The Benefits of a United Nations Standing Army: Using Article 43 of the UN Charter to Improve International Human Rights and Peace

by

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COMPULSORY DECLARATION

This work has not previously been submitted in whole, or in part, for the award of any degree. It is my own work. Each significant contribution to, and quotation in, this dissertation from the work, or works, of other people has been attributed, and has been cited and referenced using the South African Law Journal Style of citation.

Abstract

The purpose of the United Nations (UN) as set in the UN Charter is to protect the 'people' of the world and provide the necessary freedoms and security for them to flourish in their own ways. This has been expressed through the UN Charter's various chapters and articles that have been brought into practical effect by the UN's institutional and administrative bodies such as the General Assembly and the Security Council. Despite this, the world continues to witness humanitarian crises flaring up at consistent (if not growing) levels, and in most cases these humanitarian crisis situations occur in conflict zones. In attempts to curb this, the UN had initiated several peacekeeping missions, some of which had success in the early stages of the organization's peacekeeping agenda. However, the broader failure of these peacekeeping operations is mainly attributed to the disorganized and decentralized nature of current UN peacekeeping operations. These failings lead to perpetual cycles of mistrust/dissatisfaction which result in reduced support by states which then precipitates further failures and this again fuels the mistrust and dissatisfaction of member states and the public opinion.

However, an organized standing army under the UN would arguably do far better at ensuring the protection of human rights across the world. Based off the cohesive and structured nature of a standing army, a UN army would likely find far more success in promoting international peace and security than current methods of peacekeeping or awaiting approval for collective action from the Security Council. The structure to allow such a force already exists within the UN charter, most notably under article 43. However, there are other far-reaching avenues to achieve this which are explored in this study. Ultimately, a UN Standing army would improve international peace and security as well as increase the protection of human rights.

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CHAPTER 1: INTRODUCTION

1.1. Introduction

With the ever-growing humanitarian crises across the world, some question if the United Nations (UN) is still capable of enforcing some of its founding principles[1] such as the principle of 'the suppression of acts of aggression or other breaches of the peace' as well as 'promoting and encouraging respect for human rights and for fundamental freedoms for all.'[2] More often than not, violations of human rights goes hand in hand with acts of aggression, usually carried out by (or between) large powerful international bodies such as states or large organizations such as insurgency groups. Examples of this can be seen with the rise of Islamic State in areas of Syria and Iraqin the past decade,[3] the start of the 2022 war between the Ukraine and Russia,[4] and the most recent war between Israel and Hamas/Palestine.[5]

In each of these situations, as with the war in Yugoslavia, the question about whether the UN 'could have prevented this or done more?' looms.[6] Some have argued that the answer is a bit more obvious than many expect.[7] They argue that the answer can be found in article 43 of

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[1] Nigel D. White 'Protecting Human Rights in UN Peacekeeping: Operationalising Due Diligence and Accountability' 2023 *Kings Law Journal* 1

[2] Articles 2 and 3 of the United Nations, Charter of the United Nations, 1945 (hereinafter 'UN Charter')

[3] Aviva Guttmann, 'The Rise of ISIS as a Partial Surprise: An Open-Source Analysis on the Threat Evolution and Early Warnings in the United Kingdom' (2023) 36 *International Journal of Intelligence and Counter Intelligence* 3 at 687-690.

[4] Hugh Williamson 'Ukraine: Human Cost of Brutal Russian Invasion' Human Rights Watch 24 February 2023, available at: *https://www.hrw.org/news/2023/02/24/ukraine-human-cost-brutal-russian-invasion,* accessed 9 January 2024.

[5] Human Rights Watch 'Israel: Starvation Used as Weapon of War in Gaza' 18 December 2023, available at: *https://www.hrw.org/news/2023/12/18/israel-starvation-used-weapon-war-gaza*, accessed 9 January 2024.

[6] John M. Fraser 'Lessons from former Yugoslav' (2002) 57 *International Journal* 4 at 639.

[7] Eugene V. Rostow 'Should Article 43 of the United Nations Charter Be Raised from the Dead?' 1993 *Institute for National Strategic Studies* 19 at 15.

the UN Charter.[8] The article, at present, allows the Security Council to authorise certain bodies or states to use force to promote the purposes of the UN. However, even with its current structure, article 43 of the UN Charter could be used to establish a standing UN force that could police and respond to any crisis much faster than current modes of peacekeeping at its disposal.

The question, therefore is; would a standing army of the UN support the promotion and protection of human rights and international peace? While past trends of peacekeeping forces have not resembled standing armies and have been more reactive than proactive in dealing with crises, they have still shown that the presence of appropriate physical force has the ability to assist tremendously in opening up dialogue when diplomacy had become stagnant as well as reducing or even halting human rights violations.[9] It is therefore worthwhile for the UN to once again begin discussions of reviving the idea of a standing army as originally envisioned in article 43 of the UN Charter to promote and protect international peace and human rights.

1.2. Background

Since its creation, the UN was envisioned to not only be an international institution but also a representative of an international consciousness.[10] Essentially, it was supposed to begin a new era of universalism in terms of human rights and international security and prosperity.[11] In order to achieve this, the UN created various sub-bodies to facilitate the achievement of these objectives. Among the first were the Security Council whose purpose was to oversee the state of international peace and security especially in terms of use of force.[12] Another such body was

[8] Article 43 of the UN Charter.
[9] Séverine Autesserre 'The Crisis of Peacekeeping' (2019) 98 *Foreign Affairs* 1, at 102-104
[10] Sunil Amrith and Glenda Sluga 'New Histories of the United Nations' (2008) 19 *Journal of World History* 3 at253-256.
[11] Ibid
[12] Kristen Boon 'The U.N. Security Council: The Most Powerful Organ in History' (2011) 11 *Insights on Law & Society* 3.

the Human Rights Commission which was tasked with drafting the Universal Declaration of Human Rights.[13]

In order to put the work of these UN bodies into practice, various operations have been initiated with the most popular and relevant to this thesis being that of the peacekeeping missions.[14] One of the most notable and historic of these peacekeeping missions occurred during the war in Korea in the 1950s. During this period, the General Assembly created the 'Uniting for Peace' Resolution[15] which saw the deployment of peacekeeping troops in the area.[16] This resolution and resultant operation set the precedent for most peacekeeping operations that followed.

As it stands UN peacekeeping missions under the 'blue helmets' are the most direct form of military intervention from the UN without the use of other regional bodies or collective forces such as NATO. However, it has been argued that the effectiveness of current peacekeeping operations to fulfil their objectives has decreased. These objectives include assisting the UN in projecting its purpose of international peace, security and human rights and being a deterrent force.[17] These failures and shortcomings will be discussed in more detail in Chapter 2 of this research.

A UN standing army, would be established as an implementing force much like peacekeepers or operatives for other UN sub-bodies. However, it will have the benefits of a cohesive military force and thus remove many of the shortcomings of current peacekeeping operations (as will be discussed in Chapter 2). Ideally, as the UN standing army would have the objective of projecting the UN's ideals and purpose on international peace and human

[13] Amrith and Sluga op cit note 10 at 255.
[14] Autessere op cit note 9 at 102.
[15] United Nations, Uniting for Peace Resolution (A/RES/377).
[16] Andrew J. Carswell 'Unblocking the UN Security Council: The Uniting for Peace Resolution' (2013) 18 *Journal of Conflict and Security Law* 3 at 456-458.
[17] Auteserre op cit note 9 at 102.

rights, it would ideally be under a military committee that is under the directorship of the General Assembly rather than the Security Council as per article 43 currently.[18] The idea that the General Assembly would be the better option is premised on the fact that this body is more representative of the entire international community, an important factor to consider when dealing with a body that would be as influential and powerful as a UN standing army. This shall be discussed further in chapter 4 of this research.

1.3. Problem statement

As the UN approaches its 80th birthday, and world crises continue to threaten the promotion and protection of peace and human rights, it is apt that we re-examine the need for a standing UN army. Article 43 of the UN Charter makes provision for the Security Council to authorise the use of force. It is under this article that the UN standing army would be established with the sole purpose of restoring peace and promoting and protecting human rights in the face of a humanitarian crisis when diplomatic means fall short.

A look at recent atrocities in Gaza at the behest of Israel highlights a grim picture of the effectiveness of UN interventions. Israel has been able to successfully besiege the occupied territories, cutting off almost all humanitarian aid while it continues to carry out what South Africa has described as 'genocidal acts.' [19] While diplomatic avenues are explored in resolving the conflict, human rights continue to be at stake. This highlights the need for a UN standing army that would be able to intervene and halt conflict from both sides pending the outcome of diplomatic efforts.

[18] Article 43 of the UN Charter.

[19] Shola Lawal 'South Africa's genocide case against Israel: How will the ICJ decide?' *Al-Jazeera* 10 January 2024, available at: *https://www.aljazeera.com/news/2024/1/10/south-africas-genocide-case-against-israel-how-will-the-icj-decide*, accessed on 11 January 2024

1.4. Research question

This paper seeks to answer the question of whether there is the potential for the creation of a UN standing army which would benefit the promotion and protection of human rights and international peace. This involves looking at current frameworks and structures for use of force used by the UN currently and the effectiveness they have in protecting human rights. From there, an analysis of the potential success a more centralized standing army would have creates room for the further questions as to how readily the world would accept a UN standing army and what might be required to make such a thing possible.

1.5. Literature review

Academic discussion on the topic of a UN standing army slowly declined during the course of the Cold War. However, after the Cold War the discussion was once again put forward and gained some popularity in the 1990s. As such, most academic sources around the subject come from this time period.

The end of the Cold War and the supposed end of the antagonism between the East and the West opened up the UN to the conversation about the pooling of military power for the sake of pursuing world peace and maintenance of human rights.[20] The idea was to create a rapid response unit that would assist with humanitarian crisis situations. This discussion was opened by the then Secretary General Boutros Boutros Ghali in June 1992,[21] where he made a call for Security Council to consider the option of a pooled UN force under the premise of article 43.[22]

At the time of the suggestion by the Secretary General Boutros-Ghali, many scholars, such as Alex Morrison, were skeptical of the idea.[23] This skepticism was based on

[20] Andrew S. Miller 'Universal Soldiers: U.N. Standing Armies and the Legal Alternatives' (1993) 81 *Georgetown Law Journal* 3 at 773-774.
[21] Paul Lewis 'U.N. Chief Asks for Armed Force To Serve as a Permanent Deterrent' *The New York Times* 19 June 1992, available at *https://www.nytimes.com/1992/06/19/world/un-chief-asks-for-armed-force-to-serve-as-a-permanent-deterrent.html*, accessed on 13 January 2024
[22] S. Miller op cit note 20 at 774
[23] Alex Morrison 'The Fiction of a U.N Standing Army' (1994) 18 *The Fletcher Forum of World Affairs* 1 at 95

contemporary politics of the time and the balance of power coming from the Cold War. In addition, at the time UN-led military operations were run under peacekeeping missions, which had not yielded outstanding results for such a worldwide organization. Scholars such as Weston argued that they had seen better results from other collective state-run operations such as with the United States of America (USA) in the Gulf War, although they may have questioned their interpretations of the articles that may have authorized these actions.[24]

Beyond just the structural and sociological difficulties of establishing a UN standing army,[25] the primary issue is that of political imbalance. Morrison argues that states will inevitably always act in what they believe is best for their own interests, which could be quite a significant factor in decision making when one must consider a state with a large amount of international influence like the USA.[26] As such, Morrison argues rather for effort to be put into creating more political cohesiveness within the UN, and essentially states will naturally gravitate towards common goals.[27]

Although Morrison's argument has some merit, it gives too much credit to states and their ability to perhaps have an 'epiphany' over time and slowly cooperate with the international community for the greater good. Examples would be states such as Mauritania, where state practice has tacitly allowed the continued practice of chattel slavery and even benefited from it.[28] Another example is Yugoslavia, where towards the end of the 1990s leaders from the various factions were refusing to come to any sort of substantial dialogue despite nearly a decade of calls for peace and diplomacy from the international community.[29]

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[24] Burns H. Weston 'Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy' (1991) 85 *The American Journal of International Law* 3, at 525-527
[25] Morrison op cit note 23.
[26] Ibid at 94-96.
[27] Ibid.
[28] Stephen J. King 'Black Arabs and African migrants: between slavery and racism in North Africa' (2021) 26 The Journal of North African Studies 1, at 17-25.
[29] Fraser op cit note 6.

Unfortunately, if Morrison's model is to be followed, some states and factions may unfortunately go 'rogue.' It is therefore important that these be policed effectively in order to prevent further harm to human rights of the civilians that might be subject to their powers.

Although the idea of use of force is often shunned and often viewed as antithetical to diplomacy and peace negotiation, it can, in fact, be complementary to the peaceful measures. The idea of policing is one such example.[30] The institutions of policing have been created and developed in order to assist with the maintenance of peace and order, even giving these police officers leave to use force in order to achieve this goal.[31] The judicial system or any other correctional institution then take over after the work of policing has been discharged, and in contemporary times, often in non-violent ways.[32] Scholars such as Dobbins et al. have argued that in times of conflict it is important to make sure that there is a good policing system in place to ensure peace and protection of civilians.[33]

A UN standing army would essentially act as a 'policing' force for the objectives and purposes of the UN. It will ensure that there is the necessary degree of compliance to international peace and human rights and then creating an environment free of violence and conducive for diplomacy. As such the UN standing army is complementary to Morrison's idea of a more politically cohesive UN rather than an unnecessary distraction from it.[34]

Shibley Telhami, states that the idea of a UN standing army was not sustainable.[35] This was premised on consideration of the current capabilities of the UN at the time as well as the

[30] James Dobbins, Seth G. Jones, Keith Crane and Beth Cole DeGrasse 'The Police' in *The beginner's guide to nation-building* (2007) at 47-48.
[31] Philip Rawlings 'The Idea of Policing: A History' (1995) 5 *Policing and Society: An International Journal of Research and Policy* 2, at 141-142.
[32] Ibid
[33] Dobbins op cit note 30 at 47-49.
[34] Morrison op cit note 23.
[35] Shibley Telhami, 'Is a Standing United Nations Army Possible? Or Desirable?' (1995) 28 Cornell *International Law Journal* 3 at 673-674.

prevailing political power structure.[36] Telhami notes that the current structure of bodies such as the Security Council were a hindrance to the idea of a UN standing force. Telhami recognizes that most states act in accordance with their own state interests, especially more powerful and influential states such as the five permanent members of the Security Council. The scholar uses the USA's approach in the Gulf War as an example.[37] Telhami also highlights that countries such as Germany and Japan which are considerably wealthy and have significant international political weight do not even have permanent seats on the Security Council.[38] If the Security Council was restructured to allow states like Germany and Japan permanent status and became more representative of the contemporary international balance of power, Telhami argues that there might be a better chance that something akin to a UN standing army could be possible and sustainable. However, it is unlikely that the current permanent members would be willing to shift the balance of power.[39]

Furthermore, scholars such as Telhami note that the contemporary military operations directed by the UN have shown less than satisfactory results.[40] Where Telhami uses the contemporary example of the peacekeeping mission in Cambodia, a similar sentiment can be seen with current issues in the Democratic Republic of Congo, where public opinion in the country has become so negative the peacekeeping mission has now been scheduled for termination by the end of 2024.[41] Essentially, the argument being made is that if the UN cannot even manage a more decentralized military system such as its peacekeeping operations, how would it possibly be able to effectively deploy a standing army?[42]

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[36] Ibid
[37] Telhami op cit note 35 at 675.
[38] Telhami op cit note 35 at 675.
[39] Telhami op cit note 35 at 676.
[40] Telhami op cit note 35 at 675.
[41] Al-Jazeera 'UN says all peacekeepers will leave DR Congo by end of 2024' 13 January 2024, available at *https://www.aljazeera.com/news/2024/1/13/un-says-all-peacekeepers-will-leave-dr-congo-by-end-of-2024*, accessed on 14 January 2024.
[42] Telhami op cit note 35.

