



Journal of Strategic Studies

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/fjss20>

The Evolution of the Use of Force in UN Peacekeeping

James Sloan^a

^a University of Glasgow, School of Law
Published online: 25 Jul 2014.



[Click for updates](#)

To cite this article: James Sloan (2014) The Evolution of the Use of Force in UN Peacekeeping, Journal of Strategic Studies, 37:5, 674-702, DOI: [10.1080/01402390.2014.921853](https://doi.org/10.1080/01402390.2014.921853)

To link to this article: <http://dx.doi.org/10.1080/01402390.2014.921853>

PLEASE SCROLL DOWN FOR ARTICLE

Taylor & Francis makes every effort to ensure the accuracy of all the information (the "Content") contained in the publications on our platform. However, Taylor & Francis, our agents, and our licensors make no representations or warranties whatsoever as to the accuracy, completeness, or suitability for any purpose of the Content. Any opinions and views expressed in this publication are the opinions and views of the authors, and are not the views of or endorsed by Taylor & Francis. The accuracy of the Content should not be relied upon and should be independently verified with primary sources of information. Taylor and Francis shall not be liable for any losses, actions, claims, proceedings, demands, costs, expenses, damages, and other liabilities

whatsoever or howsoever caused arising directly or indirectly in connection with, in relation to or arising out of the use of the Content.

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden. Terms & Conditions of access and use can be found at <http://www.tandfonline.com/page/terms-and-conditions>

The Evolution of the Use of Force in UN Peacekeeping

JAMES SLOAN

University of Glasgow, School of Law

ABSTRACT The role of force in United Nations peacekeeping has changed dramatically since the first observer mission in 1948. Once, peacekeepers used force only in the most exceptional circumstances and only in self-defense. By the mid-1970s, peacekeepers were authorized to defend the mandates of their operations, still as a variant of ‘self-defense’ but with greater scope for offensive force. Since the turn of the century, corresponding with the ‘Brahimi Report’, the language of self-defense is no longer in use in peacekeeping mandates. Instead, the Security Council routinely finds the existence of threats to international peace and security and vest ‘robust’ peacekeeping operations with the ability to use offensive force. The role of the controversial ‘responsibility to protect’ doctrine in peacekeeping is examined; however, it is concluded that, as yet, the doctrine has had limited impact on the legal framework relating to peacekeeping.

KEY WORDS: United Nations, Use of Force, Peacekeeping

The role of force in United Nations (UN) peacekeeping has changed considerably over the years. Throughout much of the UN’s history, the use of force by its peacekeepers was virtually unheard of. The presence of UN peacekeepers provided a welcome indication that violence was at an end. On the rare occasions when peacekeepers were required to use force, it was in self-defense, as strictly defined. Now, however, UN peacekeepers are authorized to use considerable force, not just to keep an existing peace, but, in some cases, to restore it where it breaks down, and to protect civilians. This change in approach has tended not to represent a principled movement by the Security Council. Instead of being driven by a lessons-learned based development of doctrine, where successes are built upon, decisions regarding the use of force in peacekeeping operations have, for the most part, been determined by the, sometimes hasty, reaction of the Security Council to political exigencies. Indeed, the increased authorization of force by UN peacekeepers would, at times, appear to have been animated more by a desire not to do (or be seen to do) the wrong thing, rather than a genuine conviction on the part of the Security Council that the peacekeepers

could actually succeed with their forceful tasks. When these operations are unable to meet the objectives set for them – frequently due to operational and staffing limitations – they are pilloried by those meant to be under their protection and, sometimes, by the Security Council itself.

The fundamental differences that exist among peacekeeping operations – not only as regards the potential or actual use of force, but also as regards mandated tasks, personnel levels, etc. – have led commentators to create new terminology, dividing peacekeeping into categories or ‘generations’.¹ While such terminology may be helpful, it needs to be treated with caution: generations and categories may overlap or may be relied upon by different writers to mean different things. This discussion will avoid such terminology; instead the discussion divides UN peacekeeping into five phases, each of which features a different approach with regard to the use of force.² These are: (1) observer missions; (2) UNEF I; (3) operations where self-defense may include ‘defense-of-mandate’; (4) operations where offensive force is authorized by the Security Council – often in an ambiguous way – in response to the emergence of violence when a non-forceful operation is on the ground and; (5) operations where Chapter VII force is authorized from the outset.

A complexity in an analysis of the use of force in peacekeeping must be noted: the phases, while frequently chronological, are not necessarily so. So, for example, the UN Operation in the Congo (ONUC), an operation that took place in the early 1960s, is considered in the fourth phase, alongside operations which occurred after the Cold War’s end. Moreover, the beginning of a new phase does not necessarily signal the cessation of the establishment of peacekeeping operations falling into the previous phase – though it frequently will. So, for example, observer missions, the first phase, have continued to be established despite the development of the various other phases.

Another complicating factor relates to the issue of how to categorize a peacekeeping operation which is authorized to use offensive force. To some experts of a purist bent, if an operation has been vested with the ability to use significant offensive force, it can no longer be classed as peacekeeping; after all, they would argue, the ability to use only limited force is a *sine qua non* of peacekeeping – something which has certainly been true historically. To

¹Included here is the practice of dividing peacekeeping into first-, second- or third-generation operations or categorizing operations through reliance on various adjectives signaling (frequently in a very imprecise way) their nature: ‘traditional peacekeeping’, ‘complex peacekeeping’, ‘new peacekeeping’, ‘multifunctional peacekeeping’, etc.

²The five-phase approach adopted herein is by no means the only way to chart the use of force in peacekeeping operations. Other commentators have identified more or fewer phases and have defined the phases differently. The literature on the ‘stages’, ‘phases’ or ‘generations’ of peacekeeping – as regards the use of force of such operations, as well as with regard to other aspects – is vast.

others, the test of whether an operation is peacekeeping (or whether an operation that began as peacekeeping may continue to be so-called) is based on the level of force *actually* used by the operation rather than the level of force authorized by the Security Council.³ According to this logic, where an operation actually uses a sufficient level of offensive force, the operation – or that part of it using offensive force – stops being peacekeeping and becomes enforcement (or peace enforcement),⁴ at least for the period of time during which force is used. While both approaches preserve the integrity of a concept of peacekeeping that is, by and large, non-forceful, the complications this approach introduces are obviously considerable. If what begins as peacekeeping (and is so labeled by the Security Council) may transmogrify into enforcement (and, perhaps, back again⁵) depending on the particular task, the circumstance of the particular action by the force (or a part thereof) or the particular day, in order to be in a position to correctly identify a peacekeeping operation, one must have an expert's knowledge of the level of force authorized and/or used, when the use of force ceased, and the circumstances in which it was used.

An alternate approach – and the one taken herein – is to simply recognize the changed nature of peacekeeping: it is now authorized to use considerable force and the old definition that identified it as an entity that did not use force beyond self-defense (or not much beyond it) is no longer reflective of the current peacekeeping reality. Interestingly the UN has its own – somewhat disingenuous – approach to identifying the amount of force that an operation may use and still be considered to be peacekeeping. It lists operations as peacekeeping,⁶ regardless of how

³As discussed below, the level of force used by a peacekeeping force is often far less than that authorized. Commanders in the field are aware that a robust use of force by a peacekeeping mission may have the effect of changing irrevocably the character of the peacekeeping operation and its relationship with certain third parties.

⁴The distinction between the two terms is somewhat unclear. Many would characterize only the Security Council-authorized operations in Korea and Iraq/Kuwait as enforcement based on their scale and objectives and use the term peace enforcement for forceful operations of a smaller scale.

⁵Issues relating to when a civilian is considered to have taken 'direct part in hostilities' (see article 51(3) of Additional Protocol I and article 13(3) of Additional Protocol II, both to the 1949 Geneva Conventions) and when that individual may be considered to have regained his or her civilian status are complex and unsettled. See, e.g., ICRC, 'Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law' (Geneva 2009), <www.icrc.org/eng/resources/documents/publication/p0990.htm>. See also Dapo Akande, 'Clearing the Fog of War? The ICRC's Guidance on Direct Participation in Hostilities' 59 *ICLQ* (2010), 180, 189.

⁶For the UN Secretariat's listing of past and present peacekeeping operations see <www.un.org/en/peacekeeping/operations/>.

much force has been authorized or used – all the while emphasizing the limited nature of force expected of peacekeeping operations.

What follows in the second section, is a brief overview of the legal framework governing peacekeeping, including when force may be authorized for peacekeeping operations. The third section charts the development of the role of force in peacekeeping operations, through a discussion of the five phases, noted above. The fourth section considers the doctrine of Responsibility to Protect and asks what impact it has on the use of force in peacekeeping operations. Finally, the fifth section offers some brief observations on the future of the use of force in UN peacekeeping.

