

# Peacekeeping Without the UN: The Multinational Force in Lebanon and International Law

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The concept of peacekeeping<sup>1</sup> entails a fundamental contradiction, since its success depends upon the deployment of soldiers to deter armed conflict.<sup>2</sup> Some notable peacekeeping efforts since World War II have sought to overcome this contradiction by stressing their impartial character, and by adopting procedures designed to guarantee the neutral behavior of their forces.<sup>3</sup> Most such peacekeeping missions have been established and conducted under UN auspices,<sup>4</sup> on the assumption that an international body could best approximate the neutral, detached perspective ideally suited to successful peacekeeping. Indeed, UN-sponsored missions have reinforced this assumption by adopting a legal and technical framework which enhanced their reputation as neutral intervenors. While the appearance of neutrality has not always averted controversy in peacekeeping efforts,<sup>5</sup> it has generally increased their chances

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1. The concept of peacekeeping was developed by Lester Pearson, then-UN Secretary-General Dag Hammarskjöld, and General E.L.M. Burns for application in the Suez crisis of 1956. See 1 S. BAILEY, *HOW WARS END: THE UNITED NATIONS AND THE TERMINATION OF ARMED CONFLICT, 1946-1964* at 268-71 (1982). It evolved from the earlier notion of "peace observation," i.e., the sending of neutral observers to monitor truces and cease-fires, as first used by the UN in Indonesia, Kashmir, and Palestine. See generally D. WAINHOUSE, *INTERNATIONAL PEACE OBSERVATION: A HISTORY AND FORECAST* (1966). This Article will consider only peacekeeping which involves the stationing of military forces — armed or unarmed — as a neutral barrier between hostile parties.

2. The basic premise of a peacekeeping operation is that combatants will not shoot at a neutral force that has no stake in the conflict. The difficulty with this premise is that the peacekeeping force necessarily influences the outcome of the conflict, if only by ending combat. See D. FORSYTHE, *UNITED NATIONS PEACEMAKING 4-10* (1972), for an explanation of the influences under which UN peace efforts operate.

3. See S. BAILEY, *supra* note 1, at 369-70.

4. The main missions have included UNEF in the Middle East, 1 R. HIGGINS, *UNITED NATIONS PEACEKEEPING, 1946-1967* at 221-43 (1969); the ONUC in the Congo, 3 R. HIGGINS, *UNITED NATIONS PEACEKEEPING, 1946-1967* (1980); the Unified Command in Korea, 2 R. HIGGINS, *UNITED NATIONS PEACEKEEPING, 1946-1967* at 153-59, 160-73 (1970); UNFICYP in Cyprus, D. WAINHOUSE, *INTERNATIONAL PEACEKEEPING AT THE CROSSROADS 345-94* (1973). The UN has conducted numerous other small-scale military and observer missions.

5. The history of the UN effort in the Congo provides an example of a peacekeeping effort hampered not only by opposition and conflict over its activities after deployment, but also by

## Peacekeeping Without the UN

of success.<sup>6</sup>

In recent years some parties have turned to independent peacekeeping, intervening in civil or international conflicts without UN support or authorization. The intervening states have generally claimed to be acting under the authority of the UN Charter (the Charter) or other sources of international law.<sup>7</sup> Unfortunately, peacekeeping missions organized outside the UN are particularly subject to the accusations of partiality that can undermine a peacekeeping effort. The tragic experiences of the Multinational Force in Lebanon (MNF) during the years 1982-84 illustrate the pitfalls which non-UN peacekeepers may face. Beginning without the benefit of assumed neutrality which UN forces are supposed to enjoy, the MNF organized and conducted itself in a manner which only

strong disagreements about its legality and the strength of its mandate from the UN itself. On local conflict, see 3 R. HIGGINS, *supra* note 4, ch. 10-11. On the struggle over the legality and financing of ONUC, see 3 R. HIGGINS, ch. 11, and *Certain Expenses of the United Nations*, 1962 I.C.J. 49 (Advisory Opinion).

The simple act of ending an armed conflict may itself be viewed as non-neutral. Moreover, once deployed at the area of conflict, a peacekeeping force may be drawn into the fighting. Its mere presence may antagonize existing groups not adequately prepared to cooperate. See A. GROOM, PEACEKEEPING 6, 21-22, 27-28 (Lehigh University Research Monograph No. 4, 1973).

6. See generally L. FABIAN, SOLDIERS WITHOUT ENEMIES 23-28 (1971).

7. In 1976, a 30,000-member Arab Deterrent Force, organized by the Arab League and composed primarily of Syrian troops, entered Lebanon. Its stated mission was to oversee the withdrawal of Palestinian forces to the south of Lebanon. W. KHALIDI, CONFLICT AND VIOLENCE IN LEBANON: CONFRONTATION IN THE MIDDLE EAST 57-68 (1979). The Arab League presumably argued that it acted under Article 52 of the Charter, which allows regional organizations to preserve or restore "international peace and security" in all "appropriate" situations. See, e.g., H. KELSEN, THE LAW OF THE UNITED NATIONS 324-28 (1950).

In 1981, the Organization of African Unity (OAU) sent a peacekeeping force to Chad to mediate the conflict between Chadian factions. See N.Y. Times, Nov. 17, 1981, at 7, col. 1. For details on opposition to the OAU force, its attempt to receive UN financing, and its eventual withdrawal, see N.Y. Times, Feb. 11, 1982 at A16, col. 1; N.Y. Times, April 1, 1982 at A13, col. 1; N.Y. Times, June 12, 1982 at 2, col. 3. As a recognized regional organization, the OAU could also claim authority under Charter Article 52 for its action. See H. KELSEN, *supra*.

Other non-UN actions which might be characterized as either observation or peacekeeping missions include the force that supervised the Chinese evacuation from Burmese territory in 1953, see D. WAINHOUSE, *supra* note 1, at 485-89; the commissions established to monitor the Vietnamese settlements of 1954 and 1973, I. RIKHYE, M. HARBOTTLE & B. EGGE, THE THIN BLUE LINE: INTERNATIONAL PEACEKEEPING AND ITS FUTURE at ch. 10 (1974); the British police presence in Cyprus prior to introduction of UN peacekeepers, see J. BOYD, UNITED NATIONS PEACE-KEEPING OPERATIONS: A MILITARY AND POLITICAL APPRAISAL 44-47 (1971); and the contingents that participated in independent Middle East peacekeeping efforts. The latter include the non-UN forces that monitored strategic passes as part of the 1975 Sinai II peace treaty, see Napoliello, *The Sinai Field Mission: A Step Towards Peace in the Middle East*, PARAMETERS: J. US ARMY WAR COLLEGE, Dec. 1979, at 20, and the Sinai field mission that joined Israeli and Egyptian forces in policing the Camp David agreements after the United Nations Emergency Force's mandate expired, see Nelson, *Peacekeeping Aspects of the Egyptian-Israeli Peace Treaty and Consequences for United Nations Peacekeeping*, 10 DEN. J. INT'L L. AND POL'Y 113, 121-39 (1980); see also T. FRANCK, NATION AGAINST NATION 180 (1985).

magnified doubts about the impartiality of its mission.<sup>8</sup> Its presence in Lebanon may, in the end, only have aggravated the conflict which it was designed to ameliorate.

This Article will suggest that future non-UN peacekeeping efforts would benefit from the adoption of practices and rules developed by past UN missions. In particular, such efforts should be clearly sanctioned by international law and should be conducted in ways which discourage challenges to their impartiality. Situations in which the legal and technical legitimacy of a neutral peacekeeping force cannot be established may be better suited to treatment by other methods of conflict resolution than through deployment of a peacekeeping force.

Part I of this Article will examine the legal status of UN and non-UN peacekeepers in international law, with emphasis on the constraints and requirements faced by each type of force. It will also review the technical procedures followed by past UN forces. Part II will describe the establishment and performance of the MNF in Lebanon, suggesting that a lack of attention to legal and military technicalities may have encouraged opposition to the force, and may consequently have reduced its effectiveness. Part III will propose some legal and technical norms which future non-UN peacekeeping missions would find it advantageous to observe.

## I. Peacekeeping in International Law and Practice

The UN's powers to establish and deploy a peacekeeping force in international crises are carefully circumscribed by the rules of the UN Charter<sup>9</sup> and the practices developed by past missions.<sup>10</sup> While such legal and technical norms may reduce the flexibility of UN efforts, they serve to enhance the international credibility of UN-sponsored missions. As will be shown below, the lack of such formal constraints and procedures in the case of non-UN peacekeeping missions may seem to give them greater freedom of action, but in reality undermines the international base of support essential to their success.

8. Critics of the MNF suggest that it became too closely identified with the Gemayel government, and with Western interests, to be treated as a neutral force by the parties to the Lebanese conflict. They also criticize the MNF's use of force to retaliate against armed attacks. Lewis, *Deeper and Deeper*, N.Y. Times, Dec. 15, 1983, at A31, col. 1; Scheffer, *Beirut Needs a UN Force*, N.Y. Times, Dec. 16, 1983, at A35, col. 4; see generally Weinberger, *Peacekeeping Options in Lebanon*, 37 MIDDLE EAST J. 363-67 (Summer 1983).

9. See J. BRIERLY, *THE LAW OF NATIONS* 112-113 (6th ed. 1963).

10. A set of basic guidelines derived from past UN missions is contained in INTERNATIONAL PEACE ACADEMY, *PEACEKEEPER'S HANDBOOK* (1978).

## Peacekeeping Without the UN

### A. *Establishment of Peacekeeping Forces*

Peacekeeping missions established under UN auspices may be initiated by either the Security Council (the Council) or the General Assembly (the Assembly). The Council bears "primary responsibility for the maintenance of international peace and security,"<sup>11</sup> and that responsibility in itself may empower the Council both to solicit volunteers for peacekeeping operations and to assign the Secretary-General to carry out such operations.<sup>12</sup> The Council's responsibility endures, it has been suggested, until it has taken enforcement measures under Article 42 of the Charter, at which time the duty to observe such measures passes to member states.<sup>13</sup> Further, the General Assembly may exercise its own peacekeeping powers when a veto blocks Security Council action. These powers, set out in the "Uniting for Peace" resolution sponsored by the United States in 1950,<sup>14</sup> are now regarded as springing directly from the Charter itself.<sup>15</sup> Of course, member states are not obligated to contribute forces to peacekeeping missions unless the Council orders Chapter VII "enforcement" measures,<sup>16</sup> and then only pursuant to appropriate agreements. In the absence of such orders, member states may bear, at best, a moral responsibility to provide forces requested by the General Assembly. While these states are thus under no compulsion to commit forces to peacekeeping missions,<sup>17</sup> the history of UN peacekeeping shows no lack of willingness to commit such forces voluntarily. The commitment of peacekeeping troops has been perceived by some smaller states as a means to win international standing and prestige, among other goals.<sup>18</sup>

Assuming that member states accept the legitimacy of these UN peacekeeping powers without protest, such powers may only be exercised after consideration and passage of peacekeeping proposals by the Council or the Assembly. Sponsors must seek broad support for their proposals, ensuring that peacekeeping missions will reflect the common interests

11. U.N. CHARTER art. 24.

12. J. BRIERLY, *supra* note 9, at 380-93.

13. H. KELSEN, *supra* note 7, at 272-73.

14. See GAOR, Annexes (V), at 2, U.N. Doc. A/1377, Sept. 20, 1950; and L. SOHN, CASES ON UNITED NATIONS LAW 491-92. See generally Reicher, *The Uniting for Peace Resolution on the 30th Anniversary of its Passage*, 20 COLUM. J. TRANSNAT'L L. 1 (1981).

