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Peace and the Press: Media Rules During U.N. Peacekeeping Operations

Jennifer Lee

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Peace and the Press: Media Rules During U.N. Peacekeeping Operations

ABSTRACT

In recent years, U.N. peacekeeping operations have become an increasing focus of international military action and media coverage. While the military and the media have maintained a precarious balance in the United States between the military's objective of operational success and the media's call for uncensored reporting, the evolution and growing importance of U.N. peacekeeping offers new considerations to this balance. This Note examines the ability of the United Nations to affect the balance between the military and the media through the implementation of U.N. media rules during peacekeeping operations. This Note begins by reviewing the history of media coverage of U.N. peacekeeping and discussing the international conventions addressing freedom of expression and the free flow of information. Next, the Note examines both the United Nation's ability to restrict the media during peacekeeping operations and the interests of the United Nations and the media concerning such restrictions. The Note continues by proposing that the United Nations establish media rules for peacekeeping operations which balance the respective roles of the United Nations and the media. Finally, the Note concludes that to be effective, U.N. media rules must not only limit media coverage when necessary for operational success, but must also have the support of the media and the participating member states in each peacekeeping operation.

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I. INTRODUCTION

Throughout U.S. history, the military and the media have maintained a precarious balance between the military's desire for operational security and the media's call for access to military operations and uncensored reporting.¹ Recently, however, the military has altered this balance by restricting the access of the

1. For a more detailed history and analysis of this balance in U.S. military-press relations, see Michael D. Steger, *Slicing the Gordian Knot: A Proposal to Reform Military Regulation of Media Coverage of Combat Operations*, 28 U.S.F. L. REV. 957 (1994). For a general overview of war time reporting, see PETER BRAESTRUP, *BIG STORY* (Yale Univ. Press ed., 1983) (1977); JOSEPH J. MATHEWS, *REPORTING THE WARS* (1957); *WARTIME CENSORSHIP OF PRESS AND RADIO* (Robert E. Summers ed., H.W. Wilson Co. 1942). For a comprehensive history of U.S. journalism, see FRANK LUTHER MOTT, *AMERICAN JOURNALISM—A HISTORY: 1690-1960* (3rd ed. 1962).

media to the coverage of military operations.² While much discussion and debate has occurred over the constitutionality of these restrictions and the power of the U.S. government to impose them,³ there has been little discussion of the fact that these recent media restrictions have taken place within the context of United Nations (U.N.) peacekeeping operations.⁴

During the 1990s, U.N. peacekeeping operations have been the primary impetus of U.S. military action.⁵ These operations have responded to aggression in the Persian Gulf, intervened in humanitarian emergencies in Somalia, and attempted to negotiate peace in Bosnia.⁶ Although U.N. peacekeeping operations generally consist of multinational coalitions, these military operations have not been under U.N. command, but rather have been under the direction of an individual state, most notably the United States.⁷ The U.N. Security Council, however, mandates these operations and allocates the responsibility of conducting these operations to member states.⁸ Therefore, media restrictions

2. During the Persian Gulf campaign, the U.S. Pentagon's media policy included military press pools for an unspecified duration and a military "security review" of all news reports. John E. Smith, *From the Front Lines to the Front Page: Media Access to War in the Persian Gulf and Beyond*, 26 COLUM. J.L. & SOC. PROBS. 291, 301 (1993).

3. Compare Paul G. Cassell, *Restrictions on Press Coverage of Military Operations: The Right of Access, Grenada, and "Off-the-Record Wars,"* 73 GEO. L.J. 931 (1985) (arguing that press restrictions during Grenada invasion did not violate First Amendment) with Frank B. Cross & Stephen M. Griffin, *A Right of Press Access to United States Military Operations*, 21 SUFFOLK U. L. REV. 989 (1987) (arguing that the press' constitutional right of access was violated by press restrictions during the Grenada invasion).

4. In this Note, "peacekeeping" refers to U.N. authorized military missions under the command of individual states established to enforce U.N. decisions concerning the preservation of international peace. U.N. peacekeeping efforts include preventative diplomacy, peacemaking, peacekeeping, and post-conflict peace-building. See *infra* Part IV.B. Since 1990, the Security Council has adopted fifty-eight Chapter VII resolutions authorizing peacekeeping operations. Sean D. Murphy, *The Security Council, Legitimacy, and the Concept of Collective Security After the Cold War*, 32 COLUM. J. TRANSNAT'L L. 201, 207 n.2 (1994) (citing Oscar Schachter, *United Nations Law*, 88 AM. J. INT'L L. 1, 12 n.30 (1994)).

5. U.N. peacekeeping, while not originally envisioned in the U.N. Charter, has evolved over the last 40 years as an internationally acceptable technique for controlling conflicts and promoting the peaceful settlement of disputes. Ingrid A. Lehmann, *Public Perceptions of U.N. Peacekeeping: A Factor in the Resolution of International Conflicts*, 19 FLETCHER F. WORLD AFF. 109, 110 (1995). For an overview of the history of U.N. peacekeeping and current operations, see A.B. FETHERSTON, *TOWARDS A THEORY OF UNITED NATIONS PEACEKEEPING* (1994).

6. Lehmann, *supra* note 5, at 109.

7. Murphy, *supra* note 4, at 222-23.

8. Chapter VII of the U.N. Charter grants members of the United Nations the authority to settle disputes. Article 39 of Chapter VII empowers the Security Council to "determine the existence of any threat to the peace, breach of the peace, or act of aggression." Under Article 42, the Security Council may order

during U.N. peacekeeping operations may arise from a U.N. mandate, rather than the U.S. military.

This Note will examine the ability of the United Nations to affect the balance between the military and the media within the peacekeeping context. Part II of this Note describes the history of media coverage of U.N. peacekeeping missions. Part III discusses freedom of expression and the free flow of information in international law. Part IV examines whether the United Nations has the ability to restrict media coverage of peacekeeping missions. Part V discusses the interests of the United Nations and those of the media concerning media coverage and restrictions. Part VI proposes that the United Nations establish media rules when it authorizes a peacekeeping operation. This Note concludes that the United Nations may restrict media coverage of its peacekeeping missions when necessary to further their operational security and success, but that to be effective, these restrictions must have the support of the media and those member states participating in the operation.

II. HISTORY OF MEDIA COVERAGE OF U.N. PEACEKEEPING OPERATIONS

A. *From Early Peacekeeping Efforts to the Persian Gulf War*

U.N. peacekeeping had its origins with the creation of the United Nations Truce Supervision Organization (UNTSO) at the end of the first Arab-Israeli war in June of 1948.⁹ UNTSO organized and deployed U.N. military observers in conflict areas to supervise ceasefires or armistice agreements.¹⁰ Limited to a supervisory role, these early U.N. peacekeeping efforts were unarmed.¹¹

Armed U.N. peacekeeping efforts and significant media coverage of these operations began in 1950 with the Korean War.¹² At first, journalists had broad access to the front lines and censorship was informal, with "only a voluntary code of war

members of the United Nations to use force against a noncompliant country, and Article 43 authorizes the Security Council to require armed forces, assistance, and facilities from member states. U.N. CHARTER arts. 39, 42, 43, para. 1.

9. F.T. LIU, UNITED NATIONS PEACEKEEPING AND THE NON-USE OF FORCE 13 (1992).

10. *Id.*

11. *Id.* UNTSO is the longest existing U.N. military observer mission and continues its operation today. *Id.* at 15.

12. Smith, *supra* note 2, at 297.

reporting aimed at preserving military secrets."¹³ However, as U.N. losses increased, the U.S. military imposed a formal system of censorship.¹⁴ Even under formal censorship, journalists' access to coverage and reporting was not severely limited.¹⁵

In the years following the Korean conflict, the United Nations led several peacekeeping missions involving large-scale humanitarian programs, comprehensive information programs, and negotiations to end regional wars in Afghanistan and the Middle East.¹⁶ Media attention during this time concerned the image development of the United Nations.¹⁷ However, diplomats generally discouraged press coverage of negotiations-in-progress,¹⁸ and program planning and development lacked the headline-grabbing character of international hostilities. Media restrictions, therefore, were not an issue during this period.

In 1988, the awarding of the Nobel Peace Prize to U.N. peacekeeping operations demonstrated the world's recognition of these operations as an important development in the international community since World War II.¹⁹ Moreover, the period since 1988 has been the most active regarding such operations in peacekeeping history.²⁰ With this recognition and an unprecedented expansion of the exercise of these operations in the last decade,²¹ U.N. peacekeeping operations have attracted significant media attention in recent years.

In the late 1980s and the beginning of 1990, U.N. peacekeeping operations in Namibia, Central America, and

13. PHILLIP KNIGHTLEY, *THE FIRST CASUALTY—FROM THE CRIMEA TO VIETNAM: THE WAR CORRESPONDENT AS HERO, PROPAGANDIST, AND MYTH MAKER* 337 (1975).

14. *Id.* at 345-56.

15. PETER BRAESTRUP, *BATTLE LINES: BACKGROUND PAPER* 59-60 (1985).

16. Lehmann, *supra* note 5, at 113. These missions included among others: the United Nations Emergency Force Operated in Egypt and Israel in 1956 (UNEF I), United Nations Operation in the Congo in 1960 (ONUC), United Nations Force in Cyprus in 1964 (UNFICYP), United Nations Disengagement Observer Force in the Golan Heights in 1974 (UNDOF), and United Nations Interim Force in Lebanon in 1978 (UNIFIL). FETHERSTON, *supra* note 5, at 17-18, 233.

17. Lehmann, *supra* note 5, at 113.

18. *Id.* at 112.

19. *Id.* at 110.

20. FETHERSTON, *supra* note 5, at 25. According to Fetherston, several general characteristics distinguish this "Expansion Period" from earlier peacekeeping. First is the "cooperative superpower dimension" in the Security Council and U.N. activities. Second, each conflict has involved significant internal and regional dimensions. Third, with the change in attitude of the former Soviet Union toward U.N. peacekeeping, the role of the Secretary-General in the day-to-day running of operations is seen as a positive situation and is receiving much more support from the entire Council. *Id.*

21. Lehmann, *supra* note 5, at 110-11. By the end of 1993, there were approximately 72,000 persons active in 18 peacekeeping operations, only five of which began prior to the end of the Cold War. Murphy, *supra* note 4, at 220.

Cambodia involved the implementation of international peace accords, agreed upon by the target parties and the international community.²² In recent years, however, U.N. peacekeeping in Somalia, the Persian Gulf, and Bosnia has required military enforcement of U.N. mandates. It is in these three U.N. peacekeeping missions that the question of media restrictions has come into controversy and debate.

