

Analysis of South Africa's Approach to the Modern Peacekeeping Trends in Africa

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Chapter 1: Introduction

“During the 21st Century, 52 peace operations have been deployed to 18 countries. Since 2011 alone, 10 new peace operations have been deployed in 8 African Countries.”¹ In 2013, it was recorded that South Africa was the sixth largest troop-contributing state in Africa, and the fourteenth largest in the world.² The most important reasons for analysing South Africa’s approach to conflict management in Africa are that South Africa is regarded as a leader in peacekeeping intervention in African conflicts; South Africa has characterised itself as envisaging the voice and outlook of Africa; and lastly, South Africa asserts that it is propelled by the “principles of equality, local ownership and demand” when interacting with its regional community.³ Because of this position of leadership, the interventions which South Africa has been involved in has had a direct effect on continental hostilities, in addition to the continuation of peace and security of the continent.⁴ Due to the subject of international peacekeeping being a very broad field, with an array of complex and overlapping elements, this paper is specifically aimed at identifying and investigating the evolution of South Africa’s approach to peacekeeping and peace enforcement in Africa in order to establish what its legal position is regarding the participation of South African troops in international peacekeeping operations. In doing so, I will address and investigate the following two questions (by investigating various policy documents; legislation and international law doctrine): “What is peacekeeping and how has South Africa approached the need for African involvement in African problems?” and “How has the nature of conflict in Africa affected South Africa’s approach to peace enforcement in Africa?”.

¹ Williams, P.D (July 2013), *Peace Operations in Africa: Lessons Learned Since 2000*, Africa Security Brief No 52, available at http://africacenter.org/wp-content/uploads/2013/07/AfricaBriefFinal_25.pdf (last visited 27/05/2015)

² *Contributors to United Nations Peacekeeping Operations*, Monthly Summary of Contributors, available at <http://www.un.org/en/peacekeeping/contributors>. Referred to the aforementioned in *South Africa’s Peacekeeping Activities in Africa (Part 1)*, Southern African Catholic Bishops Conference Parliamentary Liaison Office, available at <http://www.catholic-dbn.org.za/south-aricas-peacekeeping-activities-in-africa-part-1/> - (last visited 27/05/2015)

³ Hendricks, C (2015), *South Africa’s Approach to Conflict Management in Burundi and The DRC: Promoting Human Security?*, Strategic Review for Southern Africa, Vol37, No 1, available at [http://www.up.ac.za/media/shared/85/Strategic%20Review/Vol37\(1\)/04hendricks-pp-9-30.zp59335.pdf](http://www.up.ac.za/media/shared/85/Strategic%20Review/Vol37(1)/04hendricks-pp-9-30.zp59335.pdf) (last visited (27/05/2015)

⁴ See footnote (fn) 3 above

The first abovementioned question will be tackled in Chapter 2, where I will provide an outline of the following: *an overview of peacekeeping, in general; South Africa's approach to and involvement in peacekeeping in Africa prior to the establishment and implementation of democracy*; and finally, I will deal with *South Africa's obligations to partake in peacekeeping operations in terms of International (United Nations) and Regional (African Union and Southern African Development Countries) bodies*. Chapter 3 will focus on the second aforementioned question, where I will address how *the nature of conflict in Africa has affected South Africa's approach, in terms of policy decision, to conflict in Africa, specifically relating to its involvement in the Democratic Republic of Congo and Sudan*. This analysis will demonstrate (supported by the information provided in Chapter 2 and 3) that there has in fact been evolution in peacekeeping operations which signifies that South Africa's participation in African conflict amounts to what has been labelled as 'peace enforcement', as opposed to the very narrow action of peacekeeping. This evidence reveals a significant shift from the traditional ideals of peacekeeping, to a more modern (and consequently more robust) approach to peacekeeping both regionally and internationally.

The motivation and inspiration to investigate the subject of South Africa's approach to peacekeeping and peace enforcement in Africa stems from a quote from Edmond Mulet⁵, who wrote that, "*The World is changing. The threats are changing. The levels of conflict are changing in many places in the world...so we have to adapt and we have to evolve and we have to learn how to deal with these new challenges*".⁶ This quote is significant to me as it reminded me of a quote by Maya Angelou which I find invaluable in my personal life and is very pertinent in an ever changing world, and which I hope will lead to the conclusion that this shift in approach to peacekeeping has led to improved international peace enforcement. Maya Angelou said that, "*Now that I know better, I do better*"⁷, a philosophy which I believe possibly justifies the United Nation's change in approach to international peacekeeping. It has been noted that the United Nations peacekeeping operations in Africa (specifically those in Western Sahara; Liberia; the Democratic Republic of Congo; Ethiopia and Eritrea; Ivory Coast

⁵ Edmond Mulet was previously the Secretary-General for Peacekeeping Operations

⁶ *UN Peacekeeping: New Trends and Implications for Civilian Protection*, International Coalition for the Responsibility to Protect, available at <https://icrtopblog.org/2014/06/17/un-peacekeeping-new-trends-and-implications-for-civilian-protection/> (last visited 17/10/15)

⁷ Quote: <http://www.goodreads.com/quotes/9821-i-did-then-what-i-knew-how-to-do-now> (Last visited 24/03/2016)

and Sudan), have been about more than just attaining peace and providing security in those regions.⁸ These operations have been initiated with the purpose of establishing national governments which are effective and which will result in more progressive international development and economic relationships for African nations.⁹ This contemporary approach to peacekeeping, which is generally characterized by interventions in 'intra-state' conflict, as opposed to 'inter-state' conflict; missions being launched in the midst of conflict without the consent of all relevant parties, under mandates which permit the use of offensive force, as opposed to mandates which either merely permit the use of minimal force to bring peace to a volatile situation, or humanitarian intervention¹⁰; appears to vary from the traditional or idealistic understanding of what peacekeeping operations would customarily entail. The traditional understanding has very basically been conceptualised as the 'deployment of armed forces under UN control to contain and resolve military conflicts'.¹¹ The dissimilarity in approach could be contributed to the fact that, contrary to preceding peacekeeping operations, troops who are sent to volatile regions in Africa are confronted with conflicts which originate from causes which are extremely problematic and unrelenting to the region, such as: "ethnic tension; conflicts starting from extreme poverty or the abuse of natural resources; and to situations in which governments are failing to do what governments should do."¹² And as a result of the international community's change in approach to dealing with these arduous African conflicts, South Africa has had to respond in a very similar way in order to have an effective impact.

Due to the lack of adequate and explicit guidelines for United Nations peacekeeping in the United Nations Charter, international bodies' responsible for the creation and deployment of peacekeeping troops, in addition to the international community, have had to rely on doctrine such as the Brahimi Report and Capstone Doctrine for further clarity. To adhere to its international obligations in terms of the United Nations Charter, Member States aim to act in accordance with and exercise strict adherence to the traditional principles and understanding of international peacekeeping contained in the

⁸ van Genugten, V (2008), *UN Peacekeeping in Africa and Good Governance: Challenges and Prospects*, PER [Potchefstroomse Elektroniese Regsblad online]. 2008, vol.11, n.2, pp. 42-88. ISSN 1727-3781., available at

⁹ See fn 8 (page 2)

¹⁰ See fn 6 (page 2)

¹¹ Shaw, M, *International Law*, Cambridge, Sixth Edition (2006)

¹² See fn 8 (page 2)

Charter, while observing the guiding principles of Brahimi Report and Capstone Doctrine, while the realities of current conflict has meant that States have been compelled to utilise the modern approach to peacekeeping, specifically in its approach to African conflicts which involve peacekeeping intervention. Additionally, the traditional understanding of peacekeeping conveys the notion that State parties to a dispute have reached an agreement regarding international intervention or assistance, in order to regain stability and peace in the country¹³, while in reality, the majority of conflict in Africa has been within a single state, or has involved other states merely as a result of lack of border control.¹⁴ The conclusion that this has led me to is that the modern ideals of peacekeeping are both based on and likewise appear to co-exist with the traditional understandings of peacekeeping, even to the extent where the two ideals contradict one another. South Africa's approach to peacekeeping in Africa signifies the foreseeable tension between these principles, and like the rest of the international community, it finds itself welded between two sets of principles which both complement and contradict one another.

Finally, during my investigation I noted that despite there being an abundance of sources and material on both international and regional involvement in peace operations in Africa, there seems to be a lack of primary sources (such as Legislation and Case Law) specifically on South Africa's approach to its involvement in peacekeeping operations. I have had to rely a great deal on the Revised White Paper on South Africa in International Peace Missions¹⁵; policy decision, opinion and discussions to create a paper which achieves what it set out to do and which will be addressed comprehensively in Chapter 3. The lack of comprehensive domestic law has sparked the following question which will also be addressed in Chapter 3: why has South Africa failed to produce a concessive piece of legislation which deals specifically with its participation in peacekeeping, when firstly, the international doctrine which it is bound by (such as the Brahimi Report and African Union Constitutive Act) have

¹³ Cilliers, J (1999), *Regional African Peacekeeping Capacity: Mythical Construct or Essential Tool?*, available at <https://www.issafrica.org/pubs/ASR/8No4/Cilliers.html>, (last visited 02/08/2015)

¹⁴ See fn 3 (page 1)

¹⁵ *Presentation on the Revised White Paper on South Africa in International Peace Mission*, Briefing Paper: Department of International Relations and Cooperation, 12/02/2014, Retrieved from Sabinet Legal 07/09/2015

conflicting principles; and secondly, it has actively chosen to participate and portray itself as a leader in peacekeeping in Africa?

Chapter 2: Brief overview of the background of peacekeeping; South Africa's Pre-democratic approach to Peacekeeping in Africa; and South Africa's obligations to partake in peacekeeping missions in terms of the United Nations Charter and Regional bodies (AU/SADC)

This Chapter will deal exclusively with the first research question, focusing on what peacekeeping is and how South Africa has approached the need for African involvement in African problems. It will be divided into three sections, which deal with the following topics: Firstly, a general overview of what peacekeeping is will be given; secondly, I will give a short summary of South Africa's approach to peacekeeping prior to a democracy being established within the State; and lastly, I will address South Africa's international and regional obligations to partake in peacekeeping both in Africa and elsewhere.

