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### **Peacekeeping Forces**

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## A. Notion

**1** The term 'peacekeeping' was coined to describe a type of military action, used as a tool in the United Nations' system of → *collective security*, which is consent-based and tries to maintain or preserve peace with no or only a minimal use of force (→ *Use of Force, Prohibition of*). It was designed as an alternative to enforcement action or enforcement measures which imply the use of force for the purpose of imposing the will of the enforcer on the addressee of the action.

**2** Both the Covenant of the League of Nations and the UN Charter established a system of collective security where coercion exercised by the international community against a State threatening or breaking the peace has been an essential element (→ *Peace, Breach of; Peace, Threat to*). The system contains both non-military and military coercion. Non-military coercion (Art. 16 (1) League Covenant) was used under the → *League of Nations*, the provision on military coercion (Art. 16 (2) League Covenant) was not. Yet the same double-track approach to the preservation or restoration of peace through coercion was also used by the drafters of the UN Charter. Although the UN Charter did not repeat what was considered the major procedural flaw of the League Covenant, namely the requirement of unanimity in the Council, they created an equivalent, namely the right of → *veto* of the permanent members of the UN Security Council. During the time of the → *Cold War (1947-91)*, that unanimity of the permanent members was impossible to achieve. Several attempts were made to overcome the resulting stalemate.

**3** In the case of the attacks by North Korea and China on South Korea in 1950 (→ *Korean War [1950-53]*), the Security Council did not take a fully-fledged enforcement action as provided by Arts 42 and 43 UN Charter, but recommended Member States to assist the victim and allowed the coalition thus formed to use the flag of the UN. That Security Council decision was rendered possible by the fact that the Soviet Union was absent from the Security Council table. When it returned, that door was closed.

**4** The next attempt was a legal and political construction which would enable the United Nations General Assembly to take all those decisions the Security Council is entitled to take under Chapter VII UN Charter. It was formulated in the so-called → *Uniting for Peace Resolution (1950)* (UNGA Res 377(V)). At the time, that concept was promoted by the United States which controlled the majority of the UN General Assembly. Yet this also proved to be unrealistic.

**5** Nevertheless, the use of military components of measures to maintain or restore peace was still considered useful and did not disappear. A new concept was developed where the use of military components is based on consent and cooperation, not on the use of stronger force. This concept had already been used by the League of Nations and in the early days of the UN. Its breakthrough was the Suez crisis of 1956 when UN Secretary-General Hammarskjöld and the Canadian Foreign Minister Pearson designed the UN Emergency Force as a buffer between Israel and Egypt. Despite considerable difficulties in the following years, the concept proved to be successful in the long run.

**6** After the end of the East-West conflict in 1990, a major obstacle to achieving unanimity among the permanent members of the Security Council disappeared. The concept of peacekeeping, however, has continued to be used in many crises, in some cases with good, in others with insufficient success. It has been supplemented, however, by two different developments: the use of military operations involving a higher degree of force undertaken

by States with the authorization, ie mandate, of the Security Council, and regional military measures for the maintenance of peace and security, in particular in Africa.

## **B. Historic Development and Practice**

### **1. The League of Nations**

7 During the time of the League of Nations, three operations involving military components were planned or executed. The first one related to the supervision of a plebiscite in the Polish-Lithuanian dispute about Vilna/Vilnius. These plans were not implemented. The second one was established as part of a short-term League of Nations administration of Leticia at the border between Peru and Colombia, based on an agreement between the two States. The third one was a multinational force created to maintain order during the plebiscite held in the → *Saar territory* in 1935, until then under the League of Nations administration according to Art. 49 Versailles Peace Treaty ([1919] 225 CTS 188). These forces can be considered as precedents in particular for those peacekeeping forces established in the framework of a UN administration.

### **2. The United Nations: Period of Trial and Error (1949-64)**

8 From the earliest days of the UN, military elements were used as tools to maintain or restore peace. The earliest examples are observer missions during the Balkan conflict 1946-51 (United Nations Special Committee on the Balkans ['UNSCOB']; UNGA Res 109 (II) 'Threats to the Political Independence and Territorial Integrity of Greece' [21 October 1947] GAOR 2nd Session 12); in Indonesia the UN Commission for Indonesia 1947-50 ('UNCI'; UNSC Res 67 [1949] [28 January 1949] UN Doc S/RES/67 [1949]); then the United Nations Truce Supervision Organization ('UNTSO'; UNSC Res 73 [1949] [11 August 1949] SCOR 4th Year 8) in Palestine (→ *Israel, Occupied Territories*) and the United Nations Military Observer Group in India and Pakistan ('UNMOGIP'; UNSC Res 47 (1948) [21 April 1948] SCOR 3<sup>rd</sup> Year 3), both created in 1949 and still existing today. Later, the United Nations Observation Group in Lebanon ('UNOGIL'; UNSC Res 128 [1958] [11 June 1958] UN Doc S/RES/128 [1958]) was established in 1958.

