Peacekeeping and Peace Enforcement
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A. Defining and Delineating the Concept

1 The term ‘peacekeeping’ refers to measures aimed at preventing a breach of the peace (→ Peace, Threat to) or maintaining and restoring peace (→ Peace, Breach of), which are carried out with the authorization of the United Nations or other international and regional organizations. Peacekeeping was traditionally viewed as a counterpoint to ‘enforcement action’, under Chapter VII of the → UN Charter, which implies that threats to the peace are dealt with by force. However, in recent years, as the traditional distinction between peacekeeping and coercive enforcement has gradually dissipated, hybrid notions such as ‘peace enforcement’, ‘robust peacekeeping’, and ‘peace operations’ have emerged to denote a more overtly militarized approach to UN-mandated conflict management.

2 Peacekeeping invariably involves the deployment of military force into a conflict or post-conflict area. In a narrow sense, however, it should be distinguished from two cognate concepts: (1) peacemaking, which refers to the process of ending conflict through → negotiation, → mediation, or → arbitration; and (2) → peacebuilding, meaning longer-term development and governance strategies aimed at fostering a self-sustaining peace, in particular: security sector reform; → disarmament; demobilization and reintegration; transitional justice (→ Transitional Justice In Post-Conflict Situations); and the → rule of law. In practice, recent UN operations also perform peacemaking and peacebuilding functions; such operations are known as ‘multidimensional peacekeeping’.

3 Classical peacekeeping relies on three key principles, known also as ‘the trinity of virtues’: (1) consent: → peacekeeping forces are deployed with the consent of the State(s) on whose territory operations are carried out; (2) non-use of force: peacekeepers can only use force in → self-defence (more recently, in defence of the mission mandate); and (3) impartiality: force cannot be used in favour, or to the detriment, of a party to the conflict. The trinity of virtues ensures respect for the principle of non-interference in the internal affairs of sovereign States. But it also implies that the core functions of peacekeeping are limited to: (1) supervising → ceasefires; (2) monitoring and reporting on developments in conflict areas; or (3) acting as a buffer or an interposition force between rival factions. Given its limited aims, classical peacekeeping is best understood as a temporary and consensual confidence-building measure, which allows the negotiation of a permanent peace settlement.

4 Since the end of the → Cold War (1947–91), peacekeeping has gradually evolved from a risk-averse method of → conflict management to a more robust tool of conflict resolution. Tasked with protecting civilians and eliminating the root causes of conflict, modern multidimensional peace operations combine elements of classical peacekeeping and longer-term peacebuilding strategies. As a result, peacekeepers perform more diverse tasks, ranging from traditional ceasefire supervision to human rights protection and democracy promotion. The expansion of peacekeeping → mandates, coupled with the United Nations Security Council’s (‘UNSC’) practice of invoking Chapter VII (associated with coercive enforcement against the sovereignty of States) has created a conceptual vagueness at the heart of peacekeeping, which is increasingly assimilated with militarized peace enforcement as opposed to the traditional idea of consensual peacekeeping.

5 This article examines the doctrine of peacekeeping through the lens of UN-mandated peacekeeping forces. Operations conducted by other international and regional organizations will feature insofar as they illustrate salient aspects of UN peacekeeping.
B. Historical Evolution

6 The idea of peacekeeping changed considerably during the 20th century. The Covenant of the League of Nations, though premised on the concept of collective security, institutionalized only a weak method of conflict prevention. Though it made no mention of peacekeeping as such, the Council—the League’s executive body—could recommend ‘what effective military, naval or air force the Members of the League shall severally contribute to the armed forces to be used to protect the covenants’ (Art. 16 (2) Covenant of the League of Nations). The hortatory nature of the Covenant’s peace and security arrangements prevented the League from playing a significant role in the political and military developments of the interwar years, though a few military operations were eventually deployed: (1) a contingent of troops observed a border dispute between Colombia and Peru in 1933; (2) several missions supervised a series of interwar plebiscites in Schleswig, Upper Silesia, Sopron, Allenstein, and Marienwerder; and (3) a multinational force, under the command of a League-appointed chairman, oversaw the 1934–35 plebiscite in the Saar Territory. These isolated instances of conflict management can be viewed as precursors to peacekeeping, which emerged only after World War II under the auspices of the League’s successor: the United Nations.

7 During negotiations of the UN Charter, the ambitious idea of a permanent international military force (International Military Forces) was considered, but eventually rejected. Even though the Charter requires States ‘to make available to the UNSC, on its call and in accordance with a special agreement or agreements, armed forces… necessary for the purpose of maintaining international peace and security’ (Art. 43 UN Charter), this provision is, in fact, a dead letter. The term does not appear anywhere in the UN Charter, so peacekeeping crystallized as a matter of diplomatic and military practice after World War II, with UN-led operations established on an ad hoc basis. Although the first UN-mandated forces were deployed to Palestine, Kashmir, and the Balkans in the late 1940s, the label ‘peacekeepers’ was not yet in use and—given their limited tasks and troop numbers—these missions are generally viewed as a more modest form of UN-sanctioned conflict management.

8 Established by the UNGA in the aftermath of the 1956 Suez Crisis, the UN Emergency Force in the Suez (‘UNEF I’) is generally considered the first fully fledged instance of UN-mandated peacekeeping. In his report to the United Nations General Assembly (‘UNGA’) in 1957, Dag Hammarskjöld, the second UN Secretary-General (1953–61), formulated the three ‘fundamental principles’ of peacekeeping, where he argued that ‘the use of military force by the United Nations other than under Chapter VII requires the consent of the State in which the [peacekeeping] force is to operate… [i]t must, furthermore, be impartial, in the sense that it does not serve as a means to force settlement, in the interest of one party, of political conflicts or legal issues recognized as controversial’ (Report to the General Assembly in Pursuance of General Assembly Resolution 1123 [XI] on Israeli Withdrawal para. 5b). While acknowledging that peacekeepers had an inherent right to use force in self-defence, Hammarskjöld stressed that a wide interpretation of these powers would transform legitimate peacekeeping into ultra vires military enforcement, which would, in turn, require the UNSC’s authorization under Chapter VII of the UN Charter. UNEF I adhered to the three principles consistently: only the Egyptian government consented to the deployment of peacekeepers, so no troops were based on the Israeli side of the ceasefire line; when Egypt revoked its consent in 1967, the mission ended.
There were few opportunities to revisit Hammarskjöld’s principles or test the limits of peacekeeping during the Cold War. Securing unanimity in the UNSC for Chapter VII measures proved impossible, with just one exception: the UN Operation in the Congo (1960–64, known by its French acronym ‘ONUC’). Deployed shortly after the Congo gained independence from Belgium in 1960 (→ Congo, Democratic Republic of the), ONUC had a classical mandate based on host State consent, impartiality, and non-use of force beyond self-defence. However, rapidly changing circumstances, including the → secession of Katanga and South Kasai provinces, put the mission’s 20,000 troops (at the height of the operation) and the Congo’s expatriate community at significant risk. Amended a few times to reflect military developments on the ground, ONUC’s mandate eventually authorized ‘vigorous action, including the use of the requisite measure of force, if necessary’ (UNSC Resolution 169/1961 para. 4). With ONUC attempting to restore peace in a full-fledged civil war, the UN was forced to take sides in the conflict, which undermined the operation’s impartiality and the principle of non-use of force. ONUC set a troubling precedent that the major powers would not follow until the end of the Cold War, even though 10 more peacekeeping missions, with narrowly circumscribed mandates, were created in the intervening 30 years. In retrospect, peacekeeping remained an acceptable method of conflict management during the Cold War only because of its disavowal of militarized intervention and respect for State sovereignty.