General Overview of Peacekeeping

In order to present a comprehensive and thorough analysis in Chapter 3, it is essential to firstly establish what 'Peacekeeping' is in order to see how South Africa has moved away from the conventional or traditional ideals of what peacekeeping is, towards a contemporary approach to peacekeeping. The fundamental principle of peacekeeping entails the deployment of armed forces under United Nations (UN) control, in order to settle and confine military conflicts.¹⁶ However, through its involvement in various operations, the United Nations Security Council have come to the realisation that peace operations are not one-dimensional (a notion which may previously have been acceptable), and therefore these operations inevitably involve various peace and security activities¹⁷. While there is no specific reference to peacekeeping in the UN Charter, peacekeeping operations which are regarded as having been authorised in terms of a contemporary mandate are regarded as 'Chapter VI and a half' missions,¹⁸ which fall in between the methods of peaceful dispute resolution (i.e. Chapter VI, consent-based missions) and more forceful action (i.e. Chapter VII, enforcement

¹⁶ Shaw, M, *International Law*, Sixth Edition, Cambridge Press (2006)

¹⁷ *Chapter 3: The Basic Principles of United Nations Peacekeeping*, United Nations Peacekeeping Operations: Principles and Guidelines (2008) [Capstone Doctrine], available at <http://www.un.org/en/peacekeeping/operations/principles.shtml> (last visited (20/08/15))

¹⁸ Durall, J.G (2013), *United Nations Peacekeeping Operations Under Chapter VII: Exception or Widespread Practice*, Revista del Instituto Español de Estudios Estratégicos, Núm. 2 / 2013, available at <https://dialnet.unirioja.es/descarga/articulo/4537260/2.pdf> (last visited 29/04/2016)

missions)¹⁹; and which will be discussed in depth in Chapter 3. This realisation led to the Panel on United Nations Peace Operations (hereinafter referred to as the Panel) establishing the Brahimi Report in early 2000 (hereinafter referred to as the Report)²⁰ and on 13 November 2000 the Report was adopted under United Nations Security Council Resolution 1327²¹, legally binding all Member States to the principles set out therein. While the concepts established in the Report are of the most significance in this paper, it is important to note that the Panel was established and tasked with the aim of strengthening its capacity in order to manage and sustain its peacekeeping operation²², while ascertaining and evaluating the inadequacy of UN peacekeeping operations. In addition, the Panel was responsible for proposing pragmatic recommendations to rectify shortcomings after two reports were released in late 1999, articulating the inadequacies of the UN's intervention in the Rwandan genocide and Srebrenician massacres.²³ In defining the concept of peacekeeping, the Report divided peace operations into three categories, namely: 'Peacemaking'; 'Peacebuilding' and Peacekeeping. The UN continued with its endeavours of reform within peacekeeping, by establishing the Capstone Doctrine in January 2008²⁴, which was published in order to serve as a formal *guiding doctrine for peacekeeping operations*²⁵ for the international community. While Member States are encouraged to utilise and reflect on the principles set out in the Doctrine when preparing to contribute personnel to UN peacekeeping operations, Member States are not legally bound by

¹⁹ Fortna, V.P, *Does Peacekeeping Work?: Shaping Belligerents' Choices after Civil War*, Princeton University Press, July 2008, available at <https://books.google.co.za/books?hl=en&lr=&id=JZryFK8II4cC&oi=fnd&pg=PP2&dq=chapter+6+and+half+peacekeeping&ots=4Mhr2P4oAW&sig=iBYy9M6ybXIOtNBMVOSrxn9lvUs#v=onepage&q&f=false> (last visited 29/04/2016)

²⁰ *Report of the Panel on United Nations Peace Operations (known as the Brahimi Report)*, available at http://www.un.org/peace/reports/peace_operations/, referred to by *South Africa's Peacekeeping Activities in Africa (Part 1)*, Southern African Catholic Bishops Conference Parliamentary Liaison Office, available at <http://www.catholic-dbn.org.za/south-aricas-peacekeeping-activities-in-africa-part-1/> (last visited 18/02/2015)

²¹ Durch, W.J; Holt, V.K; Earle, C.R; Shanahan, M.K; (2003), *The Brahimi Report and the Future of UN Peace Operations*, The Henry L. Stimson Centre, available at <http://www.stimson.org/images/uploads/research-pdfs/BR-CompleteVersion-Dec03.pdf> (last visited 24/03/2016)

²² *Reform of Peacekeeping*, United Nations Peacekeeping website, available at <http://un.org/en/peacekeeping/operations/reforms.shtml> (last visited 17/10/2015)

²³ See footnote (fn) 20 above

²⁴ See fn 6 (page 2)

²⁵ *United Nations Department of Peacekeeping and Department of Field Support Civil Affairs Handbook*, available at http://www.un.org/en/peacekeeping/documents/civilhandbook/Civil_Affairs_Handbook.pdf (last visited 24/03/2015)

these principles.²⁶ In The Capstone Doctrine, writers added ‘conflict prevention’ and ‘peace enforcement’ to the field of peace and security activities.²⁷ In terms of the Report and the Capstone Doctrine, the following concepts were identified and defined: ‘*Peacemaking*’ endeavours to stop conflict through diplomacy and mediation; while ‘*peacebuilding*’ is regarded as activities which have the aim of reconstructing the bases of peace, as well as providing the necessary tools to continue building on the foundation of that peace²⁸. *Peacekeeping* is either regarded as: (a) having occurred once a peace treaty has been signed, with the aim of ensuring that the ‘warring’ parties adhere by the terms of the agreement to which they are party to²⁹; or (b) a procedure used to conserve peace where fighting has come to a standstill, and to assist in the implementation of agreements achieved by peacemakers.³⁰ While in terms of the Capstone Doctrine specifically, ‘*conflict prevention*’ usually includes preventative deployment (amongst other things) to keep inter-state or intra-state tensions and disputes from increasing into violent conflict, by gathering information and analysing factors driving the conflict. ‘*Peace enforcement*’ is generally authorised in order to re-establish international peace and security, through the use of force, in circumstances where there is a threat to or breach of peace, or acts of belligerence.³¹ While the Report and Capstone Doctrine do not explicitly reflect what is perceived as and has been described in Chapter 1 as the ‘modern approach’ to peacekeeping in its entirety (they focus mainly on the maintenance and restoration of international peace and security, as opposed to placing the greater emphasis on protection of civilians from deliberate attacks and atrocities), these documents indicated that there was a better understanding within the UN regarding the complexities of peacekeeping, and that that understanding lead to a significant evolution in the UN’s approach to peacekeeping operations. Whilst the Capstone Doctrine merely serves as a guiding doctrine for peacekeeping operations, some of the characteristics of the ‘modern approach’³² to peacekeeping are in fact reflected in the concepts of peace enforcement and conflict prevention, as presented and defined in the said Doctrine. The evolution within the

²⁶ See fn 17 (page 6)

²⁷ See fn 17 (page 6)

²⁸ See fn 17 (page 6)

²⁹ According to the Brahimi Report, See fn 20 (page 7)

³⁰ According to the Capstone Doctrine, See fn 17 (page 6)

³¹ See fn 20 (page 7)

³² *UN Peacekeeping: New Trends and Implications for Civilian Protection*, International Coalition for the Responsibility to Protect, available at <https://icrtopblog.org/2014/06/17/un-peacekeeping-new-trends-and-implications-for-civilian-protection/> (last visited 17/10/15)

UN was prompted by what the world deemed as ‘dramatic failures’ of UN peacekeeping in 1990’s³³. During this time, the UN relied solely on what is considered as the traditional understanding and characteristics of peacekeeping, which are as follows³⁴: consent of States; impartiality of peacekeeping troops between warring parties; and the use of force only being utilised as a method of self-defence to protect civilians against Crimes against Humanity; War Crimes; Genocide and other serious abuses of Human Rights³⁵. In addition to adhering to the traditional principles of consent; impartiality and the prohibition of the use of force except in respect of self-defence, the traditional approach also meant that troops were obliged to observe and obey strict military tasks, which limited the troop’s capacity to act in situations not provided for in the relevant mandate and in addition, troops were often confronted with limited resources. The UN’s traditionalist approach was displayed in its involvement in the Rwandan genocide and Srebrenican massacres, where the UN failed to provide protection to the targeted groups in those regions, resulting in many civilians losing their lives. In both incidents, the UN Security Council approved resolutions which required firstly that, troops in Rwanda were obligated to maintain a ‘traditional, neutral peacekeeping role’³⁶. This obligation purported that troops were prohibited from using force as the mandate they were assigned under tasked troops with promoting peace, which resulted in their inability to take action against the perpetrators who both incited, planned and committed the genocide in Rwanda. And secondly, Dutch troops in Srebrenica were deployed under a mandate which set rigid and precise rules regarding the use of force, apart from the mission being ill-equipped to deal with that specific mandate, the decision of when the use of force would be appropriate and necessary, was placed in the hands of the force commander, who was tasked with reaching a decision based on his personal assessment of the situation.³⁷ With regard to the second shortcoming of the mission, to say that one’s personal assessment of a situation is most likely a subjective assessment would be obvious, and this

³³ Durand, L (2012), *How did the Brahimi Report Improve the Effectiveness of the UN Peacekeeping Operations?*, E-International Relations Students, available at <http://e-ir.infor/2012/09/05/how-did-the-brahimi-report-improve-the-effectiveness-of-un-peacekeeping-operations/> (last visited 17/10/15)

³⁴ Wills, S (2009), *Protecting Civilians: Obligations of Peacekeepers: Historical Review of Civilian Protection by UN Peacekeepers*, Oxford Scholar Online

³⁵ See fn 32 (page 8)

³⁶ Grunfeld, F & Vermuelen, W (2009), *Failure to Prevent Genocide in Rwanda (1994), Srebrenica (1995), and Darfur (since 2003)*, *Genocide Studies and Prevention: An International Journal*: Vol: 4: Iss. 2: Article 13, available at <http://www.scholarcommons.usf.edu/gsp/vol4/iss2/13> (last visited 17/10/15)

³⁷ See fn 34 above

assessment would be based on unique external factors, not based on the legality of that assessment. The conclusion which can be drawn from the UN's approach to peacekeeping in Rwanda and Srebrenica is that while both mandates were different and the actions taken under those mandates resulted in similar outcomes, due to the utilisation of very traditional approaches to peacekeeping. Therefore, both the Brahimi Report and Capstone Doctrine signified an extraordinary evolution in the United Nations approach to peacekeeping in general, based on the lessons learnt from those atrocities. The UN was forced to realise that in order to be effective; achieve its goals and effectively fulfil its international function, it had to acknowledge that peacekeeping operations could not merely be authorised under the traditional principles of consent; impartiality and the prohibition of the use of force, but that all the elements of international peace and security activities (*i.e. peacekeeping; conflict prevention and peace enforcement*) had to be incorporated, due to the change in dynamics; complexity and multi-dimensionality of the nature of conflicts.

South Africa's Approach to Peacekeeping Prior to 1994

Based on the understanding of what peacekeeping is, it would be beneficial to understand the evolution of South Africa's approach to peacekeeping in terms of what South Africa was contributing to peacekeeping prior to 1994, as the isolation and interaction which South Africa was engaged in with the international community can be regarded as the reason for South Africa's post-1994 approach and attitude towards international peacekeeping, which was based on a foreign policy which aimed at transitioning from 'confrontational' towards a policy which encouraged 'cooperation'.³⁸ It is common knowledge that South Africa was not involved in peacekeeping missions in Africa or any part of the world during Apartheid. Two reasons exist for this lack of interaction: one, the South African government showed equivocation towards International Humanitarian Law³⁹, and two, South Africa was isolated from not only other African countries, but also the rest of the world due to the apartheid regime being in effect. In 1948, with the UN's renewed dedication to human rights; racial equality and decolonisation, the South African government became an adversary of the UN because of policy which was in direct contravention of those values. At the same time,

³⁸ Pfister, R, *South Africa's Post-apartheid Foreign Policy towards Africa*, Electronic Journal of Africana Bibliography Volume 6 (2000) (last visited 01/04/2016)

³⁹ Dugard, J (1997), *Kaleidoscope: International Law and the South African Constitution*, EJIL (1997) 77-22, available at <http://www.ejil.or/pdfs/8/1/1426.pdf> (last visited 17/10/15)

