

Principles of Peacekeeping for Parliamentarians

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The purpose of this article is to provide a basic introduction to the subject of peacekeeping and peace enforcement or support operations for parliamentarians. In addition to a general history of peacekeeping, this article will also provide a description of the basic legal framework within which these activities are conducted. The term "peacekeeping" is often employed in common usage to describe a wide range of military and civilian activities to intervene, stop and prevent conflict. More precise terms have evolved with time and they will be described in the text.

Basic History of Peacekeeping

Modern peacekeeping was born after the World War II. Prior to the World War I there were no international organizations of nations comparable to the United Nations to provide a forum for discussion of international issues or provide a basis for multilateral cooperation in resolving conflicts. Various conventions and treaties between nations existed, but international relations between nations were conducted on the basis of diplomacy between individual nations. One of the great lessons learned from the World War I was the necessity for an international organization of nations to help avert future wars.

After World War I the League of Nations was founded with headquarters in Geneva. It was the first international organization dedicated to collective security and joint action against aggressors, arbitration of international disputes, reduction of armaments and open diplomacy. Unfortunately, due to the failure of the United States to join and the League's failure to prevent

Japanese, Italian and German aggression it fell into disrepute and ceased to operate during World War II.

After World War II the United Nations (UN) was founded in 1945 as a successor to the old League of Nations and it has proven to be a major source of international stability and international law.

When the UN Charter was drafted it was the intent of the drafters to establish a system, embodied in the Charter, under which member nations would take collective measures to prevent and remove threats to international peace and suppress acts of aggression or other breaches of the peace. The UN Security Council was delegated the primary responsibility under the UN Charter for the maintenance of international peace and security. It was contemplated that the Security Council would employ the powers provided to it in Chapters VI, VII, and VIII of the Charter to carry out its duties. The Security Council is made up of fifteen members, five of whom are permanent. The five permanent members of the Security Council are the Russian Federation, the United Kingdom, France, the United States, and China. Each of the permanent members possesses veto power over the resolutions of the Security Council.

The Security Council's authority for dealing with matters impacting upon international peace and security are primarily embodied in Chapters VI and VII of the UN Charter. Chapter VIII permits the Security Council to utilize regional organizations for enforcement actions under its authority. Chapter VI provides the Security Council with non-binding power to recommend procedures and terms for the diplomatic settlement of international disputes or situations which might lead to a breach of the peace. Chapter VI does not include the power to employ military force. Chapter VII of the Charter provides the Security Council with the power to take mandatory coercive military and non-military actions to maintain or restore international peace and security in situations where it has determined that a threat to peace exists, or that a breach of peace or an act of aggression has occurred.

Unfortunately, subsequent to the Charter entering into force, the Cold War broke out. As a result of the polarization between the

US and the USSR caused by the Cold War, the organizational functioning of the Security Council was completely stymied. The UN was incapable of acting in many of the growing conflicts worldwide, many of which resulted from decolonization, because the veto power, or threat of veto power, held by the US and the USSR and utilized to influence their own geopolitical interests, prevented nearly every effort by the Security Council to take action. As a result, for many years, the Security Council was unable to carry out its primary responsibility for the maintenance of international peace and security.

UN peacekeeping evolved because a way had to be found to stop hostilities and control conflicts to prevent them from developing into broader wars, despite the deadlock in the Security Council. Peacekeeping, then, was born out of necessity, largely improvised, as a practical response to a problem that required action by the international community.

Peacekeeping was an innovation not specifically provided for in the UN Charter. There is no specific language in the charter defining or describing peacekeeping. However, the advent of peacekeeping allowed the UN to begin to assist in resolving international disputes, while the Cold War and Superpower veto made implementation of the originally contemplated collective security system impossible. The fact that peacekeeping operations, as devised, required the consent of the parties to the dispute, made it politically difficult for either Superpower to veto these operations. Thereafter, peacekeeping has evolved over time into a mechanism that is more than the peaceful settlement procedures contemplated in Chapter VI of the Charter, but is less than the enforcement procedures provided for in Chapter VII. The hybrid nature of peacekeeping prompted former UN Secretary-General Dag Hammerskjold to remark that peacekeeping might be put into a new Chapter of the UN Charter – "Chapter Six and a Half".

