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## Beyond Self-Defense: United Nations Peacekeeping Operations & (and) the Use of Force

Katherine E. Cox

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## Beyond Self-Defense: United Nations Peacekeeping Operations & (and) the Use of Force

### Keywords

Military Law, Self-Defense, United Nations, Military, War and Peace

# BEYOND SELF-DEFENSE: UNITED NATIONS PEACEKEEPING OPERATIONS & THE USE OF FORCE

KATHERINE E. COX\*

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\* Presidential Fellow, Association of the Bar of the City of New York; LL.M. 1998, Columbia University School of Law; LL.B. (Hons.) 1994, University of Adelaide, Australia; B.A. 1990, Flinders University of South Australia, Australia. I would like to thank Professor Lori Fisler Damrosch of Columbia University Law School for her helpful comments on this paper, and Ms. Leila Benkirane, who supervised me during my internship at the United Nations, and provided me with an insight into the practical and legal aspects of United Nations peacekeeping operations.

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### I. INTRODUCTION

Since the end of the Cold War, the role of United Nations (UN) operations in the area of international peace and security has increasingly become a topical issue for the different nations of the world. In particular, the use of force by, and in support of, peacekeeping has raised questions concerning the future role of UN peacekeeping operations in the resolution of international and internal conflict. During the Cold War there were two accepted forms of United Nations operations: peacekeeping and peace-enforcement. Since the end of the Cold War, however, despite increasing difficulties faced by UN peacekeeping operations, no accepted mode of action beyond these two operations has emerged. This has become problematic as the UN has consistently chosen to use peacekeeping forces as its primary tool in its effort to restore peace and security; despite the fact that peacekeeping, in itself, is not always an effective means to achieve these ends.

Why did peacekeeping come to be used in situations that increasingly necessitated the use of coercive force? Primarily because peacekeeping provided a legal and 'palatable' form of intervention in intrastate conflicts, which have erupted with greater frequency in recent times. The use of UN peacekeepers to intervene and resolve conflict was acceptable to Member States and met with their growing demands and expectations that action be taken to contain State fragmentation and resolve humanitarian crises. Due to their acceptability, such forces were authorized and implemented. The circumstances into which the UN intervened, however, were often volatile and not conducive to effective peacekeeping: situations where, for example, the consent of the warring factions could only be obtained conditionally or where there was no governmental authority in existence with whom the UN could negotiate and work. The Security Council authorized the use of force by and in support of some of these UN peacekeeping operations to enable their mandates to be achieved. Ultimately this has meant that UN peacekeeping has moved beyond the three main legal principles upon

which it was originally based, notably the principles of consent, impartiality and non-use of force except in self-defense. Arguably, peacekeeping has outstripped its original doctrinal justifications and as a result now flounders without guidelines and with ill-defined purpose.

The use of force by and in support of UN peacekeeping operations has narrowed the gap that previously existed between peacekeeping and coercive peace-enforcement. Yet the use of force in such instances is controversial, primarily because there is no universally accepted agreement as to how and when force should be used. This gives rise to many legal issues. For example, how broad is a peacekeeper's inherent right to self-defense? When does force used in 'self-defense' become an enforcement measure? When does peacekeeping become coercive peace-enforcement? One way to address these questions is to clarify the legal issues that have emerged due to these developments. Their clarification is not only of theoretical interest, it is of great practical importance. Determining the legal basis for the use of force enables a conceptual framework to be built up regarding its use. A sound legal understanding of this issue would provide the basis for comprehensive policies to be formulated concerning the way in which force is used by UN peacekeepers. It will help address the current problems facing United Nations peacekeeping by ensuring that Security Council resolutions are translated into clear and effective rules of engagement, which will be adhered to by troops in the field.

Not surprisingly, if a peacekeeping operation's mandate is not clear, its rules of engagement will not be clear. Lack of clarity in a mandate or its legal basis invariably gives rise to problems in interpreting or implementing the objectives of the operation. Thus, the criteria for using force are important to define. Sound reasons are needed to explain and justify why force may be used in one situation and not in another. Furthermore, such criteria must be accepted by all the parties involved in the peacekeeping operation — the parties involved in the conflict and the countries who have donated troops. By using legal reasoning to justify the use of force, a consensus among Member States is more likely to emerge as to when and how force should be used by the United Nations. The future credibility of the United Nations depends on successful peacekeeping operations. Operations that have clearly defined mandates and legally obtainable objectives are more likely to succeed than those that do not. Clearly therefore, it is most important to concentrate on resolving the legal difficulties underpinning these operations.

This paper focuses on the extent to which UN peacekeeping operations can use force in self-defense. Clearly this is just one of the areas regarding peacekeeping and the use of force which needs to be clari-

fied.<sup>1</sup> It is an area that warrants particular attention, however, due to the fact that self-defense is the one 'legitimate' way in which peacekeepers can use force.<sup>2</sup> The first part of this paper gives an overview of UN peacekeeping operations and the legal principles governing these operations. Part two examines the history and development of the use of force by UN peacekeeping operations. In particular, the idea that self-defense, in the context of peacekeeping, may include using force 'in defense of one's mandate' is examined. Part three details some recent examples of Security Council resolutions which authorized, either explicitly or implicitly, the use of force in a way that arguably expands this concept of self-defense even further. Finally, I discuss the legal and practical implications this development has for the future of peacekeeping.

This paper focuses on the use of force *by* peacekeeping forces, as opposed to the use of force *in support of* peacekeeping forces. The reason for this limitation is not only space constraints, but the fact that the issues raised by these different uses of force are in fact quite distinct and are not necessarily ideally dealt with together. The use of force as an enforcement measure under Chapter VII of the Charter is legal where the Security Council has found a threat to international peace and security and has authorized the use of force.<sup>3</sup> In the context of a peacekeeping operation the use of force raises different issues. Whilst it may be argued that it is legal for the Security Council to authorize the use of force by UN peacekeeping operations under Chapter VII, this flies in the face of one of the fundamental legal principles governing peacekeeping operations: the principle of non-use of force. If it is accepted that peacekeeping operations can only use force in self-defense, as is generally agreed, one must question whether the concept can be stretched to include more forceful measures, the likes of which have been authorized in recent times. This paper seeks to answer some of these questions.

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1. Another area, for example, might be to what degree the use of force by Member States in support of peacekeeping operations is compatible with the underlying principles of peacekeeping.

2. As distinguished from a "lawful" use of force authorized under Chapter VII of the UN Charter. This is due to the fact that one of the principles of traditional peacekeeping was that force only be used in self-defense. U.N. CHARTER arts. 42-43. See discussion below concerning the legal principles governing United Nations peacekeeping operations.

3. Article 42 of the U.N. Charter reads:

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace or security. Such action may include demonstrations, blockade, and other operations by air, sea or land forces of Members of the United Nations.

U.N. CHARTER art. 42.

## II. AN OVERVIEW OF UNITED NATIONS PEACEKEEPING OPERATIONS

The purpose of this section is to give a broad overview and some background to UN peacekeeping operations, their legal underpinnings and core characteristics. No attempt is made to give a detailed critique of the subject matter. Indeed, there is a vast array of scholarly writings available on the topic, which highlight the complex and controversial nature of these operations.<sup>4</sup> For the purposes of this paper, however, a few general comments about the nature of peacekeeping operations, are appropriate.

### A. Definition of "United Nations Peacekeeping Operations"

No two UN peacekeeping operations are alike.<sup>5</sup> 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. Furthermore, each operation builds upon the experience of past operations. Thus by definition UN peacekeeping operations are evolutionary in nature. For the purposes of delineating the scope and character of such operations, however, it is possible to make some general observations about their distinguishing features and thereby formulate a broad definition of the concept.

Peacekeeping operations are an invention of the United Nations. They were developed in response to the political realities of the Cold War, brought about by the need to address conflicts which occurred after entry into force of the UN Charter and for which the mechanisms provided for in Chapters VI and VII of the Charter could not be used.<sup>6</sup>

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4. See, e.g., D.W. BOWETT, *UNITED NATIONS FORCES: A LEGAL STUDY* (1964); Dan Ciobanu, *The Power of the Security Council to Organize Peace-Keeping Operations*, in *UNITED NATIONS PEACEKEEPING: LEGAL ESSAYS* (A. Cassese ed., 1978); John W. Halderman, *Legal Basis for United Nations Forces*, 56 *AMER. J. INT'L L.* 971 (1962); Rosalyn Higgins, *A General Assessment of United Nations Peace-Keeping*, in *UNITED NATIONS PEACEKEEPING: LEGAL ESSAYS* (A. Cassese ed., 1978); Georg Schwarzenberger, *Problems of a United Nations Force*, in 12 *CURRENT LEGAL PROBLEMS* 247 (George W. Keeton & Georg Schwarzenberger eds., 1959).

5. Indeed, Bowett lists nine different categories of peacekeeping being (1) cease-fire, truces and armistice functions entrusted to "observer" groups; (2) frontier control; (3) interpositional functions (undertaken to "secure a cessation of hostilities"); (3) defense and security of UN zones or areas placed under UN control; (5) the maintenance of law and order in a State; (6) plebiscite supervision (undertaken in order to "determine the status of a territory disputed between two sovereign States"); (7) assistance and relief for national disasters (undertaken in order to provide humanitarian relief); (8) prevention of international crimes; and (9) disarmament functions: See BOWETT, *supra* note 4, at 268-74. Schachter lists eight different categories along similar lines. Oscar Schachter, *Authorized Uses of Force by the United Nations and Regional Organizations*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER* 65, 80 (Lori Fisler Damrosch & David J. Scheffer eds., 1991).

6. For a discussion of the development of peacekeeping and the early operations, see:

The means provided for in Chapter VI, concerning the pacific settlement of disputes, were inadequate. The means provided for in Chapter VII, concerning the enforcement measures, could not be agreed upon by Members of the Security Council due essentially to the profound ideological differences that prevailed during the Cold War. Peacekeeping emerged as a mode of international intervention other than those provided for in Chapters VI and VII of the Charter.

Peacekeeping operations have been defined broadly as:

[O]peration[s] 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.<sup>7</sup>

Generally speaking, peacekeeping operations consist of either: (1) unarmed observer missions; or (2) forces which have the function of sustaining peacemaking efforts by helping to create conditions in which negotiation between warring parties can take place.<sup>8</sup> The latter type of operation is typically armed and may use force in limited circumstances that are discussed below. Given that the theme of this paper concerns the use of force by peacekeeping operations, peacekeeping operations are defined here to cover the latter type of operation only.

