PEACE ENFORCEMENT:
Mapping the "Middle Ground"
in Peace Operations

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INTRODUCTION

The beginning of the post-Cold War era — specifically, the first half of the 1990s — saw a huge increase in the number and size of UN peace-keeping missions deployed around the world, including, in several cases, to environments for which traditional peace-keeping principles of consent, the non-use of force and impartiality proved ill-suited.

This led to a vigorous debate among international relations scholars, national defence establishments and the UN Secretariat on such questions as the extent to which these peace-keeping principles, in particular that limiting the use of force to self-defence, could be relaxed. New types of "peace-keeping" were envisaged for those situations where party cooperation was problematic and the need to use force beyond that for self-defence in fulfilment of mission objectives apparent.

Yet, other commentators argued that such environments required an entirely new type of peace operation — conceptually distinct, both from traditional peace-keeping and from the kind of large-scale enforcement action mounted in cases of trans-

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3 This term has been used by the UN, the US government and many international relations scholars to describe the full range of operations mandated by the UN for the maintenance of international peace and security. The exact scope of the term will be explored in some depth in chapter 6, infra.
boundary aggression, as in the Korean Peninsula (1950-53) and the Persian Gulf (1990-91). This thesis of a "middle ground" in peace operations was, however, rejected by other writers who saw no room for anything between peace-keeping and enforcement. In short, confusion reigned at mid-decade with perhaps the only point of consensus being the need for greater conceptual clarity in respect of peace operations.

The question of a possible middle ground in the peace operations spectrum has largely dropped out of public discussion over the last half of the 1990s. Yet, it is submitted that the question has now been resolved. The purpose of this dissertation, then, is to demonstrate that such a middle ground

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has indeed been recognized, in both theory and practice, and to describe its features in detail.

Before proceeding, it is worth pondering the merits of the subject of study. Why is it so important to resolve this question of a middle ground in peace operations? First, because the lack of a guiding operational concept for the middle ground was undoubtedly a major factor in the failure of several peace operations with enforcement or quasi-enforcement mandates conducted during the first half of the 1990s — in particular, the hunt for General Aideed in Somalia and the defence of the "safe areas" in Bosnia-Herzegovina. Thus, the first reason for mapping out the middle ground is to improve our ability to plan and implement operations of this kind. While one source of the aforementioned failures undoubtedly lay in a simple failure of political will, leading to half-measures and/or frequent shifts of strategy, confusion as to the nature of the middle ground and its relationship to peace-keeping and other types of enforcement action almost certainly played a major role as well.

Second, conceptual clarity facilitates collective action in respect of peace operations. As the ends and means of middle ground operations are spelled out with some precision, individual governments, accountable to their electorates and, in some cases, facing hostile legislatures, will find it easier to commit themselves to participate in them.\(^7\)

A third reason for conducting the present study relates to the question of UN reform. It seems obvious that a clear understanding of the different strategies developed by the UN for the maintenance of international peace and security is a prerequisite to any consideration of future reforms in this area. Only once we know exactly what instruments the UN has at its disposal, can we decide whether and how these might be improved or extended.

Finally, it remains to be proven that the UN, in particular the UN Security Council, has the legal authority to establish and conduct — and, crucially, authorize member states to establish and conduct — middle-ground-type operations. Although the question of the legality of Security Council action is important in its own right, it has taken on added importance in the post-Cold War era with the sharp increase in Security Council activity, especially in the enforcement area, and accompanying accusations of double standards and pursuit of self-interest.8

When, in recent years, the Council has acted under chapter VII of the UN Charter for the purpose of taking, or authorizing others to take, enforcement action, it has invariably done so without indicating the specific Charter provision or provisions upon which its action rests, providing at most a simple reference to chapter VII in its entirety. Yet, a failure to underpin UN-sanctioned enforcement action, including middle ground operations, with a clear legal basis fuels the perception that the members of the Security Council — in particular its permanent members and, among these, the US and its European allies — are basically unresponsive to legal considerations, preferring instead to further individual interests which may or may not coincide with those of the international community. The end result is that the Council's legitimacy is seriously undermined.9

It is important, then, to confirm that the Security Council does, in fact, have the legal authority it assumes it has to conduct, and authorize others to conduct, middle ground operations, further to clarify the precise legal basis of this authority. Although the Security Council's powers under chapter


VII of the Charter are broad, they are not unlimited. Council legitimacy obviously depends on a wide range of factors; yet it also depends, in part, on the perception that the enforcement action it conducts or authorizes has a firm legal basis in the Charter.

The outlines of the middle ground are sketched, most famously, in paragraph 44 of the former UN Secretary-General's *An Agenda for Peace*. The first chapter of the dissertation is devoted to an in-depth analysis of the 1992 Agenda and subsequent UN documentation, both in respect of the middle ground, which the Agenda calls "peace-enforcement", and the related question of the use of force in peace-keeping.

In chapters 2-5, we examine a series of enforcement operations, conducted or authorized by the UN, which tend to resemble "peace-enforcement", as the concept is presented in the 1992 Agenda. This practice is briefly reviewed and analyzed in the first section of chapter 7. Yet, this is preceded, in chapter 6, by a study of American, British and French military doctrine in respect of peace operations, focusing on the question of the middle ground and the latter's relationship to other types of peace operation.

Chapters 7 and 8 are devoted to the task of definition, first from a political perspective (the operational characteristics of peace enforcement), then from a legal one (its legal basis). In the last section of the dissertation, we consider the question of peace enforcement's specificity in the context of the broader spectrum of UN peace operations. At issue — the role of peace enforcement in relation to peace-keeping and other types of enforcement action.

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10 *Supra*, note 4.
1 THE CONCEPT OF PEACE ENFORCEMENT
AS DEVELOPED BY THE UN

AN AGENDA FOR PEACE

On 31 January 1992, meeting for the first time at the level of heads of state and government, the Security Council asked the Secretary-General to prepare

his analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peace-keeping.²

Over the following months, the Secretary-General, with the assistance of a Task Force set up especially for this purpose, prepared the report requested by the Council. Several states or groups of states submitted formal briefs to the Secretary-General within the terms of reference specified by the Security Council at the January summit. A broad range of proposals from the academic and NGO communities also formed part of the pool of recommendations examined in the initial stages of the report's preparation.

In defining the parameters of the project, the Secretary-General opted for a "bold and comprehensive" approach,³ covering a wide range of issues relating to the UN's maintenance of international peace and security and staking out his own position in areas where no consensus existed in order to stimulate debate. Although then new to the UN, having taken up

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¹ The account of the report's preparation included in this section is based on David COX, Exploring An Agenda for Peace: Issues Arising from the Report of the Secretary-General (Aurora Paper no. 20, Ottawa, Canadian Centre for Global Security, October 1993), pp. 3-6 and 41, and on a letter from Tapio KANNINEN, Political Affairs Officer (UN Secretariat, New York) to the author, 9 October 1996. Mr. Kanninen acted as Secretary of the Agenda Task Force.


³ Cox, supra, note 11, p. 3.
his functions as Secretary-General on 1 January 1992, Boutros Boutros-Ghali guided the work of the Task Force and determined the content of the final report. An Agenda for Peace is thus very much his own work.⁴

Pursuant to the Security Council's terms of reference, the 1992 Agenda focused on "preventive diplomacy", "peacemaking" and "peace-keeping". Boutros-Ghali, on his own initiative, also discussed "the critically related concept of post-conflict peace-building".⁵ Similarly falling outside the Council's terms of reference was "peace-enforcement"⁶ which, somewhat problematically, as will be explained shortly, was dealt with under the rubric of peacemaking.

None of the definitions offered by the 1992 Agenda for the aforementioned instruments was particularly satisfying. We will, however, restrict our attention to the definitions offered for peacemaking and peace-keeping given their relevance to peace enforcement, before embarking upon a detailed examination of the latter concept.⁷

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⁴ See Cox, supra, note 11, p. 3.

⁵ An Agenda for Peace, supra, note 4, para. 21.

⁶ Note that the hyphen included in the UN's initial spelling of the term — "peace-enforcement" — was later dropped. The more recent, hyphen-less spelling is retained throughout the dissertation, except, obviously, where a quoted passage dictates otherwise.

⁷ Concerning the problems inherent in the 1992 Agenda's definitions of preventive diplomacy and post-conflict peace-building, see Trevor FINDLAY, "Multilateral Conflict Prevention, Management and Resolution", SIPRI Yearbook 1994, pp. 16-18. Note also that in his 50th Anniversary Annual Report on the Work of the Organization, Boutros-Ghali stated his preference for the term "preventive action" as opposed to that of "preventive diplomacy" (A/51/1, 20 Aug. 1996, para. 652). For Findlay, the likely source of these definitional problems lies in "the woolly thinking of the Security Council, which tasked the Secretary-General with preparing a report on the rather selective menu of 'preventive diplomacy, peacemaking and peacekeeping' rather than the comprehensive agenda of conflict prevention, management and resolution" (ibid., p. 18).
PEACEMAKING

An Agenda for Peace defines "peacemaking" as:

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.\[^8\]

The word "essentially", coupled with the report's discussion of economic sanctions and the use of military force, including peace enforcement, under the "peacemaking" rubric constituted something of an innovation or, as some observers argued, a source of unnecessary confusion,\[^9\] since the traditional, pre-Agenda meaning of "peacemaking" restricted the concept to non-coercive — basically diplomatic — means.\[^10\] The recent, post-Agenda literature includes authors who stick to the non-coercive formulation\[^11\] and others whose understanding of the concept incorporates a markedly coercive slant.\[^12\]

This confusion may have been the price the Secretary-General felt he had to pay in order to include the subject of enforcement action in An Agenda for Peace since, in contrast to peacemaking, the Security Council made no mention of enforcement action in its terms of reference for the report. In any case, since the 1992 Agenda, peacemaking has been restored by the UN to its original, non-coercive formulation. Tentative steps

\[^8\] An Agenda for Peace, supra, note 4, para. 20. See also para. 21.


\[^11\] See Gareth EVANS, Cooperating for Peace (St. Leonards, Australia, Allen & Unwin, 1993), p. 11.

towards this reformulation were made in 1993, but only in 1994 was the shift clearly reflected in UN documentation. The distinction between peacemaking and enforcement action was emphasized in the 1995 Agenda Supplement and, even more strongly, in the Secretary-General's 1996 Report on the Work of the Organization:

'Peacemaking' is also a term that requires definition. As employed by the United Nations, it refers to the use of diplomatic means to persuade parties in conflict to cease hostilities and to negotiate a peaceful settlement of their dispute. As with preventive action, the United Nations can play a role only if the parties to the dispute agree that it should do so. Peacemaking thus excludes the use of force against one of the parties to enforce an end to hostilities, an activity that in United Nations parlance is referred to as 'peace enforcement'.

PEACE-KEEPING

An Agenda for Peace defines "peace-keeping" as:

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.

As innocuous as this definition might appear at first glance, the word "hitherto" actually suggested a radical departure from

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15 Supra, note 1, para. 23.


17 An Agenda for Peace, supra, note 4, para. 20.
the traditional practice of peace-keeping, developed during the Cold War.

While UN attempts to codify general principles governing the establishment and conduct of UN peace-keeping operations have not succeeded,\(^1\) a basic consensus did evolve during the Cold War on the nature of the activity. Specifically, three characteristics were seen to define the activity of peace-keeping. First, peace-keeping was to be conducted only with the consent of the parties concerned, in particular the state upon whose territory the force was to be deployed (the "host state"), together with the other parties to the specific conflict.\(^2\) The principle of consent also governed the process of putting the peace-keeping force together. Military personnel and equipment were made available by participating states on a purely voluntary basis.\(^3\)

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\(^1\) This task formed a central part of the mandate of the Special Committee on Peace-keeping Operations, established under General Assembly Resolution 2006(XIX) of 18 February 1965. Its codification efforts during the Cold War foundered, in particular, on the question of the distribution of authority over peace-keeping operations between the Security Council and the Secretary-General. See Robert SIEKMANN, "The Codification of General Principles for United Nations Peace-keeping Operations", *Netherlands International Law Review*, vol. XXXV, 1988/3. The Special Committee has not resumed its codification attempts since the end of the Cold War. Note, however, that the most recent version of the Special Committee's draft articles for peace-keeping operations, dating back to 1977, lists, in draft article 9, "the full co-operation of the parties" and the "complete objectivity" (i.e. impartiality) of peace-keeping forces as essential features of peace-keeping. "Draft Formulae for Articles of Agreed Guidelines for United Nations Peace-keeping Operations" (A/32/394, 2 Dec. 1977, Annex II, Appendix I) [hereinafter, "1977 Draft Articles"]. While many of the 1977 draft articles contain alternative provisions, reflecting the disagreement just described, a single version of draft article 9 was agreed by all Special Committee members, at least as a basis for further discussion. In this regard, see paragraphs 7 and 8 of the Eleventh Report of the Working Group (A/32/394, 2 Dec. 1977, Annex II).


\(^3\) A/3943, 9 Oct. 1958, para. 155.
The principle of consent presupposed not merely the absence of opposition to the force, but, further, the full cooperation of the belligerent parties in the implementation of the peacekeeping force's mandate.\(^{21}\) This meant, for example, allowing the force the freedom of movement and communication and other facilities which were necessary for the performance of its tasks.\(^{22}\)

The second defining characteristic of peace-keeping was the non-use of force except in self-defence. In formulating the basic rules and principles of peace-keeping on the basis of the experience of the First United Nations Emergency Force (UNEF I), UN Secretary-General Hammarskjöld defined the principle thus:

\[
\text{men engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions which they occupy under orders from the Commander, acting under the authority of the Assembly and within the scope of its resolutions.}^{23}\]

This formulation of the principle was, as we shall see, also used for the United Nations Operation in the Congo (ONUC). Yet, the principle was subsequently extended to encompass the "defence" of the peace-keeping mission as well as the defence of


\(^{22}\) A/3943, 9 Oct. 1958, para. 164. S/11052/Rev.1, 27 Oct. 1973, para. 4(b). Blue Helmets, supra, note 20, p. 6. And see note 28, supra. This principle, together with details of the facilities to be accorded, has been incorporated into the status of forces agreements that the UN has concluded with host states in respect of several peace-keeping operations. Note also that a peace-keeping force's right of freedom of movement is often analyzed in the literature as a corollary of its right of self-defence. On this point, see the discussion concerning the United Nations Operation in the Congo ─ text accompanying notes 136-42, infra.

\(^{23}\) A/3943, 9 Oct. 1958, para. 179. UNEF I, exceptionally, was established by the General Assembly.
the peace-keeping force and its positions. We will later examine more closely this evolution in the principle restricting the use of force in peace-keeping. Yet, we can note here that since the extended definition of self-defence was almost never applied during the Cold War, the concept of peace-keeping continued to be based on the self-defence principle’s original, narrow formulation.

Impartiality was the third defining characteristic of peace-keeping. A peace-keeping operation was expected to act with complete impartiality vis-à-vis the parties to the conflict in performing its functions under the UN mandate. This derived from the fact that peace-keeping was, in principle, a temporary, emergency measure, designed to consolidate a fragile peace between belligerent parties without prejudice to the claims or positions forming the subject matter of the particular dispute.

The principle of force autonomy derived from that of impartiality. Pursuant to the former, the peace-keeping force could not act at the behest of the host state or any other party to the conflict. Its function was to implement the mandate conferred upon it by the Security Council or other international organ, to whom alone it was accountable.

The principle of impartiality also had implications for the composition of the peace-keeping force. Shortly after the establishment of UNEF I, Secretary-General Hammarskjöld asserted, as a matter of principle, that neither the permanent members of the Security Council nor any states having a special interest in the particular situation giving rise to a peace-keeping operation should participate in it.


27 Abi-Saab, supra, note 6, p. 4. And see A/3943, 9 Oct. 1958, para. 165.

28 A/3943, 9 Oct. 1958, para. 160. And see Abi-Saab, supra, note 6, p. 2. Note that the participation of the United Kingdom in the United Nations
While they were not its only characteristics, the three core principles of consent, the non-use of force except in self-defence, and impartiality were widely seen, at an early stage, to define the activity of peace-keeping. It is for this reason that the definition proposed in An Agenda for Peace, rejecting consent as a basic characteristic of peace-keeping, was nothing short of revolutionary. To reject the principle of consent is also to reject the principle of the non-use of force since, in the absence of consent, a UN force would have little alternative but to employ some measure of force in order to implement its mandate. This implication of the infamous "hitherto" was in fact made explicit in writings and addresses given by Secretary-General Boutros-Ghali in the year following the release of An Agenda for Peace.

Yet, it is only on the basis of the non-use of force that peace-keeping can be distinguished from enforcement action. The ultimate implication of the "hitherto", in other words, was to erase the distinction between peace-keeping and enforcement action. This too emerged quite clearly from Boutros-Ghali's writings:

Between Chapter VI and Chapter VII lie cases which are sui generis and where earlier certainties about actions with or without the parties' agreement may need to be re-examined with each new Peace-keeping Force in Cyprus (UNFICYP) and that of France in the United Nations Interim Force in Lebanon (UNIFIL) were Cold War exceptions to the first rule. Since the end of the Cold War, the latter has effectively been abandoned. The second rule, while probably not abandoned, has been undermined in the post-Cold War period by several, significant departures from it, beginning with Russian and Turkish participation in the United Nations Protection Force (UNPROFOR) in the former Yugoslavia.


Yet, the "middle ground", if it does exist, cannot be defined in such terms. A particular operation is either authorized to use force for the purpose of implementing its mandate (not merely for the incidental purpose of protecting itself while implementing its mandate by peaceful means) or it is not. There is nothing between enforcement and non-enforcement. Whatever the operational specificity of post-Agenda peace-keeping, it cannot lie here. In fact, the principal criticism that post-Agenda peace-keeping inspires, from a theoretical point of view, is that it has no specificity at all.

In his Report on the Work of the Organization for 1993, Boutros-Ghali retained, word for word, the definition of peace-keeping found in the 1992 Agenda, including the "hitherto". He offered, however, a new definition for "the concept of peace enforcement":

It involves peace-keeping activities which do not necessarily involve the consent of all the parties concerned.

Which was to say that "peace-keeping" and "peace enforcement" were the same thing or, at least, that "peace-keeping" overlapped with "peace enforcement". In fact, the boundaries of

31 Boutros-Ghali, "Beyond Peacekeeping", ibid., p. 120.
33 A/48/1, 10 Sept. 1993, para. 278.
34 Ibid., para. 278.
post-Agenda peace-keeping appeared to know no limits.

Just as preventive diplomacy and conflict resolution, familiar responsibilities of the United Nations, have taken on new dimensions, so the term peace-keeping now stretches across a heretofore unimagined range of United Nations activities and responsibilities.

Peace-keeping is a United Nations invention. The concept is, however, not a static one, but is ever changing; in order to succeed, and to reflect the changing needs of the community of States, peace-keeping has to be reinvented every day. Each case in which United Nations peace-keepers are involved draws upon the fund of experience, imagination and professionalism of the Organization. It is not an exaggeration to state that today there are as many types of peace-keeping operations as there are types of conflict.\textsuperscript{35}

On theoretical grounds, then, the Secretary-General's proposed reconceptualization of peace-keeping raised serious concern.\textsuperscript{36}

Yet, the real test of the new definition of peace-keeping would come, not on paper, but on the ground. The new definition was driven, not by theoretical considerations, but by the practical problems then facing UN peace-keeping operations. A series of proposals for the use of force by peace-keepers, circulating in the early 1990s,\textsuperscript{37} were largely prompted by the UN's increasing, post-Cold War involvement in internal conflicts and the relative scarcity, in that context, of party consent and cooperation. In fact, the problem was quite vividly illustrated during the period, in the spring of 1992, that An Agenda for Peace was being drafted.

\textsuperscript{35} Ibid., paras. 292-93.

\textsuperscript{36} Concerning the problems raised by the Secretary-General's "hitherto", see: Weiss, supra, note 6, p. 176; Findlay, supra, note 17, pp. 17-18; Roberts, supra, note 6, pp. 100-01.

As the United Nations Protection Force (UNPROFOR) deployed to Serb-held areas of Croatia pursuant to the UN peace-keeping plan for the newly independent republic, the Secretary-General reported that the Serb-controlled Yugoslav Army, as it withdrew from these areas, as required under the plan, was transferring arms, equipment and personnel to local Croatian Serb paramilitary units. In this way, the plan's demilitarization and demobilization provisions were thwarted and UNPROFOR's mission in Croatia effectively subverted. During the same period, as the United Nations Transitional Authority in Cambodia (UNTAC) deployed to that country, the Khmer Rouge were moving to derail the military component of the Paris Accords, signed in October 1991 for the purpose of ending the Cambodian civil war.

Yet, it remained to be seen whether such problems could be overcome by allowing peace-keepers to use force. Calls for UNTAC to use force to bring the Khmer Rouge to heel were not heeded. The former Yugoslavia was to offer more fertile terrain for experimentation, though the combination of peace-keeping and enforcement action mounted by the UN and NATO in Bosnia-Herzegovina in 1993-95 was soon discredited. Writing in early 1995, even before the catastrophic fall of the Srebrenica and Zepa safe areas in Bosnia, the Secretary-General drew very different

38 S/23844, 24 April 1992, para. 16.

39 Failure to demilitarize the "United Nations Protected Areas" prevented the return of displaced persons to their homes as originally intended. For a good account of the subversion of UNPROFOR's mandate in Croatia, see Alan JAMES, "The UN in Croatia: An Exercise in Futility?", The World Today, vol. 49(5), May 1993, especially pp. 94-95.

40 S/24090, 12 June 1992. The Khmer Rouge were refusing to comply with measures which would permit the entry into force of Phase II of the cease-fire, involving the regroupment, cantonment, disarmament and partial demobilization of the four rival armies.


42 See chapter 4, "The Safe Areas" section, infra.
conclusions concerning the distinctions between peace-keeping and enforcement from those he had offered, at least implicitly, in An Agenda for Peace.

In both [Somalia and Bosnia-Herzegovina], existing peace-keeping operations were given additional mandates that required the use of force and therefore could not be combined with existing mandates requiring the consent of the parties, impartiality and the non-use of force. It was also not possible for them to be executed without much stronger military capabilities than had been made available, as is the case in the former Yugoslavia. In reality, nothing is more dangerous for a peace-keeping operation than to ask it to use force when its existing composition, armament, logistic support and deployment deny it the capacity to so. The logic of peace-keeping flows from political and military premises that are quite distinct from those of enforcement; and the dynamics of the latter are incompatible with the political process that peace-keeping is intended to facilitate. To blur the distinction between the two can undermine the viability of the peace-keeping operation and endanger its personnel.43

Thus, it has become clear: first, that "a mix of peace-keeping and enforcement is not the answer to a lack of consent and cooperation by the parties to the conflict";44 second, that peace-keeping remains peace-keeping, founded upon the three core principles of consent, the non-use of force except in self-

43 Agenda Supplement, supra, note 1, para. 35. It will be seen in chapter 3 of the dissertation that the second United Nations Operation in Somalia (UNOSOM II), in contrast to the safe areas initiative in Bosnia, did not in fact mix peace-keeping and enforcement action. Compare paragraph 35 of the Agenda Supplement, just quoted, with paragraphs 599-600 of the Secretary-General's 1995 Report on the Work of the Organization (A/50/1, 22 Aug. 1995) where, in a similar discussion of the dangers of mixing peace-keeping and enforcement, the example of Bosnia, alone, is retained.

defence, and impartiality.

In fact, the UN's shift back to the standard definition of peace-keeping was evident even before the release of the Agenda Supplement. The Secretary-General's March 1994 report on Improving the Capacity of the United Nations for Peace-Keeping quietly dropped the "hitherto" in its new definition of peace-keeping: "a United Nations presence in the field ... with the consent of the parties". The point is emphasized in the Agenda Supplement:

the last few years have confirmed that respect for certain basic principles of peace-keeping are essential to its success. Three particularly important principles are the consent of the parties, impartiality and the non-use of force except in self-defence.

Virtually everyone, inside and outside of the UN now agrees. The three core principles are seen as fundamental to peace-keeping. This is as true of so-called "second generation peace-keeping" as it is of its Cold War predecessor. While second generation operations are typically called upon to perform a much wider variety of functions than the traditional missions for the supervision of cease-fire arrangements and the separation of rival military forces, they remain peace-keeping, founded on

45 A/48/403, 14 March 1994, para. 4(c).


the three criteria just described.\textsuperscript{49}

Thus, attempts to stretch peace-keeping beyond established limits have been definitively rejected. Yet, this is not to reject the need for something more than peace-keeping when faced, in a particular conflict, with a lack of party consent and cooperation. Since An Agenda for Peace was released in June 1992, the traditional concept of peace-keeping, which it called into question, has been reaffirmed. The use of force to overcome a lack of consent and cooperation is a separate question.

**PEACE ENFORCEMENT**

Several commentators, writing in the early 1990s, were sceptical that a lack of consent and cooperation could be remedied by allowing peace-keepers to use force.\textsuperscript{50} They advocated, instead, a "third option", specifically a "third category of international military operation ... somewhere between peacekeeping and large-scale enforcement."\textsuperscript{51} In fact, Boutros-Ghali's proposal, in An Agenda for Peace, for "peace-enforcement units" appears to stake out such a middle ground.

\textsuperscript{48} The new operations, unlike their Cold War predecessors, often follow a peace settlement between the parties and may have as their primary mission the implementation of that settlement. A second factor encouraging an expansion of tasks is the shift in the locus of activity from the inter-state to intra-state realm. See: Abi-Saab, supra, note 6; Georges ABI-SAAB, "La deuxième génération des opérations de maintien de la paix: quelques réflexions préliminaires", Le Trimestre du monde, no. 20, 1992/4; Victor-Yves GHEBALI, "Le développement des opérations de maintien de la paix de l'ONU depuis la fin de la guerre froide", Le Trimestre du monde, no. 20, 1992/4; Ratner, supra, note 51, p. 17.


\textsuperscript{50} Mackinlay, supra, note 47, reviews the various arguments made by those sceptical of the use of force in this context. And see Urquhart, supra, note 29, especially pp. 201-03.

\textsuperscript{51} Urquhart, supra, note 4. Urquhart's proposal was echoed by Mackinlay and Chopra, supra, note 4 (p. 118). And see Jarat CHOPRA, Age EKNES, and Toralv NORDBO, Fighting for Hope in Somalia (Oslo, Norwegian Institute of International Affairs (NUPI), 1995), pp. 15-16.
Paragraph 44 of the 1992 Agenda reads as follows:

*Peace-enforcement units*

44 The mission of forces under Article 43 would be to respond to outright aggression, imminent or actual. Such forces are not likely to be available for some time to come. Cease-fires have often been agreed to but not complied with, and the United Nations has sometimes been called upon to send forces to restore and maintain the cease-fire. This task can on occasion exceed the mission of peace-keeping forces and the expectations of peace-keeping force contributors. I recommend that the Council consider the utilization of peace-enforcement units in clearly defined circumstances and with their terms of reference specified in advance. Such units from Member States would be available on call and would consist of troops that have volunteered for such service. They would have to be more heavily armed than peace-keeping forces and would need to undergo extensive preparatory training within their national forces. Deployment and operation of such forces would be under the authorization of the Security Council and would, as in the case of peace-keeping forces, be under the command of the Secretary-General. I consider such peace-enforcement units to be warranted as a provisional measure under Article 40 of the Charter. Such peace-enforcement units should not be confused with the forces that may eventually be constituted under Article 43 to deal with acts of aggression or with the military personnel which Governments may agree to keep on stand-by for possible contribution to peace-keeping operations.\(^52\)

On its face, this proposal is "more a mechanism than a concept",\(^53\) yet it also seems part concept and, as such, of broader scope than the specific contingency it envisages of cease-fire enforcement.\(^54\) Taken together with an article written

\(^{52}\) *An Agenda for Peace*, supra, note 4. Note the resemblance to Urquhart's proposal for "armed police actions" designed "to put an end to random violence and to provide a reasonable degree of peace and order so that humanitarian relief work could go forward and a conciliation process could commence." Urquhart, *supra*, note 4.


\(^{54}\) This interpretation finds strong support in paragraph 44 where the Secretary-General "recommend[s] that the Council consider the utilization of peace-enforcement units in *clearly defined circumstances* and with their terms of reference specified in advance." (emphasis added) The suggestion, clearly, is that the cease-fire enforcement function is merely one of a possible range of assigned functions. Also in support of this interpretation, see Boutros Boutros-Ghali, "L'ONU en première ligne", *Politique internationale*, no. 57, automne 1992, p. 146. But see Boutros Boutros-Ghali, "Empowering the United Nations", *Foreign Affairs*, vol. 71(5), winter 1992-93, pp. 93-94.
by Boutros-Ghali for the winter 1992-93 edition of *Foreign Affairs*,\(^{55}\) paragraph 44 can be seen to define an intermediate category of peace operation, possessing three principal characteristics.

**Enforcement** The peace enforcement units proposed in the 1992 *Agenda* would be mandated "to restore and maintain [a] cease-fire" in situations where such a cease-fire has "been agreed to but not complied with".\(^{56}\) Put differently, their task would be "to enforce a ceasefire by taking coercive action against either party, or both, if they violate it."\(^{57}\) As such, these units "would have to be more heavily armed than peace-keeping forces".\(^{58}\) Clearly, peace enforcement, as the name would suggest, involves the use of force beyond self-defence. It constitutes a species of enforcement action.

**Imperfect Consent** As we are dealing with enforcement action, one would assume, in direct contrast to peace-keeping, that consent is entirely dispensed with. In fact, under the scenario envisaged in both paragraph 44 and the *Foreign Affairs* article, the peace enforcement operation is deployed to enforce compliance with a previously agreed cease-fire. While there may not have been express consent to the deployment of the peace enforcement operation,\(^{59}\) the belligerents have at least agreed on the objective which the operation is mandated to secure. Consent, of a kind, existed, but has failed.

**Impartiality** While this is not expressly stated in *An Agenda for Peace*, the Secretary-General's affirmation that the legal basis of peace enforcement would be UN Charter article 40 is a

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\(^{55}\) Boutros-Ghali, "Empowering the United Nations", *ibid*.

\(^{56}\) *An Agenda for Peace*, *supra*, note 4, paragraph 44, 3rd sentence.

\(^{57}\) Boutros-Ghali, "Empowering the United Nations", *supra*, note 64, p. 94.

\(^{58}\) *An Agenda for Peace*, *supra*, note 4, middle of paragraph 44. And see Boutros-Ghali, "Empowering the United Nations", *supra*, note 64, p. 94.

\(^{59}\) Boutros-Ghali, "Empowering the United Nations", *supra*, note 64, p. 94.
strong indication of its impartial nature.\textsuperscript{60} In fact, the point is made explicitly in the Secretary-General's \textit{Foreign Affairs} article – peace enforcement troops "would be impartial between the two sides, taking action only if one or other of them violated the agreed ceasefire."\textsuperscript{61}

Peace enforcement's intermediate nature, standing somewhere between peace-keeping, on the one hand, and large-scale enforcement action, on the other, is highlighted in paragraph 44 of the 1992 \textit{Agenda}:

Such peace-enforcement units should not be confused with the forces that may eventually be constituted under Article 43 to deal with acts of aggression or with the military personnel which Governments may agree to keep on stand-by for possible contribution to peace-keeping operations.\textsuperscript{62}

Peace-keeping, as previously stated, is defined by the principles of consent, the non-use of force except in self-defence, and impartiality. Boutros-Ghali's reference to hypothetical article 43 forces designed "to deal with acts of aggression" suggests the kind of large-scale enforcement action mounted to stop or roll back transborder attacks by standing armies, as in Korea (1950-53) and the Persian Gulf (1990-91). Enforcement action of this type obviously involves no consent whatsoever and, since directed against a predetermined

\textsuperscript{60} The second-to-last sentence of article 40 reads: "Such provisional measures shall be without prejudice to the rights, claims or position of the parties concerned." The aim then is to freeze a given situation without consideration of relative blame or fault and without making any judgement on the specific claims advanced. For a detailed discussion of article 40, see chapter 8, \textit{infra}.

\textsuperscript{61} Boutros-Ghali, "Empowering the United Nations", \textit{supra}, note 64, p. 94.

\textsuperscript{62} \textit{An Agenda for Peace}, \textit{supra}, note 4, para. 44, last sentence. And see the first two sentences of the paragraph. Peace enforcement's intermediate nature is also suggested in the Secretary-General's 1993 \textit{Report on the Work of the Organization} wherein he states that "the concept of peace enforcement ... involves peace-keeping activities which do not necessarily involve the consent of all the parties concerned." A/48/1, 10 Sept. 1993, para. 278.
aggressor, is wholly partial.

Peace enforcement, as defined above, combines features of both peace-keeping and large-scale enforcement action. Like peace-keeping, peace enforcement is impartial. Like large-scale enforcement action, it involves the use of force beyond that for self-defence; it constitutes a species of enforcement action. It is distinct from both when it comes to consent, occupying an intermediate point between the "full and continuous consent" needed in peace-keeping \(^{63}\) and the total absence of consent found in large-scale enforcement action.