B. *The Persian Gulf War*

The Persian Gulf War²³ provides an instructive illustration of the tension between the media and the military during modern U.N. peacekeeping operations. While Operations Desert Shield and Desert Storm were U.N. authorized missions,²⁴ U.S. military involvement was substantial and, in effect, determinative of the strategy and implementation of U.N. mandates. The United Nations did not place any formal restrictions on media coverage of the conflict. However, after months of negotiations between the Pentagon and media organizations,²⁵ the U.S. military instituted a system of press pools, military escorts, limited access, and reporting reviews.²⁶ According to the Pentagon, such guidelines were implemented for national security,²⁷ and more specifically, to prevent the media from jeopardizing military operations and endangering lives.²⁸

22. Lehmann, *supra* note 5, at 117.

23. On January 16, 1991, the forces of a U.N. Coalition attacked both Iraq forces in Kuwait and military targets in Iraq in response to Iraq's invasion of Kuwait. Marianne D. Short & Jodene Pope, *History and Scope of the Press' Right of Access to Foreign Battlefields*, 41 NAVAL L. REV. 1 (1993), available in WESTLAW, NAVLR Database.

24. In Resolution 678, the Security Council authorized member states to "use all necessary means to uphold and implement" the Security Council's resolutions (which included the order that Iraq withdraw from Kuwait) and to "restore international peace and security in the area." S.C. Res. 678, U.N. SCOR, 45th Sess., 2963rd mtg., at 64-65, U.N. Doc. S/RES/678 (1990).

25. Steger, *supra* note 1, at 972; see also Jason DeParle, *After the War: Long Series of Military Decisions Led to Gulf War News Censorship*, N.Y. TIMES, May 5, 1991, at S1.

26. Steger, *supra* note 1, at 972. On January 7, 1991, the U.S. Department of Defense issued lists of "releasable and unreleasable" material, along with procedures for "security reviews" and interviews. Three times in two weeks, these instructions were revised with guidelines concerning press pools and updated lists of "unreleasable" material. Michael W. Klein, *The Censor's Red Flair, the Bombs Bursting in Air: The Constitutionality of the Desert Storm Media Restrictions*, 19 HASTINGS CONST. L.Q. 1037, 1038-39 n.5 (1992) (citing Nation Magazine v. United States Dep't of Defense, 762 F. Supp. 1558, 1575-78, 1580-82 (S.D.N.Y. 1991) (apps. A, B, C, and E)).

27. Smith, *supra* note 2, at 292.

28. *Id.* at 302-03 n.54.

The military was particularly concerned with the instantaneous transmission of television broadcasts.²⁹ The speed and accuracy with which television could communicate troop locations and battle images, and the ability of enemy forces to monitor the Cable News Network (CNN) and other U.S. broadcast media, added new dimensions to the power and danger of the news media.³⁰ As one commentator suggests, the Persian Gulf War was a "production of the news media conglomerate [where] . . . the boundaries between military action and media event broke down in such a way that military planning could become a new form of media reality."³¹ Because of these considerations, the U.S. military justified restricting press access and reviewing reports before television broadcasting.³²

There were further considerations that impacted the relationship between the media and military in the Persian Gulf. First, the Saudi Arabian government controlled access into Saudi Arabia.³³ As the host country for the peacekeeping operation, Saudi Arabia determined the number of reporters who could enter the region. Thus, the U.S. government, while exerting considerable influence on its Saudi host, claimed Saudi demands as another reason that the military required an escort system for journalists.³⁴ This system required that a press member had to remain with a military escort at all times and follow the escort's instructions.³⁵

Second, the military established an accreditation system that required journalists to agree to ground rules in order to be

29. Steger, *supra* note 1, at 972 (citing Matthew J. Jacobs, *Assessing the Constitutionality of Press Restrictions in the Persian Gulf War*, 44 STAN. L. REV. 675, 694 (1992)).

30. Steger, *supra* note 1, at 972. In his keynote address at the United States Institute of Peace Conference on "Managing Chaos," Ted Koppel recalled walking down the hall of the Iraqi foreign ministry a few days before the beginning of Operation Desert Storm and noticing that every office had a television tuned to CNN. Koppel further stated that he suspected that "if a colleague had walked down the appropriate corridors at the State Department, the CIA or the Pentagon at the same moment, they too would have found televisions in corresponding offices tuned to CNN." Ted Koppel, *The Global Information Revolution and TV News*, 11, 12 in KEYNOTE ADDRESSES FROM THE "MANAGING CHAOS" CONFERENCE (U.S. Institute of Peace 1995) [hereinafter MANAGING CHAOS].

31. Tom Engelhardt, *The Gulf War as Total Television*, 254 THE NATION 613 (1992) available in LEXIS, News Library, Nation File.

32. Steger, *supra* note 1, at 973.

33. *Id.* at 973.

34. *Id.* at 973. For further explanation of the military's rationale concerning Saudi control of access, see *Nation Magazine v. U.S. Dept. of Defense*, 762 F. Supp. 1558, 1577 app. C (S.D.N.Y. 1991).

35. Klein, *supra* note 26, at 1050.

accredited.³⁶ These rules consisted of prohibitions on the identification of casualties, description of future military plans, identification of units or bases, description of specific methods of operation, and provision of other types of information.³⁷ Most of the rules, however, were standard restrictions that U.S. reporters had adhered to in the past.³⁸

Third, the military implemented a pool system that served to limit the number of correspondents in combat areas.³⁹ The military granted pool membership based upon affiliation with a media organization "[b]ecause of the extensive media presence in the Arabian Gulf, the fact that some media organizations are represented by many individuals, and the likelihood that more organizations and individuals will arrive in the future."⁴⁰ Within the pool, correspondents shared their information and work product among all of the pool members.⁴¹ Non-pool members were restricted from the combat zone and risked violating local security measures.⁴² As the war advanced, however, the military expanded the number of pools from eleven to twenty-five, permitting 200 reporters to accompany the troops in the invasion of Kuwait.⁴³

Finally, the military reviewed reports before their release and enacted various forms of news blackouts.⁴⁴ Initially, U.S. Defense Secretary Dick Cheney imposed a complete news blackout because of the dangers reporting may have posed to the Allied forces.⁴⁵ The complete blackout was eventually lifted.⁴⁶ Blackouts also included limited information on casualties and

36. Steger, *supra* note 1, at 973; see also *Nation Magazine*, 762 F. Supp. at 1575-82 apps. A-E.

37. Steger, *supra* note 1, at 973; see also *Nation Magazine*, 762 F. Supp. at 1575-82 apps. A-E.

38. Steger, *supra* note 1, at 973.

39. *Id.* at 973-74.

40. *Nation Magazine*, 762 F.Supp. at 1578-80 app. D.

41. Klein, *supra* note 26, at 1049.

42. *Id.* According to Guidelines for News Media (January 14, 1991):

News media personnel who are not of the official . . . media pools will not be permitted into forward areas. Reporters are strongly discouraged from attempting to link up on their own with combat units. U.S. commanders will maintain extremely tight security throughout the operational area and will exclude from the area of operation all unauthorized individuals.

Nation Magazine, 762 F.Supp. at 1577 app. C (reprint).

43. Klein, *supra* note 26, at 1049.

44. Steger, *supra* note 1, at 974-75.

45. *Id.* at 976; see also Richard L. Berke, *War in the Gulf: The Press: News from Gulf is Good, and Cheney's Press Curbs Are Loosened*, N.Y. TIMES, Feb. 25, 1991, at A17.

46. Steger, *supra* note 1, at 976.

damage in Iraq.⁴⁷ Due to the prior review requirement, U.S. news reports were prefaced by the phrase, "Reports reviewed by military censors."⁴⁸ In addition, the military's direct briefings failed to provide any additional information about the conflict.⁴⁹

The media protested these restrictions, particularly the system of military escorts and the implementation of press pools.⁵⁰ The press claimed that both the escorts and pools limited reporting by excluding the press from areas of interest.⁵¹ In addition, the press asserted that the military discriminated in media pools membership.⁵² According to the press, the military favored those media organizations that had a long-term presence of covering Department of Defense military operations over "alternative" media organizations.⁵³

C. *Beyond the Persian Gulf War*

In 1993, the U.N. Operation in Somalia⁵⁴ commenced to help guarantee the safe transport of food to Somalians.⁵⁵ Because the Pentagon had informed the media where and when troops would be arriving in Somalia, the lighting used by media on a Somalian beach blinded U.S. Navy SEALs and Marines and made the arriving troops an easy target for snipers.⁵⁶ In spite of this initial conflict between the media and the military, the U.S. military did not place the type of restrictions upon the media as it did during the Persian Gulf operation.⁵⁷ However, in response to Somali aggression, the Defense Department activated a coverage pool for

47. *Id.*

48. *Id.* at 974. The military and media were in general agreement on the rules for publication. Of 1351 print pool reports, only five were appealed to the Pentagon for review. Eventually, four were approved and printed and the fifth was changed after consultations with the reporter's editor. *Id.* (citing Pete Williams, *View from the Pentagon: Let's Face It, This Was the Best War Coverage We've Ever Had*, WASH. POST, March 17, 1991, at D1).

49. Steger, *supra* note 1, at 976.

50. *Id.* at 973-74; see also Kevin P. Kenealey, *The Persian Gulf War and the Press: Is There a Constitutional Right of Access to Military Operations?*, 87 NW. U. L. REV. 287, 290 (1992).

51. Steger, *supra* note 1 at 974.

52. *Id.* at 977.

53. *Id.* (citing *Nation Magazine*, 762 F. Supp. at 1578).

54. FETHERSTON, *supra* note 5, at 235.

55. Smith, *supra* note 2, at 305.

56. Debra Gersh, *It's Hollywood! No, It's Somalia! Military Leaders Question Massive Media-Presence Landing of U.S. Armed Forces, but Media Say Pentagon Encouraged It*, EDITOR & PUBLISHER, Dec. 19, 1992, at 9.

57. Smith, *supra* note 2, at 305.

ten days.⁵⁸ While the Defense Department stated that "open and independent reporting" should guide news coverage of military operations, it further emphasized that the military must restrict media access when the security of the troops or operation is a factor.⁵⁹

Such safety concerns have also prompted media restrictions by the U.N. Transitional Authority in Cambodia (UNTAC)⁶⁰ and by the U.N. Protection Force (UNPROFOR) in the former Yugoslavia.⁶¹ However, these restrictions were not part of the U.N. peacekeeping mandate, but rather, were implemented by military commanders of UNTAC and UNPROFOR in charge of the U.N. peacekeeping operations.⁶²

While the United Nations has never formally restricted the media during peacekeeping operations, the concerns over restrictions imposed by the U.S. military and other national military commanders during these operations are applicable to the role of the United Nations in the relationship between the media and the military during peacekeeping operations. Operational security and success are at the heart of U.N. peacekeeping efforts. The media, however, also has a responsibility to provide the world with accurate and current information about the military operations in which its nations are engaged. With every restriction imposed on the media, the possibility exists that the military and the media will be in opposition at a time when cooperation is needed to ensure the safety of both the military and reporters. Therefore, before advising the United Nations to restrict the media during its peacekeeping operations, one must consider the many relevant international policies and agreements.

