

THE ROLE OF THE UNITED NATIONS IN PEACEKEEPING AND TRUCE-MONITORING : WHAT ARE THE APPLICABLE NORMS

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« Who killed collective security ? » As late as 1989, when the Cold War was winding down but still dominating foreign affairs, the Cold War policymakers would not have answered this question uniformly, for it was the Cold War itself that made realization of collective security, as envisaged by the drafters of the U.N. Charter, impossible. When the Charter's original vision of collective security failed because of superpower deadlock in the Security Council (1), the U.N. had no mechanism for responding to threats to international peace and security. The Security Council was able to create the United Nations Truce Supervision Organization (UNTSO) and other operations consisting of strictly truce-monitoring observers (2), but was not able to agree on deploying armed troops in foreign territories, whether directly or by authorization of unilateral action.

Under these conditions the General Assembly created the United Nations Emergency Force (UNEF) in the Sinai, in response to the Security Council's inability to take action on its own (3). The principles behind UNEF were a major departure from the past practice of sending only a few unarmed observers, whose effectiveness depended entirely on the goodwill of the

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(1) For an account of the disagreements between the U.S. and USSR that stymied the work of the Military Staff Committee and Collective Measures Committee, see BOWERT, D.W., *United Nations Forces : A Legal Study*, 12-18 (1964).

(2) *E.g.*, the United Nations Military Observer Group in India and Pakistan (UNMOGIP), and later the United Nations Observer Group in Lebanon (UNOGIL) and United Nations Yemen Observer Mission (UNYOM).

(3) The General Assembly took up the matter in Emergency Special Session, U.N. GAOR, 1st Emer. Spec. Sess., 561st plen. mtg., at 2, U.N. Doc. A/PV.561 (1956), pursuant to the « Unit-ing For Peace » Resolution, G.A. Res. 377, U.N. GAOR, 5th Sess., Supp. No. 20, at 10 (1950). It called for a cease-fire in G.A. Res. 997, U.N. GAOR, 1st Emer. Spec. Sess., Supp. No. 1, at 2 (1956), and established UNEF in G.A. Res. 1000, para. 1, U.N. GAOR, 1st Emer. Spec. Sess., Supp. No. 1, at 3 (1956).

parties. Unlike UNTSO and UNMOGIP (United Nations Military Observer Group in India and Pakistan), UNEF had 6000 soldiers (4) who could defend their positions by force.

UNEF and similar present day forces had and still have no offensive capability, however. A U.N. force with the power to enforce a peace settlement can only be created with a specific finding by the Security Council of the existence of a threat to the peace (or breach of the peace or act of aggression) (5), which enables it to apply forceful measures under Chapter VII (6). Peacekeeping forces, on the other hand, have powers that go beyond the precise meaning of Chapter VI recommendatory measures; the Charter basis for non-Chapter VII peacekeeping forces can be characterized as being under « Chapter 6 1/2 » (7) — a force able to deploy and operate only with the concurrence and cooperation of the host state, but once on the ground, able to exert a certain amount of coercion (8).

For past peacekeeping efforts this kind of scenario has been made possible by more-or-less ideal conditions for peace — two or more separate, distinguishable parties who have made some sort of truce with each other and who welcome the U.N.'s effort in helping them build a stronger peace. This is the case of UNEF, UNEF II, the United Nations Disengagement Observer Force (UNDOF), the Multinational Force and Observers (MFO), and in a sense, the United Nations Force in Cyprus (UNFICYP). The conditions faced by today's new generation of peacekeeping forces are not so ideal. Consenting host governments may not have full control in the entire territory of the state; party cooperation may be unreliable; parties opposed to peace, or even who claim to support peace, may attack U.N. troops. As U.N. peacekeeping force are called into situations where the conditions for peace are less than ideal, the applicable norms may change (9).

I. — HISTORICAL NORMS

As the first U.N. peacekeeping force with troops deployed in battalion strength, UNEF served as a precedent for future operational norms. Five

(4) UNEF's maximum strength, reached in 1957, was 6073. UNITED NATIONS, *The Blue Helmets*, 421 (2d ed. 1990).

(5) This is the language of the U.N. CHARTER, art. 39.

(6) U.N. CHARTER, arts. 41, 42.

(7) This is the term coined by Secretary-General Hammarskjöld.

(8) For a more thorough analysis of the constitutionality of peacekeeping, see HALDERMAN, « Legal Basis for United Nations Armed Forces », 56 *Am.J.Int'l L.*, 971 (1962).

(9) The analysis of the norms discussed herein is focused almost exclusively on the experiences of peacekeeping efforts involving the use of troops, *i.e.* forces as opposed to observer groups. To the extent that the norms apply to both, *i.e.* in consent, impartiality, and constituency, so does the analysis thereof. The problems surrounding rules of engagement and command and control are not applicable to observer groups who at best are only lightly armed. This article therefore does not discuss UNTSO, UNGOMIP, or subsequent observer missions in detail.

norms developed from UNEF's practice in the field : (1) consent of the host state to the presence of the force ; (2) impartiality of the force and non-intervention in the state's domestic affairs ; (3) defensive rules of engagement ; (4) U.N. control of the forces participating in its operations ; and (5) restrictions on the constituency of U.N. peacekeeping forces : that they be international in character and that permanent members of the Security Council (the P5) be excluded from participating (10).

A. — *The Legal and Practical Necessities
of Host-State Consent*

Consent of the state in which the peacekeeping force is to be deployed is the fundamental prerequisite to any peacekeeping operation. Indeed, Secretary-General Boutros-Ghali has defined the term « peacekeeping » as « the deployment of a United Nations presence in the field, hitherto *with the consent of all parties concerned* » (emphasis added) (11). A non-Chapter VII peacekeeping force may be deployed only with the permission of the host state, and may remain there only at its sufferance. This norm can be derived from the Charter thusly :

Because of the principle of sovereign equality of nations (12), U.N. peacekeeping operations cannot violate a state's sovereignty. Article 2(7) of the Charter provides that « Nothing ... shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state. » This restriction seemingly precludes a peacekeeping force from performing the most basic of functions (*e.g.* border control and disarmament). Indeed, a force could not even be deployed without violating a state's sovereignty. As measures taken by the Security Council under Chapter VI are purely recommendatory (13), there is no clear constitutional basis under Chapter VI upon which the Security Council could, at its own initiative, draw personnel, equipment, and funding from member states, and send those forces to another state (14). Such an action under Chapter VI would be in violation of Article 2(7). A force established under Chapter VII does not carry this restriction, as the Security Council is empowered to make binding decisions (15) authorizing the use of armed force against

(10) *Second and Final Report of the Secretary-General*, U.N. GAOR, 1st Emer. Spec. Sess., Annexes, Agenda Item 5, at 20 (1956). Four of the norms are set forth in paras. 6, 8, and 9. The rules of engagement were promulgated by U.N. practice.

(11) BOUTROS-GHALI, B., *An Agenda For Peace*, 11 (1992).

(12) U.N. CHARTER, art. 2, para. 1. « The Organization is based on the principle of the sovereign equality of all of its Members. »

(13) U.N. CHARTER, art. 36.

(14) This was the USSR's objection to the establishment of UNEF. U.N. GAOR, 1st Emer. Spec. Sess., 567th mtg., para. 292, U.N. Doc. A/PV.567 (1956).

(15) U.N. CHARTER, art. 25.

a state (16), without regard to the principle of sovereignty (17). However, Chapter VII peacekeeping forces were, until recently, virtually unknown (18), as peacekeeping operations were traditionally established under « Chapter 6 1/2 ». Without the firm ground of Chapter VII for the soldiers in the field to stand on, some greater authority must enable them to exercise their duties. This authority is, historically, the consent of the state in which the force is to be deployed.

The centrality of host state consent to the legal validation, as well as the practical needs, of a non-Chapter VII operation is best illustrated by Egypt's withdrawal of its consent to UNEF in 1967. In mounting UNEF, the Secretary-General and the General Assembly had both recognized the prerequisite of Egyptian consent to the stationing of foreign troops in Egyptian territory (19). No doubt keenly aware of the risk that Egypt might unilaterally and without cause revoke such consent — in which case UNEF would have to withdraw — the Secretary-General had attempted to reach an understanding with Egypt that its consent would not be revoked prematurely. Egypt was unwilling to guarantee its consent in this manner (20); the negotiation, however, did result in a memoire in which Egypt promised that « when exercising its sovereign rights on ... the presence ... of UNEF, it will be guided, *in good faith*, by its acceptance of General Assembly Resolution 1000 » (emphasis added) (21).

While Egypt did grant consent to the presence of a peacekeeping force, resulting in the immediate deployment of UNEF (22), its « good faith » memoire did not adequately safeguard the force from the kind of untimely revocation of consent that the Secretary-General had feared. In April of 1967, increasingly forceful Israeli retaliations against PLO raids culminated

(16) U.N. CHARTER, art. 42.

(17) U.N. CHARTER, art. 2, para. 7. « 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 ... but this principle shall not prejudice the application of enforcement measures under Chapter VII. » (emphasis added)

(18) The first such operations having recently been established in the former Yugoslavia (UNPROFOR), S.C. Res. 770 (1992), and Somalia (UNOSOM and UNOSOM II), S.C. Res. 814 (1993). See Section II of this article for further discussion of these and other recently formed peacekeeping operations. *N.B.*: although the Security Council invoked Chapter VII in response to Iraq's invasion of Kuwait, the ensuing military operation was never meant to be a *peacekeeping* operation.

(19) In G.A. Res. 1001, para. 1, U.N. GAOR, 1st Emer. Spec. Sess., Supp. No. 1, at 3, (1956), the General Assembly approved the Secretary-General's *Second and Final Report*, *supra* note 10, para. 9, in which he said « the Force ... would be limited in its operations to the extent that consent of the parties concerned is required under generally recognized international law. While the General Assembly is enabled to *establish* the Force ..., it could not request the Force to be *stationed* or *operate* [in] a given country without the consent of the Government of that country » (emphasis in original).

(20) *Report of the Secretary-General on the withdrawal of UNEF*, Add. 3, para. 72, U.N. GAOR, 5th Emer. Spec. Sess., Annexes, Agenda Item 5, at 11, U.N. Doc. A/6730/Add. 3 (1967).

(21) U.N. Doc. A/3375, Annex, para. 1 (1956). The Resolution specified is that which created UNEF. See note 3, *supra*.

(22) *The Blue Helmets*, *supra* note 4, at 52.

in an exchange between Israeli and Syrian forces, resulting in heightened tensions throughout the Middle East (23). By mid-May, Egypt had amassed 20.000-30.000 troops near UNEF positions. The Egyptian Commander-in-Chief requested the UNEF Commander to withdraw from the border (24). When UNEF did not withdraw, Egyptian troops occupied U.N. positions and forced U.N. troops to vacate (25). On the same day, the Secretary-General received a formal notice from Egypt terminating its consent to the presence of UNEF and requesting the force's withdrawal (26). The Secretary-General reluctantly complied, and by June UNEF had left the Sinai (27). Immediately afterward, on June 5, the Six-Day War began.

The Secretary-General's decision was widely criticized (28), but as he himself put it in his report on UNEF's withdrawal,

There is no official United Nations document on the basis of which any case could be made that there was any limitation on the authority of the Government of Egypt to rescind its consent at its pleasure, or which would indicate that the United Arab Republic had in any way surrendered its right to ask for and obtain at any time the removal of UNEF from its territory (29).

The Secretary-General also justified UNEF's withdrawal on the basis that its usefulness as a buffer between Egypt and Israel had ceased (30), and that UNEF's new status as *persona non grata* would make its situation « both humiliating and untenable » (31). In any event, UNEF itself was disintegrating : Egypt's notices to UNEF's participating states of its withdrawal of consent resulted in two participants withdrawing their contingents (32). Alan James suggests yet another explanation : that the U.N.'s ability to engage in peacekeeping operations in the future necessitated its not overstaying its welcome in Egypt (33). Whatever force guided the Secretary-General's decision to withdraw UNEF, it was clear that once Egypt had withdrawn its consent to UNEF's presence on its territory, the force was no longer viable.

(23) *Id.*, at 75-76.

(24) *Report of the Secretary-General on the withdrawal of UNEF*, *supra* note 20. See also U.N. Doc. A/6669 (1967).

(25) *Id.*, Add. 3, paras. 16-19. For a more detailed account of the events leading up to UNEF's withdrawal, see BOWETT, D., *supra* note 1.

(26) *The Blue Helmets*, *supra* note 4, at 77.

(27) *Id.* See also *Report of the Secretary-General on the withdrawal of UNEF*, *supra* note 20, Add. 2, and *Report of the Secretary-General on the situation in the Near East*, para. 13, U.N. SCOR, 22nd Sess., Supp. for Apr.-Jun. 1967, at 112 (1967).

(28) It was called « hasty » and « precipitous » in some circles. *Report of the Secretary-General on the withdrawal of UNEF*, *supra* note 20, Add. 3, para. 34.

(29) *Id.*, Add. 3, para. 40.

(30) *Report of the Secretary-General on the situation in the Near East*, *supra* note 27, para. 11.

(31) *Report of the Secretary-General on the withdrawal of UNEF*, *supra* note 20, Add. 3, para. 49.

(32) *Id.*, Add. 3, para. 23. The two participants were India and Yugoslavia. *The Blue Helmets*, *supra* note 4, at 77.

(33) JAMES, A., *Peacekeeping In International Politics*, 222 (1990).

In contrast to Egypt's consent and cooperation with UNEF (before its unilateral decision to revoke it), the United Nations Interim Force in Lebanon (UNIFIL) has never had the consent and cooperation of the parties in control of its area of operations. The Security Council established UNIFIL in March of 1978 (34), after Israel had invaded Lebanon in response to the 11 March PLO raid near Tel Aviv (35). UNIFIL's mandate was to confirm withdrawal of Israeli troops from southern Lebanon, stabilize the situation, and return control of the area to the Lebanese government (36).

The Secretary-General had envisioned the full cooperation of both Israel and Lebanon, but such cooperation proved not to be forthcoming. UNIFIL had the consent of the Lebanese government, but Beirut was not in control of the forces in southern Lebanon. In reality, the PLO and Christian militia led by Major Saad Haddad, were the local authority, and both objected to the presence of UNIFIL (37). By June, Israel had withdrawn from Lebanon, but instead of turning the area over to UNIFIL's control, the IDF turned it over to the Christian militia, whom the Israelis had heavily armed (38).

Major Haddad's forces impeded UNIFIL's deployment (39), denied the U.N. freedom of movement, and robbed UNIFIL positions. In addition, the PLO continually infiltrated UNIFIL's enclave (40). By its own admission, the government of Lebanon had no control over the PLO forces (41) and Israel was apparently unwilling to exert its influence on Major Haddad's Christian militia. Israel continues to maintain a presence and move freely in Lebanese territory (42). The situation in Lebanon has deteriorated over time with the introduction of two new factions, Amal and Hezbollah (43). Having never had the consent and cooperation of the parties on the ground, UNIFIL is unable today to fulfil its mandate (44) and its

(34) S.C. Res. 425 (1978).

(35) *Letter from Israel*, U.N. SCOR, 33rd Sess., Supp. for Jan.-Mar. 1978, at 55, U.N. Doc. S/12598 (1978). Israel invaded Lebanon on the night of 14-15 March. *Letter from Lebanon*, U.N. SCOR, 33rd Sess., Supp. for Jan.-Mar. 1978, at 56, U.N. Doc. S/12600 (1978).

