

PART I

Introduction

I

*Scope of the Manual***I.1 Peace Operations are based on three principles:
consent of the parties, impartiality and limited use of force.**

1. United Nations (UN) peacekeeping has traditionally been based on three basic principles: consent of the parties, impartiality and the non-use of force except in self-defence and defence of the mandate.¹ The same applies to Peace Operations carried out by other organisations, such as the African Union (AU), European Union (EU) and the North Atlantic Treaty Organization (NATO).

2. This Manual covers consensual Peace Operations, including both traditional peacekeeping operations and multi-dimensional Peace Operations which go beyond the traditional tasks of maintaining the post-conflict status quo and monitoring ceasefire and redeployment agreements between warring parties, and include peacebuilding and post-conflict resolution. Such operations rely on consent of the Host State and at the outset also on the consent, or at least acquiescence, of all major parties to the former conflict. A Peace Force operating in the circumstances contemplated by this Manual may be called upon to use force in situations of temporary breakdown and instability or violence directed against civilians, but will not be expected to become party to an armed conflict and will maintain impartiality and use force only as a last resort in self-defence and in defence of the mandate against so-called “spoilers”. All “blue helmet” operations are covered by the Manual, even those operations in which as a result of a temporary breakdown in stability the UN force becomes involved in hostilities with opposing factions. The Manual also covers consensual Peace Operations conducted along the lines of

¹ UN, United Nations Peacekeeping Operations: Principles and Guidelines (2008), pp. 31–34, www.un.org/en/peacekeeping/documents/capstone_eng.pdf.

blue helmet Peace Operations which are carried out by regional organisations and arrangements.

3. The Manual does not, however, cover “enforcement operations” directed against a State, or “peace enforcement operations” where the peace is enforced through participation as a party to an armed conflict on the side of a government against an opposing armed group. Similarly, it does not deal with the imposition of a political solution through force of arms upon warring parties. Counter-terrorism, counter-insurgency, counter-narcotics and counter-piracy are also not covered. Situations such as those which involved the International Security Assistance Force (ISAF) in Afghanistan will therefore be excluded. Normal peacetime military activities, such as military training and exercises, will also not be addressed in the Manual.

4. Both traditional peacekeeping operations and contemporary multi-dimensional Peace Operations are premised upon the consent of the Host State. They are bound by the fundamental principles of impartiality and of limited use of force, alongside both consent of the Host State and at the outset consent, or at least acquiescence, on the part of all other major parties involved. Many contemporary Peace Operations are conducted in unstable environments and can include the use of force in the performance of the mandate. Such operations differ from enforcement operations in which armed force is applied against a State, and from peace enforcement operations in which the mission is tasked with providing armed support to a government which is engaged in an ongoing (non-international) armed conflict. They also differ from the imposition of a political solution upon warring parties by force of arms in situations where governmental authority has broken down. While many contemporary multi-dimensional Peace Operations operate under a Chapter VII mandate from the UN Security Council and may contain certain elements of peace enforcement, they nevertheless rely upon the consent of the Host State and at the outset consent, or at least acquiescence, of all major parties to the former conflict.

5. In terms of the applicability of international humanitarian law (IHL), traditional peacekeeping does not envisage participation of peacekeeping forces as parties to either an international (IAC) or a non-international armed conflict (NIAC), and these forces do not generally involve themselves in military operations that cause them to become such parties. Likewise, multi-dimensional Peace Operations are also premised upon the principles of consent of the parties, impartiality and limited use of force, which do not bring about the *de jure* applicability of IHL.

However, since situations may arise in which Peace Forces are called upon to use force in self-defence and in defence of the mandate, they may apply at least the principles of IHL as a matter of policy, and where the factual and legal conditions for participation as a party to a NIAC have been met, they will be bound to apply IHL as a matter of law for as long as these conditions continue to be met. The Manual thus explores the questions if and when a Peace Force could become a party to the conflict and what the consequences would be if the question were answered in the affirmative.² It also identifies gaps in the applicable law and offers suggestions as to doctrine or policy with a view to filling such identified gaps. The substantive content of IHL is, however, adequately addressed in many other publications and does not require specific coverage in this Manual.

6. Considering that international human rights law (IHRL) is, in principle, applicable at all times, in peacetime as well as during armed conflict, the Manual also addresses the obligation of States and international organisations to comply with relevant norms binding upon them in Peace Operations, and to respect human rights obligations of the Host State.³ It emphasises that applicable human rights obligations cannot be circumvented by reference to the fact that other actors in the same operation have different obligations. It also explains that in case of collision between a norm of IHL and a norm of IHRL, the more specific norm applies in principle.

