SOME LEGAL ASPECTS OF THE UNITED NATIONS OF PEACE-KEEPING OPERATIONS

By Tyge Lehmann*

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I. The legal basis for conducting peace-keeping operations

United Nations peace-keeping operations can no doubt be considered one of the most successful innovations within the World Organization's efforts towards maintaining international peace and security. These operations - covering both the deployment of regular forces and dispatchment of observer units - have proved a most useful instrument of de-escalation and control in areas with potential or actual armed conflict. It is interesting to observe that the development of this means of conflict control has been based on a purely

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functional approach. The Charter itself contains no provision which authorizes any of the United Nations organs or the Secretary General to establish peace-keeping forces or observer units. However, if one considers the primary purpose of the United Nations as set out in Article 1 of the Charter, i.e. to maintain international peace and security, it would seem natural that the organization should also be given the power and means necessary to fulfil this peace-keeping function. And that is exactly what has been given the organization through its own practice. In other words, the powers of an international organization such as for instance the UN can not be described properly by looking exclusively at the letters of its constituent treaty, in casu the Charter. It is justified and indeed necessary if one wishes to give a realistic picture of the actual status of an international organization to include into that description also those powers which by implication must be conferred upon the organization, if it is to fulfil its functions properly.

This concept of implied powers was recognized and developed by the International Court of Justice (ICJ) in the advisory opinion which was rendered by the Court in 1949 in the case concerning the killing of Folke Bernadotte in Palestine. The Court was asked by the General Assembly whether the United Nations as an organization has the capacity to bring an international claim against the responsible Government, in casu Israel. To answer this question – which is not either settled by the actual terms of the Charter – the Court considers what characteristics it was intended to give to the Organization. The Court continues: “In the opinion of the Court, the Organization was intended to exercise and enjoy, and is in fact exercising and enjoying, functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane. It is at present the supreme type of international organization, and it could not carry out the intentions of its founders if it was devoid of international personality. It must be acknowledged that its Members, by entrusting certain functions to it, with the attendant duties and responsibilities, have clothes it with the competence required to enable those functions to be effectively discharged”.

The same line of reasoning was adopted by the Court in its advisory opinion from 1962 concerning certain expenses of the United Nations, where the General Assembly asked the Court whether the expenditures relating to the UN’s peace-keeping operations constituted expenses of the Organization within the meaning of Article 17, paragraph 2 of the Charter. Here the Court states that when the Organization takes action which warrants the assertion that it was appropriate for the fulfilment of one of the stated purposes of the United Nations the presumption is that such action is not ultra vires, i.e. outside the competence of the Organization.

So, in discussing the legal basis of the UN’s peace-keeping operations one can conclude that the General Assembly and the Security Council have been legally justified in creating peace-keeping forces and observer units as an additional means for fulfilling the Organization’s task of furthering peace and security even though there is no express provision in the Charter authorizing such operations.

If one nevertheless should wish to refer to one or more Articles of the Charter the most relevant ones would seem to be Art. 22 and Art. 29 authorizing the General Assembly and the Security Council respectively to establish such subsidiary organs as it deems necessary for the performance of its functions.

There are limits, however, to this functional approach. One can not by way of a principle of interpretation such as the one concerning “implied powers” change the basic legal