

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/350957446>

THE EVOLUTION OF PEACEKEEPING TO PEACE ENFORCEMENT: ISSUES ARISING

Article in Law · April 2021

DOI: 10.5281/zenodo.4682114

CITATIONS

0

READS

19

1 author:



Aisha Sani Maikudi
University of Abuja

22 PUBLICATIONS 1 CITATION

SEE PROFILE

THE EVOLUTION OF PEACEKEEPING TO PEACE ENFORCEMENT: ISSUES ARISING

Abstract

Peacekeeping is a lifesaving undertaking. It is vital for fostering global peace and stability and has contributed to reducing the number of ongoing wars in the last three decades. Since the end of the Cold War, Peace interventions have grown massively into a complex global undertaking resulting in traditional peacekeeping being under tremendous strain. This article will seek to unravel the new more ambitious approach, in which, peace interventions have abandoned their former neutrality.

I) Introduction

Peacekeeping is anything that contributes to the furthering of a peace process, once established. This includes, but is not limited to, the monitoring of withdrawal by combatants from a former conflict area, the supervision of elections, the provision of reconstruction aid, demobilization and reintegration of former combatants, monitoring the respect of a ceasefire at a demarcation line and reporting on adherence to the ceasefire¹. This gave time and breathing space for diplomatic efforts to address the underlying causes of conflict.

Peacekeeping missions can also stabilise illegally created new borders by monitoring respect of those borders as with the European Union observation mission in Georgia². Accordingly United Nations peacekeepers³ can include soldiers, police officers, and civilian personnel. The United Nations received the Nobel Peace Prize for these operations in 1968.

The United Nations defines four types of peace activities, as follows:

- A) Peace building: which ‘involves a range of measures targeted to reduce the risk of lapsing or relapsing into conflict by strengthening national capacities at all levels for conflict management and laying the foundations for sustainable peace and development’⁴.
- B) Peace enforcement: This aims to re-establish peace and security through the use of legal force in a conflict. In defending a ceasefire agreement, United Nations missions in various situations have applied military force, which extends beyond self-defence. Thus, a distinction must be drawn between peacekeeping and other operations aimed at peace. Offensive military force has been legalised only twice⁵. A common misconception is that activities such as the North Atlantic Treaty Organisation (NATO) intervention in the Kosovo War are peacekeeping operations, when they were, in reality, peace enforcement. That is, since the NATO was seeking to impose peace, rather than maintain peace, they were not peace *keepers*, but peace *enforcers*.
- C) Peacekeeping: ‘is a unique and dynamic instrument developed by the United Nations as a way to help countries torn by conflict to create the conditions for lasting peace’⁶.

* LL.B (Iond), LLM (LSE), B.L, Lecturer, Faculty of Law, University of Abuja, Gwagwalada, FCT, Nigeria. E-mail: ayeesha31@yahoo.co.uk

¹The United Nations Peacekeeping website. Available at: <http://www.un.org/en/peacekeeping/operations/surge.shtml>.

² Tim Guldemann, ‘Peacekeeping Under Strain: Coping with Evolving Contradictions?’ *Peace & Conflict Review* Volume 4, Issue 2, 2010.

³ Often referred to as Blue Beret because of their light blue berets or helmets.

⁴*Op.cit.*, see note 1 at: <http://www.un.org/en/peacekeeping/> June 2011

⁵ Korea in 1953 and Iraq in 1991.

⁶ *Op.cit.*, See note 2.

D) Peacemaking: This ‘includes diplomatic action to bring hostile parties to a negotiated agreement, which may also be undertaken by a prominent personality working independently or unofficial and non-governmental groups’⁷.

II) Legal Basis for Peacekeeping Missions.

The United Nations Charter (Charter)⁸ is the foundation document for all United Nations work. One of the United Nations main purposes is to maintain international peace and security⁹. Although peacekeeping is not explicitly provided for in the Charter, it has evolved into one of the main ways used by the United Nations to maintain international peace and security.

The closest reference the Charter makes to peacekeeping is under Article 43¹⁰, which sets out the idea of a standing United Nations Force. Chapter VI (6)¹¹ talks about peaceful measures of settlement of disputes whilst Chapter VII (7)¹² talks about forceful measures, thus, peacekeeping is sometimes referred to as Chapter VI.0 (6.5).