(36) *Report of the Secretary-General*, U.N. SCOR, 33rd Sess., Supp. for Jan.-Mar. 1978, at 61, U.N. Doc. S/12611 (1978).

(37) *The Blue Helmets*, *supra* note 4, at 119.

(38) *Id.*, at 124. For further accounts of the complex politics of the situation, see BOWETT, D., *supra* note 1, and JAMES, A., *supra* note 33.

(39) *Report of the Secretary-General on UNIFIL*, secs. II (D)-(F), U.N. SCOR, 33rd Sess., Supp. for Jul.-Sep. 1978, at 54, U.N. Doc. S/12845 (1978).

(40) *The Blue Helmets*, *supra* note 4, at 126-29.

(41) *Letter from Lebanon*, *supra* note 35.

(42) *The Blue Helmets*, *supra* note 4, at 150; JAMES, A., *supra* note 33, at 341.

(43) JAMES, A., *supra* note 33, at 344-48.

(44) *Report of the Secretary-General*, *supra* note 36, paras. 2(a)-(e).

effectiveness, as a result of lack of consent, has been greatly diminished (45).

In contrast to UNEF and UNIFIL, where lack of full consent and cooperation has hampered their missions, peacekeeping forces operating with the full consent and cooperation of all parties have been quite successful at fulfilling their mandates. A good example of this is the Multinational Force and Observers (MFO), a non-U.N. peacekeeping force which operates along the Egyptian-Israeli border. The MFO was established by a Protocol signed by Egypt and Israel (46), following their peace treaty (47). The operational norms for which host-state consent is crucial are all spelled out in the Protocol, such as freedom of movement (48), privileges and immunities (49), inviolability of MFO installations (50), right to unrestricted communication (51), use of facilities and utilities (52), and procurement of local goods and services (53). An attempt to deny MFO personnel these rights constitutes a violation of the Protocol, which is reported to the parties in accordance with MFO reporting procedures. A violation of these provisions is a violation of the bilateral agreement whence the MFO derives its powers, and the denial of freedom of movement is a direct violation of the peace treaty, the provisions of which both parties are mutually committed to implementing. Such a breach seems to be regarded by both parties as more grave, and in greater need of rectification, than a violation of what may appear on the surface to be a foreign organ (*i.e.* the U.N.) imposing a solution which the parties may feel politically compelled to accept. Being a creation of the parties to the peace treaty — and only those parties — the MFO enjoys the highest form of consent.

Host-state consent, therefore, is the most important condition for a successful non-Chapter VII peacekeeping operation. Without it, the presence of the U.N. force is tantamount to hostile occupation, and the force has none of the operational capabilities that would enable it to carry out its mission fully and effectively (54).

(45) Alan James contends that UNIFIL has satisfied the requirement of consent « in a loose way », JAMES, A., *supra* note 33, at 349, but his observation appears to follow only from the political convenience of UNIFIL's presence to Israel, Lebanon, Syria, the South Lebanese Army, and Amal. This, however, constitutes neither the *de jure* nor the *de facto* consent that U.N. peacekeepers must have in order to carry out their missions.

(46) MFO Protocol, Aug. 3, 1981, Egypt-Israel, 20 ILM 1190-1191.

(47) Treaty of Peace, Mar. 26, 1979, Egypt-Israel, 18 ILM 362, 366.

(48) MFO Protocol, *supra* note 46, Annex, para. 14.

(49) *Id.*, Annex, para. 33 ; Appendix, para. 23.

(50) *Id.*, Appendix, para. 19.

(51) *Id.*, Appendix, paras. 29-31.

(52) *Id.*, Appendix, paras. 33-34.

(53) *Id.*, Appendix, paras. 36-37.

(54) For a perspective on the U.N.'s general approach to host-state consent, see *Model Status of Forces Agreement*, U.N. Doc. A/45/594 (1990), which details the aspects of a state's consent to a peacekeeping operation posted on its territory.

B. — *U.N. Impartiality Toward the Parties*

In a non-Chapter VII context, the U.N. must maintain its impartiality throughout the course of the operation. It may not take sides in a conflict, rebellion, or insurgency; nor may it interfere in the internal affairs of a state. If the United Nations is to be an effective mediator of disputes between nations or factions, it must treat the disputants as objectively and impartially as possible. This principle can be traced back to Article 2(1) of the Charter, which is the instrument through which the U.N. embodies the principle of sovereign equality of nations (55). If members are to have equal status in the U.N., the U.N. itself must treat its member states equally. To support one member in a war, for example, where no single state is clearly in flagrant violation of international law, would violate that principle, as the sovereign states would no longer be equal in the eyes of the U.N.

Similarly, the U.N. cannot support one side in a civil conflict (56). To support a rebellion against an otherwise recognized government would imply that the U.N. does not consider that state's government to have equal standing with legitimate governments of other states (57). To support a government against a rebel movement would put the U.N. in the position of not being able or willing to recognize the rebels' full equality with other governments, should the faction ultimately come to power. This principle extends to peacekeeping forces, for in order to secure the cooperation and trust of both sides of a dispute, the mission must treat both sides as objectively and impartially as possible.

The principle of impartiality is imputed to peacekeeping forces in another way: the Secretary-General is the « chief administrative officer » of the U.N. (58), and has the ultimate authority and responsibility over U.N. peacekeeping operations, after the organ establishing the operation (usually the Security Council). The Secretary-General and his staff are required to insulate themselves from the control of any national government and must also « refrain from actions which might reflect on their positions as international officials responsible only to the Organization » (59). This provision serves to apply the principle of impartiality to the Secretariat, for in order

(55) See note 12, *supra*.

(56) Under traditional international law, support of a belligerent in a civil war, though an act of war against the other belligerent, was allowable under the laws of war. Support of an insurgency, however, violated the laws of war. For a synopsis of the traditional international law of war, see OPPENHEIM, *International Law*, Vol. II, secs. 59 and 298; Vol. I, sec. 134 (1905). Since war is no longer permissible under international law, assistance to belligerents is also a violation of international legal norms.

(57) It is true that the U.N. has supported rebel movements and opposition groups when governments are clearly in violation of international law, *e.g.*, the white minority governments of South Africa and Southern Rhodesia, but such support has its perils.

(58) U.N. CHARTER, art. 97.

(59) U.N. CHARTER, art. 100, para. 1.

to comply with this provision, the Secretary-General, the Secretariat and its organs, including peacekeeping operations, must be as unbiased as possible in performing their duties, absent Security Council instructions to the contrary.

In the context of a civil war, the principle of impartiality is related to the principle of non-intervention as embodied in Article 2(7). When the U.N. takes sides in a domestic conflict, not only does it interfere in the domestic affairs of a state, in violation of Article 2(7), but it also loses its impartiality and objectivity and is unable to fulfil its traditional role as mediator.

The U.N.'s involvement in a civil war evokes a vexing question : at what point is an internal conflict no longer internal ? Until the Security Council (or General Assembly) finds the situation to be « likely to endanger the maintenance of international peace and security » (60), the Article 2(7) principle of non-interference applies and the U.N. has no jurisdiction to take even Chapter VI recommendatory measures (61). As Steven Ratner notes in his article on the Cambodian peace settlement, the U.N. paid little attention to Cambodia, outside of purely human rights concerns, during the Lon Nol and Khmer Rouge regimes (62). It took a foreign invasion (by neighboring Vietnam) to motivate the U.N. to strive for a political settlement (63).

In the same vein, the threshold for U.N. involvement in the newly independent Congo was met when Belgium sent troops into the country in 1960, ostensibly to restore order and protect Belgian nationals (64). The United Nations Operation in the Congo (ONUC — the acronym is derived from the French name of the force) was born at the joint request of the Congolese president, Joseph Kasavubu, and his Prime Minister and political rival, Patrice Lumumba (65). At the outset, ONUC's objective was to restore law and order and effect the withdrawal of the Belgian troops (66). The force was not authorized to become a party to the conflict (67). ONUC fulfilled this mandate in most of the country and by the end of 1960, the

(60) U.N. CHARTER, art. 34.

(61) The threshold for passing Chapter VII mandatory measures is even higher — the situation must *actually* pose a threat to the peace. U.N. CHARTER, art. 39.

(62) RATNER, S., « The Cambodia Settlement Agreements », 87 *Am.J.Int'l L.*, 1, 3 (1993).

(63) *Id.*, at 4.

(64) *The Blue Helmets*, *supra* note 4, at 218.

(65) *Telegram from Congo*, U.N. SCOR, 15th Sess., Supp. for Jul.-Sep. 1960, at 11, U.N. Doc. S/4382 (1960). Two days later the Security Council called upon Belgium to withdraw and authorized the Secretary-General « to take the necessary steps » to assist the Congolese military in dealing with the situation. S.C. Res. 143 (1960).

(66) *First Report of the Secretary-General*, para. 5, U.N. SCOR, 15th Sess., Supp. for Jul.-Sep. 1960, at 17, U.N. Doc. S/4389 (1960).

(67) *Id.*, para. 7.

Belgian troops had withdrawn (68). However, a constitutional crisis erupted when President Kasavubu dismissed the Prime Minister Lumumba, who in turn dismissed Kasavubu, with parliamentary support. Kasavubu reacted by suspending parliament (69). These actions ultimately plunged the Congo into a four-way civil war between factions led by Kasavubu, Lumumba, Moïse Tschombé, who led a secessionist movement in Katanga, and Albert Kalonji, who led a similar movement in South Kasai (70). ONUC was able to maintain its impartiality with respect to Kasavubu and Lumumba (71). For example, the Security Council would recognize neither Kasavubu's nor Lumumba's delegation to the U.N. (72), and ONUC thwarted an Armée Nationale Congolaise (ANC) attempt to arrest Lumumba (73), and closed the Léopoldville airport (74), in spite of arrests and attacks on U.N. personnel in Léopoldville and Matadi (75).

The U.N. did not remain impartial, however, when it came to dealing with the secessionist government in Katanga province. After Lumumba's death (76), the Security Council authorized the use of force to stop all military operations (77) and control the armed factions (78). This seemingly impartial language authorized the use of force to prevent Katanga from seceding (79). Katangese forces mounted a resistance campaign and soon ONUC and Katangese forces were engaged in battle in much of the province (80). In November of 1961 the Security Council declared

(68) *The Blue Helmets*, *supra* note 4, at 224. Belgium had pledged its withdrawal from the Congo by 29 August, *Third Report of the Secretary-General*, Annex II, U.N. SCOR, 15th Sess., Supp. for Jul.-Sep. 1960, at 127, U.N. Doc. S/4475 (1960); it actually took a bit longer. *Id.*, Add. 1-3.

(69) *The Blue Helmets*, *supra* note 4, at 223.

(70) *Id.*, at 230.

(71) For a detailed account of the hostilities between Kasavubu and Lumumba and the ensuing civil war in the Congo, see *First Progress Report from the Special Representative*, paras. 14-31, U.N. SCOR, 15th Sess., Supp. for Jul.-Sep. 1960, at 179, U.N. Doc. S/4531 (1960); *The Blue Helmets*, *supra* note 4, at 227-32; *Second Progress Report*, paras. 10-32, U.N. SCOR, 15th Sess., Supp. for Oct.-Dec. 1960, at 9, U.N. Doc. S/4557 (1960); and BOWETT, D., *supra* note 1.

(72) *The Blue Helmets*, *supra* note 4, at 230. However, when Kasavubu himself went to New York, the General Assembly, in a controversial decision, seated him. See U.N. Doc. S/4531 (1960), and G.A. Res. 1498 (XV) (1960).

(73) BOWETT, D., *supra* note 1, at 161-62. See also *Second Progress Report*, *supra* note 71.

(74) BOWETT, D., *supra* note 1, at 159, note 38.

(75) U.N. Doc. S/4761 (1961).

(76) This was actually the second attempt on Lumumba's life. For a detailed account of his arrest and alleged execution, see *Note by the Secretary-General*, U.N. SCOR, 15th Sess., Supp. for Oct.-Dec. 1960, at 67, U.N. Doc. S/4571 & Add. 1 (1960); and *Report to the Secretary-General*, U.N. SCOR, 16th Sess., Supp. for Jan.-Mar. 1961, at 88, U.N. Doc. S/4688 & Add. 1-2 (1961).

(77) S.C. Res. 161, sec. A, para. 1 (1961).

(78) *Id.*, sec. B, para. 2.

(79) One of the Security Council's «grave concerns» was the «territorial integrity of the Congo». *Id.*, sec. B.

(80) For an account of the various clashes between the forces, see *Report to the Secretary-General*, U.N. SCOR, 16th Sess., Supp. for Apr.-Jun. 1961, at 22, U.N. Doc. S/4791 (1961); and *Report of the ONUC OIC*, U.N. SCOR, 16th Sess., Supp. for Jul.-Sep. 1961, at 99, U.N. Doc. S/4940 & Add. 1-9 (1961), and Supp. for Oct.-Dec. 1961, at 1, U.N. Dec. S/4940/Add. 10-19 (1961).

Katangese secession « illegal » (81) and « contrary to the Loi Fondamentale » (82), and reaffirmed its support for the « territorial integrity » of the Congo (83). Tschombé, the leader of the secessionist movement, regarded this resolution as a declaration of war (84), and Katangese forces began a campaign of violence against ONUC personnel (85).

It can be argued that the U.N.'s stance against Katangese secession did not stem from a concern for maintaining the territorial integrity of the Congo, but rather from Tschombé's use of foreign mercenaries to support his movement (86). It would follow that ONUC was fighting not against Katangese secession but against foreign intervention. Indeed, the Security Council's authorization to use force was aimed at the foreign military personnel and mercenaries who were still operating illegally in the Congo (87). However, the resolution was not enacted unanimously; Britain and France objected to such extreme measures as apprehending and deporting the foreign elements, and had proposed a more conciliatory approach (88). Derek Bowett contends that the resolution was too blunt — that instead of simply using force against the foreigners, ONUC set out to destroy the entire Katangese secessionist movement (89). As the Security Council apparently based its authorization to use force on the principle of non-intervention rather than self-determination, Bowett's argument seems to have merit. As can be seen from the events recounted above, the United Nations' lack of impartiality in the Congo subjected ONUC to many of the operational hazards of a hostile, occupying force.

In practice, the principle of impartiality is closely related to that of consent. The sources in the Charter whence the principle of impartiality is derived, namely Articles 2(1) and 2(7), are the same ones from which consent is derived. The operational consequences of lack of impartiality are largely the same as those of lack of consent — denial of freedom of movement, no criminal immunity, susceptibility to attack. A peacekeeping force which has lost its objectivity becomes a hostile, foreign, occupying force, just as is a force deployed without consent from the state on whose

(81) S.C. Res. 169, para. 1 (1961). « [The Security Council] *strongly depreciates* the secessionist activities illegally carried out by the provincial administration of Katanga, with the aid of external sources and manned by foreign mercenaries » (emphasis in original).

(82) *Id.*, para. 8.

(83) *Id.*, preamble, para. (a).

(84) *Report of the ONUC OIC, supra* note 80, Add. 15, para. 5.

(85) *Id.*, Add. 15. Further accounts may be found in *The Blue Helmets, supra* note 4, at 247.