15. In the *Certain Expenses* case, *supra* note 5, the International Court of Justice suggested that Articles 14 and 22, among others, may provide sufficient authority. See Reicher, *supra* note 14, at 40, and Sohn, *infra* note 17, at 770-73.

16. U.N. CHARTER arts. 43 and 45.

17. Sohn, *The Authority of the United Nations to Establish and Maintain a Permanent United Nations Force*, 52 AM. J. INT'L L. 229, 231-33 (1958); see Gross, *Voting in the Security Council: Abstention in the Post-1965 Amendment Phase and Its Impact on Article 25 of the Charter*, 62 AM. J. INT'L L. 315, 330-31 (1968).

18. See generally D. WAINHOUSE, *supra* note 4, ch. 15 and 16.

and objectives of the international community. Thus, peacekeeping missions authorized by the UN are likely to have substantial international backing.

The UN framework for authorizing peacekeeping presents some disadvantages. First, Security Council vetos and General Assembly divisions and abstentions may paralyze efforts to form peacekeeping forces. Second, the lengthy process of achieving consensus may delay authorization for a peacekeeping force until after a crisis situation has reached the breaking point. The failure of the UN to respond adequately to the Lebanese crisis of Fall 1982, and to Middle Eastern events generally, provides a clear example of these difficulties.<sup>19</sup> Finally, some observers have argued that the current domination of the UN by certain international groups—most notably those of the Third World bloc—may have begun to undermine the UN's reputation for impartial action in crises, or at least to reduce its effectiveness in international consensus-building.<sup>20</sup>

In sharp contrast to UN-sponsored missions, independent peacekeeping operations may be established at the will of individual states, subject only to the requirements of their internal constitutional and foreign policy mechanisms. Many states that have made verbal commitments to work through UN forums in their international relations have later chosen to intervene unilaterally in situations they wanted to influence.<sup>21</sup> Member states which pursue efforts to quell a dispute or bring about peace are under no duty to employ the framework of the UN for such efforts.<sup>22</sup> Peacekeeping efforts are legal so long as they respect the dictates of general international law.

The freedom of individual states to undertake peacekeeping missions offers an alternative, with its own advantages and disadvantages, to UN peacekeeping. Since they need not consult with other states to form a

19. See generally *UN Secretary General Struggles to Stay Useful*, N.Y. Times, Oct. 25, 1983, at A18, col. 1; and *At the UN, No Activity on Lebanon*, N.Y. Times, Nov. 9, 1983, at A17, col. 4. See also *infra* notes 82-118 and accompanying text.

20. See, e.g., Gross, *On the Degradation of the Constitutional Environment of the United Nations*, 77 AM. J. INT'L L. 569 (1983); Finger, *The Reagan-Kirkpatrick Policies and the United Nations*, 62 FOREIGN AFF. 436 (Winter 1983-84); see also Kalb, *UN Abdication*, The New Republic, Apr. 28, 1982, at 13-14; *Don't Count on UN*, U.S. News and World Rep., Dec. 27, 1982.

21. See, e.g., POWER AND LAW 89-91 (C. Barker ed. 1971) (U.S. policy).

22. L. GOODRICH, E. HAMBRO & A. SIMONS, CHARTER OF THE UNITED NATIONS 54-55 (1969). The UN Charter requires disputants to apply "peaceful means of their own choice" for settlement, Art. 33, and to refer continuing disputes "likely to endanger international peace and security" to the Security Council or General Assembly, Arts. 33, 35, and 37(1). There are no such constraints on member states who are not parties to a dispute. It is the UN as an organization, rather than its individual members, which bears the duty to maintain and restore international peace and security where Art. 33 disputes are concerned. See H. KELSEN, *supra* note 7, at 971.

## Peacekeeping Without the UN

peacekeeping force, participating states may swiftly and decisively establish their own mandate, peacekeeping goals, and operating procedures. However, failure to consult other states may result in the establishment of a mission to which there is substantial international opposition.<sup>23</sup> Furthermore, while there is some value in defining the peacekeeping mandate in flexible terms,<sup>24</sup> the lack of clarity which results may lead to controversy over the duties and purposes of the force.<sup>25</sup> There is also a greater likelihood that the commitment of participants in the non-UN peacekeeping mission will be affected by domestic political considerations.

### B. *Deployment of Peacekeeping Forces*

It is a principle well established in international law that the armed forces of individual states may not enter or act within the territory of a particular state without the latter's presumed or actual consent.<sup>26</sup> The legal deployment of peacekeeping forces then requires either the consent of the host country or some exception to this requirement. It is often far from clear whether "consent" has actually been given, whether such consent covers all of the activities of the force in question, or whether the government purporting to grant consent possesses the legal authority to do so.<sup>27</sup> In the absence of authoritative consent, it may be difficult to distinguish a "peacekeeping" mission from military intervention.<sup>28</sup> While UN missions operate under rules designed to avoid such controversies, non-UN missions may find themselves on uncertain legal ground.

There are some exceptions to the requirement of consent of the host government. The UN Charter provides exceptions to the general prohibition under Article 2(4) of the threat or use of armed force against or

23. See D. FORSYTHE, *supra* note 2, at 10-11.

24. See S. BAILEY, *supra* note 1, at 369, and D. WAINHOUSE, *supra* note 4, at 555.

25. Weinberger, *supra* note 8, at 364.

26. See Case Concerning Right of Passage over Indian Territory (Portugal v. India), 1960 I.C.J. 6, at 63 (separate opinion of Judge Koo).

27. Legal authority is predicated upon effective control. See *Tinoco Case* (Great Britain v. Costa Rica), 1 R.I.A.A. 369 (1923) ("The issue is not whether the new government assumes power or conducts its administration under constitutional limitations established by the people during the incumbency of the government it has overthrown. The question is, has it really established itself in such a way that all within its influence recognize its control. . .").

The United States has granted *de facto* recognition to governments which control the administrative machinery of the state, have won the general acquiescence of its people, and are willing to discharge the state's international obligations. W. BISHOP, *INTERNATIONAL LAW: CASES AND MATERIALS* 340 (3d ed. 1971). On general practices regarding recognition of a particular government's authority in a state, see generally J. BRIERLY, *supra* note 9, at 144-61.

28. R. LITTLE, *INTERVENTION: EXTERNAL INVOLVEMENT IN CIVIL WARS* 24-25 (1975). See Duner, *The Many-Pronged Spear: External Military Intervention in Civil Wars in the 1970s*, 20 J. PEACE RESEARCH 59 (1983).

within other states.<sup>29</sup> These include a right of "individual or collective self-defense" against armed attack,<sup>30</sup> which presumably authorizes third states to intervene in a collective effort on behalf of an ally under attack. The exceptions also include the right of the Security Council, or of regional security organizations acting under its authorization, to undertake collective action when international peace and security are endangered.<sup>31</sup> Some theorists have suggested that since the deployment of UN peacekeeping or security forces does not constitute a use of "armed force" within the meaning of Article 2(4), such deployment may be legal without host state authorization, even when the requirements of Chapter VII have not been met.<sup>32</sup> However, past UN peacekeeping practice has wisely avoided controversies over UN powers to deploy peacekeeping troops unilaterally. In most cases, UN peacekeepers have only been deployed with the consent of all parties to a dispute, ensuring a sound legal basis for the presence of UN forces.<sup>33</sup>

Indeed, it is the essence of UN peacekeeping that it occurs only with the consent of all combatants, as a "buffer" between them or an "instrument of persuasion,"<sup>34</sup> giving the parties the opportunity to reach an agreement. Most authorities agree that peacekeepers should not be brought in to enforce municipal law and order when a domestic party which claims "government" status has lost control,<sup>35</sup> or when a government's continued authority is threatened by a successful rebel movement.<sup>36</sup> Of course, even if such internal struggles are not appropriate circumstances for peacekeeping missions, they may permit or even require a UN or other international response, diplomatic or military.<sup>37</sup> But a rule permitting the deployment of peacekeepers without the consent of

29. See Rowles, *The United States, The OAS, and the Dilemma of the Undesirable Regime*, 13 GA. J. INT'L & COMP. L. 385, 388-89 (Supp. 1983).

30. U.N. CHARTER art. 51.

31. *Id.*, arts. 39-42, 53.

32. See Evensen, *Problems of International Law Relating to the Establishment of UN Security Forces*, in PEACE-KEEPING EXPERIENCE AND EVALUATION: THE OSLO PAPERS 235 (P. Frydenberg ed. 1964).

33. See D. WAINHOUSE, *supra* note 4, at 556; Sohn, *supra* note 17, at 239 (host-state consent is required for deployment of UN forces, although it might be implied from near-unanimous General Assembly authorization under the "Uniting for Peace" Resolution). See also Garvey, *United Nations Peacekeeping and Host State Consent*, 64 AM. J. INT'L L. 241 (1970).

34. See Parsons, *The United Nations and International Security in the 1980s*, 12 MILLENIUM 101, 106 (Summer 1983).

35. See Miller, *Legal Aspects of the United Nations Action in the Congo*, 55 AM. J. INT'L L. 1, 23 (1961). ("[I]t is virtually an axiom of the UN that internal political or factional disputes are outside the purview of the Organization," although the Congo action was an exception to this rule.)

36. See D. BOWETT, *UNITED NATIONS FORCES: A LEGAL STUDY* 272-73 (1964); A. ZEIDAN, *THE UNITED NATIONS EMERGENCY FORCE 1956-1967*, at 150-51 (1976).

37. See, e.g., Szasz, *Role of the United Nations in Internal Conflicts*, 13 GA. J. INT'L &

## Peacekeeping Without the UN

all parties might lead to the involvement of peacekeepers in domestic issues, compromising their reputation for impartiality, and subjecting them to attacks or other acts of opposition.<sup>38</sup>

The duty to obtain host state consent does not end the matter. In practice, states participating in a peacekeeping force may make their own individual judgments about which party constitutes the government of a given state<sup>39</sup> and whether that government has granted consent for the deployment of a peacekeeping force within its borders. Compliance with the consent rules is thus ultimately subject to autointerpretation by participating states.<sup>40</sup> International law provides no clear means of deciding which interpretation should prevail; thus, in reality autointerpretation may result in a breakdown in international order.<sup>41</sup>

The history of both UN and non-UN peacekeeping efforts illustrates the difficulties which arise when peacekeeping forces are deployed without the consent of all parties to a dispute. The few UN peacekeeping or security operations which did not obtain the consent of all parties before deployment have been mired in controversy, reducing their effectiveness considerably. During the Katanga uprising of 1960, disagreements between Patrice Lumumba and UN authorities over the purpose of the UN mission — and disagreements over whether Moïse Tshombe's consent was required for the entry of UN forces into the secessionist province — resulted in uncertainty and bloodshed.<sup>42</sup> The essence of both disputes was the degree to which Lumumba and Tshombe had granted or needed to grant their consent for UN operations.<sup>43</sup>

During the Cyprus crisis of 1963, the Security Council delayed deployment of peacekeeping troops until it had concluded that the Greek Cypriot "government" possessed authority to consent to UN intervention; unfortunately, this decision did not stem controversy over the status of the UN forces in Cyprus.<sup>44</sup> Finally, to the extent that the Unified Com-

COMP. L. 345 (1983); Romphul, *The Role of International and Regional Organizations in the Peaceful Settlement of Internal Disputes*, 13 GA. J. INT'L & COMP. L. 371 (1983).

