United Nations Peacekeeping
Evolution, principles and the applicable norms

Lokaverkefni til MA-gráðu í lögfræði
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Prologue

I would like to thank my family for their love, support and patience. I could not have done this without you.

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# TABLE OF CONTENT

List of Abbreviations ........................................................................................................... 7
1 Introduction .......................................................................................................................... 9
2 The United Nations ............................................................................................................. 12
   2.1 The General Assembly ............................................................................................... 13
   2.2 The Security Council ................................................................................................. 14
   2.3 The UN Charter and its limitations on the use of force ............................................. 15
3 Framework of United Nations Peacekeeping Operations ............................................. 16
   3.1 Constitutional Basis of United Nations peacekeeping operations ......................... 17
   3.2 Legal principles governing United Nations peacekeeping operations .................. 18
   3.3 Mandating the use of force by UN peace operations .............................................. 19
      3.3.1 Command and Control of the use of force ...................................................... 21
      3.3.2 Regulating the use of force .............................................................................. 22
   3.4 Application of International law of Armed Conflict to United Nations Forces ........ 22
      3.4.1 Traditional UN Peacekeepers as Non-Combatants ........................................ 24
      3.4.2 The Law of armed conflict as applicable to traditional peacekeeping ............. 25
      3.4.3 Article 2 of the Geneva Convention .................................................................. 27
      3.4.4 UN’s Code of Conduct for Peacekeepers ......................................................... 28
4 Peacekeeping during the Cold War era .......................................................................... 29
   4.1 The birth of UN Peacekeeping: 1947-1956 ................................................................. 29
      4.1.1 United Nations Special Commission on the Balkans (1947-1951) ............... 30
      4.1.2 United Nations Truce Supervision Organization (1948-present) ............... 31
      4.1.3 United Nations Military Observer Group in India and Pakistan (1949-present) .... 32
   4.2 The Assertive Period: 1956-1974 .............................................................................. 32
      4.2.1 United Nations Emergency Force I (1956-1967) ........................................... 33
      4.2.2 United Nations Observation Group in Lebanon (1958) .................................. 35
      4.2.3 United Nations Operation in the Congo (1960-1964) ................................... 36
      4.2.4 The 1973 Arab-Israeli War ............................................................................. 39
   4.3 The Inactive Period: 1974-1987 ............................................................................... 40
   4.4 Rebirth of Peacekeeping: 1988-1991 ....................................................................... 42
List of Abbreviations

AU
African Union

CSCE
The Commission on Security and Cooperation in Europe

ECOSOC
United Nations Economic and Social Council

ECOWAS
The Economic Community of West African States

ECOMOG
The Economic Community Military Observer Group

FUNCINPEC
The United National Front for Independent, Neutral, Peaceful and Cooperative Cambodia

GA
The General Assembly

HRC
Human Rights Council

ICJ
International Court of Justice

ICRC
International Committee of the Red Cross

INTERFET
International Force for East Timor

JNA
Yugoslav People’s Army

NATO
North Atlantic Treaty Organization

ONUC
Operations des Nations Unies au Congo

PDK
Party of Democratic Kampuchea

PLO
The Palestine Liberation Organization

ROE
Rules of Engagement

SC
The Security Council

SOFAs
Status of Forces Agreements

SOP
Standard Operating Procedures

SWAPO
South West Africa People’s Organization

UN
United Nations

UN doc. A/
United Nations document (General Assembly)

UN doc. S/
United Nations document (Security Council)

UNAMET
United Nations Mission in East Timor

UNAMIC
United Nations Advance Mission in Cambodia

UNAMID
United Nations - African Union Hybrid Operation in Darfur

UNAMIR
United Nations Assistance Mission for Rwanda

UNAMIS
United Nations Advanced Mission in the Sudan

UNAMSIL
United Nations Mission in Sierra Leone

UNCIP
United Nations Commission on India and Pakistan

UNCR
United Nations Confidence Restoration Operation

UNDOF
United Nations Disengagement Observer Force

UNDOs
United Nations Development Office for Somalia

UNEF I
United Nations Emergency Force

UNEF II
United Nations Emergency Force II

UNFICYP
United Nations Force in Cyprus

UNGOMAP
United Nations Good Offices Mission in Afghanistan and Pakistan

UNIFIL
United Nations Interim Force in Lebanon
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<tr>
<th>Acronym</th>
<th>Full Name</th>
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<tr>
<td>UNIIMOG</td>
<td>United Nations Iran-Iraq Military Observer Group</td>
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<td>UNIKOM</td>
<td>United Nations Iraq-Kuwait Observation Mission</td>
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<td>UNITAF</td>
<td>Unified Task Force</td>
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<tr>
<td>UNMEE</td>
<td>United Nations Mission in Ethiopia and Eritrea</td>
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<td>UNMIL</td>
<td>United Nations Mission in Liberia</td>
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<td>UNMIS</td>
<td>United Mission in the Sudan</td>
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<td>UNMISET</td>
<td>United Nations Mission of Support in East Timor</td>
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<td>UNMISS</td>
<td>United Nations Mission in the republic of South Sudan</td>
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<td>UNMOGIP</td>
<td>United Nations Military Observer Group in India and Pakistan</td>
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<td>UNOG</td>
<td>United Nations Offices Geneva</td>
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<td>UNOGIL</td>
<td>United Nations Observation Group in Lebanon</td>
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<td>UNOSOM I</td>
<td>United Nations Operation in Somalia I</td>
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<td>United Nations Operation in Somalia II</td>
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<td>UNOTIL</td>
<td>United Nations Office in Timor-Leste</td>
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<td>UNOMIL</td>
<td>United Nations Observer Mission in Liberia</td>
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<td>United Nations Operation in Côte d’Ivory</td>
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<td>UNOL</td>
<td>United Nations Office in Liberia</td>
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<td>UNPA</td>
<td>United Nations Protected Areas</td>
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<td>UNPROFOR</td>
<td>United Nations Protection Force</td>
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<td>UNSCOB</td>
<td>United Nations Special Committee on Palestine</td>
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<td>UNSF</td>
<td>United Nations Security Force</td>
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<td>UNTAC</td>
<td>United Nations Transitional Authority in Cambodia</td>
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<td>UNTAES</td>
<td>United Nations Transitional Administration for Easter Slavonia</td>
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<td>UNTAET</td>
<td>United Nations Transitional Administration in East Timor</td>
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<td>UNTAG</td>
<td>United Nations Transitional Assistance Group</td>
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<td>UNTSO</td>
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1 Introduction

The concept of peacekeeping was born soon after the United Nations (UN) was founded. Ever since the Cold War, the role of the United Nations has become a topical issue for different nations of the world. Particularly use of force by and in support of peacekeeping operations has raised questions relating to the future role of UN peacekeeping operations as a solution regarding international and internal conflict. Throughout the Cold War only two UN means of actions were accepted; peacekeeping and peace-enforcement. Even though the world has changed immensely since then, and UN peacekeeping operations have faced increasing difficulties, no other accepted mode of action has emerged.

The UN has developed an assortment of instruments for controlling and resolving conflicts between and within States. Most important of them are preventive diplomacy and peacemaking, peacekeeping, peace-building, disarmament, sanctions and peace-enforcement. The first three can only be deployed with the consent of the conflicting parties. Sanctions and enforcement on the other hand are coercive measures and by definition do not require the consent of party concerned. Member States have encouraged the UN Secretary-General to play an active role in this field even if they are reluctant when they themselves are party to the conflict. It is clear that the UN cannot impose its preventive and peacemaking services on Member States that do not want them.

Peacekeeping operations were invented and developed by the UN in response to the Cold War. There was a need to address conflicts that arose after the UN Charter entered into force, and for which the mechanisms provided for in Chapters VI and VII of the Charter could not be used. Provisions of Chapter VI, concerning the pacific settlement of disputes, were inadequate and members of the Security Council could not agree upon Chapter VII actions, concerning enforcement measures, due to ideological differences that prevailed during the

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1 The Blue Helmets: a review of United Nations Peacekeeping, p. 3
2 United Nations Secretary-General Boutros Boutros-Ghali, identified preventive diplomacy, peacemaking and peace-building in his Agenda to Peace in 1992. According to the report, preventive diplomacy is action taken to prevent disputes from arising between parties or to prevent existing disputes from escalating into conflicts. Peacemaking is action taken to bring hostile parties to agreement through peaceful means as Chapter VI of the UN Charter foresees. Peacemaking (and peacekeeping) are tools utilized to halt conflicts and preserve peace once it is attained. If successful, the tools strengthen the opportunity for post-conflict peace-building that may prevent recurrence of violence. In the aftermath of international war, peace-building can take the form of concrete cooperative projects which link two or more countries in a mutually beneficial undertaking that can not only contribute to economic and social development. Also enhancing the confidence that is fundamental to peace. In other words, preventive diplomacy is to steer clear of crisis while post-conflict peace-building is to prevent recurrence.
3 Supplement to an Agenda to Peace, paras. 23 and 28
Cold War. As a result, peacekeeping emerged as a mode of international intervention not provided for in the Charter.\textsuperscript{4}

Secretary-General Dag Hammarskjöld established the first UN peacekeeping force in 1956, UN Emergency Force (UNEF). In his report of this mission, he outlined the broad philosophy of peacekeeping that peace operations came to be subjected to. In his “Summary Study”, the Secretary-General pronounced the principles of traditional peacekeeping as (1) Consent, (2) Neutrality or Impartiality and (3) Minimum Use of Force.\textsuperscript{5} Hammerskjöld saw peacekeeping as a role for the UN which was quasi-military but avoided the use of force.\textsuperscript{6}

It has been said that no two UN peacekeeping operations are alike, and that each operation is distinguished by the environment in which it operates and the extent to which it is authorized to carry out various peacekeeping functions. Moreover, each operation builds upon the experience of previous operations. Consequently, by definition UN peacekeeping operations are evolutionary in nature. For the purpose of describing the scope and character of such operations, it is possible to make some general observations regarding their distinguishing features and thereby formulate a broad definition of the concept.\textsuperscript{7}

Peacekeeping has been defined broadly as:

Operations involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict. These operations are voluntary and are based on consent and cooperation. While they involve the use of military personnel, they achieve their objectives not by force of arms, thus contrasting them with the ‘enforcement action’ of the United Nations under article 42.\textsuperscript{8}

Through the years different definitions of peacekeeping have been put forward in doctrine. Former Secretary-General Boutros Boutros-Ghali defined peacekeeping 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.\textsuperscript{9}

\textsuperscript{4} Cox: Beyond self-defense: United Nations peacekeeping operations and the use of force, p. 244
\textsuperscript{5} U.N. Doc. A/3943, Summary study of the experience derived from the establishment and operation of the Force: report of the Secretary-General
\textsuperscript{6} Findlay: The use of force in UN peace operations, p. 1
\textsuperscript{7} Cox: Beyond self-defense: United Nations peacekeeping operations and the use of force, p. 243
\textsuperscript{8} United Nations, The Blue Helmets: A review of United Nations Peacekeeping, p. 4
\textsuperscript{9} U.N. Doc. A/47/277 – S/24111, An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping, p. 11
Since the end of the Cold War, the role of the UN has become increasingly important in the area of international peace and security. However, the use of force by peacekeepers and in support of peacekeeping mission has raised questions on the future role of UN peacekeeping. Despite increasing difficulties faced by UN peacekeepers, a new mode of action beyond peacekeeping and peace-enforcement has not emerged.\textsuperscript{10} This has proven problematic, as peacekeeping forces are at times not the answer to conflict, there have been cases where there was no peace to be kept.

United Nations peacekeeping has over the past six decades evolved into a complex global undertaking. During this time the conduct of peacekeeping operations have been guided mostly on unwritten body of principles and information of the experiences of the thousands of men and women who have served in these operations since 1948.\textsuperscript{11} Peacekeeping has had to evolve as time, technology and circumstances call for different means of actions. But, how has peacekeeping evolved and how have the principles and norms changed during this time?

This thesis is descriptive in nature, and it is not the intension to analyze or interpret the applicable norms and principles of United Nations peacekeeping. In order to understand the background of the United Nations a brief introduction will be given to the General Assembly and the Security Council, the two main political bodies of the UN, as well as the UN Charter’s limitation on the use of force. When a peacekeeping operation is established, the force used is regulated in the operations mandate. This is explained in chapter 3.3 and its subchapters. As peacekeeping is not specifically mentioned in the UN Charter, the constitutional and legal basis for such operations are discussed. When discussing legal principles, the question arises whether peacekeepers are bound by the laws of armed conflict as they are not classified as combatants and not participants in armed conflict. There is always a change that a peacekeeping operation crosses the threshold of conflict as stipulated in Common Article 2 of the Geneva Conventions. This subject is briefly discussed and leads to a summary of UN’s code of conduct for UN peacekeepers.

In order to understand the development of UN peacekeeping a historical overview is outlined in Chapter 4 which provides an inside look into how the applicable norms became principles of peacekeeping. Following this, the principles that evolved are detailed as well as the development of such principles after the end of the Cold War is detailed in the chapter entitled Traditional peacekeeping and applicable norms. Two specific UN peacekeeping operations are outlined in detail, the United Nations Operation in former Yugoslavia and in

\textsuperscript{10} Cox: Beyond self-defense: United Nations peacekeeping operations and the use of force, p. 240
\textsuperscript{11} United Nations Peacekeeping Operations, Principles and Guidelines, p. 8
Somalia, as these two operations marked a new generation of peacekeeping. Following this discussion, an inside into peacekeeping in the new millennium is given, focusing on the changes made after the experiences of Yugoslavia and Somalia. After these experiences, problems faced the UN. The Brahimi Report outlined the main problems, which are discussed in chapter 7.2. Succeeding discussion of the Brahimi Report is the cooperation between the UN and regional organizations or arrangements, which have increased since 2000.

UN peacekeeping operation and peace-enforcement is compared before discussing the use of force of peacekeepers and the doctrine of self-defense. Finally, recent use of force by UN peacekeeping forces is also outlined.

2 The United Nations

“What the Council says is the law.”

The Charter of the United Nations was signed on 26 June 1945 and is the foundation for all the United Nations work. The organization was established to “save succeeding generations from the scourge of war”. Article 1(1) of the Charter lists the primary purpose of the UN as maintaining international peace and security. Peacekeeping is one of the main tools used to achieve this purpose even though it is not explicitly provided for in the Charter.

The United Nations is nothing without its Member states, they are the decision makers and supply resources to the UN. The representatives of governments decide which actions, within the legal framework, are taken by the UN. It goes without saying that Member states have different opinions of the importance on various issues. Actions taken by the UN is the collections of its different components - the Member states. The decisions are often results of compromises of Member states with different interests which further entails the political nature of the Organization.

The United Nations consists of six main bodies; (1) General Assembly, (2) Security Council, (3) ECOSOC, (4) Trusteeship Council, (5) International Court of Justice and (6) The Secretariat. Each organ has different functions.

In this chapter, a brief overview will be given on the two of the main bodies of the United Nations, the General Assembly and the Security Council, as well as on the UN Charter’s limitations on the use of force.

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12 Martti Koskenniemi: The Police in the Temple Order, Justice and the UN: A Dialectical View, p. 327
15 Barnett and Finnemore, Rules for the world: international organizations in global politics, p. 4
2.1 The General Assembly

The United Nations General Assembly (UNGA) was established in 1945 under the UN Charter. It occupies a central position as the main deliberative, policymaking and representative organ of the UN. It comprises of all 193 Member states of the United Nations and provides a forum for multilateral discussion on international issues covered by the Charter.

According to the UN Charter, the General Assembly may consider and make recommendations on the general principles of cooperations for maintaining international peace and security, including disarmament.\(^{16}\) It may discuss any question relating to international peace and security and make recommendations on it, except where a dispute or situation is currently being discussed by the Security Council.\(^{17}\) The Assembly can initiate studies and make recommendations to promote international political cooperation, the development and codification of international law, the realization of human rights and fundamental freedoms.\(^{18}\) It may make recommendation for peaceful settlements of any situation that might impair friendly relations among nations.\(^{19}\) The General Assembly shall receive and consider reports from the Security Council and other UN organs,\(^{20}\) as well as approve the UN budget and establish the financial assessments of Member States.\(^{21}\) It falls in the hands of the Assembly to elect the non-permanent members of the Security Council and the members of other UN councils and organs, and, on the recommendation of the Security Council, to formally appoint the Secretary-General.\(^{22}\) Decisions on important questions, such as those on peace and security, admission of new members and budgetary matters, require a two-thirds majority at the Assembly. Decisions on other questions are taken by simple majority.

The General Assembly may take action if the Security Council fails to act, stemming from a negative vote of a permanent member, in a case where there seems to be threat to peace, breach of peace or acts of aggression. The Assembly may consider the matter instantly with a

\(^{16}\) Article 11(1) of the UN Charter
\(^{17}\) Article 11(2) of the UN Charter
\(^{18}\) Article 13(1) of the UN Charter
\(^{19}\) Article 14 of the UN Charter
\(^{20}\) Article 15 of the UN Charter
\(^{21}\) Article 17 of the UN Charter
\(^{22}\) Article 18(2) of the UN Charter
view to make recommendations to Members for collective measures to maintain or restore international peace and security.\textsuperscript{23}

Despite the fact that the Assembly is only formally authorized to make non-binding recommendations to States on international issues that fall within its scope, it has nevertheless initiated actions; political, economic, humanitarian, social and legal, that have affected millions of people across the world.

2.2 The Security Council

The United Nations Security Council is one of the principal organs of the UN. The Council’s first session was held on 17 January 1946 in London. Members of the Security Council are numbered at 15, consisting of five permanent members with veto powers, China, France, Russia, The United Kingdom and the United States\textsuperscript{24} and 10 elected non-permanent members with two year terms. Chapter V sets out the basic structure of the Council. The Security Council has the primary responsibility, under the UN Charter, to maintain international peace and security.\textsuperscript{25} The Council is organized to be able to function continuously and a representatives of each of its members must be present at all times at the UN Headquarters.\textsuperscript{26} This requirement was adopted to address the weakness of the League of Nations since that organization was often unable to respond quickly to crisis.\textsuperscript{27}

When a complaint is brought before the Security Council, its first action is usually to recommend to the parties to reach an agreement by peaceful means. The Council has in some cases undertaken investigation and mediation. The Council can appoint a special representative or solicit the Secretary-General to do so or to use his or hers good offices.

When a dispute escalates, the Council’s first concern is to bring an end to it at the earliest possible time. In this regard, the Council has issued cease-fire directives which have been helpful in preventing wider hostilities. The Council also dispatches United Nations peacekeeping forces to help reduce tensions, keep opposing forces apart and create conditions of calm so that peaceful settlement may be achieved. The Council can also decide on enforcement measures, economic sanctions or collective military action.\textsuperscript{28}

Article 5 of the UN Charter states that a Member State against which preventive or enforcement action has been taken by the Security Council may be suspended from the

\textsuperscript{23} “Uniting for Peace” resolution of November 1950, Resolution 377 (V), U.N. Doc. A/RES/377 (V) (1950)
\textsuperscript{24} Article 23(1) of the UN Charter
\textsuperscript{25} Article 24(1) of the UN Charter
\textsuperscript{26} Article 28(1) of the UN Charter
\textsuperscript{27} CBITMUN Committee Handbook, p. 2
\textsuperscript{28} Chapter VII of the UN Charter
exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Member States of the UN, not sitting in the Security Council may still participate, without a vote in discussions, when the Council believes that the countries interests are affected. This also applies to non-members of the UN if they are parties to a dispute being considered by the Council.

2.3 The UN Charter and its limitations on the use of force

The founders of the United Nations created a complex system; a treaty-based system that requires States to impose limits on their own right to resort to force and to depend on a collective response for protection. The aim was to prohibit the unilateral use of force by States other than in self-defense. Article 2 (4) expresses this prohibition in wide terms, banning the “use of force” rather than “war.” The system also aimed to centralize the use of force under the control of the Security Council. When the Charter was drafted, the aim was for the Security Council to have its own standing army and a Military Staff Committee to advise and assist in military planning. When the council was acting in case of a threat to peace, breach of peace or acts of aggression (Art. 39) it could take provisional measures (Art. 40), measures not involving the use of force, (Art. 41) and measures involving the use of force (Art. 42). However, the UN standing army that could carry out forcible measures to maintain and restore international peace and security was never established. States maintain their right to self-defense, but the Council must also be involved. It states in Article 51: “Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.” The intention was to ensure that the Council was informed about the use of force by States, and that it could then take action where necessary. A State’s right to self-defense is only a temporary right until the Security Council has taken measures to maintain international peace and security.

29 ‘War’ is argued by some to be a limited technical term, it had been employed in the Covenant of the League of Nations.
30 Under Article 43
31 Articles 45 - 47 of the UN Charter
33 Myra Williamson: Terrorism, War and International law; The Legality of the Use of Force Against Afghanistan in 2001, p. 111
The Charters collective security system did not operate as planned. The prohibition on the use of force has not stopped States from resorting to it and there have been over 100 major conflicts since 1945. But even so, there was a general agreement among States that the prohibition on the use of force in Article 2(4) represented customary international law; the fact that there were breaches did not terminate the normative status of the prohibition.

The veto-power of the 5 permanent Members limited the actions of the Council so that it was unable to respond to the use of force by States during the Cold War. Moreover, threats to international peace and security that occurred after the founding of the United Nation were different in nature from those provided for in the UN Charter, which were in response to the experiences of World War II. Conflicts in Iran-Iraq, Iraq-Kuwait, the Falklands, between Israel and neighbouring states, between Eritrea and Ethiopia were exceptional not typical. Many cases were complex and involved a mixture of civil war and international conflict. New threat to international peace and security arose from civil wars and from civil wars with outside intervention. UN’s system proved flexible enough to allow the Security Council to take forcible measures, even though not expressly provided for in the Charter. Even if the Security Council was not able to order the use of force by its own standing army, it could “authorize” or “call on” member states to use force.

3 Framework of United Nations Peacekeeping Operations

As mentioned above the Security Council has the responsibility of maintaining international peace and security and the five permanent members were given veto power, pragmatically reflecting that a consensus is needed among the major powers. Succeeding World War II, the drafters of the Charter assumed the victors would continue to cooperate with each other in light of their recent successful joint effort. However, the opposite occurred. The world became divided into two blocks separated by Western democratic and Eastern communistic political ideologies that undermined the new UN security mechanism. This was the start of the Cold War. This rivalry rendered the security enforcement mechanism as envisaged by the UN Charter ineffective. The veto power of the permanent Members of the Security Council blocked any attempt to exercise Chapter VII security and peace-enforcement responsibility.

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35 ICJ, Nicaragua case, June 27, 1986, I.C.J. Reports 1986, paras. 186-190
37 UN Chapter, article 24(1)
38 UN Charter art. 27(3)
39 Mats R. Berdal: The Security Council, Peacekeeping and Internal Conflict after the Cold War, p. 73
While conflicts around the globe continued, initiative after initiative failed due to one or more of the permanent Members exercising their veto power.\textsuperscript{40} The UN generated a compromise-peacekeeping in response and to facilitate the “adjustment or settlement of international disputes or situations which might lead to a breach of the peace.”\textsuperscript{41}

### 3.1 Constitutional Basis of United Nations peacekeeping operations

The constitutional basis of the United Nations peacekeeping operations is found in the broad mandate of Article 1 of the UN Charter, where one of the main purposes of the UN is stated to maintain international peace and security.\textsuperscript{42} There have been debates regarding where the UN gets its more specific mandate within the Charter, even though it is now little doubt that the UN does have power to authorize such operations.\textsuperscript{43} This was not always the case, at first some States objected to the establishment of peacekeeping operations. States argued that the establishment of such operations went beyond the power of the Security Council since they were not specifically mentioned in the Charter.\textsuperscript{44} The International Court of Justice (ICJ) emphasized in the \textit{Certain Expenses of the United Nations Case}\textsuperscript{45} that even though peacekeeping was not regarded as an enforcement measure within the realm of Chapter VII of the Charter, the Security Council undoubtedly had those enforcement powers and thereby powers to implement less forceful measures. The ICJ made it clear that the Security Council had the legal capacity to establish peacekeeping operations, it did however not give an opinion on where the constitutional sources of such operations were to be found.

Nonetheless, as far as UN peacekeeping forces are authorized to use force in self-defense, they cannot be regarded as completely peaceful means of dispute settlement under Chapter VI. Because of this, Chapter VII is usually considered as the general legal basis for UN peacekeeping operations, even though they are not Chapter VII enforcement measures. Overall, the legality of UN peacekeeping operations under Chapter VII is accepted, even if

\textsuperscript{40} Edvard J. Perkins, United Nations Peacekeeping, p. 435
\textsuperscript{41} Edvard J. Perkins: United Nations Peacekeeping, p. 435
\textsuperscript{42} Article 1(1) reads:

The purpose of the United Nations are: (1) 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.