(86) This point was voiced to the author by Prof. Jean Salmon at the Conference on the Law of International Organizations in Situations of Civil War, at NYU Law School on Jan. 30, 1994.

(87) S.C. Res. 169, para. 4 (1961).

(88) U.N. SCOR, 16th Sess., 982d mtg., paras. 59-62 (France) and paras. 114-119 (U.K.), U.N. Doc. S/PV.982 (1961). Britain and France both abstained from the vote on Res. 169. Although the U.S. voted in favor of the measure, it did so « with great reluctance ». *Id.*, para. 97.

(89) BOWETT, D., *supra* note 1, at 198-99.

territory the force is to be located. Furthermore, a state against whom the partisan peacekeeping force has allied will never consent to the deployment of that force on its territory, and will revoke that consent if it were previously granted. Once this happens, the force must get a new mandate under Chapter VII and is no longer a *peacekeeping* force, but an instrument of *peace-enforcement*. The original mandate, based on cooperation and conciliation, has failed at that point.

Should the U.N. always remain neutral and impartial to conflicts? A response in the affirmative would mean the U.N. could never take an adversarial position toward a state or some other entity violating the Charter or customary international law. It could not have been the position of the drafters of the Charter that the U.N., acting as the instrument of the expression of the international community, would never condemn violations of international law, nor oppose renegade states or other actors. If the U.N. is to forcibly confront an illegal action then any U.N. force to be deployed is better mandated under Chapter VII.

C. — *Defensive Rules of Engagement*

The traditional rules of engagement of a non-Chapter VII peacekeeping mission are that the mission may use force only in self-defense, and then only in the existence of a threat justifying the use of force. The force must be no greater than necessary to respond to the threat and once the threat no longer exists, the use of force must cease. The kind of force referred to herein, unless otherwise stated, is armed force.

The rules of engagement describing when individual peacekeepers may resort to force are not explicitly spelled out in the Charter. They are, however, implicit in Articles 2 and 104. The traditional « Chapter 6 1/2 » peacekeeping force has no Chapter VII authority to use force offensively; such an act would be a violation of the host state's sovereignty and of Articles 2(1) and 2(7). On the other hand, all of the parties involved — the Secretary-General, the host state and the participating states — have an interest in the safety of individual members of the force and the entire mission's capacity to perform the functions for which it was created. This common interest can be considered in tandem with Article 104, which grants the U.N. « such legal capacity as may be necessary for the exercise of its functions, » to create a legal right for the peacekeeping force to defend itself when attacked.

The conclusion that peacekeeping forces may use force only in self-defense is merely the beginning of the analysis. The exploration of this principle branches in two directions: the nature and extent of the aggression (or threat of aggression), and the degree of force justified in response to the aggression.

What kind of threat entitles the peacekeeper to use armed force? Without a clear definition of the term « self-defense », the logical approach to setting the rules of engagement is to be conservative — to authorize the use of force only in the most dire circumstances, *e.g.* imminent danger of death, bodily harm, arrest, or abduction. This principle was first articulated for U.N. peacekeeping forces in the Secretary-General's first report on ONUC, which specified that U.N. peacekeepers could not use force on their own initiative but only in response to an « attack with arms » (90), *i.e.* deadly force.

The authorization to use force in response to an armed attack is intuitively collective; it is logical that other units could use force to support the unit being attacked, even if the unit coming to aid were not itself originally the object of hostilities. Even if not spelled out in its mandate, a force must be able to act in self-defense collectively, otherwise it ceases to function as a cohesive body — the force as a whole is reduced to the sum of its parts. These limited terms of engagement probably find their best use in situations where the peacekeeping force is welcomed by all the parties to the conflict and where the parties themselves are equally committed to peace (91).

In 1964, the terms of engagement for U.N. peacekeeping forces became more clearly defined in the Secretary-General's guiding principles for the operations of the United Nations Force in Cyprus (UNFICYP) (92). The term « self-defense » was specifically defined to include the defense of U.N. posts and premises, both individually and collectively (93). The document also set out to define more clearly the circumstances in which use of force — armed, or deadly, force — is justified; the definition of imminent danger of death, bodily harm, arrest, or abduction was broadened to include attempts to force withdrawal, attempts to disarm, and violation of the premises (94). Most importantly, troops were also authorized to use armed force in order to resist « attempts by force to prevent them from carrying out their responsibilities as ordered by their commanders » (95). This language eventually evolved into the UNEF II definition of self-defense to include « resistance to attempts by forceful means to prevent [the

(90) *First Report of the Secretary-General*, para. 15, U.N. SCOR, 15th Sess., Supp. for Jul.-Sep. 1960, at 19, U.N. Doc. S/4389 (1960).

(91) The MFO, for example, has just such terms of engagement and it operates in the kind of peaceful environment conducive to such terms. As of June 1993, no shot had ever been fired from an MFO weapon in combat in the 12-year history of the MFO. The author is aware of this from his own observations as a former employee of the MFO.

(92) *Aide-Mémoire*, in *Note concerning the function and operation of UNFICYP*, U.N. SCOR, 19th Sess., Supp. for Apr.-Jun. 1964, at 13, U.N. Doc. S/5653 (1964).

(93) *Id.*, paras. 16(a) and (b).

(94) *Id.*, paras. 18(a), (b), and (d), respectively.

(95) *Id.*, para. 18(c). This and other circumstances warranting the use of force are repeated in *Report of the Secretary-General*, para. 7(c), U.N. SCOR, 19th Sess., Supp. for Jul.-Sep. 1964, at 284, U.N. Doc. S/5950 (1964).

Force] from discharging its duties under the mandate of the Security Council » (96).

This broadening of self-defense beyond its evident meaning seemingly contradicts the imperative to « act with restraint » and not use force offensively (97) : to use force in every situation in which the soldier is being prevented from discharging his duties might result in exchanges so frequent as to make the restriction meaningless. Liberally interpreted, the language of this provision, intended to delineate the bounds of defensive force, seemed to sanction offensive force also. The classic illustration is as follows : a peacekeeping force is entitled to freedom of movement. In exercising this privilege, the force deploys a unit to a position held by one of the parties to the conflict. The party will naturally object to the force trying to deploy in the location it occupies and will resist. The peacekeepers use force to defend their position — which a very short while ago was not their position.

In a 1991 paper, Oscar Schachter opined that ONUC equated freedom of movement with the right to use force in self-defense in this very manner (98). One of ONUC's early tasks was to restore law and order (99). Such a mission requires a peacekeeping force to interpose itself between warring factions. Once the armed unit has deployed in this manner, its « position » — which is now inviolable and if encroached upon can be defended with armed force — is the location which the U.N. has now occupied. This twisted reasoning made ONUC a party to the conflict in violation of its mandate (100), and Professor Schachter has argued that in this manner « the self-defense principle was stretched far beyond its usual legal meaning » (101). It was probably this very recognition that prompted the Secretary-General to emphasize the degree of such « attempts » justifying force — « attempts by forceful means » (102); « attempts by forcible means » (103). As such language apparently requires that a party actually take affirmatively offensive action against the peacekeeping force, it seems unlikely that any future peacekeeping forces will interpret self-defense in the manner that Schachter believes ONUC to have interpreted it.

(96) *Report of the Secretary-General*, para. 4(d), U.N. Doc. S/11052/Rev. 1 (1973).

(97) *Report of the Secretary-General*, *supra* note 95, para. 7(b), immediately preceding the interpretation of self-defense.

(98) SCHACHTER, O., « Authorized Uses of Force by the United Nations and Regional Organizations », in *Law and Force in the New International Order*, 84-85 (DAMROSCH, L. and SCHEFFER, D. ed. 1991).

(99) *First Report of the Secretary-General*, *supra* note 66, para. 5.

(100) As pointed out earlier, the Secretary-General laid out in his report the principle that « [t]he Force [cannot] be permitted to become a party to any internal conflict ». *Id.*, para. 7.

(101) SCHACHTER, O., *supra* note 98, at 84.

(102) *Report of the Secretary-General*, *supra* note 96, para. 4(d), on UNEF II.

(103) *Report of the Secretary-General*, *supra* note 36, para. 4(d), on UNIFIL.

If, however, a situation does actually authorize the U.N. to use force, the degree of force justified is governed by the customary international legal requirements of necessity and proportionality (104). This principle was applied to the U.N. in the guiding principles for UNFICYP, which specified « minimum » force as the degree of force authorized, and then only after « all peaceful means of persuasion have failed » (105); deadly force, therefore, may only be used in response to deadly force. If unarmed combat will suffice to remove an intruder on a U.N. observation post, then that is the degree of force that must be used. Even deadly force — firing a gun — must be preceded by a verbal warning or by warning shots (106). Also implicit in the meaning of « minimum force » is that once the threat has passed, armed force is no longer authorized (107); *e.g.* once the armed bandits have been driven away from the post the soldier cannot chase after them and shoot them down.

The principle that a peacekeeper must refrain from using armed force until absolutely necessary is related to the principle of impartiality. A force that departs from the traditional norm of self-defense also departs from the proverbial fence it is supposed to ride between the parties. The use of force against one party constitutes a taking of sides with the other party, in violation of the principle of non-interference and impartiality. Just as taking sides with one of the parties brings the force's Charter basis out of Chapter VI and into Chapter VII, the use of non-defensive, aggressive, armed force has the same effect. The experience of ONUC, described above, demonstrates this relationship.

In addition to the relationship between the rules of engagement and impartiality, a practical connection also exists between engagement and consent. A state will only consent to a non-Chapter VII operation if it is satisfied that the force will neither be used against its interests nor imposed as an occupying force. A peacekeeping force that transcends the legal limits of self-defense becomes a hostile force, and the host state could revoke its consent. An overly broad interpretation of the rules of engagement could therefore adversely affect the force's freedom of movement, supply lines, and privileges and immunities, and subject it to attack. The harassment to which ONUC was subjected clearly demonstrates the wisdom of restraint.

(104) See *Military and Paramilitary Activities (Nicar. v. U.S.)*, 1986 I.C.J. 94 (June 27), on the application of necessity and proportionality of the use of force in self-defense.

(105) *Aide-Mémoire*, in *Note*, *supra* note 92, para. 18.

(106) *Id.*, para. 19. In a peaceful environment such as that in which the MFO operates, soldiers may even carry their weapons with an empty cartridge, replacing it with a full one only in a threatening situation.

(107) *Id.*

D. — *Central Command and Control
of the Operation*

The individual member of a peacekeeping force is subject to two chains of command. On the one hand, his government has assigned him to U.N. peacekeeping duty and placed him in the hands of a foreign command whose orders he must carry out. On the other hand, the soldier still has ties to his home base, where decisions affecting his career are made. His government, having invested in the soldier's training, safety, and well-being, has an interest in seeing that he returns. As a result, both the U.N. and his home government exert some control over the soldier, but neither the U.N. nor his home government have complete control over him. That is the norm discussed in this section.

The U.N. does not pay the soldier's salary, nor does it promote him. He may be fed and housed by the U.N., but armed and equipped by his home government. A soldier's immediate commander may want to send him to Post XY; his government may not want him there because the area may be particularly hazardous. The soldier may be prohibited from actions that are perfectly legal, even procedurally mandatory, in his own military; worse still, some action may be required of him by the U.N. that would be expressly forbidden to him at home. The soldier's loyalties are divided. Who, therefore, is in control of the soldier in the field?

The path to knowledge in this respect begins with the Charter, which designates the Secretary-General as the « chief administrative officer of the Organization » (108), and further directs the Secretary-General to perform such functions as may be directed of him by the various organs of the U.N. (109). Although peacekeeping forces are created and dissolved by the General Assembly or the Security Council, their functions can be construed as only legislative. The Secretary-General is charged with implementing the resolutions creating peacekeeping forces. He is entrusted by both bodies to establish and operate them within the parameters set by them, and is held responsible for their actions (110). The Secretary-General, in carrying out these duties, appoints a Force Commander (111), who is responsible for the troops in the field and who reports directly to the Secretary-General. The Force Commander, a military officer of flag rank, is the highest authority

(108) U.N. CHARTER, art. 97.

(109) U.N. CHARTER, art. 98.

(110) See, e.g., G.A. Res. 998 (1956), G.A. Res. 1000 (1956), and G.A. Res. 1001 (1956), for UNEF; S.C. Res. 143 (1960), for ONUC; S.C. Res. 186 (1964), for UNFICYP; S.C. Res. 350 (1974), for UNDOF (United Nations Disengagement Observer Force); S.C. Res. 425 (1978), for UNIFIL.

(111) The Force Commander for UNEF was appointed directly by the General Assembly in G.A. Res. 1000 (1956).

in the field, and in operational matters all members of the force take orders from him (112).

In personnel matters, however, the Force Commander does not enjoy such broad discretion. For example, the Force Commander may be authorized to recruit his own staff, but commanders of national contingents will be supplied by the participating states. Especially for larger or specialized contingents, this is a necessity : every contingent, whether an infantry battalion, support and logistics battalion, or an air attachment, can only function efficiently under the leadership of someone specifically trained to command the unit, who has intimate knowledge of the contingent's own national regulations and procedures. Contingents must have a commander of their own nationality who can rate them for promotion and exercise discipline. In the case of disciplinary matters, the Force Commander's powers are quite narrowly defined — only national contingents may discipline their soldiers (113).

Control over peacekeeping forces is also set out in Participating State Agreements — agreements between the U.N. and states contributing personnel and equipment to a peacekeeping force. These have their origins in an attempt to define the relationship between the U.N. and states contributing to UNEF (114), and concern such matters germane to participating states as privileges and immunities and timely notification of withdrawal (115), and in particular the contingents' adherence to the U.N. force's command structure and regulations (116).

Another aspect of control over a peacekeeping force is the political control wielded by the participating states. In theory, a participating state could withdraw its contingent from the force at any time. If the state were to do so at a particularly inopportune time, such as after the U.N. had already committed the contingent to performing some operation vital to the force's mission, the withdrawal of the contingent could put the force in an extremely vulnerable position. As Professor Bowett put it, « [o]ne of the dangers which the United Nations had to guard against was that any one State might be able to exercise an untoward control of the employment of

(112) That all members of the force must follow the Force Commander's orders is generally embodied in the Participating State Agreements, or the individual Force regulations, the compliance with which are agreed by the participating states. See Model Status of Forces Agreement, *supra* note 54.

(113) Participating states will generally agree to exercise disciplinary powers over their personnel. See, e.g., *UNEF : Summary Study*, Annex I, paras. 6-7, U.N. Doc. A/3943 (1957), for UNEF. So even if the Force Commander cannot discipline soldiers, the contingent can and must do so. The Force Commander may, however, have the power to repatriate soldiers on his own initiative.

(114) BOWETT, D., *supra* note 1, at 111.

(115) For the text of the Secretary-General's identical letters to the participating states of UNEF, which formed the first such Participating State Agreements, see *UNEF : Summary Study*, *supra* note 113, Annex I.

(116) *Id.*, Annex I, para. 4.

the Force as a whole by threats to withdraw its contingent altogether » (117). As Bowett notes, this danger can be mitigated by keeping the force as geographically and politically diverse as possible, so that the withdrawal of one contingent does not gut the ability of the force to carry out its mission. Another way to avoid this problem is to provide for sufficient advance notice in the Participating State Agreement (118).

