Peacekeepers: Will They Advance Any Prospective Arab-Israeli Peace Agreement?

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Abstract

The establishment of a peacekeeping force is widely accepted to be an essential part of any future Israeli-Palestinian peace accord. The final status settlement proposed by the Clinton Administration specified "[s]security arrangements that would be built around an international presence." However, while the need for a peacekeeping force appears to enjoy broad support, it should be noted that the "Road Map" proposed by the European Union, Russia, the United Nations, and the United States (together "the Quartet") in 2003 does not suggest the inclusion of peacekeeping forces, although it does envisage a monitoring mechanism for its interim phases. The authors set out to examine, from an Israeli perspective, the feasibility of establishing a form of multinational peacekeeping force as part of a future Israeli-Palestinian peace accord. Part I of this Article assesses past successes and failures of peacekeeping missions in and around Israel. Part II discusses the reasons for the success and failure of those past peacekeeping missions. Part III identifies best and worst case scenarios when implementing peacekeeping missions. The Article concludes by suggesting that bilateral security cooperation with multinational oversight may be a better way of dealing with the Israeli-Palestinian conflict than peacekeeping missions.

ARTICLES

PEACEKEEPERS: WILL THEY ADVANCE ANY PROSPECTIVE ARAB-ISRAELI PEACE AGREEMENT?

Justus Reid Weiner, Avinoam Sharon & Michelle Morrison*

INTRODUCTION

The establishment of a peacekeeping force is widely accepted to be an essential part of any future Israeli-Palestinian peace accord. The final status settlement proposed by the Clinton Administration specified "[s]ecurity arrangements that would be built around an international presence."[1] In discussing the issue of security, American diplomat Dennis Ross, who was one of the American negotiators of the 1995 Interim Agreement on the West Bank and the Gaza Strip and the 1997 Protocol

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1. DENNIS ROSS, THE MISSING PEACE: THE INSIDE STORY OF THE FIGHT FOR MIDDLE EAST PEACE 3 (2004).

Concerning the Redeployment in Hebron, and who served as President Clinton's Middle East coordinator, wrote: "[T]he key lies in an international presence that can only be withdrawn by the agreement of both sides."[2]

Among the most prominent non-governmental initiatives recommending the inclusion of peacekeeping forces are the Geneva Accord[3] and the Bipartisan Statement on US-Middle East Peacemaking, entitled "A Last Chance for a Two-State Israel-Palestine Agreement" ("Bipartisan Statement"), drafted and signed by ten former senior US government officials and presented to the administration of US President Barack Obama.[4]

Although the need for a peacekeeping force appears to enjoy broad support, it should be noted that the "Road Map"[5] proposed by the European Union, Russia, the United Nations, and the United States (together "the Quartet") in 2003 does not suggest the inclusion of peacekeeping forces, although it does envisage a monitoring mechanism for its interim phases. Similarly, the 2002 Arab Peace Initiative does not include any mention of peacekeeping forces.[6] Tellingly, however, former US National Security Advisors Brent Snowcroft and Zbigniew Brzezinski, both of whom were among the authors of the Bipartisan Statement, have pointed out the need for

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2. *Id.* at 802.

3. The Geneva Accord was launched on December 1, 2003. The Accord sets out a Draft Permanent Status Agreement and a Model Israeli-Palestinian Peace Agreement. As part of the proposed peace accord to be signed between a future Palestinian State and the State of Israel, the Geneva Accord envisages the establishment of a multinational force, which would form an "integral part of the Implementation and Verification Group." The Geneva Initiative, *The Geneva Accord: A Model Israeli-Palestinian Peace Agreement* (Dec. 2003), *available at* http://www.geneva-accord.org/mainmenu/summary. The stated purpose of the Multinational Force under the terms of the draft Peace Agreement is "to provide security guarantees to the parties, act as a deterrent, and oversee the implementation of the relevant provisions of this Agreement." *Id.*

4. ZBIGNIEW BRZEZINSKI ET AL., U.S./MIDDLE EAST PROJECT, A LAST CHANCE FOR A TWO-STATE ISRAEL-PALESTINE AGREEMENT, http://www.usmep.us/bipartisan_recommendations/A_Last_Chance_for_a_Two-State_Israel-Palestine_Agreement.pdf
(last visited Sept. 25, 2010). Among its various recommendations and vision for a future peace between Israel and a future Palestinian state, the Bipartisan Statement envisages the establishment of a multinational force: "a coalition peacekeeping structure under UN mandate featuring American leadership of a NATO force supplemented by Jordanians, Egyptians, and Israelis." *Id.* at 14.

5. *The Roadmap: Full Text*, BBC NEWS, Apr. 30, 2003, *available at* http://news.bbc.co.uk/2/hi/middle_east/2989783.stm.

6. The Council of Arab States, *The Arab Peace Initiative* (2002), *available at* http://www.al-bab.com/arab/docs/league/peace02.htm.

supplementing the initiative with a multinational peacekeeping force.[7]

It is against this background that the authors set out to examine, from an Israeli perspective, the feasibility of establishing a form of multinational peacekeeping force as part of a future Israeli-Palestinian peace accord. Part I of this Article assesses past successes and failures of peacekeeping missions in and around Israel. Part II discusses the reasons for the success and failure of those past peacekeeping missions. Part III identifies best and worst case scenarios when implementing peacekeeping missions. The Article concludes by suggesting that bilateral security cooperation with multinational oversight may be a better way of dealing with the Israeli-Palestinian conflict than peacekeeping missions.

I.   *ASSESSING THE SUCCESS AND FAILURE OF PEACEKEEPING MISSIONS IN ISRAEL AND ALONG HER BORDERS*

A.   *What is "Peacekeeping"?*

Before addressing the subject of peacekeeping and its place in a future Arab-Israeli peace accord, it is useful to define what is meant by the term "peacekeeping." Peacekeeping is one of the stated objectives of the United Nations. Article 1 of the United Nations Charter declares among the United Nations' purposes:

> To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.[8]

This would appear to define peacekeeping in broad terms that include negotiation and adjudication as well as active,

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7. Brent Snowcroft & Zbigniew Brzezinski, *Middle East Priorities for Jan. 21*, WASH. POST, Nov. 21, 2008, at A23.
8. U.N. Charter art. 1.

coercive intervention. However, as Professor Erik Suy has explained:

> The peacekeeping system foreseen in the UN Charter has not been realized. Instead, another concept or system has been created and developed through the practice of the organization: the UN peacekeeping operations, which can be defined as actions involving the use of military personnel in situations of international armed conflict on the basis of the consent of all parties concerned and without resort to armed force except for self-defense. The main difference from the originally planned system is that these operations cannot be considered as enforcement actions.[9]

The distinction between peacekeeping and peace enforcement has also been made by the International Court of Justice.[10] The fundamental view that peacekeeping is based upon consent and that peacekeepers may employ force only in self-defense was reiterated in August 2000 in the Report of the Panel on United Nations Peace Operations ("Brahimi Report," also commonly described as the "NYU Report"),[11] which recommended that "consent of the local parties, impartiality and the use of force only in self-defense should remain the bedrock principles of peacekeeping."[12] This view was adopted among the "Basic Principles" of the *United Nations Peacekeeping Operations: Principles and Guidelines* ("Capstone Doctrine").[13] Thus, while peacekeeping forces often employ military personnel, and although peacekeeping troops have been armed since the deployment of the United Nations Truce Supervision Organization ("UNTSO") in Sinai in 1957, it should be borne in mind that they are supplied only with defensive weapons to be used solely for their own protection.[14]

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9. Erik Suy, *United Nations Peacekeeping System, in* ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1143, 1143 (Peter Macalister-Smith ed., 2000).

10. Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter), Advisory Opinion, 1962 I.C.J. 151, 163–72 (July 20).

11. Report of the Panel on United Nations Peace Operations, U.N. Doc. A/55/305, S/2000/809; U.N. GAOR, 55th Sess., (Aug. 21, 2000) [hereinafter Brahimi Report].

12. *Id.* at ix.

13. UN Dep't of Peacekeeping Operations, United Nations Peacekeeping Operations: Principles and Guidelines (2008), *available at* http://pbpu.unlb.org/pbps/ Library/Capstone_Doctrine_ENG.pdf [hereinafter Capstone Doctrine].

14. Suy, *supra* note 9, at 1146.

In addition to United Nations peacekeeping operations, peacekeeping is also carried out by multinational forces acting with the consent of the parties outside of the United Nations framework. For example, the Multinational Force in Sinai ("MFO") was established in 1982 to supervise Israel's withdrawal from the Sinai Peninsula.

Thus, "peacekeeping" is concerned with military or other personnel engaged in observation, interposition, and maintaining law and order within a state.[15] The first type of "peacekeeping," observation, refers to the supervision of compliance with the terms of an agreement between the parties to a conflict, e.g., in the Arab-Israeli context, the United Nations Truce Supervision Organization established in 1948, the United Nations Disengagement Observer Force ("UNDOF") established in 1974, the Multinational Force in Sinai established in 1982, the Multinational Force in Lebanon ("MNF") established in 1982, and the Temporary International Presence in Hebron ("TIPH I"), a civilian observer force established in 1994 and reinstated in 1996 ("TIPH II").

Interposition refers to situations where peacekeepers act as a separation between the parties to a conflict, as in the case of the United Nations Emergency Force ("UNEF") established in 1957, and UNEF II, established in 1973. A third type of force, often grouped under the rubric of "peacekeeping" but not falling within the strict definition of observation and interposition, is that of military personnel engaged in maintaining internal law and order within a state, e.g., the United Nations Interim Force for Southern Lebanon ("UNIFIL") established in 1978, and the Multinational Force in Lebanon established in September 1982 following the withdrawal of the Palestine Liberation Organization ("PLO") from Beirut and the assassination of Lebanese President Bashir Gemayel.

With this basic understanding of the nature and role of peacekeeping forces, the Article now proceeds to examine and evaluate the performance of the various missions deployed in the context of the Arab-Israeli conflict.

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15. *See* Derek W. Bowett, *International Military Force*, *in* 2 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 1267, 1268 (Peter Macalister-Smith ed., 1995).

B.   *Tools for Assessing Success or Failure of a Peacekeeping Mission*

In many cases, the determination of the overall success or failure of a peacekeeping operation seems obvious—the most extreme case, of course, being the outbreak of war or hostilities despite the presence of an active peacekeeping operation. However, a more structured approach than mere intuition is preferable in analyzing the success, failure, or partial success or failure of a peacekeeping operation. As American diplomat and scholar Professor Dennis Jett notes, there is disagreement among various experts in defining the factors by which to judge the success or failure of a peacekeeping mission.[16] Jett cites four criteria, proposed by Canadian Professor Duane Bratt, for assessing the success or failure of a peacekeeping mission: "completion of the mandate, facilitation of conflict resolution, containment of the conflict, and limitation of casualties."[17] This seems to expand upon the proposal by Professor Paul Diehl that peacekeeping operations be evaluated in accordance with their performance on two criteria: the limitation of armed conflict and conflict resolution.[18]

C.   *United Nations Peacekeeping Missions deployed in the Arab-Israeli Conflict*

1.   United Nations Truce Supervision Organization

UNTSO was established by UN Security Council Resolution 50 on May 29, 1948[19] in order to assist the UN Mediator and Truce Commission supervise the truce between Israel and the Arab forces that invaded her following Israel's declaration of independence.[20] However, the truce lasted only four weeks, and fighting again erupted.[21] An indefinite ceasefire was ordered by Resolution 54 on July 15, 1948, and a second group of UNTSO military observers was deployed with each of the Arab armies and the Israeli Defense Forces, with each Israeli armed group, in

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16. DENNIS C. JETT, WHY PEACEKEEPING FAILS 19 (1999).