\textsuperscript{43} McCoubrey and White: The blue helmets: legal regulations of United Nations military operations, p. 50-55
\textsuperscript{44} Cox: Beyond self-defense: United Nations peacekeeping operations and the use of force, p. 247
\textsuperscript{45} International Court of Justice, ‘Certain expenses of the United Nations’ Advisory opinion of 20 July 1962, Reports of Judgements, Advisory Opinions and Orders, p. 166-167
the exact source of that legality is not agreed upon.\textsuperscript{46} Dag Hammerskjöld, former United Nations Secretary-General described peacekeeping as being authorized by Chapter VI \textsuperscript{\frac{1}{2}}.\textsuperscript{47}
This is caused by the fact that peacekeeping operations have frequently involved use of military personnel but not Chapter VII enforcement measures.\textsuperscript{48}

3.2 Legal principles governing United Nations peacekeeping operations
Peacekeeping was invented out of the necessity to fill a void caused by the Cold War. A solution was needed to bring an end to regional conflicts that were occurring. The UN developed what is now known as traditional peacekeeping and derives from what is often called Chapter VI \textsuperscript{\frac{1}{2}}. As stated above it was Secretary-General Hammerskjöld that described peacekeeping as being authorized under that Chapter. The description of the Secretary-General makes it difficult in determining precisely where traditional peacekeeping lies on the international diplomacy spectrum; between “consent and coercion” and “passivity and force.”\textsuperscript{49}

Chapter VI \textsuperscript{\frac{1}{2}} peacekeeping is more restrained than Chapter VII peace enforcement operations. Traditional peacekeeping is only one of the instruments available for the UN in its efforts to maintain international peace and security. Peacekeeping is the use of military force to maintain and secure peace, opposed to using it to engage in war. The role of a UN peacekeeper is symbolic in many ways, as an instrument that shows international intentions to restore and enforce peace. Peacekeepers, even though usually armed, are to remain above the battle and only to use their weapons as a last resort for self defense.\textsuperscript{50}

As mentioned before peacekeeping is evolutionary in nature. As peacekeeping evolved, some core principles became fundamental to their operation. These principles are included in various legal documents relating to peacekeeping operations, such as the Status of Forces Agreements (SOFAs) and rules of engagement.\textsuperscript{51} The main underlying principles of peacekeeping are: (1) consent of all parties concerned and the competent organ of the UN,
usually the Security Council,\textsuperscript{52} (2) impartiality and (3) non-use of force except in self-defense. These principles are based on sound legal and practical reasoning. Article 2(7) of the UN Charter prohibits intervention in domestic affairs of a Member State, outside of Chapter VII enforcement measures.\textsuperscript{53} Therefore, a UN peacekeeping force can solely intervene in domestic affairs if the State has agreed to that intervention and to the peacekeeping operations as a whole. If the UN is to keep the peace, it must in the same way be impartial and unbiased in peacekeeping operations. It would be extremely difficult for the UN to engage in coercive force and still be considered as a neutral body. It is for that reason that the use of force by UN peacekeepers is limited to being used in self-defense.

The UN has been reluctant to go beyond self-defense as the touchstone of the right to use force in regards to peacekeeping operations.\textsuperscript{54} In fact, the Secretary-General and the Members of the United Nations “considered it essential from a political and legal standpoint to distinguish peacekeeping from enforcement by restricting the use of force to self-defense.”\textsuperscript{55}

\subsection*{3.3 Mandating the use of force by UN peace operations}

The use of force by a UN peace operations is regulated by the mandate given to it by the Security Council. The drafting of a mandate is an extremely political process.

Despite the fact that mandates rarely refer to a specific Chapter of the UN Charter under which they are authorized, a custom has emerged where peacekeeping forces are assumed to be authorized under Chapter VI entitled “pacific settlement of disputes”. Decisions taken under this Chapter are usually considered to be recommendatory and not enforceable since the Chapter deals with cooperative measures to resolve a conflict. As a consequence, a peacekeeping operation established by the Security Council under Chapter VI is conventionally only deployed with the consent of parties involved in a conflict. Concerning the use of force, Chapter VI operations are presumed to be limited to self-defense as it may only use force with consent of the parties. Differing from peacekeeping operations, the use of

\textsuperscript{52} Peacekeeping operations can be authorized by the General Assembly, unlike enforcement measures, but the General Assembly has only two times authorized peacekeeping; UNEF 1 which was established to secure the withdrawal of troops from Egyptian territory and UNSF created to maintain peace and security in the West Iran territory. UN Peacekeeping History, p. 9

\textsuperscript{53} Article 2,(7) of the UN Chapter reads:

\begin{quote}
Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.
\end{quote}

\textsuperscript{54} Schachter: Authorized use of force by the united nations and regional organizations, in Law and Force in the new international order p. 84

\textsuperscript{55} Ibid.
military force by the UN for enforcement measures stems from Chapter VII of the UN Charter. Under that Chapter, the Security Council takes decisions that are enforceable, including the imposing of economic sanctions and the undertaking of military action. A Chapter VII operation may therefore be authorized to use force beyond self-defense for enforcement purposes. This was confirmed by the International Court of Justice (ICJ) in 1962,\textsuperscript{56} when it ruled that while the UN had an inherent capacity to establish, assume command over and employ military forces, they may only exercise “belligerent rights” when authorized by the Security Council acting under Chapter VII. The ICJ opinion suggests that the use of force by a Chapter VI peacekeeping operation beyond self-defense is illegal under the UN Charter. Therefore, the self-defense doctrine may be seen as a key criterion that distinguishes peacekeeping from peace enforcement operations.\textsuperscript{57}

Security Council resolutions that envisage the use of force almost never mention it. A mission is usually mandated to use “all necessary means” to accomplish its mandate. Consequently, refraining from specifying the appropriate level of force to be used in advance.\textsuperscript{58} Even though the mandates for UNPROFOR authorized “all measures necessary” and UNOSOM II in Somalia authorized “all necessary means”, the way force was used was entirely different.

Since the end of the Cold War, situations have been complicated because of the tendency of the Security Council to allow Chapter VII mandates that have been perceived as peacekeeping operations. This has been resorted to for three main purposes. Firstly, to allegedly reinforce a missions right to use force in self-defense. An example of this is the UN Transitional Administration for Easter Slavonia, Baranja and Western Sirmium (UNTAES). The use of Chapter VII in this regard is probably a misuse of the UN Charter as peacekeepers already have the right to self-defense under Chapter VI. Secondly, some peacekeeping operations that originally deployed under Chapter VI later obtained revised mandates authorized under Chapter VII. This usually happens after peacekeeping forces experience difficulties. This is supposedly to strengthen their right to self-defense. A good example of this is the mandate given to UNPROFOR in Bosnia when the force experienced difficulties with the local parties. Thirdly, peacekeeping operations have gained Chapter VII mandates to allow them to conduct what is in effect peace-enforcement. This was the case in UNOSOM II, UNTAET and UNAMSIL.

\textsuperscript{56} International Court of Justice, ‘Certain expenses of the United Nations’ Advisory opinion of 20 July 1962, Reports of Judgements, Advisory Opinions and Orders, p. 177
\textsuperscript{57} Trevor Findlay: The use of force in UN peace operations, p 7-9
\textsuperscript{58} Warbrick, C.: Current developments: public international law, p. 947
Difficulties regarding the UN Charter and the use of force by peacekeeping forces, is that peacekeeping and problems relating to peacekeeping were not foreseen by the drafters of the Charter. The Charter itself is very inflexible, which results in reinterpretation of the Charter so that undertakings can be sanctioned by it.59

### 3.3.1 Command and Control of the use of force

The chain of command in UN peace operations run from the Security Council through the UN Secretary-General and his representatives in the field to the military contingents supplied by UN member states.60

The Security Council is responsible for the command and control of military forces. When dealing with enforcement measures that have called for sustained and massive use of force, the UN has contracted out command and control of operation to a single member state or a coalition of the willing. Some peacekeeping operations/peace-enforcement actions have been contracted to individual member states or coalition, this was the case of the United Task Force (UNITAF) in Somalia which was led by the US, and the International Force for East Timor (INTERFET) led by Australia.61

Command and control of UN peacekeeping operations has been entrusted to the Secretary-General ever since Dag Hammerskjöld took responsibility for UNEF I. This was merely a coincidence simply because there was no one else due to the absence of a functioning Military Staff Committee. For this reason, the Secretary-General is the commander in chief of UN peace operations.

For most peacekeeping operations, a symbolic command is sufficient. The Secretary-General has however been actively involved in command decisions, particularly when force has been used. In Somalia and in Bosnia, the Secretary-General was acting as commanding general and making final decision regarding the application of air power, arrangement of ground forces and the termination of commanding officers.62 The involvement of the Secretary-General depends to a large extent on his personality. Both Hammerskjöld and Boutros Boutros-Ghali were interventionists, while Kurt Waldheim and Perez de Cuellar removed themselves from the day-to-day command and management of peace operations. Secretary-General Kofi Annan fell somewhere in between.63

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59 Trevor Findlay: The use of force in UN peace operations, p. 7-9
60 Ibid., p. 9
61 Ibid., p. 10
62 Rosenau, J.N.:Governance in the twenty-first century, p. 35
63 Trevor Findlay: The use of force in UN peace operations, p. 7-10
3.3.2 Regulating the use of force

Security Council resolutions establishing peacekeeping operations almost never mention under which UN Chapter this is done. Moreover, usually resolutions fail to mention what type of operation is envisaged and broad guidelines for the use of force are contained in a report by the Secretary-General. Security Council resolutions usually endorse and/or cite the Secretary-Generals report. The procedure is the same when a mandate is changed during operations lifetime.

Guidelines for the use of force are sometimes reiterated in a Status of Forces Agreements (SOFA) between the UN and host state of peacekeeping operation.\textsuperscript{64} If reiterated the terminology is extremely general. For the peacekeeping operation in the Congo for example, the SOFA simply stated that the UN should only have the option to use force as a last resort and subject to restrictions imposed by its mandate.\textsuperscript{65} Usually, there is no mention of the use of force at all, indisputably to avoid raising fears of the host state.

Further details on the use of force are to be found in Standard Operating Procedures (SOP) issued to the UN force. The SOP defines force and principles governing its use. The intention of SOP is to explain in detail the circumstances for which force can be used and establish a level of responsibility for taking the decision to use it. The rules for the use of force can be called Rules of Engagement (ROE) and are issued in written form to troops in the field. Rules of Engagement for peacekeeping operations aim to encompass two important principles of peacekeeping, restraint and legitimacy.\textsuperscript{66}

3.4 Application of International law of Armed Conflict to United Nations Forces

Public international law addresses the problem of armed conflict on two levels. \textit{Jus ad bellum}, founded primarily on Chapter VII of the UN Charter is concerned with avoiding the use of armed force in international relations or, where this proves impossible, prescribes a framework for measures to be taken for re-establishment of international peace and security. This framework is fundamental to UN peacekeeping operations. \textit{Jus in bello} in international law governs the conduct of hostilities as well as protect and relieve victims of armed conflict.

Relevant rules and principles of \textit{jus in bello} are generally accepted as applying to hostilities in which UN forces may be involved in, but their application in detail may be

\textsuperscript{64} US Department of the Army: Peace Operations, p. 66
\textsuperscript{65} Seyersted, F.: United nations Forces in the Law of Peace and War, p. 72
\textsuperscript{66} Zurick, T.: Army Dictionary and Desk Reference, p. 176
problematic in light of the *sui generis* nature of peacekeeping forces and their operations. *Jus in bello* has been divided into two sub-sectors, termed Hague law and Geneva law, or simply international humanitarian law. The Hague Conventions from 1899 and 1907 concern the methods and means of warfare, including tactics, weapon types and usage. Geneva law founded upon the Geneva Conventions I-IV and the two 1977 Protocols concerns the protection and relief of victims, the wounded and sick on land, wounded, sick and/or shipwrecked at sea, prisoners of war and civilians.\(^67\)

Application of *jus in bello* to hostilities in which UN forces are involved raises difficult questions. Much of *jus in bello*’s substance dates back decades before the United Nations or even its forerunner the League of Nations came to exist, and does therefore not directly consider actions by its forces. Even provisions drafted after the establishment of the UN are silent on the issue.

Article 51 of the UN Charter conserves the inherent right to individual or collective self-defense. Usually this is conceived as a short-term response to armed attack, until effective action for restoration of peace and security is taken by the Security Council. However, Chapter VII of the Charter has never operated as envisioned by its drafters as forces held on stand-by for immediate UN use never came into being. This resulted in article 51 assuming a greater importance than originally intended.\(^68\)

The exercise of *jus in bello* in UN military operations also presents a conceptual issue. Forces acting under the auspices of the UN have the primary function of ending armed conflict as an unlawful condition of international relations. How can they then be bound by rules and principles which are part of the situation which they are trying to end? Finn Seyersted describes:

> The most important political obstacle is the general feeling that a *United Nations action*, even if governed by the same laws as war in its traditional sense, *must be clearly distinguished from war*, and the apprehension that accession by the United Nations to the conventions on warfare might blur the distinction.\(^69\)

This statement from 1966 is somewhat outdated. Customary law has developed along with the implications of requirements for a technical conditions of “war”. In principle, those who seek to act for the cause of lawfulness and humanity must be willing to be bound by the basic humanitarian norms of *jus in bello*. D. W. Bowett expresses this point clearly in his comment:

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\(^{67}\) McCoubrey & White: The Blue Helmet: Legal regulations of United Nations Military Operations, p. 153

\(^{68}\) Ibid., p. 154

\(^{69}\) F. Seyersted: United Nation Forces in the Law of Peace and War, p. 387
There is no rule of international law which, on the basis of the illegality of war ... alone, would compel the finding that the rules of law regulating [the conduct of hostilities] ... do not apply to [a lawful] ... belligerent to the same effect... as was traditional conceived ... [it is not accepted] that United Nations Forces, absent other legal considerations, are released from the ... law of war because of the legal status of its opponent.\(^{70}\)

This principle harmonizes with the fundamental basis of international humanitarian law and must be considered correct. UN personnel benefit from the same legal protection as those engaged in combat against them. Even though the general principle may seem simple, difficult issues of substance still arise in its application.\(^{71}\)

### 3.4.1 Traditional UN Peacekeepers as Non-Combatants

Traditional UN peacekeeping operations are normally not involved in armed conflict, as it goes against their nature.\(^{72}\) The laws of armed conflict do generally not apply to peacekeepers as they are not in armed conflict with anyone. UN peacekeepers are protected as non-combatants under Common Article 3 of the Geneva Convention and Additional Protocol I, Art. 37(1)(d). In order to label themselves as noncombatants, peacekeepers wear blue helmets and armbands. The UN alone can authorize the wearing of its symbols and emblems and it is illegal for others than peacekeepers to wear the designated peacekeeping emblems to avoid being targeted. If a faction involved in a conflict does so, they become guilty of treachery\(^{73}\) and can be punished accordingly.\(^{74}\) The Protocol does not define or explain the extent or attributes of the “protected status” even though it envisages that UN peacekeepers have a protected standing.\(^{75}\) Additional Protocol I is evidently meant to apply to traditional peacekeeping operations and not peace-enforcement actions where UN forces engage as combatants.\(^{76}\)

The law of armed conflict may be applicable if the United Nations peacekeepers become party to an armed conflict through use of force other than self-defense. There are numerous consequences if this occurs. In situations where the law of armed conflict applies “captured force members would be entitled to prisoner of war status, forces actively engaged in

\(^{70}\) D. W. Bowett: United Nations Forces, p. 496
\(^{71}\) McCoubrey & White, The Blue Helmet: Legal regulations of United Nations Military Operations, p. 156
\(^{72}\) Garth J. Cartledge, International Humanitarian Law, p. 150
\(^{73}\) Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflict. Art. 37(1)
\(^{74}\) L. C. Green: The Contemporary Law of Armed Conflict, p. 323-324
\(^{75}\) Christopher Greenwood: Protection of Peacekeepers: The Legal Regime, p. 190
\(^{76}\) Ibid, p. 190, n. 26
hostilities would be lawful military targets and enemies would be entitled to combatants privilege." It is important to note that if United Nations peacekeepers become parties to a conflict and the law of armed conflict is applicable, that the peacekeepers are no longer protected as non-combatants.

3.4.2 The Law of armed conflict as applicable to traditional peacekeeping

Traditional peacekeeping forces act under the authority of the United Nations. The UN, as an organization, is not bound by the Conventions relating to the laws of armed conflict, except in cases where provisions of these Conventions have gained the status of customary law. The laws of armed conflict makes a reference to ‘belligerent parties’, ‘parties to the conflict’, ‘states’, ‘enemy forces’, ‘powers’, ‘High Contracting Parties’ and ‘signatories’. A UN peacekeeping force does not fit accurately into any of these categories. As previously mentioned, the UN is not a signatory to the Geneva Conventions and for that reason UN forces are not obligated to follow provisions of the Convention. Nevertheless, the Geneva Conventions form a great deal of customary international law that is applicable to all parties of an international armed conflict.

Even though the International Committee of the Red Cross (ICRC) had maintained the applicability of international humanitarian law to UN peacekeeping forces, the United Nations position on the matter was that their forces were merely obliged to follow the principles and ‘spirit’ of the international law of armed conflict.

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80 Tyge Lehmann: Some Legal Aspects of the United Nations of Peace-Keeping Operations, p.16
83 Garth J. Cartledge: International Humanitarian Law, p. 127
The Secretary-General directed UNEF I to observe the principles and spirit of the general international conventions applicable to the conduct of military personnel. Likewise, the guidelines for the United Nations Force in Cyprus (UNFICYP) were to respect the principles and spirit of international law regarding the conduct of military forces. This meant that UN forces were to conduct themselves in accordance with general principles of proportionality, military necessity, martial honor, chivalry, humanity and the prevention of unnecessary suffering. In addition, they were to avoid military action that could possibly discredit the UN or have a negative effect on the legitimacy of the mission. It is important that peacekeepers distinguish between military forces and civilians, and between civilian and military objectives.

The UN has tried to keep peacekeeping operations distinct from peace-enforcement actions, both in theory and in practice. Applying the law of armed conflict could have serious repercussions. Combatants privilege allows a military member of one force to shoot and kill an enemy combatant. In the event a peacekeeper shoots and kills a hostile member of a faction, because of a misconception regarding the application of the laws of armed conflict, it could have serious repercussions for the entire peacekeeping operation. Put differently, it is unnecessary, dangerous and counterproductive to apply the law of armed conflict to traditional peacekeeping operations. This is one of the reasons why the UN has been very reluctant to affirm the application of the law of armed conflict to traditional peacekeeping operations.

The Institute of International Law adopted a resolution in 1971, titled “The Condition of Application of Humanitarian Rules of Armed Conflict to Hostilities in which UN Forces may be Engaged.” Article 2 of the resolution expresses:

The humanitarian rules of the law of armed conflict apply to the United Nations as of right, and they must be complied with in all circumstances by United Nations Forces, which are engaged in hostilities.

The rules referred to in the preceding paragraph include in particular:

(a) the rules pertaining to hostilities in general and especially those prohibiting the use or some uses of certain weapons, those concerning the means of injuring the other party, and those relating to the distinction between military and non-military objectives.

(b) the rules contained in the Geneva Conventions of August 12 1949;

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85 Tyge Lehmann: Some Legal Aspects of the United Nations of Peace-Keeping Operations, p. 16

86 Garth J. Cartledge: International Humanitarian Law, p. 153
(c) the rules which aim at protecting civilian persons and property.\textsuperscript{87}

The resolution never gained a following. Even so, the UN drafted its Model Participation Agreement to be used in peacekeeping operations. Before a peacekeeping operation is established, the UN and the Member States that contribute forces to a operation agree to the following:

\[\text{The United Nations peacekeeping operation}] \text{ shall observe and respect the principles and the spirit of the general international conventions applicable to the conduct of military personnel. The international conventions referred to above include the four Geneva Conventions of 12 August 1949 and their Additional Protocols of 8 June 1977 and the UNESCO Convention of 14 May 1954 on the Protection of Cultural Property in the even of Armed Conflict.} \text{[The Participating State] shall therefore ensure that the members of its national contingent serving with [the United Nations peacekeeping operation] be fully acquainted with the principles and spirit of these Conventions.}\textsuperscript{88}

Principles and spirit of international humanitarian law can be a misguided concept. Even so, it has protected the non-combatant status of UN peacekeepers and provided a framework for proper conduct of peacekeepers in their operations.\textsuperscript{89}

\textit{3.4.3 Article 2 of the Geneva Convention}

The Geneva Conventions regard Common Article 2 to be applicable during international armed conflict. The article is the threshold for whether an international armed conflict exists and thus invokes the application of the international law of armed conflict.\textsuperscript{90} UN operations that are limited to use of force only in self-defense will not cross the Common Article 2 threshold. However, if the threshold is reached the rights and obligations of the law of armed conflict become applicable.\textsuperscript{91}

It is difficult to define what amounts to being a armed conflict. Interpretation of the Geneva Conventions led the ICRC to state the following:


\textsuperscript{89} Walter Gary Sharp, Sr.: Protecting the Avatars of International Peace and Security, p. 134-135

\textsuperscript{90} Adam Roberts and Richard Guelff: Prefatory Note, p. 169-170

\textsuperscript{91} Garth J. Cartledge: International Humanitarian Law, p. 152
Any difference arising between two States and leading to the intervention of members of the armed forces is an armed conflict within the meaning of Article 2, even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or how much slaughter takes place. The respect due to the human person as such is not measured by the number of victims.\textsuperscript{92}

This definition is purposefully broad, as to include a whole spectrum of conflicts and bring them under the Convention.\textsuperscript{93} The ICRC requires an armed conflict to be present so that the law of armed conflict is applicable.\textsuperscript{94} It is realistic to assume that an international armed conflict is present when the threshold of Common Article 2 is crossed, and it is crossed when there is an identified enemy. An identified enemy is when members of the enemy factor or para-military forces associated with another state commits acts of war for the advancement of that state’s policy.

The UN accepts that traditional peacekeeping forces may become combatants and subsequently lawful targets when a peace operation reaches an undefined level of intensity.\textsuperscript{95} Since the UN has not specified circumstances where their operations might cross the threshold of Common Article 2, their forces do not have guidance on what level of intensity cross the Article and hence amount to armed conflict.\textsuperscript{96}

3.4.4 UN’s Code of Conduct for Peacekeepers

In May 1996, the UN and ICRC had prepared a set of Directives for UN forces regarding Respect for International Humanitarian Law. The ICRC described the directives as a clarification of the principles and spirits of international humanitarian law to which the UN has obligated its forces to follow for the past fifty years.\textsuperscript{97} In August 1999 Secretary-General Kofi Annan attempted to clarify the applicability of the international law of armed conflict in UN peacekeeping operations.\textsuperscript{98} The Bulletin promulgated that “fundamental principles and rules of international humanitarian law” apply to forces conducting operations under UN command and control.\textsuperscript{99} However, the Bulletin does not address how the law of armed

\textsuperscript{92} Jean Pictet: The Geneva Conventions of 12 August 1949: commentary, p. 20
\textsuperscript{93} Richard I. Miller: The Law of war, p. 275
\textsuperscript{94} Toni Pfanner, Application of International Humanitarian Law and military operations undertaken under the United Nations Charter, p. 56
\textsuperscript{95} Walter Gary Sharp, Sr.: Protecting the Avatars of International Peace and Security, p. 150
\textsuperscript{96} Judith G. Gardam: Proportionality and Force in International Law, p. 288-289
\textsuperscript{97} Garth J. Cartledge: Legal Constraints on Military Personnel Deployed on Peacekeeping Operations, p. 121
\textsuperscript{98} Secretary-General’s Bulletin: Observance by United Nations Forces of International Humanitarian Law, 1.2 ST/SGB/1999/13 (1999)
\textsuperscript{99} Ibid.
conflict apply to different types of UN peacekeeping operations. Article 1.1. of the Bulletin states:

The fundamental principles and rules of international humanitarian law set out in the present bulletin are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence.100

The Bulletin does not distinguish between the use of force in peacekeeping operations and peace-enforcement operations. With that the Bulletin fails to recognize the different legal foundations that authorize the use of force as well as limits applicable to the use of force; one being the law of armed conflict and the other an inherent right to self-defense.101 The Bulletin also centers its attention on the use of force in accordance with the international law of armed conflict and fails to recognize that peacekeepers seldom use force to fulfill their mandate. The use of force in traditional peacekeeping operations is not the rule but the exception, and furthermore it is limited to self-defense. Even so, those who use force in self-defense ad bellum are as bound to jus in bello rules as those using force for other purposes. In peace-enforcement operations, the use of force is authorized if the operation’s mandate and the rules of engagement allow for it.102

The Bulletin is a significant and positive step, in that it is the first time the UN has recognized that UN forces are bound by principles that are binding on national forces during armed conflict.

4 Peacekeeping during the Cold War era

4.1 The birth of UN Peacekeeping: 1947-1956

The three peacekeeping missions created during this period were responsible for beginning the process through which peacekeeping became an instrument for the UN. Their primary focus was to observe, monitor, establish facts and report their findings. UNSCOB was the first operation, set up in 1947 to monitor and investigate claims made by Greece regarding support provided by Albania, Bulgaria and Yugoslavia to insurgent communist guerrillas in Greece, which had pledged to overthrow the established government. Next came UNTSO, which was set up in 1948 to monitor cease-fire lines between Israel and its neighbours. This

100 Ibid.
101 Garth J. Cartledge: Legal Constraints on Military Personnel Deployed on Peacekeeping Operations, p. 121-122
102 Ibid., p. 135-136
force is still in existence as is the third force set up during this period. UNMOGIP which was established in 1949 to monitor and report on the situation along cease-fire lines within Kashmir over which India and Pakistan had fought between 1947 and 1949.103

4.1.1 United Nations Special Commission on the Balkans (1947-1951)

There has been a debate over United Nations Special Commission on the Balkans (UNSCOB) on whether it was classified as a peacekeeping operation. The argument that it was not is based on the premise that there has to be some form of cooperation from the parties of a dispute. An analysis of UNSCOB shows that there was never any possibility of cooperation from the communist states neighbouring northern Greece. Even so, UNSCOB is included as an example of UN peacekeeping, in that it depicts the first time that an observation group made up of impartial military personnel was used. This, in and of itself, established a central element for following peacekeeping operations.104

Germany occupied Greece during World War II and that gave rise to an underground resistance movement known as the National Liberation Front (EAM). Even though EAM and its military wing ELAS (the national People’s Liberation Army) operated under the umbrella of the Greek Communist Party (KKE) there were many non-communists in its rank.105 Differences between communists and non-communists grew and the country ended up in a civil war. As the civil war spread north, the communist guerrillas started receiving military help from the newly established communist states of Albania, Bulgaria and Yugoslavia. Tension grew and resulted in UN action.106 The Greek civil war highlighted the emerging conflicts between the West and the Soviet block which was to result in the deadlock in the Security Council. The continued use of veto by the Soviet Union led to the issue being removed from the Security Council to the General Assembly, which later established UNSCOB. Functions and the mandate of UNSCOB was limited to information gathering and observation by teams stationed near the northern borders of Greece. Their main role was to establish whether the Greek guerillas were being supplied with weapons and other equipment by the neighbouring communist states.107 The UNSCOB operation did not contain all the

103 Hill and Malik, Peacekeeping and the United Nations, p. 27-28
104 Ibid., p. 28
105 Higgins R. United Nations peacekeeping, documents and commentary, IV Europe 1946-1979, p. 5-7
106 Birgisson K.: United Nations Special Committee on the Balkans, p. 77-79
107 Hill and Malik: Peacekeeping and the United Nations, p. 27-28
elements of what was later recognized as peacekeeping, being the first attempt to place observers on the ground to determine the facts.\textsuperscript{108}

\textbf{4.1.2 United Nations Truce Supervision Organization (1948-present)}

Due to the confusion regarding the United Nations Truce Supervision Organization (UNSCOB), some regard UNTSO to be the first real UN peacekeeping mission. UNTSO is important as a peacekeeping mission as it was the predecessor to six other operations set up in the Middle East during the Cold War. It is identified as an observer mission, and it is responsible for the observing and monitoring of the cease-fire between Israel and its neighbours. One significant function that UNTSO has attempted to fulfill was its mandate to investigate local disputes as well as attempt to defuse situations along the cease-fire lines which may have developed into violence.

