

THE UNITED NATIONS PEACE-KEEPING OPERATIONS IN AFRICA: - A LEGAL PERSPECTIVE

SCHOOL OF LAW
OBLIG. ESSAY
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By

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A dissertation submitted to the University of Zambia in Partial fulfilment of the requirements for the degree of Bachelor of Laws.

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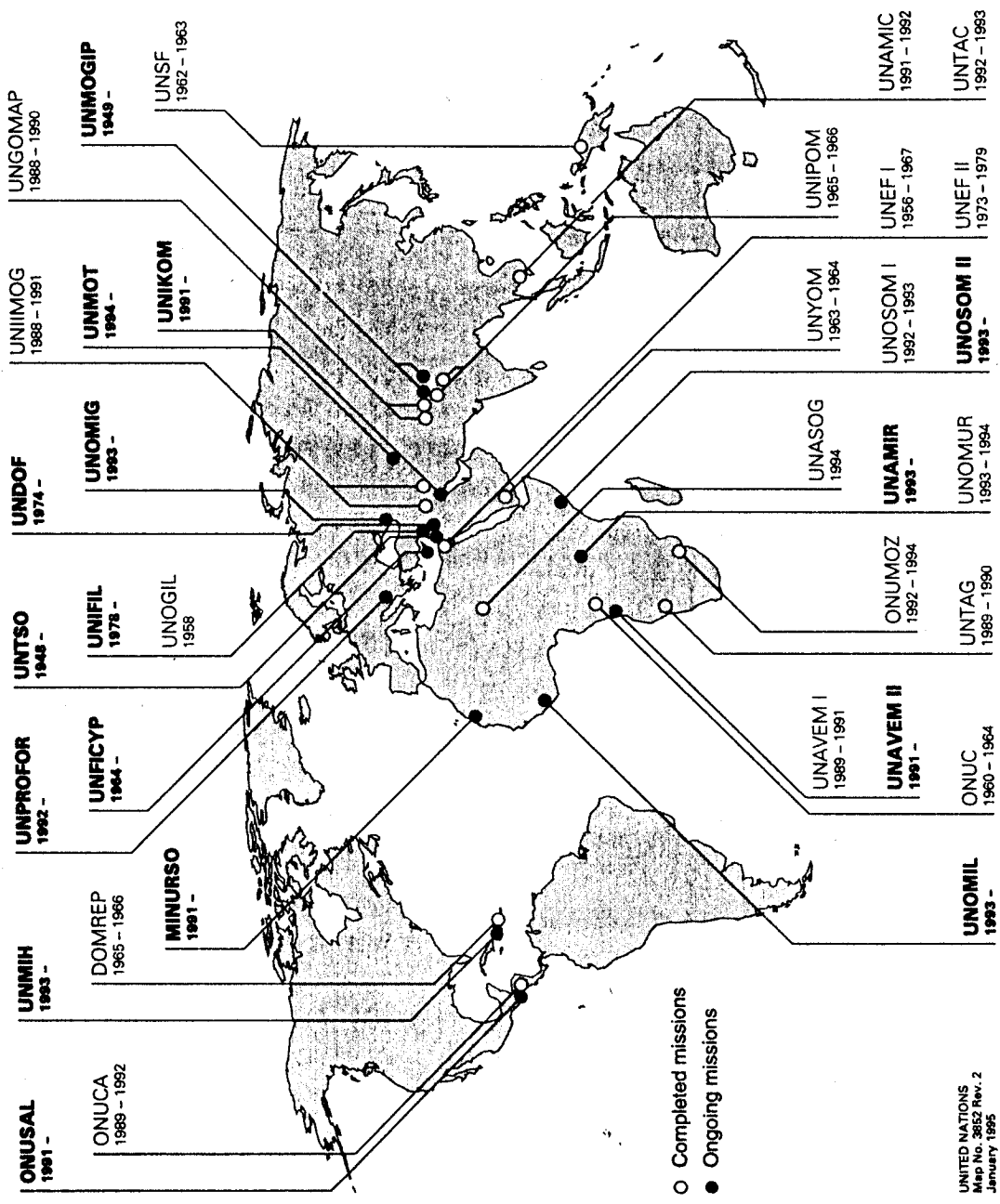
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DEDICATION

To my family:

Wife Christine, Mwatitha and Daulile

and

Our Parents.

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INTRODUCTION

The United Nations was founded in 1945 to help stabilise international relations and give peace a more secure foundation. Since then it has evolved into an organisation in which collective search for stability founded on peace has increasingly become an overriding concern. Today peace and security are no longer seen only in terms of absence of military confrontation and conflict. Economic and social developments are an intrinsic part of maintaining peace and security. Where there is no peace development will be difficult.

Throughout its history the UN has always been called upon to prevent a dangerous situation from escalating into war. It has also always been called upon to persuade opposing parties to use the **"conference-table"** rather than weapons, and to help restore peace when conflicts occur.¹ Methods of preventing or ending conflicts have taken many forms. In some disputes, the UN has dispatched peace - keeping forces, observer or fact - finding missions, good - office missions, mediators and Special Representatives.²

¹ The Security Council of the Un is the organ primarily responsible for maintaining peace and security. Under Article 25 of the Charter Member States agree to accept and carry out the Council's decisions. Recommendations of the Security Council decisions, but may influence decisions through their weight as the expression of world opinion.

² The Secretary General is the channel of communication between conflicting parties. His good-offices have increasingly been used to bring parties together to work out equitable agreements.

In some cases, it has provided the forum for debate and negotiation and a channel for quiet diplomacy. Peace-keeping operations are mounted to help control conflicts that threaten international peace and security while lasting political solutions are sought.

These operations fulfil the role of an impartial third party to help create and maintain cease-fire and form a buffer zone between warring states and parties, thus facilitating the search for a peaceful settlement of conflicts through diplomatic channels. They also serve to implement agreements aimed at ending a conflict and establishing conditions for an overall settlement. Peace-keeping operations are established by the Security Council and directed by the Secretary General. They are established with the consent of the host Governments, and usually also of the other parties involved. The operations do not interfere in the internal affairs of the host country,³ and may not be used in any way to favour one party against another in internal conflicts. Peace-keeping forces are made up of contingents of troops provided by Member States⁴ and financed by the international community. These forces have light weapons, but can use them only in self defence.

³ **The UN cannot at will send its officials and armed forces into the territory of Member States to uphold its authority.**

⁴ **The UN is not intended to have the kinds of functions and powers that are commonly vested in states, and as such it cannot directly force individuals to serve in its armed forces for peace-keeping.**

With the end of cold war, the demand for UN peace-keeping has increased dramatically. To peace-keeping character has also changed. Apart from military activities, the whole range of civilian services have been involved. In 1988, the UN peace-keeping forces were awarded the Nobel Peace Prize.

Peace-keeping in our study will encompass the use of an international force in fact finding observation and surveillance, monitoring a cease-fire, truce, and such related issues. The study focuses on the pattern of peace-keeping operations by the UN in the following five African countries: The Congo (now Zaire), Angola, Mozambique, Somalia and Rwanda. In our conclusion we shall determine whether a permanent UN peace-keeping force is feasible; whether the OAU should establish its own African Peace-keeping force and lastly which way forwards for the UN peace-keeping operations.

CHAPTER ONE

UN PEACE-KEEPING: AN OVERVIEW

The first and foremost task of the UN¹ is the global maintenance and preservation of international peace and security.² The scheme of actions under the UN Charter are designed to achieve Peaceful settlement of disputes likely to disrupt the peace and for collective action in the event that the procedures of pacific settlement fail.

The UN Charter provision marked an attempt to improve on the League of Nations system for peace preservation, which was based on a universal responsibility for collective security. The League system had failed, because it was not attuned to the political realities of the inter-war period. The League was neither a truly universal organisation nor did it enjoy the whole-hearted support, especially in its peace-keeping efforts, of all its members. Its potential usefulness all important area was further impaired by

¹ President Franklin D. Roosevelt of the United States of America (USA) coined the term "United Nations" and was first used in a Declaration of 1st January, 1942, during the 2nd World war, when representatives of 26 nations pledged their Governments to continue fighting together against the Axis Power.

² Articles (1), 2(3)(5) of the UN Charter; see also Goodrich L.M., "The Maintenance of International Peace and Security," *International Organisation*, Vol. XIX, 1965, p. 429.

organisational defects.³

Having realised the failures of the League of Nations, the UN conceived another idea of peace-keeping through peace enforcement. In this regard the Uniting for Peace Resolution 337(v) was passed and adopted by the General Assembly. This resolution came up as a result of Korean Conflict, when North Korean troops crossed the 38th parallel into South Korea (the Republic of Korea) in June, 1950. The resolutions of the Security Council dealing with the Korean case were adopted without veto. The General Assembly was urged by a group of states acting under the leadership of the USA to assert its own authority in cases in which the Council failed to act because of the veto. The Uniting for Peace Resolution was the form in which that assertion was cast.⁴

The adoption of the above resolution opened a new avenue for safeguarding the peace and security. Given the difficulties in securing Great Power agreement within the Security Council, the peace maintaining function of the UN was given a broader base. This resolution provided a procedure for adopting a plan for action when the circumstances might be appropriate.

On the other hand, Article 41 of the Charter explicitly states:

³ Conwell E.T.P., *The League Council in Action*, Oxford University Press, 1929, p. 230.

⁴ Sweeney, J.M., Oliver, C.T. and Leech, N.E., *Cases and Materials on International Legal System*, New York, The Foundation Press, 1981, pp. 1300-1301.

"The Security Council may decide what measures not involving the use of armed force are to be employed to give effects to its decisions ..."

The underlying assumption of this Article is that the Security Council has discretionary power to decide when and when not to use armed forces in order to give effect to its decisions. This does not completely rule out the use of armed force.

Article 24 of the Charter proves that the members of the UN shall:

"Confer upon the Security Council primary responsibility for the maintenance of international peace and security."

This provision draws our attention to the fact that the Council has only the primary responsibility, in matters affecting international peace.

Reliance on the Uniting for Peace in order to refer an issue on which the council is unable to act, to the General assembly is probably unnecessary. It would seem that the provisions of this resolution which create a leeway for the establishment of the Peace-keeping Force under the auspices of the UN, has been put aside, or avoided. Instead the principle of consent or reliance on Articles 11, 14 and 40 is preferred. The resolution is therefore merely used as a device to call the General Assembly into special sessions whenever any dire need arises.

A. THE GENESIS OF UN PEACE-KEEPING OPERATIONS:

1. THE FIRST ATTEMPT - THE KOREAN CONFLICT:

Chapter VI of the UN Charter deal with pacific settlement of disputes. The first attempt at UN peace-keeping was made during the Korean conflict. When North Korean troops crossed the 38th parallel into South Korea (the Republic of Korea) in June, 1950, the Security Council was able immediately to adopt resolutions responding to this event. The Council determined that there had been a breach of the peace. It recommended that members of the UN furnish assistance to South Korea and that such assistance take the form of military forces available to a unified command under the USA and authorised to use the UN flag.