C. Recent Developments

The UN has become more involved in peacekeeping in the 25 years since the end of the Cold War. Between 1989 and 2015, over 50 peacekeeping operations were established (compared to just 12 during the previous 40 years). Before 1988, small numbers of troops operated in fairly stable environments and rarely—with the exception of ONUC—resorted to military force to carry out their limited mandates. Since 1988, peacekeepers intervene primarily in civil wars against rebel groups and non-state actors as opposed to regular armed forces. Moreover, with many intra-State conflicts occurring in the world’s poorest countries, peacekeepers now face new challenges, especially humanitarian emergencies with large numbers of → refugees, → internally displaced persons, and widespread human rights violations. The implosion of State institutions has even required the UN to deploy large-scale State-building interventions on two occasions.

With the end of the Cold War, conflicts previously defined by the East–West rivalry became amenable to multilateral solutions, changing the political realities surrounding peacekeeping. In 1989, after decades of peace negotiations, the UN’s first multidimensional peacekeeping mission, comprising military, police, and civilian components, was deployed to Namibia to enable the territory’s transition to independence from South Africa. In 1990, an enforcement operation (‘Desert Storm’) was authorized by the UNSC under Chapter VII of the UN Charter, following Saddam Hussein’s invasion of Kuwait (→ Iraq-Kuwait War [1990–1991]). The restoration of Kuwait’s sovereignty by a multinational ‘coalition of the willing’ (→ International Military Forces), monitored subsequently by the UN Kuwait–Iraq Observation Mission (UNIKOM), reflected a resurgence of cooperation at the international level and prompted a reconsideration of peacekeeping’s core tenets.

Commissioned by the then UN Secretary-General Boutros Boutros-Ghali (1992–96), An Agenda for Peace marked the beginning of a new approach to conflict management at the UN. The report made it clear that peacekeeping would henceforth be just one among other tools—alongside preventive diplomacy, peacemaking, and peacebuilding—in the UN’s struggle to secure international peace and security. By defining peacekeeping as ‘the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned’ (UN Doc A/47/277 [17 June 1992] para. 20), the report implied that
consent may no longer be strictly necessary and presciently anticipated more robust military operations in the future.

13 In the 20 years since the report’s publication, UN peacekeepers have operated in increasingly hostile environments and performed an array of peacebuilding and, occasionally, State-building tasks. Not surprisingly, this reorientation of priorities has given rise to new difficulties, which the UN has intermittently sought to address through new policies. Convened in 2000 by the then UN Secretary-General Kofi Annan, the Panel on United Nations Peace Operations was a response to the UN’s peacekeeping failures in the mid-1990s in → Rwanda, Yugoslavia (→ Yugoslav, Dissolution of), and Somalia (→ Somalia, Conflict). Named after the Panel’s chairman Lakhdar Brahimi, the Brahimi Report highlighted various challenges facing peacekeepers in the field, especially preventing mass human rights violations and dealing with so-called ‘spoilers’, which were defined as hostile factions seeking to undermine negotiated peace settlements. The report proposed an ambitious set of reforms to address these challenges, emphasizing that peacekeeping missions needed clearly defined mandates, more troops, better equipment, and more robust rules of engagement in order to fully implement their mandates. In 2015, a High Level Independent Panel on United Nations Peace Operations (‘HIPPO’) released a comprehensive assessment of the state of peacekeeping in anticipation of the UN’s 70th anniversary. Echoing many reforms proposed by the Brahimi Report 15 years earlier, especially with respect to the UN’s peacekeeping institutional architecture (see below), the HIPPO Report reflects the UN’s growing unease with the militarization of peacekeeping and recommends that politics—not military and technical engagements—must lead the quest for lasting peace.

14 Neither the Brahimi Report nor the HIPPO report, or any other UN statement of policy in the last 20 years, has openly disavowed the doctrine of classical peacekeeping. The Brahimi Report emphasized that ‘consent of the local parties, impartiality and use of force only in self-defence should remain the bedrock principles of peacekeeping’ (UN Doc A/55/305 [21 August 2000] para. 48). Published by the Department of Peacekeeping Operations in 2008, the ‘Capstone Doctrine’ endorsed this view. Since 2013, peacekeeping mandates have consistently re-affirmed the doctrine of classical peacekeeping in the preambles of UNSC resolutions. The HIPPO Panel also threw its weight behind the trinity of virtues, although it was careful to underscore that ‘the principles of peacekeeping should never be used as an excuse for failure to protect civilians or defend the mission proactively’ (HIPPO Report, para. 122). These statements of doctrine notwithstanding, the UN openly acknowledges that the realities of modern peacekeeping are very different than during the Cold War: (1) impartiality should be understood as a lack of partiality, whereby peacekeepers refrain from taking sides in a conflict, as long as this does not undermine the mission mandate, especially the principle of protecting civilians; (2) consent remains desirable but it can be dispensed with if a hostile faction withholds consent in bad faith; moreover, in the context of intrastate conflicts with multiple armed factions it may not always be possible to obtain consent beyond that of the government; and (3) the use of force beyond self-defence may sometimes prove essential to an operation’s goals, especially when the lives of peacekeepers and civilians are at risk. Wider allowances for the use of force in some peacekeeping mandates have led many commentators to argue that peacekeeping has shifted closer to Chapter VII enforcement—associated with coercive military force—than Chapter VI pacific dispute-settlement. While the scholarly and policy debate remains inconclusive, it is clear that there is currently no unified doctrine of peacekeeping, and that mission mandates must be interpreted on a case-by-case basis.
D. Legal and Institutional Framework

15 The law applicable to UN peacekeeping is a complex mix of international agreements, customary international law, and internal mission regulations. As subsidiary organs of the UN, peacekeeping operations are subject to the law governing the UN as a whole, but it must be remembered that the UN Charter does not institutionalize or regulate peacekeeping as such. As a result, general UN policy and political decision-making as well as diplomatic and military practice have been equally influential in determining and circumscribing the legal contours of UN peacekeeping. Since the ICJ’s 1962 Advisory Opinion (→ Certain Expenses of the United Nations [Advisory Opinion]), it is accepted that establishing peacekeeping operations is part of the UN’s implied or inherent powers (→ International Organizations or Institutions, Implied Powers). However, even if peacekeeping is an inherent power of the UN, this only begs the question which specific legal rules are applicable to the actual conduct of peacekeeping operations.

16 During the Cold War, there was disagreement as to which principal UN organ had the authority to establish peacekeeping missions. Although the UNGA established only two missions—UNEF 1 in 1956 and the UN Security Force in West New Guinea in 1962—the ICJ (in Certain Expenses) expressly recognized the UNGA’s authority to do so, which implies that both the UNGA and the UNSC may create peacekeeping missions. In practice, however, in the intervening 50 years only the UNSC has deployed peacekeeping operations, leading some commentators to suggest that there is a customary limitation on the UNGA’s powers in the area of peacekeeping. While the debate about the respective powers of the UNGA and the UNSC may seem academic in the current political climate, where new peacekeeping operations are established on a regular basis, it may resurface if and when the UNSC permanent members are unable to agree on the deployment of a specific mission in the future.