Jewish immigration into Palestine before World War II set the scene for long-lasting hostility between Arabs and Jews and war between them resulted in the creation of UNTSO in 1948; established by the Security Council with the main function to supervise a truce called for by the UN. The UN’s initial proposals, made by the UN Special Commission on Palestine (UNSCOP), to partition Palestine into an Arab state and a Jewish state were rejected by the Arabs.\textsuperscript{109} Palestinians questioned the legality of the UN to recommend the partition of their ancestral home and UNSCOP was consequently relieved of its responsibilities. The UN’s proposal prompted two things; Jewish authorities proclaimed the creation of Israel and a number of Arab neighbouring states invaded Palestine/Israel in May 1948.\textsuperscript{110} The Security Council demanded truce and called for international supervision of that demand. Jews eventually won the war and were able to force the Arabs into a series of Armistice Agreements in 1949. This led to a drastic change in UNTSO’s functions: which included assisting with prisoners exchanges and supervising demilitarized zones in accordance with the Armistice Agreements that had been set up. The Security Council authorized military personnel associated with UNTSO to assist the parties in supervising the application of the Agreements.

UNTSO is especially important for UN peacekeeping. Its lack of structural mandate meant greater flexibility which allowed it to adapt to special circumstances and get involved

\textsuperscript{108} Ibid. p. 27-28
\textsuperscript{109} Pogany, I. S.: The Security Council and the Arab-Israeli conflict, p. 21-22
\textsuperscript{110} Ibid., p. 35
with other operations that were set up in the Middle East. UNTSO observers remained on cease-fire lines during the Arab-Israeli wars in 1956, 1967, 1973 and 1982.111

4.1.3 United Nations Military Observer Group in India and Pakistan (1949-present)

The third peacekeeping mission set up by the UN during the first period, began in 1949 following a cease-fire agreement between India and Pakistan. The mandate was similar to that of UNTSO; it was to oversee the cease-fire between the two states, prevent minor incidents from escalating into serious conflicts and report on each side’s compliance with the arms limitation agreement. Both the United Nations Military Observer Group in India and Pakistan (UNMOGIP) and UNTSO show the importance of political settlement, without which peacekeeping operations may continue for decades.

After World War II came to an end, the decolonization process within the Indian Subcontinent became signified with territorial conflict. Both India and Pakistan obtained independence from the British soon after the Indian Independence Act of 1947 was adopted. This act also provided a basis for the partition and established the independence of over 500 other princely states within what had been British India. Geography and religion made it fairly easy for most states to join either India (mainly comprised of Hindu Provinces) or Pakistan (a Muslim state). One of the most serious outstanding issues was that of Kashmir.112 Kashmir’s Hindu ruler failed to take into account the wishes of the predominantly Muslim population, which led to an invasion by Pakistan, forcing Kashmir’s ruler to turn to India for military assistance. The accession of Kashmir to India resulted in war breaking out between India and Pakistan in October 1947.113

The UN became involved following India’s complaint to the Security Council, that Pakistan was threatening international peace and security through its invasion of Kashmir. Pakistan maintained that the accession of Kashmir to India had been illegal and that a vote was necessary. This led to the hostilities between the two neighbouring countries. The UN set up the United Nations Commission on India and Pakistan (UNCIP) to mediate between the two states, which managed to arrange a cease-fire went into effect 1 January 1949.114

4.2 The Assertive Period: 1956-1974

111 Hill and Malik: Peacekeeping and the United Nations, p. 29-30
112 James, A.: Peacekeeping in international politics, p. 154-156
113 Birgisson K.: UN military Observer Group in India and Pakistan, p. 77-79
114 Hill and Malik, Peacekeeping and the United Nations, p. 31-32
The UN finally had a definitive role with regard to peacekeeping in 1956. The aforementioned peacekeeping missions, had provided basic characteristics upon which peacekeeping could be formalized. A host nations consent and impartiality of military observers provided a sufficient platform upon which the UN could launch observer missions. The missions were at first concerned with reporting and observing but developed an investigative edge as part of their mandates, and were successful in lowering tensions caused by minor disputes along cease-fire lines. During this period some important development took place: the General Assembly, in the case of UNSCOB, introduced the mandate for peacekeeping mission and set a precedent for Assembly involvement. This period also saw the formalization of the characteristics of peacekeeping in the sense that the factors of consent, the non-use of force and the use of military personnel evolved to become established principles of peacekeeping. Given that there were nine peacekeeping missions during this period, only a few will be mentioned in this chapter.


In July of 1956 President Gamal Abdel Nasser of Egypt announced the nationalization of the Suez Canal, which had serious repercussions. The decision led to a string of events, the high point of which was the establishment of a new type of UN operation, the peacekeeping force. Some significant differences were between United Nations Emergency Force I (UNEF I) and the ones that preceded it. The size and complexity of the force itself was characteristic of the magnitude of the problem. UNEF I was established to secure the cease-fire which was a step forward for UN peacekeeping. The mandate did not recommend enforcement of the cease-fire. Another example of the UN’s strengthened objectives was that the role of the Secretary-General during this crisis far outweighed any functions that he had previously fulfilled.

Nasser’s announcement provided Israel with a opening to criticize the 1949 Armistice Agreements but also to try and to solve the increasing problem of Egyptian-backed Palestine raids into Israel from the Gaza strip. The announcement would also provide Britain and France with the pretext to invade Egypt, with the assistance of Israel, owing to their obligation in the Far East where the Suez Canal offered the shortest sea route. The subsidence of the Armistice Agreement would further heighten the tension. Security Council meetings produced no results, as Britain and France would veto any resolution set forth. As a result, the

115 Ibid., p. 32-33
General Assembly once again contributed towards maintaining international peace through the use of the 1950 Uniting for Peace procedure.

In November of 1956 the General Assembly adopted a resolution that proposed an instant cease-fire and instructed Israel to withdraw behind the Armistice lines. France and Britain were also called upon to stop their advance on Egypt.\(^{117}\) Resolution 1000 was adopted on 5 November in which the UNGA accepted the Secretary Generals plan to establish a United Nations Command. UNEF I was to supervise the withdrawal of foreign troops from Egypt, patrol border areas and prevent military incursions, secure a cease-fire by forming a buffer zone between Anglo-French-Israeli and Egyptian forces and to strengthen the provisions covering the Egypt-Israeli Armistice Agreement of 1949.

UNEF I was important for UN peacekeeping since it established a number of principles that were used in succeeding operations including ONUC, UNFIL, UNDOS AND UNFICYP. These operations included questions concerning the status of the force of movement. In regards to UNEF I the Chief of Command for the force was to be appointed by the UN and he was authorized to recruit officers from UNTSO. These conditions were designed to ensure that his position remained independent of the policies of any one nation. Additionally, despite proposals that UNEF I would guarantee the right of passage through the canal, its functions were based on two basic factors: first that the force was to be an emergency one and second, it was to be temporary in nature and the mandate was not intended to influence the military balance in the region.\(^{118}\) Another pivotal factor was the consent of the host government. As UNEF I was not an enforcement force under Chapter VII it could only operate with the consent of the Egyptian government. To get consent the UN had to assure Egypt that it would not be coerced into making a decision over the Suez Canal and that its sovereignty would not be compromised in any way. The main reason for the deployment of UNEF I was to secure the withdrawal of the invaders. Israel’s pull out marked the successful conclusion of this part of the mandate. With the withdrawal came a change in the forces operations, from securing to observing the cease-fire. Israel did not allow international observers within its own borders and UNEF I had to get by with posts only on the Egyptian side. According to its mandate, the force was to stay in Egypt until 1967 and during this period the Egyptian-Israeli border stayed

\(^{117}\) Other resolutions were adopted in early November that called upon the Secretary General to submit a plan for the setting up of ‘an emergency international United Nation Force to secure and supervise the cessation of hostilities’.

quiet. Even though UNEF I could not have prevented an attack by either side, the force created a buffer zone between the two states.

As mentioned before, UNEF I’s mandate ended in 1967 because of the general Arab-Israeli war. As a result of the armed hostilities between Syria and Israel Egypt demanded the withdrawal of UNEF I. Attempts to persuade Nasser to allow UN troops to remain were unsuccessful and the UN had to comply. By now UN peacekeeping operations were based on the principle of consent. UNEF I’s continued role was therefore dependent upon Egypt’s consent. When consent of the host state was withdrawn the operation had to come to an end. UNEF I did however demonstrate both the importance of peacekeeping operations and their limitations, consequently providing a valuable lesson. The presence of the UN helped maintain peace in what was an unpredictable situation but proved unable to address the underlying reasons for conflict and contribute to a lasting peace.\footnote{Hill and Malik: Peacekeeping and the United Nations, p. 33-36}

4.2.2 United Nations Observation Group in Lebanon (1958)

During 1958 national tensions within Lebanon threatened to be complicated by the intervention of the United Arab Republic (UAR), consisting of Syria and Egypt. The United Nations Observer Group in Lebanon was set up in response to this threat. It was different from other peacekeeping operations in one important respect, the mandate restricted it to merely ascertaining the facts prior to the UN adopting any further measures. Other peacekeeping operations \textit{inter alia} UNTSO, UNEF I and II and UNMOGIP had broader roles that included observing, reporting and trying to defuse potential problem incidents (UNTSO and UNMOGIP).

Since Lebanon gained independence from France, it consisted of a collage of religious groups battling for influence and power. By 1958, the fragile peace became structured between pro-west and Christian president Kamil Shamun and Muslim Druze supporters that desired Nasser’s pan-Arabism.\footnote{Salibi, K. S.: Crossroads to civil war: Lebanon 1958-1976, p. 13} Shamun attempted to amend the constitution to enable himself to be re-elected for a second term, which infuriated the Muslim opposition. This caused disturbances to break out between supporters of both groups. As a result, Shamun, afraid of outside intervention, first and foremost from the UAR, submitted a complaint with the Security Council. The Secretary-General sent a military observer group to verify that there were no illegal infiltration of supply, materials or personnel across Lebanese Borders. UNOGIL was initially denied access to areas on the Lebanese-Syrian border. Even so, the
observation group’s first report stated that there was no evidence of mass foreign infiltration. This infuriated Shamun, who then sought help from the United States who decided to intervene militarily.

The US intervention coincided with UNOGIL obtaining access to all areas of Lebanon’s borders. A reassessment followed that downgraded the importance of external factors in Lebanon’s crisis. The conflict was regarded as a result of domestic religious and political rivalries. The problems subsided when General Fouad Chehab, a widely accepted candidate, was elected president, thereby removing the controversial issue of Shamun’s second term.

It is important not to ignore the importance of both UNEF I and UNOGIL for United Nations peacekeeping as a whole. Both of these operations, despite being different from each other provided a set of guidelines and principles upon which subsequent peacekeeping operations could be formed. As well as formalizing the principles of consent and the use of armed force only in self-defense, other components were to become strange to peacekeeping during and after the 1950’s. Amongst these peculiar factors were rights bestowed upon UN personnel which made them immune from prosecution in local courts. Connected to this, was a provision that ensured freedom of movement for UN personnel within the area of operation. As stated earlier, one critical development of peacekeeping was the principle of maintenance of strict impartiality. To guarantee neutrality, forces from Permanent member-states were precluded from field operations.\textsuperscript{121}

\textbf{4.2.3 United Nations Operation in the Congo (1960-1964)}

UN Peacekeeping operations conducted before 1960 had included monitoring of cease-fires along tense but structured cease-fire lines and borders, \textit{i.e.} those in the Middle East and between India and Pakistan. Peacekeeping had in most cases circled around keeping two belligerents apart. The Congo demonstrated a more complex and fast changing surroundings. The UN operation in the Congo (ONUC) between 1960 and 1964 was one of largest operations tackled by the Organization.\textsuperscript{122} Apart from being one of the most complex peacekeeping operations of them all, it cost the UN greatly, both financially and in terms of lives, including that of the Secretary-General Dag Hammerskjöld.\textsuperscript{123}

\begin{footnotes}
\item[121] Hill and Malik: Peacekeeping and the United Nations, p. 36-37
\item[122] At its peak strength comprising of nearly 20,000 troops. In addition to the force, it incorporated important Civilian Operations element.
\item[123] Secretary General Dag Hammerskjöld was killed in a plane crash on his way to meet President Twombe of Katanga. This was to further complicate the UN’s efforts in expelling foreign mercenaries from the Congo.
\end{footnotes}
Hammerskjöld saw the Congo crisis as a window to test the principles of preventive diplomacy. The Congo created surroundings where the discontinuance of the colonial system was leading to serious conflict and breakdown of society. The aim of the UN intervention was to temporarily fill the power vacuum that was created with the withdrawal of colonial power and give the newly independent state time to develop its own political, economic and geographical solidarity. Despite good intensions, there was no peace to keep in the Congo.

The origin of the Congo crisis stems from the country’s complicated tribal structure so when political recognition increased, political parties with different loyalties surfaced. Despite victory over the Belgians in 1960, diverse Congolese leaders had different political motives that resulted in fragile alliances. It became evident that Congo was not sufficiently prepared to assume responsibilities of independence. Law and order under Belgian rule had been preserved by the Force Publique, known as the Armee Nationale Congolese (ANC) after independence. The ANC became a inadequately disciplined force.

Faced with a deteriorating situation, Belgium contemplated military intervention to protect European lives. In spite of opposition, Belgian troops began to arrive in Katanga in July 1960, in clear violation of a Treaty of Friendship between the two countries. The situation worsened when the president of the provincial government of Katanga declared independence and placed Belgian individuals in official public posts. Convinced that Belgium was getting ready to take over the country, Lumumba turned to the international community for military help against armed incursion. “Following Lumumba’s request, Hammerskjöld invoked Article 99 of the Charter and informed the Security Council that the situation in the Congo was a threat to international peace and security.”

The Council responded to the warnings and adopted resolution 143 in July 1960, authorizing the Secretary-General to provide the Congolese Government with “[...] such military assistance as may be necessary [...]”. The resolution became the grounds for the establishment of ONUC.

The principles that regulated the UNEF I operations formed the basis for ONUC. The pattern for preventive diplomacy through peacekeeping had been set out in UNEF I.

Regardless of the Belgian government announcements that its troops were there for the protection of life and property, the Secretary-General concluded that their presence was a source of internal and international tension. The UN had to provide Belgium with the opportunity to withdraw (as UNEF I did for the Anglo-French force) and thereby acts as a stop-gap arrangement while waiting for the re-establishment of order by the Congolese forces;

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aiming at preventive diplomacy and trying to create the necessary conditions so that any violation of international law could come to an end.

Other principles of peacekeeping established in previous operations were invoked by the Secretary-General. This included the following factors: First, ONUC was to have the status of a temporary security force, deployed with host state consent. Second, UN was to keep command of the force. Although the force was to aid the Congolese government in the maintenance of law and order, it was not to be involved in any internal conflict and thereby maintain impartiality. Third, other important components included provisions that ONUC should have free access to areas of the operation and normal rules of engagement were to apply: use of force only in self-defense.

Principles of the UN operation changed when circumstances deteriorated. The original mandate, to aid in the restoration of law and order, and overseeing the withdrawal of Belgian troops remained valid. However, ONUC was assigned additional tasks and responsibilities. It may be argued that these additional tasks took the force outside the sphere of peacekeeping.

The UN encountered problems in finding a balance between the functions of the operation, in restoring law and order and bringing about the withdrawal of Belgian troops, while at the same time upholding the principle of non-interference in the internal affairs of the Congo. The UN became more and more concerned with assisting the Congolese Government to maintain territorial integrity and political independence. More emphasis was put into this function when the question of Katanga’s secession came up. This aspect revealed, more than any other, the extent of differing opinions amongst the various actors. This increased the levels of tension within the Council as well as contributed to the deteriorating relationship between the UN and the Congolese Government itself.

The Secretary-General wanted a peaceful UN entry into Katanga, even so, the Congolese Government and the Soviet Union demanded that the UN had to, if necessary, force itself into the province clearly being a Chapter VII operation. The Secretary-General saw ONUC as being similar to UNEF I - an inter-positional and consensual peacekeeping force established under the powers of Chapter VI. However, the situation deteriorated to such an extent that ONUC had to invoke Chapter VII principles.

Constitutional crisis, Lumumba’s death and Tshobe’s belligerence threatened to plummet the country into uncontrollable civil war. It became clear that a successful outcome depended on Katanga. Hammerskjöld believed that Belgian troops in Katanga were a cause for danger,

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but became convinced that their withdrawal would not be sufficient to end the crisis. Resolution 161 underlined the threat to international peace and security and recommended as a last resort the use of force. The declining situation in Katanga turned the international viewpoint against Tshombe, especially the foreign mercenaries aiding him. Resolution 169 renewed the Security Council’s dedication in maintaining Congo’s territorial integrity and political independence, and rejected Tshombe’s claim that Katanga was a sovereign state. The Council authorized the use of force if necessary to end Katanga’s secession and banished any foreign military personnel not operating under UN authority. Tshombe abandoned the goal of making Katanga independent in December 1962. Now that the Congolese Government had authority over the whole of Congo, the new Secretary-General, U Thant, announced that the majority of ONUC’s mandates had been fulfilled and a phased withdrawal ended on 30 June 1964.

In spite of criticisms on Hammerskjöld and the way ONUC operated, the operation managed to preserve the territorial integrity and political independence of the Congo. In order to obtain this goal, ONUC had to step outside the bounds of what had become principles of traditional peacekeeping: impartiality, the use of force only in self-defense and the consent of host state. Additional to the factors mentioned previously, peacekeeping developed a number of other characteristics after the Congo. One of which was that subsequent peacekeeping operations had very short mandates, usually lasting only a matter of months. Therefore, peacekeeping mandates now to be renewed periodically by the Security Council which provides the permanent members with the opportunity to veto any extension.127

4.2.4 The 1973 Arab-Israeli War

4.2.4.1 United Nations Emergency Force II (1974-1979)

A detailed analysis of the events between 1967 and 1973 goes beyond the scope of this essay. However, there is one event that is important to note as it demonstrates a particular weakness of peacekeeping. During 1967 and 1973 two Arab-Israeli wars started and finished. The first was the result of increased hostilities between Syria and Israel, triggering Egypt to demand the withdrawal of UNEF I which preceded armed conflict between Egypt and Israel. The withdrawal of UNEF I upon Egypt’s demand demonstrates the limitations of peacekeeping. This, and the inadequacy to address the underlying problems between Israel and its neighbours meant that conflict was always possible. The second war, that resulted in the


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establishment of UNEF II and UNDOF, commenced when Syria and Egypt launched surprise attacks against Israel in 1973. In the Egyptian-Israeli area, UNEF II was important in establishing a buffer zone between the two and also helping to diffuse a crisis that had threatened to bring about a superpower confrontation in the Middle East. Renowned as the most serious threat to world peace since the Cuban Missile Crisis, the war had to be diffused immediately and because of that UNEF II concentrated on securing short-term peace by inserting itself between Israeli and Egyptian forces, arranging observer posts and investigating complaints. As a result, the presence of the force diffused the local crisis and also helped to reduce superpower tensions.\textsuperscript{128}

4.2.4.2 United Nations Disengagement Observer Force (1974-present)
UNDOF also emerged out of the 1973 Arab-Israeli war. UNEF II was deployed between Israeli and Egyptian armies in the Suez Canal and UNDOF was established to oversee the implementation of a disengagement agreement between Israeli and Syrian forces in the Golan Heights. Even though the tensions in the Egyptian-Israeli part was diffused quickly, the tensions in the Israeli-Syrian part continued to be high and increased in March 1974. The United States turned its attention to the Syrian-Israeli war and diplomatic initiatives began, ending on 31 May 1974 with an Agreement on Disengagement. The Agreement called upon Israel and Syria to comply to a cease-fire and it proposed the establishment of a buffer zone between the two sides to be patrolled by a UN force. Initially UNDOF had a short mandate, for a period of six months and it periodically got its mandate renewed. The Golan Heights were divided into two zones: one being an area of separation which was a completely demilitarized buffer zone and the other a area of limitation, lying on either side of the demilitarized zone, where both Israelis and Syrians are permitted to have limited amounts of personnel and equipment. The mandate contained provisions on patrolling both zones. It is unquestionable that UNDOF has contributed to the relatively calm situation that has existed since 1974. Neither Israel or Syria have made any military moves to upset the status quo.\textsuperscript{129}

4.3 The Inactive Period: 1974-1987
After the establishment of UNDOF, the UN retreated substantially from new peacekeeping operations. Only one peacekeeping operation was created during this period, UNIFIL. This retraction appeared to be a reaction to the fact that the UN had extended itself considerably.

\textsuperscript{128} Ibid., p. 47-48
\textsuperscript{129} Ibid., p. 48
UNIFIL demonstrated everything that had gone wrong with UN peacekeeping such as high costs, Member States refusing to pay for assessments, lack of consent and the co-operation of disputants proved that peacekeeping operations could only successfully fulfill their mandates if the majority of the criteria was present. UNIFIL was to oversee the withdrawal of Israeli forces from Lebanon and restore peace. Repeated raids were being conducted by the Palestine Liberation Organization (PLO) on Israeli territory from surrounding countries, including Lebanon. The presence of the PLO in Lebanon intensified the tense conditions throughout the country. Civil war broke out in 1975 between Christians and Muslim groups, and this introduced Syria into the complex situation when it sent troops into Lebanon declaring that its intent was to stabilize the situation. Actions taken by Syria did not stop PLO attacks on Israel from Lebanese territory. In a tense situation and with high Jewish death rates, Israel resulted to invading Lebanon on 14 March 1978 to destroy PLO bases. The US was concerned that the invasion would upset the chances of a peace Treaty with Egypt. For this reason, the US turned to the UN and four days later the Security Council adopted resolutions 425 and 426 which called upon Israel to immediately cease all military activity and withdraw its forces from Lebanon.

UNIFIL troops arrived in March 1978. UNIFIL was unable to fulfill its mandate between 1978 and 1982 for a number of reasons. Since resolution 425 did not address the civil war in Lebanon, this meant that the Lebanese Government was not able to control Southern Lebanon for a number of years and was in no condition to assume responsibility. In addition, both the PLO and Israel did not accept UNIFIL’s mandate. As Israel began its withdrawal, the Israeli army handed much of the control of Southern Lebanon to allied Christian militias that had refused to co-operate with the Lebanese government and UNIFIL. UNIFIL was therefore unable to deploy to these areas. The UN could not move freely and its troops were fired upon regularly by numerous different factions. Differing interpretations of UNIFIL’s mandate did not help and the Israelis justified their continued presence in Southern Lebanon on the grounds that UNIFIL had failed to clear the area of PLO fighters. The PLO maintained that that the Cairo Agreement of 1969 had allowed them a semi self-governing regime in the refugee camps in Southern Lebanon and that UNIFIL had no higher-ranking mandate.

The PLO continued attacking Israeli settlements in Northern Israel, that caused Israel to launch a second invasion of Lebanon in June 1982. Israel overran UNIFIL positions and reached the edges of Beirut in early July. UNIFIL could not stop the invasion as it did not

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130 James, A.: Peacekeeping in international politics, p. 340
have the mandate nor the means to oppose such a large force. UNIFIL’s position changed drastically and for the next three years the UN operation remained behind Israeli lines.

The Israelis began a partial withdrawal in 1985 but continued to maintain a security zone in the border area. This meant that UNIFIL was still unable to fulfill its mandate. UNIFIL’s track-record as a peacekeeping force has been seen as less than sufficient. Even so, its inability to carry out its function has little to do with its own ability. UNIFIL clearly demonstrates that peacekeeping operations can only be successful if suitable conditions exist.\textsuperscript{131}

\subsection*{4.4 Rebirth of Peacekeeping: 1988-1991}

The international political system changed drastically at the end of the 1980’s. Western and Eastern superpowers sought peace by ending their support for regimes in areas of the world, which they no longer considered to be in their national interest. The UN was provided with the opportunity to renew peacekeeping’s visibility and perceived workability in the international arena around the globe when requested for help with disengaging the superpowers and assist the conflict ridden nations that were left behind to find lasting peace. This lead to problems in peacekeeping operations because resources for planning, deploying and maintaining operations were insufficient for the number, size and complexity of these operations. The UN encountered a credibility crisis during 1993 as unpredicted humanitarian catastrophes in the former Yugoslavia and Somalia overwhelmed the organization.

Evolution of peacekeeping in the post-Cold War era begins with the contention that the successes of peacekeeping operations in 1988-1991 caused the UN to overlook the inherent inadequacies in its ability to conduct large multi-dimensional peacekeeping operations. The UN committed to larger and more complex operations until realizing its weakness with the failure of the second Angolan operation in 1992.\textsuperscript{132}

Peacekeeping operations in the first three years post-Cold War era were without reservation a success for the UN. Having been mostly inactive for over ten years, peacekeeping emerged as a relevant and successful means of resolving long-standing and unmanageable conflicts. The Organization had become confident by the end of 1991, so much so that is was willing to commit itself to the largest and most costly operation ever undertaken in Cambodia.

