

Chapter 1

Introduction

[M]any feel that peacekeeping has become a panacea, with the deployment of United Nations forces considered proof that the Security Council is paying attention to a crisis, whether the troops are effective or not.

Neil MacFarquhar (*New York Times*), referring to discussions with diplomats and UN officials in 2009¹

OVER A FOUR-DAY period between 30 July and 2 August 2010, 242 individuals – reportedly ranging from a one-month-old baby boy to a 110-year-old great-great grandmother – were raped in and around the village of Luvungi, in the Eastern part of the Democratic Republic of the Congo (DRC).² To the embarrassment of the UN, the rapes took place some 20 miles from an armed unit of a UN peacekeeping mission, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), which, despite being authorised under Chapter VII of the UN Charter³ to use ‘all necessary means’ – Security Council shorthand for the use of force beyond self-defence – to ensure the effective protection of the civilian population,⁴ did nothing to prevent them.

This tragic incident is a recent example of the myriad problems associated with UN peacekeeping in the last decade, since the UN Security

¹ Neil MacFarquhar, ‘In UN Peacekeeping, a Muddling of the Mission’, *New York Times* (online), 11 February 2009.

² Michelle Faul, ‘Congo Leaders: We Begged the UN to Protect Civilians’, *Associated Press* (online), 1 September 2010. See also UN News Service, ‘In Wake of Mass Rapes in DR Congo, UN Official Calls for End to Impunity’, 31 August 2010, www.un.org/apps/news/story.asp?NewsID=35784# (accessed 1 April 2011).

³ Chapter VII of the UN Charter comprises 13 articles (Arts 39–51) which relate to action by the Security Council with respect to threats to the peace, breaches of the peace and acts of aggression. Art 41 provides that the Security Council may ‘decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures’. According to Art 42: ‘Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.’ Decisions taken under either article may bind UN Member States. See chapter 3, section 3 for a detailed discussion of Chapter VII measures.

⁴ SC Res 1925 of 28 May 2010.

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Council adopted a practice of routinely bestowing enforcement-type tasks, such as maintaining security and providing civilian protection, on its peacekeeping operations. The UN reacted to the rape in a way that has, by now, become familiar. First, it attempted to minimise its role in the tragedy. It asserted that its peacekeepers were unaware of the extent of the harm being caused until nearly two weeks after the events, when the Mission was informed about them by a humanitarian organization.⁵ Even if true, a claim that the Mission was unaware of what was taking place nearby did little to absolve the Organization. However, there was some uncertainty as to how much the Organization did, in fact, know. It was later to emerge that the UN *had been* aware at the outset that at least one rape had occurred in the area, and the reaction of its Department of Safety and Security was to issue an alert on 30 July advising UN staff to stay away from the area. It is difficult to argue that the peacekeepers met their obligation to ensure civilian protection.

Second, the UN admitted that its peacekeepers had not done all they should have. In a statement of 7 September 2010, Atul Khare, Assistant Secretary-General in the UN Department of Peacekeeping Operations (DPKO), observed: 'Our actions were not adequate, resulting in unacceptable brutalisation of the population of the villages in the area. We must do better.'⁶ In an address to the Security Council, Margot Wallström, the Secretary-General's Special Representative on Sexual Violence in Conflict, stated: '[W]e are all compelled to look in the mirror and face our collective responsibility for our inability to prevent the mass rapes.'⁷

Third, the UN pointed out the hopelessness of charging a handful of peacekeepers with tasks that no one could reasonably expect of them. In the case of Luvungi, the UN cited a lack of communication facilities (including a lack of something as basic as cell phones or high frequency radios) as one of the reasons for MONUSCO's failure to react immediately.⁸ It also drew attention to the limited number of personnel covering an enormous territory: at the time of the rapes, there were 80 peacekeepers stationed in an area of over 300 square kilometres. In the words of Wallström, 'we are expected to do more at the same time with [fewer] peacekeepers'.⁹

⁵ The UN's initial reaction was to deny that its peacekeepers were aware that the rapes were taking place. Later, however, a UN official conceded that a patrol of peacekeepers had been present in the area at the time the rapes were taking place.

⁶ Unattributed, 'UN Outlines Steps to Boost Civilian Protection in DR Congo in Wake of Mass Rapes', United Nations (News Centre), 7 September 2010.

⁷ United Nations, *Provisional Record of the 6378th Meeting of the Security Council* (UN Doc S/PV.6378), 7 September 2010.

⁸ Unattributed, 'UN Security Council Renews Condemnation of Mass Rape in DR Congo', *Deutsche Presse-Agentur* (online), 17 September 2010.

⁹ UN News Service (n 2).