38. Even when consent is obtained, involvement in domestic issues remains a danger for all peacekeeping missions. See Schachter, *The United Nations and Internal Conflict*, in DISPUTE SETTLEMENT THROUGH THE UNITED NATIONS 301, 337 (K. Raman ed. 1977).

39. Recognition is a matter of individual state policy, although granting or withdrawing it under certain conditions may violate international law. See generally Kelsen, *Recognition in International Law*, 35 AM. J. INT'L L. 605 (1941). On current state practice, see Peterson, *Recognition of Governments Should Not Be Abolished*, 77 AM. J. INT'L L. 31 (1983).

40. See generally Gross, *States as Organs of International Law and the Problem of Autointerpretation*, LAW AND POLITICS IN THE WORLD COMMUNITY 59 (G. Lipsky ed. 1953).

41. *Id.* at 75, 87.

42. See generally 3 R. HIGGINS, *supra* note 4, at 125-197; D. WAINHOUSE, *supra* note 4, at 269-74.

43. See, e.g., 3 R. HIGGINS, *supra* note 4, at 132-33.

44. The fact that the rights of the Turkish-Cypriot Vice-President were not taken into



mand effort in Korea can be considered a legitimate UN peacekeeping action,<sup>45</sup> it also posed controversial issues of consent, particularly since neither of the disputants was represented in the UN forums which decided to intervene.<sup>46</sup>

The insufficiency of the "host consent" standard as an acceptable legal basis for intervention has been underscored by numerous controversies over armed actions outside the realm of UN peacekeeping. On the Western side, United States interventions in Lebanon (1958), the Dominican Republic (1965), Vietnam (1965-73), and Grenada (1983) have received extensive legal criticism. All involved to some degree the claim that host state consent justified the presence of U.S. troops on foreign soil.<sup>47</sup> It remains unclear, for example, whether the Chamoun government in Lebanon requested aid to invoke its right of collective self-defense against an incursion by troops of the United Arab Republic, or whether it really needed help in order to suppress an internal revolt which had gotten out of hand.<sup>48</sup> The U.S. claimed it had been invited into Lebanon by the Chamoun government, but also invoked its right to protect U.S. nationals in that country as a separate legal justification.<sup>49</sup> In the Dominican crisis, President Johnson claimed that U.S. help had been requested in an emerging struggle between the military government and Communist rebels, although subsequent analysis casts doubt on the degree to which the U.S.-backed junta that made the request actually controlled the country.<sup>50</sup> In intervening in Vietnam, the U.S. claimed that South Vietnam

consideration in the determination probably contributed significantly to the controversy. See Eiden, *United Nations Forces in Domestic Conflicts*, in P. Frydenberg, *supra* note 32, at 271 n.13.

45. The Soviet Union protested that its absence from the Security Council during key deliberations meant the Council decisions to send the Unified Command had no "legal force." See Sohn, *supra* note 17, at 484. Some Western analysts contend that the Korean operation lacked legitimacy in practice, if not in law, see, e.g., Nicholas, *An Appraisal*, in INTERNATIONAL MILITARY FORCES 105, 107 (L. Bloomfield ed. 1964), while others have charged that it constituted a UN "cover for US action to repel North Korean aggression," A. COX, PROSPECTS OF PEACEKEEPING 7 (1967). See also Bruce, *The United States and the Law of Mankind: Some Inconsistencies in the American Observance of the Rule of Law*, in C. Barker, *supra* note 21, at 96. For an overview of the legal issues presented by the Unified Command mission, see Potter, *Legal Aspects of the Situation in Korea*, 44 AM. J. INT'L L. 709 (1950).

46. The Soviets also argued that the Korean conflict was a civil war, in which UN interference was forbidden by UN Charter Article 2.7. See Sohn, *supra* note 17, at 482-84.

47. See *infra* notes 48-53, and accompanying text.

48. See Wright, *United States Intervention in the Lebanon*, 53 AM. J. INT'L L. 112 (1959).

49. *Id.* See also D. Frolick, *The Law and Practice of Collective Security in Contemporary International Relations* 111-12 (1971) (unpublished Ph.D. dissertation at American University).

50. See generally T. FRANCK & E. WEISBAND, *WORLD POLITICS* 76 (1971); T. HALPER, *FOREIGN POLICY CRISES* 55-65 (1971). The Dominican military junta was on the verge of collapse when an obscure military officer supposedly heading it requested the assistance of 200 Marines. *Id.* at 53-54.

## Peacekeeping Without the UN

was a separate state which had exercised its sovereign rights to invite U.S. forces into the country,<sup>51</sup> but some critics of the U.S. intervention have taken the position that North and South Vietnam were merely two zones within a single state. According to the latter point of view, the United States intervened illegally in a civil war by accepting the invitation of the Saigon government, in violation of the Geneva accords of 1954 and of general international law.<sup>52</sup> Observers of the U.S. intervention in Grenada have questioned the legal validity of U.S. reliance on a 1981 Organization of Eastern Caribbean States treaty offered to show Grenadan agreement to collective defense on its behalf.<sup>53</sup>

In the Eastern bloc, repeated Soviet interventions in neighboring countries have been rationalized by claims that the host country invited intervention, although observers have questioned the validity of the invitations. When, in 1956, Soviet-picked leader Janos Kadar invited Soviet forces into Hungary after overthrowing Workers' Party Secretary Imre Nagy, Soviet troops had apparently already been in Hungary for five days.<sup>54</sup> The Soviets reportedly tried but failed to find a group within the Czech Central Committee willing to ask their help against counter-revolution during the Prague Spring of 1968; they were forced to rely upon alternative legal theories when they eventually intervened.<sup>55</sup> Finally, the 1979 invasion of Afghanistan was justified by "pleas for help" from Afghan Premier Babrak Karmal, although the pleas were broadcast a day after Soviet troops had entered the country and placed him in power.<sup>56</sup> Given the Soviet role in Afghan politics, the independence of the Afghan government would, in any case, have been subject to serious doubt.<sup>57</sup>

It may readily be seen from these examples that host state consent has

51. R. HULL & J. NOVOGROD, *LAW AND VIETNAM* 86, 100 (1968). See also Moore, *The Lawfulness of Military Assistance to the Republic of Vietnam*, 61 *AM. J. INT'L L.* 13 (1967).

52. These issues are discussed more fully in Hawkins, *An Approach to Issues of International Law Raised by United States Actions in Vietnam*, in 1 *THE VIETNAM WAR AND INTERNATIONAL LAW* 173-77 (R. Falk ed. 1968).

53. See, e.g., Rubin, *Doing it Right in Grenada*, Boston Herald, Nov. 2, 1983, at 31; Hudson, *Professors Question Invasion's Legality, Morality, Advisability*, 77 *HARVARD LAW RECORD* 6-9 (No. 6, Nov. 4 1983). Critics argued that the intervention was improperly authorized even under the terms of the Treaty since no "armed attack" on Grenada had taken place. See generally *The United States Action in Grenada*, 78 *AM. J. INT'L L.* 131 (1984).

54. The Soviets actually intervened twice, the first time after allegedly being invited by Party Secretary Erno Gero. Throughout the uprising the Soviet Union vetoed Security Council action on Hungary. See generally Rostow, *Law and the Use of Force By States: The Brezhnev Doctrine*, 7 *YALE J. WORLD PUB. ORDER* 209, at 222-27 (1981).

55. *Id.* at 229.

56. *Id.* at 236-37.

57. *Id.* For an overview of Soviet policy in the region, see Lenczowski, *The Soviet Union and the Persian Gulf: An Encircling Strategy*, 37 *INT'L J.* 307 (1982).

often proved unpersuasive as a legal basis for intervention, whether by the UN or by individual states or groups of states. Unless all disputants agree to deployment of peacekeeping forces, the consent of the apparent government may not provide a sufficient legal basis for the presence of those forces. Thus, the UN has generally required the consent of all parties before deployment, in the hope that this will minimize both international and local opposition, and will bolster the legal and political credibility of UN efforts. Unfortunately, however, the "all parties" formula is not without its problems. Under this formula, the unwillingness of even one party blocks deployment. Moreover, the possibility exists that the party obstructing the peacekeeping process will be a minor or marginal participant in the dispute.

A more serious problem, not only with the "all parties" requirement but with all consent formulae, is that whenever state consent is invoked as the justification for peacekeeping activity in a troubled area, the withdrawal of that consent destroys the legal basis for the activity. Perhaps the prime example was the request by President Nasser that the United Nations Emergency Force leave Egyptian territory in 1967, which set the stage for the Six-Day War.<sup>58</sup> This incident weakened international confidence in the effectiveness of peacekeeping operations,<sup>59</sup> and some observers thought it imperative to make more binding the consent of host states or other parties. Among the proposed solutions was the suggestion that states be required to conduct a "good faith determination" of whether a peacekeeping force had fulfilled its agreed-upon mission, and that they be permitted to request the force's withdrawal only after finding that it had not done so.<sup>60</sup> Other suggestions would institute an "established procedure of negotiation" under which state complaints could be reviewed before revocation of consent becomes effective,<sup>61</sup> or would allow the UN the ultimate power to decide when a force should withdraw.<sup>62</sup>

Whether or not solutions to the problem of withdrawal of consent are devised, UN practices are nonetheless more likely to create an "international consensus" behind peacekeeping efforts than are the ad hoc procedures of non-UN efforts.<sup>63</sup> This consensus may, in turn, be expected to

58. See generally Sohn, *supra* note 17, on the limits of the Secretary-General's authority to agree to the withdrawal request, the need to consult the General Assembly, and similar issues.

59. See D. WAINHOUSE, *supra* note 4, at 556.

60. See Garvey, *supra* note 33, at 249.

61. *Id.* at 253.

62. See McVitty, *Wanted: Rules to Guide UN Peace-Keeping Operations of the Future*, in 3 THE STRATEGY OF WORLD ORDER 574-78 (R. Falk & S. Mendlovitz eds. 1976).

63. See *supra* text accompanying notes 12-25.

## Peacekeeping Without the UN

bring pressure upon disputants to accept UN peacekeeping forces, while such pressure will be lacking where non-UN forces are concerned.