The Soviet Union's representative was not present in meetings of the council of that year. For this reason, the resolutions of the Council on the Korean conflict were adopted without veto. After the representative of the USSR returned to the Council meetings, the General Assembly already been authorised to act in cases in which the council had failed to act because of the veto. Earlier, the USSR had vetoed the establishment of the UN force under the leadership of the US. It is on this basis that the Uniting for Peace Resolution was cast. The USSR considered the UN action in Korean conflict as illegal. Fighting continued until 27th July 1953, when an Armistice Agreement was signed between the UN, Chinese and North Korean commands. This Agreement established a Military Armistice Commission to supervise the implementation of Armistice Agreement and to settle any violations through

negotiations.

2. THE SECOND ATTEMPT - THE EGYPTIAN SUEZ CANAL CRISIS:

Another test case for the UN came up following Egypt's nationalisation of the Suez Canal Company in July, 1956. Israel, France and United Kingdom (UK) intervened militarily against Egypt. The UN General Assembly, meeting in an emergency special session, called for a cease - fire and withdrawal of those forces from Egyptian territory, and authorised the establishment of the United Nations Emergency Force (UNEF).⁵ This was the first truly UN peace-keeping force. The origins of this force lies in the various resolutions which had been adopted by the General Assembly during its first emergency special session held from 1st - 10th November, 1956, and convened under part A of the Uniting for Peace Resolution.⁶ UNEF supervised the troop withdrawals and was deployed on Egyptian territory with Egypt's consent, to act as a buffer between Egyptian and Israel's forces. Through its patrols, relative peace was brought to the area of conflict. The canal blocked as a result of the conflict was cleared by the UNEF. This Force was withdrawn in May 1957 at Egypt's request.

⁵ General Assembly resolution 5/1588.

⁶ General Assembly No. 998(ES-1) in UN DOC A/RES/391, brought UNEF into Force. Other Assembly resolutions include Resolution 997(ES-1) in UN DOC A/RES/390; Res. 1000 (ES-1) in DOC A/RES/394 and Res. 1002 (ES-1) in DOC A/RES/396.

B. THE LEGAL BASIS FOR THE ESTABLISHMENT OF UN PEACE-KEEPING FORCES

Articles 24-26 of the UN Charter stipulate the functions of the Security Council. The specific powers of the Council for the discharge of these functions are provided for in Chapters VI, VII and XII. The essential distinction between the Council acting under Chapter VI and Chapter VII is that in the former the action will be recommendatory rather than mandatory. In the latter it is much more mandatory than recommendatory.

Chapter VII of the Charter provides the means for the fulfilment of the Security Council's functions other than those under Chapter VI. Article 41 authorises the Council to decide upon the use of measures short of armed forces. However, Article 42 supports Article 41 in that Article 42 permits such military reaction by the Council to be taken when deemed necessary to maintain or restore international peace and security.

According to Article 39, the Council may make recommendations for the establishment of a UN Force without further deciding upon measures under Articles 41 and 42. An interpretation of the powers inherent in Article 39 is of special significance in respect of a body of opinion which regards action under Article 42 as being impossible without the implementation of Article 43. Article 43 envisages the conclusion of agreements between the security council and other UN members for national armed forces to be made available to the council. The wording of Article 42 is broad, leaving open both the methods of recruitment of forces and the precise nature of

their command. It is clear from Article 43 that national contingents cannot be compelled to fight on behalf of the UN without special agreements being concluded. However, their services under Article 42 could be offered by Member States in response to a recommendation under Article 39.

It follows, therefore, that a UN Force may be established by a recommendation under Article 39 simpliciter. It could also be by a recommendation under Article 39 in reference to Article 42. The power of recommendation has both a substantive and a procedural aspect. The Council may recommend under Article 39 that certain measures be carried out. This is the substantive aspect. Alternatively, once collective measures have been decided upon, the procedure may be adopted of using recommendations to carry them out.

Article 106 seems to contradict Articles 39, 42 and 43. Our view is that Article 106 was intended to be of a temporary nature. Failure to implement Article 43 cannot be said to have extended indefinitely its application.

The establishment of a UN Force under Article 43 subsequent to Article 39, would point to a Force of a decidedly military nature. Possible constitutional basis for a UN Force is in Article 41. However, this Article has been considered as the another possible basis for a UN Force with functions which do not comprise the use of armed force, such as an observer group or perhaps even an

interposition force itself.⁷

The establishment and deployment of an interposition Force could constitute a provisional measure under Article 40 of the Charter, though if there is merely a threat to peace, such measures might be inappropriate. Article 40 authorises the Council to **"call upon"** UN members to abide by the provisional measures. The question that arises is **"how far does the "call" impose legal obligations on members to comply with it?"** In a situation where Article 10 is implemented to show provisional measures and to establish a Force to supervise or to assist in the implementation of these measures, is the term **"call upon"** to be characterised as mandatory? Kelsen contends that the Council has the option of making the **'call'** under Article 40.⁸ This becomes legally binding because it falls within the meaning of **"recommendations"** of Chapter VI and **"deciding on measures"** of Chapter VII. Article 40 provides a binding force to a decision made under it.

The adherence to a principle of non - intervention (Article 2(1)) may be evidence that the legal basis of the UN Force in Art. 40 rather than Article 42. However, there is danger of the conclusion being drawn from the wording of Article 2(7). This is because where the action taken is **"enforcement action"** against an aggressor, the non-applicability of the domestic jurisdiction

⁷ Sohn, L.B. "The Authority of the UN to Establish and Maintain a Permanent Force," (1958), 52 *A.J.I.L.*, p. 230.

⁸ Kelsen, H., *The Law of the United Nations*, London: Butterworths, 1950, p. 740.

clause to the UN action cannot be absolute. The reason is that the UN is always limited by the purpose and principles of the Charter. However, where an action is taken under Article 40, the situation cannot be of "**domestic jurisdiction.**" Therefore, we should argue that since an action under Article 40 may be taken pursuant to a finding of aggression and a threat to the peace and security, such an action would in such instances constitute a sanction, and in consequence would not be subject to Article 2(7). The difference between an action taken under Articles 40 and 42 is one of degree, because the difference in the aims and purposes of the action will alone give an indication of which matters are necessarily connected with the successful fulfilment of the Un purposes.

When the council indicates that its measures are mandatory, these '**calls**' will be tantamount to decisions of the council to which Articles 2(5), 25 and 49 of the Charter will apply. Therefore, all member states will be under a duty to promote the operations of the peace-keeping force and not to impede them. Instances on which specific reliance on Article 40 are few. It is in view of the above that even in the most controversial case of the Congo (Zaire), no specific finding to this effect was ever made by the council. Moreover, in its *ADVISORY OPINION ON CERTAIN EXPENSES OF THE UNITED NATIONS*,⁹ the case ICJ failed to support the view that ONUC's¹⁰ constitutional basis is to be found in Article

⁹ ICJ Reports, 1962 at p. 166.

¹⁰ United Nations Operations in the Congo

40. It merely offered a general view that the resolution on ONUC fell within Chapter VII of the Charter.

C. **PEACE-MAKING, PEACE KEEPING AND PEACE BUILDING: AN AFRICAN PERSPECTIVE**¹¹

1. **Peace-making**

One of the main function of the UN as provided in Articles 1(1), 2(3) and the entire Chapter VI of the Charter is to make peace by a way of peaceful solution to a crisis.

Namibian (South West Africa) crisis presents a good test case. Frequent resort was made to the Court by the General Assembly and later by the Security Council to seek pacific way of solving crises. Although the legalities of the Namibian crisis were laid down in various advisory opinions and findings of the political organs of the UN, they were not self enforcing.¹²

In order to find a peaceful way of solving the Namibian crisis the UN had to bring South Africa to terms through the procedures of Chapter VI of the Charter and made South Africa to accept self determination for Namibia.

Usually, when the UN is in the exercise of carrying out its functions of pacific settlement of disputes under Chapter VI of the Charter, it appoints either a mediator, conciliator or a fact

¹¹ Abi-Saab G., "Namibia and International Law: An Overview," *Africa Yearbook of International Law*, Vol. 1, 1993, pp. 3-11.

¹² Advisory Opinion on the Continued Presence of South Africa in Namibia (South West Africa), [1971] ICJ Rep. 16

finding commission or entrusting the Secretary General with such a mission which he would undertake personally or through a Special Representative. For instance in the Namibian case the UN was represented by the Contact Group which came into effect by virtue of the Security Council resolution 385 of 1976 which laid down the requirements of the UN. This demonstrates that the UN functions can be undertaken by its organs. Peace can be brought about by peaceful means and not otherwise. But once competent organs of the UN have acted on the matter which involves fundamental principles of the Charter, they can not be set aside.¹³ Settlement of disputes outside the UN is always possible and even encouraged by the Charter under Article 33(1).

2. Peace-keeping:

The implementation of the settled proposal called for the creation of the UN Transition Assistance Group (UNTAG). This marked the advent of a new generation of UN peace-keeping operations.

The first generation of peace-keeping was the UNEF operation in response to the Suez crisis of 1956. During this phase peace operations were used to serve as an emergency action to contain and freeze an already explosive situation after hostilities or disturbances. Peace-keeping is meant not to be a temporal measure but permanent.

¹³ Ibid., p. 10.

Peace operations are not meant to be enforcement measures but measures of adjustment as per Article 14 of the Charter. They are based on consent of the state on whose territory they are to be employed. The legal characterisation which determines the principles governing the functioning of operations include; the autonomy of the operations, because they have to implement an international mandate; non-intervention in the internal affairs of the territorial state. The UN personnel cannot use force except in self defence. Once these are effected peace-keeping is bound to be guaranteed.

3. Side effects of Peace-Keeping:

Once the edge is taken off the crises through peace-keeping they tend to fall into political oblivion, and pressure to solve substantive disputes underlying them slacken. Instead of paving the way for peace-keeping, the peace-keepers tend to replace it, unwittingly contributing to the perpetuation and depending of the underlying conflicts. UNTAG as well, sometimes, instead of proceeding with peace-making and remain detached from it, comes as part and parcel of the substantive solution elaborated to settle the crisis or as a means of implementing it.

UNTAG however, deals with internal situations through international dimensions and ramifications. UNTAG is called upon to fulfil such predominantly internal functions such as the neutralisation and confinement of contending troops. The humanitarian components are very important as well as substantial.

They are usually entrusted to specialised organs of the UN, particularly United Nations High Commission for Refugees. All these are tasks which go beyond peace-keeping.

4. Peace-building:

This is a generic, non-technical term, which is commonly understood to mean the improvement, through cooperation of the general economic, social and cultural conditions and respect for human rights, with a view to eradicating progressively the deep roots of the conflict as per Article 1(3) of the Charter.¹⁴ Peace-building is the creation of a more favourable condition for social and political stability and conciliation in the former seat of crisis.

In peace-building, the operations ensure that elections are free, human rights respected, and no reprisals taken against political opponents. Certain activities such as the resettlement of refugees and measures for their social and political integration belong to peace-building.