Despite this, there are some contemporary scholars such as Augusto Lopez-Claros that argue that a UN standing army would be beneficial to the protection of human rights.[43] Lopez-Claros advocates for a gradual increase of such a force, starting with Secretary General Trygve Lie's call for a 5000 UN guard to assist with humanitarian crisis situations.[44] For Lopez-Claros, the ideal situation would be for the formation of the envisioned 1.2 million manned army that would be able to address the bulk of the world's humanitarian crisis.[45]

Although, not explicitly supporting the formation of a standing force, contemporary scholars such as Ellen Ravendal do support the ideals of Secretary General Lie.[46] However, the idea is accepted that if the UN is to properly address global humanitarian crisis' and live up to its objectives of protecting international peace and security, it will need its own 'teeth' to enforce the above.[47]

This study argues that the current methods of UN directed peacekeeping have been substandard. It further argues that the approach of a global defense force in the form of a UN standing army is the best approach in terms of protecting human rights and international peace. The UN standing army's main objective would therefore be to halt or in the very least minimize conflict, especially for non-combatants in a crisis situation, and allow for an environment for diplomatic dialogue to take place.

Other mediums of international military actions such as the collective force of NATO in Yugoslavia have proven successful.[48] However, these methods of military action have

[43] Augusto Lopez-Claros, Arthur Dahl and Maja Groff *Global Governance and the Emergence of Global Institutions for the 21st Century* (2005) at 157 and 169.
[44] Ellen Jenny Ravndal '"A Force for Peace": Expanding the Role of the UN Secretary-General Under Trygve Lie, 1946–1953' (2017) 23 *Global Governance* 3, at 448-455.
[45] Lopez-Claros et al. op cit 43.
[46] Ravndal op cit note 44.
[47] Morrison op cit 23 at 87.
[48] Takis Fotopoulos 'New World Order and NATO's War against Yugoslavia' (2002) 24 *New Political Science* 1 at 90-95.

succeeded due to their cohesive nature and have been able to force the necessary dialogue and diplomacy that had been seemingly unattainable due to the 'snowballing' of conflict.[49] However, these non-UN forces such as NATO still carry a political bias with regards to the interest of the parties involved in these militaries.[50] They also do not necessarily have to promote the purpose and objectives of the UN as a symbolic force like a UN standing army would.

In conclusion, based on the above cited literature, this research asserts that a UN standing army would be the best avenue to protect human rights as well as to promote the objectives of the UN in terms of its goals of international peace and security.

1.6. Methodology

To address the research question, the paper has used a qualitative research method, specifically adopting a hermeneutics approach[51]. The hermeneutics approach is one that focuses on the meanings of texts, culture, arts and other social factors. This approach, unlike most other qualitative forms of research, requires the author to move away from authorial intent (the idea that the meaning of a text resides only with its author) and move towards a more pluralistic understanding of the research sources (for example texts and images) and participants.[52] The researcher is guided by theories to make decision about the sources and participants' responses they use and, in turn, these theories and sources not only assist in helping to find the study's findings but also lead the researcher to finding further sources or challenge or expand on previous preconceptions within the research.[53]

[49] Ibid.
[50] Ibid at 73-90.
[51] Rene Geanellos 'Exploring Ricoeur's hermeneutic theory of interpretation as a method of analysing research texts' 2000 *Nursing Inquiry* 7 at 113-114.
[52] Geanellos op cit note 50 at 113.
[53] Geanellos op cit note 50.

The source material for this topic involved several legal, historical, and sociological texts retrieved from various scholarly databases, mainly sourced online. Given the nature of the topic and the strong influence of social sciences such as history and sociology, the hermeneutic approach is best suited for this paper. This is most prevalent in the circular interpretive approach that requires constant revisiting of matters in the paper as it progresses. Additionally, the emphasis on historical context is also of importance.[54]

The study will search various legal and sociological databases using a thematic analytical approach in analysing the data. This would be most compatible with the hermeneutics approach that will be employed. The paper will then contextually analyse the data by taking into account various geo-political, socio-economic and historical factors.

1.7 Limitations of the study

This research is limited in terms of the materials used in the study. The study relies solely on desktop research. It is limited in that it does not undertake primary research such as interviews and or surveys on the effectiveness on current human rights protection methods such as peacekeeping. Instead, it focuses on physical texts and sufficient digital sources from the online databases. The research is also limited to considering the legal aspects of the formation of a standing army as a protective and policing force for protecting human rights and protecting world peace. It does not delve into the logistical intricacies of setting up such a force.

[54] Geanellos op cit note 50 at 113-114.

1.8 Structure of thesis

The first chapter provides the introduction to the study, outlines the research question, a brief literature review, and the methods used in undertaking the study.

The second chapter of this dissertation will outline the existing framework for use of force within the UN Charter, with particular focus on articles 43, 45 and 51. This chapter will also reflect on the 'collective'/'multi-state' military and policing forces that exist or have existed.

In chapter three, the dissertation will look at the historical context and the advantages of the existence of a standing UN force as well as look at the likelihood of its acceptance in the world while considering what ought to happen for a standing army to get at least a majority approval and support from members of the UN. Focus will be placed on the Security Council, in particular, the five permanent members.

Chapter four will analyse the information discussed in the previous chapters and provide a rough framework for setting up a UN standing army under the current UN legal mechanisms. The chapter will also expand on the benefits of a standing army in advancing the objectives of the UN.

Finally, chapter five will conclude the dissertation by providing a summary of the salient points discussed as well as advancing some recommendations.

CHAPTER 2: CHALLENGES FACING THE UNITED NATIONS

2.1. Introduction

The foundational framework for a UN standing army is in existence in the UN Charter.[55] In fact, the creation of a standing army would be very much in keeping with the intentions of the initial drafters of article 43 of the Charter.[56] Furthermore, the creation of a UN standing army would be far more efficient in upholding the UN's ultimate purpose which is summarized in the preamble of the UN Charter as follows; -

> '*We the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom,'* [57]

The preamble highlights a shift in thinking in terms of international law following the atrocities of WWII and the results of the Nuremburg Trials.[58] The priority was no longer the sovereignty of the state but rather the preservation of human life and human rights.[59] In theory, to achieve the goal of preservation of life and rights, the state is not a necessity. However, the reality of the make-up of international politics is that the state cannot (and likely will not soon)

[55] UN Charter.
[56] Article 45 of the UN Charter.
[57] Preamble to the UN Charter.
[58] Lloyd Axworthy 'Human Security and Global Governance: Putting People First' (2001) 7 *Global Governance* 19 at 19-20.
[59] Ibid. It is worth noting, however, that state sovereignty was still given considerable importance, for example in Article 2 of the UN Charter.

be erased as a norm. As such, in terms of the vision outlined in the preamble, the state is merely a vehicle in assisting the advancement of human rights.[60]

This is made clear throughout the preamble which speaks about "the people" and their safety and development in an international sense. The closest word to 'state' in the preamble is nation, which, although often used synonymously, can be seen as an extension of 'people' in the context of the preamble. The word 'nation' is defined in the Cambridge dictionary- 'a large group of people of the same race who share the same language, traditions, and history, but who might not all live in one area'.[61] This definition does not speak to the criteria for statehood set in the Montevideo Convention[62] that was so widely accepted up until the time of the drafting of the UN Charter.[63] This shift is clearly outlined in the UN Charter, as showcased by article 2 which emphasizes the idea of 'state' sovereignty.[64] Clearly, there is a distinction between 'state' and 'nation' (synonymous with 'people') and that the primary focus of the UN, as noted in the preamble, is the protection of peoples and upholding their human rights as much as possible.

In addition, the idea that state 'sovereignty trumps everything' has been slowly dismissed since the creation of the League of Nations.[65] By the end of WWII the idea that state sovereignty reigns supreme above all was almost excluded when it came to human rights violations, although in practice many states still continued to invoke this as a defense stating they were handling 'domestic matters.'[66] However, in many instances this defense has been

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[60] UN Charter.
[61] Cambridge University 'Cambridge Dictionary' available at *https://dictionary.cambridge.org/dictionary/english/nation,* accessed on 31 May 2023.
[62] Montevideo Convention on the Rights and Duties of States, 1933.
[63] Thomas D. Grant 'Defining Statehood: The Montevideo Convention and its Discontents' (1999) 37 *Columbia Journal of Transnational Law* 403.
[64] Article 2 of the UN Charter.
[65] Eric Suy, 'NATO's Intervention in the Federal Republic of Yugoslavia' (2000) 13 *Leiden Journal of International Law* at 195-196.
[66] Ibid.

dismissed with either UN peacekeeping operations being deployed into areas via the General Assembly or through some approval (either implied or explicit) by the UN Security Council.[67]

From the above stance, it should be understood that the creation of a UN standing army would be for the purpose of protecting 'the people'. The idea of protection of 'the people' being of primary importance is present throughout the UN Charter and given credence through the Universal Declaration of Human Rights.[68]As such, the standing army's priority (as with all things in the UN) should be the wellbeing of 'the people' rather than the states and their rights. Even so, as previously mentioned, the current reality of the world is that the 'state-system' is the current driving force for any international matters and as such any theories of the UN standing army will still have to conform with principles of statehood.

In fact, one can argue that the practice of 'statehood' has been one of the reasons that a standing army of the UN has not come close to being established. Tensions during the Cold War increased exponentially in the years following the end of WWII and shortly after the UN Charter had been drafted. As such, much of the initial implementation of the Charter was subject to the geo-political environment of the Cold War.[69] This had no doubt set most of the precedent for the expected practice deriving from it even after the Cold War.

Even in post-Cold War dialog there has been apathy towards the idea of a UN standing army. Suggestions have been proposed ranging from Brian Urquhart's 1993 call to revive Trygve Lie's 1948 idea of a 5000 strong 'UN guard', to larger forces of up to 1.2 million by Lopez-Claros, Dahl, and Groff in 2020.[70] Many of these suggestions are based on the delayed

[67] Geir Ulfstein and Hege Føsund Christiansen 'The Legality of the NATO Bombing in Libya' (2013) 62 *The international and comparative law quarterly* 1, at 167.
[68] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948)
[69] Miller op cit note 20.
[70] Lopez-Claros et al op cit note 43 at 157 and 169.

and overcomplicated responses by the UN (particularly the Security Council) to emergency humanitarian crises.[71]

2.2. Contemporary Peacekeeping Operations

Despite the above, there has been a trend of reducing peacekeeper presence even in current crisis zones as well as a reluctance of commitment to deploy them to new areas of concern. This can be seen by the fact that the UN has not initiated any new operations since 2014 in the Central African Republic.[72] From 2016 until 2022 the number of personnel contributed to the peacekeeping force has dropped from 105 000 to 74 892 and the budget has dropped from US$7.8 billion to US$6.45 billion.[73]

Arguably, the lack of support illustrated above has contributed to creating the now common idea of the 'useless blue helmets', which likely only then perpetuates less investment and interest. An example of this can be seen with the disgruntled people in the eastern parts of the Democratic Republic of Congo (DRC) regarding the presence of MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of the Congo).[74] After 24 years the organization has had little success in the eastern part of the country[75] and a track record of contributing more problems than solving them.[76]

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[71] Lopez-Claros op cit note 43.

[72] United Nations Peacekeeping 'Peacekeeping Operations fact Sheet- 30 June 2023' available at: *https://peacekeeping.un.org/sites/default/files/peacekeeping_fact_sheet_june_2023.pdf* accessed on 16 September 2023.

[73] Jacob D. Kathman 'Who Keeps the Peace? Understanding State Contributions to UN Peacekeeping Operations' 61 *International Studies Quarterly* 2017 at 151. See also Daniel Forti 'The 2022 UN Peacekeeping Budget: Signs of Progress or a Fleeting Moment of Consensus?' *IPI Global Observation*, accessed 16 September 2023 and United Nations Peacekeeping 'Contribution of Uniformed Personnel to UN by Country and Personnel Type' available at *https://peacekeeping.un.org/sites/default/files/01_contributions_to_un_peacekeeping_operations_by_country_and_post_51_june_2022_rev1.pdf,* accessed on 16 September 2023.

[74] Lenin Ndebele 'Africa's regional forces are not ready to bring peace in the DRC, the USA says' *News24* , available at *https://www.news24.com/news24/africa/news/africas-regional-forces-are-not-ready-to-bring-peace-in-the-drc-the-usa-says-20230930,* accessed on 30 September 2023.

[75] Thomas W. Jacobson 'U.N. Peacekeeping: Few Successes, Many Failures, Inherent Flaws' 2012 *International Diplomacy and Public Policy Center.*

[76] Heather Tasker, et al. 'Those MONUSCO agents left while we were still pregnant': Accountability and support for peacekeeper-fathered children in the DRC' (2023) 0 *Journal of Peace Research*.

Much of this failure can be attributed to the broader lack of structure, accountability, poor recognition of good performance by individuals and poor attempts at creating a cohesive force. Additionally, MONUSCO, the third largest funded peacekeeping mission, received an annual budget of only US$1 billion in 2023, which in comparison is a very small fraction to the military budgets of some countries that are not even at war.[77] There is no doubt that this has contributed to the lack of effectiveness and members of MONUSCO stating that they are too ill-equipped and under-staffed to handle rebel groups that now fight like conventional armies.[78]

A quote by one critic, Thomas Jacobson, provides some sort of insight into these failures that should be considered-[79]

> "By noble character and nature, a father will risk his life to protect his family, and a man to protect his community or nation. But it goes against human nature to expect foreigners to risk their lives to protect people they don't know and to whom they have no relational connection or commitment. U.N. peacekeeping creates the illusion of safety and doing something good, but is inherently flawed."