### C. *Norms of Peacekeeping Procedure*

Although not required by general international law, some technical rules for the performance of peacekeeping duties by soldiers, and for the organization of peacekeeping forces by military and political leaders, have become an established part of UN peacekeeping practice.<sup>64</sup> To the extent that these rules are accepted and approved by the international community, their observance provides an additional source of support for peacekeeping missions. The rules are designed generally to ensure that peacekeeping forces operate impartially, consistently, and efficiently, and that they avoid being drawn into the conflicts they are supposed to ease. Three of the most important of these rules are reviewed here.

One requirement is that peacekeeping forces be comprised of units from a limited number of states which are not involved, and are unlikely to become involved, in the conflict at hand.<sup>65</sup> Limiting the number of national contingents increases the likelihood that the force will be a homogeneous unit and thus an effective one,<sup>66</sup> while reducing bureaucratic friction and delay.<sup>67</sup> The choice of disinterested states is obviously required to maintain both actual impartiality and the appearance thereof. The Secretary-General typically solicits and approves requests to participate with this consideration in mind, consulting as well with both the parties to the disputes and the force commander.<sup>68</sup> With few exceptions,<sup>69</sup> the superpowers and other permanent members of the Security Council are excluded from UN peacekeeping forces on the ground that their participation could polarize the conflict or cast doubt on the impartial character of the mission.<sup>70</sup> Secretary-General Hammarskjold made the non-participation of the permanent members of the Security Council

64. Usually, such rules are set by the Secretary-General and the mission commander, rather than spelled out in the formal mandate of the mission. The basic statement of UN peacekeeping practices is contained in "Summary Statement of the Experience Derived from the Establishment and Operations of the Force," submitted by Secretary-General Dag Hammarskjold to the General Assembly in 1958. This statement describes the successful practices of UNEF. U.N. Doc. A/3943, Oct. 9, 1958. *See also* S. BAILEY, *supra* note 1, at 363-77.

65. *See* 1 S. BAILEY, *supra* note 1, at 370-71.

66. D. WAINHOUSE, *supra* note 4, at 608.

67. *See infra* text accompanying notes 73-75 for discussion of force coordination.

68. S. BAILEY, *supra* note 1, at 371.

69. For example, British troops already in Cyprus remained there to participate in United Nations Peacekeeping Forces in Cyprus (UNFICYP) after 1964. *See* L. FABIAN, *supra* note 6 at 24. The Korean Unified Command included the United States and other major states, although this has cast doubt on its "peacekeeping" character, as noted above. *See supra* note 45.

70. S. BAILEY, *supra* note 1, at 371. *See also* L. FABIAN, *supra* note 6 at 6.

one of his primary recommendations for future operations,<sup>71</sup> and most observers agree on the wisdom of his advice.<sup>72</sup>

A second rule is that, although the various troops technically remain under the control of their national military commanders, coordination of administrative and command functions must be centralized in a single authority, the force commander. While this rule has long been prescribed for UN missions, it has rarely been observed in practice.<sup>73</sup> Some missions have suffered from poor communication between national contingents, from understaffing, or from poor administrative organization.<sup>74</sup> Moreover, a lack of standardized equipment and interchangeable supplies has at times paralyzed support functions.<sup>75</sup> These difficulties merely underscore the desirability of centralized command and administration.

A third rule provides that UN peacekeepers may use force only in self-defense.<sup>76</sup> The purpose of a peacekeeping force is largely symbolic,<sup>77</sup> and its safety depends not on weapons but on the blue berets and UN insignia which distinguish its members from ordinary troops.<sup>78</sup> It has been suggested that a mission should have, at most, "the means to defend against unlawful or poorly controlled armed elements. Such means should be sufficient, under conditions short of all-out hostilities, to prevent personnel from being endangered or subject[ed] to humiliation by elements of the armed forces of the host states or opposition factions."<sup>79</sup>

However, it should not possess weapons needed to undertake other "military functions."<sup>80</sup> Although there is some tension between the

71. See Hammarskjöld, *United Nations Emergency Force*, in INTERNATIONAL MILITARY FORCES, *supra* note 45 at 272.

72. In fact, there has long been a tacit agreement between the superpowers that neither would commit its own forces to sensitive areas such as the Middle East, in peacekeeping operations or otherwise. See Ball, *A Risky Mideast Course*, N.Y. Times, Nov. 21, 1983, at A23, col. 3.

73. See D. WAINHOUSE, *supra* note 4, at 613-14.

74. *Id.* The United Nations Truce Commission for Korea, though technically an observation mission, is cited as a prime example of the bureaucratic inefficiency inherent in international peace efforts. See D. FORSYTHE, *supra* note 2, at 152.

75. D. WAINHOUSE, *supra* note 4, at 617-19. For example, during the Congo operation UN forces used about 40 different types of vehicles. See L. Bloomfield, *supra* note 45, at 169.

76. See D. WAINHOUSE, *supra* note 4, at 566.

77. In the UN Emergency Force, the mandate of the peacekeeping force described the force as "more than an observers' corps, but in no way a military force temporarily controlling the territory in which it is stationed. . . ." *quoted in* 1 R. HIGGINS, *supra* note 4, at 242.

78. S. BAILEY, *supra* note 1, at 369. *Cf.* Report of the Secretary-General in Pursuance of Security Council Resolution 516 (1982) (discussing the protection afforded unarmed UN observers), 21 I.L.M. 1172 (1982).

79. D. WAINHOUSE, *supra* note 4, at 617.

80. UNEF's mandate excluded military functions "exceeding those necessary to secure peaceful conditions on the assumption that the parties to the conflict take all necessary steps for compliance with the recommendation of the General Assembly" (i.e. to implement the cease-fire and secure order). 1 R. HIGGINS, *supra* note 4, at 242.

## Peacekeeping Without the UN

peacekeepers' need to defend themselves and their need to be readily distinguishable from the combatants, the self-defense rule is an important characteristic of all UN peacekeeping missions.

While the practices discussed above might aid the functioning of an independently-organized peacekeeping mission, their adoption might pose a new series of problems. Superpowers or states with considerable international influence will find it difficult to refrain from taking part in non-UN peacekeeping efforts, especially when the UN has failed to act in a crisis situation. States with a direct stake in a given crisis might also be tempted to use the peacekeeping label to justify intervention. Further, states participating in non-UN missions might be unwilling to relinquish control over their own troops to a foreign commander. Similar attitudes might prevent participating troops from observing the self-defense rule, particularly when domestic public opinion demands reprisal for attacks on a national peacekeeping contingent. In short, although the technical rules for UN peacekeeping missions offer enhanced credibility to UN forces, non-UN peacekeepers may be either unable or unwilling to adopt such rules.

### II. The Failure of the MNF in Lebanon to Establish its Legitimacy

While adherence to legal norms of behavior may not guarantee international approval, the observation of such norms constitutes an important means of influencing state behavior.<sup>81</sup> The failure of the MNF in Lebanon to observe peacekeeping norms established by the UN contributed to the perception that the force was an interested party, and not an impartial peacekeeper in the complex Lebanese conflict. This failure considerably reduced the ability of the MNF to perform a real peacekeeping function. This section will review the characteristics of the MNF which contributed to its loss of international credibility.

#### A. *Deployment of the MNF in Lebanon*

The MNF was originally created to respond to two crises, one in the Summer and one in the Fall of 1982. In each of these emergencies, violence between warring factions in Lebanon stirred international concern but failed to evoke a satisfactory UN response. While, as will be seen below, the United States helped to prevent effective UN action,<sup>82</sup> the in-

81. See, e.g., M. KAPLAN & N. KATZENBACH, *THE POLITICAL FOUNDATIONS OF INTERNATIONAL LAW* 341-54 (1961); L. HENKIN, *HOW NATIONS BEHAVE* 39-98 (1968); Gottlieb, *The Nature of International Law: Toward a Second Concept of Law*, in 4 *THE FUTURE OF THE INTERNATIONAL LEGAL ORDER* 331-83 (C. Black & R. Falk eds. 1972).

82. See *infra* notes 119-22 and accompanying text.

dependent peacekeeping efforts headed by the United States in both the summer and fall of 1982 met with initial international approval.

Since its independence, Lebanon has endured recurring strife between its Sunni and Shiite Muslim, Druze, Maronite Christian and Greek Orthodox factions, with the most serious national crises occurring in the revolt of 1958 and the civil war of 1975-76.<sup>83</sup> Since at least 1968, Lebanon's internal unrest has been intertwined with regional politics, with Palestine Liberation Organization (PLO) forces attacking Israel from the south of Lebanon,<sup>84</sup> Israel responding with raids on Lebanese soil,<sup>85</sup> and Syria and other countries intervening in Lebanon for various purposes.<sup>86</sup> In March 1978, Israeli forces swept sixty miles into Lebanese territory in an effort to force the PLO from its strongholds.<sup>87</sup> Israel eventually relinquished all but a "six-mile belt" of this area to the United Nations Interim Force in Lebanon (UNIFIL), a peacekeeping force created by the Security Council to oversee and patrol the Israeli withdrawal from Lebanese territory.<sup>88</sup> Despite the presence of UNIFIL, the potential for violence was undiminished.<sup>89</sup> In June 1982, the Israelis again undertook a

83. See generally E. KOURY, *THE CRISIS IN THE LEBANESE SYSTEM: CONFESSIONALISM AND CHAOS* (1976) and D. GORDON, *LEBANON: THE FRAGMENTED NATION* (1980). For analysis of the 1958 crisis, see M. AGWANI, *THE LEBANESE CRISIS, 1958: A DOCUMENTED STUDY* (1965). On the civil war of 1975-76, see F. SHAKER, *FIRE OVER LEBANON: COUNTRY IN CRISIS* (1976). For a modern analysis of the prospects for reconciling the various Lebanese factions, see Tueni, *Lebanon: A New Republic*, FOREIGN AFF. 84-99 (1983).

84. After the creation of Israel and the war of 1948, Lebanon provided an important haven for Palestinian refugees. By 1964, the year the Arab League established the PLO, Palestinian refugees constituted ten percent of the Lebanese population. At that time the Lebanese government insisted that no PLO bases be established on its territory. K. SALIBI, *CROSSROADS TO CIVIL WAR: LEBANON 1958-76*, at 25 (1976). Impelled by leftist Muslim pressure internally and by exhortations from the rest of the Arab world, Lebanon finally signed an agreement in Cairo in November 1969, permitting the presence of PLO forces and bases on its territory and committing the Lebanese military not to hamper future PLO raids on Israel. *Id.* at 42-43. See Haddad, *Lebanon in Despair*, 82 CURRENT HIST. 16 (1983).

85. The first such Israeli action occurred in December 1968. The Israelis sought to punish Lebanon for failing to prevent PLO attacks launched against Israel from Lebanese territory. K. SALIBI, *supra* note 84, at 38. Eventually, such attacks were aimed at PLO bases themselves and increased in severity. *Id.* at 65, 79.

86. The 1975-76 civil war was fought, in part, because rightist Christian and centrist Muslim groups sought to remove the "destabilizing" Palestinian influence from Lebanon. In April 1976, Syrian forces moved into Lebanon to help contain troops backing the PLO. By October, the Riyadh agreement negotiated by the Arab League had established the Arab Deterrence Forces. See *supra* note 7.