17 Once established, peacekeeping missions become subsidiary organs of the UNSC (or, historically, the UNGA). The UN Secretary-General is the de facto highest administrative authority and the Commander-in-Chief of a peacekeeping force, though he usually acts through his special representatives delegated to specific missions. The force commander is the highest military authority at the mission level. Subject to renewal every six to twelve months, the mission mandate, which defines the aims and functions of a specific operation, is usually adopted as part of a UNSC resolution. Mandate renewal is considered an opportunity to assess progress and, where applicable, change or terminate the mission.

18 The legal basis—and thus the legal boundaries—of UN peacekeeping was hotly debated during the Cold War, even though the majority of missions relied on host State consent and rarely led to military confrontations (so the practical effect of these debates was minimal). In the post-Cold War era, the UNSC’s increased use of Chapter VII and wider peacekeeping mandates has raised new questions about the applicable legal framework. Irrespective of who authorizes an operation, the question is what specific powers the UNSC and the UNGA are exercising. According to the UN Charter, the UNSC ‘may establish such subsidiary organs as it deems necessary for the performance of its functions’ (Art. 29), which comprise—in the context of peacekeeping—the power to investigate a dispute (Art. 34), recommend or decide on a method of dispute settlement (Arts 36–38), order provisional measures (Art. 40), or take military enforcement action (Art. 42). Meanwhile, the UNGA can establish subsidiary organs to perform its functions, but—unlike the UNSC—its actions are not binding even in matters concerning the maintenance of international peace and security (Arts 10 and 11) or ‘the peaceful adjustment of any situation... likely to impair the general welfare or friendly relations among nations’ (Art. 14). The legal basis of UNGA-mandated
operations is currently moot, given that it has not exercised these recommendatory powers in over half a century.

19 By contrast, the legal basis of UNSC-mandated peacekeeping missions remains relevant. Though only the UNSC may confer enforcement powers under Chapter VII of the UN Charter, peacekeeping resolutions usually do not specify which Charter provisions constitute the legal source stricto sensu of the mission mandate. The legal basis of using force is especially contentious given that official UN policy—and, since 2013, even UNSC peacekeeping resolutions—associate peacekeeping with the classical trinity of virtues (eg 2008 Capstone Doctrine, UNGA Special Committee on Peacekeeping Operations, UNSC Res 2098/2013, Res 2100/2013, Res 2147/2014, Res 2223/2015). Deliberately non-binding and aspirational due to the political nature of UNSC decision-making, the wording of peacekeeping resolutions only adds to the uncertainty by making vague references to Chapter VII, without specifying the legal provision of the UN Charter. As a result, the difference between UN-mandated enforcement action (Art. 42) and consensual forms of intervention (Arts 34, 36–38, 40) is blurred and the legal limits of the UN’s presence in post-conflict settings remain unclear.

20 The law applicable to UN peacekeeping includes international agreements between the host State and the UN, customary international norms, and internal mission regulations. As subsidiary UN organs, general UN law applies to peacekeeping operations, for instance the 1946 Convention on the Privileges and Immunities of the United Nations and the 1994 Convention on the Safety of the United Nations and Associated Personnel. However, as an international organization, the UN is not fully bound by international treaty law, which has proved especially problematic for victims of violations of international human rights law and international humanitarian law. Though formally bound by customary international law, the allocation of legal rights and duties between the UN and States contributing peacekeeping personnel is unclear in practice (see below: section F.2. Peacekeepers and International Humanitarian Law and section F.3. Peacekeepers and Human Rights).

21 Peacekeeping missions usually seek and obtain the consent of the host State before deploying troops, though this would not seem strictly necessary when Chapter VII authorization is granted. General → host State agreements, supplemented by → status of armed forces on foreign territory agreements (‘SOFAs’), are signed by the UN and the host State for each mission (though the UN formally seeks consent from all parties, rebel factions and non-State armed groups are usually not included). These agreements regulate a multitude of legal and administrative matters, in particular: (1) the basic rights and duties of peacekeeping personnel; (2) the privileges and immunities of peacekeepers, especially the scope of criminal and civil jurisdiction applicable to foreign personnel; (3) security arrangements; (4) freedom of movement, passport, and visa issues; (5) financial rules, including use of currency and tax rules; and (6) cooperation between local governmental and administrative authorities and the mission (→ Military Forces Abroad). In addition to SOFAs and other administrative agreements, each peacekeeping mission issues its own operational plans and rules of engagement (‘RoE’), which cover a variety of issues, ranging from command and control procedures to media access. RoE are especially important in that they establish more precise guidelines for when and how weapons can be used by peacekeepers, thus constituting—albeit indirectly—a contested area of authority between the United Nations and national military contingents (which often have their own national RoE).
The UN’s peacekeeping operations are managed by several UN bodies. While the UN Department of Peacekeeping Operations (‘DPKO’) is responsible for overall management and coordination, political engagement—in particular diplomatic contacts between the host State(s), rival factions, and the UN—is usually conducted by the UN Department of Political Affairs (‘DPA’). Multidimensional peacekeeping, especially its non-military aspects, features other institutional actors, most notably the United Nations Peacebuilding Commission (‘PBC’), the UN Peacebuilding Support Office (‘PBSO’), and the UN Special Committee on Peacekeeping Operations. Some UN agencies, especially the UNDP, UNHCHR, and UNHCR (United Nations Development Programme [UNDP], Human Rights, United Nations High Commissioner for [UNHCHR], Refugees, United Nations High Commissioner for [UNHCR]) exercise authority in their respective areas of expertise within a peacekeeping operation, though they remain administratively and financially distinct from the peacekeeping mission.

The personnel of each UN entity are bound by different sets of rules and their own jurisdictional regimes. Generally speaking, there are five categories of mission staff within a UN peacekeeping operation: Blue Helmets (peacekeepers stricto sensu), ie military members from the national armed forces of troop contributing countries (‘TCCs’), UN permanent staff, UN volunteers, civilian police and military observers, and external contractors or consultants. Legal rules may vary for each group, thereby adding to the overall legal complexity of peacekeeping operations.

E. Components of Peacekeeping

1. Classical Peacekeeping

The UN does not have a standby military force to deploy in times of crisis. Peacekeeping operations are established on an ad hoc basis if and when contributing States consent to the deployment of their troops. To date, it has proved impossible to set up a centralized mechanism whereby UN Member States pledge specific contributions to future missions (United Nations Peacekeeping Capability Readiness System (UNPCRS) formerly known as the United Nations Standby Arrangement System (UNSAS)). As a result, there is no single, permanent UN peacekeeping force, only individual peacekeeping operations.

Peacekeeping missions comprise military units from contributing States, which are deployed voluntarily to a specific conflict area for the duration of an operation. Military contingents participating in peacekeeping missions are subject to the UN’s overall operational authority, but remain directly responsible to their own national commanders within the mission. The term ‘Blue Helmet’ refers only to UN military units—‘peacekeepers’ in the narrow sense—and not the various civilian and police contingents that may support UN peacekeeping.