South Africa had failed to incorporate the Charter of the United Nations (hereinafter referred to as the Charter) into its domestic law, this despite it being obligated to respect and promote human rights, in terms of Article 55 and 56 of the Charter (*provisions generally regarded as principles of Customary International Law*).⁴⁰ I have listed the following UN Security Council Resolutions as examples of how the Security Council intended to isolate the Government of South Africa, by imposing various sanctions as a form of both punishment and deterrent from the practices of Apartheid⁴¹: “In 1963, the Security Council adopted Resolution 181, which called upon all States to cease the sale and shipment of arms, ammunition and military vehicles to South Africa (and the arms embargo was made mandatory on 4 November 1977); the General Assembly urged all States to refrain from supplying petroleum to South Africa (with regard to Namibia), which constituted the first of many efforts by the UN to enact effective oil sanctions against apartheid. In December 1968, The General Assembly requested all States and organisations "to suspend cultural, educational, sporting and other exchanges with the racist regime and with organisations or institutions in South Africa which practice apartheid". In November 1973, the International Convention on the Suppression and Punishment of the Crime of Apartheid was approved by the General Assembly (Resolution 3068(XXVIII)), and the convention came into force on 18 July 1976. This convention was the UN's final step in condemning Apartheid; declaring that apartheid was criminal and unlawful due to its violation of the Charter.⁴² Lastly, in 1984, in a bid to show its disapproval of the Apartheid Governments' regime, the United Nations under Security Council resolution 39/2,⁴³ the Security Council declared the new racist constitution of South Africa null and void,⁴⁴ solidifying South Africa's isolation from the rest of the rest of the international community. South Africa had a tumultuous relationship with other regional states because of its apartheid policies, policies which disregarded the equality of persons based on their skin colour. The Organisation of African Unity (OAU) at the time, condemned apartheid and called

⁴⁰ Dugard, J (1998) *The South African Judiciary and International Law in the Apartheid Era*, 14 S. Afr. J. on Hum. Rts. 110 1998, Retrieved from HeinOnline (07/09/15)

⁴¹ *The United Nations: Partner in the Struggle against Apartheid*, available at <http://www.un.org/en/events/mandeladay/apartheid/shtml> (last visited 08/06.2015)

⁴² Dugard, J, *Convention on the Suppression and Punishment of the Crime of Apartheid*; New York, 30 November 1973, Audiovisual Library of International Law (last visited 01/04/2016)

⁴³ Security Council Resolution A/RES/39/02, available at <http://www.un.org/documents/ga/res/39/a39r002.htm> (last visited 01/04/2016)

⁴⁴ Charter of the United Nations and Statute of the International Court of Justice, available at www.satreatyseries.net.innopac.up.ac.za/trindex.htm (last visited 27/05/2015)

for sanctions against South African goods, which led to fourteen independent African states formulating the Lusaka Manifesto in 1969, rejecting inequality; racism and called for black majority rule in all African States. The Lusaka Manifesto was later adopted by the OAU and UN despite the Manifesto taking what could be considered as a passive attitude towards South Africa, by recognising its independence and basing this stance on fear of military involvement in the situation.⁴⁵ Further, due to South Africa facing its own internal domestic challenges caused by the implementation and resistance of the Apartheid regime, the State was in no position to be involved in peacekeeping operations in any other state. The Apartheid Government had adopted hostile foreign policies against African countries who were at the forefront of resistance against the despotic apartheid system, such as Botswana and Zimbabwe. South Africa was in a state of war with many of its neighbouring countries, launching bomb raids and land-based incursions against Angola; making available arms and training to opposition groups in Mozambique; using Namibia as a base from which to attack other countries from.⁴⁶ In conclusion, declarations made by former Presidents Nelson Mandela and Thabo Mbeki in the early days following the 1994 democratic elections revealed the governments' advanced devotion towards the African continent, and ultimately lead to Mbeki's notion of an "African Renaissance".⁴⁷ A notion which beckoned for the *"liberalisation of African states and their economies; the institution of values that must replace corruption and incompetence; as well as seeking the peaceful resolution of conflicts, and encouraging an Africa-centred engagement that will promote trade and sustainable development"*.⁴⁸

South Africa's Obligation to participate in peacekeeping

Finally, South Africa's international obligation to partake in peacekeeping is based on its status as a Member State of the UN.⁴⁹ Despite the Charter of United Nations

⁴⁵ 1948 - 1976: South African Foreign Relations: The OAU and the Lusaka Manifesto, available at <http://v1.sahistory.org.za/pages/hands-on-classroom/classroom/pages/projects/grade12/lesson13/03-oau.htm> (last visited 07/09/15)

⁴⁶ *Inter-Ministerial Committee's Twenty Year Review: South Africa, 1994 – 2014*, available at <http://www.20yearsoffreedom.org.za/20YearReview.pdf> (last visited 17/10/15)

⁴⁷ Bongmba, EK, *Reflections on Thabo Mbeki's African Renaissance*, Journal of Southern African Studies Volume 30, Issue 2, 2004

⁴⁸ See fn 47 above

⁴⁹ *Member States of the United Nations*, United Nations website, available at <http://www.un.org/en/members/#s> (last visited 07/09/15)

(hereinafter referred to as the Charter) not explicitly providing for peacekeeping activities, South Africa is bound to contribute towards and participate in the maintenance of international peace and security in terms of Article 43 of the Charter, due to the ratification by South Africa of the Charter and Statute of the International Court of Justice on 7 November 1945.⁵⁰ Article 43 (1) provides that “*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*”.⁵¹ This Member State status therefore creates the obligation to act in accordance with mandates issued by the applicable bodies of the UN, such as the Security Council, in terms of Article 49 which provides that, “*The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council*”.⁵² The Security Council, whose primary responsibility is to maintain international peace and security, and in turn is responsible for adopting peacekeeping resolutions, fulfils its purpose by implementing procedures to ensure the maintenance of international peace and security. Many of these measures result in the Security Council invoking Chapter VII of the Charter, which deals with the actions permitted where there are threats to the peace; breaches of the peace and acts of aggression, out of necessity and based on deployments into highly volatile situations (such as the Democratic Republic of Congo and Sudan).⁵³ Therefore, based on the provisions of Chapter VII of the Charter, as well as the provision of Article 2(2), which states that, “*All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter*”⁵⁴, South Africa is obliged to participate in peace and security activities, established and authorised by Security Council resolutions.

⁵⁰ *The United Nations: Partner in the Struggle against Apartheid*, available at <http://www.un.org/en/events/mandeladay/apartheid.shtml> (last visited 08/06/2015)

⁵¹ United Nations Charter, United Nations website, available at <http://www.un.org/en/charter-united-nations/> (last visited 01/04/2016)

⁵² See fn 51 above

⁵³ *Mandates and the Legal Basis for Peacekeeping*, United Nations Website, available at <http://www.un.org/en/peacekeeping/operations/pkmandates.shtml> (last visited 07/09/15)

⁵⁴ See fn 51 above

According to the Minister of Defence and Military Veterans, during 2012, the South African National Defence Force (hereinafter referred to as SANDF) was deployed on various peace missions in the following capacities: the “United Nations and African Union Field Peace Missions; Bilateral Peace Building Missions (*which are tasked with focusing on job creation; economic rejuvenation and institutional-building*)⁵⁵ and dedicated Standby Forces to be deployed as part of the (SADC) standby Force,”⁵⁶ which is tasked with peace support mission by observing; monitoring and taking actions to prevent the resurgence or spread of violence.⁵⁷ As a member of both the African Union and SADC (Southern African Development Community), South Africa is therefore obligated to fulfil its regional obligations by partaking in peacekeeping in African conflict. In terms of Chapter VIII of the Charter⁵⁸, regional organisations are authorised (with prior authorisation from the Security Council) to participate in peace missions in their appropriate regions, on the basis of their own enterprise. The African Union (hereinafter referred to as the AU) and SADC are therefore authorised in terms of Chapter VIII, to perform the necessary function of promoting peace, security and stability in Africa.⁵⁹ This internationally and regionally imposed obligation is reiterated in the Revised White Paper on South African Participation in International Peace Missions,⁶⁰ which confirms that South Africa obtains its mandates for participation in international peacekeeping missions from both the African Union and SADC. In terms of the in the Revised White Paper on South African Participation in International Peace Missions, the African Union directive, a directive which is governed to degree by the African Union Constitutive Act⁶¹, prescribes that the AU (comprised of African member states) are required to intervene in situations where member states are committing war crimes, genocide and crimes against humanity. The African Union adopted a more

⁵⁵ *The Peacebuilding Commission: New York-based, Field-oriented, Summary of the Workshop hosted by the Permanent Mission of Norway, July 2013*, available at <http://www.un.org/en/peacebuilding/pdf/oc/Field-based%20interface-%20workshop%20summary-12Jul13-FINAL.pdf> (last visited 01/04/2016)

⁵⁶ Ministry of Defence and Military Veterans, *Question posed in the National Council of Provinces – Question No: 108 (09 March 2012)*, retrieved from Sabinet Legal Policy Document (08/06/2015)

⁵⁷ *Standby Force and SADC Brigade, Southern African Development Community, Towards A Common Future*, available at <http://www.sadc.int/themes/politics-defence-security/regional-peacekeeping/standby-force/> (last visited 01/04/2016)

⁵⁸ See fn 51 (page 13)

⁵⁹ *Presentation on the Revised White Paper on South Africa in International Peace Mission*, Briefing Paper: Department of International Relations and Cooperation, 12/02/2014, Retrieved from Sabinet Legal 07/09/2015

⁶⁰ See fn 59 above

⁶¹ Constitutive Act of the African Union, available at http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf (last visited (01/04/2016)

'interventionalist' position than its predecessor, the OAU (whom, in its Constitutive Act provided that in terms of Article 4(f) and (g), The OAU was prohibited from the use of force or the threat of use of force among Member states, and the principle of non-interference in the internal affairs of Member States was to be adhered to⁶²). This 'interventionalist' approach was demonstrated in 2004 with the establishment of the AU's Peace and Security Council, which was mandated to conduct peacekeeping; peacemaking and peacebuilding.⁶³ This Council has been tasked with the promotion and maintenance of peace, security and stability in Africa; preventative diplomacy and management of catastrophes and humanitarian actions,⁶⁴ guided by the objectives set out in the Policy on Post-Conflict Reconstruction and Development. The objectives set out in the Policy on Post-conflict Reconstruction and Development are as follows: the establishment of peace; prevention of the reoccurrence of violence, by addressing the 'root causes' of such conflict; inspire and promote planning and implementation of reconstruction in conflict regions.⁶⁵ The Council's establishment of the Protocol Relating to the Peace and Security Council of the African Union, which after being ratified by the majority of African member states in December 2003, and being entered into force to solidify the AU's stance on international peacekeeping, brought to the forefront the most significant difference between the OAU and the AU, which is reflected in Article 7(1)(c) and (e) of the Protocol. Article 7(1)(c) provides that the Council, together with the Chairperson of the Commission, shall authorise the mounting and deployment of peace support mission⁶⁶, while Article 7(1)(e) provides that the Peace and Security Council are authorised to "*recommend to the Assembly [of heads of state] intervention, on behalf of the Union, in a Member State in respect of grave circumstances, namely war crimes, genocide and crimes against humanity, as defined in relevant international conventions and instruments*".⁶⁷ The implications of these provisions, together with Article 4(h) of the Constitutive Act which states that

⁶² See fn 61 (page 14)

⁶³ Murithi, T, *The African Union's evolving role in peace operations: the African Union Mission in Burundi, the African Union Mission in Sudan and the African Union Mission in Somalia*, Institute for Security Studies African Security Review 17.1, available at <https://www.issafrica.org/uploads/17NO1MURITHI.PDF> (last visited 01/04/2016)

⁶⁴ *Peace and Security Council*, African Union website, available at <http://au.int/en/organs/psc> (last visited 17/10/15)

⁶⁵ African Union Policy on Post-Conflict Reconstruction and Development, available at <http://www.peaceau.org/uploads/pcrd-policy-framework-eng.pdf> (last visited 17/10/15)

⁶⁶ Protocol Relating to the establishment of the Peace and Security Council of the African Union, available at <http://www.peaceau.org/uploads/psc-protocol-en.pdf> (last visited 01/04/2016)