58. Steven McClellan, *Hot Spots Keep Network News Operations Hopping: Pool Coverage System in Somalia Criticized*, BROADCASTING & CABLE, Nov. 15, 1993, at 36.

59. *Id.*

60. Nate Thayer, *Moaners Beware: Harassed U.N. Reacts to Negative Press Assessment*, FAR E. ECON. REV., Nov. 5, 1992, at 27. UNTAC asserted that the directive restricting the media's access to U.N. employees was necessary to ensure the implementation of the peace plan in Cambodia. *Id.*

61. *U.N. Peacekeepers Keep the Press Out*, TIME, May 23, 1994, at 18 [hereinafter *U.N. Peacekeepers*]. UNPROFOR restricted the media's access to certain areas in order to avoid "inflam[ing] local passions." *Id.*

62. Thayer, *supra* note 60, at 27; *U.N. Peacekeepers*, *supra* note 61, at 18.

III. FREEDOM OF EXPRESSION AND THE FREE FLOW OF INFORMATION IN INTERNATIONAL LAW

In the international world, there is no equivalent of the U.S. Constitution's First Amendment guaranteeing the freedom of expression and the press. However, several international conventions provide insight regarding a universal standard concerning freedom of expression and the free flow of information. Taken as a whole, these agreements suggest that freedom of expression and the free flow of information are rights limited only by national sovereignty.⁶³

A. U.N. Charter and the UNESCO Constitution

The U.N. Charter and the United Nations Educational, Scientific, and Cultural Organization (UNESCO) Constitution advocate principles that imply a freedom of expression and information.⁶⁴ The U.N. Charter states in Article 1 that the United Nations seeks "[t]o achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all."⁶⁵ Article 55 encourages a "universal respect for, and observance of, human rights and fundamental freedoms."⁶⁶ The UNESCO Constitution refers explicitly to the right of expression by pledging that the organization will "recommend such international agreements as may be necessary to promote the free flow of ideas by word and image."⁶⁷ "Every member state of the United Nations and UNESCO has pledged support for these . . . documents which" articulate the U.N. policy of recognizing, if not actively enforcing,

63. See Amit Mukherjee, *International Protection of Journalists: Problems, Practice, and Prospects*, 11 ARIZ. J. INT'L & COMP. L. 339, 354 (1994) ("[I]n the international communications regime, free flow of information doctrine is the reigning orthodoxy[.];"); Michael J. Farley, Comment, *Conflicts Over Government Control of Information—The United States and UNESCO*, 59 TUL. L. REV. 1071, 1087 (1985). See generally David A. Cifrino, *Press Freedom in Latin America and the Emerging International Right to Communicate*, 9 B.C. THIRD WORLD L.J. 117 (1989).

64. See generally THE CHARTER OF THE UNITED NATIONS: A COMMENTARY (Bruno Simma et al. Eds. 1994) for a detailed history and analysis of the U.N. Charter. See generally C. ANTHONY GIFFARD, *UNESCO AND THE MEDIA* (1989) and UNESCO, *UNESCO ON THE EVE OF ITS FORTIETH ANNIVERSARY* (1985) for a general history of UNESCO. For an analysis of the relationship between the United States and UNESCO, see generally WILLIAM PRESTON, JR. ET AL., *HOPE & FOLLY: THE UNITED STATES AND UNESCO 1945-1985* (1989).

65. U.N. CHARTER art. 1, para. 3.

66. U.N. CHARTER art. 55(c).

67. UNESCO CONST. art. 1, § 2(a), reprinted in 4 U.N.T.S. 275, 278.

the freedom of expression and the free flow of information in the international community.⁶⁸

B. *The Universal Declaration of Human Rights*

The Universal Declaration of Human Rights was adopted by the U.N. General Assembly in 1948.⁶⁹ The Universal Declaration of Human Rights specifically guarantees freedom of expression and information. Article 19 states, "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."⁷⁰ While the Universal Declaration of Human Rights is not legally binding, it is still an authoritative statement by the international community recognizing the right to expression and the free flow of information.

C. *The International Covenant on Civil and Political Rights*

The International Covenant on Civil and Political Rights (hereinafter "International Covenant") contains language very similar to Article 19 of the Universal Declaration of Human Rights. Article 19 of the International Covenant provides that "[e]veryone shall have the right to freedom of expression."⁷¹ The International Covenant, which is binding upon all states which are party to the document, was "[u]nanimously approved by the [U.N.] General Assembly in 1966, and subsequently adopted by over seventy nations."⁷² The International Covenant, however, does not provide for freedom of expression in absolute terms, as member states are allowed to impose restrictions "[f]or the

68. Farley, *supra* note 63, at 1087.

69. The U.N.'s Universal Declaration of Human Rights was intended to be a first step toward an International Bill of Rights. See Cinfino, *supra* note 63, at 117 (citing M. Gross, *International Law Aspects of the Freedom of Information and the Right to Communicate*, in P. HORTON, *THE THIRD WORLD AND PRESS FREEDOM* 59 (1978)).

70. *Universal Declaration of Human Rights*, G.A. Res. 217 A, U.N. Doc. A/810, at 71, Art. 19 (1948).

71. Article 19 of the International Covenant states:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, or in print, in the form of art, or through any other media of his choice.

International Covenant on Civil and Political Rights, G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966).

72. Farley, *supra* note 63, at 1086.

protection of national security or of public order"⁷³ The International Covenant is nevertheless a legally binding agreement to promote the free flow of expression and information.

D. Helsinki Accords and Geneva Conventions

In 1975, thirty-five nations adopted the Helsinki Accords, providing for the "Improvement of Working Conditions for Journalists."⁷⁴ These nations proclaimed the right of journalists to gather news without restraint and pledged "to facilitate the freer and wider dissemination of information of all kinds, to encourage cooperation [sic] in the field of information and the exchange of information with other countries. . . ."⁷⁵ The agreement, however, is not a legally binding treaty.

The Geneva Conventions of 1949 are legally binding treaties that include provisions concerning journalists.⁷⁶ The provisions, however, are activated only during times of war.⁷⁷ Article 79 of the Geneva Conventions Protocol I permits the issuance of identification cards to journalists, but does not mandate that states implement a requirement that journalists procure such a card during a time of war.⁷⁸

E. Regional Agreements

Several regional agreements also provide sources of international law concerning freedom of expression.⁷⁹ In Latin America, the American Convention of Human Rights (hereinafter "American Convention"), which is binding upon signing parties, contains language similar to the International Covenant, including a restriction on individual rights for the protection of

73. *International Covenant on Civil and Political Rights*, art. 19, § 3, *supra* note 71, at 55.

74. Conference on Security and Cooperation in Europe: Final Act, Aug. 1, 1975, reprinted in 14 I.L.M. 1292, 1317 (1975).

75. *Id.* at 1315.

76. Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

77. *Id.*

78. *Id.*

79. See generally Cifrino, *supra* note 63, at 128-29; see also Mukherjee, *supra* note 63, at 354-62.

national security and public order.⁸⁰ Article 13 of the American Convention, entitled "Freedom of Thought and Expression," expressly states that "[e]veryone has the right to freedom of thought and expression."⁸¹ Article 13 further provides that the right of expression may not be restricted by "censorship"⁸² or "indirect methods or means, such as the abuse of government or private controls over newsprint, . . . information, or by any other means tending to impede the communication and circulation of ideas and opinions."⁸³

The American Declaration of the Rights and Duties of Man is another statement of international law in the Western Hemisphere.⁸⁴ Article IV provides that "[e]very person has the right to freedom of investigation, of opinion, and of the expression and dissemination of ideas, by any medium whatsoever."⁸⁵ The Inter-American Conference on Human Rights in 1981 furthered this concept of freedom of expression and information:

Freedom of Expression is universal and [its concept embodies the legal rights of all] persons, individually or collectively . . . , to express, transmit and [disseminate] their thoughts . . . freedom [to become informed] is also universal and [entails] the collective [right] of [individuals] to receive [the] information [communicated to them by others] without any interference [that might distort].⁸⁶

However, while recognizing the right to freedom of expression, the American Convention as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "European Convention")⁸⁷ and the Banjul Charter on Human and Peoples' Rights in Africa (hereinafter "Banjul Charter"),⁸⁸ limit the breadth of that freedom. All three

80. American Convention on Human Rights, Nov. 22, 1969, art. 13, 1144 U.N.T.S. 123, 149, 9 I.L.M. 673, 679 (1970) (entered into force July 18, 1978) [hereinafter American Convention].

81. *Id.*

82. *Id.*

83. *Id.*

84. American Declaration of the Rights and Duties of Man, May 2, 1948, O.A.S. OFFICIAL RECORDS, OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1979), reprinted in ORGANIZATION OF AMERICAN STATES, HANDBOOK OF EXISTING RULES PERTAINING TO HUMAN RIGHTS IN THE INTER-AMERICAN SYSTEM, OEA/Ser.L/V/II.65, doc. 6, at 17 (1985).

85. *Id.* at 20.

86. ANNUAL REPORT OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS 1980-81, at 121 (1981) (English version).

87. [European] Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 (entered into force Sept. 3, 1953) [hereinafter European Convention].

88. African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, O.A.U. Doc. CAB/LEG/67/3/Rev.5, reprinted in 21 I.L.M. 59 [hereinafter Banjul Charter].

international agreements classify freedom of expression as a right upon which restrictions may be placed, even when the restrictions are not necessitated by an emergency.⁸⁹ The American Convention requires that the restriction be "expressly established by law."⁹⁰ The European Convention allows for restrictions upon freedom of expression "prescribed by law."⁹¹ Similarly, the Banjul Charter provides that an individual's right to express and disseminate an opinion must be "within the law."⁹²

A restriction on the freedom of expression must involve one of the objectives expressly enumerated in the international agreement. The following four objectives are common to the three agreements: respect for the rights or reputation of others, national security, public order and safety, and the protection of public health and morals.⁹³ The American Convention also includes propaganda for war and advocacy of national, racial, or religious hatred that constitute incitement to discrimination, hostility, or violence as valid grounds for restrictions.⁹⁴ Interests of territorial integrity, prevention of disorder or crime, prevention of the disclosure of information received in confidence, and the maintenance of the authority and impartiality of the judiciary are additional grounds for restrictions according to the European Convention.⁹⁵ The Banjul Charter is less precise as to other grounds for restrictions, but it affirms that the rights of individuals shall be exercised with due regard to the common interest, social and national solidarity, territorial integrity, and the promotion and achievement of African unity.⁹⁶ Thus, all three of these international agreements provide for freedom of expression, but subject that right to restrictions provided by law that have the following as an objective: respect for the rights of others, national security, public order or safety, or the protection of public health or morals.

