



THE EFFECTS OF THE ADOPTION OF PEACEKEEPING MANDATES UNDER THE BASIS OF LEGAL SOURCE OF BORROWING, NECESSITY OF THE ELABORATION OF A LEGAL SOURCE PROPER TO PEACEKEEPING, PERSPECTIVES OF THE CHOICE OF THE CAPSTONE DOCTRINE.

MBOH NGOMA ALAIN PIERRE LOIC

PHD student of People's Friendship University of Russia (RUDN) named after Patrice Lumumba

Email address: 1042215337@rudn.university

Personal email: loicngoma16@yahoo.fr

Abstract: *The author starts from the observation that peacekeeping operations do not have their own legal basis. It also notes that in such a context, the mandates of these missions are adopted on the basis of borrowed legal texts imagined by doctrine. This is how this doctrine has developed articles bis and articles and a half of the charter of the United Nations. By analyzing this situation, the author deduces that such an approach contributes to the distortion of peacekeeping operations. The author therefore raises the importance and the urgency of adopting specific legislation for these UN operations and their mandate and as proposal, analyzes the prospects for the adoption of the capstone doctrine.*

Keywords: *mandate, peacekeeping, legal source of borrowing, own legal source, Capstone doctrine, United Nation charter.*

INTRODUCTION

The mandates of peacekeeping missions can be defined as the roadmap of these missions¹. Although they are drawn up by resolution of the Security Council, they are in fact the fruit of a long preparation on the basis of which we find the Secretary General of the United Nations, the Department of Peacekeeping and Field Support. The Secretary-General is the body which, once seized of a threat to peace, takes preliminary measures. These consist of evaluation meetings with all parties interested in the situation, namely the States affected by the threat, the neighboring States, the contributing States; the sending of a technical evaluation mission (TAM) to inquire about the situation on the ground². It is therefore on the basis of the assessment of this work and the suggestions that flow from it that the Security Council will support the adoption of its resolutions. The information contained in a mandate is, among other things, the purpose of the mission, the duration, the number of military and police forces, the budget, the legal bases³. Peacekeeping missions do not have their own legal basis⁴. Thus, both in the Charter of Nations and in the fundamental human rights texts of the Hague Convention⁵, the four Geneva Conventions and their Additional Protocols⁶, or the Universal Declaration of Human Rights, there are no provisions referring to these missions. However, what we are witnessing today is the development of mandates for peacekeeping missions on legal bases that have nothing to do with these operations. There are several situations in this direction.

¹ 1992 peace agenda

² chap 6 of the capstone doctrine, deployment and stratum of a peacekeeping mission

³ <https://peacekeeping.un.org/en/mandates-and-legal-basis-peacekeeping>;

⁴ <https://brill.com/content/journals/10.1163/15718040120962806?crawler=true>

⁵ Convention (IV) concerning the laws and customs of war on earth and its Annex: Regulations Concerning the Laws and Customs of War on Earth. The Hague, 18 October 1907

⁶ 1949 Geneva Convention and 1977 Additional Protocols



I- Different situations of development of peacekeeping operations under the basis of borrowed sources

The deployment of traditional peacekeeping⁷ missions on the basis of Chapter 6 of the Charter of the United Nations⁸. Chapter 6 regulates measures for the peaceful resolution of disputes. Traditional peacekeeping missions, however, differ from these measures in that they have no political influence on conflict resolution as opposed to peaceful means of resolution (mediation, conciliation, good offices). Traditional missions remain catalysts for peaceful settlement without intervention. It is therefore difficult to see how chapter 6 can serve as a legal basis. This is also the case with the development of multidimensional missions⁹ and robust peacekeeping missions under the basis of Chapter 7 of the Charter of United Nations. Chapter 7 governs threats to peace, breaches of peace and acts of aggression and serves as the basis for peace enforcement missions. The context of this chapter is therefore that of the use of force in an offensive and strategic manner, which does not correspond to the framework of peacekeeping missions whose principle is that of the use of force in a tactical manner.

We finally have the case of creating imaginary articles. The creation of imaginary articles by the doctrine poses the problem of relativity and acceptance by all. Also, the Security Council has never founded a mandate on the basis of an article created by the doctrine. There are, however, famous creations such as article 6 and a half or 6 bis of the charter of the United Nations¹⁰ which reflects the position in the grey area occupied by peace missions between the peaceful measures of Chapter 6 of the Charter of United Nations and the measures in the event of a breach of peace provided for in Chapter 7 of the Charter. This article 6 bis or then 6 and a half was invented to serve as a foundation for traditional peacekeeping missions and also multidimensional missions; we can also speak of chapter 7 and a half, to govern robust peace missions led by UN forces in combination with regional organizations. Hence its location between Chapter 7 and Chapter 8 (Regional Agreements) of the Charter of the United Nations.

whether it is the adaptation of articles, or the creation of articles, they all produce negative effects on peacekeeping.

II- The effects of such an attitude

As a result of this trend of developing peacekeeping missions on the basis of borrowing documents, the following events have been observed over time:

- . An unrestricted and unlimited expansion of the competences of the tasks of UN forces. This was particularly the case during the 1990s with the advent of multidimensional missions and was cited in many reports as one of the causes of the failures of peacekeeping missions¹¹
- . The confusion¹² between robust peacekeeping missions and peace imposition missions has resulted in the loss of human life of several UN personnel and a profound de-legitimization of the UN.
- . The use of both the name and the framework of peacekeeping missions in a generic manner for the deployment of other types of missions. In principle, peacekeeping is only one of the tools available to the Security Council to preserve peace. There are other missions such as the prevention of peace, the restoration of peace, the imposition of peace and even the consolidation of peace. The current situation is therefore that of the disproportionate use of peacekeeping missions, or even the use of other types of operations, but under the guise of peacekeeping missions.

