

**United Nations Peacekeeping
and
International Humanitarian Law**

A research paper submitted in partial fulfilment of the requirements for the degree of Magister Legum (International and Human Rights Law) at the Faculty of Law, University of the Western Cape.

Edwina Williams

[Student Number: 9926177]

Supervisor: Professor L Fernandez

November 2002

DECLARATION

I declare that *United Nations Peacekeeping and International Humanitarian Law* is my own work, that it has not been submitted before for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged as complete references.

Edwina Cathleen Sunette Williams

November 2002

Edwina Williams
.....



UNIVERSITY of the
WESTERN CAPE

ACKNOWLEDGEMENTS

Firstly, thanks to the Almighty who carried me through.

I would like to thank Prof Xavier Philippe and the French Government for granting me a scholarship for purposes of the LL.M degree.

Thanks to Prof Fernandez, for his willingness to act as my supervisor.

Thanks to my friends and colleagues for their support and understanding.

A special word of thanks to Ms Fiona Ross for her assistance and encouragement, as well as Ms Jill Claassen, librarian at the Community Law Centre, University of the Western Cape, for editing my paper.

Thanks to my family for their love and support through my academic career.

To Percival Daames; thanks for being there for me every step of the way.

The logo of the University of the Western Cape, featuring a stylized building with columns and a pediment.

UNIVERSITY *of the*
WESTERN CAPE

TABLE OF CONTENTS

ii

ACKNOWLEDGEMENTS.....	i
TABLE OF CONTENT.....	ii
LIST OF ABBREVIATIONS.....	v
CHAPTER1:INTRODUCTION.....	1
1.1 THE NATURE AND SIGNIFICANCE OF THE STUDY.....	2
1.2 SCOPE OF THE STUDY.....	4
1.3 CHAPTER OVERVIEW.....	5
CHAPTER 2.....	6
PART ONE: PEACEKEEPING AND ITS VARIOUS DIMENSIONS.....	6
2.1 INTRODUCTION.....	6
2.2 DEFINITION OF PEACEKEEPING.....	6
2.3 THE EVOLUTION OF PEACEKEEPING.....	8
a) The birth of peacekeeping.....	8
b) The assertive period.....	9
c) The quiescent period.....	9
d) Traditional peacekeeping.....	9
e) Civilian peacekeeping missions.....	10
f) Expanded peacekeeping and enforcement action.....	10
g) Reduced ambition for peacekeeping.....	11
2.4 THE BRAHIMI REPORT.....	12
2.5 CONCLUSION.....	13
PART TWO: INTERNATIONAL HUMANITARIAN LAW AND ITS CHALLENGES.....	14
2.6 INTRODUCTION.....	14
2.7 DEFINITION OF INTERNATIONAL HUMANITARIAN LAW.....	14
2.8 THE DISTINCTION BETWEEN JUS AD BELLUM AND JUS IN BELLO...15	

2.9 CRITICISM.....	18
2.10 CONCLUSION.....	20
CHAPTER 3: THE LEGAL LIMITATIONS OF PEACEKEEPING.....	22
3.1 INTRODUCTION.....	22
3.2 THE RELATIONSHIP AND COOPERATION BETWEEN..... PEACEKEEPING AND HUMANITARIAN OPERATIONS	23
3.3 CONCLUSION.....	26
CHAPTER 4: CASE STUDIES.....	27
4.1 INTRODUCTION.....	27
4.2 THE GULF WARS: a) GULF WAR I (1980-1988)..... b) GULF WAR II (1990-1991).....	27 29
4.3 SOMALIA.....	30
4.4 THE FORMER YUGOSLAVIA: KOSOVO and BOSNIA.....	33
4.5 HUMANITARIAN INTERVENTION.....	36
4.6 LEGAL POLITICAL STRATEGIES ON HUMANITARIAN INTERVENTION.....	37
4.7 CONCLUSION.....	40
CHAPTER 5: RECENT DEVELOPMENTS: ON ANOTHER LEVEL OF PEACEKEEPING.....	41
5.1 INTRODUCTION.....	41
5.2 THE ROLE OF WOMEN.....	41
5.3 PROTECTION OF PEACEKEEPERS AGAINST HIV/ AIDS.....	43
5.4 CONCLUSION.....	44

CHAPTER 6: THE EVALUATION OF PEACEKEEPING.....	45
6.1 INTRODUCTION.....	45
6.2 APPLICATION OF CRITERIA.....	45
6.3 CONCLUSION.....	47
CHAPTER 7: CONCLUSIONS AND RECOMMENDATIONS.....	48
BIBLIOGRAPHY.....	51



UNIVERSITY *of the*
WESTERN CAPE

LIST OF ABBREVIATIONS

ICC	International Criminal Court
ICRC	International Committee of the Red Cross
IHL	International Humanitarian Law
IRRC	International Review of the Red Cross
NATO	North Atlantic Treaty Organisation
SC	Security Council
SFRY	Socialist Federal Republic of Yugoslavia
UN	United Nations
UNAMSIL	UN Assistance Mission to Sierra Leone
UNEF I & II	UN Emergency Force
UNFICYP	UN Force in Cyprus
UNIIMOG	UN Iran Iraq Military Observer Group
UNIFIL	UN Interim Force in Lebanon
UNIKOM	UN Iraq-Kuwait Observation Mission
UNITAF	Unified Task Force (Somalia)
UNMOGIP	UN Military Observer Group in India and Pakistan
UNOSOM I & II	UN Operation in Somalia
UNPROFOR	UN Protection Force (in the former Yugoslavia)
UNSCOB	UN Special Committee on the Balkans
UNTSO	UN Truce Supervision Organisation

CHAPTER 1

1. Introduction

State sovereignty in its most basic sense, is being redefined by the forces of globalisation and international cooperation. The State is widely understood to be the servant of its people, and not vice versa...with his or her own destiny. These parallel developments demand of us a willingness to think anew-how the United Nations responds to the political, human rights and humanitarian crises affecting so much of the world; the means employed by the international community and about our willingness to act in some areas of conflict, while limiting ourselves to humanitarian palliatives in many other crises whose daily toll of death and suffering ought to shame us into action.¹

The end of the Cold War created the expectation that the international community will be able to deal with any challenges to international peace and security more effectively. However, these expectations were dispelled, given the experiences in some war-torn countries. The UN peacekeeping forces are mainly faced with problems such as the shift from interstate to intrastate conflict and the related challenges of how, by whom, and when intervention in civil strife will be justifiable. One of the key questions is whether there will be the necessary political will and organizational effectiveness to diffuse the types of conflicts that threatens international peace.

War is a constant feature of our times, whether it is characterised as an internal or international conflict. As result of recourse to violence during periods of armed conflicts, there is constantly a negation of human rights. It is therefore inevitable to have certain rules in place to regulate and harmonise these conflicts. Human rights and peace are closely related, therefore without the recognition of human rights there will never be peace and it is only within the framework of peace that human rights can be fully developed. The protection of human rights is a universal obligation of all states and respect of this obligation concerns all states, i.e. those rights are owed *erga omnes*. Countermeasures against violations must not include the use of armed force because Article 2 (4) of the UN Charter is a norm of *jus*

¹ *Address of Secretary-General Kofi Annan to the UN General-Assembly, 20 September 1999(GA/9596).*

*cogens*² as defined in Articles 53 and 64 of the Vienna Convention on the Law of Treaties.

1.1 The nature and significance of the study

International humanitarian law and human rights law are the two bodies of law traditionally associated with humanity. On an interpretation of humanity in terms of security and health, it is apparent that other bodies of international law restrain violence and by doing so promote humanity. These are customary rules and the international law of arms control and disarmament. International humanitarian law stands in the middle because its principle objective is to promote personal security and health when national security is determined by recourse to armed violence, but it overlaps with international law governing arms control and disarmament.³

The international system provides certain mechanisms to preserve the relationship between peace and human rights. For purposes of this paper the relevant bodies are the United Nations and the International Committee of the Red Cross. However, these institutional umbrellas must be cautious not to interfere in the domain of one another. The UN is responsible for the maintenance of international peace and security and has the authority to limit the right of any state to resort to war. The ICRC played and still plays an important role in the development and implementation of international humanitarian law and during armed conflicts the ICRC acts as a neutral intermediary, a supervising body and a relief agency.

The concept of peacekeeping evolved in response to the need to deal with conflicts in the absence of an effective security mechanism and was conceived as

² *Jus cogens* is defined as 'accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted' and which can be modified only by a subsequent norm of general international law having the same peremptory character. (*Vienna Convention on the Law of Treaties of 23 May 1969, Art 53*. United Nations Doc. A/CONF.39/27).

³ The principle treaties of IHL are the Geneva Conventions of 1949 and the 1977 Additional Protocols thereto. Other treaties are also considered to be part of IHL, such as the 1980 Convention on Conventional Weapons and the 1997 Ottawa Anti-personnel Mines Treaty. See also Coupland, R. (2001) *Humanity: What is it and how does it influence international law? IRRC*. Vol.83: 969.

an adjunct to a comprehensive political settlement. Peacekeeping also describe the help provided by the international community to disputing states to minimise violence in order to save lives globally. It is globally the most visible form of UN activity. Thus, as an activity it is responsible for bridging the gap between the quest for peace and its actual achievement.

Peacekeeping is predicated on the principles of prior consent of the parties involved, impartiality of the peacekeeping mission and the non-combat role of peacekeepers. The viability of peacekeeping as a tool for the settlement of disputes must rest on a clear and realistic mandate from the Security Council. However, in the absence of a pre-ordained mandate, it is imperative that the parties concerned must abide by certain principles for the establishment and conduct of peacekeeping operations.

The dual imperative of peacekeeping during the Cold War created tension because humanitarian concerns demanded greater involvement from the international community than would have been allowed by the requirements of *realpolitik*.⁴ After the Cold War it was generally believed that peacekeeping had no longer a dual imperative. The post-Cold War era has indicated the difficulties of reconciling the requirement of consent of parties with the demands for action, realities of civil violence and other humanitarian disasters. From 1988 to the mid-90s, the success of UN operations indicated that that the UN had developed the concept of second-generation peacekeeping, which involved the prevention of conflict as well as the reconstruction of failed states. By the mid 1990s *realpolitik* re-emerged in the form of national interests that introduced the lack of commitment of the international community to peacekeeping.⁵

International humanitarian law on the other hand, is a legal system and forms part of public international law. It includes the law of Geneva, which is concerned with the victims of war and the law of the Hague, which regulates the law governing combat.⁶ International humanitarian law is thus founded upon the ideas

⁴ Hill, S. and Malik, S. (1996) *Peacekeeping and the United Nations*. xi.