In the course of the dissertation, we will explore these characteristics of peace enforcement more thoroughly. An Agenda for Peace only reveals the approximate contours of the middle ground. To capture the latter with greater analytical precision — indeed, to confirm its existence — we will have to look outside the framework of the UN, as the latter, since the release of An Agenda for Peace in June 1992, has not merely failed to develop the concept, it has, arguably, rejected it altogether. At the very least, the term "peace enforcement" has been stripped of all meaning.

The ties in UN language between "peace enforcement" and the middle ground are severed in the Secretary-General's March 1994 report on Improving the Capacity of the United Nations for Peace-keeping which offered mostly new \(^{64}\) definitions for the various instruments for peace and security initially presented in An Agenda for Peace, including "peace-enforcement":

> It consists of action under Chapter VII of the Charter, including

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\(^{63}\) "The Special Committee stresses that full and continuous consent is crucial to the success of peace-keeping operations." A/50/230, 22 June 1995, para. 43. This conclusion was endorsed by the General Assembly in paragraph 2 of its Resolution 50/30 of 6 December 1995.

\(^{64}\) Although the Secretary-General claims, in paragraph 4 of the report (A/48/403, 14 March 1994) that "the international community has become increasingly familiar" with these instruments, the definitions given for peacemaking and peace-keeping, as well as that for peace enforcement, differ in key respects from those offered in the 1992 Agenda.
the use of armed force, to maintain or restore international peace and security in situations where the Security Council has determined the existence of a threat to the peace, breach of the peace or act of aggression;⁶⁵

On this definition, peace enforcement simply means enforcement action of any kind consistent with chapter VII of the UN Charter, including, but not restricted to, the use of armed force.

In the Supplement to An Agenda for Peace, issued in January 1995, the term "peace enforcement" is eclipsed by the generic term "enforcement" or "enforcement action". Although, in paragraph 23 of the report, "peace enforcement" is listed as one of "a range of instruments for controlling and resolving conflicts between and within States",⁶⁶ the term is dropped two sentences later in the paragraph in favour of "enforcement" alone. There is no hint of the middle ground in the brief definition of "enforcement" offered there which suggests a sharp division between coercive and non-coercive measures on the basis of the presence or absence of consent.⁶⁷

The term "peace enforcement" is not used at all in the section of the Supplement dealing with "Enforcement action".⁶⁸ The focus there is solely on enforcement operations authorized by the Security Council but conducted by ad hoc coalitions of member states or regional arrangements. A very wide spectrum of military activity is envisaged, ranging from the massive operations mounted to end North Korean (1950-53) and Iraqi aggression (1990-91) to NATO's use of air power for relatively

⁶⁶ Agenda Supplement, supra, note 1.
⁶⁷ The relevant sentence in paragraph 23 reads: "Sanctions and enforcement, on the other hand, are coercive measures and thus, by definition, do not require the consent of the party concerned." Agenda Supplement, supra, note 1.
⁶⁸ – section "F" of the report, i.e. paras. 77-80. Agenda Supplement, supra, note 1.
narrow purposes in Bosnia-Herzegovina (1994-95). 69

A fact sheet on peace-keeping, put out by the UN's Department of Public Information in September 1996, assigns the term "peace-enforcement" to the broad range of UN-authorized enforcement action described in the Agenda Supplement. 70 Issued around the same time as the fact sheet, the Secretary-General's Annual Report on the Work of the Organization describes "peace enforcement" as "the use of force against one of the parties to enforce an end to hostilities". 71

Thus, the term "peace enforcement", as used by the UN, no longer means anything in particular. One could argue that the UN has, in fact, entirely rejected the concept of a middle ground in peace operations, whether called "peace enforcement" or something else. The admonition, contained in the Agenda Supplement, against "blur[ring] the distinction between" peace-keeping and enforcement lends strong support to such a claim. 72 Yet, the presentation, in a preceding section of the report, of "a new kind of United Nations operation" involving the impartial and limited use of force by UN troops for humanitarian purposes seems predicated on the existence of a middle ground. 73 Unless


70 UN Peace-keeping: Some Questions and Answers, UNDPI, DPI/1851, Sept. 1996. The discussion of "peace-enforcement" contained in DPI/1851 has been used in a more recent UNDPI publication, though with some changes, in particular the partial replacement of the term "peace-enforcement" with "enforcement action". See Peace-keeping at a Glance, UNDPI, DPI/1903, May 1997.


72 Agenda Supplement, supra, note 1, para. 35. And see para. 34.

73 Agenda Supplement, supra, note 1, paras. 18-19. The specific examples mentioned are the protection of humanitarian relief operations and the protection of safe areas. Paragraph 19 reads:
"This has led, in Bosnia and Herzegovina and in Somalia, to a new kind of United Nations operation. Even though the use of force is authorized under Chapter VII of the Charter, the United Nations remains neutral and impartial between the warring parties, without a mandate to stop the aggressor (if one can be identified) or impose a cessation of
the report's subsequent admonition against mixing peace-keeping and enforcement, cited above, constitutes an implicit\textsuperscript{74} rejection of these activities, the middle ground would, then, retain some relevance for the UN, although its contours are even hazier in the \textit{Agenda Supplement} than in the 1992 \textit{Agenda}.

However one interprets the \textit{Agenda Supplement} on this point, it is clear that in order to map the middle ground with any precision, indeed in order to confirm its existence, we need to look outside the UN — to operations in the field and national military doctrine. Our earlier efforts to sketch out the salient features of peace enforcement on the basis of \textit{An Agenda for Peace} and the related \textit{Foreign Affairs} article will serve as the foundation of that analysis.

\textbf{AGENDA FOLLOW-UP}

The initial reaction of UN member states to Boutros-Ghali's proposal for peace enforcement units was cool.\textsuperscript{75} Over the 1992-93 period, neither the Security Council nor the General Assembly formally approved either the mechanism or concept in their review of the proposals contained in \textit{An Agenda for Peace}. The closest either body came to an endorsement of the concept of peace enforcement (the middle ground) can be found in the last of a series of nine statements made by the President of the

\begin{quote}
hostilities. Nor is this peace-keeping as practised hitherto, because the hostilities continue and there is often no agreement between the warring parties on which a peace-keeping mandate can be based. The "safe areas" concept in Bosnia and Herzegovina is a similar case. It too gives the United Nations a humanitarian mandate under which the use of force is authorized, but for limited and local purposes and not to bring the war to an end."
\end{quote}

\textsuperscript{74} Note that paragraphs 18 and 19 of the \textit{Agenda Supplement} (\textit{supra}, note 1), describing the new activities, contain no hint of the criticism found in the subsequent passage of the report (paragraphs 34-35). On the contrary, the presentation of these activities as "a new kind of United Nations operation" suggests a desire to institutionalize such practice.

Security Council on the 1992 Agenda. Therein, the Council enunciated a series of "operational principles" for "peace-keeping operations", including the following:

the consent of the government and, where appropriate, the parties concerned, save in exceptional cases; ... readiness of the Security Council to take appropriate measures against parties which do not observe its decisions; the right of the Security Council to authorize all means necessary for United Nations forces to carry out their mandate and the inherent right of United Nations forces to take appropriate measures for self-defence.\footnote{S/25859, 28 May 1993.}

While this statement, adopted at the height of Security Council activism, in May 1993,\footnote{In late March 1993, the Security Council decided to establish a UN peace enforcement operation for Somalia. UNOSOM II took over from the US-led multinational force in early May. See chapter 3, infra. The spring-summer of 1993 also saw the Security Council move to take a more muscular approach in respect of the Bosnian conflict. See chapter 4, infra.} shows some inclination on the part of Council members to use force in peace-keeping-type situations, it falls decisively short of an endorsement of the concept of peace enforcement which the statement neither mentions by name nor captures in its essential features.

While peace enforcement did not fare well on paper during this period, events on the ground were to force a trial of the concept, first in Somalia, subsequently in Bosnia-Herzegovina. We will examine the series of operations deployed to these two conflict zones in detail. Yet, we will first direct our attention to ONUC, the only military operation the UN conducted during the Cold War which appeared to involve, in certain instances, the use of force beyond that for self-defence.
2 THE CONGO (1960-64)

The largest peace-keeping operation undertaken by the UN during the Cold War period was that deployed to the Belgian Congo immediately following the latter's independence on 30 June 1960. Though initially cast in a strict peace-keeping mould, over the course of its four-year deployment in the country, the United Nations Operation in the Congo (ONUC) would be given additional powers and functions which were to force it to and, it will be argued, even over the line dividing peace-keeping and enforcement action.

THE CONGO CRISIS: AN OVERVIEW

A brief overview of the major developments in the 1960-64 Congo Crisis, especially as they concerned ONUC, is in order before we examine the latter's functions in detail.

Congolese independence, inadequately prepared, was almost immediately followed by the mutiny of Congolese soldiers and the breakdown of law and order in many areas of the country. The authorities in Katanga seized the opportunity to declare the province's secession from the rest of the Congo. Beginning on 10 July 1960, Belgian troops deployed in various areas of the Congo.

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2 At its peak, ONUC's military component comprised nearly 20,000 officers and men. The Blue Helmets, supra, note 1, p. 175.

3 The overthrow of the Mobutu regime, in May 1997, was accompanied by the renaming of the country, from "Zaire" to "Democratic Republic of Congo", which is close to the name used in the early 1960s — "Republic of the Congo" (emphasis added). For the sake of uniformity between dissertation text and quoted materials, usage in this chapter will reflect that of the early 1960s, with the country being referred to as "the Congo", instead of the current "Congo".

4 The French acronym, "ONUC" ("l'Opération des Nations Unies au Congo"), is used by the UN in both its French and English language documentation.
in order to protect Belgian nationals. The Belgian intervention, launched without the approval of the Congolese authorities, led the Congolese Prime Minister, Patrice Lumumba, and President, Joseph Kasavubu, to request military assistance from the UN.

The UN Security Council authorized the establishment of ONUC on 14 July. The first units of the Force were deployed only days later for the purpose of restoring and maintaining law and order, thus allowing the Belgian troops to withdraw. The deployment of UN troops to Katanga, initially opposed by the secessionist authorities, was agreed to once the latter had been assured that the UN would not act on behalf of the Central Government to end the secession.

As of September 1960, Central Government authority itself became fragmented in a struggle for power between Lumumba, Kasavubu and other claimants. The murder of Lumumba in February 1961 pushed the country to the brink of full-scale civil war, prompting the Security Council, for the first time, to authorize ONUC to use force in order to prevent civil war clashes (SCR 161).

The constitutional crisis was finally resolved with the establishment, in August 1961, of a new Central Government led by Prime Minister Cyrille Adoula. At the latter's insistence, ONUC then turned its attention to the problem of the foreign military and paramilitary personnel who were lending crucial support to the Katangese secessionists. Two operations launched by the UN in August and September of 1961, ostensibly for the purpose of securing the expulsion of these foreigners from the Congo pursuant to Security Council Resolution 161, failed in this aim.

The UN mandate was further strengthened in November 1961 (SCR 169), but it was not until January 1963 that ONUC, through the vigorous assertion of its right of freedom of movement and self-defence, disabled the Katangese military machine and put an end to the secession. ONUC withdrew from the country at the end of June 1964, having largely fulfilled its mandate, though at

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considerable cost.  

**ONUC'S BASIC MISSION IN THE CONGO**

The rest of the chapter will be devoted to a detailed consideration of those of ONUC's functions which, on paper and/or in practice, led it very near or over the line separating peace-keeping from enforcement action. In its Resolution 169 of 24 November 1961, the Security Council:

*Reaffirm[ed] the policies and purposes of the United Nations with respect to the Congo (Leopoldville) ... namely:

(a) To maintain the territorial integrity and the political independence of the Republic of the Congo,
(b) To assist the Central Government of the Congo in the restoration and maintenance of law and order,
(c) To prevent the occurrence of civil war in the Congo,
(d) To secure the immediate withdrawal and evacuation from the Congo of all foreign military, paramilitary and advisory personnel not under the United Nations Command, and all mercenaries,
(e) To render technical assistance*  

Underpinning these objectives was the concept of "preventive diplomacy", as formulated by UN Secretary-General Dag Hammarskjöld. From this perspective, the UN's intervention in the Congo served, above all, to prevent the extension of the Cold War to the country by "filling the vacuum" which would otherwise be filled by the superpowers in the context of the prevailing crisis. Preventive diplomacy, as applied to the

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6 The cost was not limited to the 250 fatalities suffered by ONUC (United Nations Peace-keeping, UNDPI, DPI/1827, August 1996, p. 19) or the loss of Secretary-General Hammarskjöld, killed in a plane crash in September 1961 while en route to discuss cease-fire terms with Katangese leaders. The many controversies generated by the operation had wide, often negative, effects on the UN as a whole. See Alan JAMES, "The Congo Controversies", International Peacekeeping (London), vol. 1(1), spring 1994.

7 SCR 169, S/5002, 24 Nov. 1961, pream. para. 3.

8 Hammarskjöld's concept of preventive diplomacy is enunciated in the introduction to his annual report on the work of the UN covering the year 1959-60 (GAOR, 15th sess., supp. no. 1A (A/4390/Add.1, 1960), sec. III), which is also the source of the quotation. The concept's relevance to the Congo operation is underlined by Abi-Saab, supra, note 88, pp. 1-2 and 5. Note that while the term "preventive diplomacy" was revived in An Agenda
Congo, basically required the fulfilment of two fundamental objectives: (1) the stabilization of the Congo's internal situation and (2) the prevention or elimination of foreign intervention. Realization of the first aim would promote the realization of the second, although measures specifically targeted at the elimination of the foreign intervention would also be needed in pursuit of that aim.

**ONUC'S INITIAL MANDATE**

In the Congo, in July 1960, stabilization meant the restoration and maintenance of law and order. Although, in their telegrams of 12 and 13 July, the Congolese President and Prime Minister requested UN military assistance in order "to protect the national territory of the Congo against the present external aggression", ONUC was to advance this aim only indirectly. Hammarskjöld proposed the creation of a force which would not concern itself with the Belgian intervention as such, but attend, rather, to the restoration and maintenance of law and order. The plan would, nevertheless, indirectly meet the needs of the Congolese authorities as "[it] would be understood that were the United Nations to act as proposed, the Belgian..."

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*for Peace, it carried a substantially different meaning from the Hammarskjöld concept. Preventive diplomacy now means crisis prevention. See: An Agenda for Peace, supra, note 4, paras. 23-33; note 17, supra.*

9 The 12 July telegram (English translation). The 13 July telegram reiterated the point, stressing that the requested assistance was not for the purpose of restoring the internal situation in the Congo. The two telegrams are reproduced in S/4382, 13 July 1960.

10 While the mandate is not spelled out in these exact terms in Hammarskjöld's initial statement to the Security Council on the Congo crisis, it emerges from the statement read as a whole. See SCOR, 15th yr., 873rd mtg., 13-14 July 1960, paras. 24-27. While paragraph 2 of Security Council Resolution 143, authorizing the establishment of ONUC, retains the somewhat open-ended wording of the initial statement, subsequent UN documents enunciate the law and order mandate clearly. See: S/4389, 18 July 1960, paras. 5-7; GAR 1474 (ES-IV), 20 Sept. 1960, para. 2; SCR 169, S/5002, 24 Nov. 1961, preambular para. 3 (reproduced *supra* – text accompanying note 94) and operative para. 9; SCOR, 15th yr., 913th mtg., 7 Dec. 1960, paras. 24-25.
Government would see its way to a withdrawal." This was the desire of the members of the Security Council who, though they disagreed on the legitimacy of the Belgian intervention, agreed that Belgium should withdraw its troops.12

The logic underlying the Secretary-General's plan was quite straightforward:

[The Belgian] intervention ... occurred purportedly because of the widespread internal disorders in the country. Consequently, to bring about the withdrawal of the Belgian troops, it was considered necessary, in response to the request of the Government of the Republic of the Congo, to introduce United Nations troops to assist the restoration of internal order and security.13

The same kind of reasoning also underlay the mission of the First United Nations Emergency Force (UNEF I), deployed to the Sinai in 1956, and was, in fact, central to Hammarskjöld's doctrine of preventive diplomacy.14

ONUC, as initially conceived, was a peace-keeping force.15 Thus, the operation was deployed and conducted with the consent of the parties concerned — i.e., the Central Government of the

11 SCOR, 15th yr., 873rd mtg., 13-14 July 1960, para. 27 (statement of Secretary-General Hammarskjöld).

12 Thus, the first Security Council resolution on the crisis, which authorizes the establishment of ONUC, also "Calls upon the Government of Belgium to withdraw its troops from the territory of the Republic of the Congo". SCR 143, S/4387, 14 July 1960, para. 1. See: Higgins, supra, note 88, pp. 15-16; Abi-Saab, supra, note 88, pp. 11-12.

13 SCOR, 15th yr., 913th mtg., 7 Dec. 1960, para. 25 (statement of Secretary-General Hammarskjöld).


15 Note that, in setting out the basic principles governing ONUC's establishment and operation, Hammarskjöld relied heavily on his Summary Study of UNEF I (A/3943, 9 Oct. 1958) which, as we saw earlier (text accompanying notes 29-39, supra), basically defined UN peace-keeping. Thus, many of the principles he enunciated in his first report on the implementation of SCR 143 (S/4389, 18 July 1960), relating to ONUC, simply restated the earlier report — as reflected in the text and notes immediately below.
Congo and also the secessionist leaders of the province of Katanga. The entry of ONUC into Katanga was agreed to by the latter authorities only after certain assurances were supplied by the UN as to the functions of the Force.

Second, ONUC could only use force in self-defence. This included forcible attempts to make UN troops withdraw from positions they occupied under orders. "The basic element involved [was] clearly the prohibition against any initiative in the use of armed force."

Finally, ONUC was to remain strictly impartial. It could not "be permitted to become a party to any internal conflict." This meant, in keeping with the related principle of force

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16 For the formal request for UN military assistance (the two telegrams of 12 and 13 July 1960), see S/4382, 13 July 1960. Note that ONUC's consensual basis was affirmed in S/4389, 18 July 1960, paras. 6 and 7. It was also reflected in SCR 143 of 14 July 1960 (para. 2), authorizing the establishment of ONUC. While ONUC's consensual basis was one of its defining features, throughout its four-year history, the principle, as it applied to ONUC, was not absolute. When faced with a lack of cooperation, as in the case of the Katangese authorities in August 1960 (the problem of ONUC's deployment to the province) or the Kasavubu Government in March 1961 (the Matadi incident), Hammarskjöld portrayed UN action in the Congo as based on mandatory Security Council decisions taken in order to counteract a threat to international peace and security. From this he concluded: first, that the Congolese were legally bound to cooperate with ONUC and comply with Security Council decisions concerning the Congo; second, that any decision to withdraw ONUC rested solely with the Security Council. S/4775, 30 March 1961, sec. I. And see: E.M. MILLER, "Legal Aspects of the United Nations Action in the Congo", The American Journal of International Law, vol. 55(1), January 1961, pp. 13-15; Higgins, supra, note 88, pp. 190-91. On the question of the mandatory nature of the Security Council decisions, see: S/4417, 6 Aug. 1960, para. 6; SCOR, 15th yr., 884th mtg., 8 Aug. 1960, paras. 22-23; SCR 146, S/4426, 9 Aug. 1960, para. 5. Concerning the power of decision over ONUC's withdrawal, see: S/4389/Add.5, 29 July 1960, especially para. 2; S/4775, 30 March 1961, sec. I, 6th para.; Miller, ibid., p. 15. On the same question, compare A/3943, 9 Oct. 1958, paras. 156-59.

17 See text accompanying notes 106-09, infra.

18 A/3943, 9 Oct. 1958, para. 179 (emphasis in the original). This passage and the point concerning the use of force which precedes it, both contained in the UNEF I Summary Study, are reproduced, in relation to ONUC, in S/4389, 18 July 1960, para. 15.

19 S/4389, 18 July 1960, para. 7.
autonomy, that it could not act at the request of the Central Government to end the secession in Katanga. Doubts on this point led to the adoption of Security Council Resolution 146 (9 August 1960), paragraph 4 of which:

Reaffirms that the United Nations Force in the Congo will not be a party to or in any way intervene in or be used to influence the outcome of any internal conflict, constitutional or otherwise

Secretary-General Hammarskjöld followed this, on 12 August, with a Memorandum on Implementation of the Security Council Resolution of 9 August 1960, Operative Paragraph 4 which explicitly stated that "the United Nations Force cannot be used on behalf of the Central Government to subdue or to force the provincial government to a specific line of action." It was on this basis that the Katangese authorities consented to ONUC's deployment in the province.

Restoration and Maintenance of Law and Order

ONUC's mandate for the restoration and maintenance of law and order involved the performance of a wide variety of tasks, such as patrolling troubled areas, guarding political leaders and government buildings, facilitating the evacuation of civilians from insecure zones, and establishing and guarding protected areas for refugees and others at risk of harm. As

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21 S/4417/Add.6, 12 Aug. 1960, para. 8.
22 See Catherine Hoskyns, The Congo Since Independence: January 1960 - December 1961 (London, Oxford U. Press, 1965), pp. 170-73. Despite ONUC's claim to impartiality, it would often be accused of siding with one party or another. This became a major issue in September 1960 when a simmering conflict between the Congolese President and Prime Minister developed into a full-blown constitutional crisis. For a good overview of the crisis and its ramifications for the UN, see James, supra, note 93, pp. 46-47.
reflected in this list, a key component of the law and order mandate was the protection of life and property\textsuperscript{24} - which was problematic since ONUC, at no stage, was given enforcement powers for this purpose.

The power to arrest, detain or disarm could be seen as consistent with peace-keeping principles where exercised in cooperation with the Central Government or other, de facto authorities against "uncontrolled groups of armed men who defied national or local authority".\textsuperscript{25} Yet, ONUC was instructed by Hammarskjöld "to protect the civilian population against attacks from armed units, whatever the authority under which they are acting."\textsuperscript{26} To the extent such action was directed against recognized Congolese authorities,\textsuperscript{27} it would entail a violation of the peace-keeping principle of consent. It could, however, be reconciled, barely, with the principle limiting the use of force to self-defence where peace-keepers, by defending themselves and/or their positions,\textsuperscript{28} effectively shielded others from armed attacks, as in the case of a United Nations protected area.\textsuperscript{29}


\textsuperscript{26} SCOR, 16th yr., 935th mtg., 15 Feb. 1961, para. 27.

\textsuperscript{27} This would mean, in the first place, the recognized representatives of the Central Government. It would also mean the Katangese authorities, whose consent, as described earlier, was considered a necessary prerequisite to ONUC's deployment in that province.

\textsuperscript{28} See text accompanying note 105, supra.

\textsuperscript{29} Over the course of its mission in the Congo, ONUC set up several zones where it undertook to ensure the security of all civilians who took refuge there. See: S/4757, 2 March 1961; S/4940/Add.18, 20 Dec. 1961, para. 6. Brady Lee's study of the "Rikhye Zone" in Katanga illustrates, however, that this task could not always be reconciled with the constraints imposed on the use of force in peace-keeping. "Since the U.N. had no authority for enforcement action in the zone, it could only act in self-defense, and local leaders rather than U.N. peacekeepers were the ones usually under at-
Hammarskjöld was also of the view that ONUC could not use force to liberate individuals — in particular Prime Minister Lumumba after his detention by the Central Government. Two considerations appear paramount in his thinking on this point: first, his assessment that such action "would, in fact, mean overriding by force the authority of the Chief of State"30 (thus violating the consent principle); second, the fact that it would involve taking the initiative in the use of force31 (thus violating the principle of the non-use of force except in self-defence, as formulated by Hammarskjöld).

One would have to conclude, at a minimum, that ONUC's mandate for the restoration and maintenance of law and order, at least as it related to the protection of life, took it very close to the line separating peace-keeping from enforcement action. Hammarskjöld himself acknowledged as much when he situated it "on the outer margin of the mandate of the United Nations".32

**ONUC'S SUBSEQUENT MANDATES**

Developments which followed the initial establishment and deployment of ONUC in July-August 1960, including the breakdown of central authority, Lumumba's assassination, and the persistent presence of foreign mercenaries in Katanga, dictated a strengthening of ONUC's mandate with provision for the use of

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31 See SCOR, 15th yr., 920th mtg., 13-14 Dec. 1960, paras. 82 and 85.

force. Although the UN's underlying objectives in the Congo remained the stabilization of the internal situation, on the one hand, and the elimination of foreign intervention, on the other, ONUC's specific responsibilities were extended to areas not covered in the original mandate. While there is general agreement in the literature that, as previously indicated, ONUC's initial mandate was one of peace-keeping, the proper characterization of ONUC's later functions is much less clear. We will now examine these functions to see whether they in fact took ONUC into the realm of enforcement.

**The Prevention of Civil War**

Resolution 161, adopted just after Lumumba's assassination, with the Congo drifting towards full-scale civil war, authorized ONUC to:

> take immediately all appropriate measures to prevent the occurrence of civil war in the Congo, including arrangements for cease-fires, the halting of all military operations, the prevention of clashes, and the use of force, if necessary, in the last resort.\(^{33}\)

On its face, the provision appeared to authorize ONUC to use force beyond that for self-defence — i.e., to take the initiative in the use of armed force for the purpose of preventing civil war, albeit "in the last resort". Yet Hammarskjöld held that, although the provision extended ONUC's responsibilities to include the prevention of civil war, it did not give it new powers, specifically enforcement powers, for the fulfilment of this mandate.\(^{34}\) Thus, ONUC could not "take the initiative" in order to stop a civil war clash, but it could take up positions "to prevent a civil war risk" and forcibly defend these if challenged pursuant to its basic right of self-

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defence.\(^{35}\)

In essence, the provision, as interpreted by Hammarskjöld, gave ONUC clear authority to take up and defend positions in prevention of civil war clashes although, crucially, it could not interpose itself between rival factions once fighting had begun.\(^{36}\) As Hammarskjöld was the one responsible for the overall conduct of the operation, in the absence of any expression of contrary intent by the Security Council, it was this interpretation that prevailed, at least initially.\(^{37}\)

Following the resolution of the constitutional crisis and the establishment of a new Central Government led by Cyrille Adoula in August 1961, the UN position changed in two significant respects. First, paragraph A1 of Resolution 161 notwithstanding, the UN Secretariat decided that it would not interfere with military operations conducted by the Adoula Government for the purpose of suppressing secession.\(^{38}\) The mandate to prevent civil war was, rather, to be exercised as against all other armed Congolese groups.\(^{39}\) Significantly — and this is the second change in position — it appears that the UN was prepared to use force beyond that for self-defence for this purpose.

Thus, on 31 October 1961, the ONUC representative in Katanga formally warned the Katangese authorities that, unless

\(^{35}\) S/4752, 27 Feb. 1961, Annex VII.


\(^{37}\) Abi-Saab, supra, note 88, p. 106.

\(^{38}\) SCOR, 16th yr., 982nd mtg., 24 Nov. 1961, para. 104 (statement of Acting Secretary-General U Thant). Abi-Saab indicates that "[t]his was saying aloud what Hammarskjöld had said in the privacy of the Advisory Committee after the constitution of the Adoula Government." Supra, note 88, p. 165 (n. 114). And see Seyersted, supra, note 110, p. 74. Note that this position was perfectly consistent with the Memorandum on Implementation of the Security Council Resolution of 9 August 1960, Operative Paragraph 4, paragraph 8 of which stated that "the United Nations ... has no right to forbid the Central Government to take any action which by its own means ... it can carry through in relation to Katanga." S/4417/Add.6, 12 Aug. 1960, para. 8.

\(^{39}\) SCOR, 16th yr., 982nd mtg., 24 Nov. 1961, para. 104.
they halted their bombing raids on the neighbouring province of Kasai, the UN would "take all necessary counter-action." This would include, if necessary, pursuing Katangese aircraft into Katanga and destroying them or even "bringing down such aircraft operating in Katanga and eventually destroying them by air to ground action." Similar warnings were issued to the Katangese authorities in August and November 1962, requiring them to halt military action in North Katanga where they had clashed with Central Government forces, failing which ONUC said it would intervene militarily.

In short, the UN Secretariat interpreted paragraph A1 of Resolution 161 as conferring upon ONUC a power of enforcement, though only against armed groups other than the Central Government. This is reflected in the rejection, for the purposes just described, of the three core principles of peace-keeping. First, the use of force would clearly exceed any reasonable interpretation of self-defence. Second, although ONUC had relied on the consent of the Katangese authorities before deploying to the province, it was prepared to disregard Katangese wishes in order to prevent civil war clashes. Finally, the UN's decision, after August 1961, to treat the Central Government differently from all other armed Congolese groups in implementing paragraph A1 of Resolution 161 involved a breach of the impartiality principle.

**Ending Secession**

The UN's support for the "territorial integrity and political independence" of the Congo, while reflected in several of the early resolutions on the Congo Crisis, was stated most explicitly in Security Council Resolution 169, when it was listed as one of the "policies and purposes of the United

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42 See: SCR 145, S/4405, 22 July 1960, para. 2; GAR 1474 (ES-IV), 20 Sept. 1960, preambular para. 4 and operative paras. 2 and 5.
Nations with respect to the Congo". In that same resolution, the Security Council stated its firm opposition to the Katangese secession and, further "demand[ed] that such [secessionist] activities which are now taking place in Katanga shall cease forthwith". Yet, ONUC was not authorized to use force, or take any other specific action, in support of this directive. It was mandated, simply, "to assist [the Central Government of the Congo], in accordance with the decisions of the United Nations, to maintain ... national integrity". No other resolution gave ONUC any power or mandate more specific than this.

Nevertheless, four major military operations mounted by ONUC in Katanga were widely perceived as having the termination of the Katangese secession as their principal aim. In fact, all but one of these operations resulted in a significant, though at first temporary, weakening of Katangese military power. Nevertheless, each of the operations was carried out, at least officially, in pursuit of other aims. The first two, conducted in August and September 1961, will be analyzed in the next section of this chapter since they were ostensibly concerned with the removal of foreign military personnel from Katanga. The third operation, "Unokat", conducted in December 1961, was designed to regain and assure [ONUC's] freedom of movement, to restore law and order, and to ensure that for the future the United Nations forces and officials in Katanga are not subjected to such attacks; and meanwhile to react vigorously in self-defence to every assault on our present positions, by all the means available to us. In fact, Unokat remained within these limits.

44 See ibid., preambular para. 5 and operative paras. 1 and 8.
48 See: Abi-Saab, supra, note 88, pp. 171-72 and 174-75; Hoskyns, supra, note 109, pp. 454-56; S/4940/Add.18, 20 Dec. 1961, especially paras. 17 and 20; S/4940/Add.19, 22 Dec. 1961, especially paras. 2 and 7. For a detailed
"Operation Grandslam" (December 1962 - January 1963), the fourth and last in the series of operations, was also aimed at the restoration of ONUC's security and freedom of movement.\(^{49}\) Yet, Grandslam went further than Unokat in that ONUC, having quickly cleared road blocks mounted by the gendarmerie (Katangese army) around Elisabethville, then proceeded to assert its right of freedom of movement outside the capital. Force was thus used, not merely to defend positions already held, but also to overcome armed resistance to the taking up of new positions in such Katangese towns as Kipushi, Kaminaville and Jadotville.\(^{50}\) In the event, this was enough to bring the secession to an end.\(^{51}\)

ONUC's right of freedom of movement throughout the Congo was enunciated in the "Basic Agreement", concluded between the UN and the Central Government on 27 July 1960,\(^{52}\) and in the more extensive Status of Forces Agreement of 27 November 1961.\(^{53}\) The principle is often seen as a "concrete application" of a peace-keeping force's right of self-defence, necessary to the preservation of its security.\(^{54}\) Yet, as Operation Grandslam demonstrated, it affords much wider scope for the use of force than does the self-defence principle, strictly defined. In fact, it is questionable whether the use of force to occupy new


\(^{50}\) See: S/5053/Add.14, 11 Jan. 1963, paras. 46-74; Abi-Saab, supra, note 88, pp. 175 and 189.


\(^{52}\) S/4389/Add.5, 29 July 1960, para. 1. And see S/4389, 18 July 1960, para. 9.


positions really remains within the boundaries of peace-keeping.\cite{55}

**Eliminating Foreign Intervention**

The functions we have examined to date all relate to ONUC's fundamental task of stabilizing the internal situation in the Congo. Yet, as described earlier, it was no less essential to a resolution of the Congolese Crisis that its foreign component be dealt with. Initially this responsibility was indirect. The mere fact of ONUC's deployment in the Congo, for the purpose of restoring and maintaining law and order was supposed to, in fact did, pave the way for the withdrawal of Belgian troops from the country. The exception was Katanga where, although regular Belgian forces were withdrawn after ONUC's deployment in August 1960, many Belgian officers and other soldiers remained to command the Katangese gendarmerie. This problem was exacerbated by the arrival in the province of foreign mercenaries of various nationalities.\cite{56}

Security Council Resolution 161, for the first time, mandated ONUC to take

measures ... for the immediate withdrawal and evacuation from the Congo of all Belgian and other foreign military and paramilitary personnel and political advisers not under the United Nations

\cite{55} Draper offers the following reflections on ONUC's right of freedom of movement: "We are thus confronted with a telling example of the expanding nature of the right of self-defence. It is an interesting and not entirely academic speculation to determine at what point that right has yielded up all that it can properly provide and the moment when it becomes necessary to invoke the right of the Force to take all military action necessary to carry out its mandate." Ibid., p. 401. And see Schachter, *supra*, note 7, p. 409. Compare Simmonds, *supra*, note 110, p. 132.

