

Written evidence submitted by Dr Alexander Gilder (MUO0004)

Executive summary

This evidence sets out several legal consequences of current UN stabilization activities. Stabilization is an area of contemporary, cross-cutting UN activity that involves a range of UN actors such as UNDP, UNHCR, UNICEF, UN Women, UNDP, FAO, UNFPA and more. The UK can use its existing knowledge base, found in the UK Stabilisation Unit, and its key leadership role at the UN to (re)shape UN stabilization practice towards civilian-led and bottom-up activities. By pursuing a reformulation of stabilization, the UK would be able to strengthen its position in the UN, promote the Government strategy of 'Global Britain', and empower local people affected by conflict to build greater multilateral cooperation in regions where the UN implements stabilization.

About the author

Dr Alexander Gilder is a Lecturer in Law at Royal Holloway, University of London where he is also affiliated with the Royal Holloway Centre for International Security. He specialises in public international law and has published in a variety of areas related to international peace and security. His current research looks at themes related to stabilization in UN peacekeeping including robust force, counterterrorism, and the effect of militarisation on other mandated tasks, such as entrenching the rule of law.

1. Introduction

- 1.1 Stabilization within UN peacekeeping is an area of UN policy which the UK can prioritise to maintain a leading role at the UN and promote the Government's 'Global Britain' narrative. UN peacekeeping is one of the integral and cross-cutting multilateral activities undertaken by the UN for maintaining international peace and security and involves a range of UN agencies and partners. This document suggests the FCO should focus UK engagement and reform efforts on (re)shaping stabilization to have a profound impact on a broad range of UN activities.
- 1.2 The UK acts as a penholder on country and thematic areas, mainly alongside France and the US, adopting a key leadership role in the Security Council giving the UK space to provide direction for changes in UN policy. But recent research has shown Brexit will make it difficult for the UK to maintain its current influence internationally. Gifkins, Jarvis and Ralph have suggested the UK should prioritise making specific policy suggestions and take a collaborative approach on penholding to protect the UK's legitimacy as a leading figure at the UN.¹

¹ Jess Gifkins, Samuel Jarvis, Jason Ralph, 'Global Britain in the United Nations' (UNA-UK 2019)

1.3 Stabilization is now a buzzword at the UN and forms the basis for much of the discussion on peacekeeping. To illustrate, the term was mentioned in 10% of Council meetings in 2001 but by 2014 ‘stabilization’ was mentioned in 44%.² However, there is not a consistent UN-wide understanding of stabilization. The UK could take the lead on establishing a civilian-led understanding of stabilization that would influence the activities of a broad range of UN actors allowing the UK to leave a positive mark on UN peacekeeping.

2. Stabilization at the UN

2.1 UN peace operations are mandated by the UN Security Council but are an activity involving a broad range of UN actors and cooperation with the wider UN Country Team that fall within the remit of this inquiry. Particularly activities that pursue stabilization are often undertaken in cooperation with actors such as UNHCR, UNICEF, UN Women, UNDP, FAO, UNFPA and more. This makes it a prime area for the UK to exert its influence and make a positive difference to UN deployments that affect countless individuals experiencing daily insecurity. Despite Security Council paralysis being mentioned several times in this Committee’s session on 23 June 2020 there have been significant shifts in the mandates and activities of UN peacekeeping over the last decade.

2.2 In 2015 the High-Level Independent Panel on Peace Operations Report stated, “[t]he term “stabilization” has a wide range of interpretations, and the Panel believes the usage of that term by the United Nations requires clarification.”³ [The UN has not formally adopted a definition of the term](#) or clear policy guidelines on what activities a stabilization mission will entail. In practice, the operations that use the term stabilization have a range of different activities in their mandates. Some UN officials say that no specific significance should be given to the fact that some missions have been designated ‘stabilization’ missions, but this is clearly inadequate when the High-Level Panel have requested a definition.⁴

2.3 Four UN peace operations have included stabilization in their title since 2004:

- the United Nations Stabilization Mission in Haiti, MINUSTAH (2004 – 2017),

p.4. Available [here](#).

² David Curran and Paul Holtom, ‘Resonating, Rejecting, Reinterpreting: Mapping the Stabilization Discourse in the United Nations Security Council, 2000-14’ 4(1) *Stability: International Journal of Security & Development* 1-18, p.9. Available [here](#).

³ UN Security Council and UN General Assembly, ‘Identical letters dated 17 June 2015 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council’ (17 June 2015) A/70/95–S/2015/446 para 114.

⁴ Cedric de Coning, ‘Is stabilization the new normal? Implications of stabilization mandates for the use of force in UN peacekeeping operations’ in: Peter Nadin (ed) *The use of force in UN peacekeeping* (Routledge 2018) 85–99, p.87.

