

International Peacekeeping by the United Nations: Some Main Issues and Problems Revisited

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The maintenance of peace has become the central problem and the overriding preoccupation of nation states, international law and international organisation. In an increasingly interdependent world, peace, like war, has become absolutely indivisible. Quite understandably, the search for it has inevitably become a collective exercise. Indeed, one observes that the proliferation of sovereign states which have capacity to wage war has been accompanied by the equally interesting globalization of efforts to prevent resort to war as an instrument of national policy. The globalization of efforts aimed at peace maintenance and promotion has been achieved through the device of universalizing membership in some international organizations and giving such organizations competence and authority to maintain peace in any part of the world, including authority to deal with non-members who may disturb peace. The United Nations is perhaps the best known example and the most innovative of all attempts to institutionalize a global commitment to the organization, promotion and maintenance of peace.

II

It is useful to begin by explaining the differences among three related concepts bearing upon the whole task of peace maintenance: namely peace-making, peace-keeping and peace-enforcement.

Peacemaking is the art and act of managing and settling disputes or conflicts through mediation, arbitration, conciliation or any other form of peaceful settlement. It, of course, involves a third party peaceful intervention, using negotiation as the main instrument. Peacekeeping has emerged as a historically newer form of diplomacy, a newer form of third party intervention of a peaceful nature which seeks to prevent not just an escalation of armed conflict which has developed, but perhaps more importantly the intrusion of the rival super powers in a conflict situation. It involves the use of soldiers not to fight and win, but to prevent fighting, to maintain ceasefires and to provide order while negotiations are going on. It is "the prevention, containment, moderation and termination of hostilities between or within states through the medium of a peaceful third party intervention organized and directed internationally, using multinational forces of soldiers, police and civilians to restore and maintain peace". It is important to take cognizance of the fact that peacekeeping operations do involve some peacemaking activities, in as much as peacekeeping does have a positive contribution to make to the management and resolution of conflicts. It is, in the words of a former UN Secretary-General, U. Thant, "a practical adjunct to peacemaking"; for the weapons of the peacekeeper are those of negotiation and quiet diplomacy, not the rifle.

Peace enforcement is the actual use of force under the auspices of the United Nations to deal with a proven case of armed aggression. The distinction between peacekeeping and peace enforcement is very important to the extent that it enables us to grasp and appreciate the structural and functional transformation that has occurred in the role of the United Nations in the maintenance of peace and security since 1945. There is no doubt that the founding fathers of the United Nations conceived of peace enforcement as the heart of the collective security arrangement enshrined in the UN Charter. However, while peace enforcement by the Security Council has been relegated to the background largely as a result of cold war politics that developed soon after 1945, peacekeeping by agreement and consent of parties involved in conflict has become a more important, acceptable and practicable approach to, indeed an alternative strategy for the task of peace maintenance. Peacekeeping has acquired the character of what a

former UN Secretary General, Dag Hammarskjold, once called 'preventive diplomacy'.

III

The decentralized and quasi-primitive character of the international system and the fact that peacekeeping operations are not expressly authorized under Chapter VII of the UN do not mean that an international peacekeeping force cannot be set up to operate within the territory of a state. In other words, the fact that the 1945 UN Charter does not expressly make specific provisions for peacekeeping forces should not be interpreted as meaning that there is no Charter basis for constituting and deploying UN peacekeeping forces to Egypt, Congo, Cyprus and Lebanon, as has been done. The view that UN peacekeeping lacks a Charter basis arises from the false assumption that 'collective measures' and 'enforcement measures' mean one and the same thing and from the failure to understand that peacekeeping operation is a collective measure in fulfillment of the overriding purpose of the UN, which is the maintenance and promotion of peace. The view also ignores the observation of the International Court of Justice that the UN must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties. In any case, there is no Charter provision expressly preventing the General Assembly or the Security Council from setting up peacekeeping forces.

Secondly, we should take cognizance of the fact that UN peacekeeping operates as an *ad hoc* response to individual crisis. There is yet no permanent international peacekeeping force created in relation to a general international development. There has, nevertheless, been a remarkable institutionalization of some generally accepted principles which now constitute the bedrock of UN peacekeeping doctrine.

The first principle is that the armed forces of the permanent members of the Security Council should be excluded from participation in UN peacekeeping operations. It is true that the authors of the UN Charter envisaged in 1945 that peace would be maintained by what has been aptly called 'the big policemen', especially the permanent members of the Security Council. But the peacekeeping forces which have been constituted have usually been composed of military contingents from small and middle powers, while the big powers have been deliberately excluded from contributing troops. Perhaps the only two exceptions were the UN peacekeeping operation in Cyprus in 1964 which used British troops because they were already in Cyprus and were acceptable to Greece, Turkey and Cyprus, and the UN operation in Lebanon which involved the deployment of French forces. Generally speaking, with the exclusion of the troops of the big powers, UN peacekeeping has come to be conceived as a proper function of small and middle sized powers with a commitment to political impartiality, and carrying out the resolutions of the Security Council or the General Assembly.

