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United Nations Peacekeeping  
A Viable Instrument Fifty Years After its  
Establishment?

Master thesis  
20 points

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*"All that's necessary for the forces of evil to win in the world is for enough good men to do nothing."*

*Edmund Burke 1729-1797,  
political philosopher*

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# Summary

The United Nations (UN) was founded to save future generations from the horrors of war. Maintenance of peace and security is the highest priority of the Organization and peacekeeping missions are tasked to meet this challenge. The results of peacekeeping have also become a measure according to which the UN is judged by the people it exists to protect. Many circumstances have changed, both in doctrine and in practice, since the formation of the UN but the rules and regulations governing the Organization have remained the same. This master thesis discusses some of the challenges that face the UN in the twenty-first century and evaluates whether the Organization is still an effective tool to safeguard world peace more than half a century after its establishment.

The three fundamental principles governing peace operations, consent, impartiality and minimum use of force, have to some extent assumed new meanings to better adapt to changed circumstances in conflict dynamics. Peacekeeping theory is alienating itself from a conservative strict application of these principles to approach a more liberal and humanitarian role of the UN. Over the last decades, the rights of individuals have gained ground at the expense of state sovereignty. However, UN failure such as the genocide in Rwanda shows that the Organization is not a guarantee to avoid conflicts and violations of public international law. The tasks of the Security Council are discussed with an emphasis on its competence under Chapter VII of the UN Charter and an aspiration of assuming legal functions.

Despite all the challenges facing the UN, it is argued that peacekeepers do bring about a significant change in world politics in terms of peace agreements and conflict resolution that would not have been possible without the catalyst of the Organization. This thesis is an analysis of the viability of UN peacekeeping fifty years after its establishment.

# Preface

From July to December 2007, I was given the opportunity to do an internship at the UN headquarters in New York. The knowledge I acquired about the UN and its actions when working on the political side at the Department of Peacekeeping Operations (DPKO) has been invaluable for this thesis. In the Africa Division, I worked with the Democratic Republic of the Congo (DRC), which rendered me an understanding of great utility for the analysis of the issue at hand, as it currently is the largest and most complex peacekeeping mission in UN history.

The same year, from January to June, I went for another internship, this time with the Swedish Ministry of Foreign Affairs, to the Permanent Mission of Sweden to the United Nations, also in New York. At the Permanent Mission, I worked with budgetary and administrative affairs as well as with reform questions of UN management. My experience there made my interest for the international political and diplomatic arena more profound and led to an engagement for peacekeeping operations and the realization of this thesis.

# Abbreviations

DPKO	Department of Peacekeeping Operations
DRC	Democratic Republic of the Congo
ECOSOC	Economic and Social Council
HRW	Human Rights Watch
ICG	International Crisis Group
ICJ	International Court of Justice
MONUC	Mission de l'Organisation des Nations Unies en République démocratique du Congo
OAU	Organization of African Unity
ONUC	Opération des Nations Unies au Congo
OP	Operative Paragraph
PP	Preambular Paragraph
SADC	Southern African Development Community
SRSR	Special Representative of the Secretary-General
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCIO	United Nations Conference on International Organization
UNEF	United Nations Emergency Force
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USA	United States of America
WHO	World Health Organization
WTO	World Trade Organization



# 1 Introduction

The First and Second World War constituted wars of unprecedented magnitude in human history. In order to save succeeding generations from similar horrifying conflicts, the UN was founded shortly after the end of the Second World War. According to the instrument governing the Organization, the UN Charter, the purpose of the UN is to maintain international peace and security.<sup>1</sup> One way for the UN to reach this goal is to send out peacekeeping missions to various conflict zones in the world.

Twice as many people died in World War I than in all wars from 1790 to 1913 combined.<sup>2</sup> In an attempt to prevent impacts of conflicts from reaching as far as those of a world war, the League of Nations was founded after the First World War. However, the number of states who joined the League was limited and as long as key countries such as the United States were not part of the League, its decisions could not obtain the desired influence. With the outbreak of the Second World War, the complete failure of the League of Nations was recognized, resulting in its discontinuance. Despite this fact, the idea of establishing an alliance of states to obstruct war was not abandoned. With the horrors of the Second World War fresh in mind, representatives of fifty states signed the Charter founding the UN on 26 June 1945 in San Francisco.<sup>3</sup> Since then, the Organization's importance has grown immensely. The principal strength of the UN is the number of states backing it up, rendering the Organization a universal status and its decisions a political weight of unprecedented significance. Today, almost every country in the world (192 out of a total of 194 states) is a member of the UN.<sup>4</sup>

Since the establishment of the UN in 1945, the world has undergone major changes and developments. Despite this, the UN Charter has essentially remained the same. With changed world politics, alliances of states dissolved and super powers broken down, the world has given room for new super powers, with powerful economic interests, to emerge. Conflicts in the world have gone from being essentially interstate conflicts to a stage where the threat mainly comes from within the state itself or from a non-state actor, creating new dimensions to the concept of conflicts.

Facing different challenges than those envisaged at its establishment, is it feasible for the UN, reigned by a treaty which is more than half a century old, to operate in an effective way to fulfil its goal to maintain international peace and security? With the various interests represented by the vast

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<sup>1</sup> UN Charter, Article 1(1)

<sup>2</sup> Arend and Beck, *International Law and the Use of Force*, p. 19

<sup>3</sup> Chamberlin, Hovet and Hovet, *A Chronology and Fact Book of The United Nations 1941-1976*, p. 12

<sup>4</sup> Number of countries in the world,

<http://geography.about.com/cs/countries/a/numbercountries.htm>

number of member states that need to be taken into account, has the Organization become that heavy that its decisions need to be compromised to a point where their original elements are impossible to distinguish? Given that the Organization serves its member states, is it possible for the UN to reach conclusions in which the decision-making process does not water down its decisions to the extent that they no longer have any significance?

Considering the important challenges facing the UN, consisting of political as well as managerial issues, this thesis examines the function and efficacy of the Organization. Modalities for the UN to maintain international peace and security are discussed. The different forms of the Organization's enforcement mechanism, peacekeeping and peace-enforcement, are assessed and their contemporary limits and challenges evaluated. The conflict in the DRC and the present UN peacekeeping mission in the country, MONUC, serve as an example to illustrate how concrete challenges affect the Organization's work.

## 1.1 Purpose

This thesis is written in partial fulfilment of the requirements for the master's degree in public international law in the faculty of law, University of Lund. The purpose of this thesis is to determine whether the UN is able to operate efficiently within the framework of international law, more precisely whether the UN possesses adequate means to solve complex crises of political nature and establish a durable peace. The main question explored is the following:

*Is the UN with its peacekeeping operations an effective forum and tool to ensure international peace and security in the twenty-first century?*

An explorative approach is adopted in order to, *inter alia*:

- Clarify the lack of consensus in the debate on the UN role,
- Highlight how the challenges that conflicts pose to the UN are perceived by differing views,
- Demonstrate, through two case studies of UN interventions in the DRC, how challenges to maintain international peace and security have been solved in practice,
- Critically examine the discrepancy between theory and practice in peacekeeping by investigating in which situations the UN capacity is limited to meet the challenges of conflicts, and
- Discuss how basic principles of peacekeeping may be reconciled with military interventions.

## 1.2 Delimitation

This thesis only deals with the primary components of the UN concerning peace operations: the Security Council, the General Assembly, the Secretary-General and DPKO. Although their authorities have changed over time, these are the components that have constantly remained principal in this matter. As a result, the activities of UN funds and specialized agencies will not be treated.

In a large amount of cases, the Security Council has provided mandates for peacekeeping missions to different areas of the world. Each geographic area has its own individual demands and needs. To furnish contextual focus, analytical emphasis is given to Africa, more specifically the Great Lakes Region.<sup>5</sup> Africa is the part of the world where the most severe challenges to the UN's role in addressing intrastate conflicts are posed. This continent has the highest incidence of humanitarian emergencies and it generates situations that stretch the UN peace operation competence to the outer limits of viability. The failures of the UN in Rwanda and Somalia in the early 1990's are examples thereof.<sup>6</sup>

The DRC serves as an example to illustrate how the role of the UN has evolved over time and what challenges currently are facing the Organization in this regard.<sup>7</sup> The UN first arrived in the DRC in 1960 and its present peacekeeping mission that has been in the country since 1999 is currently the largest and most complex in UN history. The history of the UN in the country in combination with the scale and complexity of the conflict makes the DRC an interesting subject for close scrutiny of controversial properties of UN peacekeeping. "The DRC" is used for the former Belgian colony that after independence in 1960 was known as the Republic of the Congo.<sup>8</sup> The country was renamed Zaire in 1971 and in 1997, it received its present name, the Democratic Republic of the Congo. For easy reference, the term DRC is used throughout the text despite the fact that the country was renamed three times during the span treated.

This thesis does not purport to be an exhaustive, less a definitive, study on the role of the UN regarding peacekeeping. It is not exhaustive since it is concerned almost exclusively with two peacekeeping missions, ONUC and MONUC. Each peacekeeping mission and the countries where they are have unique requirements. This thesis does thus not compromise aspects solely found in other parts of the world than the Great Lakes Region in Africa. It is not definitive due to the fact that some material necessary for final conclusions, including internal documents of the UN Secretariat, is not available.

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<sup>5</sup> Map of the Great Lakes Region in Supplement A

<sup>6</sup> United Nations Department of Public Information, *Inquiry finds UN failure to halt 1994 genocide* and Woods, *Somalia*, p. 1

<sup>7</sup> Map of the DRC in Supplement B

<sup>8</sup> Kanza, *Conflict in the Congo: the rise and fall of Lumumba*, p. 185

## 1.3 Methodology and Material

To deal with an issue as vast as the function of UN peacekeeping, it is necessary to clarify essential facts about the Organization in terms of the relevant decision-making bodies and mechanisms of enforcement. For this aspect, my experience from the Permanent Mission of Sweden to the United Nations has been useful, where I attained a good perception of the structure of the UN and became familiar with the working methods of its bodies.

To answer the question in section 1.1 above, a description is provided of the limits of the UN to face challenges in the area of international peace and security in the twenty-first century. Means and reasons for the UN to intervene in conflicts are discussed. For this purpose, international law is examined and arguments and opinions from writers and states assessed. Contemporary challenges confronting the UN are located through a mapping exercise. In this regard, I rely to a large extent on my findings during the period I worked at UN headquarters with the peacekeeping mission in the DRC. The thesis highlights how challenging conflicts can amend the legal framework within which the UN is authorized to act.

Over the years, numerous prominent scholars have debated the UN's role and this thesis relies on the collective thoroughness of these thinkers' books and articles on the issue. Political affairs officers at the UN and officials from the Swedish Ministry of Foreign Affairs have kindly provided insight into their respective fields of work. International documents including treaties and conventions, notably the UN Charter, as well as declarations and other non-binding instruments have been studied to clarify the legal framework of the UN. The focus on UN official documents attempts to demonstrate the interpretation of the UN Charter by the UN itself. Judicial decisions from the International Court of Justice (ICJ) have also been examined to ascertain the position of customary international law in this area. Articles from academic journals, texts from organizations and institutes as well as the Internet have served as useful tools for the research of the subject.

When exploring the role of the UN, I have realized that many writers and officials have strong opinions about what the UN should and should not interfere with. An emotional involvement in the topic came to my awareness as states and other actors often are biased in their evaluations of peace operations, depending on their political interests and opinions of which role the UN should play. I have done my best to adopt a critical reading of the literature to uphold objectivity when assessing the opposing sides of a battle about the future developments of the UN.

## 1.4 Outline

An introductory description in chapter two of the legal framework for peacekeeping initiates this dissection. The relevant provisions of the UN Charter for maintenance of peace and security are examined and the competence and legal functions of the Security Council discussed. The role of the ICJ for peace operations is also clarified in this chapter. After an analysis of various types of peace operations in chapter three, UN interference in state sovereignty is investigated in chapter four through a review of peacekeeping theory and practice.

Challenges to UN peace operations in Africa are treated in chapter five with an emphasis on the DRC. The development of peacekeeping and how theory on this matter converges with practice is visualized through the two peace operations in the country. Contemporary features of peacekeeping and the challenges facing the UN in the twenty-first century are studied in chapter six. Final remarks in chapter seven explain the changed circumstances under which the UN conducts its work. Chapter eight contains an analysis that summarises the findings of this research and the thesis ends with closing comments on the viability of the UN in the twenty-first century.

# 2 The Legal Framework for Peacekeeping

*“What the Council says is the law.”*

Martti Koskenniemi

UN is nothing but its member states. It is them who are decision-makers and provide all resources to the Organization. Within the legal framework of the UN Charter, representatives of the national governments of the members decide every action taken by the Organization. The UN executives, new member states and the members of the Security Council are decided upon nomination by the member states. It is also the members that have contributed every dollar spent by the Organization. Naturally, different members have different views and influence of varying magnitude over the UN on specific issues. UN action is the aggregated sum of its different components, the member states.<sup>9</sup> Decisions made by the Organization are the compromise of the member states’ different interests, which entails that they are of a political nature.

To provide a fair picture of the UN and its role as the guarantor of international peace and security, the rules and regulations governing peace operations are explored in this chapter. The legal foundation is found in the UN Charter and the UN Organ responsible for such actions is the Security Council. The ICJ is the UN’s official tribunal.

## 2.1 The UN Charter

The instrument governing the UN, and also the document that founded the Organization, is the UN Charter. It was signed at the United Nations Conference on International Organization (UNCIO) in San Francisco 1945. Only states can be members of the UN.<sup>10</sup> All member states agree to the rules laid down by the Charter and are thus bound to follow its regulations and act consistently with the purposes of the UN.<sup>11</sup> The provisions under the UN Charter prevail in case of conflicting obligations of member states between the obligations of the UN Charter and any other international agreement.<sup>12</sup> The legal framework within which the UN can operate is laid out in the UN Charter.

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<sup>9</sup> Barnett and Finnemore, *Rules for the world: international organizations in global politics*, p. 4

<sup>10</sup> UN Charter, Article 4

<sup>11</sup> *Ibid.*, preamble and Article 2

<sup>12</sup> *Ibid.*, Article 103

## 2.1.1 Overview

The UN Charter commences in Chapter I by specifying the purposes of the Organization and states the principles according to which it acts. One purpose of the UN is to strengthen universal peace through the development of friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples.<sup>13</sup> The Organization is also thought to serve as a centre for harmonizing the actions of nations in the attainment of its common goals.<sup>14</sup>

Regulations regarding UN membership are found in Chapter II and regarding UN Organs in Chapter III. Chapter IV and V are about the General Assembly and the Security Council respectively. The principal Organ for maintenance of peace and security, the Security Council, is discussed in section 2.2 below. Rules concerning pacific settlement of disputes belong to Chapter VI whereas actions with respect to threats to the peace, breaches of the peace and acts of aggression are part of Chapter VII. The legal basis for actions dealt with in this thesis is mainly found in these latter two chapters.

Rules concerning regional arrangements are set out in Chapter VIII. Provisions concerning international economic and social cooperation as well as the Economic and Social Council (ECOSOC) are found in Chapter IX and X. Chapter XI to XIII address non-self-governing territories and the Trusteeship Council but as there are no longer any such territories in the world, these chapters have become obsolete. The ICJ is regulated in Chapter XIV and the Secretariat in Chapter XV. Chapter XVI contains provisions of the legal status of the Charter, the UN and its representatives. Transitional security arrangements are ruled by Chapter XVII and amendments of the UN Charter by Chapter XVIII. Chapter XIX prescribes ratification and signature of the UN Charter.

## 2.1.2 Maintenance of Peace and Security

There is no provision in the UN Charter that explicitly provides for a legal basis for peacekeeping. The concept arose in the absence of armed forces that member states were initially thought to make available to the Security Council.<sup>15</sup> With a number of operations undertaken by the UN, an acceptance of reaction to crisis situations by the international community has evolved.<sup>16</sup> The general provisions of the Charter regarding the Security Council and the General Assembly govern these activities. The Security Council has powers to establish subsidiary organs, undertake investigations and make recommendations of procedures for dispute settlement.<sup>17</sup> It may

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<sup>13</sup> UN Charter, Article 1(2)

<sup>14</sup> *Ibid.*, Article 1(4)

<sup>15</sup> *Ibid.*, Article 43

<sup>16</sup> Shaw, *International Law*, p. 1107

<sup>17</sup> UN Charter, Articles 29, 34, 36-38

also make recommendations and decisions on measures to maintain or restore international peace and security.<sup>18</sup> The possibility to entrust the Secretary-General with functions has also been frequently used by the Council.<sup>19</sup> The General Assembly may also establish subsidiary organs, discuss maintenance of peace and security and entrust functions to the Secretary-General, but its recommendations do not have any binding effect.<sup>20</sup> Peace operations undertaken by the Secretary-General fall between the peaceful settlement of Chapter VI and enforcement of Chapter VII, which has led to the use of the term “Chapter VI ½”.<sup>21</sup>

The legal framework for peacekeeping activities reflects their status as UN subsidiary organs. They are subject to the law governing the UN as a whole, which make the rules concerning privileges and immunities of UN personnel and responsibility applicable.<sup>22</sup> Peacekeepers are to respect all local laws and regulations of the country where the mission is deployed while that government in return undertakes to respect the exclusively international nature of the operation.<sup>23</sup>

The provisions of the Charter governing the UN’s action with respect to threats to the peace and settlement of disputes are also found in the sections below where their practical functions are discussed.

## 2.2 The Security Council

The UN consists of six main bodies:

- The General Assembly,
- The Security Council,
- ECOSOC,
- The Trusteeship Council,
- ICJ, and
- The Secretariat.