\cite{56} In his *Second Progress Report*, the Special Representative of the Secretary-General in the Congo estimated that, as of 31 October 1960, a total of 231 Belgian nationals (114 officers and 117 soldiers of other ranks) were in the Katangese gendarmerie, with a further 58 Belgian officers in the Katangese police. S/4557, 2 Nov. 1960, para. 35.
Yet, specific authorization to use force for this purpose was not granted until Security Council Resolution 169 of 24 November 1961, where, in paragraph 4, the Security Council

**Authorizes** the Secretary-General to take vigorous action, including the use of the requisite measure of force, if necessary, for the immediate apprehension, detention pending legal action and/or deportation of all foreign military and paramilitary personnel and political advisers not under the United Nations Command, and mercenaries, as laid down in paragraph 2 of Security Council resolution 161 A (1961) of 21 February 1961;

The first attempts to expel foreign personnel from Katanga were made in August and September 1961. "Operation Rumpunch" was launched at the end of August 1961 following the UN’s failure to secure, through diplomatic means, the departure of foreign officers and mercenaries. The operation had the full backing of the Central Government which, on 24 August, issued an ordinance for the expulsion from the Congo of all non-Congolese officers and mercenaries serving with the Katangese forces and requested the UN to assist in its implementation.\(^{58}\) While it was hoped that the swift and resolute execution of Rumpunch would ensure that the Katangese authorities complied peacefully, the UN nevertheless envisaged using force, if necessary.\(^{59}\)

Rumpunch was launched in the early hours of 28 August. The Katangese were taken by surprise and ONUC met no resistance as

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\(^{57}\) SCR 161, S/4741, 21 Feb. 1961, para. A2. Concerning the categories of personnel the provision was specifically concerned with, see Simmonds, *supra*, note 110, p. 94.

\(^{58}\) Hoskyns, *supra*, note 109, pp. 403-04.

\(^{59}\) Brian URQUHART, *Hammarskjöld* (New York, Alfred Knopf, 1972), pp. 555-56. Hoskyns, *supra*, note 109, p. 402. Two days before Rumpunch was launched, the Secretary-General expressed the view that paragraph A2 of Resolution 161 should be interpreted so as to allow for the use of force, this despite his earlier, more restrictive interpretation of that provision. Concerning the Hammarskjöld interpretation, see: Abi-Saab, *supra*, note 88, pp. 129-31; Urquhart, *ibid.*, p. 555. For other views on this issue, see: Abi-Saab, *ibid.*, pp. 129-31; Simmonds, *supra*, note 110, p. 95.
it moved to blockade the residence of the hardline Minister of the Interior and take control of the radio, post office (containing the telephone exchange) and gendarmerie headquarters. Having thus disabled the capacity of the Katangese to mount any organized resistance, UN troops proceeded to arrest foreign officers in the Katangese capital Elisabethville and other parts of the rebel province. The sweep was not complete, however, and many foreign officers remained at liberty when ONUC, under pressure from the local consular corps, agreed to transfer responsibility for the expulsions to the Belgian consul.  

As relations between the UN and Katangese authorities deteriorated, the UN opted for follow-up action. Under a plan devised by the Chief of the UN Civilian Operation in the Congo, Mahmoud Khiari, named Katangese leaders were to be arrested on the authority of warrants issued by the Central Government. Katangese President Tshombé would be blockaded at his residence while the ONUC representative in Elisabethville, Conor Cruise O'Brien, tried to persuade him "that his only hope lay in co-operating with the United Nations, and in peacefully liquidating the secession of Katanga." UN forces would meanwhile take control of the radio station and post office and raid the offices of the Sûreté and Ministry of Information, removing files and apprehending Europeans and senior African personnel working there. The Congolese flag was to be raised on public buildings and UN buildings. An official was expected from Leopoldville in order to assume Central Government authority over the province.

What was envisaged was basically a repeat of Rumpunch, but for the purpose, this time, not simply of expelling foreign military personnel, but of putting an end to the secession itself. Yet, the circumstances under which "Operation Morthor"

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60 Hoskyns, supra, note 109, pp. 406-08.


62 Hoskyns, supra, note 109, p. 417.
was launched were very different from those of Rumpunch — not only were the Katangese expecting UN action, they were much better prepared for it. Morthor, initiated in the early hours of 13 September 1961, went badly from the start. Attempts to seize control of the radio station and post office met with heavy resistance. Only one Katangese leader was arrested and, crucially, Tshombé’s residence was not blockaded, apparently because of a misunderstanding between different ONUC military contingents. Control of the radio station and post office was eventually secured, but only after intense fighting.

On the basis of these modest results, O'Brien declared that Katanga was back under Central Government control. He also justified Morthor on the basis of paragraph A1 of Resolution 161 authorizing ONUC to use force for the prevention of civil war. O'Brien was almost immediately overruled by Dag Hammarskjöld who presented the operation as a continuation of Rumpunch, aimed at the rounding up and expulsion of foreign military personnel. While this was clearly at odds with the facts, it appears that, for Hammarskjöld, there was no question of presenting Morthor as an attempt to forcibly end the Katangese secession since, in particular, he saw no basis for such an action in either the Security Council resolutions defining ONUC’s mandate or the UN Charter. Indeed, given the operation's real aim, i.e. to end

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64 Hoskyns, supra, note 109, pp. 419-20.

65 O'Brien would later write: "My instructions taken as a whole, had the unmistakeable meaning of ending the secession of Katanga, following the application of A.1 (preventing civil war). I saw no point in attempting to pretend that our action had any other character, and I declared that the secession of Katanga was at an end." Supra, note 148, p. 266.

66 Significantly, the official UN report on Operation Morthor, issued on 14 September, made no mention of the attempt to arrest Katangese leaders, clearly unrelated to the claimed objective of rounding up foreign military personnel. See: S/4940, 14 Sept. 1961; Abi-Saab, supra, note 88, pp. 141-43; Hoskyns, supra, note 109, pp. 422-23.

67 Hoskyns, supra, note 109, p. 421. Abi-Saab, supra, note 88, p. 146. There was, however, more to Hammarskjöld’s decision than this. See: Abi-Saab, pp. 143-48; Hoskyns, pp. 421-22. Note also that Hammarskjöld, though he had sketched out the broad outlines of follow-up action to Rumpunch, had not specifically approved Morthor. See Abi-Saab, pp. 133-39 and 145.
the secession, one must conclude that Morthor was ultra vires ONUC's mandate.\(^68\)

It seems clear that Operations Rumpunch and Morthor both took ONUC beyond the bounds of peace-keeping. In each case, ONUC took — or, in the case of Rumpunch, was prepared to take — the initiative in the use of force in order to realize its objectives. Of course, neither operation had the consent of the Katangese authorities; yet, both had the full support of the Central Government. A Central Government ordinance for the expulsion of foreign military personnel preceded Rumpunch, while Central Government warrants formed the basis for the, mostly unsuccessful, attempt to arrest Katangese leaders during Operation Morthor.

Given these facts, it would appear, at first glance, that both operations involved breaches of the impartiality principle. Most observers saw the assistance lent the Katangese administration by the foreign officers and political advisers as the main prop for the secession. Thus, whether ONUC moved to expel the foreign personnel or instead moved directly to end the secession, it arguably amounted to the same thing; in both cases, ONUC was helping the Central Government end the secession and thus taking the side of one disputant against another.

Yet, the principle of impartiality as formulated by Hammarskjöld looked only to the internal aspect of the conflict between the Central Government and the Katangese secessionists. Specifically, it merely required that ONUC do nothing which would affect the relative power of the two parties, considered independently of any foreign intervention.

Likewise, it follows from the rule that the United Nations units must not become parties in internal conflicts, that they cannot be used to enforce any specific political solution of pending problems or to influence the political balance decisive to such a solution.\(^69\)

\(^{68}\) Concerning ONUC's mandate for the promotion of the "national integrity" of the Congo, see text accompanying notes 129-33, supra.

\(^{69}\) S/4389, 18 July 1960, para. 13 (emphasis added). Note that the key elements of this formulation of the impartiality principle are derived,
ONUC's task was thus limited to the elimination of the foreign intervention.\(^{70}\)

Clearly, Operation Rumpunch, aimed at the apprehension and expulsion of foreign military personnel, was consistent with the principle of impartiality as formulated by Hammarskjöld. Operation Morthor, on the other hand, ran afoul of the principle. By aiming, not at their foreign supporters, but at the Katangese leaders themselves, ONUC, in Morthor, sought to alter the relative power of the two rivals, considered independently of the foreign intervention.

**CONCLUSION**

Our brief review of ONUC's functions has highlighted several areas which brought the force very close to the line dividing peace-keeping from enforcement action. ONUC's mandate for the protection of civilians and its vigorous assertion of its right of freedom of movement in Operation Grandslam put considerable strain on the principle limiting the use of force to self-defence. While these cases could be seen to straddle the divide between peace-keeping and enforcement action, in other instances ONUC stepped quite clearly over this line into the enforcement realm. The warnings issued to the Katangese in implementation of ONUC's mandate to prevent civil war would constitute one set of examples, Operations Rumpunch and Morthor another.

With the possible exception of Operation Rumpunch, these instances of enforcement action did not come very close to the model of peace enforcement, underpinned by impartiality, which

\[^{70}\text{See: S/4417/Add.6, 12 Aug. 1960, para. 6; A/3943, 9 Oct. 1958, para. 166; Abi-Saab, }^\text{supra, note 88, pp. 131 and 167-68; Schachter, }^\text{supra, note 112, p. 223; Higgins, }^\text{supra, note 88, p. 49.}\]
was outlined in chapter 1 since they saw ONUC take the side of the Congolese Central Government in its conflict with the Katangese secessionists. A peace-keeping operation had, in certain instances, become involved in something other than peace-keeping, though what, exactly, was unclear. The initial impact of the Congo experience on the conceptualization, by the UN, of peace-keeping was, sadly, to subvert the principle of the non-use of force except in self-defence.\textsuperscript{71}

Beginning with the establishment of the United Nations Peace-keeping Force in Cyprus (UNFICYP), in 1964, the principle was stretched well beyond the limits previously set by Dag Hammarskjöld. Thus, Secretary-General U Thant's \textit{Aide-Mémoire} of 10 April 1964, after asserting, in line with Hammarskjöld, that the "[t]roops of UNFICYP shall not take the initiative in the use of armed force",\textsuperscript{72} added:

\begin{quote}
17. No action is to be taken by the troops of UNFICYP which is likely to bring them into direct conflict with either community in Cyprus, except in the following circumstances:

\begin{enumerate}
  \item [c)] Where specific arrangements accepted by both communities have been, or in the opinion of the commander on the spot are about to be, violated, thus risking a recurrence of fighting or endangering law and order.\textsuperscript{73}
\end{enumerate}
\end{quote}

Further, among the examples of "situations in which troops may be authorized to use force",\textsuperscript{74} the \textit{Aide-Mémoire} listed: "Attempts by force to prevent [the troops] from carrying out their responsibilities as ordered by their commanders".\textsuperscript{75}

The latter component of this quite radical reworking of the self-defence principle was retained for the Second United

\textsuperscript{71} This process, described in the following paragraphs, is summarized in Goulding, \textit{supra}, note 4, p. 8.

\textsuperscript{72} S/5653, 11 April 1964, para. 16.

\textsuperscript{73} S/5653, 11 April 1964, para. 17.

\textsuperscript{74} S/5653, 11 April 1964, para. 18.

\textsuperscript{75} S/5653, 11 April 1964, para. 18(c).

The Force will be provided with weapons of a defensive character only. It shall not use force except in self-defence. Self-defence would include resistance to attempts by forceful means to prevent it from discharging its duties under the mandate of the Security Council.\footnote{S/11052/Rev. 1, 27 Oct. 1973, para. 4(d).}

This extended formulation of the self-defence principle was applied to other peace-keeping operations established during the Cold War after UNEF II.\footnote{With respect to the United Nations Interim Force in Lebanon (UNIFIL), see S/12611, 19 March 1978, para. 4(d).} As we will see in chapters 3 (Somalia) and 4 (Bosnia-Herzegovina, 1992-95), it has also been applied to peace-keeping operations launched by the UN in the post-Cold War period.

Despite the relatively wide authority that the commanders of UN peace-keeping operations have had, since 1964, for the use of force, the vulnerability of their lightly armed, widely dispersed forces and the need to preserve party cooperation have made them extremely reluctant to use it in practice.\footnote{Goulding, supra, note 4, p. 9. Goulding, supra, note 29, p. 455.} Peace-keeping, since the Congo, has been a consistently passive affair.
3 SOMALIA (1992-93)

Four separate initiatives were launched by the international community over the 1992-95 period in an attempt to resolve the Somali Crisis. An ineffectual peace-keeping mission (UNOSOM I) gave way to coercive operations conducted, first, by a multinational coalition (UNITAF) and, subsequently, by the UN (UNOSOM II), at least until, in February 1994, the UN recast UNOSOM II in a peace-keeping mould. While our focus in this section will lie with the two coercive operations, the initial peace-keeping mission is also worth a quick look.

UNOSOM I

The United Nations Operation in Somalia I (UNOSOM I), established by the UN Security Council in its Resolution 751 of 24 April 1992, comprised a group of 50 military observers, deployed to Mogadishu in July 1992 for the purpose of monitoring a cease-fire between rival faction leaders General Mohamed Farah "Aideed" and Ali Mahdi Mohamed, along with a 500-troop security force, sent to Mogadishu in September 1992, but never fully deployed. The latter was to provide security for UN personnel, equipment and supplies at Mogadishu's port and airports and escort deliveries of humanitarian supplies from the port to distribution centres in Mogadishu and its immediate environs. At least, this was the plan.

The security force was to be guided by the existing principles and practices of United Nations peace-keeping

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operations"⁴ which, obviously, included the principle limiting the use of force to self-defence, except that, as explained in the last chapter, self-defence was "deemed to include situations in which armed persons attempted by force to prevent it from carrying out its mandate."⁵ In the case of Somalia, it was envisaged that UNOSOM I would "provide the United Nations convoys of relief supplies with a sufficiently strong military escort to deter attack and to fire effectively in self-defence if deterrence should not prove effective."⁶ Yet, this application of extended self-defence could not be put to the test since UNOSOM I was unable to deploy as provided for in its mandate. As a peace-keeping force, UNOSOM I would not take up positions in Mogadishu without the consent of the local authorities, although it would forcibly defend positions it already held if attacked.

Although Aideed and Ali Mahdi consented in August 1992 to UNOSOM I's deployment in Mogadishu,⁷ it was not until 10 November, almost two months after the first elements of the force arrived in the city, that it took control of Mogadishu airport with the agreement of the clan holding it. Aideed's subsequent demand for UNOSOM I's withdrawal, on the grounds that only he had the right to authorize such deployment, was refused. UNOSOM I held its airport positions despite the barrage of heavy machine-gun, recoilless rifle and mortar fire that this provoked. Yet, Aideed's persistent opposition did prevent UNOSOM I from deploying to the port, even though all other parties involved in port security favoured it.⁸

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⁵ S/24868, 30 Nov. 1992, p. 2.
⁸ Note also that SCR 775 (28 Aug. 1992) authorized the deployment of four additional UNOSOM I contingents (750 troops each) for the purpose of protecting humanitarian relief operations in different parts of Somalia. These were never deployed, however. Consent was obtained only for the deployment of a contingent to Bosasso in north-eastern Somalia, which was cancelled following the authorization of the US-led intervention in
Given UNOSOM I's manifest inability to improve security for the delivery of vital humanitarian assistance, the UN and its member states concluded that a more muscular approach to the problem was needed.\textsuperscript{9}

UNITAF

Following the US offer to lead a multinational force into Somalia and its presentation to the Security Council by the UN Secretary-General,\textsuperscript{10} the Council, on December 3, "[a]cting under Chapter VII of the Charter of the United Nations," authorized the Unified Task Force (UNITAF) "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia".\textsuperscript{11} The rather open-ended formulation of the mandate was to spark a lively dispute between the UN and US over what its terms meant exactly.

The problem of security was tackled in various ways. For example, UNITAF offered to guard the premises and payrolls of humanitarian agencies working in UNITAF-controlled areas and maintained radio links in case of emergencies affecting them.\textsuperscript{12} In an effort to improve security, it put particular emphasis on December 1992. Concerning the planned expansion of UNOSOM I, see: S/24480, 24 Aug. 1992, paras. 23-26, 30-31 and 37; SCR 775, 28 Aug. 1992, paras. 2-3; S/24531, 8 Sept. 1992; S/24532, 8 Sept. 1992; S/24859, 27 Nov. 1992, p. 4.

\textsuperscript{9} For an account of the problems then facing the international relief effort in Somalia and a discussion of alternatives to peace-keeping, see: S/24859, 27 Nov. 1992; S/24868, 30 Nov. 1992.


\textsuperscript{11} SCR 794, 3 Dec. 1992, para. 10. And see para. 7. The operation undertaken by the multinational coalition in Somalia was called "Operation Restore Hope".

the re-establishment of the Somali police force in Mogadishu and other cities. yet, a large part of UNITAF's efforts in the security field concerned the problem of weapons proliferation in the country. It was here that its most important disagreement with the UN over the interpretation and implementation of its mandate lay. In his letter to the President of the Security Council of 29 November 1992, in which he presented the offer of a US-led force for Somalia, the UN Secretary-General stressed that

to ensure, on a lasting basis, that the current violence against the international relief effort was brought to an end ... it would be necessary for at least the heavy weapons of the organized factions to be neutralized and brought under international control and for the irregular forces and gangs to be disarmed.

It was a point he reiterated in an 8 December letter he sent to US President George Bush. The Bush administration's official position was that UNITAF would only do what was needed, in the short-term, to get relief aid to those Somalis who needed it before handing things back to the UN.

In practice, UNITAF went somewhat further than this. Although the rules were neither uniform nor consistent over time, UNITAF weapons policies were primarily designed to ensure

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14 S/24868, 30 Nov. 1992, p. 3.


17 See: Managing Arms in Peace Processes: Somalia (New York and Geneva,
the immediate security of the areas in which its contingents operated. Factions were given a choice of either moving their heavy weapons out of these areas or else storing them at designated sites, monitored by UNITAF. The movement of heavy weapons and the open or threatening display of light arms in UNITAF-controlled areas was generally prohibited. Although some weapons stores were raided and a certain quantity of weapons and ammunition forcibly seized, UNITAF normally relied on the Somalis themselves to comply with stated weapons policies. In fact, little real disarmament was carried out. Weapons, especially heavy weapons, were "put ... out of circulation", but not permanently taken away or destroyed, in a policy more akin to "weapons management" than real disarmament.

Having reviewed the salient features of UNITAF's mandate in Somalia, we now turn to a more detailed consideration of the subject, using the analytical framework developed previously.

**The Use of Force**


As noted previously, UNITAF's mandate was explicitly grounded in chapter VII of the UN Charter. This, coupled with the authorization to "use all necessary means",\(^{22}\) meant that, in implementing its mandate, UNITAF could take the initiative in the use of force. In fact, force was occasionally used to neutralize threats posed to the security of international military and civilian personnel\(^{23}\) and to halt inter-factional fighting.\(^{24}\) There can be no doubt, in other words, that UNITAF was authorized and indeed prepared, where necessary, to use force to implement its mandate.

Nevertheless, more often than not, mission objectives were achieved without the use of force. The implicit threat of force, backed up by an abundance of military power deployed pursuant to the American strategic preference for "overwhelming force",\(^{25}\) was almost always sufficient to secure compliance with the mandate. Where force was to be used, US rules of engagement stressed the

\(^{22}\) SCR 794, 3 Dec. 1992, para. 10.

\(^{23}\) On 7 January 1993, US marines attacked a military compound belonging to Aideed in Mogadishu, destroying several buildings and seizing a large cache of weapons. The operation was carried out, in the first instance, in response to sniper fire which gunmen in the camp had earlier directed at US soldiers. Yet, it also appeared designed to stem a steady deterioration of the security environment in Mogadishu. See: Kenneth NOBLE, "400 U.S. Marines Attack Compound of Somali Gunmen", *New York Times*, 8 Jan. 1993, p. A1; *Keesing's Record of World Events*, Jan. 1993, p. 39255; "Playing the US against the UN", *supra*, note 183; Hirsch and Oakley, *supra*, note 177, p. 60.


need for restraint,\textsuperscript{26} with the use of deadly force almost entirely restricted to cases where armed Somalis posed a serious threat to the safety of US soldiers.\textsuperscript{27} Where contingents could operate with a "Chapter VI approach", they did so.\textsuperscript{28} There was a determination at the highest level to avoid armed confrontation with the factions wherever possible.\textsuperscript{29}

\textit{Consent}

Neither the terms of UNITAF's mandate nor its deployment were subject to the approval of the factions or other political authorities. Operation Restore Hope was, in effect, imposed upon them. Nevertheless, whenever possible, UNITAF sought cooperation in reaching its goals.

UNITAF's deployment to Mogadishu was conducted unopposed.\textsuperscript{30} Ali Mahdi had consistently supported international intervention

\textsuperscript{26} See \textit{Rules of Engagement for Operation Restore Hope}, supra, note 183, "Rules of Engagement" (especially nos. 2, 3, 6, 7 and 10(b)) and "ROE Card".

\textsuperscript{27} See \textit{Rules of Engagement for Operation Restore Hope}, supra, note 183, "Rules of Self-Protection for all Soldiers", "Rules of Engagement" (especially nos. 1, 3, and 10(a)), and "ROE Card". In the most significant exception to this restriction, Rule of Engagement 1(c) authorized the use of deadly force where "Armed elements, mobs, and/or rioters threaten human life, sensitive equipment and aircraft, and open and free passage of relief supplies." (emphasis added) Note that the US rules of engagement were used by most other UNITAF coalition members, though sometimes with modifications. Jonathan DWORKEN, "Rules of Engagement: Lessons from Restore Hope", Military Review, vol. 74(9), Sept. 1994, p. 32.

\textsuperscript{28} Hirsch and Oakley, supra, note 177, p. 162. The reference is to the United Nations Charter. Chapter VI is exclusively concerned with peaceful forms of dispute settlement, in contrast to chapter VII which includes provisions for the use of coercive measures.

\textsuperscript{29} See: Bentley and Oakley, supra, note 190, sec. 3; Hirsch and Oakley, supra, note 177, p. xviii and 51.

\textsuperscript{30} Discounting, that is, the swarm of TV reporters waiting to "shoot" the marines as they landed on the beaches of Mogadishu, on 9 December 1992.
while Aideed rallied to the idea at the last minute.\textsuperscript{31} Nor was any opposition encountered when UNITAF deployed to towns in Somalia's southern interior. These deployments were facilitated by the US Liaison Office (USLO) whose officials met with Somali authorities and militia leaders in these areas, in advance of deployment, in order to explain UNITAF's objectives and discourage potential resistance.\textsuperscript{32}

UNITAF's goals of securing the unopposed delivery of humanitarian assistance and controlling armaments, especially heavy weapons, were pursued, whenever possible, with the cooperation of the faction leaders and other authorities.\textsuperscript{33} A premium was put on continued dialogue and negotiation.\textsuperscript{34} A joint security committee, which brought together UNITAF officials and Somali faction leaders for regular meetings in Mogadishu, served to reduce tension and promote Somali understanding of and compliance with UNITAF goals.\textsuperscript{35}

The implicit threat of enforcement action was, in all cases, a prime component of the US strategy to achieve mission objectives at minimum cost by eliciting Somali cooperation.\textsuperscript{36} This was not peace-keeping where mission objectives were essentially hostage to the dictates of host country authorities. Yet, neither was it war.\textsuperscript{37}

\textsuperscript{31} Concerning the reasons for Aideed's sudden change of heart, see: Menkhaus and Ortmayer, \textit{supra}, note 182, p. 9; Lyons and Samatar, \textit{supra}, note 178, p. 39 (referring to a paper written by UNOSOM adviser John Drysdale).


\textsuperscript{33} See Hirsch and Oakley, \textit{supra}, note 177, pp. 55-57 and 104.


\textsuperscript{35} See: Hirsch and Oakley, \textit{supra}, note 177, p. 58; Allard, \textit{supra}, note 183, p. 73.

\textsuperscript{36} See: Hirsch and Oakley, \textit{supra}, note 177, pp. 56-57 and 104.

\textsuperscript{37} The "ROE Card", summarizing the rules of engagement for American soldiers in Somalia, urged them to "\textbf{Remember} . The United States is not at war."
Impartiality

The political and military leadership of Operation Restore Hope attached great importance to the principle of impartiality. Although, as indicated earlier, this principle is a cornerstone of peace-keeping, in the view of these officials it was no less indispensable to the success of their, more muscular, efforts. Although force might have to be used in certain instances, UNITAF sought, in all cases, to avoid generating "long-term animosity" on the part of any one faction.\textsuperscript{38} While the Force's relations with Aideed's SNA\textsuperscript{39} were often strained,\textsuperscript{40} it in fact succeeded in "maintaining and demonstrating military primacy without making a permanent adversary or national hero of any local actor".\textsuperscript{41} However tense relations with the SNA became, they never approached the catastrophic levels of hostility seen in the months following UNOSOM II's assumption of the Somali brief.

The greater problem for UNITAF lay not in dealing with the factions in an even-handed manner, but in striking the right balance between the factions, on the one hand, and what remained of Somali civil society, on the other. In the eyes of many observers, UNITAF and the USLO made a critical mistake — a

\textit{Rules of Engagement for Operation Restore Hope}, \textit{supra}, note 183 (emphasis in the original).

\textsuperscript{38} Hirsch and Oakley, \textit{supra}, note 177, p. 51. And see pp. 156-57.

\textsuperscript{39} In early 1993, the Somali National Alliance (SNA) comprised, under Aideed's leadership, Aideed's faction of the United Somali Congress (USC) and three other factions. In this chapter, the abbreviation "SNA" is used when referring to the SNA alliance as a whole and "USC/SNA" when the discussion focuses on the USC/SNA faction, based in South Mogadishu. The other USC faction, led by Ali Mahdi, was part of a separate alliance, which Ali Mahdi also headed, known at that time as the "Group of 11" or "G-11".


mistake which would cost UNOSOM II dearly—in treating the faction leaders as principal interlocutors. Thus, it was argued, an opportunity was squandered to marginalize the warlords and actively promote the emergence of alternative Somali leadership.42

The US approach which, at one level, simply involved a recognition of existing power realities, was a necessary adjunct to the overall policy of avoiding confrontation with the warlords. Yet, there were other factors and other policies at work. First, the mere fact of the US intervention and the resultant, though provisional, taming of the warlords which it brought created a certain amount of space for the revival of Somali civil society.43 Moreover, UNITAF and the USLO took deliberate steps to encourage this development.44 US Special Envoy Robert Oakley, assiduous in soliciting the faction leaders' cooperation with UNITAF, went so far as to claim that the mission's ultimate goal was, in fact, their marginalization.45


Yet, while US intervention undoubtedly did create space for Somali civil society, both as a matter of deliberate policy and as a byproduct of the military intervention, the decision of the US, in December 1992, to deal with the warlords kept them squarely in the political game. US policy was, in effect, "being pursued on two parallel tracks: The United States was talking to the warlords, and also encouraging the emergence of other groups". It would be up to UNOSOM II to come down on one side or the other of the political equation.

UNOSOM II

In March 1993, the UN Security Council authorized the establishment of the first UN peace operation explicitly granted enforcement powers. While the second United Nations Operation in Somalia ("UNOSOM II") was formally a UN operation, commanded by the Secretary-General, it should be noted that the United States wielded considerable influence over policy and important operational decisions. Americans occupied key positions in the UNOSOM II hierarchy and the US Government provided crucial military and logistic support to the mission. While some 3,000 US troops (for logistic support) were, for the first time ever, placed under UN command, the Quick Reaction Force, available at the outset of the mission, and the US Army Rangers and Delta Force commandos, sent to Mogadishu in August 1993 to hunt for Aideed, were commanded directly by the US.

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46 Richburg, supra, note 209. And see Menkhaus and Ortmayer, supra, note 182, pp. 12-13.

47 ONUC's enforcement powers were, as noted earlier, not explicit, but could nevertheless be deduced from certain of the mandates assigned the force and the practical interpretation accorded to them. See The United Nations and Somalia, 1992-1996, supra, note 169, "Introduction", paras. 5, 114 and 121.

48 Both the Special Representative of the Secretary-General in Somalia, ret. Admiral Jonathan Howe, and the Deputy Force Commander, Major-General Thomas Montgomery, were Americans.

49 Concerning the US role in shaping UNOSOM II policy in the aftermath of the USC/SNA's 5 June attacks on UNOSOM II soldiers, see Menkhaus and Ortmayer, supra, note 182, p. 16. For more information on the US military
UNOSOM II's overall mandate was wide and included many aspects of nation-building. Thus, the Security Council requested the Secretary-General, through his Special Representative, to assist the Somali people in, inter alia, the provision of relief assistance and the economic rehabilitation of the country, the re-establishment of Somali police forces, and the advancement of national reconciliation through, in particular, the re-establishment of national and regional institutions and civil administration throughout Somalia.\(^{50}\)

The enforcement powers\(^{51}\) conferred upon the UNOSOM II Force were basically tied to the task of consolidating, expanding and maintaining security throughout the country.\(^{52}\) In this respect, they built upon commitments made by the factions\(^{53}\) at Addis Ababa in January\(^{54}\) and March 1993\(^{55}\) to abide by a cease-fire, disarm

contribution to the UNOSOM II mission, including the exceptional command and control arrangements applicable to US forces, see Allard, \textit{supra}, note 183, pp. 18-19, 24-25, 31 and 57-59.

\(^{50}\) SCR 814, 26 March 1993, subparas. 4(a), (c), and (d). Other non-military tasks are enumerated in the other subparagraphs of paragraph 4.

\(^{51}\) UNOSOM II's authority to take enforcement action derived from sec. B of SCR 814 (26 March 1993) and paras. 58 and 63 of S/25354 (3 March 1993). And see: paras. 91 and 97 of the latter report; note 235, \textit{infra}.


\(^{53}\) With the exception of the Somali National Movement (SNM) of the secessionist north-west ("Republic of Somaliland"), the key Somali factions were represented at the January and March meetings.


their militia and cooperate with the international relief effort.\(^{56}\) Thus, as with the model of peace enforcement outlined in paragraph 44 of *An Agenda for Peace*,\(^ {57}\) cease-fire enforcement was one of the main tasks of the UNOSOM II Force.\(^ {58}\) In addition, it was called upon to enforce the disarmament process agreed by the factions at their January meeting\(^ {59}\) and to "secure or maintain security at all ports, airports and lines of communications required for the delivery of humanitarian assistance".\(^ {60}\) For these purposes, then, UNOSOM II could take enforcement action.

UNOSOM II assumed responsibility for military operations in Somalia on 4 May 1993. US and UN officials thought it likely that the factions, in particular Aideed's SNA, perceiving the new force to be significantly weaker than its predecessor, would test it early on.\(^ {61}\) In fact, the test came on 5 June when 24

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\(^{56}\) The link between UNOSOM II's enforcement mandate and the January Addis Ababa agreements emerges quite clearly from paragraph 8 of SCR 814 (26 March 1993) wherein the Security Council "Demands" that the factions comply with the January agreements, especially the *Cease-fire and Disarmament Agreement* (*supra*, note 219). This demand was reiterated by the Security Council in paragraph 4 of SCR 837 (6 June 1993). The link between UNOSOM II's enforcement powers and the Addis Ababa agreements is also examined in the section on "Consent*, infra.

\(^{57}\) *Supra*, note 4.

\(^{58}\) SCR 814, 26 March 1993, para. 5. S/25354, 3 March 1993, subparas. 57(a) and (b). And see: SCR 814, para. 8; SCR 837, 6 June 1993, para. 4.

\(^{59}\) SCR 814, 26 March 1993, para. 5. S/25354, 3 March 1993, subparas. 57(c) and (d). And see: SCR 814, para. 8; SCR 837, 6 June 1993, para. 4; S/25354, paras. 59-69 ("Cease-fire and Disarmament Concept").

\(^{60}\) SCR 814, 26 March 1993, para. 5. S/25354, 3 March 1993, subpara. 57(e).

