THE UNITED NATIONS
PEACEKEEPING SUCCESSES BUT PEACE ENFORCEMENT FAILURES

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INTRODUCTION

> In the course of its history, the United Nations has developed special procedures for the maintenance of peace by using military elements and units. These have become known as peacekeeping operations and differ considerably from original conceptions concerning the maintenance of international peace and security.[1]

Since time immemorial, the prevention of wars and the maintenance of peace have been the ultimate ideal of countless generations and civilisations. Since the Second World War, "We, the People of the United Nations" have entrusted the peace of humankind to the United Nations and its fundamental foundation, the doctrine of collective security.[2] Indeed, ever since the United Nations was created, nations have looked to it to resolve military conflicts that have erupted across the globe. While the United Nations has been successful in responding and repelling aggression in major conflicts such as the Korean War and the Gulf War, it is in peacekeeping, the most visible face of the efforts of the United Nations, that the world has seen mixed results.

It is paradoxical that the most publicised activities of the United Nations are those that the Charter has not explicitly provided for. Perhaps this has provided the flexibility for the nature and mandates of peacekeeping operations to evolve from civilian observer missions in the Middle East to massive peace enforcement and nation-building efforts in Somalia and the former Yugoslavia. Both throughout the Cold War and in this "New World Order", the mixed and intermittent success of operations during this evolutionary transformation has brought the usefulness of the international

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[1] Simma B and ors (editors), The Charter of the United Nations: a Commentary (1994, Oxford University Press, New York) 572.

[2] Preamble, United Nations Charter.

organisation and its underlying idealist doctrine of collective security under the microscope.

COLLECTIVE SECURITY AND PEACEKEEPING

During the meetings and conferences that drafted the United Nations Charter, Prime Minister Joseph Paul-Boncour of France quoted Blaise Pascal with the statement: "Strength without justice is tyrannical, and justice without strength is a mockery."[3] The United Nations was to be armed against violence with undisputed superiority over any aggressor as a result of the combined strength and determination of its members.[4] The demise of the League of Nations, which has been perceived to be the result of the lack of institutionalised military strength and deterrence in the context of collective security, was not to be repeated in the new international organisation.

The reality, in hindsight, is somewhat different, in that collective security in the United Nations framework has only worked intermittently, especially when consideration is given to the peacekeeping missions. Both idealists and realists have consistently blamed the Cold War as one of the contributing factors for the past failures of the United Nations. Furthermore, realists would add to this the free-rider problem where, as in economic theory, nations would acknowledge the existence and wrongfulness of the aggression in question but would quickly decline to authorise and participate in any serious military operations against the aggressor.[5]

With the Cold War over, however, the world has not seen a more successful United Nations in its role in maintaining international peace and security. In fact, the experience in Somalia and the former Yugoslavia has suggested that the mistakes and failures may in fact have increased after the fall of the Berlin Wall. The speed with which the United Nations responds has not improved dramatically also, as evidenced by the time it took this international organisation to respond to the crisis in Rwanda.

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[3] Sohn, "The new dimensions of United Nations peacekeeping", (1996) 26 Georgia Journal of International and Comparative Law 123, 124.

[4] Ibid.

[5] Moore, "Toward a new paradigm: enhanced effectiveness in United Nations peace-keeping, collective security, and war avoidance", (1997) 37 Virginia Journal of International Law 811, 854.

The answer, to the horror of the idealists, may well be that collective security inherently requires the hegemony of a world superpower or a coalition of powers to function effectively. As Claude pointed out, referring to the end of the Cold War, "An automobile does not climb the hill just because its brake has been released, but requires a battery, fuel, and a driver intent on driving up the hill."[6] Without the United States or another military power, as in the role that France played in Rwanda, collective military operations have rarely achieved its objectives. Further evidence of this can be seen in the comparison between the United Nations and the North Atlantic Treaty Organisation (NATO). In essence, NATO was effective during the Cold War in deterring the communist bloc and preventing World War III by the absolute certainty of a military response from the alliance. Both Kim Il Sung and Saddam Hussein were not deterred by the possibility of a collective reaction from the United Nations, although in both situations they have turned out to be mistaken.

However, there are also historical indications that other factors may be in play. For example, the peacekeepers were attacked in Somalia, the former Yugoslavia and Sierra Leone despite the presence of troops from France, the United Kingdom or the United States, arguably three of the most powerful countries on Earth. The reasonable conclusion to be drawn from this observation is that there are other reasons that make the collective security doctrine of the United Nations an ineffective one. As the operations in Somalia and the former Yugoslavia belong to the new breed of peace enforcement or "peace-building" missions that blur the distinction between peacekeeping and collective military action, the evolution of such peace enforcement mandates deserves closer attention.