⁶⁷ See fn 66 above

“*The right of the Union to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances, namely war crimes, genocide and crimes against humanity*”⁶⁸, are that the AU is now authorised to intervene in internal situations which may lead to atrocities being committed against minority groups or communities at risk, within states, without UN intervention.⁶⁹ Furthermore, Article 16 of the Protocol, provides that the Council should exert itself, together with regional mechanisms, such as SADC, in promoting initiatives aimed at ‘anticipating and preventing conflict’.⁷⁰

Therefore, based on the provisions of the Brahimi Report; Capstone Doctrine; Constitutive Act; Protocol and Policy, it is evident that the AU’s objectives are based on and naturally guided by the aforementioned and should be similar to that of the United Nations. While this statement is generally true, Article 7(1)(c) and (e) of the Protocol and Article 4(h) of the Constitutive Act contradicts the United Nations Charter in that, while the AU continues its working relationship with the UN and international organisation such as SADC, Article 39 of the UN Charter provides that it is the Security Council that will “*determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*”⁷¹ Lastly, in terms of hierarchy, SADC’s position on regional peacekeeping is ancillary to that of the African Union, and it is therefore both guided by and based on the UN Charter; the AU Constitutive Act and Peace and Security Council Protocol.⁷² The principles and objectives of SADC, which include solidarity; peace and security and the peaceful settlement of disputes are principles which the SADC Brigade (which is comprised of troops from SADC countries, including South Africa) are bound by.⁷³

⁶⁸ See fn 59 (page 14)

⁶⁹ See fn 63 (page 15)

⁷⁰ See fn 66 (page 14)

⁷¹ See fn 51 (page 13)

⁷² See fn 59 (page 14)

⁷³ *Regional Peacekeeping, Standby Force and SADC Brigade, Southern African Development Community, Towards A Common Future*, available at <http://www.sadc.int/themes/politics-defence-security/regional-peacekeeping/> (last visited 01/04/2016)

It is imperative at this stage to note that, while all members of the UN are obliged to support Security Council resolutions (in this case specifically relating to peacekeeping operations), South Africa has been especially active in this fulfilling this role, thus creating the impression that it is going over and beyond what it is legally obligated to do in terms of the Charter. This all-encompassing attitude towards peacekeeping in Africa could be contributed to the stance that South Africa has so fervently taken, that ‘African problems ‘ could and should be resolved with ‘African solutions’, or that the country’s ultimate vision is “a better South Africa, a better Africa and a better World”.⁷⁴ While Thabo Mbeki was the founding father of the African Peace and Security Architecture (and a keen promoter of an ‘African Renaissance’), which embodies the abovementioned maxim, Jacob Zuma has continued this legacy by seeking to strengthen the mechanisms which are in place to implement such maxim.⁷⁵ The ulterior motives behind this stance could be based South Africa’s ‘anti-imperialist ideology’⁷⁶ and the desire for political independence. There is also as perception (shared by both the African Union and South Africa), that African countries are bullied by external bodies such as the Security Council and International Court of Justice, which has in the past, denied African organisations the opportunity to attain and maintain peace in their own regions (it is the opinion of former Deputy Foreign Minister Ebrahim Ebrahim, that Libya is an excellent example of how the African Union was ‘deliberately side-lined’ from the NATO intervention in 2011).⁷⁷ Therefore, in concluding this section of work, three dramatic evolutions regarding peacekeeping operations can be noted, firstly, within the United Nation (which signifies the transition from a more traditional approach, towards a modern, robust and offensive form of peacekeeping), secondly , within the AU who adopted a more ‘interventionalist’ position than its predecessor, the OAU; and lastly within the South African approach, which went from zero participation in international peacekeeping operation prior to 1994, to gradual participation in some activity which would conform to the traditional

⁷⁴ See fn 59 (page 14)

⁷⁵ Nathan, L (2013), *African Solutions to African Problems, South Africa’s Foreign Policy*, WeltTrends, September/Oktober 2013, available at <http://www.up.ac.za/media/shared/Legacy/sitefiles/files/46/1322/17295/welttrends92themanathansdafirikaafrikanischeunionsicherheitspolitikdiplomatie.pdf> (last visited 17/10/15)

⁷⁶ See fn 75 above

⁷⁷ See fn 75 above

understanding of what peacekeeping is (South Africa's initial involvement in the DRC under MUNOC could be regarded as 'traditional peacekeeping'), and eventually found itself involved in peacekeeping operations which would be regarded as robust, offensive activity. This point will be dealt with further in Chapter 3.

Chapter 3: A Critical Analysis of how the trend of ‘offensive operation’ or ‘muscular peacekeeping’ which has been utilised by South Africa, contradicts the ideals of Peacekeeping, and what impact this new approach will have on future peacekeeping missions in Africa.

This section will deal with how the nature of conflict in Africa has affected South Africa’s approach to peace enforcement in Africa, specifically relating to its involvement in the Democratic Republic of Congo (DRC) and Sudan. The following questions will be dealt with in the first part of this chapter: firstly, what action is regarded as an ‘offensive operation’ / ‘muscular peacekeeping’; secondly, how do the principles of the traditional approach to peacekeeping contradict the ideals of the contemporary approach to peacekeeping? In the second part of this chapter, I will address how South Africa has utilised this new trend or approach to Peacekeeping in Africa, focusing on what can be considered as South Africa’s attitude towards the use of force in peace enforcement missions in the DRC and Sudan, in addition to the circumstances in which South Africa has been willing to commit to mandates which permit troops to use significant force, as the Government has been willing to do in the DRC and Sudan. Finally, I will address whether South Africa’s approach to the abovementioned conflicts could be considered as aligned with the international community’s response to peacekeeping doctrine and policy, and what the general impact of this approach will have on the outcome of both present and future peacekeeping missions in Africa.

The Contemporary Approach to Peacekeeping

Two novel terms which emerged from the transition towards a contemporary approach to peacekeeping was *peace enforcement* and *peace support*. As previously described in Chapter 2, peace enforcement operations are generally authorised in order to re-establish international peace and security, through the use of force, in circumstances where there is a threat to or breach of peace, or acts of belligerence.⁷⁸ While peace support missions are designed to undertake a range of civilian and military tasks, which include the maintenance of public order, mentoring of surety forces;

⁷⁸ *Chapter 3: The Basic Principles of United Nations Peacekeeping*, United Nations Peacekeeping Operations: Principles and Guidelines (2008) [Capstone Doctrine], available at <http://www.un.org/en/peacekeeping/operations/principles.shtml> (last visited (20/08/15))

infrastructure and national reconciliation.⁷⁹ Offensive operations and muscular peacekeeping can be regarded as actions or models which would fall into activities which are regarded as peace enforcement,⁸⁰ due to both actions employing a greater degree of the threat or use of (military) force in the execution of the task to achieve an absence of violence in a region embroiled in conflict.⁸¹ Both of the abovementioned models allow for flexibility between the traditional principles of peacekeeping and peace enforcement. More specifically, situations which fall in between Chapter VI peacekeeping (Pacific Settlement of Disputes) and Chapter VII peace enforcement (Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression) are generally termed *muscular peacekeeping* or '*Chapter VI and a half missions*'.⁸² According to Article 33(1), Chapter VI of the United Nations Charter, "*The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice*".⁸³ In contrast, under Chapter VII, Article 43(1) provides that all Members of the UN must make armed forces available in the execution of actions committed for the purpose of maintaining peace and security and Article 45 provides that Members must national air-force contingents available for international enforcement measures.⁸⁴ Consequently, by South Africa engaging in what is considered as peace enforcement activities in the DRC and Sudan, so too has South Africa participated in offensive operations and muscular peacekeeping.

The nature of peacekeeping has undergone intense changes, which, upon closer inspection, appear to deviate significantly from the traditional understanding of peacekeeping. In present conflict situations, there is a much greater need to make use of force in missions, in order to execute missions more effectively; protect the civilian

⁷⁹ Oliver, GF, *The Other side of Peacekeeping: Peace Enforcement and Who Should Do It*, International Peacekeeping: The Yearbook of International Peace Operations, Volume 8, 2002, p. 99-117

⁸⁰ See footnote (fn) 78 (page 19)

⁸¹ Morris, CA (1994), *Muscular Peacekeeping: Americas Policy in Evolving United Nations Military Operations*, Naval War College, available at <http://www.dtic.mil/dtic/tr/fulltext/u2/a283438.pdf> (last visited 24/04/2016)

⁸² See fn 81 above

⁸³ The Charter of the United Nations, available at <http://www.un.org/en/charter-united-nations/index.html> (last visited 25/08/15)

⁸⁴ See fn 83 above

population and successfully complete humanitarian operations⁸⁵. Despite the fact that under the traditional principles of peacekeeping, United Nations (UN) peacekeepers have previously had the right to use force in self-defence in terms of Article 51 of the United Nations Charter, this right had been exercised cautiously, even in situations where the use of force would appear to be reasonable and justifiable.⁸⁶ Recently, the Security Council has adopted the practice of invoking Chapter VII of the Charter when authorizing the deployment of UN peacekeeping operations into volatile post-conflict settings where the State is unable to maintain security and public order. The invocation of Chapter VII signifies the UN's firm political resolve and serves as a reminder to the parties involved in a conflict, and the rest of UN Members, of their obligation to give effect to the Security Council decision.⁸⁷ The shift in approach within the UN has been influenced by the changes in the nature of war; the overwhelming and devastating impact on society; the fact that many UN approved missions in Africa now have Chapter VII mandates; but most predominantly by the international community's reactions to the UN's failures in Rwanda and Srebrenica, as discussed in Chapter 2. Therefore, the contemporary approach to peacekeeping which now includes peace enforcement and support operations, entails a greater degree of 'firepower capabilities' and a readiness to use a higher degree of force, occasionally in environments which would resemble 'warlike' situations.⁸⁸ This shift in approach can be identified within the UN and its Member States, specifically South Africa, through relevant policy decisions and resolutions.

South Africa's approach to Conflict

This section will address how South Africa has utilised this contemporary trend or approach to Peacekeeping in Africa, with a focus on South Africa's attitude towards the use of force in peace enforcement missions in the DRC and Sudan, in addition to the circumstances in which South Africa has been willing to commit to mandates which

⁸⁵ Aboagye, FB, *International and Regional Trends in Peace Missions: Implications for the SA Army*, available at <https://www.issafrica.org/chapter-seven-international-and-regional-trends-in>. (last visited 05/07/15)

⁸⁶ Findlay, T, *The Use of Force in UN Peace Operations*, Oxford University Press (2002)

⁸⁷ *Mandates and the legal basis for Peacekeeping*, available at <http://www.un.org/en/peacekeeping/operations/pkmandates.shtml> (last visited 05/07/2015)

⁸⁸ See fn 6 (page 2)

permit troops to use significant force, as in the DRC and Sudan. In 2015, South Africa's overall contribution towards UN peacekeeping troops is 2173 personnel (including troops, police and military experts), of which 1333 personnel are deployed in the DRC in terms of Security Council (SC) Resolution 1925⁸⁹, which established MONUSCO in 2010; and 817 personnel deployed to Darfur, Sudan in terms of SC Resolution 1769⁹⁰, which established UNAMID in 2007.⁹¹ Under the mandate of MONUSCO, the Force Intervention Brigade (FIB) was established in August 2013⁹², with the specific mandate to 'take the initiative and neutralise' the Rwandan-backed M23 rebels, as well as two other foreign armed groups. South Africa, who has more than half of its personnel deployed in the DRC (*the high number of personnel committed can be contributed to the governments perception that maintaining peace and security in the DRC is imperative to the development of Africa*⁹³), is regarded as a 'key actor' in the creation of the FIB, which is seen as unsuccessful by the ordinary people of the region.⁹⁴ While in Darfur, the African Union and United Nations launched its hybrid operation (UNAMID), with its core mandate focused on the protection of civilians.⁹⁵ These missions and South Africa's approach to said missions will be discussed separately below.

