UN PEACEKEEPING IN LEBANON, SOMALIA AND KOSOVO

Operational and Legal Issues in Practice

RAY MURPHY

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The concept of UN peacekeeping has had to evolve and change to meet the challenges of contemporary sources of conflict; consequently, peacekeeping operations have grown rapidly in number and complexity. This book examines a number of issues associated with contemporary multinational peace operations, and seeks to provide insights into the problems that arise in establishing and deploying such forces to meet the challenges of current conflicts.

The focus of the book is three case studies (Lebanon, Somalia and Kosovo), involving a comparative analysis of the traditional peacekeeping in Lebanon, the more robust peace enforcement mission in Somalia, and the international administration undertaken on behalf of the international community in Kosovo. The book analyses the lessons that may be learned from these operations in terms of mandates, command and control, use of force and the relevance of international humanitarian and human rights law to such operations.

RAY MURPHY is a Senior Lecturer in Law at the Irish Centre for Human Rights, National University of Ireland, Galway.

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To my parents, Renee and Frank Murphy

PREFACE AND ACKNOWLEDGMENTS

Peacekeeping was pioneered and developed by the United Nations (UN) as a means by which it could fulfil its role under the UN Charter in the maintenance of international peace and security. The concept of UN peacekeeping has had to evolve and change to meet the challenges of contemporary sources of conflict; consequently, peacekeeping and related operations have grown rapidly in number and complexity. This book is an interdisciplinary study that examines a number of operational and legal issues associated with contemporary multi-national peace operations, and seeks to provide insights into the problems that arise in establishing and deploying such forces to meet the challenges of current conflicts. The primary focus is on three case studies, Lebanon, Somalia and Kosovo, and these are used to conduct a comparative analysis of traditional or first-generation peacekeeping, and that of second-generation multi-dimensional peace operations. Each operation examined highlights serious difficulties that arise in the command and control of UN missions, although the larger, more complex UNOSOM II (Somalia) and Kosovo missions present significantly more serious dilemmas in this regard. These problems are often exacerbated by deficiencies in the municipal laws and domestic political concerns of contributing states.

An important distinguishing feature between traditional peacekeeping operations and that of more robust peace enforcement operations is the policy regarding the use of force. Devising appropriate rules of engagement (ROE) remains a key issue in the planning and deployment of any multi-national force and a number of recommendations are made on how to deal with this problem.

The matter of the applicability of international humanitarian and human rights law to multi-national forces is also relevant in a review of all three operations. Human rights issues have been highlighted in recent times by the revelations regarding abuses that occurred in the course of peace operations. The privileges and immunities enjoyed by UN personnel, although intended to protect the interests of the UN and not individuals, may have been one factor in the numbers of personnel