9 The United Nations Emergency Force I ('UNEF I') established by the United Nations General Assembly ('UNGA') in 1956 after the Israeli attack on Egypt and the British/French intervention had a mandate which went beyond observation (UNGA Res 998 (ES-I) [2 November 1956] GAOR 1st Emergency Special Session Supp 1, 2). It constituted a buffer between Israel and Egypt along the border between the two countries. Both the observer function and the buffer function of peacekeeping had in common that they were not meant to impose any particular result by the use of force; they are not 'enforcement measures' in the sense of Chapter VII UN Charter. Authorization to use force was strictly limited to → *self-defence*. UNEF I had to be withdrawn in 1967 before what came to be known as the Six-Day War.

10 Internal unrest in the Congo (as it then was) after its independence in 1960 resulted in a Belgian intervention. When the major Congolese political protagonists called for help, the Security Council dispatched a multinational force (United Nations Operation in the Congo ['ONUC']; 1960-64) with the mandate of helping the Congolese in maintaining order, ensuring the withdrawal of foreign military personnel not under UN authority and facilitating the restoration and maintenance of the territorial integrity of the Congo (UNSC Res 143 [1960] [14 July 1960] SCOR 5th Year 5). This mandate, at least as interpreted by the then-Secretary-General, gave the peacekeeping force an active role, technically based on an extensive concept of self-defence. The conduct of this operation resulted in

considerable political controversy. But when the peacekeeping force withdrew in 1964, a certain degree of stabilization had been reached.

**11** Despite the fact that both UNEF I and ONUC were quite successful, both operations gave rise to a heated debate in and outside the UN on the powers of the UN organs involved (General Assembly, Security Council and Secretary-General), including the question of financing. It was argued that the costs for these operations could not legally be made part of the UN budget, which had to be refinanced by the Member States (Art. 17 UN Charter). Many States refused to pay the amounts thus assigned (see below para. 34).

**12** The whole concept of peacekeeping was in crisis. Nevertheless, new peacekeeping operations were undertaken, but with a more limited scale of mandate. There was a traditional observer mission, the United Nations Yemen Observation Group from 1963–64 ('UNYOM'; UNSC Res 179 [1963] [11 June 1963] SCOR 18th Year 2). The UNGA created the United Nations Temporary Executive Authority from 1962–63 ('UNTEA'; containing as military element a UN Security Force in West New Guinea ['UNSF']) in West Irian to facilitate the peaceful transition of that territory from the Netherlands to Indonesia. It was based on an agreement between the two States concerned (UNGA Res 1752 (XVII) 'Agreement between the Republic of Indonesia and the Kingdom of the Netherlands concerning West New Guinea [West Irian]' [21 September 1962] GAOR 17th Session Supp 17, 70). Finally, the United Nations Force in Cyprus ('UNFICYP') was created in 1964 (UNSC Res 186 [1964] [4 March 1964] SCOR 19th Year 2). It still serves mainly as an interposition force between the Greek and Turkish communities in → *Cyprus*. In contradistinction to UNEF I and ONUC, it was financed by voluntary contributions.

### **3. The Consolidation of the Concept: The Middle East after 1973**

**13** The aftermath of the Yom Kippur War in 1973 led to a consolidation of the concept of interposition forces established by the Security Council: UNEF II was created in 1973 (UNSC Res 340 [1973] [25 October 1973] UN Doc S/RES/340 [1973]) and served as an interposition force between Egypt and Israel until the Peace Agreement of 1979 (Treaty of Peace between the Arab Republic of Egypt and the State of Israel [signed 26 March 1979, entered into force 25 April 1979] [1979] 1136 UNTS 116). The United Nations Disengagement Observer Force ('UNDOF') has served since 1974 as an interposition force between Syria and Israel in the Golan (UNSC Res 350 [1974] [31 May 1974] UN Doc S/RES/350 [1974]). The third of these Middle East interposition forces is the United Nations Interim Force in Lebanon ('UNIFIL') between Lebanon and Israel since 1978, with somewhat varying mandates (UNSC Res 425 [1978] [19 March 1978] UN Doc S/RES/425 [1978]; UNSC Res 426 [1978] [19 March 1978] UN Doc S/RES/426 [1978]). The three peacekeeping forces were established by the Security Council and financed through obligatory contributions by the UN Member States apportioned according to Art. 17 UN Charter. This concept is now consolidated.

**14** The use of observer groups continued (Observer Group Beirut from 1982–83; United Nations Iran–Iraq Military Observer Group ['UNIIMOG'] from 1988–91, UNSC Res 619 [1988] [9 August 1988] UN Doc S/RES/619 [1978]; and United Nations Supervision Mission in Syria ['UNSMIS'] UNSC Res 2043 [21 April 2012], mandate terminated 19 August 2012).

### **4. Complex Peacekeeping Operations (1990 onward)**

**15** By the end of the 1980s, new types of peacekeeping operations developed, namely highly complex operations in the aftermath of a—mostly internal—conflict to implement a peace agreement and to facilitate the return to normal conditions of life. All cases are different, but they show a number of typical common elements. Some of them come close to development assistance and are essentially civilian, not military: maintenance of order,

which may include the exercise of police functions, but also the training of police personnel, investigations into violations of human rights, preparation and control of elections, demobilization of fighting groups—including local → *disarmament*—and, as the case may be, their reintegration, and assistance in demining.