Two main factors are taken into cognisance when authorising peace interventions. The first is external and the second is internal. With reference to the internal factor, the main issue is that the consent of the parties is needed. This is imperative for putting troops in another country’s land. In a typical Chapter VI¹³ action, consent is not always there. For example, Iraq did not consent but Kuwait did¹⁴.

The second factor, which is internal authorization, is further subdivided into four categories. Category one is via the Security Council. The Charter gives the Security Council the power and responsibility to take collective action to

⁷ *Ibid.*

⁸ Adopted 26 June 1945 and entered into force 24 October 1945. United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI.

Available at: <http://www.un.org/aboutun/charter/index.html>. In addition, the Charter of the United Nations is always reprinted in the most current Volume of the Yearbook of the United Nations. See Article 1.

⁹ *Ibid.*, See the Preamble & Article 1.

¹⁰ *Ibid.* See Article 43.

¹¹ *Ibid.* See Articles 33-38.

¹² *Ibid.* See Articles 39-51.

¹³ *Op.cit.*, see note 11.

¹⁴ The Gulf War: Aug 2, 1990 – Feb 28, 1991 (Operation Desert storm officially ended Nov, 30 1995).

maintain international peace and security¹⁵. For this reason, the international community usually looks to the Security Council to authorize peacekeeping operations. It is for the Security Council to determine when and where a peacekeeping operation should be deployed¹⁶. United Nations peacekeeping operations have traditionally been associated with Chapter VI¹⁷ (Pacific Settlement of Disputes). However, the Security Council need not refer to a specific Chapter of the Charter when passing a resolution authorizing the deployment of a United Nations peacekeeping operation and has never invoked Chapter VI.

In recent years, the Security Council has adopted the practice of invoking Chapter VII when authorizing the deployment of United Nations peacekeeping operations into volatile post-conflict settings where the State is unable to maintain security and public order. The Security Council's invocation of Chapter VII in those situations in addition to denoting the legal basis for its action, can also be seen as a statement of firm political resolve¹⁸ and a means of reminding the parties to a conflict and the wider United Nations membership of their obligation to give effect to Security Council decisions¹⁹.

Category two is via the General Assembly. Under the United Nations Charter, the General Assembly cannot discuss and make any recommendations on peace and security matters, which are at that time being addressed by the Security Council²⁰. Despite this limitation, there may be cases where the General Assembly can take action. In accordance with the General Assembly's 'Uniting for Peace'²¹ procedure that aimed to fill any void created by the Cold War deadlock in the Security Council, if the Security Council fails to act owing to the negative vote of a Permanent Member, then the General Assembly may act. This will happen in the case where there appears to be a threat to the peace, breach of peace or act of aggression. The General Assembly can consider the matter with a view to making recommendations to Members for collective measures to maintain or restore international peace.

¹⁵ The United Nations is not the only organization to have authorized peacekeeping missions. Non-UN peacekeeping forces include the NATO mission in Kosovo and the Multinational Force and Observers on the Sinai Peninsula.

¹⁶ Hervé Ladsous currently serves as the head of the Department of Peacekeeping Operations (DPKO). DPKO's highest level doctrine document, entitled, '*United Nations Peacekeeping Operations: Principles and Guidelines*', was issued in 2008.

¹⁷ *Op.cit*, see note 11.

¹⁸ *Op.cit*, see note 2.

¹⁹ *Op.cit*, note 8. See Article 25.

²⁰ *Op.cit*, note 8. See Article 12(1).

²¹ 'Uniting for Peace' UNGA Res 377 (V) (3 November 1950) UN Doc A/1775, 10; Available at: <http://www.un.org/Depts/dhl/landmark/pdf/ares377e.pdf>.

The Uniting for Peace Resolution was invoked in 1956²² when the General Assembly established the first United Nations Emergency Force. This important Resolution demonstrated the central role that peacekeeping had come to play in the activities of the United Nations.

The third category is the Secretary General via the office of the Secretary General. However, this is on a small scale. For example, few people with no weapons to check out the situation on ground.

The fourth and final category is Regional Organizations. Chapter VIII of the Charter²³ provides for the involvement of regional arrangements and agencies in the maintenance of international peace and security provided such activities are consistent with the purposes and principles outlined in Chapter I of the Charter²⁴. In cases where direct United Nations involvement is not considered appropriate or feasible, the Security Council authorizes regional organizations such as the NATO, the Economic Community of West African States (ECOWAS), or coalitions of willing countries to undertake peace activities.