Each one of these organs has different functions. As laid down in Article 1(1) of the UN Charter, the primary purpose of the UN is to maintain international peace and security. To that end, the UN should take effective, collective measures for the prevention and removal of threats to the peace. It should suppress acts of aggression or other breaches of the peace and adjust or settle international disputes or situations that might lead to a breach of the peace. This should be carried out by peaceful means and in conformity with

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<sup>18</sup> UN Charter, Articles 39, 41-42

<sup>19</sup> Ibid., Article 98

<sup>20</sup> Ibid., Articles 10-11, 14, 22, 98

<sup>21</sup> Shaw, *International Law*, p. 1108

<sup>22</sup> Ibid., pp. 1114-1115

<sup>23</sup> UN document A/45/594, *Model Status-of-Forces Agreement for Peace-keeping Operations*, paragraphs 6-7



the principles of justice and international law. The UN body that has the primary responsibility for this major task is the Security Council.<sup>24</sup>

## **2.2.1 Competence under Chapter VII of the UN Charter**

As stated above, the Security Council is responsible for maintaining international peace and security. Chapter VII of the UN Charter is the essence of the collective security system as it enables the Council to fulfil this responsibility by imposing binding decisions on states.<sup>25</sup> The means available to the Security Council for this is provisional measures, mandatory non-military sanctions such as interruption of communication and economic and diplomatic relations and military sanctions.<sup>26</sup>

### **2.2.1.1 Classification of the Situation, Article 39**

Enforcement measures require a preceding classification of the situation of the Security Council in accordance with Article 39 of the UN Charter. If decisions of sanctions have been taken without any determination under Article 39, member states are not compelled to implement the decision. Article 39 reads as follows:

*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*

The introductory part of the article is a prerequisite for action. Over time, with the developments of the world, the interpretation of what constitutes a “threat to the peace, breach of the peace, or act of aggression” has varied. The conventional idea is that “peace” in the first part of Article 39 means international peace, which is also explicitly expressed in the last part of the article where the word “international” is found. This interpretation is also congruent with the main purpose of the UN and the primary responsibility of the Security Council, i.e. maintenance and restoration of international peace. The interpretation that “peace” means “international peace” is also in accordance with Article 31(1) of the Vienna Convention on the Law of Treaties from 1969. The Vienna Convention lies down that a treaty shall be interpreted in the light of its object and purpose. This provision is considered to be a codification of international customary law, which is supported by the following rulings of the ICJ: The Case Concerning Oil Platforms,<sup>27</sup> Case Concerning Arbitral Award of 13 July 1989,<sup>28</sup> Case

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<sup>24</sup> UN Charter, Article 24(1)

<sup>25</sup> Ibid., Article 25

<sup>26</sup> Ibid., Articles 39-42

<sup>27</sup> ICJ Reports 1996, paragraph 23

<sup>28</sup> ICJ Reports 1991, paragraph 48

Concerning the Gabčíkovo-Nagymaros Project<sup>29</sup> and the Advisory Opinion on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict.<sup>30</sup> This would limit the action of the Security Council to apply only to situations where at least a threat to international peace is involved.

In doctrine, some scholars argue that this interpretation is outdated even if the intention at the drafting of the Charter was to link “peace” to “international peace”. They are of the opinion that a dynamic interpretation of the Charter shows that the application of international law has expanded and increasingly trespasses on the domain of formerly exclusive jurisdiction.<sup>31</sup> Such an interpretation is also reconcilable with the traditional interpretation, as “a threat to the peace” does not *prima facie* need to be international. The creators of the Charter considered that internal situations, such as gross human rights violations, could threaten international peace and security.<sup>32</sup> They found that precise definitions in Chapter VII could endanger the Council’s free discretion and as a result rejected proposals to insert a definition of what constituted an aggression.<sup>33</sup> Doctrine as well as rulings by international courts widely supports the finding that a threat to the peace does not need to be international, and states that the Security Council has an almost unlimited margin of appreciation in making determinations under Chapter VII.<sup>34</sup>

### 2.2.1.2 Legal Limits of Decisions, Article 24

The Security Council does not have a completely unlimited competence to make decisions under Article 39 of the UN Charter, it is bound to follow the minimum requirements set out in Article 24(2). According to this article, in fulfilling its responsibility to maintain international peace and security, “the Security Council shall act in accordance with the Purposes and Principles of the United Nations.” The article refers to Chapter VI, VII, VIII and XII for the specific powers granted to the Council for the discharge of these duties.

The purposes and principles of the Organization are found in Chapter I of the Charter, in Article 1 and 2 respectively. Article 1 reads as follows:

*The Purposes of the United Nations are:*

1. *To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international*

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<sup>29</sup> ICJ Reports 1997, paragraph 46

<sup>30</sup> ICJ Reports 1996, paragraph 19

<sup>31</sup> Österdahl, *Threat to the Peace – The Interpretation by the Security Council of Article 39 of the UN Charter*, p. 20

<sup>32</sup> *Travaux préparatoires to the UN Charter*, p. 705

<sup>33</sup> UNCIO Documents, *Verbatim Minutes of the First Meeting of Commission III*, pp. 12, 18

<sup>34</sup> Malanczuk, *Akehurst’s Modern Introduction to International Law*, pp. 425-426

- law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;*
2. *To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;*
  3. *To achieve international co-operation in solving international problems of economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and*
  4. *To be a centre for harmonizing the actions of nations in the attainment of these common ends.*

The order of listing and the content of subsequent provisions in the Charter support the view that maintaining international peace and security is the primary purpose of the Organization and takes priority over other purposes.<sup>35</sup> Meanwhile, this does not mean that the other purposes can be ignored in the contemporary world where human rights and self-determination gain ground at the expense of traditional norms of state sovereignty. Even the framers emphasized that the UN Charter should be a “world constitution”, adaptable to a changing society.<sup>36</sup>

The question of whether the Security Council is bound by general international law is subject to debate among academics and practitioners. Despite the power and credibility provided to the Organization by rule of law, it has been said that in its enforcement capacity, the Council should not be fettered by such restrictions.<sup>37</sup>

Article 2 of the UN Charter contains the principles of the Organization. The following are the paragraphs relevant in defining the legal limits of the capacity of the Security Council:

1. *The Organization is based on the principle of the sovereign equality of all its Members.*
2. *All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.*
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 or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.*

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<sup>35</sup> Simma, *The Charter of the United Nations – A Commentary*, pp. 49, 51

<sup>36</sup> UNCIO Documents 4783, Volume 6, p. 15

<sup>37</sup> UNCIO Documents 1006, *Verbatim Minutes of the First Meeting of Commission I*, pp. 1, 12

Article 2(1) concerns the principle of sovereign equality of the member states. This most likely refers to equality before the law that is not the same thing as equality under the Charter, as UN members have agreed on inequality by providing special rights to the permanent members.<sup>38</sup> The Organization is prevented from intervening in mainly internal matters of a state, although enforcement measures under Chapter VII are explicitly exempted from this principle according to Article 2(7). Scholars argue that the principle of good faith in Article 2(2) extends to the UN Organs.<sup>39</sup> As a result, the Security Council could be accused of abuse of right if a decision under Article 39 is made *mala fide*.

Article 24(2), second sentence, refers to the “specific powers” granted to the Security Council in Chapter VI, VII, VIII and XII. This raises the question whether the powers of the Council are limited. Several academics declare that such restriction would be contrary to the purpose of the UN Charter. They claim that paragraph 24(1) therefore is the basis for comprehensive powers of the Security Council, which go beyond the enumeration in paragraph 24(2) and thereby closes any gaps in the provision of Security Council powers.<sup>40</sup> This position was confirmed in the “Certain Expenses Case” which clarified that neither the purposes of the UN nor the powers conferred to effectuate them constitute definitive limits for the Security Council. When the UN takes appropriate action to fulfil its purposes, the presumption is that this action is not *ultra vires*.<sup>41</sup>

UN Organs have *compétence de la compétence*, that is, they determine their own competence. However, they are not entitled to interpret the UN Charter in a binding manner to other Organs.<sup>42</sup> In the “Lockerbie” case, the ICJ investigated whether the decisions of the Security Council, a political body, could be reviewed judicially. The Court found in its provisional measures that a Security Council Resolution with binding force under Chapter VII prevents further review by ICJ.<sup>43</sup>

### 2.2.1.3 Jus Cogens and Article 103

Security Council Resolutions under Chapter VII have pre-eminence according to the “Lockerbie” case, but is the Security Council bound by *jus cogens* norms? Norms of *jus cogens* are highest in the hierarchy of

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<sup>38</sup> Bring, *FN-stadgan och världspolitik*, pp. 41-42

<sup>39</sup> Simma, *The Charter of the United Nations – A Commentary*, pp. 89-97

<sup>40</sup> *Ibid.*, p. 403

<sup>41</sup> *Advisory Opinion on Certain Expenses of the United Nations*, p. 167. The case treats the issue whether the costs of the first peacekeeping missions in Suez and the DRC were expenses of the Organization within the meaning of the UN Charter

<sup>42</sup> Bedjaoui, *The New World Order and the Security Council: Testing the Legality of its Acts*, pp. 9-12

<sup>43</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie*, Provisional Measures, p. 129 and *Case Concerning Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie*, Preliminary Objections. The case concerned Libya’s objection to the Security Council sanctions imposed on Libya to extradite suspected terrorists

international law and as a result take precedence over other obligations.<sup>44</sup> Although disputed, general agreement has been reached among scholars on which norms that constitute this category in international law. Apart from self-determination, the ban of aggression, genocide, piracy, racial discrimination and slavery, other fundamental human rights and principles of humanitarian law belong to this cluster.<sup>45</sup>

The obligations under the UN Charter prevail in case of conflict with member states' obligations under other international agreements, according to article 103 of the UN Charter. Despite this status if the Charter, the UN, including the Security Council, is bound by *jus cogens* norms.<sup>46</sup> In addition, the prohibition of genocide, the right to self-determination and the assurance of respect for human rights and humanitarian law have double protection, as they are included in Article 1 of the UN Charter. In the "Bosnia" case, the ICJ avoided to rule on whether the Council is bound to act in conformity with *jus cogens*, as it rejected the Bosnian request with regard to self-defence. However, in his separate opinion to the case, judge Lauterpacht stated that Article 103 could not extend *jus cogens*.<sup>47</sup> The Security Council can thus not disregard *jus cogens* norms, not even in its actions under Chapter VII.<sup>48</sup>

## 2.2.2 Legal Functions

To ensure international peace and security, the Security Council has broad enforcement powers under Chapter VII of the UN Charter. It is to use these powers in accordance with public international law. This section explores whether the Security Council has taken a quasi-judicial role, using its extraordinary powers under the Charter to impose quasi-judicial decisions to enforce and create norms in public international law. Quasi-judicial decisions are acts by a non-judicial body, such as the Security Council, which entail legal consequences and would usually be made by a judicial organ. Examples of such consequences are void and nullity decisions, declarations of illegality, establishment of international tribunals, extradition of suspected criminals and legislative acts.<sup>49</sup> Has the Security Council assumed functions as a legislator and a world police?

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<sup>44</sup> The Vienna Convention on the Law of Treaties, Article 53

<sup>45</sup> Malanczuk, *Akehurst's Modern Introduction to International Law*, p. 58

<sup>46</sup> Bedjaoui, *The New World Order and the Security Council: Testing the Legality of its Acts*, p. 34

<sup>47</sup> *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide*, p. 440. In the case, the Security Council was accused by Bosnia-Herzegovina of contributing to acts of genocide by maintaining a weapons embargo against Former Yugoslavia

<sup>48</sup> Bedjaoui, *The New World Order and the Security Council: Testing the Legality of its Acts*, pp. 34-35

<sup>49</sup> Higgins, *International Law and the Avoidance, Containment and Resolution of Disputes*, p. 337

### 2.2.2.1 Legislator and Law Enforcer

After the end of the Cold War, the Security Council was no longer paralysed by the vetoes of two rival super powers. Global optimism spread with strong hopes for respect for public international law and an effective collective security system. A new demand on the Security Council was the capacity to respond under Chapter VII to contemporary crises and to modernize the concept of what constituted a threat to the peace. In this period, the Council widened its interpretation of the mandate given to it under Chapter VII, in particular its perception of a threat to the peace under Article 39. Traditional international threats have given way to interference in internal disputes. The Security Council appears to have applied Chapter VII of the UN Charter to uphold and enforce norms, thereby using a threat to the peace under Article 39 not only to sanction but also to create certain fundamental norms in public international law. The relevant norms are core principles of human rights and humanitarian law, right to self-determination or democracy, the ban of international terrorism and non-proliferation of weapons of mass destruction.

Sanctions of quasi-judicial nature have been used by the Council to implement the norms mentioned above, which can be seen as an indication of the Council aspiring for a judicial role. The idea that the Council creates and imposes law gives first of all raise to the question whether this interpretation is correct but also whether the Council in its legislative mode is bound by international law. Bedjaoui gives an affirmative answer to both of these questions. The broad discretion provided to the Council by the UN Charter also underpins the possibility for the Council to use its powers in the service of international law.<sup>50</sup> However, a judicial role for the Security Council seem problematic as it is a political body that was never intended to be a court of law or have legal functions.<sup>51</sup> There are four ways for the Security Council to use its powers under Chapter VII of the UN Charter in the service of public international law:<sup>52</sup>

- **Legislation:** The Security Council has adopted resolutions under Chapter VII that are generally addressed to all states and that can be said to establish new rules of international law without specifically relating to a particular situation and without explicit or implicit time limitations.
- **Law Enforcement:** The Security Council has sanctioned existing fundamental norms in public international law. By citing treaties and declarations in support of its findings, the Council shows that it

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<sup>50</sup> Bedjaoui, *The New World Order and the Security Council: Testing the Legality of its Acts*, p. 1

<sup>51</sup> *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie*, Provisional Measures, p. 129 and *Case Concerning Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie*, Preliminary Objections

<sup>52</sup> Delbrück, *Allocation of Law Enforcement Authority in the International System*, p. 33

continuously bases its decisions under Chapter VII on norms of international law.

- **Creation of Customary Law:** The Security Council contributes to the evolution of norms in public international law through adopting mandatory resolutions under Chapter VII. The Council's enforcement decisions create and crystallize norms into customary law, as sanctions must be complied with by member states.
- **Court of Law:** By the use of quasi-judicial sanctions, the Security Council has assumed the role of a legal court. Statements of law become binding when measures under Chapter VII are applied.

Nothing prevents the Security Council from taking action to uphold and implement fundamental principles set forth in the UN Charter. Such action is in line with Article 24(2), as it enforces the purposes and principles of the Organization. The question remains nevertheless whether the Council can act in a quasi-judicial capacity even though there is no threat to the peace. The issue is debated among scholars and the formalist wing suggests that the existence of a "real" threat to the peace is necessary for the Council to intervene for the other purposes laid out in the Charter.<sup>53</sup> Others hold that it is included in the Council's discretion to make such decisions.<sup>54</sup> A third position, bridging these two arguments, is that the most essential obligations for maintenance of international peace and security are the same as the obligations arising from the purposes of Article 1 of the UN Charter: non-aggression, self-determination and respect for human rights.<sup>55</sup> The issue is carried to its extremes in cases where there is no armed conflict. The Council has intervened in situations of internal self-determination, international terrorism and gross violations of human rights. A too formalistic approach has been criticized, according to which the Council needs to construe a threat to the peace to be authorized to intervene under Chapter VII instead of being directly allowed to take action against violations of international law. Scholars that support humanitarian intervention propose that the Security Council not only has a right but also a duty to intervene to stop violations of human rights and alleviate grand scale human suffering.<sup>56</sup>

What difference does it make if the Security Council classifies a situation as a threat to the peace to be able to uphold norms of international law in conformity with the purposes and principles of the UN? If the formalist view is to reign, i.e. that an intervention under Chapter VII without a real threat to international peace would be *ultra vires*, it could be argued that

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<sup>53</sup> Fielding, *Taking the Next Step in the Development of New Human Rights: The Emerging Right of Humanitarian Assistance to Restore Democracy*, p. 374

<sup>54</sup> Bedjaoui, *The New World Order and the Security Council: Testing the Legality of its Acts*, pp. 52-53, 128

<sup>55</sup> Hannikainen, *Peremptory Norms in International Law*, p. 284

<sup>56</sup> Fielding, *Taking the Next Step in the Development of New Human Rights: The Emerging Right of Humanitarian Assistance to Restore Democracy*, p. 374

international implications are contained in most situations in a global world such as the contemporary. An example when the Council has acted under Chapter VII without any armed conflict includes Haiti in 1991 when the democratically elected president was ousted by a military coup. The Security Council was very cautious in explicitly stating the grounds for intervention. It cited numerous reasons leading to a threat to the peace such as unique and exceptional circumstances, the fact that the president was not reinstated could lead to instability in the region and that refugee flows could affect neighbouring countries.<sup>57</sup> As long as there is no dissonance between the Security Council's aim to maintain or restore international peace and security and the other fundamental purposes specified in the Charter, it is in the interest of the international society for the Council to intervene.

The Security Council might be aware of the framers' idea of a world police, upholding and implementing fundamental norms of international law. Meanwhile, the Council has exceeded this position in assuming the role of a legal court and a legislator contributing to the creation of international law. However, in creating law through its practice, the Council can only establish norms applicable within the sphere of activity of the UN. Customary rules or practices contrary to the Charter can only be created by states.<sup>58</sup> Nevertheless, the effect of the rules established by the Security Council is of extensive importance regarding the broad spectrum of activities covered by the UN. The fact that the UN is a world constitution, thought to have a vigorous autonomy, favours a judiciary role of the Council. The broad powers provided to the Security Council should be interpreted in this light, promoting an extension of the Council's role from the executive to the legislative field. Or, as Koskenniemi concludes, "what the Council says *is* the law".<sup>59</sup>

Although the Security Council may have taken on a judicial role, resolutions should be treated cautiously as precedents. The Council, like the other UN Organs, is a political body. As opposed to judicial bodies, a fundamental difference is that political bodies are under no legal obligation to follow their own precedents, to treat like cases alike or even to act at all. Nor do political bodies need to explain the legal basis for their decisions.<sup>60</sup> The practice of the Security Council indicates nevertheless that the Council has taken action under Chapter VII in a consistent manner to enforce and support the creation of fundamental norms in international law.<sup>61</sup>

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<sup>57</sup> Security Council Resolution 841

<sup>58</sup> Bedjaoui, *The New World Order and the Security Council: Testing the Legality of its Acts*, p. 29

<sup>59</sup> Koskenniemi, *The Police in the Temple Order, Justice and the UN: A Dialectical View*, p. 327

<sup>60</sup> Delbrück, *Allocation of Law Enforcement Authority in the International System*, p. 33

<sup>61</sup> Gowlland-Debbas, *The Security Council Enforcement Action and Issues of State Responsibility*, p. 63



### 2.2.2.2 Interpretation of Resolutions

Under Article 25, all UN members have a responsibility to accept and carry out the decisions of the Security Council in accordance with the UN Charter. But on how the Council resolutions are to be interpreted, doctrine is relatively silent. The ICJ advisory opinion on Namibia serves as guidance on the method for interpretation of these resolutions.<sup>62</sup> To find out whether a resolution has a binding effect, the language needs to be thoroughly analysed, according to the Court. The question whether a resolution has been adequately followed by the member states is to be determined in each case with regard to specific criteria. According to the ICJ, these criteria include the terms of the specific resolution, its foregoing discussion, the invoked Charter provisions and all other circumstances that might be relevant to determine the resolution's legal consequences.

