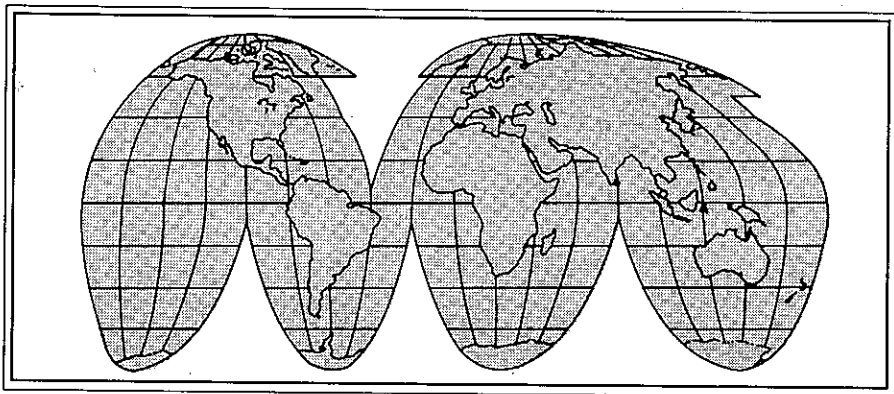


Wisconsin International Law Journal



ARTICLES

The Non-Adversarial, Extra-Judicial Search for Legality and Truth:
Foreign Notarial Transactions as an Inexpensive and Reliable Model for a
Market Driven System of Informed Contracting and Fact-Determination

Pedro A. Malavet

A Theory of Universal Democracy

Ali Khan

Subregional Coalescence in European Regional Integration

Helen E. Hartnell

NOTES AND COMMENTS

The Tragedy of Cluster Bombs in Laos: An Argument for Inclusion in the
Proposed International Ban on Landmines

Carmel Capati

The Evolution of Cooperation Between Authorities in the United States and
Switzerland in the Enforcement of Insider Trading Laws

Jennifer Hanneman

BOOK REVIEWS AND ESSAYS

Review of The New World Order: Sovereignty, Human Rights, and the
Self-Determination of Peoples

Roy E. Thoman

The Temporary International Presence in the City of Hebron: A Unique
Approach to Peacekeeping

Justus R. Weiner

position.

Finally, we come full circle and observe what happens when international law comes up against traditional power politics. The People's Republic of China has become a major world power; this means that Tibet will most certainly not be permitted secessionist self-determination, and that human rights issues in China will effectively be beyond the reach of the United Nations. It may be illogical in American law to state that some citizens are more equal under the law than other citizens, but in international law, as we try to understand the New World Order, some countries, indeed, appear to be more sovereign than others.

The Temporary International Presence in the City of Hebron ("TIPH"):

A Unique Approach to Peacekeeping

Agreement on the Temporary International Presence in the City of Hebron, published by the Israel Ministry of Foreign Affairs, Jerusalem, January 23, 1997.

JUSTUS R. WEINER¹

The Israeli-Palestinian conflict, replete with war, insurgency, terrorism and assassinations, has been one of the greatest challenges to regional and world peace for the past half-century. The current Middle East peace process, known as the "Oslo" process,² brought about, for the first time, face-to-face negotiations between Israel and the Palestinian Liberation Organization ("PLO") aimed at ultimately concluding a comprehensive peace settlement. However, four years and six interim agreements³ after the history-making mutual recognition between Israel and the Palestinians,⁴ the Israeli-Palestinian peace process is undergoing another period of acute

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² The framework of the process actually began in Madrid in 1991. Most of the progress, however, materialized from the secret bilateral Israeli-PLO talks which began in London in 1992, and bore fruit after the venue was moved to Oslo in 1993. DAVID MAKOVSKY, *MAKING PEACE WITH THE PLO: THE RABIN GOVERNMENT'S ROAD TO THE OSLO ACCORD 17-18* (1996).

³ The six interim agreements are the Declaration of Principles on Interim Self-Government Arrangements (Declaration of Principles on Interim Self-Government Arrangements, Sept. 13, 1993, Isr.-Palestine Liberation Organization, 32 I.L.M. 1525 [hereinafter DOP]); the Israel-PLO Agreement on the Gaza Strip and Greater Jericho Area which was signed in Cairo (Agreement on the Gaza Strip and the Jericho Area, May 4, 1995, Isr.-Palestine Liberation Organization, 33 I.L.M. 622 [hereinafter Cairo Agreement]; the Agreement on Preparatory Powers and Responsibilities (Agreement on Preparatory Powers and Responsibilities, Aug. 29, 1994, Isr.-Palestine Liberation Organization, 34 I.L.M. 455), the Protocol on Further Transfer of Powers and Responsibilities, Protocol on Transfer of Powers, Aug. 27, 1995, Isr.-Palestine Liberation Organization (on file with author); the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip (Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, Sept. 28, 1995, Isr.-Palestine Liberation Organization (visited Sept. 28, 1995) <<http://www.israel-mfa.gov.il/peace/interim.html>> [hereinafter Interim Agreement]); and the Protocol Concerning the Redeployment in Hebron (Protocol Concerning the Redeployment in Hebron and Related Documents, Jan. 1997, Isr.-Palestine Liberation Organization (visited Oct. 23, 1997) <<http://www.israel-mfa.gov.il/peace/interim.html>> [hereinafter Hebron Protocol]). Only three of the six agreements are relevant at this point: the Declaration of Principles, the Interim Agreement and the Hebron Protocol. The others have been superseded. Interim Agreement, *supra*, pmb., at 7.

⁴ This mutual recognition was symbolized by the Yitzhak Rabin-Yasser Arafat handshake at the September 13, 1993 signing ceremony of the DOP hosted by President Clinton on the White House lawn.

stress. Initial doubts,⁵ papered over with compromises on minor issues and unprecedented international financial and political support,⁶ have resurfaced with a vengeance.⁷ Although Israel is *not* committed in any of the interim agreements to refrain from construction in either Jerusalem or the West Bank,⁸ Palestinian sensitivity to this issue and some provocative Israeli expansion in disputed areas has engendered international criticism⁹ and significantly undermined Palestinian support for the peace process as a

⁵ At a time when euphoria over the unprecedented diplomatic breakthrough of the DOP was widespread, particularly in the United States, Europe and Scandinavia, this reviewer forecast that the process would end in a legal and political stalemate. See Justus R. Weiner, *Hard Facts Meet Soft Law - The Israeli-PLO Declaration of Principles and the Prospects for Peace: A Response to Katherine W. Meighan*, 36 VA. J. INT'L L. 931, 967 (1995). The insight of this prediction has become increasingly obvious, particularly since the signing of the most recent interim agreement, the Hebron Protocol, in January 1997. Recently, Henry Kissinger observed that "[b]oth sides had jumped onto the 'peace process' without having clarified workable objectives and expected to wrest that clarity from the process itself. Instead, it has compounded their perplexities." Henry Kissinger, *The Oslo Process Needs an Overhaul*, L.A. TIMES, Aug. 24, 1997, at 3.

It is even debatable whether Arafat was ever committed, in more than a tactical sense, to the success of the process that began in Oslo. See Weiner, *Hard Facts Meet Soft Law*, *supra* note 5. Moreover, Israeli Prime Minister Binyamin Netanyahu, who inherited the Oslo process from his predecessors, (Barry Rubin, *Turn Right at Oslo, or Continue Down the Road*, JERUSALEM POST, May 31, 1996, at 11), may have never truly embraced the peace process. Ian Black, *Likud Government Crosses the Rubicon*, THE GUARDIAN, Jan. 16, 1997, at 12; see *Al-Hayat* (BBC Shortwave Broadcasts, Feb. 1, 1997); *A Halting Step Forward*, THE GUARDIAN, Jan. 17, 1997, at 18.

⁶ Hundreds of millions of dollars were pledged to support the Palestinian Authority [hereinafter PA], but not all of the funds actually materialized. On the delay of the arrival of international monetary aid to the Palestinians, *Why Has the International Monetary Assistance for the Palestinians Not Arrived?*, PEACE WATCH, (Jerusalem, Isr., 1994). Doubts about the PA's economic decision-making, accountability, and the alleged diversion of funds to corrupt officials continue to plague the PA. See *Peace Watch Press Release: Peace Watch Publishes a Report on the Delay in the Arrival of International Monetary Aid to the Palestinians*, PEACE WATCH, (Jerusalem, Isr., Nov. 28, 1994).

⁷ See Alon Gideon et al., *Shahak Warns: Continuing Closure Might Cause Fall of P.A.*, HA'ARETZ, Apr. 26, 1995, at A1; Nadav Haetzni, *Gaza is on the Brink of Bankruptcy*, MA'ARIV, May 5, 1995, Saturday Supp., at 18; Reuters, *UN: Palestinian Income Down 23 Percent Since '92*, JERUSALEM POST, Nov. 3, 1996, at 2.

⁸ Margot Dudkevitch, Marilyn Henry & News Agencies, *US Slams Netanyahu Over Efrat Expansion*, JERUSALEM POST, Sept. 26, 1997, at 1. Israeli Prime Minister Netanyahu has stated, "Israel is building in the settlements to enable their natural growth, and this policy will not change." Michal Yudelman & News Agencies, *US: 'Time-out' Open to Debate*, JERUSALEM POST, Oct. 1, 1997, at 1.

⁹ Anton La Guardia, *Albright Urges Israel Not to Expand Settlements*, DAILY TELEGRAPH, Sept. 26, 1997, at 14; Dudkevitch, *supra* note 8; Patrick Cockburn, *Israel Angers US With Plan for New*

whole.¹⁰ Concurrent episodes of Islamic Palestinian terrorism;¹¹ together with deep and persistent differences over core issues of existential significance to the parties,¹² have combined to transform the peace process, embarked upon with enthusiasm and optimism,¹³ into an ambivalent and politically burdensome venture for the Palestinian and Israel leadership to sustain.¹⁴

The September 1997 visit of United States Secretary of State Madeleine Albright to the Middle East was aimed at stabilizing the

¹⁰ The Palestinians vociferously protested against commencement of construction on an empty hill in southern Jerusalem called *Har Homa* (Hebrew) or *Jebel Abu Ghneim* (Arabic). Elli Wohlgelemerter, *3,000 Arab Homes Approved: New Jerusalem Housing Units to Face Har Homa*, JERUSALEM POST, May 23, 1997, at 2. While Israel argues that such construction is not a breach of the terms of the interim agreements, the Palestinians view new building, whether in Jerusalem or the West Bank, as effectively prejudicing the final status negotiations by giving Israel additional facts on the ground. See Dudkevitch, *supra* note 8, at 1. However, the Palestinians are also building extensively in the West Bank. In fact, it is even suggested that Palestinian building in the West Bank is being conducted at a greater pace than that of the Israelis. See Margot Dudkevitch, *Settlers: Building Time-Out in Territories Unacceptable*, Oct. 21, 1997, at 2.

¹¹ The atmosphere has been poisoned by recriminations directed at Arafat for his unwillingness or inability to curb Palestinian terrorism despite having repeatedly promised to do so in successive interim agreements. See Guy Bechor, *Between Peace at Home and Peace with Israel*, HA'ARETZ, Mar. 4, 1996, at B3; see YECHIEL LEITER, *CRISIS IN ISRAEL: A PEACE TO RESIST* 57-58 (1994). This failure often appears calculated, as when in August 1997 Arafat kissed Abdel Aziz Rantisi, the leader of Hamas, an extreme Palestinian Islamic organization, at a Palestinian "unity" conference in Gaza. Patrick Cockburn, *Hamas Chief Says Revenge Attacks are the Only Defence*, THE INDEPENDENT, Sept. 10, 1997, at 14. In response to terrorism, Israel has frequently imposed travel closures on parts of the West Bank and Gaza. Amira Hess, *Drop of 25 Percent in Employment in Gaza Due to Closure*, HA'ARETZ, Oct. 20, 1995, at A2. In addition to making infiltration of terrorists more difficult, the closures have aggravated the already desperate economic conditions of the Palestinians, particularly those who live in areas under the local control of the PA. Arafat claims that the closures are causing the PA to lose \$7 million per day. See Clyde Haberman, *Arafat Aide Appeals to Israel and Other Nations for Help*, N.Y. TIMES, Nov. 21, 1994, at A3. Arafat terms the Israeli measures "the siege," and claims that the Palestinians "are on the verge of an economic catastrophe." *Al-Hayat*, (BBC Short Wave Broadcasting, Feb. 1, 1997).

¹² See, e.g., Weiner, *Hard Facts Meet Soft Law*, *supra* note 5; see also Justus R. Weiner, *The Hebron Protocol: The End of the Beginning or the Beginning of the End of the Israeli-Palestinian Peace Process?*, 15 B.U. INT'L L. J. 373 (1997). The recent multiple suicide bombings in the *Machne Yehuda* outdoor market and the *Ben Yehuda* Street pedestrian mall in Jerusalem were carried out by Hamas. See *Hamas Leader Urges Continued Jihad: Abd al-Shafi Calls on Arafat to Halt Talks* (BBC Short Wave Broadcast, Voice of Israel, May 28, 1995); see also Steve Rodan, Margot Dudkevitch & Mohammed Najib, *PA Rounds Up Hamas Activists*, JERUSALEM POST, Sept. 28, 1997, at 2. (Hamas has not claimed responsibility for these attacks). These bombs, which Israel blamed on the sporadic and half-hearted efforts of the PA and its Chairman, Yasser Arafat, to combat Islamic violence, further weakened the commitment of Israelis to the fast unravelling dream of peace with the Palestinians.

¹³ See generally MAHMOUD ABBAS, *THROUGH SECRET CHANNELS* (1995); SHIMON PERES, *BATTLING FOR PEACE: MEMOIRS* 325-58 (1995); SHIMON PERES, *THE NEW MIDDLE EAST* (1993).

¹⁴ By May 1997 PA officials "almost unanimously noted that the Middle East peace process is dead." They identified the Israeli government as the culprit. Elias M. Zananiri, *Palestinian Officials: The Peace Process is Dead*, THE JERUSALEM TIMES, May 2, 1997, at 3. One Palestinian official analogized the peace process to a dead body that nobody wanted to bury. As Israeli Professor Gerald Steinberg explained:

The architects of Oslo naively hoped that by the time the issues of Jerusalem, borders, and settlements came on the table, the interim period would have created enough trust and cooperation to bridge the gaps.

Gerald M. Steinberg, *The Trouble is the Nature of Oslo*, JERUSALEM POST, Mar. 14, 1997, at 6.

downward spiral.¹⁵ Albright's first official trip to the region, delayed for months because of her desire to wait for an opportune moment when progress was achievable,¹⁶ functioned as a damage control mission. Rather than making progress on the numerous and intertwined disputes that divide Israel and the Palestinian Authority ("PA"),¹⁷ her attention focused on simply keeping the process alive. Arriving in Israel shortly after a wave of terrorist suicide bombs were detonated in Jerusalem,¹⁸ the Secretary was hard pressed to restore any forward motion to the diplomatic process. Calling on both sides to observe a "time-out,"¹⁹ Albright's major achievement was to mediate a renewal of high-level meetings in Washington.²⁰ Given the depth of the distrust, this was no small achievement.²¹ However, the meetings have not yet resulted in substantive progress on the challenging issues that need to be resolved if the moribund and largely discredited venture is to be revived.²²

¹⁵ In April, 1997, in recognition of the dangerous turn of events, Albright warned: Today, in the Middle East, we face an unpredictable and dangerous situation caused by deterioration in the Arab-Israeli negotiating process.... The reason is that Arabs and Israelis alike have begun to lose faith in one another. The Oslo process and the working partnership between Israelis and Palestinians have broken down.

Albright Warns of Mideast Danger, JERUSALEM POST, Apr. 11, 1997, at 1.

¹⁶ Hillel Kuttler & News Agencies, *Albright Won't Visit Until Stalemate Ends*, JERUSALEM POST, May 18, 1997, at 1. Albright had conditioned her first visit to the region on a breakthrough in the stalemated peace process. *Id.* She told reporters in March 1997, "I will go when the time is right and when the parties are prepared to really make some of the decisions that are required." *Id.*

¹⁷ The PA was created by the Cairo Agreement. Cairo Agreement, *supra* note 3, arts. IV, V, VI, VII.

¹⁸ The Palestinians, disillusioned by the failure of the interim agreements to produce the political and economic advances promised by their leaders at the outset of the process, and alarmed by new or expanded Jewish construction in areas they hoped would become part of a future Palestinian state, have become increasingly distrustful of the process as a whole. Jon Immanuel, *Poll: Palestinians Losing Faith in Peace Process*, JERUSALEM POST, May 27, 1997, at 2.

¹⁹ Dudkevitch, *supra* note 8, at 1.

²⁰ Jay Bushinsky, *All Sides Upbeat About Renewed Negotiations*, JERUSALEM POST, Oct. 7, 1997, at 1.

²¹ Prior to his suspending the negotiations in the spring of 1997, first over Israeli construction in southern Jerusalem and later over the extent of Israel's offered first stage redeployment, Arafat claimed that the permanent status negotiations would not resume until "we have tackled all the 34 outstanding points" concerning the DOP and Interim Agreement. *Al-Hayat* (BBC Short Wave Broadcastings, Feb. 5, 1997). Israel subsequently stated it would boycott the negotiations over Arafat's "green light" to resume terrorism. Prime Minister Netanyahu alleged:

I am saying that our intelligence shows very clearly, unmistakably, that the Palestinian leadership has given the green light to the worst terrorist organizations in the world to go ahead with the kind of bus bombings and suicide attacks—the kind of mass killings that brought a halt to the peace process.

David Makovsky & Jon Immanuel, *Building at Har Homa Begins*, JERUSALEM POST, Mar. 19, 1997, at 5-6.

²² In the meantime, the goals of the Oslo process as specified in the preamble of the DOP, to "put an end to decades of confrontation and conflict... live in peaceful coexistence and mutual dignity and security and achieve a just, lasting and comprehensive peace settlement and historic reconciliation" (see DOP, *supra* note 3, pmbl.) ring with hollow disappointment. According to the time-table set out in the

One of the most demanding issues confronting the peace negotiators is to negotiate a *modus vivendi* between the Palestinians and Israelis living in Hebron, an ancient and hotly contested city in the West Bank. In Hebron, the usual political and religious difficulties are magnified by a visceral mutual animosity between Muslims and Jews. Due to concerns for the safety of the approximately 500 Jews that reside in downtown Hebron as well as the desire to protect major Jewish religious sites, Hebron was the last large city in the West Bank under Israeli occupation²³ and was a major obstacle to the continuation of the peace process.²⁴ The presence of a small Jewish community, living in close proximity to a vehemently hostile Arab population in downtown Hebron, continues to cause tension in the city today.

Curiously, however, notwithstanding the bleak outlook for the Israeli-Palestinian peace process as a whole, a unique, low-key and inexpensive peacekeeping observer mission, the Temporary International Presence in Hebron ("TIPH"), has made significant steps towards reducing tension in that city. TIPH, which unlike most international missions is not under the aegis of the United Nations ("UN"), was created to promote stability and normalization in Hebron. TIPH has meaningfully contributed to precisely those objectives. Moreover, in the opinion of the reviewer, TIPH can serve as a model for observer missions to be stationed elsewhere, in the Middle East and other parts of the world.

This essay examines the creation and role of TIPH. Section I considers the origins and functions of modern peacekeeping. Section II discusses the inception of TIPH and its intended role in the peace process. Section III analyzes the agreements between Israel and the PLO which created the TIPH missions.²⁵ Section IV examines, from diverse perspectives, the problems that have arisen since TIPH first took to the field. The views of the Palestinian Authority, the Israel Defense Forces, the Israel Foreign Ministry, the Palestinian municipal authorities and the Palestinian and Jewish residents of Hebron are considered. Section V forecasts the suitability of a TIPH-like mission for other peacekeeping roles. The reviewer's conclusions and outlook constitute Section VI.

agreements no later than May 4, 1999. The permanent (or final) status negotiations are intended to resolve the major remaining issues, including "Jerusalem, refugees, settlements, security arrangements, borders, relations and cooperation with other neighbors." See DOP, *supra* note 3, at art. V.3. As the date specified in the DOP for a permanent peace agreement approaches, the prospects of achieving that objective have receded.

²³ See Patrick Cockburn, *A Peace Deal With a Fuse Attached*, INDEPENDENT, Jan. 16, 1997, at 19; The Hebron Protocol Article, *supra* note 3, at 205.

²⁴ Daniel Reisner, *The Hebron Agreement*, JUSTICE, Mar. 1997, at 12.

²⁵ Although similar, there have actually been three variants of TIPH. References to general matters regarding TIPH appear herein simply as "TIPH." Specific references to the first mission and the second mission, respectively, are "TIPH1" and "TIPH2." There was also an advance party [hereinafter Advance Party] for TIPH2, made up entirely of Norwegians.

I. THE DEVELOPMENT OF MODERN PEACEKEEPING

Defining "Peacekeeping"

Defining the term "peacekeeping" is problematic, as the expression has been popularly used to designate a wide range of operations.²⁶ Commonly, several definitions are combined and peacekeeping is considered to include all international efforts, especially those of the UN, that involve the deployment of forces to a conflict-ridden area. Peacekeeping is not mentioned in the Charter of the UN. However, in the 1992 UN document, "An Agenda for Peace," peacekeeping is defined as:

the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.²⁷

The International Peace Academy of New York,²⁸ which is devoted to the study of peacekeeping, defines peacekeeping as "[t]he prevention, containment, moderation, and termination of hostilities, through the medium of a peaceful third party intervention, organized and directed internationally, using multinational missions of soldiers, police and civilians to restore and

²⁶ The British army has used it to describe its post-colonial internal security operations which fell under the heading "keeping the peace." In the United States, it has been used to refer to the operations in Grenada and Beirut in the 1980s, and the United Nations uses it to describe the activities of its multinational missions. JOHN MACKINLAY, *THE PEACEKEEPERS* 1 (1989).

²⁷ *An Agenda for Peace. Preventative Diplomacy, Peacemaking and Peace-keeping* (visited June 17, 1992) <<http://www.un.org/Docs/SG/agpeace.html>> at 3. An Agenda for Peace was adopted by the Summit Meeting of the Security Council on January 31, 1992. *Id.*

Peacekeeping was an activity the UN had been politically reluctant to define. The intergovernmental Special Committee on Peacekeeping Operations, for instance, annually considered making a declaration on the principles of peacekeeping, and annually rejected the idea on the grounds that to define peacekeeping was to impose a strait-jacket on a concept whose flexibility made it the most pragmatic instrument at the disposal of the UN. Nevertheless, a consistent body of practice and doctrine had developed over the years: peacekeepers functioned under the command and control of the Secretary-General; they represented the moral authority rather than the force of arms; they reflected the universality of the UN in their composition; they were deployed with the consent and cooperation of the parties involved; they were impartial and functioned without prejudice to the rights and aspirations of any side; they did not use force or the threat of force except in self-defence; they took few risks and suffered minimal numbers of casualties; and they did not seek to impose their will on any of the parties. Shashi Tharoor, *Should UN Peacekeeping Go 'Back to Basics'?*, SURVIVAL, Winter 1995-96, at 52, 56.

²⁸ The International Peace Academy is an independent, non-partisan, international organization dedicated to promoting the peaceful settlement of armed conflicts between and within states. *Mission*

maintain peace."²⁹

Peacekeeping operations typically involve one or both of two objectives: preventing the renewal of hostilities and promoting the resolution of conflict. Historically, UN peacekeeping operations are divisible into two broad categories: peacekeeping observer missions, which consist largely of officers who are almost invariably unarmed; and peacekeeping forces, which typically consist of lightly armed infantry units, together with logistical support.³⁰

Peacekeepers fulfil a large number of roles. Their functions may include separating hostile forces,³¹ monitoring a cease-fire agreement,³² supervising troop withdrawals,³³ monitoring the parties' implementation of peace agreements,³⁴ maintaining neutral demilitarized zones,³⁵ acting as a conciliator between the parties,³⁶ creating mechanisms to deal with alleged violations and disputes over the interpretation of agreements,³⁷ preventing external interference,³⁸ verifying arms control,³⁹ preventing the expansion

²⁹ PAUL F. DIEHL, *INTERNATIONAL PEACEKEEPING* 5 (1993).

³⁰ See *The Blue Helmets: A Review of United Nations Peacekeeping* [hereinafter *The Blue Helmets*], UN DEPT OF PUB. INFO 3, 8 (2d ed., 1990).

³¹ The United Nations Emergency Force II was deployed between Israeli and Egyptian forces following the 1973 War. In 1974, the UN Disengagement Observation Force was introduced between Israeli and Syrian forces on the Golan Heights. INDAR J. RIKHYE, *THE THEORY AND PRACTICE OF PEACEKEEPING* 4, 4 (1984). The United Nations Peacekeeping Force in Cyprus keeps the Turks and Greeks apart. *Id.* at 6. The peacekeeping forces' interposition between the disputants to create a buffer zone is designed to achieve two things. First, it may prevent isolated hostile incidents and accidents from escalating into full-scale hostilities. Second, it provides a moral barrier to hostile action, as a state may be reluctant to use military force if it knows that military offensives must go through UN forces, risking loss of life and international condemnation. Diehl, *supra* note 29, at 10.

³² The UN India-Pakistan Observation Mission was established in 1956 to supervise the cease-fire and other arrangements to restore peace. RIKHYE, *supra* note 31, at 4. Also the UN Observer Mission in Yemen. Elgin Clemons, *No Peace to Keep: Six and Three-Quarters Peacekeepers*, 26 N.Y.U. J. INT'L L. & POL. 117. The UN Operation in Somalia [hereinafter UNOSOM], established in April 1992. *Id.* at 136.

³³ For example, the UN Iran-Iraq Military Observer Group [hereinafter UNIIOMOG], created in 1988; and the UN Angola Verification Mission [hereinafter UNAVM], created in 1989. *Id.* at 117.

³⁴ The UN Observer Mission in Liberia [hereinafter UNOMIL] work closely with the Monitoring Group of the Economic Community of West African States [hereinafter ECOMOG] to monitor the Liberian factions' implementation of peace agreements. *The Year in Review 1996: UN Peace Missions. Four Missions, Four Approaches* (visited Oct 15, 1997) <<http://www.un.org/dot.gif>> at 3.

³⁵ For example, the United Nations Protection Force [hereinafter UNPROFOR], deployed in Croatian territory in 1995. Clemons, *No Peace to Keep*, *supra* note 32, at 125.

³⁶ For example, TIP2. See *supra* note 25.

³⁷ For example, the United Nations Interim Force in Lebanon which was deployed in March 1978. *Lebanon - UNIFIL*, UN Department of Public Information (visited Nov. 3, 1997) <<http://Depts/DPKO/Missions/unifil.htm>>.

³⁸ This was an objective of the UN Observer Group in Lebanon [hereinafter UNOGIL], created in 1958. See Clemons, *No Peace to Keep*, *supra* note 32, at 117. The UN Special Commission [hereinafter UNSCOM] is in charge of monitoring the disarmament of Iraq following the Gulf War in 1991. Anthony Goodman, *Saddam Ahead After First-Round Standoff with UN*, JERUSALEM POST, Nov. 9, 1997, at 5.

³⁹ For example, UNSCOM. Goodman, *supra* note 38.

of hostilities to new areas,⁴⁰ and conducting fact-finding missions.⁴¹ In recent years, peacekeepers have increasingly assumed responsibilities beyond the traditional concept of peacekeeping. Such functions include supervising elections,⁴² providing humanitarian assistance,⁴³ assisting in the disarmament and demobilization of factions,⁴⁴ interdicting drugs,⁴⁵ combatting terrorism,⁴⁶ establishing confidence-building mechanisms,⁴⁷ clearing mine-fields,⁴⁸ assisting in the repatriation of refugees,⁴⁹ building infrastructure,⁵⁰ maintaining law and order,⁵¹ and monitoring human rights.⁵²

⁴⁰ The UN Preventive Deployment Force [hereinafter UNPREDEP] involved the deployment of over 1,000 UN peacekeepers in the former Yugoslav Republic of Macedonia [hereinafter FYROM] to help in maintaining peace and stability in FYROM as the other parts of former Yugoslavia were at war. *The Year in Review 1996*, *supra* note 34, at 1.