In particularly hazardous situations, however, even a Participating State Agreement may not sufficiently safeguard against an untimely withdrawal. When Egypt terminated its consent to UNEF, for example, India and Yugoslavia withdrew their contingents (119), no doubt out of concern for the safety of their troops. Although the withdrawal of consent was the Secretary-General's legal justification for withdrawing UNEF (120), it is not unrealistic to consider that loss of support from the participating states played a substantial role in his decision.

A state making a sufficiently large contribution to the force may also exert a substantial amount of political influence. Before 1990, this would not have been possible in the U.N., as every effort was made to ensure that peacekeeping forces were composed of contingents from many nations (see Section E, below). Outside the U.N., however, heavy political influence from one major contributor is not unknown. The MFO is one example of such a situation. The United States contributes one-third of the MFO's annual operating budget (121). The U.S. also supplies substantial personnel and logistical needs — one of the MFO's three infantry battalions, the Civilian Observer Unit, and the one support battalion (122) — and makes its military supply system available to MFO procurement. In addition, all of the MFO's Directors General have been American. The United States, therefore, is in a position to exert a tremendous amount of political leverage over the MFO, if it so chooses. Although the author is certain of the MFO's independence in operational matters, it is noteworthy that the official language of the MFO is English, the currency used on base is American dollars, and the goods available at the Force Exchange are obtained largely through the Army Air Force Exchange Service, which is an organ of the U.S. Department of Defense.

Neither the U.N. nor the participating states exercise absolute control over the individual members of the force. They both have some control, although the type of control differs: the Secretary-General, through the

(117) BOWETT, D., *supra* note 1, at 113.

(118) See, e.g., *UNEF: Summary Study*, *supra* note 113, Annex I, para. 8 for such language applying to UNEF.

(119) See note 32, *supra*.

(120) *Report of the Secretary-General on the withdrawal of UNEF*, *supra* note 25, Add. 3.

(121) *Secretary of State's Letter*, 20 ILM 1190 (1981). Egypt and Israel also contribute one-third. Japan and Germany make annual fixed-amount contributions.

(122) *Exchange of Letters*, Aug. 3, 1981, reprinted in *MULTINATIONAL FORCE AND OBSERVERS, The Multinational Force and Observers: Servants of Peace* (1990). On file with author.

Force Commander, has the operational authority and responsibility over the force; the participating states wield political influence on the Secretary-General and the Security Council (or General Assembly).

E. — *Principles Governing Constituency
of the Force*

The historical norm concerning the constituency of non-Chapter VII peacekeeping forces is that they are made up of geographically diverse contingents, but not including contingents from the permanent members of the Security Council. UNEF, for example, had contingents from 10 countries (123), ONUC had 30 (124), and UNEF II had 13 (125). UNFICYP has had contingents from 6 countries (126), UNDOF 6 (127), UNIFIL 14 (128), and the MFO 12 (129). In only three of these forces has a P5 member participated and special interests account for two of them.

Why are peacekeeping forces international in character? Would not a U.N. force consisting of a single nationality be much more efficient? After all, ten different contingents may speak ten different languages, generating 90 paths of translations! Each participating state may have its own particular cultural habits or religious beliefs that might affect its operations, e.g. dietary customs, days of worship, or different conceptions of how individual disputes should be resolved. They may have different standards of living, which soldiers' salaries may reflect, which may be the source of ill will, ergo disciplinary problems, between contingents. In view of these and other potential problems in the field, should not geographic diversity in peacekeeping forces be sought?

The Secretary-General apparently believed that a multinational force was the best of the several options open to him at the creation of

(123) Brazil, Canada, Colombia, Denmark, Finland, India, Indonesia, Norway, Sweden, and Yugoslavia. *The Blue Helmets*, *supra* note 4, at 421-22.

(124) Argentina, Austria, Brazil, Burma, Canada, Ceylon, Denmark, Ethiopia, Ghana, Guinea, India, Indonesia, Iran, Ireland, Italy, Liberia, Malaya, Mali, Morocco, Netherlands, Nigeria, Norway, Pakistan, Philippines, Sierra Leone, Sudan, Sweden, Tunisia, United Arab Republic, and Yugoslavia. *Id.*, at 436.

(125) Australia, Austria, Canada, Finland, Ghana, Indonesia, Ireland, Nepal, Panama, Peru, Poland, Senegal, and Sweden. *Id.*, at 423-24.

(126) Austria, Canada, Finland, Ireland, Sweden, and the United Kingdom. The Force also has had Civilian Police Units from Austria, Denmark, New Zealand, and Sweden. *Id.*, at 287.

(127) Currently Austria, Canada, Finland, and Poland. Iran and Peru have had contingents there in the past. *Id.*, at 426.

(128) Currently Fiji, Finland, France, Ghana, Ireland, Italy, Nepal, Norway, and Sweden. Iran, Canada, Netherlands, Nigeria, and Senegal have contributed in the past. *Id.*, at 427-28.

(129) Currently Australia, Canada, Colombia, Fiji, France, Italy, Netherlands, New Zealand, United States, and Uruguay. The United Kingdom has contributed in the past. Although technically not a participating state, Norway contributes some staff personnel. *The Multinational Force and Observers: Servants of Peace*, *supra* note 122. (the U.K. withdrew from the Force in October 1992, and was replaced by Australia in January 1993.)

UNEF (130). There seems to be no compelling Charter basis for the Secretary-General's decision to set up a multinational force instead of charging a single Member State with the task, other than the notion that a multinational force, tasked and mandated by the General Assembly, would have greater legitimacy, be much more acceptable to the parties, and exercise a greater pull toward compliance than a national force under the command and control of a single state (131).

Another common trait of early peacekeeping forces was a lack of permanent members of the Security Council among the participating states. This practice also had its origins in the creation of UNEF, in which the General Assembly expressly prohibited their participation (132). Why would the creators of a peacekeeping force impose this limitation on themselves? Would not a military contingent from a powerful P5 nation be a significant contribution to a U.N. force? Would not the P5's interest and influence in the situation have a calming effect and a powerful pull toward compliance with the enabling resolution on the parties to the conflict? Why would the P5 pass up this opportunity?

In the case of UNEF, one reason was that two of the P5 were already involved in the situation that prompted the creation of the force (133). In addition, Professor Bowett contends that the exclusion of the P5 from participating in UNEF was also « to prevent the Force being dogged by « Cold War » politics » (134). It is no wonder, therefore, that the Secretary-General deemed the exclusion of P5 members from peacekeeping forces a good idea (135), reiterating this policy when mounting ONUC (136). This tradition continued through the establishment of UNDOF, UNIFIL, and UNEF II.

This norm has been set aside in cases where a P5 member, as a neutral party, nevertheless has a strong interest in the resolution of the conflict. The first such instance was Britain's contribution to UNFICYP. Cyprus was a former colony of Britain, having secured its independence only four years before UNFICYP was deployed in 1964. Britain is also one of the

(130) *First Report of the Secretary-General*, U.N. Doc. A/3289 (1956). See also *Second and Final Report*, *supra* note 10, para. 6.

(131) See FRANCK, T., *The Power of Legitimacy Among Nations* (1990). For a detailed discussion of the elements of international law's legitimacy and its powerful effect on the conduct of sovereign states in their relations with other sovereign states.

(132) G.A. Res. 1000, para. 3 (1956).

(133) Israeli forces had crossed into Egypt with the « cooperation » of Britain and France, whose interest in the Suez Canal had been stripped away when Egypt nationalized the canal. *The Blue Helmets*, *supra* note 4, at 43-44. See also BOWETT, D., *supra* note 1.

(134) BOWETT, D., *supra* note 1, at 110. Indeed, as mentioned in note 14, *supra*, the USSR had objected to the creation of UNEF from the beginning, on the grounds that it was *ultra vires*. For a summary of arguments concerning the constitutionality of UNEF, as put forth in Case Concerning Certain Expenses of the United Nations, 1962 I.C.J. 151 (July 20) (the World Court decision which legitimized peacekeeping), see BOWETT, D., *supra* note 1, at 95-96.

(135) The Secretary-General called the General Assembly's decision « sound and practical ». *UNEF : Summary Study*, *supra* note 113, para. 44.

(136) *First Report of the Secretary-General*, *supra* note 66, para. 10.

three guarantors of the Cypriot Constitution (the other two being Greece and Turkey), and retains two military bases on the island (137). The matter of Cyprus was taken up by the Security Council at Britain's request (138). Britain therefore had a very strong interest in a peaceful settlement to the Cyprus question, and Cyprus did not object to her involvement.

The U.S. involvement in the MFO represents another departure from this norm. Although part of this departure may be because the MFO is not a U.N. force (139), and not subject to the same political pressures, it is still true that the U.S. had a very strong interest in the MFO's establishment, for the U.S. brokered the Egyptian-Israeli peace treaty and is a signatory to it (140) and to the Protocol establishing the MFO (141). In identical letters to Egypt and Israel, the U.S. promised to provide for the peacekeeping force envisioned in the Treaty in the event that the Security Council was unable to do so (142). In addition, the U.S. contributes one-third of the MFO's operating budget (143). The U.S. had enormous political capital invested in this settlement and it was largely the American effort and commitment that made the MFO possible. That the U.S. would participate in a force that it is largely responsible for creating is inevitable.

The non-participation in peacekeeping forces of permanent members of the Security Council had its origins in exclusions based on adverse interests and Cold War politics. However, it remained the historical norm during the early period of U.N. peacekeeping.

II. — TODAY'S NORMS

With the advent of the superpower cooperation that made U.N. action during the Gulf War possible, the question has ceased to be « Who killed collective security ? » but rather « How do we implement it ? ». The role of U.N. peacekeeping has evolved since the generation of UNEF, ONUC, UNIFIL, and others. The end of the Cold War has enabled the Security Council to use Chapter VII in defining the forces' mandates, thus establishing a clearer Charter basis for their deployment. The « Chapter 6 1/2 » forces have evolved into the more assertive « Chapter 6 3/4 » operations, as

(137) *The Blue Helmets*, *supra* note 4, at 281-82.

(138) *Letter from Great Britain*, U.N. SCOR, 19th Sess., Supp. for Jan.-Mar. 1964, at 67, U.N. Doc. S/5543 (1964). Cyprus made a similar request in *Letter from Cyprus*, U.N. SCOR, 19th Sess., Supp. for Jan.-Mar. 1964, at 69, U.N. Doc. S/5545 (1964).

(139) The Multinational Force (MNF), created by the U.S., France, and Italy, at the request of Lebanon « to provide appropriate assistance to the Lebanese Armed Force » in anticipation of PLO withdrawal, *Exchange of Notes*, 21 ILM 1196 (1982), is another example of non-U.N. peacekeeping forces in which P5 members have participated.

(140) *Treaty of Peace*, *supra* note 47.

(141) *MFO Protocol*, *supra* note 46.

(142) *Letter*, 18 ILM 532, 533 (1979).

(143) See *supra* note 122 and accompanying text.

can be seen in UNTAC's empowerment to run Cambodia's government prior to its elections, which it carried out in spite of Khmer Rouge threats to sabotage them. The definition of the consenting host state has been expanded, as has the U.N.'s interpretation of impartiality and self-defense. The norms of control and constituency, while remaining essentially unchanged, have been subjected to new challenges. In addition, the emergence of Chapter VII operations have raised questions as to whether U.N. peacekeeping forces can be effective in situations where there is no peace to keep.

A. — *The Modern Norm of Consent*

The historical norm of consent is that it is granted by the host state. Host-state consent can be in three forms : 1) concurrence to a force established at the U.N.'s own initiative (UNEF) ; 2) a request from the host state to deploy a U.N. force on its territory (ONUC, UNIFIL) ; or 3) the conclusion of an agreement by two or more states, or two or more belligerents within a single state, to call for a force to verify compliance of the terms of the peace (MFO). As set out below, some of the recent U.N. peacekeeping operations, focused on ending internationalized civil war, have emerged by agreement between the parties to the conflict. Other forces, created at the U.N.'s initiative with the expectation of host-state concurrence, have been severely hampered by non-cooperation of the parties, or worse still, by revocation of consent. The modern response to such scenarios has been quite different from that of the era of first-generation peacekeeping.

The United Nations Transitional Authority in Cambodia (UNTAC) was established by the Security Council (144) after the conclusion of the Agreement on a Comprehensive Political Settlement of the Cambodian Conflict (the Paris Agreement) (145), the peace accord signed by all four of the major warring parties. The agreement provided for the establishment of a provisional governmental authority — the Supreme National Council (SNC) — as well as demobilization and cantonment of the various militias, national elections, and strong U.N. supervision. Although the Paris Agreement delegated to the U.N. « all powers necessary » to ensure implementation of its provisions (146), which is Chapter VII language, UNTAC was not established under Chapter VII and remained a « Chapter 6 1/2 » operation throughout its existence. Under the terms of the Paris Agreement, Cambodia had no « government » to consent to UNTAC — it was the recreation of the Cambodian government that UNTAC was supposed to oversee. Once the force arrived in Cambodia, cooperation was not forthcoming from all of the parties, particularly the Party of Democratic Kampuchea (the PDK,

(144) S.C. Res. 718 (1991).

(145) Agreement On A Comprehensive Political Settlement of the Cambodian Conflict [hereinafter Paris Agreement], Oct. 23, 1991, 31 ILM 183.

(146) *Id.*, art. 6.

a.k.a. Khmer Rouge) and their military element, the National Army of Democratic Kampuchea (NADK), who would not allow UNTAC forces to enter areas under their control (147). The Khmer Rouge also reneged on its agreement to canton and disarm its army, thereby halting disarmament of all of the factions (148). In spite of this, elections proceeded on schedule and were cited as free and fair by the U.N (149). The elections have not ended the fighting; the government is still at war with the Khmer Rouge. Talks did not begin until almost a year after the election, which the Khmer Rouge had boycotted (150). The situation was further complicated by the declaration of secession of seven provinces, in protest of the election results, forcing the King to create a coalition government (151). However, the results still appear to be positive, for the number of warring parties have been significantly reduced.

The United Nations Operation in Mozambique (ONUMOZ) was established by the Security Council in December of 1992 (152) after the Mozambican government and the Resistência Nacional Moçambicana (RENAMO) concluded the 4 October General Peace Agreement (153). The primary military mandate of ONUMOZ was to monitor and verify the cease-fire, demobilization and disarmament of the two parties and irregular forces, monitor and verify the withdrawal of foreign forces, and secure vital transport corridors to landlocked nations (154). Despite the fact that the originally «unrealistic» timetables for U.N. deployment and commence-

(147) *First Progress Report*, para. 24, U.N. Doc. S/23370 (1992); *Second Special Report*, para. 15, U.N. Doc. S/24286 (1992); *Second Progress Report*, para. 12, U.N. Doc. S/24578 (1992); *Fourth Progress Report*, para. 4, U.N. Doc. S/25719 (1993). The NADK even obstructed the freedom of movement of the Force Commander and Special Representative, *Special Report*, para. 4, U.N. Doc. S/24090 (1992), prevented UNTAC units in Pailin from being resupplied and confined UNTAC personnel to their homes. *Fourth Progress Report*, *supra*, para. 38. The Khmer Rouge justified their behavior by claiming that «foreign», *i.e.* Vietnamese, forces were still operating in Cambodia, in contravention of the Paris Agreement, but the U.N. could not confirm their claims and considered them unsubstantiated. *Report of the Secretary-General*, para. 18, U.N. Doc. S/24800 (1992); *Fourth Progress Report*, *supra*, paras. 42-47.

