

Problems Confronting any International Peacekeeping Force in the Israel–Palestine Conflict

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INTRODUCTION

Israel needs to retain control over the high ground overlooking Ben-Gurion Airport, the Tel Aviv Jerusalem highway and the narrow coastal plain in which most of Israel's population and industrial capacity is located. It would also have to retain full control of Palestinian air space—it is only four flight minutes from the Jordan River to Jerusalem—and the electro-magnetic spectrum to prevent jamming. It is even more doubtful that the Palestinians would ever agree to these limitations on their sovereignty . . . But Israel cannot live without them.¹

THE ABOVE QUOTATION provides an insight into the range of obstacles confronting any Israeli–Palestinian peace agreement. This article is limited to discussing one aspect of any such potential agreement: the problems associated with deploying an international peacekeeping force.² The article begins with a discussion on the evolution and nature of UN peacekeeping and peace enforcement. It then examines the prerequisites for the success of peacekeeping and the likely composition and mandate of such a force, followed by a conclusion.

There have been a number of proposals in the past for some form of international peacekeeping force in the context of the Israeli–Palestinian conflict.³ Amongst these was a call in 2002 by the former UN Secretary-General, Kofi Annan, for a robust multinational presence under Chapter VII of the UN Charter.⁴ More recently, President

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¹ J Rosenblum, 'Think Again: The Demand for Recognition as a Jewish State: Is it Just? Is it Wise?', *Jerusalem Post*, 9 January 2014.

² The issue of some form of international intervention to protect the Palestinian population was examined in 'Discussion Paper on International Protection in Palestine' (Ramallah, Al Haq, 2002).

³ See M Indyk, 'A Trusteeship for Palestine' (2003) 82 *Foreign Affairs* 51, which referred to a trusteeship force. As early as 1988, the Palestinian National Authority called for the deployment of international monitors, while the Non-Aligned Movement submitted a draft resolution before the Security Council on 18 December 2000 calling for the deployment of an international force to protect Palestinians in the Occupied Territories (Security Council S/PV of 18 December 2000).

⁴ 'The Crisis Continues: International Force Must Be Deployed, Says Annan', *The Independent*, 13 April 2002.

Abbas is reported to have asked the UN to put the 'state' of Palestine under 'international protection' due to the worsening crisis in Gaza.⁵

Israel's position has evolved from outright opposition to hesitancy and more recently acceptance that a proposed peacekeeping force has merit in the context of a broader agreement.⁶ In 2004, Stephan identified the need for an 'institutionalized supervisory mechanism consisting of international peacekeepers whose job it is to promote transparency and accountability, apply sustained pressure on the two sides and prevent spoilers from hijacking the peace process'.⁷ This meant that a strong international presence was required to help restore trust and facilitate a phased implementation of an overall peace settlement. Such a presence could be provided by the creation of a UN peacekeeping mission approved under Chapter VII of the Charter.⁸ Under Chapter VII, the UN Security Council possesses a broad range of powers to deal effectively with threats to the peace. Such powers include enforcement action, sanctions and resort to military measures.

The most significant challenge to contemporary peacekeeping operations is the need to protect vulnerable groups, and it is often expressed in terms of the responsibility to protect civilians.⁹ The past decade has witnessed the prioritising of the protection of civilians in statements and resolutions emanating from the Security Council. The mandates of peacekeeping operations have included express provisions to 'protect civilians under imminent threat of physical danger'.¹⁰ Finding agreement on policy, the requirements for robust peacekeeping and the protection of civilians are central to the success of all peacekeeping operations.¹¹ Despite resolutions and documents expressing resolve by the Security Council, the situation of peacekeeping forces is compounded by the failure to commit resources, manpower and equipment to enable peace forces to respond and confront challenges in the field.

⁵ 'Abbas to UN: Put Palestine under International Protection', *Ma'an News Agency*, 5 August 2014; C Lynch, 'Palestinians Turn to Security Council for Help', *Foreign Policy*, 18 July 2014.

⁶ During the Security Council debate on the NAM draft resolution, the Israeli ambassador to the UN, Yehuda Lancy, stated that Israel was not opposed in principle to the deployment of peacekeepers to cement an agreement but not as an alternative, see Security Council S/PV of 18 December 2000.

⁷ MJ Stephan, 'The Case for Peacekeeping in the Occupied Palestine Territories', (2004) 11 *International Peacekeeping* 248, 249.

⁸ B Simma, DE Khan, G Nolte and A Paulus (eds), *The Charter of the United Nations: A Commentary*, 3rd edn (Oxford, Oxford University Press, 2012), 1237. DL Bosco, *Five to Rule Them All: The UN Security Council and the Making of the Modern World* (Oxford, Oxford University Press, 2009); DM Malone (ed), *The UN Security Council, From the Cold War to the 21st Century* (Boulder, CO, Lynne Rienner, 2004).

⁹ See S Wills, *Protecting Civilian—The Obligations of Peacekeepers* (Oxford, Oxford University Press, 2009); V Holt and G Taylor with M Kelly, 'Protecting Civilians in the Context of UN Peacekeeping Operations Successes, Setbacks and Remaining Challenges' independent study jointly commissioned by the Department of Peacekeeping Operations and the Office for the Coordination of Humanitarian Affairs (New York, United Nations, 2009). See also Report of the Secretary-General on the Protection of Civilians in Armed Conflict, S/2010/579 (UN Security Council, 11 November 2010).

¹⁰ UN missions where this terminology was adopted include UNAMSIL (where it was expressed for the first time), MONUC, MONUSCO, UNMIL, ONUB, MINUSTAH, UNOCI, UNMIS, UNIFIL, UNAMID and MINURCAT. The UN Security Council also used similar language when approving missions approved under lead nations.

¹¹ UN, 'A New Partnership Agenda, Charting a New Horizon for UN Peacekeeping' (New York, Department of Peacekeeping Operations and Department of Field Support, 2009), v and 19.