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BOWETT, *supra* note 4; UNITED NATIONS, BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING, U.N. Doc. DPI/1800, U.N. Sales No. E.96.I.14 (3d ed. 1996) [hereinafter BLUE HELMETS I]; 1 ROSALYN HIGGINS, UNITED NATIONS PEACEKEEPING, THE MIDDLE EAST 1946-1967: DOCUMENTS AND COMMENTARY (1969); 2 ROSALYN HIGGINS, UNITED NATIONS PEACEKEEPING, ASIA 1946-1967: DOCUMENTS AND COMMENTARY (1970); 3 ROSALYN HIGGINS, UNITED NATIONS PEACEKEEPING, AFRICA 1946-1967: DOCUMENTS AND COMMENTARY (1980); 4 ROSALYN HIGGINS, UNITED NATIONS PEACEKEEPING, EUROPE 1946-1979: DOCUMENTS AND COMMENTARY (1981); Marrack Goulding, *The Evolution of United Nations Peace-Keeping*, 69 INT'L AFF. 451 (1993).

7. UNITED NATIONS, THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING at 4, U.N. Sales No. E.90.I.18 (2d ed. 1990) [hereinafter BLUE HELMETS II].

8. See Jon E. Fink, *From Peacekeeping to Peace Enforcement: The Blurring of the Mandate for the Use of Force in Maintaining International Peace and Security*, 19 MD. J. INT'L L. & TRADE 1, 10 (1995); Goulding, *supra* note 6, at 457. Note, however, that peacekeeping operations can be divided up into many more categories. For example, both Bowett and Schachter list many different categories of peacekeeping. See *supra* note 5. Given that each peacekeeping operation tends to be designed for the unique situation into which it must operate, it is not surprising that many different categories exist.



### *B. The Legal Principles Governing United Nations Peacekeeping Operations*

As the concept of peacekeeping evolved, UN peacekeeping operations developed core legal principles that became fundamental to their operation. These principles are contained in various legal documents concerning peacekeeping operations, such as the Status of Forces Agreements (SOFAs) and rules of engagement.<sup>9</sup> They embody the essence of peacekeeping and permeate all aspects of an operation.<sup>10</sup> The three main legal principles underlying peacekeeping are: (1) consent of all parties concerned and the competent organ of the UN, usually the Security Council;<sup>11</sup> (2) impartiality; and (3) non-use of force except in self-defense.

These principles developed over time and are based on sound legal and practical reasoning. For example, Article 2(7) of the UN Charter prohibits the United Nations from intervening in the domestic affairs of a Member State except where Chapter VII enforcement measures are involved.<sup>12</sup> Thus, a UN peacekeeping force can only intervene into the domestic affairs of a State if the State concerned has consented to that intervention and to the peacekeeping operation as a whole.<sup>13</sup> Similarly,

9. See *infra* note 32 and accompanying text discussing rules of engagement.

10. When a peacekeeping operation is set up, various agreements are drawn up between the United Nations and the Host State (Status-of-Forces Agreement) and between the United Nations and contributing State(s). Model agreements of this nature have been approved of by the General Assembly. See *Comprehensive Review of the Whole Question of Peace-Keeping Operations in All Their Aspects: Model of Status of Forces Agreement for Peace-Keeping Operations: Report of the Secretary-General*, U.N. GAOR, 45th Sess., Agenda Item 76, U.N. Doc. A/45/594 (1990); *Comprehensive Review of the Whole Question of Peace-Keeping Operations in All Their Aspects: Model Agreement Between the United Nations and Member States Contributing Personnel and Equipment to United Nations Peace-Keeping Operations: Report of the Secretary-General*, U.N. GAOR, 46th Sess., Item 74 of the Preliminary List, U.N. Doc. A/46/185 (1991).

11. Peacekeeping operations, unlike enforcement measures, can be authorized by the General Assembly (GA), but the GA has only done this on two occasions: UNEF 1 (United Nations Emergency Force) which was established to secure the withdrawal of troops from Egyptian territory and to serve as a buffer between Egypt and Israel; and UNSF (United Nations Security Force) which was created to maintain peace and security in the West Irian territory, *UN Peacekeeping History*, 1 INT'L PEACEKEEPING 1, 9 (1994).

12. Article 2, paragraph 7 reads as follows:

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.

U.N. CHARTER art. 2, para. 7.

13. Although it is worth noting that previously the majority of peacekeeping opera-

if the UN is to effectively "keep the peace," it must be impartial and unbiased in its operations. It is obvious that it would be extremely difficult, if not impossible, for the UN to engage in coercive force and still be regarded as a neutral body. For this reason the use of force by UN peacekeeping forces has been limited to that used in self-defense.

In more recent times a "second generation" of peacekeeping has evolved.<sup>14</sup> These operations, occurring principally since the end of the Cold War, have increasingly involved civilian personnel and have been given more complex and challenging mandates, such as helping to promote human rights and national reconciliation and organizing and monitoring elections.<sup>15</sup> Whilst the fundamental characteristics of these peacekeeping operations have not changed from those of earlier operations as enumerated above, there is no doubt that all three of the main legal principles underlying peacekeeping have been strained by the new demands placed upon these operations. For example, it has become increasingly difficult to gain the consent and cooperation of all parties involved in UN peacekeeping operations. This has necessitated, at times, an increased use of force by peacekeepers in carrying out UN mandates. The perceived impartiality of operations has similarly become more difficult to maintain for this reason.

However, the legal principles upon which peacekeeping was founded and evolved must be taken seriously. In particular (given the focus of this paper) it is important to emphasize that the UN has been very unwilling to go "beyond self-defense as the touchstone of the right to use force" with respect to peacekeeping operations.<sup>16</sup> Indeed, the Secretary-General and the Members of the United Nations "considered

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tions have involved interstate disputes as opposed to intrastate disputes. It is only more recently that peacekeeping operations have been involved in disputes contained within a single State. See STEVEN R. RATNER, *THE NEW UN PEACEKEEPING: BUILDING PEACE IN LANDS OF CONFLICT AFTER THE COLD WAR* 23 (1995).

14. Boutros-Ghali acknowledges this development in his introduction to the United Nations publication, *THE BLUE HELMETS*. See *BLUE HELMETS I*, *supra* note 6, at 5. Ratner similarly discusses these developments in his book. RATNER, *supra* note 13. See also *NEW DIMENSIONS OF PEACEKEEPING* (Daniel Warner ed., 1995); Mats R. Berdal, *The Security Council, Peacekeeping and Internal Conflict After the Cold War*, 7 *DUKE J. COMP. & INT'L L.* 71 (1996); Kelly A. Childers, *United Nations Peacekeeping Forces in the Balkan Wars and the Changing Role of Peacekeeping Forces in the Post-Cold War World*, 8 *TEMP. INT'L & COMP. L.J.* 117 (1994); Fink, *supra* note 8, at 1; Roy S. Lee, *United Nations Peacekeeping: Development and Prospects*, 28 *CORNELL INT'L L.J.* 619 (1995); Ruth Wedgwood, *The Evolution of United Nations Peacekeeping*, 28 *CORNELL INT'L L.J.* 631 (1995).

15. *BLUE HELMETS I*, *supra* note 6, at 3. Ratner describes the new breadth of responsibility of UN peacekeepers as having fallen into ten categories: (1) military matters, (2) elections, (3) human rights, (4) national reconciliation, (5) law and order, (6) refugees, (7) humanitarian relief, (8) governmental administration, (9) economic reconstruction, and (10) relationships with outside actors. He describes the depth of responsibility as covering (1) monitoring, (2) supervision, (3) control, (4) conduct, (5) technical assistance, and (6) public information. RATNER, *supra* note 13, at 42-43.

16. Schachter, *supra* note 5, at 84.

it essential from a political and legal standpoint to distinguish peacekeeping from enforcement by *restricting the use of force to self-defense*.<sup>17</sup> This point cannot be over-stressed as it indicates why conceptually and in practice, the UN has been reluctant to move away from the non-use of force by peacekeeping operations, and towards a more forceful kind of peace-making operation (as distinguished from peace-enforcement). A more thorough examination of the use of force by UN peacekeeping forces is discussed below.<sup>18</sup>

### C. *The Constitutional Basis of United Nations Peacekeeping Operations*

The constitutional basis of United Nations peacekeeping operations is the broad mandate of Article 1 of the Charter, under which one of the purposes of the United Nations is to maintain international peace and security.<sup>19</sup> There is considerable debate amongst commentators as to where the UN gets its more specific mandate within the Charter,<sup>20</sup> although there is now little doubt that the UN does have the power to authorize such operations.<sup>21</sup> This was not always the case. Initially, some States protested the establishment of such operations. They argued that because peacekeeping operations were not specifically provided for in the UN Charter it was beyond the power of the Security Council to establish them.<sup>22</sup> On these grounds, and due to disputes over the constitutional basis within the Charter for such actions, certain States (including the former USSR and France) refused to pay their

17. *Id.* (emphasis added).

18. See discussion below on the use of force in self-defense and the use of force in defense of one's mandate.

19. Article 1(1) reads as follows:

The Purposes 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.

U.N. CHARTER art. 1, para. 1.

20. One issue, for example, is whether the legal basis to establish such operations is found under Chapter VI of the Charter or under the various articles of Chapter VII. There are numerous articles and books discussing this issue. See, e.g., BOWETT, *supra* note 4; Higgins, *supra* note 4; Halderman, *supra* note 4; Schwarzenberger, *supra* note 4; Finn Seyersted, *Can the United Nations Establish Military Forces and Perform Other Acts Without Specific Basis in the Charter?* 37 BRIT. Y.B. INT'L L. 351 (1961), reprinted in 12 ÖSTERREICHISCHE ZEITSCHRIFT FÜR ÖFFENTLICHES RECHT 188 (1962); Louis B. Sohn, *The Authority of the United Nations to Establish and Maintain a Permanent United Nations Force*, 52 AMER. J. INT'L L. 229 (1958).

21. See HILAIRE MCCOUBREY & NIGEL WHITE, *THE BLUE HELMETS: LEGAL REGULATIONS OF UNITED NATIONS MILITARY OPERATIONS* 50-55 (1996); RATNER, *supra* note 13 at 58; Schachter, *supra* note 5, at 82.