PEACEKEEPING: THE CLASSICAL MODEL

Segal identified five phases in the evolution of United Nations peacekeeping. Through these phases of development, the operations have increased in size and scope as well as the burden of the mandates given to them by the General Assembly or the Security Council.[7]

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[6] Claude, "Collective security after the Cold War II" in Guertner GL (editor), Collective Security in Europe and Asia (1992, Strategic Studies Institute, United States War Army College, Pennsylvania) 7, 25.

[7] Segal, "Five phases of United Nations peacekeeping: an evolutionary typology", (1995) 23 Journal of Political and Military Sociology 65.

In the first phase, between 1946 and 1955, the operations would be best classified as observer missions. These missions do not involve the deployment of armed troops, as in the case of the United Nations Truce Supervision Organisation (UNTSO) that supervises the truce and armistices between Israel and its Arab neighbours. The impartial observers are unarmed and operate only with the consent of the parties involved and any complaints of violations are often investigated and then either resolved through mediation or reported to the Secretary-General and the Security Council.[8]

True peacekeeping was introduced in the second phase from 1956-1965 when Secretary-General Dag Hammarskjöld and Prime Minister Lester Pearson of Canada caused the United Nations to deploy peacekeeping troops along the Suez Canal. The concept of using armed troops in the implementation of settlements added a new dimension to the work of the Organisation. Over the years, several principles have been laid down governing the peacekeeping forces and, in particular, the principles of consent, impartiality and non-use of force except in self-defence.

With peacekeeping, consent from all parties to the conflict is a necessary requirement before peacekeepers may be deployed. The impartiality of peacekeepers is intended to retain the confidence of the parties concerned and thus maintain their consent. Hammarskjöld has defined the use of force within the context of self-defence to protect United Nations peacekeepers. In other words, force may be used only where their lives and safety are in danger. Furthermore, the force used must be reasonable, necessary and proportionate to the necessity of affording such protection.[9]

However, even under Hammarskjöld, some of these principles were not followed to the letter. With the Operation in the Congo (ONUC) beginning in 1960 to defuse the separatist civil war that took place in the recently decolonised Belgian Congo, many of these rules were bent until they were completely out of shape. Although originally deployed with no intention of exercising any force, the central government in the Congo collapsed and attacks on the peacekeepers began to take place. The Security Council

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[8] See Durch, "The Iraq-Kuwait Observation Mission" in Durch WJ (editor), The Evolution of UN Peacekeeping: Case Studies and Comparative Analysis (1993, St Martin's Press, New York) 261.

[9] Bring, "Peacekeeping and peacemaking: prospective issues for the United Nations", (1995) 20 Melbourne University Law Review 55, 56.

authorised ONUC troops to use force in removing foreign mercenaries and to secure freedom of movement for the peacekeeping operation. Eventually numbering 20,000 with fighter jets from Sweden, Iran and Italy, the "peacekeepers" advanced to Elizabethville in Katanga and quashed the armed secession movement.[10] Throughout the Cold War period, the operation in the Congo remained an anomaly, as most other operations did not involve any use of force except in self-defence. The opposition of the Soviet Union to the ONUC also ended this phase of the peacekeeping evolution, built almost entirely on the limited consensus between the communist bloc and the West.

These early peacekeeping operations were impliedly authorised by the Security Council under Articles 24 and 36 of the Charter, which provide for the procedures of the Security Council for the "peaceful settlement of disputes".[11] When France and the Soviet Union refused to pay their apportioned dues for those missions, the International Court of Justice was given the opportunity to provide an advisory opinion on the legality of the peacekeeping operations. In *Certain Expenses of the United Nations,*[12] the Court ruled that Article 14 empowered both the Security Council and the General Assembly to authorise peacekeeping operations.[13] The Court rejected the view that Article 43 agreements were required and that the operations were not "coercive or enforcement action[s]" requiring Security Council authorisation under Chapter VII.[14]

Since the legal basis for peacekeeping operations lie somewhere in between Chapters VI and VII, Hammarskjöld and other scholars have often

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[10] See Durch, "The UN Operation in the Congo" in Durch WJ (editor), The Evolution of UN Peacekeeping (1993, St Martin's Press, New York) 336. Schachter pointed out that the notion of self-defence for United Nations peacekeeping forces became loosely defined and greatly modified by the Congo operation. This suited the political objectives of the operation: Schachter, "Authorised uses of force by the United Nations and regional organisations" in Damrosch LF and anor (editors), Law and Force in the New International Order (1991, Westview Press, Boulder, Colorado) 67.

[11] Fink, "From peacekeeping to peace enforcement: the blurring of the mandate for the use of force in maintaining international peace and security", (1995) 19 Michigan Journal of International Law and Trade 1, 13.

[12] [1962] International Court of Justice Reports 151.

[13] Ibid 515.

[14] Fink, "From peacekeeping to peace enforcement: the blurring of the mandate for the use of force in maintaining international peace and security", (1995) 19 Michigan Journal of International Law and Trade 1, 14.

stated that the authority for peacekeeping is found in "Chapter VI½". For example, Bring prefers this approach because:[15]

> peacekeeping operations are a more ambitious level of UN involvement than anything provided for in Chapter VI; [they are] politically useful because [they show] that innovations, even without textual support, can be legitimised under the system of the Charter if they fulfil the purposes of the United Nations.