The second principle holds that the UN can station peacekeeping forces in a territory only with the express consent of the host government. The principle has evolved because peacekeeping operations have not been undertaken under Chapter VII of the UN Charter. This principle is a good reminder that there is a fundamental difference between a peacekeeping and a peace-enforcement force in so far as the deployment of the latter to any territory does not, according to the constitutional law of the UN, require the approval of the host country. The logic of the principle that a peacekeeping force remains on a country's territory only at the exclusive pleasure of the government of that country is that whenever such consent is withdrawn by the host government the peacekeeping force must be withdrawn. Those who criticized U. Thant for withdrawing UNEF from the Gaza strip and Sinai at the demand of the Egyptian President in 1967 seem to forget that UNEF was not established by a decision of the Security Council under Chapter VII of the UN Charter. The third principle is that while the UN alone can decide the composition of its forces, due regard must be paid to the viewpoint of the host government in order to ensure the acceptability of those forces to the host government. One recalls that President Nassar refused

to accept a Canadian infantry battalion as a part of UNEF in Egypt, although Canadians were accepted for administrative duties. The Pakistani offer of troops, at first accepted by the Secretary-General, was later turned down because of Egyptian hostility.

The fourth principle is that a UN force should not engage in combat activities, although it may respond with force to an armed attack in self-defense. This principle further underscores the difference between a peacekeeping and a peace enforcement force.

And finally is the principle that a UN force must enjoy freedom of movement within its zone of operation. This is a necessary condition for the performance of its duties.

III

We should now address ourselves to the institutional framework for decision-making on peacekeeping within the United Nations. The organs of the UN concerned with peacekeeping operations that have been carried out are the Security Council, the General Assembly and Secretary-General.

The final decision to dispatch a peacekeeping force to a trouble spot has always been made by the Security Council or the General Assembly. Under the UN Charter, it is the Security Council that has primary responsibility for the maintenance of peace. This responsibility is, however, not exclusive since the General Assembly is empowered "to discuss any questions relating to the maintenance of international peace and security" and to "make recommendations with regard to any such questions". Furthermore, should the Security Council be prevented by the exercise of the veto power from discharging its primary responsibility in the security field, the General Assembly is authorized by the Uniting for Peace Resolution of 1950 to consider the matter immediately with a view to making recommendations to UN Members for collective measures, including the use of force when necessary to maintain peace.

This issue of the relative competence of the Security Council and the General Assembly in peacekeeping operation has been a matter of debate among UN members. One argument is that the UN General Assembly has a residual power to authorize peacekeeping operations, that it is only when enforcement action is required that Article II of the UN Charter demands that the matter be referred to the Security Council by the General Assembly, and the General Assembly therefore, does not necessarily have to refer proposals for peacekeeping operations to the Security Council for approval. A counter argument puts an expansive construction on the use of the word 'action' in Article II of the UN Charter contending that 'action' means the dispatch of anything from a small group of military observations to a massive force. Such actions require reference to and approval by the Security Council. In a sense, the question whether it is the Security Council or the General Assembly that has the power to make the final decision to constitute and dispatch a peacekeeping force to a trouble-spot should be considered as an academic question in so far as, in actual practice, both organs have authorized the Secretary-General to establish peacekeeping forces and the UN has not been prevented from initiating any peacekeeping action deemed necessary because of the divergent constitutional interpretations of the nature of the legal competence of the two principal UN organs.

A descriptive analysis of the institutional machinery for UN peacekeeping operation must take cognizance of the role and responsibilities of the UN Secretary-General. The general practice has been that the resolutions creating an international peacekeeping force usually put operating responsibilities on the shoulder of the Secretary-General. Such resolutions usually authorize the Secretary-General to determine the composition and size of the force and to appoint the commander. By and large, UN peacekeeping operations have been characterized by an increasing centralization of administrative control under the office of the Secretary-General. No group of states has tried to deny the Secretary-General a

role in the management of a peace-keeping operation. The question is whether he is to function purely as an administrative officer or as a relatively independent political agent within the limits defined by the broad guidelines laid down by the authorizing body. Although actions of Secretary-Generals are criticized, especially those of Dag Hammarskjöld during the UN peacekeeping operations in the Congo by the Soviet Union, it is generally accepted that the organization of UN peacekeeping cannot be successful without initiatives on the part of the Secretary-General and his staff.

