The Use of Offensive Force in U.N. Peacekeeping: A Cycle of Boom and Bust

James Sloan

Follow this and additional works at: https://repository.uchastings.edu/hastings_international_comparative_law_review

Part of the Comparative and Foreign Law Commons, and the International Law Commons

Recommended Citation
Available at: https://repository.uchastings.edu/hastings_international_comparative_law_review/vol30/iss3/3

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings International and Comparative Law Review by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact wangangela@uchastings.edu.
The Use of Offensive Force in U.N. Peacekeeping: A Cycle of Boom and Bust?

By JAMES SLOAN

The nonviolent nature of United Nations peacekeeping operations is at the same time their most important and their least understood characteristic.

– Sir Brian Urquhart, former U.N. Under Secretary-General

I. Introduction

Fifty years ago, U.N. Secretary-General Dag Hammarskjöld famously observed that the legal basis for U.N. peacekeeping may be found at “Chapter VI½” of the U.N. Charter. Today, however, his message — that peacekeeping, though more than a Chapter VI peaceful measure, ought to be something less than a forceful measure under Chapter VII — is being ignored by the United Nations. Corresponding with the new millennium, a trend in U.N. peacekeeping has emerged whereby the line between peacekeeping and enforcement has been blurred: Peacekeeping missions have become progressively more forceful, more proactive and, in some cases, have been authorized to use “all necessary means” to achieve


2. This phrase is frequently attributed to Hammarskjöld, see, e.g., John Hillen, Peace(keeping) in Our Time: The UN as a Professional Military Manager, PARAMETERS 17, 17 (Autumn 1996).
their objectives. This recent tendency to bestow forceful mandates on peacekeeping operations ignores the lessons of the past. In the 1960s and again in the 1990s, U.N. peacekeeping operations were given tasks requiring the use of a considerable degree of force and in each case the experiment failed.

The rule that force should only be used in self-defense — the "self-defense principle" — has long been accepted as fundamental to U.N. peacekeeping, along with the requirements of obtaining the consent of the host state and maintaining impartiality. Although these three characteristics — referred to by some as the "holy trinity" of peacekeeping — are interlinked, this article focuses on the self-defense principle. This article considers the development of the self-defense principle, its parameters, and instances where the United Nations has strayed from it, in the direction of enforcement. It also considers whether, in light of the recent trend to establish more robust peacekeeping missions under Chapter VII of the Charter, the self-defense principle applies to current-day peacekeeping.


4. To many, the "consent principle" goes beyond the need to obtain the consent of the state or states where the peacekeeping operation is to be emplaced and refers to the need for the consent of other U.N. member states to contribute forces to a peacekeeping operation. There is also, of course, the need for the consent of all five permanent members of the Security Council to a peacekeeping operation, as reflected by the need for each to vote in favor of the resolution establishing the operation (or at least abstain on the issue).

5. For example, whether a mission has the consent of all parties will impact its need to use force; whether a mission maintains the appearance of impartiality will impact on whether it is viewed as a threat by the parties which, in turn, will impact on its need to resort to force. Findlay observed that "[i]t is a logical concomitant of the [self-defense] principle that peacekeepers should be deployed and operate only with the consent of the parties to a conflict and should observe strict impartiality in their dealings with the parties. As a tool of conflict prevention, management and resolution, peacekeeping is not sustainable if it leads to an escalation in violence, especially if, as a result, peacekeepers are perceived to have become parties to the conflict. In such circumstances consent is lost and impartiality forfeited." Findlay, supra note 3, at 52-53.

6. See infra notes 14-25 and corresponding text for a discussion of the use of the term "enforcement."
This article illustrates the United Nations' tendency to waiver between upholding the self-defense principle and straying from it. First I consider the United Nations' vacillation during the period of the Cold War. During this period, there was initially little call for the use of force and little discussion of when such force would be appropriate. In 1958, parameters for peacekeeping were set and the United Nations placed a strong emphasis on the self-defense principle. This period was followed by the controversial United Nations Mission in the Congo ("ONUC"), when the self-defense principle was largely ignored and the mission was given enforcement-type functions. As a result of problems that emerged — some argue that ONUC nearly led to the demise of U.N. peacekeeping, if not the United Nations as a whole — the importance of the self-defense principle was again highlighted by the United Nations. By now, however, the concept of self-defense was expanded to include "defense of the mandate."

The second part of this article considers the period after the Cold War. At that stage, Secretary-General Boutros Boutros-Ghali introduced An Agenda for Peace, which effectively called for the merger of peacekeeping and enforcement in certain circumstances. The theories set out in An Agenda for Peace were applied to the operations in Rwanda, Somalia, and the former Yugoslavia, Haiti; with each mission the self-defense principle was, once again, largely

7. A similar, though more elaborate, pattern was described was described by John Hillen in a hearing before the Subcommittee on International Operations of the United States Senate Committee on Foreign Relations. He spoke of a recurring pattern of five stages. First, the Security Council experiments with small peacekeeping missions in supportive environments. Second, emboldened by its success with the first type of mission, it mandates bigger and more coercive military missions that often take place in a more belligerent environment. Third, when "the challenges of managing these big missions in dangerous environments tend to overwhelm the U.N. and it fails," it tries to improvise. Fourth, discredited by these failures, it retreats to a more traditional role. Finally, possibly decades later, "armed with short memories and with the wounds healed," the United Nations returns to "playing a much more central role in being the strategic manager of ambitious and large and complex military operations." United Nations Peacekeeping Missions and Their Proliferation: Hearings Before the Subcomm. on International Operations on the Comm. of Foreign Relations, 106th Cong. (2002) (statement of John Hillen, U.S. Comm. on Nat'l Security/21st Century) available at <frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_senatehearings&docid=f:65701.pdf>.

ignored. These missions were generally considered failures. In the period following these operations, a chastened United Nations placed a renewed emphasis on the importance of limiting the use of force in peacekeeping to circumstances of self-defense.

In the third part, this article considers the United Nations' current approach in returning to the practice of bestowing enforcement powers on peacekeeping operations in disregard of the self-defense principle. Since June 1999, new peacekeeping operations have been established by the U.N. Security Council in ten countries or regions; in nine of these countries or regions, the operations have been specifically authorized under Chapter VII of the U.N. Charter to use considerable force to achieve at least some of their goals. Remarkably, several of these missions have been authorized to use "all necessary means" to achieve their objectives — language traditionally reserved for enforcement actions.

The final section of this article considers the future of U.N. peacekeeping. Is the United Nations' current move away from the self-defense principle simply the next installment in a boom-bust historical cycle of peacekeeping? Will it lead, once again, to forceful peacekeeping missions ending in disaster, the foundations of peacekeeping being shaken, and the United Nations hastily calling for a return to the strict application of the self-defense principle? Or does it represent the future face of successful U.N. peacekeeping? I will argue that history suggests the former.

**Terminology**

No discussion of peacekeeping or related issues may be sensibly undertaken without dwelling to some extent on definitions. This is particularly so when considering the forcefulness of peacekeeping operations. A peacekeeping mission's limited use of force has long been considered by many to be an essential characteristic of an operation being classified as peacekeeping, rather than enforcement.

9. These countries or regions are as follows: Kosovo, Sierra Leone, East Timor, Democratic Republic of the Congo, Ethiopia and Eritrea, Liberia, Cote d'Ivoire, Haiti, Burundi, and Sudan.

10. With the tenth country, Ethiopia and Eritrea, the Security Council has recently indicated its intention to take action under Chapter VII if the conduct of the parties fails to improve. See infra note 242 for a discussion of the current status of the operation in Ethiopia and Eritrea.

11. See discussion of the language used by the Security Council in relation to "necessary measures" infra note 283.
or, more recently, "peace-enforcement." I will consider each of these terms — peacekeeping, enforcement, and peace-enforcement — in turn.

U.N. representatives, commentators, and others disagree about what type of activity may be classed as U.N. "peacekeeping." The term "peacekeeping" is not found in the U.N. Charter. There is no "correct" definition of the term. Some scholars simply accept as "peacekeeping" whatever the U.N. Secretary-General or the U.N. Department of Peacekeeping Operations ("DPKO") says is peacekeeping. However, such an approach is problematic because the UN Secretariat and Secretary-General have been somewhat changeable regarding the essential aspects of peacekeeping.

For the purposes of this discussion, I rely on the following definition of "peacekeeping": "U.N. peacekeeping is a Security Council-authorized force, composed of personnel voluntarily provided by member states and/or members of the U.N. Secretariat, operating under the authority of the United Nations and mandated to assist with the maintenance or restoration of peace through its activities in situ." Under this definition, the question of how much force an operation may use and still be characterized as peacekeeping is deliberately left open. Moreover, this definition deliberately leaves


13. For example, after years of taking the position that a characteristic of peacekeeping operations was the non-use of force except in self-defense, in its December 2003 Peacekeeping Handbook, the U.N. Secretariat conceded that "sometimes the Security Council will authorize a peacekeeping operation to use armed force in situations other than in self-defence" (emphasis added). U.N. DEP'T OF PEACEKEEPING OPERATIONS, HANDBOOK ON U.N. MULTIDIMENSIONAL PEACEKEEPING OPERATIONS 57 (2003) available at <pbpu.unlb.org/pbpu/handbook/Handbook%20on%20UN%20PKOs.pdf>.

Similarly, the definition of peacekeeping posited by the Security Council in An Agenda for Peace contradicted the position long maintained by previous Secretaries-General and the Secretariat that consent is always an essential element in a peacekeeping operation. See discussion infra notes 102-105. Moreover, political considerations may be involved in a U.N. organ's decision as to whether or not to characterize a mission as peacekeeping. For example, the Security Council or Secretariat may favor deeming an operation "peacekeeping" — whether or not such a characterization is sustainable — because an operation so labeled is likely to be perceived as being a relatively non-violent endeavor, thereby making it more acceptable both to the forum state, which will be more likely to consent to the operation's presence, and to other states, which will be more likely to contribute troops. See discussion supra note 90 and corresponding text.
to one side the related issues of whether host state consent or the impartiality of the mission are *sine qua non* of an operation being classed as peacekeeping.

It is also necessary for the purposes of this discussion to set out what is meant by U.N. “enforcement.”14 The concept of enforcement *is* found in the U.N. Charter, though it is not defined therein.15 The term refers to a situation where the will of the Security Council is enforced by means of its Chapter VII authority against an opposing state either by the imposition of sanctions under Article 41 or, where necessary, a forceful action under Article 42.16 For the purposes of this discussion, I use the term “enforcement” to refer to an operation where the Security Council has authorized *force* to impose its will, rather than relying on non-forceful sanctions.17 In particular, I use the term “enforcement” to refer to the type of activity where the Security Council has bestowed its authority to use force to secure its will to a coalition of the willing (“COTW”) — either a grouping of states (including regional organizations such as NATO18 or ECOWAS19) or an individual state.20

---

14. To some, peacekeeping may be defined broadly enough to include enforcement. For the purposes of this discussion, I will continue to use both terms, while recognizing that a “peacekeeping” operation may be authorized to use “enforcement” or “enforcement-type” levels of force.

15. U.N. Charter art. 2, para. 5, 7; art. 5; art. 45; art. 53.


17. Some use the term “enforcement action” to distinguish a forceful action under Art. 42 from non-forceful enforcement under Art. 41. “Enforcement action” is sometimes referred to as “collective security.”


20. While largely beyond the scope of this discussion, it is important to note that this enforcement — sometimes referred to as “delegated enforcement” — is of a different nature than the enforcement envisaged under the U.N. Charter. Under the Charter, the Security Council’s will was to be enforced by means of a standing force established under Art. 43 which would act under the command of the Security Council. As no such force has ever been agreed to, the Security Council has opted to proceed by delegating its enforcement powers to coalitions of the willing. Most scholars have accepted the legality of delegated enforcement operations, based either on implied power under the Charter or by reference to the Security Council’s practice. See Niels Blokker, *Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by “Coalitions of the Able and Willing,”* 11(3) EUR. J. INT’L. L. 541, 542 (2000); see also Thomas M. Franck, *Recourse to Force: State Action Against Threats and Armed Attacks* 26
I consider enforcement operations in two categories. First, I consider operations where the Security Council has authorized a COTW to engage in an offensive campaign "against certain elements or governments." Only been two examples of such enforcement — which I will refer to as "full-blown enforcement" — exist in the U.N.'s history: the Security Council's authorization to use force in Korea and its authorization for a U.S.-led COTW to expel Iraq from Kuwait in 1990 and 1991 ("Operation Desert Storm"). Second, I refer to the enforcement operations authorized by the United Nations since the end of the Cold War (with the exception of Operation Desert Storm) as "quasi-enforcement." Generally speaking, these operations are of a more limited nature, have fewer troops, and are not to be directed against one party or government. Instead, these operations tend to use their enforcement powers to undertake functions of a more domestic nature, such as facilitating the delivery of humanitarian aid or the forceful restoration of peace. Moreover, quasi-enforcement operations are frequently designed to impose peace in an area in advance of (or concurrently with) a peacekeeping operation. Examples of "quasi-enforcement" include the Security Council's 1992 authorization of a U.S.-led operation to use all necessary means to establish a secure environment for humanitarian relief in Somalia ("UNITAF" or "Operation Restore Hope") and its authorization of the U.S.-led operation in 1994 to assist in Haiti ("Multinational Force" or "MFN").

The main basis (along with the issue of consent) of the legal

---


21. The terms "full-blown enforcement" and "quasi-enforcement" are borrowed from McCoubrey and White. See Hilaire McCoubrey & Nigel D. White, The Blue Helmets: Legal Regulation of United Nations Military Operations 55 (1996). Although many commentators agree that the two examples (Korea and Iraq/Kuwait) are Art. 42 enforcement actions, not all accept such a characterization. Instead they would consider either or both of the operations to be self-defense under Art. 51 of the Charter.

22. The U.N. action in Korea was authorized by the United Nations, the U.N. flag was flown and contributing governments used the term "U.N. command" when communicating with it. However, "in military and operational terms, control was firmly in the hands of the United States." 2 Rosalyn Higgins, United Nations Peacekeeping 1946-1967: Documents and Commentary, Asia 195-197 (1970) [hereinafter "Higgins, Asia"].
distinction between U.N. peacekeeping operations and U.N. enforcement operations has traditionally been that the latter were far less constrained in their use of force. However, now that current peacekeeping operations are generally authorized to use considerable force, including, in some cases, “all necessary means” under Chapter VII, this basis to distinguish the two concepts becomes much harder to apply. Where a peacekeeping operation is authorized to use an “enforcement-type” level of force, it becomes necessary to focus on the question of command and control: A peacekeeping operation is led by the United Nations, whereas in an enforcement operation (whether “quasi-enforcement” or “full-blown enforcement”), the Security Council delegates control24 to a COTW.25 Another important distinction between enforcement and peacekeeping is that the latter features the consent of the host state — though, acknowledgedly, there may be issues (beyond the scope of this discussion) regarding whether true “consent” may be obtained from a state whose government has broken down, such as Somalia in the 1990s. However, if one accepts the current tendency of the Security Council to specifically rely on Chapter VII of the Charter and the “all necessary means” language in establishing some peacekeeping operations, it is not such a stretch to argue that consent to a peacekeeping operation may no longer be required. As we shall see, this was the approach of Boutros-Ghali in the early 1990s.

Finally, another frequently invoked term, “peace-enforcement,” deserves mention. In its short existence, the term has come to mean different things to different people. Boutros-Ghali, thought by many to have coined the term, defined “peace-enforcement” as an action performed by member states who volunteered for service and were on-call to the United Nations. Peace-enforcement forces were to be more heavily armed and more extensively trained than peacekeeping forces. According to Boutros-Ghali, “[d]eployment and operation of such forces would be under the authorization of the Security Council and would, as in the case of peace-keeping forces, be under the command of the Secretary-General.”26 Boutros-Ghali’s peace-


25. Of course, enforcement as envisaged under Art. 43 of the U.N. Charter was to have been led by the Security Council. Blokker, supra note 20, at 542.

26. Agenda for Peace, supra note 8, at ¶ 44.
enforcement, however, is different from any forceful peacekeeping operation ever undertaken by the United Nations in that he envisaged peace-enforcement forces operating on-call. 27

To others, peace-enforcement is a means "to bring about or ensure compliance with some aspect of a Security Council mandate or an agreement among the parties." 28 "Unlike peacekeeping, but like full-scale enforcement measures, peace enforcement operations do not necessarily require the consent of the parties involved" 29 and peace-enforcement operations may use force beyond self-defense. According to this view, whether an operation is led by the United Nations, or by a member state or group of member states, is irrelevant to its characterization as peace-enforcement: ONUC would be categorized as peace-enforcement; so would the French-led Opération Turquoise in Rwanda in 1994. In effect, the concept is similar to the term "quasi-enforcement" used herein, except that "quasi-enforcement" only refers to those operations led by states or COTWS.

Common to all definitions of "peace-enforcement" is that it involves a greater use of force than peacekeeping, and a presumption that peacekeeping features a limited use of force. Because almost all peacekeeping operations in the last eight years have been given the authority to use force of a nature which is equal to or greater than the force used by operations classified as "peace-enforcement," drawing a distinction between peacekeeping and peace-enforcement is no longer valuable, if indeed it ever was. 30

In this discussion I will rely on the terms peacekeeping and

---

27. Moreover, it is arguable that Boutros-Ghali intended peace-enforcement to be limited to the enforcement of Art. 40 provisional measures. Jane Boulden takes this view, though she concedes that this limitation "has long since fallen by the wayside." Jane Boulden, Peace Enforcement: The United Nations Experience in Congo, Somalia, and Bosnia 2 (2001). Whether Boutros-Ghali envisaged such a limitation is debatable; he is not explicit on this point. See Agenda for Peace, supra note 8, at ¶ 44.