Although, strictly speaking, regional organizations cannot do so without United Nations authorization²⁵, there are exceptions to this. An example is the case of ECOWAS who created Economic Committee of West African States Monitoring Group (ECOMOG), which is predominantly a Nigerian military that kept peace in Sierra Leone. The United Nations did not disagree but eventually took over. The advantage of Regional organizations is that they tend to be more coherent plus already there so know what the area is like.

In recent years, peacekeeping authorization is done only through the Security Council. Most peacekeeping operations are established and implemented by the United Nations, with troops serving under United Nations operational control. In these cases, peacekeepers remain members of their respective armed forces, and do not constitute an independent United Nations army, as the United Nations does not have such a force.

III) Traditional Peacekeeping Under Strain Post Cold War

The United Nations pioneered peacekeeping in 1948 with the establishment of the United Nations Truce Supervision Organization (UNTSO)²⁶ in the Middle East. There have been sixty-nine (69) peacekeeping operations worldwide since

²² In the Suez Canal crisis of 1956.

²³ *Op.cit*, note 8. See Articles 52-54.

²⁴ *Op.cit*, note 8. Articles 1&2.

²⁵ *Op.cit*, note 8. Article 52(1).

²⁶ Established by SC *Resolution 50* of May 29, 1948.

then²⁷. Peacekeepers were not at first expected to fight. As a general rule, they were deployed with the consent of the parties to a conflict when a ceasefire was in place, to observe from the ground and report impartially on adherence to the ceasefire, troop withdrawal or other elements of the peace agreement.

Traditional peacekeeping is guided by four principles. The first is the consent of the conflict parties to the operations mandate. The second is the mission's operation mandate under direct United Nations command. The third is the restriction of the use of force via self-defence and the fourth is strict neutrality between the conflict parties.

Contrary to popular opinion, the end of Communism did not bring peace to the world. Rather, the number of conflicts increased²⁸. This led to an increased demand for peacekeeping with a strong international backing. As evidenced from the United Nations Former Secretary-General Boutros-Ghali's Agenda for Peace²⁹, the United Nations reacted with great euphoria to its leading role in international security. The Agenda had many innovations including proposing a permanent United Nations army³⁰ available to the Security Council and moving from peacekeeping to peace enforcement with the consent of the conflicting parties.

However, the traditional principles of peacekeeping could not cope with the evolution of peacekeeping post Cold War. The first principle of the conflict parties' consent to the mission's mandate has its drawbacks. This is because the United Nations missions' mandate revolves around the legal issues on the ground and three legal regimes must be dealt with: The law of the host country, the law of the sending country and international law. In light of this, it is imperative to consider the need for Status of Forces Agreement (SOFA). This usually results in the temporary suspension of the application of the national law. There is also the issue of Rules of Engagement (ROE). Three things influence what goes into ROE. These are:

a) Law: has there been external and internal authorization of the mission? What SOFA is in place? There is an increasing legalization of legal issues: is the weapon to be used legal? Is the target legal? Does International Humanitarian

²⁷ *Op.cit.*, see note 1 at:

<http://www.un.org/en/peacekeeping/resources/statistics/factsheet.shtml>.

²⁸ Antonio Donini 'The Future Of Humanitarian Assistance', *Proceedings of the Inaugural Symposium on the United Nations System in the Twenty-first Century 21-22 November 1995, UNU Headquarters, Tokyo, Japan*.

²⁹ UN General Assembly, *An Agenda for Peace : Resolution / adopted by the General Assembly, A/RES/47/120B*. Adopted in June 1992.

³⁰ Boutros Boutros-Ghali, 'An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping', *International Relations* December 1992, 11: 201-218, point 43.

Law (IHL) apply to United Nations soldiers? The issue of IHL is important because it does not bind United Nations soldiers in peacekeeping. This is because the United Nations has not signed to it; only States can. In addition, IHL applies only to military combat which peacekeeping is not. Nevertheless, IHL does apply to United Nations soldiers through the backdoor because their States have signed up to it thus, not in their capacity as United Nations soldiers³¹. Other issues include, does a Polish Colonel equal the same right as a French sub-lieutenant? What about the role of the military lawyer?

b) Policy: is the missions policy to monitor a cease-fire e.g. Cyprus? Is it to administrate a territory e.g. Kosovo or is it to re-establish law and order e.g. ad-hoc courts? And;

c) Strategy: the main aim of a mission's strategy is force protection. There is usually tension between force protection and the carrying out of a mission. For example, the 2003 Iraq war strategy was to win hearts and minds and thus the soldiers wore tams³² instead of helmets.