⁵ *Ibid.*

⁶ Green, L. (2000) *The Contemporary Law of Armed Conflict: 1-4*.

that the legitimate scope of military action is not unlimited. This area of law is sometimes regarded as irrelevant and impractical for a number of reasons and it is this pessimism that constrains the development of international humanitarian law. In order to understand the significance of international humanitarian law it is important that we understand several aspects of law.

Firstly, it must be borne in mind that law is a method of reasoning. Law also has to do with justice in the sense that it regulates human behaviour. It is thus possible that law can promote justice in armed conflicts, because it attempts to prescribe the most practical solutions, which must be respected. Conversely, law serves the interest of the human being and as such the progress of society. International humanitarian law allows us to understand this reality in armed conflicts.

However, the re-emergence of the doctrine of humanitarian intervention indicates that the system of norms that is responsible for guaranteeing a peaceful international order is now challenged in the name of humanitarian principles. This confronts one with yet another problem and the question posed is: What is the purpose of the dissemination of humanitarian law if it is used as a tool to legitimise acts of aggression? This indicates that the UN will in future be constrained by the contest of old and new norms of sovereignty and intervention, as well as by the role of regional organisations and ad hoc coalitions of states. This raises the question as to whether human rights and humanitarian norms can take precedence over national sovereignty and UN authority, or are these interventions merely an excuse to legitimise acts of aggression or interference in internal affairs and thus a method of sidelining the UN.

1.2 The scope of the study

The aim of this paper is to emphasise the importance of a proper understanding of the role of peacekeeping and the legal system of international humanitarian law, in order to understand the dynamics of its relationship. This paper reflects

opinions of various writers, which will be evaluated against the background of certain events and developments in the international order.

1.3 Chapter overview

The introductory chapter provides the basic background for the chapters to follow.

The first part of Chapter Two deals with the evolution of peacekeeping in order to understand the current dynamics of peacekeeping operations. The second part of this chapter gives a brief overview of international humanitarian law and the challenges it is facing. In Chapter Three, the legal limitations of peacekeeping will be discussed as well as the relationship between peacekeeping and international humanitarian operations. In Chapter Four some case studies will be analysed in order to evaluate the development of peacekeeping, the role of the UN and the ICRC, as well as the revival of humanitarian intervention. New dimensions of peacekeeping, for example, the role of women and the protection of peacekeepers against HIV/AIDS will be discussed in Chapter Five in order to highlight the fact that societal dynamics can play an important role in resolving conflict. Consequently, it can strengthen the effectiveness of peacekeeping efforts. Chapter Six deals with the method of evaluation of peacekeeping. In this regard the opinions of various writers and academics are analysed and challenged. Chapter Seven concludes with recommendations.

CHAPTER 2

Peacekeeping and its various dimensions

2.1 Introduction

In the first part of this chapter the concept of peacekeeping and its various dimensions will be explored. The second part will deal with humanitarian law and its challenges. The reason for discussing both in one chapter is based on my argument that humanitarian action in conflict situations should not be regarded as an isolated emergency operation for purely humanitarian purposes, but as an essential ingredient in consolidating the peace process. On the other hand it could be asserted that the pursuit of humanitarian action could be brought into conflict with an overall peacekeeping operation comprising such humanitarian action as its most important ingredient in a process for conflict management. This argument is based on the fact that peacekeeping, peacemaking and peace building can no longer be seen as self contained steps in the context of conflict management, but should be perceived as an integrated process.

2.2 Definition of peacekeeping

Peacekeeping operations are operations by the UN involving military personnel, but without enforcement powers, in order to restore international peace and security in areas of conflict. These operations are based on consent and cooperation.⁷ Although composed of military personnel, the operations achieve their objectives by not using force. This distinguishes them from the enforcement actions of the UN under Article 42.⁸ The concept of peacekeeping does not appear in the UN Charter, but was adopted during the Cold War as a substitute for

⁷ White, N.D. (1993) *Keeping the peace. The UN and the Maintenance of International Peace and Security*. 200. See also Howard, M.(1991). *The UN and International Security. United Nations, Divided World*. 32-45.

⁸ *Ibid.*

collective security and was used as a means to prevent the two superpowers from becoming involved in localised disputes.

It has been contended that peacekeeping is composed of four essential elements which, when combined distinguish, peacekeeping from enforcement and other forms of action.⁹ Firstly, the personnel must be of a military nature. The second characteristic is concerned with the values of the operation itself. The peacekeeping force must enjoy a high level of trust of the disputants. Thus, despite the fact that it is military in structure, it is non-threatening. Thirdly, peacekeeping can be distinguished from enforcement measures according to the content of the mandates. Fourthly, the characteristics of peacekeeping must be read with the context within which it takes place.

The context includes provisions such as the decision to establish a peacekeeping operation by a competent authority. Secondly, there should be adequate financial, personnel and infrastructure support. Furthermore, the consent of the host state to allow foreign troops is imperative as well as the political co-operation of all the parties to the dispute. Some writers are of the opinion that peacekeeping had become associated with the process of decolonisation during the Cold War, but hold that it is important not to confine peacekeeping to this narrow framework.¹⁰

Recent years have witnessed an unprecedented growth of the number and scale of the UN peacekeeping operations, as well as an expansion of the mandates beyond the bounds of traditional peacekeeping. The evolution of the United Nations peacekeeping missions and their classification will be discussed below.

Analysts use different typologies in order to classify the operations that have been mounted in the UN experience. Earlier distinctions were between observer and peacekeeping missions, but the latter developed too many variations for the one term to retain conceptual clarity. Some analysts prefer to classify them by type of

⁹See note 4, p.15.

¹⁰ See note 7.

actor, or to group them chronologically, whereas others prefer to classify them by function and task.

2.3 The evolution of peacekeeping

a) The birth of peacekeeping¹¹

UN peacekeeping missions were in 1947. From then until 1956 three peacekeeping missions were established. This introduced the process through which peacekeeping became an established tool for the UN. These missions included the United Nations Special Commission on the Balkans (UNSCOB), the United Nations Truce Supervision Organisation (UNTSO) and the United Nations Military Observer Group in India and Pakistan (UNMOGIP). UNSCOB was established to monitor and investigate the assertion made by Greece that support had been provided by Albania, Bulgaria and Yugoslavia to communist guerrillas in Greece who wanted to overthrow the government. UNTSO was set up to monitor the cease-fire lines between Israel and its neighbours. The third mission, UNMOGIP, was established to monitor the situation along the cease-fire line within Kashmir over which India and Pakistan had fought between 1947-1949.

b) The assertive period¹²

This is referred to as the second period and stretched from 1956-1974. The first three missions referred to above provided an excellent basis upon which the characteristics of peacekeeping can be formalised. During this period the UN set up nine new peacekeeping operations that were absolutely diverse in nature. The formalisation of the characteristics of peacekeeping started through the requirements of consent, non-use of force and the use of military personnel, all which evolved to become established principles of peacekeeping. This period was an indication of stronger UN objectives.

¹¹ *Ibid.*, p.27

¹² *Ibid.*, p.32.

c) The quiescent period¹³

From 1974 to the end of the Cold War only one new operation was created. This was the UN force in Lebanon (UNIFIL) that was set up in order to supervise the withdrawal of Israeli forces from Lebanon and to restore peace. It demonstrated that besides operational norms, certain conditions have to exist for the success of any peacekeeping operation, such as Great Power interest, financial support and co-operation among the parties.

Peacekeeping efforts can, however also be divided into various types as is evident from the above periodical division, which will be discussed below.

d) Traditional peacekeeping¹⁴

In the following paragraph three distinct, but closely related phases of peacekeeping will be discussed, each of which had different implications for humanitarian action. This type lays the emphasis on consent and co-operation and the non-use of force, except in self-defence. It included monitoring or supervising cease-fire agreements in the context of international armed conflicts; observing frontier lines acting as buffer between belligerents and assisting in troop withdrawals. This type clearly proved to be both distinct from and complementary to humanitarian actions. Thus these peacekeeping operations concentrated on the supervision of peace agreements and ensured that the parties to the conflict respected the terms. As soon as the agreement had been implemented, the mission ended. However, it appeared that due to a lack of viable human rights structures and adequate post-war reconstruction programmes most peace agreements, collapsed.

¹³ *Ibid.*, p.49.

¹⁴ Sassoli, M and Bouvier, A (1999) *How Does Law Protect in War?* 492-494.

e) Civilian peacekeeping missions¹⁵

This initiative is not traditional *per se*. It is used when the UN sends a mission of purely military observers unaccompanied by military personnel to the countries. These kinds of missions are necessary where traditional peacekeeping is not justified because there is no war, but where human rights violations occur. The presence of human rights observers contributes to the reduction of violence levels and facilitates the restoration of a process of peaceful political settlement.

f) Expanded peacekeeping and enforcement action

A broader notion of peacekeeping emerged after the Cold War. These operations increased UN engagement in various intra-State conflicts and involvement in the process of national political reconstruction, including the rehabilitation of collapsed State structures. Sometimes the tasks assigned to the peacekeeping operations could not clearly be distinguished from humanitarian action, for example, where they included the delivery of humanitarian relief supplies. In some instances the blurring of responsibilities was compounded by the fact that the political objectives of peacekeeping and – enforcement were unclear and their mandates ill-defined. There was a danger that humanitarian efforts could become integrated into a political process and of becoming politicised themselves. The ICRC took cognisance of this and realised that it is necessary to reaffirm that political efforts to resolve conflict and the requisite military support must be separated from humanitarian actions, which cannot be subordinated to the political aims of peacekeeping forces.

g) Reduced ambition for peacekeeping¹⁶

This phase of peacekeeping is marked by reduced political will and a general mood of retrenchment. As a result of this lack of commitment for peace efforts, a spiral of violence and disregard for the lives of non-combatants arose. This

¹⁵ *Ibid.*

¹⁶ *Ibid.*

disregard for the humanitarian ethos was illustrated by the various assassinations of ICRC delegates. It has been held that the use of force against UN personnel aimed at preventing them from carrying out their mandate would qualify as an international crime. The only exception is where the mandate was exceeded and the use of force was the only option to the other side to prevent attacks on its interest, in conformity with the general principles of international law.¹⁷ The immediate consequence of this reduced ambition for peacekeeping is the tendency to use humanitarian assistance as a substitute for political action.