28. Boulden, supra note 27, at 3; see also Trevor Findlay, The Use of Force in UN Peace Operations (2002).

29. Id. at 3.

30. Even when it was rare for peacekeeping operations to be authorized to use enforcement-type levels of force, reliance on the term "peace-enforcement" to signal a more forceful endeavor than peacekeeping was of limited value as it was impossible to state with precision how much force beyond force in self-defense a peacekeeping operation must be authorized to use in order for it to transmogrify into "peace-enforcement." As such, what was classified as "peacekeeping" by one commentator was frequently classified as "peace-enforcement" by another.
enforcement and avoid the term peace-enforcement. The term peacekeeping carries no connotation of a limited use of force; however, as noted, it necessarily refers to an operation led by the United Nations. An enforcement operation, on the other hand, is one which is authorized to use considerable force and is not led by the United Nations. Where necessary, I specify whether the enforcement operation referred to is “quasi-enforcement” or “full-blown enforcement.” As such, a peacekeeping operation may be authorized to use an “enforcement-type” level of force without becoming an “enforcement” operation.

II. The Cold War

Introduction

As noted, the self-defense principle meant that peacekeepers could not use force beyond self-defense in a peacekeeping operation. That peacekeepers possess the right to use force in self-defense has been assumed for reasons both practical and legal. Practically speaking, U.N. member states would not be likely to volunteer troops (and individuals would not likely be willing to serve) in circumstances where individuals were denuded of a right so essential to their survival. Legally speaking, the right to self-defense has been assumed to be inherent. Indeed, the right to self-defense exists in all endeavors national or international.

Because there is no established definition of the concept of self-defense – in peacekeeping or otherwise – the line between force in self-defense and force beyond self-defense can be very difficult to

31. As observed by Findlay, “From a political perspective, it has been clear since the advent of peacekeeping that states are unwilling to provide forces to the UN if they are not given the right of self-defence.” Findlay, supra note 3, at 53.

draw. Echoing the difficult considerations as to when states may legitimately have recourse to force under Article 51 of the U.N. Charter\textsuperscript{33} (what tends to be referred to as “national self-defense,” in contrast to the “individual self-defense” being considered herein), issues have arisen regarding the timing of the self-defense. May self-defense only occur in the face of an attack or is it permissible for peacekeepers to act in an anticipatory fashion? Moreover, may the right of self-defense be relied upon only where the use of force is for the protection of the “self” or can it serve to justify the defense of others under the protection of the user of force?

Because forces committed to a peacekeeping mission continue to be bound by their own national law even though they are on foreign territory,\textsuperscript{34} one indicator of what level of force may legally constitute self-defense stems from national laws. However, criminal laws at the national (or state) level regarding self-defense vary. Each legislature has its own provisions dealing with matters such as whether force may be used for protection of persons only or if it extends to property (and if property, whether it must be a dwelling), the level of force which may be used, the prerequisites to the use of force and whether only the individual who (or whose property) is under threat may reply or whether others may legitimately use force on his or her behalf (and if so, what relationship with the victim is required).\textsuperscript{35} As a result, each

\textsuperscript{33} Art. 51 recognizes states’ “inherent right of individual or collective self-defence if an armed attack occurs.”

\textsuperscript{34} As noted by Dale Stevens, “it is a universal precondition of participating in a UN peace operation that military discipline remains within the exclusive purview of the contributing state.” Dale Stevens, \textit{The Lawful Use of Force by Peacekeeping Forces: The Tactical Imperative}, 12/2 INT’L PEACEKEEPING 157, 160 (2005).

\textsuperscript{35} For example, the California Penal Code provisions may be contrasted with those in the Criminal Code of Canada. The California Code provides, \textit{inter alia}, that homicide is justified when committed “in defense of habitation, property or person” against someone who endeavors to commit a violent felony or who intends to enter the habitation, in a violent, riotous or tumultuous manner, with a violent purpose. \textbf{CAL. PENAL CODE} § 197(2) (West 2007). Further, homicide is justified where it is relied upon (as a last resort) in defense of the actor’s own person or “a wife or husband, parent, child, master, mistress, or servant of such person” where there are reasonable grounds to believe a sufficiently serious felony is imminent. \textit{Id.} at § 197(3). The Canadian Code provides, \textit{inter alia}, that when someone has been unlawfully assaulted (without provocation), causing death or grievous bodily harm to the attacker is justified if the person repelling the assault has a reasonable apprehension of death or grievous bodily harm from the assault and believes he or she cannot otherwise preserve him- or herself from the death or grievous bodily harm. Criminal Code of Canada, R.S.C., § 34 (1985). When it comes to the use of force \textit{to prevent an impending assault}, the Canadian Code provides that a person is justified in “using force to defend himself or any one under his protection from
national contingent in a U.N. peacekeeping operation has its own Rules of Engagement ("ROE") regarding the use of force.  

The focus of this discussion, however, is the use of force by peacekeepers authorized under the U.N. system. Several factors are relevant. The U.N. Security Council is the obvious source for determining the meaning of self-defense in a peacekeeping operation. Because the Security Council rarely provides much elaboration on this point, we must look for clues in the actions of the Secretary-General who, along with the DPKO and the force commanders, establishes the U.N. ROE for each mission. While parameters for the legitimate use of self-defense imposed at the national level may have considerable influence either as evidence of custom or general principles of international law, the United Nations' approach may well be different in nature — perhaps even contradicting the rules governing the use of self-defense in the peacekeeping operation as determined by the national legislation. In the words of one commentator: "The self-defense principle, the bedrock of peacekeeping, is apparently infinitely malleable. It therefore needs careful definition and management."
A. The Self-Defense Principle Elaborated: The Early Years

Not until after the establishment of the First United Nations Emergency Force ("UNEF I") in 1956 did the rules relating to the use of force by U.N. peacekeepers begin to develop in a significant way.40 In a 1958 Summary Study on the experience derived from UNEF I, Hammarskjöld noted that peacekeeping forces could "never include combat activity."41 He recognized, nonetheless, that "[t]here will always remain, of course, a certain margin of freedom for judgment, as, for example, on the extent and nature of the arming of the units and of their right of self-defence."42 He further observed:

A reasonable definition [of when force may be used in self-defense] seems to have been established in the case of [UNEF I], where the rule is applied that men engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions which they occupy under orders from the Commander, acting under the authority of the Assembly and within the scope of its resolutions. The basic element involved is clearly the prohibition against any initiative in the use of armed force. This definition of the limit between self-defence, as permissible for United Nations elements of the kind discussed, and offensive actions, which is beyond the competence of such elements, should be approved for future guidance.43

In Hammarskjöld's view, while it should be generally recognized that a right to self-defense for peacekeeping missions exists "it should be exercised only under strictly defined conditions," because "a wide interpretation of the right of self-defence might well blur the distinction between [peacekeeping] operations and combat operations, which would require a decision under Chapter VII of the Charter and an explicit, more far-reaching delegation of authority to the Secretary-General."44

40. LIU, supra note 1, at 17 (noting that, given the limited size of some of the early missions, "they would not be able to [use force] even if they wanted to"). See also Ray Murphy, United Nations Peacekeeping in Lebanon and Somalia, and the Use of Force, 8/1 J. CONFLICT & SECURITY L. 71, 72 (2003). According to Findlay, the practice emerged from this operation "gradually and in an ad hoc fashion and was only later codified." Findlay, supra note 3, at 53.
41. Summary Study, supra note 32, at ¶ 178.
42. Id.
43. Id. at ¶ 179 (emphasis added).
44. Id.
Hammarskjöld strikes a careful balance between an overly literal conception of self-defense — one limiting the use of force to the protection of one’s own person — and an overly broad conception which would stray into enforcement-type action (what he termed “offensive” or “combat” actions). While the Secretary-General recognized a “margin of freedom” in relation to the right of self-defense, he imposed clear limits: a peacekeeping mission 1) must not initiate the use of armed force and 2) must only use force in response to an attack with arms, including attempts to make peacekeepers withdraw from their positions.

A conception of self-defense whereby one is permitted to use reasonable violence only in reaction to violence, but which gives the defender a certain amount of discretion to act to defend more than just herself, appears sound. Such a conception of self-defense comports with the national criminal law of some states as well as the law of the International Criminal Court.

If the concept were limited strictly to the defense of the “self” of the peacekeeper subjected to violence, peacekeepers would be required to stand by in the face of an attack on one of their fellow peacekeepers. Moreover, if the “self” did not extend to the territory on which the peacekeepers operate, they would be required to retreat when the territory they occupy was overrun by armed spoilers. Such a position is clearly untenable.

B. The Self-Defense Principle Ignored: ONUC

Hammarskjöld’s recognition of the need for a limitation on the use of force in self-defense, lest the distinction between peacekeeping missions and enforcement become blurred, was prescient. Only a few years after he propounded the above test, the United Nations moved

45. See discussion supra note 35.

46. Under Art. 31(1)(c) of the Rome Statute on the International Criminal Court, which entered into force July 1, 2002, criminal responsibility is excluded if at the time of the conduct, “The person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected.” U.N. Doc. A/CONF. 183/9 (Jul. 17, 1998), available at <www.un.org/law/icc/statute/romefra.htm>; but see Antonio Cassese, The Statute of the International Criminal Court: Some Preliminary Reflections, 10(1) EUR. J. INT’L L. 144, 154 (1999), observing, “The notion of self-defence as a ground for excusing criminal responsibility laid down in this provision seems to be excessively broad and at variance with existing international criminal law.”
away from it. The U.N. mission in the newly independent Congo, known by its French acronym ONUC, tested the limits of any emerging definition of peacekeeping as well as the very foundations of the United Nations itself. During this mission — referred to by one commentator as the United Nations' Vietnam — the concept of self-defense became ever more broad until it appeared to be abandoned altogether, for the purposes of ONUC at least.

In early July 1960, in the aftermath of the Belgian Congo's hasty transition to independence, there were attacks against many of the Belgian nationals remaining there. Belgium responded by sending in troops against the wishes of the Congolese central government. The United Nations responded by calling for the immediate withdrawal of Belgian forces and by authorizing technical and military assistance. However, as the situation in the country deteriorated, the Security Council authorized progressively more forceful measures. Following a constitutional crisis in September 1960, the U.N. General Assembly called on the Secretary-General to continue to “take vigorous action in line with the Security Council's resolutions” and to “assist the Central Government ... in the restoration and maintenance of law and order throughout the territory ... and to safeguard its unity, territorial integrity and political independence in the interests of international peace and security.” On February 21, 1961, in the aftermath of the murder of the Congolese Prime Minister and the resulting increase in violence, the Security Council authorized ONUC to take “all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of all military operations, the prevention of clashes, and the use of force, if necessary, in the last resort.” Following

50. “The force ... had become mired in a dispute between the West and the Soviet Union. By September, Moscow began to demand the operation's termination. On September 17, the U.S. invoked 'Uniting for Peace' to convene another emergency session of the General Assembly.” FRANCK, supra note 20, at 37.
52. S.C. Res. 161, ¶ 1, U.N. Doc. S/4741 (Feb. 21, 1961) (emphasis added). The resolution also called for the immediate “withdrawal of all Belgian and other foreign military and paramilitary personnel and political advisers not under the United
Hastings Int'l & Comp. L. Rev.  

Hammarskjöld's death in September 1961, “the ground shifted somewhat.” The Security Council authorized ONUC to “take vigorous action, including the requisite measure of force, if necessary, for the immediate apprehension, detention . . . or deportation of all foreign military and paramilitary personnel . . . and mercenaries.” The mission reached its apex as U.N. forces began to seize control of positions to ensure that they had free movement, and to use force to ensure the removal of mercenaries.

At the start of the mission, Hammarskjöld steadfastly maintained that the rules relating to the use of force had not changed and that the mission 1) must never initiate the use of armed force, and 2) must only use force in response to an armed attack, including an attempt to make them withdraw from legitimately held positions. However, Hammarskjöld eventually wrote of an expanded concept of self-defense in the Congo to include a response to “attempts to overrun or displace U.N. positions,” and the “disarming and, if necessary, the detention of those preparing to attack U.N. troops.” His position evolved to a point where he authorized pre-emptive action against conduct considered to be “[i]ncitement to or preparation for violence, including troop movements and confirmed reports of an impending

---

53. On September 17, 1961, on a trip to Northern Rhodesia in support of resolving the situation in the Congo, the Secretary-General's flight crashed and he was killed.

54. 3 Rosalyn Higgins, United Nations Peacekeeping 1946-1967: Documents and Commentary, Africa 47 (1980) [hereinafter "Higgins, Africa"]. The death of several Italian peacekeepers in November 1961 in a separate incident also increased the tension surrounding the mission. Id. at 354-356.


59. Id.
attack, would warrant protective action by U.N. troops.\textsuperscript{60} Hammarskjöld considered that the mandate of February 21, 1961 authorized ONUC to “arrest anyone actually leading a mob demonstration.”\textsuperscript{61}

The ONUC mission shows Hammarskjöld’s “margin of freedom” stretched beyond its breaking point. Indeed, based on the level of force authorized, many have concluded that ONUC was not a peacekeeping operation.\textsuperscript{62} Whereas Hammarskjöld and others in the context of UNEF I interpreted the meaning of the term “self-defense” to include defense of a position — a valid and necessary interpretation of the term — the use of force in ONUC clearly went much further.

In conclusion, the use of force in ONUC surpassed any realistic definition of self-defense. ONUC was a peacekeeping operation with powers that were similar in nature to those which might be bestowed on an enforcement operation. While few commentators went so far as to classify the operation as enforcement, there was certainly no denying that the type of force authorized meant that the self-defense principle was abandoned at least in this case.\textsuperscript{63} Nevertheless many,

\begin{itemize}
\item \textsuperscript{60} Id. (emphasis added).
\item \textsuperscript{61} Id. Nevertheless, Hammarskjöld remained a voice of moderation compared to some. He was determined to emphasize the distinction between the use of force he felt strictly necessary and the all out waging of war by the peacekeepers against separatist Katanga. Indeed, Hammarskjöld’s vision of the appropriate level of force was not uniformly adhered to by his commanders on the ground. HIGGINS, AFRICA, supra note 54, at 395.
\item \textsuperscript{62} See, e.g., Findlay who describes ONUC as “a mission that would... take peacekeepers beyond peacekeeping into peace enforcement.” He notes that the controversies relating to ONUC’s mandate, including its use of force, “set back the search for a sensible and practicable use-of-force doctrine for the UN.” FINDLAY, supra note 28, at 51. Månsson refers to ONUC as “de facto peace enforcement.” Katarina Månsson, Use of Force and Civilian Protection: Peace Operations in the Congo, 12/4 INT’L PEACEKEEPING 503, 504 (Winter 2005).
\item \textsuperscript{63} As Bowett observed, “it is difficult to avoid the conclusion that the Security Council by [adopting S.C. Res. 161] abandoned a strict reliance on the principle of self-defence”; he noted further that S.C. Res. 169, supra note 55, “too, marked an abandonement of the self-defence limitation.” BOWETT, supra note 21, at 202. The issue of whether the operation constituted an “enforcement action” is a separate one from whether it went beyond force in self-defense. For Bowett, as well as most of the commentators of the day, the operation did not constitute enforcement. Id. at 176. Of course, the debate in this area is somewhat foreclosed by the fact that the International Court of Justice ruled that ONUC was not enforcement. \textit{Certain Expenses of the United Nations}, U.N. Charter art. 17, para. 2, Advisory Opinion of 20 July 1962, Reports of Judgements, Advisory Opinions and Orders (International Court of Justice: The Hague, 1962), 150; but cf. McCoubrey & White, supra note
\end{itemize}
including the United Nations itself, have taken the view that ONUC comported with the self-defense principle. In order to take this position, one needs to fit the type of activity undertaken by ONUC—the use of force against those inciting violence, the use of force to expel mercenaries, the use of force to detain those preparing to attack U.N. troops and the use force in advance of an armed attack within one’s definition of self-defense. This view is misleading as it ignores the normal meaning of the term “self-defense” — even where defined expansively. It strains credulity to argue that the level of force authorized for ONUC was in the nature of self-defense. Professor Nigel White described an interpretation that ONUC was acting in self-defense as being “unacceptably wide... going far beyond that authorized for other peacekeeping operations.”

22, at 53, where they observe that “despite the judgment of the world court in the Expenses case, [ONUC] amounted to de facto enforcement action.”

64. The United Nations, which categorizes ONUC as peacekeeping, continued to assert the existence of the self-defense principle even after ONUC. See Schachter, supra note 3, at 84, who notes the United Nations' reluctance to acknowledge that the nature of the force used in ONUC could not realistically be considered to be self-defense.

65. According to Bowett, ONUC's “operations in September and December 1961 were in the nature of ‘anticipatory’ measures of self-defence rather than reactions to an actual armed attack.” BOWETT, supra note 21, at 202.

66. In the words of Adam Roberts, “some military actions [in the Congo] were dressed up as self-defence when in fact they were essentially proactive.” Adam Roberts, From San Francisco to Sarajevo: The UN and the Use of Force, 37/4 SURVIVAL 7, 15 (Winter 1995-1996); see also Findlay who describes ONUC as “a mission that would break all the rules established so far [in relation to the use of force], although not avowedly so” (emphasis added). FINDLAY, supra note 28, at 51.

67. As noted by Bowett, ONUC “placed considerable strain on the concept of self-defence.” BOWETT, supra note 21, at 213. He continued, “The use of force to protect the civilian population was scarcely self-defence and the Secretary-General was obliged to describe it as ‘on the outer margin of the mandate of the United Nations.’” Id. at 201 (quoting a statement by the Secretary-General to the Security Council of February 15, 1961 (Official Record of the Security Council, ¶ 27, 16th yr., 935th Mtg.)).

