

Peacekeeping and Peace building under International Law: Normative Evolution and Operational Challenges

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ABSTRACT

The discourse surrounding international peacekeeping and peacebuilding has undergone significant normative evolution, necessitating a thorough examination of the challenges inherent in their operationalization within the framework of international law. This chapter delves into the conceptual and practical distinctions between peacekeeping and peacebuilding, analyzing their development from ad hoc responses to more formalized, albeit legally ambiguous, international interventions. It critically assesses the evolving legal frameworks that govern these operations, considering the interplay between peacetime law and the law of armed conflict. The chapter further explores how the fusion of peacekeeping with peace enforcement operations has induced international criminal law liabilities, thereby transforming traditional peacekeeping into more robust military crisis management operations and forcible humanitarian interventions. This convergence has blurred the lines between military action and humanitarian intervention, raising complex questions about the legal status and protection of peacekeepers, particularly in contexts where lethal force may be employed. Moreover, the shift towards more robust mandates, enabling peacekeepers to use force beyond self-defense, has introduced complex considerations regarding accountability and the potential for dual attribution liability for human rights violations committed during operations.

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1. Introduction

The discourse surrounding international peacekeeping and peacebuilding has undergone significant normative evolution, necessitating a thorough examination of the challenges inherent in their operationalization within the framework of international law. This chapter delves into the conceptual and practical distinctions between peacekeeping and peacebuilding, analyzing their development from ad hoc responses to more formalized, albeit legally ambiguous, international interventions. It critically assesses the evolving legal frameworks that govern these operations, considering the interplay between peacetime law and the law of armed conflict. The chapter further explores how the fusion of peacekeeping with peace

enforcement operations has induced international criminal law liabilities, thereby transforming traditional peacekeeping into more robust military crisis management operations and forcible humanitarian interventions. This convergence has blurred the lines between military action and humanitarian intervention, raising complex questions about the legal status and protection of peacekeepers, particularly in contexts where lethal force may be employed. Moreover, the shift towards more robust mandates, enabling peacekeepers to use force beyond self-defense, has introduced complex considerations regarding accountability and the potential for dual attribution liability for human rights violations committed during operations.¹ This chapter will also scrutinize the impact of stabilization mandates, which often extend beyond the cessation of overt conflict, on the overall objectives of peacebuilding and human rights protection. Furthermore, the nuanced relationship between distinct types of UN activities, such as peacekeeping, peacemaking, peacebuilding, and peace enforcement, is often characterized by complex interconnections and dynamic field operations, making a clear delineation challenging. The functional evolution of peacekeeping forces, from benign observers to coercive protectors of peace processes, has intensified debates regarding the applicable international legal frameworks.² This transformation often necessitates collaboration with regional organizations, thereby introducing tensions between various legal frameworks governing peacekeeping, the use of force, and intervention practices, especially in complex peace enforcement and stabilization missions with a Protection of Civilians mandate.³ This chapter aims to critically evaluate these complexities, analyzing the normative evolution and operational challenges through a lens of international legal accountability and effectiveness. Specifically, it will examine how the increasing robustness of mandates, as exemplified by missions like MONUC and its successor in the Democratic Republic of Congo, has challenged traditional peacekeeping principles and raised concerns about adherence to international humanitarian law and human rights standards. The shift from impartial oversight to stabilization efforts, coupled with a "robust turn" towards greater use of force, further complicates the legal and ethical landscape of contemporary UN peace operations.⁴ This evolution has led to a re-evaluation of the foundational principles of peacekeeping, particularly the concept of impartiality, as peacekeepers are increasingly expected to side with victims in conflict settings.

2. The Evolution of Peacekeeping under International Law

The traditional model of peacekeeping, rooted in principles of consent, impartiality, and the non-use of force except in self-defense, has undergone significant transformations, evolving from the classical United Nations Emergency Force framework to encompass more robust and multidimensional mandates. This shift has blurred the once-clear lines between peacekeeping and peace enforcement, particularly through the authorization of Chapter VII mandates

¹ Maj Grasten, Carsten Stahn and Jens Iverson, "Jus Post Bellum as Definition and Practice" Research Portal Denmark 269 (2020).

² Nigel D. White, "Protecting Human Rights in UN Peacekeeping: Operationalising Due Diligence and Accountability," 34 King's Law Journal 463 (2023).

³ Michelle Nel, "From Peacekeeping to Stabilisation: Interorganisational Co-operation, Challenges and the Law," 14 Journal of Intervention and Statebuilding 237 (2020).