Given the above typologies, I would however prefer to use the classification by Thakur and Schnabel (2001:9-13),¹⁸ because it allows one to distinguish between peacekeeping operations overall. These authors refer to the six generations of peacekeeping namely:

- Traditional peacekeeping- pending peace
- Non-UN peacekeeping
- Expanded peacekeeping-peace reinforcement, e.g. Namibia
- Peace enforcement, e.g. UNPROFOR
- Peace restoration by partnership, e.g. NATO
- Multinational peace restoration, UN state creation, e.g. East Timor

As it is clear from the above discussion, the scale and complexity of peacekeeping operations increased dramatically after the Cold War. Various reforms took place in order to address the changing nature of peacekeeping operations. As result of its failures the present Secretary-General of the UN, Kofi Annan, established an expert panel to review UN peacekeeping operations and to provide recommendations in order to contribute to the efficacy of UN peacekeeping operations. The ambit of the report includes the doctrine and practice of UN peace operations and is known as the Brahimi Report.¹⁹

¹⁷ *Ibid.*

¹⁸ In: *United Nations Peacekeeping Operations. Ad hoc missions, Permanent Engagement.*

¹⁹ *Ibid.*, pp. 53, 238-248.

2.4 The Brahimi Report

The core of the Report's recommendations, directs the UN to define peacekeeping missions to provide a force and to fulfil a mandate. It addresses the shortcomings and reforms at policy, managerial and operational level. The Report reaffirms the need to consider conflict prevention seriously. It also recommends that the Secretary-General must get more support from member states in his efforts to address root causes of conflict in many countries. It advises that the Security Council must address potential crises holistically before violence can erupt. Furthermore, it highlights the need for clear mandates that matches resources and comments on the UN tendency to base decisions on best case planning assumptions in situations with the worst case behaviour.

It suggests further that UN approaches to peacekeeping need to reflect the multifaceted nature of UN action in countries afflicted by civil war, which entails the promotion of the rule of law and economic recovery by integrating the military, policing, institution-building, reconstruction and civil administration functions of peacekeeping operations to a greater degree than in the past. The implementation of these recommendations is one of the greatest challenges of the UN. However should it be successfully implemented, UN peace-operations would, according to Thakur and Schnabel, look as follows:

The international community would be committed to effective conflict prevention and peace building. The effectiveness of peacekeeping operations will be more likely, because peace operations will enjoy a broader mandate. Successful implementation would lead to prompt deployment of peacekeeping operations. Military personnel would be equally well prepared and available for potential deployment. More attention will also be given to funding for public information, logistic support and expenditure management. The successful implementation of the recommendations will however, depend on the commitment of the member states to permit true reform.

One would have expected that the issues raised by the Brahimi Report to be part of the UN agenda already. This state of affairs is regarded as an embarrassing comment on the institutional inertia of the UN.

2.5 Conclusion

It is clear that recent years have witnessed a growth in terms of the number and degree of complexity in the UN peacekeeping operations as well as the expansion of mandates. These developments challenged the effectiveness of the UN response after the Cold War. The effectiveness of UN action can be enhanced through the implementation of the recommendations of the Brahimi Report, which should have been implemented already.



Part Two: International Humanitarian Law and its challenges

2.6 Introduction

Making no claim that it can put an end to the scourge of war, humanitarian law aims to attenuate the unnecessary harshness of war. The reciprocal interests of the belligerents also impel them to observe certain rules of the game in the conduct of hostilities. (Jean Pictet)²⁰

War... by no means absolves us from all obligations toward the enemy, on various grounds. It results in part from the object of war; in part from the fact that belligerents are human beings. The declaration of war is among civilised nations always made upon the tacit acknowledgement of certain usages and obligations and partly because war takes place between masses who fight for themselves and for others. (Lieber)²¹

The above statements reiterate the importance of international humanitarian law and its enforcement during periods of conflict. In the introductory chapter reference was made to the significance of the law of war. In the following paragraphs the importance of, as well as criticism against international humanitarian law in the international arena, will be discussed.

2.7 Definition of international humanitarian law

International humanitarian law is in essence international treaty or customary rules which are intended to resolve matters of humanitarian concern that arise directly from armed conflict, irrespective of whether it is characterised as an international or internal conflict.²² The purpose of international humanitarian law is to limit the suffering caused by war, by protecting and assisting as far as possible its victims. This area of law addresses the reality of a conflict without considering the reasons for or legality of resorting to force.

²⁰ *International Humanitarian Law: Questions and Answers*. 2000. <<http://icrc.org>>[accessed on 4 January 2002]

²¹ See note 6. p,16.

²² See *supra* note.14. p, 25.

2.8 The distinction between *jus ad bellum* and *jus in bello*

International law distinguishes between the *jus ad bellum* (the right to go to war) and the *jus in bello* (the law that governs the waging of war as well as the treatment of combatants and civilians in time of war).²³ Since the latter is concerned with the protection of war victims and their fundamental rights irrespective of the reasons for the conflict and whether or not the causes upheld by either party are just, it must remain independent of *jus ad bellum*. Nowadays, there is a tendency to justify the right to go to war by means of humanitarian intervention, a doctrine, which will be discussed in a later chapter.

The main instruments of international humanitarian law are the Geneva Conventions of 1949 and their Additional Protocols of 1977 which will not be discussed in detail in this paper. Humanitarian law has two separate branches namely the law of Geneva and Hague Law.

The law of Geneva, or humanitarian law, is designed to safeguard combatants who are no longer engaged in the conflict and civilians not involved in the hostilities.²⁴ On the other hand, Hague Law determines the rights and duties of belligerents in the conduct of their military operations and limits the choice of means and methods of doing harm.²⁵

International humanitarian law is thus concerned with striking a balance between humanitarian considerations and military necessity. These two branches are not completely separate because the effect of some of the rules of The Hague is to protect victims of conflict while the effect of some rules of the law of Geneva is to limit the action that belligerents can take during hostilities.²⁶ The adoption of the

²³ Dugard, J. (2000) *International Law: A South – African perspective*. 431. See also McCoubrey, H. (1990) *International Humanitarian Law- The Regulation of Armed Conflicts*. 227.

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.*

Additional Protocols of 1977 combined these branches. Today this distinction is only of historical, and to some extent, of didactic value.

The law of armed conflict has its origins in customary and conventional law. Both have been developed and drafted according to military needs and can only be disregarded for reasons of military necessity when this is expressly permitted by a rule. However, the mere plea of military necessity is not sufficient to evade any compliance with the laws of war, because it will reduce these laws to a code of military necessity. The purpose of armed conflict should only be to defeat the adverse party. Therefore, the law of armed conflict permits such actions only as are necessary for this purpose. It clearly forbids any action that extends beyond this and that causes damage and injury to persons and property where this is not essential to accomplish this end.

Since war can lead to cruelty and ultimate destruction there is a need for rules that can regulate military operations. The basis for such rules is that during combat there is a need to control certain methods of war and the use of certain weapons. Furthermore, it is a necessary that armed hostilities should be between organised forces and not the entire society.

It is therefore imperative to have an understanding of several aspects of law in order to understand the significance of humanitarian law. Law should not only be seen as a method of reasoning, but it also has to do with justice because it regulates human behaviour. Thus, it is possible that law can promote justice in armed conflicts, because it attempts to prescribe the most practical solutions. Law also serves the interest of the human being and, as such, the progress of society. Humanitarian law allows us to comprehend this reality in armed conflicts.

However, the development of international humanitarian law shows two contradictory trends. On the one hand, one distinguishes the normative development of humanitarian law, which has become one of the most comprehensively regulated branches of international law. On the other hand, the

gross violations of the Conventions, the increase in inhumane acts committed during armed conflicts, as well as the justification of war by means of humanitarian intervention, contrasts these developments.

The laws of war have influenced the conduct of armed forces and states and the enforcement of respect for these laws has been highlighted by numerous mechanisms used by the UN to develop, implement and clarify the laws of war.²⁷ IHL succeeded in bringing about a degree of observation and acceptance of the following basic ideas:

Persons who are not participating in conflict must be spared from its consequences; it condemns torture and provides status to prisoners of war.²⁸ Furthermore, international humanitarian law provides a standard of conduct, which states need to consider in the formulation and implementation of their policies. The willingness of states to apply agreed rules of conduct can help to make military action acceptable by governments and reduce the risk of the opposition, whether domestic or a third party.²⁹ Politically it will thus be more difficult for adversaries to denounce the means used. It is also important to bear in mind that, although difficulties may be encountered in securing the observance of rules limiting combat, all possible attempts should be made to afford protection to certain classes of war victims and the inhabitants of occupied territories.

Despite the recognition and acceptance of the laws of war, there is a widespread pessimism with regard to its role in governing soldiers and states. This will be dealt with below.

The impact of war makes it necessary to take cognisance of any pessimism towards humanitarian law. It compels one to evaluate humanitarian law against these criticisms in order to establish whether it is justified or not. In the following paragraph, the validity of this criticism will be examined.

²⁷ Roberts, A and Guelff, R. (2000) *Documents on the Laws of war*. 16.

²⁸ *Ibid.*

²⁹ *Ibid.*,p.17.

2.9 Criticisms

- **Presumed illegality of the use of force:**³⁰ It has been suggested that the rules of war are irreconcilable with the existing fundamental rules that restrict the legality of the use of force. However, there is no absolute prohibition of the use of force in the UN Charter. Humanitarian law applies irrespective of whether the conflict is lawful under *jus ad bellum*.
- **Competing purposes:**³¹ The laws governing war have been criticised for having competing purposes, as will be indicated through some examples. They seek to limit the conduct of armed hostilities but recognise military necessity in achieving military objectives. They also protect the civilian population but permit bombing if there is a reasonable presumption that military action is justifiable, having regard to the danger it poses to civilians. These competing purposes reflect the tension between considerations of military necessity and humanity and demonstrate the difficulties of the law to balance the existence of armed conflict with limitations imposable on its conduct.
- **Propaganda:**³² Another issue raised, is that the laws governing the conducting of war are open to abuse for propaganda purposes. This may be the case where facts and related law can be distorted and consequently characterize the actions of the adversary negatively.
- **Incompatibility:**³³ It has also been asserted that the laws of war are incompatible with concepts of deterrence. According to concepts of deterrence the most effective way to prevent war is to ensure that retaliation would be so brutal, that states will be discouraged to attack. However, the laws governing war may provide to a certain extent a basis

³⁰ *Ibid.*, p. 28.

³¹ *Ibid.*

³² *Ibid.*, p. 29.