Interpretation of treaties is also dealt with in the Vienna Convention on the Law of Treaties. Scholars suggest that apart from the Namibia case, reference should be made by way of analogy to the Vienna Convention's Article 31. This provision prescribes that a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the wording in its context and in light of its object and purpose.<sup>63</sup> However, such analogy should be made cautiously. The Vienna Convention regards treaties that are international agreements established through negotiations by equal parties while a Security Council resolution is a mandatory decision imposed on UN member states. The language of a Security Council resolution is the outcome of a compromise based on political considerations. This often makes the text watered down and the original intent of the parties may be difficult to distinguish. As a consequence, the drafters' intention is a more prominent source for establishing the true meaning of the resolution than in the case with treaties. For treaties, preparatory works only have limited significance as they are considered to be supplementary means of interpretation.<sup>64</sup> As not all consultations concerning drafting of Security Council resolutions are public, the Official Records of the debate is the strongest evidence of the resolution's context.<sup>65</sup>

## 2.3 The International Court of Justice

Peace operations are governed by international law and customary international law. The ICJ is an international judicial institution that decides cases on the basis of international law.<sup>66</sup> Customary international law is also

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<sup>62</sup> *Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971

<sup>63</sup> Vienna Convention on the Law of Treaties, Article 31(1)

<sup>64</sup> *Ibid.*, Article 32

<sup>65</sup> McHugo, *Resolution 242: A Legal Reappraisal of the Right-Wing Israeli Interpretation of the Withdrawal Phase with Reference to the Conflict between Israel and the Palestinians*, p. 868

<sup>66</sup> Shaw, *International Law*, pp. 966-967

visualized in its decisions. According to Article 92 of the UN Charter, the ICJ is the principal judicial organ of the UN system. The ICJ has jurisdiction in all cases referred to it by parties and regarding all matters specially provided for in the UN Charter, treaties and conventions in force.<sup>67</sup> As a result, its decisions and advisory opinions need to be followed by peacekeeping missions. Decisions of the ICJ are incorporated in this text where the relevant aspects of the UN action are discussed.

Judgements of the ICJ are final and without appeal.<sup>68</sup> The decisions are binding only for the parties and only in respect of the concerned case.<sup>69</sup> Each UN member is responsible for compliance with ICJ decisions according to Article 94 of the UN Charter. As the ICJ is considered to be the most important international court, the political impact of its decisions makes the vast majority of parties comply. ICJ judgments also have a significant influence on the evolution of new rules of international law.<sup>70</sup>

Matters that come before the ICJ are often intertwined with political factors. The political organs of the UN may consider such matters but as long as the dispute is of a legal nature, the Court can settle it. The competence of the ICJ is not detracted by the fact that the parties, the Secretary-General, the Security Council or regional organizations may actively negotiate an issue before it in the same time. The Security Council treats the political aspects of the issue while the ICJ treats the legal ones, which enables both Organs to perform its separate but complementary functions with regard to the same events.<sup>71</sup>

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<sup>67</sup> Statute of the International Court of Justice, Article 36(1)

<sup>68</sup> *Ibid.*, Article 60

<sup>69</sup> *Ibid.*, Article 59

<sup>70</sup> Shaw, *International Law*, pp. 960, 996-997

<sup>71</sup> *Ibid.*, pp. 967-968

# 3 UN Peace Operations

*“Abstention is not an option.”*

Shashi Tharoor,  
Former senior advisor to the Secretary-General and senior officer at DPKO

Is the UN with its peacekeeping operations, established half a century ago, an effective forum and tool in the contemporary world to face challenges of politicised nature in order to ensure international peace and security? A common way to conceptualise peace operations is to identify their characteristics and functions. Former Secretary-General Boutros Boutros-Ghali introduced “An Agenda For Peace” in 1992 where reference was made to peace operations, peace building and peace enforcement.<sup>72</sup> Dürch made another classification where four kinds of peace operations were identified: traditional peacekeeping, multidimensional peace operations, humanitarian intervention and peace enforcement.<sup>73</sup> This chapter explores the various types of peace operations that are used within the UN.

## 3.1 Peacekeeping

Different definitions of peacekeeping have been put forward in doctrine. Former Secretary-General Boutros Boutros-Ghali defined peacekeeping as:<sup>74</sup>

*“The deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well.”*

Secretary-General Dag Hammarskjöld established the first UN peacekeeping force in 1956, UN Emergency Force (UNEF). In his report of this mission, he outlined the broad philosophy of peacekeeping that peace operations came to be subjected to. In this “Summary Study”, the Secretary-General enunciated the principles of traditional peacekeeping: Consent, Neutrality or Impartiality and Minimum Use of Force.<sup>75</sup>

The most common type of peacekeeping involves deployment of armed troops under UN command with an aim to contain and resolve military conflicts. For a certain time, traditional peacekeeping forces tend to stabilize

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<sup>72</sup> UN document A/47/277 – S/24111, *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*

<sup>73</sup> Dürch, *The Evolution of UN Peacekeeping*, p. 17

<sup>74</sup> UN document A/47/277 – S/24111, *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*, p. 11

<sup>75</sup> UN document A/3943, *Summary study of the experience derived from the establishment and operation of the Force: report of the Secretary-General*

a particular situation by acting as a calming influence through physically separating the belligerent forces. Consent from their host state is necessary for their presence on its territory and they are inhibited to take enforcement action to prevent a determined aggression. They also require a continued support of the Security Council in order to operate. With the development of the world, peacekeeping has gone from its original intent to tackle inter-state conflicts to more recently deal with civil wars and intra-state conflicts. Of previously having had almost exclusively military deployments, contemporary peace missions have expanded to include civilian personnel as civil functions increasingly are performed by these operations. In recent years, a development towards an increasingly active role of the UN has been noted and peacekeeping missions have been extended to incorporate enforcement activities.<sup>76</sup>

It is easy to be confused by the multitude of terms and definitions related to peacekeeping. Terms such as peacekeeping, peacemaking, peace building, peace enforcement and multifunctional peacekeeping are enlisted in modern literature. They all refer to response to threats to peace and security. Each term emphasize specific doctrine or certain implemented actions. In this thesis, the term peacekeeping refers to all peace operations. The term peace operation is also used as a general language. Peace enforcement refers to a more aggressive type of peace operation, aiming at compelling non-cooperating parties to cease hostilities and endeavour to negotiate peace, more on this in section 3.2 below.

## 3.2 Peace Enforcement

The concept “peace enforcement” spread after the end of the Cold War. It can be defined as ensuring implementation of agreements, such as peace agreements or ceasefire agreements. This implementation includes application of incentives and disincentives, among them robust use of force, for all parties to comply with their obligations. The use of force is closely calibrated with political action at the highest level. Peace enforcement is a political strategy with military means playing a supportive role, involving deterrence and coercion as necessary.<sup>77</sup>

The Security Council may authorize use of force under Article 42 in Chapter VII of the UN Charter only when peaceful measures would be inadequate to maintain or restore international peace and security.<sup>78</sup> Pure UN peace enforcement missions have been infrequent and usually not deployed until a peace agreement or other agreement is in place. Military force has been authorized by the Council for these operations including to enforce

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<sup>76</sup> Shaw, *International Law*, pp. 1108-1111

<sup>77</sup> Findlay, *The Use of Force in UN Peace Operations*, p. 376

<sup>78</sup> UN Charter, Articles 39, 41-42

sanctions, defend UN staff and premises, protect civilians in conflict zones, ensure safety for humanitarian relief and to intervene in internal conflicts.<sup>79</sup>

In determining whether peace enforcement is a good option in specific situations where force may be used, the crucial issue is the possibility to uphold impartiality.<sup>80</sup> The compatibility of the actions of the UN mission with its mandate and the UN Charter is momentous, as the use of sanctions or force necessarily entails an imposition of power on the parties. Whether the public opinion or the local population disagrees with enforcing actions is in this respect irrelevant.

Although desirable, peace enforcement unlike peacekeeping does not require consent of the parties of the conflict.<sup>81</sup> In addition, military enforcement logically renders the parties' consent elusive. Robust force should only be used when alternative methods have proved to be insufficient. This criterion is however not applied as strict as in other peace operations where use of force only is permitted as a last resort.<sup>82</sup> Peace enforcement may consequently require traditional concepts and principles to be adjusted, including less importance to be given to consent from all warring factions, a rethinking of the impartiality notion and a more flexible approach to the use of force.

### 3.3 Humanitarian Intervention

Humanitarian interventions are interventions that aim to alleviate large-scale humanitarian suffering caused by starvation, refugee flows and persecution. Grave violations of human rights also constitute humanitarian concerns that may trigger sanctions. Examples of such violations are ethnic cleansing, forced labour, executions, rape and illegal detentions. To help populations in distress, the Security Council has sanctioned violations of human rights and humanitarian law under Chapter VII. Enforcement measures have been used by peace operations with the aim to ensure humanitarian relief, establish safe havens and uphold law and order. Non-military measures including economic sanctions such as weapon embargoes have also been used, alone or combined with enforcement measures.

Two concepts of humanitarian intervention can be identified: Humanitarian intervention, which implies the use of force, and humanitarian assistance, where non-forceful measures are used.<sup>83</sup> The principle of minimum use of force determines whether force is to be used in humanitarian interventions. In this thesis, humanitarian intervention is further discussed in connection to

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<sup>79</sup> Bellamy, Williams and Griffin, *Understanding Peacekeeping*, pp. 146-147

<sup>80</sup> Boulden, *Peace Enforcement: The United Nations Experience in Congo, Somalia, and Bosnia*, p. 6

<sup>81</sup> *Ibid.*, p. 3

<sup>82</sup> Findlay, *The Use of Force in UN Peace Operations*, pp. 6, 377

<sup>83</sup> The International Development Research Centre, *The Responsibility to Protect*

the debate whether there is a moral implication for the UN to intervene in conflict situations.

### 3.4 Complex Missions

At present, a variety of peace operations of older and newer construction coexist. Traditional peacekeeping missions share the scene with humanitarian interventions, peacemaking, peace building missions and state building missions. Nearly all operations after 1988 comprise state building and/or peace building properties and the majority of them also include human rights components.<sup>84</sup> As world politics changes and global aspects are necessary to take into account, peace operations increasingly contain mixed elements of all the above-mentioned types of operations. This results in UN missions becoming more and more complex. An example of a present mission that encompasses all types of peace operations is MONUC in the DRC.

### 3.5 Concepts

In doctrine, consensus on the purpose of UN peace operations does not exist in the twenty-first century. This has led to an inconsistent use of the different concepts of peacekeeping, which causes confusion.<sup>85</sup> The lack of a clear purpose of peace operations inhibits academics and other writers to fully describe the rationale of actions and the changing role of the UN in global politics in this regard.

A study of peacekeeping activities to explain their development and rationale is problematic due to their political nature. This method would be even less useful for complex missions, where elements of peacekeeping and peace building are combined.<sup>86</sup> As the purpose of peace operations may vary depending not only at which time but also by whom the considerations are made, it is difficult to make an overall survey. An evolutionary approach to peace operations would not serve the purpose of this thesis, as linear theory of peace operations does not clarify why traditional peacekeeping has not become obsolete but, on the contrary, still possesses a high demand.<sup>87</sup> Further, a linear approach is not always applicable to current peace operations. An example of this is the UN operation in the DRC. The UN first came to the country in the 1960's and continues to face the same challenges today as it did then. Consequently, it is held that changes in world politics have made peace enforcement and other kinds of peace

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<sup>84</sup> Barnett, *The New United Nations Politics of Peace: from Judicial Sovereignty to Empirical Sovereignty*, p. 92

<sup>85</sup> Ratner, *The New UN Peacekeeping: Building Peace in Lands of Conflict after the Cold War*, p. 16

<sup>86</sup> Bellamy, Williams and Griffin, *Understanding Peacekeeping*, p. 13

<sup>87</sup> *Ibid.*, p. 21

operations a complement to peacekeeping, more frequently employed today than during the Cold War.

The role of UN peace operations cannot be understood in isolation or by simply cataloguing their most common characteristics. Different regions and states have individual needs and each conflict has unique preconditions. The next chapter clarifies the academic debate and puts theory and practice of UN peace operations in its context.

# 4 UN Interference versus State Sovereignty

*“Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.”*

UN Charter article 2(7)

A fundamental rule in public international law is the principle of state sovereignty. To what extent, if any, the UN ought to interfere in the internal affairs of a state is a central issue in this thesis. The issue has originated a debate which scope has become far-reaching with analytical as well as normative aspects. Scholars express opposing views regarding whether the UN has a responsibility to intervene when gross violations of human rights are committed. Regardless if such responsibility exists, the UN’s willingness to use military force when implementing its role to maintain international peace and security has increased significantly in recent years. This fact has led to controversies regarding the purpose of UN peace operations. It influences both scholars and UN officials in determining what role the UN ought to play in world politics and to what extent it is possible for the UN to guarantee international peace and security in the twenty-first century. These two matters can also be expressed as theoretical questions:

- Which capacity should the UN be given?
- What does the UN have competence to do well?

These two aspects of peacekeeping, not necessarily in accordance with each other, are discussed in this chapter.

## 4.1 Peace Operations Theory

The world is no longer the same as it was when the UN was founded and its Charter established. The greatest current threats to international peace and security are no longer traditional interstate wars but international terrorism, violations of human rights and humanitarian law, failed states and civil wars. With new threats, the logical development of the purpose and methods to maintain international peace and security would be to change accordingly. However, there is currently no consensus among scholars on the purpose of peace operations and their role in global politics.



### 4.1.1 Purpose of Peace Operations

A dynamic debate on potential roles for UN peace operations has emerged on the international arena. The UN's role in ensuring international peace and security can be seen as a function of how its members understand the international order.<sup>88</sup> Two main approaches have evolved in the discourse regarding which role the UN ought to play in international peace and security: the pluralist and the solidarist approach. The differing views of pluralists and solidarists on how, why and when the UN can, and ought to, interfere with state sovereignty is discussed below.

According to pluralists, who are considered to be conservative, preservation of the principle of traditional peacekeeping and non-intervention in domestic affairs of sovereign states is of highest importance. They believe that the central rules of non-intervention and prohibition of use of force remain the principles that are most likely to lead to stability in the international society, which would enable states to nourish different communities and conceptions of justice. Converging security interests among states are according to pluralists possible when a power balance exist between state actors. Despite the fact that states are the principal bearers of rights and duties in international law, pluralists are sceptical about the idea that states would be able to make agreements beyond the minimum ethic of coexistence. Pluralists also question the desirability of such agreements.

Contrary to the pluralist view, solidarists, who are regarded as liberal and humanitarian, see a more proactive peace enforcer in the UN and argue for its role to be peace and state building. Solidarists strive to strengthen the international society's legitimacy by making its commitment to justice more profound. Their aim is to reconcile tensions between order and justice claims. Solidarists recognize that individuals have rights and duties in international law but are of the opinion that these only can be enforced by states. According to this view, it is argued that the principle of non-intervention restricts the potential to globally promote human rights. If interventions are not tolerated, states may interpret this as an unlimited freedom to exercise control over its population. International law, such as the UN Charter, the Universal Declaration of Human Rights (UDHR) and the 1948 Genocide Convention, is regarded by solidarists to substantially limit sovereign state authority by establishing an obligation for states to ensure protection of human rights.<sup>89</sup>

The achievement of the solidarist approach is confined by the weakness of enforcement mechanisms. The gap between normative commitments and practical political instruments threaten the realization of this view. Many solidarists advocate that use of force may be the only way to ensure humanitarian rights and stop virtual impunity of human rights abuses by governments. Use of force in peace operations represents the kernel of the

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<sup>88</sup> Barnett, *The New United Nations Politics of Peace: from Judicial Sovereignty to Empirical Sovereignty*, p. 79

<sup>89</sup> Bellamy, Williams and Griffin, *Understanding Peacekeeping*, pp. 54-63

dilemma for promoters of military intervention as a mean to reach humanitarian goals.<sup>90</sup>

In a world where global perspectives increasingly prevail, issues like development, conflict management, democracy, migration, trade and natural resources affect not only the concerned country or region but have global effects. When the effects of an economy of a specific country or region accordingly are stretched over its borders, these issues are of common concern for all countries in the entire world. The principle of sovereignty is fundamental in the world's legal systems and without this principle democracy and economic growth would not have reached current levels. But when a state is unable or unwilling to cope with the problems it is facing, and it is evident that the effects thereof would reach beyond its borders, the international society has an interest to interfere. Such interest is both to ensure protection of the threatened civilians but also to limit the spill over effect to other countries. Apart from the negative impact conflicts have on global economy, the humanitarian aspects are often catastrophic due to the fact that the most vulnerable in society are harmed the most in such events. When a state does not resume its state responsibility to protect its civilian population, the international society has the possibility to interfere in order to avoid that innocent citizens are victimized.

Considerable opposition to interventions was noted during the Cold War, especially to interventions in intrastate conflicts. This opposition was particularly strong among countries in the Third World.<sup>91</sup> The historical first time for the UN to intervene in an internal crisis was 1960 in the DRC. The immediate post Cold War period was optimistic and exceptions to the principle of non-intervention in domestic affairs of sovereign states have since been tolerated to avoid atrocities against civilians. With the fall of the Soviet Union, the Security Council became more active as it was no longer paralysed by the struggle between the super powers. The Council showed a greater willingness to establish peacekeeping missions, which became more complex with larger operations and broader mandates.

Interventions in contemporary internal conflicts increase the tension between sovereignty and protection of human rights and blur the distinction between domestic and international affairs. In most cases, the UN intervenes in a state's internal crisis with the consent of both sides of the conflict and respects in this manner the UN Charter's provision of state sovereignty. Recent developments with an increased rate of UN interventions in civil conflicts may however shift the traditional logic of "rights of states" to "rights of human beings".<sup>92</sup> Former Secretary-General Boutros Boutros-Ghali stated already in 1992 that the time of absolute and exclusive sovereignty had passed".<sup>93</sup> Further, the UN High-level Panel on Threats,

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<sup>90</sup> Wheeler, *Saving Strangers: Humanitarian Intervention in International Society*, p. 34

<sup>91</sup> Vincent, *Nonintervention and International Order*, p. 122

<sup>92</sup> Goulding, *Peacemonger*, p. 23

<sup>93</sup> UN document A/47/277-S/24111, *An Agenda for Peace: Preventive diplomacy, peacemaking and peace-keeping*, paragraph 17

Challenges and Change argue that sovereignty is conditional to the extent of which states provide and protect human rights. In case they fail to do this, the Panel stresses that there is a clear international obligation to assist states in developing their capacity to perform sovereign functions effectively and responsibly.<sup>94</sup>

There is currently no worldwide consensus on whether prevention and resolution of intrastate conflicts fall within the competence of the UN. Of the member states, China, India and the developing countries continue to protest such interventions. The disagreements often depend on the increased complexity of conflict dynamics in contemporary internal crises.