In line with the trinity of peacekeeping virtues—consent, impartiality, and minimal use of force—UN peacekeepers traditionally perform a variety of non-enforcement functions, such as: (1) monitoring ceasefires, cessations of hostilities, or peace agreements; (2) patrolling and observing buffer zones between hostile parties; (3) reporting on developments in conflict areas and supporting verification mechanisms; and (4) preventing resurgence of conflict and spill-over into adjoining areas. The ultimate goal of classical peacekeeping is to provide a measure of stability and security in a conflict zone, thereby facilitating negotiations toward a more durable political solution and a permanent end to hostilities. UN troops performing these tasks are usually lightly armed, in line with the limited military aims of classical peacekeeping.
Classical peacekeeping dominated during the Cold War. However, peacekeepers continue to perform the functions described above in a few ongoing operations. For instance, the UN Force in Cyprus (‘UNFICYP’), deployed initially in 1964, continues to patrol the border between the Greek and Turkish parts of the island. The UN Disengagement Observer Force (‘UNDOF’) in the Golan Heights, which was deployed following the 1973 Arab–Israeli War, comprises around 1000 troops patrolling a demilitarized zone between Syria and Israel. Though it is rare for recent peacekeeping missions to perform just classical peacekeeping functions, two recent examples of more limited engagements are the UN operation that monitored a ceasefire agreement between Ethiopia and Eritrea (‘UNMEE’) and a military liaison force deployed to the Ivory Coast to facilitate the implementation of a 2003 peace agreement (‘MINUCI’).

Military contingents from troop contributing countries (‘TCCs’) are still the indispensable component of virtually all UN missions, but there are two significant changes in how operations are carried out: first, a large body of civilian and police personnel support peacekeeping efforts (see below section E.2. Multidimensional Peacekeeping); second, Blue Helmets are authorized to use military force beyond self-defence (see below section E.3. Peace Enforcement and Robust Peacekeeping).

2. Multidimensional Peacekeeping

Whereas missions with classical peacekeeping mandates usually intervene in the context of interstate conflicts, multidimensional peacekeeping operations are mostly deployed during or in the aftermath of intrastate conflicts. With the host State’s ability to maintain public order diminished, its infrastructure damaged, and segments of the population displaced, multidimensional peacekeeping goes beyond preserving the status quo and entails wide-ranging political, military, humanitarian, social, and economic reforms. A strong police and civilian presence within the peacekeeping operation aims to restore good governance, ensure respect for human rights and foster post-conflict reconciliation. In short, multifunctional peacekeeping missions are tasked with peacebuilding and, occasionally, State-building functions.

Current peacekeeping operations perform a wide range of peacebuilding and conflict-resolution tasks, such as: (1) organizing and supervising free and fair elections; (2) conducting law enforcement activities, in particular training local police, maintaining public order, and implementing penitentiary reform; (3) security sector reform (‘SSR’); (4) mine clearance; (5) disarmament, demobilization, and reintegration (‘DDR’) of armed factions; (6) justice reform and development of judicial capacities; (7) political and peacemaking functions; (8) humanitarian aid and refugee assistance; (9) human rights promotion and protection; and (10) promoting reconciliation between former belligerents. Not all of these tasks are implemented by each peacekeeping mission. The choice of priorities depends on the nature of the conflict and some functions are performed by non-UN entities. Increasingly, peacekeepers work with other international, regional and domestic institutions, NGOs and civil society groups to achieve these aims. In that sense, multidimensional peacekeeping can also be viewed as part of a broader international effort to restore peace in countries emerging from conflict.

In contrast to the hands-off and neutral aims of classical peacekeeping, multidimensional peacekeeping operations engage directly with local stakeholders and facilitate negotiated political settlements. The UN provides good offices while the peacekeeping mission is involved in promoting dialogue and reconciliation at the national level. Peacekeepers also strive to develop durable partnerships with the local population, allowing local stakeholders to take ownership of the political, military, and civilian reforms being undertaken on their behalf and in their name. However, focusing on the organization of elections, which sometimes provides just a veneer of democratic legitimacy, has proved
insufficient in a few post-conflict situations, for instance in Angola or Cambodia. Likewise, the hasty departure of large-scale peacekeeping operations in Haiti and East Timor, based on overly optimistic assessments of progress, resulted in the UN having to re-deploy and restart the difficult process of post-conflict reconstruction. In response to these flawed experiments in multidimensional peacekeeping, the UN has sought to place greater emphasis on the organization’s legitimacy and credibility at the local level.

32 In addition to 12 completed missions, eight major peacekeeping missions currently operate with wider peacekeeping mandates: the Democratic Republic of the Congo (‘MONUC’ 1999–2010; ‘MONUSCO’ 2010–present), Liberia (‘UNMIL’ 2003–present), the Ivory Coast (‘UNOCI’ 2004–present), Haiti (‘MINUSTAH’ 2004–present), Darfur (‘UNAMID’ 2007–present), South Sudan (‘UNMISS’ 2011–present), Mali (‘MINUSMA’ 2013–present), and the Central African Republic (‘MINUSCA’ 2014–present). On two occasions, the UN has gone further than the multidimensional formula described above. In areas where State institutions have collapsed, the UN does not just support but also temporarily displaces the State in whose territory it operates (→ International Administration of Territories). Involvement can encompass the full range of executive, legislative, administrative, and judicial prerogatives associated with State sovereignty. To date, UN transitional administrations were authorized by the UNSC under Chapter VII in East Timor (‘UNTAET’ 1999–2002) and Kosovo (‘UNMIK’ 1999–present). Territorial administration raises a host of legal issues, in particular with respect to international human rights law, international humanitarian law, and the law of occupation (→ Occupation, Pacific). This form of intervention, which goes well beyond even the widest notion of multidimensional peacekeeping, is hard to reconcile with the doctrinal precepts underlying peacekeeping and, as such, constitutes a separate form of UN-mandated conflict management. However, in recent years, most notably in Mali (‘MINUSMA’), South Sudan (‘UNMISS’), and the Central African Republic (‘MINUSCA’), the UNSC has authorized a variety of so-called ‘stabilisation’ measures that displace State authority, albeit on a temporary basis. It remains to be seen whether, as some analysts have suggested, the implosion of state institutions in certain African countries will push the UN to revisit its experiment with broader State-building mandates.

3. Peace Enforcement and Robust Peacekeeping

33 Since the advent of multidimensional peacekeeping, UN operations have faced two major challenges. First, it has proven difficult to operate in hostile environments with little or no peace to keep, especially where spoilers, defined as ‘factions who see a peace agreement as inimical to their interests, power or ideology’ (High Level Panel Report 2004, UN Doc A/59/565 para. 222), are prepared to use violence to undermine negotiated settlements. Second, the protection of civilians has emerged as a priority for the UN. After failing to stem mass killings in Rwanda and Bosnia, peacekeeping mandates now regularly authorize use of force to protect civilians ‘under (imminent) threat of attack’. Reflecting a more militarized approach to conflict management, these two developments have produced hybrid doctrines known variously as ‘peace enforcement’, ‘robust peacekeeping’, and ‘militarized peacekeeping’, which attempt to reconcile classical peacekeeping principles with the seemingly opposite aims of coercive enforcement.

34 Peace enforcement implies that military force—beyond self-defence—can be used by peacekeepers. Contrary to classical peacekeeping, the use of force and the threat of the use of force are acceptable methods of persuasion—not measures of last resort. Thus, military force is a legitimate ‘bargaining chip,’ which fosters compliance with the terms of a pre-existing ceasefire or peace agreement. In other words, the threat of the use of force is always ‘on the table’. This also implies that well-armed troops should be available to react
and deploy quickly in moments of crisis, demonstrating the UN’s resolve and military capabilities, while also guaranteeing the safety of civilians.