⁴¹ Diehl, *supra* note 29, at 4. Fact-finding missions are based on the assumption that preventative diplomacy, peacemaking and peacekeeping "must be based upon timely and accurate knowledge of the facts." In the 1992 Report of the Secretary-General entitled "An Agenda for Peace," the Secretary-General recommends:

An increased resort to fact-finding . . . in accordance with the Charter, initiated either by the Secretary-General, to enable him to meet his responsibilities under the Charter, including Article 99, or by the Security Council or the General Assembly. Various forms may be employed selectively as the situation requires. A request by a State for the sending of a United Nations fact-finding mission to its territory should be considered without undue delay.

An Agenda for Peace, *supra* note 27, at 4.

⁴² This was performed by the UN Transition Group in Namibia, [hereinafter UNTAG], established in 1989, (See Diehl, *supra* note 29, at 4), and the UN Mission for the Referendum in Western Sahara [hereinafter MINURSO], established in 1991. Namibia - UNTAG, *Current Peacekeeping Operations*, UN Department of Public Information (visited Sept. 15, 1997) <<http://www.un.org/Depts/DPKO/Missions/untag.htm>>. UNTAC in Cambodia in 1992-93. Alan James, *Peacekeeping in the Post-Cold War Era*, INT'L J. 248, Spring 1995.

⁴³ See, e.g., UNTAG, UNPROFOR. See Clemons, *supra* note 32, at 125. UNOSOM, for example, counted among its functions humanitarian assistance. *Id.* at 136. The guiding principles governing UN humanitarian assistance are annexed to General Assembly Resolution 46/182 of 19 December 1991. The guidelines stress that:

[H]umanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality; that the sovereignty, territorial integrity and national unity of the States must be fully respected in accordance with the Charter of the United Nations; and that, in this context, humanitarian assistance should be provided with the consent of the affected country and, in principle, on the basis of an appeal by that country.

An Agenda for Peace, *supra* note 27, at 5.

⁴⁴ See, e.g., UNOMIL. *The Year in Review 1996*, *supra* note 34, at 3.

⁴⁵ Diehl, *supra* note 29, at 154.

⁴⁶ *Id.* at 156.

⁴⁷ *Id.* at 159.

⁴⁸ The United Nations Assistance Mission for Rwanda [hereinafter UNAMIR] has disabled some 1,420 mines and other explosive devices in Rwanda. *The Year in Review 1996*, *supra* note 34, at 2.

⁴⁹ See, e.g., UNAMIR. *The Year in Review 1996*, *supra* note 34, at 2. UNTAC. James, *supra* note 42, at 248.

⁵⁰ UNAMIR rebuilt four major bridges damaged during the war, helped restore operations at Kigali airport and telephone services throughout the country. *The Year in Review 1996*, *supra* note 34, at 3.

⁵¹ In July 1960, after fighting broke out in the newly-independent Congo, the Security Council authorized a UN force to help maintain law and order. RIKHUE, *supra* note 31, at 4. In Cambodia, UNTAC had policing responsibilities. James, *supra* note 42, at 248.

Despite the varied and multifaceted roles they fulfill, peacekeeping forces generally conduct their activities in accordance with three fundamental principles. First, peacekeeping missions should not brand one side or the other responsible for military conflict. Without at least the appearance of complete neutrality, UN peacekeepers are unlikely to obtain the critical element of consent and the requisite levels of cooperation from all the parties to a dispute.⁵³ This does not mean, however, that the authorizing body may not pass judgment or may not condemn one side or the other.⁵⁴ Furthermore, the deployment of peacekeeping troops in a conflict may constitute an implicit advantage for or endorsement of one side's political position.⁵⁵ Nevertheless, peacekeeping forces do not usually overtly favor one side or the other, and are not *designed* to provide military advantage to either side or *impose* a solution on the parties.⁵⁶

Second, peacekeeping operations usually have the permission of the state or states on whose territory its personnel will be stationed.⁵⁷

maintenance of law and order. They perform such police tasks as patrolling the streets and countryside to report incidents and deter criminal and other hostile activity. Peacekeeping forces may also fulfil administrative duties in a quasi-government fashion, although only as a temporary measure and without the recognition of sovereignty. Diehl, *supra* note 29, at 10.

⁵² UNTAC and UNOMIL monitor and investigate human rights violations. See *The Year in Review*, *supra* note 34, at 3; See James, *supra* note 42, at 248.

⁵³ Clemons, *supra* note 32, at 112.

According to Tharoor, "[i]mpartiality is the oxygen of peacekeeping: the only way peacekeepers can work is by being trusted by both sides, being clear and transparent in their dealings, and keeping lines of communication open. The moment they lose their trust, the moment they are seen by one side as the 'enemy', they become part of the problem they were sent to solve." Tharoor, *supra* note 27, at 58.

⁵⁴ For example, the imposition of peacekeeping forces after the Suez Crisis was preceded by UN disapproval of French and British actions. NADAV SAFRAN, ISRAEL: THE EMBATTLED ALLY 356 (1982).

⁵⁵ Diehl, *supra* note 29, at 8.

⁵⁶ *Id.*

What is at issue is not the motives of the peacekeepers, or even what they do, but the local perception of what they do. If they are seen as helping one side in the internal or external political conflict, even if only indirectly and without the immediate intention of doing so, their reputation for impartiality will be endangered, leading to the peacekeepers becoming "part of the conflict and therefore part of the problem." The peacekeepers value as unbiased intermediaries or assistants, the chief distinctive contribution of peacekeeping, will be lost. See James, *supra* note 42, at 252-53.

A reputation for impartiality has important implications on the ground. A force, or any of its contingents, which is regarded as partial will be treated as such by the offended party, conceivably resulting in an uncomfortable and perhaps even a dangerous situation for its members. No force commander would wish to find himself in that situation equipped with only light arms. The contributor states, actual or potential, are also unlikely to be happy with that situation. *Id.* at 253. This point was emphasized by the commander of the military component of the UN operation in Cambodia, "The critical point is that if peacekeepers fail to maintain their neutrality, they have to be prepared to go to war - or to go home." *Id.* at 254.

⁵⁷ Diehl, *supra* note 29, at 8. The UN Truce Supervision Organization [hereinafter UNTSO] and the UN Iran-Iraq Military Observer Group, however, were imposed under Chapter VII of the UN Charter and did not depend on the consent of the parties. See *UN Peace-keeping: Some Questions and Answers*, UN Doc. DPI/1851/Rev.4 (March 1997), at 3. However, even in the rare occasions where peace observers have been imposed on disputing parties, they remain in practice dependent on the consent of the parties as the effective performance of peace observation requires a level of cooperation from the host state(s) on the ground. Clemons, *supra* note 32, at 117.

Peacekeeping operations recognize and respect the sovereignty of states and assign a role for the mission compatible with the authority granted by the states involved.⁵⁸ In most cases, intervention without consent violates state sovereignty.⁵⁹ Moreover, any attempt to station troops without consent could precipitate military attacks on those forces by the host country, which would defeat the purpose of the mission and be dangerous for the peacekeepers, who do not possess the offensive military equipment or training to resist such actions.⁶⁰ Furthermore, permission granted by a host country allowing the deployment of peacekeeping troops does not constitute an unlimited legal right, and permission may be withdrawn at any time by the host state.⁶¹ Thus, peacekeepers cannot impose their will on those who do not wish to keep the peace.⁶²

Third, while peacekeeping troops may occupy a given area and act as an interposition force between the protagonists, they have no offensive role, and no such capability in the conflict. A peacekeeping operation does not seek to acquire or control additional territory, and has no legal or professed sovereignty over the territory it occupies.⁶³ Consequently, peacekeeping soldiers are only lightly armed, and they are authorized to use military force only under very limited conditions.⁶⁴

⁵⁸ The UN needs "to respect the sovereignty of the State; to do otherwise would not be in accordance with the understanding of member states in accepting the principles of the Charter." An Agenda for Peace, *supra* note 27, at 5.

⁵⁹ As a matter of international law, Article 2(7) of the UN Charter requires the UN to obtain the consent of any host state before entering that state's sovereign territory. Article 2, paragraph 7 of the UN Charter forbids the UN from intervening "in matters which are essentially within the domestic jurisdiction of any state." See IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 373 (1990). Likewise, peacekeepers are generally not heavily armed and can be readily overrun or bypassed by a determined army or militia. This was demonstrated at the outbreak of the 1967 Arab-Israeli War when the Jordanian army occupied the strategic UN Headquarters in Jerusalem. TEVOR M. DUPUY, *THE ARAB-ISRAELI WARS, 1947-1974* 293-94 (1978). The UN general and his staff of peacekeepers protested but offered no opposition. *Id.* UNTSO, the UN peacekeeping force placed between Syrian and Israeli forces to observe the post-1967 War ceasefire, offered no impediment to the Syrian surprise attack on Israeli positions in October 1973. JERRY ASHER, *DUEL FOR THE GOLAN* 90 (1987).

⁶⁰ The experience of the UN in Somalia and former Yugoslavia has made it clear that those who are determined to fight will not be prevented from doing so by the presence of peacekeepers. Parties to a conflict that are convinced that they have more to gain on the battlefield than at the negotiating table are also particularly unreliable partners for the UN's peace efforts. Tharoor, *supra* note 27, at 57.

⁶¹ DIEHL, *supra* note 29, at 9. In 1967, Egyptian President Abdel Nasser withdrew permission for the stationing of the United Nations Emergency Force [hereinafter UNEF] on Egyptian territory. The peacekeeping mission was removed at his request. WALTER LAQUEUR, *THE ROAD TO WAR 1967* 85-89 (1968).

⁶² Tharoor, *supra* note 27, at 59. "If there is no political will among the protagonists to solve the problem," former Secretary-General Boutros-Ghali declared in 1995, "the United Nations cannot impose peace." *Id.* at 57.

⁶³ Diehl, *supra* note 29, at 6.

⁶⁴ *Id.* at 7. UN peacekeeping forces have always carried light weapons for use, as a last resort, in self-defense. (Differences in the local context has led to a variation in the degree of "lightness" of these arms.) Furthermore, with regard to the forces it established in the 1970s, the UN claimed that self-defense included resistance to forceful attempts to prevent peacekeepers from discharging their duties. James, *supra* note 42, at 252.

The Origins of Modern Peacekeeping

The origin of modern peacekeeping can be traced back to the League of Nations, established in 1919. The League initiated methods and procedures to prevent a threatening situation from developing into international conflict.⁶⁵ One of the methods by which the League tried to

Although peacekeeping activities are usually non-coercive, the need to deploy combat units in peacekeeping roles has arisen when a stronger military presence was needed. Diehl, *supra* note 29, at 4. In particular, the principle of the non-use of force has at times been modified in civil war settings, where peacekeepers have all too often come under military assault and have been pushed to respond. Largely because of the hostile reactions of the various factions to their presence, peacekeepers in civil war situations have had to brandish heavier weaponry that would be typically permitted under the conventional peacekeeping model. For example, artillery of UN peacekeeping forces in Lebanon [hereinafter UNIFIL] goes far beyond light weaponry, as it did earlier in the Congo. Furthermore, in some civil disputes, UN peacekeepers have been armed more heavily because civil instability has meant that several groups were operating in different parts of the country. Consequently, this required the peacekeeping operation to cover more territory, opening up greater possibilities for incidents of unannounced violence or attacks. Clemons, *supra* note 32, at 123.

The end of the Cold War has opened the way to greater assertion on the part of the UN, and in many minds the recent development of peacekeeping is chiefly significant for the tougher possibilities it can offer. A more muscular approach to peacekeeping would involve two aspects. First, the UN Security Council may depart from usual peacekeeping practice by dealing somewhat ambiguously with or even directly denying the principle that the host state must consent to the presence of a peacekeeping mission and has the right to require its departure. Second, the mission's mandate and equipment may be more imposing than is usual for peacekeepers, signalling that they have the right, the ability, and, if necessary, the intention to engage in armed defensive measures; and that some breaches by the parties of their undertakings or obligations may elicit a muscular peace-restoring response. Such missions, therefore, have some of the character of peace-enforcement, that is, military activity which from the outset is both partial and threatening and for which the consent of the target state or group is certainly not deemed necessary.

The UN adopted a tough stance regarding the use of force by UNPROFOR in Bosnia-Herzegovina. The Security Council gave this force the right to protect the delivery of humanitarian supplies, banned all military flights in the state's air space; asserted the right to ensure compliance with the ban, established some "safe areas," authorized certain measures to protect civilian inhabitants, and demanded a nation-wide ceasefire. In support of these objectives, the air force of the North Atlantic Treaty Organization [hereinafter NATO] was sought and made available. James, *supra* note 42, at 255-56. However, the ban on military flights has not been stringently enforced and negotiation rather than might has been used to protect humanitarian convoys. In general, the UN authorities on the ground in Bosnia-Herzegovina, were very cautious about utilizing NATO air power. *Id.* at 256.

In Somalia, the UN has gone further in the use of force. In mid-1993, it set out to establish and maintain a secure environment throughout the country and authorized 28,000 military personnel for the purpose. However, "it all went rather disastrously wrong," causing the US to withdraw its personnel, followed by half a dozen West European states and Turkey. *Id.* at 256-57. This left some 18,000 UN troops in Somalia, but their mandate was scaled down. Even this role was abandoned in March 1995. *Id.*

Consequently, it appears that despite tough demands and associated declarations that the UN was acting under Chapter VII of the Charter in both Somalia and former Yugoslavia, the practice generally kept within the usual peacekeeping guidelines. *Id.* at 257.

⁶⁵ Article 16 of the League of Nations Covenant states:

1. Should any Member of the League resort to war in disregard of its covenants under Articles 12, 13 or 15, it shall ipso facto be deemed to have committed an act of war against all other Members of the League, which hereby undertake immediately to subject it to the severance of all trade or financial relations, the prohibition of all intercourse between their nationals and the nationals of the covenant-breaking State and the nationals of any other State.

prevent escalation of a crisis was "peace observation," whereby the international community introduced a third-party intervention as early as possible with the aim of allowing calmer judgments to resolve a potential or actual conflict.⁶⁶

However, the theory proved better than the reality. The League was ineffective in preventing the war in Manchuria between China and Japan, the Italian invasion of Abyssinia and the growing militarization of Germany, Italy and Japan, which eventually contributed to the outbreak of World War II.⁶⁷

The United Nations was created in the aftermath of the Second World War and adopted the peacekeeping aspirations of its precursor, the League of Nations.⁶⁸ Article 1 of the UN Charter states as the first purpose of the organization:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.⁶⁹

The UN was determined to give itself the capability to maintain world peace, through enforcement powers which the League had clearly lacked. Mindful of the lessons of two world wars, the members of the UN included in the Charter the legal authority and organizational machinery to keep peace by force, if necessary.⁷⁰ Chapters VI and VII of the UN Charter provide the organization with concrete methods to achieve the purposes of Article 1 of the Charter. Chapter VI provides the UN with legal authority

whether a Member of the League or not.

2. It shall be the duty of the Council in such case to recommend to the several Governments concerned what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants of the League.

See WILLIAM W. BISHOP, *INTERNATIONAL LAW: CASES AND MATERIALS* 914 (3d ed. 1962).

⁶⁶ RIKHYE, *supra* note 31, at 1.

⁶⁷ *Id.* at 1.

⁶⁸ Clemons, *supra* note 32, at 108. One of the most fundamental tasks expressed in the Charter of the UN is "to save succeeding generations from the scourge of war." UN Charter pmbl. At its establishment, members of the UN pledged "to practice tolerance and live together in peace with one another as good neighbours." *Id.*

⁶⁹ UN Charter art. 1, para. 1. See Clemons, *supra* note 32, at 108. According to Clemons, "this expressed purpose of the UN makes it easier to understand peacekeeping operations as essentially a way for the Organization [UN] to stop or contain those international disputes which escalate into armed conflict." *Id.*

to encourage peaceful dispute settlement among its members,⁷¹ while Chapter VII grants it authority to adopt a more forceful military approach whenever a dispute has escalated to a level which threatens international peace and security.⁷²

Thus, the Charter sets forth guidelines for how the UN can deal with the use or threat of force:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.⁷³

Article 41, Chapter VII of the Charter specifies several measures not involving the use of armed force which can be applied by the members of

⁷¹ UN Charter, Ch. VI. BISHOP, *supra* note 65, at 1065-66. The means to bring about peaceful dispute settlement contained in Chapter VI of the Charter have been amplified in various declarations adopted by the General Assembly, including the Manila Declaration of 1982 on the Peaceful Settlement of International Disputes and the 1988 Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the UN in this Field. They have also been the subject of various resolutions of the General Assembly, including resolution 44/21 of November 15, 1989 on enhancing international peace, security and international cooperation in all its aspects in accordance with the Charter of the UN. *Agenda for Peace*, *supra* note 27, at 5.

⁷² UN Charter, Ch. VII. BISHOP, *supra* note 65, at 1066-67.

⁷³ UN Charter, Ch. VII, art. 39. BISHOP, *supra* note 65, at 1066. It is significant that the Security Council is the body mentioned in Article 39, and not the General Assembly. The UN Charter specifies that the Security Council has primary responsibility for the maintenance of international peace and security. The fifteen member states of the Security Council, not the Secretary-General, create and define peacekeeping missions. The five permanent council members - China, France, the Russian Federation, the United Kingdom, and the US - can veto any decision on peacekeeping operations.

While the authority to make decisions on peacekeeping may be delegated to the General Assembly, with a few exceptions, the organization of peacekeeping activities by the UN has remained under the control of the Security Council. GERHARD VON GLAHN, *LAW AMONG NATIONS* 595 (1986).

In December 1946, post-World War II boundary disputes between Greece, Bulgaria, Albania, and Yugoslavia led to the Security Council's creation of a Commission of Investigation. In September 1947, the Council shifted the disputes to the General Assembly, and a month later the Assembly established the first peacekeeping unit, a Special Committee which lasted from 1947 to 1954.

In 1948, UN military observers were deployed for the first time to monitor the truce which ended Arab-Israeli hostilities. Given the political blockage caused by the divergent political interests of the United States and the USSR, both permanent members of the Security Council empowered to veto any proposals, the General Assembly acted later to establish the first of the United Nations Emergency Force. UN General Assembly Resolution 377 explained the reason the General Assembly stepped into the void as follows:

Resolves that if the Security Council, because of lack of unanimity of the permanent members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly will consider the matter immediately with a view to making appropriate recommendations to the members for collective measures, including in the breach of the peace or act of aggression, and the use of armed force when necessary to maintain or restore international peace and security.

the UN to give effect to its decisions. These include "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."⁷⁴ In the event these sanctions fail to prevent a threat to peace, the UN is empowered under Article 42, Chapter VII to "take such action by air, sea, or land forces as may be necessary to maintain or restore peace and security."⁷⁵

This activity is referred to as "collective enforcement" or "enforcement action."⁷⁶ Enforcement action occurs when the Security Council gives member states the authority to take all necessary measures to achieve a stated objective. It requires agreement among the member states and especially within the Security Council on the identity of the aggressor state against which these sanctions might be imposed.⁷⁷ Consent of the parties is not necessarily required.⁷⁸

Beyond the aforementioned provisions of the UN Charter, there is no precise legal authority for a UN peacekeeping operation.⁷⁹ Consequently, "peacekeepers are somewhat of a legal fiction,"⁸⁰ and it is useful to understand the basis of a peacekeeping operation as a UN action that finds its legal authority in the marriage of Chapters VI and VII of the Charter.⁸¹ Consequently, UN peacekeeping operations have come to be viewed as

⁷⁴ BISHOP, *supra* note 65, at 1066.

⁷⁵ UN Charter, art. 42, at 23. The Security Council has not so far made use of the most coercive of these measures - the action by military force foreseen in Article 42. In the situation between Iraq and Kuwait, the Council chose to authorize member states to take measures on its behalf. The Charter, however, does provide a detailed approach. An Agenda for Peace, *supra* note 27, at 7.

⁷⁶ Until the NATO bombings of Bosnia in September 1995 there was general recognition that peacekeeping is not peace-enforcement, and that the two activities do not mix very well. Enforcement action proceeds from different premises and is not merely one more stage in a 'peacekeeping continuum.' As the former UN Secretary-General put it:

The logic of peacekeeping flows from political and military premises that are quite distinct from those of enforcement; and the dynamics of the latter are incompatible with the political process that peacekeeping is intended to facilitate.

To blur the distinction between the two can undermine the viability of the peacekeeping operation and endanger its personnel.

Supplement to an Agenda for Peace, report of the Secretary-General, Jan. 3, 1995, para. 35 (available from the UN Department of Public Information, S/1995/1).

⁷⁷ All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security. UN Charter, art. 43 (1). BISHOP, *supra* note 65, at 1066.

⁷⁸ Enforcement action has been used in very few cases - including the Gulf War, Somalia, Rwanda, Haiti, and Bosnia and Herzegovina. None of these enforcement operations were under UN control. Rather, they were directed by a single country or a group of countries. UN Peace-keeping, *supra* note 57, at 3. A NATO-led multinational force succeeded in the UN peacekeeping operation in Bosnia and Herzegovina. What is NATO's Role in Peacekeeping in the Former Yugoslavia? (visited Nov. 3, 1997) <http://adlibitum.warwick.ac.uk/peacekeeping.htm>

actions authorized under "Chapter Six and One Half" of the UN Charter.⁸²

Peacekeeping During the Cold War

For much of the UN's first fifty years, Cold War disagreements hindered effective Security Council action.⁸³ Hopelessly divided by the Cold War and impaled on the Soviet veto,⁸⁴ the Security Council found its ability to maintain international peace and security severely compromised.⁸⁵ The contest between the US and the Soviet Union was intense. Consequently, self-interest overwhelmed the desire to submit to, or even recognize, the collective interests of the international community. In particular, since specific reference to peacekeeping does not appear in the UN Charter, the Soviet Union traditionally opposed it and refused to pay for peacekeeping missions, although it acquiesced in certain instances.⁸⁶ The veto also meant that no steps could be taken by the Security Council against the actions of any of its permanent members.⁸⁷

A consistent, albeit often underlying, criticism of peacekeeping during the Cold War era was that it was insufficiently robust. Its modest contribution to international security was generally acknowledged, but with some emphasis on the modesty. It was often implied that the UN peacekeeping contribution could only be enhanced if the peacekeepers were equipped and authorized to make more of an independent impact on the disputes to which they were despatched. That did not happen. Consequently, peacekeeping was seen by the large majority of officials, soldiers, and academics as "something of a backwater."⁸⁸

Nevertheless, important accomplishments were credited to UN peace observation and peacekeeping missions in a number of conflict or

⁸² *Id.* The late UN Secretary-General Dag Hammarskjöld coined the term to describe how certain UN peacekeeping operations fall between the pure conciliation measures outlined in Chapter VI of the UN Charter and the enforcement measures provided for in Chapter VII. *Id.*

⁸³ Between 1945 and 1992, over 100 major conflicts around the world left some 20 million dead. The UN was rendered powerless to deal with many of these crises because of the vetoes - 279 of them - cast in the Security Council, which were a vivid expression of the divisions of that period. Since the end of the cold war, May 31, 1990, there have been no such vetoes. An Agenda for Peace, *supra* note 27, at 2.

⁸⁴ The five permanent members of the Security Council have a veto over all council decisions.

⁸⁵ BRIAN URQUHART, INTRODUCTION TO PART I: TOWARDS A NEW UNITED NATIONS, SIPRI YEAR BOOK 13 (1995). The collective security action in defence of South Korea in 1950-51 was an exception to this paralysis, made possible only because the Soviet Union had absented itself from the Council in protest at the non-representation of the People's Republic of China in the UN. *Id.* at 13.

⁸⁶ See HARRIS O. SCHOENBERG, A MANDATE FOR TERROR: THE UNITED NATIONS AND THE PLO 169-70 (1989).

⁸⁷ URQUHART, *supra* note 85, at 13. The failure to make the Charter work as written led to the development of other, less spectacular methods of conflict control. Conciliation, good offices, mediation and fact-finding were exercised by groups of diplomats, mediators, and fact-finders.

potential conflict situations. The UN Special Committee on the Balkans ("UNSCOB"),⁸⁹ established in 1947,⁹⁰ marked one of the UN's earliest official steps toward diffusing hostilities between states. Undertaken before the term "peacekeeping operation" gained currency, UNSCOB established two principles that have since become cornerstones of the conventional peacekeeping operation: the practical importance of the consent of host states⁹¹ and the significance of the peacekeeping force appearing impartial to the disputing parties.⁹²

⁸⁹ In 1947, in the aftermath of World War II, Greece faced the internal violence of guerilla warfare and an escalating dispute over border violations with its northern neighbors: Yugoslavia, Albania, and Bulgaria. Greece accused its neighbors of assisting the guerilla movement within its borders. Yugoslavia, Albania, and Bulgaria countered that they had nothing to do with Greece's internal problems and, moreover, that Greece was the one responsible for promoting expansionist policies across its borders.

The UN interposed itself between the disputing states to prevent serious armed conflict. Because of the deadlock in the Security Council (see *supra* notes 84 and 85), the General Assembly established UNSCOB to achieve that end. See Clemons, *supra* note 32, at 109-10.

Although UNSCOB pre-dated the development of formal peacekeeping models for international dispute containment, its mandates were similar to those drafted today for UN peace observer missions. *Id.* at 110. Its basic functions were to observe the compliance of the four disputing states with the General Assembly resolutions and to assist those states in implementing the recommendations for peaceful dispute settlements. G.A. Res. 109, UN Doc. A/519, at 9 (1947).

⁹⁰ *Id.* at 12.

⁹¹ In order to carry out its functions of observation and conciliation, UNSCOB sought the consent of all four disputing parties. As a practical matter, without the consent of all four disputing parties, UNSCOB would not have been able to obtain the requisite levels of cooperation to perform its functions. Furthermore, non-consenting parties would likely view UNSCOB's presence as hostile, thereby jeopardizing the safety of UNSCOB members. Clemons, *supra* note 32, at 110. Secondly, as a matter of international law, Article 2(7) of the UN Charter requires the UN to obtain the consent of any host state before entering the state's sovereign territory. See *supra* note 58.

Consequently, in UNSCOB's enabling resolution, the GA requested that the Secretary General enter into a standing arrangement with each of the four governments concerned in order to ensure that UNSCOB would have "full freedom of movement and all necessary facilities for the performance of its functions." See G.A. Res. 109, *supra* note 89, para. 10; Clemons, *supra* note 32, at 110.

The failure of the GA to obtain the consent of all the parties negated an essential element of UNSCOB and severely limited its effectiveness as a conciliator to the dispute. See *Id.* at 111.

⁹² *Id.* at 109. The facts surrounding the UN's handling of this dispute made the deployment of UNSCOB appear far from impartial to the host countries, and made the hostile reactions of Albania, Bulgaria, and Yugoslavia at least predictable, if not inevitable. Preceding the GA vote on the establishment of UNSCOB, a Commission of Investigation was formed and instructed to submit a report to the Security Council on its findings of the facts surrounding the tensions between Greece and its northern neighbors. The majority of the Commission, made up mostly of non-Communist countries, found support for Greece's allegation that Yugoslavia, Albania, and Bulgaria were assisting a guerilla movement within Greece's borders. However, a minority of the Commission (the Soviet Union and Poland) considered the evidence cited by the majority to be inconclusive and contradictory. They considered the charges that Yugoslavia, Albania, and Bulgaria supported Greek guerrillas to be entirely unfounded. *Id.* at 111. Consequently, the Communist members of the General Assembly opposed the establishment of UNSCOB from the outset. They not only challenged the factual basis for the establishment of UNSCOB, but also criticized the deployment of UNSCOB as a legal violation of the sovereignty of Albania, Yugoslavia, and Bulgaria. *Id.* at 112.