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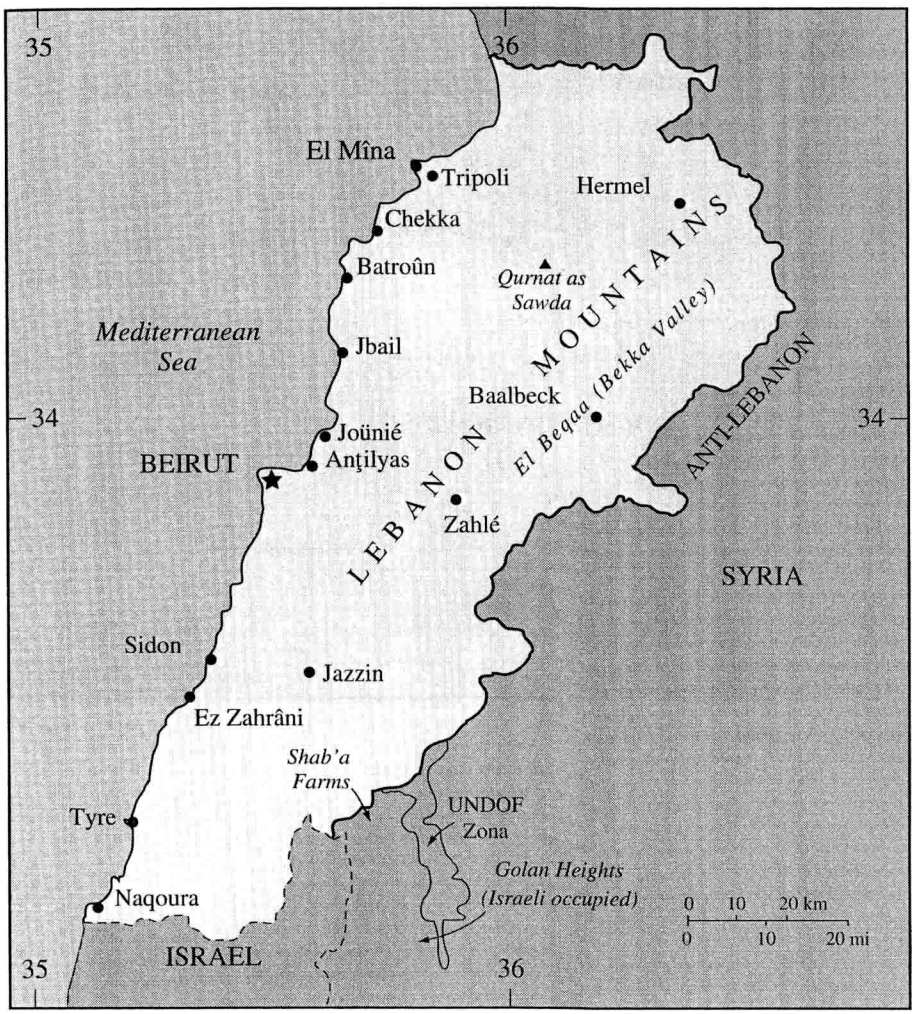
involved in such activities. Other problems can be attributed to a lack of civilian control and lack of real accountability. Ensuring compliance with international humanitarian law norms on peace support operations also remains problematic.

The United Nations Interim Administration in Kosovo (UNMIK) was established in 1999. Working closely with the NATO-led KFOR, UNMIK performs the whole spectrum of essential administrative functions and services in the province of Kosovo. It is a unique operation in one of the most politically volatile areas of Europe. There is no obvious solution to the status of Kosovo and at the time of writing the parties at the most recent summit on the issue are reported to be deadlocked. The underlying dilemma in Kosovo is that, once force is used to protect human rights, it inevitably impinges upon sovereignty and may even alter borders.