- the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, MONUSCO (1999 – present, established as MONUC and renamed MONUSCO to include stabilization in 2010),
- the United Nations Multidimensional Integrated Stabilization Mission in Mali, MINUSMA (2013 – present) and,
- United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic, MINUSCA (2014 – present).

2.4 My research has shown that, with the exclusion of MINUSTAH, the three ongoing stabilization missions have a notable congruence in their mandates which denote a somewhat similar starting point in the UN's approach to stabilization.⁵ First, they are mandated to support the extension of state authority. Second, they operate alongside state forces and actively build the capacity of those forces. Third, they use varying degrees of proactive, 'robust' force to prevent attacks on themselves and those they are mandated to protect. Lastly, they have mandates to support (re)establishing the rule of law.

3. The legal ramifications of current UN stabilization practice

2.1 I have carried out case studies of MINUSMA and MINUSCA revealing stark legal implications for current stabilization-focused mandates.⁶

(1) Robust force:

There are [examples](#) where UN peacekeepers have taken the initiative in the use of force in the pursuit of stabilization. This contradicts the traditional understanding that peacekeepers may only use force in self-defence or defence of the mandate. Mandates to extend state authority and stabilise population centres using **robust force risks intensifying the conflict, which could have a negative impact on civilians.**

The UN is toeing a fine line between *peacekeeping* and *peace enforcement* when the HIPPO Panel has drawn attention to the implication of straying toward enforcement.⁷ The Force Intervention Brigade deployed as part of MONUSCO has a distinct offensive peace enforcement mandate.⁸ Under the peace enforcement

⁵ See e.g. Alexander Gilder, 'The Effect of 'Stabilization' in the Mandates and Practice of UN Peace Operations' (2019) *Netherlands International Law Review* 66(1) 47-73. Available Open Access [here](#).

⁶ See Alexander Gilder, 'The Effect of 'Stabilization' in the Mandates and Practice of UN Peace Operations' (2019) *Netherlands International Law Review* 66(1) 47-73; Alexander Gilder, 'Human security and the stabilization mandate of MINUSCA' (2020) *International Peacekeeping* 1-32. Available [here](#).

⁷ UN Security Council and UN General Assembly, 'Identical letters dated 17 June 2015 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council' (17 June 2015) A/70/95-S/2015/446, para 122

⁸ UN Security Council, Resolution 2098 (28 March 2013) para 12.

mandate the Brigade may be partial and expressly take sides in the conflict between a state and armed groups affirming the state as the legitimate authority. But MINUSCA and MINUSMA are not defined as peace enforcement missions, are meant to be impartial actors that do not use offensive force, and yet have mandates to that use similar wording: to extend state authority and stabilise population centres which is achieved through actions such as a 'robust posture' and active patrolling to deter armed groups and allow space for the restoration of state authorities.⁹

A much clearer distinction needs to be drawn between peace enforcement and peacekeeping in relation to stabilization.¹⁰ The UN currently risks setting extremely high expectations amongst the local population that highly capable forces will fight a war and proactively respond to atrocities. There is also the risk that some portions of the population will be disillusioned by enforcement troops that act in a partial manner and the UN needs to more clearly demarcate the distinction.

(2) International humanitarian law:

Intensifying the conflict can also make the UN a party to the conflict under international humanitarian law.¹¹ For example, MINUSMA has been mandated to engage in 'direct operations' and it has been supported by sophisticated military hardware such as short-range drones and attack helicopters.¹² In addition, the mandate renewal in 2018 specified that MINUSMA is to conduct joint operations and share information with the Malian Defence and Security Forces (MDSF).¹³ Where there are sustained, direct clashes between MINUSMA and armed groups it would be difficult for the UN to contest the applicability of humanitarian law.

Peacekeepers can also become a party to the conflict where sufficient support is provided to host state forces. Where providing support the International Committee of the Red Cross (ICRC) argues UN forces can be deemed a party to a

⁹ UN Security Council, 'Report of the Secretary-General on the Central African Republic' (2 June 2017) S/2017/473, para 2; UN Security Council, Resolution 2301 (26 July 2016) S/RES/2301 paras 34, 34(a); UN Security Council, Resolution 2364 (29 June 2017) S/RES/2364 para 19; UN Security Council, Resolution 2164 (25 June 2014) S/RES/2164 para 13(a)(i).

¹⁰ Alexander Gilder, 'The Effect of 'Stabilization' in the Mandates and Practice of UN Peace Operations' (2019) *Netherlands International Law Review* 66(1) 47-73, pp. 55-56.

¹¹ Alexander Gilder, 'The Effect of 'Stabilization' in the Mandates and Practice of UN Peace Operations' (2019) *Netherlands International Law Review* 66(1) 47-73, pp. 56-59; See also Stephen Mathias, 'UN peacekeeping today: legal challenges and uncertainties' (2017) *Melbourne Journal of International Law* 18(2) 138-153.

