THE MORAL CULPABILITY OF SOLDIERS: WHERE DO PEACEKEEPERS FIT IN?

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The doctrine referred to as Moral Equality of Combatants, like its opposite, the *Moral Inequality of Combatants,* is an old theory that has generated much debate and resulted in numerous philosophical studies about the moral status of combatants in war. I have previously examined the status of soldiers in combat and argued that soldiers possessed the right to determine the justice of war and, thereupon, decide their participation in it. Subsequently, I also discussed the unique views of pacifists on the moral status of soldiers. This essay seeks to determine where peacekeepers fit into this discussion. It is clear that peacekeepers are not to be confused with belligerent parties on the battlefield; their goals and objectives are radically different. Nor are peacekeepers pacifist, although their goals may align with pacifist non-combatants at least some of the time. I conclude, ultimately, that the status of peacekeepers is fluid; their status is determined by the degree of military engagement. I also conclude that the *moral* status of peacekeepers is never the same as that of belligerents—even if some peacekeeping actions on the battlefield will cause them to be legally equal.

INTRODUCTION

This is the third in a trilogy of essays published in this journal that seek to examine the moral culpability of soldiers. The first essay,[2] "A Soldier's Right Not To Fight: Breaching the Insuperability of Military Oaths," scrutinised military loyalty oaths and asked whether individual soldiers had the right

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to decide whether a war or a battle met the criteria for engaging in armed intervention—i.e. whether the principles for the justification of going to war (Just War Theory or jus ad bellum) had been met or not, and then whether they had the right to act upon that conclusion. Posited another way: does a soldier have the legal and moral right not to fight and to make that decision themselves? I argued that soldiers indeed possessed that right—both legally, according to a forensic examination of the loyalty oath, and morally, according to a broader consideration of human and citizen rights. I carefully examined the status of soldiers according to two ancient principles: the Moral Equality of Combatants (MEC) and the theory of Invincible Ignorance (II). Both of these philosophical principles of justified war, which deal with the moral status of soldiers, are the subject of larger debates. These discussions have moved, in some scholarly circles, from a consideration of Just and Unjust Wars[3] to Just and Unjust Warriors.[4] In this moral and philosophical discussion, I concluded that soldiers possess decision-making rights. Such rights, however, come with responsibility and, potentially, culpability.

The second essay[5] in this trilogy, "Moral Equality of Combatants and Invincible Ignorance: Two Just War Doctrines in Which Pacifists have a High Stake," examined the particular views of pacifists regarding the moral status of combatants. Pacifists may not fight in wars but they do have an important contribution to make to the discussion about war and those who fight in them.

In this final essay, I take a brief look at the unique role of peacekeepers. They may fit into neither of the two previously examined categories since they may be neither a regular soldier (belligerent) nor a pacifist. So, where do peacekeepers fit in?

Before the question of the status of peacekeepers can endeavour to be addressed, I will review a few key arguments made in the previous two essays. As stated, both concentrated more directly on the moral position—or moral status—of those doing the fighting and placed it in the context of the *Moral Equality of Combatants* (MEC) doctrine. Larger *jus ad bellum* (Just War Theory) issues were only addressed as they impacted the moral assessment and status of soldiers.

The MEC doctrine, as it has been simply and succinctly articulated by Michael Walzer, "holds that soldiers are moral equals: each seeks to kill the other and has, therefore, forfeited the right not to be killed. Both are morally equal servants of a greater power: the state."[6] This has in recent years been dubbed the traditional or classic view, except that it is neither, as Uwe Steinhoff reminds us.[7] Since the early Middle Ages, theologians and philosophers from Augustine to Thomas Aquinas to Francisco de Vitoria to Francisco Suarez and Hugo Grotius to the very recent Gertrude Elizabeth Margaret Anscombe have emphasized the moral *inequality* of combatants (MIC).[8] Nevertheless, in the post-World War II philosophical landscape, the MEC doctrine, until recently at least, has led the debate, due to the work of Walzer, its most prominent proponent.[9] As the definition just provided above suggests, there are two parts to MEC; the first emphasizes a soldier's forfeiture of the right not to be killed—since each seeks to kill the other. The second defines the soldiers as servants of the state which has tasked them to do the killing. On this latter basis, Walzer allows the soldiers to be defined as victims: "They are entitled to kill, not anyone, but men whom we know to be victims. We could hardly understand such a title if we did not recognize that they are victims too."[10] In a more recently published paper on Pacifism and the Just War doctrines of *Moral Equality of Combatants* and *Invincible Ignorance*, I made the following summary additions and conclusions—the applicability of which will become clear once we consider the placement of peacekeepers on the moral continuum. First, pacifists can and do emphasize the victimhood of soldiers to an even greater extent than Walzer. This emphasis and, some would argue, this expansion of Walzer's statement can be framed, doctrinally, as the *Mutual Victimhood of Combatants* (MVC). The source of this victimhood need not be limited to the state but can be extended to society as a whole, since it is frequently a rallying—at times frenzied—society that compels soldiers to enlist.[11] On this point, I argue, both pacifists and just war theorists can and do agree, except that the pacifist definition would read like this: "Both are also morally equal servants, citizens and victims of their own state and society."[12] It is worth noting that the practical strengths of an MVC doctrine also need to be recognized on additional levels. For example, when both sides are seen as victims of war and not only as perpetrators, it is also "helpful for post-conflict peacebuilding and a successful application of *jus post bellum*."[13]