\(^{61}\) Hirsch and Oakley, *supra*, note 177, pp. 115-16. At the time of the handover, UNOSOM II had only 17,000 troops in Somalia plus the 1100 member Quick Reaction Force. This compared with UNITAF's peak force level of some 37,000 troops and UNOSOM II's approved force level of 28,000 military personnel. *The United Nations and Somalia, 1992-1996, supra*, note 169, "Introduction", para. 143. Hirsch and Oakley point, however, to other factors as inspiring the Somali perception of UN weakness, notably the failure of Pakistani troops in Mogadishu to patrol the city as aggressively as UNITAF forces had done. See Hirsch and Oakley, pp. 115-16.
Pakistani soldiers serving with UNOSOM II were killed in a series of attacks in South Mogadishu, stronghold of the USC/SNA.\textsuperscript{62}

The Security Council responded quickly with the adoption, on 6 June, of Resolution 837. Therein, the Council:

\begin{quote}
Re-emphasizes the crucial importance of the early implementation of the disarmament of all Somali parties ... and of neutralizing radio broadcasting systems that contribute to the violence and attacks directed against UNOSOM II;\textsuperscript{63}
\end{quote}

In paragraph 5 of the resolution, the Council:

\begin{quote}
Reaffirms that the Secretary-General is authorized under resolution 814 (1993) to take all necessary measures against all those responsible for the armed attacks [of 5 June], including against those responsible for publicly inciting such attacks, to establish the effective authority of UNOSOM II throughout Somalia, including to secure the investigation of their actions and their arrest and detention for prosecution, trial and punishment;
\end{quote}

Paragraphs 3 and 10 of the resolution's preamble pointed to the USC/SNA as the party responsible for the "premeditated armed attacks".\textsuperscript{64} By the terms of these provisions and the fact that Resolution 837 was adopted under chapter VII of the UN Charter,

\begin{footnotes}
\item[62] Fifty-six other Pakistani soldiers were wounded on June 5, of whom 11 were crippled for life. Probably the most complete account of the events of that day may be found in the report of the Commission of Inquiry established pursuant to SCR 885 (16 Nov. 1993). See S/1994/653, 1 June 1994, paras. 94-124 and 176-227. And see note 204, \textit{supra}.
\item[63] Para. 3
\item[64] US and UN officials were convinced of Aideed's responsibility at the time. Michael GORDON, "For Clinton, a Cautiously Limited Goal", \textit{International Herald Tribune} (NYT), 19-20 June 1993, p. 2. Menkhaus and Ortmayer, \textit{supra}, note 182, p. 14. Professor Tom Farer, an independent expert asked by the UN to carry out an investigation of the June 5 attacks, would subsequently conclude that Aideed's responsibility for the attacks was "supported by clear and convincing evidence." S/26351, 24 Aug. 1993, para. 24.
\end{footnotes}
it was clear that they authorized enforcement action. Unless one considers that UNOSOM II already possessed these powers under its broad mandate for "the consolidation, expansion and maintenance of a secure environment throughout Somalia", the task of "neutralizing" SNA-controlled Radio Mogadishu and of taking "all necessary measures" against those responsible for the 5 June attacks would involve extensions of the same.

The failure of efforts to capture or otherwise subdue Aideed led to a fundamental change of mandate. UNOSOM II's enforcement strategy was effectively abandoned in October 1993 in the wake of a battle which saw 1 Malaysian and 18 American soldiers killed. This was eventually formalized, on 4 February 1994, with the adoption of Security Council Resolution 897. It revoked UNOSOM II's powers for the enforcement of the cease-fire and disarmament process agreed within the Addis Ababa framework and limited its military tasks to the protection of essential infrastructure (including major ports and airports), humanitarian supply routes, and the personnel, installations and equipment of the UN and other international agencies.

Some observers have erroneously tagged UNOSOM II as a "mixed mission" where a peace-keeping force, operating in strict adherence to peace-keeping principles of consent, the non-use of force except in self-defence, and impartiality, is given enforcement tasks incompatible with these premises. The

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65 SCR 814, 26 March 1993, para. 14. And see note 216, supra. This interpretation is supported by the language used in the provisions of SCR 837 quoted above: "Re-emphasizes" (para. 3); "Reaffirms that the Secretary-General is authorized under resolution 814 (1993)" (para. 5).

66 For a detailed account of the events of 3-4 October, see the two-part series written by Rick ATKINSON for the Washington Post (published in the International Herald Tribune on 31 Jan. and 1 Feb. 1994).


68 SCR 897, 4 Feb. 1994, subparas. 2(b) and (g). S/1994/12, 6 Jan. 1994, para. 57.

69 Boulden, supra, note 186, p. 155. And see: Agenda Supplement, supra, note 1, paras. 34-35; Boutros-Ghali, supra, note 54, p. 12.
preceding review of the evolution of UNOSOM II's mandate clearly shows that it was conceived as an enforcement operation at the outset. On this point, the instruments defining the mandate are unambiguous.  

As just mentioned, a change of approach did occur in October 1993, with the move away from enforcement and back to peace-keeping. UNOSOM II's final period (October 1993-March 1995) marked the fourth distinct phase in the international intervention in Somalia which had begun with peace-keeping (UNOSOM I), before shifting to enforcement (UNITAF, UNOSOM II May-Oct. 1993). UNOSOM II's peace-keeping phase need not detain us here. Our enquiry is, rather, focused on the period from May to October 1993.

The Use of Force

As we have seen, UNOSOM II, in its initial phase, had extensive powers of enforcement: (1) to ensure compliance with the cease-fire and (2) the disarmament process agreed within the Addis Ababa framework; (3) to ensure the security of humanitarian relief operations; (4) to "neutralize" SNA-controlled Radio Mogadishu; and (5) "to take all necessary measures" against those responsible for the 5 June attacks on UN soldiers. Moreover, the rules of engagement used by UNOSOM II permitted a more aggressive use of force than those used by UNITAF.

70 One should note, however, that the key operative provision in SCR 814, paragraph 5, simply approves the recommendations made by the Secretary-General in respect of the mandate in his report of 3 March 1993 (S/25354). UNOSOM II's mandate, including its enforcement mandate, is in fact defined in paragraphs 56 to 88 of the latter report.

71 See text accompanying notes 216-25 and 230, supra. To these specific powers, one might arguably add a general power of enforcement for "the consolidation, expansion and maintenance of a secure environment throughout Somalia". See text accompanying note 217, supra.

72 A change in rules of engagement, which came into effect shortly after the handover from UNITAF to UNOSOM II, allowed UN soldiers to fire upon
Thus, on paper, UNOSOM II had broad scope for the use of force. The hunt for Aideed would see these powers exercised to their limit. While, as a general rule, UNOSOM military operations were constrained by the need to limit civilian casualties and unintended property damage,\textsuperscript{73} occasional mistakes\textsuperscript{74} and the SNA's use of human shields seriously undermined this policy during the period of armed conflict with the SNA.\textsuperscript{75}

\textit{Consent}

Enforcement implies, at some level, a lack of consent. Thus, the Secretary-General, in paragraph 97 of his 3 March 1993


74 UNOSOM II's 12 July missile attack on the "Abdi House" was, in contrast to standard policy, conducted without warning. The aim, in fact, was to kill top SNA leaders, including Aideed. Though denied by the UN, it is widely believed that, at the time it was attacked, the house was being used by clan elders to discuss ways of ending the hostilities between Aideed and UNOSOM II. Casualty estimates ranged from a low of 20 (UNOSOM) to a high of 73 (SNA) killed (the ICRC gave a figure of 54). See: \textit{Somalia Faces the Future}, \textit{supra}, note 184, pp. 62-64; Menkhaus and Ortmayer, \textit{supra}, note 182, p. 17; Hirsch and Oakley, \textit{supra}, note 177, p. 121; "The Mire", \textit{The Economist}, 11 Sept. 1993; Allard, \textit{supra}, note 183, pp. 65-66; S/26738, 12 Nov. 1993, para. 63; S/1994/653, 1 June 1994, paras. 153-55 and Annex 5 (pp. 79-80).

75 Somali casualties over the period from 5 June to 3 October 1993 were an estimated 6,000 to 10,000 (dead and wounded), a large majority of which occurred in the USC/SNA's stronghold of South Mogadishu. These figures, which could not be broken down more precisely, resulted from interfactional fighting as well as clashes with UNOSOM II. Two-thirds of the casualties were reported to be women or children, many of whom were used as human shields by SNA militiamen. "Americans Cite 6,000 Somali Casualties", \textit{International Herald Tribune} (NYT), 9 December 1993, p. 2. UNOSOM II fatalities as of 14 October 1993 (just after the end of the UNOSOM - SNA conflict) stood at 81. \textit{United Nations Peace-keeping Operations – October 1993}, UN Information Service (Geneva), Press Release GA/PK/3, 25 Oct. 1993.
The deployment of UNOSOM II ... will be at the discretion of the Secretary-General, his Special Representative and the Force Commander acting under the authority of the Security Council. Such deployment would not be subject to the agreement of any local faction leaders.\textsuperscript{76}

Yet, UNOSOM II was not to be an army of occupation or colonization. To some extent, it did rely on consent.

Notwithstanding the compelling necessity for authority to use enforcement measures as appropriate, I continue to hold to my conviction that the political will to achieve security, reconciliation and peace must spring from the Somalis themselves. Even if it is authorized to resort to forceful action in certain circumstances, UNOSOM II cannot and must not be expected to substitute itself for the Somali people. Nor can or should it use its authority to impose one or another system of governmental organization. It may and should, however, be in a position to press for the observance of United Nations standards of human rights and justice.\textsuperscript{77}

In fact, in the Addis Ababa Agreement of 27 March 1993, concluded the day after the Security Council voted to establish UNOSOM II, the Somali factions committed themselves to those same objectives whose realization UNOSOM II was mandated to secure, if necessary, through the use of force, namely a ceasefire,\textsuperscript{78} disarmament,\textsuperscript{79} and the provision of a secure environment

\textsuperscript{76} S/25354, 3 March 1993, para. 97.


\textsuperscript{78} Addis Ababa Agreement of 27 March 1993, supra, note 220, sec. I, paras. 4-6; referring to the General Agreement, supra, note 219, point 2, and the
for relief, reconstruction and rehabilitation operations." Moreover, in the 27 March Agreement, the factions expressed their consent to the first two components of UNOSOM II's enforcement mandate. Specifically, they "Urge UNITAF/UNOSOM to apply strong and effective sanctions against those responsible for any violation of the Cease-fire Agreement of January 1993". Thus, in March 1993, a consensual framework of a kind underlay the UNOSOM II mission.

The question arises as to whether this consensual framework was entirely sound. Were the commitments made by the faction leaders in the Addis Ababa meetings genuine? Although the official justifications offered for UNITAF's destruction, on 7 January 1993, of a USC/SNA military compound in Mogadishu centred on the security of international military and civilian personnel, the incident was believed to have played an important role in getting Aideed to end his obstruction of the January 1993 Addis Ababa meeting. Similarly, the agreement reached at the March Addis Ababa Conference was pried out of the faction leaders with threats of the imminent imposition, by the UN, of a transitional administration which would leave them on

Cease-fire and Disarmament Agreement, supra, note 219, sec. II.


80 Addis Ababa Agreement of 27 March 1993, supra, note 220, sec. II, para. 5. And see: para. 6 of the latter agreement; General Agreement, supra, note 219, point 6.


82 See note 188, supra.

the sidelines in the absence of any accord.  

Of course, such pressures are frequent companions of agreements designed to end armed conflicts. More serious was the fact that, as we will see in the next section ("Impartiality"), the Addis Ababa agreements masked fundamental disagreement — among the factions and between the factions and UNOSOM II — over such matters as disarmament and the re-establishment of Somali governance structures.

The consensual foundations of the operation, such as they were, came under significant stress almost from the beginning of UNOSOM II's mission in Somalia. The violent conflict which raged between UNOSOM II and the SNA from June - October 1993 did the most damage to these foundations; yet, problems arose even before this. UNOSOM II's apparent determination to make uncompromising use of its enforcement powers, even in such areas of prime concern to the Somali factions as disarmament, constituted one important source of pressure on the mission's consensual foundations. Equally problematic was UNOSOM II's tendency to act as a governing authority — i.e., to impose policies in such areas as the re-establishment of the judiciary and police or the national reconciliation process where it was only supposed to "assist".

These cases will also be reviewed in the next section of the chapter since they played a key role in the deterioration of relations between UNOSOM II and the SNA. Yet, it is worth noting here that UNOSOM II's evident desire to govern, as opposed to facilitate, in the political domain is seen by some observers as

84 Drysdale, supra, note 210, pp. 115 and 164. And see: Lyons and Samatar, supra, note 178, p. 50; note 221, supra.


86 See SCR 814, 26 March 1993, para. 4. See also: S/1994/653, 1 June 1994, paras. 51-52, 93 and 199-205; Hirsch and Oakley, supra, note 177, pp. 153 and 158; Drysdale, supra, note 210, pp. 175-76.
a leading cause of its armed conflict with the SNA.\footnote{71}

That conflict clearly represented the end of cooperation – the end of consent – as far as the SNA was concerned. It is a simplification, however, to claim that the war fatally undermined the consensual foundations of UNOSOM II's mission in Somalia. First, there remained a significant group of factions, allied with Ali Mahdi, who whole-heartedly supported military action against the SNA, indeed who asserted that this was the price of their own continuing cooperation with the UN mission.\footnote{72} Moreover, among those Somalis who did not consider themselves allied to any particular faction, many welcomed UNOSOM II's military initiatives against the SNA as a necessary first step in the process of defanging all warlords.\footnote{73}

With respect to Aideed's Habr Gedir clan, some analysts have claimed that Aideed's conflict with the UN weakened his base of support within the clan.\footnote{74} Yet, most observers assert, on the contrary, that the war helped him to consolidate\footnote{75} his hold on the Habr Gedir and even brought him support, including armed volunteers, from outside the clan.\footnote{76} UNOSOM II's attack on the "Abdi House"\footnote{77} appears as something of a watershed in this


\footnote{78} See: S/26530, 4 October 1993, pp. 2-3; Menkhaus and Ortmayer, supra, note 182, p. 15; Hirsch and Oakley, supra, note 177, pp. 123-24.

\footnote{79} Menkhaus and Ortmayer, supra, note 182, p. 15.


\footnote{81} Aideed's grip on the Habr Gedir was never as firm as popular imagination would have it. See: "Somalia: Aydeed Faces His Own People", ibid.; Somalia Faces the Future, supra, note 184, p. 68; Michael MAREN, "Somalia: Whose Failure?", Current History, vol. 95, no. 601, May 1996, p. 203.


\footnote{83} See note 239, supra.
respect, ending all dissension within Habr Gedir ranks and arousing considerable sympathy for Aideed and his clan on the part of other clans as well."

Thus, while UNOSOM II retained the support of much of Somali society, including, in particular, the clans allied to Ali Mahdi, it lost considerable support among the Habr Gedir, other SNA adherents and other Somalis who were receptive to Aideed's claim that he was waging a war against UN-led attempts to re-colonize Somalia. Which is to say that although the UNOSOM - SNA conflict did not entirely sweep away UNOSOM II's consensual foundations, they were at least partly undermined. The situation had become more polarized with many Somalis taking sides, for or against the UN mission.

**Impartiality**

At the outset of its mission, it was clear that UNOSOM II was to remain strictly impartial vis-à-vis the Somali factions. Impartiality, in this context, meant that UNOSOM II would implement its mandate, including its enforcement mandate, in a rigorously even-handed manner. This was reflected in the Secretary-General's report of 3 March 1993 which included the following military tasks in its definition of UNOSOM II's mandate:

(a) To monitor that all factions continue to respect the cessation of hostilities and other agreements to which they have agreed, particularly the Addis Ababa agreements of January 1993;

(b) To prevent any resumption of violence and, if necessary, take appropriate action against any faction that violates or threatens to violate the cessation of hostilities;\(^{95}\)


95 S/25354, 3 March 1993, para. 57 (emphasis added). These provisions were made part of UNOSOM II's mandate through paragraph 5 of SCR 814 (26 March 1993). The plans drawn up by the UN for disarmament also assume impartial-
Nevertheless, impartiality almost immediately became an issue with the UN Force. On the night of 6-7 May 1993, just days after the command of the military operation in Somalia passed from UNITAF to UNOSOM II, the forces of faction leader Omar Jess were repelled by Belgian troops when they tried to mount an attack on a rival in the southern port city of Kismayo. Aideed's SNA, which included Jess' faction, accused the UN of bias, noting that several months earlier the rival faction leader General Morgan had managed to infiltrate his men into Kismayo and drive out Jess though the city was then under UNITAF control.

Other developments in May widened the rift between UNOSOM II and the SNA. Specifically, UNOSOM II, in its efforts for the re-establishment of the Somali judiciary and police, was accused of trying to usurp SNA prerogatives in these areas. A particularly serious dispute arose in relation to a conference which Aideed sought to organize, with UN assistance, in order to resolve long-standing problems in the Galcayo region of central Somalia. UNOSOM II, suspicious of Aideed's motives, wanted to broaden both the conference agenda and participation. Convinced that the UN was deliberately trying to undermine him, Aideed eventually convened his own conference, independent of the UN. In fact, by this time, just days before the 5 June attacks on UN soldiers, key UN and US officials had already identified Aideed

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97 See Lyons and Samatar, supra, note 178, pp. 50 and 56.

98 See: S/1994/653, 1 June 1994, paras. 64-69; Drysdale, supra, note 210, pp. 175-76; Chopra et al, supra, note 61, pp. 93-94.

as the principal obstacle to the implementation of the Addis Ababa agreements and had advocated taking action to bring him to heel.¹⁰⁰

One of the main criticisms levelled at UNOSOM II was that, in responding to the 5 June attacks with military action against the faction believed responsible and a warrant for the arrest of its leader,¹⁰¹ it had abandoned one of the guiding principles of its mission in Somalia, namely impartiality. We now consider this claim.

Among the various objectives pursued by the UN and US in the military operations launched against Aideed and the USC/SNA over the June-October 1993 period, four stand out.

1) The restoration of peace This objective, related to the agreement of the factions, at the Addis Ababa talks, to a binding cease-fire, was enunciated, at least implicitly, in Security Council Resolution 837¹⁰² and more explicitly in a series of statements, letters and reports issued by the Secretary-General and the Security Council following UNOSOM II's first military operations against the USC/SNA, in June 1993.¹⁰³

2) Disarmament The importance of the disarmament process,

¹⁰⁰ See: Hope Restored?, supra, note 255, p. 40; Menkhaus and Ortmayer, supra, note 182, pp. 14-15; Drysdale, supra, note 210, pp. 166-67. Menkhaus and Ortmayer point out that UN and US animosity was rooted in the hostility Aideed had shown towards the UN, and on occasion UNITAF, since the beginning of 1993 (p. 14).

¹⁰¹ On 17 June 1993, SRSG Howe publicly called for Aideed's arrest and detention. A $25,000 reward was offered any Somali assisting in his capture.

¹⁰² See SCR 837, 6 June 1993, operative paras. 1 and 4, preambular paras. 4 and 9.

agreed by the factions at the January and March Addis Ababa talks, was emphasized in Security Council Resolution 837. The first series of military operations conducted by UNOSOM II against the USC/SNA, targeting its weapons stores, was presented as an application of UNOSOM II's enforcement powers in this area. The Secretary-General stressed that the effective disarmament of all the factions and warlords is conditio sine qua non for other aspects of UNOSOM's mandate, be they political, civil, humanitarian, rehabilitation or reconstruction.

3) Aideed's capture or marginalization A third objective, explicitly laid out in Security Council Resolution 837, was the capture of SNA leader Aideed, widely believed to have ordered the 5 June attacks. Yet, UNOSOM II's inability to capture the General in the first weeks following the attacks led UN and US officials to stress that the real aim was not so much to capture Aideed as to isolate him within his Habr Gedir clan ─ along with those other SNA officials responsible for the 5 June attacks ─ and to encourage the emergence of alternative leadership which, it was hoped, would take the SNA and the Habr Gedir back into the peace process.

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104 See SCR 837, 6 June 1993, operative paras. 3 and 4, preambular para. 8.


106 S/26317, 17 Aug. 1993, para. 73.

107 6 June 1993, operative para. 5 (reproduced after note 228, supra). And see preambular para. 11 and operative para. 6 of the resolution.

108 See note 229, supra.

109 See: Howe, supra, note 270, pp. 170-72; Howe, supra, note 242, p. 57; Menkhaus and Ortmayer, supra, note 182, p. 17. This strategy of marginalization also involved an attempt at pure and simple elimination in the form of a missile attack on a house where the UN believed top SNA officials, including Aideed, were meeting. See: Menkhaus and Ortmayer, p.
4) **Punishment**  More generally, UNOSOM II's forceful response to the 5 June attacks was designed to punish the USC/SNA for its deadly revolt against UNOSOM and the peace process and deter it and other factions from similar conduct in the future.\(^\text{110}\) This broad strategy served a number of more specific policy goals, which included: preserving UNOSOM II's credibility;\(^\text{111}\) ensuring the safety of UN personnel, both in Somalia and elsewhere;\(^\text{112}\) ensuring the continuing participation in UNOSOM II of those countries, in particular Pakistan, who insisted on a punitive response to the 5 June attacks;\(^\text{113}\) and demonstrating the UN's ability to rise to the challenges of its new peace enforcement role.\(^\text{114}\)

Each of the four objectives just described arguably ran afoul of the impartiality principle in that they were directed

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\(^{110}\) See Menkhaus and Ortmayer, *supra*, note 182, pp. 15-16.

\(^{111}\) "In Somalia, negotiating with Aideed after the killing of twenty-four Pakistani troops would be perceived as weakness and timidity by watchful Somali factions." Menkhaus and Ortmayer, *supra*, note 182, p. 15. And see Howe, *supra*, note 270, p. 169.

\(^{112}\) See: Howe, *supra*, note 270, pp. 169 and 172; Howe, *supra*, note 242, p. 57; *The United Nations and Somalia, 1992-1996*, *supra*, note 169, "Introduction", paras. 145 and 147. The UN Security Council's insistence on the "neutralization" of SNA-controlled Radio Mogadishu bore a particularly close relationship to this policy goal since the Radio was accused of encouraging violence against UNOSOM II. See: SCR 837, 6 June 1993, preambular para. 11 and operative para. 3; S/26022, 1 July 1993, para. 30. Note also that the question of the safety of UN personnel was already being considered by other UN organs, including the General Assembly (see GAR 47/72, 14 Dec. 1992), the Special Committee on Peace-keeping Operations (see A/48/173, 25 May 1993, sec. III D), and the Secretary-General (see *An Agenda for Peace*, *supra*, note 4, sec. VIII).

\(^{113}\) Menkhaus and Ortmayer, *supra*, note 182, p. 15.

against a single party, although the first and second derived from UNOSOM II's broad, initial mandate, applicable to all the factions. Yet, all four objectives, whether directly (the first and second) or indirectly (the third and fourth), were ultimately designed to secure SNA participation in the Addis Ababa peace process. The success or failure of these efforts was obviously of vital importance to the peace process as a whole, determining, in particular, the attitude the other factions would take towards it.

Although, as described earlier, both sides had been moving towards confrontation in the period leading up to 5 June, it seems clear that UNOSOM II's military campaign against the USC/SNA was a direct response to SNA armed opposition and not the result of a pre-existing bias against the faction. In striking at the faction and its leader after 5 June, UNOSOM II was merely striking at the point of greatest resistance to its mandate in Somalia. Retired Admiral Jonathan Howe, head of mission at the time of the UNOSOM - SNA conflict, puts the argument thus:

Critics allege that we committed a fatal peacekeeping mistake on June 17 by publicly taking sides among competing factions. They tend to ignore that all Somali faction leaders had started with a clean slate. Although some had argued that certain warlords should be punished for past deeds, we considered it our mandate to look forward to the future – not backward to the past. We were determined to facilitate an even-handed political process in which the Somalis picked their future leaders. It would then be up to newly elected Somali authorities to deal with any accusations of past misdeeds. General Aideed had distinguished himself on June 5 from other Somali leaders by "taking sides" against the U.N. By brutally attacking Pakistani peacekeepers, he had demonstrated his hostility to the lawful actions of the international community.\(^{115}\)

In the absence of any a priori intent on UNOSOM's part to

\(^{115}\) Howe, supra, note 270, p. 172. And see S/26022, 1 July 1993, para. 41.
treat the factions differently, we can therefore conclude that it did adhere to the principle of impartiality. Its implementation of its mandate remained even-handed in the sense that the means it used to that end were determined by the degree of resistance or cooperation it encountered. Throughout the hostilities with the USC/SNA, UNOSOM's abiding concern, in accordance with its mandate, was the preservation of the Addis Ababa peace process.

Yet, if we evaluate UNOSOM II's conduct on the basis of the definition of impartiality advanced by Dag Hammarskjöld in the context of the UN's Congo initiative, the picture looks rather different. Hammarskjöld's definition focused on the effects of UN action. Specifically, UN forces were not to "become parties in internal conflicts" or otherwise "influence the political balance decisive to" their resolution.\footnote{S/4389, 18 July 1960, para. 13. See text accompanying note 156, supra for the full quote.}

The claim that UNOSOM II became a party to the Somali conflict – at least in practice, if not as a matter of actual intention – is persuasive. Indeed, UNOSOM's efforts to capture and/or marginalize Aideed took it to the heart of a conflict which, since early 1991, had been driven, in large measure, by Aideed's fight with Ali Mahdi for supreme power. Removing Aideed from the scene would have changed the political equation dramatically. Yet the problem went further than this. Not only was UNOSOM II evidently bent on sweeping Aideed from the political scene, as the UNOSOM - SNA conflict dragged on, the USC/SNA, indeed the Habr Gedir as a whole, came to believe that they too had been targeted by the UN for physical elimination.\footnote{Hirsch and Oakley, supra, note 177, p. 123. Menkhaus and Ortmayer, supra, note 182, p. 18. There were two main reasons for the identification of the Habr Gedir with the USC/SNA's fight against UNOSOM II. First, the USC/SNA was essentially the militia of the Habr Gedir clan. By weakening the USC/SNA, UNOSOM II also weakened the Habr Gedir. Second, the principle of collective responsibility, a linchpin of Somali social order, bound the fate of the clan to its militia and militia leader (Aideed). Menkhaus and}
It thus appeared to many that UNOSOM II had aligned itself, not merely against a particular faction leader, but against an entire faction and the clan which it represented.

Officially, UNOSOM II had no intention of disrupting the prevailing balance of military and political power among Somali factions. Thus, the UN indicated that the coercive disarmament of the USC/SNA would be followed, as soon as possible, by a programme of cooperative disarmament in the rest of the country. Moreover, in an effort to mitigate the effects of a disarmament policy which, in its initial, coercive phase was entirely selective, UNOSOM II sent letters to the leaders of factions opposed to Aideed "cautioning [them] against taking advantage of a weakened SNA." Yet, these efforts could not alter the reality on the ground. The four-month conflict with UNOSOM cost both Aideed and his clan dearly. In fact, it appears that the UN was on the verge of prevailing when, as a result of the political fallout from the 3 October battle, it was forced to retreat from peace enforcement.

So far, we have been considering whether UNOSOM II, in its dealings with the Somali factions, remained impartial. Yet, the problem of impartiality may be posed at another, deeper level. UNITAF, with its "two-track" approach, sought to steer a neutral course between the realities of power (the factions), on the one

Ortmayer, p. 18.

118 S/26022, 1 July 1993, paras. 30 and 41.

119 Howe, supra, note 270, p. 170.

120 See "Somalia: Aynedde Faced His Own People", supra, note 255.

121 See note 240, supra.

122 "Indeed, casualties on the SNA side were so high [after the 3 October battle] that most observers believe the Habr-Gedr clan were on the verge of suing for peace on U.N. terms, jettisoning General Aideed's policy as too costly for the clan." Menkhaus and Ortmayer, supra, note 182, p. 19.
hand, and the needs of a barely renascent Somali civil society, on the other.\textsuperscript{123} It was in the nature of its role in Somalia, namely to implement a lasting solution to the problem of warlord-induced misery,\textsuperscript{124} that UNOSOM II would find itself necessarily "aligned against" the factions.

The national reconciliation process furnishes one example of this. Initially, UNOSOM II, even more than UNITAF, appeared to put the faction leaders at the centre of the political process. Thus, the agreements which emerged from the January and March Addis Ababa meetings, held under UN auspices, were negotiated and signed by the faction leaders alone, despite the attendance, especially at the March meeting, of Somalis representing a broad cross-section of their society.\textsuperscript{125}

Nevertheless, the Addis Ababa Agreement of 27 March 1993 appeared to endorse the "bottom-up" approach to the task of re-establishing Somali governance structures, long advocated by various experts in the field.\textsuperscript{126} Specifically, the Agreement's provisions for the establishment of district and regional councils opened the door to the re-emergence of local leadership independent of the factions — or at least of those factions which did not have local support.\textsuperscript{127}

\begin{itemize}
\item \textsuperscript{123} See "UNITAF: Impartiality" section, supra.
\item \textsuperscript{124} See Crocker, supra, note 206, p. 107.
\item \textsuperscript{126} The bottom-up strategy, inspired by the decentralized, though not anarchic, nature of traditional Somali society, was articulated in a series of meetings and consultations held under the auspices of the Life and Peace Institute in Uppsala, Sweden. See: Lewis, supra, note 207, p. 11; Normark, \textit{ibid.}, pp. 1-3; Local Administrative Structures in Somalia (A Case Study of the Bay Region Carried Out by the Life and Peace Institute (LPI), Horn of Africa Program), June 1995, p. 5.
\item \textsuperscript{127} See: Addis Ababa Agreement of 27 March 1993, supra, note 220, sec. IV; Lyons and Samatar, supra, note 178, pp. 52, 54 and 68.
\end{itemize}
Yet, the 15 factions, signatories of the 27 March Agreement, signed a separate document, on 30 March, which sought to refocus the reconciliation process on the prompt establishment of the top-level structure envisaged in the 27 March Agreement, the Transitional National Council (TNC), while ensuring that it remained firmly under the factions' control. UNOSOM II basically ignored the 30 March Agreement and, through 1993, worked to promote the establishment of district and regional councils in cooperation with local leaders. This policy, disliked by many of the factions, was actively opposed by the SNA.

The threat which the UN's interpretation of the political process posed to many of the warlords was, however, overshadowed by an even more fundamental challenge to their authority – disarmament. While some factions genuinely supported the disarmament process, many others did not. It was probably no

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132 The Somali Salvation Democratic Front (SSDF) was probably the strongest supporter of the disarmament process. As a result, it got much further in the SSDF's north-eastern stronghold than in the south of the country. See Managing Arms in Peace Processes: Somalia, supra, note 182, pp. 91-92. For a general assessment of the attitudes of the factions towards the disarmament process, see Hirsch and Oakley, supra, note 177, p. 99.
coincidence that the 5 June attacks coincided with UNOSOM II's resolute assertion of its right to inspect five authorized weapons storage sites (AWSS) belonging to the USC/SNA. It is almost certainly here that the real roots of the UNOSOM - SNA conflict lie. While other factors may have helped bring the situation to the boiling point by early June 1993, armed confrontation over disarmament was probably inevitable.

Concerning these inspections, see S/1994/653, 1 June 1994, paras. 94-103, 193-97 and 211. The SNA's decision to launch the 5 June attacks can also be traced to the threat the inspections appeared to pose to Radio Mogadishu, the site of one of its AWSS. In the face of the SNA's increasingly hostile, anti-UN broadcasts, UNOSOM II officials, prior to 5 June, had seriously considered seizing the station or otherwise silencing it. This was known to the SNA. See: S/1994/653, 1 June 1994, paras. 80-91, 94-95, and 210-11; Drysdale, supra, note 210, pp. 173-74; Chopra et al., supra, note 61, p. 95.

See text accompanying notes 261-65, supra.

4 BOSNIA-HERZEGOVINA (1992-95)

A variety of initiatives were launched by the international community in an effort to tame the armed conflicts which raged in the former Yugoslavia over the 1991-95 period. Most of these initiatives were non-coercive in nature, including the UN peacekeeping forces deployed to Croatia in 1992 and Macedonia in 1993.¹ Our search for practical applications of the concept of peace enforcement is on firmer ground in Bosnia-Herzegovina², though here too non-coercive approaches to the conflict tended to dominate, at least until late in the day.

As an extension of UNPROFOR-Croatia, the small UNPROFOR detachment present in Bosnia-Herzegovina during the first months of the Bosnian War (spring 1992) shared the latter's peace-keeping foundations.³ Beginning in June 1992, with the conclusion of the Sarajevo airport agreement, the Security Council gave UNPROFOR a series of functions related to the Bosnian conflict and expanded its size in the Republic accordingly. Although some of these functions suggested a shift away from peace-keeping and towards enforcement, in practice UNPROFOR-Bosnia would shake off its peace-keeping mantle only with the greatest reluctance.

THE SARAJEVO AIRPORT AGREEMENT

UNPROFOR was assigned a key role in the implementation of the agreement for the reopening of Sarajevo airport, signed by

¹ The same name – "United Nations Protection Force (UNPROFOR)" – was assigned to the three UN forces deployed to Croatia, Macedonia, and Bosnia-Herzegovina up until 31 March 1995 when UNPROFOR-Croatia was renamed the "United Nations Confidence Restoration Operation in Croatia" (UNCRO, SCR 981) and UNPROFOR-Macedonia was renamed the "United Nations Preventive Deployment Force" (UNPREDEP, SCR 983). UNPROFOR-Bosnia retained the name "UNPROFOR" (see SCR 982).