#### **4.1.2 Uniform Action Imperative for UN's Credibility**

With no unity among scholars and international actors on the purpose of peace operations, space is given for interpretation. When as issue as important as the motive of peace operations, its scope and purpose, has no common view, much of the intentions of best practices and lessons learnt are endangered to be lost. With situations seen differently by different officers, incidents may not always be reported, which would result in loss of valuable information to be accessed when similar events occur in the future. Information on experience of how problems previously have been solved would in that case not be consulted, which could prevent similar incidents from being repeated.

Within the UN, data in terms of lessons learnt and best practices are gathered from various situations in databases. The idea is to make experience available to help officers in their tasks. However, the utility of such information could be questioned when there is no unity on the perception of how situations should be solved and opposing views rule the direction in which development of events is desired to be lead. The intention is good, but if officers are not given the time to consult such information before decisions are taken and if the information itself contains contradictory elements, the practical use of those databases is limited. As a result, problems in peace operations may not be solved in the most effective manner and the method of solution may vary greatly from mission to mission. Particularly dangerous is when executives in the mission and principal officers at headquarters do not share a common view. Even the split among members of the Security Council is alarming regarding this matter. Such circumstances risk resulting in ambiguous leadership that, as often in peacekeeping, could have fatal consequences.

A framework constituted by terms of references with clear routines and continuous documentation is suggested to guide operational officers in their tasks. A variety of aspects should be covered by that framework, including

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<sup>94</sup> UN document A/59/565, *A more secure world: Our shared responsibility*, p. 83

interpretation of mandate, delegation of authority and where to seek further guidance. Such framework would permit action to be taken in a more focused way with effective and clear, measurable results. All this would enable the UN to act in a uniform fashion that would increase its efficiency. The accessibility of information on previous experience is vital to keep intelligence within the Organization. If different interpretations of a mandate are tolerated, UN's credibility is in danger. The need for the international society to set clear and unambiguous premises for a tool as powerful as peacekeeping missions is fundamental for a strong leadership without which complex conflicts would be difficult to solve.

The executive leader of a peacekeeping mission in the field is the Special Representative of the Secretary-General (SRSG). At DPKO at UN headquarters, SRSG Directives are formulated as an instruction to the SRSG for managing the operation. As the conditions for all peace operations are not the same, depending on the nature of the conflict, the mandate, the political environment in the host country, the geographical location etc., specific SRSG Directives need to be established for each mission.<sup>95</sup>

Although the content of these Directives may vary from mission to mission, certain elements are common in all of them. However, as these instructions are to be implemented at the highest level of management of the mission, they can hardly ever contain recommendations for concrete situations but are inclined to be general policies. With policy documents of general terms as guidance, it is left to the SRSG's discretionary assessment to determine how the mission's mandate is to be interpreted, when authorities and competencies can be delegated etc. This gives a hint of that also general criteria in the Directives, intended to be uniform in all peacekeeping missions, risk to be altered with the SRSG's assessment. Another matter of concern is that it is unclear whether SRSG Directives exist in each individual peace operation at all. Further, the difficulty of access to knowledge of how specific cases previously have been solved is plausible to remain with such overarching documents. Regarding the fact that the application of existing UN documents aimed for guidance, such as those of best practices and lessons learnt mentioned above, has not been harmonized in the present missions, the practical use of the SRSG Directives may also be questioned.

As noted above, opposing views are articulated in the international discussion on interference with state autonomy. To date, the purpose of peace operations is ambiguous, as no consensus among scholars seems to exist on the issue. As a result, it is unclear what proper role peacekeeping would play in world politics. This disagreement changes the meaning and stretches the principles of peace operation theory. A united management of peacekeeping missions is vital to maintain the credibility of the UN and for peace operations to be successful.

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<sup>95</sup> DPKO Officer, interview

## 4.2 Peace Operations Practice

To understand the role of UN peace operations in world politics, not only an understanding of UN member states' perception of the international order is required, but also that the primary threat to that order emanates from reactions in the Third World.<sup>96</sup> Disorder may have a variety of causes ranging from the global political economy and structures in conflict zones to ethnic primordial sentiments and ancient hatred.<sup>97</sup> In the early history of the UN, the predominant view of the UN and peace operations was pluralist. Since the end of the Cold War, there has been a lack of consensus on the issue due to a shift towards the solidarist approach.

From the 1960's, the UN and its peace operations have reflected the popular conviction that self-determination and judicial sovereignty are decisive for international order. By filling the power vacuum after decolonisation, to enable new states to establish judicial sovereignty and territorial authority, peace operations became a mean to defuse conflicts between super powers.<sup>98</sup> By doing so, the UN intended to diminish the effects of the struggle for influence in the Cold War. The predominant opinion in the world at the time and the member states' interest in the UN led to a view that, supported by Hammarskjöld's principles of impartiality, consent and minimum use of force, peace operations had a significant diplomatic but limited military role.

In the 1990's, public opinion shifted to regard empirical sovereignty, according to which states possess some extent of legitimacy and control within its borders, as supporting judicial sovereignty and consequently also international order. This altered UN peace operations duty to play a greater role with more interventionist functions.<sup>99</sup> A shift towards a global approach had thus occurred at the expense of the previous individualistic and sovereign approach. However, this only responds partially to the question about the UN's role in the twenty-first century. As will be shown, although an increased belief has been noted that empirical sovereignty is essential for world peace, there is no common ground on how the UN can achieve this goal.

Some states<sup>100</sup> argue that peace operations primarily ought to be concerned with prevention of conflict and focus on the source of friction between states. This pluralist approach is convincingly challenged by other states that suggest that a community of democratic states best sustain the desired

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<sup>96</sup> Barnett, *The New United Nations Politics of Peace: from Judicial Sovereignty to Empirical Sovereignty*, pp. 80-81

<sup>97</sup> Bellamy, *The Great Beyond: Rethinking Military Responses to New Wars and Complex Emergencies*, p. 25

<sup>98</sup> Barnett, *The New United Nations Politics of Peace: from Judicial Sovereignty to Empirical Sovereignty*, pp. 81-82

<sup>99</sup> *Ibid.*, pp. 80-81

<sup>100</sup> Traditionally Russia, China and Third World countries that had reached independency

international order and ensure human development.<sup>101</sup> Another argument, mainly conveyed after the end of the Cold War, is that peacekeepers should ensure peace within states and assist with establishment of liberal politics, societies and economies.<sup>102</sup> This argument is justified by the fact that violent conflicts easily emanate from failed governments.<sup>103</sup>

These debates visualize differing political views among member states what the UN should best focus on. One problem with the prevailing regard during the Cold War is that it does not cover more recent threats, emerging from within states or from non-state actors such as insurgency or terrorists. Internal conflicts affect not only the originating state but also the whole international society and threaten international peace and security. The dominating post Cold War argument insinuates for the UN to engage in this task, which is more ambitious than what was previously pleaded.

### 4.3 The UN Role

African conflicts have shown themselves to badly fit the governing norms of the UN peace operations framework, resulting in a chronic overstretch of resources and personnel. Peacekeepers have been deployed under-equipped and poorly trained into highly precarious situations. Scholars disagree on many issues, in particular on the issue of peace enforcement. Some of them see peace enforcement as a new category of operations while others mean that peace enforcement is synonymous to actions authorized by Chapter VII of the UN Charter.<sup>104</sup> In this section, the role of the UN is discussed with an emphasis on practical shortcomings.

Conservative pluralists support the traditional peacekeeping principles of consent, impartiality and minimum use of force. These principles have continuously until the end of the Cold War been the foundation of peace operations. Supported by the successful UN missions in Cambodia, El Salvador and Namibia, pluralists argue that the UN ought to go back to its traditional role with non-coercive and consent based peacekeeping.<sup>105</sup> The establishment and outcome of traditional peacekeeping missions depend on the consent and cooperation of the disputing parties. Traditional peacekeeping is based on the assumption that the belligerents are states, that the combatants are hierarchically organized militaries and that the protagonists search for a political solution to the conflict. Use of force in these missions is strictly limited to self-defence.<sup>106</sup> Shashi Tharoor adopts a negative attitude towards peace enforcement functions but holds at the same

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<sup>101</sup> Barnett, *The New United Nations Politics of Peace: from Judicial Sovereignty to Empirical Sovereignty*, p. 90

<sup>102</sup> Particularly the United Kingdom (UK), France, USA, Canada and international organizations like Human Rights Watch (HRW) and the International Crisis Group (ICG)

<sup>103</sup> Bellamy, Williams and Griffin, *Understanding Peacekeeping*, p. 271

<sup>104</sup> Findlay, *The Use of Force in UN Peace Operations*, p. 154

<sup>105</sup> Tharoor, *Should UN Peacekeeping Go "Back to Basics"?*, pp. 53-54

<sup>106</sup> Bellamy, Williams and Griffin, *Understanding Peacekeeping*, pp. 95-97

time that “abstention is not an option” for the UN.<sup>107</sup> Due to his dedication to the principles of traditional peacekeeping, this statement could have been more consistent if he had expressed that the UN should refrain from interventions in certain situations. Traditional peacekeeping badly meets the demands of many contemporary conflicts with a non-realistic possibility to achieve consent from all belligerents, not to mention the risk that peacekeepers put to their lives when deployed in highly volatile areas without any possibility to more than defend themselves.

As the UN is likely to carry out peace enforcement in certain circumstances, solidarists share the opinion that the Organization need to prepare for such operations despite a weak support of political will in present concepts and doctrine.<sup>108</sup> Solidarists promote the Security Council to capture a greater and more nuanced awareness of potential consequences of non-involvement and a consistent willingness to act in a focused manner, which would point the development in the right direction. Boulden argues that the horrific conflicts in the DRC and Burundi have escalated more viciously than would have been the case if the UN had engaged sooner and more proactively in the region.<sup>109</sup>

The liberal solidarist peace paradigm is widely supported by policy makers, among others the UN headquarters and member states.<sup>110</sup> It is asserted that the UN ought to play a peace building and reconstructive role and assume responsibility for trusteeship-like administrations of territories. This would enable the UN to reform war torn societies into liberal democratic states, which have proved to be the most peaceful regimes, capable to ensure its citizens development and protection of human rights.<sup>111</sup> Such action would be performed by multifunctional peace operations, including military, diplomatic and humanitarian functions, designed to establish a long-term political solution of the conflict. The main purpose of peace operations, to provide protection to the population, is a first step towards the creation of an interim UN administration. Many supporters of a liberal international order plead that it is possible to use force in peace operations without losing impartiality.<sup>112</sup>

Stanley Hoffman is one of the humanitarian solidarists who denies the importance of consent. His position is that military intervention is ethically justified solely when both human rights are grossly violated and the internal disruption of a state threatens regional or international security. The crisis in the DRC in 1996 is an example of when military intervention was justified according to these criteria. Hoffman notes that the UN has a moral duty to intervene in situations like Rwanda but at the same time he holds that

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<sup>107</sup> Tharoor, *Should UN Peacekeeping Go “Back to Basics”?*, p. 55

<sup>108</sup> Findlay, *The Use of Force in UN Peace Operations*, p. 390

<sup>109</sup> Boulden, *Dealing with Conflict in Africa: the United Nations and Regional Organizations*, pp. 305-306

<sup>110</sup> Bellamy, Williams and Griffin, *Understanding Peacekeeping*, pp. 21, 26

<sup>111</sup> Rotberg, *Peacekeeping and Peace Enforcement in Africa*, p. 13

<sup>112</sup> Bellamy, Williams and Griffin, *Understanding Peacekeeping*, pp. 165-170

solidarist military missions are likely to reach success only with an improved legitimacy and operational capacity of the UN. He claims that the UN is in need of reform accordingly and that the notion of peacekeeping should be widened to include ethical considerations.<sup>113</sup> Chan, who adds that an enlargement of the Security Council is a necessary precondition for successful peacekeeping, shares Hoffman's humanitarian concerns. He suggests that peacekeepers in solidarist military operations must be authorized to act in a humanitarian manner, even when not explicitly stated in their mandate.<sup>114</sup> Hoffman also points at the weakness of the solidarist wing, in the form of a lacking consensus among scholars. He adopts a critical position towards this view and emphasizes that there is only a limited possibility for outsiders to install and preserve democratic values in states that have never experienced democracy.<sup>115</sup>

The split between the different views of the UN role hampers the deployment of peacekeeping missions. A uniform approach and a united management of peace operations would enable missions to be established in less time and conflicts to be solved in a more efficient manner.

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<sup>113</sup> Hoffman, *The Politics and Ethics of Military Intervention*, p. 29

<sup>114</sup> Chan, *And What Do Peacekeeping Troops Do Apart From Burying The Dead, Then?*, p. 36

<sup>115</sup> Hoffman, *The Politics and Ethics of Military Intervention*, p. 37



# 5 Peacekeeping in Africa

*“The pursuit of peace and progress, with its trials and its errors, its successes and its setbacks, can never be relaxed and never abandoned.”*

Dag Hammarskjöld

Africa is large. Not only is it the continent with the world’s largest population, it also has the world’s largest number of states in conflict, the largest number of UN peace operations and the largest number of UN troops. Africa is by far the most important region for UN peacekeeping operations. Since 2003, 75 percent of all new peacekeeping missions are deployed in Africa.<sup>116</sup> Several peacekeeping operations, such as the ones in Angola, Mozambique, Namibia, Rwanda, Somalia, not to mention the DRC, are among the Organization’s most important initiatives in conflict resolution since the end of the Cold War. Africa has critically impacted on the limits and possibilities of the global order after the end of the Cold War, and the place of the UN within it.

## 5.1 Challenges to the UN

African conflicts are often referred to as complex crises. Attributes such as barbaric, anarchical and uncontrollable create a notion of how unsafe and extensive these conflicts are. Such crises are fought not only by regular governmental forces but also by militias and armed civilians with little discipline and rarely of hierarchical structure. Guerrilla wars are frequent with no clear front lines, political agendas or even willingness to end the conflict. Another feature of contemporary conflict is unconventional tactics used by the warring parties, including significant violence against civilians. Further, these conflicts are often characterized by collapsed state institutions, in particular the police and judiciary, with governance problems, breakdown of law and order and general chaos as a result.<sup>117</sup>

The UN remains the main worldwide provider of peace operations, as it possesses a hitherto unsurpassed legitimacy in maintaining international peace and security. UN peacekeeping missions are sent to conflict zones on the provisions of mandates approved by the Security Council. Peace operations under circumstances similar to those mentioned above face challenges beyond military and humanitarian aspects. According to a large number of scholars, it is essential for peace operations to include peace building elements, promotion of national reconciliation and re-establishment of effective government. Peace building is a concept that gained ground in

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<sup>116</sup> Williams, *International peacekeeping: the challenges of state-building and regionalization*, p. 165

<sup>117</sup> Goulding, *Peacemonger*, p. 269

the aftermath of the Cold War. As instability is closely linked to stagnation, underdevelopment and inequalities in a society, peace-building efforts address political, social and economic development of a post-conflict state through non-military instruments. Since the 1990's, peace operations deployed in volatile environments have faced challenges such as relapse into violence, sporadic political rebellion and public disorder. UN operations have become more complex with significant civilian and military components and mandates including disarmament of combatants, monitoring of human rights, rule of law and election processes, repatriation of refugees and internally displaced persons and support for re-establishment of state institutions.<sup>118</sup> Every peace operation has since 1999 explicitly included state-building tasks.

## 5.2 The DRC

With constantly shifting conditions in different regions of the world, the UN is obliged to adapt accordingly. The role of the Organization needs to be based on what is practically viable. The purpose of peace operations and not only what the UN has the capacity to do, but has the capacity to do well, need to have an empirical foundation. Observation of facts and experiences from the UN peacekeeping missions in the DRC will demonstrate the challenges in developing a straightforward solution to complex conflict situations. Problems presented to the UN by a civil war and difficulties to achieve stability in a country where the state authority is unable to control its territory or have monopoly of violence will be discussed.

The DRC is the largest country in the Great Lakes Region and it currently has the largest and most complex UN peacekeeping mission in UN history with more than 18,000 troops. The DRC has proved to be the state where the challenges and complexities of African internal conflicts are the most defiant to UN peacekeeping. The first UN experience in the DRC, from 1960 to 1964, and the present peacekeeping mission that has been in the country since 1999, exemplify an African conflict and demonstrate the UN approach to it during and after the Cold War. By the examination of UN intervention in these two cases, the criticism that led to an expansion of the original intentions will be demonstrated. There is thus a historical interest of clarifying the UN's activities in the DRC, but its immediate significance is that it illuminates what the UN realistically *can* achieve in relation to the demands of the twenty-first century.

### 5.2.1 Early Days of Peacekeeping: ONUC

The Republic of the Congo, now DRC, is a former colony that was granted independence from Belgium in 1960. Shortly after its independence, the rich

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<sup>118</sup> Stockholm International Peace Research Institute, *SIPRI Yearbook 2005, Armaments, Disarmament and International Security*, pp. 144-146

province of Katanga wanted secession and the Congolese army revolted. There was outside interference as Belgian troops supported Katanga, which was under official guardianship of the Belgians.<sup>119</sup> The Congolese government asked the UN for military assistance to protect the territory of the Congo from the Belgian aggression and the Security Council permitted the Secretary-General to set up a peacekeeping force for this purpose.<sup>120</sup> The force, known as ONUC from the French *Opération des Nations Unies au Congo*, was subject to the three fundamental principles of peacekeeping: consent, impartiality and minimum use of force.<sup>121</sup> The Security Council mandated ONUC to assist the Congolese government to restore law and order, thus denying secession.<sup>122</sup> ONUC was authorized to take all possible measures to protect life in the Congo. It should secure withdrawal and evacuation from the Congolese territory of Belgian and other foreign troops, paramilitary personnel and mercenaries, as well as political advisers not under UN command.<sup>123</sup> ONUC remained in the country from 1960 to 1964.