7. Peace Operations can help bridge the gap between the cessation of hostilities and a durable peace, but only if the parties to a conflict have the political will needed to reach the goal and are in control of armed groups. Initially developed as a means of dealing with inter-State conflict, Peace Operations have increasingly been used in intra-State conflicts, which are often characterised by multiple armed factions with differing political objectives and fractured lines of command. In this context the traditional key peacekeeping principles have evolved along with the evolution of complex multi-dimensional mandates and increasingly volatile operating environments.

² See Chapter 6.

³ See Chapter 5.

Short History of the Law of Peace Operations

1. Peace Operations, which were first undertaken in the early 1920s, became more frequent soon after World War II. Yet still today many of them have to be ‘invented through trial and error under the stress of urgent circumstances’.¹ A wealth of relevant literature has developed over time.² While principles and guidelines for UN peacekeeping operations have been developed in close consultation with field missions, Member States and many other stakeholders,³ the topic still lacks formal legal regulation. This is not surprising, as a variety of conflict situations, operational requirements and capabilities must be reconciled, and principles and rules stemming from many different branches of international law and the national law of Host States and Sending States are affected.⁴

2. This chapter focuses largely on the history of Peace Operations of the UN. The final paragraphs of this chapter give a short overview of the most important historical and institutional developments with regard

¹ M. J. Matheson, *Council Unbound: The Growth of UN Decision Making on Conflict and Postconflict Issues After the Cold War* (United States Institute of Peace Press, 2006), p. 99.

² See M. Bothe, ‘Peacekeeping Forces’, in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2016), www.mpepil.com. For an authoritative look into legal issues which have since taken on historic significance, see A. Cassese (ed.), *United Nations Peace-Keeping: Legal Essays* (Sijthoff and Noordhoff, 1978). For more information, see United Nations Dag Hammarskjöld Library, ‘Peace-Keeping Operations: A Bibliography’, <http://research.un.org/en/docs/peacekeeping>.

³ See UN, *United Nations Peacekeeping Operations: Principles and Guidelines* (2008), www.un.org/en/peacekeeping/documents/capstone_eng.pdf (Capstone Doctrine). See also thematic Security Council resolutions and Presidential Statements on maintenance of international peace and security – security sector reform, e.g. UNSC Res. 2151 (2014); maintenance of international peace and security – conflict prevention, e.g. UNSC Res. 2171 (2014); threats to international peace and security caused by terrorist acts, e.g. UNSC Res. 2133 (2014); UN peacekeeping operations, e.g. UNSC Res. 2167 (2014); protection of civilians in armed conflict, e.g. UNSC Res. 2175 (2014) and UN Doc. S/PRST/2014/3 (2014); and children in armed conflict, e.g. UNSC Res. 2143 (2014).

⁴ D. Fleck, ‘The Law Applicable to Peace Operations’, in A. Clapham and P. Gaeta (eds.), *The Oxford Handbook of International Law in Armed Conflict* (Oxford University Press, 2014), pp. 228–240.

to Peace Operations undertaken by the AU (see paragraphs 17–21), EU (paragraphs 22–24) and NATO (paragraphs 25–30).

3. Peace Operations of the UN have developed in three phases:⁵ (1) During the Cold War period from the late 1940s to the mid 1980s “traditional” or “classical” peacekeeping emerged as a new development, described by Dag Hammarskjöld as falling under “Chapter VI and a half” of the UN Charter, i.e. between peaceful settlement and enforcement measures.⁶ (2) During a transitional period from 1987 until late 1991, the Security Council sought and partly succeeded in making more active use of UN peacekeeping to facilitate the settlement of long-standing regional conflicts.⁷ (3) An explosion in the number of Peace Operations followed this period with even more robust missions, to include neutralisation of armed elements and increasing efforts to protect civilians.⁸ However, there were also major setbacks and failures.⁹ Regional

⁵ See M. Berdal, ‘The Security Council and Peacekeeping’, in V. Lowe, A. Roberts, J. Welsh and D. Zaum (eds.), *The United Nations Security Council and War. The Evolution of Thought and Practice Since 1945* (Oxford University Press, 2008), pp. 177–198.

