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978-0-521-84305-8 - UN Peacekeeping in Lebanon, Somalia and Kosovo: Operational and Legal Issues in Practice

Ray Murphy

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Introduction

The UN and peacekeeping operations

The concept of peacekeeping is neither defined nor specifically provided for in the United Nations Charter.¹ Historically, it is by no means a concept associated exclusively with the United Nations (UN).² Consequently, it does not lend itself to precise definition. In these circumstances, it is not surprising that there is some confusion regarding what exactly constitutes peacekeeping. Indeed, it is sometimes easier to say that a particular mission or force does not possess the generally recognised characteristics of a peacekeeping operation, than it is to confirm that it fulfils the necessary criteria.³ Part of the reason for this is the looseness with which states adopt such terms. It has a distinctly positive resonance, and those charged with the government of states are usually more concerned with public relations and opinion polls than with legal criteria or political reality. For this reason, the term is often applied to controversial situations where states intervene militarily and then seek to justify or portray their actions as some kind of benign peacekeeping operation.

¹ See B. Simma (ed.), *The Charter of the United Nations: A Commentary* (2nd edn, Oxford: Oxford University Press, 2002), pp. 648–700; N. White, *Keeping the Peace* (2nd edn, Manchester: Manchester University Press, 1997), pp. 207–84; United Nations, *The Blue Helmets – A Review of United Nations Peacekeeping* (3rd edn, New York, United Nations, 1996), pp. 3–9.

² H. McCoubrey and N. White, *International Organizations and Civil Wars* (Aldershot: Dartmouth, 1995), p. 183.

³ The UN Emergency Force (UNEF), which was established and deployed after the British and French military intervention in Suez in 1956, is generally regarded as the first true UN peacekeeping operation; *Summary Study of the Experience Derived from the Establishment and Operation of the Force: Report of the Secretary-General*, 9 October 1958, General Assembly Official Records, 13 Session, Annex 1: Doc. A/3943. See also Docs. A/3289 and A/3302; the latter was approved by General Assembly Resolution 1001 (ES-I) of 7 November 1956. D.W. Bowett, *United Nations Forces* (London: Stevens, 1964), pp. 90–152.

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The Cold War era (1945–89) between the United States and the Soviet Union was marked at the UN by continual wrangling over the correct interpretation of the Charter provisions.⁴ The Charter's own ambiguity and failure to provide for specific problems contributed to these disputes. In order to survive, the Organization had to be capable of adapting to the changed political circumstances and this meant adopting roles not specifically provided for in the Charter.⁵ When the required consensus among the major powers did not materialise, it seemed the UN would be unable to fulfil a significant role in the maintenance of peace; the growth of regional self-defence systems was just one indication of the lack of confidence in the Organization as the international guarantor of peace. In these circumstances, it is not surprising that the UN sought to circumvent the obstacles caused by Cold War rivalries. However, it should be stressed that peacekeeping is not the preserve of the UN. The concept predates the formation of the Organization and peacekeeping missions continue to be organised outside its framework. In this way, it can be argued that a peacekeeping force established and deployed by one or more states may legitimately profess to belong to some kind of internationally recognised category of peacekeeper. Peacekeeping operations were intended to end hostilities by peaceful means and create a climate in which the peacemaking process could be successfully applied.

When the divisions of the Cold War blocked effective action by the Security Council, the concept of UN peacekeeping was invented. In 1993, a former Under-Secretary-General for Peacekeeping Operations, Marrack Goulding, suggested the following definition:

Field operations established by the UN with the consent of the parties concerned, to help control and resolve conflicts between them, under UN command and control, at the expense collectively of the member states, and with military and other personnel and equipment provided voluntarily by them, acting impartially between the parties and using force to the minimum extent necessary.⁶

⁴ See generally Simma (ed.), *Charter of the United Nations*, pp. 13–32; and L. Goodrich, E. Hambro and A.P. Simons, *Charter of the United Nations* (3rd edn, New York: Columbia University Press, 1969), pp. 1–17; and I. Claude, *Swords into Ploughshares* (New York: Random House, 1956), chapter 12.

⁵ N.D. White, 'The UN Charter and Peacekeeping Forces: Constitutional Issues' (1996) 3(4) *International Peacekeeping* 43–63.

⁶ M. Goulding, 'The Evolution of UN Peacekeeping' (1993) 69(3) *International Affairs* 464.