Overall, many of the UN missions have suffered similar criticisms of cowardice and the lack of effective long-term planning, conflict competence, and efforts towards cohesion and the rewarding of meritorious work. One stark example of this was from the UN's peacekeeping mission in Rwanda. During the early parts of the genocide, General Roméo Dallaire noted that the genocide could have been easily stopped during the very early stages had peacekeeping

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[77] Statista 'Budget of the United Nations peacekeeping missions in 2022, by mission' June 2022 , available at: *https://www.statista.com/statistics/1317723/united-nations-peacekeeping-budget/*, accessed 1 October 2023. See also Statista 'Countries with the highest military spending worldwide in 2022' April 2023, available at: *https://www.statista.com/statistics/262742/countries-with-the-highest-military-spending/#:~:text=The%20United%20States%20led%20the,to%202.2%20trillion%20U.S.%20dollars* , accessed 1 October 2023.

[78] Human Rights Watch 'DR Congo: Resurgent M23 Rebels Target Civilians', 25 July 2022, available at: *https://www.hrw.org/news/2022/07/25/dr-congo-resurgent-m23-rebels-target-civilians*, accessed on 1 October 2023.

[79] W. Jacobson op cit note 77 at 6.

forces not been prevented from conducting further investigations or provided with sufficient troops.[80]

Furthermore, the current structure of UN armed forces leaves a lot to be desired. In terms of the manpower, UN forces rely on 'Troop-Contributing Countries' (TCCs).[81] Each mission conducts its own TCC requests and operations. Each country that contributes to the mission is responsible for their troops' equipment, training, welfare and commanding officers. Each mission is headed by a Special Representative of the Secretary-General (SRSG). In addition to the military component, UN peacekeeping missions include civilian personnel, such as police officers, political advisors, human rights monitors, and experts in various fields.[82] Essentially, UN peacekeeping missions end up becoming a mismatched batch of personnel, equipment, and training that are not properly integrated. As a result, the effectiveness of these forces is already hindered from the beginning as it is not a cohesive force.

Overall, the above issues paint a clear picture that the states of the UN do not take the peacekeeping projects as seriously as it should. This is despite it being clear that a properly organized and well supported peacekeeping force would be a valuable asset towards achieving the UN's objectives. Once again this can be seen through the example of the increased UN intervention later on in the Yugoslavian crisis – in comparison to Rwanda – which produced significantly better results in terms of forcing ceasefires and opening of dialogue.[83]

Nonetheless, the above failures and shortcomings should not be seen as a point against the idea of UN peacekeeping nor the proposed idea of a standing army. It cannot be overlooked

[80] C. William Strong 'The Failure of the United Nations Assistance Mission in Rwanda' (2020) 37 *American Intelligence Journal* 2.
[81] Christoph Dworschak and Deniz Cil 'Force Structure and Local Peacekeeping Effectiveness: Micro-Level Evidence on UN Troop Composition' (2022) 66 *International Studies Quarterly* 4 at 2.
[82] Ibid at 8.
[83] Fraser op cit note 6.

that the UN has had some successes with its peacekeeping operations and assisted with the promotion of human rights in accordance with international standards.[84] As previously mentioned, many of the previous failures of peacekeeping missions have and can be linked to lack of state interest or contribution. Though states may not be willing to openly admit to this, this is likely linked to their individual state interest in the matter. More often than not, states will opt to conduct operations using their own militaries or regional organizations since they can closely monitor or directly control the post-conflict environment in their best interest. As previously mentioned, this is the shortcoming of states that the UN is expected to overcome in favour of protecting the rights of 'people'.

A standing UN army with uniform structure would be able to overcome many of the shortfalls previously mentioned. By its nature, a UN standing army would have the necessary resources and structures to do its own recruitment and training as well as have its own command structure. Essentially, drawing on all the benefits, discipline and cohesion of a regular standing army. This would allow for both more rapid and effective responses in order to prevent any escalations of potential human rights-threatening situations as well as regarding stabilizing nations.

At the same time any international peacekeeping force needs to be cognizant of its inherent 'foreign' nature. This should be considered in relation to local opinion. Peacekeeping forces run the risk of being seen as an occupying force the longer they remain in a region. The emergence of these issues can be delayed or possibly even avoided with proper public relation policies.[85] However, with a properly structured standing army, rapid responses could be conducted, situations stabilized, and armed forces withdrawn before they overstay their

[84] Darya Pushkina 'A recipe for success? Ingredients of a successful peacekeeping mission' (2006) 13 *International Peacekeeping* 2, at 136-137.
[85] William P. Kiehl 'Peacekeeper or occupier? US experience with information operations in the Balkans' (2001) 8 *International Peacekeeping* 4 at 137-140.

welcome. A similar idea has been proposed in the form of the UN RRU (Rapid Response Unit), which would essentially be a standby force of reserves that can quickly respond to any international conflict or natural disaster.[86] Additionally, UN troops could easily be trained in a similar manner as Gendarmerie forces, which enjoy the privilege of both training in civilian policing and conduct as well as military training.[87] This would also allow UN standing army troops to be seen as less disruptive to the civilian population that they might have to operate around or even with. It may also give them a more popular perception from locals, a challenge faced by several peacekeeping missions in the past such as MUNESCO.

2.3. Some Proposed models of UN standing armies

In the past there have been several models of what UN standing armies could look like, ranging from the 5000-man UN guard to an army of 1.2 million.[88] A force of considerable size and proficiency may be enough to convince nations with less capacity to divert resources to the UN standing army that they would have given to their own military. However, some states may not have the necessary funds and resources to maintain and train a military force of a certain standard as well. At the same time, they also may not have the political ambitions to have their 'fingers in others' political or state pies'. As such, a cost-benefit analysis between keeping their own state militaries versus supplementing a UN army may tip the scales in favor of the later.

There have been similar practices of some states contributing to UN peacekeeping operations for the sake of improving their own military forces due to financial constraints or lack of expertise within their own state structure.[89] Examples of this were seen with Nigeria

[86] H. Peter Langille 'Improving United Nations Capacity for Rapid Deployment' 2014 *International Peace Institute.*
[87] Dobbins op cit note 30 at 47 and 55.
[88] Lopez-Claros et al op cit note 43.
[89] Lopez-Claros et al op cit note 43 at 151.

and Pakistan which had supplied about 45 percent of the peacekeeping troops in Sierra Leone in 2000, where it was argued by scholars like Kathman that many of these troops received the experience, training and professionalization that their own militaries may not have had the means to provide.[90]

Additionally, some regional unions are beginning to see the potential that standing international armies might have, as has been the case in Europe with the revival of the discussion of a European Union defense force, an idea that by 2017 had gained substantial popularity and approval among the European public.[91] Calls for such a force have continued as recently as 2024, as seen with the Italian Foreign Minister.[92] Additionally, although not an official EU project, steps have been taken by independent nations towards the concept of this EU standing army that have proven promising in terms of defense improvement as well as supplementing the weaknesses that each state may have. An example of this is the 414-tank battalion that was formed between Germany and the Netherlands in 2016.[93] The Netherlands had scraped many of its tanks and had felt that they had a lack of armored units, while Germany lacked the personal to man the tanks that it had. As such the united force proved beneficial for both states.[94]

Although the state structure is not the primary focus of the UN, at the moment its existence is vital to ensuring the protection of 'peoples'. Hence, if states were certain that a UN army could protect 'the peoples' they would certainly support it.At the same time the question of 'state interest' also stands. Sometimes state interest includes the marginalization of 'peoples'

[90] Kathman op cit note 73 at 151.
[91] Vasko Naumovski, Milena Apostolovska Stepanoska & Leposava Ognjanoska 'European Army: Reality or Fiction?' (2020) 11 *Iustinianus Primus Law Review* 1, at 2.
[92] Robbie Maguire ' Italian Foreign Minister Calls For EU Army' *Overtdefense* 9 January 2024, available at *https://www.overtdefense.com/2024/01/09/italian-foreign-minister-calls-for-eu-army/*, accessed 4 February 2024.
[93] J.R. Swillens ''You should write TRUST in capital letters''(2018) 42 *Atlantisch Perspectief* 3.
[94] Ibid.

and their human rights. An example to be considered is the situation in Mauritania where a form of chattel slavery is still practiced and endorsed by the state.[95] This has been noted as a non-negotiable violation of human rights by the UN[96], as has been seen in article 4 of the Universal Declaration of Human Rights.[97] It is very likely that if the UN were to take special consideration to Mauritania's issue of slavery, the country would immediately feel threatened by the possibility of a UN standing army deployment if they refused to cooperate regarding the matter of ending slavery. In such a scenario, it would be difficult to expect Mauritania to willingly and sufficiently contribute to this UN army if it would potentially prejudice their own state interests.

In addition, states that have large armies and military budgets such as the USA or Russia may be more reluctant to contribute to a standing UN army which might not add much value to their own defenses or interests. It is more likely that they might only show some degree of interest with the idea that this UN force could be used as a satellite force and projection of their interests under the guise of a 'benevolent international force'. Essentially, they could make extremely large contributions with the expectations that this army is coordinated in ways that suit them.[98]

However, states that believe their greatest threats are external would likely be the ones to contribute to a UN standing army. This is due to the fact that they would see it as both a defense mechanism as well as a means to arbitrate situations. An example would be a nation like Iraq

[95] J. King op cit note 28.
[96] Vladislava Stoyanova 'United Nations against Slavery: Unravelling Concepts, Institutions and Obligations' (2017) 38 *Michigan Journal of International Law* 3, at 359-361; 385.
[97] Article 4 of Universal Declaration of Human Rights.
[98] Kossi Ayenagbo, Tommie Njobvu, James V. Sossou and Biossey K. Tozoun 'China's peacekeeping operations in Africa: From unwilling participation to responsible contribution' (2012) 6 *African Journal of Political Science and International Relations* 2 at 24

defending itself against Islamic State[99] or the ongoing tension between Ukraine and Russia.[100] Both Iraq and Ukraine have been willing to receive large amounts of foreign aid in order to defend themselves, it is likely that these two countries (or countries in similar positions) would be among the more eager to contribute to a UN standing army.

2.4. The security council as an obstacle

As it stands the greatest obstacle to the formation of such a force is the Security Council. Such an explicit use of force would neither be some 'goodwill' operation by a General Assembly resolution that allows for a peacekeeping operation nor would it be a tacit allowance of use of force conducted by another state or collective organization such as with NATO. The power and potential granted to such a force would once again raise issues around article 43 of the Charter as well as well as the global power dynamics.

As has been seen with previous examples of peacekeeping operations, many have criticized certain states such as Canada and even former Yugolsavia as using these forces as projections of their own political interests.[101] It would not be unexpected then that some states may initially be more eager to engage with this operation than others. Whether this is from benevolent intention or not would still likely raise suspicion amongst other states of potential ulterior objectives, particularly among the permanent members of the Security Council.

It is therefore important for the standing army to start off small. Trust must first be earned from states that such a force would be in the best interest of global peace and perhaps, over time, act as a supplementary rather than a complimentary force to their own military structures. Although on the face of it this may seem like a naïve suggestion it has been shown to be

[99] Kathleen J. McInnis, 'Coalition Contributions to Countering the Islamic State' 2016 *Congressional Research Services* 1.
[100] Arianna Antezza et.al, 'Which countries help Ukraine and how?' 2022 *Kiel Working Paper* 2218.
[101] Alexander Bligh, 'The United Nations Emergency Force (UNEF), 1956–67: Past Experience, Current Lessons' (2014) 50 *Middle Eastern Studies* 5.

possible to convince states across the world to adhere to certain standards and respect the authority of certain international bodies. The best example of this being the International Court of Justice (ICJ).[102] Since its inception the court has become a crucial point of mediation and 'legal commentary' on matters of international law, often through request so states and other interest groups requesting legal advisory opinions on matters.

However, perhaps one of the most contentious issues for the ICJ early on was around the legality of nuclear weapons.[103] Following the bombing of Hiroshima, there were several calls in the UN to include nuclear weapons alongside chemical and other biological weapons as banned weapons in the Geneva Convention in 1949.[104] Unsurprisingly, states with nuclear capacity at the time, most of whom were on the Security Council, did not agree with this and used the Security Council veto power to object to any banning of nuclear weapons.[105] Despite this, several nations approached the ICJ requesting legal advisory opinions on the legality of nuclear weapons, an extremely contentious matter during the Cold War. Following ICJ opinions on the matter, in the 1980s Latin America and the Pacific regions essentially became nuclear weapon free zones. In fact, several Pacific islands such as Vanuatu, the Solomon's Islands and New Zealand enshrined nuclear free statuses in their constitutions.[106]

Furthermore, in 1995 nations such as the United Kingdom, France and the USA felt compelled to defend their stance on nuclear weapons in terms of oral proceedings in The Hague.[107] It must be noted that the question of whether or not their arguments were justified is not a concern of this paper. However, the fact that they felt so compelled to defend their stance in an international body rather than simply revert to some excuse of pure 'state sovereignty'

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[102] Kate Dewes and Robert Green 'The world court project: History and consequences' (2011) 7 *Canadian Foreign Policy Journal* 1 at 62-65.
[103] Ibid.
[104] International Court of Justice 'Legality of the Threat or Use of Nuclear Weapons', Advisory Opinion ,1996.
[105] Dewes op cit note 104 at 102.
[106] Dewes op cit note 104 at 62.
[107] Dewes op cit note 104 at 69-71.

shows that these international bodies have gained significant traction since the inception of the UN. More specifically, it shows that the idea of collective international 'peace and order' trumps that of a single state's sovereignty. Even if some of the states may not fully believe this individually, there still seems to be an effort to keep up the image that they hold the security of the greater international community in great regard and as such are willing to respect the decisions and advise given by bodies such as the ICJ.

Even beyond the politicians of the state, it appeared that public opinion was swayed by the outcome of these discussions held by The Hague.[108] As such public opinion favored and pressured nations that had previously been pro-nuclear weaponry to move towards more moderate outcomes in line with the ICJ, if not trying to outright reject nuclear weaponry. A strong example of this being in France in 1995.[109]

Additionally, this also shows that public opinion of international law matters should also not be discounted and can be seen as a great influence in the change of norms or progression of international laws. Ultimately, the perception of one's state within the greater international community is of utmost importance following the end of WWII, even within non-binding opinions from the ICJ. As such even states that have sought to find loopholes and maneuver around the expectations of international law are often expected to compromise their interests for the sake of international order, especially if there is no justification in the alternative such as existed in the Cold War.

Of course, this display portrayed by the ICJ and other bodies such as The Hague means that progress of acceptance of bodies that may go against the contemporary norms of the international power dynamics may be gradual at best. However, it shows that even international

[108] Dewes op cit note 104 at 76.
[109] Dewes op cit note 104 at 76.

powers with veto powers in the Security Council are not immune to such pressure, both from external forces as well as from within.

The 5000-man UN Guard is a reasonable starting point for the creation of a standing army. Based on the effectiveness of UNEF, such a force may be numerically challenging. On the other hand, however, with proper coordination even smaller forces have shown substantial success. Once again it should be considered that UNEF, like other peacekeeping forces, lacked the centralized leadership and structure of a standard army. Like other peacekeeping forces, it relied on 'donor' countries to provide not only the troops but contribute to most of their upkeep and much of their coordination. One of the major reasons for UNEF's success was probably that a bulk of its forces came from only a handful of countries with Yugoslavia being one of the biggest contributor. As such, to some degree, there was standardisation. This study asserts that standarisation is necessary for the functioning of an effective military.