87. On the legal status of the Israeli action, see generally Levenfeld, *Israel's Counter-Fedayeen Tactics in Lebanon: Self-Defense and Reprisal Under Modern International Law*, 21 COLUM. J. TRANSNAT'L L. 1 (1982).

88. The Council called for Israel to withdraw immediately, and assigned UNIFIL to "confirm the withdrawal of Israeli forces, restore international peace and security, and assist the Government of Lebanon in ensuring the return of its effective authority in the area." See S. C. Res. 425, 33 U.N. SCOR, Supp. (Res. & Dec.) 5, U.N. Doc. S/INF/34 (1978).

89. See, e.g., Weinberger, *supra* note 8, at 342-44. The contending factions included the PLO and Major Saad Haddad, a renegade Maronite Lebanese military commander to whom

## Peacekeeping Without the UN

major armed action in Lebanon. "Operation Peace for Galilee" brought 120,000 Israeli soldiers all the way to Beirut in a determined effort to crush the PLO.<sup>90</sup> PLO and Israeli troops then struggled for control of West Beirut<sup>91</sup> while 10,000 PLO and 30,000 Syrian and Arab League troops attempted to hold their positions in northeast Lebanon.<sup>92</sup> By early July, the UN had failed to take effective action<sup>93</sup> and the PLO position in West Beirut was rapidly deteriorating. On August 20, President Reagan announced that a multinational force of French, Italian, and United States troops would oversee the evacuation of 11,430 PLO and Arab League troops and personnel from Beirut.<sup>94</sup> The Lebanese government, the Israeli Cabinet, and PLO leader Yasir Arafat all gave their consent.<sup>95</sup>

The first version of the MNF included 800 French soldiers, 400 Italian soldiers, and 800 U.S. Marines stationed with the Sixth Fleet, all of whom were to assist 3,000 members of the Lebanese Armed Forces (LAF) both in overseeing the PLO-Arab League evacuation and in serving as a buffer between those Syrian-backed, Lebanese Muslim, and Israeli forces which remained in control of various pieces of territory inside and outside of Beirut.<sup>96</sup> The MNF arrived only after the arrangements had been made for a cease-fire and for the evacuation to other countries of Palestinian forces.<sup>97</sup> The MNF's stated mission was to:

- a. Assure the safety of [the] departing PLO personnel;
- b. Assure the safety of other persons in the Beirut area; and
- c. Further the restoration of the sovereignty and authority of the Government of Lebanon over the Beirut area.<sup>98</sup>

The evacuations proceeded smoothly between August 21 and Septem-

the Israelis handed control of the six-mile belt area in June 1978. The activities of both continued unabated throughout this period.

90. The invasion occurred partly in retaliation for the assassination of the Israeli ambassador to the United Kingdom. It involved air, sea, and land operations, including the strafing of PLO camps in Beirut and southern Lebanon. N.Y. Times, June 5, 1982, at A1, col. 1; N.Y. Times, June 7, 1982, at A1, col. 4. UNIFIL's commander ordered his troops not to resist the invading Israelis. DEP'T ST. BULL., Sept. 1982, at 19, and 21 I.L.M. 1175-76 (1982).

91. Haddad, *supra* note 84, at 18.

92. *Id.*

93. Security Council resolutions seeking an end to the Israeli invasion, and asking respect for the July 1981 ceasefire agreement it breached, included S.C. Res. 508 (June 5, 1982) and S.C. Res. 509 (June 6, 1982), DEP'T ST. BULL., Sept. 1982, at 14. Further UN action was prevented, in part, by US opposition, *see infra* note 119.

94. DEP'T ST. BULL., Sept. 1982, at 1.

95. N.Y. Times, Aug. 19, 1982 at A1, col. 1; N.Y. Times, Aug. 20, 1982 at A1, col. 6.

96. DEP'T ST. BULL., Sept. 1982, at 6.

97. The PLO leadership and troops were to be dispatched to Jordan, Iraq, Tunisia, Syria, North and South Yemen, and a number of other countries, *Id.* at 5-7.

98. DEP'T ST. BULL., Sept. 1982, at 2. The goals of the mission were agreed upon jointly by the Lebanese government and the participating states.



ber 5.<sup>99</sup> By September 2, an estimated 15,000 PLO and related troops had left the country, mostly by sea.<sup>100</sup> The U.S. forces left on September 11.<sup>101</sup> Overall, the first MNF operation had been a short-term, internationally-accepted peacekeeping effort with a limited mandate. As such, it had been a success.

The second MNF mission also began as a short-term operation, in response to the crisis prompted by massacres of civilians in West Beirut refugee camps during mid-September 1982. Israeli forces had entered West Beirut with the stated goal of keeping order after the assassination of Lebanese President-elect Bashir Gemayel on September 14.<sup>102</sup> Between September 16 and 19, several hundred Palestinian civilians living in the refugee camps were killed by Lebanese Christian Phalangists, apparently to avenge the death of Gemayel.<sup>103</sup> The massacre stirred the United Nations to action. Security Council Resolution 520 denounced the Israeli "incursions" into West Beirut,<sup>104</sup> and Resolution 521 authorized the deployment of 40 new UN observers to Beirut.<sup>105</sup> The Council also requested the Secretary-General to initiate discussions with the Lebanese government about "the possible deployment of United Nations forces, to assist the Lebanese government in ensuring full protection for the civilian population in and around Beirut."<sup>106</sup> By September 20, the Secretary-General had held discussions with UNIFIL Commander General Callaghan about possible deployment of 2,000 UNIFIL troops to protect Beirut civilians.<sup>107</sup>

By this time, however, events had already overtaken the UN and the Secretary-General. The PLO had called for "military forces, or United Nations military forces, or agreed multinational forces" to be immediately deployed to West Beirut.<sup>108</sup> The Italian government had asked the U.S. and France to join in sending an international force back to Beirut on September 20, and the French proclaimed their willingness to send troops in connection with a UN effort or "otherwise," as necessary.<sup>109</sup> That same day, the Lebanese Cabinet voted to ask that the MNF be re-

99. See generally N.Y. Times, Aug. 25, 1982, at A1, col. 6; N.Y. Times, Sept. 2, 1982 at A1, col. 5.

100. N.Y. Times, Sept. 2, 1982, at A1, col. 5.

101. N.Y. Times, Sept. 11, 1982, at A5, col. 1.

102. See generally N.Y. Times, Sept. 26, 1982, § 1 at 1, col. 4.

103. N.Y. Times, Sept. 19, 1982, at A1, col. 6.

104. S.C. Res. 520, 21 I.L.M. 1168, 1168-69 (1982).

105. S.C. Res. 521, 21 I.L.M. 1169, 1169-70 (1982).

106. *Id.*

107. Report of the Secretary-General in Pursuance of Security Council Resolution 521, 21 I.L.M. 1185, 1186-87 (1982).

108. *Id.* at 1187.

109. N.Y. Times, Sept. 20, 1982, at A4, col. 1.

## Peacekeeping Without the UN

constituted and brought back to patrol Beirut,<sup>110</sup> and President Reagan announced that the U.S., France, and Italy would accept the invitation.<sup>111</sup> UN officials said they approved of the MNF's return, though they lamented the UN's failure to play a more prominent role in peace efforts.<sup>112</sup>

Between September 24 and 27, 2,280 French and Italian troops were deployed in East and West Beirut, and began performing mine clearing, patrol, and humanitarian activities.<sup>113</sup> They entered the Sabra and Shatila refugee camps on September 27.<sup>114</sup> On the 29th, 800 U.S. Marines landed and took control of the Beirut International Airport and the surrounding area, as Israeli forces withdrew from these sections.<sup>115</sup> The Israelis had earlier left West Beirut, although their forces remained at key points around the city, and continued to control half of Lebanon.<sup>116</sup>

The stated mandate of the second MNF was a limited one:

to provide an interposition force at agreed locations and thereby provide the multinational presence requested by the Lebanese Government to assist it and the Lebanese Armed Forces (LAF) in the Beirut area. This presence will facilitate the restoration of Lebanese Government sovereignty and authority over the Beirut area, and thereby further efforts of [the Lebanese] Government to assure the safety of persons in the area and bring to an end the violence which has tragically recurred. The MNF may undertake other functions only by mutual agreement.<sup>117</sup>

In other words, the MNF was to serve as a temporary buffer between Israeli forces and Lebanese Muslim forces, helping the LAF to regain control of the Beirut area which all hostile troops had by this time evacuated. This mandate—somewhat broader than that of the first MNF, which had called only for evacuation supervision—was to continue for a “limited” but unspecified duration.<sup>118</sup>

### B. *Changing Perceptions of the Role of the MNF*

On its face, the MNF was a response to humanitarian concerns about the safety of civilians in Beirut, undertaken in light of UN failure to act

110. N.Y. Times, Sept. 21, 1982, at A1, col. 5.

111. See Statement by President Reagan, DEP'T ST. BULL., Nov. 1982, at 49.

112. N.Y. Times, Sept. 21, 1982, at A16, col. 6.

113. 21 I.L.M. 1190 (1982).

114. N.Y. Times, Sept. 28, 1982, at A1, col. 6.

115. N.Y. Times, Sept. 30, 1982, at A1, col. 6. The total MNF contingent later grew to over 5000 troops, including 100 British soldiers. For a map of their various positions in the Beirut area, see *The Economist*, Oct. 29, 1983, at 25.

116. N.Y. Times, Sept. 22, 1982, at A4, col. 4.

117. Statement of Lebanese Prime Minister Fouad Boutros, DEP'T ST. BULL., Nov. 1982, at 50.

118. *Id.*

quickly to secure that safety. However, important political factors were also involved in the decision of the Western powers, particularly the United States, to establish the MNF. Among these factors was U.S. concern that UN involvement could change the balance of power in Lebanon, or introduce new parties into the conflict. In the July-August crisis, U.S. representatives had vetoed Security Council resolutions which they felt were "not sufficiently balanced," generally because the resolutions did not require a complete PLO withdrawal from Beirut and from Lebanon.<sup>119</sup> The United States may have resisted deployment of UNIFIL in Beirut because of Israeli claims that the UN force had been co-opted by pro-Arab groups, compromising its neutrality.<sup>120</sup> Moreover, U.S. policy-makers may have feared that expanded UN efforts would allow the Soviet Union to become more directly involved in the Mideast: the Soviets had made clear their preference that the Lebanese problem be dealt with in international forums.<sup>121</sup> To avoid these and other problems, the United States may have found it convenient to preempt UN intervention altogether by launching an independent peacekeeping mission. This would explain the hasty U.S. assent to the reestablishment of the MNF before the Secretary-General and the Security Council could complete preparations for a UN force.<sup>122</sup>

The United States was also anxious to bolster the conservative Christian government of Amin Gemayel, who had become president after his

119. On June 8, the U.S. vetoed a Council draft resolution which condemned Israeli non-compliance with UN requests for its withdrawal and which contained veiled threats of sanctions for continued non-compliance. Ambassador Jeanne Kirkpatrick explained that the U.S. wanted a more balanced UN resolution. See DEP'T ST. BULL., Sept. 1982, at 14-15. The U.S. also vetoed a June 25 draft resolution that called for the withdrawal of Israeli forces to a distance of 10 kilometers from the city periphery, withdrawal of Palestinian forces to existing camps outside Beirut, and stationing of UN military observers to supervise the disengagement, with Lebanese agreement; the draft resolution also requested a study by the Secretary-General of any request by the Lebanese government for installation of a UN force which could "take up positions besides [sic] the Lebanese interposition forces" or for "the use of the forces available to that region." DEP'T ST. BULL., Sept. 1982, at 16-17.