The Legal Framework

UN peacekeeping – no matter what level of force an operation is authorized to use – is not referred to in the UN Charter. The drafters of the Charter did, however, envisage an important role for the Security Council in authorizing the use of force where international peace and security had been threatened or breached. The rules envisaged on the use of force in the UN Charter are straightforward:

- (1) No state may threaten or use force against another state;⁷
- (2) Where the Security Council finds that a state has threatened or breached international peace and security or engaged in an act of aggression,⁸ it may take measures under Chapter VII of the Charter, including, where necessary, the authorization of the use of armed force;⁹
- (3) States may take measures in self-defense until the Security Council has taken the measures necessary to maintain international peace and security;¹⁰
- (4) Decisions taken by the Security Council pursuant to Chapter VII are binding on all member states.¹¹

The model is simple, yet it has a fatal flaw: it envisages a Security Council with a standing force at its disposal, which it may call upon to enforce its will. Because such a force has never been established, when it came to the use of force, self-defense under Article 51 was virtually the only option –

⁷Article 2(4) of the UN Charter.

⁸Article 39 of the UN Charter.

⁹Article 42 of the UN Charter.

¹⁰Article 51 of the UN Charter.

¹¹Article 24(1) and 48(1) of the UN Charter.

during the Cold War, at least. While there was, in 1950, an authorization for the use of force against North Korea to be carried out by a US-led coalition of the willing (as an alternative to the nonexistent standing force), this was the only such authorization during the Cold War.¹² The politics of the Cold War made it unlikely that the authorization of force would be judged to be in the joint interests of all of the veto-wielding permanent members of the Security Council.¹³

It was during the Cold War that peacekeeping developed as an unobjectionable – or relatively unobjectionable¹⁴ – means by which to maintain international peace and security without resort to an authorization of the use of force by the Security Council. Peacekeeping operations were unobjectionable as they were not to be authorized to use force beyond self-defense, they were to be impartial and they were only to be present on the territory of a state with that state's consent. These characteristics were such that the veto-wielding permanent members of the Security Council did not feel the need to prevent the establishment of the operations – either on a legal or political basis. From a legal perspective, impartial, consent-based operations were not going to interfere in domestic affairs or trespass on state sovereignty in a way that was thought to be prohibited by the Charter;¹⁵ their non-forceful nature meant that issues relating to the legal authority of Security Council (or, in certain cases, the General Assembly¹⁶) to authorize force did not need to be examined. Politically

¹²The resolution authorizing the use of force in the Korean Peninsula could be passed by the Security Council due to of the refusal by the USSR to attend Security Council meetings at the time. Arguably, a second exception to the Security Council's unwillingness to authorize force during the Cold War was in the context of the peacekeeping operation ONUC in the Congo in the early 1960s (and the subsequent expansion of its mandate). This operation is considered below.

¹³With the end of the Cold War the force of the impediments, both legal and political, to the Security Council authorizing force and delegating the use of force to a state or coalition of the willing has subsided.

¹⁴Soviet states and France had certain misgivings about the nature of the expenses of the operations in Egypt (UNEF I) and the Congo (ONUC). See International Court of Justice, *Certain Expenses of the United Nations* (Article 17, Paragraph 2, of the Charter), Advisory Opinion of 20 July 1962 (ICJ Reports 1962), 151.

¹⁵Articles 2(1) and 2(7) of the UN Charter.

¹⁶In the early history of the UN, when Cold War tensions meant that the Security Council was at times unable to act, the General Assembly was involved in the establishment or modification of three UN peacekeeping operations: the United Nations Special Commission in the Balkans (UNSCOB) in 1947, the first United Nations Emergency Force in the Suez (UNEF I) in 1956 and the United Nations Security Force in West New Guinea/West Irian (UNTEA/UNSF) in 1962. Since then, all UN peacekeeping missions have been created and modified by the Security Council.

speaking, their impartiality and non-forceful nature meant that they were not going to interfere with the balance of power; the requirement for consent meant that the establishment of a peacekeeping operation could not be seen as enhancing the power of the Security Council to act in the face of member state opposition.

Although peacekeeping was not referred to in the Charter, there were some early attempts to fit it within the Charter framework. As it was not envisaged as being forceful in nature – at least not initially – and because it was only to take place on the consent of the states affected, there was no need for the Security Council to rely on its Chapter VII powers, which, as noted, allow it to authorize the use of force and to bind member states without their consent. However, the fact that peacekeeping operations were generally armed and frequently consisted of thousands of military personnel meant that they did not fit neatly into Chapter VI of the UN Charter, a set of articles which deal with pacific settlement of disputes through reliance on measures such as conciliation, arbitration and judicial settlement. This led to some referring to the legal basis for the establishment of a peacekeeping operation as being ‘Chapter VI 1/2’ of the Charter. However, as we shall see, as peacekeeping has evolved such that operations are authorized to use more and more force, any division between Chapter VII ‘enforcement’ and Chapter VI 1/2 ‘peacekeeping’ has become very murky indeed.

Phases of the Use of Force

The first UN peacekeeping missions were charged primarily with observing; these operations were not to use force beyond self-defense and, given that they were largely unarmed, would have been unable to do so even if they had wanted to. The second phase began – and ended with the establishment of the first United Nations Emergency Force (UNEF I) by the General Assembly in 1956. Here too, the role of force was narrow: force could be used in self-defense only and only as strictly defined. With the third phase, the idea that force could only be used in self-defense was invoked, but the concept of the ‘self’ was said to include the peacekeeping mission and the mandate which it was charged with carrying out. A fourth phase involved a reliance by the Security Council on its Chapter VII powers – though not always explicitly – where the outbreak of violence on the ground, when an existing non-forceful peacekeeping operation was present, left the Security Council feeling politically pressured to act. The fifth and current phase features the invocation of Chapter VII from the outset, at least for certain tasks of the operation.

Phase 1: Peace Observation Missions

To some, the peace observation missions which came into existence beginning with the United Nations Truce Supervision Organization (UNTSO) and the United Nations Military Observer Group in India and Pakistan (UNMOGIP) in the late 1940s, ought not to be considered peacekeeping at all; instead, they view these operations as antecedents to peacekeeping. While it is indeed the case that observations missions are significantly different from the type of peacekeeping operations that began with UNEF I in 1956 (see below), it is important not to exclude this category of operation from the concept of peacekeeping. After all, their functions overlap with those of other peacekeeping missions; moreover the operations are characterized as peacekeeping by the UN and many scholars.

What is clear, is that these operations are smaller (generally with a few hundred personnel), have less extensive mandates (focused on observation and reporting to the Security Council) and tend to be unarmed. As such, they have relatively little capacity to use force and relatively little occasion to consider the parameters of their ability to use force. It must be stressed, however, that, as with all UN peacekeepers, the personnel involved in such operations possess the right to use force to defend themselves.¹⁷

Phase 2: UNEF I

With the establishment of the first United Nations Emergency Force in the Suez (UNEF I) by the General Assembly, the model of UN peacekeeping was modified. The operation was given a mandate that was more comprehensive in nature and featured a considerably larger number of troops than the observation-focused operations that had come before it. At its maximum strength, UNEF I had 6,073 military personnel, supported by international and local civilian staff. With the increase in size and functions of the operation came the potential for it to have a

¹⁷Hammar skjöld described the right of self-defense for UN peacekeepers as 'generally accepted' (United Nations, 'Summary Study of the Experience Derived from the Establishment and Operation of the Force [Report of the Secretary-General]' (UN Doc. A/3943), 9 Oct. 1958, para 179) and 'inherent' (United Nations, 'Note [Transmitting the Statement by the President of the Security Council Concerning the Item Entitled 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping']' (UN Doc. S/25859), 28 May 1993, 1). See also Trevor Findlay, 'The Use of Force by Peacekeepers Beyond Self-Defence: Some Politico-Legal Implications' in Alex Morrison, Douglas A. Fraser and James D. Kiras (eds), *Peacekeeping with Muscle: The Use of Force in International Conflict Resolution* (Clementsport, Nova Scotia: The Canadian Peacekeeping Press 1997), 51–76, 73, endnote 5.

greater impact on the situation on the ground. Secretary-General Dag Hammarskjöld recognized that UNEF I was of a different nature from observer forces previously established by the UN. He described it as 'paramilitary in character and much more than an observers' corps'.¹⁸ Despite this, he stressed that it was to be 'in no way a military force temporarily controlling the territory in which it is stationed'.¹⁹