⁷ <https://peacekeeping.un.org/en/our-history>

⁸ Chapter VI: Peaceful Settlement of Disputes

⁹ <https://peacekeeping.un.org/en/our-history>

¹⁰ <https://lexdih.wordpress.com/chapitre-vi-bis-ou-vi-et-demi/>

¹¹ Brahimi report 21 August 2000

¹² <https://www.jstor.org/stable/resrep13793.8>



III- Prospect of adopting the capstone doctrine as a solution to this problem.

In all these cases, this is a distortion of peacekeeping missions because of its adaptation to borrowing texts. In this context, it is important to take action. The one we see as essential is the adoption of a text specific to peacekeeping missions, which will serve as a legal basis for developing mandates. In direct response to this concern, we believe that the capstone doctrine developed in 2008 by the Department of Peace Operations and the Department of Field Support met the criteria for ensuring this role namely.

- This is the first document developed as a compendium of standards for peace missions and planned to be renewed over the years. The preamble to this doctrine states, "The present publication, which has been developed in close consultation with field missions, Member States, United Nations system partners and other key stakeholders, represents the first attempt in over a decade to codify the major lessons learned from the past six decades of United Nations peace keeping experience... it is a living document that will be reviewed and updated regularly to reflect major evolutions in United Nations peacekeeping practices". It therefore stands out from reports aimed simply at making a diagnosis of missions of peace.

-In this doctrine, there is a clear distinction and the conditions for the implementation of the various operations carried out by the Security Council in the context of its traditional role as peacekeeper, namely: peace prevention missions, peace enforcement missions, peacekeeping missions, peacebuilding missions.

-The principles of peacekeeping contained in this doctrine form a consensus among States¹³ at least those who participated in the declaration of shared commitment¹⁴. These principles are the consent of the parties, impartiality and non-use of force except in the case of self-defense and defense of the warrant¹⁵.

However, there are several aspects¹⁶ of peacekeeping that we do not find in this doctrine, in this case, the issue of the role of women in peacekeeping, the regulation of regional missions. But despite this, it remains at present the most accomplished document to ensure a framework of peacekeeping and thus serve as a legal basis for the elaboration of peacekeeping.

CONCLUSION

In the end, therefore, it is clear from this analysis that the practice of drawing up peacekeeping operations on the basis of legal sources which are not its own has over time contributed to distorting these missions to the point where we can no longer distinguish between these missions, peace enforcement missions and even peaceful conflict resolution measures. In such a context, it is therefore necessary that peacekeeping, in view of its importance, should have a collection of norms of its own and in this sense the capstone doctrine appears as a perspective.

ACKNOWLEDGMENT

My sincere gratitude to my supervisor Dr bisultanov aslanbeck kamalarevich, my mother Dr Nangue charlette and my younger brother Djoufack ngoma chris for their intellectual, moral and financial support.

¹³ other doctrine calls for a change in the classical principles of peacekeeping as an example of the doctrine santos cruz of 2015

¹⁴ 2018 declaration benefiting from 154 endorsement around 45 commitments regarding peacekeeping <https://www.un.org/en/A4P/>

¹⁵ Capstone doctrine 2008

¹⁶ lucie martens; evolving peacekeeping operations

https://www.researchgate.net/publication/303342510_Les_operations_de_maintenir_la_paix_de_l%27ONU_doctrine_et_pratiques_en_constante_evolution

**REFERENCES:**

- [1] *Action for peace (09/11/2018) Declaration of share commitment on peacekeeping operation*
- [2] *Alexandra Novosselof (10/2010) Chap 7 and maintenance of peacekeeping, an ambiguity to destroy*
- [3] *BELLAMY, Alex J. & WILLIAMS, Paul (with GRIFFIN, Stuart) (2010) Understanding Peacekeeping, 2ème édition, Cambridge, Polity Press.- Ronald HATTO (2/01/2018) Géopolitique du maintien de la paix des Nations Unies*
- [4] *Brandt Chu ()The Forgotten Chapter: The Legality of Peacekeeping, Peace Enforcement, and Military Intervention under Chapter VIII of the UN Charter*
- [5] *Charles-Philippe DAVID (2006) La guerre et la paix: Approches contemporaines de la sécurité et de la stratégie, Paris, Presses de Sciences Po, pp. 308-309*
- [6] *-Paris conference (26.27/10/2022) conclusion on the conference on peacekeeping in the French-speaking zone*
- [7] *History of peacekeeping operations during the cold war 1945 to 1987*
- [8] *James O. Tubbs (1/09/1997) Chapter 2 Peace Operations and the Use of Force: Peace Enforcement <https://www.jstor.org/stable/resrep13793.8>*
- [9] *Kamto Maurice (01/01/2001/)*
- [10] *lexdih () Chapter VI bis or VI et demi; <https://lexdih.wordpress.com/chapitre-vi-bis-ou-vi-et-demi/>*
- [11] *Lucile Maertens (05/2013): The evolving doctrine and practices of UN peacekeeping operations; University of Lausanne*
- [12] *Menent Savas Cazala (01/01/2017) The legal framework for the action of peacekeepers; cain.info*
- [13] *UNITED NATIONS (2008), United Nations Peacekeeping Operations. Principles and Guidelines, New York, Department of Peacekeeping Operations/ Department of Mission Support.- Norwegian Institute for International Affairs (NUPI) (2015): Aligning Principles and Practice*