D. THE LEGAL STATUS OF UNITED NATIONS FORCES IN FOREIGN TERRITORY DURING PEACE TIME:

The United Nations Forces in the receiving state are accorded immunity which is absolute. However, the presence of the UN forces in a particular country sometimes raises certain questions of

¹⁴ Ibid., p. 13.

international law, and gives rise to a conflict in the interests of the sending states and the receiving state. The sending states prefer greater immunity from local jurisdiction of its armed forces. On the other hand, the receiving state wants to guard its sovereignty jealously.¹⁵

In view of the above it has been discovered that the receiving states lay down conditions or define the extent of the exercise of jurisdiction over the legality of the members of the UN forces.¹⁶

These relate to matters concerning the discipline or internal administration of the forces and those relating to the exercise of Criminal and Civil jurisdiction over them. Of these the one relating to the exercise of criminal jurisdiction is the most crucial.

The above views or theories have developed in order to state the extent to which the United Nations should retain jurisdiction over its armed forces in a receiving state along with the limits within which the latter can exercise jurisdiction over them.

Under the Charter - Chapter VII, the UN may in the last resort have to take armed action against a State or Party which has been deemed an aggressor and has refused to heed to the directives of the Council. Under the same Chapter, the UN Forces may have to

¹⁵ Boyd J.M., *United Nations Peace-keeping Operations*. (New York: Praeger Publishers, 1971), p. 54.

¹⁶ Jonkheer, H.F. van Panbuys. "Some Recent Developments of International Law in Respect of the Conflicts of Jurisdiction Resulting from the Presence of Foreign Armed Forces in the Territory of State." *Netherlands International Law Review* II, 1955, p. 254.

enforce the decisions of the Security Council for ending a breach of the peace, or even a serious threat to the peace in circumstances in which, though no State has been determined to be an **"aggressor,"** one or both parties refuse to comply with an order for provisional measures under Article 40. When this situation is in effect, the UN Force is likely to be acting against certain elements or governments. In this case the UN Force will be engaged in hostilities and will need to be a fully fighting military force.

Loosely, we may say that it is engaged in **"belligerent functions"** though the term **"enforcement measures"** is to be preferred.¹⁷ It may as well so happen that the UN Force might be deployed or **"switched to action"** with a view of enforcing a judicial decision, although this is yet to be done. Such an action may be done by the Security Council characterising a state's refusal to comply with the decision as a **"threat to the peace, breach of the peace or act of aggression"** under Article 39 of the UN Charter, thereby utilising its power as provided under Chapter VII to secure this end. Sometimes it may be that in relation to judgements of the International Court of Justice, Article 94 of the Charter gives an entirely separate legal basis for such an action.¹⁸ In any event, the action would be directed against the recalcitrant State and would partake of the character of enforcement action whether technically taken under Chapter VII of

¹⁷ Bowett, D.W., *UN Forces*. (New York, Praeger Publications, 1956), pp. 485, 496 - 499.

¹⁸ Schacter, "The Enforcement of International Judicial and Arbitral Decisions," (1960) 54 *A.J.I.L.* pp. 14 - 24.

the UN Charter or not.

In conclusion the concept of peace-keeping is one beset with endemic problems and difficulties. Since peace-keeping only checks conflicts or maintains cease fires, some observers have been critical, claiming that Un peace operations **"tend to perpetuate festering sores without healing them."**¹⁹ For this reason, it has been said that the UN peace-keeping operations foster a false sense of security without stimulating the will for settlement. A good example is the situation in Somalia, where Peace-keepers started withdrawing their troops despite the escalation of fighting between warring factions.

Elsewhere instances as above have occurred. For example, the UN Secretary General announced on and about 7th June, 1995 and approved by the Security Council on 3rd July, 1995 that the UNOMIL (United Nations Observer Mission in Liberia) would come to an end before the end of 1995 despite the hostilities existing in that Country. In view of such short falls, some critics are unwilling to let money and manpower be committed year after year for operations that merely postpone allegedly inevitable aggressive actions.

It has been suggested that disputes be allowed to run their course until one side is in the ascendancy. Perhaps that is why the UN peace-keepers withdrew from Somalia. A good example of one such advocate of the above view is former Secretary of State of the

¹⁹ Cox, A.M., *Prospects for Peace-keeping*. New York: Praeger Publishers, 1967, p. 7.

US, Dean Acheson who said that it was better to let parties to a conflict to fight it out until a solution was reached, instead of attempting UN or other third party intervention.²⁰

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(One wonders whether this was possible when Iraq invaded Kuwait; USA was at the fore-front advocating for intervention). In view of the above, we should submit that although Dean Acheson advocated for this position, usually there might occasionally be some merit in allowing a small dispute to be resolved by "reasonable" aggressive action or counteraction, but frequently the result is temporary, because you cannot suppress depression and burning zeal to revenge. In this regard, the unsatisfactory for the defeated party to a conflict might in time rise again to avenge that defeat and as a result the conflict return.

CHAPTER TWO

THE UNITED NATIONS PEACE-MAKING IN THE CONGO (ZAIRE)

A few days after Belgium hastily granted independence to the Congo on 30th June, 1960, tribal violence broke out in the country - contrary to the Belgo - Congolese Treaty of Friendship of 29th June, 1960, Belgian metropolitan troops forcibly landed in the Congo, ostensibly to protect Belgian nationals. The Congolese Government characterised this Belgian action as external aggression and promptly requested the UN for military assistance to protect the independence and territorial integrity of the Congo against Belgian intervention.

Acting under Article 55 of the UN Charter the Security Council examined the Congolese request. The Council described the Belgian intervention as constituting an act of aggression and characterised the Congo situation as a threat to international peace and security. This was followed by the adoption of Security Council resolution S/4387 on 14th July, 1960, which called for the withdrawal of Belgian troops from the Congo. The Congolese Government declared war against the Belgian troops and repudiated the unratified Treaty of Friendship.

A. THE UNITED NATIONS LEGAL MANDATE TO ACT IN THE CONGO (ZAIRE)

Article 2(7) of the UN Charter clearly does not authorise the UN to intervene in domestic matters of its members states unless such members invite the UN to settle disputes under the present Charter. The Congolese Government formerly appealed to the UN to send in UN troops to the Congo. This appeal was referred to the Secretary General and the Council in accordance with Article 99. This Article authorises the Secretary General to **"bring to the attention of the council any matter which in his opinion may threaten the maintenance of international peace and security."**

In reaction to the above, the Council adopted a resolution¹ on 14th July 1960, which among other things established the United Nations Operations in the Congo (ONUC). This decision was undertaken pursuant to the Charter Art 40. The UN mandate in the Congo was, arguably, also based on the general principles and purposes of the Charter as stated in Art. 1(1) and Art 24.² Furthermore, in the Secretary-General's report on the implementation of the July 14 resolution, he referred to a **"a threat to peace and security"** the Congo as the justification of UN intervention. References to Articles 25 and 49 of the Charter also show the mandatory character of the Council's decisions.

¹ UN Security Council S/4387

² This Article vests primary responsibility for the maintenance of peace and security in the Security Council.

The view that Chapter VII of the Charter was applicable to the Congo situation finds support from the International Court of Justice (I.C.J.) in its opinion on the EXPENSES CASE,³ the Court state that:

"In the light of the appeal from the Government of the Congo, the report of the Secretary General and the debate in the Security Council, were clearly adopted with a view to maintaining international peace and security."

However,, it is doubtful whether the use of troops for internal security purposes at the request of the territorial Government could be tantamount to an enforcement action. The Secretary General had emphasised in his statement to the Council on 13th December 1960,⁴ that ONUC operations were not based on Articles 41 and 42 of the Charter, which provide for enforcement action of measures, and which would override the domestic jurisdiction limitation of Art. 2(7). In our opinion, however, it can hardly be believed that the existence of a request, or consent, by the Congolese authorities really affects this issue. Admittedly, it could scarcely be argued that the dispatch of the UN troops constituted on "**intervention**", but this is a separate issue from the one under consideration. The resolution by the security

³ I.C.J. Reports, 1962, p. 175.

⁴ UN Document S/P.V. 920, Para 73.

Council adopted on 21st February⁵ in 1960, did not change the legal basis of ONUC.

We submit that although the above resolutions in their overall context, conferred upon ONUC the power of initiative which went beyond the purely defensive role to which it had previously been limited, they cannot, as a matter of fact, be regarded as authorising "**enforcement action**" or shifting the constitutional basis to Article 42. There was no re-negotiation subsequent to the adoption of these resolutions, between the UN and its member states. In support of this view, reference to the opinion of the ICJ in the EXPENSES CASE,⁶ should suffice. The court stated that:

"The operation (ONUC) did not involve preventive or enforcement measures against any state under chapter VII ..."

This should further strengthen our submission at this point.

ONUC not being an enforcement action under Articles 41 or 42 and not being a recommendation under Art. 39, leaves only Article 40 as the possible constitutional basis of the UN Force. The establishment of ONUC was by the Council resolution and it was intended to achieve the general purpose of the UN set out in Art. 1(1) in fulfilment of the Council's primary responsibility for the

⁵ UN Security Council S/4382

⁶ ICJ Reports 1962, p. 177.

maintenance of international peace and security conferred by Art. 24.

Although the basic resolutions were silent about their legal foundation, it is evidence that Council had made an implicit finding under Art. 39 through which the Secretary General under Art. 98, "**shall perform such functions as are entrusted to him.**" He establishment of ONUC, whose functions and purposes coasted, in the main, of provisional measures under Article 40 of the Charter.

B. THE ROLE AND FUNCTIONS OF THE U.N. OPERATIONS IN THE CONGO (ONUC)

The ONUC was clearly designed to assist the Congolese Government in the maintenance of law and order. The operation had no direct functions in relation to the withdrawal of Belgian troops, though indirectly it provided Belgium with a way out of the Congo.

1. Peace-Making in the Congo crisis:

In seeking a peaceful solution to the Congo crisis, the Soviet Union sharply attacked the USA, accusing the US of "**direct participation**" in the conspiracy of the colonisers against the young Republic of the Congo.⁷ This led the Soviet Union and Communist Poland to abstain at the voting time of resolution

⁷ **Abi-Saab G., *The UN Operations in the Congo 1960-1964*, Oxford, Oxford University Press, 1978, pp. 14-17.**

S/4387. This was intended to defeat the proposed resolution. Despite the above problems, the resolution was passed with abstentions by other members such as France, China and the United Kingdom, because they could not support Belgian troops withdrawal before the ONUC had taken over. They did, however, support the dispatch of the ONUC.

Ghana was the first African State to send troops to the Congo after the above resolution had been adopted. ONUC was the second UN peace-keeping operation on the African continent the first being UNEF in Egypt.⁸

Despite its greater size and heavier tasks, ONUC was constituted on a much more formal basis than the UNEF. In view of the urgency of the matter and the difficulties involved in reaching agreement among UN members the Security Council did not lay down in its resolutions even the basic principles on which the Force should be organised, as the General Assembly had done in the case of UNEF. The organisation of the Force, including the appointment of its Supreme Commander, was thus left to the Secretary General, who, however, made detailed reports to the Council. In September 1960, when the Security Council was unable to agree on what action to take after the split between President Kasavubu and Prime Minister Patrice Lumumba, the matter was referred to the General Assembly under the Uniting for Peace

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See Chapter 1, This was a breakthrough for the Un because, the resistance by anti-colonialists and Soviet Union were no longer in effect.