68. One former U.N. official speaks of the tendency of the United Nations to stretch the meaning of self-defense “to incredulity and beyond its usual legal meaning.” Schachter, supra note 3, at 84.

C. Self-Defense Expanded: Defense of Mandate

ONUC was the high-water mark regarding the use of force in a peacekeeping mission during the Cold War. The strict limitations on the use of self-defense established in UNEF I and championed by Hammarskjöld (that a peacekeeping operation should never initiate the use of armed force and could only use it in response to an armed attack, including an attempt to force withdrawal) were not to revive after being surpassed with the ONUC. Instead, the "defense of mandate" approach emerged whereby the right to use "self-defense" in a mission was expanded to include the situation where the mandate of the mission was interfered with. While the invocation of "self-defense" language sounds as though the use of force would occur only rarely and in prescribed circumstances, with this approach, as we shall see, peacekeeping operations were given authority to use force which was in many ways more akin to enforcement than to self-defense.

As the mission in the Congo was winding down in early 1964, the United Nations Peacekeeping Force in Cyprus (UNFICYP) was just getting under way. At the insistence of troop-contributing states, then Secretary-General U Thant provided the following explanation of self-defense for the mission:

The expression self-defence includes the defence of the United Nations posts, premises and vehicles under armed attack, as well as support of other personnel of UNFICYP under armed attack. When acting in self-defence the principle of minimum force shall always be applied and armed force will only be used when all means of persuasion have failed. The decision as to when force is to be used rests with the Commander on the spot. Examples in which troops may be authorized to use force include attempts by force to compel them to withdraw from a position which they occupy under orders from their commanders, attempts by force to disarm them, and attempts by force to prevent them from carrying out their responsibilities as ordered by their commanders.

Thant's approach to self-defense — informed, presumably, by the mission in the Congo which had proven so costly in peacekeepers'
lives
disability — is considerably broader than that set out by Hammarskjöld in relation to UNEF I. The concept of self-defense was clarified; force could be used to protect one’s fellow peacekeepers and the premises of the mission in the face of armed attack. Significantly, the concept of self-defense was expanded to allow peacekeepers to counter attempts by force to prevent them from carrying out their responsibilities as ordered by their commanders.

The idea that force to prevent forceful interference with a commander’s orders could be considered self-defense was expanded with the establishment of the Second United Nations Emergency Force (“UNEF II”) in 1973. Self-defense could now be used to prevent forceful interference with all duties under the mandate. Secretary-General Kurt Waldheim in his report to the Security Council spoke of a force that “shall not use force except in self-defence. Self-defence would include resistance to attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council.”

In a resolution of the same day, the Security Council approved this report. According to the DPKO, a similar approach, whereby self-defense includes defense of the mandate, has been stipulated for each peacekeeping force since 1973. Waldheim used similar language in his report calling for the establishment of the United Nations Interim Force in Lebanon (“UNIFIL”) in 1978. In addition to adopting Waldheim’s report — and thereby his inclusion of the
defense of mandate within the concept of self-defense — the Security Council went one step further. With UNIFIL, for the first time the Security Council (rather than the Secretary-General) specifically provided in a resolution that “self-defence would include resistance to attempts by forceful means to prevent it discharging its duties under the mandate of the Security Council.” Thus the “defense of mandate” approach to self-defense became even more firmly entrenched.

The United Nations' approach to authorizing the use of force by peacekeeping missions after ONUC was more measured, with an emphasis on the self-defense principle both in Security Council resolutions and the reports of the Secretary-General endorsed by the Security Council. If taken literally, however, the defense of mandate approach to self-defense could lead to operations that were no less forceful than ONUC — particularly where the Security Council mandate was general in nature, as was frequently the case. For example, the Security Council mandated UNEF II to supervise its demand that the cease-fire be observed and to prevent a recurrence of the fighting; similarly, it mandated UNFICYP to “use its best efforts to prevent a recurrence of fighting and, as necessary, to contribute to the maintenance and restoration of law and order and a return to normal conditions.” Under the defense of mandate approach, any forceful action that would serve to achieve these very broad goals could be classed as self-defense, including, presumably, forceful disarmament or attacking any faction whose conduct is

---

81. S.C. Res. 425, supra note 79. Gray notes that the express provision that force may only be used in self-defense in this mission led to the concern that there might arise “the false inference that if a resolution did not expressly authorize the right of self-defence a peacekeeping force could not legally use force in self-defence.” She suggested that this concern may be responsible for the fact that in later resolutions (in relation to missions in Rwanda and Angola) the Security Council recognized the right of peacekeeping operations to use force instead of authorizing it. GRAY, 1st ed., supra note 80, at 179.
83. S.C. Res. 186, supra note 70, ¶ 5.
judged likely to reignite the conflict. In the words of White: “Allowing a force to take positive action in defence of its purposes is no different from allowing it to enforce them.”

Professor Ray Murphy made a similar point when he observed that the defense of mandate approach has “allowed the Security Council to give almost any task, however ill thought out or unrealistic, to a peacekeeping force, in the expectation that it could use force under the guise of self-defence and still retain its peacekeeping status.”

Peacekeeping missions during this period did not, in fact, take advantage of this possibility to use virtually unlimited force. This restraint may be attributable to the commanders in the field, perhaps influenced by their understanding of the difficulties that might have resulted if they had, as had so vividly been illustrated with ONUC.

In the words of one observer: “While theoretically the concept of self-defense was broadened, in practice the expanded doctrine has remained, at least until more recent times, largely unused.”

In conclusion, the very sensible parameters Hammarskjöld outlined for the use of force in U.N. peacekeeping were short-lived. A few years after they were set out, they were all but abandoned in ONUC. In the words of one commentator, the controversies relating to ONUC’s mandate, including its use of force, “set back the search for a sensible and practicable use-of-force doctrine for the U.N.”

Although the Security Council’s decision to explicitly bestow enforcement powers on ONUC was not to be repeated with any other peacekeeping operation during the Cold War, the acceptance of the defense of mandate approach to self-defense could have had much

84. See White, supra note 69, at 201.
85. See Murphy, supra note 40, at 72.
86. Roberts observes, “This formulation . . . did not in practice lead to a general pattern of more forceful response when UN forces were hampered by armed groups from performing their duties; nor did it lead to a general pattern of [increased] troop deployments and armament levels.” Roberts, supra note 66, at 14.
87. Murphy notes that, “the guidelines of the Secretary-General relating to the use of force were to be restrictively interpreted and applied.” Murphy, supra note 40, at 83. He gives the example of UNIFIL refraining to use force to deploy in the area controlled by the PLO, despite this being permitted by the guidelines. “[I]nvolve [in functions and duties related to the maintenance of internal law and order] could have had serious repercussions on the impartiality of the force by involving it in the internal conflict taking place alongside the international crisis caused by the Israeli invasion.” Id. at 84.
88. See Cox, supra note 32, at 256.
89. Findlay, supra note 28, at 51.
the same effect.

We have therefore seen that even during the Cold War the Security Council’s adherence to the self-defense principle in peacekeeping was neither strict nor unconditional. Nevertheless, commentators and the United Nations itself were content to maintain the artifice that the self-defense principle in peacekeeping existed — even in the face of facts to the contrary. This may not have been without purpose. If the façade of the self-defense principle could be adhered to, potential host states and contributing states would have the impression that peacekeeping was a non-violent endeavor, thereby making consent much easier to obtain. As noted by Urquhart, “[i]t is [its non-violent nature] that makes peacekeeping forces acceptable both to the governments and parties engaged in conflict, and to the governments that contribute the troops.”

III. Peacekeeping and Force in the Aftermath of the Cold War

Introduction

From the establishment of UNIFIL in 1978 until the establishment of the United Nations Good Offices Mission in Afghanistan and Pakistan (“UNGOMAP”) in 1988, no new peacekeeping operations became operational. However, that changed after Boutros-Ghali became Secretary-General in January 1992. In the years immediately preceding Boutros-Ghali’s appointment, two events occurred which significantly impacted U.N. peacekeeping. The first was the end of the Cold War in the late 1980s. Second, and related, was the success of Operation Dessert Storm, a “full-blown” enforcement operation established by a newly cooperative Security Council. In the aftermath of these events, with the attendant expectations that under the “new world order” the Security Council could finally exercise its enforcement function without fear of the exercise of the veto on ideological grounds, came

90. Urquhart in LIU, supra note 1, at 7.
91. “A new era of activity began as the Cold War ended with more [peacekeeping operations] begun by the UN during the next five years than in all of the previous forty.” DENNIS C. JETT, WHY PEACEKEEPING FAILS 27 (1999).
92. A third event may have also had an impact: In 1988 the United Nations was awarded a Nobel Peace Prize for its peacekeeping activities.
“what was perhaps the apogee of expectations for peacekeeping.” On the heels of these events, the Security Council requested that Boutros-Ghali set forth his ideas on ways to strengthen and make more efficient peacekeeping and related activities. The report which emerged, entitled An Agenda for Peace, showed the new Secretary-General’s willingness to engage in fresh thinking on peacekeeping operations, including a willingness to challenge the traditional limitation on the use of force therein. However, as we shall see, he did not appear to pay due regard to the difficulties that emerge when peacekeeping and force are mixed, as the Congo mission so well illustrated.

A. The Self-Defense Principle Suspended: An Agenda for Peace

In An Agenda for Peace Boutros-Ghali attempted to clarify the concept of peacekeeping by distinguishing it from various, related concepts: preventive diplomacy, peacemaking, and peace building. Boutros-Ghali considered preventive diplomacy as a means of avoiding a crisis, post-conflict peace building as a means “to prevent a recurrence” of the crisis and peacemaking (including, where necessary, peace-enforcement), and peacekeeping as methods to bring hostile parties to agreement after a crisis developed. As noted above, for Boutros-Ghali peace-enforcement — a sub-category of peacemaking — would consist of heavily armed military units authorized by the Security Council under Chapter VII and under the command of the Secretary-General. Significantly, the report provided a revised definition of peacekeeping:

Peace-keeping is the deployment of a United Nations presence in

---

93. JETT, supra note 91, at 3.
95. Agenda for Peace, supra note 8.
96. Brian Urquhart describes ONUC as “a kind of rehearsal” for operations such as those in Bosnia or Somalia. Interview by Harry Keisler with Brian Urquhart, at the Institute of International Studies, University of California, Berkeley, A Life in Peace and War: Conversation with Sir Brian Urquhart, (Mar. 19, 1996), available at <globetrotter.berkeley.edu/UN/Urquhart/urquhart6.html>.
97. Agenda for Peace, supra note 8, ¶ 57.
98. “When conflict breaks out, mutually reinforcing efforts at peacemaking and peace-keeping come into play.” Id. at ¶ 21.
99. See discussion supra notes 26-30 and accompanying text.
100. Agenda for Peace, supra note 8, at ¶¶ 44-45.
101. Id. at ¶ 44.
the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well. Peace-keeping is a technique that expands the possibilities for both the prevention of conflict and the making of peace.102

Although neither this definition nor the balance of the report addresses the question of when force is appropriate in a peacekeeping mission, the definition impacts the question in two important ways.103 First, the insertion into the definition of the word “hitherto” before the words “with the consent of all the parties concerned” — carrying with it the clear implication that consent was no longer an essential part of peacekeeping — signaled a departure from accepted practice. This is significant because only where a peacekeeping operation is established as a mandatory measure under Chapter VII, may it legally be put in place without the consent of the state where the operation is to be stationed.104 Moreover, the need for consent has traditionally operated as a check on the use of force; states are less likely to consent to a peacekeeping operation where offensive force is authorized.105 A second, related impact stemmed from the fact that the report — and this is highlighted in the last sentence of above definition with its reference to peacekeeping’s role in the “making” of peace — left tremendous scope for overlap between peacekeeping

102. Id. at ¶ 20 (emphasis in original).
104. This point was made in 1956 by Hammarskjöld. He observed that the General Assembly “could not request [UNEF I] to be stationed on the territory of a given country without the consent of the government of that country. This does not exclude the possibility that the Security Council could use such a force within the wider margins provided for in Chapter VII of the United Nations Charter.” While the point was made in the context of an operation established by the General Assembly, it would apply equally to an operation established by the Security Council unless the Security Council was acting in a binding manner under Ch. VII. The Secretary-General, Second and Final Report of the Secretary-General on the Plan for an Emergency International U.N. Force Requested in Resolution 998 (ES-I), ¶ 9, U.N. Doc. A/3302 (Nov. 6, 1956) (adopted by the General Assembly on Nov. 4, 1956); G.A. Res. 1001 (Nov. 7, 1956). Boutros-Ghali described peace-enforcement as going “beyond peacekeeping to the extent that the operation would be deployed without the express consent of the two parties” while retaining “many of the features of peacekeeping.” Boutros Boutros-Ghali, Empowering the United Nations, 71 FOREIGN AFF. 89, 94 (1991-1993).
105. See supra note 5 and corresponding text for a discussion of the interconnectedness of the two concepts; see also supra note 90 and corresponding text regarding states’ attitudes towards forceful peacekeeping.
and peacemaking, including peace-enforcement. ¹⁰⁶

1. Overview of the Operations

During Boutros-Ghali’s five-year term from January 1992 to December 1996, discord in various parts of the world provided a laboratory for the testing of his ideas. I will focus on four missions which illustrate the difficulties associated with increasing the forcefulness of peacekeeping missions: the missions in Rwanda, Somalia, the former Yugoslavia, and Haiti.¹⁰⁷ In each case the United Nations was unable to carry out peacekeeping functions due to violent conditions on the ground. In each case the Security Council responded in two ways. First, it put in place a COTW-led “quasi-enforcement” action, either operating concurrently with the peacekeeping operation or temporarily taking over for the peacekeeping operation with a view to restoring peace and security so that the peacekeeping operation might return. Second, the Security Council increased the peacekeeping operation’s authorization to use force. As a result, during this period peacekeeping and enforcement overlapped to the point that, at times, the distinction between them became virtually imperceptible.¹⁰⁸ As we shall see, these missions proved to be extremely problematic and in some cases seriously damaged the reputation of the United Nations.

a. Former Yugoslavia (February 1992 - December 2002)¹⁰⁹

By late 1991, matters in the former Yugoslavia had begun to deteriorate rapidly. As a result of fighting in Croatia and Slovenia, the United Nations Protection Force in the former Yugoslavia (“UNPROFOR”) was established in February 1992 “to create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis.”¹¹⁰ Despite his concerns that conditions for peacekeeping did not actually exist,¹¹¹ the Secretary-

¹⁰⁶ The Secretary-General indicated that he considered peace-enforcement to occur at the same stage of conflict as peacekeeping. See Agenda for Peace, supra note 8, at ¶ 57.
¹⁰⁷ Other U.N. missions established during this period are not considered in detail here as they reveal no new lessons.
¹⁰⁸ See Higgins, supra note 103, at 450.
¹⁰⁹ See FINDLAY, supra note 28, at ch. 7, for a detailed discussion of this complicated mission and its offshoots.
¹¹¹ The Secretary-General concluded that “the danger that a U.N. peacekeeping
General advised the Security Council that the "normal rules in United Nations peace-keeping operations for the bearing and use of arms" should apply. This would, presumably, include an understanding that force only be used in self-defense or in defense of the mandate. It was not long into the mission's tenure, however, before the Security Council made the mission more forceful.

There is considerable scope for disagreement on the question of when the mission was militarized. In the view of Boutros-Ghali, a "mission creep" began with Security Council resolution 752 of 15 May 1992, some three months after the establishment of the mission. He characterizes that resolution as demanding that all irregular forces be disbanded and disarmed. Others see Security Council resolution 776 of September 14, 1992, which authorized the enlargement of UNPROFOR's mandate and strength in Bosnia and Herzegovina in order to facilitate the delivery of humanitarian assistance, as a turning point. Or, the turning point may have come with the Security Council's resolution 807 where, for the first time in its history, the Security Council explicitly invoked Chapter VII in a peacekeeping mandate. The resolution called for the "unimpeded freedom of movement" of UNPROFOR in order for it to carry out its functions.

What is clear, however, is that by June 1993 when the Security Council increased the scope and forcefulness of UNPROFOR's mandate such that it was charged with deterring acts against the Security Council's "safe areas," the nature of the mission had become more militarized than any previous peacekeeping mission.
since ONUC. Under its revised mandate, UNPROFOR was authorized “acting in self-defence, to take the necessary measures, including the use of force in reply to bombardments against the safe areas.”

In almost all resolutions subsequent to resolution 807, Chapter VII was specifically invoked. By June 1995, the operation arguably reached the height of its forcefulness when the Security Council assigned it a heavily armed Rapid Reaction Force (“RRF”) to enable UNPROFOR to carry out its mandate.

Making an assessment of UNPROFOR’s forcefulness even more complicated was the fact that the Security Council, acting under Chapter VII, authorized a NATO-led quasi-enforcement operation to intervene militarily concurrently with UNPROFOR. Although the NATO operation was separate from UNPROFOR, because it was working hand-in-glove with UNPROFOR (including the use of a “dual key” approach whereby UNPROFOR was meant to authorize the quasi-enforcement operation’s use of force) the quasi-enforcement operation’s forcefulness and that of UNPROFOR became intermingled.

A final factor which must be borne in mind when considering the forcefulness of UNPROFOR is the fact that its use of force was influenced not just by its changing mandates, but also by the various approaches of different force commanders and contingent commanders.