17. *Id.* (citing Duane Bratt, *Assessing the Success of UN Peacekeeping Operations*, INT'L PEACEKEEPING, Winter 1996, at 64).

18. PAUL F. DIEHL, INTERNATIONAL PEACEKEEPING 34 (1993).

19. *See* S.C. Res. 50, U.N. Doc. S/RES/50 (May 29, 1948).

20. Milos Struger, *The UNTSO Story*, 35 U.N. CHRON., Sept. 1998, at 43.

21. *Id.*

Jerusalem, along the coast, and in the various ports and airports within the area of the truce. In 1949, following the signing of the four General Armistice Agreements between Israel and Egypt, Israel and Jordan, Israel and Lebanon, and Israel and Syria, UNTSO's mandate was extended to supervise these agreements.[22]

Currently, the mandate of UNTSO is "to monitor ceasefires, supervise armistice agreements, prevent isolated incidents from escalating and assist other United Nations peacekeeping operations in the region."[23]

Since the commencement of its operation in 1948, UNTSO has maintained a presence in the Middle East, including being attached to the various additional peacekeeping forces that have been deployed over time, such as the United Nations Disengagement Observer Force ("UNDOF")[24] and the United Nations Interim Force in Lebanon.[25] Currently, the force consists of 151 military observers supported by 88 international civilian personnel and 123 local civilian staff. It has its headquarters in Jerusalem. The international personnel of UNTSO are drawn from Argentina, Australia, Austria, Belgium, Canada, Chile, China, Denmark, Estonia, Finland, France, Ireland, Italy, Nepal, the Netherlands, New Zealand, Norway, Russian Federation, Slovakia, Slovenia, Sweden, Switzerland, and the United States.[26]

Overall, UNTSO has succeeded in its declared purposes of monitoring ceasefires, supervising armistice agreements, and assisting other UN peacekeeping operations in the region.[27] However, UNTSO has been less successful in carrying out its mission of preventing isolated incidents from escalating. The clashes between Egyptian outposts and Israeli patrols along the

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22. *Id.*

23. *UNTSO Mandate*, http://untso.unmissions.org/Default.aspx?tabid=1201 (last visited Sept. 17, 2010).

24. *See infra* Part I.C.4.

25. *See infra* Part I.C.5; *About UNTSO*, http://untso.unmissions.org/Default.aspx?tabid=1204 (last visited Oct. 17, 2010); *see also* Robert Satloff & Rachel Stroumsa, *A UN 'Protection' Force for Palestinians: Background and Implications*, WASH. INST. FOR NEAR E. POL'Y, Nov. 17, 2000, http://www.washingtoninstitute.org/templateC05.php?CID=1987.

26. *UNTSO Facts and Figures*, http://www.un.org/en/peacekeeping/missions/untso/facts.html (last visited Oct. 17, 2010).

27. *See* Rosalyn Higgins, *The June War: The United Nations and Legal Background*, 3 J. OF CONTEMP. HIST. 253, 255–57 (1968) (discussing the successes and failures of UNTSO).

Sinai border in the early 1950s and the incursions into Israel by Egyptian trained *fedayeen* (Palestinian terrorist militias) during that period are among the examples that demonstrate this lack of success. Following the Suez Crisis, the ensuing Sinai Campaign in October 1956 further emphasized the inability of UNTSO to prevent war. Indeed, due to UNTSO's ineffectiveness, following the Sinai Campaign, Israel declared its unwillingness to cooperate further with UNTSO.[28] This set the stage for the establishment of the United Nations Emergency Force. In addition to the shortcomings of UNTSO on the Egyptian-Israeli front, it should also be noted that, as the former President of the International Court of Justice Rosalyn Higgins observed, "the operation of the Mixed Armistice Commission machinery had, in the case of the Jordan-Israel and Syria-Israel Agreements, become very unsatisfactory."[29]

2.   United Nations Emergency Force I ("UNEF I")

In an effort to secure an end to the Suez Crisis, then Canadian Minister of External Affairs, Lester B. Pearson, proposed a plan that led to the establishment of the UNEF.[30] Deployed on November 15, 1956, UNEF can be said to be the first real "peacekeeping" force, as that term is conceptualized today. Among the main features that characterized this new UN force were: (1) leadership: the force was directed by UN Secretary General Dag Hammarskjöld, and fell under the field command of a neutral officer appointed by the head of the UN executive; (2) composition: country contributors to the force were not from any major powers; (3) neutrality: it was intended that the force be neutral as to both its purpose and its actions; and (4) positioning: the force was intended to be positioned between the parties to the conflict, acting as a sort of physical barrier between the warring parties.[31]

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28. *Id.* at 259–60.

29. *Id.* at 260. UNTSO is the UN observer force of the Mixed Armistice Commissions established under the General Armistice Agreements between Israel and Egypt, Jordan, Lebanon, and Syria. *Id.* at 254.

30. DIEHL, *supra* note 18, at 31; *see also* G.A. Res. 1000 (ES-I), U.N. GAOR, 1st Emergency Special Sess., Supp. No. 1, U.N. Doc. A/3354, at 2–3 (Nov. 5, 1956).

31. *See* DIEHL, *supra* note 18, at 31; *UNEF I Background*, http://www.un.org/en/peacekeeping/missions/past/unef1backgr2.html (last visited Sept. 6, 2010) (discussing the establishment of UNEF).

The mandate of UNEF I was to "secure and supervise the cessation of hostilities, including the withdrawal of the armed forces of France, Israel, and the United Kingdom from Egyptian territory and, after the withdrawal, to serve as a buffer between the Egyptian and Israeli forces and to provide impartial supervision of the ceasefire."[32] To enforce this mandate, the force consisted of between 6073 military personnel supported by international and local civilian staff at its maximum, and 3378 military personnel supported by international and local civilian staff at the time of its withdrawal in May 1967. The force was headquartered in Gaza and its international troops were drawn from Brazil, Canada, Colombia, Denmark, Finland, India, Indonesia, Norway, Sweden, and Yugoslavia.[33]

UNEF I did succeed in securing and supervising the cessation of hostilities and the withdrawal of the various armed forces as set out in its mandate, but unfortunately, the inherent conditions of its mandate made it impossible for UNEF I to keep the peace. As Professor N.D. White wrote:

> Despite proposals that UNEF I should guarantee passage through the Suez Canal and the Gulf of Aqaba, UNEF's mandate and functions were to derive from the General Assembly's resolutions which basically called for four things: a cease fire, the cessation of hostilities, abstention from military raids and incursions, and scrupulous observance of the armistice agreements.[34]

Additionally, in accordance with the guiding principles presented by the Secretary General to the UN General Assembly, UNEF I was deployed entirely on Egyptian territory with the consent of the Egyptian government.[35] As a result, UNEF had no power to guarantee free passage through the Suez Canal or the Gulf of Aqaba, and as a guest on Egyptian territory, UNEF had no choice but to withdraw when Egypt ordered it to leave in May 1967.[36]

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32. *UNEF I – Mandate*, http://www.un.org/en/peacekeeping/missions/past/unef1mandate.html (last visited Sept. 6, 2010).

33. *UNEF I – Facts and Figures*, http://www.un.org/en/peacekeeping/missions/past/unef1facts.html (last visited Sept. 6, 2010).

34. N.D. WHITE, THE UNITED NATIONS AND THE MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY 193 (1990); *see also* Higgins, *supra* note 27, at 261.

35. *UNEF I Background*, *supra* note 31.

36. *Id.*

While some opinions have been expressed questioning whether the UN Secretary General had no choice but to order UNEF's withdrawal,[37] White has pointed out that if UNEF had remained, its continued presence would have been hostile and its function would have become one of peace enforcement rather than of peacekeeping.[38] Regardless of the historical merits of the debate, the Capstone Doctrine now states: "[I]n the absence of such consent [of the main parties], a United Nations peacekeeping operation risks becoming a party to the conflict; and being drawn towards enforcement action, and away from its intrinsic role of keeping the peace."[39]

In assessing the shortcomings of UNEF I, it is worth recalling Suy's definition of peacekeeping as "actions involving the use of military personnel in situations of international armed conflict *on the basis of the consent of all parties concerned* and without resort to armed force except for self-defense"[40] and noting White's observation that "Egypt's consent to UNEF I is illustrative of the basis of all observer and peacekeeping functions. It also demonstrates their weakness."[41]

3.   UNEF II

UNEF II was established on October 25, 1973, and was tasked with supervising the implementation of the ceasefire between Egyptian and Israeli forces following the Yom Kippur War.[42] Further, UNEF II was charged with using its best efforts to prevent a recurrence of the fighting and to cooperate with the International Committee of the Red Cross in its humanitarian missions in the area.[43] UNEF II enjoyed the support and cooperation of UNTSO.[44] While UNEF II's mandate remained unchanged throughout its deployment, its activities evolved and were adapted in accordance with the changing role dictated by

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37. *See* Higgins, *supra* note 27, at 262; *see also* WHITE, *supra* note 34, at 193.

38. WHITE, *supra* note 34, at 193.

39. Capstone Doctrine, *supra* note 13, at 32.

40. Suy, *supra* note 9, at 1443(emphasis added).

41. WHITE, *supra* note 34, at 193.

42. S.C. Res. 340, ¶ 3, U.N. SCOR, 28th Sess., U.N. Doc S/11046/Rev.1 (Nov. 25, 1973); *see also UNEF II Mandate,* http://www.un.org/en/peacekeeping/missions/past/unef2mandate.html (last visited Sept. 13, 2010).

43. *See UNEF II Mandate, supra* note 42; *see also* DIEHL, *supra* note 18, at 48.

44. *See UNEF II Mandate, supra* note 42.

the peace negotiations between Egypt and Israel that ultimately led to the Israel-Egypt Peace Treaty signed on March 26, 1979.[45] The signing of the peace treaty heralded the end of the mission of UNEF II, but it remained in the region until July 24, 1979.[46]

Clearly, UNEF II was successful in carrying out its mandated mission.[47] While the presence of UNEF II was not the direct cause of the peace agreement, it may reasonably be said that its presence contributed to a calmer environment in which the Egyptian-Israeli negotiations could be pursued.[48] Although the success of UNEF II is clear, ultimately the key to its success appears to have been the commitment of the parties to the conflict to cooperate with the peacekeeping forces and their mutual desire to reach an accord.