Resolution. However, the General Assembly resolutions did not concern themselves directly with the Force, except for the budgetary aspects.

The initial resolution of 14th July did not contain any reference to the establishment of a UN Force. Hence, it was the Secretary General who, by delegation of authority, was obliged to give substance to the vague terms of this resolution by formulating the principles which he conceived to be applicable to the Force. The fact must be borne in mind that originally it was the inability of the national security forces of the Congo⁹ to carry out their task of maintaining law and order that led indirectly to the decision by the Security Council to initiate the ONUC operation. The restoration of law and order whose breakdown the Belgians said had necessitated the return of their troops, would be taken over by ONUC, thus paving the way for Belgian withdrawal, and that ONUC would carry on until the Congolese were able to take over.

The law and order mandate was contained in the Security Council resolution S/4405 which was adopted on 22nd July, 1960. By the General Assembly resolution of 20th September 1960, "the Secretary General was explicitly requested to assist in the maintenance of law and order. In the discharge of this basic responsibility, ONUC patrolled areas threatened by local violence and disorder, guarded and defended the residence of Congolese political leaders established neutral or "protected areas" in the

⁹ Because of their mutiny one week after independence.

towns and granted protection and asylum to political refugees. It also controlled radio stations in order to prevent the broadcast of inflammatory speeches which could incite people to be more violent.

At the heart of all these measures taken by ONUC was the dominant consideration given to the protection of life and property. This was inextricably linked to the maintenance of law and order, and it was the primary task of ONUC throughout the operation. However, ONUC was not specifically authorised to prevent civil war or to expel mercenaries. But in an effort to promote peace, the question of disarming the fighting troops became of paramount importance. But even any action of disarming troops was strictly limited to soldiers who had broken away from their command, which had been unable to control their actions.

It is thus clear that while ONUC had no specific authority to disarm the troops as such it nevertheless considered as an essential part of its **"Law and Order mandate"** to disarm such mutinous elements of the troops because they were a threat to life and property.

2. RELATIONS BETWEEN THE UN AND THE HOST STATE

Since the ONUC operations were never conceived as **"enforcement action"** against the Congo, but based on the consent of the Congolese Government, relations between the UN and the host state necessarily had a **"consensual"** basis. Consent of the Congo was given on the basis of the Council resolutions, because the Congo had accepted these resolutions as definitive of the functions of

the Force. It follows therefore that the Council resolutions must be regarded as the overriding factor in determining the relationship between the UN and the Congo, and the specific agreements reached were by way of supplementing or complementing those resolutions.

The question to be considered is whether the UN control and authority over ONUC was limited by the fact of the Force operating with the consent of the host state. The position is that the host state has no authority over the UN Force. This may equally be said of ONUC, which went to assist the Government in the throes of anarchy to maintain law and order. The UN Force assumes functions of the internal security forces of a State. So far it is only in the case of the Saar where the Council of the League of Nations, established the international force, and placed it at the disposal and under the authority of the territorial government.¹⁰ However, the Saar Government was virtually a League Commission.¹¹

In the case of ONUC it was fundamentals to the policy of the Un that the Force should preserve its international character. But this (principle) was misunderstood by Congolese authorities. For instance Lumumba had accused the Secretary General that he had failed to co-operate with the Congolese Government.¹² Similarly,

¹⁰ See Resolution of 11th Dec., 1934 in League of Nations, Official Journal (1934) p. 1762.

¹¹ Treaty of Versailles of 1919, Pt. 111, 2 iv.

¹² Security Council Doc S/4421 (7th Aug 1960).

President Kasavubu had demanded in January, 1961 to issue orders to the UN Secretary General.

The principle of maintaining the international character of the Force and thereby exclusive UN control also implied that the UN would have final authority as to the composition of the military elements. The views of the host Government may be relevant, they are but one of the factors to be considered and are by no means decisive as to detract from the principle we have been discussing.

3. FINANCING OF ONUC

The Costs of ONUC were covered by the Un in essentially the same manner as those of UNEF. In 1961 the ONUC expenses 83 per cent were for direct expenses and about 17 per cent were for reimbursement to the Governments providing contingents. The General Assembly had expressly decided that the expenses were **"expenses of the organisation"** subject to legally binding assessment of Member States under Article 17 of the Charter, but that they were nevertheless to be kept separate as being essentially different in nature from the expenses under the regular budget. However, some Member States refused to accept this decision and to pay the corresponding amounts assessed upon them in respect of UNEF and ONUC. Consequently, the General Assembly, by its Resolution 173(XVI) decided to submit the question to the ICJ for an advisory opinion. In **CERTAIN EXPENSES OF THE UN (ADVISORY OPINION)**,¹³the

¹³ [1962] ICJ Rep 151, 153, 156, and 162.

court was of the opinion that expenditures authorised in General Assembly resolutions relating to UN peace-keeping operations in the Congo and UNEF constituted "**expenses of the Organisations**" within the meaning of Article 17(2) of the Charter.

The importance of the above case in our opinion is based on the reasoning that certain members of the Un refused to pay amounts assessed against them as "**expenses of the organisation**" (Article 17). The members refusing claimed that ONUC did not qualify as such expenses. The significance of this case is attributed to financial implications, since Art. 19 of the Charter prescribes a loss of the right to vote in the General Assembly in the case of certain financial delinquencies on the part of a member. The Advisory Opinion of the court is significant because of its analysis of the constitutional powers of the UN and its organs to employ or authorise military force.

4. Restoration of Peace to the Congo (Zaire):

Following the recovering of Parliament in August, 1961, under the auspices of the UN, the main problem was the attempted succession of Katanga, led and financed by foreign elements through Moitse Tshombe. In September and December 1961, and in December 1962, the Secessionist forces led by foreign mercenaries clashed with UN Forces. The Secretary-General died on 17th September 1961 in the plane crash on the way to Ndola (Zambia), where talks to end hostilities were to be held.

In February 1963, after Katanga had been reintegrated into the Congo, a phasing out of the UN Forces began, with the goal of terminating it by the year's end. The Congolese Government, however, requested the General Assembly to leave behind a reduced number of troops for a further six months. The Force was completely withdrawn by 30th June, 1964.

In conclusion, we submit that the Congo crisis provided the UN with one of its sternest tests quite different from UNEF in Africa and other crises world over. It tested the UN managerial ability and guidance over some conflicts. The crisis in a deeper sense was a good measure of commitment of member states to the practice of international co-operation.

Three notable mistakes by the ONUC were that it did not disarm the Congolese army at the outset. Secondly, the Anti-Lumumba feeling among some ONUC officials and workers in the Congo was not secret to the Congolese. This was an indication of UN partiality in the internal affairs of the Congo. Thirdly, the Secretary General should not have entrusted the main responsibilities for the first phase of ONUC to three US officials working for the UN.

This is because it would not be difficult to imagine Washington's reaction if three Russians had been appointed instead. It should have been fair if the UN had entrusted the main responsibilities to representatives neutral states who are not also permanent members of the UN.

The Secretary General's (Mr. Hammarskjöld) conservative interpretation of the UN mandate was a source of increasing

dissatisfaction among UN Member States. The Congolese people soon learned that UN soldiers **"talk rather than shoot."** Because of this, ONUC soldiers were ridiculed and openly ignored and slandered. Many ONUC troops became disgruntled at the abuse of as well as the nature of their duties Hammerskjold took a conservative interpretation of the UN mandate because of the size and urgency of the operation which overwhelmed the UN and carried it with a built in conservatism. Secondly, the nature of the problem about the total breakdown in civil administration in the Congo was the first of its kind. Thirdly, the uncertainty and instability of the political control and power in the Congo was a novel experience too. Lastly, the constant and severe Soviet pressure and that of the USA encouraged conservatism.

CHAPTER THREE

THE UN PEACE-MAKING AND PEACE-MAINTENANCE IN ANGOLA AND MOZAMBIQUE

The Angolan and Mozambican conflicts can be traced to the fact that decolonisation in both countries was not consensual. Independence in both countries was attained through the barrel of the gun. The major liberation movements in Angola and Mozambique were, respectively, Movement Popular Para a Libertacao de Angola (MPLA) and Mozambique Liberation Front (FRELIMO). These came to power much to the disappointment of other guerilla groups, who then decided to continue with the "bush war" not for decolonisation, which had already been achieved, but in order to wrest political power from their rivals. The ensuing civil war was a war for political power.

In Angola, the Uniao Nacional para a Independencia total de Angola (UNITA) led by Jonas Savimbi became the principal faction opposing the MPLA Government. In Mozambique the Resistencia Nacional Mocambicana (RENAMO) led by Afonso Dhlakama opposed the FRELIMO Government. UNITA and RENAMO became insurgent forces, because their operations attained such a degree that they were in effective occupation of their respective territories. By so doing they constituted defacto authority in their areas. They were supported by Western Power (Capitalists) namely United States of America for UNITA and South Africa for RENAMO. The Governments in power were pro-communists supported by the Eastern Powers, namely, Russia, China, Cuba and so on. The purpose of terming them insurgents was to prevent their treatment as mere criminals or pirates.

In view of the above the USA did not recognise the Angolan Government, but the Angolan State. With the support to insurgent groups above, hostilities with their Governments reached such dimensions that outside powers were compelled to treat conflict in both countries as real wars between rival powers and not as purely internecine struggles. This means that these Powers recognised the state of belligerency.

In order to resolve the conflicts, the UN was involved in peace-making and maintenance in both countries. By virtue of Articles 101(1) and 100 of the Charter which authorise the Secretary General to appoint the staff, he appointed Special Representatives to both countries.

On 6th February, 1992, Miss Margaret Austee a Briton was appointed Special Representative for Angola.¹ Her task was to coordinate the projected activities of the UN in connection with the Angola Peace Accords, and as the Chief of United Nations Angola Verification Mission (UNAVEM). Her appointment having been approved by the Security Council, the office of the Secretary-General's Special Representative was in March, 1992, established in Luanda. One year later Miss Austee tendered her resignation and on 27th March, Mr. Aloune Blondin Beye, former Minister for Foreign Affairs of Mali, was appointed to replace Miss Austee with effect from 28th June, 1993.

In Mozambique, by Security Council resolution 782(1992) of 13th October, the Council approved the appointment of an interim Special Representative for Mozambique. The Secretary General

¹ United Nations, *UN Information Notes. UN Peace-Keeping*, New, Dept. of Public Information, 1995, p. 23.

appointed Mr. Aldo Ajello, an Italian, as his interim Special Representative for Mozambique. His tasks were to assist the parties to the conflict in setting up a joint monitoring machinery, in finalising the modalities and conditions for the military arrangements.² He would further assist to carry out the various other actions that were required of the said parties at the start of the peace process. In March 1993, Mr. Ajello was confirmed as the UN Special Representative for Mozambique.