After Croatia demanded the withdrawal of UNPROFOR from its territory in early 1995, the Security Council established the United Nations Confidence Restoration Operation in Croatia (“UNCRO”) to take over for UNPROFOR there. In early 1996, UNCRO was replaced by two missions: the United Nations Transitional

---

122. Gray, 2d ed., supra note 69, at 219. Gray notes, “as France acknowledged, not to have resorted to Chapter VII in later resolutions would have been the worst of signals for the parties.” Id.
126. At least this was the impression given to those on the ground. For a discussion of the relationship between the two forces, see Gray, 2d ed., supra note 69, at 224-226.
The Use of Offensive Force in U.N. Peacekeeping

Administration in Eastern Slavonia, Baranja and Western Sirmium ("UNTAES") and the United Nations Mission of Observers in Prevlaka ("UNMOP"). The Security Council explicitly invoked Chapter VII in its resolutions establishing UNPROFOR and UNTAES mandates; however, in each case the mandated tasks were not forceful in nature. Also in March 1995, the United Nations Preventive Deployment Force ("UNPREDEP") was established to replace UNPROFOR in the Former Yugoslav Republic of Macedonia. In late 1995, after the Dayton Peace Agreement came into effect in Bosnia and Herzegovina, UNPROFOR ceased to exist entirely and the International Police Task Force ("IPTF"), which came to be known as the United Nations Mission in Bosnia and Herzegovina ("UNMIBH"), was established there.

The United Nations' activities in the former Yugoslavia proved in many ways to be a disaster. While the fighting in Bosnia ultimately ceased in late 1995 after nearly four years and hundreds of thousands...

131. The mandate of UNCRO was set out in S.C. Res. 981, supra note 128, ¶ 3. It endorsed the Report of the Secretary-General Pursuant to Security Council Resolution 947 (1994), U.N. Doc. S/1995/222 (Mar. 3, 1995); Corr.1 U.N. Doc. S/1995/222/CORR.1 (Mar. 29, 1995). The mandate included matters such as facilitating previous Security Council resolutions, facilitating delivery of humanitarian aid, monitoring and reporting, and performing the functions envisaged in the cease-fire agreement of March 29, 1994. See The Secretary-General, Annex to Letter Dated 30 March 1994 From the Secretary-General Addressed to the President of the Security Council, 3-4, U.N. Doc. S/1994/367 (Mar. 30, 1994). The mandate of UNTAES set out in S.C. Res. 1037, supra note 129, ¶¶ 10-11, was also non-military in nature consisting of functions such as monitoring, supervising, and facilitating and contributing "by its presence to the maintenance of peace and security of the region." Id. at ¶ 10. Although the mandates of UNCRO and UNTAES were established under Ch. VII, based on the nature of their functions, it appears that this invocation of Ch. VII was directed at the authorization, in the same resolutions, for member states (in this case through NATO) to provide close air support to the missions rather than to facilitate the functioning of the peacekeeping missions.
of deaths, this was largely brought about by the forceful actions of the quasi-enforcement operation and the diplomatic intervention of the United States which led to the Dayton Agreement. The United Nations was on the sidelines of this process. The nadir of the United Nations’ operations in the former Yugoslavia came in July 1995 in Srebrenica when some 8,000 Muslim men and boys were massacred in one of the Security Council’s “safe areas,” under the noses of UNPROFOR troops.


In April 1992, the United Nations’ activities in Somalia began with the United Nations Operation in Somalia (“UNOSOM I”) which had the primary purpose of escorting humanitarian aid to the civilian population in post-Barré Somalia. The situation on the ground proved too dangerous for the mission to operate in and it was withdrawn. In December 1992 the Security Council put in place a quasi-enforcement force, the Unified Taskforce (“UNITAF”), led by the United States.

In March 1993, as UNITAF was preparing to withdraw, Boutros-Ghali, noting a continuing security threat, requested the Security Council to mandate the returning mission — to be rechristened UNOSOM II — with a variety of “military tasks.” The Secretary-General observed that in the light of the continuing threat to peace and security in the country, “UNOSOM II will not be able to implement [its] mandate unless it is endowed with enforcement

135. By one estimate, approximately 200,000 civilians were killed in Bosnia alone. See Ruth Wedgwood, United Nations Peacekeeping Operations and the Use of Force, 5 WASH.U. J.L. & POL’Y 69, 74 (2001).


137. UNOSOM I was established by S.C. Res. 751 U.N. Doc. S/RES/751 (Apr. 24, 1992). The mission was originally referred to as “UNOSOM,” but after UNOSOM II was established, it was retroactively renamed UNOSOM I and will be referred to as such.


139. Also known as “Operation Restore Hope.”


141. Id. at ¶ 55.

142. Id. at ¶ 57.
powers under Chapter VII of the Charter. The Security Council acceded to the Secretary-General's request and, in March 1993, acting under Chapter VII, expanded the size and mandate of the mission. Despite the fact that UNITAF, which had been deployed in 40 percent of the country, initially had 37,000 troops, UNOSOM II was to carry out its functions in the entire territory with only 28,000 troops. The mandate of UNOSOM II was considerably more forceful than that of UNOSOM I and assumed many of the functions of UNITAF. UNOSOM II was to undertake such tasks as preventing "any resumption of violence and, if necessary [taking] appropriate action against any faction" violating the cease-fire, securing the disarmament of the factions, and maintaining security. Moreover, UNOSOM II was empowered to take "such forceful action as may be required to neutralize armed elements that attack or threaten to attack" U.N. personnel or property and that of its agencies, the International Committee of the Red Cross and NGOs. No mention was made in the Secretary-General's report or the Security Council resolution of any obligation on UNOSOM II to limit itself to the use of force in self-defense.

In June 1993, after 25 peacekeepers were killed in a violent confrontation with forces on the ground, the Security Council, again acting under Chapter VII, authorized UNOSOM II to take "all necessary measures against all those responsible for the armed attacks" on the personnel of UNOSOM II. After a failed raid by U.S. troops (who were acting outside the U.N. command structure) in

143. Id. at ¶ 58. See also UNITED NATIONS, THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING 296 (3d ed. 1996) [hereinafter "BLUE HELMETS, 3d ed."].
145. Id. at ¶ 6.
148. Id. at ¶ 7.
149. Indeed, the Secretary-General's approach to the ROE - which were to be drafted by the force commander - provides no indication of a desire to see the amount of force limited in any way, noting only that the actions would need to be "judged necessary to fulfill the mandate." Id. at ¶ 88. As noted, the report was endorsed by the Security Council in S.C. Res. 814, supra note 143, ¶ 5.
Mogadishu on October 3, 1993, which led to the death of 18 U.S. soldiers and hundreds of Somalis, the United States ordered the withdrawal of its forces. As a result of this withdrawal, in February 1994 "UNOSOM II’s mandate was redefined in a more limited way." While its revised mandate was still authorized under Chapter VII, it "was no longer to use force to secure disarmament or in response to cease-fire violations. It would use force only in self-defence." The diminished mission withdrew, rather ignominiously, before completing its mission; according to the Secretary-General, this was the first U.N. operation to be withdrawn by the Security Council in such circumstances.

c. Rwanda (October 1993 – March 1996)

Another stain on the United Nations' reputation — to many, the biggest to date — was the genocide in Rwanda which occurred despite the presence of a U.N. peacekeeping mission. The tragic story of Rwanda in 1994 is well known. The United Nations Assistance Mission for Rwanda ("UNAMIR I") was established in October 1993 to monitor the Arusha Peace Agreement and to contribute to "the security of the city of Kigali." Almost from the outset, the mission’s commander sought authorization from the DPKO to use force to pre-empt serious attacks on the Tutsis which —

151. Some estimates run as high as one thousand Somali deaths. See BOUTROS-GHALI, supra note 114, at 103-104.
153. GRAY, 2d ed., supra note 69, at 224.
154. Id.
157. Some, such as the Security Council, referred to the operation as UNAMIR throughout the mission; others, such as the Secretary-General, divided the mission into "UNAMIR I" and "UNAMIR II." The Secretary-General uses the term UNAMIR II in some of its literature but does not list it as a separate operation on its peacekeeping website. See United Nations Department of Peacekeeping Operations, at <www.un.org/Depts/dpko/dpko/index.asp>. For the purposes of this article, I use the term "UNAMIR I" for the mission from October 5, 1993, to May 16, 1994, and the term "UNAMIR II" for the period from May 17, 1994, when the mandate was considerably strengthened, onward.
the mission had been reliably informed—were being planned. This request was denied.160

After a plane carrying the presidents of Rwanda and Burundi was shot down on April 6, 1994, "the systematic killing of Tutsis and of Hutu members of the political opposition began."161 When 10 Belgian peacekeepers were targeted and killed, the Belgian government withdrew its contingent162 and the Security Council reduced the size of UNAMIR I from 2,500 to 270 personnel and downgraded its mandate such that it would "only act as an intermediary in securing a cease-fire, help in the resumption of humanitarian assistance and monitor developments."163 Some saw the Security Council's near withdrawal of the mission as having facilitated the genocide, which continued unabated.

The Security Council responded to the public outcry in ways that should, by now, be familiar. First, it authorized an increase in the mission's strength to 5,500 troops164 and gave the mission—by now referred to by the Secretary-General as UNAMIR II—an expanded mandate. The mandate was to include contributing to "the security and protection of... civilians at risk in Rwanda, including through the establishment of... secure humanitarian areas" and to provide security for humanitarian operations.165 Moreover, UNAMIR II was authorized "to take action in self-defence against persons or groups who threaten protected sites and populations, United Nations and other humanitarian personnel or the means of delivery and distribution of humanitarian relief."166 Second, it authorized a French-led quasi-enforcement operation, Opération Turquoise, under

159. DALLAIRE, supra note 156, at 141-144.
160. In reply to the requests by the force commander for authorization to mount a military operation, the "DPKO informed UNAMIR headquarters that such action went beyond the UNAMIR mandate." See UNITED NATIONS AND RWANDA, supra note 156, at 32. As noted by the Independent Inquiry, "the Force Commander submitted a draft set of Rules of Engagement for UNAMIR on 23 November 1993, seeking Headquarters' approval. Headquarters never responded to that request." The Secretary-General, Letter Dated 15 December from the Secretary-General Addressed to the President of the Security Council, [Enclosing the Report of the Independent Inquiry into the Actions of the U.N. During the 1994 Genocide in Rwanda], 9, U.N. Doc. S/1999/1257 (Dec. 16, 1999); see also FINDLAY, supra note 28, at 227.
161. UNITED NATIONS AND RWANDA, supra note 156, at 37.
162. Id. at 40; see also BOTROS-GHALI, supra note 114, at 134.
165. Id. at ¶ 3(a).
166. Id. at ¶ 4.
Chapter VII to use "all necessary means"\textsuperscript{167} to create a safe area in the southwest of the country.\textsuperscript{168} However, UNAMIR II was slow to emerge as U.N. member states proved reluctant to volunteer troops.\textsuperscript{169} Before UNAMIR II reached its full strength, the genocide had run its course with an estimated 800,000 people massacred.\textsuperscript{170}

d. Haiti (September 1993 – March 2000\textsuperscript{171})

Finally, another U.N. operation deserves brief mention. The United Nations Mission in Haiti ("UNMIH") was established in September 1993 to provide training to local police.\textsuperscript{172} Due to the security situation on the ground it was unable to deploy in October 2003 as intended. On July 31, 1994,\textsuperscript{173} the Security Council authorized a quasi-enforcement action and member states formed a COTW, the Multinational Force (MNF),\textsuperscript{174} to be led by the United States. The Security Council established the MNF under Chapter VII and authorized it to use "all necessary means"\textsuperscript{175} to fulfill its aims, which included facilitating "the departure from Haiti" of the governing regime (which was in place as a result of a coup against the democratically elected government). The Security Council also revised and expanded UNMIH's mandate to include "sustaining the secure and stable environment [once established by the MNF] and

\begin{itemize}
\item \textsuperscript{167} "Operation Turquoise" was "aimed at contributing, in an impartial way, to the security and protection of displaced persons, refugees and civilians at risk." S.C. Res. 929, ¶ 2, U.N. Doc. S/RES/929 (Jun. 22, 1994).
\item \textsuperscript{168} "France withdrew according to plan in August and its zone was occupied by new UNAMIR contingents finally received from African countries." FINDLAY, supra note 28, at 282.
\item \textsuperscript{169} Boutros-Ghali outlined the difficulty the United Nations had finding the required troops: "On August 1, [1994] I told the Security Council that the United Nations was as far from attaining the 5,500 troops authorized as it had been on May 17, [1994], the day Resolution 918 had been adopted." BOUTROS-GHALI, supra note 114, at 138-140.
\item \textsuperscript{170} The Secretary-General, \textit{Letter Dated 15 December from the Secretary-General, supra} note 160, at 3.
\item \textsuperscript{172} S.C. Res. 867 U.N. Doc. S/RES/867 (Sept. 23, 1993).
\item \textsuperscript{174} Also known as "Operation Uphold Democracy."
\item \textsuperscript{175} S.C. Res. 940, supra note 173, at ¶ 4.
\end{itemize}
protecting international personnel and key installations." On January 30, 1995, after it deemed "a secure and stable environment" to exist, the Security Council called for the transfer of responsibility from the MNF to UNMIH. In the same resolution the Security Council authorized UNMIH to "recruit and deploy military contingents . . . sufficient to allow UNMIH to assume the full range of its functions" as established in previous resolutions.

2. Impact on the Self-Defense Principle

Armed with a basic understanding of these four situations, I will now turn to the impact UNPROFOR in its later stages, UNAMIR II, UNOSOM II, and UNMIH in its later stages had on the role of force in U.N. peacekeeping. As UNPROFOR was gradually empowered to use greater force, it became clear that the self-defense principle was being ignored. Confusingly, however, the Security Council was reluctant to acknowledge this. While the force authorized was, by any sensible measure, beyond self-defense — as evidenced by the invocation of Chapter VII, the reference to the use of "necessary means" and the authorization of increased troop levels — the Security Council, incongruously, and some might argue disingenuously, continued to emphasize the self-defense principle in

176. Id. at ¶ 5.
178. Id. at ¶ 7.
180. The initial missions — UNOSOM I, UNPROFOR (under its initial mandate), and UNMIH (under its initial mandate) — need not be considered further because they were not authorized to use force beyond the normal parameters of the self-defense principle. Similarly, UNAMIR I need not be considered, because while its mandate could have been interpreted to allow the use of considerable force based, the DPKO rejected such an interpretation. See discussion supra note 160.
182. See S.C. Res. 836, supra note 119, at ¶ 9. As Findlay observes, the mandate "was designed to give the impression of protecting the safe areas without actually doing so. In reality attacks on the safe areas were unlikely to be deterred only by the use of force in self-defence." FINDLAY, supra note 28, at 265. Yasushi Akashi notes: In many cases, Chapter VII has been cited in Security Council Resolutions with the caveat "acting in self-defense," which is a right inherent to any peace-keeping operation regardless of Resolution wording. This routine combination of Chapter VII and the 'authorization' of the use of force in self-defense has further compounded the degree of confusion, even among knowledgeable observers, over the conditions in which force can be used by UNPROFOR.
the resolutions. Observers have suggested that the ambiguous language was necessary to facilitate consensus among Security Council members. While this may be the case, and it may indeed represent "a masterpiece of diplomatic drafting" for the Security Council to have obtained agreement in the circumstances, the result was a mandate for UNPROFOR that was confusing, contradictory and unimplementable. Boutros-Ghali highlighted the conflicting nature of the Security Council's messages: At the same time Security Council resolution 998 authorizing the RRF called for the addition of thousands of heavily armed troops to UNPROFOR, it asserted that "UNPROFOR remained an impartial peacekeeping operation." As Boutros-Ghali remarked, "Alice in Wonderland would have enjoyed the resolution."

With UNOSOM II, the Security Council was even more overt in its disregard of the self-defense principle. With Resolution 837, June 6, 1994, UNOSOM II was vested with a level of forcefulness beyond that authorized in any previous peacekeeping mission. While, as noted, the Security Council bestowed upon ONUC and the fortified UNPROFOR mandates allowing them to use considerable force, with UNOSOM II it went further still: At its most forceful stages, the


For example, Findlay describes S.C. Res. 844, U.N. Doc. S/RES/844 (June 18, 1993) which at ¶ 2 authorizes the reinforcement of UNPROFOR as a "carefully worded compromise between those [members of the Security Council] who wished to use force to protect the safe areas [and those] who were concerned for the well-being of their troops and believed that real protection was impossible." Findlay, supra note 28, at 265, 228-29.


Akashi notes that the Security Council entrusted UNPROFOR with a mandate "that it knew, or should have known was not only unrealistic, but impossible to implement." Akashi, supra note 182, at 315. He continues: that "the creation of the safe areas was a 'quick fix' response to an immediate problem was evident in the Security Council's hesitation to provide UNPROFOR with the necessary resources to implement its mandate." Tharoor describes the resolution as "largely unimplementable." Tharoor, supra note 184, at 60.

Boutros Ghali, supra note 114, at 237.

Id.

At its most forceful, the Security Council authorized ONUC to "take vigorous action, including the requisite measure of force, if necessary, for the immediate apprehension, detention ... or deportation of all foreign military and paramilitary personnel ... and mercenaries." S.C. Res. 169, supra note 55.
The Use of Offensive Force in U.N. Peacekeeping

The invocation of Chapter VII was explicit as was its reference to "all necessary measures" (unlike with ONUC); moreover, the Security Council did not temper its invocation of Chapter VII with a reference to the self-defense principle (as it had with the fortified UNPROFOR).