ONUC deployed throughout the DRC and was met by a positive attitude by the local population. At its maximum strength, nearly 20,000 troops were deployed. ONUC had weaponry unmatched by any peace operation for decades, but was mostly able to carry out its task without the use of force.<sup>124</sup> A major challenge to ONUC was that there was only little law and order to maintain.<sup>125</sup> The civilian component provided the Congolese government with extensive assistance. About 2,000 experts and technicians administered the country and assumed responsibility for law and order in the absence of a governing authority.<sup>126</sup>

### 5.2.1.1 Consent

Although the Congolese government requested the operation, it stood soon clear that its consent was not compatible with Hammarskjöld's vision of strict impartiality. The government's understanding was that the UN would take its side and use force to expel Belgian troops and foreign mercenaries and end the Katanga secession. When it realized that this was not possible, it regarded ONUC with suspicion and later also hostility. Government-led political and military attacks on peacekeepers demonstrated the withdrawal of consent. None of the rebel groups were positive to the UN presence in the DRC and Belgium had given its consent to ONUC but not to withdraw its

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<sup>119</sup> Durch, *The Evolution of UN Peacekeeping*, pp. 316-317

<sup>120</sup> Security Council Resolution 143, operative paragraph (OP) 2

<sup>121</sup> UN document A/3943, *Summary study of the experience derived from the establishment and operation of the Force*

<sup>122</sup> Department of Public Information, *The Blue Helmets: A Review of United Nations Peace-keeping*, p. 176

<sup>123</sup> Security Council Resolutions 143, 145, 146, 161, 169 and General Assembly Resolution 1474

<sup>124</sup> Findlay, *The Use of Force in UN Peace Operations*, pp. 53-54

<sup>125</sup> UN document S/4557, *Second Progress Report to the Secretary-General from his Special Representative in the Congo*, paragraph 5

<sup>126</sup> Department of Public Information, *The Blue Helmets: A Review of United Nations Peace-keeping*, p. 179

forces unconditionally.<sup>127</sup> With no consent and numerous member states wanting to redefine the mandate of ONUC by the end of 1961, the deficient legal justification made the Secretary-General obliged to bring ONUC to a rapid exit.<sup>128</sup>

### 5.2.1.2 Impartiality

ONUC was a multinational force with troops contributed by countries with no interest in the crisis.<sup>129</sup> Hammarskjöld sought in the first hand African troops but their relation was problematic as several African states were not neutral. Many of them regarded the Congolese independency as an important step towards freedom of the whole of Africa and were consternated by the Belgian aggression.<sup>130</sup>

It must be seen positively that ONUC did not become an instrument of the Congolese government and that Hammarskjöld attempted to mediate with the President of Katanga, Moïse Tshombe, rather than entering the province with force. Despite its efforts, ONUC was perceived as partial not only by the national government and Tshombe but also by the Soviet Union and the Afro-Asian member states who meant that entry into Katanga was included in ONUC's mandate. As a result, the work of ONUC became increasingly difficult.<sup>131</sup> A constitutional crisis emerged in the Congo in September 1960 and ONUC was left to conduct its mission in a political vacuum. The country was divided into four factions during eleven months, each with their own armed forces. In a solution to the crisis that caused more harm to the Prime Minister Lumumba than to the President Kasavubu, ONUC further damaged its impartiality by applying emergency measures such as closing down the airport and Léopoldville Radio.

ONUC actions appear to have affected the meaning of the principle of impartiality. According to Hammarskjöld's conception of neutrality, the UN was not permitted to influence the outcome of a political conflict. The successor to Secretary-General Dag Hammarskjöld, U Thant, understood impartiality as something the UN needed to have in relation to its Charter. It could be argued that Hammarskjöld aimed to create a legal barrier for the UN to intervene but subsequent interventionist actions contradict this possibility. In the case of the Congo, both Hammarskjöld and the USA considered Lumumba Soviet Union friendly and "impossible", making them politically more inclined to follow Kasavubu. Further, ONUC's military operations facilitated the coup of the army chief of staff Mobutu, paralleling US foreign policy objectives, as Mobutu was anti-communist.<sup>132</sup> Although

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<sup>127</sup> Findlay, *The Use of Force in UN Peace Operations*, p. 57

<sup>128</sup> Abi-Saab, *International Crises and the Role of Law: The United Nations Operation in the Congo 1960-1964*, pp. 197-198

<sup>129</sup> Department of Public Information, *The Blue Helmets: A Review of United Nations Peace-keeping*, p. 178

<sup>130</sup> Kanza, *Conflict in the Congo*, p. 204

<sup>131</sup> Higgins, *United Nations Peacekeeping 1946-1967: Documents and Commentary: Africa*, p. 40

<sup>132</sup> *Ibid.*, pp. 25, 322

the UN limited its influence in the conflict and may have prevented the outcome of it from worsening with even greater loss of lives, ONUC never managed to counterproof the concerns raised that its policies advanced Western interests only.<sup>133</sup>

### 5.2.1.3 Use of Force

The UN arrived to the Congo in a state of chaos. ONUC focused on what it estimated to be feasible, in particular to save lives.<sup>134</sup> It was attacked not only by insurgents but also by the national army, as the government was not always successful in controlling its soldiers that constituted a violent threat to civilians.<sup>135</sup> Permitting ONUC to disarm the ill-disciplined national army would have removed a large obstacle to reach the UN objectives.<sup>136</sup> However, such permission would have made ONUC a peace enforcement mission, as the Congolese government had not given its consent to this disarmament. As explained above, peace enforcement missions would in this epoch not have attained enough votes in the Security Council to be established.

Months of negotiations did not suffice to remove Belgian and other military personnel from Katanga. ONUC actions in the province to expel mercenaries led to outright fighting between ONUC and Tshombe's forces. On his way to negotiate a cease-fire agreement with Tshombe, Hammarskjöld was killed when his plane crashed under most suspicious circumstances.<sup>137</sup> Security Council Resolution 161 explicitly urged that "measures be taken" for immediate withdrawal and evacuation.<sup>138</sup> Following Hammarskjöld's death, Resolution 169 further extended ONUC's mandate to encompass the use of necessary force for deportation of foreign troops and non-UN political advisers from Katanga.<sup>139</sup> U Thant was less reluctant towards the use of force. His understanding of the ONUC mandate to end civil war implied support to the Congolese government and its efforts to suppress all opponent armed activities. After violent fights between ONUC and Katangese forces, the Katangese secession ended in January 1963.<sup>140</sup>

A vague and broad formulation of the mandate in combination with a lack of understanding of the security situation on the ground and an additional drastic upsurge of violence following the assassination of Prime Minister Lumumba in 1961 led to the controversial use of force by ONUC. For maintenance of law and order to be feasible, ONUC needed an enhanced

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<sup>133</sup> Ratner, *The New UN Peacekeeping: Building Peace in Lands of Conflict after the Cold War*, p. 108

<sup>134</sup> Findlay, *The Use of Force in UN Peace Operations*, p. 62

<sup>135</sup> Department of Public Information, *The Blue Helmets: A Review of United Nations Peace-keeping*, p. 181

<sup>136</sup> Findlay, *The Use of Force in UN Peace Operations*, p. 67

<sup>137</sup> Dayal, *Mission For Hammarskjöld: The Congo Crisis*, p. 271

<sup>138</sup> Security Council Resolution 161, OP 2

<sup>139</sup> Security Council Resolution 169, OP 4

<sup>140</sup> Findlay, *The Use of Force in UN Peace Operations*, p. 81

capacity mainly of civilian police officers. ONUC was deployed with 20,000 men to cover an area the size of Western Europe. At the time, no doctrine existed to support the use of force and it was soon evident that the rules governing such use were grossly inadequate to the situation in the Congo. ONUC faced enormous challenges including a non-existing cease-fire line to monitor, no peace agreement and a rapidly changing field with armed insurgents, an undisciplined national army and lawless civilians, all posing a threat to the peacekeepers.<sup>141</sup> The Security Council resolutions failed to provide a safe juridical position by not expanding the use of force to enforcement measures, as use of force was stretched beyond the peacekeeping limit of self-defence.<sup>142</sup> The loss of impartiality and consent made use of force inevitable for ONUC to fulfil its mandated tasks.

## 5.2.2 Peacekeeping Today: MONUC

Together with the Organization of African Unity (OAU) and the Southern African Development Community (SADC), the UN acted as a mediator from 1994 to 1999 between the states in the Great Lakes crisis. The war in the DRC emerged in the wake of the 1994 genocide in Rwanda that spread instability to the country that despite extreme poverty and mismanagement under Mobutu had remained relatively calm. The UN was prevented from intervening due to severe volatilities until a peace agreement was established.<sup>143</sup> On 10 July 1999, a cease-fire agreement was signed in Lusaka by the governments of Angola, the DRC, Namibia, Rwanda, Uganda and Zimbabwe.<sup>144</sup> Despite this progress, the signatories soon showed their faltering intentions by non-compliance with the terms of the Accord and refusal to withdraw their forces.

MONUC was established in 1999 to facilitate and monitor the implementation of the Lusaka Peace Accord that provided the framework for addressing the military dimension of the conflict. Its task included to investigate violations of the cease-fire, liaise with the parties' military forces, maintain the cessation of hostilities, disengagement and redeployment of the parties' forces, disarmament, demobilization, resettlement and reintegration of armed elements and withdrawal of foreign armed forces. MONUC was also to support the release of prisoners of war, supervise the military supply to the field, facilitate humanitarian assistance and human rights monitoring and undertake mine action activities.<sup>145</sup>

Despite nearly a decade of UN presence in the DRC, gross violations of human rights continue. There is a widespread illicit flow of arms and fighting still occurs between the Congolese national army, insurgents and

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<sup>141</sup> Findlay, *The Use of Force in UN Peace Operations*, p. 84

<sup>142</sup> *Ibid.*, p. 54

<sup>143</sup> Manwaring and Fishel, *Toward Responsibility in The New World Disorder: Challenges and Lessons of Peace Operations*, pp. 83-86

<sup>144</sup> UN document S/1999/815, *Lusaka Ceasefire Agreement*

<sup>145</sup> Security Council Resolutions 1258, 1273, 1279 and 1291

foreign armed groups. Despite national political progress, hostilities continue with its centre in the eastern provinces.<sup>146</sup>

### **5.2.2.1 Consent**

The Lusaka Ceasefire Agreement constituted a condition for the establishment of MONUC. This fact indicates an awareness of the UN of the imminent risk of deploying peacekeepers in such complex emergency and a need of a stable ground to carry out the mission. This matter is further complicated by the consent provided, it was not for monitoring but for enforcement of a substantial calibre. The Lusaka Peace Accord explicitly requested the UN for forces to disarm militia, screen for perpetrators of crimes against humanity, and hand over war criminals to the International Criminal Tribunal for Rwanda.<sup>147</sup> An observer mission was not what the signatories of the agreement had hoped for, neither with respect to the mandate, nor the size of the forces.

The Lusaka Peace Accord was a fragile foundation to base a peace operation upon. It can be questioned whether consent was really at hand regarding that the parties of the agreement appear to have had different views of the purposes of the mission. When it was clear to the Congolese that the UN undertook monitoring exercises, President Mobutu and later his successor Kabila obstructed MONUC's work. Another noteworthy circumstance is that none of the signatories lived up to the agreement, indicating that the agreement itself might have constituted a false excuse to establish a UN mission in the DRC. The assassination of President Laurent Kabila on 16 January 2001 removed some obstacles for further deployment of MONUC troops. His successor Joseph Kabila restored the lack of consent by expressing full support to MONUC's presence in the DRC.<sup>148</sup>

### **5.2.2.2 Impartiality**

The Lusaka Ceasefire Agreement implies an attempt of the UN to secure impartiality. Despite all the challenges facing MONUC, some of which are described below, the mission does not take part in the conflict and must be perceived as upholding its impartiality.

The UN failure to prevent the genocide in neighbouring Rwanda affects MONUC's actions in the DRC. In Rwanda, the UN stayed strictly true to the peacekeeping principles of impartiality and non-use of force, which prevented interference in the conflict. The critique of the international society and the fear for such horrific events to repeat themselves in the DRC may have allowed room for these principles to be stretched. MONUC's humanitarian efforts to provide security to the large refugee flow from Rwanda to eastern DRC were met with scepticism by the Congolese

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<sup>146</sup> UN document S/2007/671, *Twenty-fourth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, paragraph 2

<sup>147</sup> UN document S/1999/815, *Lusaka Ceasefire Agreement*

<sup>148</sup> MONUC chronology of events, <http://www.monuc.org/news.aspx?newsID=884>

population. The distrust got further infected after it stood clear that many of these refugees were Hutus escaping the Rwandan predominantly Tutsi dominated regime, which invaded to end the Rwandan Genocide. The Hutu militia ex-Forces Armées Rwandaises and Interahamwe were not disarmed by MONUC, as its mandate did not provide for such action. Humanitarian relief efforts were additionally entangled by the presence among the refugees of members of this group and government officials who had carried out the genocide. They used refugee camps as bases to launch attacks against Rwanda and the camps in the DRC became particularly politicized and militarized.<sup>149</sup> As an unintentional result, the UN's impartiality can be seen as indirectly favouring the Hutu ethnic group in this conflict.

MONUC's limited enforcement capacity is incoherent with its Chapter VII mandate that raises expectations the UN cannot live up to. The UN plays the role as an impartial arbiter and the disarmament, demobilization, repatriation and reintegration of combatants have not effectively been completed. MONUC is impeded to compel parties to disarm as it would affect the balance of power between the groups and MONUC would inevitably be perceived as partial. Simultaneous disarmament of all belligerent groups is far beyond the capacity of MONUC.

### 5.2.2.3 Use of Force

African actors and the 1999 Lusaka Ceasefire Agreement repeatedly called for a UN force with robust peace enforcement capacity to solve what was called the bloodiest war since 1945. Despite this fact, UN efforts focused on traditional peacekeeping with monitoring exercises until 2004. The initial number of liaison officers and military observers deployed fell short to meet the multifunctional tasks of the mission and could not do anything more than report on fighting and ruthless massacres of civilians.<sup>150</sup> In February 2000, MONUC was provided with Chapter VII protective powers. At this point, 5,537 troops were to fulfil MONUC's extensive tasks throughout a territory the size of Western Europe.<sup>151</sup> Due to a lack of adequate conditions of access, security and cooperation, MONUC's ability to deploy up to its authorized strength was also restricted.<sup>152</sup> Frequent cease-fire violations and continued refusal of the government to allow further MONUC deployment made monitoring and disarmament of forces nearly impossible for the peacekeepers.<sup>153</sup> The eastern provinces of North and South Kivu and Ituri are the most violent areas in the DRC. This is also where the majority of MONUC's troops are deployed. Since September 2005, MONUC's military

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<sup>149</sup> Boulden, *Dealing with Conflict in Africa: the United Nations and Regional Organizations*, p. 270

<sup>150</sup> Månsson, *Use of Force and Civilian Protection: Peace Operations in the Congo*, p. 505

<sup>151</sup> Security Council Resolution 1291, OP 4, 8

<sup>152</sup> Security Council Resolution 1316, preambular paragraph (PP) 6

<sup>153</sup> Boulden, *Dealing with Conflict in Africa: the United Nations and Regional Organizations*, p. 281



and civilian police strength have been significantly increased, the initial 5,500 troops are at present more than 18,000.<sup>154</sup>

Since its initial deployment, MONUC has been distrusted and criticized for not offering the Congolese population sufficient protection. However, the Security Council has over the last few years expressed an increasingly resolute view regarding use of force for the protection of human rights.<sup>155</sup> The mandate of 1 October 2004 enabled MONUC to use “all necessary means” under Chapter VII of the UN Charter to ensure protection of civilians under imminent threat of physical violence.<sup>156</sup> This provision constitutes a strong incentive for the warring parties to respect human rights standards.

National elections were successfully conducted by MONUC in 2006. The democratic elections were the first in 46 years in the DRC and they led to the establishment of a transitional government.<sup>157</sup> Another political success for MONUC is the completion of the national program of disarmament, demobilization and reintegration of former combatants in Ituri. However, substantial numbers of militia groups remain in North Kivu, where the warlord Laurent Nkunda pose a violent threat not only to the civil population in the area but also to the political progress of the country as a whole.

### **5.2.3 Progressive Use of Force: ONUC and MONUC**

ONUC and MONUC followed in a way the pluralist view as both missions were established in line with the traditional principles of consent, impartiality and non-use of force. Their task was to reinstate the territorial integrity of the DRC, which preserves the international order with juridical sovereign states.<sup>158</sup> Conservative pluralists who advocate diplomatic rather than military means to be used by the UN favour traditional peacekeeping.<sup>159</sup> Although this has been the most common type of operation throughout the history of the UN, it has proved to be inadequate for the needs in the DRC. The official interpretation of the basic principles of peacekeeping corresponding to the pluralist focus inhibits the UN from acting efficiently in complex conflicts. As with ONUC, an abandonment of these principles may cause a constitutional crisis for the UN, strongly affecting the credibility of the Organization.<sup>160</sup>

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<sup>154</sup> Security Council Resolutions 1621, OP 1, 1635, OP 2, 1669, OP 1, 1736, OP 1 and 1794, OP 1

<sup>155</sup> Månsson, *Use of Force and Civilian Protection: Peace Operations in the Congo*, p. 511

<sup>156</sup> Security Council Resolution 1565, OP 4(b), 6

<sup>157</sup> Månsson, *Use of Force and Civilian Protection: Peace Operations in the Congo*, p. 516

<sup>158</sup> Bellamy, Williams and Griffin, *Understanding Peacekeeping*, p. 157

<sup>159</sup> Baxter, *The Business of War*, p. 17

<sup>160</sup> Chan, *And What Do Peacekeeping Troops Do Apart From Burying The Dead, Then?*, p. 30

Nevertheless, ONUC included peace enforcement elements in its operation. It was authorized by the Security Council to use force as a last resort when implementing its mandate to prevent civil war.<sup>161</sup> The former Secretary-General Dag Hammarskjöld pronounced that ONUC was a Chapter VI ½ mission, meaning that it was a traditional peacekeeping force under Chapter VI that used armed force only in self-defence.<sup>162</sup> Questioning this, many consider ONUC to be the first UN operation clearly mandated to extend the use of force beyond self-defence.<sup>163</sup> As there was no consensus behind peace enforcement during the Cold War, the mainly pluralist UN was compelled to classify ONUC as a peacekeeping mission in its traditional sense. With the constraints of the Cold War gone in the 1990's, use of force in civil war by UN operations was intensely debated. Many people hoped for a more intervention friendly role of UN peacekeeping to be a possibility to respond to failed states in Africa.