UN PEACEKEEPING

Peacekeeping is a long-established central element in the UN's response to international crises and situations of conflict.¹² The concept of peacekeeping is neither defined nor specifically provided for in the UN Charter.¹³ It is a term used to describe military action that is consent based and attempts to preserve peace while abiding by the principle of non-use of force except in self-defence.¹⁴ It was designed as an alternative to enforcement measures involving the use of force and military coercion. In this way, it is a tool in the UN system of collective security, and it proved especially useful when cold war politics prevented the UN Security Council from being able to approve enforcement measures under Chapter VII of the Charter.¹⁵

The cold war era (1945–89) between the US and the Soviet Union was marked at the UN by continual wrangling over the correct interpretation of the Charter provisions.¹⁶ When the required consensus among the major powers did not materialise, it seemed the UN would be unable to fulfil a significant role in the maintenance of peace, and the growth of regional self-defence systems was just one indication of the lack of confidence in the UN as the international guarantor of peace. In these circumstances, the UN sought to circumvent the obstacles caused by cold war rivalries. A breakthrough came with the creation of the United Nations Emergency Force (UNEF) as a buffer between Israel and Egypt after the Suez crisis in 1956.¹⁷ Historically, however, peacekeeping missions were also established outside the framework of the UN.¹⁸

According to the official UN website, peacekeeping has proven to be one of the most effective tools available 'to assist host countries navigate the difficult path from conflict to peace'.¹⁹ Its unique strengths include legitimacy, burden sharing, and an ability to deploy and sustain international military and police personnel. These can be integrated with civilian peacekeepers to advance what are increasingly ever more complex and multidimensional mandates.

¹² www.un.org/en/peacekeeping/documents/backgroundnote.pdf and *United Nations Peacekeeping Operations: Principles and Guidelines* (New York, United Nations, 2008). See generally WJ Durch and ML England, 'The Purposes of Peace Operations', *Annual Review of Global Peace Operations 2009* (Boulder, CO, Lynne Rienner, 2009) 9–19; I Johnstone, 'Peacekeeping's Transitional Moment', *Annual Review of Global Peace Operations 2011* (Boulder, CO, Lynne Rienner, 2011) 9–17.

¹³ Simma et al, above n 8, 1171–99; n White, *Keeping the Peace*, 2nd edn (Manchester, Manchester University Press, 1997) 207–84; United Nations, *The Blue Helmets—A Review of United Nations Peacekeeping*, 3rd edn (New York, United Nations, 1996) 3–9.

¹⁴ Simma et al, *ibid.*, 1171–72.

¹⁵ *Ibid.*, vol 2, 1237–71; Bosco, above n 8; Malone, above n 8.

¹⁶ See generally Simma et al, above n 8, 30–147; L Goodrich, E Hambro and A Simons, *Charter of the United Nations*, (New York, Columbia University Press, 1969) 1–17; I Claude, *Swords into Ploughshares* (New York, Random House, 1956) ch 12.

¹⁷ The UN Emergency Force (UNEF), which was established and deployed after the British and French military intervention in Suez in 1956, is generally regarded as the first true UN peacekeeping operation; Summary Study of the Experience Derived from the Establishment and Operation of the Force: Report of the Secretary-General, 9 October 1958, General Assembly Official Records, 13 Session, Annex 1: Document A/3943. See also documents A/3289 and A/3302. The latter was approved by General Assembly Resolution 1001 (ES-I) of 7 November 1956. DW Bowett, *United Nations Forces* (London, Stevens, 1964) 90–152. UNEF created a precedent for future operations based on the four principles of traditional peacekeeping: consent, impartiality, neutrality and use of force only in self-defence.

¹⁸ H McCoubrey and N White, *International Organizations and Civil Wars*, (Aldershot, Dartmouth, 1995) 183. For a brief history of the various peacekeeping missions associated with the Arab–Israeli conflict and deployed to the region since 1947 see Stephan, above n 7.

¹⁹ www.un.org/en/peacekeeping/operations/peacekeeping.shtml.

The most important contribution that UN peacekeepers can make in the early transition from conflict to peace is the creation of a secure environment.²⁰ The provision of security facilitates the political and peace-building support needed to help countries meet the challenges associated with this transitional process.²¹ It is in this context that a UN force could play a worthwhile role in an Israeli–Palestinian peace process.

Since 1985 there has been a significant increase in the number of peacekeeping missions established, with a corresponding increase in the complexity of the mandates. These are often referred to as ‘second generation’ peacekeeping operations.²² The traditionally passive role of peacekeepers has been replaced by a more active role of peace making, involving, among other things, national reconstruction, facilitating transition to democracy and providing humanitarian assistance.²³ There is a broad range of terms used to describe these and related activities. The term ‘second generation’ or multi-dimensional peacekeeping often gives way to the more generic title of peace operations, adopted to cover the range of activities involved.²⁴ The UN Department of Peacekeeping Operations continues to use the term ‘peacekeeping’ to cover all such activities, and describes these operations as follows:

UN peacekeeping is based on the principle that an impartial presence on the ground can ease tensions between hostile parties and create space for political negotiations. Peacekeeping can help bridge the gap between the cessation of hostilities and a durable peace, but only if the parties to a conflict have the political will needed to reach the goal.²⁵

As the dynamic of conflict in the world changed, so too did the response of the UN, and other international organisations and states. Classical peacekeeping operations originally conducted during the cold war usually involved the deployment of military personnel as inter-positional forces between two states, similar to the early UNEF mission mentioned above.

The process leading to the deployment of a UN force was relatively straightforward: armed conflict, ceasefire, an invitation from the conflict parties to monitor the ceasefire, followed by deployment of military personnel, while negotiations for a political settlement continued. In contrast, the majority of contemporary peace operations are increasingly multidimensional. Operations can differ significantly from one to another, and achieve varying degrees of success. These should be distinguished from UN-approved operations involving ‘coalitions of the willing’ that may involve a greater degree of force by the states concerned and operations by regional bodies, especially on the African continent.²⁶

²⁰ J Dobbins, ‘Peacekeeping in Palestine’, US/ME Policy Briefs, 1 May 2010.

²¹ See generally R Paris, *At War’s End Building Peace after Civil Conflict* (Cambridge, Cambridge University Press, 2004).

²² United Nations, *The Blue Helmets*, above n 13, 5.

²³ J Roper, M Nishihara, O Otunnu and E Schoettle, *Keeping the Peace in the Post-Cold War Era: Strengthening Multilateral Peacekeeping* (New York, Trilateral Commission, 1993) 4.

²⁴ S Ratner, *The New UN Peacekeeping* (London, Macmillan, 1995) 117–36; WJ Durch, ‘Keeping the Peace: Politics and Lessons of the 1990s’ in W Durch (ed), *UN Peacekeeping, American Policy, and the Uncivil Wars of the 1990s* (London, Macmillan, 1997) 3–7.