While the level of force authorized for UNAMIR II and UNMIH was not as great as that under UNOSOM II or UNPROFOR, the self-defense principle was effectively ignored with those operations as well. Neither UNAMIR II nor UNMIH received explicit Chapter VII authorizations; however, each was clearly vested with the authority to use considerable force. UNAMIR II's mandate called upon it to undertake significant security functions, including contributing to the security and protection of civilians at risk and providing security for humanitarian operations. The strengthened UNMIH was given the authority to use considerable force: the Security Council had authorized it to sustain "a secure and stable environment" and to protect "international personnel and key installations." Yet the United Nations was contradictory on the issue of the use of force with these two operations — just as it had been with UNPROFOR in its later stages. Despite each being bestowed with an obvious potential for the offensive use of force, the United Nations continued to stress that force should only be used in self-defense. The Secretary-General, endorsed by the Security Council, indicated that UNAMIR II should "take action in self-defense against persons or groups who threaten protected sites and populations, United Nations and other humanitarian personnel or the means of delivery and distribution of humanitarian relief."

189. The wording of S.C. Res. 837, supra note 150, reads "all necessary measures against all those responsible for the armed attacks" on the personnel of UNOSOM II. This goes somewhat further than S.C. Res. 836, supra note 119, decided just two days earlier. Under that resolution, UNPROFOR was authorized to act "in self-defence, to take necessary measures, including the use of force in reply to bombardments against the same areas."

190. Cox takes the view that with UNAMIR II the non-invocation of Chapter VII and the lack of an authorization to use force imply that the Security Council did not consider the explicit authorization to use force necessary in this case; but that, even so, forceful measures were contemplated. Cox, supra note 32, at 261. In a similar vein, Findlay noted in relation to UNMIH that the invocation of Chapter VII may not have been considered necessary in view of the improved security situation which arose as a result of the MNF's presence in the country. Findlay, supra note 28, at 274-275.


192. S.C. Res. 918, supra note 164, ¶ 4, (emphasis added). The language used in
Similarly, the Secretary-General observed that UNMIH was entitled to use force “in exercise of the right of self-defence, including opposing forcible attempts to impede the discharge of the Mission’s mandate”\footnote{193} at the same time he observed that UNMIH would need to use force to sustain security in the country when “no other means are adequate or available.”\footnote{194}

The only reasonable conclusion that may be drawn from the above analysis is that the self-defense principle was abandoned during this period. The United Nations, however, continued to assert that the self-defense principle applied during and after this period.\footnote{195} Such a position could only be justified based on one of two approaches. One approach would be to argue that “peacekeeping,” by its very nature, excluded operations with enforcement-type powers such as UNPROFOR. Of course such an approach does not reflect the reality of the situation: it is the case that operations classed as peacekeeping by the Secretary-General and the Security Council may possess enforcement-type powers as I shall address in Part IV. Moreover, even at the time, UNPROFOR was characterized as “peacekeeping” by the Security Council and the Secretary-General.\footnote{196}

Another approach would be to argue that the definition of “self-defense” was even further expanded such that it included the type of

---


\footnote{194}{Moreover, the strengthened mission’s ROE provided that “UNMIH forces may intervene to prevent death or grievous bodily harm of innocent civilians at the hands of an armed person or group” and authorized forces to engage in “search, apprehension, and disarmament” when acting in self-defense. FINDLAY, supra note 28, at 275 (referring to Rule 8 of UNMIH’s ROE).}

\footnote{195}{The publications of the Secretariat during and immediately after this period continued to stress the importance of the self-defense principle in U.N. peacekeeping. See, e.g., \textit{GENERAL GUIDELINES FOR PEACEKEEPING OPERATIONS}, supra note 77.}

\footnote{196}{For example, the Security Council referred to UNPROFOR as a “peacekeeping operation” as late as June 1995. S.C. Res. 998, supra note 123. Similarly, the U.N. Secretariat classed UNPROFOR as peacekeeping even when at its most forceful. See \textit{BLUE HELMETS}, 3d ed., supra note 143. As late as May 30, 1995, the Secretary-General insisted that “UNPROFOR is not a peace-enforcement operation”. See The Secretary-General, \textit{Report of the Secretary-General Pursuant to Security Council Resolutions 982 (1995) and 987 (1995)}, ¶ 16, U.N. Doc. S/1995/444 (May 30, 1995).}
activities engaged in by UNPROFOR, UNMIH and UNAMIR II. Under this approach, self-defense would include an obligation to take measures to protect other people's security (as was the case with the strengthened UNMIH and UNAMIR II) as well as protecting civilian safe areas (UNPROFOR), taking "appropriate action" against any party violating a cease-fire (UNISOM II) and taking measures against people responsible for previous armed attacks on personnel\textsuperscript{197} (UNOSOM II). This would appear to have been the approach of the Security Council, which, as noted,\textsuperscript{198} emphasized the importance of acting in self-defense at the same time it bestowed forceful powers on these operations. However, to classify such conduct as self-defense bears little relation to the normal meaning of the term.\textsuperscript{199} If self-defense were defined so broadly, the self-defense principle would be nothing more than a legal fiction -- and a misleading one at that. Any advantage to attaching the label "self-defense" to such conduct in order to persuade a host state into providing consent or other states to contribute troops,\textsuperscript{200} is likely to be short-lived. Indeed, this may have been a factor in the slowness of states to contribute to UNAMIR II, notwithstanding the Security Council referring to it as an "action in self-defence."\textsuperscript{201}

B. The Self-Defense Principle Reprised: Supplement to an Agenda

The four operations under consideration were generally viewed either to be patent failures or, at best, of very limited success. In the former Yugoslavia, U.N. peacekeepers were taken hostage and some "safe areas" were overrun and their inhabitants systematically killed.\textsuperscript{202} UNPROFOR became marginalized with regard to its non-

\textsuperscript{197} That is to say, not in immediate reply thereto.

\textsuperscript{198} See discussion supra notes 181-187 and corresponding text.

\textsuperscript{199} Alternatively, inclusion of such activities as self-defense could be taken as an illustration of the defense of mandate approach to self-defense. As noted in the discussion supra notes 82-88 and corresponding text, the defense of mandate approach does not appear to have any limits: Any activity — including offensive action — could be said to serve to defend the mission. Cox relies on the Secretary-General's invocation of the defense of mandate approach (as noted in The Secretary-General, Report of the Secretary-General on the Situation in Bosnia and Herzegovina, ¶ 9, U.N. Doc. S/24540, (Sept. 10, 1992)) as authority for her conclusion that the Secretary-General was "of the opinion that self-defense could include situations involving the protection of third parties." Cox, supra note 32, at 260.

\textsuperscript{200} See discussion supra note 90 and corresponding text.

\textsuperscript{201} S.C. Res. 918, supra note 164, ¶ 4.

\textsuperscript{202} The Secretary-General, Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica, U.N. Doc. A/54/549 (Nov. 15, 1999).
forceful function of facilitating peace agreements; its role in the formulation of the Dayton Agreement was limited. With the situation in Somalia, UNOSOM II proved ill-suited and ill-equipped to carry out the enforcement functions asked of it. When casualties began to occur, the operation withdrew. The atrocities in Rwanda — estimated to have led to the killing of over 800,000 — are notorious. Haiti was perhaps the most successful of the four operations because it was able to facilitate peace - in the short term at least.\textsuperscript{203}

Two lessons emerged: First, that giving peacekeeping operations enforcement-type powers will not work; and, second, that the United Nations must not stand by while the mass loss of lives ensued.\textsuperscript{204} The logical conclusion arising from these two lessons is that the level of force authorized by peacekeeping missions should be strictly limited; where force is required to prevent the loss of lives, the United Nations must rely on its enforcement powers. However, another conclusion is possible: That there is nothing inherently wrong with the Security Council authorizing peacekeeping missions to use offensive force – but if it does so, it needs to make sure the level of force authorized is increased to a sufficient degree that such operations are successful and can ensure the protection of the nationals of the state and perhaps even forcibly restore peace to an area. By 1995, Boutros-Ghali had embraced the first conclusion; as we shall see in Part IV, Kofi Annan was to embrace the second.

In January 1995, Boutros-Ghali produced \textit{A Supplement to An}

\textsuperscript{203} The situation in Haiti was not stable for long. After a decade of relative calm in Haiti after Aristide's reinstallment as President in 1994, serious armed conflict broke out in early February 2004 and insurgents took control of part of the country. In February 2004, the Security Council authorized the United States-led quasi-enforcement operation, the Multinational Interim Force (MIF). S.C. Res. 1529, U.N. Doc. S/RES/1529 (Feb. 29, 2004). On April 30, the Security Council established the United Nations Stabilization Mission in Haiti (MINUSTAH) to take over many of the MIF's functions on June 1, 2004. MINUSTAH was to maintain a secure environment in the country and was authorized under Chapter VII to undertake various forceful tasks including assisting with disarmament and the restoration and maintenance of rule of law, public safety and public order. S.C. Res. 1542, U.N. Doc. S/RES/1542 (Apr. 30, 2004.)

\textsuperscript{204} Simon Chesterman makes this point well with the following passage:

The three peace operations in which troops under UN command engaged in the use of force on a significant scale — Congo from 1960-1963, Somalia in 1993, and Bosnia and Herzegovina from 1994-1995 — were traumatic experiences for the organization; the controversies to which they gave rise were surpassed only by two occasions on which force was not used at all: in Rwanda and Srebrenica.

Agenda for Peace." While Boutros-Ghali made staunch assertions that he was not retreating from his positions in the earlier document, such assertions were scarcely convincing. Reading between the lines of Supplement to An Agenda for Peace it is clear that he was, indeed, backtracking on some of his more radical ideas in An Agenda for Peace. First, Supplement to An Agenda for Peace has the effect of redacting the word "hitherto" from the definition in An Agenda for Peace, and its attendant suggestion that non-consensual peacekeeping missions are acceptable. Looking back on previous missions, Boutros-Ghali observes a link between a mission's success and the United Nations' respect for the consent principle. Second, he moves away from his earlier willingness to blur the concepts of peacekeeping and enforcement. In Supplement to An Agenda for Peace he posits that "[p]eace-keeping and the use of force (other than in self-defence) should be seen as alternative techniques and not as adjacent points on a spectrum, permitting easy transition from one to the other." Tellingly, he observes:

[N]othing is more dangerous for a peace-keeping operation than to ask it to use force when its existing composition, armament, logistic support and deployment deny it the capacity to do so. The logic of peace-keeping flows from political and military premises that are quite distinct from those of enforcement; and the dynamics of the latter are incompatible with the political process that peace-keeping is intended to facilitate. To blur the distinction between the two

206. Boutros Ghali notes, somewhat incongruously, that "[m]ost of the ideas in An Agenda for Peace have proved themselves." He further notes that the purpose of Supplement to An Agenda for Peace "is not to revise An Agenda for Peace nor call into question structures and procedures that have been tested by time." Id. at ¶ 6.
207. In fact, Boutros-Ghali had done so even before the publication of Supplement to An Agenda for Peace. As Findlay observed, Boutros-Ghali had earlier "quietly reverted to the traditional definition of peacekeeping as requiring 'the consent of the parties.'" FINDLAY, supra note 28, at 318. For authority on this, Findlay relied on The Secretary-General, Improving the Capacity of the United Nations for Peace-keeping: Report of the Secretary-General, 2, U.N. Doc. A/48/403, A/26450, (Mar. 14, 1994).
208. Boutros-Ghali, supra note 205, at ¶ 33; see also ¶ 23, where he stressed that peacekeeping "can be employed only with the consent of the parties to the conflict." This is in clear contrast with the position he advanced in An Agenda for Peace, see discussion, supra note 97 and corresponding text.
209. Id. at ¶ 36. At ¶ 33 he stressed the importance of force only being used in self-defense if a peacekeeping mission is to be successful. See also his Introduction in BLUE HELMETS, 3d ed., supra note 143, at 6.
can undermine the viability of the peace-keeping operation and endanger its personnel.\footnote{210}

In short, Boutros-Ghali appears to be conceding that his bold experiment in bestowing enforcement powers on peacekeeping operations was a failure.

U.N. peacekeeping emerged from this, its second forceful period, in something of a crisis.\footnote{211} Much like the introspectiveness that came about after ONUC in the Congo, there was a certain amount of soul searching within the organization as a result of the problems with the missions in the early 1990s. A sense that peacekeeping could not succeed where it featured force beyond self-defense was evident from other documentation prepared by the Secretariat under Boutros-Ghali’s stewardship, such as its 1995 \textit{General Guidelines on Peacekeeping}.\footnote{212} This view was confirmed by a Commission of Inquiry established to consider the attacks against UNOSOM II,\footnote{213} which recommended that the United Nations “refrain from undertaking further peace-enforcement actions within the internal conflicts of states.”\footnote{214} The conclusion that enforcement-type powers and peacekeeping do not mix was one shared by many of the commentators of the day.\footnote{215}

\begin{thebibliography}{9}
\footnotesize
\bibitem{210} Boutros-Ghali, \textit{supra} note 205, at ¶ 35.
\bibitem{212} \textit{GENERAL GUIDELINES FOR PEACEKEEPING OPERATIONS, supra} note 77. \textit{See} passage quoted, \textit{supra} note 196. Findlay also refers to the UN DPKO’s Peacekeeping Training Manual, (2d ed. 1997) in \textit{FINDLAY, supra} note 28, at 323-326.
\bibitem{214} \textit{Id.} at 48; \textit{see also} Gray, who observes a trend in at least one member state (\textit{See the U.S. President’s Decision Directive on Reforming Multilateral Peace Operations, 33 I.L.M.} 795 (1994)), as well as in some regional organizations such as the Commission on Security and Cooperation in Europe (CSCE 31 I.L.M. 1385 (1992)) or the Commonwealth of Independent States (CIS 35 I.L.M. 738 (1996)) to adhere to a more traditional concept of peacekeeping whereby force is not used except in self-defense. \textit{GRAY, 2d ed., supra} note 69, at 227.
\bibitem{215} \textit{See}, e.g., Higgins, \textit{supra} note 103, at 449; \textit{see also}, Akashi, \textit{supra} note 182, at
\end{thebibliography}
The Use of Offensive Force in U.N. Peacekeeping

Bosnia (1994-1995) confirmed the emerging view that forces under U.N. command were unsuited to war-fighting.216

The result of this period was a significant retrenchment in U.N. peacekeeping. From the beginning of 1995 to the end of Boutros-Ghali's term two years later, the Security Council created no new peacekeeping missions in places where the United Nations was not already involved.217 By 1996, the number of peacekeepers deployed around the world had fallen to under 20,000, as compared to over 70,000 in 1993.218 In the words of one commentator, the "Somalia and Bosnia debacles" caused the United Nations to "pull 'back to basics.'"219

IV. The Current Approach to Peacekeeping and Force

Introduction

Whereas the hard lesson that Boutros-Ghali woke up to after the operations in the early 1990s was that peacekeeping will not work if it uses force beyond self-defense, Annan reached a different conclusion. For Annan, the lesson from this period appears to have been that the United Nations failed because its peacekeeping had not been forceful enough. His position may have been linked to a personal sense of remorse relating to his involvement in the events in Srebrenica and Rwanda.220 The impact of these tragedies was to come into sharp relief in late 1999 when two highly critical reports detailing the United Nations' failures in Srebrenica221 and Rwanda222 were issued

320; GRAY, 2d ed., supra note 69, at 228; FINDLAY, supra note 28, at 315.
216. CHESTERMAN, supra note 204, at 9.
217. Of the missions established in the period, one related to a previous U.N. operation in Angola (UNAVEM III), six related to the United Nations' activities in the former Yugoslavia (UNPREDEP, UNCRO, UNMIBH, UNTAES, UNPSG, and UNMOP) and one followed on from UNMIH in Haiti (UNSMIH).
219. FINDLAY, supra note 28, at 315.
220. Annan was Assistant Secretary-General for Peacekeeping Operations from March 1992 to February 1993 and Under-Secretary-General from March 1993 to December 1996 before becoming the Secretary-General in January 1997.
221. Report of the Secretary-General Pursuant to General Assembly Resolution 53/35: The Fall of Srebrenica, supra note 202.
within a month of each other. These reports led to Annan's expressing his "deep remorse" that the United Nations had not done more to prevent the genocide in Rwanda\(^{223}\) and his "deepest regret and remorse" in relation to the massacres in Srebrenica.\(^{224}\) Tellingly, he also made the following comment at the time: "Of all my aims as Secretary-General, there is none to which I feel more deeply committed than that of enabling the United Nations never again to fail in protecting a civilian population from genocide or mass slaughter."\(^{225}\)

In the first 18 months of his first term as Secretary-General, Annan was cautious in his approach to the use of force in peacekeeping. During the period from January 1997 to June 1999, peacekeeping missions were established in Guatemala,\(^{226}\) Angola,\(^{227}\) Haiti,\(^{228}\) the Central African Republic\(^{229}\) and Sierra Leone.\(^{230}\) None of

---

223. Annan stated,

All of us must bitterly regret that we did not do more to prevent [the Rwandan genocide]. There was a United Nations force in the country at the time, but it was neither mandated nor equipped for the kind of forceful action which would have been needed to prevent or halt the genocide. On behalf of the United Nations, I acknowledge this failure and express my deep remorse.


225. Kofi Annan Emphasizes Commitment, supra note 223.


these missions were given Chapter VII mandates and none were authorized to use levels of force even approaching that authorized for UNPROFOR or UNOSOM II.

However, beginning in June 1999, the United Nations again embraced the use of force in peacekeeping. From June 1999 to the time of writing, the Security Council has established one or more peacekeeping missions in the following 10 countries or regions: Kosovo, Sierra Leone, East Timor, the Democratic Republic of the Congo, Ethiopia and Eritrea, Côte d'Ivoire, Liberia, Haiti, Burundi, and Sudan. Remarkably, in nine of the 10 situations the peacekeeping missions were given explicit Chapter VII authorization for at least part of their existence and for at least part of the territory in which they operated. With the tenth mission, that in Ethiopia and Eritrea, the Security Council has signaled its intention...

231. Several other operations, described as "political and peace-building missions" rather than "peacekeeping" by DPKO were established during the period in question. However, in the light of the fact that none of these missions appear to have been authorized to use force beyond self-defense, I will not consider them in this discussion.