In this sense, Chapter VI may be seen to provide adequately for the legality of peacekeeping operations for two reasons. First, Article 33 deals with parties "seeking a solution" to their dispute and secondly, Chapter VI provides that peacekeeping is "a technique that expands the possibilities for both the prevention of conflict and the making of peace".[16]

Such flexible interpretation is not unprecedented in the history of the Charter. A notable example is the requirement of the "concurring votes of the permanent members" in Article 27 being interpreted to include abstentions even though that may appear contrary to the wording of the Charter. When the Uniting for Peace Resolution was adopted in November 1950 the Swedish Foreign Minister declared that this was a case where:[17]

> the letter of the Charter had...been exceeded in practice, but this was a felicitous and happy development of the Organisation. Its Charter, like all other Constitutions, must develop so that it would not become a dead letter.

In either case, the controversy over the legal basis of peacekeeping operations has not prevented the United Nations from involving itself actively in maintaining international peace and security through the deployment of peacekeepers over the past 53 years.

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[15] Bring, "Peacekeeping and peacemaking: prospective issues for the United Nations", (1995) 20 Melbourne University Law Review 55, 56.

[16] Boutros-Ghali B, An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping (1992, United Nations, New York) para 20.

[17] (1950) United Nations Doc A/C1/SR361 at 108, as quoted in Bring, "Peacekeeping and peacemaking: prospective issues for the United Nations", (1995) 20 Melbourne University Law Review 55, 57.

TOWARDS PEACE ENFORCEMENT MISSIONS

From 1966-1985, in the third phase of the development, there were only three peacekeeping missions as a result of the lack of agreement between the two ideological rivals of the Cold War. It was only from 1985-1990 with the wave of *glasnost* and *perestroika* in the Soviet bloc influencing its relations with the West that the concept of peacekeeping became fashionable again. During these phases the United Nations deployed peacekeeping operations such as those in Cyprus (UNFICYP), Kashmir (UNIPOM) and Angola (UNAVEM) to varying degrees of success.[18] Most operations remain in the classical notion of peacekeeping where there was no use of force by the peacekeepers. Furthermore, the peacekeepers were deployed only with the consent of all parties. As Goulding pointed out traditional peacekeeping involves "monitoring cease-fires, controlling buffer zones...[or] to support implementation of comprehensive settlements".[19] All the operations that began during these phases would fall under this description.

The operation in Cyprus is an example of an operation that involves the monitoring of the cease-fire and the control of the buffer zone between the Greek and Turkish sides. Meanwhile, the relatively new operations in El Salvador (ONUSAL), Cambodia (UNTAC) and Mozambique (ONUMOZ) are examples where the United Nations has deployed peacekeepers to assist in implementing comprehensive settlements. These fourth phase operations have introduced elements of nation building, such as the curtailing of communism and the introduction of democracy, but with the implicit consent of the parties involved in the conflict and the acquiescence of the major powers.

Since the end of the Cold War and the subsequent increase in the likelihood of unity in the international community, the United Nations has entered into the current fifth phase of the evolution of peacekeeping. The majority of the operations deployed since 1991 would not fall under the traditional classification of peacekeeping. These operations often deal with domestic armed conflict including the demobilisation of local military units, assisting in elections, rebuilding infrastructure, as well as providing basic

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[18] Refer United Nations home page at <http://www.un.org> (visited October 1998).

[19] Goulding, "The evolution of United Nations peacekeeping", (1993) 69 International Affairs 451, 457.

governmental security and administration while restoring the sovereignty of a collapsed state.[20] The operations, such as the United Nations Operation in Somalia (UNOSOM) and the United Nations Protection Force in Bosnia-Herzegovina (UNPROFOR), are often deployed in the absence of consent between the parties concerned and include the exercise of military enforcement measures involving the use of force.

These so-called "second generation" peacekeeping operations, or peace enforcement operations, are necessary in situations where peacekeeping forces cannot adequately maintain a cease-fire, to prevent further aggravation or where the presence of peace enforcement units may facilitate other means of settling the dispute peacefully.[21] Stretched to its fullest, as in the case of Iraq (UNSCOM), the mandate of the operation even included several other situations. Examples are: (a) the enforcement of no-fly zones, (b) the monitoring of development programs for weapons of mass destruction, (c) humanitarian and military assistance to the Kurds, and (d) the continual bombardment of Iraqi military installations with bombs and more recently with concrete.

In contrast to the traditional peacekeeping operations, these peace enforcement operations clearly require the provisions of Chapter VII of the Charter and, in particular, Article 42 to operate. The main reasons for this lay not only in the use of force but also in the absence of consent and impartiality. After all, while Chapter VII was never explicitly invoked during the Congo operation, the peacekeepers used considerable military force to secure control of Katanga under the pretext of the need for freedom of movement.[22] In order for an operation to be deployed without the consent and the need for impartiality, the Security Council must rely on its authority under Chapter VII.