1. THE CHANGED NATURE OF PEACEKEEPING

At the heart of MONUSCO's inability to meet the responsibilities assigned to it in its mandate is the fact that the UN peacekeepers in the DRC have been cast in a different role from that of the traditional peacekeeper. Corresponding with the turn of the century, peacekeeping is now relied upon by the Security Council not only as a means of keeping the peace; in some cases it is now charged with protecting civilians and restoring the peace (including through the use of 'all necessary means') when the peace breaks down. Moreover, the Security Council routinely invokes Chapter VII when establishing peacekeeping operations. This book will show that as peacekeeping has become more and more forceful and as its constitutional basis has become explicitly located in Chapter VII, such operations have, at times, taken on the character of enforcement operations. It will also show that despite these radical changes, the UN Secretariat has, somewhat disingenuously, continued to maintain that host state consent, non-use of force and impartiality are basic principles of peacekeeping operations.¹⁰

The term 'militarised peacekeeping' is used herein to refer to a peacekeeping operation that possesses enforcement characteristics – that is to say, is authorised, explicitly or implicitly, under Chapter VII and authorised to use force beyond self-defence. Depending on the circumstances, the consent of the host state may not be a legal prerequisite to the establishment of a militarised peacekeeping operation or to the assignment of certain tasks to it, similarly, impartiality may not be a legal requirement for some or all of its tasks.

The presence of UN peacekeepers on the ground was once a welcome indicator that there was peace in the land following a period of conflict. Respected by civilians and militants alike, peacekeeping forces were present at the request of the state and charged with managing and facilitating an existing peace in a neutral, non-violent way. At various stages of the endeavour, peacekeepers took on a number of different tasks, at times of a limited, non-participatory nature, and at other times featuring more proactive involvement to secure lasting peace. What peacekeeping was not expected to do was to take sides in a post-conflict situation (or, *a fortiori*, in a conflict situation) or to take forceful measures to enforce the will of the Security Council.

While certain exceptions occurred, they tended to be damaging to the Organization. In the early 1960s, the Security Council modified the

¹⁰ United Nations Department of Peacekeeping Operations and Department of Field Operations, *United Nations Peacekeeping Operations: Principles and Guidelines* ('Capstone Doctrine'), 2008, http://pbpu.unlb.org/pbps/Library/Capstone_Doctrine_ENG.pdf (accessed 1 April 2011), 31.

mandate of the United Nations Operation in the Congo (ONUC) such that it was charged with enforcement functions involving the use of offensive force to protect certain government interests, including assisting in preventing the Katangan province from seceding. This controversial operation was seen as an aberration in peacekeeping: an exception proving the rule that the distinction between peacekeeping and enforcement must be a rigid one.

Later, with the end of the Cold War and the lessening of East-West hostilities, a sense developed within the Organization that the conventional wisdom – that peacekeeping and enforcement ought not to coexist (as proven through ONUC) – was open to challenge. During the period 1992–95, the Organization once again bestowed enforcement-type tasks on peacekeeping operations. And, once again, the operations were generally not successful: they were not sufficiently equipped or staffed to undertake the complex, enforcement-related tasks demanded of them. Moreover, peacekeepers, once seen as impartial heroes, came to be seen as partisan. Sober in the realisation that forceful, partial peacekeeping did not work, it became clear within the UN that the best course was to return to the more traditional model of peacekeeping. There was agreement – supported in the near-unanimous writings of commentators – that peacekeeping operations worked best when they were keeping an existing peace through non-forceful means, rather than attempting to establish peace or secure its continuance through the use of enforcement-type measures.

Against this background, it may come as something of a surprise that the approach of assigning enforcement tasks to peacekeeping forces represents the current model for peacekeeping. Beginning in late 1999 and continuing to the time of writing, the mandates of peacekeeping operations are routinely established through the invocation of Chapter VII and are routinely charged with using force beyond self-defence. While the consent of the host state is generally still granted before a mandate is established or modified, the Security Council's invocation of Chapter VII, and the nature of the measures it authorises under that Chapter, call into question the legal necessity of such consent. The level of force that is authorised for these twenty-first century peacekeeping operations can include the use of 'all necessary means' – language that had traditionally been associated with enforcement operations, and which echoes the 'action . . . as may be necessary' language of Article 42 of the UN Charter. A requirement that the force be impartial – unless that term is defined so as to bear no resemblance to its normal meaning – has been all but cast aside.

The fact that the UN decided to revert to a system of militarised peacekeeping that had previously shown itself unworkable might suggest that the Organization was thought to have evolved in the years between its unsuccessful forceful peacekeeping activities in the mid-1990s and its resumption of militarised peacekeeping operations in the late 1990s, such

that it had reached a stage where it could overcome the many problems of the past. Surprisingly, however, the arguments in favour of the UN reverting to militarised peacekeeping were not based on such factors. Instead, they would appear to have been animated primarily by thinking of a more wishful nature. It was considered to be so essential that peacekeepers protect those within their sphere of influence who were vulnerable in the face of a breach of security that peacekeeping mandates simply *had* to provide for this – whether or not the Organization had yet evolved such that it had the capacity to do so. The reasoning seemed to be that if the Security Council was to assign enforcement-type tasks to militarised peacekeeping operations then, *ipso facto*, the Security Council and Member States would ensure that such operations were sufficiently well-funded, well-organised and had sufficient personnel to undertake them successfully. Influential voices, including that of former Secretary-General Kofi Annan and the experts appointed to a panel established by him – the panel that produced the Brahimi Report¹¹ – persuasively argued that with sufficient safeguards and resources, as well as a certain amount of restraint on the part of the Security Council, militarised peacekeeping operations could be successful. With these changes, some UN peacekeeping operations were given the dual task of securing the restoration of peace and security in a country as well as maintaining it. Thus peacekeeping operations were, in addition to their other duties, charged with saving lives and preventing future genocides. But can such militarised peacekeeping operations work?