**16** The most important examples of this type of operation were the various United Nations Angola Verification Missions ('UNAVEM'; UNAVEM I 1989–91 [UNSC Res 626 (1988) (20 December 1988) SCOR 44th Year 19]; UNAVEM II 1991–95 [UNSC Res 696 (1991) (30 May 1991) SCOR 46th Year 37]; UNAVEM III 1995–97 [UNSC Res 976 (1995) (8 February 1995) SCOR 50th Year 59]; MONUA 1997–99 [UNSC Res 1118 (1997) (30 June 1997) SCOR 52nd Year 48]), the United Nations Observer Mission in El Salvador ('ONUSAL' 1991–95; UNSC Res 693 [1991] [20 May 1991] UN Doc S/RES/693 [1991]), the United Nations Advanced Mission in Cambodia ('UNAMIC'; UNSC Res 717 [1991] [16 October 1991] UN Doc S/RES/717 [1991]), the United Nations Transitional Authority in Cambodia ('UNTAC'; UNSC Res 745 [1992] [28 February 1992] SCOR 47th Year 39) from 1991–93; and the United Nations Operation in Mozambique from 1992–94 ('ONUMOZ'; UNSC Res 797 [1992] [16 December 1992] UN Doc S/RES/797 [1992]). Others are the United Nations Transition Assistance Group in Namibia from 1989–90 ('UNTAG'; UNSC Res 632 [1989] [16 February 1989] SCOR 44th Year 3), the United Nations Observer Group in Central America from 1989–92 ('ONUCA'; UNSC Res 650 [1990] [27 March 1990] UN Doc S/RES/650 [1990]), the United Nations Assistance Mission for Rwanda ('UNAMIR'; UNSC Res 892 [1995] [5 October 1995] UN Doc S/RES/892 [1995]) in 1993; and the United Nations Mission of Observers in Tajikistan ('UNMOT'; UNSC Res 968 [1994] [16 December 1994] UN Doc S/RES/968 [1994]) from 1994–2000. Recent examples include the United Nations Mission in the Republic of South Sudan ('UNMISS'; UNSC Res 1996 [8 July 2011] and 2155 [27 May 2014]) and the United Nations Interim Security Force for Abyei ('UNISFA'; UNSC Res 1990, 2 July 2011) as well as the United Nations Multidimensional Integrated Stabilization Mission(s) in Mali ('MINUSMA'; UNSC Res 2100 [25 April 2013] and 2164 [25 June 2015]) and in the Central African Republic ('MINUSCA'; UNSC Res 2149 [10 April 2014] after an earlier operation 1998–2000 ('MINURCA'; UNSC Res 1159 [27 March 1998])). The 'multidimensional' character of peacekeeping operations is emphasized in a general way by the Security Council. The operations should be conducted 'in a manner so as to facilitate post-conflict peacebuilding, prevention of relapse of armed conflict and progress towards sustainable peace and development' (UNSC Res 2086 [21 January 2013]). This includes environmental concerns, and, where needed, conservation or restoration of cultural heritage and cooperation with a sanctions committee of the Security Council (UNSC Res 2295 [29 June 2016]). Certain missions are particularly dedicated to the organization and supervision of elections: the United Nations Mission for the Referendum in Western Sahara ('MINURSO'; UNSC Res 690 [1991] [29 April 1991] SCOR 46th Year 35) since 1992; and the United Nations Stabilization Mission in Haiti ('MINUSTAH'; UNSC Res 1542 [2004] [30 April 2004] UN Doc S/RES/1542 [2004]) since 2004.

## **5. Peacekeeping in Crisis: Former Yugoslavia (1992 onward)**

**17** A great challenge for the concept of peacekeeping was the development of the crisis in Yugoslavia (→ *Yugoslavia, Dissolution of*). The idea of using a peacekeeping element developed in 1991, but was only implemented in 1992 with the establishment of the United Nations Protection Force ('UNPROFOR'; UNSC Res 743 [1992] [21 February 1992] UN Doc S/RES/743 [1992]). Its functions were different in different parts of former Yugoslavia, → *Croatia*, *Bosnia-Herzegovina*, and → *Macedonia*. In Croatia, its major function was to ensure peaceful conditions in UN protected areas ('UNPA'). But it also monitored local armistice arrangements. In Bosnia-Herzegovina, UNPROFOR negotiated several ceasefires and tried to ensure the access of the population to humanitarian relief, which became a

crucial question. In Macedonia, it was stationed mainly along the border with → *Serbia* and *Albania*.

