Soldier Self-Defense Symposium: The Evolution of the UN Doctrine of Self-Defence in UN Peacekeeping

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What follows is an outline of how the use of force in self-defence as a doctrine has evolved in UN peacekeeping operations. I focus on how the use of force in self-defence has moved between justifying peacekeepers' individual self-defence and defence of the mandate as these mandates have become more robust. I also highlight the UN qualification of its peacekeepers' right to self-defence as an *inherent* right. I conclude this historical review of the evolution of the UN doctrine with some brief

points and questions about the UN's approach to the use of force in self-defence today. I do not address the protection of civilians in the context of the right to self-defence nor do I critique the UN's approach to the use of force in self-defence.

Self-Defence as a right

The doctrine of the use of force in self-defence in UN peacekeeping started with the deployment of the first UN armed peacekeeping force – the United Nations Emergency Force I (UNEF I) established in 1957 to secure and supervise the cessation of hostilities over the Suez Canal. The UN Secretary-General at the time reported to the General-Assembly:

> 70. UNEF troops have a right to fire in self-defence. They are never to take the initiative in the use of arms, but may respond with fire to an armed attack upon them [...]
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> 179. It should be generally recognized that such a right [of self-defence by United Nations units] exists. However, in certain cases, this right should be exercised under strictly defined conditions. A problem arises in this context because of the fact that a wide interpretation of the right of self-defence might well blur the distinction between [peacekeeping]...and combat operations which would require a decision under Chapter VII [...]. [T]he rule is [...] that men engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions which they occupy under orders from the Commander, acting under the authority of the Assembly and within the scope of its resolutions.

There are three points to be made about the UNEF I definition of self-defence. First, self-defence is spoken of as a "right". The formula "such a right exists" leads to the assumption that the Secretary-General believed this "right" was not one given to peacekeepers by the UN. Instead, this implies that he was of the view that peacekeepers already had the right to use force in self-defence thus suggesting that the source of the right is the domestic law that peacekeepers carry with them as members of their military contingent.

Second, it is a right that applies in response to an "armed attack", and therefore it only comes into play after peacekeepers are attacked, or where attempts are made to use force to make them withdraw from their positions. By adding that force may be used to make peacekeepers withdraw from their positions the Secretary-General goes beyond the ordinary criminal law meaning of self-defence where force may be justified to defend oneself and others (i.e. individual self-defence).

Third, the "right" is not broad nor is it absolute – the Secretary-General believed that it may be conditional in certain circumstances. While he did not explain what the "certain cases" might be it is clear that he did not wish the right of self-defence to include peacekeepers being authorized to take the initiative of using force. He was however cognizant that peacekeepers always need "a certain margin of freedom of judgement, as, for example on the extent and nature of the arming of units and their right of self-defence".

Broadening self-defence to include discharge functions and mandates

It was in relation to the UN Peacekeeping Force in Cyprus (UNFICYP) that the Secretary-General spelt out in considerable detail the principles of self-defence applicable to UN peacekeepers (hereafter UNFICYP Guidelines). The Secretary-General in 1964 reported that UNFICYP troops:

> 10. [C]arry arms which [...] are to be employed only for self-defence, should this become necessary in the discharge of [their] function, in the interest of preserving international peace and security, or[sic] seeking to prevent a recurrence of fighting, and contributing to the maintenance and restoration of law and order and a return to normal conditions.

He went on to define self-defence to include:

> 16. (a) the defence of United Nations posts, premises and vehicles under armed attack;
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> (b) the support of other personnel of UNFICYP under armed attack.

On the modalities of the peacekeepers' right of self-defense, he added:

> 18. When acting in self-defence, the principle of minimum force shall always be applied, and armed force will be used only when all peaceful means of persuasion have failed. The decision as to when force may be used under these circumstances rests with the commander on the spot whose main concern will be to distinguish between an incident which does not require fire to be opened and those situations in which troops may be authorized to use force. Examples in which troops may be so authorized are:
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> (a) attempts by force to compel them to withdraw from a position, which they occupy under orders from their commanders, or to infiltrate and envelop such positions as are deemed necessary by their commanders for them to hold, thus jeopardizing their safety;
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> (b) attempts by force to disarm them;
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> (c) attempts by force to prevent them from carrying out their responsibilities as ordered by their commanders;
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> (d) violation by force of United Nations premises and attempts to arrest or abduct United Nations personnel, civil or military.
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> 19. Should it be necessary to resort to the use of arms, advance warning will be given whenever possible. Automatic weapons are not to be used except in extreme emergency and fire will continue only as long as is necessary to achieve its immediate aim.
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> 20. [...] If, despite these warnings, attempts are made to attack, envelop or infiltrate UNFICYP positions, thus jeopardizing the safety of troops in the area, they will defend themselves and their positions by resisting and driving off the attackers with minimum force.

The above description of self-defence goes beyond the narrow principle of individual self-defence expressed by the Secretary-General in his UNEF I report. First, the Secretary-General describes self-defence to include the use of force by peacekeepers to carry out their functions or their orders. This clearly goes beyond peacekeepers using force to defend themselves and even beyond using force against attempts to make them withdraw from their positions. Second, he extends self-defence as a basis to defend geographical locations (such as posts) and property (such as vehicles).