Second, contra Walzer, the pacifist perspective does not accept the forfeiture of the right not to be killed "and insists that the right not to be killed is the moral right of every human being; it is a basic human right that cannot be extinguished by war."[14] It follows then, from a pacifist

perspective, that soldiers are not permitted to kill others and that they remain accountable, since soldiers, from the pacifist perspective, "never relinquish their own agency or their moral accountability."[15] A pacifist summation of moral accountability also "maintains that both sides in a war remain morally equal (morally wrong), and morally accountable for their actions."[16] In other words, a pacifist orientation also subscribes to a form of MEC – the *Moral Equality of Combatants* – which I have called MEC2 (or MEC-P for the Pacifist approach) and in the process, rename the Walzerian view as MEC1 (or MEC-W). MEC2/MEC-P can be summarized thus: "Soldiers are moral equals: each retains the fundamental human right not to be killed and each is, therefore, morally wrong when seeking to kill the other."[17]

There are a few other areas where the Walzerian MEC1 (MEC-W) doctrine and the pacifism-inspired MEC2 (MEC-P) doctrine agree: Both see their version of MEC requiring symmetry in the application of *jus in bello* (the right in war; or law in war as codified in International Humanitarian Law or IHL) and insist that it must apply equally to all sides—both in its rights and in its responsibilities. This includes, especially, the protection of non-combatants or those hors de combat (out of the fight), "whether as prisoners of war, shipwrecked sailors, or injured combatants."[18]

PEACEKEEPERS AND MEC DOCTRINES: ARE PEACEKEEPERS COMBATANTS?

Where, then, are UN peacekeepers appropriately placed on the moral continuum relative to the doctrine of MEC1 (MEC-W), the MEC doctrine as articulated by Walzer? Are they combatants in the same way as the two or more warring sides to the conflict, which peacekeepers are seeking to interrupt or end or keep from reigniting? Few would argue that peacekeepers should be seen as moral equals to the belligerents in the conflict (MEC1; MEC-W). Peacekeepers are, after all, present in the conflict to prosecute the opposite mission of the belligerent parties—to form a barrier between the opposing nations and/or factions and keep an often fragile peace, or to create a neutral physical presence in the conflict arena to facilitate a reduction or suspension of fighting and thereby create sufficient space for peace to be facilitated or negotiated, or to keep the various warring factions of the conflict apart and monitor each belligerent's behaviour so that they can be held accountable for agreement violations and International Humanitarian Law (IHL)

transgressions by international agencies like the UN Security Council or the International Court of Justice (ICJ) when dealing with countries and the International Criminal Court (ICC) when applied to individuals. All of these goals can, potentially, be at odds with the aims of the parties on either side of the conflict, putting the peacekeepers in a unique position vis a vis the conflict—part of the conflict landscape, certainly, but without an interest in the success of either side. It also frequently can and does put peacekeepers at significant risk. One could conclude, therefore, that peacekeepers are not another party to MEC1 (MEC-W); they are not seeking to kill others on the battlefield and, importantly, they are not forfeiting their right not to be killed. They are, in that respect at least, rather similar to pacifists and non-combatants in their moral position on the battlefield; they are not seeking to kill but rather seeking the peaceful cessation of killing. What happens, however, when peacekeepers engage in active combat operations against belligerents on the battlefield and when they are deployed in battle with an identifiable opponent and relying on lethal military means to secure a battle-driven intervention in the conflict (and, presumably, to achieve the cessation of the same)? In reference to the latter, can they still be defined as peacekeepers? We will return to these questions below.