Taken as a whole, the international agreements reviewed above—the U.N. Charter, UNESCO Constitution, and

89. See Banjul Charter, *supra* note 88, arts. 9, 27-29, at 60, 63; American Convention, *supra* note 80, art. 13, 1144 U.N.T.S. at 148, 9 I.L.M. at 679; European Convention, *supra* note 87, art. 10, at 230.

90. American Convention, *supra* note 80, art. 13(2), 1144 U.N.T.S. at 149, 9 I.L.M. at 679.

91. European Convention, *supra* note 87, art. 10(2), at 230.

92. Banjul Charter, *supra* note 88, art. 9(2), at 60.

93. See American Convention, *supra* note 80, art. 13(2), 1144 U.N.T.S. at 149, 9 I.L.M. at 679; Banjul Charter, *supra* note 88, arts. 27-29, at 63; European Convention, *supra* note 87, art. 10(2), at 230.

94. American Convention, *supra* note 80, art. 13(5), 1144 U.N.T.S. at 149, 9 I.L.M. at 680.

95. European Convention, *supra* note 87, art. 10(2), at 230.

96. Banjul Charter, *supra* note 88, arts. 27(2), 29(4-5, 8), at 63-64.

international and regional conventions—constitute an international standard, recognizing freedom of expression and the free flow of information. Although several of these documents have no binding legal effect and are unenforceable, they nevertheless represent important statements by the parties to the agreement, espousing the principle of freedom of expression and information.

More importantly, these agreements limit the right to freedom of expression and information in certain circumstances. When national security or public order and safety interests are the reasons for a restriction upon expression or access to information, the right to freedom of expression and information is justifiably abridged. Therefore, while the right to freedom of expression and information is recognized in the international community, restrictions of that right are available and justified. Given this international standard, the next section examines whether the United Nations has the ability to restrict media coverage of U.N. peacekeeping operations.

IV. POWER OF THE U.N. TO RESTRICT MEDIA COVERAGE OF PEACEKEEPING OPERATIONS

The United Nations has the power to establish media rules and restrictions concerning press coverage of U.N. peacekeeping operations. The actual ability to restrict media coverage is evident from the powers delegated to the Security Council and the binding nature of its decisions on member states as designated in the U.N. Charter.⁹⁷ Furthermore, as the United Nations has demonstrated through its efforts to address the media and communications in the international context of UNESCO and with respect to the international protection of journalists, issues of the media and communications are well within U.N. concern.

A. *Peacekeeping power of the United Nations*

The U.N. Charter in Article I provides the primary purpose of the United Nations:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of peace, and to bring about by peaceful means, and in conformity with the principles of justice

97. See generally Simma, *supra* note 64, for an extensive history and analysis of the U.N. Charter.

and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.⁹⁸

The Charter creates a system of collective security to maintain international peace and security. In order to achieve this essential purpose, Chapter VII's Article 39 empowers the Security Council to "determine the existence of any threat to the peace, breach of peace, or act of aggression and . . . make recommendations, or decide what measures shall be taken . . . to maintain or restore international peace and security."⁹⁹

Accordingly, the most common "global community function" of the Security Council is the issuance of declarations determining whether a state's behavior "constitutes a 'threat to the peace, breach of the peace or act of aggression'."¹⁰⁰ In doing so, the Security Council encourages the relevant parties to reach a peaceful resolution and triggers its ability to pursue enforcement powers under Chapter VII.¹⁰¹

Before the Security Council pursues enforcement measures under Article 39, Article 40 of the Charter authorizes the Security Council "to call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable."¹⁰² Article 40 declarations include declarations that demand or encourage the parties to stop fighting, to engage in and maintain ceasefires, or to pursue processes that would lead to a permanent peace.¹⁰³

Pursuant to Articles 41 and 42, however, the Security Council may authorize peacekeeping operations. Under Article 41, the Security Council may implement "measures not involving the use of armed forces . . . and may call upon the Members of the United Nations to apply such measures."¹⁰⁴ Such measures include "complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."¹⁰⁵

98. U.N. CHARTER art. 1, para. 1.

99. *Id.* art. 39.

100. Murphy, *supra* note 4, at 210 (citing U.N. CHARTER, art. 39).

101. *Id.*

102. U.N. CHARTER art. 40.

103. Murphy, *supra* note 4, at 211. Through Article 40 declarations, the Security Council attempts to address the conflict's underlying problem and encourage the parties to resolve this problem through negotiations. For example, the Security Council "called upon Iraq and Kuwait to negotiate a resolution of 'their differences,' urged the parties in Somalia to pursue a process of national reconciliation, and demanded that the parties to the conflict in the former Yugoslavia stop their fighting, adhere to a cease-fire, and negotiate a political solution." *Id.*

104. U.N. CHARTER art. 41.

105. *Id.*

Under Article 42, the Security Council "may take action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."¹⁰⁶ According to Article 42, "Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."¹⁰⁷ Thus, in order to fulfill its duty under Article 39, the Security Council may authorize non-military enforcement measures under Article 41 or military action under Article 42.

The decisions of the Security Council to implement peacekeeping operations are binding upon all member states. Article 25 of the Charter provides that "[t]he Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter."¹⁰⁸ Article 48 further states that "[t]he action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine."¹⁰⁹ Article 48 reaffirms the obligation of member states under Article 25 to accept the binding decisions of the Security Council in the peacekeeping context.¹¹⁰

Peacekeeping is not explicitly provided for by the U.N. Charter.¹¹¹ However, the power to deploy such operations is based upon Chapter VII of the Charter¹¹² and has developed into an internationally acceptable mechanism to ensure global security.¹¹³

B. *Formation and Command of Peacekeeping Operations*

Although peacekeeping is not explicitly codified in the U.N. Charter, the practice of peacekeeping has developed a uniform

106. U.N. CHARTER art. 42.

107. *Id.*

108. *Id.* art. 25. For a discussion of the interpretation and scope of this article, see Simma, *supra* note 64, at 409-15.

109. U.N. CHARTER art. 48.

110. Simma, *supra* note 64, at 651.

111. Lehmann, *supra* note 5, at 109.

112. Murphy, *supra* note 4, at 226.

113. FETHERSTON, *supra* note 5, at 1-30. Fetherston provides a helpful framework in understanding the development of U.N. peacekeeping, dividing U.N. peacekeeping into six stages: The Nascent Period (1946-56), the Assertive Period (1956-67), the Dormant Period (1967-73), the Resurgent Period (1973-78), the Maintenance Period (1978-88), and the Expansion Period (1988-93). See Simma, *supra* note 64, at 576-87 (enumerating and describing each armed U.N. peacekeeping mission).

pattern for these operations.¹¹⁴ Generally, the operation is created by a resolution of the Security Council.¹¹⁵ The resolutions generally support reports submitted by the U.N. Secretary-General which establish the mandate and functioning of the operation.¹¹⁶ The Security Council then forms an agreement with the member states involved concerning their relationship during the peacekeeping effort.¹¹⁷

Current U.N. Secretary-General Boutros-Boutros Ghali identified four kinds of modern U.N. peacekeeping efforts: preventative diplomacy, peacemaking, peacekeeping, and post-conflict peace-building.¹¹⁸ According to the Secretary-General, preventative diplomacy comprises "action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occur."¹¹⁹ Peacemaking consists of "action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations."¹²⁰ Peacekeeping relates to "the deployment of a United Nations presence in the field, hitherto with the consent of all the parties concerned, normally involving United Nations military and/or police personnel and frequently civilians as well."¹²¹ Finally, post-conflict peace-building refers to "action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict."¹²²

Control over peacekeeping efforts rests with the Security Council.¹²³ As for peacekeeping operations, one commentator has suggested two models for U.N. command and control.¹²⁴ In the "single-state" model, the Security Council (after authorizing an operation) allows a dominant state to exercise political control, strategic direction, and operational command over forces that are

114. Simma, *supra* note 64, at 587. See generally STEVEN R. RATNER, *THE NEW UN PEACEKEEPING: BUILDING PEACE IN LANDS OF CONFLICT AFTER THE COLD WAR* (1995); INDAR JIT RIKHYE, *THE THEORY AND PRACTICE OF PEACEKEEPING* (1984).

115. Simma, *supra* note 64, at 587-88.

116. *Id.* at 588.

117. *Id.*

118. *An Agenda for Peace, Report of the Secretary-General*, U.N. GAOR, 47th Sess., U.N. Doc. A/47/277-S/24111 (1992), reprinted in 31 I.L.M. 956, 960 (1992) [hereinafter *Agenda for Peace*].

119. *Agenda for Peace*, *supra* note 118, 31 I.L.M. at 960.

120. *Id.*

121. *Id.*

122. *Id.* Pursuant to these U.N. efforts, there are four basic functions of a peacekeeping military unit: observation and verification, interposition, maintenance of law and order, and humanitarian assistance. Simma, *supra* note 64, at 588-89.

123. James W. Houck, *The Command and Control of United Nations Forces in the Era of "Peace Enforcement"*, 4 DUKE J. COMP. & INT'L L. 1, 22-23 (1993).

124. *Id.* at 19.

provided by a single state acting alone or at the head of a nominally multinational coalition.¹²⁵ According to the "managed-coalition" model, the Security Council (after authorizing the operation) allows a dominant state to manage, but not dictate, political, strategic, and command decisions through an ad hoc and truly multinational coalition.¹²⁶

Thus, as evident from the text of the U.N. Charter and the actual practice of peacekeeping operations, the Security Council is the authorizing body of peacekeeping operations and has ultimate control over them. The Security Council determines whether a threat to international peace exists. Most importantly, the Security Council determines what the appropriate response will be to that threat and provides the parameters of the responsive action that member states are obligated to follow.