⁶ B. Urquhart, *A Life in Peace and War* (Harper & Row, 1987), p. 125. See e.g. UN Military Observer Group in India and Pakistan (UNMOGIP), UNSC Res. 47 (1948); UN Troop Supervision Operation in the Middle East (UNTSO), UNSC Res. 50 (1948) and UNSC Res. 73 (1949); UN Emergency Force in the Suez (UNEF I), UNGA Res. 997 (ES-I, 1956) and UNGA Res. 1000 (ES-I, 1956); UN Operation in the Congo (ONUC), UNSC Res. 143 (1960), UNSC Res. 146 (1960), UNSC Res. 157 (1960), UNGA Res. 1474 (ES-IV, 1960), UNSC Res. 161 (1961) and UNSC Res. 169 (1961); UN Yemen Observation Mission (UNYOM), UNSC Res. 179 (1963); Second UN Emergency Force (UNEF II), UNSC Res. 340 (1973).

⁷ See e.g. UN Iran–Iraq Military Observer Group (UNIIMOG), UNSC Res. 619 (1988); UN Good Offices Mission in Afghanistan and Pakistan (UNGOMAP), UNSC Res. 622 (1988); Angola Verification Mission (UNAVEM I and II), UNSC Res. 626 (1988) and UNSC Res. 696 (1991); UN Observer Group (ONUCA) in Central America, UNSC Res. 644 (1989) and UNSC Res. 653 (1990); UN Transition Assistance Group (UNTAG) in Namibia, UNSC Res. 632 (1989).

⁸ See the enlargement of UNPROFOR’s mandate to protect the distribution of humanitarian assistance in the former Yugoslavia, UNSC Res. 769 (1992); Unified Task Force (UNITAF) in Somalia, UNSC Res. 794 (1992); UN Operations in Somalia (UNOSOM II), UNSC Res. 814 (1993); International Force for East Timor (INTERFET), UNSC Res. 1264 (1999); International Security Assistance Force (ISAF) in Afghanistan, UNSC Res. 1386 (2001) and UNSC Res. 1510 (2003) which soon turned into a non-international armed conflict with coalition forces participating on the side of the Afghan government; UN Organization Mission in the Democratic Republic of the Congo (MONUC), UNSC Res. 1258 (1999) and UNSC Res. 1291 (1999); UN Operation in Côte d’Ivoire (UNOCI), UNSC Res. 1528 (2004); AU/UN Hybrid Mission in Darfur (UNAMID), UNSC Res. 1769 (2007); UN Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), UNSC Res. 1925 (2010), UNSC Res. 2053 (2012), UNSC Res. 2076 (2012) and UNSC Res. 2098 (2013).

⁹ See T. Findlay (ed.), *Challenges for the New Peacekeepers* (Oxford University Press, 1996); J. Sloan, *The Militarisation of Peacekeeping in the Twenty-First Century* (Hart, 2001); T. Benner, S. Mergenthaler and Ph. Rotmann, *The New World of Peace Operations: Learning to Build Peace?* (Oxford University Press, 2011); A. J. Bellamy and P. D. Williams (eds.), *Providing Peacekeepers: The Politics, Challenges, and Future of United Nations Peacekeeping Contributions* (Oxford University Press, 2013).

organisations (and arrangements) are now more and more involved in Peace Operations, and post-conflict peacebuilding has become a challenge for civilians and the military, for States and civil society.

4. The term “Peace Operation” is of comparably recent coinage.¹⁰ It goes beyond traditional peacekeeping and is used in current UN terminology to describe ‘field operations deployed to prevent, manage, and/or resolve violent conflicts or reduce the risk of their recurrence’.¹¹ Broader than peacekeeping, this term entails ‘three principal activities: conflict prevention and peacemaking; peacekeeping; and peacebuilding’.¹² Widely understood and used as an informal means of effectively containing warring States, international peacekeeping was and is thus used and supported by States for wider purposes: ‘[W]hile peacekeeping forces were themselves directly engaged in the mitigation of local violence, their deployment also served as a great power instrument for managing relations and preventing war of a far more catastrophic kind.’¹³

5. Clear legal distinctions continue to apply between operations based on and executed with full consent of the Host State and enforcement operations under Chapter VII of the UN Charter. Yet peacekeeping and peace enforcement tasks may be present in one and the same operation. Even those operations in which the element of coercion is not the dominating feature may differ considerably in mandate, size and duration.¹⁴ While all UN Peace Operations are executed within the general framework of the UN Charter (Chapters VI, VII and VIII), the reality is that military forces were often sent to operate on foreign territory without an explicit legal basis, without special agreements in accordance with article 43 of the UN Charter, and without involving the Military Staff Committee under article 47.