Democratic Republic of Congo

In 1999, South Africa became one of the first African countries to deploy troops in the DRC⁹⁶, under Operation MISTRAL. This was established in response to the UN Security Council establishing MONUC in terms of SC Resolution 1279/1999⁹⁷, which

⁸⁹SC/ Res 1925 (2010), available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-> (last visited 20/08/15)

⁹⁰SC/ Res 1769 (2007), available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1769\(2007\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1769(2007)) (last visited 20/08/15)

⁹¹ *Troop and Police Contributions*, United Nations Peacekeeping website, available at <http://www.un.org/en/peacekeeping/resources/statistics/contributors.shtml> (last visited 20/08/15)

⁹²SC/ Res 2098 (2013), available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2098\(2013\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2098(2013)) (last visited 20/08/15)

⁹³ *Operation MISTRAL: Message from the Department*, available at <http://www.dod.mil.za/operations/international/Mistral.htm> (last visited 25/08/15)

⁹⁴Fabricius P (2014), *Is the Force Intervention Brigade Neutral?*, Institute for Security Studies, available at <https://www.issafrica.org/iss-today/is-the-force-intervention-brigade-neutral> (last visited 20/08/15)

⁹⁵ UNAMID Mandate, United Nations Peacekeeping website, available at <http://www.un.org/en/peacekeeping/missions/unamid/mandate.shtml> (last visited 20/08/15)

⁹⁶ *Operation MISTRAL*, available at <http://www.dod.mil.za/operations/international/Mistral.htm> (last visited 25/08/15)

⁹⁷ SC/ Res 1279/1999, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/DRC%20SRES1279.pdf> (last visited 24/08/15)

had the mandate to observe the ceasefire and disengagement of forces and maintain liaison with all parties to the Lusaka Ceasefire Agreement (1999).⁹⁸ In a series of other resolutions, the mandate was expanded to include the following: supervisions of the implementation of the Ceasefire Agreement (in addition to other related tasks); in 2005 Operation MISTRAL underwent a composition change in order to accommodate the DRC's first democratic election in 2006, which was run mainly by MONUC⁹⁹; MONUC continued to work in the DRC to implement multiple (political; military; rule of law and capacity-building) tasks, while trying to resolve ongoing conflict in the various provinces of the DRC. In 2010, under SC Resolution 1925/2010¹⁰⁰, The Security Council renamed MONUC, changing the name to MONUSCO (United Nations Organization Stabilization Mission in the Democratic Republic of Congo), whose mission it was to protect all civilians; humanitarian personnel and human rights defenders under imminent threat of physical harm or violence, and to provide support to the Government of the DRC, in its efforts to attain peace and stability.¹⁰¹ The most significant point to note with regard to the Security Council mandates in the DRC, is the fact that the Security Council authorised the missions to use all necessary means to achieve the objectives of the mandate, under Chapter VII of the Charter of the United Nations (hereinafter referred to as the Charter).¹⁰² In response to the continued violence, acts of sexual violence and serious human rights transgressions, which were used as weapons of war, the Security Council (and others), signed the Peace, Security and Cooperation Framework for the DRC and the Region on 05 March 2013¹⁰³. Then, on 28 March 2013, the Security Council unanimously adopted SC Resolution 2098/2013¹⁰⁴, which extended MONUSCO's mandate and created a specialised Force Intervention Brigade (hereinafter referred to as the Intervention Brigade), with the purpose of strengthening peacekeeping operations.¹⁰⁵ The resolution explicitly tasked

⁹⁸ MONUC (*United Nations Mission in the Democratic Republic in of Congo*), United Nations website, available at <http://www.un.org/en/peacekeeping/missions/past/munoc/background.shtml> (last visited 25/08/15)

⁹⁹ See fn 98 above

¹⁰⁰ SC/ Res 1925/2010, available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1925\(2010\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1925(2010)) (last visited 24/08/15)

¹⁰¹ See fn 100 above

¹⁰² See fn 83 (page 20)

¹⁰³ *Peace, Security and Cooperation Framework for the Democratic Republic of Congo*, available at http://www.un.org/en/ga/search/view_doc.asp?symbol=s/2013/131 (last visited 24/08/2015)

¹⁰⁴ See fn 103 above

¹⁰⁵ MONUSCO (*United Nations Organization Stabilization Mission in the Democratic Republic of Congo*), United Nations website, available at <http://www.un.org/en/peacekeeping/missions/MONUSCO/background.shtml> (last visited 24/08/15)

the Intervention Brigade with “carrying out offensive operations, either unilaterally or jointly with the Congolese armed forces, in a robust, highly mobile and versatile manner, to disrupt the activities of those groups, and to protect civilians by carrying out targeted operations to neutralize rebel forces”¹⁰⁶. The mandate was once again extended for another year in March 2014, under SC Resolution 2147/2014¹⁰⁷, which included the participation of the Intervention Brigade, which is still considered as an important contingent of MONUSCO. Due to the DRC being one of the first countries to receive a Chapter VII mandate: MONUSCO being one of the largest operations and authorisation being obtained to utilise unmanned aerial vehicles for the purposes of surveillance, the DRC has been regarded as a ‘testing ground’ for evolving UN peacekeeping operations.¹⁰⁸ It is important to note that there were other Operations (TEUTONIC I and II; AMPHIBIAN and SUNRAY) deployed in response to the situation in the DRC.¹⁰⁹ These Operations were by no means as large as Operation MISTRAL, but they did signify South Africa’s unfaltering commitment to continental peace and security. South Africa deployed Operation TEUTONIC I to the DRC with the principal purpose of assisting with the Security Sector Reform of the DRC Armed Forces (FARDC) by providing assistance with the identification and registration process, while Operation TEUTONIC II was deployed to facilitate the refurbishing of training centres in various regions, as well as upgrading the FARDC Military Hospital. These operations were terminated by the end of 2010, and Operation AMPHIBIAN was deployed from 2002 until 2004 and tasked with overseeing the extraction of the Rwandan forces from the DRC, while under Operation SUNRAY, the SANDF assisted the European Union's Interim Emergency Multinational Force in planning their deployment in Paris, and eventually ground personnel and SAAF helicopters were deployed in the DRC.¹¹⁰

¹⁰⁶ *Issue Brief: The United Nations Intervention Brigade in the Democratic Republic of the DRC* (2013), available at

<http://reliefweb.int/sites/reliefweb.int/files/resources/The%20UN%20Intervention%20Brigade%20in%20the%20Democratic%20Republic%20of%20the%20Congo.pdf> (last visited 28/08/15)

¹⁰⁷ SC/ Res 2147/2014, available at

http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2147.pdf (last visited 24/08/15)

¹⁰⁸ See fn 103 (page 24)

¹⁰⁹ *14 SA Peace Missions in 11 years*, Defence Web, Peacekeeping Africa 2010, available at http://www.defenceweb.co.za/index.php?option=com_content&view=article&id=6351&Itemid=171 (last visited 17/10/15)

¹¹⁰ See fn 106 above

Darfur, Sudan

While, On 30 June 2004, after a year of raging internal conflict in Darfur, acting under Chapter VII, the UN Security Council adopted SC Resolution 1556¹¹¹. This Resolution demanded that the Government of Sudan disarm the Janjaweed militia; apprehend and bring to justice its leaders and their associates (who incited and carried out violations of human rights and international humanitarian law, in addition to other atrocities¹¹²); and endorsed the deployment of international monitors to ensure the mandate was complied with.¹¹³ In July 2004, Operation CORDITE was deployed in support of AMIS, to Darfur, with the primary purpose of performing peacekeeping operations. This mandate continued to be extended up until 2007, while the Security Council struggled to finalise details of the UN missions' deployment.¹¹⁴ After years of what many deemed an unsuccessful intervention by the African Union (AU), the AU mission was terminated, and the Security Council authorised and mandated the establishment of AU / UN Hybrid Operation in Darfur (UNAMID), under SC Resolution 1769.¹¹⁵ The relevance of the establishment of this peacekeeping mission was that firstly, it was the first AU-UN hybrid mission¹¹⁶, and secondly, the Government of Sudan finally accepted the UN's humanitarian aid, as well as its peacekeeping troops, as opposed to its previous conduct of proficiently steering against the institution of the UN peacekeeping forces.¹¹⁷ The mission was mandated and authorised to do various tasks, including: protecting civilians and preventing armed attacks; supporting and ensuring effective implementation of the Darfur Peace Agreement¹¹⁸, in addition to

¹¹¹ SC/ Res 1556/2004, available at

http://www.sipri.org/databases/embargo/unesco/un_arms_embargo/unesco/1556 (last visited 25/08/15)

¹¹² *Security Council demands Sudan Disarm Militias in Darfur, Adopting Resolution 155 (2004) by Vote of 13-0-2*, United Nations Meetings Coverage and Press Release, available at

<http://www.un.org/press/en/2004/sc8160.doc.htm> (last visited 25/08/15)

¹¹³ See fn 109 (page 24)

¹¹⁴ *Operation CORDITE (Sudan)*, available at

<http://www.dod.mil.za/operations/international/OpCorditeSudan.htm> (last visited 25/08/15)

¹¹⁵ SC/ Res 1769/2007, available at

<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CAC%20SRES%201769.pdf> (last visited 25/08/15)

¹¹⁶ See fn 111 above

¹¹⁷ Murithi, T (2008), *The African Union's evolving role in peace operations: the African Union Mission in Burundi, the African Mission in Sudan and the African Union Mission in Somalia*, African Security Review, 17:1, 69-82, DOI: 10.1080/10246029.2008.9627460, available at

<http://dx.doi.org/10.1080/10246029.2008.9627460> (last visited 20/08/15)

¹¹⁸ *Darfur Peace Agreement*, available at <http://www.un.org/zh/focus/southern Sudan/pdf/dpa.pdf> (last visited 25/08/15)

preventing the disruption of the implementation of such agreement.¹¹⁹ Through its involvement, Operation CORDITE has successfully contributed to the peaceful division of Sudan and South Sudan; it has assisted in South Sudan's independence celebrations in 2011 (in addition to training police, prison officials and air traffic controllers situated at the capitals international airport), and it maintains its presence in Sudan to ensure that peace and stability is achieved once and for all, while assisting the people of Darfur.¹²⁰

Critique of the intervention in the DRC and Sudan

Despite the numerous successes in the DRC and Sudan, the operations have been criticized for the following shortcomings: firstly, despite MONUSCO being the largest United Nations peacekeeping mission in 2014 (with 12 500 peacekeepers deployed in the region), conflict is still on-going in the DRC, with various parties to the conflict ignoring calls for ceasefire and additional fighting in the midst dire conflict-induced humanitarian crisis.¹²¹ With an estimated 200 000¹²² people killed in Darfur and more than 6 million killed in the DRC due to conflict-related causes¹²³, it would appear that the liberal use of force in those regions, is not preventing the continuance of superfluous and unconscionable killing of African lives. This sentiment could be substantiated by the International Peace Institutes report, which specifically recorded that the Security Council made the Intervention Brigade and MONUSCO a party to the conflict in the DRC by giving both parties "*uniquely-offensive mandates*".¹²⁴ If this is in fact so, it could explain how MONUSCO operations in the DRC has caused collateral damage, which has included civilian deaths and which have become permissible where it is deemed as proportionate, in the progression of offensive operations which

¹¹⁹ *UNAMID Mandate*, United Nations website, available at <http://www.un.org/en/peacekeeping/missions/unamid/background.shtml> (last visited 25/08/15)