\textsuperscript{131} Hill and Malik: Peacekeeping and the United Nations, p. 49-51
\textsuperscript{132} Ibid, p. 59-60

The first three peacekeeping missions set up by the UN in almost 10 years were observer missions. The first was the United Nations Good Offices Mission in Afghanistan and Pakistan (UNGOMAP). UN’s Secretary-General sent 50 military observers to Afghanistan and Pakistan on the basis of the Geneva Accords. The most complicated factor of the Geneva Accords was that mujahideen, that had formed a major part of the Afghan resistance, was not party to the negotiations. Therefore, they did not feel obliged to allow the peaceful withdrawal of Soviet forces (as was provided for in the Accords) or to end their campaign against the official Afghan government. However, withdrawal of the Soviet troops eventually became a reality and with that UNGOMAP’s mandate was terminated on 15 March 1990.


The Iran-Iraq Military Observer Group (UNIIMOG) established pursuant to Security Council Resolution 598 in August 1988 was to monitor the cease-fire accepted by both sides at the peak of the eight year old Gulf war. UNIIMOG’s mandate was to establish cease-fire lines, monitor compliance with the cease-fire agreement, investigate violations, prevent changes in circumstances, to supervise, verify and confirm the withdrawal of all forces to internationally recognized boundaries, and to obtain agreement of the parties regarding other arrangements pending a comprehensive settlement. UNIIMOG successfully completed its mandate with the cooperation of both parties.


United Nations Transitional Assistance Group (UNTAG) was the first major peacekeeping operation undertaken by the UN in the post-Cold War. UNTAG’s objective was the effective decolonization of South West Africa into the independent state of Namibia. The Security Council approved Resolution 435 in 1978 but it was not until 10 years later that the Security Council adopted Resolution 629 stating that the implementation of Resolution 435 should

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133 The Geneva Accords formally known as the Agreement on the Settlement of the Situation Relating to Afghanistan and consisted of four instruments. The first a bilateral agreement between the government of Afghanistan and Pakistan on the principles of mutual relations, specifically the principles of non-interference and non-intervention. The second consisted of a declaration on international guarantees signed by the USSR and US. The third was another bilateral agreement between Afghanistan and Pakistan on the voluntary return of refugees. The final and most important instrument was the agreement on the inter-relationship for the settlement of the situation relating to Afghanistan, signed by Afghanistan and Pakistan and witnessed by the USSR and the US.


135 Ibid., p. 62-63
begin on 1 April. UNTAG was given three main objectives; monitoring democratic elections, monitor actions of the South West African Police and to monitor the cease-fire. UNTAG consisted of electoral personnel, civilian police monitors and military component. UNTAG was the first operation to get a nation ready for elections and independence. UNTAG had to alter the political atmosphere of a country that had been subjected to repression for over hundred years and had failed to gain any democratic experience, as well as adapting an atmosphere that would be beneficial to democracy and protection of human rights. The elections were a success and the UN declared that “the practicability of physically putting a solution in place through the management of the UN, given the requisite support of member states, need no longer be in question.”


An Agreement on a Comprehensive Political Settlement on the Cambodian Conflict was signed in October 1991. The agreements invited the Security Council to establish the United Nations Transitional Authority in Cambodia (UNTAC) and adopt a mandate setting out the agreements. The Council supported this with resolution 718 (1991). By signing the agreements, Cambodia took a crucial step moving away from internal conflict and considerable isolation. Despite this, battle for the country continued. Three factions resisted the Phnom Penh government; the United National Front for Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC), the Khmer People’s Liberation Front and the Party of Democratic Kampuchea (PDK), also known as Khmer Rouge. The three factions formed a coalition party: Coalition Government of Democratic Kampuchea, later the National Government of Cambodia. The coalition occupied Cambodia’s seat at the UN from 1982 until the signing of the agreements. In April 1991 a cease-fire went into effect. It was for the most part observed for several months. The Secretary-General recommended that the Security Council authorized a United Nations Advance Mission in Cambodia (UNAMIC), which was to become operational as soon as the Agreements were signed. UNAMIC was to be absorbed into UNTAC once UNTAC was established. Its main task was to help maintain the cease-fire. UNAMIC became operational with resolution 717. In December 1991 violent demonstrations broke out against

136 Ibid., p. 65-66, 76-77
137 Durch: The evolution of UN Peacekeeping, p. 372
138 The Blue Helmets, p. 449
corruption in the Phnom Penh administration. The situation deteriorated which led to the expansion of UNAMIC’s mandate, which was to undertake a major de-mining effort in the country.\(^\text{139}\)

UNTAC was established with resolution 745 in February 1992, for an initial period of 18 months. UNAMIC was to function until UNTAC became operational. UNTAC’s mandate was to ensure the implementation of the Agreement on a Comprehensive Political Settlement of the Cambodian Conflict. The mandate included aspects relating to human rights, the organization of free and fair elections, military arrangements, civil administration, maintenance of law and order, repatriation and resettlement of refugees and displaced persons and rehabilitation of infrastructure during the transitional period.\(^\text{140}\)

In May 1992, UNTAC announced that phase II; the cantonment, disarming and demobilization phase, of the cease-fire would commence in June that year. Phase II depended on cooperation of all parties, however, PDK was not cooperating on the grounds that foreign military personnel remained in Cambodia. Despite PDK’s cooperation, phase II commenced. The Special Representative in Cambodia consulted with the other three parties and underlined the importance of all efforts being made to persuade PDK in cooperating. PDK did not permit deployment of UNTAC in areas under its control and blocked implementation of phase II of the cease-fire as well as other aspects of the agreement.\(^\text{141}\)

The Secretary-General reported in November 1992 that due to difficulties in implementing phase II of the cease-fire, suspension of the cantonment, disarmament and demobilization process had taken effect. However, the peace process was to continue.\(^\text{142}\)

In October 1992, the Security Council confirmed that the electoral process should proceed.\(^\text{143}\) The Council then confirmed that elections for a constituent assembly in Cambodia were to be held not later than May 1993.\(^\text{144}\) UNTAC was to proceed with preparation for the elections in all areas of Cambodia to which UNTAC had full access as of 31 January 1993.\(^\text{145}\) The elections were a central point in the comprehensive settlement of the Agreement. A total

\(^{140}\) The Blue Helmets, p. 451-453
\(^{142}\) The Blue Helmets, p. 454-462
\(^{146}\) The Blue Helmets, p. 463-464
of 4,267,192 voted, representing 89.56% of the registered voters. FUNCINPEC won 45.47%. As it seems the Council supported the legitimacy of the election with resolution 840.\textsuperscript{147}

UNTAC’s mandate concluded on 21 September 1993, when Prince Sihanouk formally promulgated that the new Constitution of Cambodia made the country a constitutional monarchy, independent, sovereign, peaceful, neutral and non-aligned.\textsuperscript{148}

5 Traditional Peacekeeping and applicable norms

5.1 Consent

The notion of consent plays a different role in national law compared to and in international law. In national law consent may to a limited extent cancel the normal illegitimacy of an act while it is to be assumed that in international law almost any violation may be made legitimate by consent.\textsuperscript{149} As an example, occupation of a territory of another state is prohibited but becomes legitimate if consent is given. It is a condition that the consent is given prior to or simultaneously with the illegitimate act. A succeeding consent does not change the fact that a violation of international law has taken place, it only means that the affronted state relinquishes the right to enforce responsibility in the case.\textsuperscript{150}

The necessity of host country consent to peacekeeping operations was illustrated in 1967 when the Egyptian Government demanded the withdrawal of UNEF I from its territory. The Secretary-General accepted this demand and ordered an evacuation of the UN force, an act that may have caused the June 1967 Middle Eastern War. The experience had two major consequences. First, peacekeeping operations have ever since been set up for a limited duration, followed by subsequent extensions if necessary. This provides the parties with the opportunity to express and renew their consent to the presence of peacekeeping forces. Host state consent only relates to the presence of peacekeeping forces and not to other aspects of the operations, such as the composition of the force. The UN attempts, as much as possible, to meet the wishes of all parties concerned, to maintain states consent. Second, the guidelines for the forces in the Middle East provide that all matters that may affect the nature or the continued effective functioning of the force will be referred to the Security Council for its decision. Accordingly, if a host country withdraws its consent to the presence of a peacekeeping force during the force’s mandate, it would not be for the Secretary-General to

\begin{itemize}
  \item \textsuperscript{147} \textit{Ibid.}, p. 470-471
  \item \textsuperscript{148} \textit{Ibid.}, p. 473
  \item \textsuperscript{149} This applies for all international obligation based on reciprocity but not for \textit{Erga Omnes} obligations related to \textit{Jus Cogens}, which you cannot compromise on in international law.
  \item \textsuperscript{150} Tyge Lehmann: Some Legal Aspects of the United Nations of Peace-Keeping Operations, p. 14-15
\end{itemize}
decide what action to take, but for the Security Council. Even if parties concerned express their desire to maintain the forces on their territory, the final decision remains with the Security Council. In 1979 this was illustrated by the discontinuation of UNEF II due to the lack of a necessary decision by the Security Council, even though Egypt and Israel had expressed their will that the operations would be continued. If consent is not given for a continuation of the presence of a peacekeeping force, the Council could hardly maintain the units on the territory without converting the peacekeeping operation into an enforcement action under Chapter VII of the UN Charter.

Traditional peacekeeping operations are usually succeeded by conflicting parties agreeing to cease-fire or a withdrawal, and then consenting to the presence of a force on their soil. Consent is usually attained from legitimate governments involved. This procedure is rather straightforward when dealing with an inter-state conflict, as was the case of the establishment of UNIIMOG following the Iranian and Iraqi governments consent of a cease-fire called for by the Security Council. But when dealing with intra-state conflict, e.g. the conflict among the Greek and Turkish communities in Cyprus in 1964-1974, it may be argued that consent from all factions should be attained, although that is not always possible and consent is only attained from the government, which was the case in Cyprus. This has caused problems in intra-state peacekeeping operations such as UNIFIL in Southern Lebanon, where placement of the peacekeeping force was gained at the request of a very weak Lebanese government, without the consent or cooperation of the many groups that controlled Southern Lebanon. Because of this UNIFIL was very ineffective. The harmful effect of a failure to obtain consent of all groups to an internal conflict is even clearer in the case of Namibia. Even though the South West Africa People’s Organization (SWAPO) constantly accepted the 1978 Security Council resolution that called for the establishment of UNTAG with the mandate of supervising the independence of Namibia from South Africa, it was not involved in the negotiations between the states involved. Eventually this led to South African agreement to withdraw in return for Cuban withdrawal from Angola. The agreement foresaw the independence process starting on 1 April 1989. The Security Council was pleased with the agreement but stated that UNTAG’s mandate would stay the same as envisaged in 1978. SWAPO and South Africa agreed to a cease-fire and with that prepared for UNTAG.

152 McCoubrey and White: The blue helmets: legal regulations of United Nations military operations, p. 70
153 Ibid., p. 70
It may be said that a *modus vivendi* seems to have emerged, under which the UN member states have agreed to let the Security Council assume its role as the organ with primary responsibility in the field of peacekeeping. Therefore, all recently established and current UN peacekeeping forces have been set up and continue to function under the authority of the Security Council.\textsuperscript{154}

5.2 Neutrality
Consent of the host State is not only necessary, but its continued cooperation with the peacekeeping force until the end of its stay is essential. The Israeli occupation of the Golan Heights since 1967 has been a considerable obstacle to permanent peace between Israel and Syria. Despite this, they managed to cooperate with UNDOF, established by the Security Council,\textsuperscript{155} following the Agreement on Disengagement between Israel and Syria in 1974, which followed the Yom Kippur war in 1973. Peacekeeping forces successfully maintain calm on the Israeli/Syrian front, despite of Israel’s invasion into Lebanon in 1978 and 1982. One of the reasons for UNDOF’s success is the fact that it is neutral in the dispute.\textsuperscript{156}

Neutrality is an essential factor of peacekeeping, deriving from the non-prejudicial nature of provisional measures as contained in Article 40 of the Charter. Neutrality distinguishes peacekeeping from collective security in the shape of enforcement actions, as professor Diehl clarified in the following statement:

> Collective security presupposes an identifiable aggressor who then becomes the target of enforcement action; in the sense, there is a determination of victim and international criminal by the United Nations or some other international agency. Peacekeeping forces do not brand one side or the other responsible for the military conflict ... Peacekeeping forces do not usually overtly favor one side or the other in a conflict. At the very least they are not designed to provide a military advantage, as is collective security, to either side.\textsuperscript{157}

In the case of UN Iraq-Kuwait Observation Mission (UNIKOM), established by the Security Council by resolution 689 in 1991, the UN were able to maintain neutrality in peacekeeping even after it had engaged in war against one of the parties, Iraq. The Security Council also imposed conditions on Iraq after the war ended, including *inter alia* the boundary settlement between the two countries on the basis of the 1963 Agreement between Iraq and Kuwait. As

\textsuperscript{156} McCoubrey and White: *The blue helmets: legal regulations of United Nations military operations*, p. 75
\textsuperscript{157} P. F. Diehl: *International Peacekeeping*, p. 7-8
the UN was one of the parties of the conflict, it is extraordinary that the organization could take on a neutral peacekeeping operations on the Iraqi/Kuwait border, while sending in UN troops to guard camps set up for the Kurds. Perhaps the explanation for this is that there is clear legal distinction between peacekeeping and enforcement functions of the UN.\textsuperscript{158}

The modern consensual approach to peacekeeping builds on the fundamental principle of consent and neutrality and is especially emplaced in intra-state conflicts, where the UN in addition to providing peacekeeping forces to supervise cease-fire between opposing fractions, it also oversees the agreed mode of peaceful settlement; referendum and free and fair elections. The principle of neutrality is more easily compromised in these operations, and with that it may endanger the status of the force in the country in question and as a result can be the grounds of concern about the successes of these more ambitious types of operations.\textsuperscript{159}

5.3 Composition

Impartiality of traditional peacekeeping is essential and it is reflected in mandates and functions of peacekeeping operations. Professor Diehl stated:

The concept of neutrality goes beyond the purpose of the force to the composition and activities of the troops. Most UN peacekeeping forces are composed of military personnel from nonaligned states; typically Canada, Fiji and Sweden have been among the most generous contributors of troops. Soldiers from the major powers, or those from states with a vested interest in the conflict in hand (such as Saudi Arabia in Middle East operations), are explicitly not used. One could hardly imagine an effective collective security operations without the effective contributors of the major military powers, yet a similar contribution to peacekeeping jeopardizes its neutral character and perhaps its chances of success.\textsuperscript{160}

For example, UNEF II was placed between Egypt and Israel between 1973-1979 and was composed of troops from Australia, Austria, Canada, Finland, Ghana, Indonesia, Ireland, Nepal, Panama, Peru, Poland, Senegal and Sweden. Permanent Members of the Security Council are generally not directly involved in peacekeeping, even though they provide substantial assistance, with airlifts in particular. There are exceptions, for example the large British component of UNFICYP in Cyprus since 1964 despite previous British rule in Cyprus.\textsuperscript{161} Professor Higgins explains the reasons for the alleviation of the rule:

\begin{itemize}
\item McCoubrey and White: The blue helmets: legal regulations of United Nations military operations, p. 75
\item \textit{Ibid.}, p. 75-81
\item P. F. Diehl: International Peacekeeping, p. 8
\item McCoubrey and White: The blue helmets: legal regulations of United Nations military operations, p. 81
\end{itemize}
The participation of the United Kingdom was at the time without precedent in the history of UN peacekeeping (later with French involvement in UNIFIL in the Lebanon and with American and Russian observers attached to UNTSO in the Golan Heights, the tradition of excluding the major powers was modified). Although the initial Charter intention had been to involve the permanent members of the Security Council in the establishment of UN forces, the path that UN peacekeeping had in fact followed (away from enforcement towards peacekeeping by consent) had led to a consistent practice of excluding them. British participation in UNFICYP had to be seen as stemming from the singular historical circumstances of the Cyprus case. Before the UN was called in British forces had, for three months, exercised powers under the Treaty of Guarantee and had sought impartially to restore peace in the island. The British Sovereign Bases on the island would clearly be also of the greatest importance to the United Nations for logistical support. Britain therefore provided some forces for the UN command.\textsuperscript{162}

Further alleviations of the principle that contributing states should remain non-aligned to reflect the impartial nature of peacekeeping have been showing recently. In 1994, 800 Russian troops were deployed to reinforce UNPROFOR’s supervision of the cease-fire around Sarajevo. Their presence was to have a reassuring effect on the Bosnian Serbs who were concerned that UNPROFOR lacked the necessary neutrality as it had large Western contingents.\textsuperscript{163}

However, in quasi-enforcement operations, which are only subject to UN authorization rather than command and control, the Permanent Members are willing volunteers; in particular France (in the case of Rwanda) and the United States (in the cases of Somalia and Haiti). This means that when the operation approaches the level of enforcement, there is less centralization and collectivity than in the less intrusive and consensual peacekeeping operations.\textsuperscript{164} Problems that arise from lack of collectivity could be overcome to some extent, if the agreement envisioned in Article 43, the creation of a UN army, would actually be finalized. The likelihood of which is far away, even though greater moves towards having troops available for UN operations in the area of traditional peacekeeping have been advanced with standby agreements “The purpose of standby arrangements is to have a precise understanding of the forces and other capabilities a Member State will have available at an agreed state of readiness, should it agree to contribute to a peacekeeping operation.”\textsuperscript{165} There is no obligation on agreeing states to earmark and have peacekeeping troops ready. “When the need arises, they will be requested by the Secretary-General and, provided the Member States agree, they will be rapidly deploying to set up a new peacekeeping operations or to reinforce

\textsuperscript{164} J. Morris: Force and Democracy: UN/US Intervention in Haiti, p. 397
\textsuperscript{165} U.N. Doc. S/1996/1067 - Progress report of the Secretary General on Standby arrangements for peacekeeping.
The standby system protects the optional nature of troop contributions to peacekeeping operations. This system may be seen as continuing its *ad hoc* nature and sustaining a flaw in the centralization of peacekeeping while still the standby arrangements can provide the UN with the capacity to deploy needed resources rapidly.\(^{167}\)

### 5.4 Restrictions on the use of force

Another important feature of peacekeeping that sets it apart from enforcement action is that the forces are only authorized to use force in self-defense.\(^{168}\) Article 2 (1) of the UN Charter recognizes the sovereignty of all of its Members, and Article 2 (7) restricts the UN from intervening in domestic state matters, except during Chapter VII enforcement action.\(^{169}\) The Charter does not specifically address the use of armed force in peacekeeping operations, nor provide any guidelines.\(^{170}\) In peacekeeping operations authorized use of force is generally limited to self-defense, in addition the use of force must be proportional to the situation at hand.\(^{171}\)

The limitation is more related to a personal right to self-defense by individual peacekeepers if shot at, opposed to the much wider right of a state to self-defense.\(^{172}\) Given that peacekeeping does not violate the sovereignty of any state, it cannot be infused with rights, such as the right to self-defense contained in Article 51 of the Charter, which belongs to states. Professor Diehl gives a description on how this limitation fits into the ideology of peacekeeping:

> Peacekeeping forces also have the distinguishing feature of being only lightly armed. A typical peacekeeping soldier is equipped only with a rifle, and peacekeeping units only have access to vehicles for transportation purposes ... and not to those that might be used for attack ... Peacekeeping troops are only lightly armed because either mission is not a traditional one, and they are designed to use arms in self-defense; peacekeeping troops have neither an offensive military mission nor the capability to carry one out. Peacekeeping troops are not designed to alter the prevailing distribution of power in the area of deployment, nor do they wish to appear threatening to the disputant or the local population. The characteristic contrasts with collective security forces, whose only equipment restrictions are dictated by weapons availability and strategy. Furthermore,
this differs from observation forces, who usually carry no weapons at all. Unlike observers, peacekeeping troops must protect themselves and retain the means to exercise their right of self-defense ... peacekeeping must also provide a visible deterrent, with the threat of defensive military actions, in patrolling buffer and other demilitarized zones; small, unarmed observer forces are generally considered inadequate for the task.\footnote{Diehl: International Peacekeeping, p. 7}

The limitations on use of force do not hinder the work of inter-state peacekeeping forces when both states have consented to the force, but it does present problems in the intra-state situations when only the host government has given consent, or if leaders of the factions in the conflict agree to the force but are unwilling or unable to control their forces. This was a critical problem when UNIFIL was established at the request of Lebanon’s Government in 1978 succeeding partial withdrawal of Israel from Lebanon. The Secretary-General stated that peacekeepers would only use force in strict self-defense and would not shoulder any responsibilities of the Lebanese government.\footnote{U.N. Doc. S/12611 (1978)} UNIFIL operated for most of its time in a hostile environment; an area of Lebanon not under control of the Lebanese government containing various armed groups. Sadly, UNIFIL lost 130 soldiers from 1978 to 1990 due to hostile acts. UNIFIL has been unable to fulfill its mandate, ensuring the effective reestablishment of Lebanese sovereignty in the south and overseeing Israeli withdrawal from Lebanon.\footnote{S.C. Res. 425, U.N. Doc. S/RES/425 (1978)} UNIFIL has however contributed to stability and protection of inhabitants of the area.\footnote{U.N. Doc. S/1996/45, approved in S.C. Res. 1039, 51 U.N. S/PV (1996)}

The UN has been faced with the same dilemma in many intra-state conflicts, that is, to remain neutral and non-coercive or tackle the group that appears to be preventing a peaceful solution to a conflict. The problem was severe in the case of UNPROFOR. Initially, Croatia and Serbia agreed to the operation and its main task was to oversee a cease-fire between the two former republics, which is usually considered a normal task for a traditional peacekeeping force.\footnote{S.C. Res. 743, U.N. Doc. S/RES/743 (1992)} With headquarters in Sarajevo, the capital of Bosnia (another former Yugoslav Republic) it was almost unavoidable that UNPROFOR got sucked into the internal conflict between the Serbs, Muslim and Croats in Bosnia. At first limited force was authorized by the Security Council to attempt to secure the airport for the arrival of humanitarian aid,\footnote{S.C Res. 758, UN SCOR 47, U.N. Doc. S/RES/758 (1992)} this was contingent on factions agreeing on a cease-fire, which they did. The cease-fire was breached many times endangering the UN force and often led to delay of aid flight.

\footnotesize

\begin{enumerate}
\item Diehl: International Peacekeeping, p. 7
\item U.N. Doc. S/12611 (1978)
\end{enumerate}
The Security Council crossed the threshold from peacekeeping to enforcement actions, when adopting resolution 770, in August 1992 authorizing states to “take all measures necessary”\(^{179}\) to enable humanitarian delivery to Sarajevo and the rest of Bosnia. UNPROFOR limited its use of force very strictly and preferred to negotiate the transportation of food instead of forcing a way through.\(^{180}\) On paper UNPROFOR was authorized to use significant amounts of self-defense, but in practice coercive action was left to NATO, which led up to the replacement of UNPROFOR with a NATO-led-force IFOR. IFOR was authorized to take enforcement action if the Dayton Agreement was broken. The UN removed the crucial neutrality of UNPROFOR when the force was mandated to act against the Bosnian Serbs and coordinate with UN-authorized airstrikes by NATO. UNPROFOR teaches us that once a peacekeeping operations uses force beyond what is required for personal self-defense, the line between offensive and defensive action becomes blurred.

UN’s operations in the Congo showed for the first time a repeated expansion of a peacekeeping operations mandate combined with the parallel expansion of the right to self-defense. The government of the Congo requested the establishment of ONUC in July 1960. ONUC was initially a consensual, non-offensive operation sent to provide assistance to the Congolese government until security forces could fulfill their tasks following the breakdown of Belgian decolonization.\(^{181}\) When ONUC arrived the situation was unpredictable, fighting continued, rival governments were being established and secession of the Katanga region was attempted with the assistance of Belgian troops and mercenaries.

The Civil war escalated and led to the adoption of resolution 161 in February 1961. The Council considered the situation to be a “threat to international peace and security”\(^{182}\) and urged ONUC to “take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of all military operations, the prevention of clashes, and the use of force, if necessary as the last resort.”\(^{183}\) The Council went further in resolution 169 and expanded ONUC’s mandate. ONUC was to maintain territorial integrity and political independence of the Congo, assist the government to restore order and to “secure the immediate withdrawal and evacuate from the Congo of all foreign military […] personnel not under United Nations command, and mercenaries.”\(^{184}\) It also welcomed the restoration of the central government in August 1961 and rejected claims

\(^{183}\) Ibid.
of Katanga’s secession. If necessary, force was authorized to deport all foreign troops and mercenaries.\textsuperscript{185} ONUC tried to uphold the principles of peacekeeping, especially before resolution 161 was adopted, by negotiating cease-fires and not siding openly with any of the factions. Ultimately, force had to be used to subdue the Katangese rebellion in April 1961, and again in December 1961, and then between December 1962 and January 1963.\textsuperscript{186} ONUC was authorized to use force beyond that necessary for strict self-defense, therefore it is hard to look at it as a traditional peacekeeping operations. Also, it was not impartial in the conflict, ONUC received little cooperation despite the fact that formal consent was given by the central government - the fact remains that there was no real government in the Congo until August 1961.