ONUC withdrew soon after it had completed its task to end secession of Katanga, leaving many of the political problems for the government to solve.<sup>164</sup> Several of them remain today and are picked up by MONUC. The future will tell how successful the mission will be to leave a unified stable state behind. MONUC is continuously facing the challenge to protect civilians. Methods such as disarmament of militia to ensure security are inseparable from efforts to advance national economic recovery. Communities with economic progress are indispensable to reintegrate former combatants in order for them not to be re-recruited by rebel groups.<sup>165</sup> This peace building theory can be merged both with pluralist and solidarist ideas to enrich their conception of the UN role. MONUC works at present with peace building in cooperation with international organizations and financial institutions such as the World Bank to achieve a durable peace in the Great Lakes Region.

The UN has provided MONUC with functions to reform the security sector, train national army and police and support the government in holding elections.<sup>166</sup> Liberal solidarists have the strongest tendencies of interventionism and their aim is to transform states according to the western model. A weakness with the humanitarian solidarist view is that "massive and systematic suffering" that justifies intervention is not clearly defined. This entails that the moral imperative to protect civilians is nothing more than a moral aspiration.<sup>167</sup> However, this approach appears to be more concerned with reconstruction of economic systems than establishing

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<sup>161</sup> Security Council Resolution 161, OP 1

<sup>162</sup> Higgins, *United Nations Peacekeeping 1946-1967: Documents and Commentary: Africa*, p. 57

<sup>163</sup> Ratner, *The New UN Peacekeeping: Building Peace in Lands of Conflict after the Cold War*, p. 104

<sup>164</sup> Durch, *The Evolution of UN Peacekeeping*, pp. 346-347

<sup>165</sup> Boulden, *Dealing with Conflict in Africa: the United Nations and Regional Organizations*, p. 291

<sup>166</sup> Security Council Resolution 1756, OP 2-4

<sup>167</sup> Hoffman, *The Politics and Ethics of Military Intervention*, p. 37

democratic polities. The definition of democracy in this context is rarely found in doctrine and the discussion often ends with “free and fair elections” and a close link to market economies.<sup>168</sup> Economic development and growth of a society is with no doubt important for stability and peace but to have it specified by external actors is questionable and has an uncertain legitimacy. Solidarists are close to a peace building ideal, stressing the need for long term planning where specified objectives are more important than fixed exit strategies for the mission.<sup>169</sup> The strength of the solidarist approach is the long term focus to achieve a lasting peace, but it is still dependent on the overstretched capacities of the UN that, in addition, often struggles with a lack of political will.

In February 2000, MONUC was authorized under Chapter VII to use force to protect UN personnel and premises, ensure freedom of movement of its personnel and protect civilians under imminent threat of physical violence.<sup>170</sup> The solidarist approach permits peace operations to be mandated under Chapter VII, with feasibility of peace enforcement missions as a result. However, restrictions still remain in the shape of political and financial obstacles. MONUC has not had the capacity, neither logistic nor operational and at times not even the necessary political support, to successfully implement its mandate to ensure security to civilians. It remains to be proved by the future whether a tougher approach can help MONUC live up to the moral pointed out in its resolutions.

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<sup>168</sup> Manwaring and Fishel, *Toward Responsibility in The New World Disorder: Challenges and Lessons of Peace Operations*, p. 107

<sup>169</sup> Hoffman, *The Politics and Ethics of Military Intervention*, p. 45

<sup>170</sup> Security Council Resolution 1291, OP 8

# 6 Peacekeeping in the Twenty-first Century

*"Given the essential link between peace and prosperity, we cannot hope to achieve lasting development as long as conflict goes unchallenged and prevention is not a priority."*

Secretary-General Kofi Annan asks the General Assembly to focus on new ways of enhancing assistance to post-conflict societies.

As indicated by the former Secretary-General in the speech above, peacekeeping in the twenty-first century is needed more than ever.

## 6.1 Revival of Peacekeeping

Following the decline of UN peace operations in Africa after the disastrous failures in Somalia and Rwanda, resumption has been noted after a period of the so-called African fatigue in the late 1990's.<sup>171</sup> At the same time, an increased willingness of the UN to use military solutions in peace operations has been observed, motivated by the necessity for UN to project credible force in such environments.<sup>172</sup> The prospect of increased military interventions in Africa is in accordance with two views influencing the UN agenda:

- **Democracy:** A strong conviction among scholars and officials in the field of international relations is that conflicts origin from collapsed, misguided, corrupt, insensitive or incompetent governance. Certain states, mainly African states and states hosting potential terrorist cells, should be considered dangerous as they are perceived to constitute a threat to international peace and security. Supporters of this view recognize that the effect of such crises is substantial numbers of displaced persons and extensively advocate that the purpose of the UN is to promote democracy in these failed states to prevent armed conflict.<sup>173</sup>
- **Human Rights and State Sovereignty:** Human rights is increasingly linked to international peace and security and abuses of the former is considered by academics and officials to threaten the latter. Supporters of this wing suggest a moral imperative for the UN to intervene in gross human rights violations. Since the mid 1980's,

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<sup>171</sup> Furley and May, *Peacekeeping in Africa*, p. 6

<sup>172</sup> UN document A/55/305-S/2000/809, *Report of the Panel on United Nations Peace Operations*, p. viii

<sup>173</sup> Manwaring and Fishel, *Toward Responsibility in The New World Disorder: Challenges and Lessons of Peace Operations*, p. 192

the UN has increasingly been involved in fostering human rights and empirical sovereignty.

It is widely held that UN experience in Africa have had an impact on the UN approach to conflicts. After the failures in Angola, Rwanda, Sierra Leone and Somalia, the international community initiated a reassessment of peace operations viability as a mean to ensure international peace and security. Conclusions ranged from the opinion that peace operations were outdated to arguments that peace operations nevertheless had achieved valuable successes, including in Africa.<sup>174</sup> In the light of the challenge in Africa, there is a strong belief that the UN has a moral obligation to act.<sup>175</sup> In a global world nobody can ignore conflicts, even if they are in remote countries. With common politics and economies, the effects of conflicts are far-reaching and affect every part of our planet.

This chapter clarifies and analyses the reasons behind differing UN roles in relation to African conflicts. Contemporary limits and challenges to peace operations in complex intrastate conflicts in Africa are discussed as well as the UN's envisaged role in the twenty-first century.

## 6.2 Mandates under Chapter VII of the UN Charter

The large-scale problems encountered 1993 in Somalia and 1994 in Rwanda in combination with great financial, political and human lives losses notably weakened the post Cold War optimism within the UN for peace operations.<sup>176</sup> The sentiment that the UN was unable to intervene in complex situations partly originated in the lack of consensus regarding peace enforcement missions with no legal obligation to protect civilians from human rights abuses and an incoherent doctrine on use of force.<sup>177</sup> The UN response to the genocide in Rwanda and the fiasco in Somalia reflected the Organization's sporadic approach to emergencies. The UN has showed greater enthusiasm to develop capacities for peace operations in African regional organizations than to deploy its own troops in violent locations.

Missions where peacekeepers performed multifunctional tasks without an explicit expansion of their mandates were found in Liberia, Sierra Leone and Somalia. Accordingly, these missions were named "Chapter VI ½", "robust" and "second generation" peace operations. The model peace operation designed during the 1970s and 1980s with light arms and confined legal limits badly fitted the nature and dynamics of contemporary conflicts.

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<sup>174</sup> Furley and May, *Peacekeeping in Africa*, p. 14

<sup>175</sup> Tharoor, *Should UN Peacekeeping Go "Back to Basics"?*, p. 61

<sup>176</sup> Boulden, *Dealing with Conflict in Africa: the United Nations and Regional Organizations*, p. 11

<sup>177</sup> Boulden, *Peace Enforcement: The United Nations Experience in Congo, Somalia and Bosnia*, p. 46

In Rwanda and Sierra Leone, peacekeepers were deployed without realistic prospects of establishing peace agreements, as fundamental prerequisites such as a peace to keep and consent from all warring factions were absent. In addition, UN forces acted without consent in Somalia and were perceived to take sides in the conflict, thus lost their claim of impartiality.

The vast majority of peace operations deployed since 2003 are endowed with Chapter VII authorities. This fact gives, as a result, weight to the argument that peace operations in Africa presently and in the future continuously are probable to be about peace enforcement rather than traditional peacekeeping.<sup>178</sup>

### 6.3 Use of Armed Force

That the use of armed force beyond self-defence in peacekeeping, but short of full scale enforcement, is a delicate role for the UN with high risk of failure was clearly proven in Rwanda. Not only the situation on the ground is subject to rapid changes, but also the political and military support from member states and the Security Council.<sup>179</sup> Without a clear mandate to provide peacekeepers with an unambiguous legal position, strong back up from the Security Council and adequate military training and equipment, UN forces have been extremely reluctant to use military force. The theory of when use of force is allowed often fails to take realities on the ground into account. One example is that the right for peacekeepers to use force in protection of civilians at risk of genocide and gross human rights violations was not explicitly stated in Security Council resolutions until recently.<sup>180</sup> The issue is to date still not legally clear.

The use of force in peace operations corresponds to the principles of Just War. The following criteria, *jus ad bellum*, taken together, must be met in order to override the strong presumption against the use of force:<sup>181</sup>

- **Just Cause:** force may be used only to correct a grave, public evil, such as aggression or massive violation of the basic rights of whole populations,
- **Comparative Justice:** the injustice suffered by one party of a conflict must significantly outweigh that suffered by the other,
- **Legitimate Authority:** only duly constituted public authorities may use deadly force,

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<sup>178</sup> Rotberg, *Peacekeeping and Peace Enforcement in Africa*, p. 78

<sup>179</sup> Boulden, *Peace Enforcement: The United Nations Experience in Congo, Somalia and Bosnia*, pp. 129-136

<sup>180</sup> Findlay, *The Use of Force in UN Peace Operations*, pp. 123, 352

<sup>181</sup> United States Conference of Catholic Bishops, *The Harvest of Justice is Sown in Peace*, pp. 15-16

- **Right Intention:** force may be used only in a truly just cause and solely for that purpose,
- **Probability of Success:** arms may not be used in cases which beforehand are doomed to fail, a realistic prospect of success is needed,
- **Proportionality:** the overall destruction expected from the use of force must be outweighed by the good to be achieved,
- **Last Resort:** force may be used only after all peaceful measures have been exhausted.

The fundamental ruling is that force may only be deployed by a government or an international organization in self-defence, when absolutely necessary, in proportion to the threat and as a last resort. With self-defence, protection of the peacekeeper's own person and belongings, the staff and properties of the UN mission are intended. The Security Council authorizes use of armed force through Chapter VII of the UN Charter, more specifically under Article 42. Use of force is rarely explicitly stated in Security Council resolutions even if it is envisaged. Instead of spelling out specific situations and appropriate levels of force to be used, "all necessary means" may be authorized for a mission to accomplish its mandate. Political and diplomatic negotiations remain the primary tool for UN peace operations, with force playing only a supporting role.<sup>182</sup>

The mandate affects the overall output of a peace operation's undertakings. Depending on the limits established by the mandate and the interpretation thereof, activities and interventions can be directed in a certain way. Although under a Chapter VII mandate, MONUC's mission is to support the DRC government but not to engage in the military conflict. An aspect of implementation of mandates is not to provide openings for the government to rely on the UN's presence in the country in order to escape state responsibility. The UN must be careful not to engage in activities that fall under the authority of the state. In the case of MONUC, the UN's task is not to address the root causes of the conflict but to provide security for the civil population.<sup>183</sup> As the mandate is designed, it is left to the government to handle the conflict's origin.

The difficulties in achieving a sustainable peace in the DRC have resulted in MONUC's presence in the country for nearly ten years. Despite considerable progress in several areas, political and diplomatic negotiations have not led to a cessation of hostilities. The security situation is by no means stable for the civil population and militia leaders refuse to cooperate with MONUC and the Congolese national army. The rebel groups use unconventional war methods where attacks are often directly aimed at civilians. The complexity of ethnic groups present in the DRC has made

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<sup>182</sup> Findlay, *The Use of Force in UN Peace Operations*, p. 208

<sup>183</sup> Security Council Resolution 1756, OP 2-3

persecution and massive human rights violations a severe challenge to MONUC. Sexual abuse of unprecedented magnitude is used as warfare by both sides of the conflict and rebel groups recruit children and refugees on a daily basis, often from the camps for displaced persons. The question is for how long the international community is willing, and able, to uphold the principles of non use of force and impartiality that as its obvious result prevents the peacekeepers in the DRC from intervening in the atrocities going on around them.

## 6.4 Recent trends

As known, consent from the government is needed for the UN to send peace operations to a country. In recent years, African regional organizations have grown in strength and increasingly taken command of such operations, rendering the UN a less evident actor to ensure peace and security compared to earlier. An increased willingness of the UN to delegate authority by subcontracting independent actors to undertake not only peacekeeping but also peace enforcement has been noted as well.

It is a positive development that states and regions take their state responsibility seriously and make increased efforts to find solutions to their conflicts. It is them who are on place and often possess a good insight in the entanglements of the conflict. It is even considered that the most important breakthrough in African peacekeeping in the 1990's was the increased conviction that African states had to assume responsibility for the majority of future interventions.<sup>184</sup> But when doing so, access to necessary means to impose and enforce changes must be ensured. Political interests of the concerned government must never be prioritised at the expense of the security of the civil population. By using a regional actor to find solutions to a conflict, states can easily escape objectivity and the public control of the world. And most importantly, the UN and the Security Council must never forget that it is them who have the utmost responsibility for maintenance of peace and security in the world.

Regional organizations, such as the OAU, do however have a limited capacity to undertake operations of a complex character. Their resources in terms of military and logistic material, troops and intelligence cannot be compared to those of the UN. Furthermore, as a result of ethnic tensions on the African continent, it is a necessity to recruit troops of a balanced composition for each operation. Members of for instance a certain tribe cannot simply be deployed anywhere as they will not disregard their ethnic belonging when fighting enemies or worse, members of their own tribe. This circumstance is also valid for the UN when recruiting troops, but as the AU is limited to recruit people only from the African continent this limitation is more severe for the OAU.

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<sup>184</sup> Rotberg, *Peacekeeping and Peace Enforcement in Africa*, p. 16



Sudan is an example where the government preferred cooperation with the OAU and for a long time refused to give its consent to UN presence in Darfur. But due to inability of the regional actor to master the conflict and its complications that led to severe humanitarian consequences, a compromise made a hybrid mission possible, jointly led by the OAU and the UN. The hybrid mission is the first mission of its kind in UN history and only the future can tell whether this development is a phenomenon to stay in the flora of peace operations.

An example where the UN subcontracted an independent actor to undertake peacekeeping in Africa is the European Union (EU) military Operation code-named ARTEMIS, which was sent to the DRC in 2003. The aim of the operation was to stabilize the security conditions and improve the humanitarian situation in Bunia in the Congolese province Ituri.<sup>185</sup>

Why then, would the UN be interested in subcontracting external actors? The Organization's request for help could be seen as a sign of inability of the UN to undertake what used to be its tasks. The absence of consent from the government for the UN to arrive in a country is a result of deficient authority of the Organization. Failure to tackle situations, such as the genocide in Rwanda in 2004, has devastating consequences for the credibility of the UN.

## 6.5 Challenges

The case of the DRC captures the most pressing limits and challenges to the UN. The complexity of the conflict has its root in state collapse. Historical regional factors, global economic processes, US support to Mobutu's anti-communist regime, rebel groups and war lords gaining ground and presence of foreign armed groups on DRC territory are some of the explanations to the generated situation.<sup>186</sup> It is a difficult task for an external actor to find a solution to a complex situation like the crisis in the DRC. MONUC entered a divided country where extensive military hostilities continued in the east. The population was traumatized by years of conflict, the country was struck by poverty and infrastructure and state authority throughout the DRC was non-existent.

A comprehensive engagement of the international community was required as the Congolese government was unable to tackle the situation alone. All the various aspects of the conflict had to be considered and instruments needed to be adjusted for the intervention to be constructive. Long-term goals and comprehensive strategies are crucial to end the confrontation successfully. Although progress has been made both concerning the political development of the country and the security situation at large, major challenges remain. In this section, the major challenges facing MONUC are

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<sup>185</sup> Security Council Resolution 1484

<sup>186</sup> Clark, *The African Stakes of the Congo War*, p. 3

mentioned, some of which are also valid for other contemporary peacekeeping missions.

**Unpaid Financial Assessed Contributions:** Lacking political will of member states is a continuous challenge facing the UN. Financial means are required for actions to be carried out. One significant constraint to the work of UN peace operations is constituted by the fact that assessed contributions are not paid by member states. As an example, the status of contributions to MONUC may be mentioned. As of March 2007, 243.4 million United States dollars were outstanding and only 36 of all member states had paid their assessed contributions to the mission in full.<sup>187</sup> There is little done on the part of the UN for delays in collection and the Organization has explained that these contributions represent binding commitments of member states.<sup>188</sup> As a last resort, Article 19 of the UN Charter offers the possibility to exclude members in arrears from voting in the General Assembly. However, this provision is only applicable if the arrears equals or exceeds the amount of the contributions due from the member for the preceding two full years and the failure to pay does not depend on conditions beyond the control of that member. Exceptions are usually made every year for members where the outstanding contributions are considered to be due to conditions “beyond their control”.<sup>189</sup> All member states are also addressed by the General Assembly from time to time who urges them to make every possible effort to ensure payment of their contributions in full, on time and without conditions.<sup>190</sup> Further efforts would be needed to make member states fully pay their contributions. Without facing more severe consequences than exhortations, the functioning of important undertakings of the UN, such as peacekeeping missions, appears to be up to the political will of member states.

**Deployment:** Another aspect affecting the work of the peacekeeping missions negatively is late deployment. Resources approved by member states to peace operations in the form of available posts are often not entirely used. Apart from the fact that the recruitment process may be time consuming, late appointments of candidates probably depend on many different factors. Deployment has been a matter of concern for some recent peace missions, especially those in Africa.<sup>191</sup> This hampers the work of peacekeeping missions. With many vacancies to fill, activities of the operation may not be feasible as originally planned, and as a result be postponed, prolonged or even cancelled.<sup>192</sup>

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<sup>187</sup> UN document A/61/970, *Financing of the United Nations Organization Mission in the Democratic Republic of the Congo*, Section III, OP 2

<sup>188</sup> UN document A/C.5/61/SR.48, *Summary record of the 48<sup>th</sup> meeting, 5<sup>th</sup> Committee, General Assembly, 61<sup>st</sup> session*, paragraph 3

<sup>189</sup> Officer at the Permanent Mission of Sweden to the United Nations, Interview

<sup>190</sup> Ibid. and UN document A/61/970, *Financing of the United Nations Organization Mission in the Democratic Republic of the Congo*, Section III, OP 2-3

<sup>191</sup> UN document A/61/970, *Financing of the United Nations Organization Mission in the Democratic Republic of the Congo*, Section III, OP 5

<sup>192</sup> Officer at the Permanent Mission of Sweden to the United Nations, Interview

**Internal Management:** As discussed in section 4.1.2 above, there is no homogenous view among executives and officials within the UN on how to interpret peacekeeping mandates and which role the UN ought to play. The efficiency of peace operations is seriously affected by this fact. This may also have severe consequences for the credibility of the Organization and the possibilities for the UN to establish a legitimate role in the country where peace operations are carried out.