³³ *Ibid.*

for forms of deterrence during armed conflicts and will discourage adversaries to take certain actions.

The issue as to the observance of UN forces of the laws of war received tremendous attention as result of the UN and UN-authorized forces in Somalia from 1992-1995. These operations indicated a lack of clarity about the obligations of UN forces to observe basic rules of IHL and rules embodied in other human rights agreements. The application of humanitarian law on peacekeeping forces was finally clarified through the UN Secretary-General's Bulletin on Observance by UN forces on IHL of 1999. This Bulletin addresses the following issues:³⁴

- The liability of UN forces in the light of the UN status as an international organisation which is not a party to treaties. This is seen as complicating the applicability of the laws that presuppose a state structure because the UN does not have the same attributes as a state, which complicates the application of certain provisions of international agreements on the laws of war;
- The status of peacekeeping forces whose function differs from those of belligerents under IHL;
- The fact that some UN operations involved both peacekeeping and peace enforcement, which led to the blurring of the distinction of these types of operations.

The Bulletin established accordingly that peacekeeping forces would be liable under IHL when using armed forces for purposes of self-defence, that UN-controlled enforcement operations will also incur liability under IHL when violating it and that UN authorised enforcement operations will also be liable.

³⁴ *Ibid.*, p.721.

However, the content of the bulletin seemingly does not make provision for UN authorised forces, which are not under UN command and control.

Furthermore, the Bulletin regulates the protection of the civilian population, the means and methods of warfare, the treatment of civilians and persons *hors de combat*, the treatment of detained persons and the protection of the wounded and sick, as well as medical and relief personnel. The violation of IHL by members of a UN force is according to this Bulletin subject to prosecution in their national courts.

2.10 Conclusion

In the light of the above-mentioned, it is clear that the reasons for the failure to comply with the rules of international humanitarian law need to be identified, in order to address the problem of disregard for this area of law. This state of affairs can be attributed essentially to ignorance of the law, scepticism and cynicism about the law engendered by the belief that compliance cannot effectively be obtained through coercion, and that violation cannot effectively be punished. Another reason is the absence of effective monitoring, fact-finding and dispute settlement mechanisms.

Recent developments promote better compliance with the law and encourage further developments to the same end. This is to be found in the establishment by the UN Security Council of the two international criminal tribunals in the former Yugoslavia³⁵ and Rwanda³⁶ and its successes in convicting, prosecuting and imprisoning persons. The moves towards more systematic implementation of the law of war reached their conclusion with the adoption of the Rome Statute of the International Criminal Court on 17 July 1998. The ICC treaty entered into force

³⁵ The Security Council considered civil war and serious violations of international humanitarian law a threat to international peace and for the first time ever it authorised a humanitarian intervention (1991-1993).

³⁶ In 1994 the Security Council considered the humanitarian tragedy resulting from civil war, genocide and violations of international humanitarian law and human rights a threat to international peace and security and authorised a humanitarian intervention.

on 1 July 2002.³⁷ It marked the date of the Courts jurisdiction over individuals accused of war crimes, genocide or other crimes against humanity. This court is of special importance because it will serve as a permanent deterrent to people considering genocide, war crimes and other crimes against humanity and its jurisdiction is wider than that of the existing ad hoc tribunals.³⁸



³⁷ Amnesty International. 2002. *The International Criminal Court*. <<http://www.un.org/law/icc/>>.[accessed on 1 November 2002] The Rome Statute, which outlines the creation of the Court, was adopted on 17 July 1998. The ICC treaty entered into force on 1 July 2002. The ICC complements existing national judicial systems and will step in only if national courts are unwilling or unable to investigate or prosecute individuals accused of genocide, war crimes or other crimes against humanity.

³⁸ For example, the work of the Tribunals for the former Yugoslavia and Rwanda, have been limited to crimes committed in a particular territory, while crimes in other territories have not been addressed.

CHAPTER 3

The legal limitations of peacekeeping

3.1 Introduction

The concept of ‘**international security**’ implies a common interest in security transcending the particular interests of sovereign states. The recognition of that common interest carries with it the aspiration to create a communal framework to replace the need for unilateral national security measures. The primary purpose of the UN is to maintain international peace and security. To this end, the Charter specifies two means: the pacific settlement of disputes under Chapter VI, and collective enforcement against threats to or breaches of the peace under Chapter VII.³⁹

According to the Charter of the UN all members shall settle their international disputes by peaceful means in such a manner that international peace, security and justice are not endangered.⁴⁰ The Charter become more specific when it states that parties to any dispute, must first seek a solution by negotiation, enquiry, mediation, arbitration or resort to other peaceful means of their own choice when the continuance of the dispute is likely to endanger the maintenance of international peace and security. The parties are furthermore obliged to refer the matter to the Security Council if they fail to settle it by the means specified. This obligation seems to be limited in scope since it applies only if the continuance of the disagreement is ‘*likely to endanger the maintenance of international peace and security and if efforts to settle it through the peaceful means specified have failed*’⁴¹.

The term peacekeeping does not appear in the Charter and lies somewhere between Chapter VI and Chapter VII actions. It can be said to derive from Article

³⁹ Simma, B.(1995). *The Charter of the UN: A Commentary*.

⁴⁰ UN Charter, Art. 2, para. 3.

⁴¹ *Ibid*.

40, although its function does not vary with the nature of the obligation on the parties as regards the provisional measures. The nature of peacekeeping remains consensual and non-offensive whether or not the call for provisional measures is mandatory. Besides consent the continued co-operation with peacekeeping forces throughout the length of their stay is essential. Where the government concerned did not give its consent or it is withdrawn, then the peace-keeping forces cannot remain on the state's territory, unless the UN is prepared to change its mandate to one of enforcement. Although such a change of mandate is possible, it can have enormous consequences. States that contribute to peacekeeping forces will not have to give permission for their troops to be used differently.

Peacekeeping forces will also have to be rearmed and expanded if they want to be effective enforcement groups. Most importantly is the fact that such conversions in mandate would make it less likely that states would accept peacekeeping forces in the future, because the drastic changes will jeopardise the neutrality of peacekeeping.

The legal principles governing peacekeeping, whether observation, monitoring and supervision were entrenched by the World Court in the *Expenses Case*.⁴² This case made it clear that the authorisation of such consensual, non-enforcement, military activities is within the powers of the General Assembly as well as the Security Council, which as the World Court explained, has primary but not exclusive competence under Article 24 (1). Politically, the peacekeeping function of the UN is firmly under the control of the Security Council though a great deal of delegation of the organisational and logistical side is given to the Security Council and legally the General Assembly also possesses the power.

Article 2 (7) of the UN Charter imposes the primary limitations on the United Nations regulation of internal conflicts. It provides that nothing in the Charter shall authorise the UN to intervene in matters which are essentially within the domestic jurisdiction of any state subject to the exception that this principle shall not prejudice the application of enforcement measures under Chapter VII. In

⁴² See note 7 *supra*. p. 200. See also *International Court of Justice Report* (1962).151.

practice, Article 2 (7) has not really been a barrier to peacekeeping for several reasons. Before Article 2 (7) can apply the UN action must constitute intervention, the matter must be essentially within the domestic jurisdiction of the state and the application of enforcement measures must not be involved. Peacekeeping requires the consent of the government in whose territory the UN force is stationed, therefore there will be normally no intervention by the UN, except in a civil war situation.

3.2 The relationship and cooperation between peacekeeping and humanitarian operations.

At this juncture it is necessary to emphasise the relationship and cooperation between peacekeeping and humanitarian operations. Since UN military missions are an essential component of successful conflict management and proved over the years to be central in securing respect for international humanitarian law, and as such restoring the security environment for the conduct of humanitarian activities, it is necessary that peacekeeping should be clearly distinguished from humanitarian activities. It is desirable that military forces should not be directly involved in humanitarian actions, because this would associate humanitarian organisations with objectives beyond humanitarian concerns.

The function of humanitarian action is not to resolve conflict but it involves the protection of human dignity. It should move in parallel with any political process that aims to address the underlying causes of a conflict and achieving political settlement. It should not become a tool that disguises the absence of resolve to take appropriate political action. Political commitment is an essential ingredient to ensure the efficacy of peacekeeping and humanitarian action.

On the other hand, humanitarian institutions operating during armed conflict need to preserve the non-political and impartial character of their mission. The provision of humanitarian assistance should not be linked to the progression of any political objectives.

The relationship between humanitarian and peacekeeping activities reflects different assumptions of their relationship. According to some writers⁴³ humanitarian action takes place within peacekeeping operations, while others are of the opinion that humanitarian action should be integrated within, but insulated from the surrounding political framework. On the other hand, others view humanitarian efforts as totally independent of peacekeeping activities.

Another opinion held by former Secretary-General Boutros-Gali, is that humanitarian action ranks among the efforts to foster peace through addressing the deepest causes of conflict, namely economic despair, social injustice and political oppression.⁴⁴ As such, humanitarian activities are according to the Council central within the peacekeeping operations because it remains an essential instrument in the implementation of peace-agreements.

Some prefer to insulate humanitarian actions from peacekeeping activities, because even UN humanitarian organisations have their own mandates and terms of reference.⁴⁵ Thus, it is evident that from this perspective humanitarian action whether by principle or by definition is a response to human needs for protection, assistance and guidance. As a discipline, international humanitarian law requires that humanitarian action and political action must be dissociated from each other and must also be perceived as separate.

From another perspective, humanitarian action in complex emergencies should be institutionally separated from the UN, because some humanitarian organisations, for example, the ICRC and NGO's prefer their structural independence. The ICRC has always maintained a clear separation from UN political military activities, which compromise the impartiality of humanitarian organisations and associations.

⁴³ See *supra* note 14.

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

3.3 Conclusion

In the light of the aforementioned and after due consideration of the various opinions it is submitted that humanitarian action is central within the peacekeeping efforts, because it fosters peace through addressing the causes of conflict. Humanitarian institutions, however, should maintain their total independence of decision and action, while consulting with peacekeeping forces. It is important that any consultations should be held in the preparatory phase of peacekeeping missions that may affect humanitarian activities. This is necessary especially when the purpose of the mission is to create corridors for the delivery of humanitarian assistance. I would like to emphasise that humanitarian action should not be seen as an isolated emergency operation for humanitarian purposes, but it should rather be seen as contributing to the pursuance and consolidation of the peace process.

The logo of the University of the Western Cape, featuring a stylized building with columns and the text "UNIVERSITY of the WESTERN CAPE" below it.