120. Some UN agencies in the Middle East allegedly aided the PLO. In particular, Israeli Army officials discovered significant arms caches in refugee camps near Sidon which were run by the United Nations Relief and Works Agency. N.Y. Times, June 30, 1982, at A10, col. 3. Some observers rejected Israeli claims against UNIFIL as exaggerated. See Statement of International Lawyers, 11 J. PALESTINE STUD. 336 (1982).

121. The Soviets also stressed that they preferred a UN force rather than a force in which the United States and other Western states played a role. N.Y. Times, July 9, 1982, at A1, col. 4; N.Y. Times, July 21, 1982, at A9, col. 1. For analysis of Soviet policies in Lebanon generally, see Golan, *The Soviet Union and the Israeli Action in Lebanon*, 59 INT'L AFF. 7 (1982-83).

122. Admittedly, the US may have seriously considered, and at one point favored, installation of a UN force. See, e.g., N.Y. Times, June 9, 1982, at A18, col. 1 (statement by Secretary of State Alexander Haig that an eventual settlement should include more UN troops and fewer Syrian troops in Lebanon).

## Peacekeeping Without the UN

brother's assassination.<sup>123</sup> Israel had given the right-wing Lebanese parties \$100 million in aid between 1977 and 1982.<sup>124</sup> The U.S. commitment to the Gemayel Administration was made clear in the months following MNF deployment.<sup>125</sup> Once the MNF had been deployed, the U.S. kept it in Lebanon while trying to negotiate a withdrawal of Syrian, Israeli, and other foreign forces<sup>126</sup> because, as one analyst put it, "the withdrawal of the Marines might be seen as a sign of lack of confidence in Mr. Gemayel, which might lead to his overthrow."<sup>127</sup> In general, the continued U.S. presence allowed the United States a pivotal role in attempting both to shape a final settlement of the Lebanese conflict, and to guarantee some minimal protection of Israeli interests.

Increasing U.S. military and political cooperation with the Gemayel government may have proved detrimental to the avowed "peacekeeping" mission of the MNF,<sup>128</sup> although U.S. officials continued to insist that the MNF was in fact playing a neutral peacekeeping role in Lebanon.<sup>129</sup> Conflicting explanations of MNF's mission did not help matters.<sup>130</sup> As

123. For analysis of U.S. and Israeli interests in Lebanon, see Tucker, *Lebanon: The Case for the War*, Commentary, Oct. 1982, at 19.

124. Haddad, *supra* note 84, at 17.

125. See, e.g., statements by Deputy Secretary of State Kenneth W. Dam suggesting that the US should "restore" Lebanese sovereignty, strengthen the Lebanese armed forces, and aid in national reconciliation and economic reconstruction. DEP'T ST. BULL., Jan. 1983, at 73-75.

126. On US efforts to negotiate a settlement, see, e.g., Gwertzman, *US Hopes Sharon's Departure May Ease Lebanon Withdrawal*, N.Y. Times, Feb. 13, 1983, at E2, col. 1; N.Y. Times, Feb. 15, 1983, at A9, col. 1; N.Y. Times, April 24, 1983, at 1, col. 6.

127. Gwertzman, *Marines' Role in Beirut Has Drastically Shifted*, N.Y. Times, Oct. 25, 1983, at A12, col. 1.

128. See, e.g., Ignatius, *Lebanon Army Victory, With US Help, Marked Turning Point for Both Nations*, Wall St. J., Oct. 7, 1983, at 37, col. 2 (describing US Navy bombings of Syrian-backed forces advancing on Lebanese Army positions); *Report: Marines' Role Muddled*, *supra* note 95 (explaining that the US Army had begun to train and to supply weapons to Lebanese Army troops); N.Y. Times, Oct. 15, 1983, at 4, col. 1 (suggesting that at first "the Gemayel Government was so weak, had such a tenuous hold on the country and had so little self-confidence that it felt desperately in need of Washington's backing"); Gwertzman, *US and Lebanese Move to Bolster Relations*, N.Y. Times, Dec. 3, 1983, at 4, col. 3 (describing the formation of new "joint economic and military committees" to aid the unification of Lebanon, as well as to support the "morale of the Lebanese Government"). In short, the Lebanese government depended on the participation of the MNF to retain its sovereignty. This dependence hardly comported with U.S. participation in a supposedly neutral peacekeeping force. Indeed, the Lebanese encouraged U.S. forces to become more closely committed to LAF military efforts. See, e.g., *Lebanon Is Asking New Marine Role; US Reaction Cool*, N.Y. Times, Jan. 6, 1984, at A1, col. 6 (Gemayel government asks Marine deployment to south coast to help LAF extend authority).

129. See, e.g., Statement by President Reagan that the U.S. forces in Lebanon are "part of a multinational peace-keeping force seeking withdrawal of all foreign forces from Lebanon and from the Beirut area while a new Lebanese government undertakes to restore sovereignty throughout that country." N.Y. Times, Oct. 25, 1983, at A10, col. 1.

130. Cf. e.g., *supra* note 129, with statements that the Marine role in Lebanon is "vital to world peace" and "central to our credibility on a global scale," which seem to indicate two widely divergent objectives, N.Y. Times, Oct. 25, 1983, at A1, col. 6; see also *Review of State-*

the peacekeeping role of the MNF appeared to be transformed more and more into that of a support force for the Gemayel government,<sup>131</sup> opposition to the MNF increased. At first, the force found itself "accidentally" caught in crossfires from gun and rocket battles outside Beirut.<sup>132</sup> It even experienced near-skirmishes over territory with Israeli forces.<sup>133</sup> Within its first year and a half of deployment, the MNF was the object of attacks by snipers, direct rocket fire, and a truck bombing in October 1983 which killed 241 Marines.<sup>134</sup> The U.S. embassy in Beirut was bombed in April 1983.<sup>135</sup> While the sources of the attacks against the MNF could not always be determined with accuracy, some appeared to come from Syrian-backed and leftist Muslim troops.<sup>136</sup> Eventually, the U.S. and France undertook reprisals against military forces which had attacked their MNF contingents, turning the relationship between the MNF and the surrounding armed forces into virtual war.<sup>137</sup> Diplomatic efforts to achieve a withdrawal of all foreign forces and supervision of Lebanese territory by the LAF proceeded,<sup>138</sup> and Western governments

*ments since September 1982*, N.Y. Times, Oct. 25, 1983, at A12, col. 1 and Administration suggestions that the Marines were now in Lebanon only to provide a "breathing spell" until the Lebanese government could reorganize itself and its military. N.Y. Times, Feb. 3, 1984, at A4, col. 1.

131. See N.Y. Times, Oct. 25, 1983, at A12, col. 3.

132. See, e.g., N.Y. Times, May 8, 1983, at A10, col. 5 (report of U.S. Navy ship almost hit by rockets fired between Druze and Christian militias).

133. See, e.g., N.Y. Times, Mar. 19, 1983, at 1, col. 1, and Feb. 17, 1983, at 15, col. 1. See also Boston Globe, Mar. 19, 1983, at 3, col. 5.

134. See, e.g., Boston Globe, Mar. 23, at 13, col. 2 (Italian soldier is first MNF member killed in terrorist attack); N.Y. Times, Mar. 17, 1983, at A11, col. 1. (grenade attack injures US and Italian soldiers); N.Y. Times, Sept. 26, 1983, at A14, col. 1 (three Marines wounded in artillery duels between LAF and Druze); *Beirut Death Toll at 146 Americans; French Casualties Rise in Bombings*, N.Y. Times, Oct. 24, 1983, at 1, cols. 1, 6 (account of truck bombing of U.S. and French compounds).

135. See N.Y. Times, Apr. 19, 1983, at 1, col. 6.

136. See generally Middleton, *The Foe in Lebanon: Divided but Strong*, N.Y. Times, Dec. 11, 1983, at 16, col. 1.

137. See, e.g., *US Marines Join in Beirut Fighting*, Int'l Herald Tribune, Aug. 29, 1983 (first time U.S. contingent returned fire); *US Navy Enters Lebanon Fighting Shelling Hill Site*, N.Y. Times, Sept. 9, 1983, at 1, col. 6 (in response to Druze shelling of Marine airport positions); *8 French Jets Hit Militia Positions in Lebanon Clash*, N.Y. Times, Sept. 23, 1983, at 1, col. 6; *U.S. Bombers Hit Lebanon, Syrians Down 2*; N.Y. Times, Dec. 5, 1983, at 1, col. 6 (U.S. air strikes against Syrian-backed targets); *New Jersey's Guns Shell Syrian Sites in Lebanese War*, N.Y. Times, Dec. 15, 1983, at 1, col. 6.

138. A May 17, 1983 Israeli-Lebanese agreement, under which Israel would gradually withdraw as Lebanese Army troops moved in to guarantee the security of southern Lebanon, met with resistance from the various Lebanese factions present at an inconclusive "national reconciliation" conference in Geneva. See generally Trounson, *Achievements and Pitfalls at the Lebanon Conference*, Boston Globe, Nov. 6, 1983, at 26, col. 1. By early January, other peace efforts had made some progress. See Treaster, *Lebanon Disengagement Plan Accepted*, N.Y. Times, Jan. 6, 1984, at A6, col. 1.

## Peacekeeping Without the UN

urged the Gemayel regime to broaden its political base.<sup>139</sup> However, these latter events did little to remove now-established perceptions of the MNF as a partisan intervention force.<sup>140</sup>

### C. *Legal Difficulties and Loss of Credibility*

The Reagan Administration was careful to cite the Lebanese government's invitation as the legal basis for the entry and deployment of the MNF.<sup>141</sup> However, the correspondence surrounding the creation of the MNF<sup>142</sup> and the events of the summer and fall of 1982 suggest that the Gemayel government no longer possessed effective control of Lebanese soil, and was thus incapable of consenting to the presence of foreign troops in Lebanon.<sup>143</sup> Further, even if the Lebanese invitation was valid, the MNF did not meet the UN standard of all-party consent.<sup>144</sup> If the Israelis consented to the presence of the MNF, it was clear that the various Muslim and Syrian-backed factions active in northern Lebanon did not. At a minimum, consultation with these factions prior to MNF deployment might have provided an opportunity to reassure them of the MNF's non-partisan character. Had these parties been consulted, not only might they have given their consent to MNF deployment, but the Soviet Union and other critics would have found it more difficult to de-

139. See Gwertzman, *US Bids Gemayel Broaden His Base to Unify Lebanon*, N.Y. Times, Dec. 2, 1983, at A1, col. 6.

140. "The multinational force, for all its physical power, has a narrow political base that, in times of crisis, can cause its intentions to be, perhaps deliberately, misperceived by parties to the conflict." Urquhart, *On UN Peacekeeping*, N.Y. Times, Dec. 19, 1983, at A19, col. 1.