Thus, Rules of Engagement equals Law, Policy and Strategy.

If the mission moves from peacekeeping to peace enforcement, the mission's mandate can become a bone of contention between the conflicting States, which will in turn affect the SOFA, and ROE. If this occurs, how can the mandate be achieved? This means that peace enforcement by consensus is unfeasible because it is a contradiction in terms.

The second principle of the missions operation mandate under direct United Nations command can also be problematic. The issue of chain of command within United Nations forces best illustrates this. United Nations peacekeepers report not only to the United Nations Commander on the field but also to their National State. This can lead to complications on the field because of conflicting orders that can become a stumbling block to the mission's completion. As a result, Member States are very unwilling to send their soldiers for peacekeeping missions under direct United Nations command. The less troops there are available for a mission, the higher the probability of the mission ending up as a failure such as in Rwanda³³.

³¹ Secretary-General's Bulletin on the Observance of UN Forces of International Humanitarian Law.

³² Which are safer.

³³ After ten Belgian UN soldiers were killed, the UN withdrew the largest part of its mission, leaving the Tutsis without protection. Within 100 days in 1994, Hutu militias killed between 500,000 and 1 million Tutsis.

The third principle of restriction of force via self-defence can also be an obstacle to the successful completion of a mission. In 1994, the United Nations mission in Rwanda had 2,300 peacekeepers and military observers when it was informed about Hutu violent intentions against the Tutsi tribe. The United Nations mission asked for more troops and wanted to seize arms caches before the genocide against members of the Tutsi tribe began. However, United Nations headquarters vetoed the use of force except for self-defence³⁴.

In Bosnia in April 1995, United Nations peacekeeping lost its credibility when United Nations Protection Zones could not be protected. United Nations peacekeepers from the Netherlands became powerless observers of Serbian militias deporting approximately 8,000 Bosniaks and killing them afterwards. This failure to act led to the downfall of the Dutch government³⁵.

The fourth principle of neutrality in peacekeeping missions is extremely important, however, it also has its snags. Neutrality can contribute to the freeze of conflicts sometimes for decades rather than resolving them. This is the case of Cyprus where the United Nations has been stationed for over four decades. Neutrality also means that when a conflict erupts anew, the peacekeepers cannot prevent it escalating. An example can be seen from the case of the United Nations Mission in the Democratic Republic of Congo (MONUC). In 2008, MONUC was the biggest United Nations Mission with a staff of twenty thousand (20,000), nonetheless, neutrality meant the peacekeepers could not stop the rebels from committing massacres in the city of Goma.

It is clear from the above that the United Nations failed in global peacekeeping by not being able to cope with evolving peace operations. This failure caused a general disillusion with United Nations peacekeeping missions.

IV) Modern Peacekeeping: Brahimi and Beyond.

Over the last two decades, peacebuilding efforts have been massively expanded. There are currently 16 peacekeeping operations and one special political mission – the United Nations Assistance Mission in Afghanistan (UNAMA) – led by the Department of Peacekeeping Operations.³⁶

A commission led by former Algerian Foreign Minister Lakhdar Brahimi outlined the strategy for future United Nations peacekeeping³⁷. This was an

³⁴ At UN headquarters, DPKO was in charge, headed by the then Under Secretary-General, Kofi Annan.

³⁵ *Op.cit*, see note 2.

³⁶ *Op.cit*, see note 1 at: <http://www.un.org/en/peacekeeping/operations/current.shtml>.

³⁷ General Assembly A/55/305, Item 87 of the provisional agenda- Comprehensive review of the whole question of peacekeeping operations in all their aspects: Identical letters dates 21

attempt to learn from past peacekeeping mistakes. The commission reaffirmed three of the four traditional principles of United Nations peacekeeping: the consensus of the conflict parties, the mission's neutrality and the use of force only for self-defence³⁸.