2. MILITARISED PEACEKEEPING: SLOUCHING TOWARDS CRISIS

This book will consider the changed nature of peacekeeping and argue that, generally speaking, militarised peacekeeping operations have not been successful. As with the Luvungi rapes discussed above, militarised peacekeeping operations are asked to do too much, thereby leading to frequent failure. Press reports and the nationals of countries where such peacekeepers are operating tend to blame the peacekeepers themselves, suggesting that they are not willing to risk their lives to perform their assigned functions, labelling them ‘cowards’ or ‘tourists’. This is too easy a conclusion to draw. Even if some measure of fault may be found with the peacekeepers themselves in certain situations, this would represent only one element of a larger problem: peacekeeping operations are, by their very nature, ill-suited to carrying out enforcement-type functions. They do not have the necessary management structure, personnel or resources

¹¹ United Nations, *Identical Letters Dated 21 August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council [Attaching Report of the Panel on UN Peacekeeping Operations (the ‘Brahimi Report’)]* (UN Docs A/55/305 and S/2000/809), 21 August 2000, para 21.

to carry out enforcement-type tasks and, as such, they almost invariably fail when they attempt them.

Through an analysis of UN practice with respect to militarised peacekeeping operations, this book will show that, aside from the rare success story, such operations are no more successful in the twenty-first century than they were in the twentieth. Moreover, it will show that there is no sign that the level of success of such operations is on any sort of upward trajectory. As the discussion of the DRC situation above shows, militarised peacekeeping operations continue to be fundamentally ill-suited to their military tasks, and their failure in this regard continues to damage the UN. According to interviews with a number of diplomats and other experts, UN peacekeeping 'appears to be slouching toward crisis once again'¹² due to a sharp rise in the number of peacekeeping commitments worldwide and a type of 'mission creep' whereby peacekeeping operations may be expected to restore security and protect civilians.

Surprisingly, the book's contention that twenty-first century militarised peacekeeping operations have generally been unsuccessful in carrying out the enforcement-type functions assigned to them is relatively uncontroversial. Few argue otherwise. Perhaps more surprising still is the fact that many – including those who readily accept that peacekeeping operations are generally unsuccessful in carrying out enforcement functions – argue that the UN must, nevertheless, continue with its current model of militarised peacekeeping. Arguments for the continued vesting of enforcement-type tasks tend to take two (somewhat overlapping) forms.

First, there is an argument that while militarised peacekeeping is not currently successful, it will eventually succeed if the lessons of the past are learnt, past successes are built upon, and the necessary fine-tuning takes place. This argument was summarised by Findlay, writing in 2002: '[T]he UN is not currently capable of conducting such operations but might, in time, be able to do so, providing its capacities are dramatically improved.'¹³ He continued: '[T]he reflections of many observers on this issue are almost tautologous: UN peace-enforcement operations could succeed if they were provided with all the elements for success.'¹⁴

The thesis of the Brahimi Report is that peacekeeping must be reinvented such that it is authorised to ensure security and protect civilians. In order to do so, the Report argues, operations must be carefully planned, realistically mandated and vested with the necessary resources by Member States; moreover, the Security Council must exercise considerable restraint by waiting for resources to be available before establishing militarised peacekeeping operations. The UN appears to have accepted

¹² MacFarquhar (n 1).

¹³ Trevor Findlay, *The Use of Force in UN Peace Operations* (Oxford, Oxford University Press for the Stockholm International Peace Research Institute (SIPRI), 2002) 381–82.

¹⁴ *ibid.*

the first part of the thesis, while ignoring the second. The Brahimi thesis pays insufficient attention to the fundamentally political nature of UN activities and the fundamentally selfish nature of Member States. The UN is not currently, nor will it ever be, capable of administering a fighting force with the same level of skill as a state with a well-disciplined and well-resourced military. Because the UN relies on Member States to volunteer troops and resources, the planning of such operations will involve little more than guesswork. Discipline is difficult, if not impossible: if members of a peacekeeping operation disagree with the decisions of the force commander, little prevents them from taking the matter up with their national commander or state representatives and, if they gain the necessary support, simply disregarding the force commander.