The General Assembly approved both the establishment and deployment of UNSCOB over the objections of its Communist members. By isolating one side of the dispute (Yugoslavia, Bulgaria, and Albania) and by adopting the contested findings of fault as the basis for UNSCOB's establishment over

The securing of cease-fires, truces and armistices required the presence of UN military observers. The first formal peacekeeping operation established by the UN was the UN Truce Supervision Organization ("UNTSO") in Palestine.⁹³ With the creation of UNTSO, "the UN abandoned the loosely principled peacekeeping approach used in UNSCOB's operation and adopted a more structured practice based on a clearer set of operative principles."⁹⁴ The observers were instructed to be "completely objective in their attitudes" and to "maintain a thorough neutrality" on all political issues concerning the Palestine situation into which they were deployed.⁹⁵ Such impartiality was perceived as crucial to the troops' ability to perform their investigative and reporting functions.⁹⁶ UNTSO also operated under an absolute prohibition on the use of force in "supervising the truce."⁹⁷ To this day, the principles of conduct contained in

conciliator to the dispute. Therefore, it is not surprising that Albania, Bulgaria, and Yugoslavia ignored the UN's recommendation "that the four governments concerned cooperate" with UNSCOB. G.A. Res. 109, *supra* note 89, para. 5. See Clemons, *supra* note 32, at 112.

The limited effectiveness of this conciliation effort by the UN contained an important lesson for future peacekeeping operations: "UN impartiality must be expressed both in word and in deed." *Id.* at 112.

⁹³ The Blue Helmets, *supra* note 30, at 8. In response to the Arab-Israeli conflict over Palestine/Israel in 1948, the Security Council resorted to the strong measures provided for under Chapter VII of the UN Charter to contain the hostilities. In May 1948, the Security Council demanded a four week cease-fire and instructed the UN Mediator for Palestine, Count Bernadotte, and the Truce Commission to "supervise" its observance. Security Council Resolution 50, UN SCOR, 3rd Sess., 310th mtg. para. 6, UN Doc. S/801 (1948). Security Council Resolution 50 also equipped Bernadotte and the Truce Commission with a "sufficient number of observers" and threatened the future use of Chapter VII in the event that either side sought to frustrate the UN peace observers' mission. *Id.*

On July 15, 1948, in response to renewed fighting, the Security Council, using its full authority under Chapter VII of the Charter, demanded a second truce - this time to last "until a peaceful adjustment of the future situation of Palestine [was] reached." S.C. Res. 54, UN SCOR, 3rd Sess., 338th mtg. UN Doc. S/902 (1948). The UN also increased the number of military observers in the next group, (the first group of UN peace observers had to be evacuated because of the violence), to over five hundred. This group became known as UNTSO. Clemons, *supra* note 32, at 114.

⁹⁴ *Id.* at 112. Since then, all other UN missions have been established according to the same basic principles. *Id.* at 113. Later UN observer missions included the UN Military Observer Group in India and Pakistan, created in 1949; the UN Observation Group in Lebanon, created in 1958; the UN Yemen Observation Mission, created in 1963; the UN India-Pakistan Observation Mission, created in 1965; the Mission of Representatives of the Secretary-General in the Dominican Republic, also created in 1965; the UN Good Offices Mission in Afghanistan and Pakistan, created in 1988; the UN Iran-Iraq Military Observer Group, also created in 1988; the UN Angola Verification Mission, created in 1989; and the UN Observer Group in Central America, created in 1990.

⁹⁵ *Id.* at 114-15.

⁹⁶ *Id.* at 115. While the directive that the UNTSO force maintain a thorough neutrality has become established for all subsequent peacekeeping operations, sustaining such a perception is, in reality, extremely difficult. The peace observer's difficulties in maintaining an image of neutrality are often exacerbated by complaints from the disputing parties that the other side is using the truce situation to improve its military position. UNTSO faced such complaints. *Id.*

⁹⁷ However, because UNTSO was a Chapter VII operation, it is not quite accurate to say that it typified passive peace observer missions. First, while UNTSO observers were unarmed, and therefore unable to secure compliance with the truce forcibly, UNTSO administrators were in a position to use diplomatic force and to request compulsory sanctions by virtue of the mission's grounding in Chapter VII. Second, although UNTSO observers were not physically capable of defending themselves against

the instructions to UNTSO troops form the primary basis for UN peace observer missions.⁹⁸

Soon after peacekeeping observer missions established themselves as a critical tool for UN peace efforts, a type of armed conflict arose that exposed and exploited the limits of the peace observer principles. This conflict involved frequent military raids by one party against another, thereby triggering increasingly strong reprisal attacks.⁹⁹ As a result, the parties were more likely to ignore the demarcated boundary lines, as well as the UN observers who were deployed to supervise them.¹⁰⁰

In order to keep the peace and maintain armistice agreements, the UN required a paramilitary force capable of stopping and apprehending violators of demarcated armistice lines rather than simply observing and reporting them.¹⁰¹ Consequently, the UN Emergency Force ("UNEF") was created and interposed between Egypt and Israel in 1956, after the tensions over the Suez Canal erupted into fighting.¹⁰² Collective enforcement action was made impossible by the inability of the Security Council to agree on the identity of the aggressor state. However, because the Security Council recognized the threat of escalation, it endorsed a course of action aimed at defusing the situation.¹⁰³ This conciliatory act, whereby an internationally convened body of soldiers and civilians was placed between the armies of warring factions and states, without identifying an aggressor, became known as "peacekeeping."¹⁰⁴ Thus, it took over a decade for present conceptions of peaceful intervention to develop from the UN's initial concept of collective enforcement.¹⁰⁵

Born largely of the ingenuity of then UN Secretary-General Dag Hammarskjöld¹⁰⁶ and then Canadian Minister of External Affairs Lester

acts of violence, UN Mediator Count Bernadotte permitted the observers "to request and receive from both parties armed protection. . . whenever necessary in the discharge of [their] duties." *Id.* at 116.

Nevertheless, Bernadotte's principled instruction that the UNTSO observer "has no power to enforce," together with his admonition that acts "contrary to the terms of the truce not be committed or rectified," originally shaped and continue to guide the absolute prohibition against the use of force by UN peace observer missions. *Id.*

⁹⁸ *Id.* at 114.

⁹⁹ The Blue Helmets, *supra* note 30, at 43.

¹⁰⁰ Clemons, *supra* note 32, at 114.

¹⁰¹ *Id.* at 118.

¹⁰² The actions were authorized under Article 29 of the UN Charter. This force was placed along the armistice line between Israel and Egypt from 1956 until 1967. See SCHOENBERG, *supra* note 86, at 170. UNEF consisted of more than 6,000 lightly-armed soldiers from national contingents. *Id.* at 118.

¹⁰³ MACKINLAY, *supra* note 26, at 1-3.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Hammarskjöld was Secretary-General of the UN between the years 1953-1961. Hammarskjöld, Daig, 1905-1961 (visited Mar. 15, 1998) <<http://www.eica.org/us/library/eng/000002/000220.htm>>

Pearson,¹⁰⁷ UNEF marked a significant modification of the UN peacekeeping operation model. While retaining the principles of consent and impartiality, UNEF did not operate under an absolute prohibition on force.¹⁰⁸ As Hammarskjöld envisaged the force, UNEF troops, unlike peace observers, were entitled to respond with force to armed attacks, including attempts to compel them to withdraw from their authorized positions.¹⁰⁹ Given this capacity to use defensive force, UNEF was assigned more aggressive peacekeeping activities around the Suez Canal.¹¹⁰

Hammarskjöld's revised model for peacekeeping strengthened the ability of the UN to interpose itself between member states at a time when a new type of armed conflict situation had exposed the limits of the peace observation model.¹¹¹ More recently, the "Six and One Half" peacekeeping model has been expanded to include the monitoring and supervising of elections for those countries that fear the physical intimidation of voters.¹¹²

The decolonization process created power vacuums in various parts of the world.¹¹³ In these situations, the technique of peacekeeping was progressively developed until by the end of the Cold War it had become a

¹⁰⁷ Lester Pearson was the leader of the Canadian delegation to the UN, subsequently the president of the General Assembly (1952-1953), and later the Canadian Minister of External Affairs (1948-1957). His efforts to resolve the Suez Crisis were rewarded with the Nobel Peace Prize in 1957. Later, he was elected Prime Minister of Canada.

¹⁰⁸ Clemons, *supra* note 32, at 118.

¹⁰⁹ *Id.* at 118-19.

¹¹⁰ *Id.* at 119. These activities included guarding key installations, providing protection for the Suez Clearance Organization and preventing any trespassing of the agreed armistice line, which included the right to apprehend ground violators. *Id.* at 119. Regarding the concept of neutrality, Hammarskjöld emphasized that the UN did not intend to influence the military balance in the conflict. Therefore, Hammarskjöld refused any peacekeeping troops offered by "the permanent members of the Security Council or from any country which for geographical or other reasons might have a special interest in the conflict" if so requested by the disputing parties. Additionally, Hammarskjöld ordered that UNEF not be "used so as to prejudice the solution of the controversial questions involved." Hammarskjöld made it clear throughout his creation of UNEF that the UN could not request to station or operate the force on the territory of a given country without the consent of the government of that country. He was unable to gain Israel's consent to operate on its territory, and UNEF was thus deployed only on the Egyptian side of the Armistice Demarcated Line. Given Israel's refusal, Hammarskjöld made special efforts to assure Egypt that UNEF would not infringe Egyptian sovereignty. *Id.* at 119.

¹¹¹ *Id.* at 120.

¹¹² The UN Transition Assistance Group in Namibia [hereinafter UNTAG] established in 1989 is an example of the expanded use of Hammarskjöld's "Six and One Half" peacekeeping model. *Id.* at 120.

A further development of peacekeeping has been the evolution of the concept of preventive deployment, which permits the positioning of a UN military force on one or both sides of a border with the objective of deterring the escalation of tension into armed conflict. *Peacekeeping*, (visited Oct. 7, 1997) <<http://www.un.org/rights>>, ch. 7.7. Each case is dealt with individually, with member-states providing personnel and assistance on a voluntary basis. See RIKHYE, *supra* note 31, at 3. Article 43 of the Charter authorizes the Security Council to call on member-states to provide, on a systematic basis and in accordance with a special agreement or agreements, military assistance and facilities, including rights of passage, to keep the peace. However, no such agreement has yet been reached or appears likely to be reached in the immediate future. *Id.*

¹¹³ For example in Palestine, Kashmir, the Congo, Cyprus and West Iran. See URQUHART, *supra* note 85, at 14.

main pillar of the authority and effectiveness of the Security Council.¹¹⁴ Peacekeeping served not only to contain conflict and create the necessary conditions for negotiations, but it also provided a welcome and acceptable means for keeping regional conflicts out of the Cold War orbit, thereby avoiding conflict between East and West which could conceivably have resulted in a nuclear confrontation.¹¹⁵

Civilian Peacekeeping

According to the 1992 Report of the UN Secretary-General, peacekeeping operations, "to be truly successful, must come to include comprehensive efforts to identify and support structures which tend to consolidate peace and advance a sense of confidence and well-being among people."¹¹⁶ In addition to traditional military deployments, civilian peace missions have been established in several countries by the UN and international organizations to help verify agreements, promote stability, engage in public education, monitor elections, encourage former belligerents to respect human rights and assist in rebuilding state institutions to bring justice and lasting peace.¹¹⁷ Increasingly, the UN and international organizations are endeavoring to integrate peacekeeping operations with "post-conflict peace-building."¹¹⁸ These missions recognize the importance of continuum between the first stages of peacekeeping operations and later measures aimed at the full return of stability to societies recovering from the trauma of civil or international war.¹¹⁹ They involve action to identify and support structures which will strengthen and solidify peace in order to avoid

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *An Agenda for Peace*, *supra* note 27, at 9.

¹¹⁷ *Civilian Missions: Keeping Peace is not just about Blue Helmets*, THE YEAR IN REVIEW 1996: UN PEACE MISSIONS (visited Sept. 20, 1997) <<http://www.un.org/rights/micivh/rapports/helmets.htm>>.

According to the UN Secretary-General:

The human rights missions...have been established to help bring an end to long-standing conflicts and create conditions for a lasting peace for the peoples of the countries concerned. They have been designed in a way that responds to the frequently-expressed wish of the member states that higher priority should be given to preventive and peacemaking activities, which are less costly than peacekeeping operations.

Id.

Although in the breadth of its responsibilities, wider peacekeeping is a recent phenomenon, peacekeeping with an extensive ambit is not an exclusively post-Cold War activity. The biggest UN operation until the 1990s - in the Congo in the early 1960s - was composed of civilian and military wings and succeeded in securing a legitimate government. It was during this period that the UN successfully administered West New Guinea for seven months - as a means of transferring it peacefully from the Netherlands to Indonesia - employing individual experts from numerous nations alongside its security force. James, *supra* note 42, at 250.

¹¹⁸ *An Agenda for Peace*, *supra* note 27, at 2.

¹¹⁹ *UN Peacekeeping: Emphasizing Results* (visited Apr. 14, 1997) <<http://www.state.gov/www/>

a relapse into conflict.¹²⁰ Increasingly, peacekeeping requires that civilian political officers, human rights monitors, electoral officials, refugee and humanitarian aid specialists and police play as central a role as the military.¹²¹ The synthesis of peacekeeping operations with humanitarian and complementary civilian efforts is perceived by the UN and other international organizations as crucial to the success of its peacemaking objectives.¹²² Among other things, civilian missions can help to ensure that election results are honored, that local police forces are able to maintain order, and that the economic benefits of peace are tangible.¹²³ The operations that brought Namibia to independence,¹²⁴ that transformed the society and politics of Cambodia¹²⁵ and El Salvador, and that restored hope in Mozambique, were all multi-dimensional efforts that demonstrated the effectiveness of a broader concept of peacekeeping - one which combines military functions with a variety of largely civilian undertakings to bring about change and thereby fulfil the objectives of the operation.¹²⁶ However, "multi-dimensional peacekeeping" still rests on the traditional pillars of agreement and consent and the new functions identified above are usually reflected in the terms of a comprehensive settlement that both (or all) parties in a conflict wish the UN to implement.¹²⁷

Multi-dimensional peacekeeping efforts are currently underway in a number of countries where the formal UN peacekeeping operation has either ended or been dramatically scaled down, including El Salvador, Cambodia, Rwanda, Mozambique and Haiti.¹²⁸ The UN General Assembly has created three civilian missions to complement UN peacekeeping

¹²⁰ *An Agenda for Peace*, *supra* note 27, at 2.

¹²¹ *Id.* at 8.

¹²² Civilian efforts may include the disarming of previously warring parties and restoration of order, assuming custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening government institutions and promoting formal and informal processes of political participation. *Id.* at 9. "In surveying the range of efforts for peace, the concept of peace-building as the construction of a new environment should be viewed as the counterpart of preventative diplomacy, which seeks to avoid the breakdown of peaceful conditions. When conflict breaks out, mutually reinforcing efforts at peacemaking and peacekeeping come into play. Once these have achieved their objectives, only sustained, cooperative work to deal with underlying economic, social, cultural and humanitarian problems can place an achieved peace on a durable foundation. Preventative diplomacy is to avoid a crisis; post-conflict peace-building is to prevent a recurrence." *Id.*

¹²³ *UN Peacekeeping*, *supra* note 119, at 1.

¹²⁴ Besides its military element, the UN Transition Assistance Group (UNTAG, 1989-90) in Namibia had a civilian component which engaged in political education throughout the territory, kept a close eye on the local police, and oversaw all aspects of a complex and sensitive electoral process. James, *supra* note 42, at 248.

¹²⁵ In Cambodia, UNTAC's civilian role in 1992-93 included policing, repatriation of refugees, monitoring human rights, overseeing elections, and providing civil administration. *Id.*

¹²⁶ Tharoor, *supra* note 27, at 54.

¹²⁷ *Id.* None of the civilian functions involve a threat to the UN's preference for the non-use of force. *Id.*

¹²⁸ *UN Peacekeeping: Emphasizing Results*, *supra* note 119, at 1.

activities: the UN Office of Verification in El Salvador ("ONUV"), the UN Mission in Guatemala ("MINUGUA") and the International Civilian Mission in Haiti ("MICIVIH").¹²⁹

Non-UN Peacekeeping Forces

The first multinational peacekeeping force to be established outside the framework of the UN was the Inter-American Peacekeeping Force sent by the Organization of American States ("OAS") to the Dominican Republic in 1965.¹³⁰ The Arab League also has peacekeeping experience. An Egyptian force was sent to Kuwait by the League in 1961, and the Inter-Arab Deterrent Force was sent into Lebanon in 1976. The latter force was intended to police the armistice that purported to end the 1975-76 civil war between Lebanon's Christians and Muslims. It consisted of token units from Saudi Arabia, the Yemens, the Sudan, Algeria, and the United Arab Emirates, with the overwhelming bulk of the force consisting of units of the Syrian army.¹³¹

Furthermore, regional organizations have worked in cooperation with the UN on peacekeeping missions. Chapter VIII of the UN Charter is devoted to regional arrangements or agencies for dealing with matters relating to the maintenance of international peace and security as are appropriate for regional action and consistent with the purposes and principles of the UN.¹³² The Cold War impaired the proper use of Chapter VII and indeed, during that era, regional arrangements worked on occasion against resolving disputes.¹³³ However, in recent years, the UN has

¹²⁹ *Civilian Missions*, *supra* note 117, at 1. These civilian missions monitor human rights agreements, report violations, support national authorities in upholding respect for human rights and carry out human rights promotion and education programs. *Civilian Missions*, *supra* note 117, at 1.

¹³⁰ VON GLAHN, *supra* note 73, at 602. Following an initial intervention by the United States, the OAS force was, in fact, built around the US troops. The OAS also sent observers to El Salvador and Honduras after the so-called 'football war' in 1976. RIKHYE, *supra* note 31, at 6.

¹³¹ VON GLAHN, *supra* note 73, at 602. The first unit (Sudanese) arrived in Beirut on June 10, 1976, but in reality it merely supplemented the large Syrian force (22,000 men) already deployed in Lebanon. Unlike most other international forces, the Inter-Arab Deterrent Force has sometimes been involved in heavy combat. In 1984, the force was entirely composed of Syrian units. From 1976 until 1982, Syria received regular financial support for the force from the Arabs states. Since 1982, Syrian forces have remained in Lebanon. While ostensibly maintaining the peace, these troops are, in reality, an occupying force, allowing Syria to exercise control over its weaker neighbor. See JOHN K. COOLEY, *PAYBACK: AMERICA'S LONG WAR IN THE MIDDLE EAST* 65 (1991).

¹³² *Agenda for Peace*, *supra* note 27, at 9. The Charter deliberately provides no precise definition of regional arrangements and agencies, thus allowing useful flexibility for undertakings by a group of states to deal with a matter appropriate for regional action which could also contribute to the maintenance of international peace and security. Such associations or entities could include treaty-based organizations for mutual security and defense, organizations for general regional development or for cooperation on a particular economic topic or function, and groups created to deal with a specific political, economic or social issue of current concern. *Id.*

encouraged a variety of complementary efforts in cooperation with regional organizations.¹³⁴ In Africa, three different regional groups - the Organization of African Unity, the League of Arab States and the Organization of the Islamic Conference - joined efforts with the UN regarding Somalia.¹³⁵ In the Asian context, the Association of South-East Asian Nations and individual states from several regions were brought together with the parties to the Cambodian conflict at an international conference in Paris, to work with the UN.¹³⁶ In the case of El Salvador, "The Friends of the Secretary-General" contributed to agreements reached through UN mediation.¹³⁷ The end of the war in Nicaragua involved a highly complex effort which was initiated by leaders of the region and conducted by individual states, groups of states and the Organization of American States. Efforts undertaken by the European Community and its member states, with the support of the states participating in the Conference on Security Cooperation in Europe, have been critical in dealing with the crisis in the Balkans and neighboring areas.¹³⁸

Since 1992, the Organization for Security and Cooperation in Europe ("OSCE") has established nine long-term peacekeeping missions to assist in the easing of tensions and the settlement of conflicts.¹³⁹ Such missions are currently operating in the Former Yugoslav Republic of Macedonia, Georgia, Estonia, Moldova, Latvia, Tajikistan, Bosnia-Herzegovina, and Ukraine. The OSCE is also involved in assisting in the implementation of certain bilateral agreements between Russia and two of the Baltic States. Missions also operate, under the aegis of the OSCE, in each of the states neighboring Serbia and Montenegro to assist in the implementation of UN sanctions against Belgrade.¹⁴⁰ In June 1992, NATO announced its readiness to support, on a case by case basis, in accordance with its procedures, peacekeeping activities under the responsibility of the OSCE.¹⁴¹

Peacekeeping in the Post-Cold War Era

The end of the Cold War has brought about a new era for international organizations. Increased cooperation between the two former superpowers, often in the context of international organizations, allowed for the unprecedented, unified response by the UN to the Iraqi invasion of

¹³⁴ *Id.* at 10.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Peacekeeping*, *supra* note 112, at 7.

¹⁴⁰ *Id.*

¹⁴¹ *What is NATO's Role in Peacekeeping in the Former Yugoslavia?*, *supra* note 78.

Kuwait in 1991. The easing of East-West tensions has also seen major power retrenchment in various regions of the world, with the major power states showing less willingness to intervene unilaterally with arms or military forces in proxy wars or conflicts outside their region.¹⁴² Consequently, a vacuum has been created, into which the UN is re-emerging as a force for international stability.¹⁴³

The UN's security arm, once disabled by circumstances it was not created or equipped to control, has emerged as a central instrument for the prevention and resolution of conflicts and for the preservation of peace.¹⁴⁴ An unprecedented degree of agreement within the UN Security Council in responding to international crises has plunged the organization into a series of peacekeeping operations that bear little or no resemblance in size, complexity and function to those of the past. During the Cold War, peacekeeping worked within the limitations imposed upon it by superpower rivalry. When these limitations became a matter of history, everything seemed possible,¹⁴⁵ leading the world to make unprecedented demands on the military capability of the UN.¹⁴⁶

This trend is easily discernable. Shortly after the start of the 1990s, as East-West tensions eased, UN peacekeeping operations expanded

¹⁴² Diehl, *supra* note 29, at 1. The end of the Cold War loosened the straight-jacket within which many potential conflicts had been confined, and many clashes erupted amid the disinclination of the major powers to intervene. During the Cold War, both superpowers had sought to prevent conflicts arising which might engage their interests. Today, the stakes are lower; Somalia is not seen as threatening to lead to another Stalingrad, and Sarajevo 1992 does not carry the globe-threatening resonance of Sarajevo 1914. In this climate, warring factions, unconstrained by ties to one superpower or another, pursue their ambitions without regard to the outside world that clearly cannot summon the will or the resources to intercede decisively. Tharoor, *supra* note 27, at 55.

"A post-ideological world stokes its frenzies in the flames of nationalism, ethnicity and tribal triumphalism. Old injustices and older enmities are revived, intensified or reinvented; history becomes a whip with which to flail those still in the tenuous moments of peace that punctuate them. The techniques of a calmer era, peacekeeping included, seem inadequate to the moment." *Id.* at 55.

The large majority of peacekeeping missions are related to the end of the Cold War in that the conclusion of East-West rivalry had a direct impact on the relevant disputes. Some problems have been eased or settled, usually in consequence of the changed post-Cold War position of the states immediately concerned. Others, while not being settled, have at least made some formal moves in that direction. This has often been associated with the withdrawal of Cold War backing from one or both sides. Yet others have been released or reactivated by events which are related to the end of the Cold War. Additionally, some peacekeeping operations concern disputes which are settled, subsist, or arise independently of the improvement in relations between East and West, but nonetheless may benefit from the new international climate's encouragement of peacekeeping. James, *supra* note 42, at 258-59.

The withdrawal of Cold War induced support has been a factor in the outbreak of civil wars in Liberia and Somalia. Those in Croatia, Bosnia-Herzegovina, and Georgia reflect, in one way or another, the breakdown of the former states of those regions, which may be seen as an accompaniment of the Cold War's end. *Id.* at 261.

¹⁴³ Diehl, *supra* note 29, at 2.

¹⁴⁴ *Agenda for Peace*, *supra* note 27, at 2.

¹⁴⁵ Tharoor, *supra* note 27, at 53.

rapidly.¹⁴⁷ Between 1991 and 1993, significant operations began in Cambodia, El Salvador, the former Yugoslavia, Mozambique, Kuwait, Angola, Rwanda, Somalia and the Western Sahara. In the same period, the number of UN peacekeepers deployed increased from approximately 10,000 at a cost of \$300 million per year, to more than 78,000 personnel at an annual cost of \$3.5 billion by mid-1993.¹⁴⁸

This period of expansion seriously strained, and at times exceeded, UN capabilities, leading to critical failures and problems.¹⁴⁹ The evolution of peacekeeping in the new world disorder outstripped the conceptual underpinnings that had girdled it during the Cold War years. UN peacekeepers were sent to intervene in crises before the world could find the time to elaborate, or agree upon, the doctrinal justifications or the overall strategy behind each new mandate (or modification of a mandate).¹⁵⁰

As the Security Council proclaimed "no-fly zones" and "safe areas," declared punitive actions against warlords and acquiesced in NATO-declared 'exclusion zones'; as member-states established command arrangements that did not in all cases terminate in New York; and as peacekeepers mounted anti-sniping patrols and called in air strikes, the traditional peacekeeping principles have been strained to the breaking point.¹⁵¹

¹⁴⁷ Thirteen peacekeeping operations were established between the years 1945 and 1987. Since then, there have been thirteen new ones. *Agenda for Peace*, *supra* note 27, at 7.

¹⁴⁸ *UN Peacekeeping: Emphasizing Results*, *supra* note 119, at 1.

¹⁴⁹ Given the dramatic increase in the number of UN peacekeeping operations, and the relatively large size of some of them, a question does arise regarding the ability of the UN Secretariat to cope with this amount of activity, suggesting that perhaps some of the problems in the field are attributable to shortcomings at the UN headquarters in New York. Soldiers at the front often feel neglected by the staff; and the staff not uncommonly feel themselves in receipt of inadequate or inappropriate guidance from, and generally unappreciated by, the policy-makers back home. Mandates have frequently been criticized by force commanders for their imprecision. More specifically, the problems arising from a commander reporting to one part of the UN secretariat and his chief administrator officer to another have been notorious for some time. James, *supra* note 42, at 244.

The UN's overall arrangements for the administration of peacekeeping have also been seen as inadequate for the demands of recent times. A Norwegian analyst has observed that although the Department of Peacekeeping Operations "is staffed by highly competent officers when compared to the more politicized agencies of the UN, it is clearly grossly understaffed both for the effective coordination within the secretariat and for continuous liaison with missions in the field. The lack of personnel for predeployment planning and continuous operational oversight has been a major source of difficulties in contemporary peacekeeping." *Id.* at 245. According to the commander of the military component of the United Nations Transition Authority in Cambodia (UNTAC), "the lack of understanding in New York of the demands of mounting and executing an operation of the magnitude of UNTAC was a most serious problem." Lt.-Gen. John M. Sanderson, *Peacekeeping Operations in Cambodia*, 139 ROYAL UNITED SERVICES INSTITUTE OF AUSTRALIA J. 20, 25 (1994).

¹⁵⁰ Tharoor, *supra* note 27, at 56.

¹⁵¹ Tharoor, *supra* note 27, at 56. UNOSOM's attempts to impose peace in Somalia led to the loss of political support and the troops' eventual withdrawal; UNPROFOR, in former Yugoslavia, has been blamed for failing to do things it was never mandated, staffed, financed, equipped or deployed to do. *Id.* at 58.

One analyst has argued that some "recent United Nations military operations are so different in scope and mandate that they can be characterized as 'peacekeeping'."

Recent peacekeeping difficulties can be largely attributed to the unwillingness of warring parties to seek peaceful solutions.¹⁵² However, a further problem has been the failure of member states to provide sufficient resources to peacekeeping missions.¹⁵³ Peacekeepers have sometimes been handed daunting and wide-ranging tasks by the Security Council, but have not been given the means to carry them out.¹⁵⁴

categories to the breaking point. Three of them (in Cambodia, the former Yugoslavia, and Somalia) illustrate clearly the stark new challenges of UN operations and provide the basis for the military departures in *Agenda for Peace*. James, *supra* note 42, at 255.

¹⁵² The Somalia intervention demonstrated that a UN mission can only be based on the parties' willingness for peace. The withdrawal of the UN Operation in Somalia demonstrated that the UN must, in some cases, end a peacekeeping operation when the parties fail to make progress towards reconciliation and ending violence. *The Year in Review 1996: UN Peace Missions* (visited Sept. 20, 1997) <<http://www.un.org/Depts/DPKO/Missions/unifil.htm>>.

In Angola the 1992 elections, supervised by the UN, were followed by a resumption of fighting, unhappily watched over by peacekeepers. James, *supra* note 42, at 241.