² Note that since the conclusion of the Dayton accords, in December 1995, the country's exact name is "Bosnia and Herzegovina".

the warring parties on 5 June 1992. Specifically, it was to "ensure the immediate security of the airport and its installations" and "ensure the safe movement of humanitarian aid and related personnel" through the establishment of security corridors between the airport and Sarajevo city.\(^4\) Yet, UNPROFOR's ability to fulfil these tasks depended entirely upon the consent and cooperation of the parties. When these were withheld – not infrequently on the Bosnian Serb side – UNPROFOR could "ensure" nothing.\(^5\)

**HUMANITARIAN CONVOYS**

Extensive media coverage in early August 1992 of Serb-run concentration camps fuelled demands for Western nations to "do something". Resolution 770, adopted by the Security Council on 13 August 1992 under chapter VII of the UN Charter, promised, on its face, enforcement action:

> [The Security Council] 2. **Calls upon** States to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery by relevant United Nations humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina\(^6\)

Yet, no ad hoc coalitions would be sent to Bosnia to force through the delivery of humanitarian assistance to all parts of

\(^{4}\) S/24075, 6 June 1992, para. 4. And see the *Agreement of 5 June 1992 on the Reopening of Sarajevo Airport for Humanitarian Purposes*, annexed to S/24075. This mandate and corresponding Force enlargement were approved in SCR 758 (8 June 1992) and SCR 761 (29 June 1992).


\(^{6}\) Those Security Council representatives who addressed the question at the time of the resolution's adoption were of the opinion that it authorized the use of force, if necessary, for the stated purposes. See S/PV.3106, 13 Aug. 1992. And see Marc WELLER, "Peace-keeping and Peace-enforcement in the Republic of Bosnia and Herzegovina", *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, vol. 56, nos. 1-2, 1996, pp. 97-98.
the Republic. On the basis of a commitment made by the warring parties at the London Conference on the former Yugoslavia (26-27 August 1992), it was decided instead to expand UNPROFOR’s mandate and resources within a continuing, peace-keeping framework. Although it was stated to be "in implementation of paragraph 2 of resolution 770 (1992)", the enabling instrument, Resolution 776 (14 September 1992), made no mention of chapter VII, nor used any other language which would suggest that UNPROFOR's assigned tasks, in particular the protection of UNHCR relief convoys, would be conducted on anything other than a consensual basis. The 10 September report of the Secretary-General, setting out the mandate in detail, is explicit:

In providing protective support to UNHCR-organized convoys, the UNPROFOR troops concerned would follow normal peace-keeping rules of engagement. They would thus be authorized to use force in self-defence.

Except that, once again, the extended definition of self-defence would apply:

It is to be noted that, in this context, self-defence is deemed to include situations in which armed persons attempt by force to prevent United Nations troops from carrying out their mandate.

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7 The parties agreed they would collaborate fully in the delivery of humanitarian aid by road throughout Bosnia. *Specific Decisions by the London Conference, LC/C7 (FINAL), 27 Aug. 1992, para. 5(i). This commitment was noted by the Security Council in its Resolution 776 (14 Sept. 1992) – 2nd preambular para.

8 Concerning this shift of approach, partly motivated by a reluctance to put an enforcement operation alongside the pre-existing peace-keeping mission (UNPROFOR), see Trevor ROWE, "U.S., Britain and France Drop Plans for Bosnia Military Role", *International Herald Tribune* (WP), 26 Aug. 1992, p. 2.

9 SCR 776, 14 Sept. 1992, para. 2.

10 For the full list of tasks, see S/1995/444, 30 May 1995, para. 27.

11 S/24540, 10 Sept. 1992, para. 9. And see para. 1.

As noted in chapter 2, on the Congo, extended self-defence has only rarely been applied in practice. Bosnia was no exception. The movement of relief convoys was wholly dependent on the consent of the warring factions, which they withheld whenever it served their interests.\textsuperscript{13} UNPROFOR used force to repel armed attacks launched against convoys which they escorted,\textsuperscript{14} but not for the purpose of forcing the same through roadblocks or other obstacles mounted by the factions. Thus, the UN Secretary-General would observe in his May 1995 report on UNPROFOR: "Military protection serves primarily to dissuade random or unorganized attacks; it cannot substitute for the consent and cooperation of the parties."\textsuperscript{15}

**UNPROFOR'S MANDATE AND CHAPTER VII**

Beginning with Resolution 807 (19 February 1993), the Security Council invoked chapter VII of the UN Charter to underline its determination "to ensure the security of UNPROFOR".\textsuperscript{16} This formulation was extended in Resolution 815 (30 March 1993) to cover, in addition to UNPROFOR's security, "its freedom of movement for all its missions".\textsuperscript{17} This wider formulation was


\[\text{\textsuperscript{14} See "Les «casques bleus» britanniques ont pour la première fois vigoureusement répliqué à une attaque serbe", Le Monde, 12 janv. 1993, p. 4.}\]

\[\text{\textsuperscript{15} S/1995/444, 30 May 1995, para. 29.}\]

\[\text{\textsuperscript{16} – final preambular paragraph.}\]

\[\text{\textsuperscript{17} – final preambular paragraph.}\]
reiterated in subsequent Security Council resolutions dealing with UNPROFOR.\textsuperscript{18}

Notwithstanding the usual association between chapter VII and enforcement action,\textsuperscript{19} it appears clear that these references to chapter VII did not involve any change of mandate. As a peace-keeping force, UNPROFOR in Bosnia-Herzegovina was already empowered to use force for its own defence, including the preservation of its freedom of movement.\textsuperscript{20} The Security Council's invocation of chapter VII in this connection could be seen as an expression of its commitment to the safety of the Force and perhaps as a threat of tougher action were the warring parties to continue to threaten UNPROFOR's security or impede its freedom of movement. Yet, these references to chapter VII could not, by themselves, transform UNPROFOR's role from one of peace-keeping to one of enforcement.\textsuperscript{21}

THE NO-FLY ZONE

Concern for the safety of relief flights\textsuperscript{22} and the bombardment by Bosnian Serb aircraft of civilian populations led the Security Council to impose a "ban on military flights" over Bosnia in its Resolution 781 of 9 October 1992.\textsuperscript{23} The resolution,

\begin{itemize}
  \item \textsuperscript{18} SCR 847 (30 June 1993) made it clear that it applied to UNPROFOR in both Croatia and Bosnia-Herzegovina (final pream. para.).
  
  \item \textsuperscript{19} Certain provisions in chapter VII, to be examined in some detail in chapter 8, infra, give the Security Council the power to order or recommend coercive measures for the maintenance of international peace and security.
  
  \item \textsuperscript{20} See text accompanying notes 32 and 134-42, supra.
  
  \item \textsuperscript{21} See: Weller, supra, note 306, pp. 99-100; Boulden, supra, note 186, p. 160. It should, however, be noted that the reference to chapter VII is not technically incorrect. Article 40, situated within chapter VII, is widely viewed as a possible, even preferred, Charter basis for UN peace-keeping. In this regard, see text accompanying note 764, infra.
  
  \item \textsuperscript{22} The UN airlift to Sarajevo was suspended from 4 September to 3 October 1992 after an Italian aircraft was shot down by a missile of undetermined origin.
  
  \item \textsuperscript{23} — para. 1. An exception was made for "[UNPROFOR] flights or ... other
which was not adopted under chapter VII of the UN Charter, made no provision for its enforcement in case of non-compliance. While NATO monitored compliance with the no-fly zone from the air, UNPROFOR personnel were deployed to airfields in Bosnia, Croatia, and the Federal Republic of Yugoslavia (FRY) (Serbia and Montenegro) for the purpose of monitoring activity there and approving non-military flights destined for Bosnia.

Although numerous violations of the no-fly zone were noted by ground and air monitors, the ban did appear to rein in aerial combat operations – for the most part. The continuing violations of the zone, including the bombing of two Bosnian flights in support of United Nations operations" (para. 1). SCR 786 (10 Nov. 1992) subsequently specified that the ban applied to all aircraft, whether fixed-wing or rotary-wing (helicopters) (para. 2). SCR 816 (31 March 1993) extended the ban to cover "flights by all fixed-wing and rotary-wing aircraft" (not only "military flights") in Bosnian airspace, excepting humanitarian flights and other flights consistent with relevant Security Council resolutions, authorized by UNPROFOR (paras. 1 and 2).

Note, however, that the Security Council, in the last preambular paragraph of Resolution 781, states that it is "Acting pursuant to the provisions of resolution 770 (1992) aimed at ensuring the safety of the delivery of humanitarian assistance in Bosnia and Herzegovina," which, as noted earlier, were adopted under chapter VII.

In paragraph 6 of the resolution, the Security Council simply "Undertakes to examine without delay all the information brought to its attention concerning the implementation of the ban on military flights in Bosnia and Herzegovina and, in the case of violations, to consider urgently the further measures necessary to enforce this ban".


In his statement of 17 March 1993 (S/25426 of the same date), the President of the Security Council noted that a total of 465 violations had
villages by aircraft apparently originating in the FRY, finally pushed the Security Council to adopt measures for its enforcement. "Acting under Chapter VII" of the UN Charter, the Security Council, in its Resolution 816:

Authorizes Member States, seven days after the adoption of this resolution, acting nationally or through regional organizations or arrangements, to take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures in the airspace of the Republic of Bosnia and Herzegovina, in the event of further violations, to ensure compliance with the [no-fly zone], and proportionate to the specific circumstances and the nature of the flights

NATO agreed to undertake the enforcement operation, which it initiated on 12 April 1993 under the code name "Operation Deny Flight". The rules of engagement, drawn up by NATO in consultation with the UN, provided for the use of force only against military aircraft which refused to heed warnings to leave the no-fly zone. Significantly, in contrast to the

been reported by the UN since the beginning of monitoring operations. And see S/25443, 19 March 1993.


33 SCR 816, 31 March 1993, pream. para. 8. In the previous preambular paragraph, the Security Council determined "that the grave situation in the Republic of Bosnia and Herzegovina continues to be a threat to international peace and security". This determination, a prerequisite under UN Charter article 39 to Security Council action under chapter VII, was first made in respect of the Bosnian conflict in SCR 757 (30 May 1992) which imposed economic sanctions on the FRY.

34 SCR 816, 31 March 1993, para. 4.


37 Michael R. GORDON, "Firing to Be NATO Planes' Last Resort", International
measures adopted for the protection of UNPROFOR and the safe areas, to be examined in the next section, NATO conducted no-fly zone enforcement operations independently of the UN. It did not require UN approval prior to the downing of aircraft violating the zone. In only one instance did NATO, in fact, do this — on 28 February 1994 when four of six Serb aircraft on a bombing mission over Bosnia were shot down after failing to heed warnings to land or leave the no-fly zone.

Less serious violations of the no-fly zone, involving non-combat aircraft, mostly helicopters transporting individuals, were, however, common. These were routinely intercepted and warned, but not shot down. At the point of its termination, on 20 December 1995, a total of 7,552 "apparent violations" of the no-fly zone had been recorded by the UN.

**The Three Criteria**

The enforcement of the no-fly zone shared several features of the model of peace enforcement sketched out in chapter 1. First, it involved potential enforcement action. NATO could, in fact did, take the initiative in the use of force, albeit as a

_Herald Tribune_ (NYT), 13 April 1993, p. 2.


41 See: SCR 1031, 15 Dec. 1995, para. 19; S/1995/1050, 20 Dec. 1995. Since 20 December 1995, the NATO-led forces sent to ensure implementation of the Dayton accords have exercised control over Bosnian airspace under the provisions of that agreement.

last resort, for the purpose of securing compliance with the ban.

Second, there was consent of a kind to the no-fly zone itself, though not to the measures subsequently taken for its enforcement. The Security Council's decision, in October 1992, "to establish a ban on military flights" over Bosnia was, in fact, based on an identical commitment made by the warring parties at the London Conference (26-27 August 1992). That commitment was not honoured, however. The continuing use of Serb aircraft in combat missions prompted the Bosnian Government to appeal to the international community, in early October 1992, to enforce compliance with the ban. Since the Bosnian Muslims had almost no potential for air combat themselves, this was entirely in their interest.

As just suggested, the application of the third component of our earlier model of peace enforcement, i.e. impartiality, is much more problematic in the case of the no-fly zone. Although the prohibition and its associated enforcement measures applied, on their face, to the warring parties in equal measure, the Bosnian Serbs bore the brunt of their actual application. The enforcement of the no-fly zone, though formally impartial, involved in reality the elimination of the Bosnian Serb advantage in air power.


44 See Specific Decisions by the London Conference, LC/C7 (FINAL), 27 Aug. 1992, sec. 3 ("confidence-building measures"). See also S/24634, 8 Oct. 1992, Annex, Enclosure. These undertakings were noted by the Security Council in the third and fifth preambular paragraphs of its Resolution 781 (9 October 1992) establishing the no-fly zone.


46 Some observers have, however, questioned the relative military significance of that advantage. See: "Picking Over the Pieces of War", The Economist, 17 Oct. 1992, p. 34; "The Dirty Work in Bosnia", International Herald Tribune (Wash. Post editorial), 3-4 April 1993, p. 4; Gordon, supra, note 337.
THE SAFE AREAS

An assault by the Bosnian Serbs on Srebrenica in March-April 1993, led the Security Council, in Resolution 819 (16 April), to declare the enclave "a safe area which should be free from any armed attack or any other hostile act" (para. 1). The Council demanded ("Demands") that "all parties and others concerned" recognize this status (para. 1), while the Bosnian Serbs were specifically told to immediately cease their attacks and withdraw their forces from the areas surrounding the safe area (para. 2). In Resolution 824 (6 May 1993), the Security Council added five other Bosnian cities and towns to the list of safe areas: the capital Sarajevo, along with Tuzla, Bihače, Vravno, and Goražde. The basic elements of the safe areas regime were identified by the Secretary-General as:

- Freedom from armed attack or other hostile acts;
- Withdrawal of Bosnian Serb and other military or paramilitary units except those of the Government of Bosnia and Herzegovina;
- Maximum restraint and an end to all provocative and hostile actions in and around the safe areas by all parties and others concerned;
- Occupation of key points on the ground by UNPROFOR troops and monitoring by the Force in the safe areas;
- Free and unimpeded access for UNPROFOR and international humanitarian agencies and full respect for their safety;
- Participation by UNPROFOR in the delivery of humanitarian relief to the population in the safe areas.47

Neither Resolution 819 or 824 provided any means of enforcing respect for the safe areas.48 Security Council

47 S/1994/1389, 1 Dec. 1994, para. 44. As indicated by the Secretary-General in the latter paragraph of his report, the safe areas regime is defined in Security Council Resolutions 819 (16 April 1993), 824 (6 May 1993), 836 (4 June 1993), 913 (22 April 1994), and 959 (19 Nov. 1994).

48 In paragraph 4 of Resolution 819 (16 April 1993), the Security Council requested the Secretary-General, "with a view to monitoring the humanitarian situation in the safe area, to take immediate steps to increase the presence of UNPROFOR in Srebrenica and its surroundings"
Resolution 836, adopted on 4 June 1993 under chapter VII of the Charter, was ostensibly designed to fill this gap. Thus, in order "to ensure full respect for the safe areas referred to in resolution 824 (1993)"\(^{49}\), the Security Council, in paragraph 5 of Resolution 836,

*Decides* to extend ... the mandate of UNPROFOR in order to enable it ... to deter attacks against the safe areas, to monitor the cease-fire, to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia and Herzegovina and to occupy some key points on the ground, in addition to participating in the delivery of humanitarian relief to the population as provided for in resolution 776 (1992) of 14 September 1992

In paragraph 9 of Resolution 836, UNPROFOR was authorized,

in carrying out the mandate defined in paragraph 5 above, acting in self-defence, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys

NATO's role in the protection of the safe areas derived from paragraph 10 of Resolution 836 in which the Security Council:

*Decides* that, notwithstanding [the no-fly zone], Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-

\(^{49}\) SCR 836, 4 June 1993, para. 4.
General and UNPROFOR, all necessary measures, through the use of air power, in and around the safe areas in the Republic of Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate set out in paragraphs 5 and 9 above;

The exact meaning of these provisions, especially those relating to UNPROFOR, is not all clear. The reference to "self-defence" in paragraph 9 of Resolution 836 evokes the limitations of a peace-keeping force, though that would be at odds with the Security Council's aim, stated in paragraph 4 of the resolution, "to ensure full respect for the safe areas". The Secretary-General's May 1994 report on the safe areas contains what is perhaps the clearest expression of the safe areas mission, at least as understood by the UN Secretariat:

To protect the civilian populations of the designated safe areas against armed attacks and other hostile acts, through the presence of its troops and, if necessary, through the application of air power, in accordance with agreed procedures.

In other words, UNPROFOR's role in the protection of the safe areas was to deter attacks by Bosnian Serb forces through its presence there. While this is nowhere stated explicitly, one would assume that deterrence through mere presence would derive: first, from the fact that international attention would automatically be drawn to any Bosnian Serb attack on the safe areas; second, from the fact that Bosnian Serb forces would consider the application of air power to be a likely response to any attack.

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50 As acknowledged by the Secretary-General in his May 1994 report on the safe areas, there was, in fact, considerable confusion in respect of the safe areas mandate. See S/1994/555, 9 May 1994, para. 16.


52 Paragraph 13 of the May 1994 report is explicit in this respect: "UNPROFOR's protection role is derived from its mere presence." S/1994/555, 9 May 1994. And see paragraph 21 of the latter report. See also S/1994/1389, 1 Dec. 1994, para. 59, wherein the Secretary-General makes an interesting distinction between deterrence and enforcement: "it is my view that the role of UNPROFOR of deterring violations of the safe-area regime should not be changed to one of enforcing the regime." Recall that paragraph 5 of Resolution 836 (4 June 1993) required UNPROFOR "to deter attacks against the safe areas".
areas; second, and more importantly, from UNPROFOR's function as a tripwire for NATO air strikes. It was clear that UNPROFOR was not expected to fight to defend the safe areas.\textsuperscript{53} That task fell to NATO\textsuperscript{54} which, as will be explained shortly, could either provide "close air support" to UNPROFOR troops who came under Bosnian Serb attack within the safe areas or launch air strikes in defence of the safe areas themselves.

In essence, UNPROFOR, on the ground, in a continuing peace-keeping role, was to deter attacks against the safe areas through its presence in them, while NATO, from the air, would act as peace-enforcer if and when deterrence failed. This was the basic scheme. Its operational viability was another matter. Before we examine the unravelling of the safe areas regime in the months of May - August 1995, it is important to show, in some detail, how the mandates conferred upon UNPROFOR and NATO by Resolution 836 were interpreted and implemented, along the lines just sketched out, over the 1993-94 period.

**UNPROFOR's Safe Areas Mandate**

As noted already, Security Council Resolution 836 emphasizes the notion of self-defence with respect to UNPROFOR's implementation of its safe areas mandate. In particular, paragraph 9, specifying the means UNPROFOR may employ in executing this mandate ("acting in self-defence"), would appear to prohibit it from using force except in situations where it is itself under threat.\textsuperscript{55} Nevertheless, the rules of engagement adopted for the Force authorized UNPROFOR personnel to use their weapons:

\textsuperscript{53} "UNPROFOR is neither structured nor equipped for combat and has never had sufficient resources, even with air support, to defend the safe areas against a deliberate attack or to hold ground." S/1994/555, 9 May 1994, para. 13.

\textsuperscript{54} See: S/25939, 14 June 1993, paras. 4 and 5; S/1994/555, 9 May 1994, paras. 16-17.

\textsuperscript{55} In support of this interpretation, see S/1995/444, 30 May 1995, para. 33.
a. to defend themselves, other U.N. personnel, or persons and areas under their protection against direct attack, ...

c. to resist deliberate military or para-military incursions into the United Nations Protected Areas (UNPAs) or Safe Areas.\textsuperscript{56}

Reporting to the Security Council 10 days after the adoption of Resolution 836, the Secretary-General presented two options for the implementation of those provisions of the resolution concerning UNPROFOR. The first, designed "to ensure full respect for the safe areas", required approximately 34,000 additional troops, while the second, "light option" envisaged a troop reinforcement of only around 7,600.\textsuperscript{57} The Secretary-General noted that, as the latter "option cannot, in itself, completely guarantee the defence of the safe areas, it relies on the threat of air action against any belligerents."\textsuperscript{58} The Security Council, responding to the report on 18 June, chose the "light option", although even this modest commitment to the protection of the safe areas proved difficult to fulfil — it would be a full year before the last of the 7,600 additional troops were deployed in the safe areas.\textsuperscript{59}

In any case, the Secretary-General had stressed that not much could be expected of this "minimal troop reinforcement".\textsuperscript{60} It had "limited objectives" and assumed "the consent and cooperation of the parties".\textsuperscript{61} In implementing its safe areas mandate over the 1993-95 period, UNPROFOR was, in practice, very much dependent on party consent and cooperation. Bosnian Serb forces were able to obstruct access to the safe areas at will.\textsuperscript{62}

\textsuperscript{56} Force Commander's Policy Directive Number (13) Rules of Engagement, Part I: Ground Forces, supra, note 312, para. 5. And see para. 17.

\textsuperscript{57} S/25939, 14 June 1993, para. 5.

\textsuperscript{58} Ibid.


\textsuperscript{60} S/25939, 14 June 1993, para. 5.

\textsuperscript{61} Ibid., para. 6.

and even block the rotation of UNPROFOR contingents there. Perhaps the only indication that UNPROFOR was, in fact, in the business of protecting the safe areas, came, in July 1995, when a Dutch platoon, having taken up positions at the entrance to Srebrenica, tried to block a Bosnian Serb advance into the town. They succeeded in stopping one infantry advance, but were later outflanked by another group which moved on to capture the town centre. Yet, this action basically involved the use of force for the purpose of holding existing positions and, as such, did not take UNPROFOR out of its peace-keeping role.

**NATO's Safe Areas Mandate**

Meeting in Athens on 10 June 1993, NATO foreign ministers offered "our protective airpower in case of attack against UNPROFOR in the performance of its overall mandate, if it so requests." Yet, although the text of the Athens communiqué suggested otherwise, this measure, which would come to be known as "close air support", was not designed for the defence of the safe areas or their civilian inhabitants, but rather for the protection of all UN forces in Bosnia, inside and outside of the

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65 Recall that the earliest formulations of the right of self-defence in peace-keeping permitted the use of force in response to "an attack with arms, including attempts to use force to make [peace-keepers] withdraw from positions which they occupy under orders". A/3943, 9 Oct. 1958, para. 179 (quoted more fully in chapter 1 — text accompanying note 33, *supra*).

66 Ministerial Meeting of the North Atlantic Council, Athens, Greece (Final Communiqué), 10 June 1993 (source: NATO Communiqués 1993, NATO Office of Information and Press), para. 3.

67 The offer of "protective airpower" was stated to be a "response to UNSC Resolution 836 and the expanded UNPROFOR mandate related to safe areas". *Ibid.*, para. 3.
safe areas.\textsuperscript{68}

While perhaps surprising to anyone who thought the international community's primary concern should be the protection of the safe areas \textit{per se},\textsuperscript{69} this was not incompatible with the mandate conferred upon UNPROFOR in Resolution 836 which, as previously noted, limited its role in support of the safe areas to peace-keeping, with the right to use force only in self-defence.

If UNPROFOR in fact occupies "some key points on the ground" within the safe areas,\textsuperscript{70} one would assume that most threats to the safe areas would also constitute threats to UNPROFOR and thus trigger its right of self-defence. Yet, the two types of threat (to UNPROFOR / to the safe areas) need not always coincide. The question of whether Resolution 836 can be read so as to confer, at least upon NATO, a right to use force in direct defence of the safe areas is thus of considerable practical importance.

Paragraph 10 of Resolution 836 authorizes NATO to use air

\begin{footnotesize}
\textsuperscript{68} See "Conseil OTAN: Protection aérienne de toute la FORPRONU ...", \textit{Nouvelles atlantiques}, no. 2534, 12 juin 1993, p. 1. Close air support was operational as of August 1993 (S/26335, 20 Aug. 1993). It was first applied in April 1994 during the Gorazde Crisis and in a handful of instances thereafter, mostly, but not exclusively, in and around the safe areas. Note that Resolution 908 (31 March 1994) extended close air support to cover UNPROFOR troops in Croatia. It is submitted that, as it was not tied to the safe areas \textit{per se}, but rather to the defence of UNPROFOR anywhere in Bosnia (and Croatia), close air support requires legal grounds other than Resolution 836 – such as those contained in Resolutions 807 and 815 (see text accompanying notes 316-21, supra). Many legal scholars, however, make no distinction between close air support and air strikes for the defence of the safe areas themselves, identifying Resolution 836 as the legal basis for both. In this regard, see Linos-Alexandre SICILIANOS, "Le contrôle par le Conseil de sécurité des actes de légitime défense" (DANS \textit{Le chapitre VII de la Charte des Nations Unies}, Paris, Pedone, 1995), p. 93.

\textsuperscript{69} The somewhat misplaced emphasis, in Security Council resolutions dealing with the safe areas, on the security of UN personnel, as opposed to that of the safe areas' civilian inhabitants, has not escaped comment. See Maurice TORRELLI, "Les zones de sécurité", \textit{Revue générale de droit international public}, tome 99, 1995/4, pp. 842-43.

\textsuperscript{70} SCR 836, 4 June 1993, para. 5.
\end{footnotesize}
power "to support UNPROFOR in the performance of its mandate set out in paragraphs 5 and 9".\textsuperscript{71} If paragraphs 5 and 9 are separable, then NATO could employ air power, either for the ends specified in paragraph 9 (to defend UNPROFOR) or those specified in paragraph 5 ("to deter attacks against the safe areas"). The latter provision would effectively allow NATO to launch air strikes in defence of the safe areas, independently of any specific threat to UNPROFOR. If, however, paragraphs 5 and 9 are not separable, NATO would necessarily share the limitation of means imposed on UNPROFOR in paragraph 9. In other words, it could only use air power in defence of UNPROFOR.

In practice, at US insistence, the former interpretation of Resolution 836 was to prevail – NATO would have the right, subject to the specific approval of UN officials,\textsuperscript{72} to use force in direct defence of the safe areas\textsuperscript{73} – yet only after persistent Bosnian Serb pressure on the safe areas finally forced the issue.

At the end of July 1993, the Bosnian Serbs looked set to complete their stranglehold on Sarajevo with the capture of Mount Igman. The US, arguing for a broad interpretation of

\textsuperscript{71} Paragraphs 5, 9 and 10 of Resolution 836 are reproduced \textit{supra} (text following note 349).

\textsuperscript{72} Resolution 836 (4 June 1993) had specified that NATO's use of air power in "support \[of\] UNPROFOR in the performance of its [safe areas] mandate" would be "subject to close coordination with the Secretary-General and UNPROFOR" (para. 10; and see para. 11). In the case of close air support, NATO merely acted upon UN request. Where air power was used for the defence of the safe areas, a "dual key" system of authorization applied – both NATO (after the Gorazde Crisis of April 1994) and the UN could call for action, while either one (in practice, this meant the UN) could veto such a request at any rung on the command chain. Both procedures were modified over the 1993-95 period. The most significant change occurred with the UN Secretary-General's delegation of authority to approve the use of air power down to the political and military commanders in the field (in February 1994 and July 1995). Concerning the delegation of July 1995, see note 390, \textit{infra}.

\textsuperscript{73} The Russian Federation persistently opposed NATO's use of air power, whether for the defence of UNPROFOR or of the safe areas, claiming, in particular, that the Security Council had a continuing right of oversight in these areas. Concerning the Russian position, see Christakis, \textit{supra}, note 338, pp. 181-85; Weller, \textit{supra}, note 306, p. 111; Sicilianos, \textit{supra}, note 368, p. 93.
Resolution 836, threatened unilateral action if its NATO allies did not agree to authorize the use of air power for the direct defence of the safe areas, including Sarajevo. In meetings held on 2 and 9 August, NATO's North Atlantic Council (NAC) indicated that the Alliance was prepared, in principle, to use air power for this purpose. Operational options for air strikes were drawn up and approved, although a final decision to authorize NATO commanders to launch air strikes at UN request was deferred.

Continued Bosnian Serb artillery and mortar attacks on Sarajevo finally led the Alliance, on 9 February 1994, to threaten immediate air strikes in case of further attacks on the city and issue an ultimatum for the withdrawal of all heavy weapons from a 20 kilometre "exclusion zone" around it. It followed this, two months later, with a similar set of ultimatums in respect of the Gora_de safe area, then under Bosnian Serb attack. The Bosnian Serb assault of November 1994...

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75 See: Press Statement by the Secretary-General following the Special Meeting of the North Atlantic Council in Brussels on 2 August 1993 (reproduced in NATO Review, 1993/4, p. 26); Decisions Taken at the Meeting of the North Atlantic Council on 9th August 1993, NATO Press Release (93)52.

76 Decisions Taken at the Meeting of the North Atlantic Council on 9th February 1994, NATO Press Release (94)15, 9 Feb. 1994. These decisions were prompted by the UN Secretary-General's request that the NAC authorize NATO commanders, when asked by the UN, to launch air strikes against Serb heavy weapons determined to be responsible for attacks against civilian targets in Sarajevo. NATO's imposition of the Sarajevo "exclusion zone" in fact went beyond the terms of the UN request. See S/1994/131, 7 Feb. 1994.

77 See: Decisions Taken at the Meeting of the North Atlantic Council on 22nd April 1994, NATO Press Release (94)31, 22 April 1994, paras. 5-7; Decisions on the Protection of Safe Areas Taken at the Meeting of the North Atlantic Council on 22nd April 1994, NATO Press Release (94)32, 22 April 1994, paras. 7 and 9 (reproduced in S/1994/495, 22 April 1994 and S/1994/498, 22 April 1994, respectively). Note that the four safe areas not dealt with in earlier NAC decisions (Srebenica, Zepa, Biha_ and Tuzla) were the focus of paragraphs 8 and 9 of the latter set of decisions. NATO commanders were authorized, under specified conditions, to impose military exclusion zones around these safe areas and to launch air strikes against Bosnian Serb heavy weapons attacking or threatening them. Legitimate target sets were to include Bosnian Serb heavy weapons "and other Bosnian Serb military assets, as well as their direct and essential military support facilities" (paras. 9(a) and 9(b)). These broad powers went largely unused. As described below,
on the Bihaš safe area led the Security Council to adopt Resolution 958 (19 November) which extended the authorization to use air power pursuant to Resolution 836 to measures taken on Croatian territory.  

Thus, NATO took on the task of enforcing respect for the safe areas, either by providing "close air support" to UNPROFOR troops who came under Bosnian Serb attack within them, or by launching air strikes, with UN approval, in direct defence of the safe areas. UNPROFOR's mission was to deter Bosnian Serb attacks on these areas within a strict, peace-keeping framework. This combination of peace enforcement and peace-keeping, not only within the same theatre of operations, but within the context of the same operation (the protection of the safe areas), constituted perhaps the best illustration of the international community's fundamental ambivalence in its approach to the Yugoslav Crisis. In fact, it was soon evident that peace enforcement and peace-keeping could not be made to coexist.  

The fall of the Srebrenica and Zepa safe areas in July 1995 prompted a new round of NATO decision-making covering similar ground. Note also that the request of the UN Secretary-General which prompted the NAC's 22 April decisions, like the request he had made in February concerning Sarajevo (see preceding note), made no mention of an exclusion zone. See S/1994/466, 19 April 1994. While the UN Secretary-General was to assert that the NAC decisions of February and April 1994 were "in accordance with paragraph 10 of Security Council resolution 836 (1993)," he noted "a certain ambiguity about the use of air power with regard to the exclusion zones around Sarajevo and Gorazde" given the lack of any reference to such zones in the Security Council resolutions concerning the safe areas. S/1995/444, 30 May 1995, para. 49. On the question of the compatibility of the NATO-decreed exclusion zones with Security Council Resolution 836, see: Robert SIEKMANN, "The Lawfulness of the NATO Ultimatums Concerning the 'Safe Areas' in Bosnia", International Peacekeeping (The Hague), vol. 1(2), March-May 1994; Weller, supra, note 306, pp. 119-20; Christakis, supra, note 338, pp. 182-84.

The NAC authorized NATO commanders to act on the basis of this wider authorization on 19 November. On 21 November 1994, in the largest air assault the Alliance had mounted to that point in the Bosnian war, 39 NATO aircraft struck the Udbina airbase in Serb-held Croatia, the launching point for Croatian Serb attacks against Bihaš.

The safe areas experience has led many to comment on the perils of mixing peace-keeping and enforcement action within a single mission. See: Agenda Supplement, supra, note 1, paras. 33-36; Shashi THAROOR, "The Changing Face of Peacekeeping" (IN Soldiers for Peace, ed. by B. Benton, New York, Facts
The Breakdown of the Safe Areas Regime

Air power proved far less effective in defending the safe areas than had been hoped. The Bosnian Serbs' deployment of air defence systems acted as one constraint on its utilization. Even more problematic was the Bosnian Serb tactic of responding to limited air strikes by taking large numbers of UN personnel hostage and withholding all cooperation from UNPROFOR. By the end of May 1995, the UN's peace-keeping mission in Bosnia had reached a virtual impasse. Worse was to follow in July 1995 with the fall of the Srebrenica and _epa safe areas.