²⁵ Peacekeeping Best Practices Unit Department of Peacekeeping Operations, *Handbook on United Nations Multidimensional Peacekeeping Operations* (New York, United Nations, 2003) 1.

²⁶ PD Williams, ‘The African Union’s Peace Operations: A Comparative Analysis’ (2009) 2(2) *African Security* 97; PD Williams, ‘Lessons Learned from Peace Operations in Africa’ (2010) 1 *African Security Brief*; WJ Flavin, ‘New Challenges for International Peacekeeping Operations’, Congressional Hearing

PEACEKEEPING AND ENFORCEMENT OPERATIONS²⁷

There is a great deal of conceptual confusion surrounding peacekeeping and peace enforcement operations.²⁸ In general terms, so-called traditional peacekeeping involves non-coercive intervention based on the consent of the parties to a conflict and does not permit the use of force except in self-defence.²⁹ Many discussions are characterised by a failure to understand and distinguish between traditional peacekeeping and enforcement, and the grey area in between.³⁰ Peacekeeping remains quite distinct from the enforcement measures envisaged under the collective security provisions contained in Chapter VII of the UN Charter. Nonetheless, both concepts are based on similar conditions, in particular, the availability of military forces and the effective cooperation of members of the Security Council. Not surprisingly, there is considerable confusion regarding these very distinct and separate concepts.

Peace enforcement must also be distinguished from enforcement action as envisioned under Chapter VII of the UN Charter. Peace enforcement does not involve the range of tools available under Chapter VII, but it may authorise the threat and actual use of force to 'compel or coerce' the implementation of international norms or mandates.³¹ In this way, the two most important characteristics that distinguish traditional peacekeeping from the more robust peace enforcement operations are the use of force and the issue of consent.

Closely linked to these issues, and also of crucial importance, is the principle of impartiality. This does not preclude taking appropriate action against any party in violation of an agreement. Impartiality is easily maintained in traditional peacekeeping but is difficult in enforcement operations, owing to the need to use force against certain parties to carry out the mandate. Likewise, insistence that intervention in intra-state conflict adheres to the principles of consent and impartiality is not always practical and may prove counter-productive.³² It is generally accepted that the peacekeeping force in Lebanon (UNIFIL) is based on the traditional peacekeeping model, but even that is somewhat complex since the 2006 Israeli–Hezbollah conflict. The United Nations Organization Stabilization Mission in the Democratic Republic of

before the House Committee on Foreign Affairs, 29 July 2009; AJ Bellamy and PD Williams, 'Peace Operations' in S Cheldelin, D Druckman and L Fast (eds), *Conflict: From Analysis to Intervention*, 2nd edn (New York, Continuum, 2008) 392; AJ Bellamy and PD Williams, 'Contemporary Peace Operations: Four Challenges for the Brahimi Paradigm' in H Langholtz et al (eds), *International Peacekeeping: The Yearbook of International Peace Operations* (Leiden, Martinus Nijhoff, 2007) 1–28; AJ Bellamy and PD Williams, *Peace Operations and the Global Order* (Cambridge, Polity Press, 2007).

²⁷ See generally EA Schmidl, *Peace Operations between War and Peace* (London, Frank Cass, 2000); I Rikhye, *The Politics and Practice of United Nations Peacekeeping: Past, Present and Future* (Clementsport, NS, Canadian Peacekeeping Press, 2000).

²⁸ See, eg JG Ruggie, 'Wandering in the Void: Charting the UN's New Strategic Role' (1993) 75 *Foreign Affairs* 26; A Roberts, 'From San Francisco to Sarajevo: The UN and the Use of Force' (Winter 1995–96) 37(4) *Survival* 26.

²⁹ See A James, *Peacekeeping in International Politics* (Basingstoke, Palgrave Macmillan, 1991) 1–13; White, above n 30, 232–47; Bowett, above n 17, 196.

³⁰ See T Weiss, 'Rekindling Hope in UN Humanitarian Intervention' in W Clarke and J Herbst (eds), *Learning From Somalia* (Boulder, CO, Westview Press, 1997) 211.

³¹ See D Daniel, 'Wandering Out of the Void? Conceptualizing Practicable Peace Enforcement' in A Morrison, DA Fraser and JD Kiras (eds), *Peacekeeping with Muscle: The Use of Force in International Conflict Resolution* (Cornwallis, Canadian Peacekeeping Press, 1997) 4.

³² See S Duke, 'The United Nations and Intra-state Conflict' (1994) 1 *International Peacekeeping* 375.

the Congo (MONUSCO), discussed below, may be categorised as a peace enforcement operation.³³ The semantic confusion is not helped by the application of the term ‘peace enforcement’ to a large-scale international military operation, such as the first Gulf war.³⁴ Among the few situations to which the description peace enforcement can accurately be applied is that of the NATO-led Implementation Force (IFOR) in the former Yugoslavia following the Dayton Accords, and the more recently deployed Kosovo Force in Kosovo.³⁵

In June 1992, the UN Secretary-General Boutros Boutros-Ghali, published ‘An Agenda for Peace’.³⁶ The report expressed the optimism and confidence of the time, but these were to be short lived. Subsequent events have highlighted the deficiencies in the UN system, in particular the controversy over UN action and policy in Somalia and Rwanda, and the failure to secure peace and protect Bosnia in the former Yugoslavia. In the report, the Secretary-General outlined four related roles that the UN could play in the fast-evolving post-cold-war international political arena, namely, peace enforcement, peacemaking, peacekeeping and post-conflict peacebuilding. Most relevant to the Israeli–Palestinian situation are peacemaking, designed ‘to bring hostile parties to agreement’ through peaceful means, such as those found in Chapter VI of the UN Charter; and peacekeeping, established to deploy a UN ‘presence in the field, hitherto with the consent of all the parties concerned’, as a confidence-building measure to monitor a truce between the parties while diplomats strive to negotiate a comprehensive peace or officials to implement an agreed peace. To ensure long-term sustainability, this should be followed or accompanied by post-conflict peacebuilding, intended to foster economic and social cooperation, with the purpose of building confidence among previously hostile parties, developing the social, political and economic infrastructure to prevent future violence, and laying the foundations for a durable peace.