**18** In 1995, the operation was restructured and split into three different, yet interlinked operations, namely the United Nations Confidence Restoration Operation in Croatia 1995–96 ('UNCRO'; UNSC Res 981 [1995] [31 March 1995] UN Doc S/RES/981 [1995]), in Macedonia the United Nations Preventive Deployment Force 1995–99 ('UNPREDEP'; UNSC Res UNSC Res 983 [1995] [31 March 1995] UN Doc S/RES/983 [1995]); and the United Nations Missions in Bosnia-Herzegovina from 1995–2002 ('UNMIBH'; UNSC Res 1035 [1995] [21 December 1995] UN Doc S/RES/1035 [1995]). In addition, there was a force belonging to the temporary United Nations Administration of Eastern Slavonia, Baranja, and Western Sirmium ('UNTAES'; UNSC Res 1037 [1996] [15 January 1996] SCOR 51st Year 25) from 1996–98. The character of UNMIBH was essentially civilian: assistance in law enforcement and humanitarian assistance (→ *Humanitarian Assistance, Access in Armed Conflict and Occupation*), the military role being taken over, pursuant to the Dayton Agreement, by a non-UN force (Implementation Force ['IFOR'; later Stabilization Force in Bosnia and Herzegovina ['SFOR'] 1996–2005) with a mandate given by the Security Council (UNSC Res 1031 [1995] [15 December 1995] SCOR 50th Year 18)).

## **6. 'Robust Peacekeeping' and the Double Track Approach: Peacekeeping and Mandated Military Enforcement Action**

**19** Previously the Congo crisis of the 1960s and thirty years later the crises in (former) Yugoslavia and Somalia put into question a basic rule that was a characteristic for peacekeeping operations, namely the fact that permissible use of force was limited to self-defence. In many instances, this limitation turned out not to be viable. One of the answers to this challenge was so-called 'robust peacekeeping', ie operations where, strictly speaking, use of force was authorized beyond self-defence. This approach was used in a limited number of cases, first expressed in an indirect way in Somalia and Yugoslavia (see UNSC Res 836 [4 June 1993] OP 9, authorizing measures to protect 'safe areas' in Bosnia-Herzegovina based on an expanded notion of self-defence), later more openly in some peacekeeping operations in Africa (see eg UNSC Res 2155 [27 May 2014] OP 4 'UNMISS' and UNSC Res 1990 [2 July 2011] OP 3 'UNISFA'). However, the most often used approach since 1990 has been another development of military instruments of crisis management, namely armed forces of States operating with Security Council authorization (mandate) to use force for specific purposes. These operations differ from traditional peacekeeping operations in two respects: first, they are not organs of the UN, but of the States contributing to the operation, not under UN command, but under that of these States, and second, their authority to use force is not limited to self-defence, but only by the purpose for which the use of force is authorized by the Security Council. The usual formula used for this authorization is 'to use all necessary means' to achieve a certain purpose.

**20** The first example of the latter kind of operation was the operation to enforce the withdrawal of Iraq from Kuwait (→ *Iraq-Kuwait War [1990–91]*). Soon thereafter, a practice developed to use the concept of mandated forces in conjunction with traditional peacekeeping operations or with civilian UN operations. The first example of this praxis was Somalia (→ *Somalia, Conflict*). After a first peacekeeping operation (United Nations Operation in Somalia I ['UNOSOM I'; UNSC Res 751 [1992] [24 April 1992] UN Doc S/RES/751 [1992]) had failed, a multinational force (United Task Force ['UNITAF']), led by the US, was authorized in 1992 by the Security Council to use force to create 'a secure environment' (UNSC Res 794 [1992] [3 December 1992] SCOR 47th Year 63) for humanitarian action. After it had achieved a partial pacification, the Security Council established a major peacekeeping operation which, however, retained some right to use

force beyond self-defence (United Nations Operation in Somalia II 1993–95 [‘UNOSOM II’]; UNSC Res 814 [1993] [26 March 1993] SCOR 48th Year 80).

**21** The operation of mandated coalition forces besides peacekeeping was used extensively during the crisis in (former) Yugoslavia: the enforcement of the no-fly zone over Yugoslavia, the authorization of air strikes to support UNPROFOR (UNSC Res 836 [4 June 1993] OP 10), IFOR, and SFOR in Bosnia-Herzegovina pursuant to the Dayton Agreement of 1995, the Kosovo Force (‘KFOR’; UNSC Res 1244 [1999]) since 1999 as ‘security presence’ in → *Kosovo* besides the UN Interim Administration in Kosovo (‘UNMIK’; UNSC Res 1244 [1999]). Another case is East Timor: the United Nations Mission in East Timor (‘UNAMET’) —established from June–October 1999 (UNSC Res 1246 [1999] [11 June 1999] UN Doc S/RES/1246 [1999])—initially was confronted with violence. A mandated International Force for East Timor (‘INTERFET’; UNSC Res 1264 [1999] [15 September 1999] UN Doc S/RES/1264 [1999]) led by Australia then restored order. This was followed by a temporary United Nations Transitional Administration in East Timor (‘UNTAET’; UNSC Res 1272 [1999] [25 October 1999] SCOR 54th Year 130) from 1999–2002 until fully fledged independence. The new government was supported by new UN operations, the UN Mission of Support in East Timor (‘UNMISSET’; UNSC Res 1410 [2002] [17 May 2002] UN Doc S/RES/1410 [2002]) from 2002–2005 and the UN Integrated Mission in Timor-Leste (‘UMIT’; UNSC Res 1704 [2006] [25 August 2006] SCOR [1 August 2006–31 July 2007] 50) since 2006. Later, this concept was used in Afghanistan through the establishment of the International Security Assistance Force (‘ISAF’), since 2002 besides a civilian UN Assistance Mission Afghanistan (‘UNAMA’; UNSC Res 1401 [2002] [28 March 2002] SCOR [1 August 2002–31 July 2003] 278; → *Afghanistan, Conflict*).