¹⁵³ In the summer of 1994, when the UN required 5,500 soldiers for its operation in Rwanda, it turned to the 19 governments which at that time had pledged a total of 31,000 troops for future UN peacekeeping operations; all declined to participate. Tharoor, *supra* note 27, at 62.

The former UN Secretary-General, Boutros Boutros-Ghali, noted in connection with the willingness of member states to contribute to the UN mission in Somalia, "unmistakable signs of fatigue among the international community." James, *supra* note 42, at 258.

Article 43 of the UN Charter foresees special agreements whereby member states undertake to make armed forces, assistance and facilities available to the Security Council for the purposes stated in Article 42, not only on an ad hoc basis but on a permanent basis. According to the 1992 Secretary-General's Report, "[u]nder the political circumstances that now exist for the first time since the Charter was adopted, the long-standing obstacles to the conclusion of such special agreements should no longer prevail." In the opinion of the former Secretary-General, the ready availability of armed forces on call could serve, in itself, as a means of deterring breaches of the peace since a potential aggressor would know that the Council had at its disposal a means of response. While the forces envisaged under Article 43 "may perhaps never be sufficiently large or well enough equipped to deal with a threat from a major army equipped with sophisticated weapons," they would be useful "in meeting any threat posed by a military force of a lesser order." *Agenda for Peace*, *supra* note 27, at 7. However, such forces are not likely to be available in the foreseeable future. *Id.*

There is currently an enormous gap between mandates and means. As it learned in Rwanda in 1994 and the Bosnian 'safe areas' in 1993, the Security Council can routinely pass resolutions without being obliged to provide the troops to implement them. When the troops are found, they too often need to be equipped, usually with unfamiliar equipment, and trained, tasks for which the UN has no infrastructure and which it conducts by improvisation. When troops are finally found, equipped and deployed, their governments have to be paid, an obligation in which the UN is increasingly falling behind. In 1995, the Secretary-General was obliged by a severe shortage of cash to suspend all repayments to troop- and equipment-contributing countries. Tharoor, *supra* note 27, at 63. In 1992, the unpaid arrears towards peacekeeping operations stood at over \$800 million, which represents a debt owed by the UN to the troop-contributing countries. Patterns of payment by member states are "unacceptably slow." *Agenda for Peace*, *supra* note 27, at 8.

According to the former UN Secretary-General, the current peacekeeping problems concerning logistics, equipment, personnel and finance "could be corrected if member states so wished and were ready to make the necessary resources available." *Id.* at 8.

¹⁵⁴ For example, in 1994, the Secretary-General informed the Security Council that peacekeeping commanders would need 35,000 troops to deter attacks on the safe areas in Bosnia and Herzegovina created by the Security Council. Member states authorized 7,600 troops and took a year to provide them. In Rwanda in 1994, faced with evidence of genocide, the Security Council unanimously decided that 5,500 peacekeepers were urgently needed. But it took nearly six months for member states to provide the troops, even though 19 Governments had pledged to keep 31,000 troops on a stand-by basis

Furthermore, UN peacekeeping operations have become politically, administratively and logistically more complex. Peacekeepers are now more likely to be deployed in intra-state conflicts; all but 2 of the 19 operations established since January 1992 relate to such situations.¹⁵⁵ In some cases there is no peace to monitor and the acceptance by the parties of the UN role and mandate is less than wholehearted.¹⁵⁶ On occasion the UN is required to act in situations where there has been a virtual breakdown of the political,

¹⁵⁵ *Peacekeeping*, *supra* note 112, at 2. Internal missions, which take place throughout all or part of a national jurisdiction, are to be distinguished from those which operate at a border - whether *de jure* or *de facto* - demarcating one sovereign jurisdiction from another and in relation to a difficulty that exists between them. The belief that operations of the latter type exemplify traditional or classic peacekeeping is widespread.

During the post-Cold War period, the UN has more or less exercised a monopoly over peacekeeping. It lists 21 missions established between 1988 and 1995 (compared with thirteen in the previous 40 years.) Of these, no fewer than eighteen may be counted as internal. Moreover, of the three border missions set up during this period, only one now subsists - that between Iraq and Kuwait. Undoubtedly, therefore, the current trend in peacekeeping has a marked internal emphasis. James, *supra* note 42, at 242.

In most circumstances, borders are likely to present an operational context which is more straightforward than that encountered by an internal mission. However, there have been dramatic exceptions: the peacekeepers who were caught up in the Six Day War of 1967, the military observers who suffered cross-fire on the Suez Canal for eighteen months during the 1969-70 War of Attrition, and the ease with which Israeli forces swept through UN lines in south Lebanon in 1982. But the stability which usually attends an international demarcation line means that border missions generally have a relatively quiet life. *Id.* at 243.

The greater complexity characterising an internal mission does not necessarily mean that difficulties are inevitable. The Commonwealth Monitoring Force in Rhodesia/Zimbabwe was a great success; the UN role in Cyprus has been, arguably, crucial for the maintenance of internal - and, therefore, international - peace; and in West New Guinea the UN did precisely what was asked of it. After the Cold War, some now completed internal operations had a very positive impact, perhaps most notably, the UN operation in Namibia in 1989-90. Consequently, it can be maintained that an internal environment does not always prove operationally disagreeable for peacekeepers. *Id.* at 243-44.

However, UN peacekeeping missions which have failed to implement their mandates, or over which a question mark currently hangs, have without exception been elicited by deep-rooted and usually rather unstructured internal conflict. In short, by civil wars. The only case in the UN pre-Cold War history which is comparable with its recent involvement in civil wars is its role in the Congo. That operation can legitimately be presented as having had some success. But it was also a very controversial affair, so much so that the despatch of many more missions in similar situations was widely assumed to be unlikely. *Id.* at 260. Civil conflict engenders particularly bitter passion. Internal politics is also subject to a fluidity which means that any peacekeeping mission is likely to be buffeted by the changing balance of local advantage. Partly for that reason, the promises made by the parties to such conflicts tend to be especially fragile. Peacekeepers can almost expect to find themselves treated as capriciously, as means to be used by the disputants rather than as the executors of an international agreement which must, if at all possible, be honored. *Id.* at 262.

¹⁵⁶ The UN operation in Somalia was withdrawn in haste in 1995, following attacks on UN peacekeepers by the warring factions. See James, *supra* note 42, at 242.

Peacekeeping, *supra* note 112, at 2. The limitations of peacekeeping in situations where there is no peace to keep were demonstrated during the summer and early autumn of 1995, when UN peacekeepers were pushed aside as Bosnian Serbs took the 'safe areas' of Srebrenica and Zepa, and again as Croatian forces overran the former UN Protected Areas in Krajina. Tharoor, *supra* note 27, at 52. Tharoor, a Special Assistant to the UN Under-Secretary for Peacekeeping Operations, writes that "Blue Helmets stood by in frustrated impotence or were taken hostage as atrocities and human-rights abuses were committed barely out of earshot." *Id.* at 52.

administrative and judicial systems.¹⁵⁷ In these circumstances, member states are showing increasing unwillingness to provide troops for UN operations.¹⁵⁸

The widespread criticism of UN efforts in situations where there was little peace to keep - particularly in Somalia, former Yugoslavia and Rwanda - lies directly behind the calls for retreat to a simpler era. Amidst so many voices urging the UN to go "back to basics," it is likely that it will be a long time before the Security Council again authorizes another of the hybrid operations whose ever-mounting scope spiralled seemingly out of control in a flurry of Security Council resolutions in 1992 and 1993.¹⁵⁹ At a recent international conference entitled "Peacekeeping in a Revolutionary World," Professor Theodor Meron spoke about the "unrealistic expectations, inevitably followed by a measure of disillusionment" that had been associated with recent UN peacekeeping operations. He noted that the UN had often been given tasks "that the UN forces had not been authorized, equipped or financed to fulfil."¹⁶⁰ He added that when its mandate did not cover certain scenarios, like the atrocities that occurred in Srebrenica, Bosnia, the UN's credibility was further damaged. He called for more realistic peacekeeping: "limited, consent-based, low risk, observer, wire-trip type of operations, such as the MFO,¹⁶¹ remains a possibility for states in the Middle East."¹⁶²

In response, the Security Council has adopted stricter guidelines for authorizing new operations and placed greater emphasis on ending old ones.¹⁶³ There are currently fewer than 35,000 UN peacekeepers, and the cost of UN peace missions in 1996 did not exceed \$1.8 billion.¹⁶⁴ According to a UN publication, the emphasis on establishing an end point for the large-scale deployment of UN peacekeepers is designed to encourage local parties to take responsibility for their own affairs.¹⁶⁵

¹⁵⁷ *Peacekeeping*, *supra* note 112, at 2.

¹⁵⁸ *Id.* The Irish government, for example, produced a recent report on peacekeeping which called for the development of "a selective response to future requests from the United Nations" for peacekeeping troops. *Id.*

¹⁵⁹ Tharoor, *supra* note 27, at 54.

¹⁶⁰ Early in 1995 the New York Times, in discussing the future of UN peacekeeping, stated that "[r]ethinking and retrenchment are in order. . . There should be a shift back toward more limited objectives like policing ceasefires. . . UN peacekeeping does what it can do very well. It makes no sense to continue eroding its credibility by asking it to do what it cannot." *The Future of UN Peacekeeping*, N.Y. TIMES, Jan. 12, 1995, at A1. The New York Times's editorial columns had earlier been very critical of UN peacekeeping, especially with regard to Bosnia and Somalia. Tharoor, *supra* note 27, at 52.

¹⁶¹ MFO is a multinational peace observer force deployed in Sinai since the signing of the Egyptian-Israeli Peace Agreement that followed the Camp David Accords in 1979.

¹⁶² *Peacekeeping in a Revolutionary World: An International Conference*, (Cairo, Egypt) (visited Dec. 12-14, 1995) <<http://www.un.org/Depts/DPKO/Missions.htm>>

¹⁶³ *UN Peacekeeping: Emphasizing Results*, *supra* note 119, at 1.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

It is apparent that the days of peacekeeping overstretch are over. In March 1995, former UN Secretary-General Boutros Boutros-Ghali declared that "[t]he number of United Nations operations, the scale of the operations, the money spent on operations cannot keep growing indefinitely. The limits are being reached."¹⁶⁶ The outlook for the near future is that the UN will undertake fewer new peace operations than it has in the recent past, while seeking to avoid the kind of ambitious mandates that proved unachievable in Somalia and Bosnia.¹⁶⁷ Efforts will continue, however, to scrutinize existing operations carefully to determine whether they should be ended or reduced in size. These steps require a corollary recognition that alternatives to UN peacekeeping will be needed in some circumstances, especially where particularly robust military forces are required.¹⁶⁸

TIPH2 as an Example of the New Approach to Peacekeeping

TIPH2 is an indication of the new approach to peacekeeping, which recognizes the mistakes of the immediate post-Cold War period. Outside the framework of the UN, TIPH2 is an example of the developing role of regional organizations in modern peacekeeping efforts.¹⁶⁹ Furthermore, TIPH2 has adopted a low-key, relatively inexpensive approach to peacekeeping. TIPH2's realistic expectations in terms of what it can achieve, is a recognition of the failures of recent over-ambitious UN peacekeeping missions. Its utilization of civilian and humanitarian efforts to complement its observation role, is an indication of the growing importance given to development efforts and the rebuilding of civil society in modern peacekeeping missions.

¹⁶⁶ Tharoor, *supra* note 27, 53.

¹⁶⁷ *UN Peacekeeping: Emphasizing Results*, *supra* note 119, at 2.

During the immediate post-Cold War era,

[p]eacekeepers took unprecedented risks, made foreseeable mistakes, suffered an intolerable level of casualties; governments, accountable politically for the safety of their soldiers, cut their losses and proved unwilling to risk additional ones. In the process we have all learned what peacekeeping cannot do; and yet we cannot afford to do nothing. The challenge of the future is to define that 'something' in terms of what is doable - in other words, to identify how the United Nations can be enabled to respond to future Somalias and Rwandas while retaining the support of its member-states.

Tharoor, *supra* note 27, at 55.

¹⁶⁸ *UN Peacekeeping: Emphasizing Results*, *supra* note 119, at 2.

¹⁶⁹ Five of the six contributing countries of TIPH2 are European, (Sweden, Denmark, Norway, Switzerland and Italy), while Turkey is seeking admittance to the European Union. Turkey's contribution of personnel to TIPH2 could even be an attempt by the Turkish government to strengthen the perception of Turkey as a European country. At an EU summit meeting on December 13-14, 1997, the EU deferred action on Turkey's application for membership, angering Turkey's prime minister, Mesut Yilmaz, who announced that Turkey was freezing political contacts with the Europeans. Stephen Kinzer, *With Boeing Deal, Turkey Strikes Back at EU*, *THE NEW YORK TIMES*, Dec. 22, 1997, at 1.

II. THE INCEPTION OF TIPH: THE DELICACY OF THE CITY OF HEBRON

Opposing historical and present-day claims by Palestinians and Israelis to the city of Hebron complicate the role of TIPH. Jews date their arrival in Hebron to approximately 2000 years before the common era when their Patriarch Abraham purchased the cave at Machpela from a Hittite.¹⁷⁰ This cave was used as the burial site for Abraham, his son Isaac and grandson Jacob, as well as their wives¹⁷¹ and became known as the Tomb of the Patriarchs. This complex, parts of which were constructed by King Herod, the Crusaders, the Mameluks, and the Ottoman Turks over many centuries, will be referred to, *infra*, as the Tomb of the Patriarchs/al-Ibrahimi Mosque.¹⁷² Approximately 1000 years later Hebron served as King David's initial seat of government for 7 years.¹⁷³ Jews have continued to live in Hebron throughout the millennia, except after being driven out by massacres, as in 1100, 1517, 1834 and in 1929.¹⁷⁴ Jews returned to the center of Hebron¹⁷⁵ after Israel captured the city in the 1967 Arab-Israeli War. Currently some 400 to 500 Jews live in five small enclaves in the city center.¹⁷⁶

Muslims also revere Abraham¹⁷⁷ as the father of Ismael from whom the Arabs claim descent.¹⁷⁸ Hence Hebron, the city where Abraham lived much of his life and is buried, enjoys a special status.¹⁷⁹ Muslim Arabs have lived continuously in Hebron for some 1300 years,¹⁸⁰ but perhaps their most weighty claim stems from the fact that their current population in Hebron (approximately 120,000)¹⁸¹ far outnumbers that of the Jews.

¹⁷⁰ Genesis 23:7.

¹⁷¹ Isr. Min. of Defence, CARTA'S OFFICIAL GUIDE TO ISRAEL 185 (1986). According to Jewish legend Adam and Eve are also buried at the site. *Id.*

¹⁷² *Id.*

¹⁷³ Samuel II, v:iv-v. See also Amos Oz, *A Way to Ease the Pain*, THE GUARDIAN, Jan. 16, 1997, at 15; and Herb Keinon, *Jerusalem's Older Sister*, JERUSALEM POST, Jan. 17, 1997, at 4.

¹⁷⁴ HELEN BENTWICH, MANDATE MEMORIES, 1918-1948, at 129-48 (1965).

¹⁷⁵ Ian Black, *Likud Government Crosses the Rubicon*, THE GUARDIAN, Jan. 16, 1997, at 12.

¹⁷⁶ Ariel Sharon, *Sick Joy of Retreat*, JERUSALEM POST, Sept. 29, 1995, at 7. An additional 9,000 Israelis live in the suburbs of Hebron. *NewsWorld Online - News-In-Depth: A Short History of Hebron* (visited Sept. 20, 1997) <<http://www.newsworld.cbc.ca/news/indepth>>, at 2.

¹⁷⁷ See Ian Black, *Hebron Deal Signed*, THE GUARDIAN, Jan. 15, 1997, at 2.

¹⁷⁸ Herb Keinon, *Jerusalem's Older Sister*, JERUSALEM POST, Jan. 17, 1997, at 4. Actually the Bible makes clear that Ishmael's father was Abram. Subsequently, God changed Abram's name to Abraham after which he became the father of the Jews through his son Isaac. Genesis 17:7-8.

¹⁷⁹ The Arabic name of Hebron, *Khalil al-Rahman*, means "friend of the Merciful [Allah]," and refers to Abraham.

¹⁸⁰ Herb Keinon, *Jerusalem's Older Sister*, JERUSALEM POST, Jan. 17, 1997, at 4.

III. THE TIPH AGREEMENTS

TIPH1

The Israeli and Palestinian residents of Hebron have periodically been victimized by ethnic violence, principally shootings, hand grenade attacks, stabbings and stonings.¹⁸² In 1994, apparently in retaliation for attacks he had witnessed, Israeli physician Baruch Goldstein killed 29 Muslim worshippers in a shooting spree at the Tomb of the Patriarchs/al-Ibrahimi Mosque.¹⁸³ At the time, the Israeli Defence Forces ("IDF") were deployed throughout the city as no Israeli redeployment had yet been negotiated for Hebron. At the behest of the Arab states, the UN Security Council condemned the massacre and called for measures to guarantee the safety and protection of the Palestinians throughout the Occupied Territories, including the establishment of a temporary international or foreign presence.¹⁸⁴ Just such an international presence had been provided for in an annex to the first interim Israeli-Palestinian peace agreement, the DOP.¹⁸⁵

Following the Goldstein massacre, Yasser Arafat announced the PLO's withdrawal from any further peace negotiations with Israel, unless Israel agreed to a presence of international observers in Hebron to provide security for Palestinian residents.¹⁸⁶ After a month of negotiations a security agreement was reached between Israel and the PLO.¹⁸⁷ The PLO

¹⁸² See, e.g., *Id.* at 4; CONOR CRUISE O'BRIEN, THE SIEGE: THE SAGA OF ISRAEL AND ZIONISM 603 (1986).

¹⁸³ Jon Immanuel, *Two Inseparable Peoples*, JERUSALEM POST, Aug. 3, 1995, at 2. American born Dr. Goldstein lost his own life in the attack. Dr. Goldstein was in full IDF uniform at the time. He had attained the rank of Captain before his death. Captain David Ramati, *On the Edge. Thirty Days in Hebron with TIPH: A Diary*, JERUSALEM POST, Feb. 17, 1995, at 3. Captain Ramati compiled the diary while serving as a liaison between TIPH and the IDF in Hebron. *Id.*

¹⁸⁴ UN Security Council Resolution No. 904.

¹⁸⁵ In an annex to the DOP, reference was made to the possibility of positioning a peacekeeping presence in Gaza and Jericho, the territories initially handed over to the PA, although no specific mention was made of Hebron. DOP, *supra* note 3, Annex II, 3(d).

¹⁸⁶ A Presentation of TIPH (on file with author), at 1; See David Makovsky, *Arabs Halt Talks, Demand More Measures*, JERUSALEM POST, Feb. 28, 1994, at 1.

¹⁸⁷ Arafat has sought expanded international involvement in the peace process, in the belief that it will lead to increased pressure on the Israeli government. In fact, Arafat is thought to have sought the presence of international forces throughout the entire West Bank. Incidents involving foreign nationals are frequently raised on a diplomatic level and are more likely to be covered by the international media. The ensuing international pressure is most likely to fall on the Israeli government, because Israel, unlike the PA, has the power and infrastructure to address the problem. Interview with Lieutenant Peter Lerner, Spokesman for the Israeli Civil Administration, in Hebron (Oct. 5, 1997). On December 27, 1997, the Palestinian National Authority ratified a proposal by Arafat for the creation of an international force to be stationed in West Bank areas Israel deems vital to its security, thereby enabling Israel to evacuate them. Arafat's proposal calls for the deployment of an international contingent, similar to the TIPH mission deployed in Hebron, along the border between Israel and the PA.

The Israeli government rejected the proposal as "a non-starter unworthy of consideration." According to David Bar-Ilan, Communications Advisor to Prime Minister Netanyahu. "It's not a new

relinquished the idea of a Palestinian police force under Israeli auspices, in return for an international observer mission.¹⁸⁸ Despite grave doubts about the mission's viability,¹⁸⁹ and fear that Arafat wanted to use it to internationalize the conflict, on March 31, 1994, representatives from both the PLO and Israel signed an agreement asking Italy, Denmark and Norway to "provide 160 persons as TIPH personnel...consisting of office staff, field observers and support personnel"¹⁹⁰ for a temporary international presence in Hebron. Established "in response to the unique situation created in Hebron in the aftermath of the [Goldstein] massacre,"¹⁹¹ the mandate of the international observer mission was to "assist in promoting stability and in monitoring and reporting the efforts to restore normal life in the city of Hebron, thus creating a feeling of security among Palestinians in the city of Hebron."¹⁹² Established on May 8, 1994,¹⁹³ the mission became known by the acronym TIPH ("TIPH1").

The tasks of TIPH1 personnel, as set out in the Agreement were:

- a. to provide by their presence a feeling of security to the Palestinians of Hebron;
- b. to help promote stability and an appropriate environment conducive to the enhancement of the well-being of the Palestinians of Hebron and their economic development;
- c. to monitor the efforts to restore the safety of Palestinians and

idea. Arafat has put it forward several times in the past years. It's just as unacceptable now as it was then. ... Only Israelis will defend Israel." See Jay Bushinsky, *Gov't Rejects Arafat Proposal for International Buffer Force*, JERUSALEM POST, Dec. 28, 1997, at 2.

¹⁸⁸ Alon Pinkas, *A Diplomatic Recipe for More Disorder*, JERUSALEM POST, Apr. 1, 1994, at B2.

¹⁸⁹ *Id.* Historically, Israel has had mostly negative experience with the UN, in general, and its peacekeeping missions, in particular. The UN General Assembly, Security Council, and the various UN agencies have maintained a blatantly hostile attitude toward Israel for more than two decades. See SCHOENBERG, *supra* note 86, at 251-327.

Israel's frustration with the performance of various UN peacekeeping forces has made it wary of relying on these forces. UNEF I was precipitously withdrawn at the very moment it was most needed, when Egyptian President Nasser was massing troops in Sinai just before the outbreak of the 1967 War. *Id.* Israel has also had a very disappointing experience with UNIFIL in Lebanon. *Id.*, at 171. Operating since 1978 in a region with numerous armed militias and weak governmental control, UNIFIL was given a vague mandate that proved impossible to carry out. *Id.* As a result it was never able to insulate Israel from attacks and has been criticized as "living proof of the futility of peacekeeping when the parties concerned deny their cooperation." UN ASSOCIATION OF THE UNITED STATES OF AMERICA, ISSUES BEFORE THE 37TH GENERAL ASSEMBLY OF THE UNITED NATIONS 12 (Donald J. Puchala & Frederic Eckhand eds., 1982); See also SCHOENBERG, *supra* note 86, at 171-78. In certain instances, UNIFIL was also blamed by Israel for collaborating with the PLO. See *id.* However, similar accusations of collaborating with the enemy have been raised against most peacekeeping missions. Interview with Krister Lindholm, TIPH2 Deputy Head of Division, Research-Analysis-Information, in Jerusalem (Nov. 1997).

¹⁹⁰ Agreement on the Temporary International Presence in the City of Hebron [hereinafter TIPH1 Agreement] (on file with author) (Isr.-Pal., Mar. 31, 1994) art. A(2).

¹⁹¹ *Id.* at 1.

¹⁹² *Id.* at art. A(2).

¹⁹³ *Id.*

events affecting it and the return to normal life in the city of Hebron; and
d. to provide reports....¹⁹⁴

The Agreement also required TIPH1 to report "on specific events - to a Joint Hebron Committee ("JHC"),¹⁹⁵ comprised of two representatives each from the Palestinian and Israeli sides; to report periodically to a Joint Israeli-Palestinian Liaison Committee established by the DOP,¹⁹⁶ and to "provide periodic reports to the Chair of the Ad Hoc Liaison Committee of the Donor [countries]."¹⁹⁷ The Agreement specified that the senior Palestinian representative on the JHC would be the Mayor of Hebron, and that the senior Israeli representative would be the head of the Civil Administration in the District of Hebron.¹⁹⁸ A representative of TIPH1 would be "invited on a bi-weekly basis to participate in the JHC meeting in order to report on the TIPH[1] activities."¹⁹⁹

TIPH1 complied with the UN definition of peacekeeping established in "An Agenda for Peace." TIPH1 was deployed with the consent of both Israel and the PA and sought to "expand the possibilities for both the prevention of conflict and the making of peace"²⁰⁰ by providing a feeling of security to the Palestinian residents of Hebron.²⁰¹ TIPH1 can be defined as a peacekeeping observer mission as opposed to a peacekeeping force, in that it consisted of unarmed policemen and civilians rather than the lightly armed infantry units of a peacekeeping force.²⁰² TIPH1 was markedly less ambitious than recent UN peacekeeping missions in former Yugoslavia, Somalia and Haiti. Consistent with its status as an observer mission, TIPH1 did not fulfill many of the traditional peacekeeping roles of UN missions, such as separating hostile forces, monitoring a cease-fire agreement, or maintaining neutral demilitarized zones.²⁰³ In seeking to improve both the welfare and the economic situation of the Palestinians, TIPH1 carried out a role more commonly associated with recent UN and regional civilian missions.²⁰⁴

¹⁹⁴ TIPH1 Agreement, *supra* note 190, art. 3.

¹⁹⁵ *Id.* at art. 5(a).

¹⁹⁶ *Id.* at art. 5(b).

¹⁹⁷ *Id.* at art. 5.

¹⁹⁸ *Id.* at art. 5(a).

¹⁹⁹ *Id.*

²⁰⁰ *Agenda for Peace*, *supra* note 27, at 3.

²⁰¹ TIPH1 Agreement, *supra* note 190, art. A(1).

²⁰² See *The Blue Helmets*, *supra* note 30, at 8.

²⁰³ See *supra* note 35 for peacekeeping roles.

²⁰⁴ See *supra* notes 43, 47, 50, 51, and 52, for civilian missions.

The Performance of TIPH1

Initially, TIPH1's deployment generated some complaints, particularly from the IDF. IDF soldiers remonstrated that TIPH was biased against Israel. Former IDF liaison with TIPH1, Captain David Ramati,²⁰⁵ observed TIPH1's performance during the regular Friday rioting in Hebron.²⁰⁶

The Arabs throw bottles and stones at the Israelis using the TIPH Cameraman and observers for cover. The TIPH move into the center of the junction and stand between the Israelis and the Arabs. I tell the Israel commander not to shoot into the crowd for fear of injuring the observers. I protest to the TIPH team commander in the field that his men are obstructing rather than observing. He tells me that obstructing the Israelis is exactly what they are ordered to do. He says that they will protect the Arabs with their bodies against the depredations of the Israeli army...²⁰⁷

Former TIPH1 personnel readily admit, in retrospect, that Palestinian rioters were able to use its observers as cover for their attacks on Israelis.²⁰⁸ In a diplomatically embarrassing incident, the then Chief Operations Officer of TIPH1, Norwegian Colonel Knut Hansen, travelled to Gaza for a private meeting with Yasser Arafat. According to former IDF liaison, Captain Ramati, the TIPH1 official had represented himself as the Head of Mission and called on Arafat to extend the TIPH mandate in

²⁰⁵ Ramati lives in Qyriat Arba, a major Jewish settlement on the outskirts of Hebron. He was the IDF Liaison with TIPH1 for thirty of the 120 days of the TIPH1 mission. Interview with Lars Narfeldt, TIPH2 Division of Research-Analysis-Information, Jerusalem (Dec. 25, 1997) [hereinafter Narfeldt(4)].

²⁰⁶ According to two former TIPH1 observers, rioting in Hebron during the TIPH1 mandate period was a regular occurrence every Friday, after the Muslim prayer service. These riots always took place in "Police Junction." Interview with Daniel Gunderson, TIPH2 Observer, in Jerusalem (Nov. 6, 1977); Interview with Harald Bugge, TIPH2 Observer, in Jerusalem (Nov. 11, 1997); Ramati, *supra* note 183, at 3.