Even so, beyond the boots on the ground, an army needs an administrative structure as well. This is not an uncommon notion and most nations have some sort of ministry dedicated to the defense of the state and the coordination of the military. A popular example of this being the USA with its Secretary of Defense and their cabinet.[110] As the UN Charter stands it would be assumed that a UN standing army would answer directly to the Security Council as per article 43(1).[111] However, it could be argued that the article could allow for provisions of the creation of a 'UN office of defense' as per a 'special agreement.'[112]

This office could be partially independently, taking action where it sees fit based on 'crisis levels' such as likely violations of human rights. An independent ability to make these assessments as well as to act upon them would be crucial for the effectiveness of a UN Standing

[110] Title 50, Section 1of the United States Code.
[111] Article 43(1) of the UN Charter.
[112] Ibid.

Army. After all its purpose would be to act as a proactive force in as far as possible. Decisions made and actions taken by leadership in this office could be retroactively assessed, complimented or reprimanded by the Security Council. Once again this is not a novel concept. The actions by NATO in Yugoslavia in 1999 are testament to this, where use of force was employed basically on the initiative of NATO and then assessed by the Security Council after action was taken.[113]

The trend to act first then seek forgiveness for use of force seems to be the norm in the past few decades. Once again, the actions of NATO or that of the USA and its allies in Iraq are examples of this. Often these resolutions call on states or parties that are violating human rights to cease further actions for the sake of international peace. The resolutions also state that should the violating party continue to do so the Security Council will basically have to re-evaluate the situation and may have to consider taking further actions. An example of this are Resolutions 660 and 678.[114] Resolution 660 condemned the use of force by Iraq in Kuwait as well as imposing several trade and economic sanctions.[115] Resolution 678 reaffirmed the Security Council's stance on Resolution 660, acknowledging Iraq's failure to comply with the resolution as well as authorizing states to take whatever actions necessary to force Iraq to comply with terms set in Resolution 660 laid out below:

> *"*[The Security Council] *Authorizes Member States co-operating with the Government of Kuwait, unless Iraq on or before 15 January 1991, fully implements, as set forth in paragraph 1 above, the foregoing resolutions, to use all necessary means to uphold and*

[113] Fotopoulos op cit note 48.
[114] John Quigley, 'The United States and the United Nations in the Persian Gulf War: New Order or Disorder', 25 *Cornell International Law Journal* 1 at 2-3.
[115] United Nations Security Council, Resolution 660(1990).

implement resolution 660 and all subsequent relevant resolutions and to restore international peace and security in the area" [116]

Although the above statement says 'all means necessary' it did not expressly call for the use of military force. Even so, some Security Council representatives indicated that they understood that "necessary" could include military action.[117] Despite this, the resolution was used as a justification for the beginning of the Gulf War. The USA begun its invasion of Iraq specifically under the guise that it was simply enforcing the terms of Resolution 678, an argument presented by then President Bush that much of the US congress readily accepted.[118]

Often resolutions by the Security Council are interpreted somewhat loosely to justify use of force in the name of humanitarian assistance or global peace. That or the Security Council's failure to sternly reprimand states acting out of line has been seen by many as a sort of tacit consent of these actions and essentially an approval of use of force under Chapter VII. Once again with reference to the Gulf War, following the beginning of the invasion, several members of the Security Council seemed to endorse America's use of force and accept that it had indeed met the criteria of any means necessary as stated in Resolution 678.[119]

However, scholars such as John Quigley have highlighted that the principle of use of force in the circumstance of the Gulf War was somewhat misinterpreted.[120] As the Charter stands, the use of force should essentially be a last resort when all other measures truly fail. An argument can be made that by the time of Resolution 678, other means to force Iraq into compliance with the standards of international peace were still available.[121] Further sanctions

[116] United Nations Security Council, Resolution 678 (1990).
[117] Quigley op cit note 116 at 3.
[118] Quigley op cit note 116 at 5.
[119] Quigley op cit note 116 at 4.
[120] Quigley op cit note 116 at 5-6.
[121] Ibid.

could have been imposed as well as the fact that some discussions between parties involved in the conflict were still ongoing at the time. Essentially, pressure could have been put on Iraq from a few more other angles before the idea that an American military invasion was the final solution to bring Iraq to compliance. Even though the situation seemed dire, other members of the Security Council at the time such as Colombia felt that there were indeed alternatives that should have been explored first, while not fully discounting the need for military force as a final trump card. As noted by the Romanian representative[122]:

> *"[w]e continue to believe that every effort should be made to ease the existing tension politically and to solve the issues at stake by peaceful means .... We are thinking in particular of the capabilities of the Security Council and of the good offices and other initiatives that may be undertaken by the Secretary-General*"

This study maintains that there is some credit to approaches such as that taken by the USA in the Gulf War. The UN and particularly the Security Council's continuous condemnation of Iraq's invasion of Kuwait seemed to have fallen on deaf-ears and conflicts such as these always raise the question of how many human rights atrocities are being committed during the duration of the fighting. At some point some show of force may be necessary to force the objectives of international peace and prevent further human rights violations. However, the idea using force by a standing UN Army would be more in line with 'pulling apart two naughty children' in order to force dialog rather than resorting to 'spanking the (deemed) naughty child' in a more retributive sense like with America's invasion of Iraq.

The likely truth behind this 'lackluster' discipline or turning a blind eye is due to the fact that many of these actions are conducted by the permanent five members of the Security Council or their close allies with whom they share international interests. As such, even if a

[122] Quigley op cit note 116 at 6.

situation like Iraq occurred where use of force, especially to the degree used, was premature, it is likely that the Security Council would in some way align in favor of the permanent member. Even if the council's majority fails to agree, the simple fact of the veto vote ends much of the debate almost as quickly as it begins. An example of this has been with Russia's use of its veto powers with regards to use of force in both Georgia and Ukraine[123] or with America and Israel.[124]

With regards to the above, Russia had been accused by some states as having not only abused its veto power but also using it 'incorrectly.'[125] As per article 27(3), which would essentially call on a state such as Russia to abstain in a matter that directly involved them. Many scholars have argued that decades of disuse and tacit consent of disregard of this expectancy of 'abstinence' has rendered such expectations useless.[126] This further highlights the inconsistent and biased nature of the Security Council especially in relation to its permanent five members. A force such as a UN standing army whose objective would be to first and foremost uphold the principles of human rights and international peace should not be entrusted to a council which has been shown to be inconsistent and run on political biases.

Of course, this is an argument that is 'easier said than done', given the power and influence still held by the Security Council. However, the formation of UN standing army would certainly raise new debate in the UN and how exactly its function would play out. Would this be a peacekeeping force that can simply be summoned by the General Assembly such as

[123] Anne Peters 'The war in Ukraine and legal limitations on Russian vetoes' (2023) 10 *Journal on the Use of Force and International Law* 2, at 163.
[124] Lenka Hlaváčová *Reasons for U.S. veto in the United Nations Security Council on behalf of Israel, 1972-1997* (Bachelor thesis, Univerzita Karlova, 2011), at 7-9.
[125] Peters op cit note 125 at 163-165.
[126] Peters op cit note 125, at 164.

MUNESCO or would its operations be considered an international use of force as per Chapter VII and an actualization of article 43?

This study argues that it will be necessary to set-up an independent ministry or body responsible for the administration of this standing army. At the same time, this is also not to say that the army should be completely independent and not have a body to answer to or be held within the same regard and power dynamic as the Security Council or the General Assembly. Much like bodies such as UNICEF are mandated by the General Assembly but still act independently, this administrative military body should hold some degree of independence.[127][128]

Once again, given the existence of Chapter VII and the rest of the UN Charter, the standard expectation would be that the UN Security Council would be the administrative body of a UN standing army or in the very least the overseeing body. However, as previously shown with the examples of Iraq and Ukraine, this may not be the most optimal solution given the politics of the UN Security Council. As such, this study advocates that a separate body be established that is mandated and answerable to the UN General Assembly, much like UNICEF and other similar bodies.

This study acknowledges that this is somewhat of a leap, especially given the political environment. However, makes this statement with regards to the best interest of international peace and human rights. In fact, it is based on this current international political climate that this study makes such a statement. Such a proposal may indeed be possible through article 109 of the UN Charter, most notably articles 109(1) and 109(3) of the Charter which speak about

[127] United Nations International Children's Emergency Fund 'UNICEF mission statement' *UNICEF*, available at *https://www.unicef.org/about-us/mission-statement#:~:text=UNICEF%20%7C%20for%20every%20child&text=UNICEF%20is%20mandated%20by%20the,to%20reach%20their%20full%20potential*, accessed 21 December 2023.
[128] U.N. General Assembly, Convention on the Rights of the Child, 1989.

the procedure needed in order to change the Charter itself.[129] This will be discussed further on under chapter 4 which speaks more on the legal framework.

2.5. Possibility of Overcoming the Security Council Obstacle

Based on article 109, the veto vote of the UN Security Council could be ultimately removed, in theory. This of course would not be an easy task and would come with a lot of political maneuvering, most notably, in receiving the two-thirds vote within the General Assembly as per article 109(1). [130] However, this is not the request or intention of this study-. The creation of a UN standing army is still possible under the UN Security Council as previously mentioned. However, its success would be best assured in its own defense ministry that could act independently. Such a body may still be answerable to the Security Council by virtue of the design of such a body and to maintain some sort of current political status quo. However, it would make sense that a body and force dedicated to the protection of international human right and the protection of international peace be answerable to the UN General Assembly. After all, the General Assembly should be a representation of the entire world's political standing and interest, it would make sense that this body has more say on global security.

As previously mentioned, the existence of the Security Council came about as an effort to ensure global peace by the five 'main victors' of WWII. This agreement was essentially based on the executive committee of the League of Nations which was intended to serve the same function. However, the creation of the five permanent members came with the idea of removing the 'inefficiency' of the fact that every single member and their vote within the executive

[129] Article 109 of the UN Charter.
[130] Article 109(1) of the UN Charter.

committee held the same weight.[131] An argument many likely followed given the League of Nations 'good vision' but 'failure of operation'. Even so, during the drafting of the UN Charter in San Francisco some nations appeared uncomfortable with this idea of granting special power to a select few nations and felt it emulated 19th Century models of international relations such as the 'Concert of Europe, which was geared towards powerful western nations.[132]

Even so, at the time of the drafting of the UN Charter the dynamics of the world at the time were extremely different. Again, as previously explained, a massive shift in this dynamics was brought about by the waves of decolonization across Africa and Asia in the 1960s.[133] Even with the sudden surge in membership there was no substantial change to the power dynamics of the UN besides the increase in membership of the UN Security Council. Even that arguably changed little given the power still afforded to the permanent five members.[134] Any further argument about changing such dynamics were overshadowed by the 'crisis of the Cold War' and overtime it appears the argument had grown cold for some time until the recent events with Russia in Ukraine.[135]

Understandably, the other permanent five nations may not be too eager to engage with the topic of whether Russia should continue to hold a veto vote. This may ultimately result in the request for an article 109-based change to the Charter which may compromise the power that they hold themselves.[136] Even so, the question does arise as to whether so long as such states hold such immense power true efforts for peace can be made. A pertinent case in point is the USA and its alliance to Israel.[137] In 2023 the General Assembly had already made calls for substantial ceasefires between Israel and Palestine following the attack on the 7th of October

[131] Morrison op cit note 23 at 148.
[132] Ibid.
[133] Morrison op cit note 23 at 149.
[134] Ibid.
[135] Peters op cit note 125.
[136] Morrison op cit note 23 at 148.
[137] Quigley op cit note 116 at 45.

2023.[138] Even as far as the 8th of December the USA had vetoed any discussions regarding resolutions calling for ceasefire between Israel and Hamas, even with a substantial amount of Security Council members declaring their support for a ceasefire given the blatant humanitarian crisis occurring in Palestine.[139] Hence, should a standing army be considered within the UN it is clear that it would be best not left in the hands of the current structure of the UN Security Council.

2.6. Proposed Future for UN Standing Army

As such this thesis proposes that an independent administrative body be created to manage a UN standing army. Furthermore, it is recommended that this body acts as a somewhat independent body with its own standards of operations but still answerable to the UN General Assembly and its decisions and resolutions. Not only to avoid any sort of political hijacking from members of the Security Council but also to assure fair representation of the intent of peace and humanitarian efforts from the global sphere.

Drawing from afore-mentioned example of Mauritania, again it would arguably be far more accepted if a UN force interjected in the humanitarian crisis of slavery in the country with the backing of the majority of the world.[140] Had such an action been proposed but then rejected (especially via veto) by France – a permanent member – for example, for some political or other alliance reasons it would surely call into question the purpose of the United Nations itself and the goals it claims to uphold. Already there are questions about the UN's effectiveness to uphold international peace such as in the DRC with the calls to remove peacekeeping forces.[141] Furthermore, DRC's President Tshisekedi has made appeals to DRC voters to re-elect him in

[138] James Smith, Omar Abdel-Mannan, Izzeldin Abuelaish, Brenda Kelly and Nick Maynard, 'Palestine and Israel: for an end to violence and the pursuit of justice' 402 *The Lancet* 10416 at 1974-1975.
[139] *Al-Jazeera* 'Will the US again veto the UNSC resolution on Gaza?' 21 December 2023.
[140] J. King op cit note 28.
[141] A. Walter Dorn, 'Peacekeepers in Combat: Protecting Civilians in the D.R. Congo' 23 *Journal of International Peacekeeping* 2023, at 51.

order to formalize a declaration of war against Rwanda.[142] This follows years of struggle against rebel forces in the East of the DRC, particularly M23 which the DRC's government has accused Rwanda of supporting, a position that is aligned with the suspicion of Human Right Watch.[143]

Based on previous examples stated by this study, especially with MUNESCO, as well as with the current structure of the Security Council, it is clear that contemporary methods of peacekeeping have been failing the quest for international peace and protection of human rights several times. It is therefore clear that change needs to be made and the idea of a UN standing army, much more coordinated than current peacekeeping forces and less politically aligned than authorized forces like NATO, would be useful for international peace and protection of human rights.

Drawing from the successes of previous peacekeeping and collective defense operations, it is clear that a rapid and coordinated response not only significantly reduces the potential casualties and human rights violations but also can act as a deterrent to the escalation of the crisis itself. This is not to say that states that have these humanitarian crises would not have the capabilities to fight back or cause serious damage to a UN army, although ideally this force should be seen as an 'unbeatable force' for the sake of its deterrence factor. However, a properly coordinated army that responds in the very early and crucial points of a humanitarian crisis could curb any potential violations that could impact civilians.