C. UNESCO

UNESCO was established by the U.N. General Assembly on November 16, 1945,¹²⁷ "to contribute to peace and security by promoting collaboration among the nations through education, science and culture."¹²⁸ Its programs are divided into "five substantive sectors: education, natural science, social science, culture, and communication."¹²⁹

Within the communication sector, there are two main divisions: the Division of the Free Flow of Information and the Division of Development of Communication Systems.¹³⁰ The first division seeks to promote freedom of information by removing obstacles that hamper it, while the second division tries to improve the means and techniques of information distribution.¹³¹ Thus, the formation and existence of UNESCO represents U.N. concern with freedom of expression in the international context and its ability to address that concern.

Pursuant to its purpose of facilitating international communication, UNESCO adopted the Declaration on Fundamental Principles Concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid, and Incitement to War (hereinafter "Mass Media

125. *Id.*

126. *Id.*

127. DAVID C. COYLE, *THE UNITED NATIONS AND HOW IT WORKS* 36 (1969).

128. UNESCO CONST. art. I, § 1.

129. GIFFARD, *supra* note 64, at 3.

130. *Id.* at 15.

131. *Id.*

Declaration").¹³² The declaration promoted journalistic freedom to report,¹³³ protection for journalists,¹³⁴ and a free and balanced flow of information.¹³⁵ However, some commentators saw this last provision as a compromise to an earlier former Soviet Union-sponsored draft proposing "complete government control of information media."¹³⁶

The draft proposal was a reflection of the efforts by the former Soviet bloc and Third World nations to establish a New World Information and Communication Order (NWICO).¹³⁷ The purpose of NWICO was to compensate for the Western bias that the former Soviet bloc and Third World nations perceived in news reporting and to ensure a more balanced flow of information through state control of the media.¹³⁸ Western nations, however, viewed NWICO as incompatible with the freedom of expression and the free flow of information.¹³⁹

At the 1980 UNESCO General Conference, the MacBride Commission Report¹⁴⁰ was released.¹⁴¹ Formed in response to the Mass Media Declaration, the MacBride Commission Report contained over eighty recommendations in an attempt to provide solutions to the media imbalance perceived by Third World nations.¹⁴² Although the MacBride Commission Report reaffirmed the principles of freedom and diversity, and advocated the elimination of governmental interference with those principles, the report also recommended codes of ethics for

132. UNESCO Gen. Conf. Res. 4/9.3/2, 20th Sess. (1978), *reprinted in* ANN. REV. U.N. AFF. 238-40 [hereinafter Mass Media Declaration].

133. *Id.* art. II (2).

134. *Id.* art. II (4).

135. *Id.* art. IX.

136. Cifrino, *supra* note 63, at 121 (quoting *Draft Declaration on Fundamental Principles Governing the Use of the Mass Media in Strengthening Peace and International Understanding and Combating War Propaganda, Racism and Apartheid*, 19 UNESCO Gen. Conf. Rec., UNESCO Doc. 19 C/Proceedings, at 91 (1976), and citing Wolfe, *A New International Information Order: The Developing World and the Free Flow of Information Controversy*, 8 SYR. J. INT'L L. & COM. 249, 261 (1980)).

137. Farley, *supra* note 63, at 1072-73.

138. *Id.* at 1073-74. These nations contended that Western news agencies, which supply most of the world's news, portrayed Third World nations in a negative light in reporting only stories about "political instability, human rights violations, corruption and internal violence, natural disasters, and social and economic problems." *Id.* at 1073. Due to this portrayal by the Western media, the rest of the world has developed a negative perception of these nations. Thus, the Western media, at best, is oriented to Western interests and values and, at worst, threatens the independence and national identity of Third World nations. *Id.* at 1073-74.

139. GIFFARD, *supra* note 64, at 21.

140. SEAN MACBRIDE ET AL., *MANY VOICES ONE WORLD: COMMUNICATION AND SOCIETY TODAY AND TOMORROW* (1980).

141. Farley, *supra* note 63, at 1075.

142. Farley, *supra* note 63, at 1075; Cifrino, *supra* note 63, at 122.

journalists and disapproved centralized private ownership of communication agencies.¹⁴³ However, none of the recommendations from the MacBride Commission Report were adopted by UNESCO, as the report never made it on the agenda of the conference.¹⁴⁴

The 1980 UNESCO Conference did adopt the International Programme for the Development of Communication (IPDC).¹⁴⁵ Proposed by the United States, the IPDC was designed to improve the communications systems of less developed nations and to avoid the issue of government censorship. Yet in balancing the interests of the member states, UNESCO also approved programs to further develop the concept of NWICO.¹⁴⁶

Western news agencies countered UNESCO's efforts towards NWICO with the Declaration of Talloires¹⁴⁷ in May of 1981.¹⁴⁸ The Declaration of Talloires advocated the freedom of expression and the free flow of information.¹⁴⁹ More importantly, it condemned governmental censorship, international code of journalistic ethics, and licensing of journalists by national or international bodies.¹⁵⁰

Following UNESCO's continued efforts to consider a code of ethics for journalists and its recognition at the UNESCO Conference in 1983 that governments have a right to control the flow of information,¹⁵¹ the United States and Great Britain resigned and withdrew their funding from UNESCO in 1984.¹⁵² The United States cited the political nature of UNESCO debates and activities, the use of UNESCO as a forum against freedom of the press, and the \$374.4 million budget of UNESCO adopted in 1984 as reasons for its withdrawal.¹⁵³ By March of 1984, twenty-four Western countries submitted a proposal for major reforms to

143. Farley, *supra* note 63, at 1076 n.30.

144. *Id.* at 1076.

145. UNESCO Gen. Conf. Res. 4/21, 21st Sess. (1980).

146. Farley, *supra* note 63, at 1077.

147. *See id.* (citing The Declaration of Talloires (Voices of Freedom Conference 1981), reprinted in Singh & Gross, "MacBride: The Report and the Response," 31 J. COM. 104, 113-15 (1981)).

148. *Id.* at 1077.

149. Cifrino, *supra* note 63, at 123.

150. Farley, *supra* note 63, at 1077-78. The Declaration of Talloires II, issued in October of 1983, reaffirmed the major tenets of the first declaration. The Declaration of Talloires II emphasized the "importance of private and independent news media, and called for ways to ensure the editorial independence of state-owned news media and to establish the press as a guardian against abuses of power." *Id.* at 1079.

151. *Id.* at 1078-79.

152. Cifrino, *supra* note 63, at 123. Singapore withdrew later, as well. *Id.* at 123 n.29.

153. Farley, *supra* note 63, at 1079.

UNESCO due to its continuing consideration of NWICO programs.¹⁵⁴

The experience of UNESCO and its promotion of NWICO reveal UNESCO's view of the international free flow of information, and show the limitations that UNESCO, and implicitly the United Nations, must confront in implementing a policy concerning the freedom of expression and the free flow of information in an international context. Such limitations include the polarized views of the international community concerning freedom of the press and the appropriateness of international governance over that freedom, the organized resistance of the press to media restrictions, and the ability of member states to impede policy initiatives by withdrawing their membership from an international organization. For the United Nations, and more specifically the Security Council, to restrict media coverage during peacekeeping operations, awareness of such limitations and the ability to overcome them are imperative for success.

D. *International Protection of Journalists*

Although international efforts to protect journalists have been sporadic, attempts to increase the protection of journalists have arisen within the U.N. context.¹⁵⁵ As shown by such efforts, the United Nations is a proper forum for the discussion and resolution of issues concerning freedom of expression and media restrictions in the international community.

The first U.N. effort at addressing the journalist's role was the creation of the Sub-Commission on Freedom of Information and of the Press by the Commission on Human Rights in 1947.¹⁵⁶ The Sub-Commission held only five sessions, but drafted the articles on freedom of information for the Universal Declaration of Human Rights and the International Covenant on Civil and Political

154. *Id.* at 1080 n.53.

155. The United Nations has also addressed the need to protect peacekeepers during U.N. peacekeeping operations. On December 9, 1994, the U.N. General Assembly adopted the Convention on the Safety of United Nations and Associated Personnel. See G.A. Res. 59, U.N. GAOR, 49th Sess., at 2, U.N. Doc. A/RES/49/59 (1995). This multilateral convention provides legal remedies for the prosecution and punishment of persons accused of attacking U.N. peacekeepers and associated personnel. See Evan T. Bloom, *Protecting Peacekeepers: The Convention on the Safety of United Nations and Associated Personnel*, 89 AM. J. INT'L L. 621, 621 (1995).

156. Amit Mukherjee, *The Internationalization of Journalists' "Rights": An Historical Analysis*, 4 J. INT'L L. & PRAC. 87, 96 (1995). For a historical overview of international efforts toward the protection of journalists, see Mukherjee, *supra* note 63.

Rights.¹⁵⁷ Further, it convened "a Conference on Freedom of Information" in 1948 which recommended three draft conventions concerning the gathering and transmission of news, the institution of an international right of correction, and freedom of information.¹⁵⁸ After much discussion and amendments, the U.N. General Assembly approved only the Convention on an International Right of Correction.¹⁵⁹

Following an appeal by the Secretary-General on behalf of seventeen journalists missing in Indochina in 1970,¹⁶⁰ the U.N. General Assembly proposed a draft convention for the protection of journalists engaged in areas of armed conflict.¹⁶¹ In November of 1973, the U.N. General Assembly passed a resolution¹⁶² encouraging the adoption of the draft convention for the protection of journalists and requested that the Secretary-General convey the draft convention to the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts.¹⁶³ However, this phase of consideration for a draft convention protecting journalists ended at the Diplomatic Conference.¹⁶⁴

During this period, professional media organizations also submitted a draft convention for the protection of journalists.¹⁶⁵ After being reviewed by UNESCO and the Commission on Human Rights, a revised draft convention was adopted by UNESCO¹⁶⁶

157. Mukherjee, *supra* note 156, at 96. For a discussion about the article concerning freedom of information in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, see *infra* part III.B-C.

158. Mukherjee, *supra* note 156, at 96-97. The Sub-Commission and the Conference on Freedom are notable not for their accomplishments, but in their deference to the sovereign power of the state, their revelation of the fundamental differences in approach to the freedom of the press, and their revelation of Western ambivalence between freedom of expression and concern for the social accountability of the media. *Id.* at 96.

159. *Id.* at 98. The Convention on the International Right of Correction provides a mechanism for a State to provide its interpretation of events when that State contends that a news dispatch "capable of injuring its relations with other States or its national prestige or dignity . . . is false or distorted." *Convention on an International Right of Correction*, U.N. GAOR, 7th Sess., Supp. No. 20, at 22, U.N. Doc. A/2361 (1952).

160. Mukherjee, *supra* note 156, at 102. See *Protection of Journalists Engaged in Dangerous Missions in Areas of Armed Conflict: Report of the Secretary-General*, U.N. GAOR, 26th Sess., Provisional Agenda 52(b), U.N. Doc. A/8371 (1971).