A: THE UNITED NATIONS IN ANGOLA:

The UN Angola Verification Mission (UNAVEM) was originally established by the Security Council on 20th December, 1988, at the request of the Governments of Angola and Cuba. Its task was to verify the phased and total withdrawal of Cuban troops from Angola in accordance with the time-table agreed between the two Governments. The withdrawal was completed by 25th May 1991, more than one month before the scheduled date. UNAVEM 1 had carried out, fully and effectively, the mandate entrusted to it.

On 17th May, 1991, the Angolan Government insisted the United Nations to participate in verifying the implementation of the peace accords for Angola (Acordos de Paz). This was initialled by the Angolan Government and the Uniao Nacional Para a Independencia Total de Angola (UNITA) on 1st May 1991. The invitation was meant to prolong UNAVEM presence in Angola. The UN was to verify the arrangements agreed by Angolan parties for the monitoring of the cease fire and for the monitoring of the

² Ibid., p. 112.

Angolan Police during the cease fire period. The Security Council adopted its own resolution 696(1991) of 30th May, entrusting a new mandate to UNAVEM (thereafter UNAVEM II) and established the mission for a period of 17 months, until the general elections were held in 1992.

1. **VERIFICATION OF CEASE-FIRE**

The United Nations Verification Operation began as soon as the Angola Peace Accords were formally signed on 31st May, 1991. UNAVEM II teams of unarmed military observers were deployed at various assembly areas where troops of the two sides were assembled during the cease-fire, as well as at several critical points.

By Security Council resolution 696(1991) support was provided in the investigation of alleged violation of the cease-fire.³ UNAVEM II responded to requests for assistance and used their good offices to resolve problems within the monitoring groups. Factions troops and weapons were regularly under surveillance. The neutrality of Angolan Police was to be verified too.

A combined team of UNAVEM II police observes, monitoring teams composed of Government designated members and by UNITA were to visit police facilities. Police activities would be examined and allied violation of political rights investigated. The UN launched an Emergency food programme to relieve food shortages in the assembly areas.

³ United Nations, *Report of the Secretary General on the Work of the Organisation*, New York, UN Dept., of Public Information, 1992, p. 24.

Under Article 101 of the Charter the Secretary General established the office of the UN Special Representative in March, 1992, in Luanda. This office would coordinate all UN activities related to Angolan Peace Process.

By Security Council resolution 747(1992) UNAVEM was enlarged to include an Electoral Division. The UN role was to observe and verify the elections, but not to organise them. The electoral process was organised by the National Electoral Council (NEC), on which all legalised political parties in Angola were represented, and supported by technical assistance provided by experts and consultants from United Nations Development Programme (UNDP).

In order to establish a Government, elections were conducted. The ruling Government was represented by the Movements Popular Para a Liberta cao de Angola (MPLA) whereas the main opposition was by UNITA. Elections were conducted. UNITA lost the election and immediately withdrew its cooperation. MPLA won the legislative elections with 53.74% as against UNITA's 34.1%. By Security Council resolution 785(1992) of 30th October, the Council endorsed the statement by Special Representative on the election having been generally free and fair.

The discontent on the part of UNITA was shown through the heavy fighting that broke-out between Government forces and UNITA on 31st October, 1992, especially in Luanda. But through the UN efforts another cease-fire was effected on 2nd November, 1992.⁴

⁴ United Nations, *UN Information Notes*, New York, UN Dept., of Public Information, 1995) p. 26.

UNAVEM II operations were diverse in terms of their functions. The Congo operation was different from that of Angola in that UNAVEM II dealt with parties that were totally military in nature, whereas ONUC mainly did not encounter military form of fighting. In its efforts to make peace UNAVEM II worked to maintain the cease-fire. Four conditions for political dialogue were put up by the Government firstly, commitment to uphold the cease-fire, pursue dialogue and renounce violence; secondly, commitment to the principle of peace accord; thirdly, acceptance of the September 1992 results of the elections and fourthly, greater UN involvement in the peace-process and second round of elections.

By Security Council resolution 793(1992) of 30th November, UNAVEM II's mandate was extended. Through this resolution the council demanded, inter-alia, that the Government of Angola and UNITA should scrupulously observe the cease-fire. It appealed to both parties to engage in a dialogue aimed at national reconciliation. Attempts to restore dialogue between the two main parties namely, MPLA and UNITA failed, because heavy fighting soon broke out in many provincial capitals and other population centres of Angola.

In view of the above, UNAVEM II's original mandate became less and less relevant. Being unarmed, UN Forces were faced with mounting dangers, which became so extensive that some of UNAVEM's locations had to be evacuated. Three options for the future of UNAVEM II were firstly to maintain the mission at its current strength; to reduce UNAVEM II provincial deployments to only

about 6(six) locations;⁵ and thirdly, to expand substantially the UN presence in Angola in the event of significant progress in the peace process.

At the initiative of the UN, Angolan 1st round peace talks were held in Addis Ababa under the auspices of the UN. Some legislative issues remained to be resolved before a cease-fire could be arranged. The second round failed, because UNITA was absent.

The UN initiated other peace talks between the Government and UNITA in Abidjan in Cote d'Ivoire on 12th April, 1993. These talks lasted six weeks. Regrettably while very nearly reaching success it ended, without full agreement on the text of what became known as the **Protocal of Abidjan**. On the other hand the UN strengthened humanitarian activities in Angola by forming a United Nations Humanitarian Assistance Co-ordination Unit.

Despite the diplomatic ways of settling the Angolan crisis, peace was proving difficult to be had. This left one of the methods to be applied, namely, the imposition of economic sanctions on UNITA. There is little doubt that the application of economic sanctions by the States principally involved could have ended the Angolan crisis and yet this was a measure that Member States were reluctant resort to. Admittedly, the plan for economic sanctions on UNITA was at first never formally adopted by a resolution of the Security Council or the General Assembly, so that the attitude taken by these States pointed to a general lack of co-operation with the UN effort rather than to a breach

⁵ Ibid., p. 31.

of a clear legal obligation. But finally, by Security Council resolution 864(1993) the Security Council acting under Chapter VII of the Charter imposed sanctions against UNITA. Further measures including trade measures against UNITA and restrictions on the travel of UNITA personnel were to be effected. Additionally oil and arms embargoes were effected at midnight on 23rd -26th September, 1993.

Following extensive consultations, the Angolan Government and UNITA began exploratory talks in Lusaka, Zambia, on 25th October, 1993, under the auspices of the UN. These talks were possible by positive steps taken by both sides, including UNITA's proclamation of a unilateral cease-fire, its acceptance of the general legal framework of the Peace Accords. There was a further agreement to withdraw from the localities it had occupied since the resumption of the hostilities. In view of the above, UNIVEM II's authorised strength was increased from 50 to 175 military observes from 18 to 60 police monitors and from 11 to 14 military paramedics.

2. LUSAKA PEACE TALKS:

Lusaka exploratory talks were held from 25th to 31st October, 1993, in Lusaka, at which UNITA recognised the validity of the 1991 Peace Accords, and the Angolan legislative and Presidential elections of 29th and 30th September, 1992. UNITA further agreed to surrender its troops to UN monitored areas as a transitional measure pending full implementation of the Peace Accords.

At other Lusaka Peace Talks held from 15th November, 1993 to 11th December, 1993, an agreement was reached on the general and specific principles as well as on the modalities relating to all military issues on the agenda. These were the re-establishment of the cease-fire, the withdrawal, quartering and demilitarization of all UNITA military forces, the disarming of all civilians and the completion of demobilisation of forces.

3. THE LUSAKA PEACE PROTOCOL

An agreement to establish a truce was made on 16th November, 1994. On 20th November, 1994 both President Eduardo dos Santos and Dr. Jonas Savimbi were expected tin Lusaka to sign the Lusaka Peace Protocol. After dramatic efforts the two leaders never signed it, because Savimbi again was absent citing security reason as the cause of his inability to travel.⁶ Only the Angolan Minister for External Relations, and the UNITA Secretary General and its chief negotiator signed at the Lusaka Talks, in the presence of President Jos Eduardo dos Santos and UN Special Representative Mr. Alioune Blondin Beye, for Angola.

The purpose of the UN as stated in Article (II) is to maintain international peace and security, and to that end, to take effective and collective measures for the prevention and removal of threats to the peace. In order to achieve this goal in Angola, the UN (Security Council) by its resolution 952(1994) decided to enlarge UNAVEM Mission. At the Lusaka Protocol signing ceremony, high-level military talks and negotiations

⁶ United Nations, *Discovery Magazine*, New York, Un Department of Public Information, 1994, p. 7.

regarding the security arrangements for Savimbi and other senior UNITA leaders were concluded. Despite the non-appearance of Savimbi, it was agreed that further talks would be held in Luanda. However, the talks in Luanda as scheduled did not resume, because the UNITA delegation, citing logistical and transport problems, delayed its arrival in Luanda.

The UN Special Representative rearranged other peace talks. These were held in Lusaka where both MPLA and UNITA leaders agreed to sign another Peace Protocol. Both President Eduardo dos Santos and Jonas Savimbi this time were present and on 6th May, 1995, the Lusaka Peace Protocol was signed at State House.

4. THE HUMANITARIAN SITUATION IN ANGOLA:

United Nations agencies and programmes provided humanitarian assistance to all Angolans in need. The United Nations Humanitarian Assistance Coordination Unit played a major role in this process. On 21st May, 1993 an inter-agency appeal for humanitarian assistance was launched.

In the meantime, the implementation of relief operations in the interior of the country and in zones of active conflict encountered difficulties of accessibility. After UN efforts of intensive negotiations with both parties to the conflict, relief flights were allowed to reach besieged cities such as Kuwaito and Huambo whose populations had been cut off from international assistance for many months.

The UN started a massive programme of humanitarian assistance with the World Food Programme (WFP), United Nations Children's Fund (UNICEF) and the United Nations High Commissioner

for Refugees (UNHCR). By Council resolution 932(1994) of 30th June, the UN deplored the worsening humanitarian situation and urged the parties to the conflict to grant all necessary security guarantees and to refrain from actions endangering relief personnel or disrupting humanitarian assistance. This was secured.

With the end of the 'cold war' and with US influence being sustained, the Angolan Government has been recognised., US support for UNITA has waned. At the last Lusaka Peace protocol, UNITA leader. Jonas Savimbi expressly recognised the legitimacy of both the Angolan Government and Presidency of Eduardo Jose dos Santos, thereby following the US stance. Today the UN is playing a major role in Angola to restore the lost peace and development.

B. THE UNITED NATIONS IN MOZAMBIQUE

Soon after independence the Frelimo Government found itself fighting the racist South African backed RENAMO insurgents. On 4th October, 1992, after 14 years of devastating civil war a General Peace Agreement, covered by the UN, was signed between the two parties. It took effect on 15th October, 1992. The Agreement established the principles and modalities for the achievement of peace in Mozambique. It called for UN participation in monitoring the implementation of the Agreement and in providing technical assistance for the general elections.