Despite the Mayor's repeated claims that he is unable to stop the weekly Friday demonstrations, an unidentified TIPH observer noted that it "has become painfully obvious to TIPH that the mayor is fully capable of stopping things when it is to his advantage to do so." *Id.* at 5. Ramati writes that during one Friday riot, "[a] white car with Arab plates drives into the center of the demonstration. Someone from inside the car talks to the crowd and within five minutes they disperse." The implication is that an order from the Mayor's office had effectively ended the rioting. See *id.*

²⁰⁷ The video footage of this and other incidents were turned over to the IDF by TIPH. TIPH pointed out that the same group of young Palestinian men instigated the violence every Friday morning. Ramati, *supra* note 183, at 3.

²⁰⁸ Steve Rodan, *Hebron Diary: Observing the Hebron Observers*, JERUSALEM POST, Feb. 17, 1995, at 8.

Today, TIPH2 would behave differently should it face a similar situation. TIPH2 personnel would film the entire event, and not just the activities of the IDF. Furthermore, TIPH2 observers would station themselves to the side of the riots, and would not place themselves between the rioting Palestinians and

Hebron.²⁰⁹ Further allegations were made that TIPH1 was used by terrorists to deliver threats of attacks on Jewish targets²¹⁰ or to unwittingly assist in the ambush of IDF patrols.²¹¹ This conduct may have been the result of Palestinian threats against TIPH1 observers²¹² made tangible by the torching of one of their cars.²¹³ TIPH1 withdrew from Hebron upon the expiration of its mandate on August 8, 1994, following the failure of the PLO and Israel to reach an agreement on its extension.²¹⁴

The Interim Agreement and the Hebron Protocol

The major transitional agreement in the Israeli-Palestinian peace process, the Interim Agreement on the West Bank and Gaza Strip ("Interim

²⁰⁹ TIPH1 claimed that Colonel Hansen had visited Chairman Arafat in Gaza on "his own authority" and not as a TIPH1 member. Gunderson, *supra* note 206. Hansen was photographed at the meeting with Arafat and this photo was sent to the IDF Liaison Unit in Hebron. Unofficially, the IDF gave Norway three days to recall Hansen or he would be declared *persona non grata*. Ramati, *supra* note 183, at 9.

²¹⁰ *Id.*

Ramati writes that at a meeting between the IDF and TIPH1 officials, "[t]he TIPH liaison hands us a letter given to TIPH and to be delivered to Prime Minister Rabin. It threatens that if the Jews do not give up the city of Jerusalem within 72 hours the terrorist organization will make a suicide attack on the settlers or the army. The letter is signed the Abraham Mosque Martyrs Unit. . . ." *Id.* at 4.

²¹¹ *Id.* at 4. Ramati describes one such incident in his diary:

All is quiet [in Hebron] until the early evening when we receive a call from TIPH HQ that there is a riot near the Arab hospital and that the IDF are rampaging....The IDF is confused claiming that there are no patrols in the area. . . . As we approach the junction leading to the Hospital we spot a land mine and some booby traps. We take cover, sending the jeep to the rear. Suddenly a concussion hand grenade is thrown from the Rooftops. . . . The TIPH complaint was passed on to us through their Arabic interpreter, the Palestinian Arab.

Id.

²¹² According to Ramati, "[u]nofficially a TIPH observer confides. . . that they [TIPH1] have received threats from the Arabs of Hulhoul. In effect they have been told that if they do not extend their patrols to Hulhoul they will be attacked by the Arab terrorists." *Id.* at 4.

²¹³ *Id.* Following a Palestinian terrorist attack on a Jewish family near Kiryat Arba and an IDF curfew on the city of Hebron, two demolition charges were placed on either side of TIPH headquarters. However, it is not clear whether these were placed by Arabs or Jews. *Id.* at 8.

²¹⁴ After serving for thirty days as the IDF liaison with TIPH1, Captain Ramati wrote: TIPH[1] has failed in its purpose. It has not reported objectively on what has happened here; it has not even begun to understand the history and the human aspect of the struggle. . . . If they [TIPH1] had stayed for another year things could have worked out. The absolute lack of contact between the Jewish community and TIPH[1] was totally counterproductive.

Ramati, *supra* note 183.

TIPH1 officials admit that the TIPH1 mission was not as organized as TIPH2 is now. Furthermore, they explain that the political situation at the time made it more difficult for the TIPH1 mission to operate effectively. TIPH1 was deployed during the final period of the Intifada (Hebron was one of the last cities to carry on the Intifada). The presence was established as a "rescue mission" to get the peace process back on track after the Goldstein massacre. Consequently, everything was done in a hurry. Barely five weeks passed between the agreement on the mandate, and TIPH1's deployment in Hebron. Gunderson, *supra* note 206; Bugge, *supra* note 206. TIPH1 was very young and inexperienced. TIPH2 has learned from TIPH1's mistakes. Interview with Lars Narfeldt, TIPH2 Research-Analysis-Information Division, Jerusalem (Nov. 6, 1997) [hereinafter Narfeldt(2)].

Agreement"), was signed on September 28, 1995. It called for partial redeployment of the IDF from Hebron. Article VII, Chapter 10 of Annex I, sanctioned the establishment of a new temporary international presence in the city to be implemented thereafter.²¹⁵

However, it was only in the most recent interim agreement, the Protocol Concerning the Redeployment in Hebron ("Hebron Protocol"), that TIPH2 was actually authorized.²¹⁶ The Protocol was the first interim agreement reached by the Netanyahu Government, under pressure from the US. In addition to reinvigorating the peace process, one of the main purposes of this agreement was to reduce the friction between the IDF and the Palestinian residents of Hebron by redeploying the IDF from 80 percent of the city, while simultaneously protecting the small Jewish community and its major holy sites.²¹⁷ In a provision entitled "Normalization of Life in the City," both sides "reiterate their commitment to maintain normal life throughout the City of Hebron and to prevent any provocation or friction that may affect the normal life in the city."²¹⁸ This end is to be achieved by taking "all steps and measures necessary."²¹⁹

The Hebron Protocol contains a map of the city indicating the boundaries of H-1 and H-2, the Palestinian and Israeli controlled sectors, as well as police stations, checkpoints, and the routes for the Joint Patrols.²²⁰ The Palestinian Police are assigned public order responsibilities in H-1,²²¹ while Israel retains responsibility for the overall security of Israelis as well as all powers and responsibilities for internal security and public order in H-2.²²² Palestinian Police stations or posts, staffed by a total of up to 400 police,²²³ with enumerated weaponry, are empowered in area H-1.²²⁴ The

²¹⁵ Interim Agreement, *supra* note 3.

²¹⁶ Weiner, *The Hebron Protocol*, *supra* note 12, at 206.

²¹⁷ See Hebron Protocol, *supra* note 3, at 660; Weiner, *supra* note 12, at 206. The IDF redeployment from most of the city of Hebron was designed to take the IDF out of daily contact with most Palestinian residents of Hebron. *Id.* Specific responsibility is assigned to the Palestinian Police to protect four Jewish holy sites in H-1, and the visitors to these sites are to be accompanied and protected by a Joint Mobile Unit. Hebron Protocol, *supra* note 3, art. 6.b, at 9.

²¹⁸ *Id.*, art. 7.a, at 9.

²¹⁹ *Id.*, art. 7.b.1-2, at 9.

²²⁰ *Id.* at Appendix 1.

²²¹ *Id.*, art. 2.a.(1),(2), at 5.

²²² *Id.* Israel reserves the right to conduct hot pursuit and pre-emptive raids inside H-1 based on the Interim Agreement. Herb Keinon & Alon Pinkas, *IDF Removes 2 Roadblocks in Hebron: Biran Attempts to Reassure Settlers but Presents no Maps*, JERUSALEM POST, Oct. 3, 1995, at 1; see Eric Silver, *Hebron Deal Ends Months of Wrangling*, THE INDEPENDENT, Jan. 1, 1997, at 7; see Daniel Reisner, *The Hebron Agreement*, THE JUSTICE, Mar. 1997, at 14; see Interim Agreement, *supra* note 3, art. X.4, at 14, art. XII.1, at 16. Thus far Israel has not made use of these rights in other evacuated cities. Herb Keinon & Alon Pinkas, *IDF Removes 2 Roadblocks in Hebron: Biran Attempts to Reassure Settlers but Presents no Maps*, JERUSALEM POST, Oct. 3, 1995, at 1.

²²³ The Protocol requires the Palestinian Police to, "ensure that all Palestinian policemen, prior to their deployment in the City of Hebron, will pass a security check in order to verify their suitability for service, taking into account the sensitivity of the area." Hebron Protocol, *supra* note 3, art. 5.e, at 8.

²²⁴ *Id.*, art. 5.f, at 8.

Hebron Protocol situates Palestinian Police checkpoints in H-1, forming a buffer zone adjacent to H-2 "to enable the Palestinian Police, exercising their responsibilities under the Interim Agreement, to prevent entry of armed persons and demonstrators or other people threatening security and public order, into the above mentioned area."²²⁵

Various cooperative efforts, including "Joint Mobile Units" and "Joint Patrols," assist the checkpoints in preserving order along the line that divides H-1 from H-2 and on major roads.²²⁶ A "Joint Coordination Center," headed by senior officers of both sides, was established to coordinate the mutual security measures in the city.²²⁷ In addition, the Palestinian Police are authorized to create four "Rapid Response Teams" of up to 16 policemen each, to control special security situations arising in H-1.²²⁸

The Protocol also transfers to the PA certain civil powers and responsibilities for sanitation, health, postal delivery, traffic and education for all residents of Hebron except for the Israelis living in H-2.²²⁹ Also specified are limitations on construction in H-1 regarding the height of buildings, which might conceivably be used for sniping into H-2, and limitations on construction of factories that could adversely affect the environment.²³⁰

²²⁵ Hebron Protocol, *supra* note 3, art. 3.b, at 6; Eric Silver, *Hebron Deal Ends Months of Wrangling*, THE INDEPENDENT, Jan. 1, 1997, at 7. This has not proven to be an effective deterrent during the weeks of daily Palestinian rioting that followed the disagreement over *Har Homa*. Indeed the entire structure of security cooperation in the Protocol which is aimed at "preventing any provocation or friction that may affect the normal life in the city" (Hebron Protocol, *supra* note 3, art. 7.a, at 9) appears to have been ignored by the PA in permitting, and according to some reports, encouraging these rioters. See Ian Black, *Nails Hammered into Coffin of Peace*, THE GUARDIAN, Apr. 2, 1997, at 7. As regards security cooperation, Israel is apparently hedging its bets. Following shooting attacks by the Palestinian Police, the IDF has prepared contingency plans and carried out training exercises to prepare for entering the areas under Palestinian self rule. (See Arieh O'Sullivan, *IDF Training for War with PA*, JERUSALEM POST, Sept. 28, 1997, at 1; see, e.g., (BBC Short Wave Broadcast), Ha'aretz, Tel Aviv, Nov. 26, 1996) Although the government has rejected their assessment, Israeli Military Intelligence and the General Security Service have steadily warned of the likelihood of a new Palestinian uprising characterized by gun battles with Palestinian forces. See Arieh O'Sullivan, *IDF Training for War with PA*, JERUSALEM POST, Sept. 28, 1997, at 1.

²²⁶ Interim Agreement, *supra* note 206, Annex I, art. III.4-5; art. 4.a-d, at 6-7; Silver, *supra* note 225, at 7.

²²⁷ Hebron Protocol, *supra* note 3, art. 4.f, at 7.

²²⁸ *Id.*, art. 5.b, at 8; Silver, *supra* note 225, at 7.

²²⁹ See Hebron Protocol, *supra* note 3, art. 10.a-b, at 10.

²³⁰ *Id.*, art. 11, at 11; Silver, *supra* note 225, at 7. Additional specific provisions apply to the infrastructure such as the electricity grid and the flow of traffic on the roads (see Hebron Protocol, *supra* note 3, art. 12-13, at 12), municipal inspectors (*Id.*, art. 14, at 13), the location of offices of the Palestinian Council (*Id.*, art. 15, at 13) and the provision of municipal services (*Id.*, art. 16, at 14).

TIPH2

Norway²³¹ had committed itself to participation in the TIPH2 mission through its vital involvement in the peace process from virtually the outset.²³² During the months between the Interim Agreement and the Hebron Protocol, the PA and the government of Israel called on Norway to establish a TIPH-style mission composed entirely of Norwegian personnel, to serve as an advance party ("Advance Party") in "anticipation of the Israeli redeployment in Hebron"²³³ and in preparation for the forthcoming TIPH2 mission, which was scheduled to commence upon the IDF's redeployment from H-1.²³⁴ The TIPH2 Advance Party was established in Jerusalem on April 29, 1996.²³⁵ It was comprised of twelve members and its Head of Mission was a police commissioner who had been appointed by the Norwegian Ministry of Foreign Affairs.²³⁶ Pursuant to an enabling agreement signed on May 9, 1996, the Advance Party undertook the planning and development of TIPH2²³⁷ and began operating in Hebron on May 12, 1996.²³⁸ From the time the Advance Party's three month mandate expired on August 12, 1996, its authorization was renewed on a monthly basis five times.²³⁹

Due to protracted negotiations over the terms of the Hebron Protocol, Israeli redeployment from H-1 did not take place until January 17,

²³¹ The Nordic countries have been actively involved in peacekeeping since the early UN-sponsored observer missions. Their commitment was initially partly due to the close connections between Nordic politicians and the UN Secretariat and partly to the wish of small nations to support multilateralism and collective security. With no great-power ambitions or colonial legacies the Nordic countries are well suited to peacekeeping. (The Nordic countries in this context include Denmark, Norway, Finland and Sweden. Iceland, which has no armed forces, is not included in the discussion.) During the past thirty years the Nordic countries have developed extensive institutional and operational cooperation in peacekeeping. Jaana Karhilo, *Redesigning Nordic Military Contributions to Multilateral Peace Operations*, SECURITY AND CONFLICT 101 (1995).

²³² A Presentation of TIPH, *supra* note 186, at 2. In early 1993 the Norwegian Foreign Minister in effect adopted the secret negotiations that led to the DOP. MAKOVSKY, *supra* note 2, at 21-22. In addition, Norway was a state witness to the Interim Agreement. Interim Agreement, *supra* note 3, art. XXI at 29.

²³³ Agreement on the Temporary International Presence in the City of Hebron (Advance Party) [Isr.-Pal., May 6, 1996] [hereinafter Advance TIPH Agreement] (visited Sept. 25, 1997) <<http://www.israel-mfa.gov.il/peace/tiph596.html>>, art. 2.

²³⁴ A Presentation of TIPH2, *supra* note 186, at 2; Interview with Stein Ulrich [hereinafter Ulrich(1)], former TIPH2 Head of Mission, in Hebron (Sept. 11, 1997). Ulrich was the TIPH2 Head of Mission from the inception of the presence until November 1997. When his term of duty finished he was replaced by Tronda Prytz, also a police officer from Norway. Narfeldt(4), *supra* note 205.

²³⁵ Ulrich(1), *supra* note 234.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ A Presentation of TIPH, *supra* note 186, at 2.

1997.²⁴⁰ On January 21, 1997, a new agreement was signed between Israel and the PA which superseded the previous agreement of May 9, 1996. The Agreement called for Norway, Italy, Denmark, Sweden, Switzerland and Turkey to provide up to 180 personnel²⁴¹ for TIPH2, with Norway retaining the role of coordinator. The Agreement also set the initial mandate period at three months, automatically renewable for an additional period of three months, unless otherwise agreed by the parties.²⁴² With the consent of both sides, TIPH2 may extend the period or change the scope of its operations.²⁴³

The TIPH2 Mandate

The TIPH2 Agreement, signed over two years after the Goldstein massacre and following the conclusion of the Interim Agreement and the Hebron Protocol, was negotiated in a vastly different atmosphere from that in which the TIPH1 mission was established. Thus, the TIPH2 Agreement acknowledges the increased stability in the city of Hebron since the Goldstein massacre,²⁴⁴ as well as the transfer of the greater part of the city from IDF to PA administration. The new agreement also demonstrates a more realistic expectation of TIPH's role in the city, perhaps as a response to the mixed performance of TIPH1.²⁴⁵

²⁴⁰ The Hebron Protocol was negotiated over many months with frequent breakdowns during which the entire peace process appeared on the verge of disintegration. Nevertheless, this agreement was finally signed on January 17, 1997 (Hebron Protocol, *supra* note 3, at 14) and thereafter endorsed by the Israeli Cabinet (Ian Black, *Likud Government Crosses the Rubicon*, THE GUARDIAN, Jan. 16, 1997, at 12) and Knesset (legislature). IDF Begins Hebron Redevelopment, JERUSALEM POST, Jan. 17, 1997, at 1; see Patrick Cockburn, *Israeli Troops Begin Hebron Pull-out*, THE INDEPENDENT, Jan. 17, 1997, at 14. Five members of the PLO Executive Committee either expressed opposition to or voiced reservations about the Protocol (*Voice of Palestine* (BBC Short Wave Broadcast), Jericho, Jan. 16, 1997) and Arafat was saved from a likely rejection of the Protocol by the Palestinian Legislative Council ("PLC") by the fact that this institution is not empowered to vote on agreements between the PA and Israel. See Interim Agreement, *supra* note 3, art. 9; Jon Immanuel, *Hebron Agreement: PA Counsellors Decry Lack of Debate*, JERUSALEM POST, Jan. 17, 1997, at 3.

²⁴¹ The Agreement on the Temporary International Presence in the City of Hebron [Isr.-Pal., January 21, 1997], art. 2, Israel Ministry of Foreign Affairs (visited Jan. 27, 1997) <<http://www.israel-mfa.gov.il/peace/tiph197.html>> [hereinafter TIPH2 Agreement]. As of December 25, 1997, only 132 staff members were employed by TIPH2. Narfeldt(4), *supra* note 205. According to TIPH2 officials, a reduction in the number of TIPH2 personnel sent by the contributing countries may be an indication of the host countries' dissatisfaction at the current state of the peace process. See *id.*; Interview with Jan Tore Savic Knutsen, TIPH2 Division of Research-Analysis-Information, in Jerusalem (Dec. 9, 1997); Interview with Elena Hansteensen, Former Member of TIPH2 Division of Research-Analysis and Internal Information, in Jerusalem (Dec. 9, 1997).

²⁴² TIPH2 Agreement, *supra* note 241.

²⁴³ *Id.*

²⁴⁴ The provision contained in the TIPH1 Agreement stating amongst the tasks of TIPH1 personnel, "to monitor the efforts to restore the safety of Palestinians and events affecting it and the return to normal life in the city of Hebron. . . ." is not present in the TIPH2 Agreement. TIPH1 Agreement, *supra* note 100, at 2(a).

The TIPH2 Agreement²⁴⁶ outlines the tasks of TIPH2 personnel as follows:

- a. to promote by their presence a feeling of security to the Palestinians of Hebron;
- b. to help promote stability and an appropriate environment conducive to the enhancement of the well-being of the Palestinians of Hebron and their economic development;
- c. to observe the enhancement of peace and prosperity among Palestinians;
- d. to assist in the promotion and execution of projects initiated by the donor countries;
- e. to encourage economic development and growth in Hebron;
- f. to provide reports as set out in paragraph 7 [TIPH2 Agreement]; and
- g. to co-ordinate its activities with the Israeli and Palestinian authorities in accordance with paragraph 7 [TIPH2 Agreement].²⁴⁷

Several modifications between the TIPH1 and the TIPH2 agreements are noteworthy. First, the TIPH2 Agreement contains a new provision not present in the TIPH1 agreement which states that TIPH2 personnel will not "interfere in disputes, incidents or the activities of the Israeli security forces or the Palestinian police."²⁴⁸ While the TIPH1 Agreement specified that TIPH1 personnel "shall have no military or police functions,"²⁴⁹ the added provision contained in the later agreement highlights the Palestinian and Israeli desire to ensure that TIPH2 operates strictly as an observer force, without the authority to interfere in the work of officials from either side or the ability to act meaningfully in the event of disputes or incidents.

Second, rather than assigning TIPH2 the task - as stated in the TIPH1 Agreement - to "provide by their presence a feeling of security to the Palestinians of Hebron,"²⁵⁰ the TIPH2 Agreement requires TIPH to "promote by their presence a feeling of security to the Palestinians of Hebron."²⁵¹ While a seemingly minor variation in wording, this discrepancy in the two agreements may be seen as a recognition of TIPH's limited ability to

²⁴⁶ *Id.*

²⁴⁷ TIPH2 Agreement, *supra* note 241. Therefore, TIPH2 is monitoring how the Palestinians are treated and not problems in the Hebron Protocol.

²⁴⁸ *Id.* at art. 3. The Memorandum of Understanding on the Establishment of a Temporary International Presence in Hebron [hereinafter Memorandum of Understanding] states in Article B(6) that "[m]embers of TIPH will not interfere in disputes or incidents. . . [which] will be reported immediately to the TIPH HOM [Head of Mission]." The Memorandum of Understanding, [Nor.-Swed.-Den.-Turk.-Switz.-Italy, Jan. 30, 1997], at art. B(6).

²⁴⁹ TIPH1 Agreement, *supra* note 241, art. 2.

²⁵⁰ TIPH1 Agreement, *supra* note 190, art. 3(a).

significantly alter the situation of the Palestinian residents of Hebron, and the more realistic expectations that accompanied the inception of TIPH2.

Third, Article 1 of the TIPH2 Agreement states that "[i]n all its activities, TIPH will relate to Hebron as one city."²⁵² This new stipulation is in response to the IDF redeployment in Hebron in January 1997. While providing security for the Jewish residents of Hebron, the continued, if much reduced, Israeli presence effectively divides the city between IDF and PA controlled areas.²⁵³ The requirement that TIPH2 relate to Hebron as a single city may reflect Palestinian fears that Israel views its redeployment in Hebron as a permanent solution. The Palestinians, who clearly covet control over all of the city of Hebron in any final settlement,²⁵⁴ do not want the establishment of TIPH2 to sanction the perpetuation of the *status quo* in the city, thereby prejudicing the Palestinians' future right to claim all of Hebron for themselves. Furthermore, the requirement that TIPH2 relate to Hebron as one city is also in keeping with the official government policies of the donor countries, who view the entire West Bank as occupied territory from which the IDF should redeploy under any final settlement, unless the PA agrees otherwise.²⁵⁵

Article 5 of the TIPH2 Agreement confers a new role to the TIPH2 mission, not imparted to TIPH1, "to encourage economic development and growth in Hebron."²⁵⁶ TIPH2 acknowledges that it is not performing this part of its mission.²⁵⁷ Article 5(d) of the TIPH2 Agreement assigns TIPH2 the task "to assist in the promotion and execution of projects initiated by the donor countries."²⁵⁸ However, the donor countries have not provided TIPH2

²⁵² *Id.* at art. 1. Consequently, the mission operates equally in the H-1 and H-2 sectors. *A Presentation of TIPH2*, *supra* note 234, at 2.

²⁵³ See *supra* notes 220-30.

²⁵⁴ See Interview with Senior Israel Ministry of Foreign Affairs Official, *supra* note 239.

²⁵⁵ Interview with Stein Ulrich, Former TIPH2 Head of Mission, in Jerusalem (Oct. 2, 1997) [hereinafter Ulrich(2)].

²⁵⁶ TIPH2 Agreement, *supra* note 241, art. 5(e).

²⁵⁷ Ulrich(1), *supra* note 234. TIPH2 personnel stress that the mission's failure to fulfill this part of its mandate is not due to any lack of desire on the part of TIPH2. Rather, the omission is perhaps due to the administration and personnel constraints of the mission. Currently, the TIPH2 administration is focused on its observation tasks rather than its economic role and in order to make a substantial contribution to the economy of Hebron, TIPH2 would require an entirely new set of personnel to coordinate the projects. Nevertheless, TIPH2 officials claim that efforts are being made by the mission to introduce multinational projects sponsored by the contributing countries which TIPH2 can assist. Knutsen, *supra* note 241; Hanstensen, *supra* note 241. However, as of December 1997, the reviewer had received no indication that these efforts had resulted in any substantial progress. Furthermore, TIPH2 would be unable to meaningfully contribute to economic development and growth in Hebron without increased expertise and human resources. In the opinion of the reviewer, the TIPH2 mandate is unrealistic in expecting the mission to significantly "encourage economic development and growth in Hebron." The small scale development projects which TIPH2 has initiated are a more realistic option.

²⁵⁸ Ulrich(1), *supra* note 234. While some projects are being sponsored by the participating governments, these are on a country-by-country basis and there are currently no joint projects. *Id.* On the Israeli side, there is disappointment at TIPH2's ineffectiveness in developing the Palestinian economy in Hebron. *Ahmad, supra* note 234.

with any multinational projects to assist.²⁵⁹ Consequently, TIPH2 has taken it upon itself to introduce some small scale development programs financed by surplus funds diverted from the TIPH2 operating budget.²⁶⁰ Funding is directed towards voluntary, non-controversial programs for the underprivileged sectors of Palestinian society in Hebron, including women, the poor, and especially the Palestinian residents of H-2, which is the most impoverished and least developed section of the city.²⁶¹

Finally, the TIPH2 Agreement institutes changes in the composition of the JHC. In accordance with the new authority of the Palestinian police in the city of Hebron,²⁶² the Palestinians are represented on the JHC by the Palestinian Police Commander in Hebron rather than the Mayor of Hebron, who is specified as the senior Palestinian representative in the TIPH1 Agreement. The removal of the Israeli Civil Administration from Hebron under the Interim Agreement is reflected in the Israeli representative to the JHC who is no longer drawn from the Israeli Civil Administration, as was the case under the TIPH1 Agreement, but rather from the Israeli military. It is important to note that under the TIPH2 Agreement, a TIPH2 representative is accorded membership on the JHC.²⁶³ The Agreement states in Article 7(b) that the JHC shall meet on a weekly basis or on the request of any of its members, which suggests that TIPH2 can request a meeting of the JHC on its own initiative. Furthermore, the JHC is required "to deal with any issues arising from the [TIPH2] presence and the activity of the TIPH[2] which cannot be dealt with by the DCO [District Coordination Office]."²⁶⁴ The extended role accorded to TIPH2 on the JHC may have led to an increased confidence within the mission to play a more significant and

of the TIPH2 presence was in the hope that it would lead to improved Palestinian living standards. Interview with Major Rocky Abramson, Israeli head of the Hebron District Liaison Office, in Hebron (Oct. 5, 1997) [hereinafter Abramson(1)].

TIPH2 personnel contend that its failure to encourage economic development and growth in Hebron is due to factors beyond its control, such as Israeli closures on the Occupied Territories and IDF curfews. See Knutsen, *supra* note 241.

²⁵⁹ Ulrich(1), *supra* note 234.

²⁶⁰ One such project involves TIPH2 setting up an Information and Technology group in connection with the Palestinian Chamber of Commerce. Narfeldt(4), *supra* note 205.

²⁶¹ TIPH2's activities within the Palestinian community contribute to the "normalization" of life in Hebron. In the words of the former Head of Mission, Ulrich, "[w]e are trying to build up community relations, normalize their society through community building, support of local events, sports activities, art exhibitions...." Ulrich(1), *supra* note 234; See *TIPH Community Relations* (on file with author), Aug. 1997. Ulrich(1), *supra* note 234. One such project was the funding of a school package for some of the poorest children in the H-2 area, which included school bags, shoes, and stationary. Interview with Astrid Haaland, TIPH2 Community Relations Officer, in Hebron (Sept. 11, 1997). The goodwill such action generates for the peacekeepers aids in building bridges towards the local population.

²⁶² Hebron Protocol, *supra* note 3, art. 2(1), at 5.

²⁶³ TIPH2 Agreement, *supra* note 241, art. 7(b). Under the TIPH1 Agreement TIPH was "invited on a bi-weekly basis to participate in the JHC meeting in order to report on the TIPH activities." TIPH1 Agreement, *supra* note 190, art. 5(a).

central role as a permanent member on the JHC.