232. United Nations Transitional Administration in Kosovo ("UNMIK"). Although UNMIK was authorized under Chapter VII, it does not appear to be authorized to use significant force. As noted by Gray: "The invocation of Chapter VII was . . . necessary not to give UNMIK any wide right to use force, but, first, to authorize force by member states [a quasi-enforcement operation was authorized in the same resolution] and, second, to legitimize the very wide powers of UNMIK to restore a semblance of normal life to the province and to make clear that its operations did not depend on the consent of Yugoslavia." GRAY, 2d ed., supra note 69, at 230.

233. United Nations Mission in Sierra Leone ("UNAMSIL").

234. There have been three peacekeeping missions in East Timor during the relevant period. United Nations Transitional Administration in East Timor ("UNTAET") was a precursor of United Nations Mission in Support of East Timor ("UNMISSET"), which was a precursor to the current United Nations Integrated Mission in Timor-Leste ("UNMIT"). The first two missions were each given Chapter VII authorizations.


236. United Nations Mission in Ethiopia and Eritrea ("UNMEE").

237. There were two peacekeeping missions in Côte d'Ivoire during the relevant period. United Nations Mission in Côte d'Ivoire ("MUNCUI") and its successor, United Nations Operation in Côte d'Ivoire ("UNOCI"). Chapter VII was only relied upon for the latter mission.

238. United Nations Mission in Liberia ("UNMIL").

239. United Nations Stabilization Mission in Haiti ("MINUSTAH").

240. United Nations Operation in Burundi ("ONUB").

to grant an explicit Chapter VII mandate if the parties do not alter their behavior.\footnote{242}

A. The Self-Defense Principle Abandoned?: The Brahimi Report

The critical reports on the U.N. peacekeeping efforts in Srebrenica and Rwanda\footnote{242}— perhaps coupled with a growing willingness to speak out against state sovereignty being used as a basis for abusive governments to harm their own people\footnote{244} and a developing focus on the protection of civilians in situations of armed conflict\footnote{245}— appear to have been the impetus for Annan’s decision to convene the Panel on United Nations Peace Operations ("Panel") in March 2000. He established the Panel “to undertake a thorough review of the United Nations peace and security activities, and to present a clear set of specific, concrete and practical recommendations to assist the United Nations in conducting such activities better in the future.”\footnote{246}


244. Durch, et al. write of "NATO's 1999 bombing campaign against Serbia and the Secretary-General's speeches arguing that sovereignty could no longer be considered a shield behind which a country's citizens might be abused or killed with impunity" as being a basis for contemplating more robust U.N. operations. Id. at 22.

245. In S.C. Res. 1296 U.N. Doc. S/RES/1296 (Apr. 19, 2000), the Security Council referred to "its intention to ensure, where appropriate and feasible, that peacekeeping missions are given suitable mandates and adequate resources to protect civilians under imminent threat of physical danger." This resolution was cited by the Secretary-General as the basis upon which "the mandates of peacekeeping operations have been broadened to allow troops to physically protect civilians under imminent threat of violence." The Secretary-General, Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflicts, ¶ 8, U.N. Doc. S/2004/431 (May 28, 2004). In a subsequent document, the Security Council's commitment was seemingly strengthened; it did not include the words "where appropriate and feasible." The President of the Security Council, Statement by the President of the Security Council 3, U.N. Doc. S/PRST/2004/46 (Dec. 14, 2004).

The Panel's Report, which came to be known as the "Brahimi Report," was released on August 21, 2000. The report reflected a deep sense of regret at the United Nations' failures in Rwanda and Srebrenica and made many far-reaching recommendations, several of which impact on the question of the appropriate level of forcefulness in peacekeeping operations.

The Brahimi Report's recommendations in relation to force in peacekeeping operations fell into two categories. First, the Panel made recommendations relating to what it saw as an obligation on the part of peacekeeping missions to protect civilians. The Brahimi Report asserted that peacekeepers "who witness violence against civilians should be presumed to be authorized to stop it, within their means, in support of basic United Nations principles and... consistent with 'the perception and the expectation of protection created by [an operation's] very presence.'" Second, the Brahimi Report recommended that peacekeeping missions be given mandates that were far more robust than they had tended to be historically. It provided:

Rules of engagement should not limit contingents to stroke-for-stroke responses but should allow ripostes sufficient to silence a source of deadly fire that is directed at United Nations troops or at the people they are charged to protect and, in particularly dangerous situations, should not force United Nations contingents to cede the initiative to their attackers.


248. According to the Brahimi Report, "[n]o failure did more to damage the standing and credibility of United Nations peacekeeping in the 1990s than its reluctance to distinguish victim from aggressor." Id. at ix.


The *Brahimi Report* called for bigger, better equipped, more confrontational forces which were able to pose a credible deterrent. It called for forces which were "sized and configured so as to leave no doubt in the minds of would-be spoilers" that peacekeeping's "non-threatening" character had been moved away from.

At the same time it called for protection of civilians and robust mandates, the *Brahimi Report* endorsed the self-defense principle, thereby creating an ambiguous message. For example, while the report labeled the self-defense principle (along with the need for consent of the parties and impartiality) a "bedrock" principle of peacekeeping — noting that it should remain so — it also made clear that the Panel considered these bedrock principles to be largely outdated concepts, potentially hindering successful peacekeeping operations. Similarly, although the report implied that peacekeepers should not engage in enforcement-type activity, it does not state this explicitly. There is nothing novel in observing that

252. The Report also stated,

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

*Id.* at ¶ 1.

253. *Id.* at ¶ 51.

254. *Id.* at ¶ 48.

255. While the focus of this article is the use of force, as noted supra note 5, it is interlinked with consent and impartiality. Regarding consent, while not suggesting that it may not always be required, by highlighting the problems with a consent requirement (it can be manipulated by the local parties, it can be granted by a party merely to win time to rearm and withdrawn when the operation no longer serves its interests) the report leaves the suggestion that requiring consent can hinder a successful mission. *Id.* at ¶ 48. On the question of the need for impartiality, the report observed that this did not mean "neutrality or equal treatment of all parties in all cases for all time" which, it noted "can amount to a policy of appeasement." *Report of the Panel on UN Peacekeeping Operations*, ¶ 50, U.N. Doc. A/55/305-S/2000/809 (Aug. 21, 2000), available at <www.un.org>). In linking impartiality with the use of force in self-defense, the report noted that in some cases where there are obvious aggressors and victims, "peacekeepers may not only be operationally justified in using force but morally compelled to do so." *Id.*

256. The Panel "recognizes that the United Nations does not wage war. Where enforcement action is required, it has consistently been entrusted to coalitions of willing States, with the authorization of the Security Council, acting under Chapter VII of the Charter." *Report of the Panel on UN Peacekeeping Operations*, ¶ 53, U.N. Doc. A/55/305-S/2000/809 (Aug. 21, 2000), available at <www.un.org>). Of course, noting that in the past there has been consistent reliance on COTW-led operations to undertake enforcement functions is not the same as recommending that future
peacekeepers must be capable of defending themselves or their mission or ensuring they are suitably equipped to do so; nor is it a departure from previous interpretations of self-defense to call for defense of the mandate. However, by calling for robust and confrontational peacekeeping mandates — including the report’s proposal to move away from peacekeeping’s non-threatening character — without engaging in a careful discussion of the need for limits on the use of force, the Brahimi Report opened the door to the possibility of attributing enforcement-type functions to peacekeeping operations. Its approach is reminiscent of the “studied ambiguity” which was a feature of the Security Council’s resolutions relating to the mandate of UNPROFOR where the Security Council authorized the use of offensive force at the same time it stressed that the operation should use force only in self-defense.

The ambiguous way in which the Brahimi Report dealt with the use of force did not go unnoticed by certain member states of the General Assembly, which saw its findings as a potential intrusion on state sovereignty. It may have been in order to reassure these states that the Secretary-General observed that he did not consider the Brahimi Report’s recommendations to “turn the United Nations into a war-fighting machine or to fundamentally change the principles according to which peacekeepers use force.” Absent from the Secretary-General’s reassurance was any reference to the self-defense principle. A leery General Assembly decided to “take note” of the Brahimi Report, a measure which was described by one observer as “a polite but noncommittal acknowledgment.”

For its part, the Security Council was more supportive of the report’s call for increased forcefulness. It recognized the “critical importance of
peacekeeping operations having, where appropriate and within their mandates, a credible deterrent capability\textsuperscript{263} and undertook to "ensure that the mandated tasks of peacekeeping operations are appropriate to the situation on the ground, including such factors as the prospects for success, the potential need to protect civilians and the possibility that some parties may seek to undermine peace through violence."\textsuperscript{264} Moreover, the report emphasized that the ROE for U.N. peacekeeping "should . . . support the accomplishment of the mission's mandate."\textsuperscript{265} Nowhere in either resolution did the Security Council mention the self-defense principle or any other limitation on the use of force by peacekeepers.

B. Overview of the Operations

The analysis of its operations shows that by the end of the 1990s, the United Nations was, once again, on a path to greater forcefulness in peacekeeping. As noted, explicit Chapter VII authorizations were given to U.N. peacekeeping missions in all but one of the countries or regions where new missions were authorized since June 1999.\textsuperscript{266} In accordance with the recommendations from the Brahimi Report, these Chapter VII authorizations were either to provide security for civilians on the ground (in addition to the mission's own security) — what I will refer to as a "civilian protection mandate" — or to undertake forceful activities even beyond the protection of civilians — what I will refer to as "robust mandates." Frequently, missions were granted both types of authorization. I will begin by discussing the Security Council's attribution of civilian protection functions to peacekeeping operations and then consider operations with "robust mandates."

1. Missions with Civilian Protection Mandates

Since June 1999, the Security Council has passed resolutions calling on peacekeeping operations in eight countries or regions,\textsuperscript{267} to

\begin{itemize}
  \item \textsuperscript{263} S.C. Res. 1327, U.N. Doc. S/RES/1327 (Nov. 12, 2000).
  \item \textsuperscript{264} Id.
  \item \textsuperscript{265} Id.
  \item \textsuperscript{266} See supra notes 232-241 and corresponding text for a list of these missions.
The Use of Offensive Force in U.N. Peacekeeping

protect civilians under imminent threat, as well as U.N. personnel and, occasionally, associated bodies or humanitarian workers. Because most of these missions were given a civilian protection mandate at the same time that they were authorized to use robust force for other matters, it can be difficult to distinguish the impact of the civilian protection mandate on the potential use of force in peacekeeping from that stemming from the robust mandate. The wording of most civilian protection mandates is similar, though there are slight variations. The following paragraph from the United Nations Mission in the Sudan ("UNMIS") is typical:

 Acting under Chapter VII of the Charter of the United Nations, [the Security Council] decides that UNMIS is authorized to take


270. Three missions, UNAMSIL, MONUC, and UNMIS were initially given only civilian protection mandates; robust mandates were added at a later point (regarding UNMIS’s robust mandate see supra note 283).

the necessary action, in the areas of deployment of its forces and as it deems within its capabilities, to protect United Nations personnel, facilities, installations, and equipment, ensure the security and freedom of movement of United Nations personnel, humanitarian workers, joint assessment mechanism and assessment and evaluation commission personnel, and, without prejudice to the responsibility of the Government of Sudan, to protect civilians under imminent threat of physical violence.272

With all civilian protection mandates the requirement to protect civilians “under imminent threat of physical violence” is limited to that which can be accomplished by the mission “within its capabilities”273 and “within its areas of deployment.”274 As such, considerable discretion is left to the head of mission.275 Typically the civilian protection mandate will make reference to the fact that the primary security responsibilities lie with the government or a quasi-enforcement operation, if present. While not explicitly saying so, such a reference implies that the use of force by the peacekeeping mission to protect civilians should be a last resort. All civilian protection mandates have invoked Chapter VII and many feature language authorizing “the necessary action”276 or (where the civilian protection mandate and a robust mandate are put in place at the same time) “all necessary means.”277 In none of the Security Council resolutions establishing the civilian protection mandates or the reports of the Secretary-General advising the Security Council on the

273. This language or a slight variation (e.g., with ONUB in Burundi the wording was “within its capacity” S.C. Res. 1545, U.N. Doc. S/RES/1545 (May 21, 2004)) was used in all civilian protection mandates (see supra note 267 for a list of Security Council resolutions setting out the mandates).
274. This language or a slight variation (see, e.g., ONUB where the wording was “in the areas where its armed units are deployed” S.C. Res. 1545, supra note 273) was used in all civilian protection mandates (see supra note 267 for a list of Security Council resolutions setting out the mandates).
275. Holt noted that the wording means that it falls “to the Special Representative of the Secretary-General (SRSG), the force commander or another actor further down the chain to ‘deem’ [an act of protection] to be within the scope of ‘its capabilities.’” Holt, supra note 267, at 14.
277. See, e.g., S.C. Res. 1493, supra note 267; see also S.C. Res. 1545, supra note 273, which spoke of “the necessary measures.” With the civilian protection mandate established in 2004 for MONUC, the “all necessary means” language was clearly intended to apply to the civilian protection aspect of the mandate as well as to the robust aspect. See discussion supra notes 303 and 304.
level of force required, is any reference to a self-defense limitation made.\footnote{278}{Indeed the word “self-defense” is absent from the mandates of all the missions under consideration.}

\subsection*{2. Missions with Robust Mandates}

In eight\footnote{279}{See supra note 242, regarding UNMEE, which does not currently possess a Chapter VII mandate. Further, while the mandate of UNMIK was authorized under Chapter VII, its mandate is not robust. See supra note 232.} of the 10 countries or regions where new peacekeeping missions have been established since 1999, the missions have been given robust mandates authorizing them to use considerable force — in circumstances beyond the protection of civilians.\footnote{280}{These are Sierra Leone (UNAMSIL after February 2000), East Timor (UNTAET/UNMISET), the Democratic Republic of the Congo (MONUC after July 2003), Liberia (UNMIL), Haiti (MINUSTAH), Cote d’Ivoire (UNOCI), Burundi (ONUB) and Sudan (UNMIS after Aug. 31, 2006, but see supra note 283).} Moreover, with UNIFIL in the Lebanon, established in 1978,\footnote{281}{UNIFIL’s original mandate was set out in S.C. Res. 425 and S.C. Res. 426 supra 79.} the Security Council revised its mandate in 2006, such that, arguably at least, it too was given a robust mandate.\footnote{282}{See supra note 232.} With some missions the Security Council has gone so far as to authorize them to use of “all necessary means,” or language of a similar nature, to achieve certain of their tasks.\footnote{283}{Beginning in 1999 the Security Council authorized UNAMSIL to take “the necessary action” to protect its security and freedom of movement and to protect civilians under an imminent threat. S.C. Res. 1270, supra note 230, ¶ 14. From 2000 to 2002 it favored the phrases “all necessary measures” or “the necessary action” in the mandates of three peacekeeping missions. For example, UNTAET in East Timor was authorized to take “all necessary measures to fulfill its mandate” in S.C. Res. 1272, U.N. Doc. S/RES/1272 (Oct. 25, 1999); UNAMSIL in Sierra Leone was permitted “to take the necessary action to fulfill the additional tasks” in S.C. Res. 1289, U.N. Doc. S/RES/1289 (Feb. 7, 2000) and UNMIS in East Timor was authorized to “take the necessary actions . . . to fulfill its mandate” in S.C. Res. 1410, ¶ 6, U.N. Doc. S/RES/1410 (May 17, 2002). By 2003 the Security Council moved to the “all necessary means” language. For example, MONUC was permitted to take “all necessary means to fulfill its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu” in S.C. Res. 1493, supra note 269)

see supra note 242, regarding UNMEE, which does not currently possess a Chapter VII mandate. Further, while the mandate of UNMIK was authorized under Chapter VII, its mandate is not robust. See supra note 232.

These are Sierra Leone (UNAMSIL after February 2000), East Timor (UNTAET/UNMISET), the Democratic Republic of the Congo (MONUC after July 2003), Liberia (UNMIL), Haiti (MINUSTAH), Cote d’Ivoire (UNOCI), Burundi (ONUB) and Sudan (UNMIS after Aug. 31, 2006, but see supra note 283).

UNIFIL’s original mandate was set out in S.C. Res. 425 and S.C. Res. 426 supra 79.

S.C. Res. 1701, U.N. Doc. S/RES/1701 (Aug. 11, 2006). This resolution, which describes the situation in Lebanon as constituting a “threat to international peace and security” but which does not specifically invoke Chapter VII, does not adopt the language typically associated with a robust mandate. However, it does indicate the Security Council’s desire “to supplement and enhance the force in numbers, equipment, mandate and scope of operations.” The mandate was criticized as lacking clarity in relation to operation’s authority to use force. See, e.g., Michael Rose, Without a Clear Mandate, the UN Troops in Lebanon are Heading for Disaster, INDEP. ON SUNDAY (London), Aug. 27, 2006, at 37.