The Bosnian Serbs' seizure of close to 400 UN personnel as hostages, in late May 1995, prompted France, the Netherlands and the UK to set up a "rapid reaction force", some 4,500 strong, for the Bosnian theatre. The initial proposal stressed that the


Concerning the considerable restraint shown, before August 1995, in the use of NATO air power, see, for example, Meisler, supra, note 181, pp. 325-27. One of the most significant uses of air power during this period was the bombing, on 21 November 1994, of the Udbina airfield in Serb-held Croatia. Yet, while the airport runway was severely damaged in the NATO raid, Serb planes were spared at the specific request of the UNPROFOR Force Commander. "Bosnie: l'OTAN a lancé avec succès une attaque contre l'aérodrome d'Udbina en Krajina (Croatie)", Nouvelles atlantiques, no. 2672, 23 Nov. 1994. Ivo DAALDER, Anthony Lake and the War in Bosnia (Pew Case Study no. 467, Washington, D.C., Institute for the Study of Diplomacy, 1995), p. 5.


For more information on the fall of Srebrenica, see the works cited in note 364, supra. As of November 1996, more than 6,500 Muslim men from the enclave remained unaccounted for and were presumed to have been massacred by the Bosnian Serbs immediately after its capture. John POMFRET, "Bosnian Serb Leader Ousts Mladic", International Herald Tribune (WP), 11 Nov. 1996, p. 5.
force "would not change the United Nations role to peace-enforcement". Placed under UN military command, it "would act in support of UNPROFOR, functioning within its existing mandate". Unlike UNPROFOR, it was, however, equipped for combat. Its first task, once deployed in late July 1995, was to protect UN convoys crossing the treacherous Mt. Igman route into Sarajevo. Significantly, it would not do the same for Bosnian Government convoys, preferring, at least initially, to play no favourites.

The fall of the two safe areas led to the adoption of another inconsequential Security Council resolution and, more seriously, a series of decisions by Western leaders which resulted in important changes to the air strikes policy. The "pin-prick" strikes of the past were rejected. Any new Bosnian Serb threat to the safe areas was to be met with a "firm and rapid" use of NATO air power. The "zone of action" would not be limited to the safe area under threat and force could be used pre-emptively — in response to a perceived concentration of Bosnian Serb forces or any other activity presenting a direct threat to the safe areas.

87 In its Resolution 1004, adopted on 12 July 1995, just after the fall of Srebrenica, the Security Council requested the Secretary-General "to use all resources available to him to restore the status as defined by the Agreement of 18 April 1993 of the safe area of Srebrenica in accordance with the mandate of UNPROFOR" (para. 6). In fact, as the wording of this provision suggests, no new resources were to be made available to the Secretary-General for the purpose of reversing the Bosnian Serb capture of the safe area. Although the resolution was adopted under chapter VII of the UN Charter, UNPROFOR received no new enforcement powers.

88 These decisions were taken over the course of three meetings: the 21 July meeting, in London, of foreign and defence ministers of the Contact Group (France, Germany, Russia, the UK, and the US) and 11 other contributors to the UN peace-keeping forces in the former Yugoslavia; and the meetings of NATO's North Atlantic Council on 25-26 July and 1 August. A Memorandum of Understanding, signed by UN and NATO military commanders on 10 August 1995, incorporated these decisions into operational planning. See: "Allies Warn Bosnian Serbs of 'Substantial' Air Strikes if U.N. Enclave Is Attacked" (articles by S. Engelberg and J. Darnton, excerpts from a summary of the London meeting), The New York Times, 22 July 1995, pp. A1 and A4; "The International Conference on Bosnia – Now We Must Act" (Remarks by Secretary of State Christopher at a Press Briefing, London, 21 July 1995), U.S. Department of State Dispatch, vol. 6(30), 24 July 1995, p. 583;
Operation Deliberate Force

On 28 August, a Bosnian Serb mortar struck a market in central Sarajevo, killing 37 people. Immediately afterwards, the UN completed its pull-out of peace-keepers from exposed positions in Bosnia with the departure of the last troops from the remaining eastern safe area of Gora de. The stage was set for "Operation Deliberate Force". Beginning on 30 August, NATO aircraft conducted a wide-ranging bombing campaign against Bosnian Serb military targets throughout Bosnia while the rapid reaction force shelled Bosnian Serb targets in the Sarajevo area. These operations were jointly decided by NATO and UN military commanders and continued, with a four-day pause at the beginning of the month, until 14 September when Bosnian Serb leaders finally agreed to NATO and UN demands.

The basic objectives of Operation Deliberate Force were enunciated as: ending Bosnian Serb attacks on Sarajevo and the other safe areas; securing the withdrawal of Bosnian Serb heavy
weapons from the Sarajevo exclusion zone; and securing complete freedom of movement for UN forces and personnel, and NGOs, along with the unrestricted use of Sarajevo airport.\textsuperscript{91} Much of the evidence pointed, however, to a link between the bombing campaign and a US peace initiative for Bosnia.\textsuperscript{92} In any case, the objectives of Operation Deliberate Force, whatever they were, were pursued through the destruction of much of the Bosnian Serbs' military capability.\textsuperscript{93}

\textbf{Consent and the Safe Areas}

The Security Council resolutions defining the safe areas regime\textsuperscript{94} were imposed on the warring parties, specifically the


\textsuperscript{93} The operation's primary targets were "direct and essential military support" facilities located in Serb-held territory throughout Bosnia-Herzegovina, especially in the south-eastern part of the Republic, specifically: air defence systems, command and control centres, transport and telecommunications links, ammunition and fuel depots, and equipment storage and repair facilities. Heavy weapons were also targeted, where possible, but not Bosnian Serb troop concentrations. See: Press Briefing (Update): NATO Operation Deliberate Force, AF SOUTH (NATO), Naples, 9 Sept. 1995 (Briefer: Group Captain Trevor Murray, Chief Air Operations) (source of the quotation); Engelberg, ibid., pp. A1 and A10.

\textsuperscript{94} These are listed in note 347, supra.
Bosnian Serbs. In fact, they were adopted in direct response to Bosnian Serb attacks on these areas. Despite this, the Secretary-General repeatedly stressed that their effective protection depended, to a large extent, on the consent of the warring parties, including the Bosnian Serbs.\(^95\) Where such consent could not be found, it had to be manufactured. Thus, in respect of both the Srebrenica and _epa safe areas, the UN brokered agreements between the warring parties for a cease-fire, the deployment of UNPROFOR troops, "ad hoc demilitarization" and "other measures including, in particular, a clear delimitation of the safe area".\(^96\) Anti-sniping agreements were reached in respect of Sarajevo (14 August 1994) and Gora_\_de (28 August 1994).\(^97\) Agreements relating to the withdrawal or placement under UNPROFOR control of heavy weapons (9 February 1994) and freedom of movement (17 March 1994) were also reached in respect of Sarajevo.\(^98\)

Yet, as is well known, compliance with these agreements was at best partial.\(^99\) There was a further problem in that certain agreements were at variance with the Security Council resolutions defining the safe areas regime. Of particular importance, was the lack of provision in these resolutions for the demilitarization of the safe areas,\(^100\) a key element of the cease-fire agreement for Srebrenica (18 April 1993).\(^101\) Although


\(^{99}\) See _ibid._, paras. 3-20.

\(^{100}\) Neither SCR 819 nor SCR 824 required such demilitarization. In fact, SCR 836 explicitly recognized the right of Bosnian Government forces to remain in all six safe areas (para. 5).

steps were taken to implement the latter agreement, Srebrenica's Muslim defenders surrendered less than half of their weapons in the initial 72-hour period in which total demilitarization was to have occurred pursuant to its terms. Additional weapons and armed individuals flowed into Srebrenica thereafter and a formal military organization was retained in the enclave which, as described in the next section, remained a base for military activities.

In an effort to ground the safe areas regime more firmly in party consent, the Secretary-General proposed the following modifications to it:

- Delineation of the safe areas;
- Demilitarization of the safe areas and cessation of hostilities and provocative actions in and around the safe areas;
- Interim measures towards complete demilitarization;
- Complete freedom of movement.

Yet, these proposals barely scratched the surface of the problem. No arrangement in respect of the safe areas could ever really satisfy the Bosnian Serbs.

With the possible exceptions of Tuzla and one half of Sarajevo, the mere existence of the safe areas directly clashed with Bosnian Serb war aims — to exercise complete control over these territories. It appears clear that what limited "cooperation cease-fire agreement is reproduced in the first two publications (Annex II and p. 187 respectively).

Managing Arms in Peace Processes: Croatia and Bosnia-Herzegovina, ibid., p. 127.


The Bosnian Serb military commander, Ratko Mladić, was to claim that the July 1995 seizure of Srebrenica and Zepa was motivated by the failure to demilitarize these zones pursuant to the agreements concluded in 1993. See: "Bosnie: L'OTAN est déterminée à effectuer des raids aériens pour protéger Gorazde ...", Nouvelles atlantiques, no. 2739, 28 juill. 1995, p. 3; Hedges, supra, note 364 (12 July), p. A6. In fact, from the beginning of the war, the Bosnian Serbs sought total control of eastern Bosnia, as evidenced by their repeated attacks on Srebrenica, Zepa, and Gorazde, both before and after they were made safe areas in April-May 1993.
"atation" the latter gave UNPROFOR in respect of the safe areas was motivated by a fear of tougher action on the part of the international community. The Bosnian Serbs were simply deterred, for awhile, from seizing these areas by the threat of coercive action. When deterrence failed — when the Bosnian Serbs perceived they could capture certain safe areas without suffering the adverse consequences long threatened by the UN and NATO — they did so.

**Impartiality and the Safe Areas**

Impartiality was considered central to UNPROFOR's implementation of its mandate, including its mandate to deter attacks on the safe areas.\(^{105}\) It was also a central feature of the mandate of the rapid reaction force.\(^{106}\) The practical reality, however, was very different. The UN itself recognized that the defence of the safe areas involved a direct denial of Bosnian Serb war aims.\(^{107}\) Moreover, these areas often served as a base for Bosnian Government troops, weapons and military installations. Small-scale militia raids and large-scale military offensives were launched and/or directed from these areas against surrounding Serb-held territory.\(^{108}\) Seen in this light, it is clear that the defence of the safe areas could not be an impartial act.

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As of 1993, NATO began planning for a force which would help implement a peace accord between the warring factions in Bosnia-Herzegovina. The Dayton accords, signed in Paris on 14 December 1995, made explicit provision for a "multinational military Implementation Force" ("IFOR") and set out its mandate in some detail. The UN Security Council authorized the establishment of IFOR on 15 December and the Force began operations in Bosnia ("Operation Joint Endeavour") on 20 December. UNPROFOR's mandate, the no-fly zone and the safe areas regime, defined in various Security Council resolutions, also

1 Note that this chapter covers developments up to the end of 1997, with the exception of the decisions reached by the Peace Implementation Council in Bonn, on 9-10 December 1997, during its review of Dayton Accord implementation.


3 While the commonly used term "Dayton accords" will be used in the text, the latter in fact constitute a single legal instrument, comprising a series of treaties (including the central General Framework Agreement for Peace in Bosnia and Herzegovina and its 12 annexes), unilateral declarations, and "endorsements". Our focus in this chapter will be on two of the annexes to the General Framework Agreement: Agreement on the Military Aspects of the Peace Settlement (Annex 1-A) and Agreement on Inter-Entity Boundary Line and Related Issues (Annex 2). These were signed by the Muslim-controlled administration based in Sarajevo ("Republic of Bosnia and Herzegovina"), the American-brokered institution which represented both the Bosnian Muslim and Bosnian Croat communities ("Federation of Bosnia and Herzegovina") and the Bosnian Serb regime based in Pale and Banja Luka ("Republika Srpska" (RS)). The two annexes were also "endorsed" by the Federal Republic of Yugoslavia (FRY), comprising Serbia and Montenegro, and the Republic of Croatia. While there was some variation in the pattern of signature of the 12 annexes of the General Framework Agreement, the "Federation of Bosnia and Herzegovina" and the RS, recognized by the Dayton accords as constituent "entities" of the newly renamed country, "Bosnia and Herzegovina", were signatories to all of them. The full text of the Dayton accords is reproduced in International Legal Materials, vol. 35, 1996, p. 75. Their complex structure is described in some detail in: Paul SZASZ, "Introductory Note [to the Dayton accords]", International Legal Materials, vol. 35, 1996, pp. 77-80; Paola GAETA, "The Dayton Agreements and International Law", European Journal of International Law, vol. 7(2), 1996, pp. 147-49.


terminated on 20 December 1995. Although comprising many contingents from non-NATO countries, IFOR was organized and commanded by NATO.

IFOR's successor, the Stabilization Force (SFOR), commenced operations ("Operation Joint Guard") on 20 December 1996 at the expiration of IFOR's one-year mandate. It shares the basic features of IFOR just described, although, with force levels varying between 30,000 and 40,000 troops during 1997, it is significantly smaller than its predecessor.

THE MANDATE: AN OVERVIEW

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7 Eighteen non-NATO countries participated in IFOR. Fourteen of these were participants in NATO's "Partnership for Peace" programme. For the list of participants, see Gregory SCHULTE, "Bringing Peace to Bosnia and Change to the Alliance", NATO Review, 1997/2, p. 24.

8 Concerning the particular legal features of this arrangement, see Michael BOTHE, "Bosnia and Herzegovina: Farewell to UN Peacekeepers — Farewell to UN Peacekeeping?", International Peacekeeping (The Hague), vol. 2(6), Oct.-Nov. 1995, p. 130. For details of the IFOR and SFOR command structure, see: NATO's Role in the Implementation of the Bosnian Peace Agreement, NATO Fact Sheet no. 11, March 1997; The NATO-led Stabilisation Force (SFOR) in Bosnia and Herzegovina, NATO Fact Sheet no. 11, April 1997.


10 IFOR had nearly 60,000 troops at peak deployment. SFOR force levels were generally higher towards the end of 1997, as compared with the first half of that year, with special reinforcement undertaken in connection with the September and November 1997 elections. Initial plans for a gradual reduction in SFOR force levels, leading to its withdrawal in June 1998, were on hold at the end of 1997. See Ministerial Meeting of the North Atlantic Council Held at NATO Headquarters, Brussels, on 16 December 1997 (Final Communiqué), NATO Press Release M-NAC-2 (97)155, 16 Dec. 1997, para. 17. Concerning the initial, four-phase plan for SFOR operations, see: "NATO to Set 'Enlargement Summit'", International Herald Tribune (Reuters, AFP), 10 Dec. 1996, p. 5; Thierry TARDY, "Les forces de l'Otan en Bosnie-Herzégovine: paix retrouvée et avenir incertain", Relations internationales et stratégiques, no. 28, hiver 1997.
UN Security Council Resolutions 1031 (15 December 1995) and 1088 (12 December 1996), together with the Dayton accords, define the IFOR and SFOR mandate. It should be noted that, as we will see in the next section, although the NATO-defined missions of the two forces have differed, SFOR's formal mandate is identical to that of IFOR. In each case, the Security Council authorized the Force "to fulfill the role specified in Annex 1-A and Annex 2 of the [Dayton accords]."\textsuperscript{11} Moreover, it explicitly stated that SFOR is "the legal successor to IFOR".\textsuperscript{12} Thus, the many provisions in the Dayton accords which refer to the "Implementation Force" or "IFOR" can be read as applying equally to SFOR.

Annex 2 of the Dayton accords,\textsuperscript{13} assigning I/SFOR\textsuperscript{14} the task of overseeing the delineation and marking of the Inter-Entity Boundary Line, Agreed Cease-Fire Line and their zones of separation, need not detain us here. Far more important is Annex 1-A. The key provision therein is article VI(2)(a) which gives I/SFOR "the right ... to monitor and help ensure compliance by all Parties with this Annex".\textsuperscript{15}

While Annex 1-A, entitled "Military Aspects of the Peace Settlement", contains obligations of a mainly military nature, including a cease-fire,\textsuperscript{16} the withdrawal of foreign forces,\textsuperscript{17} and the separation, cantonment and partial demobilization of the parties' armed forces,\textsuperscript{18} it also contains several non-military obligations, including the maintenance of law and order\textsuperscript{19} and the

\begin{itemize}
  \item \textsuperscript{12} SCR 1088, 12 Dec. 1996, para. 18.
  \item \textsuperscript{13} Supra, note 411.
  \item \textsuperscript{14} This abbreviation will be used to denote both IFOR and SFOR.
  \item \textsuperscript{15} Annex 1-A, supra, note 411.
  \item \textsuperscript{16} Annex 1-A, supra, note 411, arts. I(2)(a) and II.
  \item \textsuperscript{17} Annex 1-A, supra, note 411, art. III.
  \item \textsuperscript{18} Annex 1-A, supra, note 411, art. IV.
  \item \textsuperscript{19} Annex 1-A, supra, note 411, art. II(3).
\end{itemize}
release of prisoners of war. Moreover, in Annex 1-A, the parties agree to:

cooperate fully with all entities involved in implementation of [the Dayton accords] ... or which are otherwise authorized by the United Nations Security Council, including the International Tribunal for the Former Yugoslavia.

Yet, I/SFOR's responsibilities under Annex 1-A extend beyond ensuring the compliance of the parties with their Annex 1-A obligations. The majority of the tasks specifically conferred upon I/SFOR under Annex 1-A, whether "principal", i.e. military, tasks or non-military "supporting tasks", are, in fact, matched by corresponding obligations of the parties under the same annex. Yet, a few are not.

One important example of an I/SFOR task which has no corresponding party obligation, at least under Annex 1-A, is the prevention of interference with civilian freedom of movement. Another is I/SFOR's broad mandate "to help create secure conditions for the conduct by others of other tasks associated with the [Dayton accords], including free and fair elections". The latter provision, open-ended in its formulation, would appear to cover all activities related to the implementation of

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20 Annex 1-A, supra, note 411, art. IX.
21 Annex 1-A, supra, note 411, art. X. And see art. II(4), also in Annex 1-A.
22 Annex 1-A, supra, note 411, art. VI(3).
23 Ibid.
24 Annex 1-A, supra, note 411, art. VI(3)(d). Note that the obligation of the parties not to impede freedom of movement is, in Annex 1-A, enunciated only in favour of IFOR (art. VI(9)(a)) and "international personnel ... in Bosnia and Herzegovina pursuant to [the Dayton accords]" (art. II(4)). Only in Annex 4 is the general principle of freedom of movement, including that for civilians, articulated. See Constitution of Bosnia and Herzegovina (Annex 4 to the General Framework Agreement, supra, note 411), art. I(4).
25 Annex 1-A, supra, note 411, art. VI(3)(a).
the Dayton accords, including those, such as the return of refugees and displaced persons to their homes, to which the parties have committed themselves within the Dayton framework but outside of Annex 1-A.

A final example of an I/SFOR task without a corresponding party obligation under Annex 1-A is the possibility of NATO's North Atlantic Council (NAC) assigning I/SFOR "additional duties and responsibilities ... in implementing [Annex 1-A]."\(^{26}\) Read, for example, in conjunction with the provision just discussed, this confers potentially sweeping authority on I/SFOR, taking it well beyond the confines of the tasks and obligations specifically enumerated in Annex 1-A.\(^{27}\) These cases, where I/SFOR's tasks are not matched by a corresponding party obligation under Annex 1-A, have particular relevance for our discussion of I/SFOR's enforcement mandate.

I/SFOR's enforcement powers derive from the same Security Council resolutions seen previously. Specific enforcement powers are conferred on I/SFOR for the purpose of controlling the airspace over Bosnia-Herzegovina.\(^{28}\) More generally, the Security Council:

> Authorizes [I/SFOR] to take all necessary measures to effect the implementation of and to ensure compliance with Annex 1-A of [the Dayton accords], stresses that the parties shall be held equally responsible for compliance with that Annex, and shall be equally subject to such enforcement action by [I/SFOR] as may be necessary to ensure implementation of that Annex and the protection of [I/SFOR], and takes note that the parties have consented to [I/SFOR's] taking such measures.\(^{29}\)

\(^{26}\) Annex 1-A, *supra*, note 411, art. VI(4).

\(^{27}\) Such features of I/SFOR's mandate have led several commentators to characterize the Force as something close to "an occupying army." Gaeta, *supra*, note 411, n. 18. And see Bothe, *supra*, note 416, p. 131.


\(^{29}\) SCR 1031, 15 Dec. 1995, para. 15. SCR 1088, 12 Dec. 1996, para. 19. As the last and third-to-last preambular paragraphs of both resolutions indicate, the latter were adopted under chapter VII of the UN Charter.
I/SFOR's power to enforce party compliance with their obligations under Annex 1-A appears clear from this provision. In effect, it confirms that I/SFOR's mandate under article VI(2)(a) "to monitor and help ensure compliance by all Parties with [Annex 1-A]" is an enforcement mandate. Yet, the question arises as to whether I/SFOR's enforcement authority extends to tasks, such as those mentioned above, which have no corresponding party obligation under Annex 1-A. If we interpret the word "implementation" in the provision quoted above as meaning implementation by the parties of their obligations under Annex 1-A, then it would not. It is submitted, however, that "implementation" means implementation by I/SFOR of its mandate under Annex 1-A. I/SFOR's enforcement mandate would, in other words, cover the entire range of responsibilities conferred upon it in Annex 1-A, including those which have no corresponding party obligation under the same annex.

This interpretation is supported, first of all, by the text of the provision quoted above. If one holds that "implementation" and "compliance" mean essentially the same thing, this leads to pointless redundancy in the text. Moreover, the separation of the two words in the latter part of the provision suggests that their meanings are indeed distinct. Second, although it is not always clear in this respect,\textsuperscript{30} Annex 1-A of the Dayton accords, which evidently inspired the Security Council provision under consideration, generally uses the word "implementation" to mean implementation of the Dayton accords by I/SFOR or states contributing to these missions.\textsuperscript{31}

Third, a broad interpretation of I/SFOR's enforcement mandate is supported by the fact that, in the Dayton accords, the parties consent to IFOR exercising extensive enforcement

\textsuperscript{30} See: Annex 1-A, \textit{supra}, note 411, art. I, paras. (1)(third sentence), (2)(b), and (3).

\textsuperscript{31} See Annex 1-A, \textit{supra}, note 411, arts. I(1)(a) ("IFOR will begin the implementation ..."), I(1)(c) ("other [\textit{i.e.} non-NATO] States may assist in implementing ..."), VI(4), and X.
authority:

The Parties understand and agree that the IFOR Commander shall have the authority, without interference or permission of any Party, to do all that the Commander judges necessary and proper, including the use of military force, to protect the IFOR and to carry out the responsibilities listed above in paragraphs 2, 3 and 4, and they shall comply in all respects with the IFOR requirements.  

While party consent cannot, in and of itself, form the legal basis of IFOR's enforcement mandate, it is submitted that it does constitute persuasive evidence in favour of a broad interpretation of the enforcement mandate given by the Security Council.

Finally, a broad interpretation appears consistent with the wide authority otherwise conferred on the Force. As previously indicated, the sweeping authority given I/SFOR in respect of both the military and non-military aspects of the Dayton accords evokes comparisons with "an occupying army." A restrictive interpretation of I/SFOR's enforcement mandate cuts against this general tendency.

BASIC MISSIONS

Having examined the formal I/SFOR mandate, it will be useful to consider, in a more general way, the roles of the Forces in Bosnia-Herzegovina as defined by NATO. We will see that the IFOR and SFOR "missions" draw upon only part of the

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12 Annex 1-A, supra, note 411, art. VI(5). Note that the consent expressed here would apply to the three tasks mentioned earlier for which there is no corresponding party obligation under Annex 1-A since these are set out in paragraphs 3 and 4 of article VI. And see note 523, infra.

13 See Bothe, supra, note 416, p. 130.

14 See note 435, supra.
formal mandate, focusing on those aspects which serve prevailing political goals.

IFOR's principal role was to oversee and, if necessary, ensure implementation by the parties of their military obligations under Annex 1-A of the Dayton accords, including a cease-fire and the separation, cantonment and partial demobilization of their armed forces. 35 Although NATO stressed that IFOR's primary contribution to the civilian implementation of the Dayton accords was the creation of a secure environment and the promotion of freedom of movement throughout the country, beginning in mid-April 1996, with its key military tasks largely complete, the Force lent increased support to civilian implementation, including the organization and conduct of the September 1996 elections. 36

SFOR is designed to consolidate the achievements of its predecessor. This means, in the first instance, deterring any return to hostilities by the factions. In addition, SFOR is to stabilize and consolidate peace in Bosnia by helping provide the security needed for the implementation of a two-year civilian consolidation plan, agreed in Paris, in November 1996, and elaborated in London, in December 1996, in the form of an initial one-year "Action Plan". 37 As in the case of IFOR, SFOR's


36 See NAC Declaration on IFOR's Role in the Transition to Peace, ibid., paras. 4-5. For more information on IFOR support to civilian tasks, see: NATO Fact Sheet no. 11, March 1997, supra, note 416; Combined Joint Civil Military Cooperation - Operation Joint Guard, SFOR AFSOUTH Fact Sheet, 20 Dec. 1996.

contribution to the implementation of Dayton's civilian provisions has, in practice, been wide-ranging.

MANDATE IMPLEMENTATION

As already noted, IFOR and SFOR's main responsibility, as defined by both the Dayton accords and the NAC, has been to ensure implementation of and continuing compliance with the military provisions of the Dayton accords. Generally speaking, military implementation has been straightforward. Of greater interest is the role played by IFOR and SFOR in the implementation of the accords' civilian provisions. It has been clear from the earliest stages of the Dayton peace process that the effective reintegration of Bosnia-Herzegovina and indeed the success of the peace process as a whole depended on the implementation of the latter provisions. It has been just as obvious, given the extraordinary reluctance of the parties to cooperate in most aspects of civilian implementation, that the involvement of IFOR and SFOR in this area was crucial. Nevertheless, it has been in the area of civilian implementation that the gap between formal mandate and assigned "mission" has been widest – although it has narrowed somewhat since mid-1997.

IFOR began to shift its attention to Dayton's civilian provisions in the spring of 1996, with the implementation of the accords' key military provisions largely complete and the September 1996 elections on the horizon. Yet, it has been, surprisingly, the much smaller SFOR which has taken civilian implementation most seriously. Although the involvement of both

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38 For an overview of the various forms SFOR support in the civilian area has taken, see: NATO Fact Sheet no. 11, April 1997, supra, note 416; SFOR Support to Non-Military Tasks, SFOR Fact Sheet, 26 May 1997; SFOR's Support to Civil Implementation, SFOR Fact Sheet, 27 June 1997.

39 For details, see text accompanying notes 543-46, infra.

40 The shift to a far more assertive approach to civilian implementation has been led by the US and UK. It was signalled in a speech given by US Secretary of State Madeleine Albright in May 1997 and quickly received broad endorsement. See: Remarks at Annual Fleet Week Gala, Madeleine
forces in civilian implementation has, in practice, been wide-ranging, we will focus in this section on four areas where IFOR and SFOR involvement, or lack of involvement, has had an especially strong impact on the fate of the peace process: freedom of movement, the return of refugees and displaced persons, the investigation and prosecution of war crimes, and media restructuring.

**Freedom of Movement**

In addition to securing their own freedom of movement, I/SFOR have been mandated "to assist the movement of organizations in the accomplishment of humanitarian missions" and ensure that the parties to the Dayton accords comply with their obligation to facilitate the "free and unimpeded access and movement" of "international personnel ... in Bosnia and Herzegovina pursuant to [the Dayton accords]."

Yet, the focus of attention in this area — seen as a prerequisite to the effective reintegration of Bosnia-Herzego-
vina — has been I/SFOR's mandate to ensure civilian freedom of movement.\textsuperscript{45} After a slow start,\textsuperscript{46} IFOR and SFOR have played a key role in the promotion of freedom of movement throughout Bosnia-Herzegovina. Their main contribution in this regard has been the removal of unauthorized checkpoints.\textsuperscript{47} They have also repaired or built roads, bridges and railways\textsuperscript{48} and have assisted initiatives, such as inter-entity bus lines, launched by the UNHCR and other international agencies in order to facilitate movement across the Inter-Entity Boundary Line.\textsuperscript{49}

\textsuperscript{45} Annex 1-A, supra, note 411, art. VI(3)(d).


By the end of 1997, these efforts had helped generate a marked improvement in freedom of movement throughout Bosnia-Herzegovina, as compared with December 1995 when the Dayton accords were signed, though the situation was still far from perfect.\textsuperscript{50}

**The Return of Refugees and Displaced Persons**

The parties have a clear obligation under the Dayton accords to permit, in safety, the return of refugees and displaced persons to their homes.\textsuperscript{51} Nevertheless, by the end of 1997, only about 400,000 of an estimated 2 to 2.5 million refugees and displaced persons had returned.\textsuperscript{52} Only 35,000 of these were returning to areas in which they were an ethnic

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\textsuperscript{51} Annex 4, supra, note 432, art. II(5). Agreement on Refugees and Displaced Persons (Annex 7 to the General Framework Agreement, supra, note 411), art. I.

\textsuperscript{52} The figure for the total number of persons internally displaced or forced to find refuge abroad as a result of the war varies depending on the source. Nevertheless, there was broad agreement on the figure of 250,000 returnees for 1996. See, for example, \textit{Official Summary of Conclusions}, supra, note 445, para. 3. The Reconstruction and Return Task Force estimated returns for 1997 at 160,000 (RRTF: Report December 1997, Office of the High Representative, sec. 3.1), while the UN Secretary-General, reporting to the Security Council on 10 December 1997, gave a figure of 150,000 returns since the beginning of that year (S/1997/966, 10 Dec. 1997, para. 29). \textit{The Economist} estimated total, post-Dayton returns, up to December 1997, at 400,000. "A Ghost of a Chance", supra, note 458, p. S9.
minority with returns of Croats or Muslims to the Serb-run Republika Srpska especially rare.\textsuperscript{53}

Local authorities have prevented returns through the use of property laws or administrative measures as well as through the use of violence and intimidation, and the destruction of houses. The latter, coercive measures have also been used to drive recent returnees out of certain areas. Moreover, many of those who escaped "ethnic cleansing" during the Bosnian War have fallen prey to the process in the post-Dayton period. Although the climate for minority returns appeared to improve somewhat in the latter part of 1997 (at least in central Bosnia, under Muslim and Croat control, and in parts of northern Bosnia, under Serb control), at the end of the year, the number of people forced from their homes since the conclusion of the Dayton accords far outweighed the number of minority returns.\textsuperscript{54}

Neither IFOR or SFOR have been explicitly mandated to support, and if necessary enforce, the return of refugees and displaced persons. It is submitted, however, that such a mandate emerges quite clearly from several, broadly-worded provisions of Annex 1-A of the Dayton accords. The party obligations to "provide a safe and secure environment for all persons in their respective jurisdictions"\textsuperscript{55} and arguably that to "cooperate fully with all entities involved in implementation of [the Dayton accords]"\textsuperscript{56} (including, presumably, the UNHCR) would constitute one foundation of a mandate in support of the right of return.\textsuperscript{57}


\textsuperscript{55} Annex 1-A, supra, note 411, art. II(3).

\textsuperscript{56} Annex 1-A, supra, note 411, art. X.

\textsuperscript{57} As explained earlier ("The Mandate: An Overview" section), I/SFOR have
A separate basis for such a mandate would appear to lie in article VI(3) of Annex 1-A of the Dayton accords, defining I/SFOR's "supporting tasks", the first of which is "to help create secure conditions for the conduct by others of other tasks associated with the peace settlement". In addition, though the Force has received no explicit powers in this respect, several of the provisions just referred to would appear to enable I/SFOR to intervene to halt ethnic cleansing, if it felt so inclined.

In 1996, IFOR distinguished itself by its inaction, both in relation to publicized instances of ethnic cleansing and in respect of the right of return, which it said it would not enforce. Instead, IFOR assisted the return process in more modest ways, in particular by promoting freedom of movement across the Inter-Entity Boundary Line.

SFOR has continued to offer such indirect forms of assistance to the return process. In fact, as civilian efforts to promote minority returns have intensified, SFOR's support for these activities has also been stepped up. But in certain

been mandated to enforce compliance with party obligations contained in Annex 1-A of the Dayton accords. The right of return is explicitly enunciated within the Dayton framework, but only outside of Annex 1-A. See note 459, supra for details.

58 Annex 1-A, supra, note 411, art. VI(3)(a). And see subparas. (c) and (d).

59 See, in particular: Annex 1-A, supra, note 411, art. VI(3)(d) (assuming the latter part of the provision is not necessarily bound to the first part, dealing with civilian freedom of movement); Annex 1-A, art. II(3) (read in conjunction with art. VI(2)(a) of the same annex).


63 For more information on these activities, typically involving information-gathering, planning, and coordination functions, see: [Fifth] Monthly
cases, SFOR, in contrast to IFOR, has also directly assisted returns, specifically by ensuring the security of individual returnees.  

Both IFOR and SFOR have also been called upon to restore order and, where possible, prevent clashes arising from attempts at resettlement by one group in areas controlled by another. For these purposes, they have confiscated weapons, detained individuals, and restricted access to and activity in areas of confrontation.

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64 The most important example of this practice which, in 1997, was not widespread, is the Brcko area, where American SFOR soldiers have provided "near round-the-clock protection" to Muslim and Croat returnees. See Mike O'CONNOR, "Quiet U.S. Protection in Brcko", International Herald Tribune, 30 July 1997, p. 2 (the source of the quotation).