In peacekeeping missions, troops are placed in situations of conflict to defuse tensions and are deployed only in situations in which all parties to the conflict in question have agreed upon their emplacement. As a result, UN peacekeeping has most often involved observing, or supervising and assisting parties to a dispute. Impartiality and neutrality are the fundamental concepts

underlying peacekeeping. Peacekeepers are not present to prevent violations of a truce or ceasefire, their presence alone is considered sufficient to maintain peace.

On the other hand, operations under Chapter VII of the UN Charter involve what are often referred to peace enforcement operations.² Peace enforcement operations since they involve the employment of military force do not require the consent of the conflicted parties and impartiality, while desirable, is not essential. Although peace enforcement operations cannot solve the underlying problems that caused peaceful relations to dissolve, they may help create the conditions in which the process of peaceful resolution of the dispute may proceed. The cessation of conflict of course will often not alone provide the solutions to the political issues which caused the outbreak of hostilities in the first place.

Legal Authority for Peace Operations

The terms "peacekeeping" and "peace enforcement" do not appear anywhere in the UN Charter. This portion of the article will discuss both international and domestic legal authority to conduct peace operations.

The international legal authority for peace operations is derived from the UN Charter and, perhaps, from the charters of Regional Organizations that might be participating, such as the Commonwealth of Independent States (CIS), or NATO. The Organization for Security and Cooperation in Europe (OSCE) cannot authorize peace operation under its Charter.

Most commentators point to Chapter VI of the UN Charter as legal authority for peacekeeping. As mentioned previously, peacekeeping is not specifically mentioned. Chapter VI addresses peaceful means of establishing or maintaining peace. It references such activities as conciliation, mediation, adjudication and diplomacy or taking disputes before the International Court of

² It should be noted that terms such as peacekeeping, peace enforcement, peace support, etc. are often defined differently. UN, US, NATO and the Draft Law on CIS Peacekeeping all use slightly different definitions. US doctrine is that peace operations include peacekeeping and peace enforcement operations.

Justice. The Security Council's authority under Chapter VI is *advisory only*, it may only make recommendations to the disputing parties, but it may not take mandatory coercive action. The prevailing view is that since peacekeeping operations are consensual in nature and lack any enforcement authority, they are essentially the same as the consensual efforts to establish peace contemplated in Chapter VI and, therefore, Chapter VI provides sufficient legal authority to conduct peacekeeping operations.³

Peace enforcement operations involving the use or threat of the use of military force are clearly authorized under Chapter VII of the Charter. As a prerequisite for the employment of coercive action under Chapter VII by the Security Council it must first make a determination that a threat to the peace exists or that a breach of the peace or an act of aggression has occurred. After making such a determination, the Security Council may impose sanctions, embargoes and other coercive actions, including the use of military force. The military forces are provided by the member nations. The UN does not have its own military forces. The text of the authorizing mandate of the Security Council will typically refer specifically to Chapter VII as authority and may use the phrase "all necessary means" in order to authorize the use of military force.

Chapter VIII of the UN Charter provides that Regional Organizations are authorized to maintain peace and security. Under Article 52 of the Charter Regional Organizations may undertake peacekeeping operations without Security Council authorization. However, under Article 53 of the Charter Regional Organizations may only undertake peace *enforcement* operations when authorized by a mandate of the UN Security Council. The Commonwealth of Independent States (CIS) is a Regional Organization within the meaning of Chapter VIII of the UN Charter. The presently existing Agreements, Protocols and Concept documents of the CIS authorize regional peace enforcement operations if authorized by a mandate of the UN Security Council. The

³ Other commentators contend that peacekeeping operations can be considered as being implied, apart from the principle of consent, in the broad powers conferred by the UN Charter upon the Security Council with respect to international peace and security. The reference to Chapter "Six and a Half" by the former Secretary General recognizes a spirit of compromise between these two views.