General Roméo Dallaire noted that in the years leading up to the Rwandan Genocide, the signs were becoming increasingly apparent that a humanitarian crisis was likely going to unfold. However, at the same time many influential Rwandese were still on the fringes and

[142] Shola Lawal 'Could DR Congo's Tshisekedi declare war on Rwanda if re-elected?' *Al-Jazeera* 21 December 2023.
[143] Human Rights Watch 'DR Congo: Killings, Rapes by Rwanda-Backed M23 Rebels' *13 June 2023.*

even those within the Rwandese military were uncertain about the probability of success and coordinating such a massive operation.[144][145] He also said that he was certain that if he had received the military support and authorization that he had requested even in the few months prior to the Rwandan Genocide, UN forces not only would have deterred those on the fringes from supporting any further humanitarian issues but also the potential success of UN forces in the area would have garnered enough support from those who opposed the humanitarian issue in Rwanda and prevented the genocide all together.[146]

The above shows the potential of rapid response to areas of crisis and the issues that could be avoided. However, it should be noted that a UN force might not always be able to keep apart two states in conflict but may be able to provide humanitarian solutions to the situation in the very least. For example, if the Security Council intervenes in some way and allows some sort of combat to continue between states or even that it blocks any sort of active involvement of a UN army in a conflict zone. Basically, this UN army cannot stop the fighting between two states but what it may be able to do is set up camps or 'safe-zones' which it can guard under various General Assembly Resolutions.[147]

Ultimately, this would still fall in-line with the UN's preamble and main purpose of protecting people. As such the general objective of improving human rights would be met however, the best way to ensure such human rights are continuously and most effectively protected is by ensuring that there is some sort of diplomatic dialog that occurs. People cannot go through decades or even a few years of suffering simply because of disagreeing factions, some of whom have become fanatical. There is no need for the UN to figure out the only way to enforce some sort of security for human lives is to force these factions apart as was the

[144] Strong op cit note 82.
[145] Dworschak and Cil op cit note 83.
[146] Ibid.
[147] Supra note 15.

realization only in 1999 in Yugoslavia. However, at the same time it is acknowledged that achieving such goals with a UN army are not as straight forward and that there will need to be some political and institutional changes within the UN accompanying this in order to make this a viable reality.

As such the thesis proposes that a UN standing army acts with its own independent 'ministry' which would be answerable to the UN General Assembly rather than just the Security Council. Of course, this would likely require changes in the UN Charter and the structure of the relationship between the UN General Assembly and the Security Council. This would mean advocating for change according to article 109,[148] which of course would be a major challenge in itself. However, the question of amending article 109 is outside the scope of this research.

[148] Article 109 of the UN Charter.

CHAPTER 3: HISTORICAL CONTEXT

3.1. Introduction

Following the end of the Second World War (WWII) the outlook on the use of force drastically changed with the introduction of the UN and the UN Charter.[149] Prior to this, use of force was permitted as a right that states had to exercise against each other. However, following the aftermath of the First World War (WWI)[150] and the formation of the League of Nations,[151] this perspective lost traction but was not entirely rebuked.[152] The disdain for the core principle of use of force most noticeable in the continuous aggression and colonial expansion of states in areas such as Ethiopia by Italy as well as in Manchuria by Japan.[153] The reason for this was mostly linked to idea of state sovereignty and the League of Nations still gave a large amount of credence to state interests, even if not said openly.[154] This was seen with the tacit approval and even expansion of colonialism (and the use of force that comes with it), especially with the British and French, with the handover of former German colonies and Ottoman territories, usually in the form of mandate territories.[155]

It was after the introduction of the UN Charter that the denouncement of any 'direct' or 'indirect' use of force and aggression was codified.[156] Yet, the drafters of the UN Charter were not entirely naïve to believe that this rule would be fully followed, especially as not every nation in existence at the time had signed up to the Charter.[157] Consequently, some allowances

[149] Charter of the United Nations, 1947.
[150] Pact of Paris (Kellogg-Briand Pact), 1928.
[151] Articles 10 and 16 of the League of Nations Covenant, 1020.
[152] Susan Pedersen 'Back to the League of Nations' (2007) 112 *The American historical review* 4, at 1093.
[153] Ibid.
[154] Ibid at 1099-1112.
[155] Ibid at 1099.
[156] Article 1(4) of the UN Charter.
[157] Madeleine K. Albright 'United Nations 2003' *Foreign Policy* 138, at 22.

and justifications for use of force in the form of self-defense as captured in article 51 were included.[158]

3.2. Drafting History and Context of Article 43

At the same time, it was evident from the UN Charter itself that the creation of the UN had the ultimate goal of ceasing, or in the very least reducing, all forms of aggression leaving behind the exception of such small scale conflicts that could be easily managed.[159] The hope was that, should there ever be any breach, the UN would have the means to enforce peace as envisaged by the UN Charter.[160] Hence the drafting of article 43(1) which states the following:

> *"All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security."* [161]

It is apparent that at the time of the drafting of article 43, the intention was that the Security Council would more or less maintain the structure that it had at the time of the drafting of the charter, particularly with regards to the separation of power of the bodies of the UN.[162] Therefore, it essentially gave exclusive authority over the global use of force to the Security Council. This was linked to the post-WWII history at the time, and the responsibility the 'great powers' of the time (USA, Britain, France, USSR and China) had taken on themselves to maintain the peace and balance of power.[163] When reflecting on the failures of the League of Nations in terms of international security, the great powers and drafters of the Charter felt that

[158] Article 51 of the UN Charter.
[159] UN Charter.
[160] Supra note 23 at 88-89.
[161] Article 43 of the UN Charter.
[162] Thomas G. Weiss, 'The Illusion of UN Security Council Reform' (2003) 23 *The Washington Quarterly* 4 at 148-150.
[163] Ibid.

it was the lack of 'executive authority' and the requirement that all member states needed to come to some sort of agreement that led to these failures and consequently WWII.[164]

As such the Security Council was established for the maintenance of peace in the world, with the great powers receiving permanent five seats with veto powers, while the General Assembly was created to run the more general functions of the UN.[165] Essentially, this arrangement amounted to giving exclusive authority over the global use of force to the Security Council. It is likely that at conception the idea was that once peace and stability had been established, the structure and perhaps even role of the Security Council would be reassessed. This was made clear with the inclusion of article 109[166] of the UN Charter which essentially speaks on the possibility of a General Conference "for the purposes of reviewing the present Charter".[167]

Following the large waves of decolonisation after 1963, member states in the UN went from 51 to 114.[168] Consequently, there was a call for the UN to be more reflective of the new dynamics of the world.[169] As such by 1965, Resolution 1990 was passed to expand the security council from 11 members to 15 and amend the majority vote requirement from seven members to nine members.[170] Despite this, the permanent five members have resisted any efforts to make any drastic change to the structure of the Charter in terms of article 109, especially with regards to the veto vote.[171]

At present, the most important power of the Security Council is the 'veto' that remains with the five victors of WWII and the permanent five members of the Security Council being;

[164] G. Weiss op cit note 164 at 148.
[165] G. Weiss op cit note 164 at 148.
[166] Supra note 2, article 109.
[167] G. Weiss op cit note 164 at 148.
[168] G. Weiss op cit note 164 at 149.
[169] G. Weiss op cit note 164 at 149-150.
[170] G. Weiss op cit note 164 at 148-150.
[171] G. Weiss op cit note 164 at 148.

The United States of America (USA), Britain, France, Russia and China.[172] The idea behind these veto powers was that since these member states were the 'heroes' of WWII that vanquished the tyranny and aggression of fascism, they would be responsible for maintaining the peace of the world indefinitely, since as 'saviours' they would consider peace to be of the utmost importance.[173]

Hence, it appeared that the idea was that the formation of a UN army was intended and was expected to be directed by the Security Council and more particularly by the permanent five. In fact, this was not a new idea. A similar suggestion had been proposed by France during the time of the League of Nations. However, given contemporary politics at the time and President Woodrow Wilson doubling down on America's 'non-involvement' outside of American politics, that early idea fizzled out.[174]

When the idea of a standing UN army directed by the Security Council was reintroduced it showed promise in its early stages. Unfortunately, the Cold War brought an end to any such implementation. With the obvious distrust between The USA and the Union of Soviet Socialist Republics (USSR), any steps sought to progress the matter from one side was met with distrust from the other and for understandable reasons.[175] One side could not trust the other with such a valuable and influential resource like manpower and weaponry. And to contribute to a pooled army as suggested by article 43 would essentially be handing over such a resource to the enemy with the potential of them using this force to further their own agenda or hinder any of the other member's own.[176]

[172] G. Weiss op cit note 164) at 150-153.
[173] Morrison op cit note 23 at 148.
[174] Ibid.
[175] Ralph B. Levering *The Cold War: A Post-Cold War History* 3ed (2016), at 13-15.
[176] Ibid.

The deadlock that gripped the Security Council during the Cold War was most evident during the Korean War of the 1950s.[177] However, even after the above, there has been maintained calls for unlocking the full potential of article 43. One of the most notable moments for the calls was during the Suez Crisis of 1956.[178] Here, the performance of UN peacekeeping troops was used as an argument for the potential effectiveness of a standing army.

Yet, despite the evidence presented above, the distrust that existed at the Security Council during the Cold War between the US and its allies and Russia carried over into the post-Cold War period. This question was raised again during the last decade of the 20th Century, in relation to the incidents in Yugoslavia and Rwanda. In both regions, it appeared there was uncertainty and cold feet from the side of the Security Council about how best to use force to protect human rights in the regions.[179]

3.3. Case studies

3.3.1. Egypt's nationalisation of the Suez Canal in July 1956

Following the first 'Arab-Israeli' war in 1948[180], tensions in the Middle East were high. Tensions continued to rise after Egypt's nationalisation of the Suez Canal in July 1956[181] which led to the joint invasion of Suez and Sinai territories by Israel, Britain and France in an effort to protect their own state interests and access to the canal.[182] Despite fervent calls for ceasefire in the region and for parties to revert to the standards set in the 1949 Armistice Agreement,[183]

[177] Rostow op cit note 7 at 7.
[178] Morrison op cit note 23 at 89.
[179] Rostow op cit note 7 at 15.
[180] Bligh op cit at 796-797.
[181] Ibid.
[182] Ibid.
[183] Armistice Agreement between Israel and Egypt, 1949.

the matter became stagnant once it came to the Security Council due to Britain and France vetoing any attempts at ceasefire and withdrawal.[184]

It was after the push from Yugoslavia to use the 'Uniting for Peace Resolution'[185] from 1950 that the General Assembly came to the conclusion that action had to be taken and they authorised the deployment of peacekeepers.[186] This saw the deployment of the United Nations Emergency Force (UNEF) by around November 1956.[187] Its objectives were primarily to facilitate the withdrawal of all other forces (particularly Britain and France) from the frontlines of the conflict and return the 'status quo' of the Armistice Agreement as much as possible.[188]

Despite some objection from Israel, the UNEF was deployed and patrolled the areas between Israel and Egypt from the Egyptian side due to Egypt's support for the peacekeeping force and willingness to comply and assist it.[189] Overall the UNEF succeeded in most of the objectives that it had set out to achieve and had managed to maintain almost a decade of peace in the high-tension area.[190]

Eventually, following Egypt's request for UNEF's withdrawal, fighting broke out between Egypt and Israel shortly after the bulk of the UNEF forces had pulled out of the country. This can be seen as a further testament to the success of the UNEF. Some, such as Bligh, argue that the UNEF failed in properly diffusing tensions between Egypt and Israel and was at best a Canadian project to push some of its own international interests.[191] However, this outlook seems to fail to understand or appreciate the purpose of the presence of a military force. Its

[184] Bligh op cit note 103 at 801-802.
[185] United Nations, Uniting for Peace resolution (A/RES/377).
[186] Carswell op cit note 16 at 456-457.
[187] Bligh op cit note 103.
[188] Nabil Elaraby, 'United Nations Peacekeeping by Consent: A Case Study of the Withdrawal of the United Nations Emergency Force' (1968) 1 *New York University Journal of International Law and Politics* 2, at 161-163.
[189] Ibid.
[190] Bligh op cit note 103 at 805.
[191] Bligh op cit note103 at 805.

objective is merely to halt any sort of further conflict and acts as a deterrent to any further military action from other parties. It is more so the role of politicians and representatives in bodies such as the General Assembly to use this period of 'calm' to conduct the necessary talks to diffuse the situation, negotiate and agree on a peaceful way forward.

In this regard, even Britain noted that the UNEF had managed to hold peace in the area relatively effectively.[192] However, the effectiveness lessened the interest in the matter by countries such as the USA which resulted in the reduction of funding to the UNEF. The immediate consequence was a substantial decrease in the size of the armed forces and the request for UNEF to leave Egypt by 1967.[193] Once more, almost immediately after the withdrawal began, conflict between Egypt and Israel flared up.

It should be kept in mind that the UNEF was a 'reactive force' to a crisis situation and with adequate support was able to create an almost conflict free environment. This conflict-free environment sought to create a space fertile for the diplomatic de-escalation of tensions between states. As such, a case can be made that a 'proactive force' that is designed to respond to potential crisis situations swiftly before they are allowed to escalate to critical levels would be even more effective at maintaining peace which would in turn save many more lives and limit the disruption and economic consequences of sustained conflict.

3.3.2. Rwanda

In the case of Rwanda, the Security Council seemed to authorise the deployment of the UNAMIR force in 1993 during the country's civil war.[194] Despite the scanty resources given

[192] Bligh op cit 103.
[193] Bligh op cit 103.
[194] Astri Suhrke 'UN Peacekeeping in Rwanda' in Gunnar M. Sorbo and Peter Vale's (ed) *Out of Conflict From War to Peace in Africa (1997)*- At 100-102.

to the mission, it proved relatively successful in 'pulling the sides apart'[195] and forcing some form of dialogue, the most notable being the Arusha Accords.[196]

The presence of a UN peacekeeping force had also given the UN better access to information about operations planned on both sides of the civil war which allowed it to know of plans set in motion for the upcoming Rwandan genocide well before the acts were carried out. In hindsight, the UN peacekeeping leadership on the ground maintained that proactive action could have easily stopped the genocide, however they received no authorisation to act and were expected to back off from 'internal matters' of the nation.