Hammarskjöld observed that UNEF I 'should not be used to enforce any specific political solution of pending problems or to influence the political balance decisive to such a solution'²⁰ and stressed that it should not have military functions exceeding those necessary to secure peaceful conditions on the assumption that the parties to the conflict would take all necessary steps to comply with the recommendations of the General Assembly.²¹ Hammarskjöld took the position that peacekeeping operations could 'never include combat activity';²² however, he recognized that '[t]here will always remain, of course, a certain margin of freedom for judgement, as, for example, on the extent and nature of the arming of the units and of their right of self-defence'.²³

In the following passage, Hammarskjöld outlined the rules on when force could be used by peacekeeping operations:

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, acting under the authority of the [General] Assembly and within the scope of its resolutions. The basic element involved is clearly the prohibition against any initiative in the use of armed force.²⁴

Noting that 'a wide interpretation of the right of self-defence might well blur the distinction between [peacekeeping] operations and combat operations, which would require a decision under Chapter VII of the Charter and an explicit, more far-reaching delegation of authority to

¹⁸United Nations, 'Second and Final Report of the Secretary-General on the Plan for an Emergency International United Nations Force Requested in Resolution 998 (ES-I), Adopted by the General Assembly on 4 Nov. 1956' (UN doc A/3302), 6 Nov. 1956, para. 12. See also the Secretary-General's 1958 Summary Study, para. 15.

¹⁹Second and Final Report, para. 12.

²⁰Summary Study, para. 167.

²¹Second and Final Report, para. 12.

²²Summary Study, para. 178.

²³Ibid.

²⁴Ibid., para. 179 (emphasis in original).

the Secretary-General',²⁵ Hammarskjöld's stressed that force in self-defense 'should be exercised only under strictly defined conditions'.²⁶

Linked to the inability of UNEF I to use force under Chapter VII, was the need for consent of the host state and impartiality. As Hammarskjöld observed:

The use of military force by the United Nations other than that under Chapter VII of the Charter requires the consent of the States in which the force is to operate It must, furthermore, be impartial, in the sense that it does not serve as a means to force settlement, in the interest of one party, of political conflicts or legal issues recognized as controversial.²⁷

From Hammarskjöld's careful analysis of UNEF I we see the emergence of what came to be known as the three 'fundamental principles' or 'basic principles' of UN peacekeeping: force only in self-defense, the establishment of operations only with the consent of the host state and impartiality.

It is important to underline that Hammarskjöld's emphasis on the non-enforcement nature of peacekeeping emerged based upon an operation that was established by the General Assembly and not, as virtually all subsequent peacekeeping operations would be, by the Security Council.²⁸ It was essential that UNEF I should not be of an enforcement nature: were it otherwise, the operation would have been *ultra vires*, as the General Assembly does not possess the equivalent of Chapter VII enforcement powers. Of course the Security Council has no such limitation: it may establish a peacekeeping operation as a Chapter VII measure, vesting it with the ability to use considerable force and doing so without host state consent – so long as it determines that such an operation is necessary to maintain and restore international peace and security.²⁹ The political impediments, during the Cold War at least, were another matter.

²⁵Ibid., para. 179.

²⁶Ibid.

²⁷UN, 'Report to the General Assembly in Pursuance of General Assembly resolution 1123 (XI) on Israeli Withdrawal', 24 Jan. 1957 (UN doc. 3512/1957), part 2 (A), para. (5)(b).

²⁸Following a threatened veto of a Security Council resolution on the subject by France and the UK, UNEF I was established by the General Assembly in emergency special session, pursuant to its powers under its 'Uniting for Peace' resolution (GA res 377 A(V) of 3 Nov. 1950).

²⁹See the discussion of the Security Council's Chapter VII powers above.

Phase 3: 'Defense of Mandate' Operations

Hammar skjöld's careful approach to the use of force by peacekeeping operations was moved away from almost immediately,³⁰ and the second phase featured a single operation: UNEF I. While it is true that subsequent peacekeeping operations were established by the Security Council³¹ – which, as noted, is vested with an authority to authorize enforcement action that the General Assembly lacks – it is important to stress that the Security Council was not, at this stage, invoking its Chapter VII powers in establishing operations. As such, Hammar skjöld's principles of use of force only in self-defense, consent of the host state and impartiality, established in the context of the UNEF I operation, were extremely influential to subsequent peacekeeping practice.

However, one important modification to Hammar skjöld's principles was to develop with operations subsequent to UNEF I. This was less linked to the fact that Security Council was not the establishing organ and more due to the insistence of troop-contributing states.³² In early 1964, Secretary-General U Thant expanded the concept of self-defense for the United Nations Force in Cyprus (UNFICYP) mission. He observed that:

self-defence includes the defence of the United Nations posts, premises and vehicles under armed attack, as well as support of other personnel of UNFICYP under armed attack. When acting in self-defence the principle of minimum force shall always be applied and armed force will only be used when all means of persuasion have failed. The decision as to when force is to be used rests with the Commander on the spot. Examples in which troops may be authorized to use force include attempts by force to compel them to withdraw from a position which they occupy under orders from their commanders, attempts by force to disarm them, and attempts by force to prevent them from carrying out their responsibilities as ordered by their commanders.³³

³⁰With the UN Operation in the Congo (1960–64), the level of force authorized and used went considerably beyond that discussed by Hammar skjöld. This operation will be considered below.

³¹The only arguable exception here is UNTEA/UNSF established in 1962 – though many do not consider this operation to be a peacekeeping operation.

³²Indar Jit Rikhye, 'The Use of Force in International Conflict Resolution', in Alex Morrison *et al.*, *Peacekeeping with Muscle*, 17–23, 19.

³³United Nations, 'Report by Secretary-General U Thant on the Deployment of UN Forces in Cyprus' (UN doc. S/5960), 10 Sept. 1964.

Some ten years on, with the establishment of a second version of the UN Emergency Force in the Suez (UNEF II) in 1973, the concept of self-defense was expanded further such that it was said to include the use of force to prevent interference with the peacekeeping operation's mandated duties (defense-of-mandate). Secretary-General Kurt Waldheim, in a report to the Security Council,³⁴ defined self-defense as including 'resistance to attempts by forceful means to prevent [UNEF II] from discharging its duties under the mandate of the Security Council'.³⁵ The Security Council approved this report,³⁶ giving its imprimatur to the modified approach to the use of force.³⁷ According to the UN Secretariat, self-defense was considered to include defense-of-mandate in all subsequent peacekeeping operations.³⁸

This expansion of the definition of the concept of self-defense to include forceful actions to defend the mandate was, in principle, very significant – though not so in practice. In effect, it authorizes virtually any use of force, so long as an operation's mandate is sufficiently general in nature – as they so frequently are.³⁹ This could presumably include, for example, the forceful disarmament or military engagement with any faction whose conduct was judged likely to reignite the conflict and thereby prevent the successful functioning of the operation. In the words of Nigel White: 'Allowing a force to take positive action in defence of its purposes is no different from allowing it to enforce them'.⁴⁰

In practice, however, the redefinition of self-defense to include defense-of-mission had relatively little impact on peacekeeping practice. Despite possessing a broad authority to use force, commanders in the field tended to do so only very rarely, arguably revealing a level of

³⁴United Nations, 'Report of the Secretary-General on the Implementation of Security Council Resolution 340 (1973)' (UN doc. S/11052/Rev.1), 27 Oct. 1973.

³⁵Ibid.

³⁶SC res. 341 of 27 Oct. 1973.

³⁷Ibid. With the establishment of the United Nations Interim Force in Lebanon (UNIFIL) in 1978, the Security Council, for the first time, specifically included defense-of-mandate as part of its definition of self-defense in a resolution (SC res. 467 of 24 April 1980). (Christine Gray, *International Law and the Use of Force*, 3rd ed. (Oxford: OUP 2008), 303).

³⁸United Nations, *General Guidelines for Peacekeeping Operations* (United Nations (DPKO) (UN/210/TC/GG95)), on file with author, para. 35.

³⁹For example, the Security Council mandated UNEF II to supervise its demand that a ceasefire be observed and to prevent a recurrence of the fighting (see SC res. 341 of 27 Oct. 1973).

⁴⁰Nigel White, *The United Nations and the Maintenance of International Peace and Security* (Manchester: MUP 1990), 201.

prudence lacking in the UN peacekeeping doctrine.⁴¹ Former Under-Secretary-General Marrack Goulding attributed peacekeepers' reluctance to use force to 'sound calculations related to impartiality, to their reliance on the continued cooperation of the parties and to the fact that their force's level of armament was based on the assumption that the parties would comply with their commitments'.⁴² He observed: 'The peacekeepers could perhaps win the firefight at that first road-block. But in the lands of the vendetta, might they not find themselves out-gunned in the third or fourth encounter?'⁴³ As we shall see, notwithstanding such 'sound calculations' on the part of commanders in the field, the Security Council came to authorize the use of ever-greater force for peacekeeping operations almost immediately after the end of the Cold War.