4.   United Nations Disengagement Observer Force

In May 1974, following the 1973 Yom Kippur War, a disengagement agreement was signed between Israel and Syria.[49] Among its provisions, the agreement provided for an area of separation between Israel and Syria, and the establishment of UNDOF to monitor the implementation of the provisions of the agreement.[50] The mandate of UNDOF is fairly limited and empowers UNDOF to "[m]aintain the ceasefire between Israel and Syria; [s]upervise the disengagement of Israeli and Syrian forces; and [s]upervise the areas of separation and limitation, as provided in the May 1974 Agreement on Disengagement."[51] The mandate of UNDOF has been continuously extended, and UNDOF continues to maintain an area of separation between

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45. Treaty of Peace, Isr.-Egypt, Mar. 26, 1979, 1136 U.N.T.S. 115, 117.

46. *UNEF II Mandate*, *supra* note 42.

47. *See* DIEHL, *supra* note 18, at 48–49.

48. *See id.* at 49.

49. Agreement on Disengagement Between Israeli and Syrian Forces, Syria-Isr., May 31, 1974, reprinted in U.N. SCOR, 29th Sess., U.N. Doc. S/11302/Add.1, Annex 1 (May 30, 1974) [hereinafter Agreement on Disengagement]; *see also United Nations Disengagement Observer Force* [*UNDOF*] *Background*, http://www.un.org/en/peacekeeping/missions/undof/background.shtml(last visited Sept. 13, 2010).

50. Agreement on Disengagement, *supra* note 49, ¶¶ B.3, E.

51. *UNDOF Mandate*, http://www.un.org/en/peacekeeping/missions/undof/mandate.shtml (last visited Sept. 13, 2010); *see also* S.C. Res. 350, 29th Year, U.N. Doc. S/INF/30 (May 31, 1974).

Israel and Syria. No military forces other than UNDOF are permitted in the area of separation.[52]

Currently UNDOF's activities include clearing and marking the existence of minefields and assisting the movement and services of the International Committee of the Red Cross.[53] UNDOF's current 1035 troops are assisted by 76 UNTSO military observers from UNTSO's Golan Group and supported by international civilian personnel and 105 local civilian staff.[54] Its international troops are drawn from Austria, Canada, Croatia, India, Japan, and the Philippines.[55]

The Syrian-Israeli border has been relatively quiet since the end of hostilities in 1973, and UNDOF has successfully carried out its limited monitoring role. However, the underlying conflict between Syria and Israel has not been resolved. Indeed, in 1984, Houghton and Trinka noted that "the underlying causes for the earlier Syrian-Israeli hostilities have not been resolved and the situation remains a potentially dangerous one."[56] The situation remains tense as a result of Syria's continued provision of sanctuary to Palestinian terrorist groups operating against Israel, and its support of Hamas and Hezbollah.[57] The authors would suggest that while the presence of UNDOF may contribute to maintaining quiet along the Israel-Syria frontier, another factor contributing to that quiet is that Syria is able to avoid direct confrontation with Israel, instead acting against them by means of third-parties like Hezbollah and Hamas.[58] The authors would also not discount the factor of Syria's desire to improve its relations with the United States, which continues to impose sanctions on Syria pursuant to the provisions of the Syrian Accountability and Lebanese Sovereignty Restoration Act.[59]

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52. *UNDOF Background, supra* note 49.

53. *Id.*

54. *UNDOF Facts and Figures,* http://www.un.org/en/peacekeeping/missions/undof/facts.shtml (last visited Oct. 22, 2010).

55. *Id.*

56. ROBERT B. HOUGHTON & FRANK G. TRINKA, MULTINATIONAL PEACEKEEPING IN THE MIDDLE EAST 15 (1984).

57. *Background Note: Syria,* U.S. DEP'T OF STATE, http://www.state.gov/r/pa/ei/bgn/3580.htm (last visited Sept. 17, 2010).

58. Jack Khoury, *Report: Syria Supplying Long-Range Missiles to Hezbollah,* HAARETZ (Tel Aviv), Jan. 1, 2009, http://www.haaretz.com/hasen/spages/1121298.html.

59. Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, H.R. 1828, 108th Cong. (2003); *Implementation of the Syria Accountability Act,* U.S. DEP'T OF

5.   United Nations Interim Force for Southern Lebanon

a.   UNIFIL I

During the 1970s, violent clashes between Palestinian terrorist groups or various Lebanese militias and Israeli forces continuously erupted along the Lebanese border.[60] These were intensified by the influx of Palestinian militants who fled Jordan following Black September in 1970.[61] In view of its mandate as an observer force, UNTSO forces stationed in southern Lebanon were not in a position to provide an effective response to the increasing violence. Following an attack upon an Israeli tourist bus in March 1978 carried out by Palestinian terrorists who crossed into Israel from Lebanon, the Israeli army responded with Operation Litani,[62] aimed at ridding southern Lebanon of the terrorist bases that had been established there.[63]

Following the Israeli incursion, the Lebanese government submitted a strong protest to the UN Security Council, stating that it had no involvement with the Palestinian attack. In response, the Security Council adopted Resolutions 425 and 426 calling for the immediate cessation by Israel of its military activity in Lebanon, for the withdrawal of Israeli forces from Lebanese territory, and for the establishment of a United Nations Interim Force in Southern Lebanon ("UNIFIL I").[64] The mandate of UNIFIL I was to "[c]onfirm Israeli withdrawal from southern Lebanon; [r]estore international peace and security; and [a]ssist the Lebanese Government in restoring its effective authority in the area."[65] Thus, UNIFIL I can be said to have been mandated with a dual role: one of peacekeeping and a second of maintaining internal law and order in Lebanon. UNIFIL I was not successful in carrying out its mandate, as is clear from its own

COMMERCE, http://www.bis.doc.gov/licensing/syriaimplementationmay14_04.htm (last visited Sept. 17, 2010).

60. *See* DIEHL, *supra* note 18, at 56; *see also UNIFIL Background,* http://www.un.org/en/peacekeeping/missions/unifil/background.shtml (last visited Sept. 17, 2010).

61. *Id.*

62. HOUGHTON & TRINKA, *supra* note 56, at 17.

63. *Id.* at 29.

64. S.C. Res. 425, ¶¶ 2–3, U.N. Doc. S/INF/34 (Mar. 19, 1978); S.C. Res. 426, ¶ 2, U.N. Doc. S/INF/34 (Mar. 19, 1978).

65. *UNIFIL Mandate,* http://www.un.org/en/peacekeeping/missions/unifil/mandate.shtml (last visited Sept. 10, 2010).

description of the situation leading up to Israel's Operation Peace of the Galilee in June 1982.[66] According to UNIFIL, Israel invaded Lebanon "after intense exchange of fire in Southern Lebanon and across the Israel-Lebanon border."[67]

Following the Israeli withdrawal from southern Lebanon in 2000, UNIFIL I returned to its role in accordance with its original mandate. During the period from 2000 until 2006, as UNIFIL notes, "periods of quiet along the Blue Line [the Israel-Lebanon border] were often followed by episodes of hostilities, with one of the incidents across the Line resulting in the killing and wounding of United Nations military observers. Tensions between the parties did not at any point appreciably diminish."[68] This is an understatement in view of the effective takeover of southern Lebanon by Hezbollah following Israel's withdrawal,[69] and the attacks across Israel's border that ensued.[70] UNIFIL I's ineffectiveness in carrying out its mandate was further evidenced by the massive buildup of Hezbollah infrastructure and forces in southern Lebanon that was revealed in the course of the 2006 Second Lebanon War.[71]

b.   UNIFIL II

In response to the Second Lebanon War, the UN Security Council adopted Resolution 1701 on August 11, 2006, article 8 of which called for the following actions: (1) a   full   cessation   of hostilities; (2) the deployment by both the Lebanese army and UNIFIL throughout southern Lebanon; and (3) the support by Israel and Lebanon of a permanent ceasefire and long-term solution to be based, inter alia, on security arrangements aimed at maintaining a southern Lebanon free of military activities and weaponry (other than those of the Lebanese government and UNIFIL) and at the cessation of the sale and supply of arms to

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66. *UNIFIL Background, supra* note 60.

67. *Id.*

68. *Id.*

69. Isr. Ministry of Foreign Affairs, *The Second Lebanon War One Year Later* (July 2007), http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/The+Second+Lebanon+War+-+One+year+later+-+July+2007.htm [hereinafter *One Year Later*].

70. Isr. Ministry of Foreign Affairs, *Hizbullah Attacks Along Israel's Northern Border May 2000–June 2006,* http://www.mfa.gov.il/NR/exeres/9EE216D7-82EF-4274-B80D-6BBD1803E8A7frameless.htm?NRMODE=Published (last visited Sept. 10, 2010).

71. *One Year Later, supra* note 69.

Lebanon, except as authorized by the Lebanese government.[72] To attain these goals, the Security Council extended UNIFIL's force "in numbers, equipment, mandate and scope of operations" such that the force was increased to a maximum of 15,000 troops (UNIFIL II).[73] UNIFIL's original mandate was extended to provide, inter alia: (1) the monitoring of the cessation of hostilities; (2) the accompaniment and support of the Lebanese army in its deployment throughout southern Lebanon; and (3) the assistance in ensuring humanitarian access to civilian populations and the return of displaced persons.[74] Further, UNIFIL II is authorized to

> take all necessary action in areas of deployment . . . to ensure that its area of operations is not utilized for hostile activities of any kind, to resist attempts by forceful means to prevent it from discharging its duties . . . and to protect United Nations personnel, facilities, installations and equipment, ensure the security and freedom of movement of United Nations personnel, humanitarian workers and . . . to protect civilians under imminent threat of physical violence.[75]

Although the Israeli border with Lebanon has remained relatively calm, it would appear that Hezbollah activities and military build-up, including stockpiling of arms and weaponry, have continued, and UNIFIL II, even with its expanded troop base and broadened mandate, has proved inadequate for preventing such activities.[76] As for UNIFIL's II contribution to the relative calm along Israel's northern border since the end of hostilities in August 2006, former Israeli diplomat and Director of the Institute for National Security Studies Oded Eran explains:

> In reality, this restraint comes from the policy decision of Hizballah's leaders to focus on the domestic agenda and solidify its political position in Lebanon. Hizballah has also been deterred militarily by the calculation that Israel would respond overwhelmingly to any provocation, striking the Shiite organization and/or its two major patrons, Syria and

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72. S.C. Res. 1701, ¶ 8, U.N. Doc. S/RES/1701 (Aug. 11, 2006).
73. *Id.* ¶ 11.
74. *Id.*
75. *Id.* ¶ 12.
76. Nicholas Blanford, *UN Resolution 1701: A View from Lebanon*, WASH. INST. FOR NEAR E. POL'Y, Oct. 21, 2008, http://www.washingtoninstitute.org/templateC05.php?CID=2940.