¹²⁰ *Operation CORDITE (Sudan)*, available at <http://www.dod.mil.za/operations/international/OpCorditeSudan.htm> (last visited 25/08/15)

¹²¹ *PSC field visit to South Sudan still pending despite 'enormous suffering'*, (2014) Institute for Security Studies, available at <https://www.issafrica.org/pscreport/situation-analysis/psc-field-visit-to-south-sudan-still-pending-despite-enormous-suffering> (last visited 20/18/15)

¹²² *The Conflict in Darfur (2007)*, Department of Foreign Affairs, retrieved from Sabinet Legal Policy Document (20/08/15)

¹²³ *Crisis in the Democratic Republic of Congo*, International Coalition for the Responsibility to Protect available at <http://www.responsibilitytoprotect.org/index.php/crises/crisis-in-drc> (last visited 20/08/15)

¹²⁴ See fn 91 (Page 22)

are executed in what is termed, “*the fog of war*”¹²⁵, which entails operations executed under ‘demanding conditions; high pressure and timely combat operations’. Secondly, notwithstanding Operation CORDITE’s decision to commit 636 personnel to assist with confidence-building in the Sudanese military in 2010, at the end of 2014, the aspirations of enduring peace in South Sudan were waning as the ceasefire was broken soon after the agreement was signed. This made a bad situation even worse where, in the midst of a harrowing humanitarian calamity, violence reconvened between warring parties.¹²⁶ Despite all of this, in June 2015, the Security Council adopted yet another resolution¹²⁷, which renewed UNAMID’s mandate and extended it until June 2016. UNAMID’s tactical priorities of ‘protecting civilians; facilitating humanitarian assistance and safety of humanitarian personnel and peace mediation between the Government of Sudan and non-signatories to the Doha Document for Peace in Darfur¹²⁸ were reaffirmed by the Security Council.¹²⁹ These failures in no way signify South Africa’s failure to execute the relevant mandates, but rather demonstrate how these multi-dimensional missions and external factors impact the success of the missions. Further, one would assume that the criticisms of the missions that the South African Government has contributed troops towards, would lead the Government to reconsider the high number of troops contributed towards those peacekeeping missions. This however is not the case, as in February 2016, South Africa was still

¹²⁵ Sheeran, S & Case, S (Nov 2014), *The Intervention Brigade: Legal Issues for the UN in the Democratic Republic of the Congo*, available at https://www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_legal_issues_drc_brigade.pdf (last visited 02/04/2015)

¹²⁶ *PSC field visit to South Sudan still pending despite ‘enormous suffering’*, (Dec 2014) Institute for Security Studies Africa website, available at <https://www.issafrica.org/pscreport/situation-analysis/psc-field-visit-to-south-sudan-still-pending-despite-enormous-suffering> (last visited 20/08/15)

¹²⁷ SC/ Res 2228/2015, available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2228\(2015\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2228(2015)) (last visited 25/08/15)

¹²⁸ *The Doha Document for Peace in Darfur (DDPD) was finalised in May 2011 in Doha, Qatar. The Government of Sudan and the Liberation and Justice Movement signed a protocol agreement committing themselves to the Document in July 2014, which is now the framework for the comprehensive peace process in Darfur*, available from <http://unamid.unmissions.org/Default.aspx?tabid=11060> (last visited 25/08/15)

¹²⁹ *Prioritizing Civilian Protection, Drawdown Benchmarks, Security Council Adopts Resolution 2288 (2015) Renewing Mandate of Darfur Mission until 30 June 2016*, United Nations Meetings Coverage and Press Release, available at <http://www.un.org/press/en/2015/sc11951.doc.htm> (last visited 25/08/15)

contributing a total of 2 072 personnel¹³⁰, with 1 344 personnel contributed to MONUSCO and 728 personnel under UNAMID¹³¹.

South Africa's Emerging Policy Framework

Because all documents relating to the deployment of troops under Operation MISTRAL and CORDITE are classified documents, I have had to rely on the Revised Paper on South Africa in International Peace Missions¹³² and the Department of Defence's Defence Review and Annual Report, specifically for the relevant years in which troops were deployed on the above mentioned missions, and Annual Performance Plan for 2015.¹³³ While the White Paper is not regarded as binding law¹³⁴ it does indicate what South Africa's policy is regarding the participation in peacekeeping missions. In terms of the Revised White Paper, the values in the Constitution underpin its national interest and its participation in international peacekeeping missions at present. As affirmed in the Revised White Paper, those national interests are as follows: 'securing the safety of the state and its citizens; promoting the social and economic well-being of its citizens; encouraging global peace and stability; participating in the process to ensure regional peace, stability and development'.¹³⁵ The Revised White Paper specifies that mandates for South Africa's participation in Peacekeeping Missions, as previously mentioned, are derived from mandates issued by the following bodies, and which are regarded as the 'cornerstone of South Africa's participation in Peace missions: (1) the UN, whose principles are consent; impartiality and the non-use of force, except in self-defence, while its main

¹³⁰ *Contributors to United National Peacekeeping Operations*, United Nations Website, available at http://www.un.org/en/peacekeeping/contributors/2016/feb16_1.pdf (last visited 02/04/2016)

¹³¹ *UN Mission's Summary detailed by Country*, United Nations Website, available at http://www.un.org/en/peacekeeping/contributors/2016/feb16_3.pdf (last visited 02/04/2016)

¹³² *Presentation on the Revised White Paper on South Africa in International Peace Mission, Briefing Paper: Department of International Relations and Cooperation*, 12/02/2014, Retrieved from Sabinet Legal 07/09015

¹³³ Department of Defence Annual Performance Plan 2015, available at <http://www.dod.mil.za/documents/annualreports/DoD%20Planning%20Instruments%20Annual%20Performance%20Plan&20403.pdf> (last visited 17/10/15)

¹³⁴ *The process of making a law may start with a discussion document called a Green Paper that is drafted in the Ministry or department dealing with a particular issue. This discussion document gives an idea of the general thinking that informs a particular policy. It is then published for comment, suggestions or ideas. This leads to the development of a more refined discussion document, a White Paper, which is a broad statement of government policy. It is drafted by the relevant department or task team and the relevant parliamentary committees may propose amendments or other proposals. After this, it is sent back to the Ministry for further discussion, input and final decisions.*, available at http://www.parliament.gov.za/live/content.php?Item_ID=1843 (last visited 12/10/15)

¹³⁵ See fn 132 above

objectives are the maintenance of international peace and security; (2) the AU, whose mandate is derived from Chapter VII of the UNC, and who is responsible for peace, security and stability in Africa; and lastly, (3) SADC, who is allowed to participate in Peace missions by the Protocol on the Establishment of the AU Peace and Security Council (AUPSC), which endeavours to promote initiatives aimed at anticipating and preventing conflict. Lastly, South Africa's foreign and domestic policies, which may not specifically be regarded as the cornerstone of South Africa's participation in international peacekeeping, but which are mutually reinforcing. South Africa's foreign policy has the purpose of promoting peaceful resolution of conflicts; creating an environment which is conducive for sustainable development and commitment to rules-based multilateralism. While its domestic policy is underscored by its constitutionally entrenched values and national interests of a democratic, peaceful, prosperous, non-racist, non-sexist society with respect for human rights and freedom that contributes to a work that is just and equitable.¹³⁶ The Revised White Paper creates the obligation on SA to participate in international peace missions by contributing civilians (both government officials and volunteers); military member and police men and women to the UN Standby Arrangement System; the AU Standby Force and the SADC Brigade.¹³⁷

The South African governments' hesitation to produce a statute from the Revised White Paper raises the question of whether the unacknowledged tension between the two bodies of law which it has committed itself to in that Paper, is one of the reasons (apart from the underlying political issues) that the Revised White Paper has not been signed into Legislation, despite the fact that the Paper was adopted almost 17 years ago in October 1999.¹³⁸ It is common knowledge that there are tensions between the UN and AU with regard to organisational procedures, or the lack therefore; an unequal working relationship; distinct organisation cultures; different working methods and the fact that there are currently no standard operating procedures for the AU to submit a request to the Security Council for consideration.¹³⁹ While these differences have

¹³⁶ See fn 132 (page 28)

¹³⁷ See fn 132 (page 28)

¹³⁸ Kent, V & Malan, M (April 2003), *Decision, Decisions: South Africa's foray into regional peace operations*; Institute for Security Studies, available at <https://www.issafrica.org/uploads/PAPER72.PDF> (last visited 10/04/2016)

¹³⁹ Williams, P.D & Boutellis, A (2014), *Partnership Peacekeeping: Challenges and Opportunities in the United Nations – African Union Relationship*, African Affairs: Oxford University Press obo Royal African Society (last visited 10/04/2016)

made it difficult for the AU and UN to find common ground and cooperate effectively in all situations¹⁴⁰; due to the substantial amount and extent of conflict in Africa, both bodies have continued to combine their organisational efforts to overcome the challenges related to achieving peace and security on the African continent.¹⁴¹ The unacknowledged tension which the Revised White Paper brings to light is that states (such as South Africa), are committing themselves to two bodies of law which embody contrasting legal principles. On the one hand, the Revised White Paper states that the principles and objectives of the UN Charter (consent; impartiality and non-use of force except in self-defence)¹⁴² are to be the guiding force in South Africa's approach to international peace and security, and unequivocally states that, "*The principle of consent and request by the host country is essential for the establishment of a peace mission in any sovereign territory*"¹⁴³. Whereas on the other hand, South Africa is also bound by the AU's legal framework which is based on more of an 'interventionist' standpoint, with a Constitutive Act which allows for more expansive and unrestrained philosophies on conflict intervention, and which provides that the "*right of the AU to intervene in a Member State pursuant to a decision of the Assembly in respect of grave circumstances namely: war crimes, genocide, and crimes against humanity*"¹⁴⁴. These legal provisions confer the AU with the authority to engage in more extensive humanitarian intervention, which inherently includes a more robust form of peacekeeping and which encompasses the contemporary notion of peacebuilding.¹⁴⁵ Another area of tension between the UN and AU can be found in Article 53(1) of the Charter and Article 4(h) of the AU Constitutive Act. In terms of Article 53(1), no enforcement of action relating to the maintenance of international peace and security by a regional agency shall be taken without the prior authorisation of the Security Council,¹⁴⁶ while in terms of Article 4(h), the AU has the right to intervene where a Member State is experiencing war crimes; genocide and crimes against humanity.¹⁴⁷ The tension which this creates is blatant, and remains unresolved.

¹⁴⁰ See fn 139 (page 29)

¹⁴¹ See fn 139 (page 29)

¹⁴² See fn 132 (page 28)

¹⁴³ See fn 138 (page 29)

¹⁴⁴ See fn 138 (page 29)

¹⁴⁵ See fn 139 (page 29)

¹⁴⁶ See fn 147 (page 20)

¹⁴⁷ Constitutive Act of the African Union, available at http://www.au.int/en/sites/default/files/ConstitutiveAct_EN.pdf (last visited (01/04/2016))

This indicates that the Revised White Paper openly commits South Africa to be bound to the UN and the principles of the Charter, which on its own, is regarded as symbolising the traditional principles of peacekeeping operations, while committing itself to the AU, whose principles can be regarded as the contemporary ideals of peacekeeping. These provisions in the Revised White Paper relating to the UN and AU mandates are peculiar because the Revised White Paper acknowledges that the traditional approach to peace missions has its limitations, and based on those limitations, there has been a shift towards a contemporary approach. The Revised White Paper then provides that the complexities of conflict and the prevalence of intra-state conflicts are a reality, and due to these 'modern' intricacies and limitations of the traditional approach to peace operations, the contemporary approach is necessary.¹⁴⁸ Therefore, it is clear that it would be difficult to sign the Revised White Paper into Legislation in its current state, as it fails to expand on the UN's revitalised approach to peacekeeping operations, as discussed in Chapter 2. In Chapter 2, I concluded that the principles of the UN Charter alone are regarded as traditional, and subsequently ineffective.¹⁴⁹ Further, I emphasized that it was the establishment of the Brahimi Report and drafting of the Capstone Doctrine that renewed the international community's confidence in the UN's ability to effectively address international conflict. Therefore, because SC Resolution 1327¹⁵⁰ legally bound all Member States of the UN to adhere to and implement the principles of the Brahimi Report in peacekeeping endeavours, it should be indisputable that those principles should be incorporated into and reflected in the Revised White Paper as the principles of the Charter alone are regarded as traditional, and this realisation could be the reason why the Revised White Paper is not yet Legislation.