However, on the crucial point of neutrality, it went beyond the traditional approach, impartiality for United Nations operations must mean adherence to the principles of the Charter³⁹. Where one party to a peace agreement clearly and incontrovertibly is violating its terms, continued equal treatment of all parties by the United Nations can in the best case result in ineffectiveness and in the worst, may amount to complicity with evil. No failure did more to damage the standing and credibility of United Nations peacekeeping in the 1990s than its reluctance to distinguish victim from aggressor⁴⁰.

Like Boutros-Ghali's Agenda, the Brahimi report⁴¹ argues for a shift in peacekeeping in the spectrum from basic peacekeeping to the very challenging tasks of enforcement operations with mandates specifying an operations authority to use force⁴². This is in contradiction to the strict traditional peacekeeping principle of the use of force only via self-defence.

The most recent reform documents – The New Partnership Agenda: Charting a New Horizon for UN Peacekeeping (2009)⁴³ and its Progress Reports No.1(2010)⁴⁴ and No.2 (2011)⁴⁵ – assess the major policy and strategy

August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council; Security Council Fifty-fifth year S/2000/809
Comprehensive review of the whole question of peacekeeping operations in all their aspects: Identical letters dates 21 August 2000 from the Secretary-General to the President of the General Assembly and the President of the Security Council,

³⁸ UN document A/55/305–S/2000/809, 21 August 2000, p. viii; Available at: http://www.un.org/peace/reports/peace_operations/docs/a_55_305.pdf. Accessed 15 July 2011.

³⁹ *Op.cit*, see note 8.

⁴⁰ *Op.cit*, see note 2.

⁴¹ *Op.cit*, see note 38.

⁴² *Ibid*. Point 38 onwards.

⁴³ *Op.cit* see note 1 at: <http://www.un.org/en/peacekeeping/documents/newhorizon.pdf>. Accessed 15 July 2011.

⁴⁴ *Op.cit* see note 1 at:

http://www.un.org/en/peacekeeping/documents/newhorizon_update01.pdf. Accessed 15 July 2011.

⁴⁵ *Op.cit* see note 1 at:

http://www.un.org/en/peacekeeping/documents/newhorizon_update02.pdf. Accessed 15 July 2011.

dilemmas facing UN peacekeeping today and in the coming years⁴⁶. The New Horizon process builds on past reforms to realize outstanding recommendations and develop fresh thinking on how to manage the new complexities and growing scale of UN Peacekeeping⁴⁷.

They attempt to reinvigorate the ongoing dialogue with Member States and other partners on how to better adjust UN peacekeeping to meet current and future requirements. As part of the New Horizon initiative, in early 2009, DPKO and DFS commissioned an external think-piece by the Center of International Cooperation (CIC), ‘Building on Brahimi: a Coalition for Peacekeeping in an era of Strategic Uncertainty’ to help stimulate discussion on the challenges and opportunities for UN Peacekeeping.

Enforcement operations need a robust mandate to deal with eventual widespread resistance. In addition to basic peacekeeping and stabilization, enforcement also includes complex stability tasks such as, guaranteeing security to populations at risk and providing them with humanitarian aid under difficult conditions, forcibly disarming belligerents and disruptive elements, conducting sanctions and embargo operations, arresting war criminals and control air space and waters.

Member States were very reluctant to concede to the robust United Nations mandates and refused to send their soldiers for operations under United Nations command⁴⁸. The alternative to enhanced United Nations peacekeeping for coping with the demand for robust action was a new division of labour called peacekeeping by proxy. Instead of working to extend United Nations mandates, the United Nations kept the classical tasks of peacekeeping by lightly arming peacekeepers and concentrating on the civilian and police fields. For more complex or challenging military tasks, the Security Council mandated individual States or Regional Organizations. This caused a shift in international peacekeeping doctrine.⁴⁹

The new form of peace operations, combining peacekeeping with active peacebuilding efforts, has been realised above all in Bosnia, Afghanistan and Kosovo, following Western military intervention. The NATO assures security, the United Nations, the Organisation for Security and Co-operation in Europe (OSCE), the European Union (EU) and other actors build up state institutions,

⁴⁶ *Op.cit* see note 1 at: <http://www.un.org/en/peacekeeping/operations/newhorizon.shtml>. Accessed 15 July 2011.

⁴⁷ *Ibid.*

⁴⁸ Hitherto one of the basic principles of traditional peacekeeping.