Arguments that the Security Council ought to exercise restraint (and ensure that sufficient resources are available before assigning enforcement-type functions to peacekeeping operations) have gone unheeded; instead, the Security Council's approach has been to decide what result it would like – based on the politics of the day or, perhaps, a lingering sense of colonial obligation on the part of some of its Member States – and leave the Secretary-General and the Secretariat to attempt to cobble together a force with the scarce resources they have to hand. Frequently, though such a force will patently be unable to undertake the duties assigned to it, it will be established by the Security Council nonetheless.

An analysis of practice shows no indication of a trend towards greater state support for such operations. To the contrary, whereas in the early- to mid-1990s it was not uncommon for states with developed militaries, including Security Council permanent Member States, to contribute personnel to militarised peacekeeping operations, now very few peacekeeping forces come from such states. Developed states tend to participate in forceful peacekeeping only when their national interests are affected – for example, Australia's participation in UNTAET beginning in late 1999. Nor can there be said to be any favourable trends as regards Member States' willingness to volunteer equipment.

The question must then be asked: for how long must this, the UN's third experiment with militarised peacekeeping, be allowed to fail? When will it be time to acknowledge that the UN and its Member States are not going to change – that they are not going to provide the necessary capacity for successful missions? When will it be time to acknowledge that the UN is inherently incapable of undertaking militarised peacekeeping?

It is a central contention of this book that in 2011, over 10 years after the peacekeeping model was militarised, it is time to recognise that the militarised peacekeeping experiment has gone on long enough – that it is working no better than it did in the early 1960s or the early- to mid-1990s. It is time, moreover, to acknowledge that the militarised peacekeeping model is, simply put, beyond the capacity of the UN. As Michael Mandelbaum put it:

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The UN is a trade association of sovereign states. Just as a trade association of hospitals can issue resolutions on health care policy, the UN is an appropriate forum for passing resolutions expressing the will of the international community. However, where the execution of UN decrees is difficult or costly, responsibility must be assumed by sovereign states, acting under the authorization of the Security Council or the General Assembly. The UN can no more conduct military operations on a large-scale on its own than a trade association of hospitals can conduct heart surgery.¹⁵

For the UN to continue to establish militarised peacekeeping operations when it has become clear that they are – and are likely to continue to be – unsuccessful, is damaging not only to peacekeeping, but also to the UN more broadly.

A second argument is made by those who favour the assignment of enforcement-type functions to peacekeeping operations: even if operations frequently fail to carry out their enforcement-type functions, at least the UN has tried to do something to avert humanitarian crisis. The UN, and the Security Council more specifically, they would argue, cannot be seen to be inactive in the face of brutal violence being visited upon innocent civilians. This argument would appear to be motivated by the laudable belief that the UN must do everything it can to minimise civilian harm in the countries where peacekeepers are present. Even if a peacekeeping operation empowered to use enforcement-type powers is only sufficiently skilled and equipped to save one civilian life out of 100 or 1,000, it could be argued, that is better than a peacekeeping operation which is not so authorised and which, as a result, saves none.

A more pragmatic variation on the argument may be based on the perception that the UN must not *be seen* to be doing nothing in the face of atrocity. Here, adherents of militarised peacekeeping might argue that the Organization can better shoulder the disgrace that comes from a peacekeeping operation's inability to perform its enforcement-related tasks than it could the disgrace that comes from being seen to have done nothing in the face of a massive loss of life – as was the case when the peacekeeping operations in Rwanda in 1994 or Srebrenica in 1995 did little to protect civilians. In the words of Chesterman:

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.¹⁶

¹⁵ Michael Mandelbaum, 'The Reluctance to Intervene' (1994) 95 *Foreign Policy* 3, 10–11.

¹⁶ Simon Chesterman, 'The Use of Force in UN Peace Operations', August 2004, [http://pbpu.unlb.org/pbps/Library/Chesterman%20External%20Paper%20\(31-08-2004\).pdf](http://pbpu.unlb.org/pbps/Library/Chesterman%20External%20Paper%20(31-08-2004).pdf) (accessed 1 April 2011).

The problem is clear: the cost to the UN of being seen to do nothing in the face of atrocities is dear.

There may be another, more cynical variant of the argument that the UN must not be seen to be doing nothing: assigning enforcement-type tasks to a peacekeeping operation – even where the peacekeeping operation is under-equipped and unable to carry out these tasks – provides the Security Council with an element of political cover, plausible deniability or, to use the word of former Secretary-General Annan, an ‘alibi’.¹⁷ It allows powerful states on the Security Council to point to the steps that the organ took to protect civilians on the ground or to authorise the use of offensive force against conduct that it has judged to be harmful. Whether or not those steps are successful – or could ever reasonably be successful – the establishment of a militarised peacekeeping operation provides the Security Council with the ability to argue that it did *something*, even if that something was almost certain to fail in its militarised aspects, and to argue that the responsibility, where failure does occur, falls to others, such as the Secretariat or the peacekeepers themselves.