161. Mukherjee, *supra* note 156, at 102-03.

162. G.A. Res. 3058, U.N. GAOR, 28th Sess., Agenda Item 54, U.N. Doc. A/RES/3058 (1973).

163. Mukherjee, *supra* note 156, at 103.

164. *Id.* at 103.

165. *Id.*

166. *Preliminary Draft International Convention on the Protection of Journalists Engaged in Dangerous Missions*, UNESCO, 50th Sess., Supp. No. 1, at 2, U.N. Doc. 5044 (1971).

and was sent to the U.N. General Assembly.¹⁶⁷ The Secretary-General also submitted the U.N. draft convention to member states for their comments.¹⁶⁸ Subsequent to this 1973 effort, the United Nations ceased considering any international convention on the protection of journalists until 1990.¹⁶⁹

The Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights has been the forum for two recent U.N. initiatives concerning the protection of journalists.¹⁷⁰ The first effort was the Sadi Report submitted to the Sub-Commission in 1990.¹⁷¹ The report emphasized the role of journalists as a source for human rights awareness and recommended that the Sub-Commission take the leading role in providing international protection for journalists.¹⁷² In response, the Sub-Commission then proposed that Sadi prepare a preliminary study on ways and means to extend journalist protection. However, the Sub-Commission has effectively put aside this effort by deferring consideration of the study until a later session.¹⁷³

The Türk-Joinet Report¹⁷⁴ in 1992 was the Sub-Commission's second attempt to address the international protection of journalists, and more particularly, their right to freedom of opinion and expression.¹⁷⁵ While recognizing the right of journalists to freedom of expression, the report acknowledged that restrictions on that right were permissible.¹⁷⁶ According to the report, a restriction on freedom of expression must meet three criteria: legitimacy, legality, and democratic necessity.¹⁷⁷ Although the report has generated much debate over its assertion

167. Mukherjee, *supra* note 156, at 103.

168. *Id.* at 104.

169. *Id.* at 107-09.

170. *Id.* at 108.

171. *Id.* at 109. The report was based upon a draft resolution, submitted by Sub-Commission member, Waleed Sadi, which recognized the importance of journalists in revealing human rights violations and recommended a study on the feasibility of extending additional protection to journalists. *Id.* at 108-09; *Draft Resolution on Protection of Journalists*, Sub-Comm. on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1989/L.24 (1989).

172. Mukherjee, *supra* note 156, at 108-09.

173. *Id.* at 109.

174. UNESCO, 44th Sess., Provisional of Agenda Item 4, U.N. Doc. E/CN.4/Sub.2/1992/9 (1992).

175. Mukherjee, *supra* note 156, at 110.

176. *Id.* at 110.

177. *Id.* at 110-11. Legitimacy is the requirement that the restriction "has in view one of the goals of the limitations expressly enumerated in the international treaties in the field of human rights." *Id.* at 110. Legality is the requirement that the restriction be "prescribed by relevant domestic law." *Id.* at 111. Democratic necessity is the requirement that the restriction be in accordance with "democratic principles of the rule of law and human rights." *Id.* at 111.

of allowable controls over the freedom of expression,¹⁷⁸ the Sub-Commission again took no action regarding the report.¹⁷⁹

Due to the historical lack of initiative in the protection of journalists by the United Nations, one commentator concluded that "the immediate prospect of enhanced international protection of journalists through an internationally enforceable regime of journalists' rights seems remote."¹⁸⁰ The inconclusive results of U.N. efforts demonstrate the difficulties the United Nations confronts in implementing substantive mandates in the area of international communication, particularly in light of the incompatible views of Western and non-Western states concerning the media.¹⁸¹ More importantly, these efforts indicate that the media and international communication are appropriate issues of discussion and for potential regulation by the United Nations.

V. INTERESTS OF THE U.N. AND THE MEDIA IN MEDIA COVERAGE AND RESTRICTIONS

The United Nations and the media each have specific interests in media coverage and restrictions during U.N. peacekeeping operations. Although these interests are not necessarily mutually exclusive, they are interests that derive from the individual nature and functions of the United Nations and the media. Thus, in the peacekeeping context, the interests of the United Nations and the media converge and diverge according to the functions of each entity during peacekeeping operations.

178. The World Press Freedom Committee and the U.S. observer objected to the report's endorsement of permissible restrictions on freedom of expression. *Id.* at 111-12. Another group supported the report's conclusions and encouraged the Sub-Commission to develop guidelines according to the report's criteria for restrictions. *Id.* at 112.

179. *Id.* at 112-13.

180. *Id.* at 113.

181. According to one commentator:

U.N. debates on information issues during this period portend to three recurring themes traditionally hampering a solution to the problem of mistreatment of journalists: first, the principle of freedom of information is subservient to the principle that the state has the sovereign right to delineate the boundaries of any "freedom" within its jurisdiction; second, the Western and non-Western states have incompatible views regarding information questions in the world; and lastly, the Western countries are ambivalent between their professed ideal of freedom of expression, and their concern for the social accountability of the media.

Mukherjee, *supra* note 156, at 100.

A. U.N. Perspective

Within the peacekeeping context, the United Nations primarily performs a military function. The Security Council mandates operations that have the objective of enforcing peace in conflicted areas, while also authorizing them to use armed force. Thus, the success of the operations and the safety of peacekeeping troops in achieving that success are of supreme concern for the United Nations. The power to achieve these objectives "requires confidentiality and secrecy."¹⁸² Any breach of secrecy could "lead to serious casualties at the least, and a threat to . . . [the peacekeeping operation] at the extreme."¹⁸³

In furthering its interests in overall operational success and troop safety, the United Nations has the additional interest of ensuring that nothing threatens the tactical execution of its peacekeeping operations. Maintaining the advantage of surprise is paramount in its successful execution of any peacekeeping operation. Arguably, the publication by the media of certain information may endanger the security of a peacekeeping operation or peacekeeping troops.¹⁸⁴ Moreover, the presence of the media during peacekeeping operations creates a concern for the United Nations in the safe transportation of reporters as well as peacekeeping troops.¹⁸⁵

In addition to its military function, the United Nations also has an administrative function to promote the necessity and wisdom of its peacekeeping actions to the international community. Consequently, the United Nations has an interest in the public perception of its peacekeeping operations. According to one commentator, "[p]ublic opinion is now a major factor in international conflict management and conflict resolution. In order to achieve their goals, U.N. peacekeeping operations . . . need an overall positive image, both inside the territory in which they are deployed and in the international community at large."¹⁸⁶

The high-profile media and instantaneous media coverage of peacekeeping operations add to the pressure of public opinion.¹⁸⁷

182. Steven Neff, *The United States Military vs. The Media: Constitutional Friction*, 46 MERCER L. REV. 977, 1004 (1995).

183. *Id.*

184. *Id.* at 1004-05.

185. Cassell, *supra* note 3, at 931; see also Debra Gersh, *The Press in Somalia*, EDITOR & PUBLISHER, Jan. 23, 1993, at 11 (describing hazardous conditions for journalists reporting from Somalia during U.N. peacekeeping operations); Elizabeth Valk Long, *To Our Readers*, TIME, June 12, 1995, at 4 (describing dangers journalists face in war-torn Bosnia).

186. Lehmann, *supra* note 5, at 118.

187. *Id.* at 111.

Instantaneous coverage from the theater of operations creates lasting images in the international public mind, garnering support or opposition to the operation.¹⁸⁸ Portraying powerful images to the international public, this "CNN factor"¹⁸⁹ influences public will, and when unfavorable, challenges the United Nations to maintain support from not only the public as a whole, but also more specifically, from the member states.¹⁹⁰ Thus, in the peacekeeping context, the United Nations has a military and an administrative function—both of which involve a relationship with the media. It is therefore necessary for the United Nations to develop a policy towards the media aligned with its operational and administrative interests in order to ensure the success of its peacekeeping operations.

B. Media Perspective

Generally, the media operate as a source of information and a "forum for the citizenry to voice their opinions."¹⁹¹ These media functions are particularly vital during peacekeeping operations where lives are at risk and the resources of U.N. member states are being expended. Thus, the media require access to information about peacekeeping operations in order to keep the public informed about the operations, and especially, military actions by member states under a U.N. peacekeeping mandate.¹⁹² The media need full and accurate information sources for their international audiences. Timeliness is also a requisite for effective media reporting. Therefore, during peacekeeping operations, the media's interest is to have unrestricted access to operational sites and uncensored reporting.

As a public forum, the media serve a monitoring purpose during peacekeeping operations.¹⁹³ The media both shape the

188. For an analysis of the media's role in shaping perspectives concerning peacekeeping operations, see Jonathan Alter, *Did the Press Push Us into Somalia*, NEWSWEEK, Dec. 21 1992, at 33. See also Peter Brock, *Dateline Yugoslavia: The Partisan Press*, FOREIGN POLICY, Winter 1993, at 152; Charles Lane, *War Stories*, THE NEW REPUBLIC, Jan. 3, 1994, at 43.

189. Les Aspin, *Challenges to Values-Based Military Intervention*, in MANAGING CHAOS, *supra* note 30, at 5.

190. See MANAGING CHAOS, *supra* notes 30, at 1-15, for a discussion of the powerful role of the media in forming foreign policy from the perspectives of both the military and the media.

191. Mukherjee, *supra* note 156, at 87.

192. Information about a nation's military action is especially important, as "it is generally recognized that 'wars' are of paramount importance to citizens when evaluating and electing government leaders." Cross & Griffin, *supra* note 3, at 1031.

193. According to Justice Black of the U.S. Supreme Court, the function of the media is to "serve the governed, not the governors." "This responsibility extends to the duty of preventing the government 'from deceiving the people and sending them

perceptions of the public and provide a channel for public opinion.¹⁹⁴ The public and U.N. member states need to make informed decisions about the purpose and validity of peacekeeping operations. Worthwhile public debate and decisions will only result from honest and full information. The role of the media is to provide the international public with as much information as possible in making such determinations.¹⁹⁵ Furthermore, in order to be effective in promoting informed decisions, this information must be independent of the U.N. point of view. For these purposes, it is important for the media to have access to peacekeeping sites and to enjoy uncensored reporting.

Essentially, the media are an informational source for the international public, enabling individuals to form opinions and to create positive or negative pressure concerning peacekeeping operations. The role of the public cannot be discounted, as public opinion may persuade member states to support or oppose peacekeeping operations. To be effective in informing the public, the media must provide information fully, accurately, and quickly. Therefore, U.N. restrictions of the media must create a balance between the media's interests and those of the United Nations.