Another important development was the redefinition of sovereignty to incorporate a global responsibility for the protection of human rights.³⁷ Doyle and Sambanis have discussed how the UN was accepted as the legitimate body to determine when sovereignty may be violated. The formerly accepted boundaries between sovereign consent and intervention by third parties became blurred. Peace operations seemed willing to use force when deemed necessary in consent-based peacekeeping or imposed peace operations. In this way, peacekeeping and peace enforcement almost merged into ‘robust peacekeeping’. This is especially evident in the case of the Democratic Republic of the Congo (DRC), where the conflict has been amongst the most intractable confronting UN peacekeepers in recent times and provides lessons for any future deployment of

³³ UN Security Council Resolution, SC/RES/2098, 28 March 2013; Special Report of the Secretary-General on the Democratic Republic of the Congo and the Great Lakes Region, S/2013/119, 27 February 2013.

³⁴ The term is often used by UN officials; see, eg the comments by D Shagra and R Zacklin, ‘The Applicability of International Humanitarian Law to United Nations Peace-keeping Operations: Conceptual, Legal and Practical Issues’ in *Symposium on Humanitarian Action and Peacekeeping Operations Report* (Geneva, ICRC, 1994) 40.

³⁵ R Murphy, *UN Peacekeeping in Lebanon, Somalia and Kosovo: Legal and Operational Issues in Context* (Cambridge, Cambridge University Press, 2007) 69 and 156.

³⁶ B Boutros-Ghali, ‘An Agenda for Peace: Report of the Secretary-General’, UN Doc A/47/277-S/24111 (June 1992).

³⁷ MW Doyle and N Sambanis, *Making War and Building Peace* (Princeton, NJ, Princeton University Press 2006) 7.

peacekeepers. The violence in the DRC, as exemplified by the crisis in North Kivu, is characterised by serious human rights and humanitarian law violations.³⁸ An underlying cause of the violence is the inability of the government to exert its authority, and the impunity for human rights violations is symptomatic of the weak state authority in eastern Congo that fuels the conflict. In order to stem a crisis in the east, the UN Security Council authorised a new ‘intervention brigade’ with what has been described as an unprecedented mandate to carry out targeted offensive operations.³⁹

This is the first time such a brigade has been created within a peacekeeping force.⁴⁰ However, it is not the first time the UN has adopted an offensive strategy.⁴¹ The track record for such military action does not inspire optimism. In 1961, UN peacekeepers in the Congo were authorised to use force as a last resort to deal with the civil war and general disturbances throughout the country. Subsequently, peacekeepers were authorised to take vigorous action during the campaign to suppress foreign supported secessionists in the mineral-rich Katanga province. Although the campaign was ultimately successful, it proved controversial. The infamous Blackhawk Down incident in Somalia in 1993 is also a stark reminder of how offensive operations can go wrong.⁴² The failed operation against the warlord General Aidid ultimately led to the premature withdrawal of all UN forces from Somalia.⁴³

The UN resolution authorising the intervention brigade in the DRC states that it will be established for one year on an exceptional basis and without creating a precedent or any prejudice to the agreed principles of peacekeeping.⁴⁴ Previous UN reports were critical of the ‘glacial speed’ of the response to attacks on civilians, and past UN failures to halt advances by armed groups in the DRC led to violent demonstrations against the UN. The human rights violations that occurred prompted a demand for a tougher response from the UN.⁴⁵ The use of force by or on behalf of the UN, whatever the circumstances, must be resorted to only in the context of an overall

³⁸ Special Report of the Secretary-General, S/2013/119, 27 February 2013; Report of the UN Joint Human Rights Office on Human Rights Violations from 15 November to 2 December 2012 (Office of the UN High Commission for Human Rights, May 2013); Report of the UN Joint Human Rights Office on Human Rights Violations between April and September 2012 (Office of the UN High Commission for Human Rights, November 2012).

³⁹ UN Security Council Resolution, SC/RES/2098, 28 March 2013, paras 9 and 1; Special Report of the Secretary-General on the Democratic Republic of the Congo and the Great Lakes Region, S/2013/119, 27 February 2013, paras 60–64.

⁴⁰ UN Security Council Resolution, SC/RES/2098, 28 March 2013, para 8.

⁴¹ ‘Rebels in DR Congo Say UN Peace Brigade Move is “War”’, *Agence France-Presse*, April 1 2013; *BBC News*, 1 April 2013.

⁴² United Nations, *The United Nations and Somalia 1992–1996*, UN Blue Book Series, vol VIII (New York, United Nations, 1996); Murphy, above n 35; and Clarke and Herbst, above n 30, 211.

⁴³ *Ibid*; M Sahnoun, *Somalia—The Missed Opportunities* (Washington, DC, US Institute of Peace, 1994); J Mayall (ed), *The New Interventionism 1991–1994: United Nations Experience in Cambodia, Former Yugoslavia, and Somalia* (Cambridge, Cambridge University Press, 1996); R Thakur, ‘From Peacekeeping to Peace Enforcement: the UN Operation in Somalia’ (1994) 39(3) *The Journal of Modern African Studies* 387, 388; J Hirsch and R Oakley, *Somalia and Operation Restore Hope* (Washington, DC, US Institute of Peace, 1995); AS Natsios, ‘Humanitarian Relief Interventions in Somalia: the Economics of Chaos’ (1996) 3(1) *International Peacekeeping* 68; MD Abdullahi, *Fiasco in Somalia: US–UN Intervention*, Occasional Paper No 61 (Pretoria, Africa Institute of South Africa, 1995).

⁴⁴ UN Security Council Resolution, SC/RES/2098, 28 March 2013, para 9.

⁴⁵ To make matters worse, UN and national forces have also been blamed for abuses. The Report of the UN Joint Human Rights Office on Human Rights Violations from 15 November to 2 December 2012 (Office of the UN High Commission for Human Rights, May 2013) blamed national and rebel forces for widespread rape and other serious violations of international humanitarian law and human rights law.

political strategy with clearly defined goals. To be fair to the UN, at the beginning of 2013 the Secretary-General outlined a multifaceted approach to the problems confronting the DRC.⁴⁶ The Israeli–Palestinian conflict requires a similar comprehensive approach if it is to have any real prospect of success.