## **7. In Search of a Division of Tasks: United Nations Peacekeeping and Regional Organizations**

**22** Another important trend has become the involvement of regional organizations in military action to maintain or restore peace, applied in particular in Africa. The first example of this cooperation was the Observer Mission in Liberia (‘UNOMIL’; UNSC Res 866 [1993] [22 September 1993] UN Doc S/RES/866 [1993]) from 1993–97 cooperating with the Economic Community of West African States Monitoring Group (‘ECOMOG’), the peacekeeping mission established by the → *Economic Community of West African States (ECOWAS)* in 1990. Other African examples include the UN Mission in the Central African Republic (‘MINURCA’; UNSC 1159 [1998] [27 March 1998] UN Doc S/RES/1159 [1998]) from 1998–2000 which took over from an inter-African force; the UN Observer Mission in Sierra Leone (‘UNOMSIL’; UNSC 1181 [1998] [13 July 1998] UN Doc S/RES/1181 [1998]) from 1998–99 which was replaced in 1999 by the UN Mission in Sierra Leone (‘UNAMSIL’; UNSC Res 1270 [1999] [22 October 1999] UN Doc S/RES/1270 [1999]) until the completion of the mission in December 2005, cooperating with ECOMOG; the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (‘MINUSCA’; UNSC Res 2140 [10 April 2014]), which took over from an African-led International Support Mission (‘MISCA’; operating under the auspices of the Economic Community of Central African States [‘ECCAS’]); and joint operations of the UN and the → *African Union (AU)* within the UN-AU Mission in Darfur (‘UNAMID’; UNSC Res 1769 [2007] [31 July 2007] SCOR [1 August 2006–31 July 2007] 234) since 2007.

**23** In other parts of the world, one has to mention the United Nations Observer Mission in Georgia (‘UNOMIG’; UNSC Res 858 [1993] [24 August 1993] UN Doc S/RES/858 [1993])

which lasted from 1993 to 2009 monitoring the → *Commonwealth of Independent States (CIS)* peacekeeping activities in Abkhazia.

**24** In certain cases, the European Union has provided peacekeeping operations in conjunction with and in support of UN peacekeeping (eg in Congo, → *Sudan*, and the Central African Republic).

## **8. Current Peacekeeping: A Complex Scene**

**25** As of 31 July 2016, there was a complex picture of variety in 16 peacekeeping operations and one special mission (UNAMA). Involving personnel of about 120,000, of which more than 100,000 were in uniform. There were traditional long-standing observer missions (UNTSO, UNMOGIP) and interposition forces (UNFICYP, UNDOF, UNIFIL). There were post-conflict stabilization missions of various kinds (Sudan, Timor-Leste [UN Integrated Mission in Timor-Leste ('UNMIT'); UNSC Res 1704], Haiti, Congo [UN Stabilization Mission in the Democratic Republic of the Congo ('MONUSCO'); UNSC Res 1925 (2010)], the Central African Republic [MINUSCA; UNSC Res 2149 (2014)], Mali [MINUSMA; UNSC Res 2100 (2013)], and South Sudan [UNMISS; UNSC Res 1996 (2011) and 2155 (2014)]). The UN undertakes operations in conjunction with regional organizations (Darfur, Sierra Leone), and it operates side by side with mandated coalition forces (UNMIK, UNAMA).

## **C. The Functions of Peacekeeping Operations**

**26** The two basic conceptual reports by the Secretary-General on instruments for the maintenance of international peace and security, namely the Agenda for Peace 1992 (UNGA 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping: Report of the Secretary-General') and the Supplement to the Agenda for Peace 1995 (UNGA 'Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the fiftieth Anniversary of the United Nations') envisage peacekeeping operations for three different phases: → *conflict prevention*, conflict management during conflict, and post-conflict → *peacebuilding*. This describes the functions of current peacekeeping operations in general terms. More precisely, the following functions can be distinguished:

- Transparency and confidence building: observer groups;
- Separation of parties in conflict: interposition forces;
- Maintenance of order in failed States or post-conflict peacebuilding;
- Verification as part of post-conflict peace-building;
- Local disarmament, reintegration of fighters into normal life, demining;
- Assistance in the re-establishment of State functions (eg elections).

## **D. The Formation and Structure of Peacekeeping Operations**

**27** The establishment of UN peacekeeping operations is a complex legal transaction. The first basis is found in a resolution of the Security Council, in some cases the UN General Assembly, preceded or followed by an agreement between and/or with the parties to a conflict. Although the Security Council could impose the presence of a peacekeeping operation in a given country by a resolution binding pursuant to Art. 25 UN Charter, it is part of the specific concept of peacekeeping as a consent-based instrument that the



agreement of the parties involved is sought. The agreement can take the form of a declaration accepting the relevant resolution; it can be an elaborate legal instrument.