> Iran. . . . [Instead]   Hizballah   has   benefitted
> tremendously . . . fully recovering from the 2006 war and
> improving its political and military position in Lebanon.
> Under the lull provided by the ceasefire, the organization
> has managed to avoid paying a price for triggering the 2006
> war and has reasserted itself even more forcefully in
> Lebanese politics.[77]

Recent rocket fire at Israel from southern Lebanon casts further doubt on the effectiveness of UNIFIL II, while recent discoveries of arms caches and explosive pits in the area under UNIFIL II control appear to indicate that Hezbollah has resumed its activities despite UNIFIL II increased presence.[78] Additionally, reports that Hezbollah has installed long-range missile emplacements to the north of the area under UNIFIL II control[79] raise questions as to the usefulness of an "interposition" of peacekeepers to maintain a buffer zone. Hezbollah's behavior sheds light upon the problems faced by a peacekeeping force when its mission does not enjoy the support of one or more of the parties to the conflict, or the full cooperation of the host state that it is meant to aid in restoring and maintaining order.

D.   *Non-United Nations Peacekeeping Missions*

1.   Multinational Force and Observers in the Sinai

The Multinational Force and Observers in the Sinai, an extra-UN observer and peacekeeping force, was set up under the terms of a Protocol to the Peace Treaty between Israel and Egypt signed on August 3, 1981.[80] Annex I of the Peace Treaty called for the establishment of a UN observer force in the Sinai, but, as the date for Israeli withdrawal from the Sinai (April 25, 1982) drew closer, the establishment of such a force was cast into doubt

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77. Oded Eran, *UN Resolution 1701: A View from Israel*, WASH. INST. FOR NEAR E. POL'Y, Oct. 20, 2008, http://www.washingtoninstitute.org/templateC05.php?CID=2939.

78. *See Further Evidence of Hezbollah's Military Activity*, INTELLIGENCE AND TERRORISM INFO. CTR. (Jan. 7, 2010), http://www.terrorism-info.org.il/malam_multimedia/ English/eng_n/html/hezbollah_e016.htm*; Rocket Fire in Northern Israel*, INTELLIGENCE AND TERRORISM INFO. CTR. (Sept. 13, 2009), http://www.terrorism-info.org.il/ malam_multimedia/English/eng_n/html/lebanon_e001.htm.

79. Howard Schneider, *Hezbollah Rearms Away from Border; Future Clash with Israel Could Be Broader*, WASH. POST, Jan. 23, 2010, at A10.

80. Peace Treaty, Egypt-Isr., Mar. 26, 1979, 1136 U.N.T.S. 115.

due to the prospect of a Soviet veto in the Security Council.[81] Indeed, on May 18, 1981, the President of the Security Council advised the Egyptians that there was insufficient support in the Security Council to establish the required UN observer force.[82]

The MFO did not enjoy the support of the entire international community:

> The Soviet Union and most of the Arab states refused to cooperate because of the MFO's association with the Camp David Accords. . . . Even the United Kingdom, France, Italy, and the Netherlands refused to participate until it was agreed that their participation did not imply any change in their position vis-à-vis the Arab-Israeli issue.[83]

The United States, however, played a vital role in the negotiations for, and establishment of, the force. It continues to provide the force with both political and financial support.[84] Indeed, the support of the United States has been one of the key factors in the establishment and continued operation of the MFO.[85]

Of significance, however, is the direct involvement of the parties to the conflict in the establishment of the force, and their continuing involvement in the MFO's operations.[86] The director general of the MFO, who must be American, is appointed by both parties on the recommendation of the United States, while the MFO force commander is appointed by the director general subject to the approval of Israel and Egypt. Further, Israeli and Egyptian liaison officers meet at least monthly with the MFO force commander, primarily regarding operational matters.[87] The direct expenses of the MFO are funded in equal parts by Egypt, Israel, and the United States. Contributions to the MFO are also made by Germany, Japan, the Netherlands, Norway, Spain, and Switzerland.[88] The participating nations (other than the United States) do not contribute funds to the MFO and are

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81. HOUGHTON & TRINKA, *supra* note 56, at 40.

82. *Id.*

83. *Id.* at 44.

84. *Id.* at 43.

85. *Id.*

86. *Id.*

87. *Id.* at 43, 47.

88. *Financial Information*, MULTINATIONAL FORCE & OBSERVERS, http://www.mfo.org/financial.html (last visited Sept. 13, 2010).

reimbursed for extraordinary costs related to their military units.[89]

The MFO appears to be carrying out its mandate successfully. Unlike the other peacekeeping missions examined, the MFO was established in the terms of a peace treaty, and in their mutual relations, the parties to that treaty have shown themselves to be committed to its success. The mutual cooperation between the parties in the formation and continued operations of the MFO would also seem to constitute a factor in the continuing success of the mission. Additionally, it should be borne in mind that the MFO operates in a desert. The Sinai Peninsula provides a natural buffer between Israel and Egypt, and it is very sparsely populated.

Twenty-eight years of peacekeeping virtually without incident might raise the question of whether the MFO actually fulfills a real need, or whether its continued presence merely reflects the absence of a concrete exit strategy. More ominously, in August 2005 an MFO vehicle carrying members of the Canadian contingent was damaged and the soldiers injured by an improvised explosive device ("IED") attack, and in April 2006 an MFO vehicle was attacked by a suicide bomber.[90] These incidents, although isolated, raise the issue of peacekeepers becoming the target of third-party "spoilers" and invite the question of diminishing returns.

2.   Temporary International Presence in Hebron

a.   TIPH I

In 1994, there were several violent attacks in Hebron, including the infamous shooting attack by Baruch Goldstein in the Cave of the Patriarchs, in which twenty-nine Palestinians were killed.[91] Following this attack, the UN Security Council passed Resolution 904, which called for an international presence in the city of

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89. HOUGHTON & TRINKA, *supra* note 56, at 52.

90. *See History*, THE AUSTRALIAN OPERATION MAZURKA WEBSITE OF THE MULTINATIONAL FORCE AND OBSERVERS—MFO SINAI, http://www.defence.gov.au/army/opmazurka/History.asp (last visited Sept. 29, 2010); *see also* Kristina Davis, *Suicide Bombers Attack near Canadian Contingent Serving on Op CALUMET*, MAPLE LEAF (Ontario), May 10, 2006, at 4.

91. Clyde Haberman, *Israel Panel Says Killer at Hebron Was Acting Alone*, N.Y. TIMES, June 27, 1994, at A1.

Hebron in order to "guarantee the safety and protection of the Palestinians."[92] On March 31, 1994, Israeli and Palestinian representatives signed an agreement that established the Temporary International Presence in Hebron (TIPH I), a civilian observer mission.[93] TIPH I commenced operations on May 8, 1994 and comprised support staff and observers from Denmark, Italy, and Norway.[94] The mandate of TIPH I was (1) to provide by their presence a feeling of security to the Palestinians of Hebron; (2) to help promote stability and an appropriate environment conducive to the enhancement of the well-being of the Palestinians of Hebron and their economic development; (3) to monitor the efforts to restore the safety of Palestinians and events affecting it and the return to normal life in the city of Hebron; and (4) to provide reports.[95] The mandate of TIPH I came to an end after just three months, due to the inability of the Israeli government and the Palestinian leadership to reach agreement on the extension of the mandate.[96]

b. TIPH II

On May 12, 1996, an interim TIPH mission was established pursuant to the Interim Agreement on the West Bank and the Gaza Strip ("Interim Agreement" or "Oslo II"), signed at Taba on September 28, 1995.[97] The agreement called for the reestablishment of a Temporary International Presence in Hebron.[98] This interim TIPH mission was composed entirely of Norwegian members and was replaced in January 1997 by TIPH II in accordance with both the Protocol Concerning the

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92. S.C. Res. 904, ¶ 3, U.N. Doc. S/Res/904 (Mar. 18, 1994); *see Establishment of TIPH*, TEMP. INT'L PRESENCE IN THE CITY OF HEBRON [TIPH], http://www.tiph.org/en/ About_TIPH/Establishment of TIPH (last visited Sept. 29, 2010) [hereinafter *Establishment of TIPH*].

93. *See Establishment of TIPH*, *supra* note 92.

94. *Id.*

95. *See* Justus R. Weiner, *The Temporary International Presence in the City of Hebron: A Unique Approach to Peacekeeping*, 16 WIS. INT'L L.J. 281, 312–13 (1997).

96. *Establishment of TIPH*, *supra* note 92.

97. The Israel-Palestine Liberation Organization Interim Agreement on the West Bank and the Gaza Strip, Isr.-P.L.O., Sept. 28, 1995, 36 I.L.M. 551 [hereinafter Interim Agreement].

98. *Id.* art. VII, ¶ 10.

Redeployment in Hebron,[99] signed January 17, 1997, and the Agreement on Temporary International Presence in Hebron ("TIPH II Agreement"), signed on January 21, 1997 between Israel and the Palestinians.[100]

The TIPH II Agreement directs the following general conduct and aims of the TIPH II mission: (1) it is to be stationed and operate in the city of Hebron,[101] where it is granted freedom of movement;[102] (2) it is to create a feeling of security among the Palestinians living in Hebron;[103] (3) in all its activities, it will relate to the city of Hebron as one city;[104] (4) its organizational structure, operational guidelines, logistics, support, privileges and immunities shall be with the agreement of the two sides;[105] and (5) its personnel shall have no military or police functions and they will not interfere in disputes, incidents, or the activities of Israeli security forces or the Palestinian police.[106] TIPH personnel wear distinctive uniforms and do not carry weapons.[107]

Building on the uniqueness of the TIPH I, the mandate of TIPH II includes goals that are not typical of traditional peacekeeping. TIPH II might be more accurately described in terms of the integrated force referred to in the *UN Report on Peacekeeping Operations*, comprising peacekeeping as well as socio-economic aims. TIPH II is mandated

> 1. to promote by their presence a feeling of security to the
> Palestinians of Hebron;

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99. Protocol Concerning the Redeployment in Hebron, Isr.-P.L.O, Jan. 21, 1997, 36 I.L.M. 650.

100. Agreement on the Temporary International Presence in the City of Hebron and Memorandum of Understanding, Isr.-P.L.O., art. 1, Jan. 21, 2007, 36 I.L.M. 547 [hereinafter TIPH II Agreement].

101. *Id.*

102. *Id.* art. 9.

103. *Id.* art. 1.

104. *Id.*

105. *Id.*

106. *Id.* art. 3.

107. *Id.* art. 8. Under Article 8 of the TIPH II Agreement, TIPH personnel may carry pistols for self-defense; however, weapons are not mentioned in the Memorandum of Understanding on the Establishment of a Temporary International Presence in Hebron signed by the participating countries, and in practice, TIPH personnel are unarmed. *See* Memorandum of Understanding on the Establishment of a Temporary International Presence in Hebron, Jan. 30, 1997, 36 I.L.M. 549 [hereinafter TIPH MOU].