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Since 1985, there has been a significant increase in the number of peacekeeping missions established, with a corresponding increase in the complexity of the mandates. These are often referred to as 'second-generation' peacekeeping operations.⁷ The traditionally passive role of peacekeepers has been replaced by a more active role of peacemaking, involving, *inter alia*, national reconstruction, facilitating transition to democracy, and providing humanitarian assistance.⁸ There are a broad range of terms used to describe these and related activities. The nomenclature of 'second generation' or multi-dimensional peacekeeping often gives way to the more generic title of peace operations, adopted to cover the range of activities involved.⁹ The UN Department of Peacekeeping Operations continues to use the term 'peacekeeping' to cover all such activities and describes these operations as follows:

Most of these operations are established and implemented by the UN itself with troops serving under UN operational command. In other cases, where direct UN involvement is not considered appropriate or feasible, the [Security] Council authorizes regional organizations such as the North Atlantic Treaty Organization, the Economic Community of West African States or coalitions of willing countries to implement certain peacekeeping or peace enforcement functions.¹⁰

As the dynamic of conflict in the world changed, so too did the response of the UN, and other international organisations and states. Classical peacekeeping operations originally conducted during the Cold War usually involved the deployment of military personnel only between two states. The process leading to the deployment of a UN force was relatively straightforward: armed conflict, cease-fire, an invitation from the conflict parties to monitor the cease-fire, followed by deployment of military personnel, while negotiations for a political settlement continued.

⁷ United Nations, *The Blue Helmets*, p. 5.

⁸ J. Roper, M. Nishihara, O. Otunnu and E. Schoettle, *Keeping the Peace in the Post-Cold War Era: Strengthening Multilateral Peacekeeping* (New York: Trilateral Commission, 1993), p. 4.

⁹ S. Ratner, *The New UN Peacekeeping* (London: Macmillan, 1995), pp. 117–36; and W. J. Durch, 'Keeping the Peace: Politics and Lessons of the 1990s', in W. J. Durch (ed.), *UN Peacekeeping, American Policy, and the Uncivil Wars of the 1990s* (London: Macmillan, 1997), pp. 3–7.

¹⁰ UN Department of Peacekeeping Operations, available at <http://www.un.org/Depts/dpko/dpko/home.shtml>.

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In contrast, contemporary peace operations are increasingly complex.¹¹ According to the Pearson Peacekeeping Centre in Canada, they are:

- deployed into both inter-state and intra-state conflicts;
- conducted in every phase of the conflict spectrum, from prevention through to post-war reconstruction;
- dependent on close cooperation among civilian, police, and military organizations from the international community, with parties to the conflict and war-affected populations;
- opening in new areas of international activity with conflict-affected countries, such as reforms to the security sector.

In this way, 'peace operations' is the umbrella term used to cover a multiplicity of UN field activities in support of peace, ranging from essentially preventive deployments to long-term state-building missions.¹² They include conflict prevention, conflict mitigation, peacemaking, peacekeeping, peace enforcement, and post-conflict peace-building.

The UN Charter, as finally adopted, contains two significant chapters in relation to the maintenance of international peace and security. Chapter VI provides for the pacific settlement of disputes by, among other things, negotiation and adjudication, and Chapter VII contains the collective security provisions which were intended as the cornerstone of its policy in the maintenance of world peace. It is Chapter VII of the Charter that provides for enforcement measures under the direction of the Security Council as the central military instrument for the maintenance of peace and security. If force is used or threatened against the territorial integrity or political independence of any state in a manner that is contrary to the Charter, there are two possible military options permitted in response: self-defence and police or enforcement action.¹³ Either response is likely to lead to full-scale conflagration. The system

¹¹ Pearson Peacekeeping Centre, Canada, available at http://www.peaceoperations.org/en/peace_operations.asp.

¹² J. Cockayne and D. M. Malone, 'The Ralph Bunche Centennial: Peace Operations Then and Now' (2005) 11 *Global Governance* 331–50 at 331.

¹³ Article 2(4) of the UN Charter prohibits the threat or use of force, while Article 51 provides for individual or collective self-defence. However, self-defence under Article 51 is only permitted until such time as the Security Council responds and takes the necessary measures to maintain international peace. See L. M. Goodrich, E. Hambro and A. P. Simons, *Charter of the United Nations* (3rd edn, New York: Columbia University Press, 1969), pp. 43–55 and pp. 342–53; and B. Simma (ed.), *The Charter of the United Nations* (2nd edn, Oxford: Oxford University Press, 2002), pp. 112–36 and pp. 788–806.

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reflects the reality that the advent of the UN did not mean an end to conflict. In particular, the old system of wars of self-defence will remain until the system for global collective action and policing becomes a universal reality.