By Security Council resolution 797(1992) of 16th December, the UN established the United Nations Operation in Mozambique (ONUMOZ). The UN established ONUMOZ by acting under Article 46 of the Charter. The mandate of ONUMOZ, in accordance with the

General Peace Agreement, included four important elements namely; political, military, electoral and humanitarian aspect. The operational concept of ONUMOZ was based on the strong interrelationship between the above four elements. Without sufficient humanitarian aid, the security situation in the country should have deteriorated and the demobilisation process stalled.

Inadequacy of military protection would lead to the difficulty of relief operations because relief aid would not reach its destination. Without sufficient progress in political area, the confidence required for the disarmament and rehabilitation process would not exist. The electrical process required prompt demobilisation and formation of the new armed forces.

The military aspect of the UN was in this regard, closely linked with the humanitarian effort. Food would be needed and other support as soon as the assembly areas were established. The technical unit of ONUMOZ would assist in implementing the demobilisation programme. This would be done in collaboration with the United Nations Office for the Coordination of Humanitarian Assistance (UNOHAC) on the programme's humanitarian aspect.⁷

The General Peace Agreement provided for the withdrawal of foreign troops which had to be initiated upon the cease-fire coming into force. The Agreement did not provide a specific role for UN civilian police in monitoring the neutrality of the

⁷ Interview with one of the Regional Police Commander in Mozambique, Mr. L.G. Chibanga (Supt) from the Zambia Police.

Mozambican Police. The Secretary General proposed to leave open the possibility of introducing a police component in ONUMOZ, once requested.

1. ONUMOZ CIVILIAN POLICE (CIVPOL) COMPONENT:

By security council resolution 898(1994) of 23rd February, ONUMOZ Civilian Police (CIVPOL) component was established.⁸ The component was mandated to monitor all police activities in Mozambique and to verify that their actions were consistent with the General Peace Agreement. Among other things, CIVPOL, together with other ONUMOZ components, would monitor the proper conduct of the electoral campaign and verify that political rights of individual groups and political organisations were respected.

CIVPOL was a separate component of ONUMOZ under the commander of a Chief Police Observer who reported directly to the UN Special Representative. It was established with the National Police at all levels and had unrestricted access to the general public. However, CIVPOL conducted its own investigations and recommended its own corrective action where necessary.

2. ONUMOZ ACTIVITIES

The various delays and difficulties of an administrative political and logistical nature seriously impeded the implementation of the General Peace Agreement. For instance the continued mistrust which became deep and resulted in reluctance

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to begin the assembling and demobilisation of troops contributed to the delays of the deployment of UN troops.

Despite the above difficulties, extensive peace operational activities were carried out by ONUMOZ in Mozambique. The transport corridors were regularly patrolled. These corridors run across Mozambique from the Indian Ocean to land-locked countries. These corridors are of critical importance to Southern Africa. For this reason Malawi and Zimbabwe with the consent of Mozambique deployed troops as well, in these corridors to keep them open. ONUMOZ also provided train escorts.

Security Council resolution 882(1993) urged all parties to the conflict assemble their troops in November, 1993 and to initiate demobilisation by January, 1994. The aim was to ensure the completion the demobilisation process by May 1994.

General elections were held from 27th to 28th October 1994. This was an indication that Mozambique was moving towards a peaceful change. With the end of "cold war" and the removal of RENAMO's chief backer the apartheid regime in South African the civil war in Mozambique became less and less pronounced. Displaced persons and refugees were resettled. The international community clearly indicated that it would not invest additional human and material resources and risk lives in peace-keeping operations where political will did not make a substantive contribution to the peace process. With this in mind the Mozambican National Assembly approved the Electoral law and the National Elections Commission was appointed.⁹

⁹ Chali Boutros Boutros, *Building Peace and Development 1994*, New York, UN Dept., of Public Information, 1994, p. 214.

By Security Council 898(1994) the Secretary General was requested to reduce the military contingent of ONUMOZ. This was further indication that the UN was succeeding in peace-making in Mozambique. ONUMOZ further assisted in the collection of weapons and undertook humanitarian and other activities.

Security Council resolution 916(1994) renewed the mandate of ONUMOZ. It was to participate in monitoring of elections. The organisation of African Unity (OAU), the European Union (EU) and the Association of European Parliamentarians for South Africa sent election observer teams to monitor the Mozambique election. elections are one of the characteristics of a democratic government. People freely choose their leaders and government. FRELIMO and RENAMO contested the elections. FRELIMO won the elections.

By Security Council resolution 960(1994) of 21st November the election results were endorsed by the UN which called on all parties to stand by their obligations to accept and fully abide by the results. It also called on them to continue the process of national reconciliation based on a system of multiparty democracy and observance of democratic principles. At the end of January 1995, ONUMOZ mission was fully liquidated.

C. PROBLEMS OF PEACE-KEEPING IN ANGOLA AND MOZAMBIQUE

Although UN Forces in both countries were established under the Security Council resolutions, there was no explicit provision authorising the establishment of an international forces. Furthermore, there was no clear legal provision authorising the Secretary General to establish such forces. The resolutions merely gave the Secretary General discretionary powers to

establish such forces. In addition, there is no evidence so far that shows that the Secretary-General made arrangements with Member States with regard to troop contribution for the constitution of the UN Forces.

Although the UN Forces in both countries composed of national contingents voluntarily provided by Member States, the actual command and control of the troops rested with the UN and not with the contributing states. However, some rights and functions retained by Member States such as discipline of individual officers tended to override the command or immediate instruction from UN commanders. In other words there was no discipline code by the UN over individual officers' disciplinary case. These were left to troop commanders to handle. This meant that the soldiers paid more loyalty to their own troop commanders than the UN Commanders.

The composition and withdrawal of troops was not guaranteed. They could withdraw from the operations at will. This affected the efficiency of performance. The withdrawal of Pakistani troops, USA and French troops are good examples. These and many others withdrew their troops before their mandated period came to an end.

The principle of enforcing peace without the authority to attack except in self defence put the lives of peace-keepers in great danger. Many were killed for instance several American soldiers, Pakistani troops were ambushed and killed at different times. Forceful prevention of hostilities from escalation should have been one of the approaches to keep the peace in such situations.

CHAPTER FOUR

THE UNITED NATIONS HUMANITARIAN OPERATIONS

Poverty, human rights abuses and under-development are critical factors contributing to the breakdown of societies and the outbreak of violence. The slaughter and brutality in Somalia, Rwanda, former Yugoslavia and other parts of the world and the resultant refugee and other humanitarian problems are a cause of shame for all humanity.

In order to combat such humanitarian problems the UN established the Department of Humanitarian Affairs (DHA) in March, 1992. This was in response to General Assembly resolution 46/182 to enhance the effectiveness of the UN system in co-ordinating emergency humanitarian assistance. This resolution stressed on the importance of a continuum of action from early warning, prevention and preparedness of humanitarian problems to issues concerning development.¹ DHA consolidated the functions previously carried out by various separate entities, including the Office of the United Nations Disaster Relief Co-ordinator.²

The functions of DHA were to advise the Secretary General on emergencies and recommend appropriate action which needed to be taken. It also provided a framework for cooperative efforts of the UN agencies, engaged in humanitarian work, and addressed the policy and diplomatic dimensions of disasters and

¹ Ghali Boutros Boutros, *Building Peace and Development*, New York, UN Dept., of Public Information, 1994, p. 114.

² United Nations, *Basic Facts About the UN*, New York, UN Dept., of Public Information, 1993, p. 181.

emergencies. In order to fulfil this., the UN insists on an undertaking by all actors to respect the neutrality and safety of those officers engaged in critical humanitarian work. Emergency relief operations in the midst of violent conflict often place the impartiality and neutrality of humanitarian operations in question.

A. THE UN HUMANITARIAN OPERATIONS IN SOMALIA

The downfall of President Siad Barre in January, 1991, resulted in a power struggle and clan clashes in many part of Somalia. The major clashes were between two factions namely; the groups supporting Interim President of Somalia Mr. Ali Mahdi Mohamed and the United Somali Congress (U.S.C.) led by General Mohamed Farah Aidid. The conflict threatened stability in the Horn of Africa and its continuation occasioned in threat to international peace and security in the area. Many innocent lives of the people especially women, children and old people were lost. Many people were displaced and some became refugees in other African countries where they sought refuge. For this reason the United Nations became concerned.

1. The Legal Basis of the UN Operation in Somalia (UNOSOM)

The deteriorating and appalling situation in Somalia led the Un in co-operation with the Organisation of African Unity, the League of Arab States (LAS) and the Organisation of the Islamic Conference (OIC) to become actively involved with the humanitarian and political aspects of the crisis. They sought to press for a peaceful solution to the conflict.

By Security Council resolution 733(1992) the Council urged all parties to the conflict to cease hostilities. By Security Council resolution 751(1992) the Council established the United Nations Operation in Somalia (UNOSOM). Through UNOSOM the UN hoped to promote reconciliation, ceasefire and humanitarian operations. One draw back however, was that Somalia remained without a Central Government with which to negotiate.

2. The UN Secretary-General's Special Representative:

Acting under Article 101(1) of the Charter, the Secretary General appointed his Special Representative for Somalia.¹ His task would be to provide overall direction of UN activities in Somalia. Furthermore, he was asked to promote political reconciliation, co-ordinate humanitarian assistance and to pave way for rehabilitation and reconstruction of Somalia.

The Office of Special Representative was responsible for initiating peaceful agreements in order to implement cease-fire and modalities of disarmament. This office also ensured the safety of the personnel of all organisations engaged in humanitarian and other assistance to Somalia. The Special Representative was mandated by the Secretary General to appoint the Chief UN civilian Police and his Police Advisors. He was responsible for the organisation of meetings and conferences through which diplomatic negotiations for peaceful settlement to

¹ Mr. Mohammed Sahnoun of Algeria was appointed Special Representative on 28th April, 1992 for Somalia and left for the mission on 1st May. He later on resigned. Mr. Ismat Kittani of Iraq was appointed to replace Mr. Sahnoun, but also resigned after the 5th June massacre of UN troops from Pakistan, on 5th March 1993, Admiral Jonathan Tl Hower (Retired) of USA was appointed to replace Mr. Kittan. After his term had elapsed, Mr. James V. Gbeho from Ghana was appointed.

the conflict were made. It was through such arrangements that the Addis Ababa Agreement was organised with the aim of giving high priority to national reconciliation in Somalia.

3. UN Humanitarian Operations and Problems Faced:

By Security Council resolution 794(1992) the Council authorised UNOSOM to resort to all necessary means to establish a secure environment for humanitarian relief operations in Somalia. Acting under Chapter VII the Council authorised the Secretary General to establish the Unified Command and control of the Military forces. These provisions provided a comprehensive legal basis of UN action in Somalia.