2. to help promote stability and an appropriate environment conducive to the enhancement of the well-being of the Palestinians of Hebron and their economic development;
3. to observe the enhancement of peace and prosperity among Palestinians;
4. to assist in the promotion and execution of projects initiated by the donor countries; [and]
5. to encourage economic development and growth in Hebron.[108]

As TIPH II was created by agreement between the parties themselves, its conduct is fully subject to the consent and direction of the parties. Importantly, the finances of TIPH II are also borne by the participating countries.[109]

TIPH II is required to report any incidents or issues occurring in Hebron to a joint committee comprising Palestinian and Israeli representatives.[110] TIPH II produces several types of reports submitted to various committees comprising Palestinian, Israeli, and TIPH II representation, or to the governments of the participating countries. The joint committee is mandated to meet weekly or at the request of a committee member.[111] Further, TIPH II is mandated to coordinate its activities and policy with a Monitoring and Steering Committee, which was intended to be established in terms of the Interim Agreement.[112] While the Committee has not yet been established, such reports are submitted to senior government representatives of the two parties.[113]

It should be noted when assessing the overall success of TIPH II that the mission was mandated ultimately to "promote" the feeling of security and stability of the Palestinian residents of Hebron through the presence of the mission. It was not mandated to become directly involved in the political or social interactions between the Israeli and Palestinian residents of Hebron or to enforce peaceful relations between them, nor is its role to act as a buffer between Israeli and Palestinian security forces. As such, the operations of TIPH II are limited to

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108. TIPH II Agreement, *supra* note 100, art. 5.
109. *Id.*
110. *Id.* art. 7.
111. *Id.*
112. *Id.*
113. TIPH MOU, *supra* note 107, art. B.

reporting incidents and issues to the parties, thus promoting a feeling of representation.

Overall, it may be said that TIPH II has met with a significant measure of success in carrying out its mandate. The majority of the city's residents are aware of TIPH's presence and are of the opinion that reporting an incident to TIPH will improve the situation, and feel optimistic about the future.[114] However, a majority of the residents of Hebron also report feeling less secure.[115] In fairness, this increased sense of insecurity may not be an indicator solely of TIPH's effectiveness, but may also reflect larger external political issues.

TIPH II is a unique mission and its civil confidence-building mandate is significantly different from the type of mandate envisaged for peacekeeping forces intended to fulfill a security role in a proposed Israeli-Palestinian peace accord.

3.   The Multinational Force in Lebanon

In August 1982, the United States brokered an agreement to end the fighting and evacuate PLO and Syrian forces from Beirut, then under siege by Israeli troops in the course of Operation Peace for Galilee ("First Lebanon War").[116] The agreement provided for the deployment of a Multinational Force in Lebanon to oversee the evacuation of the PLO and Syrian forces.[117] The MNF, composed of troops from France, Italy, and the United States began its deployment on August 21, 1982, and withdrew on August 30, following the evacuation of the PLO.[118]

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114. *TIPH, Addressing the Perception of TIPH in Hebron—Opinion Poll 2007*, http://www.tiph.org/?module=Files;action=File.getFile;ID=1617 (last visited Sept. 29, 2010).

115. *Id.*

116. *See* Ronald F. Baczkowski, *Tactical Lessons for Peacekeeping: U.S. Multinational Force in Beirut 1982–1984*, GLOBALSECURITY, http://www.globalsecurity.org/military/ library/report/1995/BRF.htm (last visited Nov. 1, 2010); *see also US Multinational Force [USMNF] Lebanon*, GLOBALSECURITY, http://www.globalsecurity.org/military/ops/ usmnf.htm (last visited Nov. 1, 2010) [hereinafter *USMNF*].

117. *See* Baczkowski, *supra* note 116; *see also* John H. Kelly, *Lebanon: 1982–1984, in* U.S. AND RUSSIAN POLICYMAKING WITH RESPECT TO THE USE OF FORCE 85, 92 (Jeremy R. Azrael & Emil A. Payin eds., 1996).

118. *See* Kelly, *supra* note 117, at 92–93; *see also* Baczkowski, *supra* note 116; *USMNF*, *supra* note 116.

On September 14, 1982, Lebanese President Bashir Gemayel was assassinated.[119] This was followed, two days later, by the massacre of Palestinian civilians in the Sabra and Shatila refugee camps by members of the Lebanese Phalangist militia.[120] In the wake of these events, US President Ronald Reagan deployed the US Multinational Force ("USMNF") in Lebanon to help the Lebanese government restore and maintain stability.[121] During the course of 1983, the USMNF and US missions in Lebanon were the targets of terrorist attacks. On April 18, 1983, the US embassy in West Beirut was bombed.[122] On October 23, 1983, suicide bombers attacked the US Marine and French Paratrooper barracks in Beirut, killing 241 Americans and 56 French servicemen.[123] Additionally, from August 1983 onward, American forces found themselves increasingly involved in fighting against Lebanese militias.[124] Under mounting Congressional pressure, the President ordered the withdrawal of USMNF, which was completed on February 26, 1984.[125]

II.   *UN AND NON-UN-MANDATED MISSIONS: FACTORS FOR SUCCESS AND FAILURE*

As the above analysis has shown, UN peacekeeping missions have met varying degrees of success and failure. The following sections will examine the various factors that may contribute to or detract from the effectiveness of a peacekeeping mission.

A.   *The Mandate*

The mandate of UN peacekeeping missions is the result of political compromise among the many UN member states in the course of the process of authorizing a peacekeeping mission. The process of compromise may yield a mandate too vague and too

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119. *See* Kelly, *supra* note 117, at 92–93; *USMNF, supra* note 116.

120. *See USMNF, supra* note 116; *see also* Kelly, *supra* note 117, at 93.

121. *See* Kelly, *supra* note 117, at 93–94; *USMNF, supra* note 116.

122. *See* Baczkowski, *supra* note 116; *see also* Kelly, *supra* note 117, at 98; *USMNF, supra* note 116.

123. *See* Kelly, *supra* note 117, at 101–02; *see also* Baczkowski, *supra* note 116; *USMNF, supra* note 116.

124. *See* Kelly, *supra* note 117, at 98–99 (describing the increased attacks on the Marines of the MNF by militia groups).

125. For a detailed history and assessment, see *id.* at 102–03; Baczkowski, *supra* note 116.

broadly phrased to serve as an effective guide for action. The same process may also yield a mandate that is too limited in its scope. As William Orbach succinctly notes:

> The United Nations is not an independent entity, but an international arena in miniature where most international conflicts and disputes are reenacted. It is a microcosm of the larger international reality. In this institution all international conflicts—military, economic, and political—are reflected in and, to a certain extent, transferred to the political plane. The United Nations is *not* an actor on the international stage, but a microcosm of that stage.[126]

This point was made even more emphatically in the recommendations of the Brahimi Report. In the section entitled "Clear, credible and achievable mandates," the report states:

> As a political body, the Security Council focuses on consensus-building, even though it can take decisions with less than unanimity. But the compromises required to build consensus can be made at the expense of specificity, and the resulting ambiguity can have serious consequences in the field if the mandate is then subject to varying interpretation by different elements of a peace operation, or if local actors perceive a less than complete Council commitment to peace implementation that offers encouragement to spoilers. Ambiguity may also paper over differences that emerge later, under pressure of a crisis, to prevent urgent Council action. While it acknowledges the utility of political compromise in many cases, the Panel comes down in this case on the side of clarity, especially for operations that will deploy into dangerous circumstances. Rather than send an operation into danger with unclear instructions, the Panel urges that the Council refrain from mandating such a mission.[127]

For example, the mandates of UNIFIL I and II—calling, inter alia, for the mission to restore international peace and security, as well as the effective authority of the Lebanese government—set out aims so broad and intangible as to be impractical. On the other hand, a mandate calling for a mission

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126. WILLIAM W. ORBACH, TO KEEP THE PEACE: THE UNITED NATIONS CONDEMNATORY RESOLUTION 136 (1977).
127. Brahimi Report, *supra* note 11, ¶ 56.

to act solely as a buffer[128] or to supervise the withdrawal of a force and the cessation of hostilities per the mandates of UNEF I and II and UNDOF, may not provide the mission with sufficient latitude for an effective response to hostilities or a breach of the ceasefire. Of course, whenever it becomes necessary to extend the mission's mandate, the time-consuming political process of compromise begins anew.

As opposed to UN peacekeeping missions, the process of drafting the mandates of multinational peacekeeping operations may be less susceptible to the shortcomings inherent in the UN drafting process. Where the mandate is drafted primarily by the parties, it is more likely that the mandate will more accurately address their concerns, and may be expected to provide mechanisms that the parties themselves deem necessary and adequate for the effective achievement of the peacekeeping goals that they have established.

The mandates of the MFO and TIPH II may serve as examples of this conflict-specific focus that may be achieved when a peacekeeping force is established primarily in accordance with guidelines established by the parties to the conflict. Thus, for example, the MFO mandate was drafted in the context of a peace treaty between two previously warring states. The peacekeeping functions of the MFO are therefore security focused and are intended to reinforce the peace treaty. The TIPH II mandate was drafted to address civil unrest in the volatile social context of Hebron. The role of that mission as an address for reporting grievances and promoting socio-economic objectives are of particular significance, as is reflected in the mandate.

Moreover, because the mandate of a non-UN peacekeeping mission is a product of negotiations between the parties and is meant to address their specific concerns, amendments to the mandate necessary for it to be effective can be decided upon by

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128. This, for example, was the mandate of the United Nations Military Observer Group in India and Pakistan ("UNMOGIP"), about which the UN Secretary General stated: "Because the role of UNMOGIP appears frequently to be misunderstood, it bears emphasis that the operation has no authority or function entitling it to enforce or prevent anything, or to try to ensure that the Cease-Fire is respected." U.N. Secretary-General, Report by the Secretary-General on the Current Situation in Kashmir with Particular Reference to the Cease-Fire Agreement, the Cease-Fire Line and the Functioning of UNMOGIP, ¶ 3, U.N. Doc. S/6651 (Sept. 3, 1965).

the parties to the conflict, and while they will require the consent of the contributing states, the process should be far more efficient than the parallel UN process.

B.   *Political Support*

Any peacekeeping mission will necessarily be subject to shifting political winds. Changes in political alignments and commitments are not exclusive to the diplomatic process of the UN. They can arise among and within the states contributing forces or support to a multinational force, and they can affect the conduct of the mission and its staying power. An example of this is the withdrawal of MNF, described in Section II D.3, and by the withdrawal of the Polish contingent from UNIFIL in 2009.[129] Another example is the extraction of Belgian troops from the United Nations Assistance Mission for Rwanda following the death of ten Belgian troops and continued threats against Belgian nationals.[130] The recent collapse of the Netherland's coalition government due to disagreements on extending the deployment of Dutch forces in Afghanistan also provides an instructive example.[131]

In the case of UN peacekeeping missions, an additional element that must be borne in mind is the possibility of a veto, either because of a threat to the direct interests or ambitions of a permanent member of the Security Council or in deference to its political alliances.[132]

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129. *See   November   2009:   Lebanon,*   SECURITY   COUNCIL   REPORT, http://www.securitycouncilreport.org/site/c.glKWLeMTIsG/b.5566459/k.E00/ November_2009brLebanon.htm (noting that the Polish contingent was due to withdraw in October 2009). On the prospect that France, Italy, and Spain may follow suit, see Yaakov Katz, *Israel Concerned Indonesia Might Take Charge of UNIFIL Naval Force*, JERUSALEM POST, Apr. 28, 2010, at 3.

130. *See United Nations Assistance Mission for Rwanda,* U.N. DEP'T OF PUB. INFO., Sept. 1996, http://www.un.org/Depts/DPKO/Missions/unamir_b.htm.