The lack of an express mention of peacekeeping in the Charter has not inhibited its development. In fact, this may have helped establish peacekeeping as a flexible response to international crises, while at the same time contributing to a misunderstanding regarding its true nature. Peacekeeping has evolved in a grey area between pacific settlement and military enforcement measures. Although authorities have differed on the exact legal basis for peacekeeping operations, the International Court of Justice has held that they are within the power of both the General Assembly and the Security Council.¹⁴

A further complication arises by virtue of the kind of operations conducted under Chapter VII and intended to be enforcement action in nature, despite the failure to conclude the requisite agreements between member states and the UN for the provision of armed forces under Article 43 of the Charter.¹⁵ Military actions conducted during the Korean conflict, and more recently the so-called First Gulf War, belong to this category. Operations of this kind can be established under Article 42 of the Charter (which provides for measures by air, sea or land forces as may be necessary to maintain or restore international peace and security) by way of a decision of the Security Council, or they may be authorised by way of a recommendation under Article 39.¹⁶ In

¹⁴ International Court of Justice, *Certain Expenses of the United Nations* – Article 17(2), Advisory Opinion, 20 July 1962, International Court of Justice Reports, 1962, p. 176.

¹⁵ Art. 43(1) states:

All Members of the United Nations . . . undertake to make available to the Security Council, on its call and in accordance with special agreement or agreements, armed forces, assistance and facilities . . . for the purpose of maintaining international peace and security.

Goodrich, Hambro and Simons, *Charter of the United Nations*, pp. 317–26; and Simma (ed.), *Charter of the United Nations*, pp. 760–3.

¹⁶ Art. 39 states:

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

The Korean action was taken on the basis of a ‘recommendation’ by the Security Council under Art. 39: Security Council Official Records, 5th Year; 473rd–474th Meetings; 27 and 28 June 1950.

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the special circumstances of the Korean conflict, the Uniting for Peace resolution procedure then adopted by the General Assembly provides a possible further mechanism that could be availed of in the future, though it would be a mistake to exaggerate its potential. The resolution provides that, if, because of the lack of unanimity of the permanent members of the Security Council (United States, Russia, China, France and the United Kingdom), the Council cannot maintain international peace where there is a 'threat to the peace, breach of the peace or act of aggression', the General Assembly 'shall consider the matter immediately'. Nonetheless, Article 42 remains the central element in enforcement operations. A wide measure of discretion is left to the Security Council as to whether a particular situation calls for the application of military enforcement measures, and if so the determination as to its nature and extent.

In spite of the controversy and problems encountered by peacekeeping missions, the concept of peacekeeping has survived and developed. One of the primary reasons for its success is that it has combined adherence to basic principles with extraordinary flexibility. In particular, it has managed to maintain the essence of what is acceptable to the UN membership at large, while at the same time adapting individual peacekeeping operations to the needs of particular circumstances. The Secretary-General plays a pivotal role in the conduct of peacekeeping operations, but the exact nature and extent of this role has not been defined, and problems of demarcation with that of the Security Council remain unresolved.¹⁷ In the course of the peacekeeping operation in the Congo (ONUC, 1960–4), serious difficulties arose in this regard.¹⁸

The legal authority for the creation of UN peacekeeping forces remains unsatisfactory and there seems little prospect of a change in their *ad hoc* nature. While it may be argued that agreement on basic principles would lessen the opportunity for conflicting interpretations of the Charter and divisive controversies, there is merit in maintaining a

¹⁷ See L. Gordenker, *The United Nations Secretary General and the Maintenance of Peace* (New York and London: Columbia University Press, 1967), pp. 235–60; and D. Sarooshi, *The United Nations and the Development of Collective Security* (Oxford: Clarendon Press, 1999), pp. 50–85.

¹⁸ See generally R. Higgins, *United Nations Operation in the Congo (ONUC) 1960–1964* (London: Royal Institute of International Affairs, 1980); Gordenker, *The United Nations Secretary General*, pp. 261–96; and B. Urquhart, *Hammarhjold* (New York: Alfred Knopf, 1972), pp. 389–456.