22. See Schachter, *supra* note 5, at 80.

share of the early peacekeeping bills. These States argued that such actions were not "expenses of the Organization" within the meaning of Article 17(2) of the Charter.<sup>23</sup> The matter went to the International Court of Justice (ICJ) in the *Certain Expenses of the United Nations Case*, in which the Court confirmed *obiter* the constitutionality of the UN peacekeeping operations UNEF I and ONUC.<sup>24</sup> The ICJ stated that: "[W]hen the Organization takes action which warrants the assertion that it was appropriate for the fulfilment [sic] of one of the stated purposes of the United Nations, the presumption is that such an action is not ultra vires the Organisation."<sup>25</sup>

The ICJ stressed that although peacekeeping operations were not to be regarded as "enforcement measures" within the domain of Chapter VII of the Charter,<sup>26</sup> there was no doubt that because the Security Council had those enforcement powers it was within the power of the Security Council to implement less forceful measures.<sup>27</sup> However, whilst it was made clear that the Security Council had the legal capacity to establish peacekeeping operations, no opinion was given as to where the constitutional sources of such operations lay.<sup>28</sup>

However, insofar as UN peacekeeping forces are entitled to use force in self-defense they cannot be regarded as purely pacific means of dispute settlement under Chapter VI. It is for this reason that Chapter VII is usually thought to provide the general legal basis for UN peacekeeping operations, although such operations are not Chapter VII enforcement measures and should not be regarded as such. Considerable debate still exists as to which Articles of Chapter VII have actually been used to authorize the various operations.<sup>29</sup> As it is not essential to determine the exact legal basis for UN peacekeeping operations for the purpose of this paper, I will not enter into a detailed discussion. It is enough to say that the legality of UN peacekeeping under Chapter VII

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23. Article 17(2) states that "[T]he expenses of the Organization shall be borne by the Members as apportioned by the General Assembly." U.N. CHARTER art. 17, para. 2.

24. *Certain Expenses of the United Nations Case*, 1962 I.C.J. 151, 167. See *infra* notes 36, 37, and 40 and accompanying text for background information on UNEF I and ONUC.

25. *Certain Expenses Case*, 1962 I.C.J. at 168.

26. The I.C.J. stated that the "operations known as UNEF and ONUC were not enforcement actions within the compass of Chapter VII. . . ." *Id.* at 166.

27. *Id.* at 167. The idea presumably being that the power to implement forceful measures encompasses the power to implement less forceful measures. This principle, ("qui peut le plus peut le moins" which is loosely translated as the "greater encompasses the lesser") is acknowledged by Georges Fischer. See Georges Fischer, *Article 42, in LA CHARTE DES NATIONS UNIES 705* (Jean-Pierre Cot & Alain Pellet eds., 1985).

28. *Certain Expenses Case*, 1962 I.C.J. at 166-67.

29. The five main Articles which have been put forward as providing the possible legal basis for peacekeeping operations under Chapter VII of the Charter are Articles 39, 40, 41, 42 & 48(1) and various combinations thereof. For a discussion on possible constitutional bases for peacekeeping operations, see *supra* note 20.

is generally acknowledged, even if the precise source of that legality cannot be agreed upon. On this point, however, it is worth noting that peacekeeping operations have been described as falling conceptually between Chapter VI and Chapter VII of the Charter and, accordingly, have been referred to as Chapter "Six and a Half" operations.<sup>30</sup> This is due to the fact that peacekeeping operations have traditionally involved the use of military personnel (*i.e.* they have gone beyond a purely diplomatic settlement of disputes outlined in Chapter VI of the Charter) but not Chapter VII enforcement measures. Although this is a symbolic analysis, it is nonetheless a legal fiction. A peacekeeping operation cannot find its constitutional basis in a non-existent Article of the Charter.

### III. THE HISTORY AND DEVELOPMENT OF THE USE OF FORCE BY UNITED NATIONS PEACEKEEPING OPERATIONS

As described above, one of the three main legal principles of peacekeeping is that force is only to be used in self-defense. Indeed, the right of UN peacekeeping operations to exercise force in self-defense is one of the authorized legal categories for the use of force by the United Nations and may be thought of as an 'inherent right' of the peacekeepers.<sup>31</sup> There is considerable practice that supports this view and the right to self-defense has been consistently provided for in the rules of engagement established for each peacekeeping operation since their inception.<sup>32</sup> Evidently, under the rules of engagement, instructions on the use of force in self-defense in a peacekeeping operation may vary considerably from those designed to suit a Chapter VII enforcement operation.<sup>33</sup> This leads one to ask what constitutes self-defense within the

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30. Dag Hammarskjold, former United Nations Secretary-General, described peacekeeping as being authorized by Chapter "Six and a Half." See BLUE HELMETS II, *supra* note 7, at 5.

31. Schachter lists six legal categories for the use of force by the United Nations, which he describes as: (1) Armed force as an enforcement measure taken by the Security Council under Chapter VII, particularly Article 42; (2) Collective self-defense in accordance with Article 51; (3) Individual self-defense under Article 51; (4) Enforcement measures under regional arrangements or by regional agencies under Article 53; (5) Peacekeeping forces of the United Nations authorized by the Security Council or General Assembly and deployed in agreement with the States concerned; and (6) Joint action by the five permanent Members pursuant to Article 106 of the Charter. See Schachter, *supra* note 5, at 65.

32. When the Security Council authorizes a UN operation to use force, the way in which force may be exercised is set out in the rules of engagement. The rules of engagement "specify the circumstances in which armed force may be used by a military unit and its permissible extent and degree." See MCCOUBREY & WHITE, *supra* note 21, at 146.

33. Indeed, the importance of the rules of engagement should not be underestimated. Rowe has stated, "In reality the mandate given by the Security Council is no real indication of how much force has been authorized by the Council for those engaged in enforcing it. Rather, it is the rules of engagement which set out the degree of force that may be

realm of a UN peacekeeping operation? Certainly it differs from its usual legal meaning.<sup>34</sup> The concept of self-defense in the context of peacekeeping evolved over time and in response to the changing needs of peacekeepers in different operations. Initially, a narrow approach was taken: force could only be used in defense of the peacekeeping operation itself and strictly in response to an armed attack ('personal self-defense'). Gradually, a much broader view evolved: force could be used 'in defense of one's mandate.' In other words, force could be used to 'defend' the objects and purposes of the peacekeeping operation. The evolution of self-defense in the context of peacekeeping and the scope of this broader approach is discussed in more detail below.

#### A. *Use of Force in Self-defense ('Personal Self-Defense')*

In the first armed UN peacekeeping operation, UNEF 1,<sup>35</sup> peacekeepers were instructed never to initiate the use of force, although they could respond to armed attacks with force and could resist attempts to make them withdraw from their positions.<sup>36</sup> In his report on UNEF I, Dag Hammarskjöld wrote:

[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*.<sup>37</sup>

This definition of self-defense was narrow and yet adequate for the UNEF I operation because the UN troops involved in UNEF I were maintaining a cease-fire on a front line between two orderly armed forces. Furthermore, there was only a small civilian population living in the area.<sup>38</sup> Thus, the amount of force which UNEF I was authorized to use was sufficient for the purposes of fulfilling its mandate.

used." Peter Rowe, *The United Nations Rules of Engagement and the British Soldier in Bosnia*, INT'L & COMP. L.Q. 946, 947 (1994).

34. Schachter, *supra* note 5, at 84.

35. United Nations Emergency Force I.

36. UNEF I operated from November 1956 - June 1967. Its function was to "secure and supervise the cessation of hostilities, including the withdrawal of the armed forces . . . from Egyptian territory, and after the withdrawal, to serve as a buffer between Egyptian and Israeli forces." UNITED NATIONS, UN PEACEKEEPING BOOKLET 9 (1996) [hereinafter UN PEACEKEEPING BOOKLET].

37. *United Nations Emergency Force, Summary Study of the Experience Derived From the Establishment and Operation of the Force: Report of the Secretary General*, UN GAOR, 13th Sess., Agenda Item 65(c) ¶ 179, U.N. Doc A/3943 (1958) (emphasis added).

38. Marrack Goulding, *The Use of Force by the United Nations*, in MOUNTBATTEN-TATA MEMORIAL LECTURE AT THE UNIVERSITY OF SOUTHAMPTON 8 (1995).

The same was not true of ONUC in the Congo, where circumstances eventually compelled the UN to authorize the peacekeeping operation to use more extensive force.<sup>39</sup> ONUC was deployed in the summer of 1960 to essentially assist the Government of the Congo in carrying out tasks related to the maintenance of law and order. Initially, the establishment of the force was based upon the principles of UNEF I, including the principle that there should be no initiative in the use of armed force by UN troops. This is made clear in the *First Report of the Secretary-General on the Implementation of Security Council Resolution S/4387 of 14 July 1960*<sup>40</sup> in which Hammarskjöld reiterated his earlier comments made in the UNEF I Report regarding the limits on the use of force by UN troops. In this report he again emphasized the prohibition of any initiative by UN forces in the use of armed force.<sup>41</sup>

The original mandate of the operation emphasized the restoration of law and order in the Congo.<sup>42</sup> Soon after the deployment of ONUC, opposition and secessionist movements in the Congo brought about disorder and violence and the peacekeeping operation started to face difficulties. It became evident that ONUC could not achieve its objective of halting the civil war whilst it was limited to the use of force within the confines of 'personal self-defense.'<sup>43</sup> If ONUC were to act effectively it would need to be able to exercise a more expanded use of force. Under

39. United Nations Operation in the Congo. ONUC operated between July 1960 - June 1964. Its initial function was to "ensure the withdrawal of Belgian forces, to assist the Government in maintaining law and order and to provide technical assistance." Later this function was modified to include "maintaining the territorial integrity and political independence of the Congo, preventing the occurrence of civil war and securing the removal from the Congo of all foreign military, paramilitary and advisory personnel not under the UN command and all mercenaries." UN PEACEKEEPING BOOKLET, *supra* note 36, at 19.

40. *First Report by the Secretary General on the Implementation of Security Council Resolution S/4387 of 14 July 1960, United Nations Emergency Force, Summary Study of the Experienced Derived From the Establishment and Operation of the Force: Report of the Secretary-General*, U.N. SCOR, U.N. Doc. S/4389 (1960).

41. He stated as follows:

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-defence. 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.

*Id.* ¶15 (emphasis in original).

42. S.C. Res. 143, U.N. SCOR, 873d mtg., U.N. Doc. S/4387 (1960).

43. BOWETT, *supra* note 4, at 201.

the circumstances the Security Council revised the mandate of ONUC to enable it to use force as a last resort to prevent civil war in the Congo.<sup>44</sup> It is hard not to view this authorization for the use of force as going beyond self-defense. As Bowett has stated, "[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-defence."<sup>45</sup> However it is interesting that the Secretary-General continued to express the opinion that troops should only engage in defensive action, or they would risk becoming a party to the conflict.<sup>46</sup> Bowett regards this statement as "clinging to the 'self-defence' concept."<sup>47</sup>

In many ways the UN's experience in the Congo was a premonition of the difficulties that came with the evolution of the more complex second generation of peacekeeping operations. Although it is generally agreed that ONUC was a peacekeeping operation, there is no doubt that it involved some enforcement elements.<sup>48</sup> In the operation's aftermath,

44. In Security Council Resolution 161, paragraph 1, the Security Council urged, "that the United Nations 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, in the last resort." S.C. Res. 161, U.N. SCOR, 942d mtg. ¶ 1, U.N. Doc. S/4741 (1961) (emphasis added). In Security Council Resolution 169, paragraph 4, the Security Council authorized the Secretary-General "to take vigorous action, including *the use of the requisite measure of force*, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the UN Command, and mercenaries. . ." S.C. Res. 169, U.N. SCOR, 982d mtg. ¶ 4, U.N. Doc. S/5002 (1961) (emphasis added).

