

Israel's Consent, UNIFIL, and the UN Charter

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When discussing UN peacekeeping, issues of international law and politics are intertwined and at times become inseparable. The issue of the political or legal nature of consent arose when the *de facto* Malian government requested the removal of the UN peacekeeping operation in 2023. The issue has arisen again recently with Israel asking for the relocation of personnel associated with the UN Interim Force in Lebanon (UNIFIL). Can UNIFIL hold its position without the consent of Israel? Is State consent a legal or political consideration? Or is it both?

To start the discussion, peacekeeping is based on three principles: consent; impartiality; and the use of force in self-defence or defence of the mandate. To appreciate the peacekeeping principles, we must understand the historical path of UN peacekeeping. Peacekeeping was first envisaged to monitor peace agreements and ceasefires. Thus, to avoid the UN being considered a conflict party, the Security Council deploys peacekeepers under these three pillars. Moreover, Chapter VI of the UN Charter first formed a basis for peacekeeping, the Security Council relied on the consent of the host State for its political authority.

With the expansion of peacekeeping activities under Chapter VII of the UN Charter, the interpretation of the principles has become more flexible. Particularly, UN reports reiterate that “the principles of peacekeeping should never be used as an excuse for failure to protect civilians or defend the mission proactively.” In other words, while the Security Council should consider these principles, UN peacekeepers should operate in accordance with their mandate, as reflected within the resolution.

In this post, I put aside the issues of impartiality and self-defence to focus on consent within the legal realm of peacekeeping and the Lebanon context.

The Consent Principle

Consent as a principle of UN peacekeeping derives from the UN Charter and “the principle of the sovereign equality of all its Members” (art. 2(1)). The principle of consent is specifically entrenched in Article 2(7), which states, “[n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter.”

Legally however, consent is only required for operations authorised under Chapter VI of the UN Charter, because the principle expressed in Article 2(7) “shall not prejudice the application of enforcement measures under Chapter VII.” While some scholars have contended that consent precludes the wrongfulness of conduct that would otherwise violate Article 2(4) of the Charter, this is a very narrow view of peacekeeping. Peacekeeping mandates are more than just an authorisation for the use of force and the use of force is only one small part of the peacekeeping landscape. But either way, if peacekeepers operate based on a Security Council resolution under Chapter VII, there is no breach of Article 2(4) or (7) of the Charter.

Legally, a decision of the Security Council does not override the sovereignty of a State or their consent. Such decisions do not need the consent of the host government, as their State has already consented to decisions of the Security Council by entering into the UN Charter. Article 25 of the Charter binds all Member States “to accept and carry out the decisions of the Security Council.” As the International Court of Justice (ICJ) stated in the Namibia case, the “obligation of states to comply with the decisions of the Council under Article 25 of the Charter extends to all decisions of the Council, not merely under Chapter VII.” Moreover, “to hold otherwise would be deprive this principal organ of its essential functions and powers under the Charter.”

Currently, the majority of UN peace operations are mandated under Chapter VII, rendering consent legally redundant. Interestingly, Resolution 1701, which enhances UNIFIL’s mandate, does not explicitly reference Chapter VII. However, the Security Council does invoke binding language with respect to the situation in Lebanon by “deciding” to “authorize”

UNIFIL “to take all necessary action in areas of deployment.” Therefore, under the ICJ’s approach to interpreting such resolutions, this decision of the Security Council is binding on all member States.

It is important to note that in the context of UN peacekeeping, “consent” is an elusive term. For example, although the Security Council had approved the deployment of a Regional Protection Force to the UN Mission in South Sudan in 2016 (UNMISS), the South Sudanese Transitional Government rejected it. President Salva Kiir withdrew his consent to the mission but was forced to change his stance a few months later to avoid a threatened UN arms embargo. Although Sudan finally granted consent, UNMISS has continually reported interference from the local authorities on the ground, hindering their ability to achieve their mandate.