131. Ian Traynor, *Dutch Coalition Collapses after Row Over Troops' Afghan Mission*, GUARDIAN (London), Feb. 22, 2010, at 24.

132. Examples are: the USSR's veto of the American proposal in regard to the United Nations Observation Group in Lebanon ("UNOGIL") in 1958, *see* United Nations Peacekeeping, *Lebanon—UNOGIL Background,* http://www.un.org/en/ peacekeeping/missions/past/unogilbackgr.html#one (last visited Mar. 3, 2010); the veto by the Ukrainian SSR and USSR of the proposal for a UN peacekeeping mission to Lebanon in February 1984, *see* S.C. Res. France: Revised Draft Resolution, U.N. Doc. S/16351/Rev. 2 (Feb. 28, 1984); and the threatened Soviet veto that led to the establishment of the MFO, *see* HOUGHTON & TRINKA, *supra* note 56.

C.   *Bias or Perception of Bias*

One of the basic principles in a UN mission is neutrality or impartiality.[133] Indeed, impartiality was one of the originally envisaged underpinnings of a UN peacekeeping mission, as first conceived by Dag Hammarskjöld, the UN Secretary General under whom peacekeeping missions were most broadly developed.[134] A peacekeeping mission that is perceived as biased by one of the parties to a conflict may face insurmountable difficulties to carrying out its mandate. A suspicious party may refrain from fully cooperating with the mission, viewing its cooperation as futile or even potentially harmful to its own interests.

While the problems arising from actual bias and perceived bias may be different, ultimately either can result in the failure of the mission. Indeed, arguably, a perception of bias may be more difficult to address as the bias may not be demonstrable, and there may be no concrete steps that might serve to change the perception.

Perceptions and accusations of bias have been particularly prominent in regard to UNIFIL, which has, at various times, been accused of bias by Israel, Lebanon, and Hezbollah.[135] In addition to evidence of actual bias in its conduct toward the parties, or perceptions of bias that may arise from ineffectiveness of the mission in carrying out its mission from the perspective of one of the parties, UN peacekeeping missions are also susceptible to being perceived as operating in accordance with the political agendas of the contributing countries or biases of the United Nations itself.

Some of the pitfalls arising from distrust and perceptions of bias may be avoided in the case of multinational peacekeeping forces where the contributing powers are agreed upon by the parties to the conflict. Of course it is not impossible that a multinational force could be the subject of accusations of bias. In a highly politicized climate, and specifically in the context of

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133. Capstone Doctrine, *supra* note 13.

134. CHARLES C. MOSKOS, PEACE SOLDIERS 25–26 (1976).

135. *See* Hagai Segal, *Is the UN up to the Task of Peacemaker?*, SOUTH CHINA MORNING POST (H.K.), Aug. 15, 2006, at A13; *Lebanon Blasts Called "Spy Devices"*, ALJAZEERA (Doha), Oct. 19, 2009, http://english.aljazeera.net/news/middleeast/2009/10/2009101918327389491.html.

politically sensitive issues that form the background to any peacekeeping force, bias and subjectivity are typically of concern. However, the active involvement of the parties to the conflict in the establishment, selection, and continued operations of the force can contribute to attenuating distrust and perceptions of bias. Where the peacekeeping force operates in concert with the parties toward attaining mutually desired goals, the underlying suspicions that feed perceptions of bias may be further reduced. Moreover, joint control and structured mechanisms for addressing grievances may also prove effective in responding to the concerns of the parties.

D.   *Rules of Engagement*

Dag Hammarskjöld envisaged a UN peacekeeping force as a conciliation force that does not engage in combat activities.[136] In keeping with this vision, the rules of engagement for UN peacekeeping forces have been very circumscribed. The fundamental rule is that the peacekeeping soldier is only permitted to use force in self-defense.[137] Unfortunately, the term "self-defense" is not unambiguous. Individual self-defense is always permitted to UN peacekeepers.[138] After all, as has been noted, no country would contribute its troops to a UN mission unless they are permitted to defend themselves if attacked.[139] However, problems arise when self-defense requires actions that go beyond the limits of personal defense, extending to the defense of the mission or actions intended to facilitate the accomplishment of the mission's mandate. Limiting the resort to the use of force to a strict definition of self-defense may render the mission unviable. Where, for example, the peacekeeping mission faces militias or guerilla groups actively seeking to undermine peacekeeping activities, such as in the case of Hezbollah in Lebanon, a peacekeeping force empowered to use force only when attacked will be hard pressed to fulfill its peacekeeping mandate. The Capstone Doctrine notes:

> The   environments   into   which   United   Nations peacekeeping   operations   are   deployed   are   often

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136. MOSKOS, *supra* note 134, at 25.

137. *Id.* at 131

138. *Id.*

139. *Id.*

characterized by the presence of militias, criminal gangs, and other spoilers who may actively seek to undermine the peace process or pose a threat to the civilian population. In such situations, the Security Council has given United Nations peacekeeping operations "robust" mandates authorizing them to "use all necessary means" to deter forceful attempts to disrupt the political process, protect civilians under imminent threat of physical attack, and/or assist the national authorities in maintaining law and order.[140]

While this broad concept of "robust" self-defense seeks to address a real problem in defining the appropriate limits of self defense and the need to expand the meaning of the term so that its limitations do not thwart the peacekeeping mission, it is inherently problematic.

While refraining from using force may make a peacekeeping operation ineffective, fuel perceptions of bias, and even cause the parties to the conflict to view the mission as a hindrance, the resort to force is itself not without dangers. As the Capstone Doctrine recognizes, "The use of force by a United Nations peacekeeping operation always has political implications and can often give rise to unforeseen circumstances."[141] Moreover, a decision to use force must be mindful of "the effect that such action will have on national and local consent for the mission."[142]

A multinational force faces similar problems in defining its rules of engagement. However, as a force working in concert with the parties to the conflict toward achieving mutually desired goals, the danger of a loss of confidence and consent may be reduced. The cooperative basis for its operations may also make it possible to better adapt the rules of engagement to the specific conditions under which it operates, and more specifically, define what is permitted in given circumstances. This could lead to greater mission effectiveness as well as greater confidence in the ability of the mission to carry out its operational tasks.

While seeking to address real problems impacting the effectiveness of peacekeeping operations, the concept of "robust" self-defense raises two additional, inter-related problems in regard to any peacekeeping operation: exposure to increased

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140. Capstone Doctrine, *supra* note 13, at 34.
141. *Id.* at 35
142. *Id.*

casualties and erosion of political support. The active use of force unavoidably increases the exposure of peacekeepers to danger. It may also cause third-party spoilers to view the peacekeepers not merely as a hindrance but as a hostile force and a legitimate target. The willingness and motivation of peacekeepers to expose themselves to the dangers of combat cannot be assumed. The loss of life attendant to such actions, whether to the forces themselves or from the collateral risks to the local populace, may also make continued participation in the mission unpopular in the contributing states and lead to a demand for the withdrawal of the peacekeepers.

E.   *Command and Control*

In general, the United Nations command structure is largely decentralized, with operational authority vested in individual force and police commanders in the field.[143] These commanders are answerable to a civilian Special Representative of the Secretary General ("SRSG")[144] who provides strategic decision-making for mandate implementation.[145] The Under Secretary General for Peacekeeping Operations has overall responsibility, while the United Nations Headquarters in New York ("UNHQ") provides overall strategic guidance.[146] In less complex missions, this decentralized command and control structure of UN operations is feasible. However, when faced with more intricate, robust missions, the UN command and control model becomes problematic as there is a "growing gap between increasingly ambitious mandates and limited military capacities"[147] such that "[t]he UN model thus seems to combine the worst of two worlds:

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143. *See* BRUCE JONES ET AL., NYU CTR. ON INT'L COOPERATION, BUILDING ON BRAHIMI: PEACEKEEPING IN AN ERA OF STRATEGIC UNCERTAINTY 41 (2009) [hereinafter BUILDING ON BRAHIMI]; Jean-Marie Guéhenno & Jake Sherman, *Command and Control Arrangements in United Nations Peacekeeping Operations,* International Forum for the Challenges of Peace Operations, ¶ 16, Nov. 9, 2009, *available at* http://www.cic.nyu.edu/peace_ssr/docs/Background%20Paper_Command%20and%20 Control%20Arrangements%20in%20UN%20Peacekeeping%20Operations_9%20Novem ber%202008.pdf.

144. BUILDING ON BRAHIMI, *supra* note 143, at 41.

145. Guéhenno & Sherman*, supra* note 143, ¶16.

146. *Id.*

147. *Id.* ¶ 4.

too much military decentralization and too much political control over the conduct of military operations."[148]

The more complex peacekeeping missions face many issues and challenges that are directly relevant to the mission's success or failure. One such prominent issue is that force commanders and SRSG's face increased challenges to their authority and command over the peacekeeping troops as the levels of danger and threat to the peacekeepers increase.[149] In such situations, national chains of command of the individual contributing states tend to become more prominent, competing with the established command structure.[150] Further, as danger levels increase, tensions may rise between the civilian command structure at UNHQ and the commanders in the field.[151] The political consensus informing the interpretation and implementation of the mandate at UNHQ might conflict fundamentally with that of the force commanders in the field, and in particular with the increased national military interests of each contributing member state.

Another issue faced in the more complex missions is the distance between UNHQ, where overall strategy is planned, and the theater of operations, where operative decisions are taken. In the Command and Control Arrangements Report, the authors refer to the difficulty involved in "[s]triking the right balance between creating a sense of ownership in the mission and maintaining UN control [as] . . . a delicate, but essential task."[152] In this regard, the authors note that "[t]oo much decentralization can make such control difficult."[153] Of course, strategic high-level control at United Nations level is subject to the broader political considerations that may not be relevant or significant for the operational decisions taken in light of the realities on the ground. This is particularly acute in the context of "missions [that] concern regional or great powers, as in . . . the Middle East."[154] Further problematic issues in this context arise where

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148. *Id.* ¶ 5.
149. *Id.* ¶ 18.
150. *Id.*
151. *Id.*
152. *Id.* ¶ 19.
153. *Id.*
154. *Id.* ¶ 21.

[d]ifferent members of the Security Council may have different expectations with the mission, and they may try to influence it directly, through their nationals in the mission. It may then put the Secretariat in a delicate situation if a high-risk operation encouraged by a Member State goes wrong, or if it is seen as contradicting the interpretation of the mandate made by other Member States.[155]

At times, national units have informally and quietly, without the knowledge of UNHQ, informed the force commander as to the limits of their engagement (instead of making them clear in official caveats inserted into their initial memoranda of understanding arranged with UNHQ). This leads to even greater distance between UNHQ and reduces the overall effectiveness of the force.[156] Furthermore, for the selection of the SRSG to be a political choice—and "[t]he selection of Force Commanders has also been politicized at times."[157]

These command and control issues can negatively affect peacekeeping missions, particularly those that call for robust action and a multi-dimensional approach. The tension between the overall strategic vision, largely politically guided, and the military needs dictated by realities on the ground can be extreme.