(148) *Third Progress Report*, para. 4, U.N. Doc. S/25124 (1993).

(149) *Report of the Secretary-General*, paras. 2 and 15, U.N. Doc. S/25913 (1993). Regrettably the results of the election have been diluted because of the effective dominance of the Cambodian People's Party (CPP). According to a Cambodian government official, the Communist CPP's apparatus continues to pervade the government «from top to bottom», and Parliament has met less than 20 days since the elections. KAMM, H., «Despite U.N.'s Effort, Cambodia Is Chaotic», *New York Times*, Jul. 4, 1994, at A1.

(150) SHENON, P., «Foes In Cambodia's Civil War Begin Talks», *New York Times*, May 28, 1994, at A5.

(151) KAMM, H., *supra* note 149.

(152) S.C. Res. 797, para. 2 (1992). The establishment of the force in battalion strength followed the October dispatch of a team of military observers, authorized in S.C. Res. 782, para. 1 (1992).

(153) U.N. Doc. S/24635 (1992). A request from Mozambique for U.N. assistance followed shortly thereafter. *Letter from Mozambique*, U.N. Doc. S/24642 (1992).

(154) *Report of the Secretary-General*, U.N. Doc. S/24892 (1992).

ment of the peace process necessitated their extension (155), by June 1993 the foreign forces had withdrawn (156), and by August direct talks between the Mozambican government and RENAMO had begun (157). In September, the two sides agreed to the reintegration of RENAMO-controlled territory into the state administration, and to request U.N. monitoring of police activities (158), which the Security Council authorized in February of 1994 (159). A new Mozambican army consisting of personnel from both sides was formed (160). Above all, despite the time lag, the peace held, which is probably attributable to both parties' commitment to the peace process and their consent and cooperation to U.N. presence and U.N. confidence-building measures. Elections are scheduled to take place in late October of 1994 (161).

If the success of a peacekeeping force is measured by how little media attention it gets, then UNTAC and ONUMOZ, as « Chapter 6 1/2 » operations, have so far achieved a level of peace and reconciliation between the parties that UNPROFOR and UNOSOM II, the two Chapter VII operations discussed herein, have not.

In November 1991, the Secretary-General's Personal Envoy for Yugoslavia met with Yugoslav leaders, including the Presidents of Serbia and Croatia, to attempt a peaceful settlement to the Yugoslav conflict. Each party expressed the desire to have a U.N. peacekeeping operation deployed (162). A few days later, the Permanent Representative of Yugoslavia requested the Security Council to establish a peacekeeping force (163). The Security Council, however, decided not to establish the force at that time « without ... full compliance by all parties with the agreement » (164). Three months later, notwithstanding lack of full concurrence of all parties with the U.N. plan (165), the Security Council decided to implement the plan anyway, and established the United Nations Protection Force (UNPROFOR) in Croatia (166). UNPROFOR's original mandate

(155) *Report of the Secretary-General*, U.N. Doc. S/25518 (1993). One problem, relating directly to host-state consent, was that the U.N. had no status-of-forces agreement with the Mozambican government.

(156) *Report of the Secretary-General*, U.N. Doc. S/26034 (1993).

(157) *Report of the Secretary-General*, U.N. Doc. S/26385 (1993).

(158) *Id.*, Add. 1. The agreement is in U.N. Doc. S/26432 (1993).

(159) S.C. Res. 898, para. 2 (1994).

(160) KELLER, B., « Mozambique's Army Is Uniting Old Enemies », *New York Times*, Feb. 5, 1994, at A3.

(161) S.C. Res. 916, para. 6 (1994).

(162) *Letter from the Secretary-General*, p. 2, U.N. Doc. S/23239 (1991).

(163) *Letter from Yugoslavia*, U.N. Doc. S/23240 (1991).

(164) S.C. Res. 721, para. 2 (1991). The Council took up the question 2 1/2 weeks later, with the same result, in S.C. Res. 724, para. 2 (1991), apparently upon the advice of the Secretary-General. *Report of the Secretary-General*, para. 21, U.N. Doc. S/23280 (1991).

(165) Some Serb communities within Krajina still objected to the plan. *Further Report of the Secretary-General*, para. 8, U.N. Doc. S/23592 (1992).

(166) S.C. Res. 743, para. 2 (1992).

was to deploy in several U.N. Protected Areas (UNPA's), where there were large Serb populations, ensure their demilitarization and control access to them, and outside the UNPA's to verify the withdrawal of the Yugoslav People's Army (JNA) and irregular forces (167). Because the numerous cease-fire violations and the continued presence of irregular forces — who never consented to UNPROFOR's presence — were preventing UNPROFOR from implementing the peacekeeping plan (168), UNPROFOR found its mandate enlarged to give it an increasingly militant role in Croatia (169).

In April of 1992, UNPROFOR found its mission being extended to Bosnia and Herzegovina (170). After the Security Council demanded the cease-fire and withdrawal of forces from Bosnia (171) and imposed sanctions on the truncated Yugoslavia (172), it authorized deployment of UNPROFOR to Sarajevo (173). After an agreement to keep Sarajevo's airport open was regularly violated (174), causing the humanitarian situation in Bosnia to deteriorate rapidly, the Security Council expanded UNPROFOR's mission to include protecting relief convoys in Bosnia (175). As UNPROFOR's mission in Bosnia was *not* originally under Chapter VII (176), when the force was not able to obtain consent from all of the *de facto* authorities, it deployed in different locations than had been planned (177).

(167) *Report of the Secretary-General, supra* note 164, Annex III; S.C. Res. 743 (1992); S.C. Res. 749 (1992); *Report of the Secretary-General*, U.N. Doc. S/23777 (1992).

(168) *Report of the Secretary-General*, U.N. Doc. S/24188 (1992); *Report*, U.N. Doc. S/24353 & Add. 1 (1992); *Report*, U.N. Doc. S/24600 (1992).

(169) By S.C. Res. 762 (1992), UNPROFOR assumed monitoring functions in the « pink zones » — areas with large Serb populations but not within the UNPA's. S.C. Res. 769 (1992) authorized UNPROFOR to control entry of civilians into the UNPA's and perform customs and immigration functions at UNPA international borders. S.C. Res. 779 authorized UNPROFOR to monitor demilitarization of the Prevlake peninsula and to take control of the strategically important Peruca dam, situated in one of the « pink zones ».

(170) *Report of the Secretary-General*, U.N. Doc. S/23836 (1992); *Report of the Secretary-General*, U.N. Doc. S/23900 (1992).

(171) S.C. Res. 752 (1992).

(172) S.C. Res. 757 (1992). In U.N. circles the nation is called the Federal Republic of Yugoslavia (Serbia and Montenegro).

(173) Originally its deployment was to be limited to military observers to supervise withdrawal of forces from Sarajevo airport. U.N. Doc. S/24075 (1992); S.C. Res. 758 (1992); S.C. Res. 761 (1992).

(174) *Further Report of the Secretary-General*, U.N. Doc. S/24263 (1992).

(175) S.C. Res. 770 (1992) called upon states under Chapter VII to « facilitate ... the delivery ... of humanitarian assistance to Sarajevo and ... other parts of Bosnia ». In further discussions, it was decided that the task should go to UNPROFOR. *Further Report of the Secretary-General*, para. 9, U.N. Doc. S/25264 (1993). UNPROFOR's original mission in Bosnia was to support and protect UNHCR relief efforts and protect released civilian detainees, under the normal defensive rules of engagement. *Report of the Secretary-General*, U.N. Doc. S/24540 (1992).

(176) The mission described in note 175 *supra* was authorized in S.C. Res. 775 (1992), which makes no mention of Chapter VII.

(177) *Further Report of the Secretary-General*, paras. 34-35, U.N. Doc. S/24848 (1992).

In January of 1993, the Croatian army mounted a major offensive operation, capturing the Peruca dam, and prompting the local Serb population to rearm. Since then, cooperation from the parties has not been forthcoming. After the Secretary-General reported UNPROFOR's inability to fulfill its mandate in Croatia or in Bosnia (178), the Security Council invoked Chapter VII in demanding compliance with the original peacekeeping plan in both countries (179). The Serbs and the Croats did not comply with the Security Council's demands (180). Since then, Croats and Serbs have continued to skirmish in the UNPA's in Croatia (181). Bosnian Serbs have continued to carry out campaigns against Bosnian Muslims (182) and the U.N. (183). The lack of consent and cooperation by the Serbs has made it impossible for UNPROFOR to fulfill its mandate. The Secretary-General himself has suggested that should the factions in Bosnia finally come to an agreement, it would be best enforced by the «major powers», and UNPROFOR should withdraw (184).

The case of Somalia is another one in which the Security Council has remandated a «Chapter 6 1/2» force under Chapter VII. In March 1992, the two main rivals to power, Ali Mahdi Mohamed and General Mohamed Farah Aidid, signed a cease-fire agreement which provided for a U.N. monitoring mission (185). In response to this, and to a request from Somalia to consider the situation there (186), the Security Council established the United Nations Operation in Somalia (UNOSOM) (187). The security personnel of UNOSOM numbered only about 500 and were deployed with the consent of the principal factions, as no Somali government, with which the U.N. could negotiate consent, existed (188). This level of consent, however, was not enough to insure safe delivery of supplies, for lawless armed gangs took to robbing and looting convoys and

(178) U.N. Doc. S/25264 (1993).

(179) S.C. Res. 802 (1993).

(180) See *Report of the Secretary-General*, U.N. Doc. S/25993 (1993), and *Report*, U.N. Doc. S/26470 (1993).

(181) See S.C. Res. 908, para. 9 (1994), in which the Security Council urges the parties to comply with their cease-fire agreement. The agreement is located in U.N. Doc. S/1994/367, annex (1994).

(182) See, e.g., SUDETIC, C., «U.N. Reports New Cases of Harassment by Serbs», *New York Times*, Jul. 6, 1994, at A3; SUDETIC, C., «More 'Ethnic Cleansing' by Serbs Is Reported in Bosnia», *New York Times*, Jul. 18, 1994, at A2.

(183) The *New York Times* has reported numerous incidents between Bosnian Serbs and UNPROFOR personnel since April 1994. In early August, ABC World News Tonight reported that Serb forces near Sarajevo had repossessed arms that they had previously placed under U.N. control.

(184) LYONS, R., «U.N. Chief Urges Reassessment of Peacekeeping Force in Bosnia», *New York Times*, Jul. 26, 1994, at A7.

(185) *The Situation in Somalia: Report of the Secretary-General*, paras. 6-8, U.N. Doc. S/23829 (1992).

(186) *Letter*, U.N. Doc. S/23445 (1992).

(187) S.C. Res. 751, para. 2 (1992).

(188) *Report of the Secretary-General*, U.N. Doc. S/24451 (1992).

attacking supply ships (189). By November, UNOSOM's position had become untenable, for some factions, especially General Aidid's, refused to consent to U.N. troops in areas under their control, prompting the Secretary-General to hint at the necessity of revising the principles under which UNOSOM was operating (190). Cooperation with UNOSOM was at best « spasmodic », and even factions that gave their consent to UNOSOM's presence acknowledged that they did not have full control over their areas (191). The Secretary-General recommended that the Security Council invoke Chapter VII to enforce a peaceful solution (192). The Security Council did so, and the result was the Unified Task Force (UNITAF) (193). During UNITAF's operations, the conflicting parties concluded a cease-fire and disarmament agreement (194). In March of 1993, the Security Council under Chapter VII established UNOSOM II (195), its mandate among other things to monitor the cease-fire, prevent further violence, control heavy weapons, seize small arms, and secure ports and lines of communication (196). The parties signed the Agreement of the First Session of the Conference of National Reconciliation in Somalia, providing for disarmament and a transitional government (197). Several of the party leaders, including General Aidid, refused to be disarmed, and mounted violent campaigns against UNOSOM II's efforts to restore peace, culminating in the series of ambushes on U.N. personnel in June. Although General Aidid and UNOSOM eventually made a truce (198), Somalia still has no governmental authority and lawlessness has resumed (199).

(189) The Secretary-General recommended an additional 3000 troops in *The Situation in Somalia*, para. 37, U.N. Doc. S/24480 (1992). The Security Council authorized them in S.C. Res. 775, para. 3 (1992), but the troops were never deployed.

(190) *Letter from the Secretary-General*, U.N. Doc. S/24859 (1992). General Aidid had demanded withdrawal of the Pakistani contingent from Mogadishu and from the airport, citing lack of authority of the Somali officials with whom the U.N. had already negotiated its presence, and objected to U.N. troops posted in Kismayu and Berbera as well. Two weeks after his demands, the Pakistanis at the airport were attacked.

(191) *Letter from the Secretary-General*, p. 2, U.N. Doc. S/24868 (1992).

(192) *Id.*, p. 6.

(193) The United States had offered to mount an operation to secure Somalia for the safe delivery of humanitarian supplies. *Letter, supra* note 191, p. 5. The Security Council, under Chapter VII, authorized states to use « all necessary means to establish ... a secure environment for humanitarian relief operations ». S.C. Res. 794, para. 10 (1992).

(194) UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION [UNDPI], *Peacekeeping Information Notes 1993 : Update No. 2* [hereinafter *Peacekeeping Information Notes*], at 87, U.N. Doc. DPI/1306/Rev.2 (1993).

(195) S.C. Res. 814, para. 6 (1993).

(196) *Report of the Secretary-General*, U.N. Doc. S/25354 (1993).

(197) *Peacekeeping Information Notes, supra* note 194, at 87.

(198) See note 217, *infra*.

(199) *Report of the Secretary-General*, U.N. Doc. S/26351 (1993). See also S.C. Res. 897 (1994), where as late as February 1994 the Security Council « express[es] serious concerns » that Somali factions are re-arming and banditry and violence against humanitarian operations are again on the rise. In late June, the *New York Times* reported fighting again between the forces of Mahdi and Aidid, in Six Killed in Clash Between Two Somali Clans, *New York Times*, Jun. 26, 1994, at 11, but the former U.S. Special Envoy to Somalia later played down the incident as a « blip ».

In contrast to UNTAC and ONUMOZ, whose successes have been due in large part to the consent and cooperation of the parties, UNPROFOR and UNOSOM, whose consent has been illusory, have not been able to carry out their mandates. The conditions in Somalia and the former Yugoslavia which have lead the Security Council to authorize Chapter VII enforcement measures are such that a *peacekeeping* force is not a viable instrument for post-civil war reconciliation, for no peace has been achieved by the parties.

Indicative of what may become the norm in the future are the provisions of a Draft International Convention, submitted by Ukraine in October of 1993, concerning the protection of members of peacekeeping forces (200). Part III of the Draft Convention outlines the obligations of the host state. Among these obligations are « to take all necessary measures to ensure respect for and guarantee the safety and security of those personnel » (201) and « to deter, prosecute, and punish all those responsible for attacks and other acts of violence against such personnel » (202). The Draft Convention also criminalizes attacks, kidnappings, obstructions, and detentions of U.N. peacekeeping personnel (203). A host state to a Chapter VI operation is much more likely to honor the terms of this convention, if enacted, than a state which is an object of Chapter VII enforcement activities. It may be that until Participating States are willing to devote much more money and materiel to U.N. peacekeeping operations, and sacrifice many lives, Chapter VII is better suited to authorizing states to use all necessary means to achieve the Security Council's objectives, rather than creating a multinational force to do it.