The ‘at least the UN is doing something’ argument – whether motivated by a desire to save as many lives as possible, to avoid unfavourable publicity for the UN or to provide an alibi – is more complex than many acknowledge. In order to judge the merits of militarised peacekeeping, the *costs* of the undertaking must be considered alongside the possible benefits. This book will argue that there are four main costs involved in such operations (in addition to the increased financial costs to the Organization). First, with a militarised mandate comes an increase in loss of peacekeepers’ lives. It may, of course, be argued that the loss of a small number of peacekeepers is a necessary sacrifice to assist a civilian population that is being attacked. Putting to one side the issue of whether this argument may be made in the circumstances of a particular mission, another factor must be borne in mind: because militarised peacekeeping is an endeavour which may be costly in terms of peacekeepers’ lives, states will be more reluctant to volunteer troops. As noted, over recent years there has been a noticeable shift in the countries from which troops are being volunteered. This, in turn, may have an effect on the skills, training and equipment of the troops.

Second, when the UN is charged with enforcing security or protecting civilians, the expectations of the civilian population affected, as well as of observers generally, are raised. When the operation fails to achieve its objectives – as this book will argue it almost invariably does – the particular peacekeeping operation, peacekeeping generally and the UN overall are all brought into disrepute. The mass rapes in Luvungi, discussed

¹⁷ As quoted by Jim Hoagland, ‘Who Wants Peacekeeping? Put Up or Shut Up’, *Washington Post*, 3 August 2000.

above, provide but one example of UN peacekeeping not meeting the demands placed upon it and of the stinging criticism of the UN that followed.

Third, the increased potential for militarised peacekeeping operations to use offensive force and to take sides undermines one of peacekeeping's greatest strengths: its reputation for non-violence and even-handedness. This can lead to the view that peacekeeping has been reinvented such that *all* missions may now use force to carry out all of the tasks within their mandates, regardless of the nature of the tasks in which they are engaged. Thus, peacekeepers who are engaging in functions for which force has not been authorised or is not necessary are more likely than ever to be perceived as the 'enemy' by various factions within a state, rather than international neutrals whose presence represents a time of peace.

Finally, when the Security Council assigns enforcement functions to a peacekeeping operation, it may serve to impede (or delay) the establishment of an enforcement force. The political pressure on the Security Council and Member States to do something effective in the face of a genocide or mass atrocity – something which, I will argue, can generally only be achieved through a state-led enforcement operation – will be diminished, at least until the militarised peacekeeping operation has proven itself to be a clear failure. With the United Nations Mission in Sierra Leone (UNAMSIL), for example, the Security Council, at the instigation of the UK (Sierra Leone's former coloniser), bestowed numerous enforcement-type responsibilities on an under-equipped, under-manned, poorly trained militarised peacekeeping force. It was only after the forces had proven themselves almost entirely incapable of maintaining order or protecting civilians – and scores of peacekeepers were kidnapped – that the UK agreed to send in an independent force for a limited period. If the assignment of unrealistic enforcement tasks to a militarised peacekeeping operation serves as an impediment to the Security Council taking efficacious steps, the suffering the militarised peacekeeping operation was designed to prevent may, in fact, be prolonged.

3. STRUCTURE OF THE BOOK

Following this introductory chapter, chapter 2 traces the development of peacekeeping and enforcement and asks the question: is peacekeeping the opposite of enforcement? Peacekeeping, which began as an uncontroversial Cold War compromise featuring a handful of observers present in a state, developed into a model featuring larger, better equipped operations and, most recently, into a Chapter VII-authorized endeavour, at times, overlapping with enforcement. Chapter 2 illustrates that host state consent, non-use of force and impartiality may no longer be said to be 'fundamen-

tal principles' of peacekeeping. The chapter also outlines the development of enforcement. What was envisioned in the UN Charter as a means to ensure international security through reliance by the Security Council on a UN force established pursuant to Article 43, has evolved such that the Security Council authorises willing states or groups of states to enforce its will. Moreover, the nature of the circumstances in which enforcement operations have been authorised by the Security Council has changed. Where force was once authorised to address the invasion of one state by another, it is now authorised to aid with internal disturbances, frequently in association with a peacekeeping operation with overlapping functions. In short, it will be shown that as peacekeeping has become more enforcement-like, enforcement has become more peacekeeping-like. Thus, it is no longer meaningful to refer to peacekeeping as the opposite of enforcement.

With that background, chapter 3 considers the legal basis of peacekeeping, including peacekeeping operations that have been given enforcement functions. The chapter outlines the restrictions that the UN Charter imposes on the Security Council's freedom to act, which may be lifted when it is engaging in enforcement action or where the affected state consents. The chapter examines the powers vested in the Security Council in Chapters VI and VII of the Charter, the prerequisites thereto and limitations thereupon, and considers their impact on the Security Council's ability to establish peacekeeping operations. The chapter shows that while certain restrictions on the Security Council's ability to function are lifted when it is taking enforcement measures, certain other restrictions come into play that may impact on its freedom to act.