UNIVERSITY of the
WESTERN CAPE

CHAPTER 4

Case Studies

4.1 Introduction

The world is organised on the basis of State sovereignty and it should, in my opinion, remain the basis of the world order. Conversely, states must respect obligations that limit their sovereignty. Special importance must be given to the obligations that protect the interests of the international community. The international organisations have an important role to play in conformity with their respective mandates and in accordance with the principles of the UN Charter. The UN system has the central role to play in dealing effectively with massive violations of human rights and humanitarian law as such violations constitute a threat to peace and security.

In the following paragraphs the action and inaction of the relevant organisations will be illustrated through case studies.

4.2 The Gulf Wars

The impact of the ICRCs intervention in armed conflicts are clearly illustrated by the first and second Gulf War. It also indicates the ambit of the co-operation between the ICRC and the UN.

a) Gulf War I (1980-1988)⁴⁶

Due to its length and the way in which it was conducted, this war can be counted among the most vicious of modern times. The Iraqi invasion of Kuwait in 1990 can only be fully understood in the light of the Iraqi experiences in the war with Iran in the 1980's.

In 1980 conflict broke out between the Islamic Republic of Iran and the Republic of Iraq.⁴⁷ The ICRC encountered problems from the start of the conflict in the

⁴⁶ See *supra* note 4 and note 11,p 978.

exercise of its mandate under the Geneva Conventions. Therefore the ICRC appealed in 1983 to all state parties to the Geneva Conventions to see it as their duty that international humanitarian law is respected with the cessation of these violations which affect the lives and well-being of prisoners of war and civilians of this conflict.

Further, that the ICRC may fully discharge the humanitarian task of providing assistance which has been entrusted to it by states and that the means provided for in the Conventions to ensure their respect are used to effect the designation of Protecting Powers to represent the belligerents interests in the territory of the enemy. After yet another appeal in 1984 the ICRC held that the conflict had been prolonged unnecessarily as a result of the violations of IHL, which in turn hampered peace negotiations. The Security Council Resolution 540 (1983) condemned all violations of IHL and called for the cessation of military operations against civilian targets, including city and residential areas. The Security Council determined that there exists a breach of the peace and, acting under Articles 39 and 40, and demanded that:

- Iran-Iraq should observe an immediate ceasefire and discontinue military action as a first step towards a negotiated settlement;
- A UN observer mission be dispatched to verify, confirm and supervise the ceasefire; and
- Prisoners of war be released and repatriated after the cessation of hostilities.

In 1988 the UN Iran-Iraq military was established to monitor a ceasefire, which had been accepted by both parties. As in all observer missions, the success of UNIIMOG was dependent on the co-operation of both parties. The mandate of UNIIMOG included the establishment of cease-fire lines, monitoring compliance

⁴⁷Keen, D.(1995) In :*The Politics of Humanitarian Intervention*. pp. 167-183. See also Sassoli,M and Bouvier,A.(1999) *How Does Law Protect In War?*:1014.

with the ceasefire; attempting through negotiation to prevent changes in the status quo, pending the withdrawal of their respective forces and obtaining the agreement of parties to other arrangements which could in the interim reduce tension and establish trust.⁴⁸ UNIIMOG's mandate included the oversight of exchange of prisoners of war. Therefore, Iraq's action to capture prisoners of war after deployment of UNIIMOG had negative consequences for the mission. Iraq's need to pacify the border in order to transfer troops to fight the coalition forces during the Second Gulf War provided the opportunity for a solution. This conduct is questionable and ironic because the UN was mandating a coalition of multinational forces to urge Iraq to withdraw behind its border with Kuwait while it was monitoring the withdrawal of Iraqi troops behind its borders with Iran.

b) Gulf War II (1990-1991)⁴⁹

The practice of the UN Security Council since 1991 shows a tendency towards considering inherently internal conflicts threats to international peace and security, due to the human suffering involved. The Security Council practice also evidences a tendency towards widening the notion of a 'threat to peace'. It considers that internal conflicts with humanitarian consequences may be regarded as threats to peace in their own right, regardless of their international repercussions.

This war erupted as a result of the Iraqi invasion of Kuwait. Iraq continuously refused to comply with various UN Security Council resolutions and the UN consequently imposed economic sanctions upon Iraq under Chapter VII of the Charter. The UN reaffirmed the commitment of all member states to the sovereignty, territorial integrity and political independence of Iraq and of all states in the area by means of Resolution 688 on Northern Iraq. It also insisted that Iraq should allow immediate access by international humanitarian organisations to those in need of assistance and appealed to all member states and humanitarian organizations to contribute to these humanitarian relief efforts. Resolution 688

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

may be regarded as a forerunner to authorisations for humanitarian intervention in subsequent cases.

The UNIKOM was requested to monitor the border between Iraq and Kuwait after the Second Gulf War ended in 1991.⁵⁰ It was the only peacekeeping operation that emerged from a Chapter VII enforcement action. It was further mandated to deter violations of the Iraq-Kuwait border through surveillance of the demilitarised zone and to observe hostile actions from the territory of the two states. During the course of the operation the maintenance of law and order has remained with the respective governments and the UNIKOM avoided creating the impression that the demilitarised zone has come under UN authority.

According to the dominant view in international legal doctrine, the use of force for humanitarian purposes in Iraq is an example of humanitarian intervention without Security Council authorisation, although the operations were arguably politically legitimised by the involvement of the Security Council.⁵¹

4.3 Somalia⁵²

In December 1992 Security Council Resolution 794 created the Unified Task Force authorising 28 000 American troops to be deployed as well as troops from other nations. The UNITAF was deployed in Somalia in the midst of a well-established NGO presence that had been working there continuously through the duration of the crises. The UNITAF was the beginning of Operation Restore Hope that enabled the UN and humanitarian NGOs to undertake their operations. The UNOSOM I was established in April 1992 during the power struggle in Somalia to create and maintain cease-fire agreements between factions and to provide humanitarian assistance. After conclusion of its mandate, the UNITAF'S responsibility passed over to UNOSOM II which allowed the use of force as envisaged under Chapter VII of the UN Charter. The UN expanded its mandate to

⁵⁰ *Ibid.*, p.1016.

⁵¹ Danish Institute of International Affairs.(1999).*Humanitarian Intervention. Legal and Political Aspects.* p 65.

⁵² See Abiew, F. (1999) *The Evolution of the doctrine of Humanitarian Intervention.*162-174.

nation building by means disarming factions and arresting of unco-operative leaders. This undermined the role of UN forces since Pakistani members of the UN forces were killed.⁵³

It is clear that this extended mandate exacerbated the conflict. All UN efforts at encouraging negotiations were unsuccessful. Several incidents opposed local militias and UNOSOM II, catalysing a shift from a peace operation to war for the UN and US forces. The impact of fatalities in Somalia on US policy toward peacekeeping and the UN in general are illustrated by the Presidential Decision Directive 25 (PDD-25), which was issued in May 1994.⁵⁴ According to this order, the USA would not become involved in any peace operation that was not judged within US strategic interests (Rwanda is the first example of the application of this doctrine).

Observers consider Somalia as a turning point in the military civilian concept of operations. The apparent failures of American and UN military efforts have led to the **Somalia Syndrome**.⁵⁵ The latter refers to multilateral interventions to prevent starvation, genocide, the forced movement of people and violations of fundamental rights, which are no longer political or operationally feasible. The Somali experience clearly indicates that unilateral UN political and military action cannot serve as a substitute for the process of mediation.

In the light of the above it is important to learn some valuable lessons from the Somali experience in order to improve the UN capacities in the area of peacekeeping, humanitarian and relief efforts and to overcome the Somali Syndrome referred to earlier. The major problem of the UN efforts in Somalia has been the gap between the willingness of the international community to help Somalis and the absolute lack of a clear vision on how to achieve this goal. Furthermore, the peacekeepers were not adequately briefed on the social and local patterns in Somalia. This is a lesson that should be seriously taken into account in

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Azimi, N. (1997). *Humanitarian Action and Peacekeeping Operations*. 125-132.

situations where international peace efforts, as well as humanitarian action are essential. It is not easy to classify the operation as successful or unsuccessful because it has elements of both.⁵⁶ The significance of 'Operation Restore Hope' was that the UN saved Somalis from starvation.

On the other hand, the UN could not provide a political solution to the Somali crises and had to withdraw without success. However, after the UN withdrawal the humanitarian conditions in Somalia did not improve or worsen significantly as was reported in 1996.⁵⁷ There were also still clashes as there were before and during the UN presence. From this it can be deduced that that UN intervention did not have a negative impact on Somalia.

The integration of peacekeeping and the provision of humanitarian aid created unexpected consequences for UN forces. It was concerned with a loss of impartiality as a result of the use of force to protect relief convoys and civilian enclaves. This is known as **mission creep**;⁵⁸ a phrase designed to describe how the UN has become more involved in operations that it started with limited objectives. The UN was forced to negotiate for the delivery of humanitarian assistance and when these negotiations failed to produce the desired conditions it decided to enact Chapter VII mandates.

Thus, it can in sum be said that Somalia provides an example of UN Security Council authorisation for collective humanitarian intervention in a civil war where there is no functioning government and in which human rights violations occur. Therefore, it can be said to represent the most accurate articulation of the principle of humanitarian intervention, which will be discussed below.

⁵⁶ *Ibid.*, p.126.

⁵⁷ *Ibid.*

⁵⁸ See note 4, p. 106 and note 49.

4.4 The former Yugoslavia⁵⁹: Kosovo⁶⁰ and Bosnia

The intricate conflict in former Yugoslavia created one of the most difficult dilemmas for the Western alliance and the UN because it had to deal with more interlocutors. These included the authorities of Serbia, the Serb Republic of Krajina, Croatian authorities in Croatia, the Croatian military and militias in Bosnia and Herzegovina, the Bosnian government and Bosnian Serb authorities in the self declared Republic of Serbska and the splinter Muslim faction in the autonomous zone of Western Bosnia. This conflict definitely served as a test case for conflict resolution in the past Cold War era.