B. — *Impartiality Still A Norm*
Under « Chapter 6 1/2 »

If more U.N. peacekeeping efforts evolve into Chapter VII operations, we will see more departures from the traditional norm of impartiality. A Chapter VII operation needs no impartiality, for the Security Council may authorize it to enforce compliance with Security Council Resolutions (204). However, in non-Chapter VII operations, the norm of impartiality and non-interference still applies.

GORDON, M., « U.S. Force Ready To Take Last Aides From Somalia », *New York Times*, Jun. 29, 1994, at A10. In March of 1995, the last of the U.N. troops left Somalia.

(200) *Draft International Convention on the Status and Safety of the Personnel of the United Nations Force and Associated Civilian Personnel* [hereinafter *Draft Convention*], annex to *Letter from Ukraine*, U.N. Doc. A/C.6/48/L.3 (limited distribution, 1993). On file with author. A similar proposal was submitted by New Zealand, U.N. Doc. A/C.6/48/L.2. See also *Question of Responsibility for Attacks on United Nations and Associated Personnel*, a conference paper in the Sixth Committee, Agenda Item 152, U.N. Doc. A/C.6/48/WG/RESP/CRP.1 (1993).

(201) *Draft Convention*, *supra* note 200, art. 8, para. 1.

(202) *Id.*, art. 8, para. 2.

(203) *Id.*, art. 10.

(204) U.N. CHARTER, art. 42.

The value of impartiality as a continuing norm in non-Chapter VII operations is evident in a comparison of ONUC and UNTAC. When the secessionist government of Katanga declared its opposition to the presence of ONUC in Katanga, ONUC entered the province anyway (205). The Security Council, in declaring Katangese secession illegal and authorizing the Secretary-General to use force to remove the foreign mercenaries operating in Katanga (206), forced ONUC into a war against the Katangese secessionist movement.

In contrast, when the Khmer Rouge refused UNTAC access to areas under its control (207), UNTAC chose not to enter them forcibly. When they refused to be disarmed, as stipulated in the Paris Agreement (208), cantonment was suspended for all of the factions, in the interest of maintaining a balance of power (209). Despite the frequent attacks on UNTAC blamed on the Khmer Rouge (210), UNTAC did not become involved in a shooting war with them. In addition, UNTAC's efforts to stabilize the Cambodian currency were colored by the political consideration that direct support for the currency could be seen as partisan support for the central authorities (211). It can be partly attributed to UNTAC's strict impartiality that UNTAC has been considered a success, while ONUC was severely entangled in controversy.

In UNPROFOR and UNOSOM II, the U.N. has not been able to maintain its impartiality. This is the result of one side of the conflict attacking U.N. troops or engaging in flagrant, egregious violations of international law. In this respect the U.N. became the enemy of the Serbs in the former Yugoslavia, and the forces of General Aidid in Somalia.

In the case of the Serbs, the Secretary-General laid the blame for obstruction of the demilitarization of the UNPA's flatly on the « Government of the Republic of Serbian Krajina » (the « Knin Authorities », many of whom were former JNA), and was openly skeptical of Serbia's assertion that it had no effective control over them (212). It was the Bosnian Serbs, apparently with the support of neighboring Serbia (213), who denied UNPROFOR humanitarian access to their areas (214); it is the Serbs who have generally been blamed for the systematic massacre, detention, rape

(205) S.C. Res. 146, para. 3 (1960).

(206) S.C. Res. 169 (1961).

(207) See note 147, *supra*.

(208) Paris Agreement, *supra* note 145, Annex I, sec. C.

(209) *Third Progress Report*, *supra* note 148.

(210) See note 147, *supra*.

(211) *Fourth Progress Report*, *supra* note 147.

(212) *Further Report of the Secretary-General*, *supra* note 177.

(213) ABC World News Tonight reported in early August of 1994 that Serbia may soon cease its support to the Bosnian Serbs.

(214) *Further Report of the Secretary-General*, *supra* note 177.

and other « ethnic cleansing » activities (215). The Secretary-General himself apparently does not believe in the feasibility of an impartial UNPROFOR (216).

In Somalia, UNOSOM II went on a manhunt for General Aidid (217), putting the force in much the same position as ONUC when it disarmed the Katangese forces. The highly publicized confrontation, resulting in a number of U.S. casualties and the televised capture of an American airman, resulted in the U.S. decision to withdraw from Somalia by March 31, 1994 (218). Since it took the American-led UNITAF to secure Somalia for safe delivery of humanitarian aid, there is room for doubt as to whether UNOSOM II will be able to maintain this safety now that the U.S. has left. The force continues in its mission to protect ports, the Somali infrastructure, and communications (219), reorganize the police and judicial system (220), and provide humanitarian relief (221) and resettle refugees (222), but the Security Council has noted the increased violence against humanitarian operations and that the factions appear to be headed for war once again (223).

Similarly, mixed signals about the impartiality of the U.N. force in Rwanda have generated opposition to the force's presence from the rebel faction there. The United Nations Assistance Mission in Rwanda (UNAMIR) was established in October of 1993 (224) at the recommendation of the Secretary-General (225), in order to monitor the cease-fire agreement and the cantonment and demilitarization of the factions (226), in

(215) See, e.g., S.C. Res. 819 (1993), in which the Security Council « condemns and rejects » Serb « ethnic cleansing » activities against Muslims in and around Srebrenica. For recent activities, see note 182, *supra*. Bosnia has sued Yugoslavia in the World Court for violations of the Genocide Convention.

(216) *Further Report of the Secretary-General*, *supra* note 177, para. 49. « United Nations troops may have to move beyond the usual peace-keeping mode of impartiality between two parties to a conflict who have both agreed to the United Nations role. They themselves may become a party to a conflict with whoever tries to block, rob or destroy the convoy which they are protecting. »

(217) S.C. Res. 837 (1993) condemned the June 5 attack on Pakistani troops, and reaffirmed the Secretary-General's authorization to arrest and prosecute those responsible. In the following weeks, the *New York Times* reported U.N. assaults against General Aidid's home, command center, and forces. Following U.S. casualties, the U.S. pressured the U.N. into ending the manhunt, which it did in S.C. Res. 885, para. 8 (1993).

(218) Following a September 9 Senate resolution and a September 28 House resolution, President Clinton announced the withdrawal on October 7. JEHL, D., « Clinton Doubling U.S. Force in Somalia, Vowing Troops Will Come Home in 6 Months », *New York Times*, Oct. 8, 1993, at A1. See also notes 272-73, *infra*, and accompanying text.

(219) S.C. Res. 897, para. 2(b) (1994).

(220) *Id.*, para. 2(d).

(221) *Id.*, para. 2(e).

(222) *Id.*, para. 2(e).

(223) See note 199, *supra*.

(224) S.C. Res. 872, para. 1 (1993).

(225) *Report of the Secretary-General*, U.N. Doc. S/26488 & Add. 1 (1993).

(226) S.C. Res. 872, para. 3(b) (1993).

accordance with the Arusha peace agreements between the Government of Rwanda and the Rwandese Patriotic Front (RPF). The deaths of the presidents of Rwanda and Burundi in a plane crash resulted in the collapse of the peace and renewed fighting and ethnic violence at genocidal proportions (227). By May of 1994, UNAMIR was a Chapter VII operation (228).

Following a period of Western hesitancy (229), France announced its intention to intervene, but with assurances that its objective was to halt the killing of civilians, not to assume a partisan role in the conflict (230), despite the suspicions of the largely Tutsi RPF that France's real motive was to aid the Hutu government (231). The Security Council endorsed the invasion, but with the caveat that UNAMIR was *not* to act as a buffer force between the factions (232). On the ground, however, French officials were saying that the RPF could not be permitted to defeat the government militarily (233). At one point, the French force's actions were consistent with its words, for in early July French troops blocked the RPF's advance (234). France recanted the next day, but only in the face of almost certain victory by the RPF (235).

If the traditional norm is that U.N. peacekeeping missions do not commence their operations in favor of one side or another, that norm has been colored by an apparent shift toward lesser tolerance of, and impartiality toward, states or factions who commit gross violations of international law or attack U.N. troops. Judging from a comparison of UNTAC, UNPROFOR, and UNOSOM II, however, it is likely this shift is actually the result of the Security Council's more frequent usage of Chapter VII.

What has not changed, however, is the Council's strong presumptions in favor of « territorial integrity. » The Secretary-General had moved away somewhat from the position of absolute sovereignty and territorial integrity in his *Agenda For Peace*, but with extreme caution :

Respect for [the State's] fundamental sovereignty and integrity is crucial to any common international progress. The time of absolute and exclusive

(227) LOROH, D., « Anarchy Rules Rwanda's Capital And Drunken Soldiers Roam City », *New York Times*, Apr. 14, 1994, at A1.

(228) S.C. Res. 918 (1994).

(229) SCIOFINO, E., « For West, Rwanda Is Not Worth the Political Candle », *New York Times*, Apr. 15, 1994, at A3.

(230) See SIMONS, M., « France Says Allies Support Support Rwanda Plan », *New York Times*, Jun. 20, 1994, at A7.

(231) SIMONS, M., « France Is Sending Force to Rwanda To Help Civilians », *New York Times*, Jun. 23, 1994, at A1.

(232) S.C. Res. 925, preamble (1994).

(233) BONNER, R., « French Force In Skirmish In Rwanda », *New York Times*, Jul. 4, 1994, at A2.

(234) BONNER, R., « French Establish A Base In Rwanda To Block Rebels », *New York Times*, Jul. 5, 1994, at A1.

(235) BONNER, R., « France Reconsiders the 'Line' It Drew to Bar Rwanda Rebels », *New York Times*, Jul. 6, 1994, at A4.

sovereignty, however, has passed ; its theory was never matched by reality. It is the task of leaders of States today to find a balance between the needs of good internal governance and the requirements of an ever more interdependent world. ... if every ethnic, religious or linguistic group claimed statehood, there would be no limit to fragmentation, and peace ... would become ever more difficult to achieve (236).

The Security Council has opted for the more cautious approach. In February of 1994, it reaffirmed the « sovereignty, territorial integrity, and political independence » of Bosnia-Herzegovina (237), and in July paid similar homage to the territorial integrity of Georgia (238) and Cyprus (239). The latter is particularly significant because the Council has now closed the door to any solution to the 30-year-old conflict in Cyprus, other than reunification, which Northern Cyprus has rejected all along.

C. — *Rules of Engagement* *Stretched Even Further*

Peacekeeping operations traditionally used force only in self-defense, whether in response to threats to U.N. personnel or attempts to prevent the force from carrying out its mandate. The rules of engagement for modern « Chapter 6 1/2 » and « Chapter 6 3/4 » forces have not changed with respect to attacks or threats against U.N. personnel. Indeed, the provisions of the Draft Convention, mentioned in section I(A), in affirming the right of U.N. peacekeepers to carry arms, would also affirm the duty to use force only in self-defense (240). U.N. forces have been called upon to perform another kind of function : ensuring respect for human rights. In exercising this new task U.N. forces have assumed a more activist role than the traditional defensive rules of engagement would have allowed.

This role was most evident in Cambodia, where one of UNTAC's duties was to arrest and prosecute persons for committing acts of political violence (241). Such authority goes beyond self-defense because it empowers the force to engage in pro-active measures against someone whose violence is directed not towards the U.N., but a third party. Under the Secretary-General's interpretation of self-defense in his guiding prin-

(236) *An Agenda For Peace*, *supra* note 11, at 9.

(237) S.C. Res. 900, preamble (1994).

(238) S.C. Res. 937, preamble (1994).

(239) S.C. Res. 939, para. 2 (1994).

(240) *Draft Convention*, *supra* note 200, art. 6, para. 1 (« Military personnel and civilian police personnel shall have the right to have and carry arms and use them in self-defense when fulfilling their functions mandated to them by the United Nations Security Council »). See also art. 12.

(241) Paris Agreement, *supra* note 145, art. 16 and Annex I, sec. E. The Special Representative established an UNTAC office with such powers in January 1993. *Third Progress Report*, *supra* note 148, para. 103. Arrests and prosecutions of such offenders, amongst whom were personnel of several parties, commenced shortly thereafter. *Report of the Secretary-General*, para. 15, U.N. Doc. S/25289 (1993).

ciples of UNFICYP (242), a Cambodian committing politically-motivated acts of violence against other Cambodians would be preventing UNTAC from carrying out its mission, and UNTAC would be authorized to take forceful measures. Although this premise may be stretching the principle of self-defense beyond a reasonable interpretation, it is doubtful that the Supreme National Council would have raised strong objections to it — under the Paris Agreement, the SNC delegated to the U.N. « all powers necessary » to ensure implementation of its terms (243).

Ironically — and sadly — the pro-active measures taken by the non-Chapter VII UNTAC were more aggressive, and more fruitful, than the measures taken by UNPROFOR, a Chapter VII force, in response to forcible attempts to prevent UNPROFOR personnel from carrying out their duties. The Security Council did indeed authorize *states* to use « all necessary measures » to enforce the « no-fly » zone over Bosnia (244), but UNPROFOR itself was not given such broad discretionary powers. The rules of engagement laid down by the Security Council only authorized UNPROFOR personnel to use all necessary measures *acting in self-defense*. This was the language used both in the mandate to protect the so-called « safe areas » in Bosnia (245) and to ensure its own « security and freedom of movement » in Croatia (246). These more limited rules of engagement did *not* provide UNPROFOR with any enforcement powers, and consequently UNPROFOR did not act like the Chapter VII force that it is professed to be.

On April 10, 1994, at the request of the UNPROFOR Commander, NATO planes bombed Serbian positions around the U.N. « safe area » of Gorazde, after Serbian forces had ignored U.N. demands to stop shelling the city, and threatened more air strikes if they did not withdraw (247). The request came on the heels of a U.S. decision to regard further Serbian advances on Gorazde as a threat to UNPROFOR troops stationed there (248), thereby invoking the defensive rules of engagement laid down by the Security Council with respect to the « safe areas » (249). After the Serbian forces continued to ignore U.N. warnings and fired on a U.N. posi-

(242) *Aide-Mémoire*, *supra* note 92, para. 18(c).

(243) Paris Agreement, *supra* note 145, art. 6.

(244) S.C. Res. 816, para. 4 (1993). The « no-fly » zone was first authorized in S.C. Res. 781 (1992).

(245) S.C. Res. 836, para. 9 (1993).

(246) S.C. Res. 871, *supra* note 9 (1993).

(247) СУДЕТИЋ, G., « 2 NATO Jets Bomb the Serbs Besieging A Bosnian Haven ; U.S. Warns of More Strikes », *New York Times*, Apr. 11, 1994, at A1.

(248) ЖЕЛ, D., « A More Forthright Stand By An Embarrassed U.S. Set the Stage for Air Strikes », *New York Times*, Apr. 11, 1994, at A6.

(249) S.C. Res. 836, para. 9 (1993). In a CNN interview, the U.S. Ambassador to the U.N. said that the purpose of the air strike « is, according to the U.N. resolution, to protect Unprofor personnel ». GORDON, M., « Modest Air Operation in Bosnia Crosses A Major Political Frontier », *New York Times*, Apr. 11, 1994, at A1.

tion (250), NATO bombed Serbian targets again the next day (251). Although carried out under the legal justification of use of all necessary measures in acting in self-defense (252), these air strikes seem to have had a second purpose : to stop the Serbian offensive and effect a cease-fire and resumption of peace negotiations (253). The strategy was initially branded a failure (254), for the Serbs responded by shooting down a NATO plane (255), shelling a U.N. position (256), and entering the city anyway (257). A week later, the Serbs did withdraw from Gorazde (258), but only after new NATO ultimatums (259). The second set of ultimatums and subsequent actions (260) appear to be derived not from UNPROFOR's defensive powers, but rather its offensive powers as a Chapter VII force (261).