141. See *supra* note 110 and accompanying text.

142. A September 25, 1982 letter from Lebanese Deputy Prime Minister and Minister of Foreign Affairs Fouad Boutros explained that the MNF would "facilitate the restoration of Lebanese Government sovereignty and authority over the Beirut area." The letter professed "the determination of the Government of Lebanon to restore its sovereignty and authority over the Beirut area and thereby to assure the safety of persons in the area. . ." DEP'T ST. BULL., Nov. 1982, at 50. These statements implicitly admit that the Lebanese "government" had lost control of segments of Lebanese territory, raising questions about the validity of its authority in those areas. See *supra* notes 26-63 and accompanying text.

143. The events of August-September 1982 alone—including the massacres in Beirut refugee camps, the free movement of armed bands, and Israel's refusal to withdraw from Lebanese territory—suggest that the Gemayel regime did not have effective control over Lebanon. Israel and Major Haddad occupied fully half of Lebanon, Syrian-backed forces controlled the Bekaa Valley and parts of northeast Lebanon, and a variety of armed forces owing no allegiance to the Gemayel government controlled sections of the capital city. See *supra* notes 82-118 and accompanying text. See also *The Economist*, Oct. 23, 1982, at 33. By February 1984, widespread dissatisfaction with the Gemayel government had sparked calls for the President's resignation by Druze and other leaders. Shiite Muslims urged their representatives to leave the cabinet, and encouraged Muslim LAF soldiers not to fight against rebel forces. See N.Y. Times, Feb. 5, 1984, at A1, col. 6. The Prime Minister and nine-member Cabinet of the Gemayel government resigned on February 6. N.Y. Times, Feb. 6, 1984, at A1, col. 6.

144. See *supra* notes 26-63 and accompanying text.

ride the partisan nature of the force.<sup>145</sup>

Such criticism was partly borne out by the overt support of the MNF for the Gemayel government, and by its lack of interest in the technical peacekeeping rules developed by UN practice.<sup>146</sup> Of the four Western states comprising the MNF, all were NATO members and/or permanent members of the Security Council; one was a superpower, and three had intervened militarily in the Middle East at some time during the previous thirty years.<sup>147</sup> In short, the MNF participants did not represent a broadly-based, politically diverse and disinterested group of countries whose presence was likely to inspire inter-national confidence or support.<sup>148</sup> Instead, the MNF attracted the vehement opposition of Middle Eastern states and other parties which were in a position to undermine its peacekeeping efforts.<sup>149</sup> In part because of the identity of its participants, the MNF became a pawn in the struggle for control of the Middle East.

Several other factors combined to make the position of the MNF untenable: the vulnerability of the MNF participants to internal political pressure, the lack of an integrated command structure, and the failure to adopt a uniform and consistent self-defense policy. Safety concerns and domestic opposition forced the French and Italian governments to reduce or redeploy their MNF contingents.<sup>150</sup> In the United States, similar

145. The Soviets termed the MNF presence "interference" in Lebanon, claiming it had far less legitimacy than had Syrian and PLO forces brought in under the Arab League mandate for ADF. *See, e.g., Soviet Intensifies Its Criticism of US and Allied Forces in Lebanon*, N.Y. Times, Oct. 25, 1983, at A13, col. 1. The Soviets also called the MNF a US "invasion and occupation force," Medvedko, *Twenty-Five Years Later*, New Times, Oct. 1983, at 10-11. They also said MNF had entered Lebanon on a "pretext" to install a pro-Israeli dictatorship, Nikolayev, *"Quiet Americans" on Arab Soil*, New Times, Sept. 1983, at 8-9.

146. *See supra* notes 64-80 and accompanying text.

147. The United Kingdom and France had intervened in the Suez crisis of 1956. *See generally* R. BOWIE, *SUEZ 1956* (1974). The U.S. had, of course, intervened in the 1958 Lebanese crisis. *See supra* notes 48-49 and accompanying text.

148. Troops from smaller states have played a vital and successful role in past UN peacekeeping missions. *See generally* D. WAINHOUSE, *supra* note 4, at ch. 16. In fairness to the MNF states, it should be noted that 15 nations apparently refused to join the MNF between August 1982 and December 1983. *See Boston Globe*, Dec. 23, 1983, at 8, col. 1.

149. For example, Iranian hatred of the U.S. seems to have encouraged Iranian groups to play a role in the October 1983 truck bombing of U.S. and French compounds. *See* Brinkley, *Mideast Bombers: Hard to Pin Down*, N.Y. Times, Dec. 19, 1983, at A6, col. 4. Syria has long opposed US interests in the Middle East, while the Reagan administration has sometimes stressed superpower geopolitics as a factor leading to U.S. participation in the MNF. *See, e.g., Reagan: Syria gets new Soviet arms*, Boston Globe, Oct. 9, 1983, at 15, col. 3.

150. The October 1983 bombing of MNF troop compounds, *see supra* note 134 and accompanying text, initially had no effect on the resolve of the four MNF participants to remain in Lebanon. *See* N.Y. Times, Dec. 9, 1983, at A1, col. 5. However, domestic pressures in each participating state gradually caused some divergence in positions.

The French government strongly favored participation in the MNF, *see e.g., Carnage in Beirut Only Stiffens the Will of the French to Stay*, N.Y. Times, Oct. 30, 1983, at A24, col. 1, apparently with solid public backing. *See Le Monde*, Nov. 19, 1983, at 4 (all parties except

## Peacekeeping Without the UN

worries,<sup>151</sup> together with a controversy over presidential authority to deploy troops in Lebanon,<sup>152</sup> ultimately brought about the U.S. pullout in February 1984.<sup>153</sup> The possibility that domestic political pressures might precipitate the withdrawal of troops at any moment could hardly have enhanced the credibility of the force as a stabilizing influence. Moreover, it offered those anxious to bring about withdrawal an incentive to step up attacks on the MNF.

The lack of a single, unified command structure may have contributed to inconsistent behavior by the four MNF contingents, which further undermined their credibility as peacekeepers. In October 1982, a group of French soldiers went on patrol with LAF troops and helped disarm leftist and Muslim bands.<sup>154</sup> Without an integrated command, such incidents were bound to occur. One veteran of UN peacekeeping efforts has called the MNF's decentralized command a "hazard" which could do

Communists support Mitterrand policy in Lebanon and retaliation against truck bombers). However, criticism of the government policy eventually developed. *See* N.Y. Times, Dec. 22, 1983, at A9, col. 1. By the end of 1983, France had decided to adopt new measures to protect its contingent, *see* Le Monde, Dec. 15, 1983, at 1, col. 2; Miami Herald, Jan. 3, 1984, at 1, col. 6.

The Italian government apparently faced a more intense public debate over the status and purpose of its national contingent in MNF, including strong criticism from some of its political opponents. *See* Le Monde, Dec. 9, 1983, at 3. It eventually agreed to withdraw half of its 2200 troops from Lebanon, although as part of a "slow, low-profile exodus." Wall St. J., Dec. 16, 1983, at 34, col. 4.

The British government held to its firm stance in favor of the small national force which served with MNF. *See* Mrs. Thatcher Says Britain Will Keep Troops in Beirut, N.Y. Times, Dec. 7, 1983, at A18, col. 5. Strong objections from the Labour Party and others in the House of Commons did not sway British resolve. *See* Erlanger, *The Pressure on Thatcher to Withdraw from Lebanon*. Boston Globe, Jan. 5, 1984, at 7, col. 1.

151. In the U.S., calls for withdrawal of Marines from Lebanon were renewed, *see* Critics in Congress Declare Reagan Is Heading for War, N.Y. Times, Dec. 6, 1983, at A20, col. 5, particularly in response to heightened US retaliation against Syrian attacks. *See supra* note 137.

152. The April 1983 bombing of the American embassy in Beirut prompted Congressional moves to limit presidential powers to deploy US troops in Lebanon. *See* Gwertzman, *Marines in Lebanon: Congress is Becoming Wary*, N.Y. Times, April 20, 1983, at A8, col. 3. Eventually, both houses of Congress passed legislation granting permission under the War Powers Resolution for the Marines to remain in Lebanon up to 18 months. President Reagan claimed authority to deploy troops even without such permission. *See* War Powers Resolution, Pub. L. No. 93-148, 87 Stat. 555 (1973) (codified at 50 U.S.C. §§ 1541-48). For Congressional approval, *see* Pub.L. No. 98-119, 1983 U.S. CODE CONG. & AD. NEWS (97 Stat.). *See generally* Gelb, *Lebanon Peacekeeping Sets Stage for War Powers Debate*, N.Y. Times, Sept. 11, 1983, at E1, col. 1; Reagan, *Congress Agree to Keep Marines In Lebanon As Fighting Clouds Peace Bid*, Wall St. J., Sept 21, 1983, at 3, col. 2; Roberts, *Congress Adopts Measure Allowing Marines in Beirut*, N.Y. Times, Sept. 30, 1983, at A1, col. 6. Political controversy over the status of the Marines in Lebanon did not die with passage of War Powers authorization. *See supra* note 151 and accompanying text.

153. Continued heavy fighting in the Beirut area forced the U.S., Italian, and British contingents to undertake phased withdrawal to ships offshore. *See* N.Y. Times, Feb. 8, 1984, at A1, col. 6.

154. *See* Weinberger, *supra* note 8, at 365.



little to enhance peacekeeping missions.<sup>155</sup>

The failure of the MNF peacekeepers to define and observe a consistent policy on questions of self-defense further jeopardized the success of the mission. Initially, the force appeared ready to adhere strictly to self-defense rules similar to those of the UN, with one U.S. Marine commander stating that his men would go on patrol without bullets in their rifles.<sup>156</sup> By the end of 1983, however, the MNF had begun to work closely with the Lebanese Army, and to retaliate against attacks on its forces by air and sea-launched bomb or rocket responses.<sup>157</sup> It had also established a clear policy of returning ground fire in attempts to remove sniper and other opposition.<sup>158</sup> While such responses may be understandable from a military point of view, they did little to reinforce the avowed peacekeeping role of the MNF, or to lessen perceptions of parties to the conflict that the MNF was a partisan intervention force allied with the Gemayel government. The departure from the self-defense rule may have been unavoidable, given the incomprehension and frustration of on-lookers in the participating countries.<sup>159</sup> Indeed, the shifting role and increased military action of the MNF after September 1982 may perhaps be best explained as a response to demands by the home constituencies of participating states for retaliation against the attackers of the MNF.<sup>160</sup>

Of course, the MNF stood under no obligation to follow UN procedures. However, its avowed mission was to keep the peace, and the most effective technical means—as well as legal and other bases of support—should have been marshalled behind it. As indicated above, failure to learn from UN precedents may have been a costly error.

### III. Improving the Effectiveness of Non-UN Peacekeeping Missions

If non-UN forces are to serve a credible, constructive role in the resolution of future international conflicts, such forces will have to build international support for their activities and to distinguish themselves clearly from ordinary military forces. It is important to develop tech-

155. Urquhart, *supra* note 140.

156. N.Y. Times, Sept. 30, 1982, at A12, col. 2 (statement by Col. James Mead).

157. *See supra* notes 82-118 and accompanying text.