Although to talk of partiality would appear contrary to the objects of the United Nations, it has often been necessary to use force against an

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[20] Lee, "United Nations peacekeeping: development and prospects", (1995) 28 Cornell International Law Journal 619, 624.

[21] Sohn, "The new dimensions of United Nations peacekeeping", (1996) 26 Georgia Journal of International and Comparative Law 123, 128-129.

[22] See generally Durch, "The UN Operation in the Congo" in Durch WJ (editor), The Evolution of UN Peacekeeping (1993, St Martin's Press, New York).

identified aggressor in a conflict to restore the original *status quo* position or to bring about the cessation of hostilities.[23] As Bring pointed out:[24]

> Chapter VII is not at all based on impartiality; it is based upon the need for the Organisation to be able to take a position and to enforce that position (against any member state or other international actor) if this is necessary for the maintenance of international peace and security.

Similar to other enforcement actions, such as Korea and Kuwait, any use of Security Council powers under Chapter VII would require a finding of a threat or a breach of the peace under Article 39 of the Charter. Scheffer points out that throughout history internal conflict often leads to mass migrations of refugees, expanding armed conflicts when a domestic struggle "spills" across the border and problems with the availability and distribution of resources.[25] In view of the recent practice of the Security Council, "grave and systemic" gross violations of human rights with transboundary effects may also be regarded as a threat to international peace and security under Article 39.[26] This has given rise to the quasi-doctrine of humanitarian intervention to address situations that are not otherwise covered by classical principles of international law.

The use of Article 39 and relevant Chapter VII powers for humanitarian peace enforcement operations find its precedent in Resolution 688 of the Security Council relating to the Kurdish situation in northern Iraq. Although Iraq eventually gave its consent to the operation Allied troops were deployed well before that consent was given and in any case, the consent of the Iraqi Government was considered unnecessary.[27] Although both China and Yemen argued that such interventions, no matter how humanitarian in nature, contravened the principle of non-intervention found in Article 2(7), the Security Council nonetheless found that there was a

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[23] This may be seen in the missions in Somalia and the former Yugoslavia.

[24] Bring, "Peacekeeping and peacemaking: prospective issues for the United Nations", (1995) 20 Melbourne University Law Review 55, 61.

[25] Scheffer, "Toward a modern doctrine of humanitarian intervention", (1992) 23 University of Toledo Law Review 253, 287.

[26] Rodley, "Collective intervention to protect human rights and civilian populations: the legal framework" in Rodley NS (editor), To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights (1992, Brassey's, London) 34.

[27] Freedman and anor, "Safe havens for Kurds in post-war Iraq" in Rodley NS (editor), To Loose the Bands of Wickedness (1992, Brassey's, London) 63.

threat to international peace and security.[28] Essentially, Resolution 668 relied on Chapter VII authority and "dictated that Iraq forgo its right to territorial integrity and allow the allies to go into the country to set up the relief operation without the consent of the host state."[29] This laid the first brick in the construction of a new breed of mandates for United Nations operations that moved from peacekeeping into peace enforcement.

SOMALIA: INVENTING PEACE ENFORCEMENT

When President Said Barré of Somalia was overthrown in 1991, rival factions began heavy military fighting for control of the country against a backdrop of widespread starvation. The civil war prevented the transport of food and humanitarian aid to millions of starving Somalis and eventually the Security Council enacted an arms embargo on the country in 1992 by unanimous vote.[30] Later that year the Security Council sent a team of 50 unarmed observers, through the creation of UNOSOM, to assist in the distribution of food aid to regions beyond Mogadishu.[31] As the situation continued to worsen and pictures of starving people were shown continually on television screens, the Security Council invoked Chapter VII powers and increased the troop levels of UNOSOM peacekeepers.[32]

By the end of 1993, the Security Council had authorised "the Secretary-General and Member States cooperating to...use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."[33] The United States thereafter dispatched a large contingent to Somalia that unintentionally coincided with the news of a forthcoming presidential and congressional election. The UNOSOM operation was unique in terms of peacekeeping as there was a mandate that was not in response to any act of aggression but to use force to provide

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[28] Rodley, "Collective intervention to protect human rights and civilian populations" in Rodley NS (editor), To Loose the Bands of Wickedness: International Intervention in Defence of Human Rights (1992, Brassey's, London) 29.

[29] Fink, "From peacekeeping to peace enforcement: the blurring of the mandate for the use of force in maintaining international peace and security", (1995) 19 Michigan Journal of International Law and Trade 1, 19.

[30] Security Council Resolution 733 (1992).

[31] Hutchinson, "Restoring hope: UN Security Council Resolutions for Somalia and an expanded doctrine of humanitarian intervention", (1993) 34 Harvard International Law Journal 624, 627.