⁴⁹ *Op.cit*, see note 2.

strengthen democracy, promote the return of refugees, and support minorities as well as the respect of Human Rights⁵⁰.

The step from traditional peacekeeping to a broader approach including peacebuilding was a substantial change of paradigm. Whereas peacekeeping during the Cold War was committed ‘to abstain from any political activity in the hosting country’⁵¹, peace operations now lead to the opposite because they imply direct political intervention, from outside, into the political and social life of another State⁵². Hence, peacebuilding is based on political influence, because it could not otherwise be realised through the consensus relationship of traditional peacekeeping.

Peace operations are increasingly confronted with new problems and contradictions, which did not exist in traditional peacekeeping. The new difficulties are mostly consequences of the political interference from outside⁵³. These political influences have affected the peace operations principle of neutrality and can have grave legal implications as enunciated below.

This issue of peacebuilding based on political influence is made clear via the carrot and stick approach in the examples of Croatia and Indonesia. EU membership negotiations for Croatia was initiated only after it had handed over the indicted war criminal, Ante Gotovina in December 2005. In Indonesia, the East-Timor conflict was resolved when pressure from the International Monetary Fund (IMF) obtained the necessary concessions from Jakarta in 1999.

In addition, there is lack of democratic legitimacy of foreign interventions. Local people may welcome foreign presence initially, for assuring peace and security. However, foreign presence is increasingly questioned, the longer it lasts. Foreigners who promote democracy also execute power, for which they have no democratic mandate from the population concerned⁵⁴. This can be illustrated from the models for peace settlements in which the West keeps Sovereign Rights to intervene in local issues. For example, the High Representative for Bosnia and Herzegovina has special rights for implementing the civilian part of the Dayton Peace Agreement. He can overrule political decisions and dismiss local politicians. Likewise, following the declaration of independence in Kosovo in February 2008, the International Civilian Representative, can take corrective measures to remedy any actions taken by

⁵⁰ *Ibid.*

⁵¹ Mandate of the United Nations Emergency Force in the Sinai 1956.

⁵² *Op.cit.*, see note 2.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

Kosovo authorities that he deems to be in breach of this Settlement.⁵⁵ This can include annulment of *laws*⁵⁶ or decisions adopted by Kosovo authorities and sanctioning or removing from office any public official⁵⁷.

In addition, peacekeeping enhancing stability via internal security has the predicament of making pacts with partners who have or are suspected to have committed serious crimes during the conflict. In Afghanistan, the West felt obliged to work closely with brutal warlords in order to foster security. Ramush Haradinaj was a strong partner of the international actors in Kosovo, although the International Criminal Tribunal for the Former Yugoslavia (ICTY) indicted him⁵⁸. Stability considerations can hinder subsequent approaches respecting the rule of law on drugs⁵⁹ or organised crime⁶⁰, undermining the credibility of the international intervention.

If peace operations promote rule of law and democracy in traditional societies for example, with quotas for female candidates in elections, they accelerate modernisation, but provoke conflicts with traditional elites. This is the situation in Afghanistan, where the Taliban and others oppose efforts for granting equal rights for women by denouncing it as Western cultural imperialism⁶¹. However, western predominance in the world is diminishing. The world has become multi-polar thereby making international consensus on peace interventions more difficult. As the former High Representative for Bosnia, Paddy Ashdown said, 'If we want a more ordered world at a time of great instability, we are going to have to provide a space at the top tables for nations that do not share our culture, our history, our world view or even our values'⁶².

Moreover, legal stability can become sustainable only if local ownership is assured. This can be accomplished by, empowering local partners to take responsibility in the process of developing local structures. Effective approaches to national and local ownership not only reinforce the perceived legitimacy of the operation and support mandate implementation, they also help to ensure the sustainability of any national capacity once the peacekeeping operation has been

⁵⁵ This is referred to as the Ahtisaari Plan. The United Nations Secretary-General submitted the Ahtisaari Plan to the Security Council on 26 March 2007 and the Council failed to endorse it. Nevertheless, it is the basis for the independence process promoted by the Western powers that resulted in 60 States recognizing Kosovo's independence. For the majority of States, Kosovo is part of Serbia.

⁵⁶ Writer's emphasis.

⁵⁷ Annex IX of the Comprehensive Proposal for the Kosovo Status Settlement

⁵⁸ He was later acquitted due to lacking testimonies.