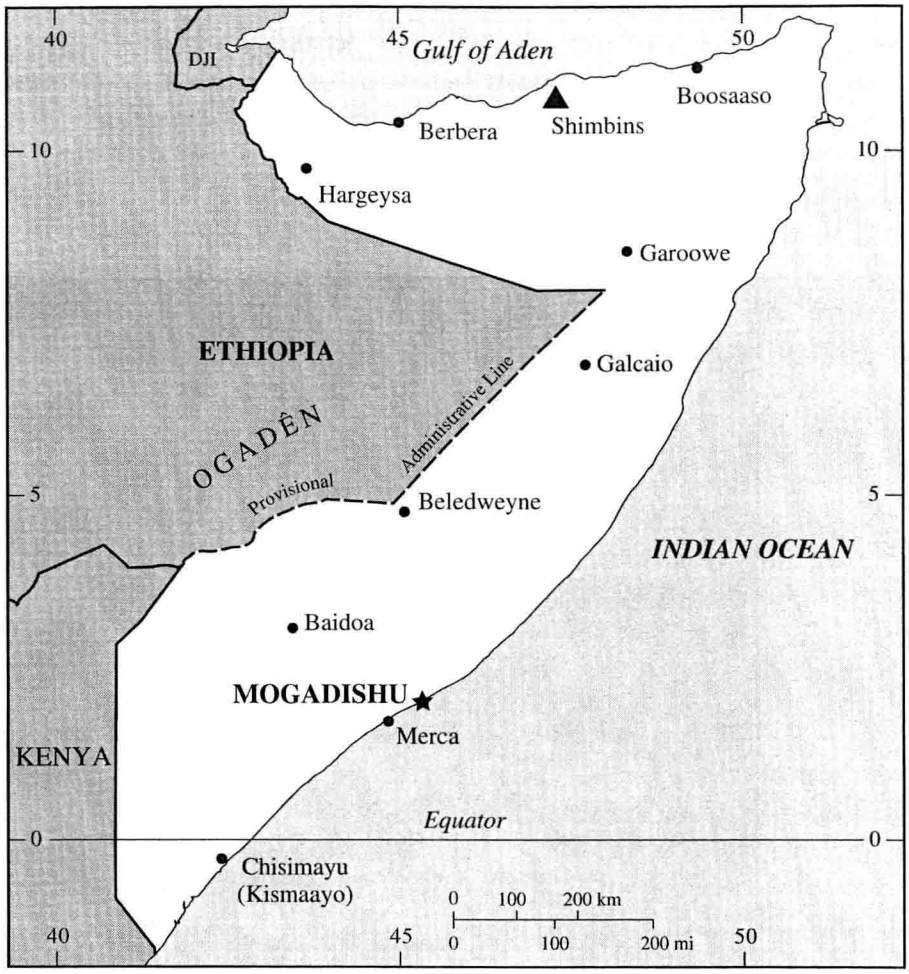
UNOSOM II was the first real test in the post-Cold War era of UN-mandated nation-building. Events in Somalia had a significant impact on United States foreign policy and they have also cast a shadow over UN and United States involvement in similar operations from Kosovo to Afghanistan. The book analyses the lessons to be learned from the experiences of UNIFIL, UNOSOM and UNMIK in regard to these and related issues.

As I complete the final draft, violence has once more broken out between Israel and the Islamic resistance movement Hizbollah in Lebanon. At the same time, Islamic militants are consolidating their control of Somalia. The leaders of the G-8 industrial nations and UN Secretary General Kofi Annan have called for the swift deployment of international troops to end the escalating violence in south Lebanon. Reference has been made to the need for an 'aggressive' or 'robust mandate' for the proposed force, but it is difficult not to conclude that many of the lessons from previous operations are not being considered. An unfortunate consequence of the current crisis and focus on the Middle East is that attention is being deflected from equally serious humanitarian catastrophes taking place in Darfur and elsewhere.

I would like to thank my colleagues at the Irish Centre for Human Rights for providing a warm and stimulating work environment. Many people helped me in many ways over the years and it is not possible to thank everyone. I acknowledge the early advice of Professor Nigel White and the proofreading completed by Dr Megan Fairlie and Jen Smith. I want to thank Finola O'Sullivan of Cambridge University Press for her professional and supportive advice at all stages. Last, but not least, I would like to thank all my family.



Map 1. Lebanon



Map 2. Somalia

0 20 40 km
0 10 20 30 mi
SERBIA
MONTENEGRO
Priština
K O S O V O
Daravica
Prizren
ALBANIA
THE FORMER
YUGOSLAV REPUBLIC OF
MACEDONIA

Map 3. Kosovo

CONTENTS

Preface and acknowledgments *page* xi

Maps xiii

1 Introduction 1

The UN and peacekeeping operations 1
Peacekeeping and enforcement operations 8
Collective security and the role of the Security Council 11
Peacekeeping and contemporary issues 12
The structure of the book 24

2 The political and diplomatic background to the establishment of peace support operations in Lebanon, Somalia and Kosovo 33