[32] Security Council Resolution 794 (1993).

[33] Ibid.

safety to food convoys. Despite the original pretence of having been requested by the Somalia Government to take action, it was clear that Somalia did not have a competent government to consent to the operation by the time Resolution 794 was adopted.

It has been an undisputed principle in international law that any use of force by a state must be authorised or provided by the Security Council under Chapter VII of the Charter.[34] In Somalia, it was clear that the Security Council acted only because it decided that the civil conflict constituted a threat to international peace and security under Article 39 of the Charter.[35] Gordon points out that, with Resolution 794, "a humanitarian crisis with no discernible cross-border effects, or at least none that involved military responses, [had] triggered the most extreme measures the Council can undertake."[36] The political and legal implications for such an operation in Somalia became quite clear as a result.[37]

Some scholars have argued that interventions of the sort in Somalia are unlikely to succeed because of the slim prospects of achieving a political settlement and the absence of a centralised government to provide political and administrative support for the operation.[38] With the lack of a central government to supply consent, the Security Council in effect "considered the consent of several key warlords in Mogadishu sufficient legal authority for UNOSOM to enter and operate without invoking Chapter VII."[39] It was only when the warlords began impeding the supply of humanitarian aid and the operation of the mandate that the Security Council abandoned the veil

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[34] With the notable provision made for the use of force in self-defence under Article 51.

[35] See Ramlogan, "Towards a new vision of world security: the United Nations Security Council and the lessons of Somalia", (1993) 16 Houston Journal of International Law 213, 242-243.

[36] Gordon, "United Nations intervention in internal conflicts: Iraq, Somalia and beyond", (1994) 15 Michigan Journal of International Law 519, 554.

[37] See Wedgwood, "The evolution of United Nations peacekeeping", (1995) 28 Cornell International Law Journal 631.

[38] Hampson, "Can peacebuilding work?", (1997) 30 Cornell International Law Journal 701, 704; Higgins, "The United Nations role in maintaining international peace: the lessons of the first fifty years", (1996) 16 New York Law School Journal of International and Comparative Law 135, 148.

[39] See Security Council Resolution 767 (1992); Ratner, "Image and reality in the UN's peaceful settlement of disputes", (1995) 6 European Journal of International Law 426, 444.

of consent for a full peace enforcement mandate under Chapter VII in December 1992.

The operation in Somalia marked a new beginning in the use of the enforcement measures under Chapter VII in a quasi-peacekeeping context. The failure of the operation is the result of a combination of factors: the lack of consent and cooperation from the parties, the lack of a clear mandate and the absence of the political and diplomatic efforts to achieve a permanent settlement.

The casualties sustained by the peacekeepers created a new inertia, especially in the United States against other proposed large-scale United Nations operations. This is the result of what the Italians refer to as *mammismo* or "motherism" that describes the combined effect of the reduction in family sizes and the proliferation of mass media attention on military casualties. Notwithstanding the tough lessons learnt from the beaches of Mogadishu, the same errors were to be repeated in the United Nations operation in the former Yugoslavia.

FORMER YUGOSLAVIA: STRETCHING CHAPTER VII

> Like Tolstoy's unhappy families, and perhaps for many of the same reasons, all United Nations peacekeeping operations are different. Thus, the activities carried out by the United Nations in Bosnia and Herzegovina are very different from any that the Organisation has undertaken elsewhere, even the other operations in the former Yugoslavia.[40]

The most notable point to make is this. As in Somalia, there was no peace to keep in Bosnia and the international community spent years trying to make peace by enticing the warring parties to the negotiating table with the peacekeepers deployed on the ground as the meat in the sandwich.

To begin with, the Security Council imposed an arms embargo on the Socialist Federal Republic of Yugoslavia, which continued to apply to all its successor republics.[41] Throughout the conflict, maintaining this

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[40] Szasz, "Peacekeeping in operation: a conflict study of Bosnia", (1995) 28 Cornell International Law Journal 685.

[41] Security Council Resolution 713 (1991).

embargo on the Muslim Government of Bosnia and Herzegovina that was having a hard time fighting the Serbs and, occasionally, the Croats, have been somewhat controversial and was considered ineffective in bringing the conflict to an end.[42] The Security Council considered Serbia and Montenegro to be responsible for the outbreak and continuation of the hostilities in Bosnia-Herzegovina, and consequently imposed an economic embargo on the new Federal Republic of Yugoslavia.[43]

In conjunction with the sanctions, the UNPROFOR was established initially as a traditional peacekeeping operation intended to monitor cease-fires and ensure the supply and delivery of humanitarian aid. In 1993, when the realisation that there were no cease-fires to be had dawned on the members of the Council, the UNPROFOR operation was converted into a Chapter VII operation that, in principle, could overcome resistance by force.[44] Indeed, in Resolution 836 (1993) the Security Council authorised UNPROFOR to act in self-defence and to take all necessary measures, including the use of force, to reply to bombardments against safe areas by any of the parties.[45] Curiously, the Security Council never authorised UNPROFOR to enforce the declared safe havens. Instead, in the same Resolution it merely authorised the following:

> Member States, acting nationally or through regional organisations or arrangements, may take...all necessary measures, through the use of air power, in and around the safe areas...to support UNPROFOR in the performance of its mandate.