Security arrangements for Israel are among the contentious issues to be resolved in any peace agreement with the Palestinians. The Palestinians have rejected Israeli Prime Minister Netanyahu's demand that Israel be allowed exclusive security control along the Jordan Valley.⁴⁷ He also wanted to be allowed to retain Israeli Defense Forces in the Jordan Valley until the Palestinians met the test of implementation of the security arrangement. Apart from the difficulty associated with retaining the armed forces of a foreign power on the sovereign soil of an independent state, a major problem with this proposal is who decides when the implementation of the security arrangements has been achieved. Palestinian President Abbas has indicated that he is willing to accept the presence of the Israeli Defense Forces in the West Bank for a transitional period.⁴⁸ This is likely to be unacceptable to Israel. Mr Netanyahu is also reported to have demanded the 'right' to pursue 'terrorists' throughout the future Palestine state. In this way, the presence of an international peacekeeping force could facilitate a resolution of the problematic issue of security arrangements. This would be premised on a range of related factors, including consent of the parties, UN approval, and agreement by states to provide the military, police and other personnel required for such a mission. Such a force would be more than just an inter-positional force between warring factions such as the early United Nations Emergency Forces (UNEF I and UNEF II) deployed in the region.⁴⁹

Any peace agreement or security arrangements are likely to be complex, taking into account the nature of the relationship between Israel and Palestine and the variable of Israeli settlements in the Occupied Territory, especially around east Jerusalem. The particular problems associated with Jerusalem are beyond the scope of this article, but dividing the city does not appear workable at this stage. Demilitarisation and the proposal made in 2000 at Taba calling for the creation of two sovereignties in Jerusalem, joint administration of the city and free access to the holy sites is at least a starting point for discussion. The UN force would need the capacity to prevent incursions by either side into the territory of the other, something that could give rise to significant military and political challenges. It would also need to have a civilian component to engage in peacebuilding and provide support for the institutions of a nascent Palestinian state. For these reasons, and given the geopolitical strategic importance of the region to the US and EU, the situation is unique and a special candidate for such an operation.

⁴⁶ Special Report of the Secretary-General, S/2013/119, 27 February 2013.

⁴⁷ B Ravid, *Haaretz*, 26 January 2014, 1 and 3.

⁴⁸ *Haaretz*, 29 January 2014, 1; J Rudoren, 'Palestinian Leader Seeks NATO Force in Future State', *The New York Times*, 3 February 2014, A4.

⁴⁹ Summary Study of the Experience Derived from the Establishment and Operation of the Force: Report of the Secretary-General, 9 October 1958, General Assembly Official Records, 13 Session, Annex 1: Document A/3943; Bowett, above n 17, 90–152.

PREREQUISITES FOR PEACEKEEPING IN PALESTINE

In the event of an agreement providing for a peacekeeping force, it is imperative that it be under the authority of the UN. This is to give the force the legitimacy that comes with any operation approved under the authority of the UN. Furthermore, the US has taken a central role in the negotiations and excluded the UN from process so far, thus delegitimising any outcome in the eyes of many Palestinians. It is also critical that the peacekeeping mission succeed, and evidence indicates that consent could be a critical factor in determining the outcome of a peacekeeping operation.⁵⁰ Fortna utilised a systematic argument to demonstrate four ways that peacekeepers could enhance the prospects for a stable peace in a post-war period.⁵¹ These are: raising the costs of returning to the battlefield and increasing the benefits of peace; reducing uncertainty among the parties by monitoring compliance; preventing an ‘accidental’ return to armed conflict; and preventing political abuse. The post-agreement phase will be fragile, and an international presence is intended to provide the Palestinian Authority with an opportunity to exercise control over all its territories and to give Israel the confidence to withdraw its forces and dismantle the military occupation.

Having given the peacekeeping force the mantle of UN approval, practical issues must be addressed to ensure success. In this context, the experience of UNIFIL in Lebanon is illustrative of some of the problems likely to be encountered. A major advance was made in the effectiveness of UNIFIL when the UN agreed and delineated definite lines of demarcation in south Lebanon and the creation of the so-called Blue Line along the internationally recognised border of Lebanon. This allowed for the withdrawal of Israeli forces and the deployment of Lebanese and UN forces along the agreed line. In 1978, the Secretary-General outlined three essential conditions that needed to be met for UNIFIL to be effective. First, it needed the full confidence and backing of the Security Council. Secondly, it must operate with the full cooperation of all the parties concerned. Thirdly, it must be able to function as an integrated and efficient military unit.⁵² In 1983, the now retired Under-Secretary-General of the UN with special responsibility for peacekeeping operations, Brian Urquhart, elaborated upon this when writing about the multinational force in Beirut and stated that successful peacekeeping depends, among other things, on a sound political base, a well-defined mandate and objectives, and the cooperation of the parties concerned.⁵³ These criteria are equally relevant today, and provide a benchmark by which to measure the likely success of a peacekeeping operation along agreed Israeli–Palestinian borders and in other sensitive locations.

Israel is currently in occupation of the West Bank and the Gaza Strip.⁵⁴ A prerequisite for the deployment of any international peacekeeping force is an agreement between the parties, but especially Israel, for the withdrawal of military forces and an

⁵⁰ The experience of operations in Namibia, El Salvador, Cambodia, Mozambique, Eastern Slavonia (Croatia) and East Timor demonstrates how the UN can be successful, see Doyle and Sambanis, above n 37; LM Howard, *UN Peacekeeping in Civil Wars* (Cambridge, Cambridge University Press, 2007). £24.99

⁵¹ VP Fortna, *Does Peacekeeping Work?* (Princeton, NJ, Princeton University Press, 2008); DC Jett, *Why Peacekeeping Fails* (London, Palgrave MacMillan, 2001).

⁵² UN Security Council Document S/12611, 19 March 1978, para 3.

⁵³ *The New York Times*, 19 December 1983.

⁵⁴ Y Dinstein, *The International Law of Belligerent Occupation* (Cambridge, Cambridge University Press, 2009) 13–16 and 276–80.

end to the occupation. This requires a simultaneous agreement on deployment and the area of operations. A failure to get this right from the start could be fatal to the success of any such initiative. The deployment of UNIFIL in Lebanon in 1978 demonstrates the hazards of failing to agree such issues at the outset. A challenge is to deploy an international force with a mandate based on Chapter VII of the UN Charter with the military capacity to enforce this in a way that would not be seen by the Palestinians as another occupying force merely replacing the Israeli Defense Forces.