⁴ Alex J. Bellamy and Charles T. Hunt, "Twenty-first century UN peace operations: protection, force and the changing security environment," 91 International Affairs 1277 (2015).

allowing for the use of force beyond self-defense, sometimes described as operating under 'Chapter VI and a half'.⁵ This evolution, significantly influenced by the failures to prevent genocides in Rwanda and Srebrenica, has prompted the UN to adopt more muscular peacekeeping approaches aimed at civilian protection, leading to the deployment of forces with increasingly offensive capabilities. These robust mandates, exemplified by missions like MONUC, authorize peacekeepers to employ armed force beyond traditional self-defense, sometimes crossing the line into peace enforcement rather than merely peacekeeping. The Brahimi Report in 2001 solidified this shift, advocating for more robust and effective peacekeeping operations capable of responding to complex emergencies and protecting civilians.⁶ However, this embrace of robust mandates has not been without its challenges, as missions have struggled with the practical implications of implementing these broader directives, often finding themselves deeply entrenched in the conflicts they were intended to mitigate. The transformation has led to a redefinition of decision-making bases within UN peacekeeping, moving towards "assertive liberal internationalism" where humanitarian norms like civilian protection and the responsibility to protect take precedence, even if it means departing from strict impartiality. This updated understanding of impartiality mandates peacekeepers to actively protect the mission's objectives and, if necessary, side with victims rather than remain neutral, particularly in situations involving egregious human rights violations. This reinterpretation permits the use of force to protect civilians and the mission's mandate, thereby moving beyond the traditional constraints of self-defense. The notion of "muscular peacekeeping" has gained increasing acceptance within the UN Secretariat, often labeled as a "robust turn," which was significantly influenced by the failures of the 1990s to prevent mass atrocities.

3. The Evolution of Peacebuilding under International Law

The conceptualization of peacebuilding has similarly evolved, moving from a narrow focus on post-conflict reconstruction to a more comprehensive and proactive approach that integrates elements of conflict prevention, sustainable development, and institutional reform to address the root causes of conflict. This expanded understanding views peacebuilding not merely as an aftermath of conflict, but as an ongoing process that begins even before or during conflict, aiming to create conditions for lasting peace. The emphasis on proactive engagement underscores a shift from reactive intervention to strategic, long-term investments in stability and governance, often intertwining with the responsibilities articulated by the Responsibility to Protect (R2P) doctrine. This comprehensive approach mandates that peacebuilding efforts extend beyond physical reconstruction to include deep-seated societal transformations, such as electoral assistance, judicial reforms, and security sector restructuring, often in collaboration with regional and financial institutions.⁷ This requires a complex interplay of international and local actors, necessitating robust legal and policy frameworks to ensure accountability and coherence across diverse mandates and operational environments. This

⁵ Alexander Gilder, "The Effect of 'Stabilization' in the Mandates and Practice of UN Peace Operations," 66 *Netherlands International Law Review* 47 (2019).

⁶ Hubert Mayer, "Is International Law Fair? A Conference Report on the 18th Annual Conference of the European Society of International Law in Aix-en-Provence," 17 *Zeitschrift für Außen- und Sicherheitspolitik* 217 (2024).

⁷ Kari M. Osland and Mateja Peter, "UN peace operations in a multipolar order: Building peace through the rule of law and bottom-up approaches," 42 *Contemporary Security Policy* 197 (2021).

expanded purview necessitates a re-evaluation of the legal bases for such extensive interventions, considering the potential implications for national sovereignty and the principle of non-interference in internal affairs. The Responsibility to Protect (R2P) doctrine, emerging from the limitations of rigid non-interventionist norms, fundamentally redefines sovereignty as a duty to protect populations from atrocities, shifting away from an absolute non-interference stance.⁸ This reinterpretation of sovereignty as responsibility has led to more intrusive policy interventions and a significant erosion of the classical understanding of state sovereignty, particularly within the liberal peacebuilding paradigm of the 2000s. This conceptual shift, articulated notably by the International Commission on Intervention and State Sovereignty in 2001, reflects a re-thinking of the sovereignty norm, where a state's domestic affairs are no longer entirely shielded from international scrutiny, regardless of its conduct towards its own people. This evolution culminated in the 2005 World Summit, where R2P was formally endorsed, extending beyond humanitarian intervention to encompass responsibilities to prevent, react, and rebuild. However, the application of R2P has been met with considerable debate, particularly regarding the threshold for intervention and the potential for selective implementation, prompting ongoing discussions about its scope and the legitimate use of force.