Chapters 4–6 consider Security Council practice in relation to militarised peacekeeping. Chapter 4 considers such practice in the twentieth century, including an examination of UNEF I and ONUC in the Organization's early years, and an examination of four operations in the early 1990s: UNPROFOR in the former Yugoslavia, UNOSOM II in Somalia, UNAMIR II in Rwanda, and UNMIH in Haiti. The Security Council's twenty-first century practice in relation to militarised peacekeeping is considered in chapters 5 and 6. Chapter 5 considers militarised peacekeeping operations that were established at or around the turn of the century in Sierra Leone, East Timor and the DRC. Chapter 6 examines later twenty-first century militarised peacekeeping operations in Liberia, Côte d'Ivoire, Burundi, Haiti, Sudan, and the Central African Republic and Chad.

In chapters 4, 5 and 6, the circumstances in which each of the peacekeeping missions was established are considered, as are, where appropriate, the circumstances leading to each operation being made more forceful. The focus is not only on the level of force authorised in each operation but also on the level of force actually used. Where a state-led enforcement operation is established by the Security Council to aid militarised peacekeeping operations, these enforcement operations are

examined. In analysing these peacekeeping operations, the question of whether or not the operation adhered to the 'fundamental principles' of peacekeeping – force only in self-defence or in defence-of-mandate, host state consent, impartiality – is examined. In addition, the difficult – but, as argued herein, highly relevant – issue of the Article of the UN Charter under which each operation was established is considered. Finally, general conclusions are offered, which consider the lessons learned from each operation.

In chapter 7, overall conclusions are drawn. It is argued that the force-only-in-self-defence/host-state-consent/impartiality model of peacekeeping (the three 'fundamental principles' of peacekeeping) is, in most respects, legally irrelevant in terms of militarised peacekeeping operations – despite attempts by the UN Secretariat to promote the view that those 'fundamental principles' are alive and well. Based upon the invocation of Chapter VII (implied with ONUC; express in subsequent operations) and the authorisation to use offensive force in order to restore international peace and security, militarised peacekeeping operations are frequently best characterised as an exercise by the Security Council of its enforcement powers under Article 42. Chapter 7 also considers the myriad problems associated with militarised peacekeeping. In view of the severity and insuperability of these problems, the book contends that the status quo is not sustainable. Peacekeeping must return to its roots in order for it to succeed. Enforcement-type tasks must be left to enforcement operations.

4. THE DEFINITION OF PEACEKEEPING

The term 'peacekeeping' is not found in the Charter of the United Nations. What has developed over the years is an extremely wide variety of interpretations of the concept. While those invoking the term – lawyers, diplomats, UN functionaries, scholars, journalists and others – may share the same general conception of peacekeeping, it is striking how far apart they will frequently be as to its exact particulars. Indeed, no agreement exists as to whether the first peacekeeping operation occurred in the late 1940s or in 1956.¹⁸ The nature of operations covered by the term 'peacekeeping' is extremely varied and can include an operation with limited personnel and a limited mandate (such as to observe and report) through to an operation involving tens of thousands of personnel charged with maintaining security or even acting as a *de facto* government.

¹⁸ Some exclude early observer missions from their definitions of peacekeeping, while others include them. To adherents to the former view, the United Nations Emergency Force in the Suez (UNEF I) in 1956 was the first example of UN peacekeeping. For adherence to the latter view, UN peacekeeping began sometime between 1946 and 1948, with the establishment of the United Nations Special Committee on the Balkans (UNSCOB), the United Nations Commission for Indonesia (UNCI) or the United Nations Troop Supervision Operation (in the Middle East) (UNTSO).

In the introduction to her seminal four-volume study on UN peacekeeping,¹⁹ Dame Rosalyn Higgins highlighted the fact that peacekeeping is open to a variety of definitions, each of which may be permissible according to the purpose of the particular study. She observed:

To some, peacekeeping is a broad concept, referring to the entire role of the UN in maintaining, or restoring, international peace. According to this definition any book on peacekeeping must refer not only to UN Forces, but to investigation committees, special representatives of the Secretary-General and diplomacy within the UN system. Others have suggested that peacekeeping is a term which has come to refer to UN Forces and observer groups which are operational on a territory with the consent of its government. Yet others have insisted that the term peacekeeping cannot include UN observers. There is, of course, no one 'correct' definition.²⁰

Higgins's comments, first made in 1969, are all the more true in the twenty-first century, now that the range of functions assigned to peacekeeping operations has increased dramatically.