158. *See supra* note 137 and accompanying text.

159. Domestic critics complained that the Marines were "sitting ducks," or lampooned the ironies of their mission. *See, e.g.,* Buchwald, *Peacekeepers can't get angry*, Boston Globe, Sept. 22, 1983, at 31, col. 2. The Marines themselves professed that "it feels a little odd" to be "holed up in a defensive position." *Marines View of Beirut Mission: To 'Hunker Down and Bunker In'*, N.Y. Times, Dec. 2, 1983, at A1, col. 5.

160. In Fall 1983, President Reagan assured listeners that "The Marines will always defend themselves, and we will provide that defense." N.Y. Times, Oct. 25, 1983, at A12, col. 5 (statement of Oct. 19, 1983).

## Peacekeeping Without the UN

niques for achieving these objectives before the problems experienced by the MNF in Lebanon repeat themselves. Some of the suggestions discussed in this section include a role for the UN in "collective legitimization" of non-UN peacekeeping efforts (despite the difficulties which this concept involves), while others attempt to establish other sources of legitimacy for non-UN missions.

### A. *Association of Independent Peacekeeping Missions with the UN*

Even when, as in the Lebanon crisis, the Security Council proves unable to establish its own peacekeeping force, there are ways in which the UN might play a constructive role in legitimizing the efforts of non-UN peacekeepers. For instance, the UN might create regular channels through which it could monitor non-UN missions. Under such a plan, observers from such agencies as the United Nations Truce Supervisory Organization (UNTSO)<sup>161</sup> would monitor the operation of peacekeeping forces, reporting back to the Secretary-General or the General Assembly at regular intervals. This proposal would enhance the credibility of the peacekeepers, by reassuring critics of their neutrality and impartial conduct. UNTSO actually carried on this kind of monitoring activity for a brief period at the beginning of the MNF deployment in Lebanon.<sup>162</sup>

A more radical strategy would involve the establishment of a permanent, independent "international police force," to be funded and controlled by the UN. The purpose of such an entity would be to isolate the peacekeepers from short-term "political pressures," so that they could serve as a genuinely neutral buffer in crisis situations.<sup>163</sup> Both this and the monitoring proposal discussed above pose major practical difficulties, because both the judgment of UN observers and the actions of international police would be subject to the factional politics of the UN itself. Thus, UN involvement might only exacerbate the problem it is intended to solve. At best, UN assistance for private peacekeeping efforts can be helpful only when there already exists a high degree of international consensus.

161. For a general description of UNTSO and its activities, see D. WAINHOUSE, *supra* note 1, at 256-76.

162. See, e.g., 21 I.L.M. 1185-87 (1982) (describing arrival and activities of UNTSO members prior to MNF arrival) and *id.* at 1189-90 (UN observers report to Secretary-General on developments in Beirut after MNF deployment began).

163. See discussion of the Christian Herter proposal for disarmament and world police forces to enforce it, *International Forces Today and Tomorrow*, in INTERNATIONAL MILITARY FORCES *supra* note 45 at 11-23. See also Schelling, *Strategy: A World Force in Operation*, *id.* at 212-35.

B. *Establishment of Legal and Technical Standards for International Peacekeeping Activities*

Where the UN cannot play a direct or indirect role in keeping the peace, the legal and technical norms which have evolved as a result of past UN efforts provide a code of conduct which potential peacekeepers might do well to follow. Indeed, if these norms could be defined with sufficient detail and specificity, they might form the basis for a convention under which the legitimacy of non-UN peacekeeping missions could be assessed. Among the central requirements of such a convention would be that peacekeeping missions: (1) be established under the appropriate legal procedures of participating countries; (2) be deployed only with the consent of all major parties to the conflict; (3) consist of forces from a minimum number of countries of specified geographical distribution, and whose participation would comprise a minimum percentage of the total force; (4) be commanded by a centralized administration with ultimate authority over all national contingents, and to whom all parties not connected with the mission could address complaints or communications; and (5) be conducted under recognized rules of self-defense prohibiting the performance of any other military functions, and prohibiting military cooperation or coordination with any armed forces which are parties to the conflict.

The requirement that missions be established pursuant to the appropriate legal procedures of participating countries would shield such missions from the kind of debilitating and destabilizing domestic debate which characterized United States involvement in the MNF. While the process of obtaining parliamentary or congressional approval might be time-consuming, it would ultimately insure internal political consensus on the validity of the mission.

The requirement of major-party consent also has its drawbacks, and might rule out many potential peace efforts. Nonetheless, without such consent, peacekeeping efforts are futile, however well-intentioned. This requirement also poses the problem of defining "major party." One possible definition would include any group undertaking the obligations of a party to Protocol I (1977) of the Geneva Conventions of August 12, 1949,<sup>164</sup> or otherwise meriting combatant status and treatment under Ar-

164. In other words, an "authority representing a people" making a unilateral declaration to respect the Geneva Conventions of 1949 and subsequent protocols, as provided by Article 96(3) of Protocol I (1977). See Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, (Protocol I) 1977, reprinted in DOCUMENTS OF THE LAWS OF WAR 389 (A. Roberts & R. Guelf eds. 1982). Any such "authority" would be an identifiable unit by virtue of its having made a

## Peacekeeping Without the UN

article 43 of the Conventions.<sup>165</sup> In many situations, however, this definition would be too restrictive, excluding armed groups not covered by the Conventions.<sup>166</sup>

The third requirement would seek to achieve a balanced composition for peacekeeping missions by mandating the inclusion of small, non-aligned states. Minimum percentages from these states would avoid domination of the mission by a key state or states.<sup>167</sup>

Centralized authority over multinational missions is important for both internal cohesion and external communication. Detailed guidelines could be developed to govern the creation of a unified command, the relationship of the participating contingents to the command and to each other, and the rules under which individual contingents would be permitted to withdraw from participation.

The requirement restricting the activities of peacekeeping forces to self-defense obviously requires the adequate definition of that elusive concept. Existing UN practice provides at least a partial guide.<sup>168</sup> Among the additional requirements which might apply in the non-UN context are that peacekeeping forces not be permitted to displace armed forces from the territory which they occupy, that they be permitted to respond to armed attacks only with the force required to repel them, and that they be permitted to use only those tactical weapons deemed appropriate to their role.

Agreement upon such norms as these will not be a panacea for disputes over the legitimacy of non-UN peacekeeping operations. What such agreement will provide is a basic legal and political framework for minimizing such disputes. Adoption of this framework might at least encourage future non-UN missions to consider modes of legal and technical conduct likely to win the approval of the international community.

declaration. The legal status of such an "authority" would, of course, depend on interpretations of Article 1(4) of the Protocol.

165. In short, all "armed forces of a Party to a conflict," which means "all organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates . . ." *Id.*, Art. 43, at 411. This definition would have the effect of requiring consent for peacekeeping deployment from any party to the conflict protected by and assuming obligations under the Geneva Conventions of 1949 and Protocols thereto.

166. See generally, Rubin, *Terrorism, "Grave Breaches" and the 1977 Geneva Protocols*, 74 PROCEEDINGS OF THE AM. SOCIETY OF INT'L L. 192-96 (1980); Rubin, *Terrorism and the Laws of War*, 12 DEN. J. INT'L L. & POL'Y 219 (1983); and Draper, *Humanitarian Law and International Armed Conflicts*, 13 GA. J. INT'L & COMP. L. 253 (Supp. 1983) for a discussion of a few of the issues raised, including whether conflicts are "international" or "internal" and which armed groups the rules ought to apply to.

167. Of course, participation by states too numerous and diverse might also hamper force effectiveness. Maximum limits might also be imposed to meet this objection. See *supra* notes 66-77 and accompanying text.

168. For the rules followed by UN missions, see *supra* notes 77-81 and accompanying text.

It might also provide an objective standard against which the actions of controversial peacekeeping missions could be assessed.

C. *Maintenance by National Governments of Special Peacekeeping Forces*

States might enhance the credibility of their independent peacekeeping efforts and improve their effectiveness by creating special sections of their national armed forces whose sole function would be to participate in peacekeeping activities. This suggestion is not a novel one. In 1965, Republican members of Congress endorsed the concept of a U.S. "First Brigade" of specially-trained volunteers ready for service with UN peacekeeping forces at short notice.<sup>169</sup>

The rationale for such separate forces is that ordinary soldiers are trained, not to keep the peace, but to fight. Peacekeepers require special training in conciliation, negotiation, and conflict mediation.<sup>170</sup> The skills needed for successful peacekeeping service may more closely resemble those of a domestic police officer than those of a soldier.<sup>171</sup> Indeed, it may be quite difficult to teach soldiers trained in an aggressive, partisan posture to adopt the impartial attitudes crucial to peacekeeping operations.<sup>172</sup>

Forces already experienced in peacekeeping operations,<sup>173</sup> or specially trained and separate from conventional armed forces, would likely be well-equipped for their non-combat role. Further, they would probably have greater credibility in the eyes of the international community. Both their special training and their separation from ordinary military forces might reduce the likelihood of clashes with armed parties which could jeopardize the safety and the neutrality of the peacekeepers, and lead to a larger conflict.

169. A. COX, *supra* note 45, at 78-79. The U.S. rejected plans to pursue the idea partly because the State Department felt its adoption would reduce national leverage with the UN. *Id.* at 77.

170. See Dicks, *The International Soldier—A Psychiatrist's View*, in INTERNATIONAL MILITARY FORCES, *supra* note 45, at 236-56.

171. See A. WASKOW, TOWARDS A PEACEMAKERS ACADEMY 14 (1967), and D. WAINHOUSE, *supra* note 4, at 619-20.

172. M. HARBOTTLE, THE IMPARTIAL SOLDIER 45-48 (1970). Indeed, the disparity between the incongruity of a peacekeeping role and the training accorded the Marines sent to Lebanon has been cited as a source of their frustration. Friedman, *American's Failure in Lebanon*, N.Y. Times (Magazine), April 8, 1984 § 6, p. 32 at 65.

173. Experience in past UN missions would be an ideal qualification for service in future peacekeeping operations, according to one analyst. See Harbottle, *The October Middle East War: Lessons for UN Peacekeeping*, 50 INT'L AFF. 544, 549 (1974).

## Peacekeeping Without the UN

### Conclusion

Successful peacekeeping requires careful preparation, a broadly-based consensus within the international community, and scrupulously well-defined objectives and operating procedures. As nearly thirty years of UN peacekeeping experience has demonstrated, the observance of established legal and technical norms can enhance the effectiveness of peacekeeping forces, and contribute substantially to the international credibility which they require. By failing to respect these norms, the MNF in Lebanon did little to enhance its image as a disinterested keeper of the peace. Further missions organized outside UN auspices must not repeat the same mistake.

If the peacekeeping concept developed by Pearson and Hammarskjold is to remain of service to humanity, agreement must be reached on the composition and behavior appropriate to the peacekeeper's role. Only when this role is accepted and understood by the major parties to a conflict, the peacekeepers' domestic constituencies, and the international community, can a peacekeeping mission confidently interpose itself as a buffer between warring parties.