It should be noted that TIPH2's mandate is to monitor how the Palestinian residents are treated and not to improve or monitor the peace process or to criticize noncompliance by either side with the Hebron Protocol or earlier interim agreements.²⁶⁵ TIPH2 is intended to give the Palestinians in Hebron a feeling of security and stability, and its mandate allows them only to report what happens as clearly as possible.²⁶⁶ While the former TIPH2 Head of Mission, Stein Ulrich, admits that TIPH2 personnel are powerless to protect Palestinian residents against violence, they are able to "make them feel that they live in a place where they can be heard."²⁶⁷ In pursuit of this aim, the TIPH2 mission is two-fold: to observe and report the situation in the city, and to aid in rebuilding civil society.²⁶⁸ TIPH2 maintains contact with the Palestinian population on a daily basis by patrolling the streets of the city, usually in pairs, from 7:00 am to 10:00 pm, seven days a week. Approximately 40 observers, working in three shifts, crisscross both H-1 and H-2.²⁶⁹ The only part of the city they do not cover is the Tomb of the Patriarchs/al-Ibrahimi Mosque, which is in the hands of the IDF.²⁷⁰ These patrols give particular attention to Israeli checkpoints, which have often been sites of friction as Israel has imposed closures of

²⁶⁵ While TIPH2 officials maintain that it is not within their mandate to comment on a possible solution to the tensions in Hebron, according to former IDF liaison with TIPH1, Captain David Ramati, "TIPH holds out absolutely no hope for peace" in Hebron. In a daily meeting between TIPH1 and the IDF, TIPH1 officials outlined "the unofficial Norwegian stand" vis-a-vis the Jewish community:

Kiriat Arba will be a ghetto surrounded by a large fence and patrolled by the IDF. Jews will only be allowed to travel to Jerusalem in heavily guarded convoys. The convoys will be allowed to leave Kiriat Arba only at specific times during the day. No one will be allowed to leave the convoy between Kiriat Arba and Jerusalem for any reason. The Hebron Jewish community will be disarmed. A joint Israeli, Scandinavian and Palestinian police force will be formed to police the Jewish areas of Hebron. A buffer force will separate the Kiriat Arba and Hebron Jews. This force will be made up of crack units of the IDF and will be responsible for preventing Jews from entering Hebron. Jews will be allowed access to the Jewish Holy Places in limited numbers.

Ramati, *supra* note 183, at 6.

²⁶⁶ Ulrich(1), *supra* note 234; TIPH2 Agreement, *supra* note 241. TIPH2 observers may not conduct an investigation, but can collect extra information to compile a complete picture of the incident. This may include TIPH2 observers seeking additional data from sources not present at the incident. *Id.* However, in its reports, TIPH2 endeavors to distinguish between first and second hand sources, i.e., what its observers have seen and what has been reported to them by other sources. Knutsen, *supra* note 241.

²⁶⁷ Ulrich(1), *supra* note 234.

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ The Tomb of the Patriarchs/al-Ibrahimi Mosque is not mentioned in the TIPH2 Agreement, and the IDF interprets any TIPH2 presence there as a violation of the status quo. According to IDF Major Abramson, while TIPH2 has produced reports on incidents allegedly occurring in the structure, all of them have been either baseless or a minor misunderstanding. Abramson told TIPH2 that the IDF is "not prepared to deal with the Cave. If it is a big issue, I am prepared to deal with it on a bilateral basis," i.e., not on the level of the JHC. Abramson(1), *supra* note 241.

varying severity.²⁷¹ TIPH2 personnel observe any confrontations between Palestinian residents and IDF soldiers, often interceding verbally for the Palestinians and sometimes raising the matter with an IDF liaison officer.²⁷²

The Palestinian residents of Hebron are encouraged to approach TIPH2 personnel with any complaints concerning the behavior of Israeli soldiers, Jewish residents and even Palestinian security forces. TIPH2 personnel often provide advice to Palestinians as to which Israeli authorities they need to contact to make a complaint, or to apply for a particular permit or license.²⁷³ Although TIPH2 personnel will often accompany the complainant when he or she makes the complaint to ensure that it is handled in an appropriate criminal justice manner, TIPH2 is not entitled to receive any further information, including whether any investigation takes place, or the result of such an inquiry.²⁷⁴

While TIPH2 treats complaints made by Palestinian residents against the PA in the same way as they handle complaints against the Israeli authorities, such complaints are rare as much of the activity of TIPH2 personnel is centered around the Israeli checkpoints, where incidents are likely to be between Palestinians and IDF soldiers. Former Head of Mission, Ulrich, considers the rarity of complaints made by Palestinians against the PA to be a "black mark" against the TIPH2 mission. However, in the opinion of the reviewer, the scarcity of such complaints is not surprising given that the complainant must be willing to have his name revealed.²⁷⁵

The TIPH2 Agreement states that "TIPH personnel shall enjoy freedom of movement for the performance of their tasks within the City of Hebron as set out in the modalities referred to in paragraph 1."²⁷⁶ These modalities are contained in the Memorandum of Understanding on the Establishment of a Temporary International Presence in Hebron ("Memorandum of Understanding"),²⁷⁷ which establishes the organizational structure, operational guidelines, logistics, support, and privileges and immunities of TIPH. A slight variation on the Memorandum of Understanding developed for TIPH1 and signed by the six participating governments, the Memorandum of Understanding places limitations on the movement and action of TIPH2 personnel.²⁷⁸ Article B(3) of the Memorandum of Understanding states that TIPH2 personnel will "enjoy

²⁷¹ Ulrich(1), *supra* note 234.

²⁷² *Id.* Interview with Nidal Al-Tamimi, Spokesman for the Public Relations Department of the Hebron Municipality, in Hebron (Oct. 5, 1997).

²⁷³ Ulrich(1), *supra* note 234.

²⁷⁴ *Id.* While TIPH2 has no right to request information from the authorities, the IDF will sometimes provide information to TIPH2 personnel on a discretionary basis. *Id.*

²⁷⁵ *Id.*

²⁷⁶ TIPH2 Agreement, *supra* note 241, at art. 9.

²⁷⁷ Memorandum of Understanding, *supra* note 248.

²⁷⁸ *Id.*

freedom of movement....except when notified through the DCO of exceptional and temporary measures...." Furthermore, "[m]embers of TIPH[2] will not enter privately held areas, or military camps and security installations without specific permission from the qualified individual or authorities as appropriate."²⁷⁹ Consequently, TIPH2 is not allowed to enter the area of the Tomb of the Patriarchs/al-Ibrahimi Mosque, which is a security installation. Nor are TIPH2 personnel permitted to enter police stations, military areas, prisons or private homes without the specific permission referred to in the Memorandum of Understanding.²⁸⁰

Despite these restrictions, Ulrich is confident that TIPH2's presence helps to reduce tensions in the city. Ulrich believes that the mere presence of foreign observers leads IDF soldiers to behave in a more professional manner,²⁸¹ thereby reducing confrontations.²⁸² However, TIPH2 is not mandated to prevent confrontations between the Palestinians and the Jewish residents of Hebron. These incidents repeat themselves in much the same manner, and include the throwing of rocks and garbage, and intimidation. Under the terms of its mandate, TIPH2 is only authorized to observe and report such incidents and is unable to interfere.²⁸³

TIPH2 Reports

Several kinds of reports are produced by the TIPH2 mission: some for internal use; some which are submitted to committees where the PA, the Israeli Government and TIPH2 are represented; and some which are submitted to the governments of the participating countries. None of the reports are made public, and TIPH2 does not comment publicly on specific incidents mentioned in the reports.²⁸⁴

In accordance with Article B in the Memorandum of Understanding,²⁸⁵ the TIPH2 observers compile daily situation reports based on internationally recognized human rights standards.²⁸⁶ These situation reports are mainly concerned with the tension levels in public places and are

²⁷⁹ *Id.* at B(3).

²⁸⁰ Ulrich(1), *supra* note 234.

²⁸¹ This can avert problems, particularly as troops who have just been rotated from actual combat in Lebanon to police work in Hebron may be short-tempered. *Id.*

²⁸² *Id.*

²⁸³ TIPH2 Agreement, *supra* note 241, art. 3; Ulrich(1), *supra* note 234. According to Ulrich, the Jewish residents of downtown Hebron are trying to squeeze out the neighboring Arabs. Ulrich(1), *supra* note 234. TIPH2 does present reports on the activities of the Jewish community of Hebron to the JHC. IDF Liaison Officer Major Abramson refers those reports involving illegal activity to the police. Abramson(1), *supra* note 258.

²⁸⁴ Ulrich(1), *supra* note 234.

²⁸⁵ Memorandum of Understanding pursuant to the TIPH2 Agreement was signed in Oslo on January 30, 1997 by the six participating countries. *A Presentation of TIPH*, *supra* note 186, at 2.

²⁸⁶ Memorandum of Understanding, *supra* note 248, at art. B(2).

based on incident reports written by teams of TIPH2 personnel who have observed incidents they consider necessary to report. Some of these reports are used exclusively to update TIPH2 members on the situation in the city. Others are submitted to the JHC.²⁸⁷ In practice, TIPH2 incident reports are usually conveyed bilaterally to the party involved.²⁸⁸ If TIPH2 receives a "satisfactory" explanation or response to the report, the case will be closed.²⁸⁹

General weekly reports and reports on special topics are submitted to the governments of the countries participating in TIPH2.²⁹⁰ While the Monitoring and Steering Committee has not yet been established, periodic reports meant for the Monitoring and Steering Committee (as specified in the TIPH2 Agreement), are submitted to senior representatives of Israel and the PA.²⁹¹

TIPH2 - A Unique Peacekeeping Mission

Several factors render TIPH2 unusual among the plethora of peacekeeping missions around the world. One unique aspect of the TIPH2 mission is its community relations program. TIPH2 personnel stress the importance of community outreach as a way to build up support for the mission.²⁹² According to Ulrich, observation makes little sense if the population does not know what TIPH2 is and does not feel free to talk to its observers.²⁹³ When the TIPH1 mission first began operating in Hebron, it received occasional negative reactions from the local civilian population, especially children, some of whom would throw stones at the patrol cars.²⁹⁴ TIPH2 personnel wanted to change the perception, prevalent especially

²⁸⁷ *Id.* at art. B(2).

²⁸⁸ The party involved will usually be the IDF or the PA.

²⁸⁹ Knutsen, *supra* note 241. Most cases are closed at this stage. *Id.*

TIPH2 personnel are also encouraged to keep the complainant informed of any progress that has been made concerning his or her complaint. *Id.*

²⁹⁰ *A Presentation of TIPH2*, *supra* note 234, at 3. Ulrich(1), *supra* note 234. Weekly summaries of TIPH2 incident reports are sent to the contributing countries. Only in exceptional cases, are actual incident reports submitted to the contributing countries. Knutsen, *supra* note 241.

²⁹¹ *A Presentation of TIPH2*, *supra* note 234, at 3.

²⁹² The UN has also recognized the utility of small-scale development assistance as a component of peacekeeping operations. The 1996 UN Review of Peace Missions concluded that "[p]eacekeepers can sometimes induce parties to cooperate through actions such as using military resources for small scale development assistance, restoring local infrastructure, or medical care." *The Year in Review*, *supra* note 34, at 1. The Secretary-General's former Special Representative for Rwanda, Shaharyar Khan, has urged that strong consideration be given to utilizing peacekeepers for reconstruction, even if on a limited basis. The goodwill such action generates for the UN helps enormously in building bridges towards the local population. The idea, he said, was not to introduce nation-building into military peacekeeping operations, "but simply to be responsive to the immediate needs of a devastated country." *Id.*

²⁹³ Ulrich(2), *supra* note 255.

among Palestinian children, that the mission was merely a replacement of the Israeli military presence. Consequently, TIPH2 established a community relations program with the "overriding" objective of disseminating information to the civilians of Hebron.²⁹⁵ The community relations project also aims to "develop the cooperation and deepen the relationship" between TIPH2 and the local Palestinian community through information programs at schools, universities, various institutions and organizations.

TIPH2's egalitarian nature also distinguishes it from other peacekeeping missions. There are no insignia on the identical, grey uniforms which all TIPH2 members wear,²⁹⁶ and there are no ranks. To the outsider, TIPH2 personnel are all the same: observers.²⁹⁷ Hence, they resemble neither a military nor a police force and are readily distinguished from the various uniformed services of the PA and Israel. Moreover, the nationalities which make up the TIPH2 mission are mixed in the daily patrols, and TIPH2 personnel are encouraged to view themselves not as representing their donor countries, but as a single unified mission representing TIPH2.²⁹⁸

The fact that TIPH2 is outside the usual UN framework of peacekeeping makes the mission atypical. One TIPH2 member commented that TIPH2's distinctiveness is drawn from the fact that it was the only form of international presence the two sides could agree on.²⁹⁹ Finally, according to IDF Major Rocky Abramson, whereas another mission might come with preconceived ideas and ways of operation, TIPH2 comes with a fresh and unique perspective. Because it is new, TIPH2 is a dynamic mission.³⁰⁰

III. CHALLENGES AND PROBLEMS FACED BY TIPH

Perspective of the Palestinian Authority

According to the Head of Operations of the Palestinian Preventative Force in the West Bank, Colonel Jamal Qawasmeh, TIPH2 has been effective in helping to reduce tensions in Hebron, especially between Jewish and Palestinian residents.³⁰¹ However, while welcoming TIPH2's role, Qawasmeh believes that the mission has not had a significant effect on the

²⁹⁵ *TIPH Community Relations*, *supra* note 261, at 1.

²⁹⁶ Members of UN peacekeeping missions usually wear the military uniform of their country of origin, with only the blue berets or helmets distinguishing them as peacekeepers.

²⁹⁷ Ulrich(2), *supra* note 255.

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ Abramson(1), *supra* note 258.

³⁰¹ Interview with Colonel Jamal Qawasmeh, Head of Operations, Palestinian Police Forces, in Hebron (Oct 12 1997).

security of the city's Palestinians.³⁰² However, although TIPH2's presence helps to modify the behavior of Israeli soldiers, Qawasmeh believes that the situation in the city will be substantially improved only through the advancement of the political process between Israel and the PA.³⁰³

Colonel Qawasmeh places particular importance on TIPH2's role as a "good player" between the Israelis and the PA. The fact that TIPH2 is viewed as non-aligned and honest by both parties, means that it can fulfil a significant co-ordinating function.³⁰⁴ He stresses that TIPH2 personnel observe Palestinian as well as Israeli actions, and that TIPH2 has produced reports critical of the PA.³⁰⁵

The PA would like TIPH2 to be given greater authority to take on a role beyond that of a pure observer force.³⁰⁶ Qawasmeh would like to see TIPH2 given the power to enter any area where there is tension, including buildings and military areas.³⁰⁷ Furthermore, Qawasmeh suggests that a TIPH2 presence in place of the current deployment of Israeli soldiers in the Tomb of the Patriarchs/al-Ibrahimi Mosque, would provide a satisfactory solution to the problem of competing Jewish-Muslim claims to the holy site.³⁰⁸

Perspective of the IDF

IDF Major Rocky Abramson³⁰⁹ believes that TIPH2 is a positive force in Hebron. The IDF recognizes that observation by an outside mission causes one to modify one's behavior, and TIPH2's presence creates greater self-consciousness in the way Israeli soldiers behave towards the Palestinians.³¹⁰ There is a continual flow of information from TIPH2 to the

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.* One such report involved Palestinian police climbing onto the roof of the TIPH building during a visit to the city by Chairman Arafat. According to Qawasmeh, the problem has been solved, and Palestinian police are not allowed within 10 meters of the building. *Id.*

³⁰⁶ Lerner, *supra* note 187.

³⁰⁷ Qawasmeh, *supra* note 301.

³⁰⁸ *Id.*

³⁰⁹ Abramson(1), *supra* note 258. Major Abramson has been involved with TIPH2 since mid-February 1997, two weeks after the TIPH2 mission arrived in the city of Hebron. Abramson's office is responsible for responding to all TIPH inquiries regarding Israeli policy in Hebron. Lerner, *supra* note 187. Abramson has sat on the JHC as one of the two IDF representatives since March 1997. In the JHC, Abramson acts as the assistant to the IDF Commander. Abramson(1), *supra* note 258; Knutsen, *supra* note 241.

³¹⁰ Abramson(1), *supra* note 258. According to Abramson, TIPH's presence has not had a dramatic effect on the behavior of the Palestinian residents of Hebron. However, if there has been any change, it has been to make the Palestinians feel a little more comfortable giving verbal abuse to Israeli soldiers,

IDF, both at JHC meetings and on a bilateral basis,³¹¹ and TIPH2 reports are taken very seriously by the IDF and the Civil Administration.³¹²

Furthermore, TIPH2 does not significantly interfere with the work of the IDF in Hebron. Abramson notes that the TIPH2 mandate gives the IDF the option of declaring a closed military area, which TIPH2 personnel may not enter.³¹³ The IDF has created a closed military area only once during the mandate of TIPH2, on November 5, 1997.³¹⁴ This suggests that

³¹¹ Former IDF liaison to TIPH1, Ramati, records that he met "daily" with his counterparts in TIPH1. Ramati, *supra* note 183, at 6. Abramson is in daily contact with TIPH2 members via e-mail. Lerner, *supra* note 187.

However, the flow of information between TIPH2 and the IDF is much more limited in the field. IDF soldiers are instructed not to answer questions posed by TIPH2 personnel. Abramson(1), *supra* note 258. However, according to a TIPH observer who has served in both TIPH1 and TIPH2, the communication between TIPH2 observers and Israeli soldiers is much improved over what prevailed during the TIPH1 mandate. TIPH2 personnel can speak with soldiers. Sometimes the soldiers will answer their questions and sometimes they claim to be unable to speak English. Bugge, *supra* note 206.

³¹² Abramson(1), *supra* note 258. Abramson claims to relate to every TIPH2 report he receives, usually orally. *Id.* Up until Sept. 15, 1997, the IDF was the Israeli representative at the JHC. However, in September this role was been transferred to the Civil Administration. Lerner, *supra* note 187.

³¹³ Memorandum of Understanding, *supra* note 248, art. 3(b); Abramson(1), *supra* note 258.

³¹⁴ Under the TIPH2 Agreement, the IDF is permitted to create a closed military area into which TIPH2 is not allowed to enter only as a temporary and extraordinary measure. Major Abramson contends that this was the case on November 5, 1997, when the IDF created a closed military area for a period of approximately three hours in the area of the Cave of Machpela for the purpose of carrying out ID checks on Palestinians. Telephone Interview with Major Rocky Abramson, Israeli head of the Hebron District Liaison Office, (Dec. 2, 1997) [hereinafter Abramson(2)]. As reported in Jerusalem Post, the IDF said that on November 5, 1997 "168 Palestinians were rounded up . . . in Hebron, then photographed and released in an action aimed at deterring further firebomb and pipe bomb attacks on troops." Margot Dudkevitch, *IDF Detained 168 Palestinians in Hebron*, JERUSALEM POST, Nov. 7, 1997, at 2. According to the IDF spokesman, the roundup was in response to an increasing number of assaults on soldiers on patrol in the Casbah area. The Palestinians were photographed so they could be identified in the event any were involved in a future attack or clash. Nobody was arrested. Palestinians maintained that as many as 300 people were rounded up in a two-hour action launched just before midnight. *Id.*

TIPH2 complains that it was not notified in advance through the DCO of the IDF intention to create a closed military area, and that, therefore, the IDF action was a breach of the TIPH2 Agreement. Narfeldt(2), *supra* note 214. Article B(3) of the Memorandum of Understanding states that TIPH2 personnel will "enjoy freedom of movement . . . except when notified through the DCO of exceptional and temporary measures. . . ." [emphasis added] Memorandum of Understanding, *supra* note 248, at B(3).

However, Abramson claims that the IDF did not know in advance that the operation was going to take place. Furthermore, there was an IDF Colonel in the field who spoke to TIPH2 personnel and informed them of what was happening. Abramson(2), *supra* note 314.

However, a senior TIPH2 official contends that TIPH2 observers had to place a lot of pressure on IDF soldiers in order to obtain any information about the closure. One patrol was eventually permitted to enter a small distance into the closed military area, however, the observers were unable to see what was happening to the Palestinians detained there. Narfeldt(4), *supra* note 205. TIPH2 officials maintain that regardless of what happened at the scene, TIPH2 should have been informed of the closure through the DCO. Narfeldt(2), *supra* note 214. However, Abramson says that TIPH and the IDF do not generally coordinate their activities through the DCO and the IDF ought not to have been expected to do so in this instance either. According to Abramson, the IDF has every right to create a closed military area. It is the first time it has happened in eight months, it was in a small area and for a limited period of time. He complains that TIPH2 often sees things very simplistically, and that they need to understand that the military can not inform the "whole world" in advance that they are going to carry out an operation. They have to understand the situation in Hebron, and how the IDF must operate. If they can't understand that, "it's their problem not ours." Abramson(2), *supra* note 314.

the IDF is able to operate effectively in the presence of TIPH2 personnel.³¹⁵

Abramson does not view the JHC meetings as necessarily a forum for problem solving, but rather as an opportunity for the IDF to receive feedback.³¹⁶ To a certain extent, TIPH2 acts as a mediating force in the JHC. Despite fluctuations in the peace process, the Palestinians and the Israelis are forced to sit together with TIPH2 on the JHC. Even when Arafat suspended all negotiations with Israel as a protest against Israeli building at *Har Homa*, and the Palestinians were under constraint from above to cancel the JHC meetings, TIPH2 succeeded in pressuring both parties to continue with the meetings.³¹⁷ It could be argued that TIPH2's presence as a mediating party in the JHC could reduce the possibility of Israel and the Palestinians developing a direct relationship. However, the JHC forces the Palestinians to come and sit with the Israelis, and thereby gives some continuity to the dialogue between Israel and the Palestinians. Discussions in the JHC are to the point and productive.³¹⁸

The publication of the first TIPH2 periodic report, however, highlighted problems between TIPH2 and the IDF in the interpretation of TIPH2's mandate. The report, which was submitted to the governments of all six host countries, was highly critical of IDF behavior and policies.³¹⁹ Abramson gave several explanations for this criticism. First, when the report was written, the parties were still negotiating the interpretation of the TIPH2 Agreement, and the report mentioned issues that were not in the mandate, but which TIPH2 considered, at that time, to be within its directive.³²⁰ Second, the report evaluated the IDF according to international human rights standards, and not on the basis of IDF policies.³²¹ This created

TIPH2 has received an apology from the IDF for the failure to notify TIPH2 in advance of the creation of a closed military area on Nov. 5, 1997. Knutsen, *supra* note 241. However, according to Narfeldt, TIPH2 remains unsatisfied, despite the apology, because the IDF has not ruled out the possibility of creating a closed military area in the same manner again. TIPH2 wants the IDF to acknowledge that it is required to inform TIPH2, through the DCO, of its intention to create a closed military area. However, Abramson has apparently informed TIPH2 that the IDF has no intention of acknowledging such an obligation. Narfeldt(4), *supra* note 205.

A closed military area was created at least once during the TIPH1 mandate. During the summer of 1994, Hebron was declared a closed military area following a terrorist attack on a Jewish family driving near Kiryat Arba. TIPH1 was confined to their base for two days, while the IDF searched for the terrorists. Ramati, *supra* note 183, at 7.

³¹⁵ Abramson(1), *supra* note 258.

³¹⁶ *Id.* For example, TIPH2 may provide reports which show that the IDF is taking too long to carry out security checks on Palestinians wanting to cross Israeli checkpoints. *Id.*

³¹⁷ *Id.* TIPH2 went to the Palestinians and said: "If you will not meet, we may as well go home as there is no use for us here." *Id.*

³¹⁸ Ulrich(1), *supra* note 234; Abramson(1), *supra* note 258.

³¹⁹ Lerner, *supra* note 187.

³²⁰ Abramson(1), *supra* note 258. These issues have now been clarified. *Id.* Further, many of the

a problem for the IDF in Hebron, which operates within the parameters of a military occupation, pursuant to which certain limitations on human rights are required to maintain security.³²² According to Abramson:

If TIPH[2] evaluates our actions on the basis of international human rights standards - we are in trouble. This is a military occupation. Of course, our policies are different here, in an occupied area, than elsewhere in Israel...Therefore, we come off looking bad, and there is not much we can do.

Abramson also criticizes TIPH2 for its failure to submit, even on an informal basis, the report to the IDF for feedback. If the IDF had been given an early opportunity to comment on the report, Abramson maintains, many of the issues could have been resolved before they were submitted to the host countries. Furthermore, according to Israeli Civil Administration Spokesman, Peter Lerner, the report was blatantly biased. The outcome was that TIPH2's credibility was put into question.³²³

TIPH2 has recently completed its second periodic report. Despite a request by Abramson, TIPH2 decided against allowing the IDF or the PA to read and respond to the report before it was submitted to the host countries.³²⁴ Although conceding that the second periodic report contains fewer inaccuracies than the first, Abramson claims that the process of producing the report has not improved and the latest report contained inaccurate reporting and numerous mistakes of fact, all of which were made at Israel's expense. Furthermore, TIPH2 continued to report on things that were not in its mandate. Abramson claims that, even if the issue is not

³²² *Id.* For example, there is a much greater need for security checks on Palestinians in the Occupied Territories than in Tel Aviv or Haifa. *Id.*

³²³ Former TIPH2 Head of Mission Ulrich signed the report just two weeks after arriving in Hebron, (Abramson(1), *supra* note 258), although TIPH2 personnel stress that Ulrich was very active in writing the report despite his limited experience with the mission. Knutsen, *supra* note 241. Despite his dissatisfaction with the periodic report, Abramson stresses his satisfaction with the "very positive attitude" and "very healthy outlook" of TIPH2, especially given the bias in its mandate. Abramson says that while the TIPH members come from a wide range of backgrounds, and those who have studied or who were born in Arab countries are often biased towards the Palestinians, there are TIPH2 members who are pro-Israeli, and even some who are married to Israelis. Abramson(1), *supra* note 258.

In the opinion of TIPH2 Official, Lars Narfeldt, the first periodic report was poorly written and made a lot of mistakes: "Ulrich said too much. . ." Apparently, Ulrich rewrote a report written by a TIPH2 member of the Research-Analysis-Information Division, who later left the mission in protest. See *supra* notes 319 and 320; Narfeldt(4), *supra* note 205. According to Narfeldt, the issue of the first periodic report highlighted the need to replace the current practice of appointing a policeman to the position of Head of Mission with the appointment of career diplomats instead. *Id.*

³²⁴ Narfeldt(2), *supra* note 214. However, TIPH2 allowed senior Israeli and Palestinian officials, including Sa'eb Erekat, (Palestinian Head of the Steering and Monitoring Committee and PA Minister of Local Government), and Yitzhak Lior, (Deputy Director of International Organizations at the Israel Ministry of Foreign Affairs) to read the TIPH2 report.

within its area of responsibility, if TIPH2 considers it to be important, it will be included in the periodic report.³²⁵ Abramson laments the fact that TIPH2 continues to write about things which are not within its mandate and continues to include inaccurate reporting in its periodic report, and the IDF is not even given the opportunity to read and respond to the report before its publication.³²⁶

Perspective of the Israel Foreign Ministry

Historically, Israel has had a negative attitude towards proposals to create international peacekeeping forces on its borders.³²⁷ This attitude is attributable to repeated efforts of the Palestinians and the various Arab states to internationalize their conflicts with Israel, as well as decades of almost automatic one-sided anti-Israeli bias of the UN General Assembly and Security Council, and a range of other UN agencies.³²⁸

Most Israelis and many other observers³²⁹ discount the UN's assessments in matters involving Israel. Even after the repeal of the resolution equating Zionism with racism in 1991,³³⁰ the UN has continually

³²⁵ Abramson(2), *supra* note 314.

³²⁶ *Id.* A senior TIPH2 official responded angrily to Abramson's complaint concerning TIPH2's decision not to allow the IDF to read the periodic report before publication. He said that the periodic report has nothing to do with the IDF, who is not a recipient of the report, and more specifically, nothing to do with Abramson, who is "just the liaison officer." Narfeldt(4), *supra* note 205. He also linked TIPH2's refusal to allow the IDF to read the periodic report with the IDF's refusal to comply with art. 3(B) of the Memorandum of Understanding. If Abramson is not willing to comply with the provision contained in art. 3(B) that requires the IDF to notify TIPH2 in advance concerning the creation of a closed military area, why should TIPH2 allow the IDF to read the periodic report when it has no obligation to do so? *Id.*; see Memorandum of Understanding, *supra* note 248, at art. 3(B).

³²⁷ Israel Ministry of Foreign Affairs official, *supra* note 239.

³²⁸ See SCHOENBERG, *supra* note 86, at 251-327. A critic of the world body noted:

In spite of the multitude of wars, atrocities, and terrorist acts, many of which have been sponsored by terrorist states, the UN Security Council has still managed to devote some 30 percent of its meetings, and a full one-third of its resolutions to Israel. Strangely, until the time of the recent Gulf War, the Security Council had never warned, censured, or condemned a single Arab state. . . . To this point the UN Security Council has issued 31 expressions of concern, seven warnings, and 49 condemnations against Israel.