The Congo operation was the first example of a quasi-enforcement action that connects peacekeeping with enforcement. Even though it can be successful in certain situations, as illustrated in the Congo, it does compromise the institution of peacekeeping in a general way. States will be more cautious in inviting peacekeeping forces into conflict zones if an implied threat is present that the operation may undertake greater enforcement. Even so, there will be situations were there is no other choice than to use force beyond the defensive. In those cases the UN should have clear goals, be equipped to carry out enforcement action and should have international support. Some of these requirements were missing in the Congo, Bosnia and Somalia. In spite of that, the UN forces were successful in the Congo, Bosnia and Somalia. In spite of that, the UN forces were successful in the Congo, and the effectiveness of UN authorized force in Bosnia (after Dayton) shows that this approach can successfully bring an end to unmanageable conflict. Clearly, the UN should only authorize force beyond the defensive when all other methods have been exhausted and it is necessary to control or bring a situation of extreme danger and/or suffering to an end.\textsuperscript{187}

\textbf{6 Peacekeeping after the Cold War - 1990’s}

After the end of the Cold War and the success of the Gulf War, optimism prompted the UN to propose a stronger and more powerful form of peacekeeping.

In \textit{An Agenda for Peace} in 1992, UN Secretary-General Boutros Boutros-Ghali proposed a deviation from traditional peacekeeping operations that used limited armed forces and passive military operations to preserve an existing peace agreement. The “peace-enforcement” units would be more heavily armed than traditional peacekeepers and be able to

\textsuperscript{185} Ibid.
\textsuperscript{186} U.N. Doc. S/5240 (1963)
\textsuperscript{187} McCoubrey and White: The blue helmets: legal regulations of United Nations military operations, p. 84-85
use military force to pressure belligerents to accept a stable and peaceful environment.\textsuperscript{188} The Secretary-General noted in his \textit{Supplement for An Agenda for Peace} in 1995, that peacekeeping was in time of transition. Most of the peacekeeping after the Cold War had been within states and irregular forces rather than regular armies face UN forces. This meant that international intervention had to go further than military and humanitarian operations in order to bring peace to concerned parties. Peacekeeping has become more complex and more expansive than it used to be.\textsuperscript{189} The expansion was intended to be a second generation of peacekeeping. The concept of peacekeeping is not static and there are as many types of peacekeeping as there are conflicts according to the Secretary General.\textsuperscript{190} With the disengagement of the superpowers from their Cold War client states, in some cases a political vacuum was left in which historical animosities, nationalistic, cultural, religious and tribal rivalries competed for power.\textsuperscript{191} In many countries where continued ancient tribal and religious beliefs prevented the introduction of democracy. When the ‘state’ as a political organization was introduced, government control often went to the most powerful tribe or fraction at the time. With the support of one of the superpowers, the controlling regimes were inclined to rule by force. With the disengagement of the superpowers, the continued financial, political and military support stopped in the Congo. A state of anarchy emerged as the regime of Siad Barre collapsed, leaving remaining warlords fighting to take his place.\textsuperscript{192}

This expansion of peacekeeping has sometimes been referred to as Chapter VI and 3/4 Operations, where UN military forces are inclined to work under more vigorous rules of engagement. In other words, the definition of self-defense is expanded. An example of this is the UNPROFOR (United Nations Protection Force) established for a mission in Bosnia-Herzegovina to protect convoys and supplies designated for humanitarian purposes. The Secretary-General used an expanded definition of “self-defense”,\textsuperscript{193} declaring that peacekeepers “would follow normal peacekeeping rules of engagement [and] would thus be authorized to use force in self-defense … it is noted that in this context self-defense is deemed to include situations in which armed persons attempt by force to prevent UN troops from carrying out their mandate.”\textsuperscript{194} The expanded definition of self-defense given is likely to become the applicable norm for UN Peacekeeping forces in future vigorous peacekeeping

\textsuperscript{188} Boutros Boutros-Ghali: \textit{An Agenda for Peace}
\textsuperscript{189} When UN peacekeeping operation mostly consists of monitoring cease-fire and controlling a buffer zone.
\textsuperscript{190} Christine Gray: \textit{International law and the use of force}, p. 272
\textsuperscript{191} Hill and Malik: \textit{Peacekeeping and the United Nations}, p. 93
\textsuperscript{192} \textit{Ibid.}, p. 93
\textsuperscript{193} L. C. Green, \textit{The Contemporary Law of Armed Conflict}, p. 324
\textsuperscript{194} \textit{Ibid.}, p. 324
operation. Peacekeeping forces may protect themselves in self-defense and avert other forces from interfering with them while carrying out a UN mandate. Any response must be proportionate to the attack, and be directed at subduing the attackers. Furthermore, every reasonable effort must be made to prevent the fight from escalating. In addition, the use of armed force taken in response to actions that prevent the achievement of UN mandate must be tied to humanitarian concerns. If coercive use of force would be restricted to humanitarian circumstances, peacekeepers are able to maintain the moral authority necessary to ensure their safety and continue their mission. Peacekeeping forces are not combat forces, they only monitor previously decided cease-fires and truces. Traditional peacekeeping forces have used force, but it is the exception and not the rule.

The UN operation that took place in former Yugoslavia was the first test of the new generation of peacekeeping. The forces that had maintained the federation for over forty years was no longer strong enough to do so after president Tito’s death in 1980. With the collapse of communism in Eastern Europe, national identity emerged as a political force in the form of new independent nations. UNPROFOR in Bosnia-Herzegovina tried to find a middle way between traditional peacekeeping that “preserves” a peaceful environment and large-scale enforcement operations that use active military force to “produce” that environment. This middle way was hard to find and by January 1995 the Secretary General withdrew the Agenda for Peace, and stated:

The UN operation in Bosnia-Herzegovina ... [was] given additional mandates which required the use of force. These were incompatible with existing mandates requiring consent of the parties, impartiality, and non-use of force. The resultant combination was inherently contradictory. It jeopardized the safety and success of the peacekeeping mission.

The UN Secretary-General did however not recognize that in addition to the unclear strategy of those operations, the effort to push enormous amounts of humanitarian aid into former Yugoslavia and the use of UN forces to keep quiet about the tensions in the region backfired.

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195 Ibid., p. 324
196 From 1960-1964, The UN authorized a peacekeeping force to restore law and order to the Congo. ONUC redefined and expanded the use of force in self-defense to prevent local factions from preventing the peacekeepers from carrying out their mandate and responsibilities. “The concept of self defense, as well as the principles of non-intervention and sovereignty, were loosely defined and greatly modified in the Congo Operation”. Jon E. Fink: From Peacekeeping to Peace-Enforcement: The blurring of the Mandate for the Use of Force in Maintaining International Peace and Security, p. 15
197 Hill and Malik: Peacekeeping and the United Nations, p.93
198 Lieutenant Colonel Vladimir Qiriazi: Future Balkan Security: the International and Albanian role in the process
The middle way that the international community forced on the United Nations contributed to the problem, rather than help solving the situation.\textsuperscript{199} The biggest defect of the strategy was that the enormous military, civil and humanitarian effort was not reasonably tied to any policy that could convince the hostiles that there would be more to gain by negotiating than fighting. The UN recognized that is was risky to utilize a peacekeeping force without the prerequisite of success, such as a former concluded settlement and the approval and cooperation of belligerents. The Security Council, however, thought that the force could be an interim arrangement to create the conditions of peace and security required for the negotiations of an overall settlement of the Yugoslav crisis.\textsuperscript{200}

The UN had in cases such as Angola and Mozambique created conditions for peace, and peacekeeping forces helped implement negotiated agreements. In the former Yugoslavia and Somalia such a settlement never seemed possible, without an achievable cease-fire to maintain, the UN could only supply humanitarian comfort to those suffering from the violence. This type of humanitarian intervention was to have unexpected consequences for the future of UN peacekeeping.\textsuperscript{201} First, the distribution of humanitarian aid in situations of turbulent political circumstances can threaten one of the fundamental principles of UN Chapter VI operations; impartiality. The second repercussion of the combination of peacekeeping and humanitarian aid also involves loss of impartiality. The UN used force to protect relief convoys and civilian boundaries. The term ‘Mission creep’ was invented to describe how the UN has progressively become more involved in operations which it only set about with limited objectives. In Somalia and former Yugoslavia ‘mission creep’ arose because the UN was coerced to negotiate for delivery of humanitarian aid and because Chapter VII mandate were enacted when these negotiations failed to produce the desired environment. The UN was not prepared for the consequences of such use of force. As was the case in both Somalia and former Yugoslavia, if one or more sides are considered to be the aggressor, officially or unofficially, it is almost impossible to remain impartial.\textsuperscript{202}


The conflict in former Yugoslavia exasperated in 1990 when Slovenia voted for independence in a referendum. The previous day, the Croatian Parliament had declared that its laws were

\textsuperscript{199} John F. Hillen III: Killing with Kindness: The UN peacekeeping mission in Bosnia.
\textsuperscript{200} UN Department of Public Information, Peacekeeping Notes Update, May 1994, p. 56; John F. Hillen III: Killing with Kindness: The UN peacekeeping mission in Bosnia.
\textsuperscript{201} Hill and Malik: Peacekeeping and the United Nations, p. 93
\textsuperscript{202} \textit{Ibid.}, p. 105-106
superior over federal laws. Negotiations regarding an unbound federation failed when the Serbian party, which represented the dominant Yugoslav republic, walked out of the negotiations. Croatia and Slovenia declared independence on June 25 1991 despite Serbia’s opposition. Within days, the Yugoslav People’s Army attacked the Slovenian provisional militia. And, by August the conflict led to a widespread fighting in Croatia.

The Security Council gathered in September at the request of several states.\(^{203}\) The Council adopted resolution 713 in September 1991 and stated that the continuation of the situation was a threat to international peace and security and invoked provisions under Chapter VII. All parties to the dispute were urged to comply with the terms of the cease-fire agreement and an embargo was called on all deliveries of weapons and military equipment to Yugoslavia. However, in a short period of time, all the parties had violated the cease-fire agreement. The Security Council expressed its hope that the Secretary-General would recommend the establishment of a peacekeeping force in Yugoslavia. Despite two resolutions claiming the situation unsuitable for a peacekeeping operation, the Council authorized a peacekeeping force, United Nations Protection Force (UNPROFOR), under Article 25, with resolution 743\(^{204}\) in February 1992.\(^{205}\) In that resolution the Council recalled that UNPROFOR should be an interim arrangement to create conditions of peace and security required for the negotiations of an overall settlement of the Yugoslav crisis. UNPROFOR’s first mandate related to Croatia. Later that year the mandate was expanded to include Bosnia and Herzegovina and former Yugoslav Republic of Macedonia.\(^{206}\)

### 6.1.1 Croatia

UNPROFOR was deployed in certain areas, designated as United Nations Protected Areas (UNPAs), following its establishment. The UNPAs were areas in which Serbs constituted the majority or a substantial minority of the population and where inter-ethnic tensions had led to armed conflict. The Security Council decided that special interim arrangements were required in the UNPAs to ensure that a lasting cease-fire was maintained. For UN purposes, these areas were divided into four sectors, East, North, South and West.\(^{207}\)

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\(^{203}\) Marc Weller: The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia, p. 577-579
\(^{205}\) Jon E. Fink: From peacekeeping to peace enforcement, the blurring of the mandate for the use of force in maintaining international peace and security, p. 25-26
\(^{206}\) The Blue Helmets, p. 513
\(^{207}\) Ibid., p. 513
The original plan in Croatia rested on two central elements: (a) the withdrawal of the Yugoslav People’s Army (JNA) from all of Croatia and the demilitarization of the UNPAs; and (b) the continuing functioning, on an interim basis, of the existing local authorities and police, under UN supervision, pending the achievement of an overall political solution to the crisis.208

UNPROFOR’s mandate was to ensure that the UNPAs were demilitarized and that all UNPA residents were protected from fear of armed attack. UNPROFOR was authorized to control access to the UNPA’s and to monitor the functioning of the local police to help ensure non-discrimination and the protection of human rights. UNPROFOR was also to verify the withdrawal of JNA and irregular forces from Croatia and support humanitarian agencies in returning displaced persons. The UN was unable to secure cooperation from the parties so that it could achieve this goal. Croats continued to attack UNPA territories to seize strategic sites, they were also displeased with UN’s failure to disarm the Serbs. The Serbs refused to disarm referring to the need for self-defense against the Croatian army. At the same time, the Croatian government continued to insist that the UNPAs be reincorporated into Croatia, Serbia maintained that a pre-condition for talks on the future status of the areas was that they would be recognized by the Croatian authorities as the state of the Republic of Serbian Krajina. The tension increased when UN monitors announced that while sections of JNA were withdrawing from the UNPAs as was agreed, they left behind arms and equipment for the Serb militias. The establishment of the Federal Republic of Yugoslavia was introduced on 27 April 1992 and succeeding withdrawal of the JNA from other republics also resulted in large numbers of well armed troops in Croatia and Bosnia. This development left UNPROFOR with a more militarized situation than it anticipated.209

In June 1992 UNPROFOR’s mandate was extended, with Security Council resolution 762 UNPROFOR was authorized to undertake monitoring functions in the “pink zones” - certain areas outside of the UNPA’s that had been controlled by the JPA, largely populated by Serbs and were not covered in the original agreement. The objectives of the operations became more indefinable.210 In August 1992, the Security Council authorized with resolution 769 the enlargement of UNPROFOR’s strength and mandate to enable it to control the entry of civilians into the UNPA’s and to perform immigration and customs functions at the UNPA

208 Ibid., p. 513
210 Ibid., p. 107
borders at international frontiers.\textsuperscript{211} The force was authorized with resolution 779 (1992) to assume responsibility for monitoring the demilitarization of the Prevlaka Peninsula near Dubrovnik and control the Peruca dam, which was situated in one of the “pink zones”.\textsuperscript{212}

In January 1993 the Croatian Army attacked in the southern part of UNPROFOR’s sector. The reason for which was their impatience with the slow negotiation progress regarding different economic facilities in and adjacent to the UNPA’s and the “pink zones”. The Croatian Army captures the Peruca dam on 27 January. Local Serbs responded to the attack by breaking into UN weapon storage areas that were under UNPA’s control and removed arms, including heavy weapons.\textsuperscript{213} UNPROFOR gave the local Serb authorities and the Croatian Government a warning against further violations and did their best to prevent escalation of the fighting and to bring about a cease-fire.\textsuperscript{214}

The Security Council demanded that weapons seized from UNPROFOR’s storage areas be returned and that parties adhered to strict compliance with the terms of the cease-fire arrangements. The Council urged parties to cooperate with the International Conference on the Former Yugoslavia (ICFY) and to refrain from any action that might undermine efforts aimed at reaching a political settlement.\textsuperscript{215} The Croatian Government informed UNPROFOR’s Force Commander that, upon compliance by the Serbs with the various provisions of resolution 802 (1993), they would remove their military personnel, but not their police, from areas they had taken. The Serbs stated that Croatia must return to its pre-22 January positions before the implementation of the remainder of resolution could be considered.\textsuperscript{216}

6.1.2 Bosnia and Herzegovina

The original mandate of UNPROFOR related only to Croatia. However, it was envisaged that succeeding demilitarization of the UNPA’s that UNPROFOR’s military observers would be redeployed into certain parts of Bosnia and Herzegovina (hereinafter Bosnia).\textsuperscript{217}

In March 1992, the ethnic groups in Bosnia released a Statement of Principles for New Constitutional Arrangements declaring that the new state would maintain existing boundaries and would recognize the rights of all the Muslim, Croat and Serb citizens. It did not take long

\begin{footnotes}
\item The Blue Helmets, p. 514
\item \textit{Ibid.}, p. 514
\item \textit{Ibid.}, p. 514
\item \textit{Ibid.}, p. 514
\item \textit{Ibid.}, p. 514
\item \textit{Ibid.}, p. 514-515
\item The Blue Helmets, p. 521
\end{footnotes}
until the Serb leadership in Bosnia renounced the statement. Conflict broke out and swept throughout Bosnia. The Security Council released a statement condemning the use of force and demanding that outside parties refrain from interfering in the affairs of Bosnia.

With the situation in Bosnia deteriorating, the Secretary-General decided to expedite the deployment by sending 40 military observers to the Mostar region in April 1992. In May the conflict between Bosnian Muslims and the Bosnian Croats on the one side and the Bosnian Serbs on the other intensified despite diplomatic efforts by the European Community, the Secretary-General and UNPROFOR to negotiate a lasting cease-fire. On 14 May the threat to UNPROFOR’s observers lives reached an unacceptable level and they were redeployed to Croatia.

The General Assembly demanded an end to the fighting in Bosnia in 25 August 1992, and denounced the tremendous violations of human rights and humanitarian law. The Assembly also demanded that JNA and Croatian forces withdrawal from Bosnia. Even though the JNA withdrew from Bosnia, they left behind weaponry and equipment which Bosnia Serb forces used and became to be known as the Army of the Serb Republic. The GA resolution focused on the human rights violations taking place and condemned the ethnic cleansing which was taking place. The Assembly requested that the International Committee of the Red Cross (ICRC) would be granted immediate, unrestricted and continued access to all camps, prisons and other places of detention in former Yugoslavia. The free movement of ICRC was also to be ensured. The Security Council acted and adopted resolution 787 in November to try and address these concerns. The resolution called for full cooperation with humanitarian agencies and with UNPROFOR to ensure the safe delivery of humanitarian assistance in former Yugoslavia. The Council took measures to guarantee that the humanitarian assistance was delivered to those in need. It established a ban on military flights in the airspace of Bosnia, with the exception of UN flights in support of the humanitarian assistance operations. Responding to this, the US, France and the Netherlands deployed aircrafts in October to make sure that the ban was complied with.

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218 Marc Weller, The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia, p. 597
219 Ibid., p. 600
221 The Blue Helmets, p. 522
225 Jon E. Fink: From peacekeeping to peace enforcement, the blurring of the mandate for the use of force in maintaining international peace and security, p. 27-29
Numerous violations of the ban were reported which led to the Security Council, acting under Chapter VII of the UN Charter, to extend the ban to “all fixed-wing and rotary-wing aircraft in the airspace” of Bosnia.\(^\text{226}\) Additionally, the resolution “[a]uthorize[d] Member States ... acting nationally or through regional organizations or arrangements, to take ... all necessary measures in the airspace of the Republic of Bosnia and Herzegovina, in the event of further violations, to ensure compliance with the ban on flights.”\(^\text{227}\) It was under this resolution that NATO set up *Operation Deny Flight*. The use of force was limited to violation of the no-fly ban. It did not authorize pre-emptive actions.\(^\text{228}\)

With resolution 836 the Security Council demanded that certain towns in Bosnia and Herzegovina would be treated as safe heavens. The Security Council extended the mandate of UNPROFOR so it would be able to prevent attacks against safe areas, and to monitor cease-fires, and promote withdrawal of military units. UNPROFOR was also supposed to occupy some key points on the ground and deliver humanitarian aid. UNPROFOR was able to take necessary measures, including the use of force, in reply to attacks against safe areas or armed incursions. UNPROFOR was authorized to use force to contravene attacks against the safe areas and deliberate obstructions of humanitarian convoys. In August 1993, the Security Council reaffirmed its demand for unrestricted delivery of humanitarian aid and continued safety and operational effectiveness of UNPROFOR and UNHCR personnel. With resolution 859 the Council called for an “immediate cease-fire and cessation of hostilities.”\(^\text{229}\) UNPROFOR’s mandate was expanded in October 1993 with resolution 871 and peacekeepers were authorized to use “self-defense to take necessary measures, including the use of force, to ensure its security and its freedom of movement.”\(^\text{230}\) This mandate became similar to that of ONUC in the Congo operations, this blurred the principles of peacekeeping and peace-enforcement measures regarding the use of force.\(^\text{231}\)

In the end, the Security Council had to turn to NATO to protect the safe havens. NATO used force for the first time in 1994 in response to a violation of the no-fly zone. What happened was that UNPROFOR was on the ground and vulnerable to attack. This proved to be true, when Bosnian Serbs took UNPROFOR troops hostage in response to the NATO air strikes. The Security Council then withdrew its forces from areas they were not able to protect

\(^{227}\) Ibid., para.4 
\(^{228}\) Christine Gray: International law and the use of force, p. 289-90 
\(^{231}\) Jon E. Fink: From peacekeeping to peace enforcement, the blurring of the mandate for the use of force in maintaining international peace and security, p. 30-31
and consequently made it possible for NATO air forces to take action. In the end, NATO used force in *Operation Deliberate Force*, an operation to defend Sarajevo, under resolution 836/1993. This brought an end to the conflict in Bosnia and led to the conclusion of the December 1995 Daytona Peace Agreement.\(^{232}\)


The UN began its involvement in Somalia with efforts to facilitate humanitarian aid to people trapped by civil war and food shortages, but it developed into a broad attempt to help stop ongoing conflicts and to form basic institutions of a viable State.\(^{233}\)

In 1960, British and Italian colonial territories united to become independent Somalia. From the beginning, the country had disputes with Ethiopia over boundaries. The parties tried to solve their problems militarily and sought aid from US and the Soviet Union.\(^ {234}\)

The UN sent a peacekeeping mission to Somalia in response to food shortage induced by drought and extended conflict that threatened to become a major humanitarian catastrophe. After the collapse of the oppressive regime of Siad Barre in 1991, clans and sub-clans fought for control of a country that had no civil society, law and order and governmental services had almost disappeared. Somalia was the quintessential failed state and worldwide pressure led the international community to respond.

A cease-fire was agreed upon on 3 March 1992 between the two main opposing rivals; Mogadishu General Mohamed Farah Aideed, who led the United Somali Congress/Somali National Alliance (USC/SNA) and controlled south Mogadishu and Ali Mahdi Mohamed who controlled the north. Secretary-General Boutros-Ghali used this opportunity and asked the Security Council to dispatch a small military troop to monitor the cease-fire and provide security for humanitarian agencies. The Security Council responded and on 24 April 1992 United Nations Operation in Somalia (UNOSOM) was established.\(^ {235}\) At first the troop consisted of 50 unarmed, uniformed military observers that monitored the cease-fire. The Security Council also agreed to deploy a 500-strong but lightly armed infantry unit that was to provide UN relief convoys with a sufficiently strong military escort to deter attack and to fire effectively in self-defense if deterrence would not prove to be sufficient.\(^ {236}\) Peace zones were to be established as to facilitate the delivery of aid. As was the case in Bosnia, there was a

\(^{232}\) Christine Gray: International law and the use of force, p. 289-290  
\(^{233}\) The Blue Helmets, p. 287  
\(^{234}\) *Ibid.*, p. 287  
notion that the use of force in self-defense could deter local belligerents determined to disrupt the UN operation.237

The resolution did not cite any chapter of the UN Charter, although the preamble to the resolution did express the Council’s concern that the continuation of the situation in Somalia constituted a threat to international peace and security, the phrase commonly used to clear the way for a Chapter VII operation. Up to this point, the operation was to be a traditional peacekeeping operation under Chapter VI, were the use of force was limited to self-defense.

In a report by Secretary-General Boutros-Ghali in January 1996 he expresses in retrospect:

UNOSOM I was conceived as a peace-keeping mission even though, for the first time in the history of United Nations peace-keeping, one if its primary purposes was to make possible the delivery of emergency assistance to a civilian population. Peace-keeping, in contrast with peace enforcement, is not intended to achieve its objectives through the use of force. When peace-keepers are deployed, they make every effort by peaceful persuasion, to stop fighting between warring parties or to carry out other aspects of their mandates; they do not force belligerents to cease their hostilities. Indeed, peace-keeping operations use weapons only in self-defence, which is defined to include defence of their mandate as well as of their personnel and property. The rationale for the neutrality of United Nations peace-keeping forces is that it will serve to defuse tensions, deter violence and build confidence among the parties to a conflict. The security force to be sent to Somalia ... was intended to help deter armed attacks on humanitarian relief operations and was to use its weapons only in self-defense if deterrence failed.238

Even though the resolution referred to a cease-fire in Somalia, the peacekeepers were only deployed to Mogadishu as that was the only place were a cease-fire had been agreed to. Conditions in Somalia continued to worsen which led the Secretary-General to propose a comprehensive effort to restore all aspects of Somali life as opposed to managing the food crisis. He suggested the UN establish a presence in all regions of the country and assist in humanitarian relief and recovery. The Security Council agreed and resolution 767 was adopted. In August 1992 the Secretary-General announced that an agreement had been reached between rival parties that a 500-strong security force would be deployed as envisaged and Pakistan had agreed to provide.239 However, there was no Somali government that could approve the mission - and therefore no such approval was obtained.240

For the plan of the Secretary-General to work, a larger and more military capable force would be required. On 28 August the Council authorized the deployment of 3500 troops,

237 Jon E. Fink: From peacekeeping to peace enforcement, the blurring of the mandate for the use of force in maintaining international peace and security, p. 143
including the 500 Pakistani soldiers who were on their way and the 50 military observers already there.\textsuperscript{241} The Security Council again failed to make a reference to a particular Chapter of the UN Charter. In September the Council agreed to add three logistics units and with that bringing the authorized force in Somalia to 4219. Regrettably, after months of negotiations to convince Somalis to accept the small Pakistani force, no consultations were held about the large UN force which was now authorized. This lack of consent made armed opposition to the presence of UN troops much more likely.\textsuperscript{242}

By now, the Secretary-General had introduced his \textit{Agenda for Peace}, where a more expansive role for peacekeepers was envisaged, including the possible use of force for peace enforcement. The peace enforcement unit was to be more heavily armed than peacekeepers had been and be available to enforce a cease-fire. Peacekeepers in UNOSOM I did not fall under this category of peacekeepers.\textsuperscript{243}

On 28 October 1992, Aideed declared that Pakistani troops would not be tolerated on the streets of Mogadishu and refused their deployment to Berbara or Kismayo. Rumors began spreading that the UN was abandoning its policy of cooperation and would resort to forcible action in an effort to invade the country.\textsuperscript{244} The Secretary-General was unsuccessful in countering these misunderstandings. In November Aideed forces attacked and shot at the Pakistani troops at Mogadishu airport and demanded the withdrawal of the troops. Pakistani troops returned fire in self-defense.\textsuperscript{245} Even though UNOSOM I remained in control of the airport, the situation was impossible. Outside the secured UN compound, vehicles of relief organizations were being hijacked, their convoys and warehouses ransacked and foreign staff was harassed, detained and killed. Belligerents continued fighting and anarchy continued.