**Humanitarian Relief:** MONUC faces difficulties in delivering humanitarian aid to the civil population. Not only is the DRC a vast country with difficult terrain and very limited infrastructure, rebels and militia leaders also block the few available roads to inhibit free movement of peacekeepers and humanitarian relief organizations. Already in 1992, the Security Council explicitly recognized the link between prevention of delivery of humanitarian assistance and a threat to the peace.<sup>193</sup> Enforcement powers are necessary for peace operations to operate under circumstances where political negotiations and diplomatic efforts have little or no effect.

**Public Opinion:** For the local population and the parties of the conflict to accept the UN presence, it is necessary for each peacekeeping mission to continuously work with public information to inform about the tasks and functions the UN troops carry out.<sup>194</sup>

**Disengagement of Illegal Armed Forces:** A stable security environment cannot be established until all foreign combatants definitively have withdrawn from the DRC. MONUC focuses on disengagement of Congolese combatants of various armed groups. The process is complicated by the fact that MONUC only has capacity for about one third of the former combatants who have entered the national disarmament, demobilization and reintegration programme to engage in longer-term reintegration projects.<sup>195</sup> Ex-combatants without work or other engagement are a frequent source of violent unrest in society and the risk of re-recruitment of remaining militia is high. Another challenge is that this programme does not target all militia groups in the DRC and of those who are targeted, the militia leaders need to be convinced to send their troops for disengagement.

**Establishment of Rule of Law:** The absence of law and order in a country can undermine efforts to achieve the necessary stability to attain lasting peace. It is therefore a challenge to peace operations to elaborate feasible strategies to address the institutional law and order vacuum in post conflict states.

**Strengthening of Democratic Institutions:** For MONUC to fully implement its mandate and be able to exit the DRC without fighting to

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<sup>193</sup> Security Council Resolution 770, PP 6

<sup>194</sup> Security Council Resolution 1355, OP 36

<sup>195</sup> UN document S/2007/671, *Twenty-fourth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, paragraphs 36-37

revive with renewed clashes and humanitarian suffering, the DRC state institutions need to have an effective structure and capacity. National elections were held in 2006 and a democratically elected president was inaugurated but that does not automatically lead to an efficient democracy.<sup>196</sup> Many of the political leaders in the transitional government had little experience in democratic practices and a continuously important task for MONUC is to support the government in its work.<sup>197</sup> MONUC also supports the national army and police and related law enforcement agencies to enable them to resume responsibility for protection of the population and assists the government to re-establish state authority in the eastern provinces of the DRC.<sup>198</sup>

## 6.6 Revitalization

Secretary-General Boutros Boutros-Ghali re-emphasized the particular importance of the three fundamental principles governing peacekeeping in 1995. Without the respect of consent, impartiality and minimum use of force, he stressed that peace operations are less likely to be successful.<sup>199</sup>

The conditions for peacekeeping missions are constantly changing and Secretary-General Kofi Annan initiated a revitalization of its structure in 2000. A special Panel undertook a thorough review of the functioning of peacekeeping that resulted in a number of recommendations, found in the so-called Brahimi Report. These included a more frequent use of fact-finding missions to tense areas to support immediate crisis prevention and a doctrinal shift in the use of civilian police and rule of law elements in peace missions to enhance focus on respect for rule of law and human rights. The three peacekeeping principles were affirmed anew by the Panel in its report. The UN was recommended to improve standby arrangements to enhance the capacity of forces and to engage effectively against parties who violate their commitments under peace accords. Several other recommendations were made and the implementation thereof is still ongoing.<sup>200</sup>

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<sup>196</sup> UN document S/2006/759, *Twenty-second report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, paragraph 8 and UN document S/2007/156, *Twenty-third report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, paragraph 2

<sup>197</sup> UN document S/2003/566, *Second special report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, paragraphs 67-68

<sup>198</sup> UN document S/2007/671, *Twenty-fourth report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, paragraphs 54, 56

<sup>199</sup> UN document A/50/60, *Supplement to an Agenda for Peace*, paragraph 33

<sup>200</sup> UN document A/55/305-S/2000/809, *Report of the Panel on United Nations Peace Operations*, paragraphs 34, 47, 55, 64, 75, 83, 91, 101, 117, 126, 145, 150, 169, 197, 217, 233, 238, 243, 245, 251, 258, 263

# 7 The UN in a World of Change

*“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”*

UDHR, Article 1. This article was written after the Second World War when emphasis was made to create unity among states and tolerance between different cultures and political interests.

The UN was founded more than half a century ago. Those who signed the founding treaty were determined: never again a war that will destroy human lives and societies. The UN has not accomplished this ambition, nor has it lived up to all our expectations. This is often a result of member states not being as committed as necessary, providing the Organization with insufficient support and resources. However, we do not know what the world would have been like without the UN. The positive impact of the Organization on developments in society is well documented: millions of refugees have received aid from the UN High Commissioner for Refugees (UNHCR), millions of children have profited from the UN Children’s Fund (UNICEF) and millions of people have been vaccinated through the World Health Organization (WHO). It is impossible to know how many wars and major injustices that have been avoided thanks to this international forum where everybody can make their voice heard.

The UN is in need of reform to strengthen its structure in order to meet the demands of the twenty-first century. To improve the Organization’s efficiency, the decision-making processes and the financing need to be reviewed. The Organization’s ability to give strong and immediate responses to evolving emergencies around our globe is vital for its authority and credibility. Civilians’ safety must be able to be protected in a world where an increasing number of conflicts and abuse of human rights take place within rather than between states. In the ideal international order, which also converges with the aim of the UN, all men are treated equally, irrespective of how large or small, rich or poor the countries are.

The UN may not be the perfect solution to all the problems in the world but it seems to be the best working option that mankind has come up with. Even though the Organization does not succeed in all its tasks, it has proven that it truly can make a difference. The complex problems that threaten the world today cannot be tackled by any state alone. The simple, brilliant idea that all nations shall meet, discuss and find common solutions is needed in the twenty-first century more than ever.

## 7.1 A New World

Although the Organization has grown since its foundation in 1945, the UN structure has remained the same. The world has changed significantly during this period. The world's population has increased dramatically, poverty has spread and the gap between developed and developing countries has widened. Environmental problems have deteriorated and nuclear weapons have turned into a threat to human existence. Civil wars and ethnic conflicts have become increasingly more common and more violent. Over time, the tasks given to the UN have augmented and gotten more difficult than any founder could foresee in 1945 when the Charter and the Organization was established. As an example of this, environmental issues shall be highlighted.

The impact of climate change on international peace and security was discussed in the Security Council on 17 April 2007.<sup>201</sup> This debate constituted the first time in history that the Security Council brought up any issue related to the environment. As the responsibility of the Security Council is to maintain international peace and security, some people questioned whether the Council was the right forum to have this discussion. The tasks of the Security Council include prevention of conflict and at this meeting, the link between the environment and instability was stressed. Some roots of conflict, such as migration and competition for resources are exacerbated by the climate change. Deserts continuously spread and vegetation cannot find stronghold on the ground. When wells are dried out and large parts of a population are impeded to work on their crops to feed their families, frustration grows. If they have nowhere else to go, this frustration can mount to the extent that conflicts evolve into civil wars that risk to spread over borders and affect large regions which have potential effects in the entire world. The Stern Review Report on the Economics of Climate Change stresses that economic disruption as a result of climate change can amount to the level of that of the First and Second World War and of the great depression of the first half of the 20<sup>th</sup> century.<sup>202</sup> This fact alone would inevitably have an impact on the security of the whole world, developed and developing countries alike.

By lifting up the issue of climate change to a level of unprecedented magnitude, through the Security Council, the world recognized that apart from economic, developmental and environmental imperatives, there is a security imperative for addressing this environmental issue. The evolution of climate change and many other issues that are facing the UN today could impossibly have been predicted at the time when the UN was founded.

Many people believe that the UN needs to be reformed in order to successfully manage the increasing number of complex tasks it is faced with. The Cold War hampered every attempt to make the UN stronger and

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<sup>201</sup> UN Press Release SC/9000, *Climate Change*

<sup>202</sup> HM Treasury, *Stern Review Report on the Economics of Climate Change*, p. vi

more effective as the super-powers, the USA and the former Soviet Union, were not in favour of a powerful UN. They had their own agendas and did not desire to abandon the possibility to act in their own interests.

After the Cold War was ended in 1989, the UN's possibility to interfere in international disputes was ameliorated. The USA and the then Soviet Union had no longer conflicting interests and could cooperate to guarantee safety. Nothing seemed to stop the UN from regaining the central role it was originally entrusted with. However, the UN faced more challenges. Several member states were not able, or did not have the will, to put sufficient resources in terms of money and military personnel at the Organization's disposal. At times, the UN was charged with deep financial crises at the same time as it was tasked to solve a number of complex conflicts. At this stage, more fuel was given to the discussion about UN reform.

For the UN to function effectively under new circumstances, its internal structure needs to be reviewed. The amount of members of the UN has expanded immensely and the positions of states have changed with the development of world politics. The decision-making processes for the UN Organs were designed for the initial fifty states that signed the Charter in 1945. Sixty years later, they are no longer adequate to support all the different interests of member states whose number has grown almost four times in size.

The status of UN members is also subject to debate. As an example, the Russian Federation can be mentioned. It constitutes one of the permanent five members of the Security Council and possesses, as a result, the right to veto. It withholds its unique position in the UN despite the fact that it can no longer be considered a super-power in accordance with what the Soviet Union once was. It is questionable whether a permanent membership shall remain that is based mainly on historical grounds. The imbalance among member states created by the veto has led to proposals not to abolish it but to at least increase the number of permanent members in the Security Council.

Has the development of the world reached a point where it is no longer possible for mankind to unite and respond to contemporary demands? As long as the permanent members and the right to veto remains in the Security Council, the relationship between member states is not equal within the UN. Reform questions are uneasily discussed as the permanent members can use their veto to hinder decisions, and most probably will do so as soon as their status or political interests are involved. Without the necessary reform, will peacekeepers be able to respond to the demands of the twenty-first century?

## **7.2 The Security Council and Chapter VII**

The Security Council is equipped with broad powers under the UN Charter for maintenance of international peace and security. As the ultimate goal of

the Organization is maintenance of peace, clearly expressed both in the preamble and Article 1(1) of the UN Charter, the UN founders with all certainty intended this. The specific enforcement powers of the Security Council to enforce international peace and security are found in Chapter VII of the UN Charter. The Council is provided with the widest possible margin of appreciation under Article 39 to determine the existence of any threat to the peace, breach of the peace or act of aggression and what measures should be taken to maintain or restore international peace and security. Further, with maintenance of international peace and security as the supreme purpose of Article 1, this overrides other purposes of the Organization in case of conflict.

The Security Council's discretion in its decisions is however not unlimited. It is bound to follow the purposes and principles of the Organization. As a result, the Council needs to treat issues in good faith according to Article 2(2) of the Charter, implying that it cannot act arbitrarily outside its mandate to maintain international peace and security. Nevertheless, as this concept is of a rather general and broad nature in combination with the wide margin of appreciation of the Council, the difficulties to ascertain whether the Council acts *mala fide* are obvious. The practical effect of these restrictive regulations on the Security Council's competence is thus questionable. Although Article 103 gives precedence to the UN Charter over other international treaties, the Council is most probably compelled to act in accordance with *jus cogens*, in particular the norms embedded in Article 1 of the UN Charter, stating the purposes of the Organization.

The risk of abuse of the Security Council is imminent, as it is judge of its own competence and it possesses powers that bridge any gaps in the interpretation of its authority under the UN Charter. UN Organs, which are political bodies, are autonomous and a judicial review of their decisions is neither supported in the UN Charter nor by ICJ. The International Court shows in its practice a reluctant position towards rulings that involve whether the Security Council has gone beyond its competence. As the members of the Security Council are politically appointed, the importance of international media in supervising the decisions of the Council cannot be overrated.

The Security Council provides peacekeeping missions with mandates and albeit many conditions have changed over time, they are still subject to the basic principles of consent, impartiality and minimum use of force. In complex conflicts, like the one in the DRC, the alleged shift from rights of states to rights of individuals seems to exist only in theory as the extent to which it has appeared in practice over the past few years has been very limited. The experience of ONUC made the Council refrain from UN involvement in civil war until after the end of the Cold War and it remains important when similar operations are under consideration.<sup>203</sup>

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<sup>203</sup> May and Cleaver, *Peacekeeping: The African Dimension*, p. 490



ONUC troops used force in their function to uphold law and order, which at the time included civilian protection. This led to doubt among scholars regarding the legitimising principles of consent and impartiality. Others meant that the chances of success would have increased if more effective military action had been deployed at an earlier stage.<sup>204</sup> These principles have also been subject to debate in the case of MONUC and they appear to have stretched or at least altered their meanings. As an example, the fact that the Security Council in its contemporary resolutions explicitly recognizes the moral imperative to protect civilians under attack can be mentioned.

There are important differences between peacekeeping today and peacekeeping in the early days of the UN. Media's role has practically exploded, it has become international and covers all aspects of society, it is increasingly mobile and reaches out to a broader audience. Public information adds to the pressure from the external world on the UN and the Security Council that efforts are needed also in internal crises such as civil wars. The dynamics of conflict have also changed dramatically with the use of unconventional warfare tactics. In addition, in the twenty-first century as opposed to the 1960's, more weapons are possessed by the Congolese people and the weapons they have are of a more advanced kind. Many ONUC officers were inexperienced and the majority of them had never been in combat before deployment. Militia today is well equipped and extremely violent, which complicates peace negotiations substantially.<sup>205</sup>

Whether the fundamental principles of peace operations have expanded or not, all this taken together shows that heavy demands are made on the Security Council to provide adequate mandates, enabling peacekeepers to respond effectively to the conflicts of the twenty-first century.

### 7.3 Promotion of Democracy

An important feature of peace operations in the twenty-first century is its state-building functions. Peacekeepers support the strengthening of democratic institutions, provide training to national police and army and monitor the administration of justice and rule of law. In this section, some issues related to the organizing of democratic elections are discussed.

It is problematic for an external actor, such as the UN, to install and preserve democratic ideas in states that have never experienced democracy. Despite the fact that the UN may be faced with severe security challenges in a country, it has in a number of cases focused its efforts not on protection of civilians but on organizing democratic elections. The wish for the international society to turn war torn states into democracies seems to override the practical living conditions for the civil population. Democratic

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<sup>204</sup> Ratner, *The New UN Peacekeeping: Building Peace in Lands of Conflict after the Cold War*, p. 104

<sup>205</sup> Clark, *The African Stakes of the Congo War*, p. 25

countries have historically proved to be more stable and peaceful than other regimes but the practical probability for the UN to impose these values on other states is limited. Without security guarantees and ensured disarmament of rebel groups, long-term political efforts culminating with the holding of elections may be in vain. Democratic elections alone can generally not guarantee a stable peace, justice or reconciliation.<sup>206</sup>

When civilians in a society struggle to survive, all they wish for is peace. It is normal for them to desire the conflict to end to the extent that exactly who or which party wins the elections is less important. For democratic elections, organized with the support of the international society, the polling needs to exceed a certain level. A population that has lived in terror for quite some time and feared for their lives not only due the effects of direct violence of militia and rebel groups but also of medical epidemics, lack of food and other humanitarian relief are likely to embrace elections. In African conflict zones, the possibility to receive education is very limited and a good part of the population is often illiterate. Although the polling might be heavy, it can be questioned whether the people know who they are voting for and what the various parties stand for. In the national elections in the DRC 2006, on the question of what the people were voting for, many answered, “We vote for peace!” Under such circumstances the risk for abuse is obvious.

It is not evident that the model with democracy and democratic elections that has proved to be the most successful in western countries will function as well in other parts of the world. Each geographic region has specific conditions and pre-settings that need to be taken into account when political and diplomatic efforts are to be applied. Variables such as philosophy and religion play an undeniable role in the outlook of different people. Peacekeeping is not a “one fits all” solution.

However, the support of the international society in the holding of democratic elections should not be regarded as a void alternative. It is a powerful attempt to establish long-term peace in a country, which is the utmost purpose of the Organization. One can always have different opinions on how priorities should be set, but democratic elections constitute at least a manifestation of a will to re-establish an autonomous government. With regard to peacekeeping, effective state institutions are imperative for UN troops to be able to exit the country without an imminent risk of warring factions to grow stronger and fights to flare up anew once the UN has withdrawn. To reach stability in a country through negotiations and other efforts instead of elections is plausible to require much more time. In addition, democratic elections often draws attention to the country from other parts of the world which puts political pressure on the newly elected governors to implement democratic values. The pressure on the new government to perform in accordance with this often has positive results for the population.

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<sup>206</sup> Bellamy, Williams and Griffin, *Understanding Peacekeeping*, p. 126

## 8 The viability of the UN in the Twenty-first century

*“There are many tasks which United Nations peacekeeping forces should not be asked to undertake and many places they should not go. But when the United Nations does send its forces to uphold the peace, they must be prepared to confront the lingering forces of war and violence, with the ability and determination to defeat them.”*

The Brahimi report

The object of peace operations is to preserve and restore world peace. They have not always been successful in fulfilling this task but after the end of the Cold War, the position of the UN improved notably. Substantial changes in the approach of the Soviet Union and an increased cooperation with the USA had a positive impact on the work and achievements of the Organization.

The activities of the UN have evolved to encompass a wide range of issues. Contemporary peace operations may not only be used for observer functions or to stabilize tense situations according to the traditional approach, they may also perform civil functions including key administration of a country, supervision of implementation of peace agreements, monitor compliance with human rights standards, organization and supervision of elections, train national capacities of military and police, demobilization of combatants and assist in demining activities. With this spectrum of activities in the political environment, it is difficult to reach a consensus among world scholars on one sole role of the UN. The methods of the Organization to reach its aims are also contested and it is not a given fact that one solution will fit all situations at the various locations of the world where the UN is deployed.