45. BOWETT, *supra* note 4, at 201-02.

46. See *Report of the Secretary-General on Certain Steps Taken in Regard to the Implementation of the Security Council Resolution Adopted on 21 February 1961*, U.N. SCOR, 942d mtg., U.N. Doc. S/4752, Annex 7 (1961).

47. BOWETT, *supra* note 4, at 202.

48. There has been dispute about whether or not ONUC was actually a peacekeeping operation because it was couched in language of Chapter VII of the Charter and authorized the use of force. The consensus is that ONUC was not an "enforcement action." This was the determination of the ICJ in the *Certain Expenses Case*. *Certain Expenses of the United Nations Case* (Art. 17, Para. 2 of the Charter), 1962 I.C.J. 151, at 177. Certainly, the purposes for which ONUC was created "were essentially different from those for which, at San Francisco, forces used under Article 42 were contemplated." See BOWETT, *supra* note 4, at 176. The United Nations force in the Congo was present with the consent of the government of Congo and the measures authorized by the Security Council were specifically aimed at implementing the Security Council peacekeeping mandate. Furthermore, as Higgins points out, "even though the circumstances in which ONUC was permitted to use force was [sic] enlarged, the action was still not a sanction against the Congo[, and] there is ample evidence that the UN still regarded itself as bound by the domestic jurisdiction requirements. . ." For example, the Article 2(7) restraint operated so that intervention into the internal affairs of a State was not permissible without the consent of that State. 3 HIGGINS, *supra* note 6, at 58. Most commentators express the view that the constitutional basis of ONUC lay in Article 40, Chapter VII of the Charter. This was the view of the Secretary-General and has been described as the "official" view of



and as a result of the UN's experiences in the Congo, the narrow definition of self-defense was revised. It was thought that a broader definition of self-defense would make peacekeeping operations more viable and would enable the United Nations to effectively carry out peacekeeping mandates without the need to resort to 'enforcement measures.' Thus ONUC, while not the definitive peacekeeping operation of the Cold War period due to its expansive use of force, played a notable role in the development of the use of force within the realm of peacekeeping.<sup>49</sup>

### *B. Use of Force in Defense of One's Mandate*

When the UN peacekeeping operation was set up in Cyprus the situation with regards to the use of force in self-defense was more clearly defined by the Secretary-General.<sup>50</sup> In an *Aide-Memoire of the Secretary-General Concerning Some Questions Relating to the Function and Operation of the United Nations Peacekeeping Force in Cyprus, 10 April 1964*<sup>51</sup> the Secretary-General outlined an expanded definition of self-defense. The traditional principles were confirmed (for example, the principle that troops should never take the initiative in the use of armed force) but additional elements were included in the definition.<sup>52</sup>

the United Nations. See BOWETT, *supra* note 4, at 177; 3 HIGGINS, *supra* note 6, at 54-60; Schachter, *supra* note 5, at 82.

49. Fink has written, "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." See Fink, *supra* note 8, at 15.

50. The United Nations Peace-Keeping Force in Cyprus (UNFICYP) has operated from 1964 to the present. Its initial mandate was to "prevent a recurrence of fighting between Greek Cypriot and Turkish Cypriot communities and to contribute to the maintenance and restoration of law and order and a return to normal conditions." Since 1974 its mandate has been expanded and UNFICYP has "supervised the cease-fire and maintained a buffer zone." UN PEACEKEEPING BOOKLET, *supra* note 36, at 17-18.

51. *Note by the Secretary-General*, U.N. SCOR, U.N. Doc. S/5653 (1964).

52. *Id.* ¶¶ 17(c), 18 (c). The full text of the *Principles of Self-Defence* read as follows:

16. Troops of UNFICYP shall not take the initiative in the use of armed force. The use of armed force is permissible only in self-defence. The expression "self-defence" includes:

(a) The defence of United Nations posts, premises and vehicles under armed attack;

(b) The support of other personnel of UNFICYP under armed attack.

17. No action is to be taken by the troops of UNFICYP which is likely to bring them in to direct conflict with either community in Cyprus, except in the following circumstances:

(a) Where members of the Force are compelled to act in self-defence;

(b) Where the safety of the force or of members of it is in jeopardy;

(c) Where specific arrangements accepted by both communities have been or in the opinion of the commander on the spot are about to be, violated, thus risking a recurrence of fighting or endangering law and order.

18. When acting in self-defence, the principle of minimum force shall al-

Thus while troops were not to take the initiative in the use of armed force, they 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.<sup>53</sup>

The most significant expansion to be noted here, and one that definitively moves way from the idea that self-defense only includes the defense of the peacekeeping force itself, is 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. Interestingly, it seems that force could even be used in 'anticipatory self-defense' where such agreements were about to be violated.

This interpretation of self-defense, although expressed more generally, was reapplied in 1973 when UNEF II was established.<sup>54</sup> In the *Report of the Secretary-General on the Implementation of Security Council 340 (1973)*, Kurt Waldheim, the then Secretary-General, wrote

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ways be applied, and armed force will be used only when all peaceful means of persuasion have failed. The decision as to when force may be used under these circumstances rests with the commander on the spot, whose main concern will be to distinguish between an incident which does not require fire to be opened and those situations in which troops may be authorized to use force. Examples in which troops may be so authorized are:

- (a) Attempts by force to compel them to withdraw from a position which they occupy under orders from their commanders, or to infiltrate and envelop such positions as are deemed necessary by their commanders for them to hold, thus jeopardizing their safety;
- (b) Attempts by force to disarm them;
- (c) Attempts by force to prevent them from carrying out their responsibilities as ordered by their commanders;
- (d) Violation by force of United Nations premises and attempts to arrest or abduct United Nations personnel, civil or military.

19. Should it be necessary to resort to the use of arms, advance warning will be given whenever possible. Automatic weapons are not to be used except in extreme emergency and fire will continue only as long as is necessary to achieve its immediate aim.

*Id.* ¶¶ 16-19.

53. *Id.* ¶¶ 17(c)-18 (c).

54. United Nations Emergency Force II. UNEF II operated from October 1973 to July 1979. Its function was to "supervise the cease-fire between Egyptian and Israeli forces and, following the conclusion of agreements. . . [and] to supervise the redeployment of Egyptian and Israeli forces and to man and control the buffer zones established under those agreements." UN PEACEKEEPING BOOKLET, *supra* note 36, at 10. See also Goulding, *supra* note 38, at 9; Adam Roberts, *From San Francisco to Sarajevo: The UN and the Use of Force*, 37 SURVIVAL 7 (1995).

that self-defense included "resistance to attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council."<sup>55</sup> In other words, self-defense included situations in which peacekeepers needed to use force to fulfil their mandate. This is a significantly broadened definition of self-defense when compared to the definition that applied in UNEF I, and may be regarded as covering all subsequent UN peacekeeping operations.<sup>56</sup> Indeed, Boutros-Ghali made it clear in 1993, that at least at that point in time, "existing rules of engagement allow [United Nations soldiers to open fire] if armed persons attempt by force to prevent them from carrying out their orders."<sup>57</sup>

### C. Conclusion

As discussed above, one of the legal principles of peacekeeping is that the use of force is restricted to that used in self-defense. The fact that this is a legal principle which the UN considers to be binding upon itself can be gauged from the way it responded to difficulties encountered whilst operating within this self-imposed limit. Instead of doing away with the principle, it remained, as Schachter has described, the "touchstone" of peacekeeping and the use of force was justified by adopting an expanded and somewhat artificial definition of self-defense.<sup>58</sup> The actual scope of this expanded notion of 'self-defense,' and the extent to which it applies, and has applied, in various peacekeeping operations, is not clear. If self-defense is interpreted broadly to mean 'in defense of one's mandate' in all operations, it would presumably mean that if any operation is hindered (by the use of force) from carrying out any part of its mandate, its inherent right to 'self-defense' entitles it to use force in order to fulfil its duties. The ability of a peacekeeping operation to use force would then largely depend on how broad its mandate was. The broader the mandate, the more occasions in which the peacekeeping operation might find itself not only needing to use force but also legally 'permitted' to do so.

However, interpreting self-defense in this manner, comes perilously close to enforcement measures. Such an approach leads one to ask to what extent force can be used in self-defense to fulfil a mandate and still remain consistent with the principles of consent and impartiality underlying peacekeeping operations? The answer lies in the fact that in practice and for many years, commanders in the field have very rarely

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55. *Report of the Secretary-General on the Implementation of Security Council Resolution 340 (1973)*, U.N. SCOR ¶ 4(d), U.N. Doc S/11052/Rev. 1 (1973). UNEF II was set up on the basis of Security Council resolution 340 of October 25, 1973.

56. Goulding, *supra* note 38, at 9; Roberts, *supra* note 54, at 14.

57. Boutros Boutros-Ghali, *Empowering the United Nations*, 71 FOREIGN AFF. 89, 91. (1992)

58. Schachter, *supra* note 5, at 84.

applied the expanded definition of self-defense.<sup>59</sup> Instead, negotiation and persuasion have been used. In reality the use of force in the context of peacekeeping is a perilous activity which does not rest easily along side the concepts of consent and impartiality. The reluctance to use force in self-defense by commanders in the field is essentially intended to secure the impartiality of peacekeepers and ensure the continued cooperation of the parties concerned. Thus, while theoretically the concept of self-defense was broadened, in practice the expanded doctrine has remained, at least until more recent times, largely unused.

Clearly, UN peacekeeping operations have an inherent right to use force in self-defense; at least in so far as they have a right to use force to protect themselves and seemingly to defend at least some aspects of their mandate. The issue remains, however, what is the scope of self-defense in the context of peacekeeping? To what degree can force be used in defense of one's mandate? Is the use of force limited to what is necessary and proportionate? Where does anticipatory self-defense fit into the picture? Do some uses of force in 'self-defense' need to be explicitly authorized by the Security Council or risk being considered an illegal use of force? Some of the recent resolutions authorizing the use of force have been couched in terms of "self-defense," indicating that at least in some instances, the Security Council still takes the view that force must be explicitly authorized, even if it is in 'self-defense.' In contrast, there are other resolutions that tend to indicate that no such authorization is necessary. In this regard, the Security Council has been inconsistent, or at least given confusing signals, with respect to the extent to which the use of force by peacekeeping operations is possible. After an examination of recent UN peacekeeping operations, I will discuss some possible answers to the above questions and also reflect on whether or not such a use of force, whilst possibly legitimate, is desirable.