\subsection*{6.2.1 United Task Force}

When UNOSOM I failed to protect the delivery and distribution of humanitarian aid, UNITAF stepped in, known as Operation Restore Hope by the US military, it arrived in a blaze of publicity, in front of the world press on 9 December 1992. UNITAF made an entrance and showed force. Warships patrolled the coast and planes flew over Mogadishu as soldiers spread out on the streets of Mogadishu.

\begin{flushright}
242 William J. Durch: UN Peacekeeping, American Policy and the Uncivil War of the 1990s, p. 316 \\
243 Jon E. Fink: From peacekeeping to peace enforcement, the blurring of the mandate for the use of force in maintaining international peace and security, p. 145 \\
245 \textit{Ibid.}, p. 293
\end{flushright}
The Security Council unanimously adopted Resolution 794. The situation in Somalia was a threat to international peace and security and authorized action under Chapter VII of the UN Charter. The Secretary-General and UN member states were mandated to use “all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.” This was the first time the Security Council authorized actions under Chapter VII in relation to an internal armed conflict or a humanitarian situation. The main task of UNITAF became its humanitarian mission. It divided southern Somalia into humanitarian relief sectors and established food distribution centers in each one to guarantee the delivery of large quantities of food in order to eliminate ransacking, stockpiling and the use of food as a weapon. The north-east was less affected by the food crisis and was not included in UNITAF’s area of operation. UNITAF became a military mission with a strict humanitarian role. This had implications for its successor, which was forced to deal with the issues that UNITAF had not addressed, particularly disarmament, deployment throughout Somalia and a wider nation-building agenda. UNITAF mostly used force in self-defense. UNITAF’s mandate, to protect and deliver humanitarian relief supplies involved little use of force except in self-defense. UNITAF successfully achieved most of its mandate.

6.2.2 United Nations Operation in Somalia II

In March 1993 the Security Council unanimously adopted resolution 814, which authorized the second UN operation in Somalia (UNOSOM II). “It was to be the first mission organized and commanded by the UN to be explicitly mandated under Chapter VII of the UN Charter and the first since the Congo to be specifically mandated to use force beyond self-defence.” As was the case with UNOSOM I and UNITAF, UNOSOM II was deployed without the consent of a host state as Somalia still did not have a working government.

The original plan was for UNITAF to be succeeded by a traditional peacekeeping force that would have inherited a secure and nonviolent arena. As UNITAF was unwilling and unable to achieve this goal, the UN was pressured to deploy a follow up peace enforcement operation. The US wanted its forces to leave Somalia as soon as possible, and even though changes in administration occurred, their views remained the same. Boutros-Ghali did his best to prolong UNITAFs stay in Somalia, claiming it had not met its goal of creating conditions where a smooth transition to a peacekeeping force could take place.

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246 Jon E. Fink: From peacekeeping to peace enforcement, the blurring of the mandate for the use of force in maintaining international peace and security, p. 167
247 Ibid., p. 172-173
248 Ibid., p. 184
UNOSOM II’s mandate was widely perceived to be nation-building, unlike UNITAF. According to Madeleine Albright, it was “an unprecedented enterprise aimed at nothing less than the restoration of an entire country as a proud, functioning and viable member of the community of nations.” However, the mandating resolution only asked the UN to provide assistance to the Somalis as opposed to take charge of rebuilding the country.

The first part of the resolution was not linked to Chapter VII, but aimed at assisting in food crisis, economic rehabilitation, the re-establishment of national and regional institutions, the investigation and facilitation of the prosecution of serious violations of international law among others. The second part of the resolution fell under Chapter VII and mandated the most ambitious military tasks of any UN peace operation ever:

[...] monitor that all factions continue to respect the cessation of hostilities and other agreements to which they have agreed, particularly the Addis Ababa agreements of January 1993; [...] to prevent any resumption of violence and, if necessary, take appropriate action against any faction that violates or threatens to violate the cessation of hostilities; [...] to maintain control of the heavy weapons of the organized factions which will have been brought under international control pending their eventual destruction or transfer to a newly constituted national army; [...] to seize the small arms of unauthorized armed elements and to assist in registration and security of such arms; [...] to secure or maintain security at all ports, airports and lines of communications required for the delivery of humanitarian assistance; [...] to protect, as required, the personnel, installations and equipment of the United Nations and its agencies, ICRC as well as NGOs and to take such forceful action as may be required to neutralize armed elements that attack, or threaten to attack, such facilities and personnel, pending the establishment of a new Somali police force which can assume this responsibility; [...] to continue the programme for mine-clearing in the most afflicted areas; [...] to assist in the repatriation of refugees and displaced persons within Somalia; [...] to carry out such other functions as might be authorized by the Security Council.

The resolution envisaged the use of force beyond self-defense when carrying out these tasks. The factions were to be disarmed with force if they failed to comply with timetables and modalities. In order to prevent the resumption of violence, appropriate action could be taken against any faction.

Despite its ambitious mandate, UNOSOM II had a smaller, less capable and less coherent military force than UNITAF. The Secretary-General tried to explain why UNOSOM II could manage with only 28,000 troops for the whole of Somalia, while UNITAF had 37,000 troops.

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252 Jon E. Fink: From peacekeeping to peace enforcement, the blurring of the mandate for the use of force in maintaining international peace and security, p. 186
in part of Somalia for easier tasks. Although not entirely convinced by his own reasoning, Boutros-Ghali warned that reinforcement might be needed and underlined the crucial importance of US logistic and support.\textsuperscript{253}

In May 1993 UNOSOM II was not close to its authorized strength, comprising only of 18,000 troops. Two of the most capable UNITAF contingents were leaving their deployment areas without any replacements. The troops that had arrived at that time were ill equipped.\textsuperscript{254} UNOSOM increasingly used force in self-defense as factions began testing the operations resolve through random sniping and harassment. UNOSOM began using force in defense if its mission as well as in enforcing disarmament. The operations used substantial military force after June 1993 when attempting to capture or kill General Aideed and his senior lieutenants. However, the most violent engagements initiated and conducted were not by UNOSOM forces but by US troops acting outside the UN chain of command.\textsuperscript{255}

When UNOSOM II arrived, the USC/SNA began to sneak its heavy weapons back into Mogadishu. UNOSOM II was rather well resourced and military strong in Mogadishu, which is why systematic disarmament was first attempted there. In early June UNOSOM decided to inspect some of the USC/SNA’s authorized weapon storage sites in south Mogadishu that had been inspected by UNITAF in February 1993. Communications with Aideed faction had already begun to deteriorate. One of the sites set for inspection was co-located with the radio station. Opinions differ whether the inspection was a cover for an investigation for subsequent seizure of the station. The Commission of Inquiry concluded at a later date, that the size and military strength of the inspection teams left little doubt that UNOSOM decided to use force if the cooperation during the inspection was not obtainable.\textsuperscript{256} The inspection was conducted on 5 June, the inspectors were escorted by Pakistani troops, which had not been told of the threat against them and were not expecting trouble. The inspection was successfully completed. Even so, angry crowds of civilians confronted UN troops elsewhere in the city. Militias used the crowd as cover and attacked and ambushed peacekeepers. Helicopters and tanks were deployed but were too late to be effective. 24 peacekeepers were killed and 57 wounded, the highest count for a single day in UN peacekeeping history.\textsuperscript{257}

\begin{itemize}
\item \textsuperscript{253} Ibid., p. 187
\item \textsuperscript{254} Ibid., p. 188
\item \textsuperscript{255} Ibid., p. 192
\end{itemize}
The Security Council was infuriated. Fearing dangerous precedent for other UN operations if it would fail to act, the Security Council adopted Resolution 837, authorizing the Secretary-General to take “all necessary measures against all those responsible”, including “their arrest and detention for prosecution, trial and punishment”. The Council highlighted the importance of early disarmament of all factions and the neutralization of the radio station that contributed to the violence against UNOSOM. The Council sought reinforcement of UNOSOM’s capabilities to “confront and deter armed attacks directed against it”. This was a change in policy and in operation for the UN. Boutros-Ghali stated that this was a crucial moment in UN history:

For the first time since the 1950 Korean War, UN forces had been mandated to engage in military operations against an adversary specified by the Security Council. This came as something of a shock to those who identified the United Nations with impartial peacekeeping under a cease-fire agreement.258

UNOSOM became more militarized and became more aggressive. In Somalia an attack on an individual is an attack of his clan. UNOSOMs actions were equivalent to a declaration of war against the USC/SNA. The response was typical guerrilla tactics that resulted in a virtual war situation over the next months.259

The Commission of Inquiry noted three separate phases of war:

The first phase characterised by United Nations offensive operations; the second showing the SNA having the initiative; and the third when independent US Special forces took up the offensive on behalf of UNOSOM II.260

Pakistani forces lost control over much of south Mogadishu and by early July Aideed’s forces made concerted efforts to close main lines of communication between UN Headquarters and ports and airfield. USC/SNA increased its attacks dramatically from 6 July. The feeling of being at war was hard to escape, especially after the orders of 8 July which included reference to ‘enemy forces.’261

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258 Boutros Boutros-Ghali: Unvanquished: A US-UN Saga, p. 97
261 Ibid., para. 152
The war commenced on 12 July when UNOSOM began what Boutros-Ghali called a systematic drive to restore law and order in south Mogadishu, with the destruction and confiscation of USC/SNA weapons stocks and neutralization of its broadcasting stations.\textsuperscript{262} The attacks continued for several days, with aerial bombardments and ground assaults by UNOSOM and Quick Reaction Forces. It was also on 12 July that the Quick Reaction Forces attacked the house of Habr-Gedir, which was considered be the operational headquarters for USC/SNA. It was assumed that a meeting of clan elders would be taking place, including Aideed. Different from previous raids, no warning was given. The attack was planned and recommended by UNOSOM and approved by both the White House and UN Headquarters. At least 54 Gedir Clan members were killed, mostly civilians.\textsuperscript{263} After the raid, four journalists were murdered and their bodies displayed for television cameras.

Difficulties faced UNOSOM II, especially the failure to capture General Aideed, despite an offer of $25,000 bounty for anyone who might assist in that regard.\textsuperscript{264} The UN did its best to protect its personnel while also searching for General Aideed. A special task force of US Rangers was dispatched to Mogadishu. The Rangers operated under a separate command from UNOSOM II.\textsuperscript{265} The Rangers mission was to capture and arrest Aideed and other high level USC/SNA leaders. The operation of 3 October was to capture top Aideed followers. Even though they were captured and taken away, the operation became a catastrophe when helicopters were shot down and resulted in heavy US casualties.\textsuperscript{266} Soon after, the US had a change of heart and reversed its policy; it announced that all US forces would be withdrawn from Somalia by the end of March 1994. This decision left the UN with no choice but to change its policy and abandon the hunt for Aideed. The SNA then announced a cease-fire on 8 October and the war was over.\textsuperscript{267}

It was on 16 November that the Security Council suspended the call for Aideed’s arrest and established an international commission of inquiry into the attacks on UNOSOM II personnel.\textsuperscript{268} The Security Council asked the Secretary-General for new options; his first option was to continue down the current path, assisting with voluntary disarmament but retain the power to resort to coercive disarmament and commence countermeasures if factions attacked UN forces. His second option was to rely completely on the cooperation of the

\textsuperscript{263} Jan A.: Peace building in Somalia, p. 15
\textsuperscript{265} \textit{Ibid.}, para. 168
\textsuperscript{266} \textit{Ibid.}, para. 169-170
\textsuperscript{267} \textit{Ibid.}, para. 174-175
Somalis, using force only in self-defense in conformity of traditional peacekeeping doctrine. The third option was a decreased version of the second option, with only 5000 troops, this would essentially be a return to UNOSOM I. The only realistic option was the second one.

On 4 February 1994 the Security Council decided to withdraw UNOSOM II by March 1995, no matter what the situation was on the ground, and adopted a scale-down mandate.²⁶⁹ The operation was to abandon coercive means and revert to dependence on the cooperation of the Somali parties. UNOSOM II retained the right to defend itself and was mandated to protect ports, airports and essential infrastructure of Somalia. It continued to pursue the reorganization of Somali police and judicial systems.

The UN began its staged withdrawal from Somalia in mid-December 1993. By March only a nominal Western presence remained. As the deadline for complete withdrawal drew closer, UNOSOM II began to reduce its area of operation and pull its contingents out of Somalia or back to Mogadishu. The UN asked the UK, the US and others for military assistance to ensure the safe removal of UNOSOM II from Somalia. The US provided 1800 marines, along with US Special Forces soldiers. On 28 February 1995 troops from France, India, Italy, Malaysia, Pakistan, the UK and the US landed in Mogadishu to provide cover for the withdrawal. There were 27 incidents that involved weapon fires; from snipers to rocked-propelled grenades fired by gangs. The force was withdrawn ahead of schedule, in 73 hours as opposed to 7-10 days. No lives were lost and UNOSOM II was gone by 3 March.²⁷⁰

7 Peacekeeping during this millennium

In the Secretary-Generals 1995 Supplement to An Agenda for Peace, he noted the transformation in the nature of peacekeeping. He pointed out the fact that peacekeeping was in time of transition and discussed the difficulties that had arisen. Since most of the peacekeeping that occurred after the Cold War had been within states, challenges had arisen that had not been encountered since the Congo operation in the 1960s. The characteristics of such intra-state conflicts are also different from inter-state conflicts. They are fought by regular armies, but also militias and armed civilians with ill-defined chains of command. They are often guerrilla wars without clear front lines; civilians are the main victims and targets. Humanitarian emergencies are common and authorities lack the capacity to cope with them. Another attribute to such conflicts is the collapse of state institutions, particularly the

²⁷⁰ Jon E. Fink: From peacekeeping to peace enforcement, the blurring of the mandate for the use of force in maintaining international peace and security, p. 202-204
police and judiciary bodies that result in paralysis of governance and a breakdown in law and order. This leads to international intervention that must extend beyond military and humanitarian tasks and must include the promotion of national reconciliation and re-establishment of effective government. Peacekeeping in these circumstances are more complex and expensive than when its tasks were mostly monitoring cease-fires and controlling buffer zones with the consent of the States involved in the conflict.271

As mentioned before a new kind of peacekeeping operations evolved in the late 1980s. Missions were established after negotiations had succeeded, with the mandate of helping the parties implement comprehensive settlements they had negotiated. Such operations were deployed to Namibia, Angola, Cambodia and Mozambique and have for the most case been successful.

The negotiated settlements did not only involve military arrangements but also a range of civilian matters. This resulted in the UN being asked to undertake an unprecedented variety of functions; for example, the supervisions of cease-fires, the demobilization of forces, their reintegration into civilian life and the destruction of their weapons, the implementation of de-mining programs and returning of refugees and displaced persons, the provision of humanitarian assistance, the supervision of existing administrative structures; establishing new police forces; the verification of respect for human rights; the design and supervision of constitutional, judicial and electoral reforms; the observation, supervision and even organization and conduct of elections; and the coordination of support for economic rehabilitation and reconstruction.272

The Secretary-General reiterated the importance of the principles of consents, impartiality and the non-use of force except in self-defense.273 However, there have been mandates that led peacekeeping operations to forfeit the consent of parties, to behave in a way that was perceived to be partial and to use force other than in self-defense. This has been the case when protecting humanitarian operations during continuing warfare, protecting civilian populations in designated safe areas and when pressing parties to achieve national reconciliation at a pace faster than they were ready to accept. The cases of Bosnia and Herzegovina and Somalia are instructive in this respect.274

7.1 Short overview of recent peacekeeping operations

271 Christine Gray: International law and the use of force, p. 272
272 Supplement to an Agenda to Peace, paras. 12,13,15,20,21
273 Christine Gray: International law and the use of force, p. 294-295
274 Supplement to an Agenda to Peace, paras. 33, 34
A total of 14 peacekeeping operations have been established since the year 2000, most of which are still ongoing. This chapter will go over a selected few of them to demonstrate changes occurring in UN peacekeeping since Yugoslavia and Somalia. Recent peacekeeping operations include the monitoring of cease-fires, implementation of peace agreements and support reconstruction of governmental infrastructure.

The first operation established in the new millennium was the United Nations Mission in Ethiopia and Eritrea (UNMEE).\(^{275}\) In June 2000, two years after the fighting broke out in a border dispute, Ethiopia and Eritrea signed a cessation of hostilities agreement. In July the Security Council established UNMEE to maintain liaison with the parties and set up a mechanism for verifying the cease-fire. The Council authorized UNMEE to monitor the cessation of hostilities and to help ensure the observance of security commitments. The mandate of UNMEE was terminated in July 2008 as both Eritrea and Ethiopia refused to cooperate. The decision came in response to restrictions imposed by Eritrea on UNMEE, as well as the cutting off of fuel supplies, making it impossible for the operation to continue carrying out its mandated tasks, and putting UN personnel at risk.\(^{276}\)

The second operation was that in East Timor. The Security Council authorized the establishment of the United Nations Mission in East Timor (UNAMET) to carry out consultation determining whether the people of East Timor accepted or rejected a special autonomy for East Timor within the Republic of Indonesia.\(^{277}\) UNAMET was to oversee a transitional period impending implementation of the decision of the Timorese people. The proposed autonomy was rejected and a transition process towards independence begun. Pro-integration militias launched a campaign of violence, looting and arson. The Security Council authorized\(^{278}\) a multinational force (INTERFET) to restore peace and security in East Timor, and to protect UNAMET. In October 1999 Indonesia recognized the consultations results and the Security Council established\(^{279}\) the United Nations Transitional Administration in East Timor (UNTAET), a peacekeeping operation responsible for the administration of East Timor.

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\(^{278}\) Ibid.
during its transition to independence. UN involvement in Timor-Leste continued after its independence in May 2002, with a new mission, the United Nations Mission of Support in East Timor (UNMISET).\textsuperscript{280} UNMISET’s mandate was to assist core administrative structures critical to the viability and political stability of East Timor, provide interim law enforcement and public security and assist in development of the East Timor Police Services. UNMISET gradually handed authority over to the Government of Timor-Leste. UNMISET’s mandate was completed in May 2005 and a successor UN political mission, the United Nations Office in Timor-Leste (UNOTIL), was established on 20 May 2005.\textsuperscript{281}

7.1.3 United Nations Mission in Liberia (2003-present)

The Economic Community of West African States (ECOWAS) has from the outset undertaken various initiatives aimed at a peaceful settlement. The UN has supported ECOWAS in its attempt to end civil war that broke out in 1989. One of its efforts was the establishment of an ECOWAS observer force and the Military Observer Group (ECOMOG). After negotiating a peace agreement in 1993, the Council established the UN Observer Mission in Liberia (UNOMIL). Its mandate was to support ECOMOG in implementation of the agreement by all parties. The implementation of the agreement was delayed and fighting resumed among Liberian factions, making it impossible to hold election in February 1994. The UN successfully observed elections in July 1997 that led to the establishment of a democratically elected Government and the end of the war. UNOMIL had reached its main objectives. Following the completion of UNOMIL’s mandate, the UN established a post-conflict peace-building support office (UNOL), which was to strengthen and harmonize UN peace-building efforts and promote respect for human rights. The peace-building efforts of UNOL were restrained by the inability of the Government and opposing party leaders to resolve their differences. At the same time, promotion of national reconciliation was compromised by systematic violence of human rights, the exclusion and harassment of political opponents and the absence of security reform. This contributed to civil war returning in Liberia, which again, prompted the international community to call on warring parties to seek a negotiated settlement of the conflict.

The Security Council unanimously adopted resolution 1509 in September 2003. UNMIL was established for a period of 12 months. Authority was transferred to UNMIL from forces led by ECOWAS, and UNOL’s mandate was terminated and its functions transferred to

UNMIL. UNMIL’s current mandate is to continue its assistance to the Liberian Government. The Government of Liberia and UNMIL are to continue the transition planning process, as well as coordinate with UNMIL, the UN country team and international partners to continue development of a national security and rule of law institutions that are operational. ECOWAS is to develop a sub-regional strategy to address the threat of the cross-border movement of armed groups and weapons as well as illicit trafficking, with UNMIL’s assistance.

7.1.4 United Nations Operation in Côte d’Ivory (2004-present)

After determining that the situation in Côte d’Ivory continued to pose a threat to international peace and security in the area, and acting under Chapter VII of the UN Charter, the Security Council decided to establish United Nations Operation in Côte d’Ivory (UNOCI) for an initial period of 12 months as of April 2004. UNOCI was authorized to use all necessary means to carry out its mandate within its capabilities and its areas of deployment. UNOCI’s goal is to further the implementation of the Ivorian parties of the peace agreement signed by them in January 2003. Its mandate has been renewed on several occasions, the most recent being resolution 2000 (2011). After the UN-certified presidential elections were held in November 2010. Expectations were that the elections would advance the peace process in Côte d’Ivory. Instead, the country stumbled back into civil war when reigning leader Laurent Gbagbo refused to step down, using troops, paramilitaries and mercenaries to secure his position and crush the opposition. The deadlock lasted for five months and ended with Gbagbo’s arrest and the inauguration of the legitimate President in May 2011. UNOCI has remained on the ground to support the Ivorian Government.

7.1.5 United Nations Stabilization Mission in Haiti (2004-present)

The United Nations Stabilization Mission in Haiti (MINUSTAH) was established by the Security Council on 1 June 2004 by resolution 1542. The Mission followed a Multinational Interim Force sanctioned by the Council in February 2004, after Haiti President Aristide was exiled in the aftermath of an armed conflict that spread to several cities across the country. Initially MINUSTAH was set up to support the Transitional Government in establishing a secure and stable environment, assist in monitoring, restructuring and reforming the Haitian security sector. The Mission has since expanded its mandate to include efforts to promote human rights, fight corruption and combat HIV/AIDS.

National Police, provide help with comprehensive and sustainable disarmament, demobilization and reintegration programs, assist in restoring and maintaining the rule of law, public safety and public order in Haiti, support constitutional and political processes and assist in organizing, monitoring and carrying out free and fair municipal parliamentary and presidential elections. The Security Council adjusted MINUSTAH’s mandate on many occasions to adapt to changing circumstances on the ground and to the evolving requirements as dictated by the political, security and socio-economic situation existing in the country. By 2010, Haiti appeared to be on track towards a more promising future for its people, the media was operating freely and the economy was growing despite world economic crisis. However, a devastating earthquake hit Haiti in January 2010, claiming 220,000 lives, including 96 UN peacekeepers, left 1.5 million homeless, leveled the capital city and delivered a severe blow to the shaky Haitian economy and infrastructure. Additionally, it led to a political uncertainty and interrupted the relatively smooth progress towards legislative, presidential and municipal elections scheduled to be held in February 2010. The Secretary-General provided recommendation on the future role of the UN mission in Haiti in his semi-annual report, where he pointed to the need for greater technical, operational and logistical assistance to Government and state institutions. In June, the Council authorized the deployment of additional 680 police personnel to MINUSTAH. In October 2011, the Security Council recognized that the security situation in Haiti was still fragile, but had improved since the earthquake hit, and with resolution 2012 (2011) extended MINUSTAH’s mandate and adjusted the forces capabilities.

7.1.6 United Nations Mission in Sudan (2005-present)
Following the breakdown of the 1972 Addis Ababa agreement, the north-south civil war began in 1983. The Government and the Sudan People’s Liberation Movement/Army (SPLM/A), the main rebel movement in the south, fought over resources, power, roles of religion and self-determination for more than two decades. In July 2002, parties to the conflict signed the Machakos Protocol where they reached a specific agreement on a broad framework, setting forward principles of governance, transitional process and structures of governments, as well as the right to self-determination for the people of South-Sudan. It was agreed that talks would continue on outstanding issues of power sharing, wealth sharing,

human rights and a cease-fire. The Security Council established a special political mission, the United Nations Advanced Mission in the Sudan (UNAMIS). The mission was mandated to facilitate contracts with parties concerned and to prepare for the introduction of the envisaged UN peace support operation. Responding to the crisis in Darfur, the Council assigned additional tasks to UNAMIS with resolution 1556 (2004), relating to Darfur. Darfur was no stranger to localized violence, which was exacerbated by ethnic, economic and political tensions and competitions over scarce resources. In February 2003, attacks on governmental targets by the SPLM/A began and the government responded by deploying its national armed forces and mobilized local militia, which took the violence to unprecedented levels. The African Union (AU) had led international political efforts to seek a solution to the crisis in Darfur, at the same time, the UN and a group and non-governmental organizations launched a large humanitarian operation in Darfur, that continuously expanded activities to respond to the needs of the increasing number of people displaced by violence.

January 2005 marked a turning point in Sudan’s history when the Government of Sudan and SPLM/A signed the Comprehensive Peace Agreement. The agreement took to unresolved issues remaining after the Machakos Protocol and provided provisions on security arrangements, power-sharing, and some autonomy for the south and fairer distribution of economic resources, including oil. The signing of the agreement put an end to the civil war in the south. However, conflict continued in Darfur. In March 2005, the Security Council established the United Nations Mission in the Sudan (UNMIS). Its tasks would be to support implementation of the Comprehensive Peace Agreement, to facilitate and coordinate the return of refugees and internally displaced persons and humanitarian assistance, assist parties in the mine action sector, contribute towards international efforts to protect and promote human rights in Sudan.

The signing of the Darfur Peace Agreement (DPA) marked the peak of AU efforts to seek a solution in May 2006. Following the agreement, confrontation increased between supporters of the agreement and those opposed. In August that year, the Security Council expanded UNMIS’s mandate so it included deployment to Darfur. It decided that UNMIS was to support implementation of the DPA and N’dhamena Agreement on Humanitarian cease-fire on the Conflict in Darfur. Nevertheless, UNMIS was not able to deploy to Darfur due to the Sudanese Governments constant opposition to peacekeeping operations entirely undertaken by the UN, as resolution 1706 (2006) envisaged. The UN commenced on an alternative

approach, with the aim of stabilizing the region through phased strengthening of the African Union Mission in Sudan, before authority would be transferred to a joint AU/UN peacekeeping operation. After long and intense negotiations, the Government of Sudan accepted peacekeeping operation in Darfur. On 31 July the Security Council adopted resolution 1769 (2006) that authorized the establishment of the United Nations - African Union Hybrid Operation in Darfur (UNAMID). UNMIS has continued its support in implementing the 2005 Comprehensive Peace Agreement by supplying good offices and political support to the parties, monitoring and verifying their security arrangements and offering assistance in a number of areas.