¹⁰ See N. White, ‘Peace Operations’, in V. Chetail (ed.), *Post-Conflict Peacebuilding: A Lexicon* (Oxford University Press, 2009), pp. 213–227. For a list of terms as used in the Manual, see Appendix VIII.

¹¹ See Capstone Doctrine (n. 3), p. 99.

¹² Report of the Panel on United Nations Peace Operations, UN Doc. A/55/305-S/2000/809 (2000), para. 10 (Brahimi Report). See Glossary of UN Peacekeeping Terms, www.un.org/en/peacekeeping/sites/glossary.

¹³ Berdal (n. 5), p. 176.

¹⁴ For general information, see the UN website for Peacekeeping Operations: www.un.org/en/peacekeeping/operations. A historical overview and legal assessment of the practice of peacekeeping operations are provided by M. Bothe, ‘Peacekeeping’, in B. Simma, D. E. Khan, G. Nolte and A. Paulus (eds.), *The Charter of the United Nations: A Commentary*, 3rd edn, 2 vols. (Oxford University Press, 2012), vol. I, pp. 1171–1199.

6. In its 1962 Advisory Opinion on *Certain Expenses of the United Nations*,¹⁵ the International Court of Justice confirmed, despite several dissenting opinions, that in establishing UN Emergency Force (UNEF) I and UN Operation in the Congo (ONUC)¹⁶ neither the General Assembly nor the Security Council had acted *ultra vires*, as UNEF I was not an enforcement action under Chapter VII but rather a measure recommended under article 14 of the Charter, and in the case of ONUC it was in conformity with the Charter that the Council had authorised the UN Secretary-General to select and invite Member States willing to assist; hence the expenditures for both operations constituted ‘expenses of the Organization’ within the meaning of article 17(2) of the Charter. In more than fifty years of practice, fundamental elements of Peace Operations (i.e. consent of the Host State, impartiality of peacekeepers and limited use of force) have repeatedly been confirmed both in the Secretary-General’s reports on the issue¹⁷ and in the reactions of Member States. Recent developments, especially in Africa, have caused concern as to whether Host State consent is still a key principle of contemporary Peace Operations.¹⁸ The principle of limited use of force has come under strain in several Peace Operations.¹⁹ Yet Sending States and Host States alike continue to underline the importance of all three principles. Consent of the Host State, impartiality of peacekeepers and limited use of force are widely considered today as customary international law requirements in all Peace Operations, whether conducted by the UN or by regional organisations and arrangements.

7. The Agenda for Peace,²⁰ commissioned by the Security Council at its first meeting at the level of Heads of State and Government²¹ and later endorsed by the General Assembly,²² identified four separate components of the maintenance of international peace and security, i.e. peacemaking

¹⁵ *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, ICJ Reports 1962, 151.

¹⁶ For both operations, see n. 6.

¹⁷ The first of such reports was submitted by Secretary-General Dag Hammarskjöld after UNEF I: Summary Study from the Experience Derived from the Establishment and Operation of the Force: Report of the Secretary-General, UN Doc. A/3943 (1958).

¹⁸ See D. M. Tull, ‘When They Overstay Their Welcome: UN Peacekeepers in Africa’, 17 *Journal of International Peacekeeping* (2013), pp. 179–200, arguing that UN mandates were not fully met with the consent of the Host State and that peacekeepers have repeatedly become actors in the domestic power game, as a result of their ever longer and intrusive presence.

¹⁹ See Chapter 12.

²⁰ An Agenda for Peace – Report of the Secretary-General, UN Doc. A/47/277-S/24111 (1992).

²¹ UN Doc. S/23500 (1992).

²² UNGA Res. 47/120 (1992).

including preventive diplomacy, peacekeeping and post-conflict peacebuilding. Advocating for an early warning system to identify potential conflicts, and a ‘reinvigorated and restructured Economic and Social Council’, the Agenda for Peace tried to establish a system of preventive deployment in situations of national crisis, to discourage hostilities in inter-State disputes, and to serve to deter conflict in situations of external threats.²³ Three years later, UN Secretary-General Boutros Boutros-Ghali’s Supplement to the Agenda for Peace²⁴ reiterated the need for hard decisions in view of a dramatic increase in relevant UN activities, as the end of the Cold War enabled the Security Council to begin using its authority under the Charter more extensively.