**28** The various peacekeeping operations are created as subsidiary organs of the UN organ creating the operation (UN General Assembly or Security Council). The overall operation and management of peacekeeping operations is handled by a special division of the UN Secretariat, the Department of Peacekeeping Operations ('DPKO') headed by an Undersecretary-General. The command level of a specific operation—ie the Commander in Chief, Personal Representative of the Secretary General, staff—is part of the DPKO. But below that level, the military components of peacekeeping operations are national contingents, placed as units at the disposal of the UN by their respective State of origin. In contradistinction, the civilian component of a peacekeeping operation is composed of persons hired in their individual capacity. They may be seconded by States or not. Observer missions may be formed by persons hired in their individual capacity or by national contingents.

**29** Thus, a peacekeeping operation is formed in the following steps: first, appointment of the command structure and the members of the civilian component by the Secretary-General; second, an agreement between the UN and the State contributing troops is concluded after which national military units are transferred and placed under the authority of the UN. Although the national contingents in this way become organs of the UN, they retain a link with their State of origin, which entails the necessity of a division of responsibilities between the UN and the State of origin of a contingent, including financial ones.

**30** The fact that the operations are established as organs of the UN entails as a consequence that acts or omissions of members of the operation—both persons hired individually and members of national contingents—are attributed to the UN. The UN, not the States contributing contingents, is internationally responsible for the behaviour of all members of the operation as, and to the extent that, the UN has 'effective control' over them (see Art. 7 ILC Articles on the Responsibility of International Organizations). This rule is also applied where individuals claim to be the victims of unlawful acts of members of peacekeeping operations (eg in the *Srebrenica* cases before Dutch courts). In these cases, the jurisdictional immunity of the UN prevents national courts from providing a remedy, a result hardly compatible with the principle of the rule of law. On the other hand, it is the UN, not the contributing State which may address claims to third States acting unlawfully against members of the operation (right of functional protection).

**31** This construction also involves problems of internal organization. The most important one is how to ensure the appropriate behaviour of peacekeepers in a situation where the UN does not have the same jurisdictional grip on the persons in question as a State has on its personnel. Sexual misbehaviour of peacekeepers is a major problem. The Secretary-General tries to ensure the accountability of peacekeepers through an elaborate internal rule-making (guidelines) and through cooperation with the States contributing contingents. The Secretary-General also has to address problems of gender equality.

## **E. The Legal Basis for Peacekeeping Operations in the United Nations Charter**

**32** In order to elucidate the legal basis for peacekeeping operations under the UN Charter, one has to distinguish three different types of enabling provisions: first, substantive enabling provisions, ie provisions empowering the organization and/or a certain organ to deal with a particular subject matter or with a particular type of situation; second, formal enabling provisions, ie provisions granting the power to adopt binding decisions (Art. 25 UN Charter for the Security Council, Art. 17 UN Charter for the UN General Assembly);

third, organizational enabling provisions, ie provisions enabling a particular organ to take organizational measures (power to create subsidiary organs in Arts 22 and 29 UN Charter; power to entrust certain functions to the Secretary-General under Art. 98 UN Charter).

## 1. Security Council

**33** The powers of the Security Council are in a general way formulated in Art. 24 UN Charter. It has the 'primary responsibility' for the maintenance of international peace and security. For that purpose the article refers to the various specific powers contained in Chapters VI, VII, VIII, and XII UN Charter. Art. 34 UN Charter describes for Chapter VI and Art. 39 UN Charter for Chapter VII the situations in which the specific powers exist. In the beginning of its practice, the Security Council did not specify under which provision it was acting. More recently, it used to determine that it is acting under Chapter VII UN Charter without specifying under which provision. Where the situation is not yet urgent, the Security Council could also act under Chapter VI UN Charter.

**34** Resolutions adopted under Chapter VI UN Charter are not binding, as the Security Council under that chapter is limited to adopting 'recommendations'. On the other hand, resolutions adopted under Chapter VII are binding unless the Security Council itself refrains from taking a binding decision and limits itself to adopting a recommendation according to Art. 39 UN Charter. A recommendation may, however, also become binding when it is accepted as such by the party concerned. Given that there is a habit to seek the acceptance of the parties concerned for the relevant resolutions establishing a peacekeeping operation, the practical difference between the two possibilities is not so important. In the internal organizational sphere of the UN decisions are binding according to Arts 29 and 98 UN Charter.

## 2. General Assembly

**35** The substantive powers of the UN General Assembly cover, as a matter of principle, the entire field of activities of the UN, which includes the maintenance of international peace and security, as is expressly provided in Art. 11 UN Charter. These powers are, however, to a certain extent limited by the prerogatives of the Security Council. The Security Council has the 'primary', but not the exclusive responsibility for the maintenance of international peace and security (→ *Certain Expenses of the United Nations [Advisory Opinion]*). The powers of the UNGA are limited by the last sentence of Art. 11 (2) UN Charter: a question which requires 'action' must be referred to the Security Council. The question of whether this means any substantive decision or only enforcement measures under Arts 41 and 42 UN Charter is left open. But a decision on a peacekeeping operation could also be based on Art. 14 UN Charter, which—according to the → *International Court of Justice (ICJ)*—is not subject to the limitation of Art. 11 (2) UN Charter. Thus, the ICJ held that the establishment of UNEF I lay within the powers of the UNGA. But since 1963, all peacekeeping operations have been established by the Security Council. It may be argued that this has entailed a customary law limitation of the UNGA powers under Arts 11 and 14 UN Charter.