In other words, while UNPROFOR may in self-defence reply to bombardments against the safe areas, it is the individual members or regional organisations that are to support the mandate of UNPROFOR through the use of air power or other means of reinforcement.

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[42] The General Assembly in Resolution 10 (1994) requested that the embargo against the Muslim Government be lifted. Meanwhile, Bosnia and Herzegovina applied to the International Court of Justice for the embargo to be lifted; see Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide [1993] International Court of Justice Reports 3.

[43] Security Council Resolution 757 (1992).

[44] Security Council Resolution 807 (1993).

[45] The "safe areas" referred to in the Resolutions were Srebrenica, Zepa, Gorazde, Bihac and Sarajevo.

It has been argued that the reason for this ambiguous distinction is that the safety of the peacekeepers became the primary consideration. When 68 civilians were killed in a Sarajevo marketplace in February 1994, the UNPROFOR commander threatened to call in NATO air strikes against Serb gun positions in the hills surrounding Sarajevo unless the guns were removed from range or placed under United Nations control.[46] When it became clear that NATO air strikes could take place only when an attack was in progress, frequent attacks of short duration on UNPROFOR began to take place. However, by the time a decision was made to launch air strikes, the attack that prompted them in the first instance would have already ended.

In essence, the UNPROFOR peace enforcement mission was a failure. It failed to bring an end to the conflict, though many observers attributed that not to the nature of the operation but to the fact that UNPROFOR was never sufficiently armed or strengthened to play a peace enforcement role in such a violent conflict.[47] It was only with the threat of overwhelming air power to be deployed by the United States that the parties signed the Dayton Agreement in 1995 that ended the conflict.

Paradoxically, while the United Nations undertook the non-traditional task of peace enforcement, it is now NATO that has been enforcing the Dayton Agreement in Bosnia-Herzegovina. In effect, NATO is fulfilling the peacekeeping role traditionally carried out by the United Nations. Clearly, the roles should have been swapped in the first place, with NATO undertaking the peacemaking and the United Nations fulfilling its role of peacekeeping. After all, there was no question that NATO was authorised to use force, as it eventually and reluctantly did, under Security Council Resolution 836 (1993). The lack of sufficient and adequate force had left UNPROFOR with an impossible peacemaking mandate in Bosnia to perform. Now that there is a peace agreement in place, by not withdrawing, NATO has usurped the role of the peacekeeper in Bosnia and Herzegovina that should be played instead by a classical United Nations peacekeeping mission.

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[46] See Higgins, "Peace and security achievements and failures", (1995) 6 European Journal of International Law 445, 457. Serb forces complied with this ultimatum.

[47] Varady, "The predicament of peacekeeping in Bosnia", (1995) 28 Cornell International Law Journal 701, 703.

APPLYING HUMANITARIAN LAW

As peace enforcement missions increasingly involve the use of force by the peacekeepers, the need to define the legal regime in which the operations are conducted has been neglected. Instead, treaty arrangements or domestic legal provisions have been relied upon on an *ad hoc* basis by the peacekeepers.[48] After all, members of peacekeeping forces in past operations were alleged to have committed serious humanitarian law violations.[49] Furthermore, it has been said that:[50]

> future UN efforts to maintain or restore international peace and security, including efforts to investigate and prosecute humanitarian law violations, may be jeopardised if the international community perceives the United Nations as condoning or ignoring such international humanitarian law violations.

Since humanitarian law of armed conflict applies intrinsically to adversaries and confers the belligerent status on their armed forces, the application of such principles to traditional peacekeeping forces would be inconsistent with the neutrality and impartiality attributed to them.[51] The indiscriminate application of humanitarian law to all peacekeeping forces does not only jeopardise their neutrality but endangers the important privileges and immunities afforded to peacekeepers as well.[52] Peace enforcement operations, on the other hand, pose a different situation in

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[48] Weiner and anor, "Beyond the laws of war: peacekeeping in search of a legal framework", (1996) 27 Columbia Human Rights Law Review 293, 350-351.

[49] See Kirgis FL, International Organisations in their Legal Setting (2nd edition, 1993, West Publishing Co, St Paul, Minnesota) 665; Houck, "The command and control of United Nations forces in the era of 'peace enforcement'", (1993) 4 Duke Journal of Comparative and International Law 1.

[50] Tittemore, "Belligerents in blue helmets: applying international humanitarian law to United Nations peace operations", (1997) Stanford Journal of International Law 61, 63. See also Caron, "The legitimacy of the collective authority of the Security Council", (1993) 87 American Journal of International Law 552, 558-563.