Definitional issues are further complicated by the fact that a decision by a politician, a diplomat representing a UN Member State or a member of staff at the UN Secretariat to characterise an operation as 'peacekeeping' is not taken in a vacuum. It may be motivated less by a concern for consistency or fidelity to an established meaning or set of characteristics than by what best suits the characteriser's objectives in relation to the particular mission. For example, if it is accepted that the label 'peacekeeping' carries with it a substantial limitation on the operation's ability to use force – something which many continue to believe despite evidence to the contrary – referring to an action as such may increase the likelihood that states will contribute forces to the operation²¹ and that the affected state will consent to the operation's presence on its territory.²² If it is accepted that the term 'peacekeeping' implies that an operation is 'non-enforcement' in

¹⁹ Higgins's four-volume study of UN peacekeeping operations, published by Oxford University Press between 1969 and 1981, is among the most influential bodies of work on UN peacekeeping to date. Rosalyn Higgins, *United Nations Peacekeeping 1946–1967: Documents and Commentary*, Vol I: *The Middle East* (1969); Vol II: *Asia* (1970); Vol III: *Africa* (1980); Vol IV: *Europe 1946–1976* (1981).

²⁰ Higgins, *ibid*, vol I, ix.

²¹ In some states, participation in an operation where force is used beyond self-defence may be constitutionally prohibited. On the situation in Japan see eg Akiho Shibata, 'Japanese Peacekeeping Legislation and Recent Developments in UN Operations' (1994) 19 *Yale Journal of International Law* 307. Further, the use of force beyond self-defence by a peacekeeping operation may be considered to impact on a state's neutrality. See Katherine E Cox, 'Beyond Self-Defense: United Nations Peacekeeping Operations and the Use of Force' (1999) 27 *Denver Journal of International Law & Policy* 239, 271 and n 132, which refers to Austria, Switzerland, Finland and Sweden.

²² As noted by Brian Urquhart, a former UN Under-Secretary-General, it is their 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'. Quoted in Fou-Tchin Liu, *United Nations Peacekeeping and the Non-Use of Force* (Occasional Paper, International Peace Academy) (Boulder, Col, Lynne Rienner Publishers, 1992) 7.

nature, the operation's characterisation as peacekeeping will facilitate the establishment of the operation by the Security Council, some of whose permanent Member States have consistently voiced reluctance to see obligations imposed on sovereign states. Similarly, whether or not an operation is characterised as 'peacekeeping' may have an impact on the protection under international humanitarian law to which its personnel are entitled.²³

Many observers turn to the UN itself for a definition of peacekeeping – and a listing of the missions that comport with this definition.²⁴ However, the UN does not speak with one voice on the issue, leading to inconsistencies in approach among the principal organs that have considered the matter; indeed there can be variance in approach within a single organ. Nor are the different organs' approaches to defining the term – or indicating which missions may be classed as peacekeeping – necessarily objective: certain organs of the UN are not above allowing political considerations to influence their characterisation of an operation as peacekeeping, or as something other than peacekeeping. For example, the Secretariat has been known to opt not to label an operation as 'peacekeeping' in order not to displease a host state that did not favour the term.²⁵

The website of the UN Secretariat's Department of Peacekeeping Operations (DPKO) was restructured in late 2010/early 2011 and continues to stress that host state consent, non-use of force except in self-defence

²³ The Rome Statute of the International Criminal Court provides that where an individual intentionally directs attacks against personnel involved in a 'peacekeeping mission in accordance with the Charter of the United Nations', he or she is guilty of a war crime, as long as the peacekeepers are entitled to the protection given to civilians under the international law of armed conflict (Rome Statute of the International Criminal Court, adopted 17 July 1998, entered into force 1 July 2002 (2187 UNTS 90), Art 8(2)(b)(iii) in the context of international conflicts and Art 8(2)(e)(iii) in the context of non-international armed conflicts). Where a peacekeeper is a combatant he or she is not entitled to civilian protection. See discussion on this point in *Situation in Darfur, Sudan in the case of The Prosecutor v Bahar Idriss Abu Garda, Decision on the Confirmation of Charges (Public Redacted Version)* (No ICC-02/05-02/09), 8 February 2010 (PTC I), www.icc-cci.int/iccdocs/doc/doc819602.pdf (accessed 1 April 2011). This provision was subsequently reproduced in Art 4(b) of the Statute of the Special Court for Sierra Leone (established by an Agreement between the United Nations and the government of Sierra Leone pursuant to Security Council Resolution 1315 (2000) of 14 August 2000). See discussion on this point in *Prosecutor v Issa Hassan Sesay, Morrison Kallon and Augustine Gbao* (Case No SCSL-04-15-T, Special Court for Sierra Leone, Trial Chamber I, 2 March 2009).

²⁴ For a list of peacekeeping missions between 1948 and 2011, according to the UN Secretariat, see www.un.org/en/peacekeeping/documents/operationslist.pdf (accessed 1 April 2011). See also United Nations, *The Blue Helmets: A Review of United Nations Peacekeeping*, 3rd edn (New York, UN Sales No E.96.I.14, 1996) 296.