Phase 4: Non-Forceful Peacekeeping Operations which Become Forceful when Confronted with Crisis (Mission Creep)

Until the publication of the Brahimi Report in 2000 – an event which corresponds with the beginning of the fifth phase, outlined below – the authorization of offensive force in UN peacekeeping was rare and represented something of a desperate, last resort for the Security Council when attempting to rescue a failing peacekeeping operation confronted with a deteriorating situation on the ground. Operations falling within this category include the UN peacekeeping operation established in the Congo in 1960 (ONUC), the UN operations in Somalia and the former Yugoslavia established in 1992 and the UN operations in East Timor established in 1999.⁴⁴ In each case, a peacekeeping operation was established with an authorization to use limited force and, in each case, peacekeepers were authorized to use offensive force by a rattled Security Council when violence on the ground compromised the original operation.

⁴¹Adam Roberts, 'From San Francisco to Sarajevo: The UN and the Use of Force', *Survival* 37/4 (1995–96), 7, 14. See also Marrack Goulding, 'The Evolution of United Nations Peacekeeping' *International Affairs (Royal Institute of International Affairs 1944-)* 69/3 (1993), 451, who noted that it was rare for peacekeepers 'to open fire on, for instance, soldiers at a roadblock who were denying passage to a United Nations convoy' (455); Ray Murphy, 'United Nations Peacekeeping in Lebanon and Somalia, and the Use of Force' *Journal of Conflict and Security Law* 8/1 (2003), 71, 83.

⁴²Goulding, 'The Evolution of United Nations Peacekeeping', 455.

⁴³*Ibid.*

⁴⁴In addition, the UN Operation in the Democratic Republic of the Congo (MONUC), which was established in Nov. 1999 (SC res. 1279 of 30 Nov. 1999) without any Chapter VII authorization was, after two months, given civilian protection tasks pursuant to an invocation of Chapter VII (SC res. 1291 of 24 Feb. 2000). See the discussion of MONUC and its successor MONUSCO below.

ONUC. The first such operation, ONUC, was established in July 1960 to ensure the withdrawal of Belgian forces and to assist the government in maintaining law and order.⁴⁵ Only when the situation in the country deteriorated, did the UN authorize increasingly forceful measures. With civil war looming following the death of the Prime Minister,⁴⁶ the Security Council, in Resolution 161,⁴⁷ authorized ONUC to take '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'.⁴⁸ In November 1961, after the tragic death of Secretary-General Hammarskjöld in a plane crash that occurred when he was traveling as a part of his efforts to resolve the situation in the Congo, the Security Council continued further down its forceful path. It authorized 'vigorous action, including the requisite measure of force, if necessary, for the immediate apprehension, detention ... or deportation of all foreign military and paramilitary personnel ... and mercenaries' and 'all necessary measures' to prevent their return.⁴⁹

While Chapter VII of the UN Charter was not explicitly invoked in either resolution, it was clear from the reference to 'all appropriate measures' and the authorization of the use of force without any limitation to the effect that force needed to be in self-defense,⁵⁰ that the Security was exercising its Chapter VII powers. We see a Security Council that was hastily modifying peacekeeping doctrine in response to events on the ground.

Somalia and the former Yugoslavia. The next two operations in this category occurred some 30 years later, within months of each other. While these two operations may be said to have been influenced by Secretary-General Boutros-Boutros Ghali's 1992 report entitled *An Agenda for Peace*,⁵¹ the Security Council's progressively greater reliance

⁴⁵SC res. 143 of 14 July 1960.

⁴⁶Lumumba, who had been jailed by a rival government, was killed in January 1961; his death was announced on 13 Feb. 1961 (Roselyn Higgins, *United Nations Peacekeeping 1946–1967: Documents and Commentary*, Vol. III: *Africa* (Oxford: OUP 1980), 394).

⁴⁷SC res. 161 of 21 Feb. 1961.

⁴⁸*Ibid.*, Part A.

⁴⁹SC res. 169 of 24 Nov. 1961.

⁵⁰Note that the defense-of-mandate approach to defining self-defense, discussed above, had not been articulated at this point in the UN's history.

⁵¹In one of his first tasks after taking up the Secretary-Generalship, Boutros-Ghali was requested by the Security Council (sitting for the first time at the Head of State or Head of Government level) to set forth his ideas on ways of strengthening and making more efficient peacekeeping and related activities. The report that emerged revealed the new

on force would appear to have been influenced more by its reaction to the political realities on the ground than by any carefully considered doctrinal framework.

In February 1992 the United Nations Protection Force in the former Yugoslavia (UNPROFOR) was established 'to create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis'.⁵² The Secretary-General advised the Security Council that the 'normal rules in United Nations peace-keeping operations for the bearing and use of arms' should apply.⁵³ This would have included an understanding that force was only to be used in self-defense or in defense-of-mandate. As matters deteriorated on the ground, the Security Council soon felt compelled to make the mission more forceful. In June 1993, the Security Council, explicitly acting under Chapter VII, passed Resolution 836 charging UNPROFOR with deterring acts against 'safe areas' that had earlier been established by the Security Council, and authorized it 'to take the necessary measures, including the use of force in reply to bombardments against the safe areas'.⁵⁴ Remarkably – and in an apparent manifestation of its discomfort with the authorization of the use of Chapter VII force by a peacekeeping operation – the Security Council provided that this use of offensive force was to be 'in self-defense'.⁵⁵

The United Nations Operation in Somalia (UNOSOM) began in April 1992 as a non-forceful operation to assist with humanitarian aid in the country.⁵⁶ The operation was withdrawn when the

Secretary-General's desire to engage in fresh thinking with regard to peacekeeping operations, including a willingness to challenge the 'fundamental principles'. United Nations, 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping' (UN Doc A/47/277-S/24111), 17 June 1992.

⁵²SC res. 743 of 21 Feb. 1992.

⁵³United Nations, 'Further Report of the Secretary-General Pursuant to Security Council Resolution 721 (1991)' (UN doc. S/23592), 15 Feb. 1992, 6.

⁵⁴SC res. 836 of 4 June 1993.

⁵⁵In the words of Yasushi Akashi, formerly the Secretary-General's Special Representative for the former Yugoslavia, the 'combination of Chapter VII and the "authorization" of the use of force in self-defense has further compounded the degree of confusion, even among knowledgeable observers, over the conditions in which force can be used by UNPROFOR'. (Yasushi Akashi, 'The Use of Force in a United Nations Peace-Keeping Operation: Lessons Learnt from the Safe Areas Mandate', *Fordham International Law Journal* 19 (1995–96), 312, 317).

⁵⁶UNOSOM was established by SC res. 751 of 24 April 1992. The mission was withdrawn in Dec. 1992 and it resumed in March 1993 after security was restored. Some refer to the initial phase of the operation as UNOSOM I and its second phase as UNOSOM II.

situation on the ground proved too dangerous. Instead a US-led enforcement operation (the Unified Taskforce or UNITAF), authorized by the Security Council in December 1992, stepped in to restore security. With the US anxious to withdraw, the Security Council strengthened UNOSOM's mandate (now referred to as UNOSOM II), charging it with many of the enforcement functions that had been undertaken by UNITAF.⁵⁷ Acting under Chapter VII, the Security Council empowered the operation to take 'such forceful action as may be required to neutralize armed elements that attack or threaten to attack' UN personnel or property and that of its agencies, the International Committee of the Red Cross and non-governmental organizations. Neither the Secretary-General's report nor the Security Council resolution endorsing it made any mention of an obligation on the part of UNOSOM II to limit itself to the use of force in self-defense or in defense-of-mandate.

In June 1993, 26 UNOSOM II peacekeepers were killed in a violent confrontation with forces on the ground. As a result, the Security Council further strengthened the mandate that same month. Again acting under Chapter VII, it authorized UNOSOM II to take 'all necessary measures against all those responsible for the armed attacks' on the personnel of UNOSOM II.⁵⁸ This effectively made the peacekeeping operation – by now referred to by many observers as enforcement or peace enforcement in view of the level of force authorized⁵⁹ – a participant in the conflict. After 18 US soldiers, one UN peacekeeper and hundreds of Somalis were killed in an incident that began on 3 October 1993, the US ordered the withdrawal of its forces. The operation withdrew in March 1995 without completing its mission.