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flexible and adaptive approach to peacekeeping operations. Traditional peacekeeping operations were sometimes said to be based on 'Chapter VI¹₂' of the Charter and required, in principle, invitation or consent on behalf of the recipient state(s). The consent of the host state to the presence of a peacekeeping force confers the legitimacy required for a lawful presence in its territory and it is normally specified in an agreement concerning the rights and duties of the force.¹⁹ In fact, the legality of a peacekeeping force on any country's territory should be guaranteed in a legal instrument known as the Status of Forces Agreement (SOFA).²⁰

The issues of host state consent to a UN military presence and domestic jurisdiction raise difficult questions in the context of internal conflicts or civil wars. There were reservations about UN involvement in the Congo, Somalia, Lebanon and Kosovo for these very reasons. But the criterion of consent should be applied with some caution. Even in the case of UNIFIL, when deployed in 1978 with the consent of the Lebanese government, the authority of the government barely extended beyond west Beirut. Likewise, in the more recent case of Albania (1997), the government there consented to the deployment of a 'coalition of the willing' under a Chapter VII enforcement mandate. However, internal conflicts frequently escalate into regional conflicts and these in turn may involve breaches of international law, thereby removing the conflict from the reserved domain of domestic jurisdiction.

The resolution of internal or domestic conflict has been a dominant feature of recent peacekeeping operations and has involved the establishment of democratic governments culminating in the nation-building attempted for a time in Somalia, and currently underway in Kosovo. International administration of this kind, like peacekeeping itself, is not specifically provided for in the UN Charter. It is not subject to a clear UN doctrine, and it appears to be handled by the Department of Peacekeeping Operations more by default than by design. Operations in eastern Slavonia, Bosnia-Herzegovina, Kosovo and East Timor have been characterised by the UN and other international organisations assuming responsibilities that evoke the historically sensitive concepts

¹⁹ *The Peacekeepers Handbook* (New York: International Peace Academy, 1984), p. 362.

²⁰ D. Fleck (ed.), 'Present and Future Challenges for the Status of Forces (Ius in Praesentia): A Commentary to Applicable Status Law Provisions', in *The Handbook of the Law of Visiting Forces* (Oxford: Oxford University Press, 2001), p. 47.

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of trusteeship and protectorate.²¹ Making such administrations accountable and preventing them from adopting neo-colonial roles is imperative. Any interventions by UN forces may, intentionally or otherwise, alter the delicate balance of power between the warring parties.²² Maintaining impartiality can present peacekeepers with a dilemma, especially when they confront situations in which civilians are victimised, or when UN forces are themselves the subject of attack.²³ The question of the consent of the host state or parties to a conflict to a UN presence is particularly problematic in these situations and the blue berets involved must be prepared to resort to force rather than be bystanders to large-scale human rights abuses or even genocide.

Peacekeeping and enforcement operations

There is a great deal of semantic and conceptual confusion surrounding peacekeeping and peace enforcement operations.²⁴ In general terms, peacekeeping involves non-coercive intervention and is based on the consent of the parties to a conflict and the non-use of force, except in self-defence.²⁵ Many discussions are characterised by a failure to distinguish traditional peacekeeping from peace enforcement, and to understand the grey zone that lies between the two.²⁶ This was especially evident in debates on Somalia, which involved a combination of operations and mandates embodying all three elements mentioned, and more besides. Not surprisingly, the continuum from peacekeeping to peace enforcement can be difficult to track. Peacekeeping remains quite distinct from the enforcement measures envisaged under the UN

²¹ M. Berdal and R. Caplan, 'The Politics of International Administration' (2004) 10 *Global Governance* 1–5 at 2.

²² J. Peck, 'The UN and the Laws of War: How Can the World's Peacekeepers Be Held Accountable' (1995) 21 *Syracuse Journal of International Law* 283–310 at 288.

²³ United Nations, *The Blue Helmets*, p. 5.

²⁴ J. G. Ruggie, 'Wandering in the Void: Charting the UN's New Strategic Role' (1993) 72(5) *Foreign Affairs* 26; and A. Roberts, 'From San Francisco to Sarajevo: The UN and the Use of Force' (1995–6) 37(4) *Survival* 26; and generally E. Schmidl, *Peace Operations Between War and Peace* (London: Frank Cass, 2000); and I. J. Rikhye, *The Politics and Practice of United Nations Peacekeeping: Past, Present and Future* (Clementsport, NS: Canadian Peacekeeping Press, 2000).

²⁵ A. James, *Peacekeeping in International Politics* (London: Macmillan, 1990), pp. 1–13; and White, *Keeping the Peace*, pp. 232–47.

²⁶ T. Weiss, 'Rekindling Hope in UN Humanitarian Intervention', in W. Clarke and J. Herbst (eds.), *Learning From Somalia* (Boulder: Westview Press, 1997), pp. 207–228 at p. 211.