²⁵ Marrack Goulding, then UN Under-Secretary-General for Political Affairs, noted that while he considered the United Nations Observer Group for the Verification of the Elections in Haiti to be peacekeeping, it was not officially so called at the request of the Haitian authorities; nor was it established or financed as such (Marrack Goulding, 'The Evolution of United Nations Peacekeeping' (1993) 69 *International Affairs* 451, 456). Similarly, the government of Papua New Guinea refused to allow the United Nations Political Office in Bougainville (a 'peace-building mission' or 'political office') to carry on under its assigned name, preferring that it refer to itself as the United Nations Observer Mission in Bougainville on the basis that the latter name sounded less politically intrusive.

or in defence-of-mandate and impartiality are the three 'guiding principles' of peacekeeping²⁶ – this despite the fact that of the 10 peacekeeping operations established since October 1999, almost all have been established, at least in part, under Chapter VII of the Charter and vested with the authority to use force beyond self-defence in relation to at least some of their functions.²⁷ While certain of these characteristics are frequently present in peacekeeping operations – and, as will be discussed in chapter 3, find considerable legal support in the UN Charter – to characterise them as 'fundamental' or 'guiding' principles of peacekeeping is misleading in today's world.²⁸ These considerations notwithstanding, the UN provides a valuable source of understanding of the nature of UN peacekeeping.

No attempt will be made to provide a 'correct' definition of the term 'peacekeeping'. Nevertheless, certain types of operation will be excluded for the purposes of this book. First, this study will focus on UN peacekeeping. As such, a 'peacekeeping' operation such as the Multinational Force and Observers (MFO) in the Sinai Peninsula, established outside the auspices of the UN to supervise the implementation of the security provisions of the 1979 Egyptian-Israeli Treaty of Peace, falls outside its scope. Similarly, the African Union Mission in Sudan (AMIS) will not be classified as a peacekeeping operation for the purposes of this book; despite being endorsed by the UN Security Council *ex post facto*, it was established by the African Union, not the UN.²⁹ Second, for the purposes of this book an operation must have a physical presence in the state or states in question in order to be characterised as peacekeeping. Third, 'peacekeeping' operations must be primarily in aid of maintaining peace or preventing the recurrence of a breach of the peace, as broadly construed.³⁰ Thus, the term as used herein does not 'encompass low-level operations by the Organization involving technical assistance, even if that aid serves to help a state implement some type of solution to a conflict'.³¹ Nor does it

²⁶ See the DPKO's definition of peacekeeping at www.un.org/en/peacekeeping/operations/peacekeeping.shtml (accessed 1 April 2011).

²⁷ See discussion in chapters 5 and 6.

²⁸ This is also discussed in chapters 4, 5 and 6, which consider UN practice.

²⁹ cf the approach taken by the International Criminal Court. In the *Abu Garda* case, it needed to determine whether AMIS was a 'peacekeeping mission in accordance with the Charter of the United Nations' for the purposes of the application of Art 8(2)(e)(iii) of the Rome Statute. It held that a requirement that the operation be established in accordance with the Charter was 'not tantamount to a requirement that the mission be established by the United Nations only, and shall be understood to encompass also missions that are otherwise foreseen by the UN Charter' (*Prosecutor v Abu Garda* (n 23) para 75). It referred to the fact that Art 52 of the UN Charter envisages a role for regional arrangements or agencies in relation to the maintenance of international peace and security (*ibid*, para 76).

³⁰ This may include operations with enforcement functions; the overlap between peacekeeping and enforcement will be considered in chapter 2 below.

³¹ Steven Ratner, *The New UN Peacekeeping: Building Peace in the Lands of Conflict after the Cold War* (New York, St Martin's Press, 1995) 20. He conceded, however, that the line between a technical assistance operation that assists with elections or human rights and peacekeeping may not always be clearly drawn (*ibid*, 20–21).

include diplomacy or fact-finding missions;³² while the functions of such missions may overlap with those of peacekeeping missions, they tend to be considerably narrower.³³ Finally, the concept of peacekeeping used in this book does not include operations that, while UN-authorized, are led by states or regional organizations.³⁴ The distinction between UN-led operations and state-led operations – and its significance – is discussed in detail in chapter 2.

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³² cf Boutros Boutros-Ghali in United Nations, *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping* (UN Doc A/47/277-S/24111), 17 June 1992, para 25.

³³ The point at which a fact-finding or investigative mission ends and a peacekeeping mission begins may be difficult to discern. For example, a diplomatic or fact-finding mission will likely contribute to the maintenance or restoration of peace; similarly, peacekeeping forces will frequently have diplomatic functions (ie resolving minor breaches of a ceasefire, etc), as well as fact-finding and reporting functions.

³⁴ A similar requirement is set out in *An Agenda for Peace* (n 32) at paras 20 and 44, which define peacekeeping as featuring UN personnel ('normally' at any rate) under the command of the Secretary-General. See also Roy Lee, formerly of the UN Office of Legal Affairs, who observed that 'UN peacekeeping operations do not include actions which are authorized by the Security Council but carried out by interested Member States or by an ad hoc multinational force. Roy S Lee, 'United Nations Peacekeeping: Development and Prospects' (1995) 28 *Cornell International Law Journal* 619, 621–22.