The literature on the operations in the former Yugoslavia and Somalia – and where they went wrong – is vast.⁶⁰ Boutros-Ghali, who, as noted, had advocated a move away from the non-use of force by peacekeeping operations in his *An Agenda for Peace*,⁶¹ was to revise

⁵⁷It was to undertake such tasks as preventing 'any resumption of violence and, if necessary [taking] appropriate action against any faction' violating the ceasefire, securing the disarmament of the factions, and maintaining security (SC res. 814 of 26 March 1993).

⁵⁸SC res. 837 of 6 June 1993.

⁵⁹It may be noted that the UN Secretariat, itself, characterized the operation as peacekeeping.

⁶⁰See, for example, Simon Chesterman, *The Use of Force in UN Peace Operations* (2004) External Study for the UN DPKO, <<http://smallwarsjournal.com/documents/useofforceunpko.pdf>>; Akashi, 'The Use of Force in a United Nations Peace-Keeping Operation'; and Rosalyn Higgins, 'Peace and Security: Achievements and Failures' *European Journal of International Law* 6 (1995), 445.

⁶¹United Nations, 'An Agenda for Peace'.

his position. In January 1995, he produced Supplement to An Agenda for Peace, in which he observed:

[T]he last few years have confirmed that respect for certain basic principles of peace-keeping are essential to its success. Three particularly important principles are the consent of the parties, impartiality and the non-use of force except in self-defence. Analysis of recent successes and failures shows that in all the successes those principles were respected and in most of the less successful operations one or other of them was not.⁶²

To others, calling upon peacekeeping operations to use force beyond self-defense or defense-of-mandate was not, per se problematic; instead, they took the view that problems would continue to occur only if such operations were not adequately funded, staffed and equipped. Once these hurdles were overcome, they argued, peacekeeping forces could successfully use force beyond self-defense, including to protect civilians. It was this view that was to become prevalent, resulting in the fifth and current phase of the use of force in peacekeeping, discussed later in this section.

East Timor. When the non-forceful United Nations Mission in East Timor (UNAMET)⁶³ had to be evacuated due to violence on the ground, the situation was likened by many to that in Rwanda and the former Yugoslavia in the early 1990s.⁶⁴ Sensitive to this criticism, Secretary-General Annan called for action to protect the people of East Timor.⁶⁵ In September 1999, the Security Council authorized the establishment of an Australian-led enforcement operation, the International Force for East Timor (INTERFET), to restore peace and security and resolved that a United Nations peacekeeping operation should be established to take over from INTERFET as soon as possible.⁶⁶

In October 1999, the Security Council passed Resolution 1272 establishing the United Nations Transitional Administration in East Timor

⁶²United Nations, 'Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations' (UN doc. A/50/60-S/1995/1), 3 Jan. 1995, para. 33.

⁶³SC res. 1246 of 11 June 1999. The operation was charged with conducting a popular consultation to ascertain whether the East Timorese wanted full independence or autonomy within Indonesia.

⁶⁴T. Findlay, *The Use of Force in UN Peace Operations* (Oxford: OUP for the Stockholm International Peace Research Institute (SIPRI) 2002), 287.

⁶⁵*Ibid.*

⁶⁶SC res. 1264 of 15 Sept. 1999.

(UNTAET). This resolution characterized the continuing situation in East Timor as ‘a threat to peace and security’⁶⁷ and the Security Council invoked Chapter VII and authorized UNTAET to ‘take all necessary measures’ to fulfill its mandate. Its military component was charged with, *inter alia*, providing security and maintaining law and order in the territory, ensuring delivery of humanitarian assistance, providing security for UN personnel and property, and disarming and demobilizing armed groups.⁶⁸ In addition, the Security Council called upon ‘all parties to cooperate with humanitarian and human rights organizations so as to ensure their safety [and] the protection of civilians’.⁶⁹ In September 2000, following the death of three UN staff members, the Security Council authorized UNTAET to ‘respond robustly to the militia threat in East Timor’.⁷⁰

The Security Council’s decision to vest UNTAET with the ability to use considerable offensive force indicates that the pressure to act in the face of a possible genocide in East Timor outweighed the considerable reluctance held by many in the international community to see the Security Council establish a militarized operation that could fail in the same way that the militarized UNOSOM II had so publicly failed earlier in the decade.

*Phase 5: The Brahimi Report and the Invocation of Chapter VII from the Outset*⁷¹

In March 2000, Secretary-General Annan decided to convene a high-level Panel to undertake a thorough review of the UN’s peace and security activities. This resulted in a broad ranging report on peace-keeping, which came to be known as the Brahimi Report after its Chairman, Lakhdar Brahimi.⁷² The Report, which was transmitted in August 2000, has been extremely influential as regards the use of force

⁶⁷SC res. 1272 of 25 Oct. 1999.

⁶⁸Ibid.

⁶⁹Ibid.

⁷⁰SC res. 1319 of 20 Sept. 2000.

⁷¹This fifth phase of operations is distinguished from the operations in the fourth phase primarily on the basis that the Security Council vested the operations with Chapter VII powers from the outset – and did so in a routine manner. It may be noted, however, that with some of the operations considered hereunder, the Chapter VII nature of the operation was progressive. That is to say, only certain tasks were established under Chapter VII but, as time passed and matters on the ground deteriorated, the number and nature of the Chapter VII tasks increased.

⁷²United Nations, ‘Identical Letters Dated 21 August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council [Attaching ‘Report of the Panel on UN Peacekeeping Operations’]’ (the ‘Brahimi Report’) (UN docs A/55/305 and S/2000/809), 21 Aug. 2000, para. 21.

by peacekeeping operations. The Brahimi Report argued that peacekeeping must be reinvented such that it is authorized to ensure security and protect civilians.

In this fifth and current phase, we see that the influence of the Brahimi Report has led to a practice by the Security Council to specifically invoke Chapter VII for some or all of the functions of peacekeeping operations from the outset. An approach whereby peacekeepers are authorized to use force pursuant to Chapter VII represents a clear confirmation by the Security Council that peacekeeping is not longer envisaged as a non-forceful endeavor. Whereas with earlier phases, force was not to be relied upon (phase 1), was only to be relied upon in self-defense as strictly construed (phase 2), was to be relied upon in self-defense as widely construed, though, in practice, generally not used (phase 3) or was authorized only as a last resort in the face of a crisis on the ground (phase 4), with the fifth and current phase, we see a sea change in peacekeeping doctrine. Peacekeeping operations are now routinely authorized to use offensive force ('the necessary action') to protect civilians, UN personnel, and, occasionally, associated bodies or humanitarian workers, as well in order to achieve various other objectives relating to the operation, including disarmament.

The Brahimi Report. The Brahimi Report's treatment of the use of force by peacekeepers was somewhat schizophrenic. On the one hand, it characterized the use of force only in self-defense as one of the 'bedrock principles of peacekeeping' and asserted that it should remain as such.⁷³ It noted, moreover, that 'the United Nations does not wage war. Where enforcement action is required, it has consistently been entrusted to coalitions of willing states'.⁷⁴ On the other hand, however, the Report called for peacekeepers to be 'capable of defending themselves, other mission components and the mission's mandate, with robust rules of engagement',⁷⁵ and referred to an obligation on peacekeepers to protect civilians, within their means.⁷⁶ The Report recommended that peacekeeping missions be given mandates that were more forceful than they had tended to be historically. It observed:

Rules of engagement should not limit contingents to stroke-for-stroke responses but should allow ripostes sufficient to silence a source of deadly fire that is directed at United Nations troops or at the people they are charged to protect and, in particularly

⁷³Brahimi Report, para. 48.

⁷⁴Ibid, para. 53.

⁷⁵Ibid, para. 55.

⁷⁶Ibid., para. 62.

dangerous situations, should not force United Nations contingents to cede the initiative to their attackers.⁷⁷

The Brahimi Report called for bigger, better equipped, more confrontational⁷⁸ forces that would pose a credible deterrent – forces that were ‘sized and configured so as to leave no doubt in the minds of would-be spoilers’ that peacekeeping was no longer ‘non-threatening’⁷⁹ in character.

In short, there is something of a disconnect between the size and level of robustness envisioned for peacekeeping operations by the Report and the circumstances in which such operations would be expected to use force, on the one hand, and the Report’s characterization of self-defense as a ‘bedrock principle’ of peacekeeping and its implication that such peacekeeping operations would not engage in enforcement-type activities, on the other.