With peacekeepers on the battlefield and militarily engaged in the conflict, we can also argue that the parties on the battlefield are not all equally just, at least when measured according to *jus ad bellum* or Just War doctrines and according to their goals. As has been previously queried (in the first two papers of this trilogy), what does it mean for a differential status of justness to be applied? The concept of a differentially assessed status of justness, along with a corresponding degree of permission to wage war, is not new in the debate about MEC, even before any consideration of peacekeepers on the battlefield. For some time, scholars in the just war field have sought to sort out this precise question: in contrast to the blanket foundational assertion of MEC1 (MEC-W), are opposing parties on the battlefield, however defined, really morally equal? The best collection of essays to address this issue is, *Just and Unjust Warriors: The Moral and Legal Status of Soldiers,* edited by David Rodin and Henry Shue.[19] Many Just War theorists, from early medieval times (as per Steinhoff), but now especially in the post-9/11 world, refuse to accept a doctrine affirming the moral equality of combatants. Do combatants from opposing sides really possess an equal moral standing on the battlefield? What if one side has a defined just cause

(e.g. self-defense) and the other clearly acts on the basis of naked aggression or terror or the perverse goal of amassing treasure (e.g. oil, water or land)? Similarly, are those attempting to protect citizens from fascism morally equal to the fascists they are fighting? How can one arrive at an assertion of moral equality in such circumstances? Are they not, rather, morally unequal? David Rodin[20] indeed makes this point and insists on moral inequality. He rejects the notion of symmetry relative to moral equality and argues that the only just approach is one of defined asymmetry – where both sides are not equal. Further, he also rejects the common corollary assertion of "independence." The latter holds that that combatants are subject to the same *jus in bello* laws and mandates, whether a differing ad bellum justness has been determined or not. Instead, he insists that the rights and privileges relative to *jus in bello* are dependent on *jus ad bellum*, in which varying degrees of justness are assessed and where the unjust party has a reduced right to wage war. In other words, the rights and privileges of *jus in bello* are explicitly and demonstrably dependent on *jus ad bellum*.[21] As has been pointed out elsewhere, however, this is both politically and practically unworkable. Since both sides invariably believe their cause is just and act on that basis, to suggest, as Rodin does, that one side has a reduced right to wage war, including a reduced number of military combat measures they are permitted to take, while the other side is granted greater permission for the employment of military measures when pursuing the war, is simply unrealistic. Similarly, to grant the "just" side greater license to wage war can also make them act in a profoundly unjust manner. A determination of justness of one side over the other can, perversely, result in greater bloodshed and carnage.

Jeff McMahan has taken a rather different approach. He insists that soldiers are morally unequal but must be legally equal.[22] The reason is simple; the rights and prohibitions enshrined in International Humanitarian Law only work if all parties are legally equal and are bound to obey the same laws of war. The law cannot be differentially applied. In contrast to Rodin, McMahan argues that an unequal application of *jus in bello* would create chaos. At the same time, a single morality, according to McMahan's assessment, is not just. He uses a domestic analogy that is particularly helpful for our examination of the peacekeeping role; McMahan points out that according to the Walzerian MEC1 (or MEC-W) doctrine, a police officer who threatens a criminal is thereby forfeiting his own right not to

be attacked. As a result, McMahan says, we must conclude that the police officer and the criminal are not morally equal.[23] However, in order to prevent chaos, McMahan *insists* on the legal equality of combatants. Law which is unequally applied does not work and becomes unenforceable. In response to McMahan, Henry Shue has argued that a differentiation between moral and legal categories is untenable since legal statutes must always be based on sound moral principles (some might dispute this assertion since examples of laws based on immoral principles abound, e.g. racism).[24] Nevertheless, a differentiated status between the moral and the legal is simply not an ethically or philosophically sound approach. How does one implement a law equally applicable to both parties when the moral assessment is that they are quite unequal—and the law's credibility is based on moral principles? Instead, Shue proposes a differential application of law and morality based on two different contexts: "war and ordinary life."[25] The police officer in McMahan's evaluation is not locked in war but is pursuing a criminal in a differently calibrated context—ordinary life.

Perhaps, however, we should not dismiss McMahan's analogy too quickly, especially when discussing the role of peacekeepers. While legitimate arguments can be made for rejecting a differentiated moral vs. legal calibration, both when talking about opposing belligerents and when assessing the moral theories more generally, there may be reason to consider aspects of McMahan's and even Rodin's model when considering peacekeepers. It is, one can argue, not a case of police personnel being in a separate environment or context, as Shue would have it, but of police personnel being on the battlefield in a policing role. Should that inform our view of a differentiated moral position? After all, peacekeepers, like police, are sometimes seen seeking to restrain criminals or criminal state entities that are waging a destructive war which is negatively impacting the lives and security of civilians. Similarly, as per Rodin, when differentiated levels of justness are applied, international bodies, as we will see below, have also determined that differentiated levels of force are legally available to parties according to their role and legal status.