The less complex command structure of a force operating in concert with the parties to the conflict may mitigate these problematic aspects of the UN-mandated mission. Moreover, because the overall strategic aims and the specific operational activities are aimed at achieving the same goals, the interaction between the two levels is likely to be less strained. Nevertheless, the involvement of several parties—even under a unified command—cannot entirely avoid all of the political and practical problems that may arise when the peacekeeping force must achieve consent from a number of actors. Even when all the actors aspire to a common goal, they do not necessarily share the same military or political culture, and are not free of political interests and pressures.

155. *Id.*
156. *Id.* ¶ 19.
157. *Id.* ¶ 30.

F.   *Financing*

The *Building on Brahimi* report notes that the total costs of UN peacekeeping missions have steadily increased, with the budget for UN peacekeeping reaching US$8 billion in 2008–2009, marking a ten percent increase over the 2007–2008 period and a five-fold increase in just under a decade.[158] Further, the largest funders of the UN peacekeeping missions are also typically the main contributors towards other international military or regional groupings such as NATO or the EU.[159] With their funding commitments split, and with UN peacekeeping becoming increasingly complex and expensive, maintaining the required level of commitment to funding UN peacekeeping missions cannot be taken for granted. The global financial crisis will certainly be a complicating factor. It is also important to realize that funding can be exploited as a means for exerting political control over the scope and operations of a mission.

The funding models of non-UN-mandated forces present certain advantages, even if they are not without problems. A non-UN-mandated force, established by an agreement between the parties, should be funded primarily by the parties themselves, as in the cases of TIPH I and II and the MFO. Where possible, this financial model can yield a number of advantageous consequences in terms of the commitment of the parties to the success of the mission. Of course, as Diehl points out, the risk of financial "blackmail" of a mission remains possible in the multinational force context, including the possibility that a party could withhold financial commitments in order to leverage control over the conduct of a mission.[160] Moreover, while maintaining a civilian observer force like TIPH may be relatively affordable, equipping and maintaining a robust military peacekeeping operation may be beyond the independent resources of the parties, and may require some third-party funding, either directly or through earmarked foreign aid to the parties. Another model, employed in part in funding the MFO, is one in which some states provide funds exclusively for maintaining the force, while other states provide personnel.

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158. BUILDING ON BRAHIMI, *supra* note 143, at 6.

159. *Id.*

160. DIEHL, *supra* note 18, at 135.

G.   *Troop Composition*

A UN peacekeeping force is composed of troops from various and sometimes numerous countries. A single peacekeeping mission can be comprised of troops from as many as thirty different countries (as in the case of UNIFIL II). This can be the source of a variety of problems. On the one end of the scale are more technical problems, such as language and cultural differences that may lead to serious breakdowns in communications. Differences in military training and approach can also hamper the smooth operation of the mission. Another factor that cannot be overlooked is that of differing military cultures and the possibility that contingents from different participating countries may be bound by different rules of engagement and even conflicting legal approaches, either deriving from their domestic law or arising from treaty obligations. Among the more complex issues that may arise are those deriving from the possible bias of troops from certain national contingents. The willingness of host countries to cooperate with troops from hostile nations can also lead to problems of cooperation. For example, both Iran and Poland contributed troops to UNDOF, but neither maintained diplomatic relations with Israel at the time. This complicated Israeli cooperation with UNDOF's freedom of movement.[161]

Some of these problems can be mitigated by limiting the number of participating states and by adopting appropriate vetting procedures. Such steps are inherently better suited to a multinational force option than to a UN force. The MFO and TIPH II would appear to provide successful models in this regard.

Nevertheless, the UN model enjoys an advantage in its ability to turn to a broader base. For example, the domestic law of some countries prohibits the contribution of troops to non-UN-mandated missions.[162] Additionally, some countries may perceive a UN mandate as granting greater legitimacy to the mission, a factor that may be important in its internal political

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161. HOUGHTON & TRINKA, *supra* note 56, at 9. This problem was most recently addressed in regard to the prospect that command of UNIFIL's naval force may be taken over by Indonesia, a country that does not maintain diplomatic relations with Israel. *See* Katz, *supra* note 129.

162. *See* Katz, *supra* note 129.

debate. Further, it is has been argued that national domestic concerns could make a country more inclined to withdraw its forces deployed under a national flag than those deployed under the UN flag.[163]

H. *Involvement/Commitment of the Parties*

Consent of the parties is regarded as a basic principle of UN peacekeeping.[164] The greater the involvement of the parties, and the greater their commitment to the peacekeeping mission and to the eventual resolution of the underlying conflict, the more likely that the peacekeeping mission will succeed. While it is hoped that a UN peacekeeping force set up and operating in the context of a peace agreement will enjoy the full support of the parties, unequivocal support cannot be assumed or assured. The drafters of the Capstone Doctrine were aware of this issue:

> The absence of trust between the parties in a post-conflict environment can, at times, make consent uncertain and unreliable. Consent, particularly if given grudgingly under international pressure, may be withdrawn in a variety of ways when a party is not fully committed to the peace process. For instance . . . [by] restrict[ing] the operation's freedom of action, resulting in a *de facto* withdrawal of consent . . . . The fact that the main parties have given their consent to the deployment of a United Nations peacekeeping operation does not necessarily imply or guarantee that there will also be consent at the local level, particularly if the main parties are internally divided or have weak command and control systems. Universality of consent becomes even less probable in volatile settings, characterized by the presence of armed groups not under the control of any of the parties, or by the presence of other spoilers . . . . A peacekeeping operation must have the political and analytical skills, the operational resources, and the will to manage situations where there is an absence or breakdown of local consent. In some cases this may require, as a last resort, the use of force.[165]

Arguably, in circumstances like those described above, a multinational force created by the agreement of the parties will

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163. DIEHL, *supra* note 18, at 139.
164. Capstone Doctrine, *supra* note 13, at 31.
165. *Id.* at 32–33.

enjoy a distinct advantage. Ownership of the process is likely to produce better results than submission of the process to a body in which the political considerations and national interests of other states play a significant role. As Jett observes, "[A]n agreement that has been facilitated rather than mediated, inherently has a better chance for success because the parties have greater responsibility for the agreement's shape."[166] But attaining the level of cooperation required for the establishment of an effective multinational presence may not be practical in the absence of basic trust between the parties to the conflict. A significant presence of "spoilers" may also argue in favor of a UN-mandated operation where such a mission might enjoy greater legitimacy in the eyes of the parties to the conflict.

I.   *Spoilers*

The problem of spoilers is addressed in the Capstone Doctrine.[167] It is counted among the factors likely to affect peacekeeping operations in the next three to seven years, as described in the 2009 NYU Report:

> First, spoilers: as the Brahimi Report established, even where there is broad support for a political process, splinter groups, rogue actors or individuals may use violence to undermine the process, and missions must be able to respond to them. The spoiler problem is greater when (i) there are several parties to the conflict; (ii) spoilers include groups motivated by factors outside the immediate conflict, such as international terrorist networks; or (iii) spoilers include factions of a recognized government.[168]

The presence of spoilers cannot be discounted in the context of both the UN-mandated peacekeeping forces and the non-UN-mandated multinational forces. By definition, spoilers are external to the process and antagonistic to it.

The moral or symbolic value of a UN-mandated peacekeeping force as "an international force representing the world community's desire for peace"[169] may well be a factor in its favor, as the authors have proposed elsewhere in this Article.

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166. JETT, *supra* note 16, at 53.
167. *See* Capstone Doctrine, *supra* note 13, at 4.
168. BUILDING ON BRAHIMI, *supra* note 143, at 17.
169. DIEHL, *supra* note 18, at 35.

However, it would be a mistake to overemphasize the deterrent factor of "international legitimacy." Non-state spoilers act outside of the norms of international humanitarian law. Reciprocity is not relevant to their conduct and they have nothing to gain by adherence to the rules. The idea that "[a]ny protagonist choosing to renew hostilities will bear the costs of international disapproval and perhaps sanctions"[170] is an empty threat in regard to armed militias, terrorists, and other spoilers that have no presence at the United Nations, that are, by their nature, already the subjects of international disapproval, and for which the threat of sanctions is irrelevant.

J.   *Regional Players*

The significant role of regional players in the success of a peacekeeping mission is referred to in the Capstone Doctrine, which notes that "[t]he attitude of neighbouring states can be as important a factor in determining the viability of a peace process, as the commitment of the local parties, some of whom may even be acting as proxies for neighbouring states."[171]

Again, as is the case with spoilers, the presence of destructive regional players, in particular where they act through local agents, such as local militias or terror networks, is problematic for both UN-mandated and non-UN-mandated peacekeeping missions. Here, too, the threat of sanctions may be of little relevance when neighboring states maintain deniability by acting through proxies.

III. *THE ISRAELI CALCULATION—RISK VERSUS BENEFIT*

Peacekeeping operations have been a common element in the context of the ongoing conflict between Israel and her neighbors. Although no peacekeeping provisions were established under the Treaty of Peace between Israel and Jordan,[172] or as part of the Declaration of Principles on Interim

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170. *Id.*

171. Capstone Doctrine, *supra* note 13, at 50.

172. *See* Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan, Isr.-Jordan, Oct. 26, 1994, 34 I.L.M. 43 [hereinafter Israel-Jordan Peace Treaty].

Self-Government Arrangements[173] or the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip,[174] the establishment of a peacekeeping force is widely assumed to be integral to any future Israeli-Palestinian peace accord.

The two basic models for peacekeeping are the UN-mandated peacekeeping force and the non-UN multinational force. Both of these models have been tried in the context of the Arab-Israeli conflict with varying degrees of success. The question to be addressed now is whether the adoption of one of those models would make a constructive contribution to the peaceful relations between Israel and a future Palestinian state.

Peacekeeping missions are particularly successful in fulfilling their mandate in regard to conflicts that have already been resolved. The success of a peacekeeping mission is directly proportional to the level of mutual trust, commitment, and cooperation of the parties to the conflict: the stronger those elements, the greater the success. The NYU Report states this in another way: "[C]redible political process and credible military presence should reinforce one another. Ideally, they are inversely related: the more credible the political process, the less the need for a military presence."[175] Parties to a conflict or to a process intended to resolve a conflict should not imagine that a peacekeeping mission can be a substitute for any of those elements. Just as a peacekeeping mission will reinforce the positive, it has the potential to highlight and even exacerbate the negative. It may even become a source of friction or a target, and thus contribute to further deterioration.

A.   *Best-Case Scenario*

In the situation envisaged by those who propose a peacekeeping force as part of the resolution of the Israeli-Palestinian conflict, the force is intended to be an element of the final status. It is proposed neither as a facilitator for conflict resolution nor as a buffer between the parties that will enable them to negotiate in a less contentious atmosphere. This would

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173. *See* Declaration of Principles on Interim Self-Government Arrangements (Isr.), Sept. 13, 1993, *avaiable at* http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Principles.htm.

174. *See* Interim Agreement, *supra* note 97.

175. BUILDING ON BRAHIMI, *supra* note 143, at 17.

seem to provide a strong basis for the success of a peacekeeping operation.

In a best-case scenario, following the resolution of a conflict by parties committed to peaceful coexistence, the example of the MFO reinforces the positive view. Indeed, in such an ideal situation, each of the peacekeeping options offers certain advantages.