Model Law "On participation (of a CIS member-state) in peace support operations" drafted and proposed for adoption by the CIS by the Center for Political and International Studies, Moscow, provides doctrine and requirements for peace enforcement operations utilizing military force by the CIS under the authority of a UN Security Council mandate. Therefore, one may look to the charter and other documents of Regional Organizations for additional international legal authority to conduct peace operations.

The next level of legal authorization for peace operations is the domestic law of an individual nation. Domestic legal authority may be found in the constitution and other statutory laws of a nation. In modern democracies, typically the president is designated to be the commander in chief of the armed forces and given the authority to authorize the use of military force, though, as in the US, the authority to declare war is reserved for the legislative branch of government. If a nation is a member of the United Nations, the Charter of the United Nations itself becomes a part of the domestic national law by virtue of the fact that the Charter is a treaty to which each member nation is a party. Article 2(5) of the UN Charter provides that all members are required to give the UN "every assistance" in any action it takes under the Charter. Additionally, Article 25 of the Charter calls upon all member states to agree to accept and carry out the decisions of the UN Security Council.

On the other hand, there may be prohibitions upon a nation's ability to participate in peace operations contained in its domestic law. These prohibitions or limitations may take the form of a declaration of neutrality or a restriction upon use of the armed forces outside of the territory of the nation or, perhaps, a time limit upon deployment of armed forces outside of the country. In the US Congress adopted the War Powers Act in 1973 which attempted to restrict the power of the President to commit US armed forces to overseas deployments without advance Congressional approval. The Act also set a 60 day time limit on any deployment and required notification and consultation with Congress about the details and plans for the deployment. However, all the US Presidents since 1973 have taken the position that this Act is an unconstitutional infringement upon the war powers of the

President as contained in the US Constitution. The Courts have taken the position that they cannot decide the validity of the Act because this is a political question not subject to judicial review. This US example is given to point out that any legislative attempt to curtail the power of the president to deploy military forces for peace operations may not be very effective. The most effective limitation would probably be a limitation contained in the constitution itself.

In the US the Constitution provides that Congress must approve the budget for the military. This power over the budget has proven to be the most effective tool with which to affect legislative oversight over the use and employment of military forces. The Model Law on peacekeeping in the CIS provides detailed requirement for parliamentary approval of the initial provision of the budget for peace support operations and for approval of any funds in excess of those initially provided. This provision should substantially enhance the ability of CIS parliaments to ensure parliamentary oversight of any proposed involvement in CIS peace operations.

Finally, another issue for consideration is whether the armed forces of a nation possess a military justice system that can be deployed outside of its territory with the forces provided for peace operations. Some nations have abolished their separate military justice systems and now all military criminal cases are handled in the civilian courts. This presents a problem if a soldier deployed on a peace operation is accused of committing a crime in the host nation. If there is no deployable military justice system, and the crime must be handled in the soldier's civilian court system, although the witnesses and victim are located in the host nation, it could be prohibitively expensive and difficult to provide justice.

Conclusion

A parliamentarian would probably desire the answer to at least the following questions if confronted with a request to authorize use of his nation's military forces in a peace operation:

- 1) Is the proposed peace operation in the nation's national security interest?
- 2) Is the proposed peace operation one of peacekeeping or peace enforcement involving the use of military force?
- 3) Is the peace operation pursuant to a mandate of the UN Security Council?
- 4) Is the peace operation pursuant to a mandate of a Regional Organization?
- 5) What is the size and nature of force requested?
- 6) Is there sufficient international and domestic legal authority for the peace operation?
- 7) Does domestic law prohibit or limit the nation's participation in any way?
- 8) What is the anticipated cost of the peace operation known and who will pay the cost?
- 9) What is the anticipated duration of the peace operation?
- 10) Will the armed forces to be deployed have sufficient training in order to safely participate in the peace operation?
- 11) Do the armed forces to be deployed have a military justice system that can effectively address crimes while deployed?
- 12) What are the command and control arrangements for the forces?

The answers to all these questions should be included in any legislative act regulating peace-keeping and peace enforcement efforts by national states.