In the realm of international law, the distinction between peacekeepers and belligerents has already been made and, it can also be argued, this legal distinction is based on an implicit moral distinction that precedes it. I will list only five salient legal distinctions that have been made, and they are structured as protections of UN personnel—especially peacekeepers.

1. The Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on February 13, 1946, granted broad immunity to UN personnel. Article 1 proclaims that "The United Nations shall possess juridical personality."[26] The immunity claims continue to court controversy, especially when, for example, individual UN peacekeepers engage in criminal behaviour or otherwise contravene the prescribed Rules of Engagement (ROE).

2. A second and more explicit declaration of special status—at least for peacekeepers—was asserted by the Convention on the Safety of United Nations and Associate Personnel, which was signed in 1994 and came into force in 1999.[27] Comprised of 29 Articles, the significant advancement of this convention was to explicitly criminalize attacks against UN personnel. Article 9 lists various types of attacks on UN and associated personnel that will be classified as crimes. Article 11 requires measures of prevention to be taken and articles 13, 14, and 15 require the prosecution and/or extradition of alleged offenders. Significantly, however, article 21 still allows for the right of self-defence.

3. A third treaty requiring inclusion in our list is the *Optional Protocol* added in 2005 to the 1994 *Convention on the Safety of United Nations and Associate Personnel* just discussed.[28] It simply added organizations related to—or established by—the United Nations whose purpose was "(a) Delivering humanitarian, political or development assistance in peacebuilding, or (b) Delivering emergency humanitarian assistance" as those covered by the more comprehensive protocol described above.

4. The 1998 *Rome Statute* to establish the *International Criminal Court* took the criminalization of attacks on peacekeepers described in the 1994 convention and further defined attacks on peacekeepers and those providing humanitarian assistance as a war crime subject to prosecution by the ICC.[29] Article 8 on War crimes (8.2 (b)(iii) and 8.2 (e)(iii)) delineates the inclusion of peacekeeping and related missions as follows:

> Intentionally directing attacks against personnel, installations, material, units, or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;

The court added a further explanation in a commentary on its position which allowed that some violations could also be crimes against humanity:

> The Court's Statute provides special protection for peacekeepers by prohibiting intentional attacks against personnel, installations, material units, or vehicles involved in humanitarian assistance or peacekeeping missions. Such violations constitute war crimes and, under certain circumstances, also crimes against humanity. In addition, the Statute does not affect existing arrangements, for example, with respect to UN peacekeeping missions, since the troop-contributing countries continue to retain criminal jurisdiction over their members of such missions.[30]

5. Our fifth and final case of legal distinction of peacekeepers from combatants comes via Rule 33 from *Customary International Humanitarian Law:*[31]

> Directing an attack against personnel and objects involved in a peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians and civilian objects under international humanitarian law, is prohibited.

The distinction of peacekeepers from belligerents in armed conflict, as has been demonstrated, is strongly made and widely accepted in international law. These legal codes explicitly put peacekeepers not only in a special legal category, but also into an assumed special moral classification which permits the legal distinction (morally similar but legally in contrast to McMahan's model). They are, clearly, not placed in the same moral category as the belligerents they are seeking to pacify. To state it bluntly: they are anti-war not pro-war and attempting to intervene on that basis—and attempting to do so without causing harm.

But are peacekeepers really in the same moral and legal bracket as civilians or non-combatants? Do some peacekeepers not go into battle? Perhaps put more explicitly, are peacekeepers subject to IHL? To *jus in bello*? The answer to that question has most commonly been articulated as "it depends." To address this question further, the law has been divided into two categories of peacekeeper activity—non-combatant combatant and, what is sometimes

called, more robust engagement, including armed engagement against an aggressor. Put another way, it can be seen as a distinction between Chapter VI of the UN Charter[32] application versus Chapter VII[33] intervention. Chapter VI seeks to settle conflict by pacific means ("Pacific Settlement of Disputes"), while Chapter VII defines a more robust engagement in an attempt to quell a conflict. Even the legal document excerpts just examined above made that additional distinction. For example, the *Convention on the Safety of United Nations and Associate Personnel*, included this caveat at the outset in Article 2(2):

> This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.[34]

Similarly, Rule 33 of Customary International Humanitarian Law adds a "Scope of Application" clarifying note:

> This rule applies only to peacekeeping forces, whether established by the United Nations or by a regional organisation, as long as they are entitled to the protection given to civilians and, as a result, excludes forces engaged in peace-enforcement operations who are considered as combatants bound to respect international humanitarian law.