The U.N.'s power of aggression in Somalia was better defined when the Security Council authorized the Secretary-General « to take all necessary measures » against General Aidid for the June 1993 series of ambushes on U.N. personnel (262). It is interesting to note, however, that the U.S. Rangers who did the most damage to General Aidid in fulfillment of that mandate were not operating under U.N. command, so it is difficult to

(250) GORDON, M., « New Bosnia Debate : How Much Force ? », *New York Times*, Apr. 12, 1994, at A10.

(251) SUDETIC, C., « U.S. Planes Bomb Serbian Position For A Second Day », *New York Times*, Apr. 12, 1994, at A1.

(252) SCIOLINO, E., « U.S. Policies Under Siege », *New York Times*, Apr. 16, 1994, at A1.

(253) COHEN, R., « NATO's Balkan Gamble : Using Force Is the Best Way of Achieving Peace », *New York Times*, Apr. 12, 1994, at A10. President Clinton said the purpose of the air strikes was « to get them to honor U.N. rules, and to encourage them to do what they say they wish to do, which is engage in negotiations ». JEHL, D., « Clinton Is Telling Serbs That NATO and U.N. Are Neutral », *New York Times*, Apr. 15, 1994, at A8. See also SUDETIC, C., *supra* note 251, at A10, col. 6, which chronicles a verbal exchange between the UNPROFOR Commander and the Commander of the Serb forces in Bosnia.

(254) GORDON, M., « The Bluff That Failed », *New York Times*, Apr. 19, 1994, at A1.

(255) SUDETIC, C., « Serbs Down A British Jet Over Gorazde », *New York Times*, Apr. 17, 1994, at A1.

(256) SUDETIC, C., « Serbian Troops Step Up Pressure On U.N. », *New York Times*, Apr. 15, 1994, at A8.

(257) SUDETIC, C., « Gorazde In Panic As Serbian Forces Enter « Safe » Area », *New York Times*, Apr. 18, 1994, at A1.

(258) COHEN, R., « Bowing to NATO, Serbs Pull Back But Damage City », *New York Times*, Apr. 25, 1994, at A1.

(259) WHITNEY, C., « NATO Warns Serbs To Cease Attacks Or Face Bombings », *New York Times*, Apr. 23, 1994, at A1.

(260) *E.g.*, the airstrikes mentioned in note 183, *supra*, and the house-to-house searches for snipers, reported by CNN on August 6, 1994.

(261) It is interesting that the authority to call air strikes was delegated to the UNPROFOR Commander in mid-April, LEWIS, P., « U.S. and U.N. Consider Heavier Attacks On Serbs », *New York Times*, Apr. 13, 1994, at A14; and yet three days later the Special Representative overruled the Force Commander's call for new strikes against the Serbs at Gorazde. SUDETIC, C., « Serbs Move Again On Muslim Town ; Air Raid Rejected », *New York Times*, Apr. 16, 1994, at A1.

(262) S.C. Res. 837, para. 5 (1993).

determine whether the broader authorization of the Security Council to use force actually resulted in a more aggressive U.N. force.

The U.N. may be able to better tailor its power of aggression if the Draft Convention enters into force. Article 12 of the draft reiterates that if the parties violate the principles in the draft that are to provide for the safety of U.N. peacekeepers, the force «shall have the right to act in self-defense in accordance with the rules of engagement ..., which may be widened or specified on the basis of a special decision taken by the ... Security Council» (emphasis added). This provision could allow the Security Council to formalize the norm that threats to U.N. peacekeeping forces include forcible attempts to prevent them from carrying out their mandates, a norm which, as discussed in section I(C), stands on shaky legal ground.

In his *Agenda For Peace*, the Secretary-General took note of «an unconscionable increase in the number of fatalities» in peacekeeping operations (263). He recommended that the Security Council «keep open the option of considering in advance collective measures ... to come into effect should the purpose of the ... operation systematically be frustrated and hostilities occur» (264). Incorporating the Draft Convention into the Model Status of Forces Agreement would be a significant step in implementing the Secretary-General's recommendation, at least for «Chapter 6 1/2» forces. As for Chapter VII forces, the Security Council has broadened the power of aggression somewhat. In March of 1994, the Council authorized member states and NATO to take «all necessary measures to extend close air support to ... Croatia, in defense of UNPROFOR personnel» (emphasis added) (265). In June, the Council «emphasiz[ed] the necessity» that «[a]ll appropriate steps be taken to ensure the security and safety of ... personnel engaged» in UNAMIR (266). In July, the Council enacted an identical measure for the United Nations Mission In Haiti (UNMIH) (267). These actions reflect a greater willingness on the part of the Council, and the Secretary-General, to have stronger peacekeeping forces, able to achieve their goals by coercion, if necessary.

(263) *An Agenda For Peace*, *supra* note 11, at 39.

(264) *Id.*, at 40.

(265) S.C. Res. 908, para. 8 (1994). The Council did this under the Secretary-General's recommendation. U.N. Doc. S/1994/300, para. 12 (1994).

(266) S.C. Res. 925, para. 12(a) (1994).

(267) S.C. Res. 940, para. 16 (1994). UNMIH is not discussed in detail in this article because its mission is to oust the illegal regime in Haiti and restore the elected government, *Id.*, para. 4, and *not* to monitor or impose a peace agreement between warring factions. Thus, technically, UNMIH is not a peacekeeping operation.

D. — *New Developments in U.N. Command
and Control*

As U.N. peacekeepers find themselves in more dangerous operations, where they are more frequently shot at, contingents will more and more often use the « rear link » — the line of communication from the contingent directly to its national government. Unwilling to put their soldiers at risk, national governments will second-guess the U.N.'s judgment in deployments, undermining the effectiveness of the operation. This problem became particularly acute in Somalia, where Italian and Pakistani troops on occasion refused to deploy in certain areas on the instructions of their national governments (268). The *Village Voice* has reported that UNTAC had similar problems with some of its contingents (269). National governments may also more frequently resort to withdrawing their forces from the operation. The withdrawal of U.S. forces from Somalia (270) and Italy's threat to do the same (271) are ominous signals of the emergence of this trend.

Another emerging trend is for national legislatures to regulate their governments' contribution to peacekeeping forces. An additional result of the outcry in the U.S. Congress over U.N. actions in Somalia against General Aidid (272) was the introduction in January 1994, by then Senate Minority Leader Robert Dole (now the Senate Majority Leader), of the Peace Powers Act of 1994 (273). This bill, if enacted, would have amended the United Nations Participation Act (274) to « strengthen congressional oversight of United Nations peacekeeping activities » and serve other American security

(268) LORCH, D., « Disunity Hampering U.N. Somalia Effort », *New York Times*, Jul. 12, 1993, at A8. The Italians went so far as to mount unilaterally a weapons search operation, in which three Italian soldiers were killed. The Italian contingent commander quite ostentatiously disputed the U.N. stance of not negotiating with General Aidid's forces. A month later Italy announced its decision to move its troops out of Mogadishu. Italy To Move Troops Out of Somali Capital, *New York Times*, Aug. 13, 1993. In a similar policy dispute, the U.S. requested the U.N. to limit usage of American troops to « emergency operations ». SCIOLINO, E., « U.S. Asks U.N. Not to Use American Troops on Patrol », *New York Times*, Sep. 29, 1993, at A10.

(269) COBURN, J., « Shooting An Elephant : The United Nations In Cambodia », *Village Voice*, Jul. 20, 1993, at 26. The article singled out the Indonesian contingent as being one whose troops were always consulting their home government for orders. In an interview on Nov. 17, 1993, Mr. F.T. Liu, former Asst. Secretary-General for Special Political Affairs, now with the International Peace Academy, denied that UNTAC suffered any impairments to its mission from contingents' use of the « rear link ».

(270) See note 218, *supra*, and accompanying text.

(271) COWELL, A., « Italy, in U.N. Rift, Threatens Recall of Somalia Troops », *New York Times*, Jul. 16, 1993, at A1.

(272) See note 218, *supra*, and accompanying text.

(273) Peace Powers Act, S. 1803, 103rd Cong., 1st Sess. (1994). The capture of the American airman in Somalia was specifically mentioned in sec. 15(a)(4) : « (a) The Congress finds that ... (4) the capture and torture of Chief Warrant Officer Michael Durant in Somalia in October 1993 was a horrendous and recent example of the risk to United States personnel in multilateral forces. »

(274) United Nations Participation Act of 1945, 22 U.S.C. § 287.

and financial interests with respect to the U.N (275). Among its checks on executive operational authority were a requirement to notify Congress in advance of Security Council votes concerning peacekeeping operations (276) and of U.S. assistance to U.N. peacekeeping forces (277). Also included was a mechanism for reporting to Congress of evaluations of the safety of American troops captured while in U.N. service and of measures to improve their safety (278). The most onerous provision of this bill was the prohibition of U.S. troops from serving under foreign command, unless certain conditions were met (279).

Congress defined these conditions as presidential determination of a national security interest served by the force, U.S. contingents' ability to contract the U.S. government, U.S. ability to withdraw from the force, and retention of U.S. « administrative command » (280). Although this provision, if enacted, would have well served the political interests of Congress, it would have been quite detrimental to the U.N.'s interests, for the second condition — no restrictions on the use of the « rear link » (281) — would have further undermined the cohesiveness of U.N. peacekeeping command. In addition, a blanket authority to withdraw from the force (282) would have opened the door to the same horrors envisioned by Professor Bowett and experienced by UNEF I (283), although article 13 of the Draft Convention on the protection of U.N. peacekeepers, if enacted, will entitle participating states to unilaterally withdraw their troops anyway, if in their judgment the troops are not being adequately protected (284). Ultimately, the prohibition of subordination of U.S. forces under foreign command was not enacted ; the bill was dropped in favor of an amendment to the State

(275) Peace Powers Act, *supra* note 273, sec. 2.

(276) *Id.*, sec. 5 : « ... any United Nations peacekeeping activity ... which would involve the use of United States Armed Forces or the expenditure of United States funds », *i.e.* all of them !

(277) *Id.*, sec. 8.

(278) *Id.*, sec. 15.

(279) *Id.*, sec. 4(b).

(280) *Id.*

(281) Section 4 of the Peace Powers Act would have amended section 6(c)(1)(A)(ii) of the United Nations Participation Act to read, « the unit commanders of the United States Armed Forces proposed for subordination to the command of foreign nationals will at all times retain the ability to report independently to higher United States military authorities. » *Id.*

(282) Section 4 of the Peace Powers Act would have amended section 6(c)(1)(A)(iii) of the United Nations Participation Act to read, « the United States will retain authority to withdraw the United States Armed Forces from the operation at any time and to take action as it deems necessary to protect those forces if they are endangered. » *Id.*

(283) See notes 117 and 119, *supra*, and accompanying text. One condition enunciated in the bill could have eliminated the need to satisfy the other four : Congressional authorization. However, given the conditions Congress imposed on subordination of U.S. troops by the President, it seems likely that Congress would have imposed the same conditions on such subordination by Congressional authorization.

(284) *Draft Convention*, *supra* note 200, art. 13. « If [breaches of the Convention] continue to occur, a State Party whose personnel are engaged in the United Nations peace-keeping operation shall have the right to recall that personnel as not adequately protected. »

Department Authorization Bill for 1994 (285), without this particular section.

The Japanese Diet has also enacted legislation regulating its government's participation in peacekeeping forces. In June of 1992, the Diet passed the Peacekeeping Law (286) «to set forth a framework for the implementation of International Peace Cooperation Assignments» (287). The Peacekeeping Law set forth several conditions and restrictions on Japanese participation. These «Five Principles», as Akiho Shibata has described them (288), are 1) an end to the fighting between the parties to the conflict (289); 2) consent of the parties (and of the host state, if not a party) to the presence of the U.N. peacekeeping force (290); 3) U.N. impartiality with respect to the parties (291); 4) the limitation on use of force to «unavoidable needs» (292), *i.e.* self-defense; and 5) termination of Japanese participation should the force lose consent or impartiality (293). In addition, the Peacekeeping Law requires the Prime Minister to get Diet approval before deploying Japanese troops (294), and such approval must be renewed after two years (295). The Diet, however, did not impose restrictions on the dispatch of Japanese peacekeepers to foreign command, as Senator Dole's original Peace Powers Act would have done; the Peacekeeping Law provides that «the preparation and revision of Operating Procedures shall be made so as to conform with commands of [the] Secretary-General» (296). This provision, though a positive move toward U.N. central command and control, probably does not restrict a Japanese contingents' use of the «rear link», nor would it prevent Japan from withdrawing from a U.N. force.

The Peace Powers Act and the Japanese Peacekeeping Law mark a new trend in legislative assertion of control over the traditionally executive power to contribute to U.N. peacekeeping operations. Although not all

(285) Amendment 1323 to S. 1281, 103rd Cong., 1st Sess., (1994).

(286) Kokusairengo Heiwa Iji Katsudo-to Ni Taisaru Kyoryoku Ni Kansaru Houritsu [Law Concerning Cooperation for United Nations Peace-Keeping Operations and Other Operations, hereinafter Peacekeeping Law], Law. No. 79, Jun. 19, 1992, 1011 *Jurisuto* [Jurist] 33 (1992.11.1), *unofficial translation printed in* 32 *ILM* 215 (1993). The «Other Operations» referred to therein are humanitarian relief operations.

(287) *Id.*, art. I.

(288) SHIBATA, A., «Japanese Peacekeeping Legislation And Recent Developments in U.N. Operations», part III, sec. 2, 19 *Yale J. Int'l L.*, 307 (1994).

(289) Peacekeeping Law, *supra* note 286, art. III(1).

(290) *Id.*, art. III(1), art. IV, sec. 1.

(291) *Id.*, art. III(1).

(292) *Id.*, art. XXIV, sec. 3.

(293) *Id.*, art. VI, sec. 13, para. 1.

(294) *Id.*, art. VI, sec. 7.

(295) *Id.*, art. VI, sec. 10.

(296) *Id.*, art. VIII, sec. 2.

some-time participating states have enacted such laws (297), they may become of the future.

In the case of UNTAC, which essentially ran the government of Cambodia prior to the election, a new type of control came into being : control by the host state. Just as the SNC delegated to UNTAC all powers necessary to implement the Paris Agreement (298), it also defined its relationship with UNTAC, and the scope of the powers which it, the consenting party, had over UNTAC (299). The SNC could render advice to UNTAC concerning the implementation of the Agreement and, subject to certain conditions, UNTAC had to comply (300). UNTAC's check on this power is that the advice must be « consistent with the objectives of the ... Agreement » (301), as determined by the Special Representative (302). Thus UNTAC could ignore any lawfully submitted advice from the SNC if the Special Representative believed that complying with it would not be in the interests of the Paris Agreement. This particular aspect of control so far is unique to UNTAC, and may have derived wholly from its unusual status as legally authorized administrator of the host state.