The problem came with a lack of decisive leadership within the UN structures which likely feared a similar disaster to the one experienced previously in Somalia.[197] As such for some time the General Assembly refused to acknowledge the actions that would have been taken by Hutu nationalists as part of their genocidal project. The UN opted to view these actions as an extension of the civil war and thus absolving itself of the responsibility to protect civilians.[198]

3.3.3. Yugoslavia

In the case of Yugoslavia, the humanitarian situation had already begun to deteriorate in the early 1990s.[199] Although peacekeeping operations were deployed following the Croatian independence war[200] and the Security Council's Resolution 743, the entire operation lacked the necessary coordination needed for peacekeepers to be effective.[201] Additionally, some such as Cohen and Moens criticise the initial peacekeeping operations in Yugoslavia as more of a push by Canada to increase its international influence, and that its initial over-eagerness coupled

[195] Suhrke op cit note 196 at 112.
[196] Arusha Accords, 1993.
[197] Lopez-Claros et al op cit note 43 at 101-102.
[198] Lopez-Claros et al op cit note 43 at 109.
[199] Sreca Perunovic 'Animosities in Yugoslavia before its demise' (2016) 16 *Ethnicities* 6 at 822-825.
[200] Ibid.
[201] United Nations Security Council Resolution 743.

with not only its lack of understanding of the reality on the ground nor the provision of a clear objective and strategy for peacekeepers led to atrocities such as Srebrenica in Bosnia in 1995.[202] Although technically not a UN force, it was the collective army of NATO that eventually forced some form of effective dialogue in the region in 1999 leading to the implementation of the Rambouillet Agreement.[203]

Again in this situation the Security Council had not provided a clear cut resolution to authorise the use of force by NATO. The Security Council Resolutions 1199[204] and 1203[205] of 1998 essentially stated that Yugoslavian forces needed to desist from excessive use of force (especially against civilians) by military forces in the area as well as condemning terrorist actions by any parties involved in the deteriorating situation that constituted a threat to peace and security in the region.[206] NATO essentially relied on paragraph 16 of the Security Council Resolution 1199 as its justification for its actions. Paragraph 16 stated that,

> "should the concrete measures demanded in this resolution and in resolution 1160 (1998) not be taken to consider further action and additional measures to maintain or restore peace and stability in the region."[207]

Interestingly enough, by September 1998, members of the Security Council were very much aware that NATO had intentions to use force in the area on the basis of Resolution 1199.[208] Effectively, the actions taken by NATO in the area were retroactively 'approved' by the Security Council. This is likely due to the fact that for nearly a decade, local leaders – especially Yugoslavian – resisted any real forms of substantial diplomacy.

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[202] Lenard J. Cohen and Alexander Moens 'Learning the lessons of UNPROFOR: Canadian peacekeeping in the former Yugoslavia' (1999) 6 *Canadian Foreign Policy* 2.
[203] Rambouillet Agreement, 1999.
[204] UN Security Council Resolution 1199, 1998.
[205] UN Security Council Resolution 1203, 1998.
[206] Suy op cit note 65 at 198-200.
[207] Suy op cit note 65 at 198-200.
[208] Suy op cit note 65 at 200.

The longer the conflict in the region continued the more these groups and leaders seemed to dig their heels into whatever motives drove them, leading to tragedies such as the Bosnian genocide.[209] Without a significant force to police their actions until the very last minute, leaders in the region clearly felt no need to alter any of their actions or politics even if they involved clear human rights violations.

3.3.4. Iraqi war

After the underutilisation of the peacekeeping forces and use of force by the UN, the UN has now resorted to authorising other parties to act on its behalf. However, it can be argued that this method of authorisation has created concerning levels of ambiguity surrounding how it has been practiced and how it ought to be practiced especially in recent history.[210] Early examples of this can be seen in America's attack on Iraq in 1998 and NATO activity in Yugoslavia in 1999.[211] In both situations explicit authorisation to use force had not been granted by the Security Council. This prompted international debate as to how exactly this authorisation ought to work, what requirements need to be satisfied and under what circumstances would authorisation be granted.[212] In the case of Iraq, America made the claim that although there had been a UN sanctioned ceasefire after Resolution 678 of the Security Council, Iraq's subsequent violation of the ceasefire was the necessary element they needed to 'resume' using force against Iraq.[213]

Although many individuals such as Kofi Anan and states like Russia argued that the attack was unlawful and required a new explicit authorisation from the Security Council, no

[209] Alice C. Hu '"Genocide" Taboo Why We're Afraid of the G-Word' (2016) 37 *Harvard International Review* 4
[210] Jules Lobel and Michael Ratner 'Bypassing the Security Council: Ambiguous Authorizations to Use Force, Cease-Fires and the Iraqi Inspection Regime' (1999) 93 *The American journal of international law* 1.
[211] Ibid.
[212] Ibid.
[213] Ibid at 124-125.

substantial consequences came of it.[214] Even until as recently as 2023, no case has been brought to the International Court of Justice for an advisory opinion on the legality of the war or clarity regarding what Security Council authorisation should entail.[215]

It would appear that even the UN General Assembly has not reached a collective decision or opinion on the matter. Eventually the Security Council went on to pass Resolution 1441 in 2002, which was essentially a 'final warning' to Iraq to comply with previous resolutions regarding disarmament.[216] This in turn was used by the US to justify its initial actions in 1998 in Iraq and could arguably be seen as the Security Council having given 'retroactive' authorisation.[217]

3.4. Analysis of the case studies

In short, the above examples show that there has been a trend of ambiguity around how Security Council authorisation should be practiced exactly. This, in turn, leaves the matter of use of force in a rather confusing space, especially in a world where there is already a considerable delay in debating resolutions of whether force should be used or not.

Based on the aforementioned cases, a convincing argument can be made that proactive measures in the form of a standing army could go a long way in ensuring global peace or at the very least, provide relief to conflict ridden areas before humanitarian crises arise. Using Rwanda and Yugoslavia as examples, hindsight reveals that earlier intervention to 'pull all sides apart', would likely have forced dialogue. This would either be due to the deterrence

[214] Rachel S Taylor 'The United Nations, International Law and the War in Iraq' available at *https://www.worldpress.org/specials/iraq/,* accessed 23 May 2023.
[215] Ibid.
[216] United Nations Security Council 'Resolution 1441' (8 November 2002).
[217] Michael Glennon, Paul Szasz, Thomas M. Franck and Michael Matheson 'Legal Authority for the Possible Use of Force against Iraq' 92 *Proceedings of the Annual Meeting (American Society of International Law)* 1998 at 137-140.

factor of a coordinated military presence or the limited time to coordinate and entrench themselves and others into the ideologies and practices that resulted in many of these human rights violations. Furthermore, as was shown in the case of Serbia, delay and uncertainty in some of these matters can only result in more human rights violations in the meantime.[218]

Despite this, discussion around the full potential of article 43 have died down for the most part. As evinced from recent history, the Security Council has moved towards a preference of authorising other bodies or nations to use force on its behalf either through Chapter VII of the Charter or resolutions.[219]

Therefore, as things stand it can be seen that the Security Council, and perhaps the UN as a whole, act simply as 'referees' of the use of force in the world. One might argue that from the drafting of articles 43, 45 and 47 there was a vision that the UN would be a major stakeholder in terms of international military power or perhaps even hold the monopoly on force.[220] This can be seen through the aforementioned articles which not only speak about the contribution each nation must make towards the envisioned UN army but also about the establishment of a 'Military Staff Committee'.[221]

Another significant factor to consider is the make-up of the Security Council. Even if the current approach to use of force was not so ambiguous and distant from the UN, it is still the Security Council that technically holds the monopoly on authorizing the use of force. As such, even if a UN army were to be formed as per the abovementioned relevant articles of the UN Charter, it would still be subject to the Security Council. Critics of the feasibility of a UN standing army have latched onto this issue as justification for the impossibility of such a

[218] C. Hu op cit note 211.
[219] Lobel op cit note 212 at 153.
[220] Articles 43, 45, and 47 of the UN Charter.
[221] Article 47 of the UN Charter.

measure. [222] The make-up of the Security Council, with its five permanent members has been a hurdle for much more than just the establishment of a standing army. The very structure of the Security Council had been a source of debate for over two decades, with much of the reasoning for hindering any sort of meaningful reform stemming from Cold War political differences between the polar opposite members.[223]

Even in contemporary matters, the Security Council, the organization that was established with the intention of reigning in all acts of international aggression, has struggled to come to a consensus on matters of unjust uses of force. This can be seen with the still politicized debates the council faces over the issue of Ukraine and despite the fact that several non-permanent members have attempted to call out the problem, the permanent five veto power has halted all discussion for over year.[224]

In terms of article 51, around the time of the drafting of the UN Charter, some scholars believed that the article was drafted essentially to satisfy the idea of collective defensive measures.[225] The biggest example being some of the Pan-American organizations, more specifically with the Act of Chapultepec.[226] Although at the time some scholars were not entirely sure what this 'right' of collective self-defense entailed as there had been no precedent within the League of Nations Covenant and most state's that had laws analogous to the concept often attributed it to being a duty rather than a right.[227]

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[222] Dimitris Bourantonis, *The History and Politics of UN Security Council Reform* (2005) at 10-12.
[223] Ibid.
[224] United Nations 'With Invasion of Ukraine, Security Council's 2022 Efforts to Maintain International Peace, Stability Mired by Widening Rifts between Veto-Wielding Members' *Round-Up Release- Security Council*, 12 January 2023, available at: *https://press.un.org/en/2023/sc15172.doc.htm*, accessed on 23 May 2023,
[225] Josef L. Kunz 'Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations' (1947) 41 *The American Journal of International Law* 4, at 872-877.
[226] Act of Chapultepec, 1945.
[227] L. Kunz op cit note 227 at 875-876.

More contemporary scholars have argued that there had been a misunderstanding about article 51[228] and that it more so intended to act as a sort of legitimisation of existing customary international law regarding collective self-defense as well as a platform to grow and update the idea of collective self-defense.[229] Examples of such developments can be seen in the treaties between states that developed afterwards, such as the 'Treaty of Peace with Japan' in 1951[230] and the 'Treaty of Friendship and Mutual Assistance'[231] between Yugoslavia and Albania in 1946.[232]

Nonetheless, article 51[233] should be seriously considered as an acknowledgement of the need for some sort of collective self-defense. This can be seen from the article itself which states that there should be no hindrances for states defending themselves or acting in some sort of collective self-defense, so long as the measures they take are for the betterment of international peace and security and do not go against anything stated by the Security Council.[234] Arguably, a UN standing army would be able to satisfy these standards as per article 51.

In fact, it would be better equipped to do so as it would also not have to worry about much of the difficult questions states are often forced to deal with around collective self-defense such as the issue of article 2(4)[235] and sovereignty. This will be a matter discussed in further detail in Chapter 4 which will look more into the existing legal frameworks of the UN.

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[228] Michael J. Glennon 'The Fog of Law: Self-Defense, Inherence, and Incoherence in Article 51 of the United Nations Charter' (2002) 25 *Harvard Journal of Law & Public Policy* 2 at 554-555.
[229] Tom Ruys *Article 51 of the UN Charter: Evolutions in Customary Law and Practice* (2010) at 7-9.
[230] Treaty of Peace with Japan, 1951.
[231] Treaty of Friendship and Mutual Assistance, 1947.
[232] Ruys op cit note 231 at 16.
[233] Ruys op cit note 231.
[234] Article 51 of the UN Charter.
[235] Article 2(4) of the UN Charter.

It is therefore unsurprising that, historically, the idea of a UN army has barely had any substantial discourse as mentioned earlier in the chapter. Rather it can be argued that the Security Council opted to outsource military power. This is mainly due to the issue of national politics and rivalries impacting onto the discourse of international peace and wellbeing.

CHAPTER 4: Framework for a UN Standing Army

Chapter 2 of this research outlined how current models of peacekeeping have proven ineffective in protecting human rights violations and securing international peace. Few exceptions can be noted such as UNEF, where elements of what could be considered a 'standing army' were present.[236][237]

At the same time nations or alliances such as NATO that do have standing armies have proven the effectiveness of such forces in forcing dialogue and stopping further human rights violations, as in the case of Yugoslavia.[238] However, these forces have also been shown to be too politically 'self-interested' and critics have even questioned if their objectives lie within the objectives of that of the UN.[239]

As previously mentioned, the ideal situation of an international standing army would be that it stands as a complimentary rather than supplementary force to state armies. The supplementary approach has been attempted with current peacekeeping forces, which may have led to the result of its ineffectiveness, such as with MUNESCO.[240] This has undoubtedly led to the self-fulfilling prophecy of the ineffectiveness of peacekeeping forces across the world. As some scholars such as David Rieff remark, perhaps there is a disconnect between what the UN ultimately wants and stands for in terms of global objectives and its actions on the ground as reflected by its peacekeeping forces.[241]

A strong example of the above occurred in Somalia. UN peacekeeping during operations of the early civil war in Somalia in the 1990s was heavily backed by the US

[236] Bligh op cit note 103.
[237] Lopez-Claros et al. op cit note 43.
[238] Cohen and Mohens op cit note 204.
[239] Ibid.
[240] Kathman op cit note 73.
[241] David Rieff 'The Illusion of Peacekeeping' (1994) 11 *World Peace Journal* 3, at 2-4.

government and military.[242] The initial successes of the UN peacekeeping operations to 'pull apart warring parties' was set to be a precedent for future peacekeeping operations. However, offsets faced by the US military in Somalia caused the American military force to eventually pull out the bulk of its support from the area. This forced much of the UN peacekeeping force to pull out as well due to under-resourcing. Ironically, the effectiveness of the retreat of the UN peacekeepers in Somalia alongside US military was hailed by scholars such as David Rieff as being a model for potential retreats for further UN peacekeeping operations especially in contemporary Bosnia where by 1995 the success of UN operations was under scrutiny.[243]

As embarrassing as the result of the operation in Somalia was, it does highlight two important factors:

(i) The UN has the potential to execute effective peacekeeping operations, even with minimal resources provided its backed by an effective military structure (even if at the time it was the US government); and

(ii) (ii) the UN peacekeeping operations and its attempts to uphold international peace are nothing more than beggars to state powers of the world and can scarcely conduct proper humanitarian operations without the explicit involvement of state parties, which often will be major state powers, particularly the five permanent members of the Security Council or their close allies.