A referendum to determine the status of Southern Sudan was held in January 2011. 98.83% voted for independence. On 9 July, the mandate of UNMIS ended following the fulfillment of the interim period set up by SPLM and the Sudanese Government. On the same day, the Security Council established the United Nations Mission in the republic of South Sudan (UNMISS) for a period of one year. With resolution 1996 (2011) UNMISS was mandated to consolidate peace and security, and help establish conditions for the development of strengthening the capacity of the Government of the Republic of South Sudan and create good relations with its neighbours.\(^{291}\) After UNAMID’s establishment in 2007, it has focused on its core mandate; protecting civilians but additionally contribute to security for humanitarian assistance, monitor and verify implementation of agreements, contribute to the promotion of human rights and the rule of law and monitoring and reporting on situations along the borders with Chad and the Central African Republic.\(^{292}\)

### 7.2 The Brahimi Report and its implementation

The *Brahimi Report* was produced for the 2000 Millennium Summit of the UN Security Council. It is an extensive examination of peacekeeping and it set forward proposals for reform. The report has had considerable influence on practical and administrative reform of UN peacekeeping. There was political intention to implement the proposals made in the report and to avoid credibility crisis if changes were not made. A number of practical proposals regarding institutional change have been implemented and have had great impact in the transformation of the Department of Peacekeeping. Also, progress has been made in speeding up the deployment of peacekeeping forces. Since the standing UN army under Article 43

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never became a reality, the UN established a standby arrangements system of peacekeeping forces which have helped the UN in meeting the goals set forward by the Brahimi Report on securing a speedy deployment of peacekeeping forces.293

The report identified the difficulties faced by the UN in securing troops for peacekeeping. As peacekeeping became more complex, dangerous and operations got more expensive, it became difficult for the Security Council to find enough troops and personnel for the operations. Additionally, a Security Council resolution mandating an operation was no longer a guarantee that the operation would be carried out as authorized, as the experience was in Yugoslavia and Rwanda. Differences in composition of UN troops have also changed. As for the first fifty years developed states provided the bulk of troops for UN peacekeeping operations, while in recent years the majority of troops have been contributed by developing countries.294

The Secretary-General had conveyed concerns that peacekeeping obligations were not shared equally by member states and that not all mandated missions were receiving equal or even support. Many states disapproved of the commitment gap, which is the gap between the commitments undertaking in resolutions and the actual contributions of states in practice.295 The Secretary-General further explained that the performance of UN peacekeeping would not improve until member states, particularly those having the greatest capacity and means to do so, were ready to participate.296

Resolution 1327 that was passed in response to the report indicates the lack of unanimity amongst states regarding further permanent member participation in UN peacekeeping. The resolution appears to accept that the shared responsibility could take the form of logistical support or provision of equipment.297

Moreover, the Brahimi Report called for a new three-way relationship between the Secretariat, the Security Council and troop-contributing countries. This was to help address problems like commitment gaps in the contribution of troops or shortcomings in the operations.298 Resolution 1327 (2000) correspondingly emphasized the importance of an improved system of consultation between the Secretary-General, the Security Council and the troop-contributing countries in order to foster a common understanding of the situation on the

293 Christine Gray: International law and the use of force, p. 307
294 The Brahimi Report, paras. 103-104, 60-61; see also Christine Gray: International law and the use of force, p. 307
296 Report of Secretary-General S/2000/1081; see also Christine Gray: International law and the use of force, p. 308
297 Christine Gray: International law and the use of force, p. 308
ground, of mission’s mandate and its implementation. The Security Council agreed to strengthen the consultation system, particularly during the implementation phase of an operation or when considering a change, renewal or completion of a peacekeeping operation, or when rapid downturn on the ground threatens the peace and safety of peacekeepers. The resolution set out a new system for closer co-operation and involvement with troop-contributing countries. Despite progress made, there are fundamental splits as to how much say troop-contributing countries should have in peacekeeping operations.

The second reform priority emerging from the Brahimi Report was the need for well-conceived and comprehensively defined peacekeeping mandates. The report also made a case for robust peacekeeping, but it has become clear that this was not acceptable to supporters of a more limited concept of peacekeeping, based on traditional principles of impartiality, consent and self-defense. The call for better equipped and bigger forces that are able to pose a credible disincentive, contrasts with the traditional non-threatening presence that characterized traditional peacekeeping.

It is recommended that the Council only adopt clear, credible and achievable mandates for peacekeeping forces. UN’s experience in the former Yugoslavia, Somalia and Rwanda led the report to recommend reform. UNPROFOR’s mandate changed many times, Chapter VII was used to give UNPROFOR power and peacekeeping and enforcement-actions were combined. The frequent mandate changes reflected the lack of agreement in the Council on which strategy was to be adopted. Some of UNPROFOR’s problems may be seen as failures that occurred because the Security Council and member states crafted and supported vague, inconsistent and cash-starved mandates and then stood back and watched them fail. After peacekeeping operations in Somalia and Rwanda, the Lessons Learned Unit identified the failure to provide a clear and workable mandate as a serious problem for UN peacekeeping forces. Experiences in Somalia led to the conclusion that the mandate of the operation was vague, was subject to frequent changes during the operation and open to innumerable interpretations. The mandate changed from protecting the delivery of humanitarian assistance and the establishment and maintenance of a secure environment, to encouraging and assisting in political reconciliation and to capture a leader of one of the factions and later to encourage negotiations with that same leader. These mandate changes were contradictory and often

300 Christine Gray: International law and the use of force, p. 309
302 The Brahimi Report para. 266; Christine Gray: International law and the use of force, p. 310
decided on with little explanation to member states, troop-contributing countries or the Somali people.303

The Security Council resolved in Resolution 1327 to give peacekeeping operations clear, credible and achievable mandates. It attempted to ensure that mandated tasks of peacekeeping operations were suitable to situations on ground, while taking into account the prospects of success, the potential need for protection of civilians and the possibility that parties might try to undermine peace through violence. The Council also underlined that the rules of engagement of peacekeeping forces should be consistent with the legal basis of the operations and with relevant Security Council resolutions and set out the conditions in which force may be used to protect all mission components and personnel.304

7.3 The United Nations and Regional Arrangements

Article 24 of the UN Charter confers the primary responsibility for the maintenance of international peace and security with the Security Council. However, the Charter does provide a role for regional organizations and arrangements in the maintenance of peace and security in their regions. Article 33(1) of the Charter stipulates that parties to any dispute endangering international peace and security “shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”305 Article 52 (1) in Chapter VIII prescribes that nothing in the Charter is to preclude “the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action.”306 Members of the UN that enter into such arrangements shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council. The Council is to encourage the development of pacific settlement of local disputes through such regional arrangements.

The growth in UN activity after the end of the Cold War strained the UN financially, moreover the UN had problems in securing adequate number of troops from member states to carry out peacekeeping operations. Therefore, the proposal was put forward that the UN turn to regional organizations to share the burden. The Secretary-General did not stipulate any

303 The Comprehensive Report on Lessons Learned from UNOSOM, para.10; http://www.peacekeepingbestpractices.unlb.org/PBPS/Library/UNOSOM.pdf
304 Christine Gray: International law and the use of force, p. 311
305 Article 33(1) of the UN Charter
306 Article 52(1) of the UN Charter
formal pattern of relations between the UN and regional organizations in his *Agenda for Peace*, nor did he call for any specific division of labor. He pointed out that regional organizations had potentials that should be used for preventive diplomacy, peacekeeping, peacemaking and post-conflict peace building. According to the proposal the Security Council would keep its primary role in the maintenance of international peace and security, but regional action was to lighten the burden of the Council and also contribute to a deeper sense of participation, consensus and democratization in international affairs.\(^{307}\)

Since the *Agenda for Peace*, parts of the Secretary-General’s hopes have become a reality. Significant increases in consultation and cooperation between the Security Council and regional organizations has taken place. Resolutions show the increased awareness of regional organizations and of their increased role in international peace and security. A study from 1988 shows that reference to regional organizations in Security Council resolutions was rare.\(^{308}\) Since 1991, this has changed. References to regional arrangements can be found in numerous Security Council resolutions, for example, Western Sahara, Rwanda, Mozambique, Angola, Somalia and others. When reference is made, Chapter VIII of the Charter is sometimes expressly recalled or appreciation of regional efforts is expressed.

The Secretary-Generals report *In Larger Freedom*,\(^{309}\) the High-level Panel report\(^{310}\) and the 2005 World Summit outcome all called for a more determined relationship between the UN and regional organizations, pursuant to Chapter VIII of the UN Charter. Responding to the World Summit Outcome Document, the Council adapted Resolution 1631 (2005). This is the first resolution on cooperation with regional and sub-regional organizations. The Council emphasized its determination to take steps regarding further cooperation, and invited regional and sub-regional organizations to place their role in the framework of the UN standby arrangements system. All states were encouraged to contribute to strengthening the role of regional and sub-regional organizations. The importance of developing the ability of regional organizations to deploy peacekeeping forces quickly in support of UN peacekeeping operations was underlined in the resolution. The Security Council required better communication between the UN and regional organizations, it further recalled the obligation for regional organizations to keep the Council fully informed under Article 54 of the Charter.\(^{311}\)

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\(^{307}\) Christine Gray: International law and the use of force, p. 370-372

\(^{308}\) Sonnenfeld: Resolutions of the UN Security Council, p. 103


\(^{311}\) Christine Gray: International law and the use of force, p. 372-373
The Secretary-General published in 2006 his report *A regional-global security partnership: challenges and opportunities*. The report stated that it has long been known that the UN was not equipped to handle every crisis in the world on its own. The report proposed the establishment of a more effective partnership which bases on a clear division of labor reflecting the advantage of each organization in conflict prevention, peacemaking, peacekeeping and peace-building. It has been argued that regional organizations have the advantage of accessibility to threats, and also possess a better understanding of symptoms of conflict and are able to act rapidly. In other words, regional organizations may be able to provide a prompt response when the UN is unable to act.

7.3.1 The UN and the AU

The UN prompted the OAU (Organization of African Unity), now AU (African Union) to take a more active role in resolving the conflicts in Africa. After an OAU/UN cooperation agreement in 1990, the African Union established a *Mechanism for Conflict Prevention, Management and Resolution* in 1993. The provisions were adopted despite opposition of the OAU to intervene. The Security Council welcomed the contributions in 1997. The Council supported the increasing capacity of African states to contribute to peacekeeping operations and asked for a Secretary-General report on ways to prevent and address conflicts in the region. Correspondingly, the Secretary-General issued a *Report on the causes of conflict and the promotion of durable peace and sustainable development in Africa*. The AU has taken a more active approach to peacekeeping and its *Constitutive Act* sheds a more positive light about intervention than before. Article 4 allows the AU to intervene in respect of war crimes, genocide and crimes against humanity, it also provides member states with the right to request intervention from the AU in order to restore peace and security.

The UN has supported the enhancement of African peacekeeping capacity through financial, technical and training assistance. The World Summit Outcome document put forth a requirement of a ten-year capacity-building program for the AU, and the Secretary-General

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is working towards implementing this.\textsuperscript{317} A framework for the program was adopted in the 2006 Declaration on Enhancing UN-AU Cooperation.\textsuperscript{318} The General Assembly has communicated their support and called on the UN system to increase its assistance to the AU in strengthening the institutional and operational capacity of its Peace and Security Council.\textsuperscript{319} The Security Council held an open debate in March 2007 on relationships between the UN and regional organizations, particularly the AU, in maintenance of international peace and security.\textsuperscript{320} The Assistant Secretary-General for Peacekeeping, Mr. Annabi said that the partnership between the UN and AU is one of the most intense of all peacekeeping partnerships and that its cooperation stretched over all phases of conflict management; prevention, peacemaking, peacekeeping and peace-building.\textsuperscript{321}

\textbf{7.4 Constitutional Bases for Regional Peacekeeping}

The question whether an organization has the power to take action involving the use of force has not been controversial in practice. When most regional and sub-regional organizations were set up, their constituent instruments did not make any reference to peacekeeping activity or enforcement action. In recent years, the awareness of possible regional action has increased, and some of the regional organizations have made new agreements that expressly provide peacekeeping powers. The Commission on Security and Cooperation in Europe (CSCE) provided itself with the capacity to undertake peacekeeping operation at the 1992 Helsinki summit. Member states declared that they understood that the CSCE is a regional arrangement in the sense of the UN Charter Chapter VIII. Detailed rules are laid down in the declaration on CSCE peacekeeping and that such operations are to be conducted within the framework of the Chapter VIII. To a large degree, the declaration codifies UN rules on peacekeeping that have materialized through practice. Additionally, it reflects the lessons learned from UN experiences in Yugoslavia and Somalia.\textsuperscript{322}

The CSCE declaration identifies the broad range of peacekeeping operations that can take place; and according to its mandate, a CSCE peacekeeping operation can involve civilian and/or military personnel, it can range from small missions to large-scale, and can take on a variety of forms, including observer and monitoring missions, and larger deployment of

\begin{itemize}
\item \textsuperscript{317} A regional-global security partnership, U.N. Doc. S/2006/590 (2006) paras. 64–70, Report of the Secretary-General, A regional-global security partnership: challenges and opportunities
\item \textsuperscript{318} U.N. Doc. A/61/630, annex (2006)
\item \textsuperscript{319} U.N. Doc. GA Res. 61/296 (2007)
\item \textsuperscript{320} U.N. Doc. S/PV.5649 (2007)
\item \textsuperscript{321} Christine Gray: International law and the use of force, p. 376-378
\item \textsuperscript{322} Ibid., p. 387-388
\end{itemize}
forces. The activities, which can fall under peacekeeping operation, can be to supervise and maintain cease-fires, monitor troop withdrawals, maintain law and order, provide humanitarian aid and assist refugees. Furthermore, the declaration provides that peacekeeping operations shall not entail enforcement actions, and that consent of parties directly concerned is required. As with the Security Council, the practice has become to obtain consent not only of the government but of all parties involved in a conflict. Additionally, it is required that certain conditions are fulfilled before a decision is made to dispatch a mission, an effective and durable cease-fire must be established and operations should have a clear and precise mandate and be conducted impartially.\(^{323}\)

Some sub-regional organizations have provided for the possibility of peacekeeping action. ECOWAS has taken a vital role in West African peacekeeping. Established in 1975, its constituent treaty made no provisions for peacekeeping forces, but subsequent treaties\(^{324}\) have expanded ECOWAS’s field of participation. Provision on peacekeeping were added when ECOWAS negotiated the 1999 Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. Where detailed rules are laid down on institutions and decision-making procedures. ECOWAS has undertaken operations in Liberia, Sierra Leone, Guinea-Bissau and Côte d’Ivoire.

When addressing the question whether regional organizations have the power to engage in peacekeeping activities under its own constitution, has in the past been insignificant as the legality of regional peacekeeping operations has been assessed under the terms of the UN Charter and general international law.

There was a debate in the Security Council when discussing the case of Grenada and the Organization of Eastern Caribbean States own constitution.\(^{325}\) In 1983 a government sympathetic to Cuba and the USSR seized power and the US led an intervention with the aim of restoring the government. The US maintained that the action was taken pursuant to an invitation by the Organization of Eastern Caribbean States (OECS) and explained that the OECS had called for their assistance to undertake collective regional action because of the lack of authority in Grenada. The representative of Grenada maintained that the action taken by the US and OECS member states were not legitimate under the OECS constitution, as the treaty made no provision for peacekeeping action. The US justified its action on Article 8 of the treaty, a provision that allows for collective self-defense against external aggression.

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\(^{323}\) Ibid. p. 388

\(^{324}\) These are the 1978 Protocol in Non-Aggression and the 1981 Protocol on Mutual Assistance on Defense.

\(^{325}\) Christine Gray: International law and the use of force, p. 390
Following this, the US vetoed a Security Council resolution calling for the withdrawal of foreign troops from Grenada.\textsuperscript{326} When measure taken by the Organization of American states (OAS) against Cuba in 1962 and the Dominican Republic in 1965 were debated in the Council, there was a discussion about whether the OAS Charter prohibited forcible interventions which were undertaken. There was no real discussion on the scope and application of Article 6 of the Rio Treaty or of the constitutionality of the action in terms of the article. The debate centered on whether interventions taken were compatible with the UN Charter and general international law. It seems to have been accepted during the Cold War that regional organizations have implied powers to establish peacekeeping operations, and that they do not need to follow formal procedures for decision making as laid down in respective treaties. The basis for this, was that because individual states can undertake peacekeeping activities, then groups of states acting through a regional organization may do the same, whether an entity qualifies as a regional arrangement or not under Article 52 had no affect on its power to undertake peacekeeping activities.\textsuperscript{327}

8 Third Generation Peacekeeping Operations

It is hard to harmonize the quasi-enforcement approach with the original principles and aims of peacekeeping, especially as it lack the fundamental principles of consent and neutrality. The approach dates back to the UN operation in the Congo. It clearly reflects the impatience of the international community with the traditional approach to peacekeeping. Traditional peacekeeping may stabilize circumstances but does not necessarily prevent war, nor does it guarantee long-term settlements. Traditional peacekeeping may end wars and can produce long-term settlement, but it is by no means guaranteed.

The quasi-enforcement approach is based on the notion that faction do not act according to, or do not agree to a cease-fire, resulting in breach of an agreement, or there is immense humanitarian needs, and factions will be forced to act accordingly. This can be composed of economic sanctions together with peacekeeping.\textsuperscript{328} Military enforcement actions can also be imposed together with peacekeeping\textsuperscript{329} or it can be take the form of traditional peacekeeping and be replaced by UN authorized military action.\textsuperscript{330} The quasi-enforcement approach

\textsuperscript{326} Ibid., p. 391
\textsuperscript{327} Akehurst, Enforcement Action by Regional Agencies, p. 175; see also Christine Gray: International law and the use of force, p. 392
\textsuperscript{328} Sanctions imposed against Serbia while UNPROFOR tried to maintain peace between Serbia and Croatia.
\textsuperscript{329} In Bosnia, the UN authorized NATO to take enforcement action against the Bosnian Serbs, while continuing to keep its peacekeeping force on the ground.
\textsuperscript{330} Which was the case of Somalia.
requires considerable contribution from states with military power, including the permanent members. The international community has become cautious of the cost required for the success of combined peacekeeping and therefore have an inclination towards neutral and consensual peacekeeping whenever possible. In other words, “first generation” peacekeeping or “second generation” peacekeeping is the preferred norm. However, if these fail to be accepted by parties or factions involved, the use of “third generation” peacekeeping is not ruled out.

Both the Secretary-General and the Special Committee on Peacekeeping have leaned towards traditional peacekeeping values after the experiences in Bosnia and Somalia. In stead of proposing greater flexibility in military deployment by the UN, both in terms of prevention and mandate, by authorizing a peacekeeping force to move from traditional mandate to a quasi-enforcement mandate, the emphasis has been more conservative. This was shown in recommendations of the Special Committee in 1995:

The Special Committee stresses that peace-keeping operations should strictly observe the principles and purposes enshrined in the Charter of the United Nations. It emphasizes that respect for the principles of sovereignty, territorial integrity and political independence of States and non-intervention in matters which are essentially within the domestic jurisdiction of any State is crucial to common efforts, including peace-keeping operations. The Special Committee concurs with the Secretary-General’s observation in his Supplement to an Agenda for Peace [of 1995] that respect for certain basic principles of peace-keeping are essential for its success. Three particularly important principles are the consent of the parties, impartiality and the non-use of force except in self-defense.  

These recommendations represent, in many ways, a return to traditional peacekeeping, supplemented by the integrated approach that combines peacekeeping with peaceful solutions, and abstaining from the quasi-enforcement approach.

9 Peacekeeping vs. peace-enforcement operations

The difference between peacekeeping operations authorized under Chapter VI of the UN Charter and peace-enforcement operations authorized under Chapter VII need to be defined. Any use of force under Chapter VI must be strictly construed, as Chapter VI peacekeeping forces may only use armed force in self-defense. UN peace-enforcement actions on the other hand, usually involve the use of force and on numerous occasions as a means to secure peace. These two types of operations are fundamentally different in nature.

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332 McCoubrey and White: The blue helmets: legal regulations of United Nations military operations, p. 84-85
Chapter VI peacekeeping operations should be customized to a situation or crisis and ordinarily prevent offensive military operation. The rules regarding use of force must be clear and peacekeeping forces should apply them equally to all parties of a dispute, preventing credibility loss and escalation of the conflict. If peacekeeping forces regularly use force, the mission would become expanded to a *de facto* peace-enforcement operation for which the peacekeeping forces are not adequately prepared or equipped for.\(^{333}\)

The distinction between the two is not nearly as clear as many believe. The Security Council can change a mandate so that the mission begins to take on the character of a peace-enforcement action. Whenever a UN peacekeeping unit resorts to force, its neutrality and its obligations under international law may be legitimately questioned.\(^{334}\) Operations on the ground can be subject to rapid changes in intensity. A highly experienced UN peacekeeper explains:

> Once violence erupts the peacekeeper must often wait until the smoke of battle clears and the parties have agreed to take their first steps toward conflict resolution. In cases where the fighting does not stop and a decision is taken to intervene regardless, we are no longer talking about peacekeeping, but rather enforcement, intervention, or plain old war. Whatever we call it, we are in a totally different province from peacekeeping.\(^{335}\)

A UN commander is presented with a mission and is duty-bound to carry it out. Nevertheless, the commander’s responsibilities and mission can change from peacekeeping towards peace-enforcement, and so does the applicability or non-applicability of the laws of armed conflict.\(^{336}\)

There must be a clear distinction between peacekeeping and peace-enforcement action. UN “forces must not cross the impartiality divide from peacekeeping to peace-enforcement. If perceived to be taking sides, the force loses its legitimacy and credibility as a trustworthy third party, thereby prejudicing its security.”\(^{337}\) The distinction has become blurred as peacekeeping forces have been given more robust operational contingencies causing peacekeeping forces to slowly move toward active peace-enforcement. The undesirable effect

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\(^{333}\) Yasushi Akashi: The Use of Force in a United Nations Peace-Keeping Operation: Lessons Learnt from the Safe Areas Mandate, p. 320-21

\(^{334}\) Willy Lubin: Towards the International Responsibility of the United Nations In Human Rights Violations During “Peace-Keeping” Operations: The Case of Somalia, p. 48

\(^{335}\) James H. Allen: Peacekeeping: Outspoken Observations by a Field Officer, p. 39

\(^{336}\) Thomas B. Baines: The Laws of War and the Rules of Peacekeeping Presented to The Joint Services Conference on Professional Ethics, p. 3-4

\(^{337}\) Mats R. Berdal: Fateful Encounter: The United States and UN Peacekeeping, p. 5-6

> The logic of peace-keeping 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 peace-keeping is intended to facilitate. To blur the distinction between the two can undermine the viability of the peace-keeping operation and endanger its personnel.\footnote{Ibid.}

Basically, the UN and its member-states do not have a clear policy concerning the use of force, except in the case of a traditional peacekeeping operation where the use of force is limited to self-defense. In the absence of a strong policy on the use of force in situations outside traditional peacekeeping, a peacekeeping operation should never be allowed to become something it is not, \textit{i.e.} a peace-enforcement operation. In other words, peacekeeping and peace-enforcement, according to their different mandates, must remain clearly separate operations. Peacekeeping should exclusively be authorized under Chapter VI of the UN Charter and peace-enforcement operations under Chapter VII. If a traditional peacekeeping operations starts to change and take on the character of a peace-enforcement operation, the UN should formally change the operation. Noncombatant peacekeepers should be withdrawn and previous mandate modified to a Chapter VII operation.\footnote{See Yasushi Akashi: The Use of Force in a United Nations Peace-Keeping Operation: Lessons Learnt from the Safe Areas Mandate, p. 320-21} The decision to establish a Chapter VI peacekeeping operation is the product of political and military considerations, which are different from those that would prescribe a Chapter VII peace-enforcement operation. Peacekeeping has the purpose of suspending a conflict and allow parties to it to pursue a long-term peaceful solution. Peace-enforcement on the other hand is the use of military force to demand desired results. Peacekeeping and peace-enforcements dynamics are completely different. Peacekeeping, where force can only be used in self-defense, and peace-enforcement, where force is used to obtain a sought-after result, must remain as separate and unconnected alternatives. They are not be regarded as points on a continuum - where a peacekeeping operation would, if the military or political situations should change, evolve with it and expand into a peace-enforcement action.\footnote{Boutros Boutros-Ghali: An Agenda for Peace, p. 15-16} If the differences between the two are
not separated the United Nations mechanisms become blurred, other peacekeeping operations may lose credibility and peacekeepers might be endangered.