#### IV. BEYOND SELF-DEFENSE: AN EXAMINATION OF RECENT USES OF FORCE BY UNITED NATIONS PEACEKEEPING OPERATIONS

Since the end of the Cold War the number of peacekeeping operations authorized by the Security Council has outstripped the previous operations not only in number but also in complexity and size.<sup>60</sup> Many of the peacekeeping operations established since 1989 have gone beyond the traditional peacekeeping role of monitoring cease-fires and controlling buffer zones between belligerent States. Although peacekeeping operations continue to carry out such tasks, they have been entrusted additionally with mandates as varied as the monitoring of troop with-

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59. Roberts, *supra* note 54, at 14.

60. During the Cold War there were 15 peacekeeping operations. Since 1989 there have been 26 established. See BLUE HELMETS I, *supra* note 6, at 3.

drawals, elections and human rights violations.<sup>61</sup> Peacekeeping forces have also provided assistance in the resettlement of refugees and displaced persons, the rebuilding of political and administrative structures and the protection of deliveries of humanitarian relief supplies. Certain peacekeeping operations, such as those deployed in Cambodia, Mozambique, and Angola, required an integrated program in which most of the above mentioned tasks were included.<sup>62</sup>

During the Cold War, the concept of self-defense, as elaborated above, remained static and force was not widely used in practice by UN peacekeeping forces.<sup>63</sup> Since then, as peacekeeping itself became more complicated and difficult, peacekeepers have been authorized to use force more liberally and have increasingly resorted to the use of force. Both the authorization and use of force has come about for several reasons: first, due to the number of attacks against civilian and military personnel engaged in peacekeeping operations; secondly, in order to more effectively carry out difficult mandates; and thirdly, due to more complex conflict situations in which peacekeepers are engaged. Given the limited scope of this paper, it is not possible, or desirable, to undertake a detailed examination of all the peacekeeping operations that have taken place since 1989. However, such an analysis is not necessary for the purpose of illustrating the increasing tendency of the Security Council to authorize the use of force by peacekeepers and in so doing to give them more "muscle."<sup>64</sup> In order to illustrate this trend I will give examples of recent Security Council resolutions which explicitly authorize peacekeepers to use force. I will also argue that the use of force may have been implicitly sanctioned in other Security Council resolutions. This can be shown by examining the language of these resolutions and related United Nations reports.

It should be understood that this study is complicated by the fact that in recent times the Security Council has "authorized Member States to use all necessary means to achieve specific goals in operations in Somalia, Rwanda, and Haiti, separate from United Nations peacekeeping missions."<sup>65</sup> This kind of support was also authorized in

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61. Ratner describes second generation peacekeeping in the following way: (1) Second generation operations aim primarily at assisting a State or group of States in executing an agreed political solution to a conflict; (2) Second generation peacekeeping operations are limited to an exclusively military mandate, but can have a substantial or predominantly nonmilitary mandate and composition; (3) Second generation peacekeeping has complex agendas; (4) The new peacekeeping is as likely to respond to an ostensibly internal conflict as an interstate conflict; (5) Second generation operations involve numerous types of actors; (6) The new peacekeeping is a fluid phenomenon. See RATNER, *supra* note 13, at 21-24.

62. See BLUE HELMETS I, *supra* note 6.

63. Except in the case of the Congo.

64. Goulding, *supra* note 6, at 461

65. BLUE HELMETS I, *supra* note 6, at 6.

the former Yugoslavia, in the UNPROFOR, UNCRO and UNTAES peacekeeping operations.<sup>66</sup> Such measures, for the purpose of this paper, are characterized as enforcement measures and are not within its scope.<sup>67</sup> Instead, this paper focuses on examples where the peacekeeping force itself was authorized to use force. It is acknowledged, however, that it is becoming harder to distinguish, legally speaking, between peacekeeping and enforcement measures.<sup>68</sup> Indeed, considerable controversy exists in some instances as to how to characterize particular operations. UNOSOM II,<sup>69</sup> for example, is alternatively described as a peacekeeping operation,<sup>70</sup> or as the first "peace-enforcement operation authorized and commanded by the United Nations."<sup>71</sup> This confusion as to characterization is borne in mind in undertaking this analysis.

Finally, it is important to emphasize the common theme that runs through the peacekeeping operations discussed below, as it is this theme which underlies the expanded use of force by peacekeepers. The use of force, whether its specific purpose be to ensure freedom of movement or protect a safe area, is primarily geared towards the ultimate goal of alleviating human suffering. In this respect, I argue, that a significant expansion of the use of force by peacekeepers has occurred. Force, in these instances, has been used for the protection of civilians and the protection of humanitarian activities. This use of force goes beyond self-defense, in even the broader sense of the meaning, because although it might be termed as being in 'defense of a mandate', the mandate now involves the protection of third parties, as distinct from the protection of peacekeepers themselves (albeit in pursuit of their duties). In the context of UNPROFOR, Marrack Goulding has stated that this

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66. United Nations Protection Force, United Nations Confidence Restoration Operation in Croatia & United Nations Transitional Administration for Eastern Slavonia, Baranja, and Western Sirmium respectively. See S.C. Res. 1037, U.N. SCOR, 3619th mtg. ¶ 14, U.N. Doc. S/RES/1037 (1996) (UNTAES); S.C. Res. 981, U.N. SCOR, 3512th mtg. ¶ 6, U.N. Doc. S/RES/981 (1995) (UNCRO); S.C. Res. 836, U.N. SCOR, 3228th mtg. ¶ 10, U.N. Doc. S/RES/836 (1993) (created safe areas which Member States could protect through air power); S.C. Res. 781, U.N. SCOR, 3122d mtg., U.N. Doc. S/RES/781 (1992) *revised* by S.C. Res. 816, U.N. SCOR, 3191st mtg., U.N. Doc. S/RES/816 (1993) (created no-fly zone and gave Member States authority to use all necessary measures to enforce the ban).

67. I use the term "enforcement measures" to encompass measures outlined in Article 42 of the Charter which can be exercised once the Security Council has determined the existence of a threat to the peace, breach of the peace or act of aggression, *i.e.*, a more active and aggressive use of force than that involved in peacekeeping. Thus, enforcement measures are not undertaken with the consent of the State involved (in fact such measures are used 'against' the State) and the use of such force is offensive as opposed to defensive. See U.N. CHARTER art. 42.

68. For a discussion on this point see Fink, *supra* note 8.

69. United Nations Operation in Somalia II.

70. UNOSOM II is included in the U.N.'s review of United Nations peace-keeping. See BLUE HELMETS I, *supra* note 6.

71. UNITED NATIONS, THE UNITED NATIONS AND SOMALIA 1992-1996 at 43, U.N. Sales No. E.96.I.8 (1996) [hereinafter UNITED NATIONS AND SOMALIA].

use of force, under the “fig leaf of ‘self-defence’”, was incompatible with the operation’s peacekeeping role.<sup>72</sup> It is for this reason that such an expansion of the concept of self-defense should be considered carefully before being adopted.

In the examination below I will trace the development of this broader interpretation of self-defense. I have divided the analysis into three categories: force authorized to deliver humanitarian assistance and relief, force authorized to secure the freedom of movement of UN personnel and force authorized to protect safe areas and protected sites and populations. These are not watertight categories and, as will become evident, there are frequent overlaps between the first two in particular.<sup>73</sup> It is also worth noting that events in the former Yugoslavia dominate this analysis. Indeed, it has been said that the “performance of UNPROFOR in former Yugoslavia will doubtlessly form a prototype for successor peacekeeping forces assigned with a mission that involves the use of force beyond self-defense.”<sup>74</sup>

*A. Force Authorized to Ensure Delivery of Humanitarian Assistance & Relief: UNOSOM II, UNPROFOR, UNCRO & UNAMIR*

The UN’s involvement in the Somalia is long and complicated: it consisted of three operations (and phases) being UNOSOM I, UNITAF and UNOSOM II. UNOSOM I can be regarded as essentially a traditional peacekeeping operation that failed primarily because the situation into which it went was not conducive to peacekeeping. UNITAF, a US-led multinational operation, followed UNOSOM. Its mandate, under Chapter VII of the Charter, was to use force to establish a secure environment for humanitarian relief operations.<sup>75</sup> Upon restoration of peace (albeit of a precarious nature) in southern and central Somalia, a second peacekeeping operation, UNOSOM II, took over operational responsibility for the area. This operation is sometimes described as a peacekeeping force, and yet 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 the use of force.”<sup>76</sup> Such use of force was authorized because UNITAF’s task of establishing a secure environment in all of Somalia was “far from complete” when UNOSOM

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72. Goulding, *supra* note 38. Marrack Goulding is the Under-Secretary-General for Political Affairs of the United Nations.

73. Indeed, Goulding merely divides the new uses of force into two categories: force authorized to protect civilians; and force authorized to protect humanitarian activities. *See id.*

74. Fink, *supra* note 8, at 31.

75. S.C. Res. 794, U.N. SCOR, 3145th mtg., U.N. Doc. S/RES/794 (1992).

76. Serge Lalande, *Somalia: Major Issues for Future UN Peacekeeping*, in *NEW DIMENSIONS OF PEACEKEEPING* 69, 77 (Daniel Warner ed., 1995).

II took over.<sup>77</sup> In this respect, UNOSOM II must be regarded as an enforcement measure, albeit under the control and command of the United Nations. While, for this reason, UNOSOM II does not truly fit within the scope of this paper, it is worth mentioning the operation because it forged a path for the use of force to deliver humanitarian assistance. The mandate of UNOSOM II was to "take appropriate action, including enforcement measures, to establish throughout Somalia a secure environment for humanitarian assistance."<sup>78</sup> Although UNOSOM II had many other purposes and duties,<sup>79</sup> this was the driving force behind the operation.

This theme has been picked up in subsequent peacekeeping operations. The role of UNPROFOR in delivering humanitarian relief was confirmed in numerous Security Council resolutions.<sup>80</sup> Although the use of force was not explicitly authorized for this purpose in these resolutions, it is interesting to note that the Secretary-General was of the opinion that force could be used. In September 1992 the Secretary-General stated that, *in the context of ensuring the delivery of humanitarian aid and protecting humanitarian convoys*, "self-defence is deemed to include situations in which armed persons attempt by force to prevent United Nations troops from carrying out their mandate."<sup>81</sup> Clearly the Secretary-General was of the opinion that self-defense could include situations involving the protection of third parties. The fact, however, that the operation was later explicitly authorized to use force to secure their freedom of movement in resolution 871 (primarily to en-

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77. UNITED NATIONS AND SOMALIA, *supra* note 71, at 42.

78. S.C. Res. 794, *supra* note 75. See also S.C. Res. 814, U.N. SCOR, 3188th mtg., U.N. Doc. S/RES/814 (1993) (establishing UNOSOM II); BLUE HELMETS I, *supra* note 6, at 722.