STATUS AND COMPOSITION OF THE FORCE

While UN approval is essential, it does not follow that the international force for Palestine/Israel would be led by the UN. There are a number of alternative precedents from previous missions that provide a potential template that could be followed. As the objectives and particular challenges of each mission are unique, there is no exact model that fits all situations.

Since no formal agreement under the Charter for the provision of troops to the UN has yet been concluded, Member States are under no legal obligation to supply the Security Council with armed forces except on a voluntary basis. In recent years, standby arrangements and other ‘offers’ have been made by states, and it is on this basis, in contrast to what was intended for enforcement measures, that states usually provide the necessary troops to make up a peacekeeping force.⁵⁵

Cooperation with regional bodies and so-called coalitions of the willing are characteristic of contemporary UN-approved operations, a situation that has been brought about by a number of factors, not least the lack of finance.⁵⁶ Substantial cooperation between NATO and the UN was forced by the necessity to respond to the Yugoslav crisis.⁵⁷ The complex nature of many contemporary conflicts requires significantly larger and better equipped forces than a traditional peacekeeping mission, and this in turn has led to greater participation by the permanent members of the Security Council. The most likely candidates to play the lead role are the US or NATO, with the US already being mentioned as a preferred option. As professional, well-trained and well-equipped military forces are required, this would exclude some current large troop-contributing states and favour NATO forces. However, Jordanian forces could be considered acceptable from both a military and a political perspective. A major issue for both Israelis and Palestinians is trust, and there is likely to be significant opposition to the deployment of any force by both populations. In addition, Israel just does not trust Europe.⁵⁸ Israel perceives the policing of the Rafah crossing into Gaza in the aftermath of the Israeli pull-back in 2005 and the deployment of UN forces in south

⁵⁵ See generally M Bothe, ‘Peacekeeping Forces’ and R Murphy, ‘United Nations Standby Arrangement System (UNSAS)’ in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (Oxford, Oxford University Press, 2013).

⁵⁶ Though costs are minuscule compared to the national defense budgets: see E Schoettle, ‘Financing Peacekeeping’ in Roper et al, above n 23, 20; ‘UN Peacekeeping: Deployments and Budgets, 1946–2013’, *Security Council Report, Monthly Forecast*, February 2014.

⁵⁷ See generally M Nordquist, *What Color Helmet?: Reforming Security Council Peacekeeping Mandates* (Newport, RI, Naval War College, Center for Naval Warfare Studies, 1997) 46–50.

⁵⁸ C Wergin, ‘Why Israel no Longer Trusts Europe’ *International New York Times*, 1–2 March 2014, 8. This view was confirmed in an interview with an Israeli Defense Forces officer, Jerusalem, April 2014.

Lebanon as part of the 2006 ceasefire as unsatisfactory. In any event, the Palestinian Authority and Israel would have a de facto veto on the composition of the force. It is likely that European and North American governments would be more willing to support any peacekeeping initiative owing to the political and strategic importance of the region and the Israeli–Palestinian conflict, and the hesitancy that existed with deploying a UN force in other countries such as the Central African Republic would not exist. Nevertheless, both parties would need to be realistic, as it could still prove difficult to generate the necessary personnel from potential troop-contributing countries.

Martin Indyk, the former US Special Envoy for Israeli Palestinian negotiations, in advocating a trusteeship in 2003, also stressed the importance of US leadership, supported by British, Australian and Canadian forces.⁵⁹ He proposed a force of under ten thousand, large enough to make its presence felt but still reasonable, given the relatively small area covered by the Occupied Palestinian Territories. So-called ‘over the horizon’ forces or reinforcements could be stationed in neighbouring countries like Jordan or Egypt.

The status of a UN or similar force depends on the underlying authority upon which the force is present in the receiving state, and on the nature and mission of the force.⁶⁰ The consent of the host state confers the legitimacy required for a lawful presence in its territory, and it is normally specified in an agreement concerning the rights and duties of the force.⁶¹ In fact, the legality of a peacekeeping force on any country’s territory should be guaranteed in a legal instrument known as the Status of Force Agreement.⁶²

In August 2000, the Secretary-General published an externally commissioned report on enhancing the effectiveness of UN peace operations.⁶³ The Brahimi Report contained a range of recommendations to be kept in mind when considering deployment. Although it contained a number of flawed assumptions, especially with regard to the conclusion that a strategy could be devised for peacekeeping and enforcement by the same forces, many recommendations are relevant to any proposed deployment in and around the Occupied Palestinian Territories. First, peacekeeping must be an appropriate option, given the nature of the conflict. Secondly, there must be a peace to keep based on agreement between the parties, including agreement on UN involvement in resolving the conflict. The peacekeeping operation must be part of a more comprehensive strategy that may include political, economic, developmental, institution-building, and humanitarian and human rights elements. This must involve other parts of the UN system—both UN bodies and Member States—and other international organisations. The comprehensive strategy needs to take into account the regional dimension to

⁵⁹ Indyk, above n 3, 57–58. Though Indyk proposed that these were special forces ready to play a counter-terrorism role. D Gold, ‘Why International Peacekeepers Cannot Replace the IDF in the Defense of Israel, Friends of Israel Initiative’, Paper No 13, 25 July 2013.

⁶⁰ WG Sharp, ‘Protecting the Avatars of International Peace and Security’ (1996) 7 *Duke Journal of Comparative and International Law* 92, 112–43.

⁶¹ *The Peacekeepers Handbook* (New York, International Peace Academy, 1984), 362.

⁶² D Fleck, ‘Present and Future Challenges for the Status of Forces (ius in praesentia). A Commentary to Applicable Status Law Provisions’ in D Fleck (ed), *The Handbook of The Law of Visiting Forces* (Oxford, Oxford University Press, 2001) 47.

⁶³ UN General Assembly Security Council, A/55/305 S/2000/809, Report of the Panel on UN Peacekeeping Operations (Brahimi Report), 21 August 2000.

ensure that gains made in addressing the problems that contributed to a conflict are not undermined by problems in neighbouring countries. The Security Council, particularly its five permanent members, must agree on the objective of an operation and provide it with 'clear, credible and achievable mandates.'⁶⁴ This includes authorising the deployment of an appropriate number of adequately trained and equipped troops. Best case scenarios must not be assumed and the mandate should clearly outline the authority to use force. The credibility and ability of a mission to implement its mandate is often determined at the outset, so the rapid deployment of personnel and equipment is essential. Deploying an international force in Palestine will need to be coordinated with Palestinian and Israeli authorities to determine which checkpoints will be taken over and which will be removed. Other sensitive issues include the division of areas of operation or zones of responsibility, the timetable for Israeli withdrawal and the need for freedom of movement throughout Palestine for the international force.

