Chapter 6

Enforcement of Peacekeeping Measures

The Security Council shall duly take account of failure to comply with such provisional measures.

The last sentence of Article 40 of the UN Charter

1. Enforceability of Peacekeeping Measures

One of the significant implications of basing peacekeeping measures on Article 40 of the UN Charter is the provisional nature of peacekeeping whose purpose is confined only to the prevention of conflicts from further deterioration and to the creation of an atmosphere conducive to a peaceful settlement of the conflicts. Peacekeeping measures are not intended to impose a settlement upon the parties to a conflict, nor are they, at least in the first place, aimed at the enforcement of Security Council decisions. The Security Council is nonetheless required under Article 40 of the Charter to take account of the failure of the parties involved in a conflict to comply with the measures that it has taken. This sentence can be read not only as indicating the possibility that an enforcement action under Articles 41 and 42 of the Charter will be taken against a non-compliant party, but also as calling upon the Security Council to make necessary arrangements to verify and induce compliance in directing provisional measures. In view of the fact that the parties to a conflict have often failed to heed peacekeeping measures, the Security Council must take account of that possibility and incorporate contingency plans providing guiding rules and appropriate procedures in implementing peacekeeping measures. UN forces to be deployed for the purpose of peacekeeping, from

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this point of view, must be prepared to protect themselves and the mandates given to them.

In addressing this issue, the former UN Secretary-General, Boutros-Ghali, proposed that the Security Council consider ‘the utilization of peace-enforcement units’ to strengthen the effective implementation of cease-fire orders. While the concept of ‘peace enforcement’ was innovative, the degree to which the use of armed force is required has posed a question as to how it is distinguished from enforcement measures under Article 42 of the Charter. In other words, to what extent are UN military personnel allowed to use armed force to secure an effective implementation of a peacekeeping measure? Attempts have been made to clarify the distinction on the conceptual level, but, as will be shown in the next section, discussions or policy formulations on such an abstract level do not contribute much to the clarification. The question will therefore be addressed in the following sections by lowering the level of analysis to the strategic level in relation to the scope of the right of self-defence that has been recognised as one of the basic principles to be applied to UN peacekeeping operations. It will then be lowered further down to the tactical level in terms of the regulation of the use of an armed force in the field. A study at these lower levels will reveal that what is envisaged by peace enforcement is nothing new and has been part of peacekeeping operations. The strategic and tactical points of view will provide a sound basis for ascertaining the limit to which a peacekeeping measure may allow for the use of armed force without change in the nature of the operation.

It should be noted, before proceeding with the examination, that this question might not be so serious in the case of consent-based peacekeeping operations. However, as shown in Chapter 4, the consent and cooperation of armed opposition groups in cases of internal armed conflict are necessarily elusive and in no way form a legal basis for peacekeeping measures. The question becomes serious when the Security Council decides on its own initiative to direct a peacekeeping measure without securing the consent of the parties to a conflict in a strict legal sense, even though it may seek cooperation of the parties for the sake of an effective implementation of the measure. The question is, in addition, primarily concerned with the operation of UN forces deployed on a large-scale. Although effective


5 See, Ch. 4, Section 3-B-iii.

6 UN forces are defined here as multi-national contingents provided by troop-contributing states to serve in a particular mission mandated by a competent UN political organ to be operated under UN command and control.