It becomes clear when peacekeeping forces engage in combat, they are no longer peacekeepers in the narrow definition of the term. Rather, they are soldiers engaged in combat – even if their goals are to end the conflict or stop an aggressor – and are required to abide by *jus in bello* rules and regulations. Here the International Committee of the Red Cross (ICRC), the recognized guardian of IHL, again insists that *jus in bello* (the law of conduct in war) needs to be kept separate from *jus ad bellum* (the right of going to war).[35]

Does that, however, make peacekeepers morally equal to the parties they are seeking to pacify? After all, they are legally equal (and subject to *jus in bello* limitations) on the battlefield. McMahan would say no; Rodin would say no. Others, including the ICRC, might argue that the battlefield is a place where legal equality and moral equality are about the battle itself and other distinctions evaporate. Therefore, in battle, according to the ICRC, they are soldiers and equally bound by the laws governing combat—all of which are also totally independent of the justice of the war they are fighting.

The categorizing difficulty remains on several levels. Distinctions—even moral classifications regarding combatant status, and between Chapter VI and VII actions—are not always easily determined. For example, if those engaged in Chapter VI actions are protected and granted special status, how much combatant activity must be undertaken to lose the protected status? Is there another category between unarmed non-combatant and armed combatant such as, perhaps, McMahan's police? What *moral* assessment, if any, do we assign to peacekeepers engaged in armed intervention against one or more belligerents in an attempt to stop of the conflict? Are they placed in the same category as the belligerents? Do we need to borrow McMahan's argument that there may be policing parties to the conflict, including peacekeepers who are morally unequal to the belligerents but legally equal on the battlefield?

Steinhoff adds another degree of complexity to our discussion and argues that the justice or injustice of combatants—including those seeking to create an end to conflict by engaging in it—is more complex and must be understood through the reality of the modern battlefield. For example, unjust soldiers can have a just cause when protecting civilians—who might be otherwise targeted or be seen as "collateral damage" by soldiers on the "just" side.[36] He expands his argument by pointing out that there is much "concomitant slaughter," (collateral damage) by combatants on the justified side, who "violate the rights of innocent people . . . by imposing upon them a significant risk of their being killed or mutilated ... by shooting and dropping bombs."[37] Steinhoff adds: "in modern wars, you will always wrong innocent bystanders; but so will the combatants on the justified side—who therefore cannot be just."[38] According to Steinhoff's logic and argument, once a police officer/peacekeeper (or soldier) steps into battle or onto the battlefield, they are no longer just, because they will likely harm innocent persons to achieve their goals.

It is important for politicians and citizens to understand the moral category they impose on the soldiers they send out on missions to represent them and this in turn helps us understand the goals for engaging in theatres of conflict. We have multiple options and these options have moral attributes; do we wish to send in non-combatants who, on the moral battlefield, represent a position quite similar to many pacifists—or perhaps not pacifists

but a close category called *pacificists?*[39]

An unarmed UN representative who is on the battlefield as an observer and monitor might fall into such a category. One thinks, for example, of someone like Canadian Major Paeta Hess-von Kruedener and his three international UN peacekeeping colleagues, all unarmed observers, who were killed in southern Lebanon in a sustained Israeli attack by GPS and laser-guided missiles on their monitoring outpost in 2006. According to CBC News, Hess-von Kruedener and his colleagues had been sending back reports of violations and war crimes, e.g. the bombing of schools.[40] Do we, perhaps, send soldiers into combat to interrupt a conflict in order to set up a peaceful solution? We can say again, as we did earlier—it depends.

One could argue that peacekeepers are always somewhat in a category distinct from the belligerents so long as the goal is peace. Do I think it is better that Canadians and their peacekeeping missions should aim for Chapter VI actions with a view of solving conflict via pacific—i.e. peaceful—means instead of Chapter VII? Various surveys carried out in the past decade by Canada's Department of National Defense have confirmed the preference of Canadians for more pacific peacekeeping (Chapter VI) interpretations, as opposed to military interventions.[41] This more readily allows peacekeepers an effective role between the belligerents and in bringing application of IHL and its conflict-limiting laws to the belligerent parties. It also provides them with a unique opportunity to engage in peacebuilding and the training of the belligerents in IHL as a means of reducing the intensity of the conflict.

If the goal is indeed between pacifistic peacekeeping and militarized peacemaking, being in the middle between the belligerents has many peacekeeping advantages over directly facing off against parties defined as "enemy." However, asking soldiers to be on this middle ground may require a different sort of training. It also means the rejection of another traditional doctrine regarding war and conflict—Invincible Ignorance.

PEACEKEEPERS AND THE INVINCIBLE IGNORANCE DEBATE

Invincible Ignorance (II) is a doctrine closely related to MEC, and which holds that "soldiers cannot know whether their cause is just or not and thus cannot base their participation in war on this knowledge."[42] It is popularly claimed that this doctrine has its roots in the writings of Francisco de Vitoria

in 1529. This is due to a selective and only partial reading of Vitoria, since Vitoria also made statements that sharply contradicted this view. He was clearly of more than one mind on the issue. Vitoria is still frequently cited in the following manner.