MANDATE

In the case of Israel/Palestine, the nature of the peacekeeping mission would require a mix of traditional peacekeeping under Chapter VI and the more robust peace-enforcement missions envisioned under Chapter VII. The model of Bosnia-Herzegovina and the IFOR led by NATO would not be appropriate in any post-Palestine-Israel peace agreement. The IFOR was deployed following the Dayton Accords, which compelled the parties, especially the Serbs, to accept an agreement. The peace enforcement mission was mandated to deal with any 'spoilers' or use force against any party that refused to comply with the terms of the agreement. In this way, the peace agreement concluded under the auspices of the US was enforced by a heavily armed and well-trained international force. The idea of enforcing a peace agreement on the parties in Palestine is not an option. However, any international force deployed would need to be well armed, with the capacity to use force. This would be necessary for force protection purposes and to defend the mandate.

The maintenance of security would be the primary responsibility of the international force in conjunction with the parties to the agreement. The mission could also be responsible for preventing weapon smuggling and attacks on Israel. Israel would be responsible for the orderly withdrawal of forces and the evacuation of settlements within an agreed time-frame. Palestinian security forces would have the primary responsibility to maintain law and order while the prevention of attacks on Israel and weapons smuggling would be the primary responsibility of the international force.⁶⁵ Other important roles for the international peacekeeping force would be as guarantor of the agreement, and to observe and monitor the conduct of the parties. Whether this would be described as supervision or monitoring, the mandate would need to empower the force to take whatever measures were deemed necessary to defend the mandate. In theory, defending the mandate and enforcing it are two distinct roles. In practice, the situation is much more blurred.

⁶⁴ *Ibid.*, 10.

⁶⁵ See reported comments by Palestinian President Abbas, J Rudoren, 'Palestinian Leader Seeks NATO Force in Future State', *The New York Times*, 3 February 2014, A4.

The mandate of any international force should include a role in the monitoring of international human rights and humanitarian law. This would require the right to intervene to prevent violations as part of a broader strategy to protect Palestinians and reassure Israel. In this regard, a human rights component to the mission would have an important role working with other agencies, such as the Office of the High Commissioner for Human Rights, the United Nations Relief and Works Agency and the International Committee of the Red Cross.

The Temporary International Presence in Hebron provides a model of how ineffectual the mandate of a monitoring mission can be when there is no real follow-up or enforcement of reported violations.⁶⁶ Here, political considerations took precedence in order to accommodate Israeli demands. The United Nations Truce Supervision Organization is another example of a monitoring mission.⁶⁷ Its original mandate is now redundant. It has remained in the region to play a useful role in observation and reporting, but it is a little more than a witness to events and does not shape the outcome. It could play a useful role in conjunction with a large, well-armed peacekeeping mission, but its current role and configuration would rule out its playing any significant part in a post-agreement peacekeeping mission. In fact, it would be preferable to deploy no international peacekeeping force rather than establish a force without an effective mandate or means to defend it.

Although all peace agreements require some degree of constructive ambiguity, some issues cannot be evaded from the outset. Lessons from the past demonstrate that the Oslo Accords contained a number of practical weaknesses in that they lacked a clearly defined end goal and did not spell out where the parties would be at the end of the process. Unsurprisingly, the deeply divisive issues of final status were left undefined, and, as feared by both parties, became hostages to the creation of facts on the ground.⁶⁸ Significantly, there was no monitoring mechanism created for settlement expansion or for violence. In any new agreement, there would be a need for independent monitoring of its implementation, especially to avoid the adoption of a sequential rather than a parallel approach by either party. In fact, it is difficult to envisage any consolidation of peace without serious and systematic independent monitoring on the ground.

Although the situation in the Sinai was significantly different from that of the Occupied Palestinian Territory, the Multinational Force and Observers (MFO) deployed there following the Camp David Accords and the Egyptian Israeli Peace Agreement of 1979 provides an interesting example of what can be undertaken when the required consensus within the Security Council for the establishment of a peacekeeping force cannot be achieved.⁶⁹ Under the Treaty, Israel undertook to withdraw from the Sinai Peninsula over a period of three years. The withdrawal involved the razing of Israeli settlements and military facilities in Sinai.⁷⁰ Differences emerged over the precise demarcation of certain portions of the international frontiers. These were resolved

⁶⁶ www.tiph.org/en/About_TIPH/Mandate_and_Agreements/.

⁶⁷ www.un.org/en/peacekeeping/missions/untso/. S/801, UN Security Council Resolution 50, 29 May 1948.

⁶⁸ UN Security Council S/2006/956, Report of the Secretary-General on the Middle East, 11 December 2006, paras 5–7.

⁶⁹ Israel–Egypt Treaty of Peace, 1979 (1979) 18 *International Legal Materials* 362, 363; <http://mfo.org/info/11> (accessed on 29 January 2014).

⁷⁰ Dinstein, above n 54, 14.

by an Arbitral Award in 1988, following which Israel withdrew behind the recognised international boundary in 1989. The Treaty establishes four security zones, three in the Sinai in Egypt and another in Israel along the international border. It all provides limitations on military forces and equipment within each zone.

The mission is to supervise the implementation of the security provisions of the Egyptian–Israeli Treaty of Peace and prevent any violations. It operates checkpoints and observation posts, and conducts reconnaissance patrols and verification tasks. The division of the area of operations into zones provides an example of how areas of responsibility and likely flashpoints can be identified. Another issue that was resolved at the time was the participation of European forces. Israel had threatened to veto European participation over implied support for the Palestinian Liberation Organisation at the time, and it seemed that European states were also reluctant participants.⁷¹ The US wanted to ensure the international character of the forces. The security environment for the MFO has changed and it is an example of how events can unfold in a way that was not originally envisaged. Force protection has become a major concern for the MFO with political unrest in Egypt and rising tensions from the siege of Gaza.⁷²

CONCLUSION

The period following the Oslo Accords saw two developments that illustrated the weakness in the political will of both parties and the lack of trust between them.⁷³ On the Israeli side, settlements continued to be expanded and Israeli control over land, borders and Palestinian movement was consolidated, with frequent and widespread closures, resort to heavy force and increased extrajudicial killings. On the Palestinian side, the Authority failed to institute reform and a transparent and accountable system of governance, and was weakened within by widespread allegations of corruption.⁷⁴ There has also been criticism of the inability to tackle armed resistance, which increasingly took the form of ‘acts of terrorism’.⁷⁵ Given the ongoing occupation and expansion of settlements, and taking into account the security measures invoked by the Palestinian Authority against civilians and armed groups since 1996, this seems an unfair criticism. Furthermore, having implemented what were often repressive and indiscriminate measures at the behest of the US and Israel, there were few if any reciprocal positive developments recognising a Palestinian right to self-determination and autonomy in exchange. In any event, similar issues will confront any international presence, and this will make such a mission challenging.