⁵⁹ For example, in Afghanistan.

⁶⁰ For example, in Kosovo.

⁶¹ *Op.cit*, see note 2.

⁶² Paddy Ashdown, www.guardian.co.uk, 25 May 2009.

withdrawn⁶³.

However, bureaucratic structures tend to perpetuate themselves. As the United Nations Secretary-General Ban Ki Moon said at a meeting of United Nations managers in August 2008:

‘When you are trying to do something, which is tough, when you are trying to change the status quo, people will resist. They are thinking of their own position or benefit, not the larger interest. Unfortunately, I see too many turf fights, too much intramural wrangling, too much protectiveness of the status quo. People forget we are here to act, to deliver results. Please leave your ego at the door⁶⁴.

It is the authors opinion that lack of neutrality in modern peacekeeping has led to grave legal questions in both private and public international law, in particular, on the issue of regime change. The cases of Afghanistan and Kosovo elucidate this. The Bonn Conference in December 2001 put President Karzai in power in Afghanistan. Only afterwards was he democratically endorsed. In Kosovo, a protectorate was established, where, based on Security Council Resolution 1244⁶⁵, the actual sovereignty was handed over to the Special Representative of the United Nations Secretary-General, as the head of an interim administration⁶⁶.

Regime change is normally regarded as unlawful but it often accompanies action taken, as in Panama in 1989 (and currently Libya) with a variety of purportedly lawful objectives⁶⁷. In fact, Security Council Resolutions cannot authorize regime change. The United Nations Charter⁶⁸ gives the Security Council no such power, and even the Security Council may act only within the limitations of the Charter⁶⁹.

Furthermore, it is important to have comprehensive peacekeeping mandates so

⁶³ UN Doc.- *United Nations Peacekeeping Operations: Principles and Guidelines* (2008). Also available at: http://pbpu.unlb.org/pbps/library/capstone_doctrine_eng.pdf. Accessed July 18 2011.

⁶⁴ Ban Ki-Moon’s remarks at the Chief Officers of United Nations Funds and Programme Meeting, Turin, Italy, Friday 29 August 2008.

⁶⁵ United Nations Security Council Resolution 1244 (1999).

⁶⁶ The stabilisation model consisted of the gradual establishment of local provisional institutions, to which more and more administrative responsibilities were transferred until a political settlement could be achieved.

⁶⁷ Ian Brownlie, ‘The Rule of Law in International Affairs’. At the Annual Sir Hersch Lauterpatch Memorial Lecture on 06 Oct, 2004 at the Charles Clore House of the British Institute of International and Comparative Law.

⁶⁸ *Op.cit*, see note 9.

⁶⁹ A.S. Maikudi, ‘Legality of the War Against Iraq: A Passing Frenzy?’, *Abuja Journal of Private and Comparative Law*, Vol.1, 2010/2011.

that the fragile equilibrium of successful peacekeeping and successful peace building can be maintained. As Guildman⁷⁰ argues:

...(this) requires a strong military and peace building engagement from the outset, otherwise the process can fall victim to a vicious circle. In Afghanistan, the military engagement at the beginning was weak. Worsening security conditions have seriously jeopardised the development of civilian capacity. At the same time, setbacks in peace building efforts; especially in the judiciary and police, hampered social development, affected internal stability and increased conflict potential. This vicious circle has now provoked fundamental doubts about the Western approach in Afghanistan. In Bosnia, although security is stabilised, the international presence finds itself in a deadlock because the Dayton accord 19 years ago does not have an exit strategy.

V) Conclusion

Continual referral to peace operations as Chapter VI.0 or having mandates under Chapter VI or VII is too uncertain. An overt recognition of peace activities in the Charter will make Member States more serious on the Brahimi recommendation of having a permanent United Nations Troop. If the United Nations has its own troops at its disposal without having to wait for Member States to provide troops for peace operations, disastrous peacekeeping situations like Rwanda and Afghanistan will be avoided.

In conclusion, for the United Nations to cope with complex evolving peace interventions, it is imperative that its Charter is amended to explicitly recognise peacekeeping activities. This will lay the foundation for international consensus on peace interventions, provide a clearer definition of legal issues that arise with respect to the operations mandate and in particular whittle down the effect of non-neutrality on account of political interference from the outside.

⁷⁰ *Op.cit*, see note 2.