> To summarize Vitoria: "princes" should rule; soldiers should fight. Each had a job to do and the job of soldiers was not to meddle in the business of rulers; soldiers followed orders. Soldiers were "invincibly ignorant" and could not know and were not intended to know the reasons why rulers decided for war. Significantly, these statements from Vitoria provided a convenient "out" as soldiers could be excused if they fought in an unjust war. Moreover, both ruler and soldier could blame each other for injustice in war—rulers could blame soldiers for *jus in bello* transgressions and soldiers could blame rulers for *jus ad bellum violations*.[43]

Vitoria's arguments above, seem clear and unambiguous. He did, however, articulate five additional points, which are often overlooked or ignored. As I have argued previously, "These statements arose from Vitoria's realization that both sides would believe their cause to be just and, therefore, "belief" in the justice of one's cause was insufficient."[44]

1. Judgement of "someone wise" was important (even if the wise person was from the other side).[45]
2. If the war "seems patently unjust to the subject, he must not fight, even if he is ordered to do so by the prince."[46]
3. If one's conscience suggests the war is unjust, one should refuse to fight, even if the conscience is wrong.[47]
4. If powerful "arguments and proofs of the injustice of war" existed, even lower class soldiers and subjects could not claim ignorance.[48]
5. Vitoria "especially condemned wilful ignorance."[49]

Vitoria's arguments may seem out of date, but they still function as part of the philosophical underpinning of the debate. Peacekeepers, especially, cannot accept the Invincible Ignorance doctrine because, it can be argued,[50] peacekeeping requires a greater degree of expertise, knowledge, and specialized skill than traditional belligerent combat activities, particularly in the area of negotiation across differences. As I have argued previously, those

engaged in peacekeeping need II2 (Informed Intelligence), not Invincible Ignorance. This applies not only to senior officers but for everyone seeking to participate in a military that is dedicated to peacekeeping and long-term peacebuilding.

Both MEC and II, when applied to peacekeeping require a unique classification and a higher standard. Surely, this is a laudable goal.

DRAWING CONCLUSIONS

Our brief discussion of Peacekeepers on the "Moral Battlefield" does allow us to draw several summary conclusions:

1. Peacekeepers are not the same as belligerents and must, therefore, be considered differently. Of course, not all peacekeepers or peacekeeping missions are the same. We have considered three categories of peacekeepers. First, unarmed peacekeepers do not conform to the same MEC1 (MEC-W) principles as Walzer's soldiers do. Peacekeepers in this category may fit the moral model of pacifists (or at least *pacificists*) in this sense—they do not seek to kill the other and have not forfeited or relinquished their own right to be killed. They do, in fact, seek a cessation of conflict without anyone being killed.

2. A second category of peacekeepers refers to those who have been tasked with armed intervention against one or both belligerents. Here two analyses come to the fore. McMahan and his police officer example might insist that peacekeepers are still morally superior to the other belligerents in the field—but that they are legally the same. Steinhoff would argue that the sameness between the police officer and the other combatants evaporates since all parties to modern conflict engage in "concomitant slaughter," which the parties thereto call "collateral damage." In his view, on the global battlefield the rights of the innocent are always violated, making it impossible to declare anyone who participates therein as "just."

   a. How do we distinguish between McMahan and Steinhoff for this scenario? The UN made a legal commitment by creating a distinction between Chapter VI and Chapter VII intervention. It must be acknowledged that the line between Chapter VI and Chapter VII can be fuzzy. However, since these soldiers are sent in by the UN—or at least with the UN's blessing—a battlefield-determined moral status has also clearly been arrived at, even if it may not have been explicitly articulated. Our discussion herein strongly suggests that McMahan's model coincides with the approach adopted by the UN. Steinhoff, on the other hand, leaves little, if any, room for military intervention.

   b. Steinhoff's absolutist position does not necessarily make him incorrect. Steinhoff's description would simply insist that Chapter VII actions should be avoided. He is also correct in suggesting that harm will inevitably be created and the mandate to do no harm is primary.

3. A third type of peacekeeper can be placed on the continuum part way between the first and the second peacekeeper categories we have just discussed. This third medial category describes armed monitors who use weapons only in self-defence and to protect innocent civilians. This may, in fact, describe the majority of active peacekeeping personnel in the field. How should their moral status be categorized? Perhaps, these should be considered on a sliding continuum. So long as they remain in a non-combative role and restrict themselves to actions akin to Chapter VI of the UN Charter, their moral status could be aligned with the first (pacifist) category. They could fit with the *pacificist* category described above (as per Alan J. P. Taylor and Ian Hazlett). Should these peacekeepers move to greater military action and align with Chapter VII of the UN Charter, they would land in the same philosophical bracket as the second category described above and fit either into the split definition (legal vs. moral) outlined McMahan or suffer Steinhoff's rejection as an unjust party that aligns with the belligerents in their moral culpability.