Because mutual trust, commitment to maintaining peace, and cooperation directly affect peacekeeping success, there would seem to be an inherent advantage to missions that are created by the parties and that are answerable to them. Such missions are an expression of the cooperation and ongoing commitment and may serve to enhance mutual trust. They also avoid some of the political pitfalls discussed above. From an Israeli perspective, this type of multinational force may also be preferable inasmuch as Israel tends not to view the UN as a particularly hospitable forum. Moreover, the possibility that the force might receive its marching orders in accordance with the political consensus of the UN member states might be seen by Israel as a cause for worry. However, to the extent that the Palestinians might view the UN as a supportive forum and an ally, the Palestinians might prefer the UN option. This option might also be deemed preferable for the Palestinians for the perception of "international legitimacy" that may be important both from a domestic and pan-Arab political perspective. While a UN-mandated multinational force would directly conflict with the Israeli interest, a multinational force consisting of solely the parties to the conflict might be seen to serve it.

Ultimately, in a best-case scenario, the decreasing need for peacekeeping means that the most important function of the operation is its physical and ultimately symbolic presence. The bottom line is that Israel has to consider what type of force would best serve this largely emblematic role, while bearing in mind such factors as the proximity of the frontier to Israeli population centers and the perception of the force by the Israeli public.

Of course, a third possibility in such an atmosphere of commitment and cooperation is the adoption of security arrangements like those set out in the Israeli-Jordanian Peace Treaty. In that framework, the parties agreed upon security relations based upon "mutual trust, advancement of joint

interests and co-operation,"[176] and upon a consultation and liaison mechanism for addressing questions of implementation without the involvement of third parties. That arrangement appears to have resulted in significant success.

B.   *Worst-Case Scenarios*

As the Brahimi Report duly notes, "the Secretariat must not apply best-case planning assumptions to situations where the local actors have historically exhibited worst-case behaviour."[177] This need to consider worst-case scenarios is also noted in the Capstone Doctrine, which observes that "[p]lanning based solely on short-term engagement and best case scenarios has rarely proven to be a successful basis for the deployment of a United Nations peacekeeping mission and should be avoided."[178] This trenchant observation must be borne in mind when considering the appropriate approach to peacekeeping in the context of an Israeli-Palestinian accord.

While the future cannot accurately be predicted, past and present reality can serve as the basis for suggesting certain elements of possible worst-case scenarios. Among these elements are the following possible factors: (1) the government of the Palestinian state may not be committed wholeheartedly to peaceful relations, or may deem an overt or overly zealous commitment to peace to be an obstacle to its internal political interests; (2) Hamas or other opponents of the peace agreement may violently oppose the Palestinian government; (3) Hamas or other opponents of the peace agreement may continue to try to operate against Israel; (4) Israeli settlement blocs or enclaves may remain within the territory of the Palestinian state and may be targeted by spoilers; (5) Israeli opponents to the peace agreement may attempt to reassert their presence in evacuated areas; (6) Israeli opponents to the peace agreement may attempt violent opposition to the Palestinian state. Each of these possible scenarios must be considered in weighing the appropriate security arrangements to be made as part of a peace accord.

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176. Israel-Jordan Peace Treaty, *supra* note 172, art. 4.1(a).

177. Brahimi Report, *supra* note 11, at x.

178. Capstone Doctrine, *supra* note 13, at 51.

If the Palestinian side is not wholly committed to maintaining peaceful relations, the possibility of establishing an entente like that of the Israeli-Jordanian Peace Treaty is precluded. Such a situation would also not produce the level of coordination and cooperation needed for establishing a multinational force. The remaining option is a UN-mandated peacekeeping mission operating in a situation that is not conducive to its success. The extent of its failure to realize its mission will largely be dictated by the nature of the Palestinians' lack of commitment and the intensity of spoiler activity.

The scenario in which commitment to peaceful relations is accompanied by a desire to avoid any overt expression of cooperation with the former enemy or with the peacekeeping operation also argues strongly in favor of a peacekeeping operation rather than a regime of security cooperation between the parties. On its face, such a situation would seem to favor a UN-mandated mission, however, the experience of the MFO and TIPH may support the view that the actual level of cooperation demanded of the parties may not be to such a degree that it would appear as overt cooperation or "collaboration."

The presence of spoilers acting against the Palestinian government from within the territory of the Palestinian state raises additional considerations. First, the need to act against internal spoilers raises a question as to how a government wishes to be perceived domestically. If the government wishes to be seen as acting forcefully against its opponents, then it might prefer the presence of a multinational force acting together with its own security forces, with full cooperation, intelligence sharing, and joint leadership. Such a force might also be deemed preferable by Israel due to the high level of cooperation and because the exclusion of the UN might be seen as advantageous where the spoilers may be supported or encouraged by UN member states that may try to influence or thwart the mission.

If a UN-mandated mission were considered in such circumstances, it would have to be "robust."[179] Such a peacekeeping force, operating independently by a UN command might, at least to some degree, free the Palestinian government from any appearance of "collaboration" in the fight against other

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179. *See supra* Part II.D.

Palestinian groups. Such a non-committal position might not be seen favorably by Israel, and the presence of a UN force might not allay Israeli security concerns, both because, as stated above, the spoilers may be supported by or acting on behalf of member states, and because it would mean that an element of Israel's security would be dependent upon a type of peacekeeping operation that has not proven successful in the past.

Additionally, in this regard, it is worth noting a warning from the Brahimi Report:

> Willingness of Member States to contribute troops to a credible operation of this sort also implies a willingness to accept the risk of casualties on behalf of the mandate. Reluctance to accept that risk has grown since the difficult missions of the mid-1990s, partly because Member States are not clear about how to define their national interests in taking such risks, and partly because they may be unclear about the risks themselves.[180]

Experience shows that the possibility that peacekeepers may become targets and that their involvement in robust peacekeeping may lead to casualties creates another major obstacle.

A situation that envisages spoilers acting against Israel is one that directly addresses Israel's own domestic security policy. It is unlikely that Israel would agree to relinquish its right to self-defense, entrust the protection of its citizens to a foreign agent, or in any way compromise its sovereignty. The presence of some kind of multinational force, acting in concert with Israel and intended to prevent infiltration across Israel's frontier, might constitute a positive element in such a situation, but it might also be viewed as a possible hindrance and obstruction to effective Israeli action. However, the possibility that the mandate of such a force might also permit it to act against spoilers within the Palestinian territory might be seen as an advantage. Such a mandate, if effective, could avoid the problematic scenario of Israeli forces violating Palestinian sovereignty in pursuing terrorist threats. Ideally, however, it would seem preferable that Israel and the Palestinian state act together in this area, in a manner similar to the Israeli-Jordanian model, inasmuch as the

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180. Brahimi Report, *supra* note 11, ¶ 52.

presence of a foreign force operating independently on Israel's behalf within the Palestinian state might be domestically unpalatable to the Palestinian side and further exacerbate the situation. Here too, the possibility that the peacekeepers might themselves become targets cannot be ruled out, and the inevitable casualties incurred in such peacekeeping can undermine the missions.

The last three scenarios envisage various Israeli elements that might affect the Israeli approach to incorporating a peacekeeping force as part of a peace accord. While each scenario presents its own problems, they share the common element that in each case Israeli nationals would be confronted by foreign troops. In the case of Israeli enclaves, the situation would be one of entirely submitting the safety and security of Israeli communities to foreign control. This might be ameliorated, from the perspective of the Israeli nationals, by the posting of Israeli troops within the communities. But such an option would mean a permanent Israeli military presence within the Palestinian state, and could form an ongoing source of friction. In any case, the idea of placing the security of Israelis directly in the hands of UN or multinational peacekeepers would, in all likelihood, be unacceptable in Israeli domestic politics.

In the case of Israelis attempting to reassert an Israeli or Jewish presence, for example, in evacuated settlements or sites like Joseph's Tomb, experience has shown that confrontations intended to remove such "demonstrators" may become violent. This potential for deadly confrontation becomes almost inevitable considering the possibility of Israelis taking violent action against the Palestinian state. From the point of view of Israeli domestic politics, any such situation would preferably be handled by Israeli security personnel. Perhaps such a unique arrangement can be made in the framework of a peacekeeping mandate. It is also possible that proper relations between Israel and a future Palestinian state, including mutual respect for sovereignty, would best treat such events as matters of internal security that should not form part of any peacekeeping mandate, and should only be addressed in the framework of mutual security cooperation and foreign relations.

Indeed, it is worth noting that Article XVII of the Interim Agreement, addressing the issue of jurisdiction, states, "[I]ssues that will be negotiated in the permanent status negotiations: Jerusalem, settlements, specified military locations, Palestinian refugees, borders, foreign relations and Israelis . . . ."[181] It would appear that the parties envisaged some kind of jurisdictional arrangement that would not involve foreign actors. At present, Israelis who enter areas under complete control of the Palestinian Authority are dealt with by the Palestinian security authorities, often in cooperation with Israeli authorities. A recent example was seen in the ancient synagogue in Jericho, where, at Israel's request, the Palestinian police at the scene permitted Israeli border policemen to forcibly remove and arrest the Israeli demonstrators.[182]

CONCLUSION

The conventional wisdom is that the success of a future peace agreement between Israel and an envisaged Palestinian state would require the support of an international peacekeeping mission. In this Article, the authors have reviewed the history and relative success and failure of peacekeeping missions in the region. The authors have also examined the salient factors that appear to contribute to the prospects for success or failure of a peacekeeping mission. On that basis, they have considered the advantages and disadvantages of the various peacekeeping options in light of a panoply of factors that may come to play in worst-case scenarios.

As the authors have noted, there would not appear to be a definitive answer as to which peacekeeping model is best—in general or from an Israeli perspective. In certain situations, there would appear to be a clear preference for a UN-mandated peacekeeping mission, while other situations would seem better suited to non-UN-mandated multinational peacekeeping operations, and still other situations would appear best suited to bilateral peacekeeping without any foreign participation. Of course, the picture becomes more complex where more than one

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181. Interim Agreement, *supra* note 97, art. XVII.
182. Chaim Levinson, *IDF Arrests 35 Rightists Holed Up in Jericho Synagogue*, HAARETZ (Tel Aviv), Feb. 23, 2010, http://www.haaretz.com/hasen/spages/1151400.html.

factor comes into play. Real worst-case scenarios must take into account the possibility that all potential negative factors may have to be confronted, and it is such complexity that policy makers will have to face.

While the assumption in various peace proposals to date has been that a peacekeeping force is an essential element, it would appear to the authors that this assumption is incorrect. While peacekeeping missions have proven successful in certain situations, they have failed in others. At the same time, it should be borne in mind that bilateral peacekeeping has shown itself to be effective along the Israeli-Jordanian border, and bilateral security cooperation with multinational oversight has succeeded along the Israeli-Egyptian border. Given the inherent limitations of peacekeeping in confronting spoilers, and the history of peacekeeping efforts to contend with spoilers in the region, it may well be that the common wisdom is mistaken, and that primarily bilateral security arrangements present the best course. That would seem to have been the course envisaged by the parties to the conflict in their negotiations and agreements up until now. The authors would suggest that it is one that should not be abandoned.