Beginning in 1999 the Security Council authorized UNAMSIL to take “the necessary action” to protect its security and freedom of movement and to protect civilians under an imminent threat. S.C. Res. 1270, supra note 230, ¶ 14. From 2000 to 2002 it favored the phrases “all necessary measures” or “the necessary action” in the mandates of three peacekeeping missions. For example, UNTAET in East Timor was authorized to take “all necessary measures to fulfill its mandate” in S.C. Res. 1272, U.N. Doc. S/RES/1272 (Oct. 25, 1999); UNAMSIL in Sierra Leone was permitted “to take the necessary action to fulfill the additional tasks” in S.C. Res. 1289, U.N. Doc. S/RES/1289 (Feb. 7, 2000) and UNMIS in East Timor was authorized to “take the necessary actions . . . to fulfill its mandate” in S.C. Res. 1410, ¶ 6, U.N. Doc. S/RES/1410 (May 17, 2002). By 2003 the Security Council moved to the “all necessary means” language. For example, MONUC was permitted to take “all necessary means to fulfill its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu” in S.C. Res. 1493, supra note 269)

\footnote{283}{Beginning in 1999 the Security Council authorized UNAMSIL to take “the necessary action” to protect its security and freedom of movement and to protect civilians under an imminent threat. S.C. Res. 1270, supra note 230, ¶ 14. From 2000 to 2002 it favored the phrases “all necessary measures” or “the necessary action” in the mandates of three peacekeeping missions. For example, UNTAET in East Timor was authorized to take “all necessary measures to fulfill its mandate” in S.C. Res. 1272, U.N. Doc. S/RES/1272 (Oct. 25, 1999); UNAMSIL in Sierra Leone was permitted “to take the necessary action to fulfill the additional tasks” in S.C. Res. 1289, U.N. Doc. S/RES/1289 (Feb. 7, 2000) and UNMIS in East Timor was authorized to “take the necessary actions . . . to fulfill its mandate” in S.C. Res. 1410, ¶ 6, U.N. Doc. S/RES/1410 (May 17, 2002). By 2003 the Security Council moved to the “all necessary means” language. For example, MONUC was permitted to take “all necessary means to fulfill its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu” in S.C. Res. 1493, supra note 269)
each case the Security Council has authorized these peacekeeping missions to take on similar or identical responsibilities to those previously held by quasi-enforcement operations. In some instances, the personnel of the quasi-enforcement operations were simply “rehatted” as members of the missions led by the United Nations.284

This part of the article will consider the mandates of two missions with robust mandates, each of which echoes the attempt to bestow enforcement powers on peacekeeping operations in the early 1990s. I will first consider United Nations Organization Mission in the Democratic Republic of the Congo (“MONUC”). Here a peacekeeping operation was charged with taking over security functions previously undertaken by a quasi-enforcement operation, as was the case in UNOSOM II and, to a lesser extent, the strengthened UNMIH. Second, I will consider United Nations Operation in Côte d’Ivoire (“UNOCI”) where a peacekeeping operation was mandated to carry out security functions concurrently with a quasi-enforcement operation, using similar levels of force. This operation is reminiscent of UNPROFOR and, to a lesser extent, UNAMIR II.

a. The Democratic Republic of the Congo (December 2000 – Present)

In November 1999,285 the Security Council established MONUC, a military liaison team charged with establishing contacts with the parties, planning and providing information.286 In February 2000,287

and UNOCI was authorized to take “all necessary means to carry out its mandate within its capabilities and its areas of deployment” in S.C. Res. 1528, U.N. Doc. S/RES/1528 (Feb. 27, 2004). In a letter dated November 6, 2004 from the Secretary-General addressed to the President of the Security Council, UNOCI was “authorized to use all necessary means, within its capabilities and areas of deployment, to prevent hostile action.” U.N. Doc. S/2004/886. Moreover, ONUB was permitted “all necessary means” within its capacity to carry out certain parts of its mandate in S.C. Res. 1545, supra note 273 and, UNMIS was authorized to take “all necessary means, in the areas of deployment of its forces and as it deems within its capabilities” in relation to the Darfur region. Here the Security Council, for the first time, specifically invited “the consent of the Government of National Unity for the deployment”. This consent has yet to be granted at the time of writing. S.C. Res. 1706, U.N. Doc. S/RES/1706 (Aug. 31, 2006).

284. For more on the re-hatting of forces, see UN Secretariat’s Peacekeeping Best Practices Unit, Re-hatting ECOWAS Forces as UN Peacekeepers: Lessons Learned, (Aug. 2005), available at <pbpu.unlb.org/pbpu/library/Conversion%20from%20ECOWAS%20to%20UN%20forces%20-%20Final%20Document.pdf>.
286. Id. at ¶ 5.
287. S.C. Res. 1291, supra note 276.
the Security Council increased its size and expanded its mandate.\(^{288}\) While most of its new tasks were of a non-forceful nature,\(^{289}\) MONUC was given a civilian protection mandate at this time.\(^{290}\) In December 2002, faced with security concerns (in particular in the Ituri region of the country), the Security Council agreed to “a revised concept of operations”,\(^{291}\) whereby personnel would be increased to up to 8,700 and two “robust task forces” would be formed to provide increased security for the mission.\(^{292}\)

In May 2003,\(^{293}\) the Security Council authorized the establishment of a COTW-led quasi-enforcement operation, the Interim Emergency Multinational Force (“IEMF”),\(^{294}\) to aid with security the town of Bunia, the capital of the Ituri District.\(^{295}\) In the months leading up to the IEMF’s withdrawal, the Security Council increased MONUC’s

---

288. *Id.* at ¶4. Forces were to be deployed in a phased manner.

289. These tasks included monitoring the implementation of the cease-fire agreement, establishing liaison with the parties, supervising the disengagement of the parties’ forces, facilitating humanitarian assistance, and deploying mine experts. *S.C. Res. 1291, supra* note 276, at ¶7.

290. This mandate called on it to take the “necessary action” in the areas of its deployment and as it deemed within its capabilities to “protect United Nations and co-located JMC [Joint Military Commission] personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence.” *S.C. Res. 1291, supra* note 276, at ¶8.


292. The Secretary-General, *Special Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo*, ¶72, *U.N. Doc. S/2002/1005* (Sept. 10, 2002). Among other things, these forces were to provide security for the mission, including security for the disarmament and demobilization process. The operation was to include command, combat and support elements and to be structured around a well-equipped infantry battalion, with an armed helicopter unit for support. *Id.* at ¶¶49, 50, 76.


295. This force was authorized to work in close coordination with MONUC “to contribute to the stabilization of the security conditions and the improvement of the humanitarian situation in Bunia, to ensure the protection of the airport, the internally displaced persons in the camps in Bunia and, if the situation requires it, to contribute to the safety of the civilian population, United Nations personnel and the humanitarian presence in the town.” *S.C. Res. 1484, Id.*
troop levels to 10,800\textsuperscript{296} and, acting under Chapter VII, reiterated MONUC's civilian protection mandate.\textsuperscript{297} For certain parts of the country, however, MONUC's mandate was made even more forceful. The Security Council authorized it to use "all necessary means to fulfill its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu."\textsuperscript{298} When the IEMF withdrew in September 2003,\textsuperscript{299} it handed over its remaining tasks in Bunia to the strengthened MONUC.\textsuperscript{300}

After a serious deterioration of the security situation in the summer of 2004,\textsuperscript{301} the Security Council again raised the MONUC's troop numbers — this time to 16,700\textsuperscript{302} — and revised its mandate giving it additional tasks of a forceful nature.\textsuperscript{303} In order to carry out

---

\textsuperscript{296} S.C. Res. 1493, \textit{supra} note 269, at \$ 3. The increase in troops was to provide protection to the U.N. personnel and assets and establish a framework of security, as well as providing limited support to some humanitarian operations. The Secretary-General, \textit{Second Special Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo}, \$48, U.N. Doc. S/2003/566, (May 27, 2003).

\textsuperscript{297} Id. at \$ 25.

\textsuperscript{298} Id. at \$ 26. By August 26, 2003, the Security Council authorized the IEMF in Bunia to provide assistance to the MONUC contingent deployed in Bunia and its immediate surroundings, if MONUC so requested and if exceptional circumstances so demanded. S.C. Res. 1501, U.N. Doc. S/RES/1501 (Aug. 26, 2003).

\textsuperscript{299} According to the Secretary-General, the operation had been successful in restoring a measure of security in the town. The Secretary-General, \textit{Fourteenth Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo}, U.N. Doc. S/2003/1098 (Nov. 17, 2003).

\textsuperscript{300} See discussion regarding "Operation Artemis," \textit{supra} note 294.

\textsuperscript{301} In May and June 2004, dissident elements took over Bukavu, which led to widespread abuse and looting. There were also serious attacks against the personnel and property of MONUC. In August 2004, there was a massacre of Congolese Banyamulenge refugees in Gatumba, Burundi. See The Secretary-General, \textit{Third Special Report of the Secretary-General on the United Nations Organization Mission in the Democratic Republic of the Congo}, \$37, 39, 45, U.N. Doc. S/2004/650 (Aug. 13, 2004). See also The Secretary-General, \textit{Letter Dated 3 September 2004 from the Secretary-General Addressed to the President of the Security Council}, U.N. Doc. S/2004/715 (Sept. 7, 2004).

\textsuperscript{302} The Secretary-General had requested an additional 13,100 personnel, almost exclusively for military purposes. The Secretary-General, \textit{supra} note 301, at \$\$ 82-102.

\textsuperscript{303} S.C. Res. 1565, U.N. Doc. S/RES/1565 (Oct. 1, 2004). The mandated tasks may be divided into three categories, all falling under Chapter VII. First, MONUC was given tasks not requiring the use of force, such as assisting in the promotion of human rights and observing troop movements. Second, the Security Council, once again, gave MONUC a civilian protection mandate. Finally, MONUC was given tasks that appeared likely to require the use of considerable offensive force, such as seizing and disposing of arms and conducting inspections to ensure the arms embargo
these tasks MONUC was authorized to use "all necessary means, within its capacity and in the areas where its armed units are deployed." 304 In September 305 and October 2005, 306 in the face of continued violence, the Security Council authorized a further increase in personnel. Several other increases have been authorized since that time. 307 In April 2006, the Security Council authorized, for a period ending four months after the date of the first round of presidential and parliamentary elections, the temporary deployment of a European Union-led quasi-enforcement Reserve Force ("EUFOR RD Congo") to support MONUC. 308

b. Cote D'Ivoire (April 2004 – Present)

In February 2004, 309 the Security Council, acting under Chapter VII, established UNOCI to replace two previous United Nations-sanctioned missions. One of the departing missions, 310 the ECOWAS Mission in Côte d'Ivoire ("ECOMICI"), 311 was a COTW-led quasi-enforcement operation that had been authorized, "together with the French forces supporting them," to provide security guarantees in the country. 312 UNOCI was to act in cooperation with the French forces, was being complied with.

304. Id. at ¶ 6. Note that the "all necessary means" language did not apply to the tasks in the first category – just to those tasks in the second and third categories. See discussion supra note 303 regarding the categories.
306. S.C. Res. 1635, U.N. Doc. S/RES/1635 (Oct. 28, 2005). This was a temporary increase of 300 personnel "to allow for the deployment of an infantry battalion in Katanga."
309. S.C. Res. 1528, supra note 283.
310. The other was the United Nations Mission in Côte D'Ivoire (MINUCI) established in May 2003 by the Security Council to facilitate a January 2003 peace agreement (the "Linas-Marcoussis Agreement"). MINUCI, which was present in Côte d'Ivoire from May 2003 to April 2004, is described on the DPKO website as a "political mission" rather than peacekeeping. See United Nations Department of Peacekeeping website, <www.un.org/Depts/dpko/dpko/index.asp>
311. Also referred to as "ECOFORCE."
312. S.C. Res. 1464, U.N. Doc. S/RES/1464 (Feb. 4, 2003). ECOWAS, at its Summit in Accra on Sept. 29, 2002, had taken the decision to deploy a regional peacekeeping force in Côte D'Ivoire. This force, which was joined by French forces,
Hastings Int'l & Comp. L. Rev.

which were to remain.\textsuperscript{313} UNOCI was authorized "to use all necessary means to carry out its mandate within its capabilities and its areas of deployment,"\textsuperscript{314} which included monitoring the cease-fire, disarmament and civilian protection.\textsuperscript{315} When the security situation worsened in November 2004, the Secretary-General wrote to the President of the Security Council asking for reassurance that UNOCI was "authorized to use all necessary means, within its capabilities and areas of deployment, to prevent hostile action."\textsuperscript{316} This assurance was given on the same day.\textsuperscript{317}

In June 2005,\textsuperscript{318} the Security Council, again acting under Chapter VII, increased the size of UNOCI and expanded its mandate, authorizing it to undertake several forceful tasks, including observing and monitoring "the implementation of the joint declaration of the end of the war of April 6, 2005," preventing, "within its capabilities and its areas of deployment, any hostile action," monitoring the arms embargo, and assisting with security measures.\textsuperscript{319} In the same resolution, the Security Council authorized UNOCI "to use all necessary means to carry out its mandate, within its capabilities and its areas of deployment."\textsuperscript{320} In January 2007, UNOCI's mandate was

---

\textsuperscript{313} The Security Council renewed its authorization of the French force, known as "\textit{Opération Licorne}," authorizing it to "use all necessary means in order to support UNOCI." S.C. Res. 1528, \textit{supra} note 283, ¶ 16. In particular, the French force was authorized to "intervene at the request of UNOCI in support of its elements whose security may be threatened," and to "intervene against belligerent actions, if the security conditions so require, outside the areas directly controlled by UNOCI." \textit{Id.} at ¶ 16. In June 2005 the Security Council reiterated the authority of the French force to use all necessary means in order to support UNOCI. S.C. Res. 1609, ¶ 12, U.N. Doc. S/RES/1609 (June 24, 2005).

\textsuperscript{314} S.C. Res. 1528, \textit{supra} note 283, ¶ 8. UNOCI was to have a maximum military strength of 6,240 in addition to "the appropriate civilian, judiciary and corrections component." \textit{Id.} at 2.

\textsuperscript{315} \textit{Id.} at ¶ 6.

\textsuperscript{316} The Secretary-General, \textit{Letter Dated 6 November 2004 from the Secretary-General Addressed to the President of the Security Council}, U.N. Doc. S/2004/886, (Nov. 6, 2004). The request dealt with a "Zone of Confidence" where UNOCI and the French forces were deployed and which had been agreed with the Ivorian parties.

\textsuperscript{317} The President of the Security Council, \textit{Statement by the President of the Security Council}, U.N. Doc. S/PRST/2004/42 (Nov. 6, 2004). The statement added that the Security Council "confirms also that UNOCI, within its capabilities and areas of deployment, is authorized to prevent any hostile action, in particular within the Zone of Confidence."

\textsuperscript{318} S.C. Res. 1609, \textit{supra} note 313.

\textsuperscript{319} \textit{Id.} at ¶ 3.

\textsuperscript{320} \textit{Id.} at ¶ 8.
further augmented.\textsuperscript{321} It was given a variety of new tasks, some of which were military in nature (e.g., disarming militia and the collection and disposal of materiel brought into the country in violation of the arms embargo) and its authorization to “use all necessary means to carry out its mandate, within its capabilities and its areas of deployment” was restated.

C. Impact on the Self-Defense Principle

1. Missions with Civilian Protection Mandates

A mandate that provides for the security of the peacekeepers themselves is, of course, not unusual. As discussed above, it has long been the case that the term “self-defense” has been considered to include the defense of U.N. personnel and premises as well as the protection of freedom of movement of U.N. personnel. What is unusual is the Security Council’s decision to specifically authorize the missions under Chapter VII\textsuperscript{322} and to do so without any reference to the self-defense principle.\textsuperscript{323} Even more remarkable is the Security Council’s decision to authorize peacekeepers to protect civilians (where the peacekeepers are capable doing so and within the area of their mission’s deployment) and to specifically invoke Chapter VII in this regard.\textsuperscript{324} This provides a clear illustration of the acceptance on the part of the Security Council of the position that peacekeeping


\textsuperscript{322} In October 1999, when the civilian protection mandate was put in place for UNAMSIL, Chapter VII had only been explicitly invoked with five peacekeeping missions: UNPROFOR, UNOSOM II, UNCR, UNTAES, and UNMIK. With three of these missions — UNCR, UNTAES, and UNMIK — the invocation of Chapter VII appeared to be in order to authorize enforcement action by a COTW-led operation which was considered in the same resolution. Regarding UNCR and UNTAES see the discussion \textit{supra} note 131; regarding UNMIK, see the discussion \textit{supra} note 232.

\textsuperscript{323} Although the principle of self-defense is rarely discussed in Security Council resolutions setting out the mandate for a mission, given that these civilian protection mandates specifically authorize the use of force and do so under Chapter VII a reiteration of the self-defense principle would be more important than ever in providing clarity as to whether the Security Council continued to adhere to the principle or not. For example, with UNPROFOR, the Security Council was at pains to emphasize the self-defense principle in the same resolution authorizing the use of force under Chapter VII. \textit{See} S.C. Res. 836, \textit{supra} note 119.

\textsuperscript{324} While several earlier Security Council resolutions have dealt with (or impacted upon) the protection of civilians (e.g., ONUC, UNPROFOR, UNMIH, UNAMIR I, UNAMIR II, UNOSOM II, UNCR, and UNTAES), this is the first time it explicitly invoked Chapter VII for this endeavor.
operations have an obligation to protect civilians on the ground.325

While a requirement that peacekeepers protect individuals under their care might fit within some conceptions of self-defense at the national level,326 these mandates go much further, referring to all civilians under imminent threat within a mission’s area of operation and subject to its capabilities. Depending on the interpretation of “imminent,” “area of operation,” and “capabilities,” this could require the peacekeeping operation to protect hundreds, or hundreds of thousands of people. The possibility of such a large number of protected persons, when combined with the invocation of Chapter VII and the lack of a reference to self-defense, indicates that what is envisaged with these civilian protection mandates is the use of offensive force, potentially at any rate. Certainly there is nothing in the wording of the mandates which would prevent a mission from using extremely forceful actions or even pre-emptive force.327

As such, we are left to conclude that the Security Council’s actions in bestowing a civilian protection mandate on peacekeeping operations mean that the self-defense principle has, once again, been abandoned by the Security Council. To conclude that the self-defense principle still stands but that the definition of self-defense has been expanded to include the protection of possibly thousands of civilians on the ground,328 would be at variance with the normal meaning of the concept of self-defense at best, and disingenuous at worst. Nevertheless, the U.N. Secretariat appears to favor such a

325. The Security Council indicated its intention to ensure that peacekeeping missions are given mandates to protect civilians under imminent threat of physical danger in S.C. Res. 1296, supra note 245. The focus on civilian protection also emerged from the Brahimi Report and the Security Council’s endorsement thereof. See supra notes 263-265 and corresponding text.