**36** In a related field, the powers of the UN General Assembly are exclusive, namely those concerning the budget of the organization and the apportionment of expenses among the Member States according to Art. 17 UN Charter. Only the UN General Assembly can impose upon members a duty to financially contribute to the expenses of the organization. Within its sphere of substantive and organizational powers, the Security Council may create financial obligations of the organization which the UN General Assembly must honour in its

decision on the budget. But this is nevertheless a decision to be taken by the UN General Assembly alone.

## **F. The Rights and Duties of United Nations Peacekeeping Forces in the Host State**

**37** Typically, the peacekeeping operations are organs of the UN—most of them subsidiary organs of the Security Council. Thus, the UN, not the States providing military contingents for an operation, are the addressees of rights and obligations concerning the legal position of the operation in the host State.

**38** The rights and duties of a peacekeeping operation in the host State are, first of all, determined by the resolution establishing the operation, which will have been accepted by that State, thus creating a contractual relationship between the host State and the UN. This resolution constitutes the mandate of a peacekeeping operation. In many cases, agreements are concluded between the parties to a conflict before a UN resolution is adopted. These agreements form a part of the legal regime governing a peacekeeping operation.

**39** The relevance of the basic resolutions makes their interpretation a crucial point in determining the rights and duties of a peacekeeping operation and its members. The resolutions often refer to reports of the Secretary-General submitted to the Security Council (earlier also the UNGA) which outline the tasks and functions of an operation to be established. These reports are, thus, important for determining its rights and duties. They differ for different types of operations. In particular where a peacekeeping operation has the task to administer a given territory, its powers and obligations differ from that existing in normal peacekeeping operations.

**40** For most peacekeeping operations, this contractual relationship has been further elaborated by → *Status of Armed Forces on Foreign Territory Agreements ('SOFA')*. Since UNEF I, these agreements have a typical content inspired by preceding State practice concerning visiting forces, which is now formulated in a model agreement. In addition, two multilateral treaties apply, namely the Convention on the Privileges and Immunities of the United Nations ('CPIUN') and the Convention on the Safety of United Nations and Associated Personnel. Newer status of forces agreements refer to the CPIUN.

**41** The basic principle underlying the SOFA is the full → *sovereignty* of the host State. Thus, the peacekeeping operation has to respect the law of that State, subject to certain exceptions established by the SOFA and by customary international law.

**42** A first and important principle is that the relationship between the UN and the members of the operation—armed forces and civilian component—are not subject to the law of the host State. This applies also to the relationship between the armed forces and local personnel. The UN and its property as well as the property of the State furnishing contingents are inviolable. The UN enjoys jurisdictional immunity. The operation enjoys a right of free communication by whatever means. The members of the peacekeeping operation enjoy certain immunities from criminal and civil jurisdiction of the host State. On the other hand, the mandate gives certain functions and powers vis-à-vis the population of the host State. Limited as these powers may be according to the mandate, there is the problem whether and to what extent individuals affected by the acts or omissions of peacekeeping operations enjoy legal protection, including an effective remedy in case of a

violation. The practical solution of this problem is characterized by improvisation, such as the establishment of local claims commissions.

**43** On the other hand, the host State has a number of obligations vis-à-vis the peacekeeping operation and its personnel. The host State is obliged to cooperate with the operation and to provide certain services and material needed for the use of the operation. Pursuant to the Convention on the Safety of UN and Associated Personnel, the host State must prosecute and punish acts of violence against the members of peacekeeping operations.

**44** In the case of territorial administration, the legal situation is different from normal peacekeeping operations as the organization exercises a comprehensive governmental power, and is thus not bound by local law. In this situation, the head of the peacekeeping operation has the supreme legislative power, which poses a certain problem as to the democratic legitimization of such legislation.

**45** The regulations of the SOFA are geared to the situation of visiting forces, they are not appropriate in the case of the administration of a territory by the UN where the organization exercises a comprehensive governmental power, and is thus not bound by local law.

**46** Particularly in this situation, but also in other cases where the peacekeeping operation involves functions which amount to the exercise of 'jurisdiction', the question arises whether and to what extent the UN is bound by → *human rights* standards. As the UN is not a party to relevant treaties it can only be bound by rules of → *customary international law*. Indeed, the UN is bound by it. Given that the core of human rights law constitutes → *ius cogens*, the Security Council is not entitled to modify this legal obligation of the organization.

**47** The question of the application of customary international law also arises in respect of the law of armed conflict. Normally, the situation of a peacekeeping operation, with its very limited powers to use force, cannot be characterized as an armed conflict. There is no place for the application of the law of armed conflict. But there have been and there can be situations where UN peacekeeping forces are drawn into fighting. In this situation, the customary law of armed conflict applies. For a long time, this has been maintained by the → *International Committee of the Red Cross ('ICRC')*, while the Secretary-General was somewhat reluctant to accept it. But this legal possibility is now accepted by the Secretary-General who, in a 'Bulletin' issued in 1999, formulated the principles of international humanitarian law to be applied by United Nations forces 'when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement' (UN Secretary-General's Bulletin of 6 August 1999 on Observance by United Nations Forces in International Humanitarian Law para. 1.1). During such engagement, UN forces are also not protected by the Convention on the Safety of UN and Associated Personnel.

