

**Hitoshi Nasu, *International Law on Peacekeeping: A Study of Article 40 of the UN Charter* (Martinus Nijhoff, Leiden, 2009)
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With the increased activism of the UN Security Council over the past two decades, this book presents a timely and valuable study of article 40 of the *Charter of the United Nations* (1945) as the legal ‘centre’ of international peacekeeping. It examines the legal authority of, obligations and constraints upon, and accountability of the Council in regulating peacekeeping, in a world where an unreformed Council has become simultaneously hyperactive and inactive in the security field. The book is methodical, even forensic, in its treatment of the legal issues and makes a significant and thorough contribution to understanding the legal bases of peacekeeping.

Chapter 1 critically reviews peacekeeping practice and doctrine in light of UN conflict prevention policy. It discusses the tripartite doctrines of peacekeeping—consent, neutrality and the limited use of armed force—and concludes that they emerged from a pragmatic approach to conflict management which lacked critical legal and theoretical review, embodied in the ambiguity and elasticity of the definition of ‘peacekeeping’ itself. It argues that such legal uncertainty has overemphasised the role that the principle of consent should play, to the detriment of effective initiatives that the Security Council may lawfully take for conflict prevention. It argues that by placing Article 40 at the centre of the legal regime governing peacekeeping measures, a more flexible approach to conflict management will be facilitated. Based on the functional approach taken to Article 40, the book uses the term ‘peacekeeping’ to describe the functions that the Security Council performs that prevent the aggravation of armed conflict before adopting enforcement action.

Chapters 2 and 3 examine the proposition that Article 40 of the Charter provides the legal basis for peacekeeping. Chapter 2 looks at the origins of peacekeeping in the experience of the League of Nations in its efforts to prevent war and the peacekeeping measures available under Article 11 of the *Covenant of the League of Nations* (1919). The chapter argues that the League’s experience played an important role in the inclusion of Article 40 in the Charter and reinforces the view that provisional measures under the Charter are designed to be flexible.

Chapter 3 confirms the observation that the legal significance of Article 40 by examining the five different types of provisional measures that have been undertaken by the Security Council, namely; calls for cease-fire, peace observation, deployment of

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peacekeeping forces, provisional territorial administration, and preventive arms embargo. The author argues against the notion that provisional measures under Article 40 must not be undertaken unless a threat to the peace has been pronounced, and also argues against too much reliance on the consent of concerned governments, so as not to unduly reduce the effectiveness of peace keeping measures.

Chapters 4, 5 and 6 consider the requirements in Article 40 to regulate the manner in which peacekeeping measures are to be directed and undertaken. Chapter 4 addresses issues regarding the legal force of peacekeeping measures. It looks at the determination of legal force through the various interpretations of UN Charter provisions and Security Council resolutions. It argues that the legal force of each peacekeeping measure is best ascertained in light of the purpose of the measure, with due regard to the collective will and intention of the Security Council.

Chapter 5 discusses the relationship with the principle of non-intervention in light of the principles of neutrality and impartiality in peacekeeping measures. The chapter argues that strict adherence to non-intervention in the domestic affairs of a state would prejudice a peacekeeping measure either in favour of, or against, armed opposition groups. It calls for a re-examination of the principle of non-intervention in light of impartiality in undertaking a peacekeeping measure, taking into account the human rights to political participation and self-determination of the people involved in the conflict.

Chapter 6 examines the enforcement of peacekeeping measures, particularly the extent to which armed forces can be used for their implementation. The chapter undertakes a conceptual level analysis of the basis for peace enforcement, as well as a strategic level analysis on the right of self-defence. The legal constraints on the use of force in peacekeeping are also discussed. The author proposes that should resistance against peacekeeping forces persist, it is the responsibility of the Security Council to adopt enforcement measures under Articles 41 and 42 of the Charter.

Chapters 7 and 8 further develop the argument by situating peacekeeping measures under Article 40 within a wider regulatory framework. Chapter 7 examines the substantive jurisdictional basis, legality and legitimacy of peacekeeping measures under Article 40 that constitute the criteria by reference to which the Security Council's peacekeeping powers are to be regulated. It is argued that the current move towards the 'responsibility to protect' should be reflected in peacekeeping and its effects on the legal status of military actions taken by parties in conflict. Chapter 8 addresses the procedural aspect of regulation and considers mechanisms to ensure that peacekeeping measures are undertaken and implemented in accordance with substantive criteria.

The book argues that the significance of Article 40 of the Charter as a basis of the legal regime governing peacekeeping measures must be reevaluated as it potentially allows for a more flexible approach to conflict management. While acknowledging legitimate concerns about abusive and arbitrary use of peacekeeping powers under Chapter VII of the Charter, the book concludes that the provisional nature of the peacekeeping power and stringent legal requirements under Article 40 will help restrain peacekeeping measures and them against balance respect for state sovereignty.