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Charter. Nonetheless, both concepts are based on similar conditions, in particular, the availability of military forces and the effective co-operation of members of the Security Council. Consequently, there is considerable confusion regarding these very distinct and separate concepts. Deployments in the late 1990s in Albania (1997) and East Timor (1999–2002) could be described as hybrid operations comprised of coalitions of the willing based on consent; but the consent involved, especially in the case of East Timor, was somewhat qualified by the international pressure brought to bear on the Indonesian government at the time.

Peace enforcement must also be distinguished from enforcement action as envisioned under the collective security provisions of Chapter VII of the UN Charter. Peace enforcement does not involve identifying an aggressor, but it may involve the threat and actual use of force to ‘compel or coerce’ the implementation of international norms or mandates.²⁷ For this reason, the two most important characteristics that distinguish traditional peacekeeping from the more robust peace enforcement operations are the use of force and the issue of host state consent to the presence of the UN force. Closely linked to these issues, and also of crucial importance, is the principle of impartiality. Impartiality is easily maintained in traditional peacekeeping, but difficult in enforcement operations. Insistence that interventions in intra-state conflict adhere to the principles of host state consent and impartiality is not always practical and may prove counterproductive. It is generally accepted that the peacekeeping force in Lebanon (UNIFIL, 1978) was based on the traditional peacekeeping model, and that the UNITAF (Unified Task Force, 1992) and UNOSOM II (United Nations Operation in Somalia II, 1993–5) may be categorised as peace enforcement operations. In Kosovo (UNMIK/KFOR, 1999), the UN was authorised under Chapter VII of the Charter to undertake a mission that was unprecedented in both its scope and structural complexity. No other mission had ever been designed in such a way that other multilateral organisations were full partners under UN leadership. In this way, it may be

²⁷ D. Daniel, ‘Wandering Out of the Void? Conceptualizing Practicable Peace Enforcement’, in A. Morrison, D. Fraser and J. Kiras (eds.), *Peacekeeping with Muscle: The Use of Force in International Conflict Resolution* (Cornwallis: Canadian Peacekeeping Press, 1997), pp. 1–15 at p. 4. The quote is from *FM 100–23: Peace Operations* (Washington, DC: Department of the Army, 1994), p. 12.

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described as the quintessential multi-dimensional peace operation with a peace enforcement mandate.

The recent UN Secretary-General's report on threats and challenges has referred to the characterisation of peacekeeping missions in terms of 'Chapter VI' or 'Chapter VII' (of the UN Charter) operations as somewhat misleading.²⁸ It acknowledges that there is a distinction between operations in which a robust use of force is integral to the mission, and the more 'traditional peacekeeping' where there is a reasonable expectation that force may not be used. However, in peacekeeping as much as peace enforcement cases, it is now the usual practice for a Chapter VII mandate to be given (even if it is not always welcomed by troop contributors). This practice is easily explained: an otherwise benign environment can turn hostile, and it is desirable that there is complete certainty about the mission's capacity to respond with force, if necessary.

The semantic confusion is not helped by the application of the term 'peace enforcement' to large-scale international military operations, such as the First Gulf War.²⁹ It undermines the credibility of genuine attempts by the UN to keep or enforce the peace, as the case may be, when operations involving enforcement measures by a group of states are erroneously portrayed in these terms. In practice, few situations can accurately be described as peace enforcement operations, for example, the NATO-led force (IFOR) in the former Yugoslavia following the Dayton Accords and the more recently deployed Kosovo Force (KFOR). The notion of host state consent also marks an important distinction between peacekeeping and related humanitarian aid missions on the one hand and humanitarian intervention on the other. Humanitarian intervention is generally understood to mean intervention by a third party in the affairs of another without that country's consent in order to prevent serious human rights violations being

²⁸ United Nations, *A More Secure World: Our Shared Responsibility, Report of the High-Level Panel on Threats, Challenges and Change*, UN Doc. A/59/565, 2 December 2004, paras. 212–14. See also S. Chesterman, 'The Use of Force in UN Peace Operations', External Study, Best Practices Unit (UN DPKO, 2004), p. 6.

²⁹ The term is often used by UN officials: see D. Shagra, Legal Officer, Office of Legal Affairs, and R. Zacklin, Director and Deputy to the Under-Secretary-General, Office of Legal Affairs, 'The Applicability of International Humanitarian Law to United Nations Peace-keeping Operations: Conceptual, Legal and Practical Issues', *Symposium on Humanitarian Action and Peacekeeping Operations Report* (Geneva: ICRC, 1994), p. 40.