Introduction 33
Factors influencing the decision to intervene 34
Response to the interventions in Lebanon, Somalia and Kosovo 37
The case of Lebanon 37
Security Council fails to support UNIFIL 43
Lack of co-operation from the parties in Lebanon 45
The case of Somalia 48
Deployment of UNOSOM I 50
Options facing the Secretary-General and the deployment of UNITAF 55
The dilemma of disarmament and the creation of a safe environment in Somalia 60
Reconciliation and mediation efforts in Somalia and Lebanon 63
Intervention in Kosovo 69
Operation Allied Force: the NATO air campaign 75
The Military Technical Agreement and UN Resolution 1244 77

Creation of provisional institutions of self-government and the protection of minorities in Kosovo 81
Constitutional Framework for Provisional Self-Government 84
The security deficit and the de facto partition of Kosovo 86
The problem of parallel political structures 89
Military effectiveness and problems of command and control 93
UNOSOM II 93
UNIFIL 96
KFOR 96
Deficiencies in the UN organisation and structures 97
Conclusion 100

3 Legal framework of UN peacekeeping forces and issues of command and control 106
Introduction 106
Legal framework of UN operations and the SOFA 107
UNIFIL 110
KFOR 112
Consequences for Irish and Canadian personnel in breach of UN regulations 114
Command and control 115
Command and control of peacekeeping operations 121
Command and control of UN forces in Somalia 125
Command and control of Canadian forces 134
Constitutional issues arising in the command of Irish forces 139
Conclusion 144

4 United Nations peacekeeping in Lebanon, Somalia and Kosovo, and the use of force 148
Introduction 148
The establishment of peace support operations in Somalia, Lebanon and Kosovo 153
Somalia 153
Lebanon 155
Kosovo 156
Standing operating procedures and rules of engagement 158
Lebanon 173
When to use force to implement the UNIFIL mandate? 173
Escalating the response and the tactical use of force 176

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Confrontation at At-Tiri and the adoption of Resolution 467 (1980) 179
Somalia 185
The strategic use of force 185
Conflicting interpretations of the concept of operations and the slide into combat 187
Kosovo 195
Conclusion 203

5 UN military operations and international humanitarian and human rights law 214
Introduction 214
Human rights and humanitarian law 217
Humanitarian law and armed conflicts 220
International human rights law 226
Sexual abuse and peacekeeping operations 230
International and non-international armed conflicts 238
Humanitarian law and UN operations 241
The United Nations position 246
The ICRC position 253
The 1994 Convention on the Safety of UN and Associated Personnel 255
Humanitarian law and UN forces in Lebanon and Somalia 262
The predicament of UNIFIL 262
Summary 270
Somalia 271
Summary: practical difficulties applying the Conventions in Somalia 276
Kosovo 279
Conclusion 285

6 Conclusion 294
The need for UN reform 294
Intervention 296
Operational and legal issues 298
Unrealistic expectations 300
Lack of accountability 301
The UN, NATO and Kosovo 304
Lessons for the future 307

Appendix 1 Resolutions of the Security Council: UNIFIL 312

Appendix 2 Resolutions of the Security Council: Somalia 315

Appendix 3 Resolutions of the Security Council: Kosovo 326

Bibliography 333

Index 369

1

Introduction

The UN and peacekeeping operations

The concept of peacekeeping is neither defined nor specifically provided for in the United Nations Charter.[1] Historically, it is by no means a concept associated exclusively with the United Nations (UN).[2] Consequently, it does not lend itself to precise definition. In these circumstances, it is not surprising that there is some confusion regarding what exactly constitutes peacekeeping. Indeed, it is sometimes easier to say that a particular mission or force does not possess the generally recognised characteristics of a peacekeeping operation, than it is to confirm that it fulfils the necessary criteria.[3] Part of the reason for this is the looseness with which states adopt such terms. It has a distinctly positive resonance, and those charged with the government of states are usually more concerned with public relations and opinion polls than with legal criteria or political reality. For this reason, the term is often applied to controversial situations where states intervene militarily and then seek to justify or portray their actions as some kind of benign peacekeeping operation.