[51] Tittemore, "Belligerents in blue helmets: applying international humanitarian law to United Nations peace operations", (1997) Stanford Journal of International Law 61, 106; see also Houck, "The command and control of United Nations forces in the era of 'peace enforcement'", (1993) 4 Duke Journal of Comparative and International Law 1, 26.

[52] See von Grünigen, "Neutrality and peacekeeping" in Cassese A (editor), United Nations Peacekeeping – Legal Essays (1978, Sijthoff and Noordhoff, Alphen aan den Rijn) 139; Lyons, "A new collective security: the United Nations and international peace", (1994) 17 Washington Quarterly 173, 184.

terms of the application of humanitarian law. These operations, as in the case of Somalia, involve the use of military force and sometimes the peacekeepers themselves are the ones committing the violations of humanitarian law. The legal debate on the applicability of humanitarian law on peace enforcement operations continues to be controversial and unresolved.

Some authorities argue that since the states contributing troops to the operations are parties to the Geneva Conventions,[53] the peace enforcement operations must therefore observe and respect humanitarian law.[54] To extend the doctrine of state responsibility to peace enforcement operations would be to ignore the legal status of the United Nations as an independent organisation with the capacity to conduct military activities.[55] Furthermore, the legitimacy and effectiveness of peace enforcement operations would be compromised when parties to a conflict find that the forces owe their obligations to their respective governments rather than the collective will of the Organisation.

Tittemore argues as follows:[56]

> [T]he only effective way to combine humanitarian law with peace enforcement activities is to apply humanitarian law to UN forces only for the specific time periods during which they are directly engaged in armed conflict with one or more of the parties in a dispute.

Although the Geneva Conventions do not recognise part-time belligerency, peace enforcement forces not using force may in practice be treated as civilians under Article 51(3) of Protocol I to the Geneva Conventions. The privileges and immunities under Article 51(3) are subsequently lost as the peacekeepers take a direct part in the hostilities and acquire the duties and protection as combatants. Another dimension to this confusing state of law

[53] See the 1949 Geneva Conventions for the Protection of War Victims (Red Cross) and the Protocols.

[54] For example, see Green LC, The Contemporary Law of Armed Conflict (1993, Manchester University Press, New York) 3-10.

[55] The International Court found the United Nations to possess a large measure of independent international personality and the capacity to operate on an international plane: Reparation for Injuries Suffered in the Service of the United Nations [1949] International Court of Justice Reports 174, 179.

[56] Tittemore, "Belligerents in blue helmets: applying international humanitarian law to United Nations peace operations", (1997) Stanford Journal of International Law 61, 107.

is whether peace enforcement forces may be regarded as lawful targets as combatants and consequently entitling them to prisoner of war status, an issue nowhere more acute than in Bosnia and Sierra Leone where United Nations peacekeepers were taken hostage.[57]

It is clear that the United Nations cannot accede to the Geneva Conventions and in any case cannot be bound by it.[58] However, since the principles of the Conventions developed out of some of the oldest and most enduring laws and customs relating to armed conflict and a substantial majority of the international community has ratified them, the key provisions of the Conventions may arguably constitute customary international law.[59] Article 1(1) of the Charter provides that the United Nations must act in conformity with the principles of international law and this presumably includes any customary international law principles relating to the law of armed conflict.

Some authorities have argued that the Security Council, in maintaining and restoring international peace and security, can override certain principles of international law. Consequently, peace enforcement operations are arguably not subject to "the full panoply of humanitarian law [and] may apply the laws of war to its forces as may seem to fit its purpose."[60] However, there are very few practical reasons why the United Nations should be exempt from the application of humanitarian law and nothing in the practice of the Security Council has indicated that its peace enforcement operations do not have to comply with principles of humanitarian law.[61]

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[57] Weissbrodt, "The role of international organisations in the implementation of human rights and humanitarian law in situations of armed conflict", (1988) 21 Vanderbilt Journal of Transnational Law 313; see also Lepper, "War crimes and protection of peacekeeping forces", (1995) 28 Akron Law Review 411.

[58] Simmonds R, Legal Problems Arising from the United Nations Military Operations in the Congo (1968, Martinus Nijhoff, The Hague) 168-196 which noted that the United Nations refused to undertake the duty of compliance with the provisions of the Geneva Conventions.

[59] See Meron, "The Geneva Conventions as customary international law", (1987) 81 American Journal of International Law 348.

[60] Tittemore, "Belligerents in blue helmets: applying international humanitarian law to United Nations peace operations", (1997) Stanford Journal of International Law 61, 104.

[61] Simmonds R, Legal Problems Arising from the United Nations Military Operations in the Congo (1968, Martinus Nijhoff, The Hague) 174-177.