Id.

³²⁹ For example, one critic noted that "[b]y equating Israel's temporary deportations with very permanent ethnic massacres in Bosnia, or with Iraq's territorial marauding, persecution of Kurds and continuous military defiance of the UN, the UN members and the Secretary-General are conniving in a distortion of history, reality and morality." A.M. Rosenthal, *Dances With Wolves*, N.Y. TIMES, Jan. 29, 1993 at A6; see also, Mortimer B. Zuckerman, *The PLO as Image Maker*, U.S. NEWS AND WORLD REP., Jan. 22, 1990, at 76.

demonstrated blatant animus towards Israel.³³¹ Moreover, as has consistently been demonstrated in Lebanon with UNIFIL, the interposition of international forces can make it more difficult both operationally and politically for the IDF to pursue the perpetrators of hit-and-run attacks that emanate from behind the lines of the peacekeepers.³³²

Nevertheless, despite misgivings, Israel agreed to the placement of an international presence in Hebron and even to its repeated renewal.³³³ TIPH1 was seen as a way to restart the negotiations which Arafat had boycotted in the aftermath of the Goldstein massacre.³³⁴ Israel insisted, however, that TIPH1 would have no political role, that it would not have a public relations role (i.e., by briefing journalists) and that it would not interfere with Israeli security efforts.³³⁵ Indicative of its limited role, the "P" in TIPH stands for "presence" which is a less military-sounding designation than "force," a term which is frequently used in other international peacekeeping missions. Likewise the head of TIPH does not employ a military title, such as "general" or "colonel." Rather, he is simply referred to as "Head of Mission."³³⁶ Moreover, the members of TIPH are permitted by their mandate to carry only handguns for the purpose of self-defense,³³⁷ and even these are not carried pursuant to a decision of the participating countries.³³⁸

Notwithstanding its apprehensions, in the view of the Foreign Ministry, Israel's overall experience with TIPH1 and the Advance Party was satisfactory. Thereafter, when the peace process moved to a new stage, Israel conceded to the Palestinian demand to create a somewhat larger presence³³⁹ with an expanded mandate⁴⁰ and to place it in Hebron for a

³³¹ Meir Rosenne, *Double Standard*, JERUSALEM POST, Jan. 11, 1993 at 6 (UN never condemns violence directed at Jews or Israelis); see, e.g., *The UN and Its Allies*, JERUSALEM POST, May 10, 1996, at 4; Marilyn Henry, Hillel Kuttler & Aryeh O'Sullivan, *Israel, US Reject UN Kana Report*, JERUSALEM POST, May 9, 1996, at 1.

³³² Terrorist groups, such as Hizbollah, have been able to use the peacekeepers as a kind of partial shield against IDF responses. See, e.g., *The Blue Helmets*, *supra* note 30.

³³³ Israel Ministry of Foreign Affairs official, *supra* note 239.

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ Ulrich(1), *supra* note 234.

³³⁷ TIPH2 Agreement, *supra* note 241, art. 8.

³³⁸ Ulrich(1), *supra* note 234.

³³⁹ According to a senior official at the Israeli Foreign Ministry, Arafat approached every government he visited and requested that they commit personnel (and budget) to TIPH2. Israel Ministry of Foreign Affairs official, *supra* note 239. Five additional nations agreed to commit personnel. *Id.* Israeli Foreign Ministry officials attempted to persuade their Palestinian counterparts that a larger presence was not necessarily beneficial to Palestinian interests since, in most cases, the expenses of the presence comes out of the economic assistance budget that the various countries earmark for the PA. *Id.* They argued that the same funds could be better spent on development projects that would employ Palestinians and build their economy.

longer period.³⁴¹ After almost a year of experience with TIPH2 peacekeepers on the ground in Hebron, a senior Israeli Foreign Ministry official was willing to give them a grade of 100 percent for effort.³⁴²

Perspective of the Hebron Municipality

The municipality of Hebron³⁴³ views TIPH's role in the city as very positive.³⁴⁴ According to Hebron municipality spokesman, Nidal Al-Tamimi, TIPH2's presence helps to reduce ethnic tensions in the city, especially in the Old City and along Al-Shuhadah Street.³⁴⁵ Al-Tamimi believes that the TIPH2 presence acts to modify the behavior of Israeli soldiers towards Palestinian residents, by forcing the soldiers to answer questions about their actions.³⁴⁶

Al-Tamimi claims that TIPH2 is welcomed and appreciated by the Palestinian residents of Hebron. He attests that through their community relations program, TIPH2 members have established a good relationship with the Palestinian community.³⁴⁷ However, while TIPH2 is viewed as a

³⁴¹ The TIPH2 Agreement specifies an initial three month period with an automatic renewal for another three months. Subsequently its mandate was extended for a second "three plus three" period. Israel Ministry of Foreign Affairs official, *supra* note 239. In the opinion of former TIPH2 Head of Mission Ulrich, the presence may be needed for a considerable period into the future. See speech by Stien Ulrich, Jerusalem, Oct. 29, 1997.

³⁴² Israel Ministry of Foreign Affairs official, *supra* note 239.

³⁴³ According to Ramati, the Arab mayor of Hebron only represents approximately 20 percent of the city. "He is the PLO puppet in the Hamas city of Hebron." Ramati, *supra* note 183, at 3.

³⁴⁴ Al-Tamimi, *supra* note 272. Before the conclusion of the Hebron Agreement in January 1997, the municipality used to sit on the JHC. Al-Tamimi was the liaison officer between the municipality and TIPH. Since the Hebron Agreement was signed, the PA is represented at the JHC. *Id.*

³⁴⁵ Al-Shuhadah Street is a major artery in downtown Hebron. It is in the Israeli-controlled area of Hebron and separates PA-controlled Hebron (H1) from the Israeli-controlled sector (H2). It is a key access route to the city's Jewish enclaves and also passes by the Arab market area. See Margot Dudkevitch, *Shuhada St. Opens to Palestinian Buses*, JERUSALEM POST, Nov. 5, 1997, at 20; see Fadel Atawneh, *Partial Reopening of Shuhada St.*, JERUSALEM TIMES, Oct. 31, 1997, at 1. Frequent violence following the Goldstein massacre prompted the IDF to close the street to civilian vehicular traffic in February 1994. This has caused substantial inconvenience and economic hardship, particularly to the Palestinians. The Jewish residents of Hebron fear that the complete reopening of the street will facilitate the approach of terrorists. Pursuant to the Hebron Protocol, it was agreed that the US would fund the renovation and repaving of Al-Shuhadah Street, and that Israel would permit its reopening to vehicular traffic. According to Hebron Jewish community leader Noam Arnon, renovating the road, which has been demanded by Palestinians, would "endanger our lives and allow for masses of troublemakers to come... We need to prevent this for peace and security in Hebron." *Hebron Street Work Draws Jewish Protesters*, (visited Sept. 3, 1997) <http://virtual.co.il/city_services/lists/hebron>.

Al-Shuhadah Street was partially reopened to Palestinian automobiles and municipal vehicles on October 29, 1997. On November 4, 1997 Palestinian buses were also permitted on the road. Dudkevitch, *supra* note 245. As of December 25, 1997, Al-Shuhadah Street remained off limits to pedestrians and other Palestinian civilians. Atawneh, *supra* note 345. According to Civil Administration spokesman, Lt. Peter Lerner, the partial opening of Al-Shuhadah Street is being treated as a test case to see how it works and if any changes are necessary before the complete reopening of the street. Margot Dudkevitch,

necessary and welcomed force in the interim period of the peace process, Al-Tamimi expresses the hope that one day the Palestinians will have a Palestinian state which they will govern independently of any outside presence.³⁴⁸

Perspective of Palestinian Residents

TIPH2's primary purpose is to promote a sense of security for the Palestinian residents of Hebron.³⁴⁹ However, upon its arrival in Hebron, TIPH1 encountered mixed reactions from the Palestinian community they were there to assist. Presumably mistaking TIPH1 vehicles for those of Israelis, TIPH1 patrols were occasionally stoned.³⁵⁰ It seems that Palestinian residents were initially misled regarding the mandate of TIPH1, and were expecting the mission to be armed and authorized to confront IDF soldiers. Consequently, the Palestinian residents of Hebron were disappointed by how little TIPH1 could do to change their situation.³⁵¹

TIPH2 has, therefore, gone to considerable lengths to gain the respect and trust of the Palestinians.³⁵² One of its major ventures, the

³⁴⁸ *Id.* Hebron Mayor Mustafa Natsheh has demanded that the Israeli settlers be removed for fear that their actions would lead to bloodshed and torpedo the peace process. Fadel Atawneh, *Hebron: Shuhada Street Split*, JERUSALEM TIMES, Apr. 17, 1997, at 1.

³⁴⁹ See TIPH2 Agreement, *supra* note 241; Ulrich(1), *supra* note 234.

³⁵⁰ Ulrich(1), *supra* note 234. Two TIPH1 vehicles were set on fire by Palestinian youths. Interview with Captain David Ramati, Former IDF Liaison with TIPH1, in Jerusalem (November 11, 1997).

³⁵¹ Bugge, *supra* note 206. According to one former TIPH1 observer, TIPH1 personnel were initially told to shoot at the IDF by Palestinian residents. *Id.*

³⁵² TIPH has commissioned three public opinion polls among the Palestinians in Hebron to ascertain the grass roots reaction to their efforts. At the outset, it is worthy of mention that the very commissioning of these polls reflects TIPH's attentiveness to the needs of the public. However, TIPH2 has decided not to publish the results of the most recent poll, prepared by the Palestinian Center for Public Opinion, due to its arguably non-scientific methodology. This, in turn, raises doubts concerning the findings of the first two polls, which were also conducted by the Palestinian Center for Public Opinion. Narfeldt(2), *supra* note 214. Consequently, TIPH2 intends to carry a further public opinion poll using a different surveyor. *Id.* The most recent published poll concerns the performance of the Advance Party in Hebron and was conducted during January 5-8, 1997. The study is considered as an update of the July, 1994 poll, which was conducted to probe the consciousness of Hebron residents vis-a-vis the TIPH1 presence. Taken before TIPH2 was deployed in full force, the newer survey revealed that 24.5 percent supported extending the stay of TIPH missions in Hebron, 64.5 percent were in opposition and 10.6 percent were undecided. Of those polled, 23 percent believed that the TIPH's presence provided a sense of security to the Palestinians, while 67.9 percent believed it had not, and 9.1 percent expressed no opinion. Only 18.4 percent agreed that the TIPH missions had already decreased the number of incidents between Palestinians and Israelis, whereas 68.3 percent believed the opposite, and 13.3 percent expressed no opinion. Despite these mixed responses, the poll revealed that a majority of those surveyed, 60 percent, believe that there is a measure of understanding and intimacy between the TIPH missions and the Palestinians of Hebron, compared to 23.3 percent who disagreed, and 16.7 percent who were undecided. Dr. Nabil Kukali, A Poll Conducted by the Palestinian Center for Public Opinion about the TIPH Forces Existence in the City of Hebron (Jan., 1997) [hereinafter Poll about TIPH's Existence in Hebron].

Perhaps the lack of...

Community Relations Division, endeavors to "disseminate information about TIPH[2] to the citizens of Hebron" and thereby "to develop the cooperation and deepen the relationship with the local community, that is schools, the university, various institutions and organizations."³⁵³ TIPH2 has even funded educational, sports, art and cultural projects, mostly for children, teenagers and women.³⁵⁴

For both pragmatic and political reasons, the Palestinians do not want the mandate of TIPH to be balanced vis-a-vis offering assistance to the Jews of Hebron. They want the limited power of TIPH to assist them in their interaction with Israel, i.e., they don't want TIPH to have a relationship with the Jews because it would imply that they are equally legitimate residents of Hebron, not an alien body implanted by force.³⁵⁵

Perspective of the Jewish Residents and Community Leadership of Hebron

Often referred to pejoratively in the media as "settlers,"³⁵⁶ the Jewish residents of Hebron view themselves as a new link in the chain of Jewish residence in the city of Abraham, the first Jew, and their most famous king, David. Living as a small and vulnerable minority in a hostile and threatening environment, they claim to seek coexistence with the Palestinians but not with the PLO, which they consider to be an unreconstructed terrorist organization masquerading as a legitimate political entity.³⁵⁷ The Netanyahu government asserts it is committed to preserving and consolidating the Jewish presence in that Hebron. Convinced that the Palestinians wish to drive them out of the city,³⁵⁸ however, the Jews are fearful that the government of Israel will agree to remove them from Hebron in exchange for paper promises of peace.³⁵⁹

³⁵³ IMPRESSUM (TIPH Community Relations Division), Aug. 1997, at 1.

³⁵⁴ See Interview with Astrid Haaland, TIPH Community Relations Department, in Hebron (Sept. 11, 1997); TIPH Community Relations, *supra* note 353, at 1-2.

³⁵⁵ Israel Ministry of Foreign Affairs official, *supra* note 239.

³⁵⁶ Dudkevitch, *supra* note 10.

³⁵⁷ Interview with Noam Arnon, Spokesman for the Jewish Community of Hebron, in Jerusalem (Sept. 30, 1997).

³⁵⁸ According to Al-Tamimi, there can never be co-existence between the Palestinian residents of Hebron and the Jewish community because the Jewish "settlers" are "not humans. All the settlers are fanatics, lunatics, but the ones living in the Old City are the lowest." Al-Tamimi, *supra* note 272.

³⁵⁹ Arnon, *supra* note 357. The Prime Minister asserted in his speech to the Knesset on the Hebron Protocol:

Every step that we take in the city of the patriarchs and the matriarchs is difficult. . . . We are not leaving Hebron. . . . In Hebron, we touch on the very basis of our national consciousness, the bedrock of our existence. Everyone whose heart beats with national feeling, with Jewish feeling, cannot help but feel the weight of the responsibility placed on our shoulders, and the supreme obligation to preserve our heritage.

It is difficult to ascertain the true attitude of the Jewish Israeli residents of Hebron towards TIPH2. According to Noam Arnon, a spokesman for the Jewish community of Hebron, any utility which TIPH2 could theoretically provide in decreasing tensions in the city is made redundant by the bias inherent in the TIPH2 mandate.³⁶⁰ Arnon views TIPH2 as a presence that is, by definition, pro-Arab and pro-Palestinian, and therefore incapable of acting objectively. He argues that TIPH2's bias is evident in its concentration of personnel in just 20 percent of the city, those areas surrounding the Jewish enclaves, where incidents involving Jews and the IDF are most likely to occur.³⁶¹ Areas under PA control are largely ignored, as are incidents involving Palestinian actions against Jewish residents of the city.³⁶² Arnon contends that the restrictions on Jewish movement in the city of Hebron and the prevention of Jews from visiting Jewish holy places in the PA controlled area, both in breach of the Hebron Agreement, have been ignored by TIPH2 personnel, and that there is little if any TIPH2 presence at PA checkpoints where such incidents against the Jewish residents are likely to occur.³⁶³ Furthermore, Arnon points out that in favoring the economic development of the Palestinian sector, TIPH2 (or more precisely the nations that make up TIPH2) effectively threaten the security of the Jews. By bringing Palestinian businesses and vehicles alongside or into Jewish neighborhoods, TIPH2 is facilitating riots or even terrorist attacks.³⁶⁴ Moreover, one of the major reasons Arafat demanded the imposition of TIPH2 was to create an additional channel to broadcast to

Protocol Concerning Redeployment in Hebron, Jerusalem, Jan. 16, 1997, (visited Sept. 15, 1997) <<http://alpah.neoki.nl/~likoed/govern10.html>>.

³⁶⁰ Arnon, *supra* note 357.

³⁶¹ *Id.* Arnon likens TIPH2 to a hunter, waiting for an incident to occur. *Id.* A senior TIPH2 official disputes Arnon's claim that TIPH2 concentrates its observers in the Israeli-controlled area of Hebron. H-1 and H-2 are considered equally important and the TIPH2 patrol route is designed to have 80 percent of observers in H-1 and 20 percent of observers in H-2 during observation hours. TIPH2 observers are also stationed at the Palestinian check point at Andora Junction. However, because more incidents occur in the H-2 area, follow-up TIPH2 patrols are often sent to the Israeli controlled sections of the city. More Israeli as opposed to Palestinian checkpoints are monitored by TIPH2 patrols, but this is because there are fewer Palestinian checkpoints and most of the Israeli checkpoints are on the border between H-1 and H-2. Narfeldt(4), *supra* note 205.

³⁶² Arnon, *supra* note 357. Contrary to Arnon's opinion, TIPH2 officials are anxious to debunk the widely-held impression that TIPH2 is biased towards or an instrument of the PA. Consequently, TIPH2 officials are keen to produce incident reports on the behavior of the Palestinian Police and not only on the IDF. See Narfeldt(4), *supra* note 205. According to Narfeldt, TIPH2 observers have produced incident reports on episodes involving Jews being detained at Palestinian checkpoints. *Id.*

³⁶³ Arnon, *supra* note 357. According to Abramson, Jews are prevented by the IDF from entering into H-1 areas for security reasons. The IDF provides security escorts for Jewish groups wanting to visit the four religious sites located in H-1, but it is technically impossible for the IDF to provide this assistance every time a Jew wants to enter H-1. According to the Hebron Agreement, the Palestinians can not refuse entry into H-1 areas to Jews, but they can and often do detain them at checkpoints. Abramson believes there is a political policy behind such detentions. Abramson(1), *supra* note 258.

³⁶⁴ Arnon, *supra* note 357.

sympathetic governments the grievances of the Palestinians against Israel.³⁶⁵ Given the generally negative international attitude towards what are termed "Jewish settlements," the Jewish residents of Hebron cannot be under any illusion that they will gain a sympathetic response from foreign governments. However, the Jews in Hebron have good connections with the IDF³⁶⁶ and right wing Israeli politicians, which are far more influential contacts than TIPH2 could ever be. With such support, it is not clear what meaningful assistance TIPH2 could furnish.³⁶⁷

The Jewish residents of Hebron contend that they, and not the Palestinians, are the ones being victimized, and that "it is quite ridiculous that TIPH[2] is here to protect the Palestinian community when it is clear that the Jews are the ones that need to be protected."³⁶⁸ However, despite claiming to be the victims of continued Arab and PA harassment, the Jewish residents very rarely complain to TIPH2, as they believe that TIPH2's biased nature renders such protests useless.³⁶⁹ As proof of TIPH2's ineffectiveness, Arnon points to what he considered the mission's inability to prevent, stop or in any way influence the Palestinians in Hebron who engaged in the widespread rioting of June and July 1997.³⁷⁰

³⁶⁵ Israel Ministry of Foreign Affairs official, *supra* note 239.

³⁶⁶ A senior Israeli Foreign Ministry official who participated in the drafting of all the TIPH agreements believes that the Jewish community prefers to rely on the IDF rather than to look to TIPH for assistance. *Id.*

³⁶⁷ Abramson believes that a TIPH2-like mission could contribute little to the security of the Jewish community in Hebron. By reporting on Israelis detained at Palestinian checkpoints, TIPH2 would not be providing security to Israelis, and TIPH2 could not prevent a Jew from getting shot. Abramson(1), *supra* note 258.

³⁶⁸ Arnon, *supra* note 357. Arnon points out that the Goldstein massacre was just one incident against the Arabs by a single individual, whereas the Jews have been attacked hundreds of times in organized incidents of terror. *Id.*

³⁶⁹ *Id.* In the summer of 1994, when several "young Jews" were being held by Israel in administrative detention, "TIPH[1] refused to consider their request for assistance, even though the Jews were officially members of the Hebron community and definitely within the boundaries set up for TIPH regarding its authority to investigate human rights violations. Evidently Jews have no human rights in Hebron." Ramati, *supra* note 183, at 8. In the opinion of this reviewer, these views reflect misunderstandings of TIPH1's mandate.

³⁷⁰ *Id.* Arafat's aides admit that his Fatah faction organized the rioting in Hebron during the spring of 1997. See Charles Krauthammer, *Final Status, Final Peace*, JERUSALEM POST, Apr. 8, 1997, at 6.

The Former TIPH2 Head of Mission, Stein Ulrich, disagrees that TIPH was ineffective. Ulrich did pressure the Palestinians to stop the rioting in Hebron in July 1997. While the Palestinians claimed that they could not control the rioters, this seems unlikely given the 400 plus Palestinian policemen stationed in Hebron. A more likely explanation is that the PA wanted the riots in order to put pressure on the Israeli government. In a courageous speech to the JHC on July 13, 1997, Ulrich termed the riots "a minor public order problem." As a career police officer Ulrich told the Palestinians that it should be easy for them "to get the children off the street with 20 or 30 police officers." Confidential minutes of JHC meeting, July 13, 1997. According to a senior TIPH2 official, just two hours after Ulrich's comments were made, Palestinian police were deployed on the street and the riots were stopped. In the opinion of the official, the PA's decision to stop the riots can be directly linked to TIPH2's pressure at the JHC meeting. Confidential interview with TIPH2 official, Hebron (Oct. 12, 1997) [hereinafter TIPH2 official]. However, Abramson believes that the order to stop the riots was given by the Palestinian leadership from outside Hebron, and was not due to Ulrich's speech. However, once the intensity of the

Noam Arnon does not rule out the possible utility of a multinational peacekeeping mission in the city of Hebron or elsewhere, but argues that such a mission will only be useful if it is truly neutral in its actions. According to Arnon, neutrality requires that TIPH2 observe the entire situation in the city, and not concentrate exclusively on Jewish or Israeli activity.

Former TIPH Head of Mission, Stein Ulrich, readily admits that the bias inherent in TIPH2's mandate is problematic: "There is a bias in our mandate. We have to be neutral in our behavior but we are not neutral in our task."³⁷¹ However, TIPH2 officials insist that it is their policy to deal with all complaints made by the Jewish residents of Hebron in the same manner in which complaints by Palestinian civilians are handled.³⁷² Therefore, they contend that it is wrong for the Jewish community to accuse TIPH2 members of being partial towards the Palestinians, when the Jews do not come to TIPH2 with their complaints.³⁷³

IV. HOW TIPH2 COULD BE MADE MORE EFFECTIVE

An Expansion of the TIPH Mandate

TIPH2 is a relatively young and inexperienced mission. Its dynamic character is due in part to its need to continually adapt to the changes taking place in Hebron, Israel, the PA, and the Middle East. However, it has been suggested by TIPH2 personnel that their effectiveness is compromised by certain limitations in their mandate.³⁷⁴ First, TIPH2's lack of access to buildings and military areas creates follow-up problems.³⁷⁵ For example, TIPH2 personnel may observe the detention or arrest of an individual on the street, but if the individual is taken inside a military area, they have no authority to enter the building and observe what follows.³⁷⁶ Further, TIPH2

Abramson(1), *supra* note 258.

Colonel Qawasmeh attributes the end of the rioting to high level meetings between PA and Israeli officials. Qawasmeh, *supra* note 301. He insists that the riots were caused by a settler shooting a Palestinian with a pistol, and continued each day because the settlers threw stones at the Palestinian residents. He claims the riots stopped when the settlers stopped throwing stones. *Id.*

³⁷¹ Ulrich(2), *supra* note 255.

³⁷² Narfeldt(2), *supra* note 214.

³⁷³ Ulrich(2), *supra* note 255.

³⁷⁴ *Id.*

³⁷⁵ See *supra* note 279.

³⁷⁶ Consequently, TIPH2 is unable to verify accusations made by Palestinians that they have been beaten by Israelis in military areas. Ulrich(2), *supra* note 255. TIPH2 launched the idea of renegotiating the mandate to give it greater access to sensitive areas when the TIPH2 mandate came up for discussion between the six contributing countries in early 1997; however, the political climate was not right. Entry to military areas is a very sensitive issue, and TIPH2 is unlikely to gain access in the immediate future. *Id.*

personnel have no right to enter the Tomb of the Patriarchs/al-Ibrahimi Mosque, which is considered by many to be the most tension-filled area of Hebron.³⁷⁷ Increased freedom of movement would allow TIPH2 to fulfil its observation role more fully, and perhaps would provide a greater feeling of security to the Palestinian residents of Hebron. However, increased access would also bestow an investigative function on the mission, which it has no authority to carry out under the existing mandate.³⁷⁸

Second, TIPH2's effectiveness is hindered by its lack of access to information and its inability to interfere in disputes.³⁷⁹ Following from its lack of investigative powers, TIPH2 has no right to know if any proceedings, criminal or otherwise, follow from the incidents on which its members have observed and reported.³⁸⁰ Such limitations in TIPH2's authority may have led to the widespread opinion, especially amongst the Palestinian residents of Hebron, that the mission, while perhaps important symbolically and politically, is of little practical importance in reducing the frequency of incidents in the city or in improving the everyday life of its

³⁷⁷ Article VII, 9a. of the Interim Agreement states: "Since the two sides are unable to reach agreement regarding the Tomb of the Patriarchs/al-Ibrahimi, they have agreed to keep the present situation as is." Interim Agreement, *supra* note 3, at 53. The "present situation" gives Israel control of the area.

³⁷⁸ Abramson(1), *supra* note 258. Moreover, TIPH2 does not have the personnel resources or the authority to act as a full-fledged human rights mission.

³⁷⁹ See TIPH2 Agreement, *supra* note 241, arts. 3 and 5.

³⁸⁰ Ulrich(2), *supra* note 255. However, Abramson points out that TIPH2's job is to observe, not to investigate. Therefore, while the IDF provides TIPH2 with a great deal of information off the record, it cannot allow TIPH2 to have access to such information by right. Further, because TIPH2 is only allowed to work within the confines of Hebron city, they are often refused access to the Israeli police station which is outside the city boundaries. At the moment, TIPH2 personnel are often stopped by Israeli soldiers and prevented from leaving the Hebron area in order to enter the police station. TIPH2 officials particularly object to the arbitrary nature of IDF activity in this respect. Sometimes TIPH2 officials are granted entry into the police station, sometimes they are not. Knutsen, *supra* note 241. According to Abramson, however, a new entrance to the police station from within the boundaries of Hebron city is almost finished, and this will solve the problem. While TIPH2's mandate does not give TIPH2 the right to enter the police station, Abramson is prepared to give TIPH2 some leeway provided that it does not use it to investigate further. "I am prepared. . . to allow them to ask what the person is being charged with but nothing more. If they investigate further, I will stop this privilege." Abramson(2), *supra* note 314. A TIPH2 official, Daniel Gunderson, disputes Abramson's claim that the new entrance to the police station is almost finished. He believes that work on the road has barely begun. Gunderson, *supra* note 206. According to another TIPH2 official, TIPH2 was "promised" access to the police station by the IDF. Knutsen, *supra* note 241. Abramson admits that there are problems concerning the new entrance to the police station. However, he complains that TIPH2 often fails to realize the complexity of the situation and what is involved. Abramson claims that he is trying to improve TIPH2 access to the police station, but stresses that it is not located within TIPH2's area of responsibility, that officially TIPH2 has no right to enter the police station and that the IDF is under no obligation to grant access to TIPH2 personnel. Abramson(2), *supra* note 314. TIPH2 officials point out that the lack of access to the police station is also a problem for the Palestinian residents of Hebron, who are often sent to the police station to file complaints but are sometimes not allowed to enter the area.

residents.³⁸¹

However, any significant expansion of the TIPH2 mandate would effectively alter the character of the mission, and thereby diminish its political acceptability to Israel. An important component of TIPH2's success is its low-key and nonconfrontational approach to peacekeeping. Such an approach is essential given that the ability of the mission to operate effectively is largely dependent on the willingness of the Israeli authorities to cooperate.³⁸² Currently, the IDF and TIPH2 enjoy positive cooperation. However, the IDF is willing to work with TIPH2 only as long as its presence does not significantly interfere with IDF activities in Hebron.³⁸³ It is unlikely that such cooperation would be forthcoming should TIPH2 personnel be given the authority to enter military areas or carry out investigations. Moreover former TIPH2 Head of Mission, Ulrich, is well aware that such cooperation is contingent on TIPH2 maintaining a modest and diplomatic approach to its peacekeeping activities, in light of the bias inherent in its mandate.³⁸⁴

The Publication of TIPH Reports

Consistent with TIPH2's low profile approach, TIPH2 generally does not comment on incidents to the media.³⁸⁵ Nor are TIPH2 reports made public, except to the members of the JHC, who receive incident reports, and the governments of the contributing countries, which receive weekly summary reports and periodic reports.³⁸⁶ This nonconfrontational approach helps to increase the willingness of both the Israeli authorities and the PA to respond positively and effectively to TIPH2 reports. Rather than antagonize either the PA or Israel by publicly criticizing their behavior, TIPH2 needs to solicit their cooperation in improving the situation of the Palestinian residents of Hebron.