35 Although the two terms are used interchangeably, peace enforcement and robust peacekeeping are, strictly speaking, distinct doctrines. According to the DPKO, robust peacekeeping ‘involves the use of force at the tactical level’ whereas peace enforcement ‘may involve the use of military force at the strategic or international level’ (Capstone Doctrine: United Nations Peacekeeping Operations: Principles and Guidelines [2008] 34). Robust peacekeeping implies that force can be used in defence of the mission mandate, especially its ‘protection of civilians’ component. Instead of waiting for an imminent attack, peacekeepers can proactively eliminate individual threats to civilians or the peacekeeping mission. By contrast, peace enforcement implies that peacekeepers are mandated to use force against selected targets, irrespective of any individualized threat to the mission or civilians. In other words, peacekeepers are deployed on the assumption that force will be used against specific groups. Yet, despite their similarities, peace enforcement should not be equated with Chapter VII enforcement. The difference is that even peacekeepers operating under a peace enforcement mandate use force only as a means of implementing a pre-existing agreement, whereas enforcement operations deployed under Chapter VII seek to defeat an adversary (usually the armed forces of a sovereign State). In other words, the ultimate aim of Chapter VII enforcement action is military victory, not incentivizing peace.

36 In practice, the boundaries between classical peacekeeping, robust peacekeeping, peace enforcement, and Chapter VII enforcement are becoming increasingly blurred. Just as there is no unified concept of peacekeeping, there is no authoritative doctrine of peace enforcement or robust peacekeeping. To date, ‘enforcement action’ under the UN Charter has been undertaken only by non-UN forces also known as ‘coalitions of the willing’: during the Korean War (1950–53), in Iraq (‘Desert Storm’ 1990), and in Somalia (‘UNITAF’ 1992–93). Such enforcement operations usually receive Chapter VII authorization from the UNSC, but there are also significant exceptions, most notably NATO’s 1999 air campaign in Kosovo and the US-led invasion of Iraq (→ Iraq, Invasion of [2003]). Although some States and regional organizations have deployed robust ‘peace support operations’ with enforcement functions, much uncertainty remains as to the legal and doctrinal bases of these missions (for instance, the Australian-led force in East Timor in 1999, a British contingent in support of the UN in Sierra Leone in 2000, NATO in Kosovo (‘KFOR’ 1999–present) and Afghanistan (‘ISAF’ 2001–present)).

37 Until recently, UN-mandated peace enforcement remained a theoretical concept. UMOSOM II in Somalia, the only operation to receive enforcement powers, was considered one of the UN’s greatest failures and not a precedent to be emulated. Yet, in 2013, the UNSC reversed course and created an ‘offensive’ combat brigade to ‘neutralize’ and ‘disarm’ rebel groups as part of its existing peacekeeping mission in the Democratic Republic of the Congo (‘MONUSCO’ 2010–present). This was followed by broad authorizations to use force in Mali (‘MINUSMA’ 2013–present) and the Central African Republic (‘MINUSCA’ 2014–present). Reflecting many observers’ unease and uncertainty about the aims of peacekeeping, the 2015 HIPPO Report ‘recognizes that is the prerogative of the Security Council to authorize UN peacekeeping operations to undertake enforcement tasks’ but it also urges ‘extreme caution’ in adopting such mandates, which should in any event be ‘a time-limited, exceptional measure’ (HIPPO 2015, 31–32). It remains to be seen whether today’s peace enforcement operations in central Africa portend a broader systemic shift in the UN’s approach to conflict management.
F. Specific Issues

1. Peacekeepers and the Use of Force

38 The use of force by peacekeepers is controversial both in theory and in practice. It must be remembered that under international law the threat and the use of force is prohibited, with only three exceptions: (1) individual and collective self-defence (Art. 51 UN Charter); (2) UNSC authorization to use force under Chapter VII of the UN Charter; and (3) the customary rule of → intervention by invitation. Though Art. 2 (4) UN Charter applies prima facie only to States and their armed forces, the prohibition on the use of force is nonetheless applicable mutatis mutandis to peacekeeping operations.

39 In line with the ‘trinity of virtues’, in particular the principle of non-use of force except in self-defence, the very idea of using force in a peacekeeping context is extremely limited. As a matter of principle, it would cover only situations in which a peacekeeper’s life or physical integrity is threatened. However, in reality, there is much uncertainty about the scope and limits of this principle. Owing to the doctrinal debates surrounding peacekeeping and the politics of UNSC decision-making, there is currently a patchwork of conflicting rules on when and how force may be deployed in peacekeeping operations. The UNSC’s use of euphemisms such as ‘all necessary means’, ‘to take the necessary action’, or ‘to take the necessary measures’ in peacekeeping mandates creates legal ambiguity as to when, where, and why force may lawfully be deployed. Bereft of legal guidance, peacekeepers in the field have used force inconsistently, with very serious consequences, in several instances. In the past, peacekeepers were disarmed, arrested, and humiliated, and their equipment seized, while on other occasions, peacekeepers failed to return fire, even in life and death situations, where use of force would be considered legitimate under any applicable legal standard, because of a misguided belief that peacekeeping included a blanket prohibition on the use of force.

40 Though universally recognized as a core peacekeeping principle, a peacekeeper’s right of self-defence should not be confused with the right of self-defence under Art. 51 of the UN Charter (applicable to States), or the right of self-defence in national criminal and civil legislation (applicable to civilians). In reality, the scope of a peacekeeper’s right to use force in self-defence has evolved greatly over the last 50 years. First recognized in UNEF I’s mandate (1956), self-defence in early peacekeeping only covered the passive idea of responding to acts of violence directed at peacekeepers. During the Cold War, the right of self-defence gradually expanded to encompass situations of non-lethal violence, which gave rise to the idea of using force in defence of the mission’s mandate (formally endorsed for the first time in UNEF II’s mandate (1973–79)).

41 In the post-Cold War period, with the UN involved in internal conflicts, the UNSC provided increasingly generous interpretations of the right to use force. Though initially a traditional peacekeeping operation based on the trinity of virtues, the United Nations Protection Force in Croatia and Bosnia-Herzegovina (‘UNPROFOR’) had its mandate amended dozens of times, which—by 1995—authorized the use of force under Chapter VII to secure the delivery of humanitarian aid, protect ‘the freedom of movement’ of peacekeepers, and ensure the protection of designated ‘safe areas’ (→ Humanitarian Assistance, Access in Armed Conflict and Occupation). Around the same time, the UNSC mandated peacekeepers in Somalia (‘UMOSOM II’ 1993–95) to carry out disarmament activities and apprehend a rebel leader. A de facto enforcement operation (according to most commentators), UMOSOM II was long considered an outlier in the history of peacekeeping. However, in 2013 the UNSC revisited this precedent: under UNSC Res 2098/2013, a special Intervention Brigade (‘FIB’) created within the UN’s existing peacekeeping mission in the Democratic Republic of the Congo (‘MONUSCO’ 2010–present) was allowed to target non-state armed groups. Unlike the Somalia precedent, the FIB
achieved some success in 2014, contributing to the defeat of a major rebel group in eastern Congo.