4. Normative Frameworks for Peacekeeping and Peacebuilding

This section will delve into the primary legal and ethical frameworks that underpin contemporary peacekeeping and peacebuilding operations, examining how international law has adapted to these evolving challenges. It will critically analyze the interplay between established principles, such as state sovereignty and non-intervention, and the emerging norms of humanitarian intervention and the Responsibility to Protect (R2P) within the context of UN operations and broader international peace efforts.

4.1. United Nations Charter and Resolutions

The UN Charter, particularly Chapters VI and VII, provides the foundational legal basis for peacekeeping missions, delineating the Security Council's authority to maintain international peace and security through various measures, including the authorization of force. While Chapter VI emphasizes pacific settlement of disputes, Chapter VII grants the Security Council the power to take action, including military force, to address threats to peace, breaches of the peace, and acts of aggression. This framework has been progressively interpreted to encompass a wider range of threats, extending beyond inter-state conflict to include intra-state violence and human rights abuses that are deemed to threaten international peace and security. The Security Council's broad interpretation of its Chapter VII powers has, at times, blurred the lines between peacekeeping and peace enforcement, particularly when authorizing missions with robust mandates for civilian protection or counter-insurgency operations.

4.2. International Humanitarian Law and International Human Rights Law

These bodies of law provide critical frameworks for the conduct of peace operations, dictating the obligations of peacekeepers concerning the protection of civilians, the humane treatment of combatants, and the respect for fundamental human rights even during armed conflict. Specifically, international humanitarian law governs the methods and means of warfare,

⁸ J. P. Singh, "Reconceptualizing Sovereignty: The Emergence OF The Responsibility To Protect (R2P) In International Law" (2025).

aiming to minimize suffering in armed conflicts, while international human rights law imposes obligations on states to respect, protect, and fulfill the human rights of individuals within their jurisdiction. The interplay between these two branches of international law is particularly crucial in peace operations, where peacekeepers frequently operate in complex environments where traditional distinctions between combatants and civilians are blurred. Therefore, an analysis of the interplay between these two branches of international law is necessary in the context of peace operations to ensure adherence to principles of proportionality and distinction. The applicability of international humanitarian law and international human rights law to peace forces, particularly in non-belligerent contexts, remains a subject of considerable scholarly debate, necessitating clarity on the legal frameworks governing such operations.

4.3. The Responsibility to Protect (R2P) and its Implications

This doctrine, while widely accepted in principle, raises complex questions regarding its operationalization, particularly concerning the threshold for intervention and the potential for selective application by powerful states. This debate underscores the persistent tension between state sovereignty and international humanitarian intervention, demanding careful consideration of the legal and ethical boundaries within which such actions are undertaken. Furthermore, the legal framework governing peace operations also incorporates specific mandates outlined in Security Council resolutions, which delineate the tasks and permissible actions of peacekeepers. Moreover, the Status of Forces Agreements with host countries further define the legal status, privileges, and immunities of peacekeeping personnel, adding another layer to the complex normative landscape.⁹ These agreements are crucial for ensuring the operational effectiveness of missions while upholding accountability for peacekeepers, especially in contexts where national legal systems may be weak or compromised. Beyond these, the precise interaction between International Humanitarian Law and International Human Rights Law within the context of UN peace operations, particularly regarding rules of engagement and the specific mandates derived from Security Council resolutions, often lacks explicit public clarification from the UN, despite its critical importance for troop-contributing countries and local populations.

5. Operational Challenges in Peacekeeping and Peacebuilding

This section will examine the practical difficulties and obstacles encountered during the deployment and execution of peacekeeping and peacebuilding missions, focusing on issues such as logistical constraints, political complexities, and the evolving nature of contemporary conflicts. These challenges are often exacerbated by the multifaceted nature of modern conflicts, which frequently involve non-state actors, asymmetric warfare, and transnational threats.¹⁰ Furthermore, the lack of a direct legal basis or explicit definition for peacekeeping and peacebuilding operations within international law complicates the clear delineation of responsibilities and permissible actions during transitional phases from conflict to peace. This ambiguity often leads to operational challenges, particularly in navigating jurisdictional complexities and balancing the immunity of peacekeepers with the imperative for

⁹ Paolo Palchetti, "How can member States be held responsible for wrongful actions committed during peace operations conducted by international organizations" HAL (Le Centre pour la Communication Scientifique Directe) (2012).