79. These duties included, through disarmament and reconciliation, the restoration of peace, stability, law and order. Its main responsibilities included monitoring the cessation of hostilities, preventing resumption of violence, seizing unauthorized small arms, maintaining security at ports, airports and lines of communication required for delivery of humanitarian assistance, continuing mine clearing and assisting in repatriation of refugees in Somalia. See S.C. Res. 814, *supra* note 78; *Further Report of the Secretary-General Submitted in Pursuance of Paragraphs 18 and 19 of Resolution 794* (1993), U.N. SCOR, 48th Sess., Addendum 1, U.N. Doc. S/25354/Add.1 (1993); *Further Report of the Secretary-General Submitted in Pursuance of Paragraphs 18 and 19 of Resolution 794* (1993), U.N. SCOR, 48th Sess., Addendum 2, U.N. Doc. S/25354/Add.2 (1993) (proposing that the mandate of UNOSOM II cover the whole country and include enforcement powers under Chapter VII of the Charter).

80. See S.C. Res. 776, U.N. SCOR, 47th Sess., 3114th mtg., U.N. Doc. S/RES/776 (1992); S.C. Res. 770, U.N. SCOR, 47th Sess., 3106th mtg., U.N. Doc. S/RES/770 (1992); S.C. Res. 764, U.N. SCOR, 47th Sess., 3093 mtg., U.N. Doc. S/RES/764 (1992); S.C. Res. 761, U.N. SCOR, 3087 mtg., U.N. Doc. S/RES/761 (1992); S.C. Res. 749, U.N. SCOR, 47th Sess., 3066th mtg., U.N. Doc. S/RES/749 (1992); S.C. Res. 743, U.N. SCOR, 47th Sess., 3055th mtg., U.N. Doc. S/RES/743 (1992).

81. *Report of the Secretary-General on the Situation in Bosnia and Herzegovina*, U.N. SCOR, 47th Sess. ¶ 9, U.N. Doc. S/24540 (1992).



sure delivery of humanitarian assistance) seems to indicate that the Security Council did not regard UNPROFOR as being able to use such extensive force without explicit authorization.<sup>82</sup> This interpretation is supported by a later resolution which similarly explicitly authorized the use of force *in self-defense* in the safe areas, in the event of any obstruction in or around the areas which interfered with the freedom of movement of protected humanitarian convoys.<sup>83</sup>

UNCRO's mandate also included "facilitating the delivery of international humanitarian assistance" and other humanitarian tasks.<sup>84</sup> Although the use of force was not explicitly authorized in Resolution 981, the resolution under which UNCRO was established, the operation's mandate included "facilitating the implementation of all relevant Security Council resolutions."<sup>85</sup> In the *Report of the Secretary-General Submitted Pursuant to Paragraph 4 of Security Council Resolution 981 (1995)* the Secretary-General stated clearly that the resolutions referred to in resolution 981 included "those relevant to the functioning of UNCRO (freedom of movement, security, self-defense, including close air support)."<sup>86</sup> This implies that force could be used in 'self-defense' where it was necessary to ensure freedom of movement and the delivery of humanitarian aid. As part of the implementation of UNCRO's mandate was to protect and escort humanitarian convoys,<sup>87</sup> and given that the use of force in self-defense to ensure freedom of movement had previously been explicitly authorized, it is plausible to argue that force could be used in self-defense to protect humanitarian convoys and ensure assistance was delivered.<sup>88</sup>

In Rwanda, the Security Council "recognized" that the United Nations Mission for Rwanda (UNAMIR) might need to take action in self-defense "against persons or groups who threaten[ed] . . . the means of delivery and distribution of humanitarian relief."<sup>89</sup> Interestingly, there was no explicit authorization to use force in this regard and no reference made to Chapter VII. This implies that, in this instance, the Security Council did not believe it was necessary to explicitly authorize such

82. See discussion below on the use of force to secure freedom of movement of UN personnel.

83. S.C. Res. 836, *supra* note 66 ¶ 9. See discussion below on the use of force to secure freedom of movement of UN personnel.

84. S.C. Res. 981, *supra* note 66 ¶ 3(c), (e). United Nations Confidence Restoration Operation in Croatia (UNCRO) was one of the three peacekeeping operations which replaced UNPROFOR.

85. *Id.* ¶ 3(c).

86. *Report of the Secretary-General Submitted Pursuant to Paragraph 4 of Security Council Resolution 981 (1995)*, U.N. SCOR, 50th Sess. ¶ 18, U.N. Doc. S/1995/320 (1995).

87. *Id.* ¶ 24(c).

88. S.C. Res. 871, U.N. SCOR, 48th Sess., 3286th mtg., U.N. Doc. S/RES/871 (1993).

89. See S.C. Res. 925, U.N. SCOR, 49th Sess., 3388th mtg. ¶ 5, U.N. Doc. S/RES/925 (1994); S.C. Res. 918, U.N. SCOR, 49th Sess., 3377th mtg. ¶ 4, U.N. Doc. S/RES/918 (1994).

a use of force. This interpretation is supported by the *Report of the Secretary-General on the Situation in Rwanda*. In this report it was made clear that UNAMIR was expected to provide security assistance to humanitarian organizations in their programs for distribution of relief supplies.<sup>90</sup> Although the rules of engagement were not to envisage enforcement action, it was acknowledged that UNAMIR might have to take action in self-defense against persons who threatened the means of delivery and the distribution of humanitarian relief.<sup>91</sup> As before, no explicit mention is made of the use of force in this report, however, because 'rules of engagement,' by definition, cover the use force it is clear that forceful measures were contemplated. Furthermore, the Secretary-General was of the opinion that for UNAMIR to successfully execute its mandate it had to be "composed of a credible, *well-armed* and highly mobile force" indicating that the operation had to be suitably armed for such a role.<sup>92</sup>

*B. Force Authorized to Secure the Freedom of Movement of UN Personnel: UNPROFOR, UNCRO & UNTAES*

Freedom of movement is deemed to be essential to the functioning of all peacekeeping operations and is generally provided for in the Status of Forces Agreements establishing an operation.<sup>93</sup> The right to use force in self-defense to defend one's freedom of movement has existed since ONUC. 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-defence 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.<sup>94</sup>

Schachter has likewise recognized that a "significant extension of self-defense resulted from granting the ONUC freedom of movement throughout the country."<sup>95</sup> UNPROFOR, however, was the first peacekeeping operation to be explicitly authorized to use force in *self-defense* to ensure freedom of movement and some commentators regard this authorization as significantly expanding the concept.<sup>96</sup>

90. *Report of the Secretary-General on the Situation in Rwanda*, U.N. SCOR, 49th Sess., ¶ 12, U.N. Doc. S/1994/565 (1994).

91. *Id.* ¶ 15.

92. *Id.* ¶ 16 (emphasis added).

93. Bowett states that "the right to freedom of movement should be acknowledged by the host State as early as possible [and] recognized in the basic agreement, but the details of the right should be worked out in the SOFA." See BOWETT, *supra* note 4, at 434.

94. *Id.* at 204.

95. Schachter, *supra* note 5, at 85.

96. Certainly Fink is of the view that "the peacekeeper's mandate to use force for self-defense in Bosnia is greatly expanded by their authority to secure 'free movement,'

What distinguishes the use of force to secure freedom of movement in recent operations from past operations is that recently it has been closely linked to the delivery of humanitarian aid. Not surprisingly then, there is a fair degree of overlap between the force authorized to secure free movement and that authorized to ensure delivery of aid. The main difference between the two is that force here is being used to secure the freedom of movement of UN personnel, as opposed to humanitarian convoys. For example, in order to carry out their humanitarian objectives, UNPROFOR was authorized under Chapter VII of the Charter, "in carrying out its mandate in the Republic of Croatia, *acting in self-defence*, to take the necessary measures, including the use of force, to ensure its security and freedom of movement."<sup>97</sup> This new resolution was passed primarily to enable the operation to ensure that humanitarian assistance was provided in compliance with earlier Security Council resolutions.<sup>98</sup> Arguably, this explicit authorization indicates that the Security Council was in some way expanding the operation's original self-defense mandate.<sup>99</sup> The Security Council's determination to ensure the freedom of movement of UN personnel was reaffirmed in many subsequent Security Council resolutions.<sup>100</sup>

The trend allowing peacekeepers to use more forceful measures to secure their freedom of movement in order to deliver humanitarian aid, was implicitly followed in two subsequent former-Yugoslavia operations. In Security Council Resolution 981, in which UNCRO was established,<sup>101</sup> the Security Council reaffirmed its "determination to ensure the security and freedom of movement of the personnel of United Nations [p]eace-keeping operations in the territory of the former Yugoslavia."<sup>102</sup> The peacekeeping operation was established under Chapter VII

thereby facilitating the delivery of humanitarian aid." See Fink, *supra* note 8, at 37.

97. S.C. Res. 871, *supra* note 88 ¶ 9 (emphasis added). Fink likens the mandate of the peacekeepers in Bosnia to that of the ONUC peacekeepers in the Congo. Fink, *supra* note 8, at 31.

98. S.C. Res. 836, *supra* note 66 ¶ 9.

99. The language of this authorization followed that used in the earlier Security Council Resolution 836, which had authorized peacekeepers to use force in self-defense to ensure their freedom of movement within certain 'safe areas.' See discussion below concerning the authorized use of force to protect 'safe areas' and 'protected sites and populations.'

100. See generally S.C. Res. 1026, U.N. SCOR, 3601st mtg., U.N. Doc. S/RES/1026 (1995); S.C. Res. 998, U.N. SCOR, 3543d mtg., U.N. Doc. S/RES/998 (1995); S.C. Res. 987, U.N. SCOR, 3521st mtg., U.N. Doc. S/RES/987 (1995); S.C. Res. 982, U.N. SCOR, 3512th mtg., U.N. Doc. S/RES/982 (1995); S.C. Res. 947, U.N. SCOR, 3434th mtg., U.N. Doc. S/RES/947 (1994); S.C. Res. 941, U.N. SCOR, 3428th mtg., U.N. Doc. S/RES/941 (1994); S.C. Res. 914, U.N. SCOR, 3369th mtg., U.N. Doc. S/RES/914 (1994).

101. United Nations Confidence Restoration Operation in Croatia.

102. S.C. Res. 981, *supra* note 66. This determination was reaffirmed in Security Council Resolutions 990, 994, 1009, and 1025. See S.C. Res. 1025, U.N. SCOR, 3600th mtg., U.N. Doc. S/RES/1025 (1995); S.C. Res. 1009, U.N. SCOR, 3563d mtg., U.N. Doc. S/RES/1009 (1995); S.C. Res. 994, U.N. SCOR, 3537th mtg., U.N. Doc. S/RES/994 (1995);

of the Charter. As stated above, in the Secretary's report on the operation he made it clear that the previous resolutions relevant to the functioning of UNCRO applied to the operation. This included resolutions relating to freedom of movement and self-defense.<sup>103</sup> As UNPROFOR had previously been authorized to use force in self-defense to secure freedom of movement in Croatia, there seems to be no reason why UNCRO would not also be covered by this authorization.