42 Since the mid-1990s, the UNSC has been more willing to characterize widespread and grave violations of human rights as a threat to peace and security. Peacekeeping operations in Sierra Leone (‘UNAMSIL’ 1999–2005) and the Democratic Republic of the Congo (‘MONUC’ 1999–2010) were the first to receive mandates with the explicit aim of ‘protect[ing] civilians under (imminent) threat of physical violence’, and most recent mandates have included language to that effect. A shift to broad ‘protection of civilians’ mandates, including internally displaced persons and refugees, is also reflected in the UN’s official policy: a 2006 UNSC resolution endorses the notion that peacekeepers should protect civilians, ‘particularly those under imminent threat of physical danger’ (UNSC Resolution 1674/2006 para. 16) and a 2015 DPKO report provides operational guidance on implementing ‘protection of civilians’ mandates in UN peacekeeping operations. The 2015 HIPPO Report, while endorsing the three principles of classical peacekeeping, explicitly notes that adherence to doctrine can never be an excuse for failing to protect civilians (HIPPO Report, para. 122).

43 There is little doubt that, under the current legal framework, peacekeepers have more latitude to use force than was historically the case. Nonetheless, resorting to force remains a contentious issue at the international and mission level. There is a discrepancy between prerogatives existing ‘on paper’ in UNSC resolutions and the realities of peacekeeping on the ground. Wider authorizations to use force are not always backed up with the required manpower, equipment, and weaponry. Rules of Engagement (‘RoE’) on when and how peacekeepers may engage hostile factions are open to various interpretations, which lead to conflicting decisions among TCCs. Although there are periodic calls for even more robust mandates and more flexible RoE, the UN has yet to find a way to reconcile its policy on the use of force with the principles of classical peacekeeping, and how to translate policy into clear operational guidelines in the field.

2. Peacekeepers and International Humanitarian Law

44 The application of international humanitarian law (‘IHL’, → Humanitarian Law, International) to peacekeeping raises theoretical and practical challenges. It should be remembered that IHL developed as an autonomous body of legal norms applicable to international conflicts between regular armed forces, where the ultimate goal is military victory over one’s adversary. By contrast, peacekeeping aims to preserve peace or prevent conflict, without resorting to military force (if possible). It is not at all self-evident that the same set of rules should apply to these two forms of militarized intervention.

45 In the early years of peacekeeping, the majority view was that peacekeepers were not bound by IHL (→ United Nations and International Humanitarian Law), given that the rules of the 1949 Geneva Conventions only bind parties to a conflict, who must also be ‘High Contracting States’. Given that the UN is not a State and peacekeeping forces were not, in fact, parties to a conflict, it was argued that the traditional body of IHL did not apply. Criticized during the Cold War by organizations such as the → International Committee of the Red Cross (‘ICRC’), this interpretation became increasingly controversial as peacekeepers intervened in politicized and militarized campaigns in the post-Cold War period.

46 Though it initially disputed the blanket applicability of IHL to peacekeepers, the UN began reconsidering its position after several unsuccessful operations in the mid-1990s, most notably in Rwanda and the former Yugoslavia. The debate was seemingly put to rest in 1999 when the then UN Secretary-General, Kofi Annan, issued a Bulletin on the ‘Observance by United Nations Forces of International Humanitarian Law,’ which states
that: ‘The fundamental principles and rules of international humanitarian law... are applicable to 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 Doc ST/SGB/1999/13, preamble). Although the general applicability of IHL has been reaffirmed by various UN documents, including the 2008 Capstone Doctrine and most SOFAs, the legal framework established by the Bulletin and subsequent texts remains fragmentary, with a host of specific legal issues left unresolved.

47 First, it is rarely ever clear when an armed conflict actually exists and—by extension—when IHL becomes applicable to a peacekeeping operation. Though highly relevant in any instance of armed conflict, the threshold question about the applicability of IHL has distinct consequences in the context of peacekeeping. It is especially important for the UN to maintain the perception that peacekeepers are not engaged in combat operations, as acknowledging the contrary would call into question their adherence to the classical doctrine of peacekeeping, especially the principle of impartiality. UN Force commanders have, in the past, contested the applicability of IHL, even though the objective criteria of armed conflict appeared to be met. The better view is that, irrespective of a specific peacekeeping operation’s mandate, the applicability of IHL is a purely factual question, which reflects military realities on the ground. In other words, IHL applies whenever military operations conducted by peacekeepers rise to the level of an armed conflict, regardless of whether this happens in the context of Chapter VII enforcement (where the use of force is anticipated) or consensual peacekeeping (where military force is a last resort).

48 Second, there is no conclusive answer as to which IHL rules are actually binding on peacekeepers. The Bulletin provides only an outline of the main obligations applicable to peacekeeping. While most commentators agree that customary international humanitarian law is binding, it remains unclear whether this encompasses rules applicable to international (Armed Conflict, International) or non-international (Armed Conflict, Non-International) armed conflicts. Depending on whether the UN engages in combat operations against State armed forces or non-State armed groups, and whether this happens in a conflict- or post-conflict zone, the distinction between international and non-international armed conflict may have implications for the scope of obligations incurred by peacekeepers. The classification of conflict is also relevant to the law of occupation, which—some commentators argue—may be applicable to certain UN peacekeeping missions (to date, the UN has refused to acknowledge the applicability of the law of occupation). Though the question is far from settled, it appears that the scope of IHL obligations applicable to peacekeeping varies depending on the type of mission (for instance, Chapter VII enforcement or a less robust mandate) and the type of operational challenges encountered in the field.

49 Third, there is uncertainty about the UN’s responsibility for violations of IHL. As a preliminary matter, for its responsibility to be engaged, the UN must have ‘effective control’ over the conduct of peacekeepers. In theory, the UN acquires full command over the strategic organization and deployment of troops, whereas TCCs only retain authority over administrative and disciplinary matters. In practice, however, these distinctions are blurred. Many TCCs take a hands-on approach to managing their peacekeeping contingents, which makes the legal question of ‘effective control’ less clear-cut, especially in ‘joint peacekeeping operations’, where there are multiple lines of command, and military units from multiple organizations/TCCs. On accountability, the UN Secretary-General’s Bulletin provides that: ‘In case of violations of international humanitarian law, members of the military personnel of a United Nations force are subject to prosecution in their national courts’ (UN Doc ST/SGB/1999/13 Section 4). In practice, this rule has provided de facto impunity to peacekeepers suspected of IHL violations, as TCCs rarely ever hold their troops...
accountable for misdeeds committed in faraway war zones. Despite the Bulletin’s general recognition that IHL applies to peacekeepers, attributing violations to the UN and securing accountability remains an unfulfilled promise.

3. Peacekeepers and Human Rights

It is important to distinguish between: (1) peacekeepers’ active role in promoting human rights; (2) their duty to protect human rights, especially those of civilians in conflict and post-conflict areas; and (3) their passive subordination to the body of law known as international human rights law (‘IHRL’). These distinctions are best illustrated by the truism that peacekeepers must not only promote but also respect human rights.

Under Art. 1 (3) UN Charter, ‘promoting and encouraging respect for human rights’ is one of the UN’s main purposes. With the expansion of peacekeeping mandates in the post-Cold War period, it is common for a human rights component to be part of modern multidimensional peacekeeping operations. Designated peacekeeping personnel are tasked with a variety of human rights activities, in particular monitoring ongoing human rights abuses in conflict areas, strengthening and overseeing national human rights institutions, and providing human rights training to other UN personnel and local actors. The basic idea is that the entire peacekeeping mission should participate in disseminating human rights norms among the affected populations, and this should cover the full range—political, civil, social, and economic—of human rights.