There has been no shortage of UN resolutions and political rhetoric in relation to the Israeli–Palestinian conflict. None of these have been matched by a commensurate political commitment to enforce such resolutions, and this has been an overriding weakness with UN and other engagements to date. Nonetheless, the UN can bring unique skills and resources to bear on conflicts that are ready for resolution, thus

⁷¹ ‘Fighting Over the Peacekeepers’, *TIME*, 12 July 1981, vol 118, issue 23, 44.

⁷² Interview, MFO officer, Jerusalem, April 2014.

⁷³ UN Security Council S/2006/956, para 6.

⁷⁴ *Ibid*, paras 5–7.

⁷⁵ *Ibid*, paras 5–7.

helping to alleviate the suffering of people affected by war and assisting them in the reconstruction of their post-conflict societies.⁷⁶ While the UN is not equipped for war making, including imposing a settlement by force, it can be very good at ‘peace’, mediating and implementing a comprehensively negotiated peace.⁷⁷ Multidimensional peacekeeping cannot be rolled out at will, however, and there is no ‘one-size-fits-all’ model. Ultimately, the whole Arab–Israeli conflict must be addressed, not that between Israel and the Palestinians alone. To succeed, the peacekeeping operation must have a clear mandate and adequate resources, and it must be tailored to fit the political, regional and other realities of the Arab–Israeli conflict. It should also reflect the needs and aspirations of the majority of the local population. Although the military component may be led by NATO, the UN should retain the lead role in the civilian operation, and the Office for the Co-ordinations of Humanitarian Affairs is well placed to take this lead.

The prospect of an intra-state conflict would present a serious dilemma for the international peacekeeping forces should fighting break out between Palestinian factions. It is much easier to deploy peacekeeping forces between two warring parties when they have agreed to settle their differences. Israel will have its own internal difficulties with any deal involving the removal, forced or otherwise, of settlers from the Palestinian territories. However, the Palestinian Authority is likely to face even greater challenges to any peace agreement, which almost by definition will involve compromise by both parties. Fatah and Hamas will need to reach some agreement, as any deal that excludes either would most likely fail. From a peacekeeping perspective, the fear is that the international forces would be targeted. Random attacks by hard-line elements such as Salafi Jihad in Gaza opposed to the agreement could be expected; what is not acceptable is the targeting of an international presence by any significant militant group, as this would render the mission untenable.

The resolution of internal conflict has been a significant feature of recent peacekeeping operations and has involved the establishment of democratic governments, culminating in the nation building attempted for a time in Somalia and currently underway in Kosovo. International administration of this kind, like peacekeeping itself, is not specifically provided for in the UN Charter. It is not subject to a clear UN doctrine. Operations in Eastern Slavonia, Bosnia-Herzegovina, Kosovo and East Timor have been characterised by the UN and other international organisations assuming responsibilities that evoke the historically sensitive concepts of trusteeship and protectorate.⁷⁸ Such a role is neither suitable nor appropriate for a peacekeeping operation in Palestine.

Maintaining impartiality can present peacekeepers with a dilemma, especially when they confront situations in which civilians are victimised, or when the international forces are themselves the subject of attack.⁷⁹ The question of the consent of the parties to a conflict to an international presence is particularly problematic in these situations, and the international forces involved must be prepared to resort to force rather than be bystanders to large-scale violations of international humanitarian law or human

⁷⁶ Peacekeeping Best Practices Unit, above n 25, 7.

⁷⁷ Doyle and Sambanis, above n 37, 5.

⁷⁸ Indyk, above n 3, 51–66; M Berdal and R Caplan, ‘The Politics of International Administration’ (2004) 10(1) *Global Governance* 1, 2.

⁷⁹ United Nations, *The Blue Helmets*, above n 13, 5.

rights. However, a clear lesson from past experience is that peace operations alone cannot end a conflict and nor will the robust interpretation of a mandate provide the solution.

Finding agreement for the deployment of international forces is just one step in the process. The requirement for a clear, credible and achievable mandate cannot be overstated. Key issues, such as rules of engagement, area of operations and freedom of movement, are among the more specific details that cannot be fudged but must be agreed before any proposed deployment. There is also the issue of who will defend Palestine from external aggression in the absence of a Palestinian army. Will an international force have the mandate and means to protect civilians, whether Palestinian or Israeli, and how will this be achieved? What guarantees can the US, Europe or the UN offer Israel in return for agreeing to the creation of a Palestinian state if the peace agreement fails and radical groups assume power? Would NATO membership or support be available?⁸⁰

The Israeli occupation has choked economic and political developments throughout the Palestinian territories and, despite the presence of UN agencies, the EU and other international organisations, this assistance is hindered by the occupation. An extensive and focused peacebuilding programme will be required. The situation might require the establishment of a civilian post similar to that of the Office of the High Representative in Bosnia and Herzegovina. The primary role of such an office holder would be coordination, and the provision of advice and assistance. He or she would not have any governance responsibility. Funding of the entire operation would be a critical issue. Recently, the UN redeployed forces from one peacekeeping operation to another to reduce costs. The major funder of UN peace operations is the US, so this is another reason for US involvement in every aspect of the process. In this regard, despite its potential political strength and economic influence, the Quartet (UN, US, EU and Russia) has lost its relevance. The breakdown in relations over the Ukraine between the US and EU on the one hand and Russia on the other means that this situation is unlikely to change in the near future.

⁸⁰ C Wergin, 'Why Israel No Longer Trusts Europe', *International New York Times*, 1–2 March 2014, 8.