Therefore, the peace enforcement operations of the United Nations should remain subject to modified rights and duties under customary humanitarian law in relation to the use of force authorised by the Security Council to enforce its mandate. Additionally, the international organisation should bear the additional responsibility for preventing violations and for making reparations for such violations by its forces. Although it is clear that time would be needed to develop the appropriate humanitarian law framework for peace enforcement operations, the experiences in Rwanda and Bosnia prove that uncertainty is a luxury the world can ill afford.[62]

BLURRING THE LINES

As we have seen in the former Yugoslavia, the exercise of a peace enforcement mandate by UNPROFOR, which was not sufficiently armed or reinforced with military support, had condemned it to failure. In Sierra Leone, recent events evidence further the inability of the international organisation to undertake such a peace enforcement role without more than sufficient military force. However, Somalia has shown that even with adequate force and the involvement of the world's sole hegemonic superpower, peace enforcement missions of that nature are also fated to fail. The problem, therefore, may lie not in the lack of force or superpower involvement but in the nature of the mandate itself.

The original legal principles relating to classical peacekeeping under the Hammarskjöld era, namely the consent of the parties, the impartiality of the operation, and the use of force only in self-defence, are all effectively abandoned in a peace enforcement mandate. In such a mandate consent and impartiality are goals that are often impossible to attain because in order to enforce the peace it may even be necessary to use force to compel the perceived aggressor to the negotiating table. The abandonment of these principles has had the effect of diminishing the perceived dignity and authority of the universal inter-governmental organisation that embodies the just and impartial voice of the community of nations.

While there is no doubt that the rules of war apply to collective military actions, as in the United Nations operations in Korea, the fact that these rules are now considered to be applicable to the military personnel

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[62] See generally Weiner and anor, "Beyond the laws of war", (1996) 27 Columbia Human Rights Law Review 293.

involved in peace enforcement missions is an alarming development. This indicates clearly that peace enforcement operations are belligerent in nature. In a traditional peacekeeping mission the need to consider humanitarian rules of war may arise only if the legal principles of peacekeeping are violated. The fact that such rules may apply *per se* to peace enforcement operations, considered together with the need for a Chapter VII mandate, is strong evidence that the delimitation between collective military actions and peacekeeping has been blurred.

Fundamentally, it is this grey area between peacekeeping and collective military actions that has condemned peace enforcement missions to failure. As a quasi-peacekeeping mission, peace enforcement operations are often not given the adequate arms or reinforcements to enable them to impose a cease-fire or peace agreement. As a quasi-military mission their military abilities are often constrained by limitations in their mandate to use the limited force that is available to them to overwhelm the aggressor into submission. Moreover, unlike the conflicts in Korea and Kuwait where defiance by the aggressor almost certainly brought about the wrath of the United States and its allies, generally speaking, defying the peace enforcement mission may bring about nothing more than a barrage of diplomatic protests from New York. Or worse still, it may result in the threat of continuing existing sanctions against the aggressors that have been rather ineffective in deterring the defiance in the first place.

In the future, the interests of international peace and security would be much better served if the United Nations responds to international crises with one of the two weapons in its arsenal. If there is a negotiated peace settlement or at least a viable cease-fire, the United Nations should deploy a peacekeeping operation to monitor and maintain the cease-fire. If a negotiated peace settlement that would restore international peace and security is impossible, the United Nations should either authorise military action by member states to repel the aggression or provide an open mandate under Chapter VII for willing and concerned Member States to initiate the resolution of the crisis.

For the United Nations to attempt peace enforcement operations would only worsen the crisis and take away the best opportunity for the United Nations and its Member States to respond to the crises.[63] In the former

[63] Touval, "Why the UN fails", (1994) 73:5 Foreign Affairs 44, 54-57.

Yugoslavia, had the United Nations refrained from creating UNPROFOR but instead empowered its Members States to take military action, Europe and the United States might have taken the initiative sooner to intervene. In Somalia, the operation may well have been successful if it remained a "United States and friends" military operation rather than transforming itself into a United Nations peace enforcement mission.[64] In both cases, collective security had failed not because of inherent flaws in the doctrine but because the collective had chosen to create a new and untested weapon rather than use an existing one to enforce its security.

CONCLUSION: BRING BACK THE PEACEKEEPER

The world has seen the best successes of the United Nations and its underlying foundation of collective security in its classical peacekeeping missions and collective military actions. As the two types of operations became blurred into peace enforcement, the United Nations lost its credibility and authority at the cost of many human lives and caused the doctrine of collective security to be questioned.

While the realists may still have their day in predicting the demise of collective security, the liberal idealists in support of the collective security ideal would be enhanced greatly by the restoration of the demarcation between the two distinct types of United Nations operations. In the end, no matter which school of international relations theory wins out, at least the world can be thankful that it can engage in this continuing debate in the international peace and security that the United Nations provides and maintains for it.

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[64] See Crocker, "The lessons of Somalia: not everything went wrong", (1995) 74:3 Foreign Affairs 3.