In response to the above, the Unified Task Force (UNITAF) spearhead by the USA was established and deployed in Mogadishu in December 1992. UNITAF's principal concern and goal was to establish a secure environment for urgent humanitarian relief operations. Once this was accomplished the military command would then be handed over to the United Nations. Meanwhile, UNOSOM was still responsible for political aspects and humanitarian assistance. Later UNITAF was transformed into UNOSOM II. On 4th May, 1993, UNOSOM II took over the responsibility and authority of UNITAF.

The tasks of UNOSOM II were to promote political reconciliation between warring factions and to coordinate humanitarian relief, to pave way for rehabilitation and reconstruction of Somalia.²

²

Gassem M.A. *Hostages: The People who Kidnapped Themselves*, Nairobi, Central Graphics Services Ltd., 1994, p. 122.

The security situation having been improved, facilitated the flow of food and other relief supplies into the neediest areas of Somalia. The levels of malnutrition and death from starvation fell dramatically in many areas. But in spite of this improvement, the humanitarian and political situation in many parts of the country still remained complex and tense.

The three major challenges facing the UN in 1993 were; the facilitation of voluntary return of approximately 300,000 refugees and internally displaced person, provision of jobs for the many millions of unemployed Somalis, and assistance to the Somalis in rebuilding their society and rehabilitating the decayed infrastructure.³ In order to attain these objectives a new Relief and Rehabilitation Programme was established and adopted by the UN Conference on Humanitarian Assistance to Somalia held from 11th to 13th March, 1993 in Addis Ababa, Ethiopia.⁴ This programme covered a range of issues including rendering support services to the return of refugees and over one million displaced person within Somalia.

The Addis Ababa Agreement and the Security Council mandate tasked UNOSOM II to disarm all Somali factions and armed groups who obstructed humanitarian activities. This task to UNOSOM II generated hostility of a few clan leaders who became fearful of losing their power to UNOSOM II. They refused to be disarmed and resorted to violence in order to frustrate efforts of UNOSOM II to bring relief aid, peace and security, and development to

³ Ibid., p. 136.

⁴ United Nations, *UN Information Notes*, New York, UN Dept., of Public Information, 1995, p. 136.

Somalia.

In view of the above, on 5th June, 25 Pakistani soldiers who were on duty distributing relief food were killed, 10 missed and 54 were wounded in a series of ambushes in Southern Mogadishu. Their bodies were mutilated and subjected to other forms of degrading treatment. Pakistan withdrew its troops immediately from Somalia after this tragedy.

Despite successful efforts to end famine in Somalia, indications showed that malnutrition levels were on the rise again in some parts of the country. In this regard the Division for the co-ordination of Humanitarian Affairs of UNOSOM II and other UN Agencies and NGOs stepped up efforts to provide emergency food relief and medical treatment to the affected population.

Apart from the above mentioned problems, the security situation was deteriorating. Inter-clan fighting and banditry were on the rise, and various factions were making efforts to re-arm themselves. Humanitarian agencies personnel were threatened and sometimes kidnapped by the uncontrolled armed elements. These problems and shortfalls in resources slowed the programme, forcing UNHCR to issue an urgent appeal for additional funds.⁵

Following positive response from UN member states, life in various places was returning to normal. Agricultural production as well was recovering. In this regard, UNOSOM II was to be withdrawn from Somalia. This withdrawal did not mean the UN abandonment of Somalia. The UN was to retain a sizeable presence

⁵ Ibid., p. 137.

after the withdrawal of UNOSOM II. This would assist the Somalia political organisations and other factors to reconcile, depending on the degree of security in Somalia.

B. UNITED NATIONS HUMANITARIAN OPERATIONS IN RWANDA

The fighting between the Armed Forces of the Government of Rwanda and Rwandese Patriotic Front (RPF) firstly broke out in October, 1990 across the border between Rwanda and its Northern neighbour, Uganda. Despite numerous cease-fire agreements thereafter, hostilities continued. This led to loss of many lives. Many people were displaced internally within Rwanda and other were forced to flee to other countries as refugees.

In view of the above, in separate letters by Rwanda and Uganda to the Security Council in February 1993, a call was made for UN assistance and intervention. By Security Council resolution 812(1993) the Council called on the Rwandese Government and RPF to respect the renewed cease-fire agreement, to resume negotiations, allow the delivery of humanitarian supplies and the return of displaced persons. The commitments the parties had made in the past and their obligations were to be fulfilled.

1. United Nations Assistance Mission for Rwanda:

The UN reconnaissance mission that visited Rwanda in August 1993, made findings upon which a recommendation for the establishment of a United Nations Assistance Mission for Rwanda (UNAMIR) was based. This was established by Security Council

resolution 872(1993).⁶ The mandate of UNAMIR would be to contribute to the establishment and maintenance of a climate conducive to the secure installation and subsequent operation of the transitional Government.⁷

The principal functions of UNAMIR would be to assist in ensuring the security of capital city (Kigali), monitor the cease-fire agreement and establishment of an expanded demilitarised zone (DMZ) and demobilisation procedures. Among other functions UNAMIR would provide security for the repatriation of Rwandese refugees and displaced persons. It would further assist in the coordination of humanitarian assistance.

By Security Council 872(1993) which established UNAMIR, the council approved the Secretary General's appointment of Mr. Sharyar M. Khan as his Special Representative for Rwanda. He would lead UNAMIR in the field and exercise authority over all its elements. This appointment was made pursuant to Mr. Booh-Booh's⁸ initiative in the organisation of the Arusha Peace Agreement, at which a joint declaration by both parties to Rwandese conflict re-affirmed their commitment to the provisions of the Arusha Agreement.

⁶ *Africa Recovery*, (UN Publication), Vol. 8, No. 2, February, 1994, p. 30.

⁷ Major-General Juvenal Habyarimana, later in 1994, was sworn in as President of Rwandese (5th January, 1994) Government.

⁸ Mr. Jacques - Roger Booh Booh is former Minister of External Relations of Cameroon.

2. Humanitarian Assistance

An inter-agency appeal for international assistance to Rwanda was made by the UN on 15th April, 1993. Over 900,000 people had been displaced, representing about 13 per cent of the nation's population. The appeal was launched as a result of the request by the Rwandese President to the Secretary General.

Serious malnutrition and diseases were prevalent. The situation was exacerbated by Rwanda's already precarious economic conditions, over population and rapidly declining agricultural production. In this regard, an inter-agency mission, led by United Nations Department of Humanitarian Affairs (UNDHA) was fielded to prepare a consolidated appeal with all concerned UN agencies.⁹ The appeal presented priority emergency relief projects focusing on food, nutrition, health, water and sanitation.

Many Rwandese escaped from the genocide that was taking place between the Hutus and Tutsi tribes. Many Rwandese refugees settled in Goma (Zaire) and some sought refuge in Mwanza (Tanzania). The refugee camps in these countries presented problems to the UN, because conflicts arose with the camps between the two tribes. Further security from the UN was sought through the UNHCR. Unfortunately, Member States were reluctant to provide funds or troops for such security. This led the UN to drop its plans to deploy peace-keepers in refugee camps. A proposal to provide support for Zairean and Tanzanian policing of the camps also met with scepticism.

⁹ Ghali, Boutros Boutros, *Building Peace and Development*, New York, UN Dept., of Public Information, 1994, p. 236.

In the Zairean refugee camps specifically, Hutu forces brutalised refugees and humanitarian aid workers. They stockpiled food aid for themselves. This pattern of behaviour prevailed in Tanzanian refugee camps, where the situation constituted the **"reign of terror"**¹⁰ in the camps and had made many non-governmental agencies (NGOs) threaten to withdraw. On the other hand, the World Food Programme (WFP) protested against **"harassment and intimidation"** by Zairean paramilitary forces against UN agencies and NGOs.

UNAMIR aided the Government to launch security sweeps in the camps and set up Rwandese Police Force.¹¹ The International Tribunal Staff were also protected during their course of conducting genocide investigations.

The creation of the United Nations Rwanda Emergency Office (UNREO) enabled the limited cross-border humanitarian assistance possible. However, efforts by humanitarian workers to obtain access to WFP food stocks held in warehouses in Kigali were repeatedly blocked by hostile fire. However, the coordinated efforts of NGOs and International Committee of the Red Cross provided aid whenever the security situation permitted. In the meantime, more genocide cases continued to occur in various parts of the country.

¹⁰ Frank V., "Tanzania's Untold Story", *Africa Recovery*, Vol. 8, No. 2, December 1994, p. 4.

¹¹ Interview with former UN Police Advisor for Rwanda, Mr. W.A. Kabwilu (Deputy Commissioner of Zambia Police Force).

3. GENOCIDE IN RWANDA

The genocide that had engulfed Rwanda prompted the Security Council by its resolution 929(1994) to approve a multinational operation vowed "**Operation Turquoise**". This operation was conducted by France and was set up for humanitarian purposes in Rwanda until UNAMIR was brought up to the necessary strength. Acting under Chapter VII of the Charter, the Council authorised Member States to conduct the operation using all necessary means to achieve their humanitarian objectives. Costs of implementing the operation would be borne by the Member States concerned. Operation Turquoise established "**humanitarian protected zone**" in various areas of Rwandese territory.

Arising from the genocide that took place in Rwanda, a Commission of Experts pursuant to Security Council resolution 935(1994) was established. The Commission would provide the Secretary General with its conclusion on the evidence of grave violations of international humanitarian law committed in Rwanda, including the evidence of possible acts of genocide. The Commission was located at the Un office in Geneva, where it could benefit from the resources of the office of the United Nations High Commissioner for Human Rights. This Commission firstly comprised of only three members who were appointed by the Secretary General. Those appointed were; Mr. Atsu-Koffi Amega, a former President of the Supreme Court and former Minister of Foreign Affairs of Togo - Chairman, Mrs Habi Dieng, Attorney General of Guinea; and thirdly Mr. Salifou Fomba, Professor of International Law from Mali and a member of the United Nations

International Law Commission.¹²

The Commission's findings stated that the acts of mass extermination against the Tutsi tribe constituted genocide within the meaning of Article II of the Convention on the Prevention and Punishment of the Crime of Genocide. The Commission did not, however, uncover any evidence to show that Tutsi elements perpetrated acts committed with the intention to destroy the Hutu ethnic group.

In view of the above, the Commission recommended to the Security Council that the responsible people for genocide should be brought to justice before an independent and impartial international criminal tribunal. It further recommended that the council should amend the statute of the International Criminal Tribunal for the former Yugoslavia so that it could consider crimes under international law committed during the armed conflicts in Rwanda.

The recommendations made by the Commission of Experts that among other things acts of genocide be carried out by an international criminal tribunal were submitted to the Security Council by the Secretary General. It was further suggested that the jurisdiction of the International Criminal Tribunal for the former Yugoslavia be expanded to cover crimes in Rwanda.

¹² United Nations, *United Nations Information Notes*, New York, Dept., of Public Information, 1995, p. 223.