65 From the summer of 1996 up until the following spring, the zone of separation in the Brcko area of northern Bosnia was the scene of repeated confrontation and occasional clashes between Bosnian Muslims attempting to resettle in the area and Bosnian Serbs anxious to prevent the Muslims from encroaching upon this narrow strip of land which connects the two halves of their "Republic". Other flashpoints over the 1996-97 period have included the areas around the Croat-held towns of Jajce, in central Bosnia, and Drvar, in north-western Bosnia.


The Investigation and Prosecution of War Crimes

In keeping with their mandate to assist the International Criminal Tribunal for the Former Yugoslavia (ICTY), IFOR and SFOR have conducted aerial and ground surveillance of suspected mass grave sites, provided logistical support and local area security for ICTY teams investigating such sites, and transported to The Hague persons wanted by the Tribunal for questioning or trial.

The question of the detention and transfer to ICTY custody of persons indicted for suspected violations of international humanitarian law is rather more complex. There can be little doubt that IFOR and SFOR have had the legal authority to make such arrests. Nevertheless, in defining the operational parameters of its Bosnia missions, NATO has used only a fraction of this authority. As part of the Operational Plan (OPLAN) adopted for IFOR by the NAC on 16 December 1995, it was agreed that IFOR would

69 Annex 1-A, supra, note 411, art. VI(3)(a)-(c). A second basis for I/SFOR's authority in this area is Annex 1-A, art. VI(2)(a) combined with the obligation of the parties, under Annex 1-A, to cooperate with the International Tribunal and its personnel (arts. II(4), IX(1)(g) and X). As argued above ("The Mandate: An Overview" section), this mandate, in all its aspects, would be an enforcement mandate. Note that the ICTY was established under Security Council Resolution 827 (25 May 1993).

70 On 12 February 1996, two Bosnian Serbs were flown, via NATO aircraft, to The Hague for questioning and possible indictment. On 13 June 1996, NATO transported two Bosnian Muslims to the Hague for trial. All these individuals had been detained by the Bosnian Muslim authorities. Cases in which SFOR itself detained war crimes suspects before transferring them to ICTY custody are dealt with below.

71 See note 477, supra. Of particular relevance to the task under consideration are: Annex 1-A, supra, note 411, art. VI(3)(c); and art. VI(2)(a) in combination with art. X, both of Annex 1-A. Note further that several authors have argued that I/SFOR and/or states participating in these missions have had not merely the right, but in fact the duty to arrest and detain persons indicted for war crimes. See: John R.W.D. JONES, "The Implications of the Peace Agreement for the International Criminal Tribunal for the former Yugoslavia", European Journal of International Law, vol. 7(2), 1996, pp. 239-40; Niccolo FIGA-TALAMANCA, "The Role of NATO in the Peace Agreement for Bosnia and Herzegovina", European Journal of International Law, vol. 7(2), 1996, pp. 165 and 171-75.
detain and transfer to the ICTY persons indicted for war crimes, when coming into contact with them in carrying out its duties as defined by the military annex of the Peace Agreement.  

Statements made by NATO and US officials following IFOR's deployment to Bosnia-Herzegovina made it clear that this narrow NAC mandate would be strictly adhered to. In fact, following repeated sightings of Bosnian Serb leader Radovan Karadžić, occasionally in close proximity to IFOR troops, and wider revelations in the press concerning the high profile of other indicted war crimes suspects, some observers concluded that IFOR had a "deliberate policy ... not to arrest [war crimes suspects]."

The NAC mandate governing the detention of war crimes suspects was left unchanged with the establishment of SFOR in December 1996, despite appeals for a tougher approach. While

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76 Urban and Badal, ibid. And see Urban, ibid.

77 "NATO to Set 'Enlargement Summit'", supra, note 418.
diplomatic and economic pressure did succeed in securing the extradition or surrender of some suspects, most remained at large throughout 1997. It was against this background that SFOR mounted special operations on 10 July and 18 December which resulted in the capture of one Bosnian Serb and two Bosnian Croat suspects and the death of one Bosnian Serb suspect. Both operations, involving sealed (non-public) indictments, were planned in advance and could in no way be construed as accidental encounters occurring as SFOR soldiers carried out other duties. NATO officials insisted, nevertheless, that there had been no change in SFOR policy.

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79 As of 22 December 1997, taking into account the two operations mentioned immediately below, there were 19 accused held in the Tribunal's custody against a total of 20 public indictments targeting 74 individuals, plus "a number of sealed indictments." Fact Sheet, ICTY, 22 Dec. 1997 (source: ICTY website: <http://www.un.org/icty>).

80 Both operations were conducted by special forces acting as part of SFOR. For details of the 10 July operation, see: Statement Concerning Detained Indicted War Criminal, SFOR, LANDCENT, 10 July 1997; Richard BOUDREAUX, "NATO Forces Kill Serb Suspect, Arrest Another", Los Angeles Times, 11 July 1997, p. A1; Steven ERLANGER, "Raid in Bosnia: A Turning Point for Peacekeepers", International Herald Tribune (NYT), 12-13 July 1997, p. 1; "Progress at Last?", The Economist, 19 July 1997, p. 29. For details of the 18 December operation, see: Statement by the Secretary General of NATO, Dr. Javier Solana, on SFOR's Action Against Indicted War Criminals, NATO Press Release (97)158, 18 Dec. 1997; Chris HEDGES, "Dutch Seize 2 Croats to Face War Tribunal", International Herald Tribune (NYT), 19 Dec. 1997, p. 1.


82 See the sources cited in note 488, supra.

While, by the end of 1997, it appeared that SFOR was prepared, on a selective basis, to arrest war crimes suspects, the two most notorious suspects — Radovan Karadžić and Ratko Mladić, the Bosnian Serb political and military leaders — remained at large. Reported plans for a special operation to seize the heavily-guarded Karadžić were not implemented, though American intelligence teams did closely monitor his movements. It appeared that the international community preferred to try to marginalize the hard-line Bosnian Serb leader, specifically by vigorously supporting his chief rival in the Republika Srpska, RS President Biljana Plavšić.

**Media Restructuring**

Since August 1997, on the basis of authority previously conferred by the Steering Board of the Peace Implementation Council, the High Representative has led efforts to curb

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87 "The Steering Board is concerned that the media has not done enough to promote freedom of expression and reconciliation. It declared that the High Representative has the right to curtail or suspend any media network or programme whose output is in persistent and blatant contravention of either the spirit or letter of the [Dayton accords]." S/1997/434, 5 June 1997, Annex, para. 70 ("Sintra Declaration", 30 May 1997). The Peace
inflammatory media broadcasts in Bosnia. The principal target of these initiatives was the hard-line Bosnian Serb faction, based in Pale, but, during the latter part of 1997, all media in Bosnia-Herzegovina were subject to close international scrutiny and demands for reform.

SFOR has lent key support to these efforts, in particular by taking control of vital transmission facilities and placing them at the disposal of the more moderate Bosnian Serb faction led by Biljana Plavšić, based in Banja Luka. Since the provi-

Implementation Council (PIC) was set up in London, in December 1995, to supervise peace implementation in Bosnia-Herzegovina. The Steering Board of the PIC gives the High Representative (see next note) political guidance on this question. See: S/1995/1029, 12 Dec. 1995, Annex, para. 21; Bosnia and Herzegovina 1997: Making Peace Work, supra, note 445, section on "Coordination Structures", para. 4.


sions of the Dayton accords which appear most relevant in this area, namely those dealing with freedom of expression / freedom of the press and reconciliation, are situated outside of SFOR's main domain, i.e. Annex 1-A, it appears that SFOR's formal mandate for the curtailment of media networks acting in contravention of Dayton would derive from article X of Annex 1-A in which the parties agree to "cooperate fully with all entities involved in implementation of [the Dayton accords]", including the High Representative. The NAC authorized SFOR to take up such assignments in August 1997.

THE THREE CRITERIA

Having examined various aspects of the I/SFOR mandate and its implementation, we will now analyze these operations using the three criteria introduced earlier.

detail in the section dealing with "Impartiality", infra.

92 See paragraph 70 of the "Sintra Declaration" (reproduced in note 495, supra).

93 See: Agreement on Elections (Annex 3 to the General Framework Agreement, supra, note 411), art. I(1); Annex 4, supra, note 432, art. II(3); Agreement on Human Rights (Annex 6 to the General Framework Agreement, supra, note 411), art. I.

94 See: Annex 4, supra, note 432, preamble to the Constitution; Annex 7, supra, note 459, arts. I(3) and II(1).

95 Annex 1-A, supra, note 411. As explained earlier ("The Mandate: An Overview" section), article X would be read in conjunction with article VI(2)(a) of Annex 1-A, giving SFOR the task of ensuring compliance with Annex 1-A obligations (an enforcement mandate). It is submitted that article VI(3)(a) of the same annex, authorizing SFOR "to help create secure conditions for the conduct by others of other tasks associated with the peace settlement", does not provide an adequate basis for the actions in question as these involved much more than the provision or promotion of "secure conditions".

96 For the source of the High Representative's authority for the curtailment or suspension of media networks, see note 495, supra.

**The Use of Force**

As noted previously, I/SFOR's enforcement powers are extensive, underpinning a wide range of military and non-military tasks. Although the rules of engagement which NATO, pursuant to Security Council Resolutions 1031 and 1088, adopted for IFOR and SFOR subject any use of force for the purpose of Dayton implementation to the requirements of international humanitarian law, including the "principles of proportionality and the use of minimum necessary force", they do not limit the scope of I/SFOR's enforcement powers in any way. Thus, the two forces have been given blanket authorization to use "deadly force ... [t]o safely implement the peace plan."

Statements made by political and military authorities have emphasized IFOR and SFOR's capacity and determination to use force to secure implementation of the Dayton accords. That resolve was clearly demonstrated to the parties immediately after IFOR's deployment through the latter's vigorous assertion of its right of freedom of movement. Nevertheless, in the course of their missions, IFOR and SFOR have shown considerable restraint in the exercise of their enforcement powers.

A lack of party cooperation in the implementation of Dayton's military provisions, more frequent than is sometimes

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99 *IFOR/SFOR Rules of Engagement, ibid.*


101 See Leighton Smith, *supra*, note 455, p. 11.
assumed, has led IFOR and SFOR to issue verbal warnings, confiscate and destroy weapons and ammunition, impose bans on military training and the movement of armed forces, and, in particularly serious cases, mount shows of force. Given the two forces' undeniable military "leverage" over the parties, this has been sufficient to secure party compliance when IFOR and SFOR have insisted on it, although, up until the middle of 1997, they only insisted on compliance with the military provisions of the Dayton accords.

As previously indicated, it has been the smaller SFOR which has enforced, albeit selectively, Dayton's civilian provisions. Returning refugees have been protected, indicted war crimes

102 See text accompanying notes 543-46, infra.


106 While IFOR, on occasion, sought to compel cooperation through the display of massive firepower, the actual use of force was invariably avoided. In 1996, the Bosnian Serb military headquarters at Han Pijesak was the site of several such confrontations. See: "NATO Shows Force to Get at Arms", International Herald Tribune (AP), 19 Feb. 1996, p. 8; Patrick MOORE, "IFOR Forces Serbs to Withdraw Weapons", Pursuing Balkan Peace (OMRI), no. 27, 9 July 1996; Patrick MOORE, "How to Deal with Inat", Pursuing Balkan Peace (OMRI), no. 32, 13 Aug. 1996; "NATO Moves to Increase Pressure on Bosnian Serbs", International Herald Tribune (Reuters), 13 Aug. 1996, p. 5; "U.S. and NATO Press for Fair Polls in Bosnia", International Herald Tribune (Reuters), 14 Aug. 1996, p. 6. IFOR also mounted shows of force to compel cooperation by Bosnian Muslim forces. See: "NATO Planes Settle Showdown", International Herald Tribune (Reuters), 14 Aug. 1996, p. 2; "Christopher Hopes to Bring Bosnia Factions to Heel", International Herald Tribune (Reuters, AFP), 3-4 Feb. 1996, p. 2.

107 "Peace Mission to Bosnia Is 'on Track'' (interview with the NATO Secretary-General), International Herald Tribune (IHT), 19 Feb. 1996, p. 8.

108 See text accompanying note 472, supra.
suspects have been seized, and hard-line media have been shut down. Yet, in all these operations, the actual use of force has typically been held in reserve — employed only as a last resort.

Consent

The parties to the Dayton accords expressed therein their consent to IFOR's establishment under NATO authority and to the various components of its mandate, including its enforcement mandate. In addition, the parties agreed to "cooperate fully with all entities involved in implementation of [the Dayton accords]," including IFOR. This consent was, at NATO's express request, reaffirmed by the parties in respect of SFOR.

109 See text accompanying notes 488-90, supra.

110 See text accompanying note 499, supra.


112 See note 411, supra.

113 See Annex 1-A, supra, note 411, arts. I(1) and VI(1).

114 See: Annex 1-A, supra, note 411, art. VI, paras. (2)-(4) and (9); Annex 2, supra, note 411.

115 See: Annex 1-A, supra, note 411, art. I(2)(b); Annex 1-A, art. IV, paras. (2), (4) and (6); Annex 1-A, art. VI, paras. (5)-(6) and (9). See also text accompanying note 440, supra.

116 Annex 1-A, supra, note 411, art. X. And see art. II(4) of that annex.

117 See S/1996/1025 (10 Dec. 1996), including its annexes. Note that the letter from the members of the Presidency of Bosnia and Herzegovina, confirming their acceptance of SFOR as "the legal successor to IFOR", carries the signatures of all three Presidency members (Muslim, Croat and Serb).
American political and military leaders saw the consent of the Bosnian factions to the IFOR mission, and their commitment to the Dayton settlement generally, as essential preconditions to the participation of American troops in the NATO-led Force.\textsuperscript{118} Although those American and NATO officials most closely associated with IFOR invariably glossed over this problem,\textsuperscript{119} the agreements, initialled at the Wright-Patterson Air Force Base near Dayton on 21 November and signed in Paris on 14 December 1995, in fact masked fundamental discord.

In Dayton, the Bosnian Muslims were put under considerable pressure, especially by American negotiators, to reach a settlement with their Serb and Croat counterparts.\textsuperscript{120} Nevertheless, the Muslim delegation directly negotiated the Dayton accords and, after weighing their options, signed the resulting agreements freely.\textsuperscript{121} The situation in respect of the Bosnian Serbs was rather different.

Serbian President Slobodan Milošević, anxious to reach an


\textsuperscript{121} See the works cited \textit{ibid}. A key consideration in this decision was the military assistance US negotiators had promised if the Muslims reached a peace settlement. Concerning the US-sponsored "train and equip" programme, see note 552, infra.
agreement at Dayton, deliberately kept the three Bosnian Serb members of his team out of the negotiations, revealing the final details of the settlement only just before it was initialled. They then denounced the accord and boycotted the initialling ceremony. Those sections of the Dayton accords to which the Republika Srpska (RS) was a party were initialled for it by the Minister of Foreign Affairs of the Federal Republic of Yugoslavia (FRY), Milan Milutinović.

Bosnian Serb opposition to the Dayton accords centred on the requirement that they surrender the four Sarajevo suburbs which they held and on the sweeping authority given to IFOR. Although a subsequent meeting between Milošević and Bosnian Serb leaders went some way towards securing the latter's grudging acceptance of Dayton, they remained dissatisfied. Shortly after IFOR's deployment, they appealed for a delay in the

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[125] See note 411, supra.

[126] Gaeta, supra, note 411, p. 150. The marginalization of the Bosnian Serbs at Dayton was made possible by an agreement, reached on 29 August 1995 among Serb leaders from both Serbia and Bosnia, to form a joint FRY-RS delegation for purposes of negotiating and concluding future peace settlements concerning Bosnia-Herzegovina. This delegation, comprising three members from the FRY and three from the RS, represented the Serbs at Dayton. Pursuant to the terms of the 29 August accord, Milosevic headed the delegation and had a deciding vote in case of a split, 3-3 vote. As Milosevic already controlled the FRY side of the delegation, he could thus dictate the Serb, including Bosnian Serb, position in the Dayton negotiations. Depending on the subject at hand, the delegation acted as an organ of either the FRY or the RS. Gaeta, pp. 150-53.


transfer of Serb-held Sarajevo to Federation control. They had, however, already given the game away. On 14 December, Bosnian Serb leader Nikola Koljević signed those sections of the Dayton accords to which the RS was a party at the formal ceremony held for this purpose in Paris.

Thus, IFOR's consensual foundations, though real enough, were fragile. Not surprisingly, IFOR and SFOR have been quite assiduous in their attempts to nurture and sustain the cooperation of the Bosnian factions. A principal means of achieving this has been the Joint Military Commission, provided for in the Dayton accords. Chaired by the I/SFOR Commander or his representative and bringing together the senior military commanders of the rival Bosnian forces, it allows I/SFOR to clarify matters relating to the implementation of Dayton's military provisions and resolve any problems arising in that context. The establishment of subordinate military commissions at various levels of the military command hierarchy allows problems to be resolved at the lowest possible level.

Party compliance with Dayton's military provisions has been good. Isolated incidents aside, the cease-fire has been

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130 See note 411, supra. Note that International Legal Materials (vol. 35, 1996, p. 75) reproduces the accords exactly as signed in Paris, with the actual signatures.

131 See Annex 1-A, supra, note 411, art. VIII.

132 Annex 1-A, supra, note 411, art. VIII(3).


135 Many of the worst incidents involved attempts by Bosnian Muslims to resettle the zone of separation in northern Bosnia in the latter part of 1996 and early 1997. See note 473, supra. The city of Mostar has been
observed, and provisions for the separation, cantonment and partial demobilization of the rival forces were basically complied with, though not always within the stated deadlines.\(^{136}\) Yet, problems have arisen. The Bosnian Muslims were extremely slow to see off their foreign Islamic fighters and advisors as the accords require.\(^ {137}\) Various other violations of the military provisions have been committed by the three sides, with the declaration and/or storage of weapons and ammunition in approved sites a particular problem, especially on the Bosnian Serb side.\(^{138}\)

The most serious problems of compliance have, however, arisen in respect of Dayton's civilian provisions. We have already examined, in some detail, four such areas — freedom of movement, the return of refugees and displaced persons, the investigation and prosecution of war crimes, and media restructuring. Progress in other areas which are just as important to another flashpoint. Note that such violence has involved individuals and police forces or individual policemen, but not the rival armed forces as such.

\(^{136}\) The separation of the rival forces went according to schedule, yet significant delays occurred in the cantonment / partial demobilization of troops and the cantonment of heavy weapons. For details, see the monthly reports on IFOR operations listed in the Bibliography (sec. I A) 3)).


the effective reintegration of Bosnia-Herzegovina, but where IFOR and SFOR's role has been much less central — such as the establishment and functioning of common national institutions — has also been slow. Each of the former warring factions bears some blame for the slow pace of civilian implementation and, as a result, Bosnia's continuing division into three ethnic territories, but the Bosnian Serbs have distinguished themselves in their obstructionism.

**Impartiality**

The IFOR and SFOR missions have both been premised on the principle of impartiality, understood as the "even-handed" implementation of the mandate, including the enforcement mandate. A link with the principle of consent is recognized, with I/SFOR's impartiality seen as a crucial determinant of party cooperation.

Despite some initial scepticism, especially on the part of

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the Bosnian Serbs, that IFOR, once deployed, would really be impartial, the overall record tends to show that IFOR and SFOR, at least up to mid-1997, implemented their mandates in an even-handed manner, carrying out their activities without regard to the identity of the parties they were dealing with, but only the fact of their compliance, or noncompliance, with the Dayton accords. The situation in the last half of 1997 has, at first glance, been rather different.

The last half of 1997 has been marked by a struggle for power between the elected President of the Republika Srpska, Biljana Plavšić, and a group of RS hard-liners, led by Radovan Karadžić. By the end of 1997, Plavšić, confounding initial expectations of a quick defeat, had control of almost all of the western half of the RS, including the Republic's largest town, Banja Luka, leaving the hard-liners, based in Pale, with its eastern half. In this, Western support has been crucial. Western governments, seeing Plavšić as their best hope among the Bosnian Serbs for the implementation of Dayton's civilian provisions, have given her extensive diplomatic support, offered

143 See Schulte, supra, note 336, pp. 25 and 32.

144 This is the author's own assessment, based on an extensive review of IFOR and SFOR activities over the stated period, including those cited in notes 510-19, supra. And see Schulte, supra, note 336, p. 25. It is submitted that the $400 million, US-sponsored "train and equip" programme, designed to bring the Muslim-Croat Federation Army up to military parity with its Bosnian Serb opponent, has not undermined the impartiality of the NATO-led forces given the complete lack of functional ties between the two. See Graham, supra, note 545, p. 1. Nevertheless, it may well be argued that "train and equip" has hurt the impartiality of the international community's post-Dayton efforts in Bosnia, taken as a whole. For a detailed account of the programme, see Enis DZANIC and Norman ERIK, "Retraining the Federation Forces in Post-Dayton Bosnia", Jane's Intelligence Review, vol. 10(1), Jan. 1998.

145 According to some news reports, the split within the ranks of the Bosnian Serb leadership was itself engineered by the West. See: Wilkinson, supra, note 494; Patrick MOORE, "Political Stories from Former Yugoslavia", RFE/RL Newsline (End Note), vol. 1(81), 25 July 1997.

146 This has included crucial support for her dissolution of the Bosnian Serb Parliament and for her decision to hold early elections limited to the latter's replacement. See: "Bosnia: U.S. Wants NATO to Support Serb President", supra, note 494; Mike O'CONNOR, "Wiretapping Evidence Found", International Herald Tribune (NYT), 20 Aug. 1997, p. 5; Raymond BONNER,
economic assistance in return for progress in implementing Dayton, and warned her adversaries not to topple her by force.

SFOR has, in fact, been instrumental in preventing a coup by the hard-liners against Plavšić and in helping her to consolidate and extend her control over the western half of the Bosnian Serb Republic. It has also played a key role in


shutting down hard-line radio and TV broadcasts, a crucial weapon in the propaganda wars, and transferring the relevant communications facilities to Plavši_'s control. Although all of these initiatives can be justified on the basis of the extensive powers accorded to IFOR and SFOR, examined earlier, international officials have acknowledged, off the record, that their real objective has, in fact, been to enhance Plavši_'s power while diminishing that of her rivals.

It is submitted that SFOR's strong partisanship in the Bosnian Serb power struggle has not involved the abandonment of the impartiality its mission prescribes. First, the differential treatment at issue has occurred, not between the parties, as defined by Dayton, but within the ranks of one of those parties. Second, and most important, SFOR's favouritism among Bosnian Serbs has been motivated by the same fundamental concern which has underpinned all its activities in Bosnia — namely, to secure the implementation of the Dayton accords. This, at least, has been the official response to accusations of bias. Yet, it appears clear that this has, in fact, been the real reason for SFOR's partisanship. The latter, as previously described, has been just one component, albeit a key one, of a wide-ranging international effort clearly aimed at obtaining significant improvements in Bosnian Serb compliance with Dayton's civilian provisions by strengthening the faction perceived as more inclined to cooperate in this respect.


151 See "Media Restructuring" ("Mandate Implementation") sec., supra.

152 See Cody, supra, note 492. This is also reflected in many of the sources cited in the three preceding notes.


CONCLUSION

Of all the operations examined so far in Bosnia-Herzegovina, only IFOR and SFOR closely approximate the model of peace enforcement outlined in chapter 1 on the basis of paragraph 44 of An Agenda for Peace and the related Foreign Affairs article.

Enforcement Both IFOR and SFOR have had extensive enforcement powers, although the wide authority conferred on paper has been circumscribed by NATO's NAC, especially in the area of civil implementation. Within this, more limited, framework, the actual use of force has been held in reserve. Other forms of pressure have typically been used to secure compliance with the accords where IFOR or SFOR have insisted on this, with force employed only as a last resort. There have been no violent clashes between the NATO-led missions and the Bosnian factions of the kind seen in Somalia during UNOSOM II's pursuit of General Aideed.

Imperfect Consent All three factions formally consented to the IFOR and SFOR operations, including their enforcement mandates, as evidenced by the factions' signature of the Dayton accords in Paris on 14 December 1995 and their subsequent, written assent to SFOR's replacement of IFOR. Yet, despite these formal trappings, consent, in reality, was quite imperfect.

Although representatives of the Bosnian Serbs were present at Dayton, the accords were negotiated without their participation. While a Bosnian Serb representative later signed the accords in Paris, they in fact remained opposed to key aspects of the agreements, including the wide authority given to IFOR to ensure their implementation. The Bosnian Serbs' opposition to unclear whether Plavsic would, in fact, deliver improved compliance with Dayton. On this question, see: McManus, supra, note 494; Wilkinson, supra, note 494; Moore, supra, note 512.
Dayton was reflected in their uneven record of compliance with the military, and especially non-military, provisions of the accords, although they were not alone in this. The other two factions were also, not infrequently, in breach of the accords, prepared to cooperate only at IFOR's or SFOR's insistence.

Thus, the picture in relation to consent has been very mixed. Although, formally speaking, the IFOR and SFOR missions rest on clear consensual foundations, such consent has not always translated into practical cooperation. Cooperation has been selective, offered in respect of certain provisions of the Dayton accords, but not others, and contingent on IFOR's and SFOR's sustained efforts to nurture and, if necessary, compel such cooperation.

Impartiality The third characteristic of peace enforcement, impartiality, has been a defining feature of the IFOR and SFOR operations, as emphasized in a wide variety of NATO and UN documentation. The record shows that the NATO-led missions in fact implemented their mandate in an even-handed manner, at least up to mid-1997 when the Bosnian Serbs split into moderate and hard-line factions.

It is submitted that the strong support given by SFOR in the last half of 1997 to the moderate Bosnian Serb faction, in concert with broader international efforts along the same lines, did not involve a breach of impartiality as this support was ultimately aimed at improving Bosnian Serb compliance with the Dayton accords. As understood and applied by NATO in the IFOR and SFOR operations, the principle of impartiality has, in fact, consistently rested upon such foundations. IFOR and SFOR's actions have invariably been based on one consideration — the parties' compliance or non-compliance with Dayton.
This chapter will be devoted to an examination of the ongoing efforts of certain key states to develop military doctrine for peace operations. As of the time of writing,¹ both the United States and the United Kingdom are preparing revisions and/or expansions of recent military manuals for peace operations. French efforts to develop peace operations doctrine are also well advanced. Our enquiry will be limited to these three states for two reasons. First, their status as permanent members of the UN Security Council and key contributors to the UN-sanctioned enforcement operations previously examined makes the US, UK, and France indispensable to any consideration of national military doctrine for peace operations. Second, it is submitted that the remarkable degree of convergence found in these three military doctrines, to be described in detail in the course of the chapter, obviates the need for a broader enquiry involving the extraction of general trends and tendencies from a larger sample. On the basis of the evidence to be presented here, the trend appears clear.

In the course of our study, we will seek to describe and distinguish the various categories of peace operation recognized by the three military doctrines, together with what they call "war". Particular attention will, of course, be paid to the "middle ground" of the spectrum of military operations. The three, by now familiar, characteristics of the use of force, consent and impartiality will, as it turns out, remain indispensable to our analysis.

US MILITARY DOCTRINE

Since the end of the Cold War, the US military has devoted considerable attention to the development of doctrine for peace operations. Joint services doctrine for peace-keeping alone² was

¹ This chapter was prepared in September 1997 on the basis of information available at that time.

² Note that both US and UK military doctrines spell "peacekeeping" without
The US Army followed this, at the end of 1994, with a comprehensive manual on peace operations. The joint services manual on peace-keeping is now being revised to cover the full range of peace operations. A draft version of this publication, together with the US Army manual, will ground our discussion of US military doctrine.

Current US military doctrine makes a fundamental distinction between "peace operations", a term which encompasses peace-keeping operations and peace enforcement operations, and "war." Specifically, whereas the latter involves the pursuit of

the hyphen used by the UN, as indicated in the relevant quotations and citations appearing below. Nevertheless, for the sake of consistency in the dissertation as a whole, the UN spelling will, as a rule, be used in this chapter for simple "peace-keeping", while the UK spelling will be retained for the special UK category "wider peacekeeping".


4. FM 100-23, supra, note 183.


6. Once finalized, the joint services manual on peace operations (ibid) will guide the planning and implementation of peace operations involving two or more of the American services (army, air force, navy, and marines). As it will override existing US Army doctrine, the latter will have to be revised to remove any discrepancies, although, at present, these appear minor. Also relevant to our discussion of US military doctrine for peace operations are: Department of Defense Dictionary of Military and Associated Terms, Joint Chiefs of Staff, Joint Pub. 1-02, 23 March 1994 [hereinafter "JP 1-02"], setting out standard definitions of terms; and Joint Doctrine for Military Operations other than War, Joint Chiefs of Staff, Joint Pub. 3-07, 16 June 1995 [hereinafter "JP 3-07"], describing the basic tenets of "military operations other than war (MOOTW)", of which peace operations are a subset.


8. Note that "war" is not defined in JP 1-02 (ibid.), even though it is a key reference point in US doctrine. The latter divides all military operations into "war" and "military operations other than war (MOOTW)". Peace operations fall within the scope of MOOTW. See JP 3-07, ibid., ch. I, pp. 1-2.
military victory and the destruction of a predetermined adversary, peace operations, as the name suggests, are designed to bring about, or at least facilitate the achievement of, peace—"the conflict, not the belligerent parties, is the enemy."\(^9\)

Although, in US doctrine, the "critical variables" of the use of force, consent, and impartiality\(^10\) serve, above all, to distinguish peace enforcement from peace-keeping, they also help to set war apart from both of these peace operations. This is especially true with respect to the use of force, subject to greater constraints in all peace operations, including peace enforcement.\(^11\) US military doctrine also holds that "[i]n war, consent is not an issue of concern for the military commander", whereas "[i]n peace operations, ... the level of consent determines fundamentals of the operation."\(^12\) In fact, for all practical purposes, consent is entirely absent in war, whereas, as we shall see, it plays at least some role in peace enforcement, as well as peace-keeping. Similarly, war, as already noted, involves a predetermined adversary and, as such, is wholly partial, whereas both peace-keeping and, in almost all cases,\(^13\) peace enforcement aspire—to a greater (peace-keeping) or lesser (peace enforcement) extent—to impartiality.

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\(^12\) FM 100–23, *supra*, note 183, p. 13.

\(^13\) See note 598, *infra*. 

The US military's concept of "peacekeeping" is the same as that developed by the UN, introduced in the first chapter. The use of force is essentially limited to self-defence. Peacekeeping operations are deployed and conducted with the consent of the principal parties to the conflict and are impartial.

**Peace Enforcement**

US military doctrine defines "peace enforcement" as:

the application of military force, or the threat of its use, normally pursuant to international authorization, to compel compliance with resolutions or sanctions designed to maintain or restore peace and order.

Peace enforcement forces may be assigned the following missions: the enforcement of sanctions; the guarantee and denial of movement; the establishment and supervision of protected areas.

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14 JP 3-07.3 (Peace Operations), supra, note 567, p. I-13. In its description of the use of force in peace-keeping, FM 100-23 also incorporates the notion of extended self-defence (defence of the mandate), though with rather less precision than the UN. See FM 100-23, supra, note 183, pp. 12-13 and 17.

15 JP 3-07.3 (Peace Operations), supra, note 567, pp. I-7 and II-3. FM 100-23, supra, note 183, pp. 1, 4 and 12.

16 JP 3-07.3 (Peace Operations), supra, note 567, pp. I-7 and II-2. FM 100-23, supra, note 183, pp. 1, 12, 13, 18 and 36.

17 JP 3-07.3 (Peace Operations), supra, note 567, p. I-7 (and see ch. III, pp. 1-3 and 38). The definitions given in JP 1-02 (supra, note 568, "peace enforcement") and JP 3-07 (supra, note 568, p. III-13) are virtually the same, while that offered in FM 100-23 (supra, note 183, p. 6) differs only slightly.


19 See FM 100-23, supra, note 183, p. 8. Note that JP 3-07.3 (Peace Operations) includes this task under the broad rubric of sanctions enforcement. See *ibid.*
zones; the protection of humanitarian assistance; the restoration and maintenance of order and stability; and the forcible separation of belligerents, including the related task of establishing buffer or demilitarized zones and other action, such as disarmament and demobilization, designed to maintain their disengagement.

Under US military doctrine, a peace enforcement operation may take the initiative in the use of force. In fact, US doctrine allows for the use of "overwhelming force" where necessary. Yet, in general, peace enforcers are to use only such force as is needed to secure compliance with the mandate. US doctrine puts special emphasis on the need "to minimize collateral damage to the fullest extent possible." The principle of restraint, applicable under US military doctrine to

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20 See FM 100-23, supra, note 183, pp. 9-11. While this task is not specifically mentioned in JP 3-07.3 (Peace Operations), it is at least partly captured by the latter's broad formulation of sanctions enforcement, which includes the enforcement of air, land or sea exclusion zones, such as those imposed in Bosnia-Herzegovina. See JP 3-07.3 (Peace Operations), ibid.