So where do peacekeepers fit in? What is their moral status? While our initial answer of "it depends" may seem vague and unsatisfactory, any assessment will indeed be based on the degree of military engagement. So, it still depends and always will. The moral status of peacekeepers is ultimately determined by the goals and actions of the subject peacekeeping personnel. On this basis, one assessment remains clear—due to their differing goals and objectives, peacekeepers are not morally equal to other battlefield belligerents, even if legally they are subject to the same laws of armed conflict.

ENDNOTES

1. An earlier version of this essay was presented at a workshop on international peacekeeping sponsored by the Peace and Conflict Studies Association of Canada (PACS-Can) held on 22 September, 2017, at the Balsillie School of International Affairs in Waterloo, Ontario. Canada.
2. Edmund Pries, "A Soldier's Right Not To Fight: Breaching the Insuperability of Military Oaths," *Peace Research: The Canadian Journal of Peace and Conflict Studies* 44, no. 2 (2012) and 45, No. 1 (2013): 31-87.
3. The theme is taken from Michael Walzer, Just and Unjust Wars (New York, NY: Basic Books, 1977).
4. See further: David Rodin and Henry Shue, ed. *Just and Unjust Warriors: the Moral and Legal Status of Soldiers* (Oxford, UK: Oxford University Press, 2008). The title of the work is clearly derived from Michael Walzer's foundational work, Just and Unjust Wars.
5. Edmund Pries, "Moral Equality of Combatants and Invincible Ignorance: Two Just War Doctrines in Which Pacifists have a High Stake," *Peace Research: The Canadian Journal of Peace and Conflict Studies* 49, no. 1 (2017): 43-65.
6. Pries, "Moral Equality of Combatants"; Pries, "A Soldier's Right Not to Fight." The section examining the doctrine on the Moral Equality of Combatants (MEC) begins on page 50 of the latter article.
7. Uwe Steinhoff, "Rights, Liability, and the Moral Equality of Combatants," *Journal of Ethics* 16, no. 4 (2012): 339-366.
8. Steinhoff, "Rights, Liability," 339.
9. Walzer, *Just and Unjust Wars*, 36-41.
10. Walzer, *Just and Unjust Wars,* 36.
11. Pries, "Moral Equality of Combatants," 46-50, 53-55.
12. Pries, "Moral Equality of Combatants," 54.

13. Pries, "Moral Equality of Combatants," 55.
14. Pries, "Moral Equality of Combatants," 53.
15. Pries, "Moral Equality of Combatants," 53.
16. Pries, "Moral Equality of Combatants," 53.
17. Pries, "Moral Equality of Combatants," 54.
18. Pries, "Moral Equality of Combatants," 55.
19. Rodin and Shue, ed. *Just and Unjust Warriors: the Moral and Legal Status of Soldiers*.
20. David Rodin, "The Moral Inequality of Soldiers: Why *jus in bello* Asymmetry is Half Right" in *Just and Unjust Warriors: the Moral and Legal Status of Soldiers* ed. David Rodin and Henry Shue (Oxford, UK: Oxford University Press, 2008), 44-46.
21. See Pries, "Moral Equality of Combatants," 51; Pries, "A Soldier's Right Not to Fight," 51-53; Rodin, "The Moral Inequality of Soldiers," 44-46.
22. Pries, "Moral Equality of Combatants," 51; Pries, "A Soldier's Right Not to Fight," 52-54; Jeff McMahan, "The Morality of War and the Law of War" in *Just and Unjust Warriors: the Moral and Legal Status of Soldiers* ed. David Rodin and Henry Shue (Oxford, UK: Oxford University Press, 2008), 20-22.
23. McMahan, "The Morality of War," 21-22.
24. Pries, "Moral Equality of Combatants," 51; Pries, "A Soldier's Right Not to Fight," 53-54; Henry Shue, "Do We Need a 'Morality of War?'" in *Just and Unjust Warriors: the Moral and Legal Status of Soldiers* ed. David Rodin and Henry Shue (Oxford, UK: Oxford University Press, 2008), 87-90.
25. Pries, "Moral Equality of Combatants," 51; Pries, "A Soldier's Right Not to Fight," 53-54; Shue, "Do We Need a 'Morality,'" 87-89.
26. United Nations, "Convention on the Privileges and Immunities of the United Nations," accessed at https://www.un.org/en/ethics/assets/pdfs/Convention%20of%20Privileges-Immunities%20of%20the%20UN.pdf.