In terms of the various Department of Defence Annual Reports and the South African Defence Review 2014¹⁵¹ (which is hypothetically regarded as a guide for policy-making, but which fails to provide or convey any specific policy decisions), provides comprehensive feedback for the public regarding what the Department observes as

¹⁴⁸ See fn 138 (page 29)

¹⁴⁹ Capstone Doctrine, See fn 78 (page 19)

¹⁵⁰ SC/Res 1327/2000, available at <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/CPR%20S%20RES%201327.pdf> (last visited 10/04/2016)

¹⁵¹ South African Defence Review 2014, available at http://www.gov.za/sites/www.gov.za/files/dfencereview_2014.pdf (last visited 10/04/2016)

‘achievements of measurable objectives’, and which includes the Department of Defence’s outcomes, which encompasses amongst other things, that “Peace, stability and security on the continent, is advanced through the support to multinational organisations such as the UN; the AU and the SADC”. After careful scrutiny of various Annual Reports released during the period 2004 to 2015, it can be noted that the same general message is reiterated throughout all the Annual Reports: South Africa is committed to its international obligations as it views South Africa’s successes and failures, as those of the people of Africa¹⁵², its participation is vital to the enhancement of diplomatic initiative¹⁵³; and that African economic development is impossible without securing continental peace and security.¹⁵⁴ The Department echoed its stance that in order to maintain peace and ensure sustainable economic development, it was vital for the Department to support the United Nations, the African Union, the New Partnership for Africa's Development and the Southern African Development Community's (SADC)¹⁵⁵; that defence foreign relations and diplomacy could not be over hyperbolized in the pursuance of global peace and security¹⁵⁶; that deploying troops to assist in continental peace missions, disaster and humanitarian support strengthens African solidarity; contributes towards the stabilisation and normalisation of those affected countries.¹⁵⁷ What is distinctly evident in these Annual Reports is firstly, that South Africa’s commitment to its participation in peace missions has been unwavering, despite budget constraints being one of the key challenges which the Department has faced over the years.¹⁵⁸ And secondly, that in terms of the Defence Review, South Africa has the ambition of approaching peace operations in Africa in a multidimensional (i.e. contemporary) way, by engaging the SANDF in tasks which are regarded as both military (peacekeeping) and civilian (humanitarian intervention; post-conflict reconstruction and development).¹⁵⁹ The Defence Reviews policies present

¹⁵² Department of Defence Annual Report 2004/2005, available at <http://www.dod.mil.za/documents/annualreports/AnnualReport2005.pdf> (last visited 17/10/15)

¹⁵³ Department of Defence Annual Report 2010/2011, available at <http://www.dod.mil.za/documents/annualreports/annrep%201011%20net.pdf> (last visited 17/10/15)

¹⁵⁴ Department of Defence Annual Report 2014/2015, available at <http://www.dod.mil.za/documents/annualreports/DoD%202014-15%20RGB.pdf> (last visited 17/10/15)

¹⁵⁵ See fn 54

¹⁵⁶ Department of Defence Annual Report 2005/2006, available at <http://www.dod.mil.za/documents/annualreports/AnnualReport2006.pdf> (last visited 17/10/15)

¹⁵⁷ Department of Defence Annual Report 2006/2007, available at <http://www.dod.mil.za/documents/annualreports/AnnualReport2007.pdf> (last visited 17/10/15)

¹⁵⁸ See fn 139 (page 29)

¹⁵⁹ See fn 147 (page 30)

the following two challenges: firstly, by engaging SANDF in both military and civilian tasks, such as peacekeeping and humanitarian assistance, there is fear that the efforts of humanitarian agencies will be compromised based on the fact that peacekeepers are mandated to establish peace, stability and security in a region faced with conflict, while the roles of humanitarian personnel are to be guided by the principles of humanitarian activities.¹⁶⁰ And secondly, the abovementioned missions (Operation MISTRAL and CORDITE, which resulted in a shortfall of millions of Rands as a result of UN and AU mission requests¹⁶¹) contributed to the budget constraints challenges, as they were regarded as unforeseeable and unavoidable peace support operation activities.¹⁶² The challenges regarding finances has however been rationalised, and almost disregarded completely because the accolades received from the international community reaffirmed that South Africa was making a meaningful contribution to the region, and was being acknowledged for the role the country was playing in the support and promotion of continental peace and security.¹⁶³

The conclusion which can be drawn from what the Revised White Paper; Defence Report and Review present in terms of policies regarding South Africa's approach to international peacekeeping, is that an undeniable lacuna exists within the legal framework. The Revised Paper on South Africa in International Peace Missions, appears to be nowhere near being signed into Legislation, and no proposed amendments have been put forward; and lastly, the South African Defence Review which serves as a guide for South African policy-making for the foreseeable future was approved despite the Defence Review not explicitly acknowledging the principles of humanitarian law; SANDF's limited capacity and '*irresponsible and misguided policy-making*'.¹⁶⁴ Each document presents a diverse range of ideals and policies, which I have shown to be conflicting and in turn signifies uncertainty regarding the South Africa's legal stance on its engagement in peacekeeping activities. Unlike the Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002,

¹⁶⁰ The Principles of humanitarian activities are: humanity; neutrality; impartiality and independence. See fn 139 (page 29)

¹⁶¹ *In that year, The UN requested the redeployment of an aircraft from Burundi to the DRC, while in Sudan, the AU requested that there be an increase of military personnel deployment.* See fn 60

¹⁶² See fn 138 (page 29)

¹⁶³ See fn 138 (page 29)

¹⁶⁴ Heleta, S (2016), *Securitising humanitarian assistance and post-conflict reconstruction in Africa: A critical review of South Africa's new defence policy*, African Security Review, 25:1, 4-20, DOI: 10.1080/10246029.2015.1124794, available at <http://www.tandfonline.com/doi/pdf/10.1080/10246029.2015.1124794> (last visited 10/04/2016)

which provided a tangible framework for the effective implementation and conformity to the obligations set out in the Rome Statute¹⁶⁵, creating legal certainty regarding South Africa's stance on the provisions of the said Statute, there is no material piece of legislation which sets the standard to which South Africa is bound to with regard to its participation in international peace operations. Needless to say, South Africa needs to back its proclamations of being committed to its international peacekeeping obligations with substantive and comprehensive legislation.

The Alignment of South Africa's Approach

The final section of this chapter will deal with whether South Africa's approach to the abovementioned conflicts could be considered as aligned with the international and regional community's response to peacekeeping doctrine and policy, and what the general impact of this approach will have on future peacekeeping missions in Africa.

First and foremost, two elements may well be evaluated in order to establish whether South Africa's approach to international peace operations is aligned to that of the international community's. The first element relates to the number of state participators, which reveals that the contribution and willingness of 55 states (22 of which are African states) to commit personnel to the MONUSCO mission; and 46 states (24 of which are African states) to commit personnel to UNAMID¹⁶⁶, would demonstrate the international community's eagerness to invest in and contribute towards peacekeeping operations in Africa. South American and Asian countries have been consistent in contributing a fair and satisfactory number of personnel to both missions, with the Asian contribution being more than 10 000 troops to MONUSCO (from countries including India, Bangladesh and China), and just less than 5000 personnel to UNAMID (from countries including Nepal, Thailand and Republic of Korea); while the South American contribution has totalled just less than 200 personnel under MONUSCO and less than 20 under UNAMID.¹⁶⁷ The EU emphasised

¹⁶⁵ Implementation of the Rome Statute of the International Criminal Court Act 27 of 2002, available at <http://www.justice.gov.za/legislation/acts/2002-027.pdf> (last visited 10/04/2016)

¹⁶⁶ *Troop Contributors*, United Nations website, available at <http://www.un.org/en/peacekeeping/contributor/2015/jul15.15.pdf> (last visited 02/09/15)

¹⁶⁷ *UN Mission's Contributions by Country, Sept 2015*, available at http://www.un.org/en/peacekeeping/contributors/2015/sep15_5.pdf (last visited 17/10)

in 2013 that “stability in the region as a whole depends upon the internal stability and development of each country.”¹⁶⁸, but this emphasis was not reflected in the number of European troops deployed under MONUSCO in 2015 (with a total number of European troops being 76 personnel from countries like the United Kingdom; France and Switzerland)¹⁶⁹ and under UNAMID, only Germany still has troops in Sudan.¹⁷⁰ And secondly, despite the DRC repeatedly requesting that troops engaging in peace operations be removed from the DRC and the government of Sudan only accepting troops subsequent to excessive pressure from the international community, AU and UN troops have continued to fulfil the mandates, this despite the inadequate support from the host state.¹⁷¹ South Africa’s approach to conflict in the DRC and Sudan, through its participation and general conduct can therefore be deemed largely as being both parallel and proportional to that of the international community’s approach, especially the African and Asian communities. The above is based on various factors, one of which is the fact that its co-member state of the AU and regional neighbour, Nigeria, which is the second largest peacekeeping contributor in Africa,¹⁷² has contributed personnel to more than 40 UN, OAU/AU and ECOWAS missions having personnel deployed in both the DRC and Sudan. Further, very much like South Africa, Nigeria has utilised its opportunities to be involved in peace operations in order to enhance its credentials in Africa, and its military and diplomatic status within the international community.¹⁷³ As with South Africa, there appears to be a very effective relationship between Nigeria’s executive and legislative arms of government, which is displayed in its National Assembly which is also vigorously involved in the decision-making process regarding peacekeeping, as it is constitutionally mandated to approve

¹⁶⁸ Council of the European Union: Council conclusions on the Democratic Republic of Congo (DRC) and the Great Lakes Region, Foreign Affairs Council Meeting, 16 December 2013, Brussels, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/140093.pdf (last visited 17/10/15)

¹⁶⁹ See fn 168 above

¹⁷⁰ See fn 168 above

¹⁷¹ Rodriguez, RM, *Unamid and MONUSCO – the Two Most Expensive UN peacekeeping Operations*, Lulu Press, Inc., 2015, available at https://books.google.co.za/books?id=qU8QCwAAQBAJ&dq=au+member+states+monusco&source=gs_navlinks_s (last visited 20/04/2016)

¹⁷² Ozkan, M (2013), *When a Giant became a 'Reluctant Peacekeeper': South Africa and Peacekeeping Operations between 1994 – 2003*, Africa Insight, available at http://www.researchgate.net/publication/260651991_When_a_Giant_became_a_'Reluctant_Peacekeeper'_South_Africa_and_Peacekeeping_Operations_between_19942003 (last visited 02/08/15)

¹⁷³ Peacekeeping Contributor Profile: Nigeria, Providing for Peacekeeping, available at <http://www.providingforpeacekeeping.org/2015/04/24/peacekeeping-contributor-profile-nigeria/> (last visited 12/04/2016)

any deployment of Nigerian troops outside the shores of the country.¹⁷⁴ All states which have committed troops under the specific mandates relating to MONUSCO and UNAMID, are bound by those mandates and are therefore authorised to 'use all necessary means' to achieve the objective of the Resolution.