Tension rose in the late 1980's. The SFRY faced economic crises. Bloody riots took place in Kosovo from 1981, 1989 and 1990 by the large Albanian majority that lived in Serbia. The abolition of the autonomous status of Kosovo followed. The communist one-party system was disbanded with the formation of opposition parties in the Republics of Slovenia and Croatia and multiparty elections in all six Republics that brought the nationalist parties to power. The UN intervened in 1991 because it viewed the continuation of the conflict as a threat to international peace and security and responded by means of Resolution 713.⁶¹ The UNPROFOR was established in 1992 by means of Resolution 743. The Secretary General was cautious about the safety of a UN peacekeeping force where the cooperation of all parties was not evident. However the fear that a failure to deploy might cause a breakdown of the latest cease-fire caused him to recommend the establishment of the UNPROFOR.⁶²

At this stage with the cease-fire in effect, the consolidation of the ceasefire and facilitation of negotiations of a settlement seemed possible. In 1992 the Security

⁵⁹ *Ibid.*, p. 185-192. See also note 30, pp. 175-189. See also Oberg, J. (1993) Conflict Mitigation in the Former Yugoslavia. *Peace Review. The International Quarterly of World Peace*: 423-436.

⁶⁰ In the case of Kosovo (1998), in the Federal Republic of Yugoslavia, the Security Council considered a pending humanitarian catastrophe a threat to international peace and security.

⁶¹ *Ibid.*

⁶² *Ibid.*

Council reacted to the widespread violations of IHL within the former Yugoslavia, especially in Bosnia and Herzegovina. The Security Council reaffirmed that all parties to the conflict are bound to comply with their obligations under IHL and in particular the Geneva Conventions. Persons who committed or ordered the commission of such grave breaches would be individually responsible for such breaches. It also condemned violations of IHL, including those involved in ethnic cleansing. The Security Council further demanded that the relevant humanitarian organisations, in particular the ICRC, should be granted unimpeded and continued access to camps and detention centres.

Finally in 1995, after persuasion by the international community, the parties concluded a cease fire.⁶³ This was known as the Dayton Peace Agreement that eventually culminated in a peace settlement.

The UN peacekeeping approach in Bosnia was criticised because the circumstances were of such a nature that the intervening parties had to ignore directives on impartiality and take sides in support of the victims. Disparities between rhetoric and reality created enormous confusion on the ground for civilian humanitarians in Bosnia. Governments switched their rhetoric from peacekeeping to physical enforcement in the Security Council, but inadequate military support was provided. This was the case for the core of the operation in Bosnia from NATO.

In 1998, a violent internal conflict was developing in Kosovo between Serbian government military and police forces and the Kosovo Liberation Army. The Council determined that the situation was a threat to peace and security in the region. When it became clear that Russia and China would block, by veto Security Council authorisation for military intervention, NATO carried out a humanitarian

⁶³ See *supra* note 56.

intervention without authorisation from the Security Council.⁶⁴ Subsequently, the Council endorsed the political outcome of NATO's action.

NATO's intervention in Kosovo and Yugoslavia were in clear violation of the UN Charter and the Charter of NATO.

The threat or use of force against the territorial integrity of the nation state, is prohibited by the UN Charter.⁶⁵ It is only permitted in cases of collective self-defence where a member state is the victim of aggression, and where the Security Council acts under Chapter VII to deal with a threat to peace, breach of the peace or acts of aggression.

Thus, the UN Charter and practice of NATO's action clearly calls for a re-commitment to the rules of the UN. Most of NATO's member states have argued that the situation was exceptional and should have no bearing on the future need for Security Council authorisation.

Mission creep⁶⁶ occurred also in the former Yugoslavia because it was clear that the forces became involved in peacemaking because some form of peace was needed in order to get humanitarian convoys through to the civilians. The configuration of military force used in Bosnia has been mainly a disadvantage. Though a number of lives were saved within the former Yugoslavia, humanitarian action combined with inadequate military back up has been a powerful diversion. It has substituted more creative diplomatic and military strategies to end the war.

This mixture of Chapter VII rhetoric with Chapter VI negotiation attempts is a clear illustration of UN action that should rather be avoided.

⁶⁴Simma, B. (1999) NATO, the UN and the use of Force: Legal Aspects. *European Journal of International Law*: 1-22. See also Henkin, L.(1999) Kosovo and the Law of Humanitarian Intervention. *African Journal of International Law*. 824-826.

⁶⁵Art. 39.

⁶⁶ See *supra* note 55.

4.5 Humanitarian Intervention

Some of the above case studies clearly indicate a trend towards the revival of humanitarian intervention. Nowadays, states that dominate the global power balance claim they have a right or a moral duty to intervene. Human rights have become a tool of power politics in an environment where there is a lack of checks and balances to restrain the arbitrary use of power. It seems as if the system of norms that is tasked with the responsibility to guarantee a peaceful international order, is being challenged in the name of humanitarian principles. This humanitarian intervention amounts to a justification of the exercise of power within the framework of the norms of international law that has been replaced by an ideological discourse.

The Just War Theory or *bellum justum* contains two meanings.⁶⁷ The legal meaning, designating the war, which is declared and fought in accordance with those legal formalities which govern relations between states.⁶⁸ It has also a moral meaning designating a war whose outcome is regarded as desirable and whose conduct is regarded as sufficiently defensible in order to justify the violence used.⁶⁹ When looking into the Just War Theory one can distinguish between *jus ad bellum* and *jus in bello* as was referred to earlier. *Jus ad bellum*, the right to war, considers under what conditions and for what ends it may be permissible to go to war. *Jus in bello*, right conduct in war, has to do with the issue of what means are acceptable or are not acceptable for waging war once it has started.

As shown in the case studies, the revival of the doctrine of humanitarian intervention was prevalent in the Gulf war (1991) and the Kosovo war (1999). Humanitarian intervention has become the term that legitimises acts of aggression or interference in internal affairs. The interested powers succeeded in sidelining the UN by creating their own doctrine of intervention.

⁶⁷Kochler, H. (2001). *Humanitarian Intervention in the Context of Modern Power Politics*.25. See also Harriss,J.(1995) *The Politics of Humanitarian Intervention*.

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*

There is no right for states to undertake humanitarian intervention in another state without prior authorisation from the UN Security Council under current international law. Humanitarian intervention without the authorisation of the UN is incompatible with Article 2 (4) of the UN Charter, which prohibits the use of force in international relations with the exception of the use of force in self-defence against an armed attack and the use of force mandated by the Security Council under Chapter VII of the Charter. The International Court of Justice has emphasised the prohibition on the use of force for whatever reason and has thus implicitly rejected the doctrine of humanitarian intervention (without Security Council authorisation).⁷⁰ The fact that the Security Council may be prevented from acting because of lack of unanimity amongst the permanent members, does not justify the unilateral use of force whether by one country acting on its own, by a group of countries, or by a regional alliance like NATO.

Nevertheless, it is clear that the international world is faced with the reality that irrespective of whether this doctrine is introduced under the pretext of crises response operations or humanitarian intervention, it will ultimately lead to the collapse of the international rule of law. There is thus clearly a need for some renewed effort to reform the Security Council and a recommitment to the rules of the Charter in the international arena.

At present there are strong moral and legal arguments related to the creation of a humane international legal order. These arguments are in favour of the legitimacy of humanitarian intervention without Security Council mandate, in cases where serious crimes against individuals take place and the Security Council is

⁷⁰ See the decision of the International Court of Justice in the Nicaragua case: “The right to sovereignty and to political independence possessed by the republic of Nicaragua, should be fully respected and should not in any way be jeopardized by any military and paramilitary activities which are prohibited by the principles of international law in particular the principle *that States should refrain in their international relations from the threat or use of force against the territorial integrity or the political independence of any State*, and the principle concerning the duty not to intervene in matters within the domestic jurisdiction of a State...” (International Court of Justice, “The Case Concerning Military and Paramilitary Activities In and Against Nicaragua [Nicaragua v. United States of America] [Provisional Measures],” *Order of 10 May 1984*.) (Own emphasis).

blocked.⁷¹ However, should these interventions become legal under international law, it might blur the recognised prohibition on the use of force between states. Consequently the collective security system will be at risk and it will undermine the basic tenets of the international legal order in its current stage of development.

On the surface it seems advisable to leave open the option for humanitarian intervention in extreme cases of human suffering, if the reasons seem morally imperative and politically sound and the Security Council is unable to act. However, this action must not jeopardise the existing legal order, including the role of the Security Council.

In an attempt to respond to this challenge, a report on the legal and political aspects of the possibilities for intervention was submitted.⁷²

Four legal-political strategies on humanitarian intervention were identified and will be discussed briefly. Each of these strategies has different implications for the international legal and political order as well as political, moral and legal-political advantages and drawbacks.

4.6 Legal-political strategies on humanitarian intervention

- **The status quo strategy: exclusive reliance on the Security Council to authorise humanitarian intervention.**⁷³

This strategy preserves the Security Council as the sole centre for authoritative decision-making on humanitarian intervention.

⁷¹ O'Connell, M.(2000). The UN, NATO and International Law after Kosovo. Is the revival of the doctrine of 'Just War' compatible with the International Rule of Law? *Human Rights Quarterly*.22: 58-89.

⁷² See note 50. pp.112-127.

⁷³ *Ibid.*

- **The ad hoc strategy: humanitarian intervention justified in extreme cases in breach of international law.**⁷⁴

This strategy keeps open the option to undertake humanitarian intervention in extreme cases if the Security Council is blocked, but without challenging the existing legal order. It justifies such intervention only as an 'emergency exit' from the norms of international law.

- **The exception strategy: establishing a subsidiary right of humanitarian intervention under international law.**⁷⁵

This strategy seems to modify existing international law by establishing through amendment of the UN Charter or through state practice, a subsidiary right of humanitarian intervention outside the auspices of the Security Council when the Council is unable to act.

- **The general right strategy: establishing a general right of humanitarian intervention under international law.**⁷⁶

This strategy represents the most fundamental change to settled international law. It would allow for humanitarian intervention without authorisation from the Security Council and leave humanitarian intervention to the states as a lawful option to be applied at own discretion.

It has been contended that a combination of the status quo strategy and the ad hoc strategy is preferable to the general right and exception strategy in the light of the fact that the goal is to reinforce the existing international legal order and the strengthening of the UN Security Council.

⁷⁴*Ibid.*

⁷⁵*Ibid.*

⁷⁶*Ibid.*

4.7 Conclusion

The above case studies clearly illustrated that certain UN actions should be avoided. It is however the tendency of humanitarian intervention that is prominent in these case studies. The international world is clearly faced with the reality that this doctrine can lead to the collapse of the international rule of law, unless there is some renewed effort to reform the Security Council and a recommitment to the rules of the Charter in the international arena. Whatever the rationale may be behind the efforts to establish the international legality of intervention such as that of NATO in Yugoslavia, there is jurisdiction of the ICJ banning recourse to armed force by one state to influence the political scenario in another state.⁷⁷



⁷⁷ See note 66. See also Hassner, P. (1998) *From War and Peace to Violence and Intervention: Hard Choices, Moral Dilemmas, in Humanitarian Intervention*. 11.