Practice. From October 1999 – just before the publication of the Brahimi Report – to the time of writing, the Security Council has authorized 18 peacekeeping operations in 13 countries or regions. Of these, Chapter VII has been invoked from the outset in relation to some or all of the tasks of the operations in all but three of those 13 countries or regions.⁸⁰ Aside from the instances where Chapter VII was invoked in emergency situations as discussed earlier, reliance on Chapter VII in relation to a peacekeeping operation was virtually unheard of previously.⁸¹ With none of these authorizations did the Security Council indicate that the force only be used in self-defense.

⁷⁷Ibid., para. 49.

⁷⁸Ibid., para. 1.

⁷⁹Ibid., para. 51.

⁸⁰Neither United Nations Mission in Ethiopia and Eritrea (UNMEE), (July 2000–July 2008) nor United Nations Supervision Mission in Syria (UNSMIS), (April 2012–Aug. 2012) were vested with Chapter VII powers. Chapter VII was not invoked by the Security Council in relation to the functioning of United Nations Mission in Central African Republic and Chad (MINURCAT) when it was established in Sept. 2007; however, it was strengthened in Jan. 2009 and authorized under Chapter VII to undertake certain tasks. Also during this period, the United Nations Interim Force in Lebanon (UNIFIL) was given a retrospective upgrade in terms of the amount of force it was authorized to use. Chapter VII, however, was not explicitly invoked.

⁸¹Previously, Chapter VII had only been invoked in relation to the functions of peacekeeping operations rarely, as discussed earlier: once implicitly (ONUC) and three times explicitly (UNOSOM II, UNPROFOR and UNTAET). In addition, Chapter VII was invoked in relation to the United Nations Iraq-Kuwait Observer Mission (UNIKOM) in the aftermath of the Gulf War (SC res. 689 of 9 April 1991). With UNIKOM, as with UNPROFOR, the Security Council’s Chapter VII authorization was tempered by a – somewhat incongruous – call for the operation to use force only in self-defense (see

The operations where Chapter VII has been invoked are as follows:

- (1) Sierra Leone
 - United Nations Mission in Sierra Leone (UNAMSIL), October 1999–December 2005.
- (2) East Timor
 - United Nations Transitional Administration in East Timor (UNTAET), October 1999–May 2002 and
 - United Nations Mission of Support in East Timor (UNMISSET), May 2002–May 2005.⁸²
- (3) Liberia
 - United Nations Mission in Liberia (UNMIL), September 2003–present.
- (4) Côte d'Ivoire
 - United Nations Operation in Côte d'Ivoire (UNOCI), April 2004–present.
- (5) Haiti
 - United Nations Stabilization Mission in Haiti (MINUSTAH), April 2004–present.
- (6) Burundi
 - United Nations Operation in Burundi (ONUB), May 2004–December 2006.
- (7) Sudan and South Sudan
 - United Nations Mission in the Sudan (UNMIS), March 2005–July 2011;
 - African Union/United Nations Hybrid Mission in Darfur (UNAMID), July 2007–present;
 - United Nations Organization Interim Security Force for Abyei (UNISFA), June 2011–present and
 - United Nations Mission in the Republic of South Sudan (UNMISS), July 2011–present.
- (8) Democratic Republic of the Congo

United Nations, 'Report of the Secretary-General on the Implementation of Paragraph 5 of Security Council Resolution 678 (1991)' (UN doc. S/22545), 5 April 1991). While the Security Council had previously invoked Chapter VII in resolutions establishing three other peacekeeping missions – UNCRO and UNTAES in Croatia and UNMIK in Kosovo – its use of Chapter VII was not in relation to the functioning of the peacekeeping operation; rather it was directed at the authorization of support operations by member states arising from the same resolutions.

⁸²The United Nations Integrated Mission in Timor Leste (UNMIT) which functioned from Aug. 2006–Dec. 2012 was not vested with an authorization to use force under Chapter VII.

- United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), July 2010–present.⁸³
- (9) Mali
 - United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), April 2013–present.
- (10) Central African Republic
 - United Nations Multidimensional Stabilization Mission in the Central African Republic (MINUSCA), April 2014–present.

The tasks assigned to these peacekeeping operations now routinely include an authorization to use force to protect civilians. The following paragraph is typical such an authorization:

Acting under Chapter VII of the Charter of the United Nations, [the Security Council] [d]ecides that UNMIS is authorized to take the necessary action, in the areas of deployment of its forces and as it deems within its capabilities, to protect United Nations personnel, facilities, installations, and equipment, ensure the security and freedom of movement of United Nations personnel, humanitarian workers, joint assessment mechanism and assessment and evaluation commission personnel, and, without prejudice to the responsibility of the Government of Sudan, to protect civilians under imminent threat of physical violence.⁸⁴

These authorizations tend to be limited to civilians ‘under imminent threat of physical violence’ and only where the protection can be accomplished by the mission ‘within its capabilities’ and ‘within its areas of deployment’. Furthermore, the primacy of the role of the host state – without prejudice to the government’s responsibility – tends to be acknowledged.

With some operations, the level of force authorized goes well beyond what could convincingly be referred to as civilian protection.⁸⁵ In some cases, the force authorized is such that peacekeepers may act as *de facto* parties to internal conflicts. Perhaps the most militarized peacekeeping operation in the UN’s history is the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), established in November 1999. While, as noted above, its mandate was initially non-forceful, it soon expanded such that it was authorized

⁸³This is a re-christened version of the MONUC; see above (note 44).

⁸⁴SC res 1590 of 24 March 2005.

⁸⁵As was seen with the 2011 intervention in Libya, the concept of ‘civilian protection’ may be mean different things to different people, up to and including regime change.

under Chapter VII to protect civilians⁸⁶ and, later, to ‘use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu’.⁸⁷ In 2005, MONUC began to engage in joint operations with the Armed Forces of the Democratic Republic of the Congo against rebel forces. Most recently, on 28 March 2013, the Security Council established a specialized ‘intervention brigade’ for the operation⁸⁸ to consist of three infantry battalions, one artillery and one special force and reconnaissance company to operate under direct command of the Force Commander. It was charged, *inter alia*, with ‘neutralizing armed groups’.⁸⁹

Peacekeeping and the Responsibility to Protect

For reasons that will be elaborated, the Responsibility to Protect doctrine is not considered to have led to the establishment of a further phase relating to the use of force in peacekeeping. Nevertheless, the much-discussed Responsibility to Protect doctrine and its influence on UN peacekeeping warrants examination.

Responsibility to Protect Mark I

At the UN General Assembly in 1999, and again in 2000, Annan called upon the international community to try to find a new consensus on how to approach the difficult issues relating to the interplay between the concept of state sovereignty (and the right of a state to govern its own affairs) and the role of the international community in preventing mass atrocities along the lines of the 1994 Rwandan genocide or the attack by the Serbian government on its own citizens in Kosovo in the late 1990s.⁹⁰ The International Commission on Intervention and State Sovereignty (ICISS) was established in 2000 by the Canadian government in response to Annan’s pleas. The 2001 ICISS Report argued that ‘sovereign states have a responsibility to protect their own citizens from avoidable catastrophe ... but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states’.⁹¹ In

⁸⁶SC res. 1291 of 24 Feb. 2000.

⁸⁷SC res. 1493 of 28 July 2003.

⁸⁸MONUC was renamed United Nations Organization Stabilisation Mission in the Democratic Republic of the Congo (MONUSCO) in 2010.

⁸⁹SC res. 2098 of 28 March 2013.

⁹⁰International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty*, Dec. 2001, <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>, VII.

⁹¹*Ibid.*, VIII.

short, it took the view that when a population is suffering from serious harm and the state is unwilling or unable to halt it, the 'principle of non-intervention yields to the international responsibility to protect'.⁹² Responsibility to Protect was about more than just using force: the Report envisaged a responsibility on the part of the state to prevent atrocities from occurring, a responsibility on the international community to protect victims when the duty to prevent was not being met by the state, and a duty to rebuild.

While the ICISS Report did touch on UN peacekeeping, it did not envisage a forceful role for it.⁹³ It observed:

As is widely recognized, UN peacekeeping strategies, crafted for an era of war between states and designed to monitor and reinforce ceasefires agreed between belligerents, may no longer be suitable to protect civilians caught in the middle of bloody struggles between states and insurgents. The challenge in this context is to find tactics and strategies of military intervention that fill the current gulf between outdated concepts of peacekeeping and full-scale military operations that may have deleterious impacts on civilians.⁹⁴

Peacekeeping operations were envisaged as having an important role in the preventative and post-conflict stages;⁹⁵ however, where force was required to protect populations from their governments, the ICISS Report looked beyond peacekeeping operations. It observed that:

military intervention operations – which have to do whatever it takes to meet their responsibility to protect – will have to be able and willing to engage in much more robust action than is permitted by traditional peacekeeping, where the core task is the

⁹²Ibid., p. XI.