4. International Tribunal Establishment

In response to the submissions by the Secretary General regarding the Commission of Experts findings, the Security Council on 8th November 1994, by its resolution 955(1994), decided to establish an International Tribunal to prosecute persons responsible for genocide and other violations of international humanitarian law committed in Rwanda. This tribunal would also prosecute Rwandese citizens responsible for such acts in neighbouring states such as Zaire and Tanzania between 1st January and 31st December 1994.¹³ To this end, it was further resolved that the Statute of the International Criminal Tribunal for Rwanda should be adopted by the UN. The Security Council finally requested the Secretary General to make practical arrangements for the effective functioning of the International Tribunal, including recommendations to the Council as to possible locations for the seat of the Tribunal. There were suggestions that such a Tribunal should be located in Europe (Yugoslavia), but with the conflicts in that country other suggestions were that the Tribunal should be located in Tanzania (Africa). But whatever the final conclusion would be, the Secretary General would be the last man to confirm the final Tribunal location.

¹³ *Ibid.*, p. 228.

CHAPTER FIVE

GENERAL CONCLUSION AND RECOMMENDATIONS

1. Preventive deployment of UN Forces

Over the last twenty years or so the UN peace-keeping operations have received as much attention as any other current or projected programme of the UN action. One striking fact is that the word "**peace-keeping**" is not used in the UN Charter. But then maintaining, securing and strengthening universal peace is at the heart of the UN system. Indeed one of the set purposes of the UN, stated in Art 1(1) of its Charter is:

"To maintain international peace and security --- settlement of international disputes or situation which might lead to a breach of the peace."

In order to improve its capacity for peace-making and peace-keeping in areas of conflicts, the UN has increased the use of confidence - building and fact finding and has, within the framework of preventive diplomacy, established an early - warning system for assessing possible threats to international peace and security. In this regard it should also be resorted to. By this UN Forces would be sent to an area of conflict to deter incipient or threatened hostilities have broken out.

The current diplomatic approach to pacific solution of conflict by the UN ought to be revised. Peace-enforcement and peace-keeping will only be meaningful where the peace keepers are better equipped than the conflicting parties. In this regard the UN ought to implement the General Powell's Doctrine of "**overwhelming force cautiously, deployed.**" By this doctrine the

UN force will have to apply all its heavy weaponry at its disposal when enforcing and keeping the peace where needed. In so doing it will have to be ~~cautious~~ in its application of that weaponry. This will deter the defaulting state from ignoring UN calls for peace settlement of disputes. A good example where the General Powell's Doctrine was effectively applied is in Iraq, where the UN Allied force came out in unison with all its weapons at its disposal to force Iraq to withdraw its troops from Kuwait. This Doctrine seems to have worked well in Bosnia where the Serbs have been forced to withdraw their weapons in accordance with the UN resolutions. Serbs' disobedience only led to heavy bombing of their areas and shelling by the combined UN - NATO forces.

2. A Permanent UN Peace-Keeping Force?

Is a permanent UN Peace-keeping force feasible?

In his report to the Security Council, the Secretary General Boutros - Boutros Ghali,¹ containing an integrated programme of proposals for more effective UN activities aimed at peace-keeping proposed the creation of a permanent and specially trained "peace-enforcement unit" which could be deployed in cases where the tasks of maintaining a cease-fire might exceed the mission of peace-keeping. This leads to our contention that a permanent UN Peace-keeping force is feasible.

¹ Ghali Boutros Boutros, *An Agenda for Peace*, New York, Dept., of Public Information, 1994, p. 147.

The UN Secretary General's proposal, however, provokes a number of questions. If such a force is feasible, where would they be trained and who would train them? Where would the UN force Barracks be located? What would be the qualification of the recruits into such a force? What would their conditions of service be like? What would their position be in an event where their country of origin is involved in a conflict. The maintenance of an international force is very expensive. In the past the USA has borne major financial burdens in supporting UN Forces. Who would finance such a permanent force and on what conditions? Our contention is that UN peace-keeping operations demand that serious attention be given to ways of carrying out those functions more efficiently.

There is no doubt that hitherto the peace-keeping operations of the UN have suffered from hasty improvisation, financial uncertainty, lack of a clear chain of command, and confusion sometimes between political aims and military means as the case was in the Congo. But it is submitted that these should not be an impediment to a permanent UN Force.

A permanent UN Force would be ready for action anywhere at anytime. But both U Thant and Mr. Hammerskjold opposed the idea of a permanent force for reasons which are chiefly political. They contended that each peace-keeping force comes into being as a response to a particular political situation. They contended that the composition of the force will vary according to the geographical area in which it is operating and the conflicting political interests involved.

The political problem is the most serious obstacle to UN peace-keeping operations. For instance lack of money or refusal of certain Member States, notably France and Russia to pay their share of the expenses of peace-keeping operations has been one of the problems. Political attitude of the Great Powers, in our view, are liable to be reflected not only in finance but also in the vital questions of supply and equipment. For air transport, base facilities and special equipment, the UN forces are after dependent on the good will of Great Powers who control the sources of supply.

With the demise of the "cold war", a permanent UN force is possible. The Scandinavian countries have already formed a force of volunteers for use in future peace-keeping operations. From such an example, the UN could come up with its own Standard Status of Forces Agreement and Regulations which could come into immediate operation once a force is constituted.

3. Towards an OAU Peace-keeping Force?

The Organisation of African (OAU) has not been as actively involved in peace-keeping as the UN has. However, Art II(1)(e) of the Charter of OAU aligns the purposes of the OAU to those of the UN Charter. The question that arises is whether the OAU, like the UN, is able to sustain its own peace-keeping force within Africa.

The principle of peaceful settlement of disputes is the logical corollary of the prohibition of the threat or use of force in international relations. It would seem that the drafters of the OAU Charter, fully considered the renunciation of the use

of force prescribed by the UN Charter Art 2(4).

Article XIX of the OAU Charter, establishes a legal obligation binding all its Member States to settle their disputes peacefully.² Although peace-keeping has been aligned to military forces, the OAU has taken a different course of action. Conflicts have been resolved by mediation which relates to direct conduct of negotiation between the parties at issue on the basis of the proposals made by the mediator. This is also called "**good offices.**" Conciliation has been another way of settling disputes in the OAU. Conciliation is the process of settling a dispute by referring it to a commission of persons whose task is to elucidate the facts after hearing from the parties and endeavouring to bring to an agreement.³ Finally arbitration has been used by the OAU. Arbitration means the determination of a difference between States through a legal decision of one or more arbitrators or of a tribunal of a tribunal other than the International Court of Justice chosen by the parties.

From the above it follows that is possible for the OAU to establish its own Peace-keeping force. Previous instances exist where the OAU has deployed its own African forces to carry out Peace-keeping operations. The first such OAU attempt was in Chad where the OAU mobilised its own forces from the Member States within Africa and deployed them to the area of conflict. Secondly, the OAU was able to mobilise its own forces and deployed them to Liberia where internal conflicts were a threat

² Cerrenka Z, *The Organisation of African Unity and its Charter*, Praha, Academia Nakladatelstvi, 1968, p. 46.

³ Oppenheim's *International Law*, (8th Edu), 1955, Vol. II, Chapter 1, p. 12.

to international peace and security.

We submit that it would be contrary to the spirit of African Unity to bypass the **"peace settlement machinery"** of the OAU and appeal directly to the Un for help. We are of the view that an appeal for an OAU peace-keeping force would receive great moral support.

On the aspect of regionalism in the solution of international conflicts, it is pertinent to observe that during the Congo crisis, the UN Secretary General from the on set of ONUC, recognised the importance of working with and through the African group.⁴ He said that he would give priority in the selection of troops to regional states. This supports our view for an OAU peace-keeping force.

4. Global Peace-keeping: Which way forward?

Our study has made a finding that there is no specific provision under Chapter VII that envisages the creation of a force for all purposes for which the UN peace-keeping operation is established. The council has to make an implicit finding under Article 39 by virtues of which it exercises implied powers under Chapter VII to create the Un peace-keeping force. This is done by way of authorization to the Secretary General rather than by way of recommendation directly to Member States.

In order to efficiently come up with the UN peace-keeping in future, it is our submission that the UN Charter be amended in order to set its principles and purpose in line with the

⁴ UN Security Council Document S/4389, para 17 and also UN Security Council Document S/P.V. 873, para 28.

current trends of the economic social and political changes. The Charter ought to have explicit provisions which should relate to the formation of the Peace-keeping force. It further ought to provide for the interpretation of the major concepts which are cardinal in achieving its purpose, such as **"peace-keeping, peace-making, peace-enforcement and peace-building."**

Peace-keeping operations have demonstrated all too clearly that the supervision and promotion of law and order in a setting of domestic strife and secessionist movements backed by outside interference, are scarcely compatible with the ideals of neutrality and impartiality.

Prima facie the UN has no power to intervene in a civil war within a state. If the UN intervenes in a situation of domestic strife, it must act under the authority of the Charter **"to maintain or restore international peace and security.** So far it would seem that domestic strife per se is not a ground for UN intervention. If, however, the Security Council reaches the conclusion that the domestic strife **"threatens international peace and security,"** the UN must intervention prevent such a threat and must be competent to exercise its own judgement on what is required for that purpose without reference to the invitation or consent of any of the political factions within the country.

On the basis of the optionism **"prevention is better than cure,"** the UN should start solving or being interested to solve conflicts when they are still in infancy. This is because, the domestic conflict is part and parcel of the international body. Therefore any **"malaise on this body"** should be attended to

promptly and adequately by the UN. It is our submission that if the UN had in faster to solve the Rwandese, Somalian, Angolan and Mozambican conflicts, millions of lives would have been saved. It is cheaper to deal with a problem when it is at an early stage. For this reason we propose that the UN should establish a surveillance system that will detect early enough, possible areas of conflicts world-wide.

The UN as a system of collective security, rests on the assumption that when the action is decided upon, through the constitutional processes provided for in the Charter, it will be action supported by the entirety of the membership. But from our study, it has been shown that ONUC operations demonstrated all too frequently a refusal by member states to accept and carry out the decisions of the UN organs, arrived at by the majority vote requisite under the Charter. For this reason, it is our proposal that there should be a much more emphatic insistence by the political organs on the obligations on all members as per Articles 2(5), 25 and 49 of the Charter, when a peace-keeping operation is being undertaken.

The UN operations need further to clarify on the question of the applicability of the Laws of War by UN Forces. It is clear that the authorization of UN peace-keeping operations comprehend combat activities, these operations therefore become relevant to the question of the applicability of the Laws of war.

Human suffering is not only caused by fighting. Natural calamities such as drought, diseases, hunger, earth quakes, poverty and so on should become a major concern of the UN. These calamities, have taken more lives and still continue to do so

than the wars that have been fought. Many deaths have never been reported because of poor communication. The UN has concentrated on peace-keeping operations, but we contended that the Un has not paid much attention to saving lives from calamities some which kill thousands of people within a few minutes. For this reason the Un should in future pay much more interest to humanitarian operations. Where there are natural calamities there cannot be peace. Conflicts emanate from a peaceful atmosphere because people involved have the freedom to think to the contrary thereby evolving differences of opinions resulting in major conflicts.

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