The conclusion that South Africa's approach to peacekeeping is in fact aligned with that of the international community raises the question of whether the criticism of South Africa's applicable to its regional community. My response to this question would have to be yes, specifically those States which are members of both the UN and AU. Those Member States have committed themselves to two bodies which have conflicting legal principles, such as Article 53 of the Charter and Article 4(h) of the Constitutive Act. In order to rectify this dilemma, changes with regard to the doctrines established within the bodies of law of both the UN and AU need to occur in order to have present principles which are comparable and aligned. Alternatively, those Member states need to reach a decision on whether committing themselves to the UN and AU specifically regarding peacekeeping and peace enforcement is a rational determination which allows them to exercise their regional and or international obligation to participate in international peacekeeping.

To continue, with reference to the future of peacekeeping in Africa, it has been noted that in order to effectively address the multidimensionality of conflict in Africa, a modern approach is required. Therefore, in spite of the Charter of the United Nations lacking explicit legal provisions for UN peacekeeping operations¹⁷⁵, it is and should still be regarded as the 'source of authority' for the conduct within peacekeeping operations¹⁷⁶. It is my opinion then that the Brahimi Report and Capstone Doctrine should likewise be regarded as complementary sources of international authority for peacekeeping operations in this modern approach. While the AU Constitutive Act and Protocol should be regarded as the regional authority; and once the Revised White Paper is amended to reconcile the conflicting principles contained therein, that should be the domestic authority for South Africa's approach to peace operations in Africa.

¹⁷⁴ See fn 173 (page 35)

¹⁷⁵ Sheeran, SP (2011), *Briefing Paper: Contemporary Issues in UN Peacekeeping and International Law*, available at http://www.idcr.org.uk/wp-content/uploads/2010/09/02_11.pdf (last visited 02/09/15)

¹⁷⁶ Sule, AM (2013), *Nigeria's Participation in Peacekeeping Operations*, available at <http://cdn.peaceopstraining.org/theses/sule.pdf> (last visited 02/09/15)

With the AU's regulatory and institutional transformations, which now allow for the AU to authorise peace operations, a capacity which is an egression from the capabilities of its predecessor,¹⁷⁷ the AU's approach to peace operations appear to be more aligned with the contemporary principles of the Capstone Doctrine. In terms of the Capstone Doctrine¹⁷⁸, UN peacekeeping operations are regularly deployed to situations where militia and criminal gangs, in addition to groups who vigorously seek to destabilize the process of peace and pose a threat to civilians. The Security Council has been prepared to launch 'robust mandates' in these situations, giving authorisation to 'use all necessary means'¹⁷⁹ to protect civilians under impending threat of physical attack; to deter forceful attempts to disrupt political process and to assist national authorities in maintaining law and order.¹⁸⁰ The future of peacekeeping therefore appears to be heading in a direction which would constitute peace operations in order to accommodate for robust mandates which focus of the protection of civilians through peace enforcement, but which also recognises that humanitarian intervention and peacebuilding are crucial elements to lasting peace and security within the region.

The contemporary approach to peacekeeping encompasses the execution of offensive operations and what is regarded as muscular peacekeeping, in the face of the inherent disparity between the AU and UN, the AU's interventionist approach to peace and security has strengthened the AU-UN partnership, resulting in inventive approaches to present and future peace operations.¹⁸¹ The South African Legislature's decision to incorporate the principles of both the UN and the AU in its prospective legislation regulating its participation in international peacekeeping has shown its eagerness to be a party to the innovative approaches to peace operations. Further, with the aggrandizing of the AU's interventionist principle, contained in Article 4(h) of

¹⁷⁷ Okeke, JM, *An evolving model of African-led peace support operation? Lessons from Burundi, Sudan (Darfur) and Somalia*, from the book *Peacekeeping Africa: The Evolving Security Architecture* by Marco Wyss and Thierry Tardy, Routledge, Feb 2014 (pages 37 – 53) available at <https://books.google.co.za/books?id=MbPpAgAAQBAJ&pg=PA52&lpg=PA52&dq=Back+to+the+future:+UN+peacekeeping+in+Africa&source=bl&ots=9-EG7Lrnjk&sig=Ly4VAWx5j6NJXGo5zPO7IJAAdl4&hl=en&sa=X&ved=0ahUKEwiKgqrByKXMAhWjBsAKHYIHCwUQ6AEIPTA#v=onepage&q=Back%20to%20the%20future%3A%20UN%20peacekeeping%20in%20Africa&f=false> (last visited (20/04/2016))

¹⁷⁸ Capstone Doctrine, See fn 78 (page 19)

¹⁷⁹ *'all necessary means' implies that force may be used in terms of Chapter VII of the Charter, however, the bare minimum force necessary should be utilized to achieve the goals set out in the mandate, and the return of peace to the situation should always be at the forefront of the missions attention.*

¹⁸⁰ See fn 132 (page 28)

¹⁸¹ See fn 177 (page 17)

the Constitutive Act, which signified an unprecedented milestone for the future of peace operations in Africa,¹⁸² South Africa's continued support and participation in the AU and AU-led operations has inferred that the intentions and aspirations of the AU (to solve Africa's problems with African solutions), are shared by South Africa and its regional community.

¹⁸² See fn 177 (page 37)

Chapter 4: Conclusion

To say that South Africa follows a purely contemporary approach to international peacekeeping would be an inadequate description of South Africa's approach to peacekeeping operations, as I have previously noted that the modern ideals of peacekeeping are both based on and appear to co-exist with the traditional understanding of peacekeeping, even to the extent that the two ideals contradict one another. South Africa has tackled the need for African involvement in African problems by fully immersing itself in both UN and AU lead missions throughout the continent. However, South Africa's approach to peacekeeping particularly in the Democratic Republic of Congo and Sudan has been to a large extent regarded as a modern approach to peacekeeping, based on the multidimensional nature of the mandates under which MONUSCO and UNAMID were authorised. Moreover, the Intervention Brigade in the DRC (with a mandate which authorises the neutralisation of "all armed" groups, the use of force has not been conditional on the threat to civilians or the peace), characterises the contemporary model of peace enforcement and potentially signifies the nature of future of peacekeeping operations.¹⁸³ While South Africa currently lacks a binding legal doctrine, specifically regarding its participation in international peacekeeping, the Revised White Paper serves as a guide and the Defence Review reflects South Africa's stance and approach to peacekeeping.¹⁸⁴ Accordingly, the provisions of the Revised White Paper are important to this analysis, specifically the section which remarks that there has indeed been a shift from the traditional approach of the UN peace missions to a multidimensional approach to peace missions.¹⁸⁵ The definition of multidimensional peacekeeping presented in the Revised White Paper reflects the principles and ideals of both the Brahimi Report and the Capstone Doctrine, but does not take in consideration the traditional principles of peacekeeping. In terms of the principles of the Revised White Paper,

¹⁸³ Sheeran, S & Case, S (Nov 2014), *The Intervention Brigade: Legal Issues for the UN in the Democratic Republic of the Congo*, New York: International Peace Institute, available at https://www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_legal_issues_drc_brigade.pdf (last visited 29/04/2016)

¹⁸⁴ Heleta, S (2016), *Securitising humanitarian assistance and post-conflict reconstruction in Africa: A critical review of South Africa's new defence policy*, *African Security Review*, 25:1, 4-20, DOI: 10.1080/10246029.2015.1124794, available at <http://www.tandfonline.com/doi/pdf/10.1080/10246029.2015.1124794> (last visited 10/04/2016)

¹⁸⁵ Presentation on the Revised White Paper on South Africa in International Peace Mission, Briefing Paper: Department of International Relations and Cooperation, 12/02/2014, Retrieved from Sabinet Legal 07/09/2015

*“Multidimensional peacekeeping incorporates a complex model of many elements such as military, police and civilians, working together to help lay the foundations of a sustainable peace, with the purpose of assisting to maintain ceasefires, implementation of comprehensive peace settlements and the protection of humanitarian operations.”*¹⁸⁶ Whereas, the Defence Review states that ‘a purely military approach to peace support operations, which ignores the developmental, economic and governance aspects of peace-building, will not effectively achieve lasting stability and conditions of human security’, further adding that South Africa will follow a ‘multidimensional developmental approach’ and promote military–civilian cooperation in order to accelerate stabilisation and recovery.¹⁸⁷

It is important to note that the Capstone Doctrine declares that the basic traditional principles of peacekeeping have and still are regarded as imperative implements for maintaining peace and security internationally, irrespective of the contemporary approach being implemented in recent times.¹⁸⁸ The most relevant principle with regard to this particular section is the prohibition of the use of force, which includes the exception that force is permitted in the act of self-defence and in defence of the mandate¹⁸⁹. This principle is supported by the Brahimi Report¹⁹⁰, which as previously mentioned, places conflict prevention as one of its principle activities and which is legally binding on all United Nations Member States. The Security Council has liberally given UN peacekeeping operations ‘robust’ mandates, which authorise them to ‘use all necessary means’ to deter vigorous attempts to bring disruption to political processes; protect civilians who are in looming danger of physical violence; and to assist national authorities in maintaining law and order in regions affected by conflict.¹⁹¹ Troops are however advised to only rely on the use of force as a measure

¹⁸⁶ See Footnote (fn) 185 (page 39)

¹⁸⁷ South African Defence Review 2014, available at http://www.gov.za/sites/www.gov.za/files/dfencereview_2014.pdf (last visited 10/04/2016)

¹⁸⁸ Chapter 3: The Basic Principles of United Nations Peacekeeping, United Nations Peacekeeping Operations: Principles and Guidelines (2008) [Capstone Doctrine], available at <http://www.un.org/en/peacekeeping/operations/principles.shtml> (last visited (20/08/15)

¹⁸⁹ See footnote (fn) 188 above

¹⁹⁰ The Report of the Panel on United Nations Peace Operations (known as the Brahimi Report), available at http://www.un.org/peace/reports/peace_operations/ (last visited 20/08/15)

¹⁹¹ Principles of UN Peacekeeping, United Nations peacekeeping, available at <http://www.un.org/en/peacekeeping/operations/principles.shtml> (last visited 25/04/2016)

of last resort, and in doing so, troops are implored to exercise moderation in the execution of their mandates.¹⁹²

The most significant call for action which arises from the conclusion that South Africa's emerging policy framework portrays its approach to its participation in international peacekeeping operations, but lacks certainty and well-defined legal principles, is that the Legislature should be looking at drafting a piece of legislation which doesn't commit the country to conflicting legal principles. While the Revised White Paper is regarded as a comprehensive and all-inclusive piece of law, being bound by the traditional principles of United Nations Laws and at the same time binding itself to the robust and multidimensional principles of the African Union, creates tension which could lead to South Africa violating the legal principles of one body of law, in its execution of the mandate of the other body of law. By rectifying this incongruity within the Revised White Paper, and indeed passing this Bill into law, South Africa would have a piece of legislation which would essentially embody the multidimensional nature of contemporary peacekeeping operations. In doing so, the modified legislation would have the potential of further imbedding South Africa's leadership role in international peacekeeping operations, both in terms of its personnel contribution; and in terms of settling the discord which is created by being bound to by the principles of the UN and AU. Further, by producing legal doctrine which embodies the multidimensional nature of peacekeeping, this legislation has the potential of being a legal precedent for our regional neighbours who find themselves in a similar position as South Africa.

¹⁹² See fn 188 above

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