It is important to clarify that this research is in no way asserting that all 'superpowers' of the world hold ill-will towards the progression of international peace and the objectives of the UN. However, it does question the power given to individual states, especially the permanent five.[244] The objectives of the UN after WWII were that state power should not

[242] Chester A. Crocker 'The Lessons of Somalia - Not Everything Went Wrong' (1995) 73 *Foreign Affairs* 2, at 2-6.
[243] Rieff op cit note 243.
[244] Bourantonis op cit note 224.

interfere with international peace. Additionally, that the power of the UN would act as a deterrent to such power which in the space of half a century had brought two world wars and the collapse of the League of Nations. Hence, the UN's stance on the protection of the rights of 'people' rather than the rights of 'states' which is an important difference in comparison to its predecessor, the League of Nations.[245]

The drafters of the UN Charter understood that state interests, when left unchecked, could only lead to the most problematic outcomes. One needs only to consider the Cuban missile crisis that almost led to WWIII, or even worse, the Mutual Assured Destruction (MAD) situation.[246] Even so, the insecurity of the UN Security Council veto power remains a contentious and unresolved issue in ensuring peace and security.[247]

Despite this, the larger degree of centralization of power in comparison to the League of Nations certainly has its benefits.[248] A stronger universal power that has the ability to call states to account in the early stages of what may be considered a crisis could definitely be seen to have acted as a deterrent for future global war and for states to at least pretend that they cared about acting in accordance with the principles of international peace set by the UN.[249] An example of such is the ICJ, where it is clear that states do not wish to be seen on the wrong side of international law and principles as seen with the matter between Russia and Georgia, where much of the world seemed to side with Georgia yet Russia still persisted to try and justify its position. One can only wonder just how far Russia would have gone had it not felt the need to justify itself before such a body which cannot even fully hold it accountable. One should

[245] Axworthy op cit note 58.
[246] Svetlana V Savranskaya 'New Sources on the Role of Soviet Submarines in the Cuban Missile Crisis' (2022) 28 *The Journal of Strategic Studies* 2, at 246-248.
[247] Jennifer Trahan, 'Vetoes and the UN Charter: the obligation to act in accordance with the 'Purposes and Principles of the United Nations' (2022) 9 *Journal of International Force and International Force* 2.
[248] Nigel D. White 'The Legacy of the League of Nations: Continuity or Change?' (2019) 71 *Revista Española de Derecho Internacional* 2.
[249] Ibid at 281.

then ask just how far Russia would be willing to go if there was an actual force that could be rapidly deployed to secure an area and in the very least be a significant obstacle should an attack still commence. Especially where such a force is a projection of the world's collective principles.

The Covenant of the League of Nations was argued to have had the same potential in preventing WWII, yet it lacked the centralized power of the Security Council to prevent WWII.[250] However, this power should not be centralized around the Security Council as it has been shown that this has led to abuses of power by some of the five permanent members or the deadlock of decision-making likely based on considerations of political interests of these permanent members. Had there been mechanisms in place, such as in the League of Nations, that prevent the use of such veto powers and the prevention of states involved in human rights violations to be able to judge on the matter, especially in matters such as Chapter VII, this would not be as contentious.[251]

As such this study argues that global security is best left in the hands of the greater global community that holds an actual interest in the matter of global peace. This is best held in a body answerable to the General Assembly. Essentially, an independent UN body would be best suited to projecting the objectives of 'international and humanitarian peace' that the UN seeks to ensure. If anything, this falls under the UN's principle of the 'Responsibility to Protect' which was advocated under Koffi Anan.[252] The only issue with this lies within paragraph 139 of the 2005 Global Summit which essentially still requires the Security Council to make relevant calls for use of force.[253]

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[250] D. White op cit note 250 at 281.
[251] D. White op cit note 250 at 280.
[252] Alicia L. Bannon ', The Responsibility to Protect: The U.N. World Summit and the Question of Unilateralism' (2006) 115 *Yale Law Journal* 1157 at 2005.
[253] 2005 World Summit Outcome, A/60/L.1, para. 139, 2006.

Even so, there was clearly an understanding amongst member's states that the current trajectory of the UN has been pointing towards global irrelevance, a point that the USA was not afraid to emphasize.[254] It was clear that one of the main issues that needed change was the UN's institutional and bureaucratic systems, with lawmakers elaborating further that a special focus should be placed on reforms related to human rights and the use of force.[255] The discussion stemmed mainly from two conflicts. The first being the involvement of NATO in Yugoslavia in 1999 which prompted the question of when and where collective use of force for the sake of the protection of human rights should occur. The second was around the Iraq conflict spearheaded by America following the infamous 11 September 2001 incident. The second question hinged more on the clear lack of cohesion by the Security Council around whether or not collective military action should have occurred, and how the inaction of the Security Council ultimately led to the unilateral actions taken by America.[256]

With regards to the matter in Yugoslavia, no NATO state besides Belgium seemed to have the courage to state what the standard for humanitarian intervention that was used to justify the collective use of force.[257] However, after the events of 1999 it was Canada that prompted the creation of the independent International Commission on Intervention and State Sovereignty (ICISS) whose objective was to try find the answer to this standard for humanitarian intervention or the 'responsibility to protect'. [258]

It was these ICISS standards that grounded the standards used by the UN's principles for 'the responsibility to protect'. These standards essentially say that states have a 'duty' to

[254] Jutta Brunnee & Stephen Toope, 'Norms, Institutions and UN Reform: The Responsibility to Protect' (2005) 2 *Journal of International Law and International Relations* 1, at 121-122.
[255] Brunnee and Toope op cit note 256.
[256] Brunnee and Toope op cit note 256 at 123-124.
[257] Brunnee and Toope op cit note 256 at 123-124.
[258] Brunnee and Toope op cit note 256 at 123-124.

ensure the protection of human rights.[259] Primarily that a state must ensure the protection of its own people (both from its own actions as well against external threats). Other states or collective forces may then intervene if there is "serious and irreparable harm occurring to human beings, or imminently likely to occur." The threshold for this being "large scale loss of life ... with genocidal intent or not, which [was] the product either of deliberate state action, or state neglect, or inability to act, or a failed state situation," or "large scale ethnic cleansing. ""[260]

The ICISS noted that should collective action be needed to protect human lives and rights this should take priority with or without the Security Council. This was because the Security Council authorization could always be acquired retrospectively and that a revitalisation of the UN's 'Uniting for Peace' resolution should be enough to provide legitimacy for any collective action taken.[261] This was understandably met with criticism from the Security Council which had stated that "the task is not to find alternatives to the Security Council as a source of authority but to make it work better."[262]

However, as previously shown, there are currently no frameworks that prevent the permanent five members of the Security Council from abusing their veto powers. At present, only article 27 of the Charter was the only thing that could prevent such abuse of power especially regarding matters of Chapter VI.[263] Article 27(3) states that:

> *"Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in*

[259] Louise Arbour 'The Responsibility to Protect as a Duty of Care in International Law and Practice' (2008) 34 *Review of International Studies* 3, at 448.
[260] Independent International Commission on Kosovo, 'The Kosovo Report: Conflict, International Response, Lessons Learned', available at: *https://reliefweb.int/report/albania/kosovo-report,* accessed 25 December 2023. See also Alicia op cit note 154 at 124.
[261] Alicia op cit note 154.
[262] Ibid at 126.
[263] D. White op cit note 250 at 280.

decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting."[264]

The definition of who could be counted as a 'party to a dispute' was raised by the Interim Committee before the official establishment of the General Assembly in 1947.[265] Although somewhat contested by some states such as the UK and the USA, even the contested definitions more or less aligned with what the description the Interim Committee had provided. This definition was:

"Whenever the State or States bringing the matter before the Security Council allege that the actions of another State or States in respect of the first State or States constitute a breach of an international obligation or are endangering or are likely to endanger the maintenance of international peace and security, or that such actions demonstrate preparation to commit a breach of international obligations or to endanger the maintenance of international peace and security, […]."[266]

As such, it can be argued that even a state that is not 'directly' involved in a conflict or crisis situation may still be considered as a party to the dispute. For example, a state that enables or supplies a state that is either the aggressor or the defender should essentially be considered a party to the dispute. An example of this would be the case of *Nicaragua*, where it was found that the USA's support of rebels in the country was still considered as the USA being a party to the dispute.[267] Although, in the case of *Nicaragua* the 'effective control' test was established, which would essentially require a state to have a substantial degree of influence on the situation

[264] Article 27 of the UN Charter.
[265] Enrico Milano 'Russia's Veto in the Security Council: Whither the Duty to Abstain under Art. 27(3) of the UN Charter?' (2015) 75 *Heidelberg International Law Journal* 1 at 217.
[266] Milano op cit note 267 at 218.
[267] Case Concerning Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States*), International Court of Justice, 1986.

in question. For example, organizing operations conducted by certain parties in the conflict and not just merely financing, training or supplying.

However, given current practice many of the five permanent members have circumvented this by stating that they are not in fact a party to the matter in question and as such refer the matter as a question within Chapter VII where they immediately use their veto powers.[268] Although there seemed to be some understanding of the proper practice and application of article 27(3) from around 1968 until 1982, it also appears that there was a counterweight of improper practice between 1952 and 1990 that scholars believe has outweighed the proper practice and set the current precedent of 'ignoring' the proper use of article 27.[269]

A recent example of this was shown in 2015 during the annexation of the Crimea by Russia.[270] Russia tried to argue that they were not truly directly involved with the crisis in Crimea and were only acting on instruction of the leadership of Crimea in the aftermath of a crisis situation and assisting an ally. Once again, the failure to properly utilise article 27(3) set further precedent for the permanent five members to skirt the standards that may require them to surrender their veto power for the sake of international peace and security rather than their own state interests.[271]

Given the importance of the idea of a UN standing army, a Security Council that has shown a tendency to use their power for what can arguably be seen as self-interested intentions cannot be trusted with governing such an important organ. The fears of the Cold War that should a UN standing army be authorised under article 43 have only continued. Once again, examples exist with the current situations in both Ukraine and with the Israeli-Palestinian

[268] D. White op cit note 250 at 280.
[269] Milano op cit note 267 at 223.
[270] Milano op cit note 267.
[271] Milano op cit note 267 at 231.

conflict. Both conflicts have very stark political undertones to them, and with the example of Ukraine it is very clear that these undertones still follow the same patterns as those of the Cold War. As such either side of the conflict might not fully trust or believe in the impartiality of a standing army that has been significantly contributed to by its opposition.

As things stand, it is likely that the avenue of directly using article 43 to found a standing army of any kind would be most unlikely considering the current nature of the Security Council. Hence this research advocates for the General Assembly to exercise power over a UN standing army.

Under the present UN frameworks, this is possible through two avenues. The first, and more difficult approach is to use existing frameworks such as 'Uniting for Peace', 'Responsibility to Protect,' and Chapter VI as well as article 51 of the Charter to establish and govern the organ. This would require a lot more 'legal gymnastics' to achieve. Yet it would not necessarily upset the current international status thus not risk backlash from the five permanent members. The second option is the more extreme one but would make progress much easier for future matters (not just only for the standing army). This involves invoking article 109 of the UN Charter which would essentially call into question changes to the make-up of the UN itself.

4.2. Avenues for Change

4.2.1. The First Avenue

Approaches to the first avenue of the legal framework discussion starts with the 'Uniting for Peace' Resolution.[272] The resolution came about in the 1950s following the crisis in Korea. After attacks by North Korea against South Korea, the UN General Assembly managed to

[272] United Nations, Uniting for Peace Resolution (A/RES/377).

authorise peacekeeping forces under the principle of 'collective self-defence'. This was also following long lasting deadlocks in the UN Security Council.[273]

This resolution was once again brought up in the Suez Crisis and led to the deployment of one of the most effective peacekeeping forces to date, UNEF.[274] The question around the purpose and extend of the resolution came up in the ICJ *Wall* Advisory Opinion.[275] A major question here was asked around article 12 of the Charter and it was advised by the ICJ that technically the UN General Assembly should be able to assess a matter at the same time as the Security Council, essentially allowing it to make a determination about the humanitarian condition of a situation.[276] Further, this could be used as an additional 'pole-vault' to get over the hurdle that is article 2(7) which states:

> *"The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:*
>
> *[…]*
>
> *7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter Vll."*[277]

Had it become accepted practice (and arguably accepted customary international practice) to allow the UN General Assembly to act with some degree of force where it felt necessary under the 'Uniting for Peace' Resolution, it could be then argued that it would be

[273] Larry D. Johnson, 'Uniting for Peace: Does it Still Serve any Useful Purpose?' 2015 *AJIL Unbound* 108 at 108.
[274] Bligh op cit note 103.
[275] International Court of Justice, 'Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory', Advisory Opinion, 2004.
[276] Michael Ramsden '"Uniting for Peace" in the Age of International Justice' (2016) 42 *The Yale Journal of International Law Online* 1, at 9.
[277] Article 2(7) of the UN Charter.

acceptable for the General Assembly to invoke certain uses of force where the Security Council shows inaction. As previously shown, this was further emphasized by the ICJ's Advisory Opinion regarding the *Wall case* in Israel. Given the above, discussions of a UN standing army as potentially acting as a representative of the 'Uniting for Peace' Resolution's collective action plan as well as in accordance with Responsibility to Protect may not actually 'prejudice' any application of enforcement under Chapter VII.

In terms of 'an action plan', use of force or anything close to that has been avoided by the General Assembly. Often this is with regards to article 2(4) which relates to the sovereignty of states, one of the articles held in high regard since the drafting of the Charter.[278] This is understandable given that any state that would participate in any sort of 'collective action' would still hold some sort of degree of individual accountability. However, one could argue that a UN army could both satisfy the need of collective action in this regard while at the same time taking away the dread of responsibility of violating article 2(4). In fact, the idea of a 'collective action' would be much more solidified, if it were an army of the UN as the expectations would be that it represented the entire world's interests and had been deployed to act in accordance with such interests, not just a single or select few states.

Additionally, it is these ideals of collective action that align standards set in the Responsibility to Protect. [279] Although ultimately no binding power came from the discussions around the Responsibility to Protect, it remained a continuous question within international law especially regarding the point at which states were expected to intervene in other states' matters and the degree to which that intervene can reach. Once again, the weight of this burden could easily be alleviated with the creation of a UN standing army. This would not only be able to act upon the standards to protect human rights as well as the collective action required but also

[278] Johnson op cit note 275 at 112-115.
[279] Arbour op cit note 261.

remove the direct responsibility and duty placed onto individual states in scenarios that may evoke the principle.[280]

States could essentially participate in the collective action without having to risk any sort of infringement of article 2(4) that they may be afraid of. Any sort of risk related to violations of article 2(4) would be on any sort of separate administrative body that runs the UN Standing Army or with the General Assembly itself. However, one could argue that the General Assembly, if acting with such a force, would be acting in accordance with article 1, specifically article 1(1):

"The Purposes of the United Nations are:

1. *To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."*[281]

This purpose and the need to defend international peace and human rights is further highlighted in Chapter VI and article 51.

It is article 35 of Chapter VI that should be considered most. Although the article states that the General Assembly may have some sort of consideration to a matter of international peace subject to articles 11 and 12, it has already been shown that if there is indeed some sort of deadlock or inaction by the Security Council regarding a certain matter of international law (as per the *Walls* Advisory Opinion), the General Assembly can then step in and make its own

[280] Arbour op cit note 261.
[281] Article 1(1) of the UN Charter.

considerations. This 'deadlock' or 'inaction' may indeed also include the use of a veto power to stop further discussions on the matter.

This point is in fact articulated in article 51 of the UN Charter:

> *"Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security."*[282]

Once again, the issue that still stands is that if the matter is indeed returned back to the Security Council, even following the event of a deadlock, a majority vote in the Security Council may still halt any further actions as per Chapter VII. However, if one considers the number of times a deadlock has occurred it is usually in the case of a crisis that one of the permanent five members has an interest in (direct or indirect).[283]

As previously mentioned, a small UN Guard of about 5000 to perhaps even 10 000 personnel could be formed in accordance with the above legal framework. This could essentially act as a substitute to the existing UN peacekeeping forces, although for effectiveness the range of operations may need to be scaled down. However, as with many other parts of the UN it is a matter of trust and 'buy-in' of membership that is important. As such visible success, such as with the UNEF, would be an inspiration for further buy-in from states on the fringes of

[282] Supra note 2, article 51

[283] Jess Gifkins 'Beyond the Veto: Roles in UN Security Council Decision-Making' (2021) 27 *Global Governance* 1 at 7-9

the idea of a UN standing military force. Further buy-in would ultimately lead to further success of the UN army.