⁹³The ICISS Report makes reference to the Brahimi Report, noting that it focused for the most part on 'traditional peacekeeping and its variations, not the more robust use of military force' and invoking the Brahimi Report's statement that 'the United Nations does not wage war. Where enforcement action is required, it has consistently been entrusted to coalitions of willing states' (ibid., para. 7.2, p. 57). 'The use of only minimum force in self-defence that characterizes traditional peacekeeping would clearly be inappropriate and inadequate for a peace enforcement action, including a military intervention' (ibid., para. 7.26, p. 62). The drafters of the ICISS Report were not aware, of course, of the significant changes in the use of force in peacekeeping that were to occur in the aftermath of the Brahimi Report.

⁹⁴Ibid, para. 1.23, p. 5.

⁹⁵'[H]umanitarian protection operations will be different from both the traditional operational concepts for waging war and for UN peacekeeping operations' (ibid., para. 7.50, p. 66).

monitoring, supervision and verification of ceasefires and peace agreements, and where the emphasis has always been on consent, neutrality and the non-use of force.⁹⁶

Responsibility to Protect Mark II

The Responsibility to Protect concept as envisaged in the ICISS report was never widely embraced by the UN. For the UN, the concept of responsibility to protect begins with the following paragraph from the 2005 Summit Outcome document, where representatives of UN member states, meeting at the head of state or head of government level, affirmed that 'each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity'.⁹⁷ The document provided further:

The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapter VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with the relevant regional organizations as appropriate, should peaceful means be inadequate and [where] national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.⁹⁸

These paragraphs were subsequently endorsed by the Security Council.⁹⁹

Unlike the ICISS approach, the nature of the humanitarian catastrophes are specifically set out and limited to the four listed. Given that paragraphs 138 and 139 represent a consensus of states, rather than the consensus of international experts that led to the ICISS Report, it is perhaps unsurprising that they make clear that collective action must be in accordance with the UN Charter.¹⁰⁰ This has led

⁹⁶Ibid., para 7.2, p. 57.

⁹⁷UN General Assembly, 'UN World Summit Outcome, 2005', 15 Sept. 2005, para. 138.

⁹⁸Ibid., para. 139.

⁹⁹SC res. 1674 of 28 April 2006.

¹⁰⁰The ICISS Report on the other hand noted that 'if the Security Council fails to discharge its responsibility in conscience-shocking situations crying out for action, then it is unrealistic to expect that concerned states will rule out other means and forms of action to meet the gravity and urgency of these situations' (ICISS, *The Responsibility to Protect*, para. 6.39, p. 55).

to some critics disparaging the revised approach as being 'R2P-lite'.¹⁰¹

In a 2009 report on the implementation of the (revised) Responsibility to Protect doctrine, the Secretary-General envisaged a three-pillared strategy for advancing the Responsibility to Protect agenda: (1) a responsibility of the state to prevent the listed crimes from occurring, (2) a responsibility of the international community to provide assistance and capacity-building in meeting its obligations and (3) a responsibility of member states of the UN to respond collectively when a state is manifestly failing in its obligations.¹⁰² As regards the first pillar, matters are clearly in the hands of the state alone. A role for peacekeeping is, however, envisaged in relation to the second pillar – though peacekeeping of a non-forceful nature. The Secretary-General recognizes that, with the consent of the state in question, military units may be deployed for a 'range of non-coercive purposes, such as ... peacekeeping'.¹⁰³ Finally, as regards the obligation to respond, the report stresses that 'pillar three encompasses, in addition to more robust steps, a wide range of non-coercive and non-violent response measures under chapters VI and VIII of the Charter'.¹⁰⁴ While there may be a role for peacekeeping with regard to these non-coercive and non-violent measures,¹⁰⁵ no Chapter VII role is envisaged.

It was in the context of the atrocities taking place in the Darfur region of Sudan that the Security Council invoked the (revised) Responsibility to Protect doctrine for the first time in a country-specific circumstance in the context of UN peacekeeping. This was, however, far from an unqualified success. In August 2006, the Security Council, in Resolution 1706, decided that the mandate of UNMIS – a peacekeeping operation established in relation to the north-south conflict in the Sudan – should 'be expanded ... [such] that it shall deploy to Darfur' and undertake a variety of militarized tasks, and sought the consent of the Sudanese government for the deployment.¹⁰⁶ The Security Council, in the resolution's preamble, made reference to its earlier endorsement of paragraphs 138 and 139 of the World Summit document. The government of Sudan did not consent and, moreover, voiced its view that Resolution

¹⁰¹Edward C. Luck, 'The United Nations and the Responsibility to Protect', Policy Analysis Brief of the Stanley Foundation (Aug. 2008), 3.

¹⁰²United Nations, 'Implementing the Responsibility to Protect [Report of the Secretary-General]', (UN doc. A/63/677), 12 Jan. 2009.

¹⁰³The examples given are peacekeeping operations charged with preventive deployment, such as those in the former Yugoslav Republic of Macedonia during the period 1992–99 (*ibid.*, paras. 41–2).

¹⁰⁴*Ibid.*, para. 52.

¹⁰⁵For example, the Report envisages that where the UN has a peacekeeping presence, the operation could have a role of countering incitement to racial hatred (*ibid.*, para. 55).

¹⁰⁶SC res. 1706 of 31 Aug. 2006.

1706 was illegal. As such, the revision to the mandate of UNMIS envisioned in resolution 1706 did not occur.

It would appear that the inclusion by the Security Council of the reference to paragraphs 138 and 139 was less in the nature of an invocation of the (revised) Responsibility to Protect doctrine in relation to a forceful peacekeeping operation and more as a way to underline to the Sudanese government that if it did not agree to a revised UNMIS, it may be considered to be failing in its duty to protect and, as such, be subject to collective action as envisaged in paragraph 139. If this reference was a threat, it was one that the Sudan did not take seriously – perhaps justifiably so. When the Security Council later passed resolution 1769 authorizing a new, hybrid, operation, the African Union/United Nations Hybrid Mission in Darfur (UNAMID),¹⁰⁷ it had to delete a draft paragraph invoking paragraphs 138 and 139, in order for the draft resolution to pass.¹⁰⁸

In short, it does not appear that the fact that the Security Council has endorsed paragraphs 138 and 139 of the World Summit Outcome document and has even invoked the paragraphs in the context of specific peacekeeping activities, has much bearing on the use of force in peacekeeping operations. After all, neither version of the doctrine envisages a role for forceful peacekeeping. While it is indeed the case that the Security Council may base a finding of the existence of a threat to international peace and security (and an attendant invocation of Chapter VII) upon a state's failure to uphold such a responsibility, as we have seen above, it has already been routinely invoking Chapter VII in peacekeeping operations since the late 1990s. Nevertheless, because the doctrine of the Responsibility to Protect corresponds with the Brahimi Report's emphasis on civilian protection, it seems unlikely that the Security Council will reverse its position on the authorization of Chapter VII force that has developed since the turn of the century.

The Future

While the focus of this discussion has been on the development of the use of force in UN peacekeeping operations, rather than whether the use of this force has been successful, it is fitting to close with a few remarks on how these post-Brahimi operations are performing.¹⁰⁹ After all, the success or failure of the operations and their use of force will

¹⁰⁷SC res. 1769 of 31 July 2007.

¹⁰⁸A. J. Bellamy, *Global Politics and the Responsibility to Protect: From Words to Deeds* (Abingdon, UK: Routledge 2011), 29.

¹⁰⁹For a detailed analysis of the efficacy of the use of force by UN peacekeeping operations, see James Sloan, *The Militarisation of Peacekeeping in the Twenty-first Century* (Oxford: Hart 2011).

surely have an impact on whether the UN's current approach to the use of force will continue or be modified.

Although it is difficult to argue on a counter-factual basis, it seems reasonable to assume that a significant number of civilians have been protected by the expanded use of force in the mandates of twenty-first century peacekeeping operations. There have been significant successes among the peacekeeping operations authorized to use force pursuant to Chapter VII. Among the successes, many would include UNTAET in East Timor, ONUB in Burundi and, latterly, UNAMSIL.¹¹⁰ Unfortunately, however, when a UN peacekeeping operation is functioning well, it is unlikely to make the news. What is frequently considered newsworthy, however, are the frequent incidents where peacekeeping operations charged with civilian protection (or the use of force more broadly) fail to meet their objectives, resulting in the deaths of civilians and/or peacekeepers themselves.¹¹¹ Sometimes the results are mixed. Press coverage of the functioning of MONUSCO, for example, characterized its peacekeepers as having timidly stood by in November 2012 when Rwandan rebels conquered the city of Goma. Where, as with MONUSCO, the peacekeeping operation is charged with fighting alongside government forces, additional criticism can arise if those government forces are notorious violators of human rights.¹¹² However, when the recently-strengthened MONUSCO participated in military activities alongside the Congo government in 2013, the same rebels surrendered, providing a rare victory a 'phase 5' peacekeeping operation, as well as for the Congo government.