¹⁰ Mateja Peter, "Global Fragmentation and Collective Security Instruments: Weakening the Liberal International Order From Within," 12 Politics and Governance (2023).

accountability in instances of misconduct. For example, incidents involving peacekeepers, such as those related to international crimes or other violations, have highlighted the urgent need to re-evaluate existing doctrines and mechanisms for ensuring justice and preventing impunity. The inability of the International Criminal Court to prosecute UN peacekeeper offenders due to jurisdictional complexities further exemplifies this challenge, requiring a delicate balance between immunity and accountability while also considering the responsibility of sending states. Such instances necessitate a streamlined peacebuilding agenda that prioritizes the rule of law, fostering accountability and transparency within host state institutions through the support of UN peacekeepers.¹¹ Therefore, proposals for reforming the UN Charter suggest incorporating specific provisions for peacekeeping and peacebuilding operations, distinguishing them from Chapter VII enforcement measures and establishing a dedicated agency for their planning and execution. This proposed reform aims to address the current interpretative challenges posed by the absence of a direct legal basis for these operations, potentially streamlining command structures and clarifying the terms of reference for engagement.

6. Regional and South Asian Perspectives on Peacekeeping and Peacebuilding

This section will explore how regional organizations and individual states in South Asia engage with, contribute to, and are affected by international peacekeeping and peacebuilding efforts, considering the unique geopolitical dynamics and historical contexts of the region. A comprehensive analysis of UN peacekeeping operations in South Asia over the past two decades, including missions in Kashmir, Sri Lanka, and Nepal, reveals critical successes and limitations influenced by regional political factors and complex ethnic conflicts. A critical takeaway from these experiences is the imperative to tailor UN mandates to the specific conflict environments, recognizing that open-ended missions with limited enforcement mechanisms, such as UNMOGIP in Kashmir, often struggle to achieve tangible impacts. The complex geopolitical landscape, particularly regarding Pakistan's advocacy for UN intervention in Kashmir versus India's opposing stance, further complicates peacekeeping engagements in the region. These regional dynamics underscore the necessity for adaptive strategies and innovative approaches to enhance the overall impact of peacekeeping efforts. Such an approach would prioritize the establishment of the rule of law and foster bottom-up initiatives to ensure lasting peace and effective conflict transformation. The challenges faced by peacekeepers in South Asia, characterized by complex ethnic conflicts and geopolitical tensions, highlight the limited utility of traditional peacekeeping in achieving lasting peace without robust peacebuilding initiatives. Conversely, time-bound, focused missions, such as UNMIN in Nepal, exemplify how clearly defined mandates can significantly enhance peacekeeping effectiveness, although long-term stability ultimately depends on domestic political negotiations. However, even in successful cases, peacekeeping alone cannot address deeper structural issues like political instability, ethnic divisions, and governance failures, demonstrating that the effectiveness of peacekeeping is inherently limited without concurrent, comprehensive peacebuilding strategies. This highlights the necessity for integrated

¹¹ Kari M. Osland and Mateja Peter, "UN peace operations in a multipolar order: Building peace through the rule of law and bottom-up approaches," 42 *Contemporary Security Policy* 197 (2021).

approaches that not only stabilize immediate conflicts but also address underlying causes of instability through sustained peacebuilding efforts.

7. Conclusion

The preceding sections have meticulously examined the normative evolution and operational challenges inherent in peacekeeping and peacebuilding under international law, highlighting both the successes and significant limitations encountered across diverse global and regional contexts, particularly within South Asia. Despite the varying mandates and operational modalities, a recurring theme is the limited efficacy of peacekeeping missions in achieving lasting peace without concomitant, robust peacebuilding initiatives. This underscores the critical need for a paradigm shift that integrates peacekeeping efforts with comprehensive peacebuilding strategies from the outset, moving beyond merely managing conflicts to actively transforming their underlying causes. Indeed, the success of future interventions hinges on developing learning organizations capable of adapting to fluid conflict dynamics and investing in forward-looking preventive peacebuilding measures. This necessitates a re-evaluation of foundational principles, such as consent, impartiality, and the use of force, within contemporary geopolitical landscapes to ensure that mandates are both achievable and ethically sound. Moreover, the evolving nature of conflict, characterized by hybrid warfare and non-state actors, further complicates the application of traditional peacekeeping doctrines, demanding innovative solutions that incorporate local complexities and foster indigenous ownership of peace processes. The limitations of peacekeeping without peacebuilding are further accentuated by the persistent challenges in achieving post-conflict reconciliation and societal transformation, as evidenced by case studies such as Kashmir and Northern Ireland where peacekeepers did not act as peacebuilders. . Therefore, future engagements must explicitly integrate peacebuilding components within peacekeeping mandates, fostering responsive and adaptive approaches to address the multifaceted challenges of post-conflict recovery and sustainable peace.

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