If political or military conditions change within a peacekeeping operation, the UN must revise its collective positions. If the UN wants to continue with its operation as a peace-enforcement, peacekeeping forces should be withdrawn. The United Nations should only undertake peace-enforcement actions under Chapter VII of the UN Charter. Only then, member-states could contribute properly trained and equipped peace-enforcement military forces. Forces authorized under Chapter VII may have both peacekeeping and peace-enforcement duties. They should have appropriate resources to adequately carry out the enforcement operation, and if inevitably, escalate it. Peacekeeping forces should be presented with clear rules of engagement, adapted to the specific operation, as to when and in what circumstances armed force is to be used in order to avoid unwanted escalation of the conflict and compromise the intended end-state to the conflict.342

10 Use of force in Peacekeeping Operations

Use of force only in self-defense is one of the main legal principles of peacekeeping, as described above. The right of UN peacekeeping forces to exercise force in self-defense is one of the authorized legal categories for the use of force by the United Nations and can be looked at as an ‘inherent right’ of peacekeepers.343 Substantial practice supports this view and the right to self-defense has constantly been provided for in the rules of engagement which establishes each peacekeeping operations.344 It is clear, that under the rules of engagement, instructions on the use of force in a peacekeeping mission can differ noticeably from those designed to suit a Chapter VII enforcement action. The concept of self-defence within the subject of peacekeeping operations varies from its usual legal meaning. The concept has evolved over time and in response to the changing needs of peacekeepers. At first, a narrow approach was taken; force could exclusively be used in defense of the peacekeeping operation itself and strictly in response to an armed attack (personal self-defense). Slowly, a broader view evolved; force could be used to defend the mandate of peacekeeping operations. In other words, force could be used to protect objects and purposes of the operation.345

343 Schatchter: Use of Force by the United Nations and Regional Organizations, p. 65
344 McCoubrey & White: The Blue Helmet: Legal regulations of United Nations Military Operations, p. 146
345 Cox, Beyond Self-defense: United Nations peacekeeping operations and the use of force, p. 249-250
10.1 Use of force in Personal Self-Defense

UNEF I was the first armed peacekeeping operation, and peacekeepers were instructed never to initiate the use of force, even though they could respond to armed attack with force. Secretary General Dag Hammerskjöld wrote in his report on UNEF I:

[T]he rule is applied that men engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions which they occupy under orders from the Commander ... The basic element involved is clearly the prohibition against any initiative in the use of armed force.  

The definition of self-defense is narrow but adequate for UNEF I operations since the UN troops involved were maintaining a cease-fire on a front line between two orderly armed forces. The amount of force UNEF I was authorized to use was sufficient for the purposes of fulfilling its mandate.

The same can not be said of ONUC in the Congo. Circumstances in the Congo forced the UN to authorize the peacekeeping operation to use greater force. As mentioned above, ONUC was to assist the Congolese Government in carrying out tasks related to maintenance of law and order. At the beginning, the establishment of the operation was based on the principles of UNEF I, including the principles of “no initiative in use of armed force by UN troops.”


In my initial statement I recalled the rule applied in previous United Nations operations to the effect that the military units would be entitled to act only in self-defense. In amplification of this statement I would like to quote the following passage from the report to which I referred ‘[M]en engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions which they occupy under orders from the Commander’, acting under the authority of the Security Council and within the scope of its resolution. ‘The basic element involved is clearly the prohibition against any initiative in the use of armed force.’

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The original mandate for ONUC highlighted the restoration of law and order in the Congo.\(^{349}\) Soon after the troops deployment, opposition and secessionist movements brought about disorder and violence. It became apparent that ONUC would not be able to achieve its objective of halting the civil war while being limited to the use of force within the confines of ‘personal self-defence’.\(^{350}\) The Security Council revised the mandate of ONUC so it was able to use force as a last resort to prevent civil war in the Congo. “[I]t is difficult to avoid the conclusion that the Security Council by this Resolution [S/RES/161 (1961)] abandoned a strict reliance on the principle of self-defense.”\(^{351}\) It is agreed that ONUC was a peacekeeping operation even though it involved some enforcement elements.

The experience in the Congo was in many ways a premonition of the difficulties that came with the evolution of more complex peacekeeping operations; second generation peacekeeping. It was the result of this experience that the narrow definition of self-defense was reviewed. A broader definition would make peacekeeping operations more viable and enable the UN to carry out effectively peacekeeping mandates without needing to resort to ‘enforcement measures’. ONUC played an important role in the development of the use of force within the realm of peacekeeping.\(^{352}\)

**10.2 Use of force in Defense of Operation’s Mandate**

When setting up the UNFICYP operation in Cyprus definition of use of force in self-defense was clearer, the Secretary General outlined an expanded definition of the term.\(^{353}\) Traditional principles were confirmed; for example the principle that troops should never take initiative in use of armed force, however, additional elements were included in the definition. Ipso facto, troops could use force in self-defense where:

> specific arrangements accepted by both communities have been or ... are about to be violated, thus risking a recurrence of fighting or endangering law and order ... [or where there were] attempts by force to prevent them from carrying out their responsibilities as ordered by their commanders.\(^{354}\)

\(^{351}\) Ibid., p. 201-201
\(^{352}\) Cox, Beyond Self-defense: United Nations peacekeeping operations and the use of force, p. 250-253
\(^{354}\) Note by Secretary General, U.N. SCOR., U.N. Doc. S/5653 (1964)
The most noteworthy expansion is that of the premise that peacekeepers could use force in response to attempts by force to prevent them from carrying out their responsibilities or where agreements agreed to by both sides were not honored.  

This interpretation was reapplied in 1973 when UNEF II was established. Kurt Waldheim wrote that self-defense included “resistance to attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council.” Self-defense included situations where peacekeepers needed to use force to fulfill their mandate. This is notably a broader definition of self-defense than was applied in UNEF I. Boutros Boutros-Ghali stated in 1993 that “existing rules of engagement allow UN soldiers to open fire if armed persons attempt by force to prevent them from carrying out their orders.

### 11 Beyond self-defense - recent use of force by UN peacekeeping operations

Since the Cold War came to an end, the number of peacekeeping operations has increased immensely. Numerous operations have gone beyond traditional peacekeeping, which mostly consisted of monitoring cease-fires and control buffer zones. Although these tasks are still parts of peacekeeping operations, expanded mandates now include *inter alia*, monitoring of troop withdrawals, elections and human rights violations. Peacekeeping missions have also assisted in resettlement of refugees and displaced persons, the rebuilding of political and administrative structures and the protection of deliveries of humanitarian aid supplies.

At the outset of peacekeeping operations, force was rarely used by peacekeeping forces, except in the case of the Congo, and the concept of self-defense remained almost static. However, as peacekeeping evolved, operations became more complex and difficult - and with that, peacekeepers were authorized to use force more liberally and have progressively resorted to the use of force. Both the authorization and use of force have come to pass for several reasons; the large number of attacks against civilian and military personnel engaged in peacekeeping operations, in order carry out difficult mandates, and more complex conflict situations in which peacekeepers are engaged. The Security Council has to an increasing extent authorized peacekeepers to use force - and recent Council resolutions clearly authorize peacekeepers to use force.

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355 Cox, Beyond Self-defense: United Nations peacekeeping operations and the use of force, p. 255
357 Boutros Boutros-Ghali, Empowering the United Nations, p. 91
358 Cox, Beyond Self-defense: United Nations peacekeeping operations and the use of force, p. 256-259
The development of the broader interpretation of self-defense will be traced below. The analysis are divided into three categories; force authorized to protect civilians, force authorized to secure freedom of movement of UN personnel and force authorized to protect humanitarian activities.

11.1 Force Authorized to Protect Civilians

In 1993 the Security Council adopted two resolutions under Chapter VII that created safe areas in Bosnia and Herzegovina. The aim of these resolutions was to protect civilians that populated in those areas. UNPROFOR’s mandate was extended for this purpose, and it was to prevent attacks made against the areas, the mandate authorized UNPROFOR to:

[A]cting in self-defense, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursions into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys.\textsuperscript{359}

The Security Council further authorized

Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures, through the use of air power, in and around the safe areas in the Republic of Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate.\textsuperscript{360}

NATO then enforced the use of air power to protect UNPROFOR personnel and for air strikes to enforce respect for the safe areas.

Similarly, In Rwanda protected sites were established, patrolled and protected by UNAMIR. The Security Council recognized that “UNAMIR may be required to take action in self-defense against persons or groups who threaten protected sites and populations.”\textsuperscript{361} The Security Council makes no reference to Chapter VII or the use of force in this context. It is likely that the Council thought that such use of force was not required. In the report of the Secretary-General on Rwanda,\textsuperscript{362} he acknowledges that UNAMIR might have to take action in self-defense to protect sites and populations and states that the rules of engagement would not cover enforcement measures.

\textsuperscript{360} Ibid, U.N. SCOR. 10
The Secretary-General addressed in a letter to the Security Council where he reports on the breakdown of the peace process in Rwanda.\textsuperscript{363} He suggests that the Council consider authorizing a French-commanded multinational operation under Chapter VII of the Charter. The letter then states:

it would be necessary for it to request the Governments concerned to commit themselves to maintain their troops in Rwanda until UNAMIR is brought up to the necessary strength to take over from the multinational force and the latter has created conditions in which a peace-keeping force operating under Chapter VI of the Charter would have the capacity to carry out its mandate.\textsuperscript{364}

It seems that the Secretary-General did not consider the use of force in self-defense by UNAMIR to be subject to authorization under Chapter VII of the Charter, in fact he seems to consider UNAMIR as an operation that falls directly under Chapter VI of the Charter.

\textbf{11.2 Force Authorized to Secure Freedom of Movement of UN personnel}

The freedom of movement is considered an essential for the purpose of all peacekeeping operations and is commonly provided for in the SOFA’s.\textsuperscript{365} Bowett has stated that:

In simple terms, it may be said that ONUC was entitled to assert its freedom of movement and to resort to self-defense against any action constituting a denial of freedom of movement: this would not have meant abandoning the principle, then operative, that ONUC could not take the initiative in military action.\textsuperscript{366}

Similarly, Schachter has acknowledged that a “significant extension of self-defense resulted from granting ONUC freedom of movement throughout the country.”\textsuperscript{367} UNPROFOR was the first operations to be clearly authorized to use force in self-defense to ensure freedom of movement and has been regarded as a significant expansion of the concept of self-defense.\textsuperscript{368} In recent operations the use of force in self-defense to secure freedom of movement has been linked to the delivery of humanitarian aid. There is therefore an overlap between the force authorized to secure freedom of movement and the force authorized to ensure the delivery of

\textsuperscript{365} D. W. Bowett: United Nations Forces: A legal Study, p. 434  
\textsuperscript{366} \textit{Ibid.}, p. 204  
\textsuperscript{367} Schachter: Authorized Use of Force by the United Nations and Regional Organizations, p. 85  
\textsuperscript{368} Jon E. Fink: From Peacekeeping to Peace-Enforcement: The blurring of the Mandate for the Use of Force in Maintaining International Peace and Security, p. 37}
aid. The main difference between the two is that the force is used to secure the freedom of movement of UN personnel, and not humanitarian convoys. 369

UNPROFOR was authorized under Chapter VII of the Charter, “in carrying out its mandate in the Republic of Croatia, acting in self-defense, to take the necessary measures, including the use of force, to ensure its security and freedom of movement.” 370 The resolution was passed to enable the operation to ensure that humanitarian assistance was provided in compliance with earlier resolutions. The Security Council has reaffirmed its determination to ensure the freedom of movement of UN personnel in subsequent resolutions. 371

In two subsequent peacekeeping operations the use of more forceful means to secure the freedom of movement in order to deliver humanitarian aid continued. In Security Council Resolution 981 regarding the establishment of UNCRO 372 the Council reaffirmed its “determination to ensure the security and freedom of movement of the personnel of United Nations peacekeeping operations in the territory of the former Yugoslavia, and, to these ends, acting under Chapter VII of the Charter of the United Nations.” 373 It was made clear in the Secretary’s report that previous resolutions relevant to the functioning of UNCRO applied to the operation. 374 UNPROFOR had been authorized the use of force in self-defense to secure the freedom of movement in Croatia and reason stands to believe that UNCRO would also be covered by that authorization.

UNTAES 375 was established under Security Council resolution 1037 to take over from UNCRO. The Council again reaffirmed that it was “determined to ensure the security and freedom of movement of the personnel of the United Nations peacekeeping operations in the Republic of Croatia.” 376 The use of force was not specifically authorized but it was made clear in the Secretary-General’s Report Pursuant to Security Council Resolution 1025 (1995) that the operation should be able to use force, at least in self-defense. The Secretary-General stated:

The force deployed must therefore have a mandate under Chapter VII of the Charter, must have the capacity to take the necessary action to maintain peace and security, must

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369 Cox, Beyond Self-defense: United Nations peacekeeping operations and the use of force, p. 262-263
372 United Nations Confidence Restoration Operation In Croatia.
375 United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirium.
be sufficiently credible to deter attack from any side and must be capable of defending itself. Anything less than a well-armed division-sized force would only risk repeating the failures of the recent past.377

The lack of clear authorization for the use of force in this manner indicates, that unlike UNPROFOR and UNCRO, that the scope of the right to self-defense should be interpreted more narrowly.378

11.3 Force Authorized to protect Humanitarian Activities
United Nations participation in Somalia is long and complicated. It is composed of three operations and phases: UNOSOM I, UNITAF and UNOSOM II. UNOSOM I can be considered a traditional peacekeeping operation that was unsuccessful mainly due to the situation in Somalia, which was not favorable to peacekeeping. Succeeding UNOSOM I was UNITAF, a multinational operation led by the US, established under Chapter VII. Its mandate was to use force to establish a secure environment for humanitarian relief operations.379 After peace was restored, UNOSOM II took over operational responsibilities. UNOSOM II is often referred to as a peacekeeping operation even though it was “deployed without the consent of the parties [and had] the right to use all necessary measures to carry out its mandate - including the right to use of force.”380 The use of such extensive force was allowed because of UNITAF’s task was not finished when UNOSOM II took over.381 The mandate of UNOSOM II was to “take appropriate action, including enforcement measures, to establish throughout Somalia a secure environment for humanitarian assistance.”382

This theme has continued in subsequent peacekeeping operations and the role of delivering humanitarian aid has been reaffirmed in many resolutions383. Even though the use of force is not clearly authorized for this purpose in these resolutions the Secretary-General’s opinion seems to be that force could be used. To ensure delivery of humanitarian aid and protection of humanitarian convoys the Secretary-General stated that “self-defense is deemed

378 Cox, Beyond Self-defense: United Nations peacekeeping operations and the use of force, p. 264
to include situations in which armed persons attempt by force to prevent United Nations troops from carrying out their mandate.”

In Rwanda, the Security Council acknowledged that UNAMIR might need to take action in self-defense against groups or persons that threatened the means of delivery and distribution of humanitarian relief. It is interesting to note that there was no clear authorization to use force in this regard and there is no reference to Chapter VII of the UN Charter. This suggests that the Security Council deemed it unnecessary to straightforward authorize such use of force. This suggestion is supported by the Report of the Secretary-General on the Situation in Rwanda were it was made clear that UNAMIR was supposed to provide security assistance to humanitarian organizations distributing relief supplies. It was recognized that UNAMIR might have to act in self-defense against those who threatened the means of delivery and distribution of humanitarian relief.

12 Conclusions
When the Charter of the United Nations was drafted, the idea was a standby UN army that could be deployed to areas in need. As mentioned above, this never became a reality. The evolvement of peacekeeping emerged as a means to prevent the opposing superpowers of its time becoming entangled in disputes that could have escalated into global conflict. It is now generally accepted that peacekeeping operations developed out of Chapter VI of the Charter, entitled Pacific Settlement of Disputes. Peacekeeping missions are considered to be a peaceful means chosen and consented to by parties to a conflict, aiming at a peaceful settlement of the conflict. As previously mentioned, that chapter dictates that the Security Council can investigate situations that may lead to potential conflict. Furthermore, the Council may, with consent of state parties, make recommendations to resolve the conflict.

The Charter did not foresee the deployment of military forces under UN authority, inserting themselves between parties to an armed conflict. Nevertheless, the Charter is a flexible political document that contains many possibilities and interpretations, depending on the situation at hand. The invention of peacekeeping is the practical realization of one of these

389 W. Michael Reisman: Peacemaking, p. 416 n.9
possibilities. In the words of a former United Nations Under-Secretary General for Political Affairs:

[T]he technique of peace-keeping is a distinctive innovation by the United Nations. The Charter does not mention it. It was discovered, like penicillin. We came across it, while looking for something else, during an investigation of the guerrilla fighting in northern Greece in 1947.

In spite of the fact that peacekeeping is not mentioned in the UN Charter, it can also be implied from the primary purpose of the United Nations. Which is stated in Article 1 of the Charter and is to maintain international peace and security. It follows that the UN should be empowered with the means to fulfill its purpose. The powers of the United Nations can not be discovered by strict interpretation of the Charter. To do so would constrain the UN and prevent it from ever acting. The United Nations must have implied powers to allow it to act and achieve its chartered mandate. Through its implied powers, the UN has legally created peace observer and peacekeeping units as an approved method of fulfilling its primary purpose. Although peacekeeping operations are not specifically mentioned in the Charter, the I.C.J. established that the Charter was sufficiently broad enough to allow the Security Council to monitor a conflict without having to resort to Chapter VII peace-enforcement action.

Over time peacekeeping developed its own principles and operational norms that enabled UN forces to be recognized as non-coercive and neutral. Notably, the Congo operation is an exception to this. The principles and norms that had developed over time remained throughout the Cold War. These norms are namely consent of host country, neutrality and restrictions on the use of force. Each of these norms has proven to be necessary for a traditional peacekeeping operation to effectively accomplish its mandate.

Following the end of the Cold War, the United Nations developed new roles for its peacekeeping forces. Regrettably, the Secretary-General and the Security Council did not adhere to the guiding principles set out for peacekeeping missions and had proven to be

390 Mats R. Berdal: The Security Council, Peacekeeping and Internal Conflict after the Cold War, p. 74
392 See Rapartions Case - Advisory Opinion, 1949, I.C.J. 174 (“The Organisation must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to it in the course of it duties.”
393 Tyge Lehmann: Some Legal Aspects of the United Nations of Peace-Keeping Operations, p. 11-12
394 Certain Expenses of the United Nations, Advisory Opinion, 1962 I.C.J. 151, 164-167; The I.C.J. Agreed that the United Nations Charter authorized peacekeeping operations, to include peacekeeping operations authorized by the General Assembly. The I.C.J. Cautioned, however, that “the Assembly should not recommend measures while the Security Council is dealing with the same matter unless the Council requests it to do so.”
successful for previous peacekeeping operations. The new peacekeeping operations were military style enforcement actions for humanitarian purposes, where traditional peacekeeping forces became involved and use of force increased. The problem with allowing peacekeeping to use force is that the use of force is not compatible with consent and neutrality. This problem consists of legal and practical consequences. If force is authorized for peacekeepers to fulfill parts of their mandate, it tends to jeopardize other parts of it, which rely upon consent and cooperations of the parties. The Secretary-General pointed out that blurring of the distinction between peacekeeping and peace-enforcement measures can undermine the viability of the peacekeeping operations and put its personnel in danger. The result may be that a mandate designed to protect UN personnel may in the end do more harm than good. Blurring the lines between peacekeeping and peace-enforcement can be dangerous. As there is a world of difference between troops deployed with the consent and cooperation of parties to a conflict, and help them carry out an agreement that has previously been reached and troops deployed with consent of host state and with powers to use force to pressure parties to accept decisions taken by the Security Council.

It is important that the concept of self-defense, the expansion of it and to which it can be used be clearly defined. It is in the best interest of the UN, its personnel, contributing States and host State of conflict as well as the troops and everyone else that the extent of which peacekeeping forces may become involved in conflict is crystal clear. With such clarification, the extensive use of force by peacekeepers may be regarded as agreeable with the goals and purposes of peacekeeping. The fundamental principles of peacekeeping developed over time and are based on legal and practical reasons. They should not be disregarded as that might have serious consequences for the international community. Chapter VI operations are usually presumed to be limited to self-defense as it may only use force with the consent of parties to a conflict. However, Security Council resolutions that envisage the use of force almost never mention it. An operation is usually mandated to use “all necessary means” to accomplish its mandate, and therefore it avoids specifying the appropriate level of force to be used in advance. As an example, the mandate for UNPROFOR authorized “all measures necessary” and UNOSOM II’s mandate authorized “all necessary means” – nevertheless, the way in which force was used was completely different.

When discussing the use of force of peacekeepers, the question arises whether the laws of armed conflict apply to peacekeeping operations. The United Nations, as an organization is not bound by the Conventions relating to the laws of armed conflict, except in cases where provisions of these Conventions have gained status as customary law. Despite the fact that the
UN is not a signatory to the Geneva Convention, it does form a great amount of customary international law that is applicable to all parties to an international armed conflict. The ICRC has maintained that international humanitarian law is applicable to UN peacekeeping forces, while the UN asserts that their forces are merely obliged to follow the principles and spirit of international law of armed conflict. Rules and principles of *jus in bello* are generally accepted as applying to hostilities in which UN forces may be involved. The application of it to UN peacekeeping operations may be problematic because of the *sui generis* nature of such operations. Traditional UN peacekeepers are usually not involved in armed conflict, since it goes against the nature of traditional peacekeeping. Therefore, the laws of armed conflict do not generally apply to peacekeepers, as they are not in armed conflict with anyone. UN peacekeepers are non-combatants and are protected as such under Common Article 3 of the Geneva Convention. Common Article 2 of that same Convention is regarded as the threshold for whether an international armed conflict exists that causes the application of international law of armed conflict. As traditional peacekeeping operations are limited to the use of force in self-defense, they will not cross the threshold of Common Article 2. If the threshold should be reached, the rights and obligations of the laws of armed conflict become applicable. The UN has accepted that traditional peacekeeping forces may become combatants and with that lawful targets when an operation reaches an undefined level of intensity. But, since the UN has not specified circumstances where operations might cross the threshold of Common Article 2, their forces do not have guidance on what level of intensity crosses the threshold and therefore amounts to armed conflict.

When the Cold War came to an end, the UN proposed a stronger and more powerful form of peacekeeping. UN Secretary-General Boutros Boutros-Ghali proposed in his *Agenda for Peace* that the UN deviate from traditional peacekeeping operations. The peace-enforcement units were to be heavily armed and able to use military force to pressure belligerents to accept a stable and peaceful environment. The expansion was to be a second generation of peacekeeping. The UN operation in the former Yugoslavia was the first test of the new generation of peacekeeping. UNPROFOR did its best to find a middle way between traditional peacekeeping that preserves a peaceful environment and large-scale enforcement operation that uses active military force to produce that environment. The middle way proved hard to find.

Quasi-enforcement action that connects peacekeeping with enforcement can be successful in certain circumstances as was illustrated in the Congo. Regardless, it does compromise the institution of peacekeeping in a general way. States may become more cautious in inviting
peacekeeping forces into conflict zones if there is an implied threat that the operation may undertake greater enforcement. However, there will be situations where there is no other option than to use force beyond the defensive. In such cases the UN needs to have clear goals, be equipped to carry out enforcement action and should have international support. Some of these requirements were not present in the Congo, Bosnia or Somalia. The UN should only authorize force beyond the defensive when all other means have been exhausted and it is necessary to being an end to the conflict.

After the experiences in Yugoslavia and Somalia, the United Nations realized that peacekeeping had changed and applicability of principles and norms had changed. The Secretary-General reiterated the importance of the principals of consents, impartiality and the non-use of force except in self-defense. Even so, there have been mandates that led peacekeeping operations to forgo the consent of parties, to act in a way that was perceived to be partial and use force in other circumstances than self-defense. This has been the case when protecting humanitarian operation during continuing warfare, protecting civilian population in designated areas and when pressing parties to achieve national reconciliation at a pace faster than they were ready to accept.

An extensive examination of peacekeeping was produced for the 2000 Millennium Summit of the Security Council in 2000: the Brahimi Report. The report has had considerable influence in practical and administrative reform of UN peacekeeping. Since the standing UN army under Article 43 never became a reality, the UN established a system of standby arrangements for peacekeeping forces which have helped the UN in meeting the goals set forward by the Brahimi Report on securing a speedy deployment of peacekeeping forces.

As peacekeeping became more complex, dangerous and operations got more expensive, it became difficult for the Security Council to find enough troops and personnel for the operations. Additionally, a Security Council resolution mandating an operation was no longer a guarantee that the operation would be carried out as authorized, as was the experience in Yugoslavia and Rwanda. Composition of UN troops have also changed, for the first fifty years developed states provided the bulk of troops for UN peacekeeping operations but in recent years the majority of troops have been contributed by developing countries. The Secretary-General had conveyed concerns that peacekeeping obligations were not shared equally by member states and that not all mandated missions were receiving equal or even

395 Christine Gray: International law and the use of force, p. 294-295
396 Ibid., p. 307
397 The Brahimi Report, paras. 103-104, 60-61; see also Christine Gray: International law and the use of force, p. 307
support. The Security Council passed Resolution 1327 which seems to accept that shared responsibility of member states could take the form of logistical support or provision of equipment.\textsuperscript{398}

The growth in UN activity after the end of the Cold War strained the UN financially, moreover the UN had problems in securing adequate number of troops from member states to carry out peacekeeping operations. Therefore, the proposal was put forward that the UN turn to regional organizations to share the burden. Since the Secretary-General\textemdash\textit{Agenda for Peace}\textemdash significant increases in consultation and cooperation between the Security Council and regional organizations have taken place. Resolutions also show the increased awareness of regional organizations and of their increased role in international peace and security. Recent development regarding the cooperation between the UN and regional organizations suggest that regional arrangements will continue to play a substantial role in international peacekeeping and enforcement in the future. However, there is a need to be cautious. A consistent commitment to the legal framework of UN Charter Chapter VIII is desirable.

Since the Cold War came to an end, the number of peacekeeping operations has increased, many of them have gone beyond traditional peacekeeping that consist of monitoring cease-fires and control buffer zones. These tasks are still apart of peacekeeping operations, even though mandates now include monitoring troop withdrawals, elections and human rights violations. UN operations have also increasingly assisted in resettlement of refugees and displaced persons, the rebuilding of political and administrative structures and the protection of humanitarian aid deliveries.

Peacekeeping has managed to adapt to new circumstances and conflicts. And the UN has learned through time and different operations how to thread the middle way. And have in the recent past stayed true to the principles of traditional peacekeeping, that is, consent, neutrality and restrictions on the use of force. Therefore it is safe to say that peacekeeping remains an important tool for the United Nations to resolve conflicts that threaten international peace and security.

\textsuperscript{398} Christine Gray: International law and the use of force, p. 308

103
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