8. The Brahimi Report,²⁵ initiated by Secretary-General Kofi A. Annan, conspicuously avoided the traditional distinction between peacekeeping and peace enforcement and addressed doctrinal issues of peacemaking, peacekeeping and peacebuilding in context. The Report is an important contribution towards adapting the three principles of peacekeeping – i.e. consent of local parties, impartiality and limited use of force – to the more complex circumstances of internal conflicts in which consent of the host parties may be unreliable, in which Charter principles are often neglected at least by one of the parties and in which peacekeepers have to operate in a rather volatile safety and security environment. The Report developed practical recommendations, in particular for ‘clear, credible and achievable mandates’, to be formulated by the Security Council.²⁶ Accordingly, Rules of Engagement (ROE) (if necessary robust ones) were called for, and adopted with relevant specifications for each mission.²⁷

²³ See Agenda for Peace (n. 20), paras. 26–32.

²⁴ Supplement to An Agenda for Peace, UN Doc. A/50/60-S/1995/1 (1995).

²⁵ See n. 12. See N. White, ‘Commentary on the Report of the Panel on United Nations Peace Operations’, 6 *Journal of Conflict and Security Law* (2001), pp. 127–146; C. Gray, ‘Peacekeeping After the Brahimi Report’, 6 *Journal of Conflict and Security Law* (2001), pp. 267–288; D. Bratt and E. Giornet, ‘Evaluating the Brahimi Report’, 96 *Strategic Datalink* (2001), pp. 1–4; B. Jones, R. Gowan and J. Sherman, *Building on Brahimi: Peacekeeping in an Era of Strategic Uncertainty* (NYU Center on International Cooperation, 2009).

²⁶ The Security Council has endorsed these proposals in UNSC Res. 1327 (2000), adopting detailed decisions and recommendations resulting from the Brahimi Report, and decided to review their implementation periodically. For a critical assessment, see W. J. Durch, V. K. Holt, C. R. Earle and M. K. Shanahan, *The Brahimi Report and the Future of UN Peace Operations* (Henry L. Stimson Center, 2003).

²⁷ T. Gill, J. A. M. Léveillée and D. Fleck, ‘The Rule of Law in Peace Operations: General Report’, 17 *Recueils de la Société Internationale de Droit Militaire et de Droit de la Guerre* (2006), pp. 109–157.

9. The doctrine of Responsibility to Protect (R2P),²⁸ developed to articulate the responsibility of States to intervene in extreme situations,²⁹ was presented by its authors as ‘a new international security and human rights norm to address the international community’s failure to prevent and stop genocides, war crimes, ethnic cleansing and crimes against humanity’.³⁰ Yet clear limitations must be considered in this context. At the 2005 World Summit, the assembled Heads of State and Government, accommodating concerns that an unqualified reference to R2P might result in ‘an obligation to intervene under international law’,³¹ gave a cautious response to more progressive approaches by invoking three pillars on which this responsibility rests: (1) the responsibility of the State through appropriate and necessary means to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity including their incitement; (2) the commitment of the international community through the UN and in accordance with Chapters VI and VIII of the Charter to assist States in meeting these obligations; and (3) the responsibility of States ‘to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organisations as appropriate, should peaceful means be inadequate and national authorities manifestly fail to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity’.³² The doctrine of R2P, later referred to as the responsibility to prevent, the responsibility to react and the responsibility to rebuild,³³ is not so much new law as a different way of presenting some existing legal obligations and sound policy objectives in a new form.

²⁸ International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (International Development Research Centre, 2001), <http://responsibilitytoprotect.org/ICISS%20Report.pdf>; G. J. Evans and M. Sahnoun, ‘The Responsibility to Protect’, 81 *Foreign Affairs* (2002), pp. 99–110.

²⁹ International Commission on Intervention and State Sovereignty (n. 28), xi: ‘State sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself ... Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.’

³⁰ *Ibid.*, Introduction.

³¹ See e.g. US Ambassador John Bolton, ‘Letter dated 30 August 2005’, www.humanrightsvoices.org/assets/attachments/documents/bolton_responsibility_to_protect.pdf.

³² 2005 World Summit Outcome, UNGA Res. 60/1 (2005), paras. 138–140. See E. C. Luck, *The United Nations and the Responsibility to Protect* (Stanley Foundation, 2008), www.stanleyfoundation.org/publications/pab/luckpab808.pdf.

³³ S. C. Breau, ‘The Impact of the Responsibility to Protect on Peacekeeping’, 11 *Journal of Conflict and Security Law* (2006), p. 431.