CHAPTER 5

Recent Developments: on another level of peacekeeping

5.1 Introduction

In the preceding chapters a lot has been suggested as to structural and institutional reform in order to enhance the effectiveness of peace-operations and its relationship with humanitarian law. However, there is still a need to address some of the shortcomings in the system of peacekeeping, which can contribute to the effectiveness and overall success of peacekeeping operations.

5.2 The role of women

A new dimension of peacekeeping is the increasing interest of the role of women. Though it is evident that women are still victims of rape and humiliation during war, it is possible that this problem can be turned into something positive. This can be attained through allowing women to contribute in peace agreements and the reconstruction of society. In October 2000 the UN Security Council adopted its first resolution that promoted an increased role for women in peacemaking and peacekeeping.⁷⁸ This vision was reaffirmed in November 2001 by means of the UN's strong support for the vital role of women in conflict resolution and prevention. In various countries it was women that played a leading role during peace negotiations. In Somalia women brought the clan leaders together by means of the sisters' clan.⁷⁹ The Mano River Union project also illustrates the ability of women when the women of Sierra Leone, Guinea and Liberia persuaded the presidents to meet.⁸⁰ In the case of Liberia and Sierra Leone the mothers took the initiative and went to the bush to persuade their children to stop participating in

⁷⁸ Resolution 1325 (women, peace and security).

⁷⁹ Europa World. 2000. *Women, Peacekeepers and Stereotyping*.

<<http://www.un.org/womenwatch/daw/news/angela2.htm>> [accessed on 23 March 2002]

⁸⁰ *Ibid.*

the war and to return home.⁸¹ In Burundi women played an influential role in the peace accord by persuading the chief negotiator to include certain issues and these women managed to include at least half of their demands in the final version.⁸²

It is evident that, from a psychological point of view that women are better listeners and are, as such, open minded and sensitive to the point of view of the other side. Women also seem to be better in transmitting messages of peace. It has also been proven that women are good in traditional means of negotiations that can be crucial in certain communities and that they are less aggressive e.g., if no agreement has been reached women will return to the negotiation table, whereas men are likely to be more offended.⁸³

It is thus important that women should not be deprived of their rights to play their role in civil society, whether it is political or military, because women are part of society and the exclusion of women will result in excluding experience and intelligence.

It is the role of the UN to enhance the capacity of the women already active in the field and to see whether these women can be supportive in the peacekeeping missions. It has been reported by UN spokesperson Angela King that it would be useful to have some of these women as resource people for initial assessment missions.⁸⁴

⁸¹ *Ibid.* See also IRIN. 2001. *Interview on the role of women in Conflict and Peace and Security.*

⁸² *Ibid.*

⁸³ Olsson, L. (2000). Mainstreaming Gender in Multidimensional Peacekeeping: A Field Perspective. *International Peacekeeping*. Issue 7.3. <http://www.frankcass.com/jnls/ip7-3.htm>. [accessed on 26 January 2002]. A three-year effort between the Department of Peacekeeping Operations and the division for the Advancement of Women resulted in a comprehensive study; *Mainstreaming a Gender Perspective in Multidimensional Peace Operations*. This study highlights the important role that women can play with regard to the peace process.

⁸⁴ See *supra* note 78.

5.3 Protection of peacekeepers against HIV/AIDS⁸⁵

By now it is evident that institutional and other structural adjustments are necessary for the overall success of peacekeeping. This is, however, not where it ends. There is an obligation on member states to make AIDS awareness an important part of preparation for the participation of forces in operations. In June 2001 the Security Council underlined the importance of the special session of the General Assembly⁸⁶ and encouraged further action.⁸⁷ During this session, the importance of the fact that HIV/AIDS may pose a risk to stability and security if it is not properly adhered to, was recognised. It was also recognised that the pandemic was exacerbated by conditions of violence and instability and that efforts are necessary to reduce the negative impact of conflict and disasters in the spread of HIV/AIDS. A declaration containing special measures need to be adopted at national and international levels to reduce the impact of disasters and conflict on the spread of HIV/AIDS on peacekeeping efforts. At national level the development of national strategies to address the spread of HIV amongst national uniformed services was encouraged. The inclusion of HIV/AIDS awareness and training into guidelines designed for personnel involved in international peacekeeping operations was suggested.⁸⁸

Efforts were welcomed to develop practical measures such as the development of the HIV/AIDS Awareness Card for distribution to peacekeeping operations after testing in Sierra Leone (UNAMSIL). The Council further recognised the need to develop the capacity of peacekeepers to become advocates for awareness and prevention of HIV transmission.⁸⁹ It is clear that the Council is giving attention to the implications of HIV/AIDS for UN peace operations. In this regard, reference has been made to Resolution 1308(2000) that highlights the potential of the pandemic in affecting the health of peacekeepers and support personnel. This

⁸⁵ See Resolution 1308(2000).

⁸⁶ UN General Assembly Special Session (2000) *Review of the problem of HIV/AIDS in all its aspects*. A/54/2000.

⁸⁷ UN Security Council Resolution. (2001) *Examining Implications of HIV/AIDS for UN Peacekeeping Operations*. S/ RES/ 7086.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

resolution underlined the fundamental role that the General Assembly and the Economic and Social Council have to play in addressing the social and economic factors that contribute to the spread of HIV/AIDS.

Since the adoption of Resolution 1308, progress has been made in its implementation by, for instance, the increased co-operation between the Department of Peacekeeping Operations and the Joint United Nations Programme on AIDS through signing the Memorandum of Understanding in January 2001. Further developments in the prevention of HIV/AIDS are the signing of the Co-operation Framework between UNAIDS and the United Nations Development Fund for Women, hereinafter referred to as UNIFEM. Through this agreement the parties expressed their intention to co-operate in the follow up to Resolution 1308(2000) and efforts to enhance co-operation. In this regard the Security Council pointed out the inclusion of HIV/AIDS advisors in peacekeeping operations and the revision of relevant codes of conduct.

5.4 Conclusion

These developments need to be taken into account in the assessment of the overall role and success of peacekeeping, since there is a tendency to lose sight of the fact that societal dynamics can play an important role in resolving disputes and as such, they can enhance the effectiveness of peacekeeping efforts.

CHAPTER 6

The evaluation of peacekeeping

6.1 Introduction

When it comes to the evaluation of peacekeeping, explicit standards are needed in order to conduct a justified assessment. There is a tendency amongst observers to base their judgements on the belief that the utility of peacekeeping operations can be evaluated according to the following criteria:⁹⁰

- 1) The successful prevention of armed conflict;
- 2) The successful promotion of conflict resolution; and
- 3) By projecting the larger failures of the UN on the peacekeepers.

On the failure of the peacekeeping operations to meet the above criteria, it gets classified as unsuccessful.⁹¹ Though it is the objective of peacekeepers to prevent violence, it is not practical to limit their goal to hold them responsible for preventing war. In this regard it is of utmost importance to distinguish between violence that attributes to the shortcomings of the different peacekeeping operations, and violence resulting from other causes in order to make a valid and useful assessment of the contributions of peacekeeping. Failure to approach it from this point of view can lead to the devaluation of peacekeepers by conflicts that erupt even though it is not due to their incompetence.

6.2 Application of criteria

The application of the above criteria will be illustrated by referring to some peacekeeping efforts. The first criterion can be illustrated by UNEF I in the Sinai

⁹⁰Johansen, R. (1998) *Enhancing UN Peacekeeping*. 89-125.

⁹¹*Ibid.* For example, Paul Diehl argues that the ability of peacekeeping operations to deter/prevent conflict in areas of deployment, is the first criterion for judging the success of peacekeeping operations.

Peninsula from 1956-1967⁹². This operation can be classified as successful even though war broke out between Israel and Egypt in 1967 after Egypt asked the UN to withdraw UNEF I from its territory. However, before the outbreak of the war UNEF I successfully monitored the longest period of peace in the Middle East since the founding of Israel.⁹³ It is thus clear that the prohibition of war as criterion for peacekeeping is not effective in that it does not reflect the true scenario.

Further, as to the second criterion whereby the success of peacekeeping is judged according to its ability to facilitate the resolution of the disagreements underlying the conflict, needs to be rejected. It is clear that this criterion demands more from the forces than can be reasonably expected. These forces are not designed to resolve underlying conflicts and are clearly not, according to international law, authorised to act as arbiter.

Observers of UN peacekeeping efforts therefore need to distinguish between the matters over which forces have control and those not, since it depends a lot on the willingness of the adversaries to facilitate a conflict resolution.⁹⁴

As to the third criterion, some critics have validly pointed out the UN's failure in preventing ethnic cleansing in Bosnia and the Serbians accountability with regard to the prohibitions against aggressive use of force.⁹⁵ This failure is due to the Security Council's way of operating as an instrument of the geopolitical interests of dominant states and should not be seen as the failure of the peacekeeping operations.

⁹² *Ibid.*, p. 95.

⁹³ *Ibid.*

⁹⁴ For example, UNFICYP has been criticized for being unsuccessful because the Greek and Turkish Cypriots have not reached a dispute settlement after 30 years of PKO'S presence.

⁹⁵ *Ibid.*, p. 96.

6.3 Conclusion

It is thus evident that there is a need that UN observers must change their method of evaluation and should rather pay attention to the following:

- The effect of peacekeeping operations on local people and then compare the violence that occurs in the presence of UN peacekeeping operations with the results of diplomatic activity without peacekeeping;
- Whether, and to what extent, peacekeeping operations increase understanding for monitoring, reduce the likelihood of violence if it is for a limited time, and
- How peacekeeping operations discharge certain incidents from escalating or postpone a recurrence of conflict in order to give diplomacy some time to address the situation successfully, even though the outbreak of war cannot be prevented.

A credible evaluation should also include the lessons one can learn from the handling of various conflicts by peacekeeping forces in order to establish a code of international conduct based on the enforcement of global norms by the multinational agencies of the UN system, since global political culture needs to be changed to be perceptive to the demands of a dynamic world.

CHAPTER 7

Conclusion and Recommendations

The post-Cold War era has been recognised by expectations about the responsibilities of the international community to ensure the well being of mankind. These expectations have been the major factor in the increased demands for UN peacekeeping with reference to ethnic conflict, state failure and humanitarian disaster. Despite being the subject of criticism and scepticism, the laws of war have influenced the conduct of armed forces and states. The enforcement of respect for these laws has been highlighted by mechanisms used by the UN to develop and implement these laws.