¹² Erwan de Cherisey, 'Desert watchers: MINUSMA's intelligence capabilities' (2017) *Jane's Defence Weekly* 54(23).

¹³ UN Security Council, Resolution 2423 (28 June 2018), S/RES/2423 para 38(b).

pre-existing non-international armed conflict (NIAC) under the following circumstances;

1. there is a pre-existing NIAC taking place on the territory in which multinational forces are called on to intervene;
2. actions related to the conduct of hostilities are undertaken by multinational forces in the context of the pre-existing conflict;
3. the military operations of multinational forces are carried out in support (as described above) of a party to the pre-existing conflict; and
4. the action in question is undertaken pursuant to an official decision by the troop-contributing country or the relevant organization to support a party involved in the pre-existing conflict.¹⁴

The ICRC claims that meeting these criteria displays a 'genuine belligerent intent' which would result in participation in hostilities and liability under international humanitarian law.

Becoming a party to the conflict would remove the protections afforded to UN peacekeepers under the Convention on the Safety of United Nations and Associated Personnel and would mean they are legitimate military targets.

(3) Counterterrorism:

MINUSMA currently provides support for the French Operation Barkhane and regional force (G-5 Sahel Force) that are offensively fighting terrorism in the Sahel. MINUSMA has a sophisticated intelligence unit (ASIFU) staffed by NATO contingents which [reportedly](#) shares its targeting packs with the French forces. In the name of stabilization, MINUSMA is mandated to use robust force under Chapter VII and to provide support and intelligence to the G-5 Sahel Force and Operation Barkhane. **MINUSMA's Chapter VII mandate is consequently linked to supporting a regional counterterrorism operation which uses offensive force with the open encouragement of the UN Security Council.**¹⁵

(4) UN responsibility for wrongful acts:

UN peacekeepers have increasingly cooperated with host state forces. By working alongside the host state, the UN takes sides in a civil war and fails to act with any sense of impartiality. Where, in the eyes of individuals and communities, the UN cooperates with a state which has previously committed human rights violations the UN could lose the trust of sections of the population. Going further, the active

¹⁴ ICRC, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' (32nd International Conference of the Red Cross and Red Crescent, 8–10 December 2015), p.23.

¹⁵ Alexander Gilder, 'The Effect of 'Stabilization' in the Mandates and Practice of UN Peace Operations' (2019) *Netherlands International Law Review* 66(1) 47-73, pp. 59-64.

UN support for Malian and Central African Republic forces could have legal ramifications where the host state forces commit serious breaches of human rights or humanitarian law.¹⁶ **It is possible that the UN could be found responsible under Article 14 of the Draft Articles on Responsibility of International Organizations for aiding or assisting a state in committing a wrongful act.**¹⁷ It is unclear how much support would need to be provided by the UN to result in liability but support has continued to be provided during the operation of MINUSCA and MINUSMA despite violations of international law being committed by the host state forces.

4. What role for the UK in determining the path forward?

4.1 The UK currently has the cross-government Stabilisation Unit. The Stabilisation Unit [informs its deployees](#) to UN missions that it is common to find there is no shared and coordinated vision of stabilization. The Stabilisation Unit does though have a common definition of stabilization as,

“... an activity undertaken as an initial response to violence or the immediate threat of violence ... when undertaking stabilisation interventions, the UK seeks to protect the means of survival and restore basic security, promote and support a political process to reduce violence as well as prepare a foundation for longer term stability”¹⁸

The UK focuses on a civilian-led approach to stabilization which is supported by the military. Conversely, [the US takes a narrower approach](#) where the goal of stabilization is to support the legitimate authority in securing the monopoly on the use of force to enable the authority to protect its population. The US aims to use the military to defeat an insurgency while entrenching support for a domestically owned transition towards peace.

4.2 There are similarities between the UK and US approaches with both identifying a legitimate authority to which support is provided and the capacity building of the authority to be able to deflect spoilers to peace but there are divergent views on the role of the military in pursuit of stabilization. The UK Stabilisation Unit further stresses that in a destabilised state there will likely be a number of parties vying for control through force.¹⁹ As a result, a decision will need to be taken with regard to who with

¹⁶ For example, Central African forces (FACA) have committed human rights abuses see Alexander Gilder, ‘Human security and the stabilization mandate of MINUSCA’ (2020) *International Peacekeeping* 1-32, p.17.

¹⁷ Alexander Gilder, ‘The Effect of ‘Stabilization’ in the Mandates and Practice of UN Peace Operations’ (2019) *Netherlands International Law Review* 66(1) 47-73, p.66.