The operation that took over from UNCRO, UNTAES, was established under Security Council Resolution 1037.<sup>104</sup> In this resolution the Security Council again stated that it was "determined to ensure the security and freedom of movement of the personnel of the United Nations peace-keeping operation in the Republic of Croatia."<sup>105</sup> As with UNCRO, the peacekeeping operation was established under Chapter VII of the Charter. Although the use of force is not explicitly authorized in this operation it was made clear by the Secretary-General in his *Report Pursuant to Security Council Resolution 1025 (1995)*, that the operation implemented should be able to use force, at least in self-defense. He stated, in advising the UN on the type of force to be implemented, that:

The force deployed must. . . have a mandate under Chapter VII of the Charter, must have the capacity to take the necessary action to maintain peace and security, must 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.<sup>106</sup>

It is not clear what the scope of this use of force is and whether or to what extent it included the use of force to ensure freedom of movement. The absence of an explicit authorization allowing force to be used in this manner indicates, however, that unlike the UNPROFOR and UNCRO operations, the scope of the right to self-defense with regards to UNCRO should be interpreted more narrowly. There does not appear to be any reason, however, why force could not be used to secure movement required to carry out its mandated tasks, such as facilitating the return of refugees.<sup>107</sup>

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S.C. Res. 990, U.N. SCOR, 3527th mtg., U.N. Doc. S/RES/990 (1995).

103. *Report of the Secretary-General Submitted Pursuant to Paragraph 4 of Security Council Resolution 981* (1995), *supra* note 86 ¶18.

104. United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium.

105. S.C. Res. 1037, *supra* note 66.

106. *Report of the Secretary-General Pursuant to Security Council Resolution 1025*, U.N. SCOR ¶ 22, U.N. Doc. S/1995/1028 (1995).

107. S.C. Res. 1037, *supra* note 66 ¶ 11(d).

*C. Force Authorized to Protect 'Safe Areas' & 'Protected Sites & Populations:' UNPROFOR & UNAMIR*

In 1993, the critical situation in Bosnia and Herzegovina led the Security Council to adopt two resolutions under Chapter VII creating six 'safe areas' primarily aimed at protecting the civilian populations in those areas. Under Security Council Resolution 836 of 4 June 1993, the Security Council decided to ensure full respect for these areas.<sup>108</sup> For this purpose the Council extended the mandate of UNPROFOR to enable it to deter attacks made against the areas. It further authorized UNPROFOR:

*[A]cting in self-defence, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas, in reply to bombardments against the safe areas by any of the parties or to armed incursion 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.*<sup>109</sup>

The Security Council also authorized Member States, acting nationally or through regional organizations or arrangements, to take through the use of air power in and around the safe areas and in close coordination with the Secretary-General and UNPROFOR, all necessary measures to support UNPROFOR in the performance of its mandate.<sup>110</sup> Subsequently NATO enforced the use of air power authorized by the Security Council for "close air support" to protect UNPROFOR personnel and for "air strikes" to enforce respect for the safe areas. However, it is clear that UNPROFOR, in its own right as a peacekeeping operation, was authorized to use force in self-defense.

A parallel can be drawn in Rwanda where 'protected sites' were to be established, patrolled and monitored by UNAMIR. In Resolution 918, the Security Council recognized that "UNAMIR may be required to take action in self-defence against persons or groups who threaten *protected sites and populations*."<sup>111</sup> Interestingly, as described above, no reference is made to Chapter VII or the use of force in this context. It is possible to argue that the "action" described does not include the use of force, however, this seems unlikely. More likely is that the Security Council did not believe it was required to explicitly authorize such a use of force. As discussed above, support for this interpretation can be

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108. Established under Security Council Resolutionw 819 and 824. See S.C. Res. 824, U.N. SCOR, 3208th mtg., U.N. Doc. S/RES/824 (1993); S.C. Res. 819, U.N. SCOR, 3199th mtg., U.N. Doc. S/RES/ 819 (1993).

109. S.C. Res. 836, *supra* note 66 ¶ 9 (emphasis added).

110. *Id.* ¶ 10.

111. See S.C. Res. 918, *supra* note 66 ¶ 4; S.C. Res. 925, *supra* note 89 ¶ 5 (emphasis added).

found in the Secretary-General's report on Rwanda.<sup>112</sup> He stated that the rules of engagement would not cover enforcement measures, but acknowledged that UNAMIR might have to take action in self-defense to protect sites and populations.<sup>113</sup> There is no reason why the use of force would not be included in this "action."

Later, in a letter from the Secretary-General addressed to the President of the Security Council, in which he reports on the breakdown of the peace process in Rwanda,<sup>114</sup> the Secretary-General recommends that a French-commanded multinational operation take place in Rwanda under Chapter VII of the Charter. Interestingly, in this letter he states that:

[I]t 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.<sup>115</sup>

This indicates clearly that the Secretary-General did not regard any use of force in self-defense by UNAMIR as requiring authorization under Chapter VII of the UN Charter. In fact he seems to regard UNAMIR as an operation falling squarely within Chapter VI of the Charter.

#### D. Conclusion

As discussed above, there is clear evidence that 'self-defense' has been, or is in the process of being, expanded to include the defense of third parties: namely, civilian populations and humanitarian convoys. Force has also been authorized to ensure the freedom of movement of UN personnel. Although on its face this does not appear to be an expansion of the concept of self-defense, the purpose for which such force is authorized in fact brings this use of force within the rubric of protecting humanitarian activities, and thus indirectly third parties. This expanded use of force can be traced from the explicit authorizations for the use of force in self-defense in UNPROFOR, to the implicit acknowledgment that such force may be used in self-defense in UNAMIR. It is not clear, with regards to future operations, what kind of authorization or acknowledgement would be required (if any) to enable an operation to legitimately use force in this manner.

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112. *Report of the Secretary-General on the Situation in Rwanda*, *supra* note 90.

113. *Id.* ¶ 15.

114. *Letter Dated 19 June From the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, U.N. Doc. S/1994/728 (1994).

115. *Id.* ¶ 12 (emphasis added).

It is true that the uses of force outlined above can all be described as being in 'defense of a mandate'. The use of force to secure freedom of movement was to enable humanitarian aid to be delivered,<sup>116</sup> the use of force to protect safe areas was to enable the civilian population to be protected,<sup>117</sup> and the use of force to protect humanitarian convoys fulfilled, in an even more direct way, the mandate to provide humanitarian relief.<sup>118</sup> Indeed, it is not clear why the Security Council regarded it as necessary to explicitly authorize the use of such force in 'self-defense' in the first place, given that such force would have presumably could have come within the already established inherent right to 'defend one's mandate.' Whether the Security Council did so because it felt legally bound to, or whether it did so merely because it wanted to make it unequivocally clear that peacekeeping operations could use such force, is not evident. France, for example, was of the opinion that bringing the UNPROFOR operation under Chapter VII, was in itself enough to strengthen the peacekeeping's operation traditional right to self-defense, without the need for explicit authorization.<sup>119</sup>

Ultimately it is not clear on what basis force can and cannot be used by peacekeeping operations. Nor is it clear how far the concept of self-defense can be pushed. At the moment it is apparently limitless, able to encompass even the defense of others so long as a legitimate mandate is being pursued. This, in effect, means that the use of force is dependent on an operation's mandate, not on any clear and fixed rules as to how force may and may not be used. The confusion and vagueness that results from this approach must prevail in all operations where clear authorization for the use of force is not set. The main problem with this is that too much is left to chance. Troops are left to apply force haphazardly, with authority to use that force being drawn, not from a mandate, or any concept of an inherent right to defend third parties, but through guesswork and reading between the lines. This is not a desirable state of affairs: it leads to misunderstandings and possible recriminations. Furthermore, while such use of force may come within the concept of 'defending one's mandate,' that is not to say that it should. There are many implications to allowing a peacekeeping operation to use more forceful measures in carrying out its mandate. Some of these are discussed below.

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116. In Bosnia-Herzegovina and Croatia for example.

117. In Bosnia-Herzegovina and Rwanda for example.

118. In Somalia, Bosnia-Herzegovina, Croatia, and Rwanda for example.

119. *Provisional Verbatim Record of the Three Thousand One Hundred and Seventy Fourth Meeting*, U.N. SCOR, 3174th mtg., at 13-15, U.N. Doc. S/PV.3174 (1993) (remarks of Ambassador Merimée of France).

## V. WHAT ARE THE IMPLICATIONS OF THE EXPANDED USE OF FORCE BY UNITED NATIONS PEACEKEEPING OPERATIONS?

*Creating this kind of grey area between peace-keeping and peace enforcement can give rise to considerable dangers. In political, legal and military terms, and in terms of the survival of one's own troops, there is all the difference in the world between being deployed with the consent and cooperation of the parties to help them carry out an agreement they have reached and, on the other hand, being deployed without their consent and with powers to use force to compel them to accept the decisions of the Security Council.*<sup>120</sup>

As the above passage indicates, there are many implications involved in having a peacekeeping operation that can exercise a more extensive amount of force than was traditionally the case. The problems that arise have two root causes. First, the use of force is unpredictable because there is no understanding regarding the basis on which force is used by peacekeeping operations or how force can and cannot be used. Secondly, the use of force undermines the fundamental principles of peacekeeping and confuses the concepts of peacekeeping and peace-enforcement. As Fink has stated, the "blurring of peacekeeping 'guiding principles' and peace-enforcement standards for use of force . . . jeopardizes the safety of the peacekeepers and hampers the effectiveness of their mission."<sup>121</sup> Thus there are two issues that need to be dealt with by the international community. First, when and how force is used by peacekeeping operations needs to be clarified. It appears that the United Nations has recognized this need and is currently undertaking the complex project of revising guidelines for rules of engagement for future peacekeeping operations. This is being done in light of the fact that the use of force in peacekeeping operations and 'Chapter VII operations' is no longer distinct and separate. However, these guidelines are unlikely to be completed for quite some time.<sup>122</sup>

Secondly, the international community needs to determine whether it is in fact desirable to 'blur' the notions of peacekeeping and peace-enforcement. Certainly once a peacekeeping operation uses force beyond that required for self-defense, the line between defensive and offensive force becomes harder to distinguish. Indeed, if a peacekeeping operation has a broad mandate, it is possible to argue that any force used is exercised in defense of the operation's purpose. Yet it is not hard to see how far removed this is from acting in strict self-defense.

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120. Goulding, *supra* note 6, at 461.

121. Fink, *supra* note 8, at 31.

122. I have been given this information by a senior legal officer in the Office of the Legal Counsel, United Nations Secretariat, New York. I was also told that the current model rules of engagement, the mission specific rules of engagement and the revised rules of engagement are confidential.