Notwithstanding its laudable role in promoting human rights, UN peacekeeping has a mixed record of protecting human rights in conflict and post-conflict areas. Several prominent failures have tarnished the UN’s reputation in the last 20 years. In 1994, the UN failed to stop the Rwandan genocide, even though a peacekeeping mission was stationed in the country. In 1995, Dutch peacekeepers failed to intervene as thousands of Muslims were executed in Srebrenica. In the eastern Democratic Republic of the Congo, where the UN has had its largest peacekeeping mission for well over a decade (‘MONUC’ 1999–2010; ‘MONUSCO’ 2010–present), peacekeepers have been powerless to prevent armed groups and local militias from killing, pillaging, and raping civilians. Broad ‘protection of civilians’ mandates raise difficult questions about the political and legal limits of peacekeeping, especially whether there is a duty to intervene and stop ius cogens or mass human rights violations. The legal situation remains unclear (→ Civilian Population in Armed Conflict).

Despite their shortcomings, UN peacekeeping missions are increasingly proactive in monitoring human rights: for instance, Blue Helmets are often the first to encounter victims and report about ongoing violations, with specialized peacekeeping personnel deploying thereafter to gather evidence of potential crimes, which can then be used by international criminal tribunals (→ International Criminal Courts and Tribunals, Complementarity and Jurisdiction).

Given the prominence of human rights in the UN framework, it seems uncontroversial that peacekeepers should be expected to conform to the standards they are promoting. However, the UN has witnessed a steady stream of human rights scandals involving peacekeepers over the last two decades. The charges range from minor transgressions to very serious allegations, including disproportionate uses of force, torture, sexual exploitation of minors, and even infecting local populations with communicable diseases. In the vast majority of cases, neither the UN nor TCCs have held violators accountable, as a result of the complexity of and lacunae in the applicable legal framework.
Unlike the UN Secretary-General’s Bulletin on IHL, the UN has no general policy on incorporating human rights norms into the legal framework of peacekeeping. As an international organization, the UN cannot sign—and thus stricto sensu is not bound by—international human rights treaties. Although the applicability of customary human rights law or ius cogens norms is beyond dispute, the content and scope of these norms are anything but clear in the context of extraterritorial peacekeeping operations. By the same token, while a plethora of internal peacekeeping instruments—in particular mission mandates, SOFAs, RoEs, and → codes of conduct—outline various human rights obligations, none is legally binding as such. As a result, although it is acknowledged that peacekeepers remain generally bound by some norms of international human rights law, the precise source and content of these norms are difficult to determine.

Moreover, UN peacekeepers enjoy—as a matter of principle—immunity from the criminal jurisdiction of the host State in which they are deployed (→ International Organizations and Institutions, Privileges and Immunities), with the result that domestic criminal courts are barred from entertaining prosecutions of human rights violations. Immunity regimes vary depending on the category of peacekeeping personnel: for instance, UN officials enjoy immunity under the Convention on the Privileges and Immunities of the UN, whereas troop immunity is usually incorporated into SOFAs (→ International Organizations and Institutions, Immunities before National Courts). It should be remembered that, although the UN Secretary-General has the authority to waive the immunity of UN personnel (but not Blue Helmets, who remain subject to TCC jurisdiction), this prerogative has rarely been exercised. By the same token, although TCCs are required to hold troops accountable for human rights violations before their national courts (or in disciplinary proceedings), this too has run into a variety of practical and legal obstacles (→ Human Rights, Treaties, Extraterritorial Application and Effects). TCCs are generally reluctant to punish their troops, and the UN—whose own accountability record leaves much to be desired—has failed to exert pressure over TCCs, lest they decide to withhold contributions from future peacekeeping missions.

A messy patchwork of human rights norms, coupled with the UN’s immunity regime, has made it extraordinarily difficult for victims to seek redress for human rights violations committed by peacekeepers. Contrary to the universalistic aspirations of the UN’s human rights system, under the current legal framework, neither the source of human rights obligations nor the legal forum, where redress can be sought, is clear: The UN’s unwillingness to waive immunities, the lack of credible accountability and disciplinary measures, and the de facto impunity of peacekeepers before national courts, are hard to square with the aims of peacekeeping. Although there is a growing awareness within the UN that the human rights record of its peacekeeping missions, as well as the ensuing impunity gap for human rights violations, is undermining the organization’s work in many conflict and post-conflict areas, no wholesale reforms have yet been undertaken to remedy this state of affairs.

4. Regional Peacekeeping

The UN is not the only international organization involved in peacekeeping. Since the mid-1990s, several other international, regional, and sub-regional organizations have also deployed troops to conflict zones. The African Union (AU) has been especially active in this regard, with military operations in Burundi (Inter-African Mission in Burundi ‘IAMB’), Sudan (‘AMIS’, which then became ‘UNAMID’ in cooperation with the UN), Somalia (‘AMISOM’), and the Comoros Islands (‘AMISEC’). NATO established large-scale missions in Bosnia and Herzegovina (‘SFOR’), Kosovo (‘KFOR’), and Afghanistan (International Security Assistance Force ‘ISAF’). Meanwhile, the European Union (EU) deployed thousands of Member State troops to Bosnia and Herzegovina (‘EUFOR’), the Former Yugoslav Republic
of Macedonia (‘CONCORDIA’), Chad and the Central African Republic (‘EUFOR’), and the Democratic Republic of the Congo (‘Operation Artemis’ in Ituri Province 2003 and ‘EUFOR’ 2006). Several sub-regional African organizations have also contributed to peacekeeping, for instance: the South African Development Community (SADC), the Central African Economic and Monetary Community (CAEMC), and most notably the Economic Community of West African States (ECOWAS) in the Ivory Coast, Sierra Leone, and Liberia.

58 In general, the UN has welcomed the emergence of regional peacekeeping, especially in Africa, where the majority of today’s operations are based. Regional troops provide much needed manpower, and decision-making processes within regional bodies are sometimes less cumbersome (there is, for instance, no UNSC veto at the regional level). It is also suggested that regional peacekeeping is more attuned to the needs of conflict and post-conflict states, and that local populations are more willing to accept peacekeepers from the region. Despite these benefits, regional peacekeeping also has its fair share of challenges. The human rights records of some TCC militaries, particularly from less developed African countries, remain a serious concern. Coordination problems have emerged in joint peacekeeping missions, where regional forces operate alongside (in the Democratic Republic of the Congo and Kosovo) or together with UN peacekeeping missions (eg the hybrid UN/AU Force in Darfur ‘UNAMID’, 2007–present). Notwithstanding these challenges, a pivot toward regional peacekeeping appears to be underway: with the world’s developed countries providing fewer troops, regional organizations are fielding troops under the UN banner or establishing their own military missions. In 2016, the African Union is scheduled to launch its eagerly anticipated African Standby Force, a permanent multidimensional peacekeeping force with military, police, and civilian components that could deploy rapidly in times of crisis.