VI. THE ESTABLISHMENT OF U.N MEDIA RULES DURING PEACEKEEPING OPERATIONS

As stated above, the United Nations has the power to authorize peacekeeping operations and to define the parameters of those operations.¹⁹⁶ Thus, it is within U.N. authority to establish media rules during peacekeeping operations. Taking into account the varying interests of the United Nations and the media, U.N. media rules during peacekeeping operations would prove to be beneficial by ensuring independent media coverage

off to distant lands to die of foreign fevers and foreign shot and shell." Neff, *supra* note 182, at 1003 (quoting *New York Times v. U.S.*, 403 U.S. 713, 717 (1971)).

194. According to Ted Koppel, media reports "are destined to have a disproportionate influence on public opinion because no countervailing compass point exists." *MANAGING CHAOS*, *supra* note 30, at 14. Koppel goes on to suggest that it is the media, not the government, that has taken the lead in determining U.S. foreign policy. *Id.* at 15; see also MARTIN LINSKY, *IMPACT: HOW THE PRESS AFFECTS FEDERAL POLICYMAKING* 69 (1986) (citing a recent survey which showed that over 96% of those governmental officials interviewed thought the media had an effect on policymaking and over one-half believed that the media's influence was substantial).

195. Paul Cassell suggests that the media are not "a particularly potent device for discovering what goes on at the battlefield." Cassell, *supra* note 3, at 968. According to Cassell, "publicized congressional hearings on military operations abroad would probably provide much more information than even the most expansive of press access policies." *Id.* at 968 n.267.

196. See *supra* part IV.

from operational sites while limiting the potential harm by the media to U.N. operational success.

A. Procedure to Establish Media Rules

In authorizing a peacekeeping operation, the Security Council provides a broad mandate of action. Media rules for peacekeeping operations could be included in this mandate. By providing well-defined media rules before the implementation of a peacekeeping operation, the Security Council would avoid ad hoc media restrictions and potential conflicts between peacekeeping forces and the media during a peacekeeping operation.¹⁹⁷

In establishing media rules, the Security Council should first consult with the participating member states of a peacekeeping operation and the media. This kind of discussion has resulted in general agreement between the military and the media concerning media restrictions during U.N.-sanctioned U.S.-led military operations.¹⁹⁸ The Security Council may also consult the General Assembly for a diverse perspective on the issue of media restrictions.

Once the Security Council has determined the media rules for a particular peacekeeping operation, it is vital that these rules are formally introduced to the media and peacekeeping forces. Awareness by both the peacekeeping forces and the media of these formal guidelines will create a common understanding between the parties. In this regard, the rules should be distributed to the press and forces if possible, or at the least, clearly articulated. The International Peace Academy in its *Peacekeeper's Handbook* emphasized the importance of clarity in effectuating guidelines for peacekeeper interaction with the press.¹⁹⁹ The *Handbook* states, "A member of a peacekeeping Force/Mission can at anytime be approached by members of the press corps, whether by arrangement or not. It is important that

197. See *supra* part II.B-C.

198. Following the Persian Gulf War, the Pentagon and major U.S. news organizations negotiated and agreed upon nine principles for news coverage of battlefield operations. The military and the media "agreed to disagree on the issue of prior review." Debra Gersh, *War Coverage Guidelines: After Six Months of Talks, Media and Military Agree on Proposed Principles for News Coverage of Battlefield Operations*, EDITOR & PUBLISHER, Mar. 21, 1992, at 18.

199. INTERNATIONAL PEACE ACADEMY, *PEACEKEEPER'S HANDBOOK* 340 (1984). Established in 1970, "[t]he International Peace Academy (IPA) is a nonpolitical, nonprofit, educational institute." *Id.* at vii-ix. One of the important roles of the . . . (IPA) . . . is the development of skills and techniques for greater efficiency within peacekeeping forces." *Id.* at ix. The *Peacekeeper's Handbook* compiles the experiences of present and former members of U.N. operations with the intent to prepare future peacekeepers. *Id.*

clear instructions are issued indicating how the peacekeeper should act towards the press."²⁰⁰

With formal media rules that are clearly defined and presented, the Security Council, and effectively the United Nations, provide the media and peacekeeping forces with a cohesive set of guidelines. Formal U.N. media rules will circumvent the ad hoc application of media restrictions by the participating member states and pursue the interests of both the United Nations and the media more effectively.

B. U.N.'s Media Policy and Rules

While individual peacekeeping operations may require operation-specific media rules, the United Nations should adopt basic guidelines for media coverage during peacekeeping operations. This precommitment to an established set of guidelines prevents the United Nations from implementing arbitrary revisions, absent a specific need by a particular operation,²⁰¹ and encourages media compliance by ensuring the media of consistent and familiar rules.

U.N. media rules should establish what the media may report and regulate the media's access to various types of information.²⁰² Because operational success is paramount to peacekeeping operations the Security Council may restrict media coverage if such coverage would endanger the operation, peacekeeping troops, or reporters. However, the Security Council may also justify any media restriction by citing concern for tactical execution and security. On the other hand, the media's ability to shape and voice public opinion should temper any inclination on the part of the Security Council to overregulate the media.

Thus, U.N. media rules should reflect a balance between the roles of the U.N. and the media during peacekeeping operations. Generally, U.N. media rules should intrude as little as possible on news reporting. When operational security is at risk, however, greater media restrictions should be implemented by the Security Council. As one commentator stated, "Some control over the media in a war zone is necessary. However, the military should be aware of the potential backlash that may result from a hard-line approach to media relations. When controls are necessary,

200. *Id.* at 340.

201. Steger, *supra* note 1, at 1000.

202. *Id.* at 1001.

they should cause as little intrusion into news gathering as possible."²⁰³

In determining specific media guidelines, two previous efforts by the U.S. military and the media to create clear guidelines for media coverage of military operations provide a useful framework. The first was the Sidle Panel recommendation which followed the U.S. invasion of Grenada in 1983.²⁰⁴ The second was the "Statement of Principles" negotiated by the Pentagon and the media after the Persian Gulf War.²⁰⁵ Both of these efforts demonstrate the ability of the military and the media to negotiate general guidelines and the balance necessary to ensure the interests of both the military and the media.

1. The Sidle Panel

As a result of media dissatisfaction with the Grenada invasion, the Department of Defense formed the Sidle Panel, headed by Major General Winant Sidle, to study military-press relations.²⁰⁶ "[R]epresentatives from journalism schools, the media, and the military" participated in the Panel.²⁰⁷ The Panel's report included eight recommendations to improve military-press relations.²⁰⁸ The Panel recommended that the military plan for media coverage concurrently with operational planning, devise a reporter accreditation system, encourage voluntary compliance

203. Captain William A. Wilcox, Jr., *Media Coverage of Military Operations: OPLAW Meets the First Amendment*, ARMY LAW., May 1995, at 42, 51 (1995). In listing factors which relate to media relations, the International Peace Academy in *Peacekeeper's Handbook* also recognized the importance of this balance between the objectives of the United Nations and the media. The *Peacekeeper's Handbook* states:

[P]eacekeeping operations will attract the attention of a widely representative press corps. Its aim will be to get news and it will take every step to obtain it. It should not be obstructed unjustifiably in its efforts, but when these encroach on sensitive areas of the U.N. role and operational practices it is advisable to seek the advice of the Press Information Officer.

It is helpful to good relations with the media for the Force/Mission Commander, or one of his senior staff officers, to meet and brief the press at regular intervals. The better the links with the press corps the more understanding it is likely to be to the Force/Mission problems.

INTERNATIONAL PEACE ACADEMY, *supra* note 199, at 341.

204. Wilcox, *supra* note 203, at 47.

205. Short & Pope, *supra* note 23, at 9.

206. Steger, *supra* note 1, at 969. The Department of Defense excluded all press members from Grenada until their safety could be guaranteed. *Id.* "The complete exclusion of reporters constituted an unprecedented news blackout for American combat operations." *Id.*

207. Wilcox, *supra* note 203, at 47.

208. Steger, *supra* note 1, at 969-70.

with established ground rules, and develop a system of press pools.²⁰⁹

The reaction of the media to the report was generally supportive, as the report was seen as a compromise between media coverage and operational logistics and security.²¹⁰ Though the Sidle Panel was in response to a specific situation, its recommendations established general media guidelines "that theoretically direct the military's press relations efforts today."²¹¹

2. Statement of Principles

After six months of negotiations following the Persian Gulf War, the Pentagon and the media agreed on nine principles concerning press coverage during military operations and essentially agreed to disagree on the issue of prior security review of press reports.²¹² The "Statement of Principles" demonstrated the continuing efforts of the U.S. military and the media to attain

209. Wilcox, *supra* note 203, at 47. Specifically, the eight recommendations were:

1. Public affairs planning for military operations should be conducted concurrently with operational planning.
2. When news media pooling provides the only feasible means of early access to an operation, planning should support the largest possible press pool, but only for the minimum length of time necessary.
3. The Secretary of Defense should study whether a list of accredited journalists or merely accredited news organizations is necessary.
4. The media should voluntarily comply with security guidelines.
5. Qualified military personnel should assist journalists covering combat operations.
6. The military should provide media communications as early as feasible, provided they do not interfere with combat operations.
7. Military planning should consider media transportation.
8. The military should meet regularly with media leaders to discuss mutual problems.

Steger, *supra* note 1, at 970 n.98 (citing REPORT BY CHAIRMEN OF THE JOINT CHIEFS OF STAFF MEDIA-MILITARY RELATIONS PANEL (1984)).

210. Steger, *supra* note 1, at 970. Some journalists criticized the recommendations as vague and indeterminate, allowing the military to implement new rules at its discretion. *Id.*

211. Wilcox, *supra* note 203, at 47.

212. Gersh, *supra* note 198, at 18. As to prior review, the media stated, "The news organizations are convinced that journalists covering U.S. forces in combat must be mindful at all times of operational security and the safety of American lives. News organizations strongly believe that journalists will abide by clear operational security ground rules. Prior security review is unwarranted and unnecessary." *Id.* The Pentagon, however, asserted that the military "must retain the option to review inadvertent inclusion in news reports of information that could endanger troop safety or the success of a mission." *Id.*

common ground and clear rules concerning media coverage of military operations.