The United Nations organization has adopted important structural devices which have become reasonably well institutionalized and whose purpose is to mobilize political support for the organization's operations, to strengthen the Secretary-General's ability to control field operations and to facilitate the emergence of harmonious relations between the UN Force and the host government. For instance, Dag Hammarskjöld established in 1958 the office of Military Adviser to the Secretary-General to obtain practical guidance on military organizational matters confronting the UN peacekeeping force in the Middle East. The Secretary-General sought advice and support from the Advisory Committee on UNEF, UNOGIL and ONUC created by the UN and on which every nation contributing peacekeeping forces was represented. Advisory Committees have been very useful to the management of peacekeeping operations. It was, for instance, on the basis of consultation with the Advisory Committee on UNEF operations that the Secretary-General acceded to the unilateral demand by President Nassar for the withdrawal of UNEF from Egypt in 1967.

Finally, we should now address ourselves to an important problem of funding encountered by the UN in the course of its peacekeeping activities.

Four methods of financing the operations seem to have emerged. Under the first method, the states 'benefiting' from the presence of UN peacekeeping forces pay for their maintenance. For example, the cost of UN observation mission in Yemen in 1963 was defrayed by Saudi Arabia and the UAR who were the parties to the dispute. Earlier, Indonesia and the Netherlands had agreed to share the cost of the seven month peacekeeping operations of the United Nations Temporary Emergency Authority (UNTEA) in New West Guinea. .

The financing of the UN peacekeeping operations in Cyprus (UNFICYP) is a good example of the second basic financing method. UNFICYP was financed entirely from voluntary contributions from those member states who agreed to provide peacekeeping forces.

Thirdly, the funding of some peacekeeping operations has been charged to the regular budget of the Organization. The United Nations Military Observer Group in India and Pakistan (UNMOGIP) was financed out of the contingency fund which is part of the regular budget set aside for discharging obligations not provided for in the regular budget.

The fourth technique of financing peacekeeping operations is essentially a cost-sharing device. UNEF expenditures from 1965 were financed by this method. A very small percentage of the expenditure was apportioned on a 'capacity-to-pay' principle among a large majority of states designated as 'economically less developed', while the remaining 95% was distributed among twenty-six developed states.

The financing of peacekeeping operations has become a political and constitutional problem. The problem surfaced in a fundamentally serious manner when some countries, especially the Soviet Union and France, refused to pay their share of assessment for the UN operations in the Middle East and Congo. The reason for refusal to pay was not due to an excuse of financial incapability, but to the view expressed by the Soviet Union that UN operations in the Middle East and the Congo were a violation of the provisions of the UN Charter and therefore the cost attributable to those operations was not a legitimate expense of

the UN. The Soviet Union argued before the International Court of Justice that

UNEF was set up illegally because Article 11 bars the General Assembly from taking such actions; that ONUC was equally illegally constituted because it was the Secretary General and not the Security Council who selected the states contributing troops and because he and not the Security Council directed the Congo operations.

The deeper political problem, of which the financial crisis was merely a superficial manifestation, did not appear to have been grasped by the International Court of Justice which rendered an Advisory Opinion in 1962 -that the expense authorized for peacekeeping operations in the Middle East and the Congo constituted "expenses of the Organization within the meaning of Article 17(2) of the UN Charter", and that they should be apportioned among the Members of the Organization by the General Assembly according to the scale of assessment.

The principle of mandatory collective responsibility of UN members for the financing of peacekeeping operations has not been accepted. It does not even appear that it will be accepted and respected largely because no state wants to pay for what it considers a politically undesirable peacekeeping operation and which it believes has been illegally established. The World Court's opinion was ignored by France and USSR. And significantly, the US realistically withdrew her demand for the automatic application of Article 19 because of what Ambassador Golberg described as "the simple and inescapable fact of life that a majority of the 114 member states was unready to apply Article 19".

VI

As earlier pointed out, international peacekeeping by the UN has always operated as an *ad hoc* response to individual crisis. For the meantime, the issue of 'standing' vs. '*ad hoc*' peacekeeping force seems to have been resolved in favour of the latter. There have, of course, been suggestions to ensure that peacekeeping forces are "instantly available for use if situation arises". For example, the Uniting for Peace Resolution of 1950 recommended that each Member State of the UN should maintain within its national armed forces elements so trained, organized and equipped that they could promptly be made available for service as a UN unit upon the recommendation of the Security Council or General Assembly. Canada and the Nordic countries have in fact created special stand-by units within their armed forces and earmarked them for peacekeeping activities.