Today armed conflicts continue to bring emotions of fear and horror to humanity. The involvement of the UN is thus required to prevent, contain and even to end it. Peacekeeping has always been the most visible symbol of the UN's role in international peace and security, but it had difficulty in meeting the heightened expectations of the post-Cold War era. Recent years have witnessed a growth in terms of the number and scale of the UN peacekeeping operations, as well as an unforeseen expansion of mandates, often beyond the bounds of traditional peacekeeping. Thus, it is clear that peacekeeping is in a state of flux.

The proliferation of internal conflicts and the changing nature of sovereignty have re-introduced humanitarian intervention. As it had been illustrated in this paper, the role of the UN, more particularly, its authority is challenged by these developments. The UN is constrained by the tension between the desire for respect for state sovereignty and the demand for humanitarian intervention. It is clear that the world needs an order in which the UN can undertake peacekeeping operations to serve the cause of peace and not that of individual states or role-players. Furthermore, it seems as if the dilemma of humanitarian intervention without UN authorisation is inescapable.

The only way to deal with this effectively is to find a strategy to uphold the existing international legal order against the refusal to accept gross human rights violations without international reaction. A new consensus on humanitarian intervention is clearly needed. To this end I would recommend a consideration of the proposed strategies by the Danish Institute of International Affairs.⁹⁶ In my opinion, the combination of the status quo and ad-hoc strategy seems feasible in theory, but I doubt whether it will be successful in practice.

The UN should strengthen its ability to draw lessons from its failures and successes. There is also a definite need for engaging women in violence prevention and peace building since societal dynamics can play an important role in dispute resolution. This approach can enhance the effectiveness of peacekeeping as has been illustrated in this paper.

Together with member states and NGOs, future peacekeeping efforts should focus on where they can be effective in serving the purpose of peace. In order to face the challenges of the future, the UN will have to increase its effectiveness and reinvigorate its legitimacy.

The historian, John Gaddis, has noted that *"we are at one of those rare points of leverage in history when familiar constraints have dropped away; what we do now could establish the framework within which events will play themselves out for decades to come."*⁹⁷

Since changing norms have created expectations that the UN will respond to humanitarian disasters, there is a need for preventive actions where crises can be anticipated. The onus is on the international community to maintain and strengthen peace and stability in the world order through prevention. Should prevention fail, intervention to terminate conflicts and the rebuilding of society and government must follow.

⁹⁶ See *supra* note 37.

⁹⁷ Gaddis, J. (1990). *Coping with victory*. 49.

From the above it can be deduced that the UN will have to restore its own legitimacy by means of its Charter and managerial reforms, if it wants to retain respect in the international community. There is a definite need to reform the UN system in order to avoid deadlock within the Security Council as well as the identification of means and procedures for monitoring the Security Council. Perhaps a starting point would be the implementation of the recommendations of the Brahimi Report that would at least be indicative of the political will that is needed to realise the goals of sustained efforts of conflict prevention and resolution, which can ultimately result in justice and order.



BIBLIOGRAPHY

PRIMARY SOURCES

Annan, K (1999). *Address of the Secretary-General to the UN General Assembly*. 20 September 1999. (GA/9596)

Annan, K. (2000). *We the peoples: The Role of the UN in the Twenty first Century*. Report of the Secretary-General, New York: UN General Assembly. Doc A/54/2000. 27 March 2000.

Boutros-Ghali, B. (1992). *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peacekeeping*. New York: UN Department of Public Information: 44.

ICRC (1996). *Geneva Conventions of 12 August 1949*. [Online]. Available <http://www.icrc.org>.

ICRC (1996). *Protocols Additional to the Geneva Conventions of 12 August 1949*. [Online]. Available <http://www.icrc.org>.

IRIN (2001). *Interview on the Role of Women in Conflict and Peace and Security*.

International Court of Justice, *Case Summaries: Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America) Provisional Measures. Order of 10 May 1984*. [Online]. Available <http://www.icj-cij.org/icjwww/idecisions/ismmaries/inussummary840510.htm>.

International Court of Justice Report. (1962). *Certain Expenses Case: 151*.

Köchler, H. (2000). *Humanitarian Intervention in the Context Of Modern Power Politics. Is The Revival of The Doctrine of Just War Compatible with the Rule of Law?*Vienna : International Progress Organization.

Report of the Panel on United Nations Peace Operations, A/55/305-S/2000/809, New York: UN General Assembly/Security Council, 21 August 2000: i.

United Nations General Assembly. *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.* (Resolution 2625 [XXV] of 24 October 1970.)

United Nations General Assembly. *Review of the problem of HIV/AIDS in all its aspects.*(Special Session A/54/2000).

United Nations Security Council. *Examining Implications of HIV/AIDS For UN Peace operations* (Resolution 7086 of June 2001).

Vienna Convention on the Law of Treaties of 23 May 1969. United Nations Doc. A/CONF.39/27.

UNIVERSITY of the
WESTERN CAPE

SECONDARY SOURCES

ARTICLES

Boutros-Ghali, B.(1992/1993).Empowering the United Nations. *Foreign Affairs*. 71: 89-102.

Coupland,R.(2001). Humanity: What is it and how does it influence international law?*IRRC*, 83 (844): 964-989.

DUPI.(1999).*Humanitarian Intervention: Legal and Political Aspects*. Copenhagen.[Online]Available <http://www.dupi.dk/html>.

Eno, R. (1999).UN Peacekeeping operations and respect for human rights. *South African Journal of International Law*. 24: 77 – 126.

Europa World (2000). *Women, peacekeepers and stereotyping*. [Online]Available <http://www.un.org/womenwatch/daw/news/angela2.htm>

Falk, R. (1999). Kosovo, World Order, and the Future of International Law. *American Journal of International Law*.93: 847.

Gaddis, J. (1990). Coping with Victory. *Athlantic Monthly*. May 1990:49.

Henkin, L. (1999). Kosovo and the Law of Humanitarian Intervention. *American Journal of International Law*: 824-826.

Oberg, J. (1993). Conflict Mitigation in the Former Yugoslavia. *Peace Review: The International Quarterly of World Peace*, Winter: 423-436.

O'Connell, M. (2000).The UN, NATO and International Law After Kosovo. *Human Rights Quarterly*.22: 58-89.

Olsson, L. (2000). Mainstreaming Gender in Multidimensional Peacekeeping; A Field Perspective. *International Peacekeeping. Issue 7.3.* [Online] Available <http://www.frankcass.com/jnls/ip7-3.htm>

Simma, B. (1999). NATO, the UN and the use of Force: Legal Aspects. *European Journal of International Law*. 10: 1-22.

BOOKS

Abiew, F. K. (1999). *The Evolution of the Doctrine and Practice of Humanitarian Intervention*. Boston : Kluwer Law International.

Alger, C F (ed.) (1998). *The future of the UN System. Potential for the 21st Century*. Tokyo : University Press.

Azimi, N. (1997). *Humanitarian Action and Peacekeeping Operations Debriefing and Lessons*. Boston: Kluwer Law International.

Cassese, A. (ed.) (1978). *UN Peacekeeping. Legal Essays*. Netherland : Sijthoff and Noordhoff.

Dugard, J. (2000). *International Law: A South African Perspective*. (2nd ed.). Cape Town: Rustica Press : 431 – 444.

Green, L. (2000). *The Contemporary Law of Armed Conflict* (2nd ed.). Manchester University Press.

Harriss, J. (ed) (1995). *The Politics of Humanitarian Intervention*. New York: Pinter.

Harrod, J. & Schriver, N (eds) (1988). *The UN Under Attack*. England : Gower.

Hassner, P. (1998). From War and Peace to Violence and Intervention: Permanent moral dilemmas under changing political and technological conditions. Moore, J. (ed.). *Hard Choices: Moral Dilemmas in Humanitarian Intervention*. Lanham MD: Rowman and Littlefield: 11.

Hill, S and Malik, S. (1996). *Peacekeeping and the UN*. Croft, S.(ed.) USA: Dartmouth Publishing Company.

Howard, M. (1991). The UN and International Security. Roberts, A and Kingsbury B. (eds.), (3rd ed.). *United Nations, Divided World*. Oxford: Oxford University Press: 32-45.

Johansen, R (1998). Enhancing United Nations Peacekeeping. Alger, C (ed.), *The Future of the UN System. Potential for the 21st Century*. Tokyo University Press: 89 –125.

Keen, D. (1995). Short-term interventions and Long-Term problems: The case of the Kurds in Iraq. Harris, J (ed.), *The Politics of Humanitarian Intervention*. New York: Pinter Publishers: 167.

McCoubrey, H. (1990). *International Humanitarian Law- The Regulation of the Armed Conflicts*. England: Dartmouth.

Mchwinney, E. (2000). *The UN and a new World Order for a New Millenium*. Boston: Kluwer Law International.

Mingst, K. and Karns, M. (2000). *The United Nations in the Post Cold War Era*. (2nd ed.) Boulder: Westview.

Nambiar, S. (2001). UN Peacekeeping in the former Yugoslavia. From UNPROFOR to Kosovo. Thakur, R. and Schnabel, A. (eds.). *United Nations Peacekeeping Operations. Ad Hoc Missions, Permanent Engagement*. Tokyo: UN University Press: 167 – 181.

Roberts, A. and Guelff, R. (2000). *Documents on the Laws of War*. (3rd ed.). New York: Oxford University Press.

Sassoli, M and Bouvier, A. (1999). *How does Law Protect in War?* Geneva: ICRC.

Simma, B. (1995) (ed.). *The Charter of the UN. A Commentary*. New York: Oxford University Press.

Thakur, R and Schnabel, A (eds.) (2000). *Kosovo and The Challenge of Humanitarian Intervention. Selective Indignation, Collective Intervention and International Citizenship*. Tokyo: United Nations University Press.

Thakur, R. and Schnabel, A. (eds.) (2001). Cascading generations of peacekeeping: Across the Mogadishu line to Kosovo and Timor. *United Nations Peacekeeping Operations. Ad Hoc Missions, Permanent Engagement*. Tokyo: United Nations University Press: 3-25.

White, N. D. (1993). *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security*. Manchester: Manchester University Press.

Wisemann, H. (1987). *The UN and Maintenance of International Peace and Security*. Dordrecht: Marthinus Nijhoff.

Word Count: 13 782 words (excluding footnotes).