[1] See B. Simma (ed.), *The Charter of the United Nations: A Commentary* (2nd edn, Oxford: Oxford University Press, 2002), pp. 648–700; N. White, *Keeping the Peace* (2nd edn, Manchester: Manchester University Press, 1997), pp. 207–84; United Nations, *The Blue Helmets – A Review of United Nations Peacekeeping* (3rd edn, New York, United Nations, 1996), pp. 3–9.

[2] H. McCoubrey and N. White, *International Organizations and Civil Wars* (Aldershot: Dartmouth, 1995), p. 183.

[3] The UN Emergency Force (UNEF), which was established and deployed after the British and French military intervention in Suez in 1956, is generally regarded as the first true UN peacekeeping operation; *Summary Study of the Experience Derived from the Establishment and Operation of the Force: Report of the Secretary-General*, 9 October 1958, General Assembly Official Records, 13 Session, Annex 1: Doc. A/3943. See also Docs. A/3289 and A/3302; the latter was approved by General Assembly Resolution 1001 (ES-I) of 7 November 1956. D. W. Bowett, *United Nations Forces* (London: Stevens, 1964), pp. 90–152.

The Cold War era (1945–89) between the United States and the Soviet Union was marked at the UN by continual wrangling over the correct interpretation of the Charter provisions.[4] The Charter's own ambiguity and failure to provide for specific problems contributed to these disputes. In order to survive, the Organization had to be capable of adapting to the changed political circumstances and this meant adopting roles not specifically provided for in the Charter.[5] When the required consensus among the major powers did not materialise, it seemed the UN would be unable to fulfil a significant role in the maintenance of peace; the growth of regional self-defence systems was just one indication of the lack of confidence in the Organization as the international guarantor of peace. In these circumstances, it is not surprising that the UN sought to circumvent the obstacles caused by Cold War rivalries. However, it should be stressed that peacekeeping is not the preserve of the UN. The concept predates the formation of the Organization and peacekeeping missions continue to be organised outside its framework. In this way, it can be argued that a peacekeeping force established and deployed by one or more states may legitimately profess to belong to some kind of internationally recognised category of peacekeeper. Peacekeeping operations were intended to end hostilities by peaceful means and create a climate in which the peacemaking process could be successfully applied.

When the divisions of the Cold War blocked effective action by the Security Council, the concept of UN peacekeeping was invented. In 1993, a former Under-Secretary-General for Peacekeeping Operations, Marrack Goulding, suggested the following definition:

> Field operations established by the UN with the consent of the parties concerned, to help control and resolve conflicts between them, under UN command and control, at the expense collectively of the member states, and with military and other personnel and equipment provided voluntarily by them, acting impartially between the parties and using force to the minimum extent necessary.[6]

[4] See generally Simma (ed.), *Charter of the United Nations*, pp. 13–32; and L. Goodrich, E. Hambro and A. P. Simons, *Charter of the United Nations* (3rd edn, New York: Columbia University Press, 1969), pp. 1–17; and I. Claude, *Swords into Ploughshares* (New York: Random House, 1956), chapter 12.

[5] N. D. White, 'The UN Charter and Peacekeeping Forces: Constitutional Issues' (1996) 3(4) *International Peacekeeping* 43–63.

[6] M. Goulding, 'The Evolution of UN Peacekeeping' (1993) 69(3) *International Affairs* 464.

Since 1985, there has been a significant increase in the number of peacekeeping missions established, with a corresponding increase in the complexity of the mandates. These are often referred to as 'second-generation' peacekeeping operations.[7] The traditionally passive role of peacekeepers has been replaced by a more active role of peacemaking, involving, *inter alia*, national reconstruction, facilitating transition to democracy, and providing humanitarian assistance.[8] There are a broad range of terms used to describe these and related activities. The nomenclature of 'second generation' or multi-dimensional peacekeeping often gives way to the more generic title of peace operations, adopted to cover the range of activities involved.[9] The UN Department of Peacekeeping Operations continues to use the term 'peacekeeping' to cover all such activities and describes these operations as follows:

> Most of these operations are established and implemented by the UN itself with troops serving under UN operational command. In other cases, where direct UN involvement is not considered appropriate or feasible, the [Security] Council authorizes regional organizations such as the North Atlantic Treaty Organization, the Economic Community of West African States or coalitions of willing countries to implement certain peacekeeping or peace enforcement functions.[10]

As the dynamic of conflict in the world changed, so too did the response of the UN, and other international organisations and states. Classical peacekeeping operations originally conducted during the Cold War usually involved the deployment of military personnel only between two states. The process leading to the deployment of a UN force was relatively straightforward: armed conflict, cease-fire, an invitation from the conflict parties to monitor the cease-fire, followed by deployment of military personnel, while negotiations for a political settlement continued.

[7] United Nations, *The Blue Helmets*, p. 5.

[8] J. Roper, M. Nishihara, O. Otunnu and E. Schoettle, *Keeping the Peace in the Post-Cold War Era: Strengthening Multilateral Peacekeeping* (New York: Trilateral Commission, 1993), p. 4.

[9] S. Ratner, *The New UN Peacekeeping* (London: Macmillan, 1995), pp. 117–36; and W. J. Durch, 'Keeping the Peace: Politics and Lessons of the 1990s', in W. J. Durch (ed.), *UN Peacekeeping, American Policy, and the Uncivil Wars of the 1990s* (London: Macmillan, 1997), pp. 3–7.

[10] UN Department of Peacekeeping Operations, available at http://www.un.org/Depts/dpko/dpko/home.shtml.

In contrast, contemporary peace operations are increasingly complex.[11] According to the Pearson Peacekeeping Centre in Canada, they are:

- deployed into both inter-state and intra-state conflicts;
- conducted in every phase of the conflict spectrum, from prevention through to post-war reconstruction;
- dependent on close cooperation among civilian, police, and military organizations from the international community, with parties to the conflict and war-affected populations;
- opening in new areas of international activity with conflict-affected countries, such as reforms to the security sector.

In this way, 'peace operations' is the umbrella term used to cover a multiplicity of UN field activities in support of peace, ranging from essentially preventive deployments to long-term state-building missions.[12] They include conflict prevention, conflict mitigation, peacemaking, peacekeeping, peace enforcement, and post-conflict peace-building.

The UN Charter, as finally adopted, contains two significant chapters in relation to the maintenance of international peace and security. Chapter VI provides for the pacific settlement of disputes by, among other things, negotiation and adjudication, and Chapter VII contains the collective security provisions which were intended as the cornerstone of its policy in the maintenance of world peace. It is Chapter VII of the Charter that provides for enforcement measures under the direction of the Security Council as the central military instrument for the maintenance of peace and security. If force is used or threatened against the territorial integrity or political independence of any state in a manner that is contrary to the Charter, there are two possible military options permitted in response: self-defence and police or enforcement action.[13] Either response is likely to lead to full-scale conflagration. The system

[11] Pearson Peacekeeping Centre, Canada, available at http://www.peaceoperations.org/en/peace_operations.asp.

[12] J. Cockayne and D. M. Malone, 'The Ralph Bunche Centennial: Peace Operations Then and Now' (2005) 11 *Global Governance* 331–50 at 331.

[13] Article 2(4) of the UN Charter prohibits the threat or use of force, while Article 51 provides for individual or collective self-defence. However, self-defence under Article 51 is only permitted until such time as the Security Council responds and takes the necessary measures to maintain international peace. See L. M. Goodrich, E. Hambro and A. P. Simons, *Charter of the United Nations* (3rd edn, New York: Columbia University Press, 1969), pp. 43–55 and pp. 342–53; and B. Simma (ed.), *The Charter of the United Nations* (2nd edn, Oxford: Oxford University Press, 2002), pp. 112–36 and pp. 788–806.

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