This is perfectly illustrated with the situation in South Lebanon. While Israel has not formally removed its consent for the deployment of the mission, it has asked UNIFIL to relocate. In other words, it is not consenting to the peacekeepers’ position. In UN peacekeeping, consent is an elusive term; it relates not only to the peacekeepers’ deployment, but to the full scope of activities on the ground.

Although consent is not a legal requirement, the Security Council still attempts to attain consent from the host State as a political necessity. Peacekeeping operations are simply more effective when they have local support. Without local support UN missions will most likely fail. Therefore, the majority of the literature on peacekeeping insists not only on government consent in the UN, but also consent of local authorities on the ground.

As such, the political authority of a UN peace operation is rooted in host State consent. However, this does not mean that the UN Mission is legally authorised by that consent. That an activity is not legally required does not make it readily, or appropriately, disposable. This is not just a technicality; the distinction manifests when examining peacekeeping operations on the ground and the situation with UNIFIL.

The Legal Authority of UN Peace Operations

UN peacekeeping finds its authority in the Security Council resolution and its mandate. In other words, UN peacekeepers need solely to examine the mandate for their legal authority and obligations. As such, UN peacekeepers should not perceive host State consent as a legal authority for any operation. This distinction becomes important regarding the protection of civilians, a cross-cutting theme across all UN peace missions. As peacekeepers are mandated to protect civilians, it is important for peacekeepers to recognise that the government itself contributes to civilian harm.

As such, the Department of Peace Operations has continually informed peacekeepers that they are to protect civilians regardless of the source of violence. Unfortunately, this confusion over host State consent was found in the 2012 UN Office of Internal Oversight Services

(OIOS) report on the implementation of the protection mandate. The report indicated that peacekeepers “determined not to act if local security forces were not present or had abandoned the scene.”

An important illustration of the Security Council reiterating that consent has no power in the field is the UNMISS mandate to protect civilians “irrespective of the source of such violence.” As stated in the majority of Secretary-General reports and the literature, the mandate to protect civilians exists outside the realm of host State consent, and peacekeepers should operate based only on the mandate.

If UN peace operations relied on the legal authority of host State consent, peacekeepers could not have an “implied” authorisation to use force to protect civilians regardless of the source of the violence. Moreover, this would mean that peacekeepers are not solely authorised by the Security Council mandate but by another legal authority, that is, the State. In recent interviews with the UN Secretariat, all participants agreed that although peacekeepers are to act alongside local authorities, they must ensure that the mandate is carried out impartially and without reference to the State.

However, if one of the pillars of UN peacekeeping is consent, can any UN action remain “peacekeeping” as a legal matter without host State consent? While it’s true that under Security Council procedure State consent is always sought before the deployment of a peacekeeping force, that procedural practice is not legally required. As stated earlier, under the UN Charter, the State has already consented to the decisions of the Security Council and as such, the Council does not legally require additional consent from the government.

While in UN practice non-consent would declassify the mission as peacekeeping, this is a categorical, rather than legal, consequence. The better question to ask is whether the Security Council resolution retains legal authority absent the State’s consent. Does anything change, other than the category?

The answer is no; the only change is the classification of the mission, not its legal authority. Hence, State consent must be seen as categorical rather than legal.

Applied to UNIFIL, if Israel formally removes its consent, the mission would be classified as an enforcement mission under the binding power of the Security Council, rather than a peacekeeping mission. However, even as an enforcement mission, UNIFIL still retains protected status. As Israel is bound by Article 25 of the UN Charter, even without consent, UNIFIL retains its protected status, as long as the peacekeepers are not directly participating in hostilities with Israel.

Moreover, the UNIFIL mission cannot relocate without permission of the UN and the Security Council. The misconception of consent as a legal requirement ignores considerations of peacekeeping in the field, thus blurring the lines between legal and political authority. Of

course, this does not mean that the Security Council should ignore the Israeli government and its request but instead recognizes that an action on that request is a product of politics rather than law.

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