### 8.1 Peacekeeping Principles

Peacekeeping is subject to three fundamental principles: Consent, Impartiality and Minimum Use of Force. As has been shown, the interpretation of these principles varies and the role of peace operations differs accordingly. During the Cold War, the interpretation was in a way clearer as enforcement functions never was an option due to the ideological split between member states. With a humanitarian emphasis and nation building exercises, these rules have become contested since 1989. The principles are reconsidered in order to better match the challenges of complex crises. With an expansion of the role of the UN that encompasses

enforcement measures, the purposes of peace operations have a more realistic possibility to be fulfilled.

It is normally the government's task to provide effective protection to its population. Civilians frequently distrust peacekeeping missions due to a lack of understanding of the functions of the mission. Peacekeepers are limited to perform what is included in their mandate. This is a vital restriction for the legitimacy of the Organization and the intrusion that peacekeeping otherwise would constitute on a state's territory and in its internal political affairs. For a democracy to be long lasting, the UN must be careful in assuming duties that are included in state responsibility. If the UN shoulders the burden to protect civilians only because it might have the capacity to do so, it assumes trusteeship functions, which is counter-productive for the country to develop state institutions liable for these tasks. In case a government explicitly requests the UN to protect its civilians, careful surveys need to be undertaken to ensure that the government is incapable of doing this and not just aspires to escape state responsibility.

Civilians living in regions where a peace operation is deployed often show hostility towards peacekeepers in their frustration to see UN soldiers doing what they perceive as nothing. To make the local population understand the peace process and the UN role is a challenge for peacekeeping missions. In complex missions such as MONUC, officers are deployed to work with public information, an undertaking the importance of which cannot be overestimated for the function of the operation. Support of the local community and their understanding of the principles of consent, impartiality and minimum use of force have a significant effect on the result of the peacekeepers efforts.

A reinterpretation of the basic attributes of peacekeeping is motivated as their effect often directly contradicts their aim. A limitation in the form of minimum use of force is there to prevent abuse of arms, but peacekeepers must be able to interfere when civilians are victimized or peacekeepers attacked. The UN, and the world, cannot afford situations like the one in Rwanda to be repeated when the only thing needed to stop atrocities is a Security Council mandate. Maintaining impartiality in humanitarian emergencies can be perceived as problematic with regard to the moral imperative for the UN to intervene. Consent and impartiality are affecting the legitimacy of the Organization but contemporary war dynamics may require a re-evaluation of these principles. The following sections provide a forward-looking view of each one of the fundamental principles governing peace operations.

### **8.1.1 Consent**

Consent is nearly impossible to be obtained in failed states where the government is either unrepresentative or unable to reign. Although desirable, consent by all belligerents is no longer considered to be

mandatory in peace operations with enforcement capacities.<sup>207</sup> For theory to be congruent with practice, this principle need to adapt in order to be applied in a uniform manner. Consent has in many cases been wanting, involuntary or deceiving, even to traditional peacekeeping missions.<sup>208</sup> As shown in the case of ONUC, once given, consent can also be withdrawn or turned into hostility towards the UN. However, the danger with a more flexible interpretation of consent is the difficulty to make imposed settlements of conflicts long lasting.

### 8.1.2 Impartiality

The UN is requested by the parties of a conflict to find a solution for them, as it is entrusted to act without prejudice to the proper dispute. As with consent, this principle is in need of a reinterpretation if the UN is to play a uniform role in resolving complex crises. Intervention of peace operations implicitly involves an imposition of power, as peacekeepers must be permitted to prevent and stop attacks on civil population and UN personnel and premises. As a result, at least one of the factions is likely to perceive the UN as partial, no matter the official UN view.

Impartiality is a principle whose meaning has evolved over time. In the early days of peacekeeping, as in the case with ONUC, Hammarskjöld's strict sense of neutrality involved an inhibition of peacekeepers to intervene in internal affairs of a state. Later, other meanings of impartiality have been put forward. It can mean peacekeepers' acting that in its great majority is in the interest of the international society, to maintain peace and security, rather than in the interest of a specific state or non-governmental actor.<sup>209</sup> This interpretation entails that the UN is not expected to be impartial in a strict sense. With the implementation of the mandate, the peace operation will inevitably affect the dynamics of the conflict. In addition, accepting the moral imperative to protect civilians, peacekeepers are even under an obligation to take specific measures against groups committing crimes against humanity.

### 8.1.3 Minimum Use of Force

Peace operations often encounter armed resistance. Increased expectations on the peacekeepers to offer civil population protection create a tension with the principle of minimum use of force. The warring factions will not respect a military force that is not only inhibited to protect civilians but also to defend itself which leads to a risk of losing the credibility of the Organization as a whole.

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<sup>207</sup> Pugh, *The UN, Peace and Force*, p. 14

<sup>208</sup> Hoffman, *The Politics and Ethics of Military Intervention*, p. 29

<sup>209</sup> Gibbs, *The United Nations, international peacekeeping and the question of "impartiality": revisiting the Congo operation of 1960*, p. 360

With the provision of security to civilians as the highest moral imperative, peacekeepers must be allowed to use force to carry out this duty. That being said does not mean that the criteria of proportionality, exhaustion of other means etc. no longer restrict the applicability of this permission. The norm of use of force only in self-defence has been stretched to its limits. As many operations and elements of a mission are mobile, the boundaries of what can be defended are not always clear. To enable the peace operation to fulfil its tasks and implement its mandate appropriately, a thorough review of the principle of use of force is needed. Clear and unambiguous directions from the central headquarters are needed to guide peacekeeping missions at different locations for use of force to be applied in a uniform manner.

Use of force is intertwined with impartiality and its applicability depends on how the principle of impartiality is interpreted. It is difficult for the UN to use force against one party of a conflict without that party to see the UN as turned against it. In the same time, the UN can be perceived as impartial with regard to its mandate to ensure that all parties refrain from breaches of for instance a peace agreement. Another controversial aspect of the use of force is whether force can be used for peace purposes at all or if it is always tied to war and destruction. To this regard, the legal framework of the UN reflects the notion that peace operations and UN troops seek to prevent violations of international law. Use of force is controlled through Security Council mandates and the supply of resources such as financial means, personnel and materiel by member states.

## **8.2 Member States in Charge**

The UN has constantly been at the centre of debates around the world on security governance. No institution could be better qualified to face the challenge to maintain peace and security in the twenty-first century than the UN. Its universal membership provides the Organization with the necessary capacity and legitimacy to define a legal framework of security norms that encompass different continents and cultures. The UN possesses unique multifunctional competencies and an ability to interact as well with all types of non-state actors as with national governments. A pragmatic approach will facilitate the large developed states to manage interdependence with developing countries in a way that seeks a win-win situation. Solidarity and insight enables the understanding that the Organization itself needs to follow its rules and restraints in order to maintain credibility.

Despite all its efforts to mitigate the effects of conflicts in terms of human suffering and collapse of states, the UN does not seem to be able to address root causes before conflicts break out. Perhaps the borderline of when a situation constitutes a threat to the peace makes it more difficult to intervene than when developments have reached a point where it is clear that the breach of the peace is a fact. The UN appears to alleviate the severance of a conflict rather than preventing it from occurring in the first place, which

would have been more desirable. The difficulties of preventing conflicts in all parts of the world are obvious, if not even impossible.

The UN has never sought or possessed authority over all security related issues in world politics. Other organizations are active in the same field, such as the World Trade Organization (WTO) that sets the preconditions for global economy and the Group of Eight industrialized countries that lead issues bridging economic and security dimensions. It is difficult for the UN to play an active and positive security role in the same way that it applies rules and sanctions for constraining purposes. It lacks adequate resources for such functions and, more importantly, interactive security building must begin with interaction between the concerned parties. An example of this is arms control. The UN may adopt rules to stop trafficking of weapons of mass destruction and it can inspect results of confiscation and destruction of such materials but it is unfeasible for it to carry out the collection or destruction itself.

The same relation applies to peace operations. No matter how promising and strong the rules adopted by the Organization may be they are not efficient without the political will of the UN member states to implement them. The provision of sufficient resources in terms of financial and material means by the UN and its member states is crucial for peacekeeping missions to fulfil the agreed mandate.

One has to be careful not to overestimate the importance of peacekeeping missions in difficult political situations. Their operation is dependent on a continued support of the Security Council, which is a compromise of the political will of certain member states. The international community may have a responsibility to protect innocent civilians but this must never be an excuse to let governments escape state responsibility.

### **8.3 Peacekeeping Theory**

There is no unity in doctrine regarding the object of peace operations and the role of the UN. Two main wings have evolved, one conservative that claims that state sovereignty must be respected at all costs and that the UN cannot interfere in the internal affairs of a state, and one liberal and humanistic that seeks a more proactive peace enforcer in the UN and advocates a peace and state building role for peace operations. The conservative pluralists tend to defend a traditional role where the fundamental principles of peacekeeping are strictly followed while liberal solidarists are inclined towards more humanitarian functions of the UN with a flexible applicability of these principles. It is too early to conclude that consensus has shifted to a solidarist conception of the role of the UN, but there is awareness that with the complexity of African conflicts, there is a need for long-term commitment and multifunctional missions with enforcement powers. Tendencies in the direction of the solidarist approach are noted through norms regarding the role of peace operations in world

politics. In most, if not all mandates for contemporary peacekeeping missions, protection of the civil population is expressed as the primary aim of the UN. Nevertheless, it can be asserted that the position of the international society has moved away from a rigid pluralist perception of peace operations. If the UN was to keep a traditional peacekeeping role, state reconstruction and protection of civilians would not be feasible and UN interventions in complex conflicts would be doomed to fail due to limited enforcement capacities.

With global economy and increasing interaction between continents and countries, conflicts become more and more complex. For the UN to take a role with solidarist elements and if the Organization is to engage in conflict resolution for moral reasons, a common view needs to be established regarding the interpretation of the fundamental principles of peacekeeping. Without such common ground, a homogenous management of peace operations is difficult to be achieved and without uniform leadership much efficiency risk to be lost for the Organization. A strong united management of the UN is vital for the credibility of the Organization, without which peacekeepers are likely to encounter severe difficulties and political resistance in fulfilling their tasks.

A stronger commitment on behalf of the member states is needed in order to fully provide peace operations with the required resources. Decisions of the UN to finance the missions does not have any practical effect if member states lack the political will to make the actual contributions. In reports from the General Assembly, member states in arrears are urged to ensure payment of their outstanding assessed contributions. If these states are not faced with more severe consequences than such exhortations, it is questionable whether the concerned mission will ever be able to fully implement its mandate.

For the legitimacy of the UN to be maintained, a wider political support not only from national governments but also from the international community at large is sought. A consensus on the long-term purpose of military interventions is necessary to establish a balance of which duties range under the UN in order for national governments not to escape state responsibility but reach an autonomous independency. Without a strong and effective mandate for peacekeeping missions, loss of civilian lives will be suffered and UN's credibility as the main guarantor of peace and security risk to be damaged.

## **8.4 Legal Functions of the Security Council**

The Security Council has in recent years assumed the role of an international legislator by means of quasi-judicial activity. Through sanctions under Chapter VII, it seeks to enforce maintenance of world peace. The Security Council has also assumed the role of a legal court, as



there is no legal remedy available to challenge its quasi-judicial decisions under Chapter VII. The Security Council's exceptional powers to define what constitutes a threat to international peace and security was emphasized in the *Lockerbie* case that clarified that the Council's binding resolutions under Chapter VII of the UN Charter have pre-eminence.

By examining peacekeeping mandates, it is clear that the Security Council has a strong focus on protection of civil population and shows an increasing willingness to intervene for humanitarian reasons. This is the most frequent motive for action in all the current peace operations. The UN has played a role as an enforcer of human rights and international humanitarian law and has repeatedly intervened under Chapter VII in conflict zones to provide protection to the human person. Like the founders of the UN Charter, who already in 1945 were aware of the fact that abuse of human rights could threaten the peace, the Council has intervened in internal situations where humanitarian crises have been cited as constituting a threat to international peace and security. Humanitarian concern is also the most frequent reason to use of force by peacekeepers.

Legal considerations have influenced the Security Council when adopting sanctions under Chapter VII of the UN Charter. After the end of the Cold War, the Council no longer linked decisions under Chapter VII to traditional threats to the peace in the form of inter-state conflicts but increasingly intervened in internal situations. This trend is an evidence of the fact that Security Council action under Chapter VII is motivated by other considerations to uphold fundamental norms in public international law. These norms mainly converge with the UN purposes as enumerated in Article 1 of the UN Charter, several of which are of *jus cogens*. By upholding these fundamental norms, notably norms aimed at the protection of individuals, the Security Council fulfils its mandate to maintain international peace and security.

Although the Security Council is a political body, its actions may have legal effect. The Council's exceptional powers under Chapter VII of the UN Charter can be used for legislation, law enforcement, creation of norms in customary international law and as a court of law. This is a possibility for the UN to enhance its position and benefit the international community whose traditional legislation processes has problems to keep up with the urgent requirements of the new millennium. The legal functions of the Security Council should however be used prudently as this Organ first and foremost is political. The political considerations governing the Council makes it inevitably biased with the inability to create a doctrine as a result. Nevertheless, the development of international law after the end of the Cold War has paved way for the Security Council to adopt an extended quasi-judicial role with a greater emphasis on the right of individuals at the expense of state sovereignty.

## 8.5 The Power of Unity

The international community must assume responsibility in both international and domestic conflicts and the UN is currently the most effective institution to shoulder this challenge due to its consensual base. The Organization does not only have a universal membership and multifunctional competencies, it also has the capacity and legitimacy to define norms embracing all different continents and cultures. The UN has every legal authority required to solve armed conflicts and humanitarian crises in the twenty-first century. What imposes a constraint for this to become reality is the difficulty in achieving consensus among the decision-making member states and the Security Council on action and provision of resources. The failure of peace operations in the past do not depend on lacking legal authority to implement their mandates, but is a result of an unwillingness of the international community to act or inability to make decisions on what best should be done. Chapter VII provides the authority needed for peacekeeping and peace enforcement missions to be conducted. A pragmatic approach will enable the world's leading powers to recognize the merits of the UN as a way of managing interdependence. To prevent illegal armed forces to persecute and kill hundreds of thousands of civilians, a united will and mutual efforts of the international community are needed to address the humanitarian crises and armed conflicts that plagues our world. Without the help from the UN with financial means, military resources, adequately trained personnel and, most importantly, a strong commitment, the concerned governments are unable to address ongoing conflicts, if there is a legitimate government at all, that is.

As the sole worldwide recognized guarantor of peace and security, the UN must accept this unique position and act upon its responsibility to maintain international stabilization. To meet the challenges of the twenty-first century, it must adopt a more aggressive approach than it has in the past to assist governments to maintain internal peace, uphold respect for public international law and promote political, economic and social development. The Security Council should take circumstances of the concerned conflict into account when designing the mandates for peace operations, as well as political, religious and economic factors of the relevant country or region. To function as intended, it is also necessary to take effective measures on member states that do not fulfil their mandatory obligations to pay the assessed financial contributions to the Organization, as this is vital for the existence of the UN.

In the interest of all living people in the world, the international community might be obliged to abandon its unwillingness to apply sufficient force to dictate a particular outcome of a conflict situation. When it is obvious that political and diplomatic negotiations have no effect, enough strength could be applied to prevent human rights atrocities and genocides from occurring, if there is only enough political will of the UN member states. With the power of unity, a considerable number of lives of innocent people can be saved.

*“Blessed are the peacemakers, for they shall be called the children of God.”*

Matthew 5:9

# Supplement A

Map of the Great Lakes Region, the area comprising the following countries: the DRC, Uganda, Rwanda, Burundi and Tanzania.<sup>210</sup>



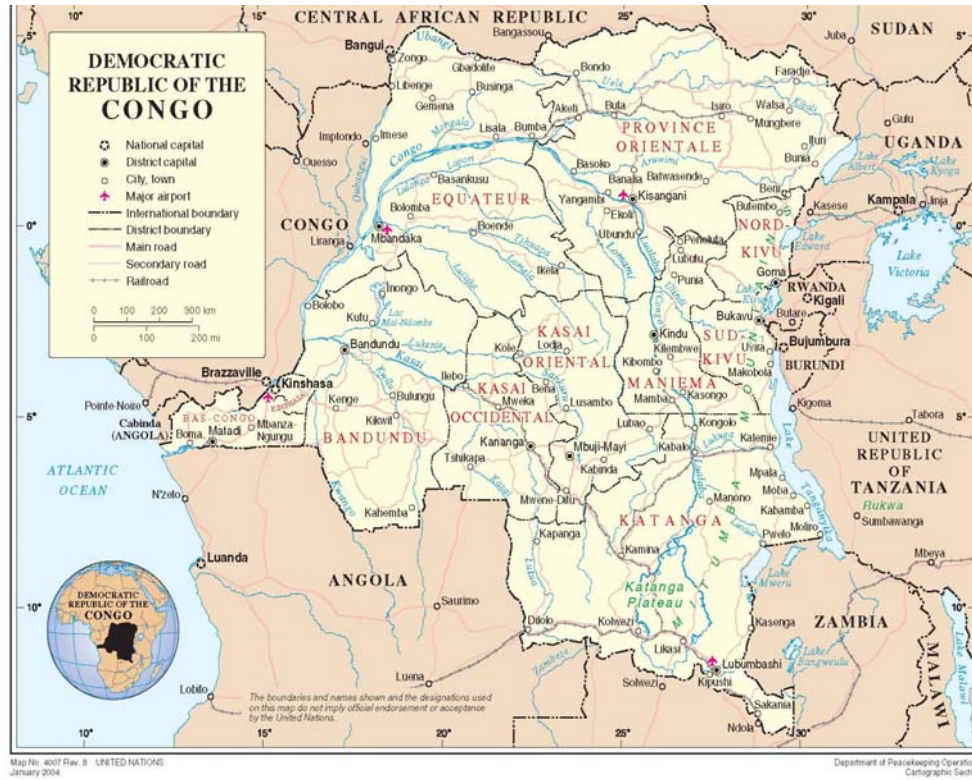
Map No. 4004 I UNITED NATIONS  
January 2004

Department of Peacekeeping Operations  
Cartographic Section

<sup>210</sup> Map of the Great Lakes Region,  
<http://www.un.org/Depts/Cartographic/map/profile/blr.pdf>

# Supplement B

Map of the DRC<sup>211</sup>



<sup>211</sup> Map of the DRC, <http://www.un.org/Depts/Cartographic/map/profile/drcongo.pdf>

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