The latest trend of political influence on peacekeeping operations has been the increasingly vocal calls for clear and realistic mandates and timetables for completion of the missions and withdrawal of the forces. Senator Dole's desire for clearer mandates was among his motives for introducing the Peace Powers Act ; however he was not the first to voice that concern, for as early as 1992 the Secretary-General himself referred to a « clear and practicable mandate » as a « basic condition for success » (303). This trend appears to reflect a growing impatience with the continuing hostilities of the parties for whom peacekeeping operations are established, or, in the case of Chapter VII peace-enforcement operations, with the U.N. itself. As Secretary-General Boutros-Ghali put it, « [t]he fault lies first in the lack of political will of parties to seek a solution to their differences through such means as are suggested in Chapter VI of the Charter » (304). This impatience has resulted in suggestions that forces be withdrawn. At

(297) The United Kingdom, for example, has no such legislation. Interview with Michael C. Wood, Counsellor and Legal Advisor, Permanent Mission of the U.K. to the U.N., at the Conference on the Law of International Organizations in Situations of Civil War, NYU Law School, Jan. 29, 1994.

(298) Paris Agreement, *supra* note 145, art. 6.

(299) *Id.*, arts. 6, 7, 11, 13, 16, and Annexes 1-3.

(300) *Id.*, Annex 1, sec. A, para. 2(a). The SNC's decision had to be unanimous ; if not, the SNC President could render such advice to UNTAC on his own, subject to similar restraints. *Id.*, Annex 1, sec. A, para. 2(b). As Steven Ratner points out in RATNER, S., *supra* note 62, this power did not extend to conduction of elections, where UNTAC had sole authority. Paris Agreement, *supra* note 145, Annex 1, sec. D, para. 1 : « UNTAC will organize and conduct the election ... » (emphasis added).

(301) Paris Agreement, *supra* note 145, Annex 1, paras. 2(a) and 2(b).

(302) *Id.*, Annex 1, para. 2(e).

(303) *An Agenda For Peace*, *supra* note 11, at 29.

(304) *Id.*, at 20.

one point, for example, the Secretary-General declared that he was « sorely tempted » to withdraw UNPROFOR from Croatia (305) because of Serb and Croat non-compliance with their own peace plan (306). In June of 1994, the Security Council declared its intent to « reconsider » the U.N. role in Angola (the United Nations Angola Verification Mission, UNAVEM and UNAVEM II) if no peace agreement had been reached by the end of the mission's mandate (307). The Council's most recent resolution on Cyprus (308) also reflects impatience and dissatisfaction with the *status quo* there. Consequently, the Security Council has begun to put into place timetables for completion of the missions and withdrawal of personnel. Examples include UNOSOM II, where the Council set a deadline of March 1995 for an agreement (309); ONUMOZ, whose mandate the Council extended for a « final period » until 15 November 1994 (310); and UNMIH, where the Council set a deadline of February 1996 for completion of the mission (311).

Another manifestation of member states' frustration with U.N. peacekeeping has been a shift of emphasis from the U.N. to the permanent members of the Security Council. The United States, for example, has blocked new missions in Burundi, Georgia, and Angola « because the goals of the missions did not seem realistic » (312). France called upon the U.N. to deploy in Rwanda only after its troops invaded and stabilized the situation on their own (313). The U.N. has collaborated extensively with the Russian Federation in defining the objectives of the U.N. Observer Mission In Georgia (UNOMIG) (314). Finally the Secretary-General himself has suggested that in the event of a peace agreement in Bosnia, UNPROFOR should withdraw and allow the « major powers » to enforce the agreement (315). In the case of Bosnia, it is interesting to note that the Security

(305) *Report*, U.N. Doc. S/26470 (1993).

(306) See notes 178-80, *supra*, and accompanying text.

(307) S.C. Res. 922, para. 6 (1994). The Council made another such declaration a month later, in S.C. Res. 932, para. 7 (1994). UNAVEM is an observer mission and therefore has not been discussed in detail in this article.

(308) S.C. Res. 939 (1994), in which the Council reaffirmed the territorial integrity of Cyprus. See note 239, *supra*, and accompanying text.

(309) S.C. Res. 897, para. 13 (1994).

(310) S.C. Res. 916, para. 19 (1994). This action followed a request that the Secretary-General prepare a timetable for completion of the mandate and withdrawal of personnel. S.C. Res. 898, para. 4 (1994).

(311) S.C. Res. 940, para. 11 (1994).

(312) SCIOLINO, E., « New U.S. Peacekeeping Policy De-Emphasizes Role of the U.N. », *New York Times*, May 6, 1994, at A1, A7.

(313) LEWIS, P., « France Calls Rwanda Mission a Success; Asks For U.N. Force », *New York Times*, Jul. 12, 1994, at A4.

(314) See S.C. Res. 934, para. 2 (1994). UNOMIG is an observer mission and is beyond the purview of this article.

(315) LYONS, R., « U.N. Chief Urges Reassessment of Peacekeeping Force in Bosnia », *New York Times*, Jul. 26, 1994, at A7.

Council resolutions authorizing the use of force have been directed mostly toward individual states and NATO, not to UNPROFOR itself.

From these occurrences it is clear that the P5 and participating states are both becoming more intensely involved in the work of peacekeeping. States are assuming a more active role in carrying out the force's mandates, particularly in Chapter VII operations, where the use of force is more frequent and even expected. Legislatures are also asserting greater control over member states' power to participate in peacekeeping operations.

E. — *Greater Participation in Peacekeeping by the P5*

The multinationality of peacekeeping forces is still a norm of U.N. peacekeeping practice. Even the American-dominated UNITAF in Somalia included forces from 21 other nations (316). What is new, however, is the greater involvement of the P5 in peacekeeping. Britain and France both participated in UNTAC (317) and UNITAF (318), and both contribute to UNPROFOR (319). The USSR, which for decades held the opinion that peacekeeping operations were beyond the authority of the U.N. (320), offered to contribute to future operations (321). Since then, Russia has participated in UNTAC (322) and UNPROFOR (323). The Russians have even suggested creating the permanent U.N. force, comprised of contingents from the P5, that the drafters of the U.N. Charter had originally intended (324), a proposal echoed by Secretary-General Boutros-Ghali (325). Even China, the P5 member which « disassociated » itself from

(316) Australia, Belgium, Botswana, Canada, Egypt, France, Germany, India, Italy, Kuwait, Morocco, New Zealand, Nigeria, Pakistan, Saudi Arabia, Sweden, Tunisia, Turkey, United Arab Emirates, United Kingdom, Zimbabwe. UNDP, *The United Nations and the Situation in Somalia: Reference Paper, 30 April 1993* [hereinafter *U.N. in Somalia*], at 7, U.N. Doc. DPI/1321/Rev.1, U.N. Sales No. 93413 (1993).

(317) UNDP, *United Nations Transitional Authority in Cambodia* [hereinafter *UNTAC*], at 14, U.N. Doc. DPI/1352, U.N. Sales No. 93184 (1993).

(318) *U.N. in Somalia*, *supra* note 316, at 10.

(319) UNDP, *The United Nations and the Situation in the Former Yugoslavia: Reference Paper, 7 May 1993* [hereinafter *U.N. in Yugoslavia*], at 17, U.N. Doc. DPI/1312/Rev.1, U.N. Sales No. 93429 (1993).

(320) See note 14, *supra*, and accompanying text.

(321) Mikhail Gorbachev: *Address at the United Nations, New York, December 7, 1988* (1988), cited in MACKINLAY, J. and CHOPRA, J., «Second Generation Multinational Operations», *The Washington Quarterly*, Summer 1992, at 115.

(322) *UNTAC*, *supra* note 317, at 14.

(323) *U.N. in Yugoslavia*, *supra* note 319, at 17.

(324) KRYLOV, N., «International Peacekeeping and Enforcement Actions After the Cold War», in *Law and Force in the New International Order*, *supra* note 98, at 98. For an account of the Security Council's original failure to implement this measure, see BOWETT, D., *supra* note 1, at 14-15. David Scheffer contends that such a standing force was actually opposed by the drafters of the Charter. SCHEFFER, D., «Commentary on Collective Security», in *Law and Force*, *supra* note 98, at 106-107.

(325) *An Agenda For Peace*, *supra* note 11, at 25.

UNDOF (326), UNEF II (327) and UNIFIL (328), contributed forces to UNTAC (329), and has expressed a willingness to become a more active participant in the international community (330).

The United States, on the other hand, has sent mixed signals about its willingness to participate in further peacekeeping operations. The U.S., traditionally a bystander in peacekeeping (331), has participated in UNTAC (332), UNPROFOR (333), and UNOSOM II (334), and spearheaded UNITAF (335). John Mackinlay and Jarat Chopra have suggested that the USSR's initiative pressured the U.S. to reflect upon its non-participant status (336). Since then, the U.S. has withdrawn from Somalia (337), and the U.S. President has urged the U.N. to reconsider its inclination to « become engaged in every one of the world's conflicts » (338). The U.S. furthermore has announced its intention to place conditions on U.S. participation in U.N. peacekeeping operations, ranging from the detail of the initial planning stages to the degree of « domestic political support » for American involvement in the operation (339). The misgivings of the U.S., however, do not seem to be shared by the other P5, who have shown a much greater interest in peacekeeping in the last few years.

Is greater P5 involvement in peacekeeping a good thing? As discussed earlier, participating states tend to exert a not insignificant amount of political influence over the peacekeeping operations, which may potentially color what otherwise would be a neutral, non-partisan decision of the U.N. By becoming participants in the forces that the P5 have a substantial role in creating, the P5 exert even greater control than before. Is this healthy?

Brian Urquhart seems to believe that it is. In May 1993, he published an article proposing a U.N. volunteer force, « under the exclusive authority of the Security Council and under the day-to-day direction of the secretary-general » (340). The opponents of the original proposal for a permanent

(326) U.N. Doc. S/11768, paras. 3-4 (1975).

(327) U.N. Doc. S/12089, para. 3 (1976).

(328) U.N. Doc. S/12618 (1978).

(329) *UNTAC*, *supra* note 317, at 14.

(330) Interview with Dr. Kening Zhang, Legal Advisor to the Chinese Mission to the U.N., Dec. 1, 1993.

(331) The MFO being the exception. See notes 139-43, *supra*, and accompanying text.

(332) *UNTAC*, *supra* note 317, at 14.

(333) *U.N. in Yugoslavia*, *supra* note 319, at 17.

(334) *U.N. in Somalia*, *supra* note 316, at 10.

(335) *Id.*, at 7.

(336) MACKINLAY, J. and CHOPRA, J., *supra* note 321, at 115. Messrs. Mackinlay and Chopra are research fellows at the Watson Institute for International Studies at Brown University.

(337) See note 218, *supra*.

(338) CLINTON, W., « Confronting the Challenges Of a Broader World [address to the General Assembly] », Sep. 27, 1993, 4 *U.S. Dept. of State Dispatch*, 649, 652 (1993).

(339) LEWIS, P., « U.S. Plans Policy On Peacekeeping », *New York Times*, Nov. 18, 1993, at A7.

(340) URQUHART, B., « For a UN Volunteer Military Force », *New York Review of Books*, Jun. 10, 1993, at 3.

U.N. force had claimed that « the United Nations would become a super-state with a large standing army that could intimidate member states at will » (341). It follows that such a supranational force, controlled by the P5, would give the P5 even greater control of the U.N. than they already have from their veto powers, to the peril of smaller, weaker members. This concern was expressed by the Australian Foreign Minister Gareth Evans in response to Urquhart's proposal :

... it is going to take an awful lot of persuasion to make the developing countries give up their reservations about vesting power in the Security Council to call up its own force without having to put together the usual balanced multinational group. And the Permanent Five and quite a few others are going to be very cautious indeed about accepting a force under the day to day direction of the Secretary-General (342).

But Urquhart had acknowledged these fears in his proposal, noting that the P5 could do nothing without support from the majority of the Security Council (343).

The « supranationality » concern of non-P5 states to a permanent U.N. force may reflect a similar concern about P5 participation in traditional peacekeeping forces. Australia's statement on the willingness of the P5 to accept the Secretary-General as commander of the force also raised serious doubts about the Secretary-General's ability to control non-Chapter VII forces to which P5 members contribute. The difficulties caused by political influence on the force by the P5, discussed earlier, would be exacerbated if the P5 were also to have operational control. The force would no longer be a U.N. force, but a P5 force, and the original objections to peacekeeping forces raised by the USSR might have more validity.

CONCLUSION

It is the conclusion of the author that the first and foremost condition for a successful « Chapter 6 1/2 » or « Chapter 6 3/4 » peacekeeping operation is the total commitment of the parties to the conflict toward a peaceful solution to their grievances. The commitment must be sincere and lasting ; the savage bloodletting in Rwanda is ample proof that a peace settlement, fragile in its infancy, can fall apart very quickly. Cooperation in good faith is required also ; had the Khmer Rouge honored their agreement to be cantoned and disarmed, for example, it is possible that UNTAC's presence in Cambodia would have put an end to that country's long, dark chapter of war, poverty, and hopelessness. Instead, the fighting continues. In con-

(341) SCHEFFER, D., *supra* note 324, at 107.

(342) EVANS, G., in « A UN Volunteer Military Force — Four Views », *New York Review of Books*, Jun. 24, 1993, at 58.

(343) URQUHART, B., *supra* note 340, at 4.

trast, the MFO-monitored peace between Egypt and Israel is a complete success, and the peace in Mozambique appears to be destined to last as well, with the assistance of ONUMOZ.

It is evident to the author that a successful Chapter VII operation will require much greater political backbone and commitment from the participating states. As Secretary-General Boutros-Ghali said, «United Nations personnel must expect to go in harm's way at times» (344). This is especially true of an operation whose mission is to stop the fighting between parties who have made no peace, and quite probably are not interested in peace. The United States' resolve in such matters has been severely curtailed by the apparent unwillingness of its citizens and legislators to see U.S. troops killed in another foreign war which does not affect American interests. The U.S. reluctance to intervene militarily in Rwanda and its caution regarding Haiti are signs of this. The lesson of Somalia, where expectations of renewed anarchy, now that the U.S. has withdrawn from UNOSOM II, have been realized, is that Chapter VII operations not adequately supported — by materiel, manpower, or spirit — inevitably will fail. Chapter VII is still in its infancy, though, and only time will tell if UNPROFOR has made a meaningful contribution toward a lasting peace in the former Yugoslavia.

This article has analyzed the origins and legal foundations of five traits common to peacekeeping operations. The norm of multinationality, but excluding the P5, appears to be eroding quickly as a result of the end of the Cold War and increased impatience with the U.N. New entities have asserted their roles in the policymaking process, complicating the norm of central command and control. Increased violence against peacekeepers have made it necessary to implement stronger defensive measures, and, in the case of Chapter VII forces, even some offensive ones, for as the old proverb says, the best defense is a good offense. While the need for impartiality remains, it is important not to confuse impartiality with strict neutrality, for neutrality contemplates inaction, even in the face of gross violations of international law. Such a level of tolerance is incompatible with the objectives of a more pro-active U.N. Finally, without the consent and cooperation of the parties, in good faith, a peacekeeping operation cannot fulfill its mandate. A Chapter VII enforcement operation is required, and peace becomes far more expensive for everyone, in terms of time, resources, blood, and faith in the power of the international community. We may yet kill collective security.

31 août 1994

(344) *An Agenda For Peace*, supra note 11, at 39.