Although criticisms remain, there appears to be a continued determination in the UN to authorize peacekeeping operations under Chapter VII, calling on them to use force beyond self-defense and beyond defense-of-mandate and appointing them as civilian protectors to the extent possible. As noted, a concern for the safety of civilians and a recognition that governments do not always serve their citizens well – as elaborated in the Responsibility to Protect doctrine – is, more than ever

¹¹⁰After a spate of kidnapping of UN peacekeepers, a UK military force was sent to Sierra Leone to assist UNAMSIL. Subsequently, the peacekeeping force was able to achieve many of its objectives.

¹¹¹A recent series of articles in *Foreign Policy* offer a deeply disturbing analysis of UNAMID's inability to protect civilians and, indeed, itself. (Colum Lynch, 'They Just Stood Watching', 'Now We Will Kill You' and 'A Mission That Was Set Up to Fail', *Foreign Policy*, <http://www.foreignpolicy.com/articles/2014/04/07/special_report_darfur_united_nations_peacekeeping_investigation>).

¹¹²See, e.g., Christoph Vogel, 'Congo: Why UN peacekeepers have a credibility problem: Unravelling a war involving nine countries and 40 rebel groups was never going to be easy. But there's a glimmer of hope', *The Guardian.com*, 30 Aug. 2013, <<http://www.theguardian.com/world/2013/aug/30/congo-un-peacekeepers-problem>>.

before, part of the ethos of the UN. For now, at any rate, it appears that the benefits of this modified approach to the use of force by peacekeepers are considered to outweigh the problems. Whether that will continue to be the case remains to be seen.

Note on Contributor

James Sloan is a Senior Lecturer in International Law at the University of Glasgow, School of Law, where he specializes in the Law of the United Nations, International Human Rights Law and International Criminal Law. He was Visiting Professor at the University of California, Hastings College of the Law. Prior to joining the School of Law, he worked for the United Nations in different capacities, including for the UN Political Office in Bougainville. He has advised a number of intergovernmental and non-governmental organizations on international legal matters. He has been admitted to the Bars of New York and Ontario.

Bibliography

- Akande, Dapo, 'Clearing the Fog of War? The ICRC's Guidance on Direct Participation in Hostilities', *ICLQ* 59/1 (2010), 180–92.
- Akashi, Yasushi, 'The Use of Force in a United Nations Peace-Keeping Operation: Lessons Learnt from the Safe Areas Mandate', *Fordham International Law Journal* 19 (1995–96), 312–23.
- Bellamy, Alex J., *Global Politics and the Responsibility to Protect: from Words to Deeds* (London: Routledge 2011).
- Chesterman, Simon, *The Use of Force in UN Peace Operations* (External Study for the United Nations Department of Peacekeeping Operations 2004), <<http://smallwarsjournal.com/documents/useofforceunpko.pdf>>.
- Findlay, Trevor, 'The Use of Force by Peacekeepers Beyond Self-Defence: Some Politico-Legal Implications', in Alex Morrison, Douglas A. Fraser and James D. Kiras (eds), *Peacekeeping with Muscle: The Use of Force in International Conflict Resolution* (Clementsport, Nova Scotia: The Canadian Peacekeeping Press 1997), 51–76.
- Findlay, Trevor, *The Use of Force in UN Peace Operations* (Oxford: OUP for the Stockholm International Peace Research Institute (SIPRI) 2002).
- Goulding, Marrack, 'The Evolution of United Nations Peacekeeping', *International Affairs (Royal Institute of International Affairs 1944-)* 69/3 (1993), 451–64.
- Gray, Christine *International Law and the Use of Force*, 3rd ed. (Oxford: OUP 2008).
- Higgins, Rosalyn, *United Nations Peacekeeping 1946–1967: Documents and Commentary*, Vol. III: *Africa* (Oxford: OUP 1980).
- Higgins, Rosalyn, 'Peace and Security: Achievements and Failures', *European Journal of International Law* 6 (1995), 445–60.
- International Commission on Intervention and State Sovereignty, *The Responsibility to Protect: Report of the International Commission on Independence and State Sovereignty*, Dec. 2001, <<http://responsibilitytoprotect.org/ICISS%20Report.pdf>>.
- International Committee of the Red Cross, 'Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law' (Geneva 2009), <<http://www.icrc.org/eng/resources/documents/publication/p0990.htm>>.
- International Court of Justice, 'Certain Expenses of the United Nations' (Article 17, Paragraph 2, of the Charter), Advisory Opinion of 20 July 1962 (ICJ Reports 1962), 151.

- Luck, Edward C., 'The United Nations and the Responsibility to Protect', Policy Analysis Brief of the Stanley Foundation (Aug. 2008).
- Morrison, Alex, Douglas A. Fraser and James D. Kiras (eds), *Peacekeeping with Muscle: The Use of Force in International Conflict Resolution* (Clementsport, Nova Scotia: The Canadian Peacekeeping Press 1997).
- Murphy, Ray, 'United Nations Peacekeeping in Lebanon and Somalia, and the Use of Force', *Journal of Conflict and Security Law* 8/1 (2003), 71–99.
- Rikhye, Indarjit, 'The Use of Force in International Conflict Resolution', in Alex Morrison Douglas A. Fraser and James D. Kiras (eds), *Peacekeeping with Muscle: The Use of Force in International Conflict Resolution* (Clementsport, Nova Scotia: The Canadian Peacekeeping Press 1997).
- Roberts, Adam, 'From San Francisco to Sarajevo: The UN and the Use of Force', *Survival* 37/4 (1995), 7–28.
- Sloan, James, *The Militarisation of Peacekeeping in the Twenty-first Century* (Oxford: Hart 2011).
- United Nations, 'Second and Final Report of the Secretary-General on the Plan for an Emergency International United Nations Force Requested in Resolution 998 (ES-I), Adopted by the General Assembly on 4 November 1956', (UN doc. A/3302), 6 Nov. 1956.
- United Nations, 'Report to the General Assembly in Pursuance of General Assembly resolution 1123 (XI) on Israeli Withdrawal', (UN doc. 3512/1957), 24 Jan. 1957.
- United Nations, 'Summary Study of the Experience Derived from the Establishment and Operation of the Force [Report of the Secretary-General]', (UN doc. A/3943), 9 Oct. 1958.
- United Nations, 'Report by Secretary-General U Thant on the Deployment of UN Forces in Cyprus', (UN doc. S/5960), 10 Sept. 1964.
- United Nations, 'Report of the Secretary-General on the Implementation of Security Council Resolution 340 (1973)', (UN doc. S/11052/Rev.1), 27 Oct. 1973.
- United Nations, 'Further Report of the Secretary-General Pursuant to Security Council Resolution 721 (1991)', (UN doc. S/23592), 15 Feb. 1992.
- United Nations, 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping' (UN doc. A/47/277-S/24111), 17 June 1992.
- United Nations, 'Note [Transmitting the Statement by the President of the Security Council Concerning the Item Entitled 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping']', (UN doc. S/25859), 28 May 1993.
- United Nations, 'Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations' (UN doc. A/50/60-S/1995/1), 3 Jan. 1995.
- United Nations, 'Identical Letters Dated 21 August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council [Attaching 'Report of the Panel on UN Peacekeeping Operations']', (UN docs A/55/305 and S/2000/809), 21 Aug. 2000.
- United Nations, 'Report of the Secretary-General on the Implementation of Paragraph 5 of Security Council Resolution 678 (1991)' (UN doc. S/22545), 5 April 1991.
- United Nations General Assembly, 'UN World Summit Outcome, 2005', (UN doc. A/Res/60/1), 24 Oct. 2005.
- United Nations, 'Implementing the Responsibility to Protect [Report of the Secretary-General]', (UN doc A/63/677), 12 Jan. 2009.
- Vogel, Christoph, 'Congo: Why UN peacekeepers have a credibility problem: Unravelling a war involving nine countries and 40 rebel groups was never going to be easy. But there's a glimmer of hope', *The Guardian.com*, 30 Aug. 2013, <<http://www.theguardian.com/world/2013/aug/30/congo-un-peacekeepers-problem>>.
- White, Nigel, *The United Nations and the Maintenance of International Peace and Security* (Manchester: MUP 1990).