326. See supra note 35 for a discussion of two instances of national conceptions of self-defense.

327. Holt notes that the nature of the protection may need to take a pre-emptive form:
If a force charged with protection reacts to an attack on civilians after the fact, it will already have failed in its goal of providing protection. As a result, success will often require taking aggressive action prior to any attack .... Protection may include, for example, escorting individuals and protecting camps, safe areas, key roads. It could also require direct action to target bad actors or prevent such actors from operating.

Holt, supra note 267, at 19.

328. Another, equally unpersuasive approach would be to classify the protection of civilians falling with the category of “defense of the mandate” and therefore as self-defense.
The Use of Offensive Force in U.N. Peacekeeping

As recently as 2003 the U.N. Secretariat described self-defense as follows: “Self-defence includes the right to protect oneself, other U.N. personnel, U.N. property and any other persons under U.N. protection.”

2. Missions with Robust Mandates

Professor Christine Gray’s observation that missions with robust mandates mark “a reversion to the practice in the former Yugoslavia and Somalia” is apt. Indeed the mandates of some of the missions suggest an intention to go even further down the path of forcefulness than the Security Council did in the former Yugoslavia. There, unlike with the robust mandates under consideration, the mission’s authority to use considerable force was counter-balanced by an explicit, if contradictory, reference to the need to use force only in self-defense. With the robust mandates, the Security Council explicitly invoked Chapter VII of the UN Charter and, with several, authorized the use of “all necessary means” — a phrase described by one observer as “standard Security Council shorthand for military force.” With the use of this phrase, the Security Council sends the message: Use whatever means you must. Clearly such a message is incompatible with a limitation on force only in self-defense, even one that is extremely widely drawn. A further indication that the self-defense principle is not meant to apply to the robust mandates arises.

329. UNITED NATIONS MULTIDIMENSIONAL PEACEKEEPING OPERATIONS, supra note 13.
330. GRAY, 2d ed., supra note 69, at 238. Her observation, written in 2004, was in relation to UNAMSIL and MONUC; it would apply equally to other missions with robust mandates.
331. See supra notes 181-187.
332. Charles Pierson, Preemptive Self-Defense in an Age of Weapons of Mass Destruction, 33 DENV. J. INT’L L. & POL’Y 150, 153 (2004-2005). The phrase had historically been used only to authorize full-blown enforcement actions, such as that in Iraq in Security Resolution 678. U.N. Doc. S/RES/678 (Nov. 29, 1990). In Korea the language was similar, but not identical; there the Security Council authorized states to “furnish [the South with] such assistance . . . as may be necessary.” S.C. Res. 83, U.N. Doc. S/1511 (June 27, 1950). Beginning in the 1990s the Security Council used the language for quasi-enforcement operations. For example, Operation Turquoise in Rwanda, the NATO operations in the former Yugoslavia and US-led MNF in Haiti were authorized to use “all necessary means” to achieve certain aspects of their mandates. Even with such forces, however, the Security Council was at times reluctant to use this forceful wording. See Christine Gray, From Unity to Polarization: Unity and the Use of Force against Iraq, 13 EUR. J. of INT’L L. 1, 5 n.1 (2002). For a consideration of the language used with robust peacekeeping operations, see the discussion in supra note 283.
from the fact that, in many cases, the operations were envisaged as replacements for enforcement operations, oftentimes with troops from quasi-enforcement forces simply being re-hatted as "peacekeepers."

The analysis of the robust mandates confirms the conclusion arrived at above in relation to civilian protection mandates: The self-defense principle has been abandoned by the Security Council. Even the U.N. DPKO, previously prone to stress the self-defense principle (even though expansively drawn), seems to acknowledge that it is not possible to attempt to fit "all necessary means" within even the broadest conception of self-defense. In its December 2003 Peacekeeping Handbook, it concedes that "sometimes the Security Council will authorize a peacekeeping operation to use armed force in situations other than in self-defence." It would appear that peacekeeping, as now understood by the Security Council and Secretariat at any rate, may involve the use of considerable force, well beyond self-defense. As outlined in a news briefing by Margaret Carey, an officer in the Africa Division of the DPKO, speaking in New York in March 2005: "There has been a change in peacekeeping. We do military operations. Peacekeeping is robust now."

---


334. Id. at 57 (emphasis added).

335. However, recognition that peacekeeping operations are not always bound by the self-defense principle is not universally accepted within the United Nations. The U.N. Special Committee on Peacekeeping Operations continues to stress the importance of force only in self-defence. In its 2004 Report it provided: "The Special Committee believes that respect for the basic principles of peacekeeping, such as the consent of the parties, impartiality and the non-use of force except in self-defence, is essential to its success." Report of the Special Committee on Peacekeeping Operations and its Working Group at the 2004 Substantive Session, ¶ 36, U.N. Doc. A/58/19 (Apr. 26, 2004). Interestingly however, in its Reports in 2005 and 2006, the same paragraph was reproduced with a modification: "the non-use of force except in self-defence" was replaced with "the non-use of force except in self-defence and in the defence of a mandate authorized by the Security Council." (emphasis added) Report of the Special Committee on Peacekeeping Operations and its Working Group at the 2005 Substantive Session, ¶ 30, U.N. Doc. A/59/19/Rev.1 (undated) and Report of the Special Committee on Peacekeeping Operations and its Working Group at the 2006 Substantive Session, ¶ 36, U.N. Doc. A/60/19 (Mar. 22, 2004).

V. The Future: Is Forceful Peacekeeping Sustainable?

Does the United Nations' most recent foray into forceful peacekeeping represent, once again, a temporary experiment, with it being only a matter of time before it reverts to its more cautious, self-defense-oriented approach to peacekeeping? Of course, in large measure, the answer to the question lies in whether the operations using force beyond self-defense are judged successful. This may be measured in a number of ways. One approach is to ask if civilians on the ground have been better protected than they would otherwise have been. Annan's observation as late as 2004 that civilians continue to "bear the brunt to armed conflicts" notwithstanding the presence of forceful peacekeeping forces proves little; no matter how successful a peacekeeping presence is, it would be unreasonable to expect it to result in the complete elimination of attacks against civilians or the establishment of a perfect security situation. It would appear that, in all but the most extraordinary circumstances, mandating peacekeepers to protect civilians will lead to fewer attacks. However, to compare the level of civilian protection available under a peacekeeping operation with enforcement-type powers with that provided by a peacekeeping operation using force only in self-defense is to make the wrong comparison. Instead, one should compare the civilian protection offered by a forceful peacekeeping operation with that provided by an enforcement operation. After all, bestowing forceful powers on peacekeeping operations means there will be fewer enforcement operations with mandates of shorter duration. By putting in place a regime of forceful peacekeeping, the United Nations is to a certain degree letting those states which would otherwise be morally obliged to contribute to U.N. enforcement forces "off the hook." When states do agree to participate in a quasi-enforcement operation (often after much foot dragging), they will tend to insist that their participation in the operation be for a short time only and that the quasi-enforcement operation be replaced by a forceful peacekeeping operation. This has led, in some cases, to

---

337. In a 2004 report to the Security Council, Kofi Annan reflects on what civilian protection mandates had achieved. He noted that the "[s]tark and disturbing evidence that civilians continue to bear the brunt of armed conflicts" and in support of this cited two examples where peacekeeping missions with civilian protection mandates were operational. The Secretary General, Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflicts, ¶ 3, U.N. Doc. S/2004/431 (May 28, 2004).

338. For example, the United States' participation in the quasi-enforcement force
overly hasty transitions from a quasi-enforcement operation to a forceful peacekeeping mission. As a result, the situation on the ground in which the peacekeeping operation has to function will frequently be far from stable and secure; and this in turn has led to the granting of greater and greater enforcement-type powers to the peacekeeping operation. Of course, this is reminiscent of the transition from UNITAF to UNOSOM II, discussed above, which ended so disastrously.

Another approach is to consider some of the problems associated with forceful U.N. peacekeeping, many of which were applicable in the forceful peacekeeping operations of earlier years. I divide these difficulties into four categories. First, constant pressures on resources are likely to lead to peacekeeping missions with personnel and resources which are insufficient to accomplish their more forceful mandates. Despite the emphasis in the Brahimi Report on the importance of granting robust peacekeeping operations adequate personnel and resources, the problem remains. Indeed the imposition of a forceful mandate may actually lead to states being less willing to contribute troops. The example of MONUC is illustrative. Katarina Månsson notes a “mismatch” between MONUC’s initial civilian protection mandate, “and the resources allocated for its implementation: 5,537 troops were authorized to carry out complex tasks throughout a territory the size of Western Europe.”

Moreover, despite continued attacks on civilians, in February 2001 Annan introduced an updated concept of operations, requiring only
3,000 troops, reducing the original force by almost half, apparently due to the unwillingness of states to contribute troops. In an October 2005 address to the General Assembly, the Under-Secretary-General for Peacekeeping Operations noted that “[o]ur personnel in the field ... operate in many instances on a more or less permanent state of shortfall .... Overstretch ... undermines our capacity to manage operations effectively.”

A second difficulty with the increased forcefulness in peacekeeping operations is the risk that parties on the ground will no longer perceive the operations to be impartial and unthreatening. This would appear to have been a factor in some attacks against U.N. forces or the taking of such forces hostage, for example in Somalia in 1993, in the Former Yugoslavia in 1995, and in Sierra Leone in 2000. More recently, in February 2005, nine MONUC peacekeepers were killed in the Ituri region in what was described as a retaliatory attack. A peacekeeping operation’s impartiality may be further imperiled where the peacekeeping mission and the quasi-enforcement mission operate at the same time. As we saw in the former

342. As noted by Månsson, One would assume that the unwillingness of states to contribute troops was the main reason for this reduction: as the Secretary-General was writing his report only 200 military personnel had been deployed to the [Democratic Republic of the Congo]. When peace operations are endowed with an enforcement mandate, member states are less prone to contribute troops. Id. at 507.

343. S.C. Res. 1565, supra note 303.

344. See Månsson, supra note 62, at 514.


346. As noted by Gray, “UNAMSIL was not able to fulfill [its] wide mandate when the opposition forces resorted to violence in 2000. Hundreds of UN forces were taken hostage by the Rebel RUF.” GRAY, 1st ed., supra note 80 at 181.

347. According to newspaper accounts there was “some suspicion ... that the attack on the peacekeepers was in retaliation for the recent effort to confront the militias.” Marc Lacey, Militia Fighters Kill 9 U.N. Peacekeepers in Congo as Instability Continues, N.Y. TIMES, Feb. 26, 2005, § A6. As noted by Månsson, MONUC presents its own set of problems regarding perceptions of bias: “The use of force to protect civilians in certain areas rather than others could undermine the perception of peacekeepers as impartial.” See Månsson, supra note 62, at 515.
Yugoslavia in the early 1990s when the NATO-led force and UNPROFOR operated at the same time, it was not always clear to the people on the ground to which entity the use of force should be attributed. This led to a perception that the use of force by NATO was the use of force by UNPROFOR.

Third, with an increase in robustness comes increased expectations. When these heightened expectations are not met — as will almost invariably be the case — there is the risk that the mission, and peacekeeping as a whole, will be pilloried. An example here is the criticism leveled against MONUC troops, who, despite having a civilian protection mandate at the time, reportedly stood by as Hema UPC forces, backed by Rwanda, took over Bunia in May 2003. Similar criticisms have arisen with the MINUSTAH’s reluctance to use force, with many Haitians describing them as being in the country “on vacation.” Such complaints prompted its commander, General Augusto Heleno Ribeiro, to remark: “I command a peacekeeping force, not an occupation force.”

348. It could be argued that the movement away from the self-defense principle merely shifts the decision that the peacekeeping operation is not able to achieve its goals through force of arms further down the chain of command. So if, for example, a genocide was occurring in a country which had a robust peacekeeping operation with a civilian mandate, the decision as to whether to use force — and if so how much — would fall to the force commander. This would make force commander the lightening rod for criticism if he was unwilling to request his troops to engage in the use of combat-type force in circumstances likely to be unacceptably costly in peacekeepers’ lives (thereby insulating Security Council and the Secretariat from the harsh criticism each received in the context of the genocide in Rwanda). Moreover, even if the force commander took the decision to use offensive force in dangerous circumstances, there is every likelihood that the troops would “double check” with the authorities in their home states — with the possible result that they would be told to disregard the force commander’s order. This “red carding” of peacekeepers by their own governments has occurred in the past and is likely to reoccur. Furthermore, where a forceful engagement by a peacekeeping operation resulted in significant casualties, there would be every possibility that peacekeepers would be unilaterally withdrawn by their governments. See Dallaire, supra note 156, at 293-296, regarding the withdrawal of the Belgian forces from UNAMIR.


350. Michael Kamber, A Troubled Haiti Struggles to Gain Its Political Balance, N.Y. TIMES, Jan. 5, 2005, §1 at 11. The article further noted that former U.S. Secretary of State Colin Powell had been critical of the mission’s reluctance to use force.

351. Id.
former Yugoslavia did not meet expectations.\textsuperscript{352}

Finally, if peacekeeping operations use offensive force, the protection afforded peacekeepers will change fundamentally. As is well known, international humanitarian law classifies individuals as combatants or non-combatants and as military or civilians. Peacekeepers who use force only in self-defense would appear to fall into the categories of non-combatant military;\textsuperscript{353} as such, like civilians, they are not legitimate targets for combatants.\textsuperscript{354} However, where a peacekeeper uses force beyond self-defense, he or she becomes a combatant under international humanitarian law and, as such, a legitimate target.\textsuperscript{355} This will undoubtedly lead to the routine

\textsuperscript{352} Gray observes that the "use of Chapter VII in the resolutions on UNPROFOR, UNCRO, and UNTAES increased expectations as to what they might achieve, but did not in itself give these forces enforcement powers in the absence of further express provision. The lack of realistic mandates and of adequate resources meant that the forces were not able to fulfill the expectations raised." GRAY, 2d ed., supra note 69, at 221.


\textsuperscript{354} The status of peacekeepers is enshrined in the Convention on the Safety of United Nations and Associated Personnel which, at Art. 7(1), provides that "United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate." However, Art. 2(2) provides an exception for "a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies" (emphasis added). See also the Rome Statute on the International Criminal Court, which provides that a person shall not be criminally responsible where he or she "acts reasonably to defend himself or herself or another person ... against an imminent and unlawful use of force in a manner proportionate to the degree of danger...." Rome Statute, supra note 46, Art. 31(1)(c).

\textsuperscript{355} The applicability of certain fundamental rules and principles of international humanitarian law to U.N. forces "when in situations of armed conflict they are actively engaged therein as combatants to the extent and for the duration of their engagement" was confirmed by the Secretary-General in his 6 August 1999 Bulletin on the Observance by United Nations Forces of International Humanitarian Law, Art. 1.1, U.N. Doc. St/SGB/1999/13 (Aug. 6, 1999), reprinted in 38 I.L.M. 1656 (1999). The Bulletin specifically provides at Art. 1.1 that the rules and principles were "applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence." At Art. 1.2, it provides that it "does not affect the protected status of members of peacekeeping operations under the 1994 Convention on the Safety of United Nations and Associated Personnel or their status as non-combatants, as long as they are entitled to the protection given to civilians under the international law of armed conflict." See Daphna Shraga, UN Peacekeeping Operations: Applicability of International Humanitarian Law and Responsibility for Operations-Related Damage, 94 AM. J. INT'L L. 406 (2000); Stevens, supra note 34, at 157.
targeting of U.N. forces — even where the particular peacekeeping mission at the particular time is not engaging in enforcement functions. The significance of such a development on U.N. peacekeeping cannot be underestimated.

If history provides us with an accurate guide, it would appear to be only a matter of time before the United Nations again reaches the realization that the use of force beyond self-defense is fundamentally incompatible with the concept of peacekeeping and retreats to an approach whereby some variation on the self-defense principle is again embraced. The problems, as outlined, are considerable and will only grow worse as more and more forceful peacekeeping operations come into existence.

While the idea behind the increased forcefulness is laudable — a recognition that the United Nations and, through it, the international community, has a responsibility to protect civilian populations from serious atrocities and to restore peace and security — peacekeeping is not the means to achieve the goals where force beyond self-defense is required.\(^\text{356}\) If the international community is serious about its responsibility to provide civilian protection, a means to do so already exists: enforcement operations. In the words of Professor, now Judge, Rosalyn Higgins writing in 1995, “Enforcement should remain clearly differentiated from peace-keeping. Peace-keeping mandates should not contain within them an enforcement function. To speak of the need for more ‘muscular peace-keeping’ simply evidences that the wrong mandate has been chosen \textit{ab initio}.”\(^\text{357}\) This is no less true in 2007.

---

\(^{356}\) White makes the following observation:

\begin{quote}
The problem with peacekeeping is that it cannot provide the answer to situations where conflict, whether international or civil, still rages. In such situations the need to restore peace, as opposed to keeping it, requires an enforcement action under chapter VII of the Charter. Overall, the weakness of the UN system is not so much its peacekeeping operations (although they can be considerably improved), but its deficient military enforcement actions which have depended upon “coalitions of the willing” coming forward . . . . Thus any reform in the military responses of the UN must look at the system overall and identify whether peacekeeping under “chapter VI and a half,” or enforcement under chapter VII, is needed.
\end{quote}

White, \textit{supra} note 249, at 128, 129.

\(^{357}\) Higgins, \textit{supra} note 103, at 459.