27. Office of Legal Affairs Codification Division, United Nations, "Convention on the Safety of United Nations and Associated Personnel," accessed at http://www.un.org/law/cod/safety.htm.

28. United Nations, "Optional Protocol to the Convention on the Safety of United Nations and Associate Personnel," accessed at https://treaties.un.org/doc/source/RecentTexts/XVIII-8a_english.pdf. The treaty was opened for signature in 2006 and came into force in 2010. Canada, having undergone a political change at approximately the same time, is not a signatory to the optional protocol.

29. International Criminal Court, "Rome Statute of the International Criminal Court," accessed at https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf.

30. International Criminal Court, "Rome Statute of the International Criminal Court: Some Questions and Answers," accessed at http://legal.un.org/icc/statute/iccq&a.htm.

31. International Committee of the Red Cross, "Rule 33: Personnel and Objects Involved in a Peacekeeping Mission," accessed at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule33.

32. United Nations, "Charter of the United Nations: Chapter VI," accessed at http://www.un.org/en/sections/un-charter/chapter-vi/index.html.

33. United Nations, "Charter of the United Nations: Chapter VII," accessed at http://www.un.org/en/sections/un-charter/chapter-vii/index.html.

34. Office of Legal Affairs Codification Division, "Convention on the Safety."

35. See Francois Bugnion, "Just Wars, Wars of Aggression and International Humanitarian Law," *International Review of the Red Cross* 84, no. 847 (September 2002): 523-46; also especially Jasmine Moussa, "Can *jus ad bellum* Override *jus in bello*? Reaffirming the Separation of the Two Bodies of Law," *International Review of the Red Cross* 90, no. 872 (December 2008): 963-90. See also Daniel Thürer: "it would be absurd, not to say unjust in the extreme, to make the protection of war victims, who very often have no say in the decision to go to war, dependent on whether their rulers' decision to go to war was 'just.'" Daniel Thürer, *International Humanitarian Law: Theory, Practice, Context* (The Hague, NL: Hague Academy of International Law, 2011), 44; quoted in: Pries, "A Soldier's Right Not to Fight," 54.

36. Steinhoff, "Rights, Liability," 341.

37. Steinhoff, "Rights, Liability," 348.

38. Steinhoff, "Rights, Liability," 350.

39. This is a term first coined by Alan J.P Taylor and a category promoted by Ian Hazlett in "War and Peace in Christianity" in *War and Peace in World Religions* (London, UK: SCM Press, 2004), 112. *Pacificism* stops just short of pacifism because it allows a small window for what Hazlett calls "pacific realism." The question remains whether pacificism is really that different from a very strictly, and restrictively, applied Just War Theory along the lines of *jus contra bellum*.

40. Canadian Broadcasting Corporation "UN Officer Reported Israeli War Crimes Before Deadly Bombing: Widow," CBC News, 6 February 2008, accessed at https://www.cbc.ca/news/canada/ottawa/un-officer-reported-israeli-war-crimes-before-deadly-bombing-widow-1.703087#:~:text=Paeta%20Hess%2Dvon%20Kruedener%20of,post%20on%20July%2025%2C%202006.

41. Campbell Clark, "Part 2: Canadians Pick Peacekeeping Over Combat," Globe and Mail, 25 October 2010, accessed at https://www.theglobeandmail.com/news/national/time-to-lead/part-2-canadians-pick-peacekeeping-over-combat/article1215629/.

42. Pries, "Moral Equality of Combatants," 56; Pries, "A Soldier's Right Not to Fight," 54.

43. Pries, "Moral Equality of Combatants," 56.

44. Pries, "Moral Equality of Combatants," 56.

45. Pries, "A Soldier's Right Not to Fight," 55; Francesco de Vitoria, "On the Law of War," in *Vitoria: Political Writings,* Anthony Pagden and Jeremy Lawrance, eds. (Cambridge, UK: Cambridge University Press, 1991), 306-307.

46. Pries, "A Soldier's Right Not to Fight," 55; Vitoria, "*On the Law of*

War," 307. Vitoria strongly emphasized this point.

47. Pries, "A Soldier's Right Not to Fight," 55; Vitoria, "*On the Law of War,*" 308.

48. Pries, "A Soldier's Right Not to Fight," 55; Vitoria, "*On the Law of War,*" 308-309.

49. Pries, "A Soldier's Right Not to Fight," 55; Vitoria, "*On the Law of War,*" 308-309.

50. Pries, "A Soldier's Right Not to Fight," 55.