In initial phases it is likely that most states that contribute would be ones faced with 'guns-versus-butter' dilemma or something of a similar nature.[284] This has been a common trend of member states that have contributed heavily to peacekeeping operations in the past. In cases such as Nigeria and Pakistan this has at times proven more beneficial to their own state interests and security.[285]

In addition, member states may contribute to the UN Standing Army in ways that are more than just financial. This would cover the shortfall of contribution of many states that are often unable to make the annual monetary contributions to the UN, at times even being in a shortfall.[286] Armies do not only need financial resources. They also need barracks, airfields and other logistical and physical positions. States that may not be able to make great financial contributions could provide these resources. Such contributions could be considered as supplements for their general UN contributions, making up their shortfalls.[287] For example, countries like Malawi or Vanuatu, which struggle to make their annual payments and are usually late in comparison to other contributing nations even those within the same 'economic class'.[288]

Essentially, a country like Vanuatu would be able to state that they have made a greater net contribution to the UN if they provided space for the construction of a port or airfield for the

[284] Kathman op cit note 73 at 151.
[285] Kathman op cit note 73 at 150.
[286] Sebastian Haug, Nilima Gulrajani and Silke Weinlich 'Funding Multilateralism: Strengthening the United Nations Through Assessed Contributions' *Task Force 7: Towards Reformed Multilateralism: Transforming Global* June 2023, available at: *https://www.orfonline.org/wp content/uploads/2023/06/T20_PolicyBrief_TF7_FundingMultilateralism.pdf,* accessed 29 December 2023 Institutions and Frameworks.
[287] Ibid.
[288] United Nations, General Assembly, 'Contributions received for 2023 for the United Nations Regular Budget', 28 December 2023, available at: *https://www.un.org/en/ga/contributions/honourroll.shtml,* accessed 29 December 2023.

operations of a UN Standing Army. This would indeed increase buy-in from 'poorer' member states and as such increase their 'confidence' within the UN and possibly greater geo-political space. This could also likely contribute to making the UN a more legitimate and recognised international institution and prevent its trajectory towards 'irrelevance' as threatened by countries like the USA.[289]

4.2.2. The Second Avenue:

As such a certain consideration should be given to the second avenue, even if it appears more extreme. This, as previously mentioned, would take the form of an entire UN Charter reform under article 109 which reads as follows:

1. *A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any nine members of the Security Council. Each Member of the United Nations shall have one vote in the conference.*

2. *Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.*

3. *If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.* [290]

[289] Brunnee and Toope op cit note 256 at 121-122.
[290] Article 109 of the UN Charter.

This is of course a far more 'dramatic' approach which could possibly only be taken after first attempting the first avenue. Introducing the standing army via the first avenue will provide an opportunity for gaining the buy-in and trust of members who will appreciate the necessity of a standing army through its record of effectiveness. Additionally, from the above article, it is clear that a veto vote would not be applicable in this circumstance. It would thus be difficult for the five permanent Security Council members to try and restructure any sort of argument towards this reform being a Chapter VII matter as they have done with Chapter VI matters that they should have withheld the veto on.

Of course, this study acknowledges that the permanent members are also amongst the wealthiest and most politically influential states in the world. They could thus easily apply such influence to upsetting any step or vote under article 109. However, this is also why it was argued that granting more buy-in power for poorer or more 'easily influenced' states would be crucial as it would give them the political 'confidence' needed to proceed with such a radical reform.[291] In the very least it would drastically increase their cost of being bought out by states trying to influence their vote and perhaps make it impossible to justify the cost of manipulating as many states as would be needed to upset their agenda.

The first hurdle with this avenue is article 109(1) itself. As can be seen above, the 'fixing of the date and place' needs to be approved by at least two thirds of the General Assembly and nine members of the Security Council. This can be understood as saying that to even initiate the procedure and discussions about any change there is a rather high threshold that needs to be met. However, it would be likely that there would be an understanding or an expectation of what the desired change is prior to the formal invoking of article 109. As such if the trust and

[291] David B. Carter and Randall W. Stone 'Democracy and Multilateralism: The Case of Vote Buying in the UN General Assembly' (2015) 69 *International Organization* 1 at 2-4; 15-25.

build-up of the first avenue is followed it would be more likely that there would be success in achieving reform under article 109(1).

Further. the threshold is a bit lower as per article 109(3). Here only a majority vote of the General Assembly and seven members of the Security Council is required. As previously mentioned, this part of the process should go in favour of alterations to the UN Charter and the UN institutional makeup in order to create the necessary institutions and international laws and treaties for the development of a greater UN army, perhaps even the recommended size of a 1.2 million personnel force as suggested by Lopez-Claros.[292]

One approach to fulfilling the radical reform may be to change article 43. As discussed earlier the article already has the framework for the creation of a standing army. At present, a collective force would be under the directorship of the Security Council.[293] If the wording was altered to state that this force should be answerable to the General Assembly instead, it would be far easier to create the necessary administrative bodies, as previously discussed, in order to make the force far more cohesive and effective at the task of protecting human rights and maintaining peace.

This does not necessarily require the removal of the Security Council. In fact, it may be possible for it to act as the administrative body for the standing army. Considering that it is already an established institutional body it may be that all that is required is some changes to the Charter, perhaps additions to Chapter VII, in which the Security Council is more at the mercy of the General Assembly rather than the permanent five members and their veto power.

Article 47 is an example of an existing structure that could allow for the effective running of a standing army but at the same time still grants certain privileges to the permanent five

[292] Lopez-Claros et al op cit note 43 at 157 and 169.

[293] Article 43 of the UN Charter. It can be argued that the reason the article never met its potential is because of the above hurdle.

members.[294] The article calls for the creation of a military committee that would essentially deal with the finer details of such a force, such as its equipment, logistics and even organisation of regional sub-committees.[295] However, under article 47(2) it states that "The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives…"[296] Such a privilege is what the argues against and highlights would be a hindrance for the effective establishment of a UN standing army in line with the purposes of the UN. An allowance of this privilege would likely lead to the manipulation of such a standing force, a turnout that this thesis warns against.

Ultimately, as things stand there is a shortcoming in terms of international peace and the security of human rights. Both current peacekeeping operations and collective defence forces have made little ground at best in creating the desired post-WWII world without conflict. However, based on the political undertones and other factors that embed peacekeeping and collective defence forces it is somewhat understandable. The duty to uphold the international peace and security of human rights should rest primarily on the UN, as has been made clear through the Charter and the many other international instruments it has put forward. As such, this thesis argues that although there are many factors and approaches that would be required to achieve the objective of the UN, the likelihood of success is far less without a UN standing army.

[294] Article 47 of the UN Charter.
[295] Ibid.
[296] Article 47(2) of the UN Charter.

Chapter 5: Conclusion

Reflective Remarks

This study set out to look at the potential of a UN standing army whose purpose is protecting international human rights and maintaining peace. This is in light of the ongoing humanitarian crises that have occurred and continue unabated especially in conflict zones around the world. There has been a very weak response from the collective global community to make tangible and substantive change in ensuring that the crises in conflict zones are adequately addressed or to propose an environment that would be conducive to implementing such changes. Consequently, a major part of the UN's purpose is yet to be realized.

A close analysis of article 43 of the UN Charter shows that an army under the direction of the UN was likely part of the original vision of the founders of the UN as well as the drafters of the Charter. The article calls on all member's states to make contribution to a collective military effort to maintain international peace and order as envisioned by the Charter. Such a force would be directed by the Security Council. In fact, the idea of such a force had even captured much of the attention of the post-WWII public discourse, with many political analysts, newspapers, and other forms of media occasionally stating their opinions and predictions of what such a force would look like and how it would play out practically.

However, it could be argued that it is the Security Council itself that halted any advancements towards the creation of such a force in terms of article 43. This has often been attributed to the Cold War era and the ideological conflicts between what are possibly the most powerful members of the United Nations, the five permanent members of the Security Council. As a result, many of the members - especially the USA and the USSR (now replaced by Russia in the Council) would not entrust such a powerful and influential force to states they considered their enemies. So long as their rival had the opportunity to influence a symbolic force that could arguably be seen as the 'protector of world peace,' neither side would dare advance article 43 in the sense of creating a standing army.

Additionally, given that the potential requirement to contribute to this army by the leading states, pursuing this army would essentially be tantamount to handing over troops and equipment that may be used against them or their own interests in the future. Even after the end of the Cold War era, the five permanent Security Council members are still polarized on ideological and political lines. Nonetheless, the idea of article 43 being used to establish a UN standing army had long died by the time of the 1990s when the Cold War ended. By this point, the Security Council had moved to a practice of authorizing states or collective bodies to use force through Chapter VII of the UN Charter.

Instead, the closest practice to the idea of a UN army has been that of peacekeeping troops. Peacekeeping missions became more popular following the 'Uniting for Peace' resolution of 1950 by the General Assembly that served to circumvent any sort of stagnation from the Security Council regarding use of force whenever a humanitarian crisis arose. In its early stages, peacekeeping forces showed some sort of promise at maintaining peace and protecting human rights. One of the best examples of this success was seen with the deployment of UNEF during the Suez Crisis of 1956.

The Suez Crisis showed that there was potential for collective forces to have a substantial impact on promoting the UN's purpose of protecting human rights. However, over the proceeding decade, interest in the potential of peacekeeping declined significantly. This led not only to the lack of support of peacekeeping missions but it also resulted in the lack of institutional and administrative development necessary to make sure that the success of missions such as UNEF could be repeated. Ultimately, it gave rise to the current circumstances faced currently by peacekeeping missions, with continuous failure in most of the areas they operate and an extremely poor cohesive system as well as under-resourcing. The deterioration has become so stark in areas such as the DRC that criticism of the peacekeeping mission has gone beyond the government but now the public is loudly calling for the removal of peacekeepers through demonstrations. Indeed, the state of current peacekeeping operations is a saddening sight and does rightfully put into question the capabilities of a collective military force, especially under the directorship of the UN.

Yet collective military forces – albeit not UN-led – have also shown great successes in achieving objectives of promoting humanitarian objectives. An example of this is the role of NATO in Yugoslavia which, after nearly a decade of the failure and stagnation of political negotiation, managed to turnaround the conflict in 1999. Shortly after the showcase of properly coordinated military action, the factions involved in the crisis at the time became far more willing to come to the table to begin dialogue and cease any further human rights violations. It is no surprise that the swift success of this action by this collective force was one of the undercurrents to one of the UN's most difficult and glaring questions on the principle of 'Responsibility to Protect'.

Under the 'Responsibility to Protect' there is an obligation on states to do their part to protect their own civilians from humanitarian crisis'. However, should a threshold of large-scale losses (or threats) to life be crossed then there is an expectation for the greater

international community to step in. this is a principle quintessential to the purpose of the UN as set in the preamble of the UN Charter which speaks about the protection of 'people' and 'nations' (synonymous of a collective of people). This does not remove the existence and importance of the entity that is the state and the responsibility that is expected from it in a world where statehood is of paramount importance to global governance.

Even so, such a responsibility may seem almost dismaying to many states that may consider themselves almost too poor economically. A notable reservation that has presented itself before is that of article 2 of the UN Charter, which speaks around the idea of state sovereignty, an ideal that many states believe is of utmost importance to uphold within the Charter.

However, the above worries could be abated if the responsibility was not directly associated with the states but the obligation could be satisfied nonetheless. Such a responsibility could be best served in a collective force under the directorship of the UN which acts as a symbolic force to protect "the maintenance of international peace and security". As such, a UN standing army would be best suited for such a task. A cohesive force with the necessarily resources as well as proper administrative processes can be assembled incrementally, starting with a small UN Guard like the UNEF which, over time, is transformed into a fully-fledged UN army with the full support of United Nations membership.

It is expected that the idea of such an army would still face high levels of backlash. However, this study proposes two avenues that could possibly overcome such difficulties. The first avenue promotes using current institutional structures as well as articles within the Charter to establish the force. This would be most recommended as it avoids any sort of major upset especially among the permanent five. The second avenue is a more radical approach requiring an overhaul of the Charter and some of the structures of the UN using article 109. At the same

time this study argues that both these approaches can be utilised together with the first avenue preceding the second avenue.

The first avenue not only provides more certainty but also allows a build-up of trust as well as more political independence for 'weaker' states that may feel the pressure of toeing the line of more influential states. Ultimately, the idea is to build up enough trust through the success of a smaller UN guard that could be seen as more of a complementary armed force for several states rather than as a supplementary peacekeeping force. Once this UN standing guard is considered a success, it will provide the necessary impetus to ensure that states can vote positively for the necessary changes in the UN Charter and structure as per article 109 to allow for a standing army administered by the General Assembly. This essentially means changing article 43 to request that states provide towards this international force that would be under the General Assembly rather than the Security Council.

Alternatively, the Security Council could also serve as the necessary administrative body for this UN standing army. However, necessary changes to Chapter VII would need to be made to make it clear that it should act subordinate to the General Assembly and its direction. This is to best ensure that there is less of a risk that such a force would be manipulated by powerful members of the Security Council to serve their own interests.

Collective forces have shown their potential in protecting human rights and assisting in securing international peace and security. There have been some upsets, especially in the realm of UN peacekeeping in the later parts of the 20th Century. Despite this, more cohesive forces such as UNEF or NATO have shown that a properly coordinated force can make a big difference. One can only imagine how differently the situation in Rwanda would have been if General Roméo Dallaire had received the forces he requested and was allowed to coordinate the operation in the cohesive manner that he envisioned. NATO showed how a proper use of

force was able to force diplomatic dialog almost overnight after a decade of fighting in Yugoslavia. As such it can be argued that a cohesive, properly managed and trained force tasked with rapidly responding to international crisis situations in their early stages would be able not only to secure the crisis but mitigate the harm to human rights and lives drastically.

Proposed Future Research Work

Based on the limitation of the desktop-based research, there is still an opportunity for further and more in-depth research to be done. This research should focus more on the lived realities of stakeholders in terms of collective military operations and should be conducted through more on the ground observations and analyses as well as data gathering in the form of in person surveys and interviews.

As such it is suggested that research focusing specifically on stakeholders that are more actively involved in the collective international military operations such as peacekeeping troops and other related staff members, such as other aid workers in conflict situations, be conducted. Another recommendation is for primary data research on the civilians or those who are the main victims of the crisis at hand. Considering that they are the main indicator as to whether or not there has been any significant change in the measure of human rights within a crisis situation, it would be most important to gather and analyse data from this grouping in future research on the importance or efficacy of a standing army.

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