## **G. The Relation between the United Nations and Participating States**

**48** The relation between the UN and the States contributing contingents of armed forces is regulated by an international agreement, which may be an elaborate written text or implied in the behaviour of the parties to this agreement. This agreement places a contingent at the disposal of the UN. It transfers, in particular, the power to give orders, ie command power from the State to the UN. This command power is, in principle, exclusive. The participating State retains, however, certain functions: powers related to personnel administration, discipline, and criminal jurisdiction. These powers of the participating State must be

exercised so as to enable the UN to comply with its obligations vis-à-vis the host State. In particular, where under the general law of the responsibility of international organization, similar to the law of → *State responsibility*, it would be required to prosecute a military or civilian member of a peacekeeping operation, the participating State must be prepared, and de facto and de iure able, to exercise its criminal jurisdiction accordingly (→ *Criminal Jurisdiction of States under International Law*).

## **H. 'Permanent' Forces and Stand-by Arrangements**

**49** The relative frequency of peacekeeping operations and the consolidation of this concept since the 1970s have triggered efforts to facilitate the establishment of such operations in crisis situations by creating some kind of permanent mechanism—an idea which underlies Art. 43 UN Charter. Certain States have indeed been prepared to maintain forces ready, and especially trained, for such operations and to agree with the UN on a 'stand-by' arrangement. This arrangement does not constitute, however, a fully-fledged obligation to provide military contingents on request to the UN. These stand-by arrangements do not constitute a permanent UN force.

**50** Based on the experience during the Yugoslav crisis, the Secretary-General, in his position paper relating to the Supplement to an Agenda for Peace, recommended that a rapid deployment force, still consisting of national units, should be established which would be trained to the same standard, would use the same operating procedures and inter-operable equipment, and would undertake common exercises. In 1996, a number of countries responded to that request by agreeing on a Multinational Standby High Readiness Brigade for United Nations Operations ('SHIRBRIG'). This provided for some uniformity and cooperation among troop-providing countries, but the national discretion and procedures to participate in a given operation remained unaffected. A mandate of the Security Council was required. These units took part in a number of peacekeeping operations (United Nations Mission in the Sudan ['UNMIS'] [UNSC 1590 (2005) (24 March 2005) UN Doc S/RES/1590 (2005)]; United Nations Missions in Ethiopia and Eritrea ['UNMEE'] [UNSC Res 1320 (2000) (15 September 2000) UN Doc S/RES/1320 (2000)]). The scheme was, however, discontinued in 2009.

## **I. Peacekeeping and Other Military Action by Regional Organizations**

**51** Peacekeeping operations are also undertaken by regional organizations (see above paras 22–24), namely by the → *Organization of American States (OAS)*, AU, ECOWAS, ECCAS, the European Union, and CIS. Plans for peacekeeping operations to be undertaken by the → *Organization for Security and Co-operation in Europe (OSCE)* have so far not materialized. In many respects, these operations follow the model of the UN operations, but there are differences. These operations are not in all cases organs of the relevant organization (eg the European Union). If their mandate includes a use of force which amounts to an enforcement action, a Security Council authorization is required (Art. 53 (1) UN Charter). In some cases that authorization was not sought or given, and the legality of the operations thus remained controversial. In other cases, the Security Council took a positive stance towards operations undertaken without such authorization. However, the question of whether the authorization can be given after the start of the operation remains controversial.

## J. Mandated Forces

**52** Since the operation to repel the Iraqi invasion into Kuwait 1990–91, the Security Council, acting under Chapter VII UN Charter, has in a number of cases authorized certain States or groups of States to use force for specific, more or less broadly defined purposes. This practice has become generally accepted, so that there is no longer any point in questioning its legality. The legal basis is found in Arts 39, 42, and 48 UN Charter.

**53** These mandated forces are not UN forces; they are not organs of the UN. They remain organs of the respective participating States acting as a coalition. Their status in the area of operations varies with the context.

## K. National Legal Problems of Participation

**54** The national decision to place armed forces at the disposal of the UN is subject to conditions which may be imposed by national constitutions. There are three levels of questions. First, does the national constitution permit participation in international military operations at all? This question was highly controversial in both Japan and Germany and solved by legislation and by court decisions (Germany). Second, does the national constitution prescribe certain procedures for the decision to participate? In Germany, the Federal Constitutional Court held that a decision by parliament was necessary (German Federal Constitutional Court 2nd Senate [2008] 28 NJW 2018); in the US, the question is still controversial under the War Powers Resolution 1973, 50 USC § 1541–48). There is a widespread trend to require parliamentary consent or authorization. Third, how can it be achieved by law that national contingents indeed become subject to the command power of the UN and that the national contingents' behaviour conforms to the obligations incumbent upon the United Nations?

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