59 Although it has been tested on various occasions, the legal dimensions of regional peacekeeping remain contested. Under Chapter VIII of the UN Charter, regional organizations may take action to ensure international peace and security. Moreover, regional peacekeeping is permitted without the express approval of the United Nations so long as ‘no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the UNSC’ (Art. 53 UN Charter). This means that regional organizations can engage in consensual peacekeeping—in line with the UN ‘trinity of virtues’—without asking for the UN’s permission. By the same token, it also implies that regional enforcement action against the sovereignty of a State requires the UNSC’s approval, a view that the UN Special Committee on Peacekeeping Operations has reiterated on many occasions. Yet the historical record is mixed. ECOWAS deployed missions in Liberia (1990–93) and Sierra Leone (1997–98), which were authorized only ex post facto by the UNSC. NATO’s official military doctrine also seems to imply that UNSC authorization is not strictly necessary for peace enforcement undertaken by the organization’s own ‘peace support operations’ (NATO Allied Joint Publication 3.4.1 ‘Peace Support Operations’ [2001] paras 0217–0220). Likewise, some UN bodies, though endorsing the principle in the abstract, have argued that the UNSC’s authorization may, exceptionally, be given retrospectively. The 2000 Constitutive Act of the African Union appears to allow unilateral enforcement action against AU Member States in cases of genocide, war crimes, and crimes against humanity (Art. 4 (h) African Charter). Though few concrete disputes between the UN and regional organizations have emerged, the legal parameters of regional peacekeeping remain unclear in the light of international law.
5. Privatized Peacekeeping

50 States have traditionally enjoyed a monopoly on the lawful use of force and thus the conduct of combat operations. Military activities carried out by individuals or groups of individuals on behalf of the State were viewed—subject to other requirements—as acts of mercenaries, enjoying little or no protection under international law. This clear distinction has begun to fray as States and international organizations increasingly turn to private military and security companies (‘PMSCs’; → Private Military Companies) to reinforce their operations. After opposing the idea for many years, the UN recently authorized the use of private security contractors in some dangerous field missions and peacekeeping operations. However, the issue still remains taboo and UN peacekeeping policy does not expressly acknowledge PMSCs. The precise scope of the UN’s reliance on PMSCs also remains unknown, though a UN-commissioned study devoted to the topic is scheduled to be presented to the UNGA in 2015.

51 The Multinational Force and Observers in Sinai, an international NGO monitoring the 1979 peace agreement between Egypt and Israel, can be viewed as a precursor to the modern phenomenon of privatized peacekeeping. To date, the UN has only once contemplated deploying a full-blown private peacekeeping force: a 1994 proposal to send a British company to help monitor Zaire’s refugee camps was ultimately defeated. However, in recent years, many peacekeeping operations, especially in Africa, have employed PMSCs to handle services ranging from logistics to training and support operations. There is much debate about the definition of a PMSC and the scope of activities to which PMSCs are legally entitled. In fact, the UN faces the same legal difficulties as States with respect to PMSCs: though the general legal framework governing peacekeeping is sufficient to establish the UN’s responsibility for PMSC conduct—either by virtue of the mission’s mandate, a SOFA, or any other agreement—securing enforcement and accountability remains problematic. Uncertainties about the applicability of IHL and human rights, already a serious problem in the context of UN-mandated peacekeeping, are further compounded by the fact that PMSCs are for-profit private corporations. The UN can enter into a contractual relationship with a corporation, but if a violation of international law occurs the only apparent remedy is terminating the contract or dismissing the individual wrongdoer. The UN does not have the public authority to sanction such misconduct, with the result that enforcement is left either to the host State or to the PMSC’s State of incorporation. This has proved controversial in cases of serious human rights abuses committed by contractors working for the UN, for example in the Balkans in the 1990s.

52 The international legal framework applicable to PMSCs is still in its infancy. The UN participates indirectly through its Working Group on the Use of Mercenaries as a Means of Violating Human Rights and Impeding the Exercise of the Right of Peoples to Self-Determination, which recently proposed a preliminary draft of a Convention on Private Military and Security Companies for consideration by the Human Rights Council (→ United Nations Commission on Human Rights/United Nations Human Rights Council). Although private initiatives on the use of PMSCs, such as the 2008 Montreux Document on Pertinent International Legal Obligations and Good Practices for States, have received the support of States, international organizations, and private companies, it will take many more years to develop a comprehensive and binding legal framework.

6. Gender and Peacekeeping

63 Two significant developments have made gender an integral part of peacekeeping in the post-Cold War period. First, the greater range of tasks performed by peacekeeping operations has prompted a reconsideration of how women can assist in maintaining and building peace. It is now widely acknowledged that integrating women’s perspectives is essential to making peacekeeping relevant to the entire population of a country emerging
from conflict. Second, the revelations of sex abuse scandals involving peacekeepers, most notably in Liberia and the Democratic Republic of the Congo, have raised awareness about the connection between armed conflict and sexual- and gender-based violence (‘SGBV’). The UN has responded by requiring its own troops to undergo compulsory training on SGBV issues, and has made the protection of women from sexual violence an important element of peacekeeping mandates.

64 UNSC Resolution 1325 on Women, Peace and Security provides the general framework for ‘mainstreaming gender perspectives in peacekeeping’. It requires peacekeeping operations to consider the impact of their actions on both women and men, and to make gender an integral element of planning, implementation, and evaluation of peacekeeping activities. Special gender units have been incorporated into a number of larger missions, with gender advisors and training programs deployed to raise awareness around gender-related issues. There has also been a push to recruit women peacekeepers in greater numbers. All peacekeeping personnel may be required to perform gender-oriented tasks, such as: (1) protecting women’s rights; (2) supporting women in rebuilding conflict-afflicted societies; (3) providing role models to women in male-dominated societies; and (4) encouraging women to take part in the process of reform and rebuilding. Despite much progress, the ultimate goal of parity between women and men in peacekeeping operations still looks remote. The participation of women has increased, but gains remain uneven: while 30% of civilian staff are now women, the numbers are less impressive for police (10%) and military personnel (3%).

G. Significance and Assessment

65 Although it was not foreseen by the UN Charter, peacekeeping has emerged as an essential component of the UN’s efforts to maintain peace and security. UN peacekeepers have operated in several dozen countries over the past 70 years, providing much-needed stability in times of crisis and contributing to long-term transitions in countries emerging from conflict. Although the practice of peacekeeping has changed a great deal during this time, especially in the last 20 years, doctrinal and legal arguments about the role and limits of UN-mandated conflict management have played only a secondary role in these developments. Grounded in consent, impartiality, and non-use of force, peacekeeping in the classical sense remains the UN’s official peacekeeping policy, even though it has been superseded by operational realities and the challenges of modern conflict. Operating in environments where there is little or no peace to keep, in the midst of large-scale humanitarian crises, today’s missions—including UN police and civilian personnel—are required to perform a constantly expanding list of peace making, peace building, peace enforcement, and, even, State-building tasks. Echoing these developments, the 2015 HIPPO Panel urges the UN to discard the term peacekeeping and adopt the term ‘peace operations’, which denotes ‘the full spectrum of United Nations peace and security missions and initiatives’ (HIPPO Report, para. 50). It remains to be seen whether wider Chapter VII authorizations to use force, more robust ‘protection of civilians’ mandates, and multidimensional peace-building functions will be met with increased financial resources and political support from UN member states, especially TCCs and Western donors. Despite its growing popularity as a tool of conflict resolution, the wider aims of modern peacekeeping also make it a more controversial method of securing international peace and security.

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