¹⁸ UK Stabilisation Unit, ‘The UK Government’s Approach to Stabilisation: A guide for policy makers and practitioners’ (March 2019)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784001/The_UK_Government_s_Approach_to_Stabilisation_A_guide_for_policy_makers_and_practitioners.pdf> pp. 13-4.

and how to work in the environment. The UK Stabilisation Unit encourages flexibility in this regard. The host state government may not be the most suitable actor to provide stabilization services and the UK approach ensures there is legitimacy at the local level.²⁰

- 4.3 What I have found in my work is that the UN currently adopts a two-step approach to stabilization: (1) force is used to deter or displace armed groups and (2) civilian-led peacebuilding activities, aimed at entrenching the rule of law and re-establishing the host state government as the legitimate authority, take place in the power vacuum left behind.²¹ This current approach is partially the root of many of the legal problems outlined above. There is an overriding focus on UN use of force and promoting the position of the host state government which is distinctly less flexible than the UK's understanding of stabilization.
- 4.4 My research has shown UN stabilization missions do, to a certain extent, build peace from the bottom-up and empower local people.²² For instance, the empowerment of women is a regular priority and is followed up on by the mission reporting. There are also numerous other examples with peace conferences to facilitate dialogue, local peace committees, community-based workshops to teach conflict management, the promotion of women's organisations and mandates to support the inclusion of civil society, and youth groups in the implementation of peace agreements.²³ However, while the UN implements some wider empowerment related strategies, either on its own or in partnership with host governments, local, **civilian-led activities do not feature as focal points of the missions.**
- 4.5 The UK's existing expertise could be harnessed to nudge UN stabilization practice towards a more flexible, primarily civilian-led process that has local legitimacy, reduces conflict, and improves human security. This would allow the UK to influence a

¹⁹ UK Stabilisation Unit, 'The UK Government's Approach to Stabilisation (2014)' (May 2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784001/The_UK_Government_s_Approach_to_Stabilisation_A_guide_for_policy_makers_and_practitioners.pdf> p.2.

²⁰ UK Stabilisation Unit, 'The UK Government's Approach to Stabilisation: A guide for policy makers and practitioners' (March 2019) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/784001/The_UK_Government_s_Approach_to_Stabilisation_A_guide_for_policy_makers_and_practitioners.pdf> p.124.

²¹ Alexander Gilder, 'The Effect of 'Stabilization' in the Mandates and Practice of UN Peace Operations' (2019) *Netherlands International Law Review* 66(1) 47-73, pp. 51-52.

²² Alexander Gilder, 'Human security and the stabilization mandate of MINUSCA' (2020) *International Peacekeeping* 1-32.

²³ UN Security Council, 'Report of the Secretary-General on South Sudan' (8 November 2013) S/2013/651 para 39; UN Security Council, 'Report of the Secretary-General on South Sudan' (17 February 2015) S/2015/118 para 29; UN Security Council, 'Report of the Secretary-General on South Sudan' (21 August 2015) S/2015/655 para 35; UN Security Council, Resolution 2100 (25 April 2013) S/RES/2100 paras 16(b)(iii), 25; UN Security Council, Resolution 2295 (29 June 2016) S/RES/2295 para 26; UN Security Council, Resolution 2227 (29 June 2015) S/RES/2227 para 14(c).

major area of cross-cutting UN practice that involves countless UN agencies and programmes. President Ellen Johnson Sirleaf told this Committee that France have a more engaging relationship in Africa than the UK and Ambassador Bermann suggested there should be further cooperation in Africa to avoid leaving the continent to China – greater leadership on stabilization could achieve this. Providing leadership on stabilization that veers UN practice away from war-fighting would show the global community the UK is committed to peace. It would also demonstrate UK commitment to working *with* communities and promote a wide range of actors in the decision-making processes.

5. Key recommendations:

- 5.1 The UK should take the lead on establishing a comprehensive UN understanding of stabilization that is primarily focused on civilian-led activities and taps into the UK's existing knowledge base. This would strengthen a key area of contemporary, cross-cutting UN activity that involves a range of UN actors such as UNDP, UNHCR, UNICEF, UN Women, UNDP, FAO, UNFPA and more. The UK would be able to strengthen its position in the UN and promote the Government's 'Global Britain' narrative.**
- 5.2 UK needs to be actively aware of the legal implications of current multilateral stabilization activities. The UK can use its influence to (re)shape the mandates to refocus attention on positive bottom-up activities that empower local people affected by conflict and build greater multilateral cooperation regions where the UN implements stabilization.**
- 5.3 The UK must not lose knowledge from the UK Stabilisation Unit during the DFID/FCO merger. The Stabilisation Unit is key to continue promoting stabilization practice focused on civilian-led activities.**

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