For example, it is possible to argue that UNOSOM II was a peacekeeping operation acting in defense of its widely drawn mandate, rather than an 'enforcement measure.' Clearly, almost any forceful action taken by a UN operation can be described as a 'peacekeeping operation defending its mandate' if the mandate is wide enough. The danger with this approach is that "once you allow a peacekeeping force to use force in defence of its purposes instead of simply in defence of its personnel, the action becomes an enforcement action."<sup>123</sup> This is even truer if force is used in defense of third parties. Because peacekeeping operations and enforcement actions are so different, the legal significance of merging the two operations should not be underestimated.<sup>124</sup> Some of the problems and implications that have emerged due to the unpredictability and confusion regarding the use of force by peacekeepers are discussed below.

### A. *Legal Implications*

The most fundamental problem with authorizing peacekeepers to use force is that the use of force is not compatible with consent and impartiality. This problem has legal and practical implications. If force is authorized in order to allow peacekeepers to implement part of their mandate, ultimately it tends to jeopardize other parts of the mandate, which rely upon the consent and cooperation of the parties. Although technically such force would only be used to support a peacekeeping mandate under threat, the practical reality is that the use of such force could not be carried out without endangering the peacekeeping operation as a whole. As the Secretary-General put it in his supplement to the *Agenda for Peace*: "To blur the distinction between the two [peacekeeping operations and enforcement measures] can undermine the viability of the peacekeeping operation and endanger its personnel."<sup>125</sup> Ironically, therefore, a mandate designed to protect such personnel under the banner of "self-defense" may ultimately do more harm than good.

Aside from the legal difficulty of distinguishing between peacekeeping and peace-enforcement operations, there are other legal issues which arise in this context. One such issue derives from the need to have a clear legal understanding as to the nature of peacekeeping. Ralph Zacklin, Director and Deputy to the Under-Secretary-General, Office of the Legal Counsel of the United Nations, has explained,

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123. MCCOUBREY & WHITE, *supra* note 21, at 87.

124. Some of the practical implications of merging the two operations are outlined below.

125. *Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, U.N. GAOR ¶ 35, U.N. Doc. A/50/60 – S/1995/1 (1995).

Insistence on clarifying the nature of meaning of peacekeeping is not merely a lawyer's obsession with clarity and legal definition; it is necessary because the legal character and nature of the operation has a direct bearing on the legal issues which arise and their resolution.<sup>126</sup>

As emphasized in the introduction to this paper, lack of clarity in an operation's mandate will give rise to legal difficulties when drafting peacekeeping agreements between the parties (such as SOFAs) and giving advice on the interpretation and implementation of such agreements. More specifically, with regards to the use of force, if it is not clear what authority there is for the use of force, difficult questions arise about what the acceptable levels and uses of force are. As stated above, it is the rules of engagement that govern the use of force in the field.<sup>127</sup> If the mandate of the Security Council is not clear, then the rules of engagement cannot accurately reflect the degree of force that has been authorized by the Council. The importance of specifying the authority for the use of force in order that it can be articulated in the rules of engagement is crucial to establishing an operation with a clear, purposeful, and attainable mandate.<sup>128</sup>

Other more probing issues arise in this context: for example, can the peacekeepers use force in "anticipatory" self-defense when the use of force against them while carrying out their mandate is foreseeable? Do the customary requirements of necessity and proportionality apply to an expanded form of self-defense in the context of peacekeeping?<sup>129</sup> These questions should not be left unresolved only to be 'answered' by chance through future uses of force in the field. As sound reasons are needed to explain and justify why force may be used in one situation and not in another it is preferable to clarify the instances in which force can be used before, rather than after, the event. Furthermore, it is better to use legal reasoning to justify the use of force, rather than appealing to ad hoc and random arguments in any given situation. Such legal reasoning is more likely to enable a consensus among Member States to develop with regards to the use of force. As the future credibility of the United Nations depends on successful peacekeeping operations the utmost attention must be given to these legal issues, and the sooner the better.

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126. Ralph Zacklin, *Managing Peacekeeping from a Legal Perspective*, in NEW DIMENSIONS OF PEACEKEEPING 159, 159 (Daniel Warner, ed. 1995).

127. MCCOUBREY & WHITE, *supra* note 21, at 146-47.

128. Fink, *supra* note 8, at 46.

129. Oscar Schachter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1635-38 (1984).

### *B. Political and Military Implications*

While expanding the concept of self-defense to include a more offensive use of force may be legitimate and cannot be regarded as illegal or intrinsically 'bad,' such an expansion may lead to great political and military difficulties when conducting operations. This is particularly so if the differences between peacekeeping and peace-enforcement become blurred. Some of these problems are outlined below.<sup>130</sup>

It may be harder to get a host State or States to consent to a peacekeeping operation if the "operation is perceived as liable to be transformed into a peace-enforcement operation against one party which initially accepted the deployment."<sup>131</sup> Thus, peacekeeping may, as a result, become an increasingly ineffective and useless tool of the UN, with peace-enforcement left as the primary measure of resolving conflict in the world. If this were to happen the UN would arguably find itself less able to resolve disputes via conciliatory means.

It may be harder to get States to contribute troops to peacekeeping operations if they may be involved in the use of coercive force. This may be due to constitutional reasons. For example, neutral countries or countries with constitutional limitations on getting involved in foreign military involvement, may find it difficult to reconcile involvement in such a force with their constitutional values or limitations.<sup>132</sup> Alternatively States may be reluctant to contribute troops for political reasons. Clearly, there is a huge political difference between becoming involved in a peacekeeping operation with the consent of a host State and working with the cooperation of the parties as opposed to taking sides in a conflict and imposing Security Council resolutions by the use of force. States will have to pay much greater regard to their domestic and foreign policies before deciding to become involved in operations that may entail forceful measures. This is primarily because a State could only justify risking the lives of its military personnel if it had a significant national interest in the conflict.

It follows then, that in an enforcement operation States with a vested interest in the matter are more likely to get involved than neutral States. Thus, not only are peacekeeping operations that use force less likely to retain the consent and impartiality of the parties (principles they traditionally espoused), but they may no longer attract the neutral States that they want and need for an operation to be viewed as

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130. See also Lalande, *supra* note 76; Connie Peck, *Summary of Colloquium on New Dimensions of Peacekeeping*, in *NEW DIMENSIONS OF PEACEKEEPING* 181 (Daniel Warner ed., 1995).

131. Lalande, *supra* note 76, at 78.

132. Neutral countries include Austria, Switzerland, Finland or Sweden. Countries with constitutional limitations on foreign military involvement include Japan and Germany.

impartial by the host State. The national make-up of operations may inadvertently aggravate the conflict, where for example it is a dispute based on ethnic or religious grounds.

In military terms there is a vast difference between a peacekeeping operation and peace-enforcement measures. This is particularly true of the military conduct and command structure of the operation and how it is equipped. For example, the way in which force can be used and the rules of engagement vary greatly according to the type of operation that is undertaken. Furthermore, a peacekeeping operation may be authorized to use force but, in reality, not be equipped to do so. Thus if it does try to use force it may leave itself exposed to more forceful attacks to which it cannot reply. Leaving the use of force to Member States who can 'support' the peacekeeping operation using 'all necessary measures' is unlikely to resolve the problem. Peacekeepers are still more likely bear the brunt of any forceful retaliation.<sup>133</sup>

The relations between all the parties in peacekeeping operations, as opposed to the relations in an enforcement operation, are different. In a peacekeeping operation everyone works together in a conciliatory atmosphere of cooperation. In peace-enforcement all parties are adversaries and the mission is in a position of authority. It is not realistic to expect that a peacekeeping operation based on consent and impartiality would be able to retain those qualities if force was used against parties in a conflict. The very basis upon which peacekeeping is founded is undermined by allowing an expansive use of force to take place.

On a more theoretical level, conflicting concepts of peacekeeping and peace-enforcement may "lead to confusion, uncertainty and ambiguity in the minds of policy makers currently designing the shape of their countries' involvement in future peacekeeping operations."<sup>134</sup> For example, policies may be designed which limit a country's involvement in future peacekeeping operations because of concern about what kind of operations are being instigated by the UN. A good example of this is in the U.S. where, in response to the events in Somalia, President Clinton issued a Presidential Decision Directive which severely limited the future role of U.S. troops in peacekeeping operations.<sup>135</sup>

A more ethereal effect of the lack of a clear-cut distinction between a peacekeeping operation and peace-enforcement is that it makes it ex-

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133. Goulding, *supra* note 38, at 10.

134. Lalande, *supra* note 76, at 80.

135. See *Statement by the Press Secretary on Reforming Multilateral Peace Operations*, 30 WEEKLY COMP. PRES. DOC. 998 (May 5, 1994). The United States will now only participate where there have been grave threats to international peace and security, major disasters which require relief, or gross violations of human rights. U.S. troops would most likely be under U.S. command. See Fink, *supra* note 8, at 46; Steven J. Lepper, *The Legal Status of Military Personnel in United Nations Peace Operations: One Delegate's Analysis*, 18 HOUS. J. INT'L L. 359, 366 (1996).

tremely difficult for the press and the general public at large, to comprehend the role, nature and purposes of future UN peacekeeping operations. The importance of this problem should not be underestimated. Public opinion, which is sharply influenced by the press, may be decisive in determining whether action is taken in a humanitarian crisis and in determining whether a State gets involved or not.

## VI. CONCLUSION

The erosion of the fundamental principles of peacekeeping occurs when force is authorized to such a degree that it can be used to protect third parties and carry out any part of a broad mandate. Such use of force threatens the basis of successful peacekeeping and does not necessarily lead to better results. While the concept of self-defense has been deemed to include 'defense of one's mandate', the continued expansion of this concept, in order to give peace-keepers even greater enforcement powers, is not a good idea for the legal, political and military reasons described above. It is time for the United Nations to accept that it must "either maintain a neutral role with consent of parties to the conflict in future peacekeeping operations, or be prepared to encounter increasing threats to the safety of its peacekeepers and be ready to exercise a level of force beyond the traditional legal meaning of self-defense."<sup>136</sup> In other words, it must choose between peacekeeping and peace-enforcement as its two major methods of conflict resolution.

However, if recent uses of force (as discussed in this paper) are to be regarded as a legitimate expansion of the concept of self-defense, it is essential that the legal basis for such force and the extent to which it can be used, be definitively clarified. It is in the interest of everyone, the UN, the host and contributing States, the troops who risk their lives, and the public at large, that the extent to which peacekeeping troops may become involved in a conflict is made clear. It is only with this kind of clarification that an extensive use of force by a peacekeeping body will remain, in any sense, palatable with the goals and purposes of peacekeeping. The fundamental principles of peacekeeping were developed and based on sound legal and practical reasoning. They should not be done away with without serious reflection about what the possible consequences might be.

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136. Fink, *supra* note 8, at 45.