Israel is especially sensitive to public criticism against its policies issued by foreign governments or NGOs. Condemnation is likely to place

³⁸¹ It was interesting to note that 63 percent of the Palestinians interviewed in a January 1997 poll conducted in Hebron by the Palestinian Center for Public Opinion believe that the TIPH2 observers had not contributed in reducing the number of incidents between the Palestinians and the Israelis. Also, 56.4 percent of those polled believed that the presence of TIPH2 observers in the city of Hebron has not provided a sense of security to the Palestinian citizen. Kukali, *supra* note 352.

³⁸² Abramson(1), *supra* note 258. One of the complexities of the TIPH2 mission is that while its presence in Hebron is to provide security to the Palestinian residents of the city, it is completely reliant on the cooperation of the Israeli authorities if it is to conduct its mission effectively.

³⁸³ *Id.*

³⁸⁴ Ulrich(1), *supra* note 234. To this end, TIPH2 refrains from reporting incidents or making comments to the media, and publishes its reports only to the members of the JHC and the governments of the host countries. *A Presentation of TIPH*, *supra* note 186.

³⁸⁵ Ulrich(1), *supra* note 234.

³⁸⁶ The Memorandum of Understanding, *supra* note 248, at art. B(4); *A Presentation of TIPH*, *supra* note 186.

Israel on the defensive, thereby contributing to an attitude of reproach, dismissal and denial, rather than a constructive attitude which is conducive to progress. The private human rights organization, Amnesty International ("AI"), for example, has been extremely contentious in its approach towards Israel. Often relying on unproven allegations and various unsubstantiated media reports, AI has frequently criticized Israel in press conferences, news releases, reports, statements, lectures, newsletters and in video film.³⁸⁷ Apparently in order to justify its existence and attract attention and funding, AI has often focused on and sensationalized the worst examples of *alleged* Israeli human rights abuses. Such an aggressive approach, rather than forcing Israel to address AI complaints, prompted the Human Rights Division of the Israel Justice Ministry and other governmental departments to issue rebuttals accusing AI of bias, reliance on politically motivated sources, distortion of history, ignoring context, misuse of international law and unwillingness to consider Israel's difficult security situation.³⁸⁸

By contrast, for twenty years Israel has enjoyed a very constructive relationship with the International Committee of the Red Cross ("ICRC") whereby its Swiss delegates are permitted to meet with all security detainees in absolute privacy, even while those detainees are still undergoing interrogation.³⁸⁹ The ICRC generally does not publish reports on its work in Israel and the Occupied Territories. Rather, its delegates meet periodically with senior Israeli government authorities and are empowered to raise any issues regarding the treatment of prisoners and prison conditions.³⁹⁰ The ICRC is perceived by the Israeli government to be operating in a constructive and professional manner, and consequently, its complaints are taken seriously and given substantial consideration.

Similarly, TIPH2 is perceived by the IDF as a positive presence in Hebron because its approach to fulfilling its mandate is professional and low-key. The IDF is willing to cooperate fully with TIPH2 because of their shared interest in providing the Palestinian residents of Hebron with a sense of security and normalization as well as an improved economy.³⁹¹ However,

³⁸⁷ Justus Weiner, *Human Rights in the Israeli Administered Areas During the Intifada: 1987-1990*, 10 WIS. INT'L L. J. 185, 254 (1992).

³⁸⁸ *Id.* at 255.

³⁸⁹ See Justus Weiner, *Terrorism: Israel's Legal Responses*, 14 SYRACUSE J. INT'L L. & COM., 183, 200-201 (1987). The visit to each detainee occurs no later than fourteen days after his arrest, and subsequent visits to the detained individual may be made as frequently as every two weeks (at the discretion of the ICRC) as long as he remains in custody. The reviewer has read, but for reasons of confidentiality cannot reveal, the letter agreement between the Minister of Defence of Israel and the President of the International Committee of the Red Cross. See *id.*

³⁹⁰ See *id.* At 200-01.

³⁹¹ Abramson(1), *supra* note 258. However, the adoption of a more aggressive approach to peacekeeping by TIPH2, possibly including the publication of its reports in the media and an expansion of its mandate to allow entry into buildings and military areas, would, in all likelihood, lead to sharply

tension has been created between TIPH2 and the IDF in relation to TIPH2's publication of its periodic reports.³⁹² According to one TIPH2 official, Lars Narfeldt, the mission could achieve greater success in the area of problem solving if it did not produce periodic reports at all, but rather discussed problems in the forum of the Monitoring and Steering Committee.³⁹³

A More Professional Staff

The former Head of Mission, Ulrich, concedes that while he is generally happy with the level of TIPH2 personnel, the mission could be improved through the recruitment of a more professional staff.³⁹⁴ It seems that the professionalism of the mission could be enhanced by the creation of a more permanent staff base, or the extension of the usual period of duty from three to six months. There is also a need for a greater number of Hebrew and Arabic speakers,³⁹⁵ and increased expertise in human rights.³⁹⁶ However, the recruitment of a more professional staff would require a substantial increase in the salaries paid to personnel. As the expenses of TIPH2 are "borne by the participating countries"³⁹⁷ and, in most cases, funded by money deducted from the host countries' general aid package for the Palestinians, the PA would prefer that the extra funds be spent directly on economic and social programs.³⁹⁸

³⁹² See *id.*

³⁹³ Narfeldt(4), *supra* note 205. The Monitoring and Steering Committee has not been formed. See text accompanying *supra* note 291. According to Narfeldt, as soon as TIPH2 decides to write down what is happening, they are bound to step on someone's toes. Therefore, it is better to convey problems to each side orally, thereby facilitating a more conciliatory approach to problem solving. Narfeldt(4), *supra* note 205. In the opinion of the reviewer, such an approach would have prevented the ill-will created between TIPH2 and the IDF over the publication of both the first and the second periodic reports.

The first Head of Mission, Overkiel, was against writing a periodic report and no report was produced during his tenure. Instead, a member of the TIPH2 Division of Research-Analysis-Information, Bjarne Johansen, wrote a two page report hinting at the establishment of a Monitoring and Steering Committee in which problems could be discussed and more constructively solved, rather than written down and published in the periodic report. The TIPH2 management decided against this idea and in favor of the more confrontational approach involving TIPH2 writing periodic reports. Consequently, Johansen's report was scrapped and a new report, authored by Ulrich, was produced in a matter of weeks. *Id.*

³⁹⁴ Ulrich(2), *supra* note 255.

³⁹⁵ TIPH2 official, *supra* note 370. As of December 25, 1997, TIPH2 had six Hebrew and thirteen Arabic speaking personnel working as observers. Including its headquarters staff, TIPH2 had twenty-three Arabic and seven Hebrew speakers. Narfeldt(4), *supra* note 205.

³⁹⁶ Confidential Interview with TIPH2 official, *supra* note 370. Currently, TIPH2 members receive no formal human rights training, nor does TIPH2 retain a human rights expert. *Id.*

³⁹⁷ TIPH2 Agreement, *supra* note 241, art. 12. "The expenses of the TIPH will be borne by the participating countries." *Id.*

³⁹⁸ Narfeldt(4), *supra* note 205.

Fewer Contributing Countries

There are also indications that TIPH2 would function more effectively if it were comprised of personnel from one or two countries rather than the current six.³⁹⁹ A senior TIPH2 official concedes that the mission's efficiency has been compromised somewhat by the language and cultural problems associated with the participation of so many nationalities.⁴⁰⁰ English is the official working language of the mission,⁴⁰¹ but in the first six months of operation, TIPH2 encountered problems arising from the poor English level of some of the personnel. In response, TIPH2 adopted an English language proficiency examination to be administered to applicants. However, this examination was taken only after the candidate had arrived in Hebron, and a TIPH2 member who failed the test the first, the second or even the third time was unlikely to be sent home given the diplomatic and political problems this would have created with the host country.⁴⁰²

Furthermore, a reduction in the number of contributing countries would allow TIPH2 to operate a more streamlined mission. Diplomatic niceties dictate that each of the six countries be represented in all five TIPH2 divisions,⁴⁰³ which, in the words of one senior TIPH2 official, has created a problem of "too many chiefs and not enough Indians."⁴⁰⁴ Fewer host countries would give TIPH2 greater flexibility in placing personnel where they are most needed.⁴⁰⁵

However, TIPH officials contend that the benefits to the TIPH2 mission of having six contributing countries far outweighs the practical difficulties. They stress that the political clout gained by having the backing of six host governments is more important than alleviating the "minor"⁴⁰⁶

³⁹⁹ Several further countries have explored the possibility of contributing personnel to TIPH2, including Japan and Greece. Knutsen, *supra* note 241; Narfeldt(4), *supra* note 205.

⁴⁰⁰ Confidential Interview with TIPH2 official, *supra* note 370.

⁴⁰¹ The Memorandum of Understanding, *supra* note 248, at art. A(8).

⁴⁰² Confidential Interview with TIPH2 official, *supra* note 370.

⁴⁰³ The TIPH2 divisions are: Operations Division, Security Division, Community Relations Division, Administration Division, Research-Analysis-Information Division. *Presentation of TIPH*, *supra* note 186, at 4.

⁴⁰⁴ Confidential Interview with TIPH2 official, *supra* note 370.

⁴⁰⁵ According to a senior official at the Israel Foreign Ministry, the Norwegian government was not pleased with having to absorb small contingents from the five additional contributing countries because it necessitated finding or creating positions to be staffed according to diplomatic protocol rather than according to the true needs of the presence. Israel Ministry of Foreign Affairs official, *supra* note 239.

⁴⁰⁶ According to TIPH2 officials, the communication problems were solved in the first three months of TIPH2 and had no effect on the effectiveness of the mission. The host countries now have an obligation to send only English-speaking personnel. Narfeldt(2), *supra* note 214. Furthermore,

communication problems and operational inefficiencies mentioned above. Ultimately, the diplomatic influence gained by having a number of foreign governments involved in the mission, means that TIPH2 is able to fulfil its mandate more effectively.⁴⁰⁷

Women in TIPH2

According to several male members of TIPH2, the presence of women personnel in the mission has created problems.⁴⁰⁸ One TIPH2 member claimed that the women personnel created tensions within the mission by contributing to competition and jealousy between the men.⁴⁰⁹ Another long-serving member of the mission opined that the inclusion of women in the mission, in itself, is not the problem, but that professionalism should dictate that nobody on a peacekeeping force commences an intimate relationship with another member of the force.⁴¹⁰ TIPH2 does have rules regarding the conduct of intimate relations between TIPH2 personnel. Couples are not allowed to live together, and married couples are not allowed to join the mission together. Spouses of TIPH2 personnel are only allowed on visits, and are not permitted to stay on the TIPH2 base for more than three days.⁴¹¹ Furthermore, it seems that a total ban on intimate relationships between TIPH2 members could create more problems than it would solve. There is little opportunity for TIPH2 personnel to meet potential partners outside the mission and in a tense environment, it can be helpful to have close relations.⁴¹²

Perhaps the problem is less the inclusion of women personnel in TIPH2, than the disparity in numbers between men and women on the force. As of 16 November, 1997, 23 of the 132 members of TIPH2 were women; three months previously, the number was 19 out of a total of 140.⁴¹³ According to one former TIPH2 member, Elena Hansteensen, the comparatively small number of women in the mission creates extra pressure for female personnel. Women personnel have to place limits on the advances of their male counterparts and there have been several serious

⁴⁰⁷ Narfeldt(2), *supra* note 214.

⁴⁰⁸ Bugge, *supra* note 206; Confidential Interview with TIPH2 observer, Jerusalem (16 November 1997).

⁴⁰⁹ Bugge, *supra* note 206.

⁴¹⁰ Confidential Interview with TIPH2 observer, *supra* note 408. The TIPH2 member believes that intimate relationships between TIPH2 personnel can become problematic and lessen the professionalism of the presence. For example, if shooting breaks out and the TIPH2 personnel involved begin to protect their loved ones rather than perform their duty. *Id.*

⁴¹¹ Knutsen, *supra* note 241. Several male members of TIPH2

incidents of sexual harassment against women within the mission.⁴¹⁴

There is little question regarding the important contribution of women to the TIPH2 mission. The participation of women in TIPH2 patrols is especially important given that many local Palestinian women do not feel comfortable talking to male TIPH2 observers.⁴¹⁵ Furthermore, if more women were hired, TIPH2 would be more representative of the society which it serves.⁴¹⁶ Although there is no TIPH2 policy on the hiring of women, the mission is currently conducting research on the recruitment of more policewomen.⁴¹⁷

V. THE UTILITY OF MODELLING OTHER PEACEKEEPING MISSIONS ON TIPH2

The larger question is whether TIPH2 could serve as a model for additional peacekeeping missions. For instance, a TIPH2-like mission, perhaps called "TIPJ," could assist the Palestinian residents of Jerusalem.⁴¹⁸ Another possible usage of such a mission could be to give security to Israeli Jews, whose neighborhoods are located in the midst of a future Palestinian state.⁴¹⁹ It is not difficult to envisage such a force, perhaps called TIPH3,

⁴¹⁴ Hansteensen, *supra* note 241. Hansteensen knows of one TIPH2 member who was sent home in relation to one such incident. *Id.*

⁴¹⁵ *Id.* Consequently, the relatively small number of women in the mission is a problem and TIPH2 would prefer to see more women observers out on the streets of Hebron. Knutsen, *supra* note 241.

⁴¹⁶ Hansteensen, *supra* note 241.

⁴¹⁷ *Id.* Hansteensen also believes that it is important that women are represented in the senior posts within the TIPH2 mission. At one time, women held the positions of Chief of Research and Analysis, Head of Personnel, and the TIPH2 doctor. As of December 25, 1997, there were no women in senior positions. Female TIPH2 members who held senior positions in the past apparently faced difficulties in being the only woman in staff meetings lacking the police background of the majority of the senior male members of TIPH2. The majority of the female TIPH2 members have academic backgrounds and are hired for their language skills. *Id.*

⁴¹⁸ In the opinion of the reviewer, another possible site for the future placement of a TIPH2-like presence would be in Jerusalem. Although by legislative act Israel regards the entire city, within its expanded 1967 municipal borders, its eternal and undivided capital (*Basic Law: Jerusalem, Capital of Israel*, 34 LAWS OF THE STATE OF ISRAEL 209 (1980)), the PA asserts that the part of the city Israel captured in the 1967 War should become the future capital of a Palestinian State. Clearly Israel's starting position would be that no international missions are needed in its capital city. Confidential interview with senior Israel Ministry of Foreign Affairs official, Jerusalem, Nov. 1, 1997. Yet, despite the stalled peace process, it is possible to envisage the formation of a Temporary International Presence in Jerusalem to smooth relations between Palestinians living under Israeli administration or, if parts of the city were turned over to the PA, Jews living therein. Al-Tamimi, however, believes that a TIPH2-like mission is not needed to provide security to the Arab residents of Jerusalem or elsewhere in Israel, as these communities have their own representation on municipal councils or in the Israeli parliament. Al-Tamimi, *supra* note 272.

⁴¹⁹ The reviewer asked if a prospective TIPH3 presence could be useful in the event that a final

entrusted with the reciprocal role of advocacy for the Jewish residents of Hebron were they to find themselves situated outside of Israeli sovereign boundaries following a final status peace agreement.⁴²⁰

Further afield, missions modeled on TIPH2 might have utility in Northern Ireland, Tibet, Cyprus, East Timor, Lebanon, Kashmir, parts of former Yugoslavia and elsewhere where ethnic tension and occupation has engendered distrust among civilians towards the intentions of the authorities.

However, it is important to keep in mind the special nature of Hebron which necessitated the creation of the TIPH missions and has enabled them to operate constructively. Hebron was the last city in the West Bank to be handed over to PA control because of its peculiar historical and security situation.⁴²¹ Primarily because of the presence of the Jewish community in Hebron, which lives in such close proximity to the Palestinian population, Hebron requires unique solutions to its situation.⁴²² There are those who believe that TIPH was a specific answer to peculiar circumstances and therefore would be inapplicable to other situations.⁴²³

Two additional factors negate the viability of the TIPH2 peacekeeping model to other tense locales. First, TIPH2 is heavily reliant for its success on the goodwill and cooperation of the authorities of the host country, i.e., TIPH2 could not be effective without IDF cooperation. However, it is unlikely that the Palestinian authorities would be enthusiastic about having an international presence to observe and report on their behavior towards Israelis living in their midst in the event of the creation of a Palestinian state.⁴²⁴ According to Colonel Qawasmeh, there would be no need for a multinational presence to provide security to the Israeli citizens living in a future Palestinian state, as their security would be sufficiently guaranteed by the Palestinian security forces.⁴²⁵ Second, TIPH2 has a biased mandate, i.e., in favor of the minority civilian population, which would

⁴²⁰ Many of the Jews living in Hebron and elsewhere in the Occupied Territories are fearful of what would happen if the area in which they live were to come under the control of the PA. One Israeli described their concerns:

A good test is Hebron. If the Palestinians were Canadians, it would be reasonable to rely on them to allow Jews to continue praying in the Cave of the Patriarchs. But they aren't. And the Palestinians make no bones about it. For as Palestinian Authority Minister of Waqf and Religious Affairs, Hassan Tahboob, told me, the Cave of the Patriarchs is also the Ibrahim Mosque. And Jews cannot pray in mosques. In fact, they can't pray next to one.

Take the example of the Western Wall in Jerusalem. The Palestinians consider it part of Al Aksa Mosque and thus maintain that, under their rule, Jewish prayer will be prohibited within two meters of the Wall.

Aaron Lerner, *On the Table*, THE JERUSALEM POST, Dec. 3, 1997, at 10.

⁴²¹ See *supra* notes 170-81.

⁴²² Lerner, *supra* note 187.

⁴²³ *Id.*

reduce the willingness of the Palestinian authorities to agree to its placement and cooperate with its presence.

Moreover, it is difficult to imagine a TIPH2-like operation in a war zone or a very dangerous area, unless the personnel are more suitably equipped. Thus, the mission, in its current form, requires a relatively civil and stable society within which to operate.⁴²⁶ According to the IDF, TIPH2 is intended to monitor the peace process, and were there no peace process to monitor, TIPH2 would be unable to function.⁴²⁷ IDF Major Abramson notes that TIPH2 failed to produce a single incident report detailing the February-March 1997 rioting in Hebron, and concludes that "when there is chaos and bilateral clashes, TIPH[2] is pretty much paralysed."⁴²⁸ According to Abramson, TIPH2 reporting during this time gave no indication that riots were even taking place.⁴²⁹ Furthermore, he stated that in the case of fighting, the IDF is given more leeway in how it fulfills its task and international criticism becomes less relevant.⁴³⁰ TIPH2 officials insist that TIPH2 did produce a number of reports during the rioting of February-March 1997.⁴³¹ Detailed reports on the riots were contained in subsequent summary reports and the first periodic report, however, they were not contemporary with the events.⁴³² A senior TIPH2 official admits that TIPH2 reporting during this time was unprofessional and incompetent because TIPH2 observers focused on the activities of the stone-throwers rather than on the behavior of the IDF and the PA.⁴³³

One Israeli official opined that TIPH2 can be a useful but limited

⁴²⁶ Ulrich(2), *supra* note 255.

⁴²⁷ Abramson(1), *supra* note 258.

⁴²⁸ *Id.* A senior TIPH2 official admitted that TIPH2 was partially paralysed by the rioting in Hebron in February-March 1997. There was debate within TIPH2 over how to react to the rioting: some argued that to report on the riots was outside TIPH2's mandate, while others maintained that the riots required TIPH2 personnel to monitor the situation even more closely than usual. However, the TIPH2 official claims that such paralysis did not occur during the subsequent June-July 1997 rioting. At this time, TIPH2 was better organized, and many reports were produced. Interview with TIPH official, Hebron, Oct. 12, 1997. Abramson agrees that TIPH2 functioned more effectively during the second period of rioting in June-July 1997. Abramson(2), *supra* note 314.

According to another TIPH2 official, however, there was never any discussion within TIPH2 over whether to report on the February-March 1997 rioting. Rather, there was disagreement over whether to continue to deal with the two parties - the Israelis and the Palestinians - and whether to continue to bring the two sides together during a period of open conflict. There was no such indecisiveness during the June-July 1997 rioting, and TIPH2 assumed a more active role in bringing the IDF and the PA together in the JHC. Knutsen, *supra* note 241. Consequently, in June-July 1997, there was a distinct difference in TIPH2's official behavior in relation to how the mission dealt with the IDF and the PA during the periods of rioting. (During the February-March 1997 riots, the JHC often did not meet. During the riots of June-July 1997, TIPH2 informed the parties that if the JHC did not continue to meet regularly, there was no point in TIPH2 remaining in Hebron.) *Id.*; Ulrich(1), *supra* note 234.

⁴²⁹ Abramson(2), *supra* note 314.

⁴³⁰ Abramson(1), *supra* note 258.

⁴³¹ Narfeldt(4), *supra* note 205.

⁴³² *Id.* Perhaps this explains Abramson's opinion that no reports were produced during this time.

Id.

tool.⁴³⁴ It would not work in every friction spot, locally or internationally.⁴³⁵ Its utility centers around its ability to reduce tension and keep incidents from developing into a crisis. Arguably, such a mission would not be able to do its job if tensions were running high.⁴³⁶ Nevertheless, TIPH2's July 1997 protest to the Palestinian police to the effect that they were in violation of their obligations under the Interim Agreement and Hebron Protocol apparently prompted the stationing of a large number of Palestinian policemen where the daily rioting had been taking place which, in turn, stopped the violence.⁴³⁷

Overall, the TIPH2 mission has been successful in Hebron. In the opinion of this reviewer, a similar civilian observer mission could work in situations of ethnic conflict combined with an occupation. The key is to ascertain how and when international intervention can prevent or at least mitigate violence between competing ethnic groups, and simultaneously promote the political, economic and societal enfranchisement on which multi-ethnic and multi-religious societies depend.⁴³⁸ There is no certainty of success in peacekeeping efforts, even those that involve great expenditure such as the UN intervention in Somalia in 1993. A spectacular failure on a humanitarian, diplomatic and military level, the UN spent nearly two billion dollars on this venture.⁴³⁹ Yet, despite a major commitment of manpower, stability was not achieved, the warlord Aideed was not captured, a new president was not inaugurated, and a new government was not put in place.⁴⁴⁰

As important as it is to identify what TIPH2 does well, such as being highly visible on the streets and thereby promoting stability, it is perhaps equally vital to identify what it makes no attempt to do. TIPH2 is not a human rights group. It does not follow-up particular cases or investigate

⁴³⁴ Israel Ministry of Foreign Affairs official, *supra* note 239.

⁴³⁵ Without specifying the particular parts of the world he had in mind, Ulrich suggested that a similar presence could be useful in other locales where an occupation and ethnic tension existed. Ulrich(1), *supra* note 234.

⁴³⁶ *Id.*

⁴³⁷ *Id.*

⁴³⁸ See RODERICK VON LIPSEY, *BREAKING THE CYCLE: A FRAMEWORK FOR CONFLICT INTERVENTION*, (1997).

⁴³⁹ See April Oliver, *The Somalia Syndrome in BREAKING THE CYCLE: A FRAMEWORK FOR CONFLICT INTERVENTION*, (Roderick von Lipsey ed., 1997).

⁴⁴⁰ *Id.* The UN attributed this failure to "fielding an operation without three essential ingredients, an understanding of the conflict, and the mandate and means to deal with it." UN Internet Website, *Studying the Past While Planning for the Future*, The Year in Review 1996: UN Peace Missions (visited Sept. 15, 1997) <<http://www.un.org/Depts/dpko/yir96/study.htm>>, at 1. The fiasco in Somalia demonstrated that peacekeepers cannot impose a sense of community or the will to reconcile. *Id.* Furthermore, missions must sometimes be abandoned and the forces withdrawn when the parties make insufficient progress towards reconciliation and ending violence. See *id.* Similarly, peacekeeping in the former Yugoslavia, the largest and most ambitious such operation in the history of the UN, has been fraught with problems. See generally GEORGE STAMKOSKI & BEN COHEN, *WITH NO PEACE TO KEEP: UNITED NATIONS PEACEKEEPING AND THE YUGOSLAVIAN EXPERIMENT* (1997).

patterns of abuses. It has no role inside prisons, courts or other structures. It controls no territory, except the buildings where its offices are located and even there it has no armaments. TIPH2 does not interfere with the conduct of either the IDF or the Palestinian Police, although it may observe and report on their conduct when it is visible, i.e., in open places. Moreover, if TIPH2 consistently offends either Israel or the PA, or if the mission becomes too costly,⁴⁴¹ it would likely not be continued when it comes up for renewal every three months. Furthermore, TIPH2 does not serve as an arbitrator of the rights and wrongs committed by the parties vis-a-vis the Hebron Protocol and earlier interim peace agreements.

No two peacekeeping scenarios are identical. However, upon examining the conditions that favor peacekeeping of the type represented by TIPH2, as well as the problems associated with this variant on the theme, it becomes apparent that with care exercised in identifying appropriate venues, peacekeeping missions modeled on this presence could contribute to stability and reduce the likelihood of outbreaks of violence. If successfully discharged, such a presence can facilitate political movement provided that the parties grasp the opportunity.

VI. CONCLUSIONS AND OUTLOOK

The partial thaw in the personal chemistry between Arafat and Netanyahu has largely frozen over. Immediately after the Hebron Protocol and the TIPH2 Agreement the two leaders began to refer to each other in more positive terms, using expressions such as "partner" and "friend."⁴⁴² Within days, however, Arafat gave a speech to a group of students in Hebron propounding a provocative theme he has frequently touched upon before Arab audiences, "Holy Jerusalem is the capital of the State of Palestine, come what may! Anyone who does not like this can drink from the Dead Sea."⁴⁴³ Since then the always uncertain effort of promoting a final peace has sustained major setbacks, including Palestinian Islamist suicide bombings, controversial Jewish construction and challenges to the leadership of Netanyahu and Arafat.

Despite the doubtful future of the Israeli-Palestinian peace process, it has born fruit in the form of a unique international peacekeeping mission

⁴⁴¹ This cost could be measured in fiscal terms, political terms or lives, if TIPH2 peacekeepers were to be targeted by violence as peacekeepers have been in so many other regions. See Fatalities: UN Peacekeeping Operations (visited Apr. 14, 1998) <<http://www.un.org/Depts/dpko/fatalities>>.

⁴⁴² See (BBC Short Wave Broadcast), Al-Quds, Jerusalem, Jan. 22, 1997 (ME/2825 MED/1); see (BBC Short Wave Broadcast), Voice of Israel, Jerusalem, Jan. 20, 1997 (ME/2822 MED/3,4).

⁴⁴³ See (BBC Short Wave Broadcast), Egyptian Space Channel TV, Cairo, Jan. 25, 1997 (ME/2827

in the troubled and often violent city of Hebron. Even if the TIPH2 mission does not outlive the likely denouement of the Oslo peace process, it can be viewed as an example, in the region and elsewhere, for assisting hostile ethnic groups living in close proximity, especially where the local government or military occupation is partial to one of the groups. It is therefore useful to gain a full understanding of why and how TIPH2 functions.

Moreover, to improve the chances for peace between Israel and the Palestinians, it is essential to resolve problems before they fester. In an environment like Hebron, where grudges are nursed for decades and even centuries and where revenge is a common motivation, it is critically important to avoid bloodshed. While peace is not *made* by peacekeepers, they can contribute to the reduction of tension which, in turn, makes it possible for the political process to move forward. Thus, in the opinion of the reviewer, if even one attack like the Beit Hadassah ambush or the Goldstein massacre is averted by the presence of TIPH2, its cost is well justified.

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