The "Statement of Principles" stated that: (1) open and independent reporting will be the principle means of coverage of U.S. military operations; (2) pools are not to serve as the standard means of covering U.S. military operations, but sometimes may provide the only feasible means of early access to a military operation; (3) when used, pools should be disbanded as early as possible; (4) logistical problems may mandate pools; (5) journalists in a combat zone will be required to abide by military security ground rules where violation of those rules may result in suspension of the credentials and expulsion of the journalists involved; (6) news organizations will attempt to assign experienced journalists to combat operations; (7) journalists will have access to all major military units, except in some cases involving special operations; (8) military public affairs officers should act as liaisons, but should not interfere with the reporting process; (9) the military will be responsible for pool transportation and will otherwise provide transportation of journalists whenever possible; (10) the military will supply facilities to enable timely media transmission consistent with its capabilities and will not inhibit the media's use of its own communications systems operation; and (11) the principles stated above would apply as well to the operations of the standing Department of Defense National Media Pool system.²¹³

Both the "Statement of Principles" and the Sidle Panel report provide specific guidelines for media coverage during military operations and suggest two general principles necessary for effective media rules during military operations. These two principles include agreement between both the media and the military on media rules prior to implementing the operation and rules that encourage open media coverage unless operational logistics or security demand further restrictions. Therefore, in order to strike the proper balance between the media and military, U.N. media rules should generally create open media coverage and only restrict such coverage in very limited circumstances.

C. *Enforceability of U.N. Media Rules*

The procedure to create formal media guidelines and the establishment of those guidelines are the initial steps in implementing U.N. media rules for peacekeeping operations. The most difficult issue to address, however, in implementing U.N.

213. *Id.* at 18-24.

media rules is the enforceability of those rules. In order to be effective, U.N. media rules must include mechanisms for their enforcement against the international media.

As noted earlier, in forming general media rules, the Security Council should invite media input and participation.²¹⁴ This not only allows the media to contribute their perspectives and interests, but it also encourages the media to abide by the rules through their role in formulating the rules. Furthermore, if U.N. media rules generally favor open media coverage as proposed in this Note,²¹⁵ then the media will be even more inclined to abide by the media rules. A general agreement between the United Nations and the media concerning media rules will promote the effectiveness of the rules, fairness on the part of the United Nations in applying the rules, and adherence on the part of the media in following them.

The support of member states is also imperative to the enforceability of U.N. media rules. International and regional agreements indicate that the international community supports the freedom of expression and the free flow of information.²¹⁶ More importantly, most of these agreements limit these freedoms when national security or public welfare is at risk.²¹⁷ U.N. media rules that promote open media coverage, except when operational security is at risk, are aligned with the view of the freedom of expression and the free flow of information as expressed by international laws. With the consultation of member states in determining U.N. media rules, these rules are likely to garner the support of member states.

Further, the formation of U.N. media rules reduces the danger of member states withdrawing from a peacekeeping operation, akin to the situation with UNESCO.²¹⁸ Problematic issues that prompted Western nations, including the United States, to withdraw from UNESCO included defining the appropriate parameters of UNESCO and governmental control over the media. These problems are absent from the issue of U.N. media rules. The nature of the U.N. media rules is one of openness and cooperation, rather than discretionary governmental control. Moreover, restrictions on the media would result only from identifiable threats to operational security, not for unknown or general governmental reasons. Finally, the United States has already implemented such media rules in its

214. See *supra* part VI.A.

215. See *supra* part VI.B.

216. See *supra* part III.

217. *Id.*

218. See *supra* part IV.C.

military operations, indicating that Western nations would be supportive of such media rules.

With the compliance of participating member states and the media, the Security Council effectively ensures that U.N. media rules will be enforced during a peacekeeping operation. The Security Council, however, also has additional options to further enforce the media rules.

1. Accreditation

In implementing media rules, the United Nations should formally brief reporters about the rules as well as the security concerns of the peacekeeping operation prior to the operation itself. This briefing would put reporters on notice to not only the media rules, but also to the security implications that may require later restrictions. Additionally, the emphasis on operational concerns would also enlighten the media as to the potential harm an inadvertent report of information may cause to the peacekeeping operation.²¹⁹ Awareness on the media's part of this potential harm will encourage responsible reporting from an operational site.

The U.N. briefing would also serve as an enforcement mechanism in two ways. First, attendance at the briefing would be required for accreditation of reporters who wish to cover the peacekeeping operation.²²⁰ Second, the conditional granting of credentials and their revocation for violations of the media rules would deter reporters from disregarding the rules.²²¹ An accreditation system would thus promote the enforceability of U.N. media rules.

2. Judicial Review

The determination of how U.N. media rules are to apply or when an operational security risk warrants further restrictions beyond the general guidelines rests with the United Nations, and specifically with peacekeeping commanders. This unilateral determination may result in infringements upon the media's ability to report about a peacekeeping operation, ranging from access restrictions to total exclusion of reporters from an operation. In order to guard against inappropriate or excessive application of the media rules by the United Nations, judicial

219. Steger, *supra* note 1, at 1002.

220. See *id.* at 1003 (proposing that the military briefing be a mandatory part of the accreditation process for journalists in the U.S. military context).

221. *Id.*

review of contested media regulations comprises a necessary check on U.N. discretionary power.

In reviewing the U.N.'s application of its media rules, a court may adopt a contractual analysis or a factor-balancing test articulated by the U.S. Supreme Court. Under a contractual analysis, the court would review a conflict between the media and the United Nations over the enforcement of U.N. media rules by: "(a) enforcing the terms of the contract; (b) determining the parties' intent by referring to the statement of principles and purpose if the contract terms are ambiguous; (c) imposing a duty of good faith and fair dealing; and (d) examining the parties' performance with an emphasis on consistency with their reasonable expectations."²²²

Further, in *Globe Newspaper Co. v. Superior Court*,²²³ the U.S. Supreme Court provided a "three-part [factor-balancing] test to determine whether the media is entitled to access to a government activity."²²⁴ First, the government activity historically must be open.²²⁵ Second, press access must have a significant role in the function of the government activity.²²⁶ Finally, the government may nevertheless restrict press access if a compelling government interest exists to limit access and these limits are narrowly tailored to meet that compelling interest.²²⁷

Applying these criteria, judicial review in the peacekeeping context may be performed by domestic courts or the International Court of Justice (I.C.J.). The utilization of either court has its advantages and disadvantages. No one factor is determinative in favoring one court over the other. In addition, the use of one court does not necessarily exclude the availability of the other. The possibility of either of these courts as bodies of judicial review is briefly discussed below.

a. Domestic Courts

Judicial review in domestic courts allows reporters to directly contest U.N. application of U.N. media rules. The media also has the advantage of appearing before its own national courts. Furthermore, the participants involved in the case would most likely be of the same national origin, as media organizations most

222. Short & Pope, *supra* note 23, at 23-24.

223. 457 U.S. 596 (1982).

224. Wilcox, *supra* note 203, at 50.

225. See *id.* at 50 (citing *Globe Newspaper*, 457 U.S. at 605).

226. See Wilcox, *supra* note 203, at 50 (citing *Globe Newspaper*, 457 U.S. at 606).

227. See Wilcox, *supra* note 203, at 50 (citing *Globe Newspaper*, 457 U.S. at 607).

heavily concentrate on activities of their own government or military. Therefore, domestic courts would be familiar with all the parties. However, there are also several problems in relying on domestic courts for judicial review.

The most problematic aspect of judicial review by domestic courts is the potential for inconsistent outcomes concerning U.N. media rules. In nations where the media and freedom of speech are not highly valued, the United Nations will enjoy considerable deference to its application of the media rules. However, in nations like the United States where freedom of speech is constitutionally protected, the media may have the greater advantage. The domestic perspective of the media may transform the U.N. media rules from consistent guidelines to arbitrary decisions.

An additional problem with domestic judicial review consists of a conflicts of law problem. The domestic court would have to reconcile U.N. media rules with any domestic law concerning its own media. For instance, a U.S. court may have to consider the First Amendment as well as the international or U.N. norm concerning freedom of speech. This may not only invite inconsistent applications of U.N. media rules, but may also prove to be an impossible task.

b. International Court of Justice

The I.C.J. is "the principal judicial organ of the United Nations."²²⁸ The I.C.J. has jurisdiction over "all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force."²²⁹ Although the Statute of the International Court of Justice provides that only states may be parties in cases before the I.C.J.,²³⁰ the I.C.J. in an advisory opinion²³¹ held that the United Nations may be party to a suit before it.²³²

Arguably then, a state could espouse a claim on behalf of a media organization against the United Nations, challenging the

228. U.N. CHARTER art. 92.

229. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 36, para. 1.

230. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 34, para. 1.

231. "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question." U.N. CHARTER art. 96, para. 1. Advisory opinions are non-binding, but provide guidelines for international behavior.

232. *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. 174, 187 (April 11) (holding that the United Nations has the capacity to bring an international claim against a member state for damages to the United Nations caused by that member's breach of an international obligation to the United Nations).

application of U.N. media rules. An action before the I.C.J. would avoid the inconsistency or conflicts of law problem confronting domestic courts. In fact, ability of the I.C.J. to apply the singular standard of international norms, as well as the fact that the I.C.J. is probably more well-versed on such norms than domestic courts, would promote greater consistency in the outcome of such cases.

However, the problem of inadequate claims would hinder the effectiveness of judicial review by the I.C.J. Because individuals and media organizations cannot bring claims before the I.C.J., the state of national origin of the individual reporter or media organization would have to espouse the claim. In all likelihood, the state will have endorsed the application of U.N. media rules as that state's military is likely to be involved in the peacekeeping operation. Therefore, it is unlikely that the state will challenge U.N. media rules when the rules are for the security of that state's troops, or more generally, that state's success in the operation from which the rule is promulgated. Thus, the media would have no course of redress for overregulation by the United Nations.

While the enforcement of U.N. media rules may be problematic, particularly the difficulty in checking U.N. discretionary power to apply those rules, the merits of U.N. media rules during peacekeeping operations warrant an attempt to develop and implement such rules. By promoting open media coverage except when operational security or success is jeopardized, U.N. media rules can create a cooperative atmosphere between peacekeeping forces and the media and allow for both the interests of the United Nations and the media to be served.

VII. CONCLUSION

"[P]eacekeeping is beginning to form a core function of the United Nations in the fields of international peace and security, self-determination, human rights, and economic development."²³³ While U.N. peacekeeping serves such vital international interests, the legitimacy of U.N. peacekeeping still depends upon the success of each operation. Thus, in order to preserve the effectiveness of the United Nations in pursuing these international interests, U.N. peacekeeping efforts should not be compromised. However, even though overexposure or inadvertent reports by the media may compromise the operational security of peacekeeping operations, it is important that the media keep the

233. RATNER, *supra* note 114, at 209.

international public informed. The media's role as a source of information is particularly important when lives and national, as well as international, interests are at stake. U.N. media rules that balance the respective roles of the United Nations and the media in the peacekeeping context promote cooperation and understanding, allowing the United Nations to better manage an operation towards success and the media to better inform the public as to the progress toward that success.

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