The extension of the doctrine of self-defence to justify the use of force to permit peacekeepers to carry out their functions was again referred to by the Secretary-General in his 1973 report to the Security Council regarding United Nations Emergency Force II (UNEF II). The Secretary-General proposed that peacekeepers "shall not use force except in self-defence" but then added "[s]elf-defence would include resistance to attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council." The Security Council in 1980 reinforced the wider view of self-defence to include achieving the mandate by stating in its resolution concerning the United Nations Interim Force in Lebanon (UNIFIL) "[t]hat self-defence would include resistance to attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council."

Delinking self-defence from defence of the mandate

The wider view of self-defence to include both individual self-defence and achieving the mandate was, at least from the Security Council's perspective, delinked in 1993. Following the Secretary-General's report entitled *An Agenda for Peace* the President of the Security Council issued a statement in which he makes it clear that the Security Council may authorize peacekeepers to use all means necessary "to carry out their mandate *and* the inherent right of United Nations forces to take appropriate measures for self-defence" (emphasis added). The UN has continued to emphasize this delinking. For example, in 2017 the UN Secretariat issued its first public document on the use of force on peacekeeping operations. The document, entitled *Use of Force by Military Components in United Nations Peacekeeping Operations* (hereafter "2017 Guidelines") provides "clarity in the appropriate use of force at the tactical and operational levels of UN peacekeeping missions" (para. 1). The 2017 Guidelines reaffirm that "peacekeepers are authorized to use force in self-defence *and* to execute their mandated tasks in appropriate situations" (para. 6, emphasis added). This doctrinal approach is also reflected in the preamble to Security Council resolutions such as those concerning the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (Res 2149 (2014)) and the United Nations Multidimensional Integrated Stabilization Mission in Mali (Res 2364 (2017) and Res 2423 (2018)).

However, this is not to say that the UN has adopted a narrow definition of self-defence. This is clear in the 2002 UN Department of Peacekeeping Operations (DPKO) Guidelines for the Development of

Rules of Engagement (ROE) for UN Peacekeeping Operations (hereafter "2002 ROE Guidelines"). The sample ROE confirm the de-linking between defense of the mandate and self-defense when they recognise that the force may be used "beyond self-defence" in circumstances that are "consistent with the relevant Security Council resolution and subject to the conditions set out in [the]…ROE" (para. 7(j)1). But they also contain a number of rules which may be selected to permit UN peacekeepers to use force, including deadly force, to protect themselves; UN personnel; international personnel; UN installations, areas or goods; civilian personnel in need of protection from a hostile act or hostile intent; and to prevent limitations to their freedom of movement. The 2002 ROE Guidelines thus reflect a broad interpretation of when UN peacekeepers may use deadly force in "self-defense".

Self-defence as an inherent right

Finally, it is interesting to note that the notion of self-defence as a "right" which all peacekeepers have seems to have shifted to peacekeepers having an "inherent right" to use force in self-defence in the early 1990s. For example, in 1993 the President of the Security Council President issued a statement that UN peacekeepers have an "the inherent right […] to take appropriate measures in self-defence." This notion of self-defence as an inherent right is reaffirmed in the 2002 ROE Guidelines. The 2017 Guidelines also reaffirm the principle of an inherent right of self-defence by recognising that, if individual peacekeepers or their unit come under attack, or if a patrol or convoy is attacked or ambushed, peacekeepers are authorised to "[r]espond effectively [or "appropriately"] by exercising [their]inherent right of self defence" (Annex A)..

It is worth considering whether the word "inherent" adds anything to the meaning of the term "right of self-defence". From one perspective it might be argued that "inherent" suggests the right to self-defence cannot be restricted by ordering peacekeepers not to fire even if the peacekeepers believe that their lives, or the lives of their comrades, are at stake. If this interpretation is correct, it is worth considering whether the Secretary-General's view, as expressed in his UNFICYP self-defence guidelines – that it is for the commander on the spot to "distinguish between an incident which does not require fire to be opened and those

situations in which troops may be authorized" to return fire – would still apply. Indeed, if the peacekeepers' right to self-defense is "inherent", can the commander withhold such right?

In conclusion, the above review of the evolution of the UN doctrine concerning the use of force in self-defence calls for three observations and questions which deserve further scrutiny:

1. The UN doctrine on the right of self-defense for UN peacekeeping forces has evolved as UN peace operations have evolved. Given this evolution, can one consider that self-defence by UN peacekeepers is still sourced in domestic law or has it developed its own normative framework as a matter of international law?
2. The UN views its peacekeepers as having an *inherent* right of self-defence. Is this approach consistent with the law of self-defence in domestic law, and what does the word "inherent" mean in the context of commanders controlling the use of force by peacekeepers?
3. The UN has originally interpreted the right to use force in self-defence as including individual self-defence and to resist forceful attempts to stop peacekeepers fulfilling their responsibilities under a Security Council resolution. At least from 1993, the UN has delinked the use of force in self-defence and the use of force to achieve the mandate. How do these two bases for the use of force in UN peacekeeping operations relate to the possible application of human rights law and, in some cases IHL?