24 See: JP 3-07.3 (Peace Operations), ibid; FM 100-23, ibid.


29 - i.e., unintended death and destruction caused to civilians, civilian property and other non-military objects.

all "military operations other than war (MOOTW)", including peace enforcement, is of prime importance.\textsuperscript{31}

The US military recognizes some role for consent in peace enforcement, while stressing that it cannot be relied upon.\textsuperscript{32} A peace enforcement force may, in fact, be deployed without the consent of the state on whose territory such deployment occurs.\textsuperscript{33} Even when the cooperation of the belligerents allows the force to conduct itself in most circumstances "as if performing [peace-keeping]", it must be prepared to use force to implement its mandate.\textsuperscript{34} Yet, wherever possible, it is to nurture cooperation in order to ease the transition to a durable peace.\textsuperscript{35}

The US military considers impartiality in peace enforcement to be "desirable but not necessary".\textsuperscript{36} It is desirable since, as


\textsuperscript{33} JP 3-07.3 (Peace Operations), \textit{supra}, note 567, p. III-2.

\textsuperscript{34} JP 3-07.3 (Peace Operations), \textit{supra}, note 567, p. I-15. Note that, for the sake of clarity and consistency, abbreviations used in US and UK military manuals ("PK", "PE", etc.) are spelled out when they appear in quoted passages, as here.


\textsuperscript{36} JP 3-07.3 (Peace Operations), \textit{supra}, note 567, p. III-2. And see FM 100-23, \textit{supra}, note 183, p. 14. Note that JP 3-07.3 (Peace Operations) says, at one point, that "[i]n some [peace enforcement] mandates, impartiality may not be desired" (p. I-13). This remark is not developed elsewhere in the manual, however. Throughout the rest of the text, impartiality is treated as a desirable, though not always attainable, feature of peace enforcement. The meaning of the quoted passage may, arguably, be found in FM 100-23 which asserts, at page 2, that despite their frequent designation as "peace enforcement" operations, the UN operations in Korea (1950-53) and Kuwait/Iraq (1990-91) "are clearly wars and must not be confused with [peace enforcement] as described herein." War, as noted earlier, is seen in US military doctrine as a wholly partial activity. Thus, the reference in JP 3-07.3 (Peace Operations) to peace enforcement mandates where impartiality is not desired may be to operations such as those undertaken in Korea and Kuwait/Iraq.
with consent, it helps pave the way to a lasting peace. Nevertheless, "it may be extremely difficult to attain and maintain in an actual [peace enforcement operation], no matter how the [peace enforcement] force executes its mission." Impartiality, in US doctrine, does not derive from the effects of a peace enforcement operation's actions. US military doctrine recognizes that "[e]ven the least intrusive [peace operation] is unlikely to affect all parties equally." The US concept of impartiality focuses, rather, on the way in which the force implements its mandate.

Impartiality means that the [peace operation] force will treat all sides in a fair and even-handed manner, recognizing neither aggressor nor victim. This implies that the force will carry out its tasks in a way that fosters the goals of the mandate rather than the goals of either of the parties. During [peace enforcement], the force maintains impartiality by its focusing on the behaviour of a recalcitrant party – employing force because of what is being done, not because of who is doing it.

**Distinctions**

The major differences between peace-keeping and peace enforcement are summarized in US Army Field Manual 100-23. Thus, consent is "clear" or "high" in peace-keeping, but "not absolute" or "low" in peace enforcement. The use of force is

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38 JP 3-07.3 (Peace Operations), supra, note 567, p. I-13. And see FM 100-23, supra, note 183, pp. 12 and 18. Although US doctrine is not entirely clear on this point, the sources just cited suggest the key problem is the perception – as opposed to the reality – of bias.


41 The following points are derived from FM 100-23, supra, note 183, pp. 12-14.
limited to self-defence (including the "defence of the mandate") in peace-keeping, whereas in peace enforcement "force is used to compel or coerce." Finally, impartiality is "more easily maintained" or "high" in peace-keeping, while harder to maintain or "low" in peace enforcement.

**Transitions**

Although, as the preceding discussion would indicate, peace-keeping and peace enforcement are seen as clearly distinct categories in US military doctrine, the latter does envisage the possibility of transition from one to the other. A shift from peace enforcement to peace-keeping may occur as a deliberate response to a high level of cooperation from the warring parties. Yet, in such a situation, the force, though temporarily and provisionally operating in peace-keeping mode, remains prepared to use force in order to implement the mandate should this become necessary.

A shift from peace-keeping to peace enforcement, on the other hand, is a more perilous undertaking, though a serious deterioration in the prevailing situation (the collapse of a cease-fire, the withdrawal of consent, and so forth) may make it necessary. Thus, US doctrine emphasizes the need to plan in advance for possible transitions from peace-keeping to peace enforcement and vice versa.

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UK MILITARY DOCTRINE

The UK military has also been active in recent years in developing operational doctrine for peace operations.\(^{47}\) Army Field Manual (AFM), vol. 5, part 1 (Peacekeeping Operations), released in 1988, was followed, in 1995, by AFM, vol. 5, part 2 (Wider Peacekeeping).\(^{48}\) Current efforts are directed towards the preparation of a new manual, the first version of which will form the basis for our analysis of UK military doctrine. Peace Support Operations\(^{49}\) constitutes both a revision of the earlier work, especially that concerning "wider peacekeeping", and an expansion to include "peace enforcement". As we will see, it takes a markedly different approach to its subject than Wider Peacekeeping.

"Wider peacekeeping" is, in fact, a subset of peacekeeping,\(^{50}\) with the difference that wider peacekeeping operations

\(^{47}\) While UK doctrine uses the term "peace support operations", for the sake of consistency we will continue to use "peace operations" in this section. Quotations will, however, reflect British terminology (and see note 596, infra).

\(^{48}\) Supra, note 313.


\(^{50}\) This is asserted in Wider Peacekeeping itself (see supra, note 313, ch. 2, pars. 4-8 and 23). It is also reflected in the importance accorded by the manual to the principles of impartiality (see: ch. 2, paras. 15-16 and 19; ch. 4, paras. 4-7 and 14) and what it calls "minimum force" (see: ch. 2, paras. 17-20; ch. 4, paras. 8-14) in wider peacekeeping. With respect to the latter principle, it should be noted that Wider Peacekeeping envisages the use of force for the purpose of overcoming local opposition to the wider peacekeeping force (ch. 2, para. 18) and "in defence of mandated activities, for example the delivery of humanitarian aid" (ch. 4, para. 12), as well as for strict self-defence (ch. 4, para. 12). Yet, at the same time, the manual specifies that "[r]eprisals and the pre-emptive (ie first use) of force are inappropriate to Wider Peacekeeping operations." (ch. 4, para. 14(b)). While Wider Peacekeeping is not as clear on this point as it might be, it appears that, lacking the authority to take the initiative in the use of force, a wider peacekeeping force would not be involved in enforcement.
are deployed in "volatile" environments where consent, though present to some extent, is incomplete and/or unstable.\(^{51}\) One of the main functions of a wider peacekeeping force is to build or restore consent through adherence to such principles as impartiality and "minimum force".\(^{52}\) Peace Support Operations explicitly rejects the application of traditional peace-keeping techniques to environments which are "volatile" in the sense just described, concluding rather that this is the proper domain of what it calls "peace enforcement".\(^{53}\)

In describing current UK military doctrine for peace operations, we will focus exclusively on the new draft manual. Although Peace Support Operations is not yet official doctrine, it has the advantage of being more complete than Wider Peacekeeping as it covers the full range of peace operations. It also takes account of important, recent experience in the field, including that of Bosnia-Herzegovina over the crucial 1995-96 period\(^{54}\) — experience which tends to invalidate the key premises on which Wider Peacekeeping is founded.\(^{55}\)

Approval of Peace Support Operations in its current form would, in fact, involve the rejection of "wider peacekeeping" in

\(^{51}\) The specific scenarios envisaged appear to include a general breakdown of consent in situations of open warfare and/or state collapse, as well as instances where consent given by the principal belligerents at the "theatre" level is not transmitted to the local or "tactical" level. See Wider Peacekeeping, supra, note 313, ch. 1, paras. 5 and 24-25, ch. 2, paras. 9-10.

\(^{52}\) See: Wider Peacekeeping, supra, note 313, ch. 2; note 612, supra.


\(^{54}\) Peace Support Operations (supra, note 611), written in the latter part of 1996, acknowledges its debt to "recent experience" (ch. 1, para. 4; and see para. 3) and draws explicitly on UNPROFOR and IFOR experience (see, for example, ch. 3, paras. 4-5, and 12).

\(^{55}\) Thus, the experience of UNPROFOR in the spring-summer of 1995 showed quite clearly that, at least in some cases, consent could not be built up or restored through adherence to peace-keeping principles. See: text accompanying note 614, supra; chapter 4, "The Breakdown of the Safe Areas Regime" section.
favour of (1) a single category of "peace-keeping", moulded on the traditional lines with which we are already familiar, and (2) an entirely separate category of peace operation, termed "peace enforcement", occupying the middle ground of a spectrum extending from peace-keeping, at one end, to "war", at the other. This, then, is the framework which will underpin our analysis of UK military doctrine.

Like its US counterpart, UK military doctrine recognizes a fundamental distinction between peace operations and "war". The main features of the peace operations / war divide in UK doctrine are, in fact, remarkably similar to the US version, examined earlier. Thus, peace operations aim to facilitate the achievement of a lasting settlement among the principal antagonists. The goal is not military victory, as in war, but a durable peace. 56 Moreover, both peace-keeping and peace enforcement are impartial in nature, 57 in contrast to war which involves "a designated enemy". 58 Other distinctions exist with respect to the use of force, more restrained in peace operations than in war, 59 and consent, usually present, to some extent, in peace operations, including peace enforcement, but invariably absent in war. 60

56 See Peace Support Operations, supra, note 611, ch. 1, para. 1, and ch. 3, paras. 3-4 and 6.

57 As we shall see, as it concerns peace enforcement, UK doctrine is even more insistent on this point than the US version.

58 Peace Support Operations, supra, note 611, ch. 1, para. 1. And see ch. 3, paras. 3 and 5.

59 See Peace Support Operations, supra, note 611, ch. 2, para. 16, and ch. 4, para. 1. See also the discussion of the use of force in peace enforcement, infra.

60 "In [peace support operations], the active participation of the belligerent parties in the formulation and achievement of the end-state, be that ceasefire or peace plan, will be advantageous. As the operation moves towards war this trend will diminish until ultimately the terms of any peace plan could be imposed without consultation or agreement with the factions concerning conditions." Peace Support Operations, supra, note 611, ch. 3, para. 3.
Peace-keeping

Having dispensed with "wider peacekeeping", Peace Support Operations' revised concept of "peacekeeping", as a single category, is virtually identical to that developed in UN practice. Thus, the use of force is, in principle, limited to self-defence\(^{61}\) and full consent and impartiality are both considered essential.\(^{62}\)

Peace Enforcement

Peace Support Operations defines "peace enforcement" as:

Coercive operations carried out to restore or maintain peace in situations of chaos, or between parties who may not all consent to intervention and who may be engaged in combat activities, in order to help create the conditions for diplomatic and humanitarian activities to support political goals.\(^{63}\)

The various tasks or missions envisaged for peace enforcement\(^{64}\) include: "peace restoration";\(^{65}\) the protection of

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\(^{61}\) See Peace Support Operations, supra, note 611, ch. 1, para. 10, ch. 3, paras. 5 and 7, and ch. 4, para. 13. Note, however, that the draft manual allows peace-keepers greater scope for the use of force "in a situation of chaos" where "belligerent parties [are] uncoordinated and independent" (ch. 4, para. 8) or to "contain local upset" (ch. 4, para. 11). In each case, the use of force would involve a loss of consent at the tactical (field operations) level only.

\(^{62}\) Concerning consent, see Peace Support Operations, supra, note 611, ch. 1, paras. 1 and 10, ch. 2, para. 12, and ch. 3, paras. 5, 7 and 12. Concerning impartiality, see ch. 3, paras. 5 and 7.

\(^{63}\) Peace Support Operations, supra, note 611, ch. 1, para. 1.

\(^{64}\) Generally, see Peace Support Operations, supra, note 611, ch. 3, para. 23.
humanitarian operations;\textsuperscript{66} conflict containment;\textsuperscript{67} the forcible separation of belligerents;\textsuperscript{68} the establishment and supervision of protected or safe areas;\textsuperscript{69} the guarantee and denial of movement;\textsuperscript{70} and the enforcement of sanctions.\textsuperscript{71}

\textit{Peace Support Operations} stresses the coercive nature of peace enforcement.\textsuperscript{72} Thus, a "force deployed for [peace enforcement] must be prepared to fight and to escalate if need be to achieve the mission."\textsuperscript{73} The use of "'overwhelming' force" is also envisaged where a peace enforcement operation is "challenged to create an immediate impact and provide credibility."\textsuperscript{74} Nevertheless, as with US doctrine, the use of force in peace enforcement is subject to restraint in the interests of "the long-term requirements of peace building".\textsuperscript{75} This means specifically that, as a rule, force is to be used only when other methods of persuasion have failed and only "in response to an offensive

\begin{itemize}
\item \textsuperscript{65} See \textit{Peace Support Operations}, supra, note 611, ch. 3, para. 25(a), and ch. 5, para. 26.
\item \textsuperscript{66} See \textit{Peace Support Operations}, supra, note 611, ch. 5, para. 27.
\item \textsuperscript{67} See \textit{Peace Support Operations}, supra, note 611, ch. 3, para. 25(b), and ch. 5, para. 28.
\item \textsuperscript{68} See \textit{Peace Support Operations}, supra, note 611, ch. 3, para. 25(c), and ch. 5, para. 29.
\item \textsuperscript{69} See \textit{Peace Support Operations}, supra, note 611, ch. 3, para. 25(d), and ch. 5, paras. 30-31.
\item \textsuperscript{70} See \textit{Peace Support Operations}, supra, note 611, ch. 3, para. 25(e), and ch. 5, para. 32.
\item \textsuperscript{71} See \textit{Peace Support Operations}, supra, note 611, ch. 3, para. 25(f), and ch. 5, para. 33.
\item \textsuperscript{72} See \textit{Peace Support Operations}, supra, note 611, ch. 1, paras. 1 and 11, ch. 3, para. 8, and ch. 4, para. 8.
\item \textsuperscript{73} \textit{Peace Support Operations}, supra, note 611, ch. 2, para. 12. And see note 596, supra.
\item \textsuperscript{74} \textit{Peace Support Operations}, supra, note 611, ch. 4, para. 8.
\item \textsuperscript{75} \textit{Peace Support Operations}, supra, note 611, ch. 1, para. 11. This point is also made in ch. 3, paras. 6 and 8, and ch. 4, para. 8.
\end{itemize}
action initiated by a belligerent party";\textsuperscript{76} further, when force is used, that "all positive measures [are] taken to avoid civilian casualties and minimise collateral damage."\textsuperscript{77} In fact, any use of force is to be guided by the principle of "[m]inimum necessary force ... defined as the measured and proportionate application of violence or coercion, sufficient only to achieve a specific objective and confined in effect to the legitimate target intended."\textsuperscript{78}

Like US doctrine, \textit{Peace Support Operations} recognizes a role for consent in peace enforcement. While a peace enforcement operation can be conducted in the absence of consent, consent will often be present, though in the context of a "volatile" environment where it is incomplete and/or unstable.\textsuperscript{79} Though not crucial in the short-term, the promotion of consent by a peace enforcement operation is seen as a key determinant of long-term success.\textsuperscript{80} This need to nurture consent explains the importance \textit{Peace Support Operations} attributes to impartiality in peace enforcement, as well as peace-keeping, and its emphasis on restraint in the use of force.\textsuperscript{81}

In practice, [peace support operations] are likely to represent a continual struggle between the use of force and the need to promote, preserve, and sustain whatever consensual framework might exist.\textsuperscript{82}

\textsuperscript{76} \textit{Peace Support Operations}, \textit{supra}, note 611, ch. 4, para. 13.
\textsuperscript{77} \textit{Peace Support Operations}, \textit{supra}, note 611, ch. 4, para. 8.
\textsuperscript{78} \textit{Peace Support Operations}, \textit{supra}, note 611, ch. 4, para. 15. And see ch. 3, para. 3, and ch. 4, para. 13.
\textsuperscript{80} \textit{Peace Support Operations}, \textit{supra}, note 611, ch. 6, para. 2. And see ch. 3, paras. 8 and 26, ch. 4, para. 5, and ch. 6, sec. 2.
\textsuperscript{81} See \textit{Peace Support Operations}, \textit{supra}, note 611, ch. 3, paras. 8 and 26, and ch. 4, paras. 4, 8, and 17.
Peace Support Operations goes somewhat further than US doctrine in stressing the importance of impartiality to peace enforcement, although it acknowledges that perceptions of bias will invariably plague even the most "scrupulously impartial" of operations. As presented in Peace Support Operations, the concept of impartiality appears virtually identical to its US counterpart. Again, the emphasis is on the "even-handed" implementation of the mandate:

The conduct of a [peace support operations] force should always be impartial and even-handed, and should force have to be used against a particular party, it will only be because of what that party is doing, or not doing, as the case may be, rather than who they are.

**Distinctions**

Peace Support Operations' tripartite division of the "spectrum of conflict" into peace-keeping, peace enforcement, and war is neatly illustrated in chapter 3 of the draft manual:

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83 See Peace Support Operations, supra, note 611, ch. 3, paras. 5, 8 and 26, and ch. 4, paras. 4, 12, and 17-21.

84 Peace Support Operations, supra, note 611, ch. 4, para. 19. And see para. 18.

85 Peace Support Operations, supra, note 611, ch. 4, para. 18. And see ch. 3, para. 3, and ch. 4, para. 19.

86 Peace Support Operations, supra, note 611, ch. 3, para. 2.

87 Peace Support Operations, supra, note 611, ch. 3, para. 5.
Several comments on the diagram are in order. First, the consent divide is rather less abrupt than the vertical "CONSENT" bar would suggest, although the text accompanying the diagram helps convey a more nuanced picture. Thus, as indicated previously, while full consent is a feature of peace-keeping alone, consent also plays a role in peace enforcement, both in shaping the "volatile" environments to which peace enforcement operations will often be deployed and in defining an objective to be pursued. As the diagram shows, the impartiality divide, by contrast, is abrupt. While both peace-keeping and peace enforcement demand a strictly even-handed application of the relevant mandate, war, involving a "designated enemy", is entirely partial. A further distinction between war and peace enforcement, not shown in the diagram, but nonetheless contained in the text of the draft manual, is the requirement, in peace enforcement, for greater restraint in the use of force given its long-term goal of a durable peace.

Transitions

While Peace Support Operations acknowledges the dangers of mixing peace-keeping and peace enforcement within the context of a single mission, it appears relatively comfortable with the notion of a deliberate transition between the two types of

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88 See Peace Support Operations, supra, note 611, ch. 2, para. 18.

89 "The significance and nature of the conceptual divisions separating [peace-keeping] from the resource-intensive and combat capable activities of [peace enforcement], and [peace enforcement] from war have been identified as inexact but critical divides that should only be crossed deliberately and after careful preparation." Peace Support Operations, supra, note 611, ch. 3, para. 26. And see ch. 3, paras. 9 and 13.
operation, especially that from peace enforcement to peace-
keeping (and back again). It recognizes that shifting from
peace-keeping to peace enforcement is more difficult. A peace-
keeping operation rendered incapable of fulfilling its mandate
will often have to be withdrawn from the theatre. Yet, a
transition to peace enforcement, whether as a result of the
peace-keeping force's reconfiguration or its complete
replacement by another force, is also an option, provided that
the new force is able to meet peace enforcement's greater
operational demands and that other necessary preparations,
relating, in particular, to the mission's civilian and
humanitarian components, are made.

FRENCH MILITARY DOCTRINE

As of the time of writing (September 1997), the French
military has yet to publish its doctrine for "peace operations" in
final written form. Nevertheless, the Chief of Staff of the
French armed forces issued general guidelines on the subject in
March 1995. These have served as the basis for several
subsequent studies and proposals, two of which will retain our

90 See Peace Support Operations, supra, note 611, ch. 1, para. 10, ch. 2,
para. 12, and ch. 3, paras. 5, 9, 10, and 12.
91 See Peace Support Operations, supra, note 611, ch. 3, para. 10.
92 See Peace Support Operations, supra, note 611, ch. 2, para. 13, and ch.
3, para. 9.
93 See Peace Support Operations, supra, note 611, ch. 3, paras. 9-10.
94 An equivalent expression is used in French military manuals, although
there is some variation in the particular term used – one finds both
"opérations en faveur de la paix" and "opérations de paix".
95 Orientations pour la conception, la préparation, la planification, le
commandement et l'emploi des forces françaises dans les opérations
militaires fondées sur une résolution du conseil de sécurité de l'ONU,
lettre de l'Amiral Jacques Lanxade, Chef d'État-Major des Armées, no.
165/DEF/EMA/EMP/E.1, le 6 mars 1995 [hereinafter "lettre 165"].
96 Concerning the process of formulation of French military doctrine, see
Colonel LE NEVEN, "La Communauté doctrinale?", Objectif 21 (Revue du
attention in this section: France's response to the UN Secretary-General's *Supplement to An Agenda for Peace* and a comprehensive study of the employment of land forces in peace operations, published in November 1996 by the Centre d'Études et de Prospective (État-Major de l'Armée de Terre).

In contrast to its American and British counterparts, which recognize two types of peace operation, namely peace-keeping and peace enforcement, French military doctrine recognizes three: "maintien de la paix" (peace-keeping); "restauration de la paix" (peace restoration); and "imposition de la paix" (peace enforcement), all of which are distinct from "war".

Like the American and British versions, French military doctrine stresses the need for greater restraint in the use of force in peace operations, as compared with war. The goal in peace operations is not military victory, as in war, but rather securing international peace and respect for international law. In certain cases, this will require forcibly bringing to

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98 Forces terrestres et maîtrise des crises: conception générale de l'emploi des forces terrestres dans les opérations extérieures en faveur de la paix, de la sécurité, et de l'application du droit international (document provisoire), État-Major de l'Armée de Terre, Centre d'Études et de Prospective, novembre 1996 [hereinafter "Forces terrestres et maîtrise des crises"].

99 Lettre 165, supra, note 657, sec. I, 1.1. The equivalent English terms are taken from: A/50/869, supra, note 659, Engl. version, pp. 2-3; and Forces terrestres et maîtrise des crises, supra, note 660, pp. 73-74.

100 Forces terrestres et maîtrise des crises, supra, note 660, pp. 17 and 49-50.

101 See: *Livre blanc sur la défense 1994* (Paris, Éditions 10/18, 1994), pp. 115-16 and 122; Lettre 165, supra, note 657, cover note by Admiral Jacques Lanxade (Chief of Staff); Forces terrestres et maîtrise des crises, supra, note 660, p. 17 (note also the subtitle of this publication: "Conception générale de l'emploi des forces terrestres dans les opérations extérieures en faveur de la paix, de la sécurité, et de l'application du droit interna-
heel, but not destroying, a designated adversary.  

"Maintien de la paix"

The French concept of peace-keeping, like its American and British counterparts, is faithful to the traditional model developed by the UN during the Cold War. Thus, the use of force is limited to self-defence\(^{103}\) and full consent\(^ {104}\) and impartiality\(^ {105}\) are considered indispensable.

"Restauration de la paix"

In contrast to peace-keeping operations, deployed following the cessation of hostilities, peace restoration operations are sent to environments characterized by ongoing armed conflict or general instability.\(^{106}\) Peace restoration aims at ending, or at least moderating, these hostilities.\(^ {107}\) Conflict moderation involves, in particular, the protection of threatened...
populations through such missions as the organization of refugee returns, ensuring the free movement of humanitarian convoys, and establishing and maintaining safe areas and no-fly zones.\(^{108}\)

While the use of force is authorized for such purposes,\(^ {109}\) as with US and UK military doctrine, it must be carefully controlled and closely tailored to the specific objectives being pursued.\(^ {110}\) As for consent, the Chief of Staff's guidelines simply state that a military intervention launched for purposes of peace restoration is not subject to the approval of the warring factions:

L'intervention militaire pour favoriser le retour de la paix dans un pays déstabilisé, selon les dispositions d'ordre coercitif du chapitre VII, ne peut être assimilée à une simple opération de maintien de la paix. En effet, notamment lorsqu'il s'agit d'assurer la sécurité des populations, il n'est plus question de s'interposer sur une base consensuelle, ...\(^ {111}\)

Subsequent doctrinal work specifies that, while consent is typically present in peace restoration, it is artificial, incomplete, and/or unstable.\(^ {112}\) These same sources emphasize the importance of strengthening the consensual basis for peace restoration operations through such means as negotiation and assistance to civilian populations.\(^ {113}\)


\(^{110}\) See: A/50/869, \textit{supra}, note 659, p. 3; \textit{Forces terrestres et maîtrise des crises, supra}, note 660, pp. 18 and 42.

\(^{111}\) Lettre 165, \textit{supra}, note 657, sec. I, 1.2.2. And see A/50/869, \textit{supra}, note 659, p. 3.

\(^{112}\) See: \textit{Forces terrestres et maîtrise des crises, supra}, note 660, pp. 25 and 39-40; A/50/869, \textit{supra}, note 659, p. 3.

In peace restoration, there is no designated adversary.\textsuperscript{114} A peace restoration operation is "impartial" though not "neutral".\textsuperscript{115} As with American and British doctrine concerning "peace enforcement", impartiality in peace restoration means the even-handed implementation of the mandate. The peace restoration force ensures that all parties comply, to the same extent, with the terms of the mandate, even though in practice this may prove more detrimental to certain parties than to others.\textsuperscript{116}

Observatrice du statu quo dans les opérations de maintien de la paix, [la force de paix] est, dans le cadre des opérations de restauration de la paix, l'arbitre des manquements commis par les belligérants à l'encontre du respect du mandat, lequel constitue une règle supérieure de droit qui s'impose à tous et dont la force de paix est chargée de faire respecter les termes.\textsuperscript{117}

"Imposition de la paix"

In contrast to both peace-keeping and peace restoration, there is a "designated adversary" in "peace enforcement".\textsuperscript{118} Peace enforcement aims, not to destroy that adversary, but rather to force a change of behaviour which disrupts international peace and/or violates international law.\textsuperscript{119}


\textsuperscript{115} Lettre 165, supra, note 657, sec. II, 2.2. \textit{A/50/869}, supra, note 659, p. 3. \textit{Forces terrestres et maîtrise des crises}, supra, note 660, p. 40. Note that none of the sources of French military doctrine used in this chapter define "neutrality" or otherwise make its meaning clear.

\textsuperscript{116} See: \textit{A/50/869}, supra, note 659, p. 3; \textit{Forces terrestres et maîtrise des crises}, supra, note 660, pp. 39-41.

\textsuperscript{117} \textit{Forces terrestres et maîtrise des crises}, supra, note 660, p. 39 (emphasis in the original).

\textsuperscript{118} – "adversaire désigné". \textit{Forces terrestres et maîtrise des crises}, supra, note 660, p. 25. And see Lettre 165, supra, note 657, sec. I, 1.1.

\textsuperscript{119} \textit{Forces terrestres et maîtrise des crises}, supra, note 660, p. 49. Lettre 165, supra, note 657, secs. I, 1.1 and II, 2.1.
Specific scenarios include: bringing an act of interstate aggression to a halt; forcing an aggressor to participate in a process of peaceful dispute settlement; and preventing a state from committing acts of repression or violence against part of its own population.

A peace enforcement force makes use of the full range of means normally used in full-scale combat operations. Nevertheless, the use of force must be closely tailored to the specific objective being pursued which, again, is not to destroy the target state or faction, but rather to compel it to change its unlawful behaviour. Escalation to extreme force levels, especially those involving the use of weapons of mass destruction, is to be scrupulously avoided.

There is no consent in peace enforcement. The target's opposition to the change in behaviour the international community demands of it is what renders the peace enforcement operation necessary in the first place. Finally, with respect to impartiality, it has already been noted that the existence of a designated adversary is central to the French concept of peace enforcement. In contrast to peace-keeping and peace restoration, peace enforcement is entirely partial.

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120 Lettre 165, supra, note 657, sec. I, 1.2.3. Forces terrestres et maîtrise des crises, ibid. The example given in these documents is the international community's response to Iraq's invasion and annexation of Kuwait (1990-91).

121 Forces terrestres et maîtrise des crises, ibid.

122 Lettre 165, supra, note 657, sec. I, 1.2.3. Forces terrestres et maîtrise des crises, ibid. The example given in these documents is of the humanitarian intervention launched in favour of Iraqi Kurds following the end of the Gulf War in 1991.

123 See Forces terrestres et maîtrise des crises, supra, note 660, pp. 49-51.

124 Forces terrestres et maîtrise des crises, supra, note 660, pp. 49-50.

125 Forces terrestres et maîtrise des crises, supra, note 660, p. 25.

126 See: Lettre 165, supra, note 657, sec. I, subsecs. 1.1 and 1.2.3; Forces terrestres et maîtrise des crises, ibid.
Distinctions

The main distinctions between the various kinds of military operations just described may be summarized as follows. The distinction between peace enforcement and war in French military doctrine is a relatively fine one. In neither of these is there consent or impartiality. The use of force is more restrained in peace enforcement, as opposed to war, in that any such use must be harnessed quite narrowly to the specific objective being pursued and extreme levels of violence, especially involving the use of weapons of mass destruction, are to be avoided. Yet, the main distinction between peace enforcement and war centres on purpose. In peace enforcement, the aim is to bring to an end conduct which disrupts international peace and/or violates international law, not to achieve military victory as such.

The principal distinctions between the three categories of peace operation can be analyzed in terms of the three criteria of the use of force, consent, and impartiality. The use of force in peace-keeping is limited to self-defence. While both peace restoration and peace enforcement involve enforcement, this is subject to rules of restraint similar to those seen in respect of US and UK military doctrine. French doctrine considers consent to be full in peace-keeping, artificial, incomplete, and/or unstable in peace restoration, and completely absent in peace enforcement. Both peace-keeping and peace restoration require impartiality, in contrast with peace enforcement which is premised on the designation of an "adversary", or target state or faction.

Transitions

127 For a graphical representation of some of these distinctions, see Forces terrestres et maîtrise des crises, supra, note 660, p. 25.
French doctrine allows for the possibility of transition from peace-keeping to peace operations of a coercive nature. In fact, it advocates equipping peace-keeping forces, not only for self-defence, but also for combat in case such a transition becomes necessary, though the doctrine also emphasizes that until a decision to change the nature of the operation has been taken, a peace-keeping force, though equipped for combat, remains strictly non-coercive in nature. Like its American and British counterparts, French military doctrine stresses that any transition from peace-keeping to a coercive peace operation must be the product of a deliberate decision in which all the risks inherent in such a shift are carefully weighed. The withdrawal of the peace-keeping force from the theatre of operations is always an option.\textsuperscript{128}

French doctrine also admits the possibility of transition from peace restoration to peace enforcement, notably as a result of a loss of impartiality in the former (designation of an adversary), though this should only follow a careful assessment of the political costs (specifically, the abandonment of certain of the peace restoration force's tasks) and military requirements (necessary force restructuring) involved.\textsuperscript{129}

CONCLUSION\textsuperscript{130}

The extent to which the military doctrines of the US, UK and France converge in respect of peace operations is quite striking. Each of the three states defines peace-keeping, in line with the traditional UN concept, as a strictly non-coercive

\textsuperscript{128} Lettre 165, supra, note 657, sec. I, 1.2.1. And see Forces terrestres et maîtrise des crises, supra, note 660, pp. 33-34.

\textsuperscript{129} A/50/869, supra, note 659, p. 3. Forces terrestres et maîtrise des crises, supra, note 660, p. 42.

\textsuperscript{130} Note that the points made in the following section are derived exclusively from the analysis of national military doctrine undertaken earlier in this chapter, together with the sources cited in that connection.
activity in which the use of force is limited to self-defence, and full consent and impartiality are considered essential.

At the other end of the military operations spectrum, one finds "war", characterized by the existence of a predetermined adversary (no impartiality) and a total lack of consent. Sharing these same characteristics, the French concept of "peace enforcement" also occupies this end of the spectrum. Nevertheless, the French version of "peace enforcement" is distinct from "war" in the additional constraints it faces with respect to the use of force and in its more limited aim of compelling a change of behaviour in, as opposed to destroying or disabling, the target state or faction. The French concept of "peace enforcement" finds no equivalent in current UK doctrine and only a hint of an equivalent in its US counterpart; yet all three states again demonstrate a surprising degree of consensus in mapping out the middle ground of the military operations spectrum.

Taking, then, the American and British versions of "peace enforcement" together with the French concept of "peace restoration", we find rough agreement as to the function of these operations, namely to maintain or restore peace and order in situations of armed conflict or general instability. The French military puts particular emphasis on the protection of threatened populations in its formulation of the middle ground function, yet this is perfectly consistent with the American and British approaches. All three states list the establishment and maintenance of protected zones as a potential task of these operations.

Convergence among the three military doctrines is particularly close when it comes to describing the characteristics of middle ground activity. All three states agree that these operations are authorized to use force to implement their mandates, but that this enforcement authority is subject to the requirement of restraint, including the need to closely tailor any use of force to the specific objectives being pursued.

\[\text{131} \text{ See note 598, supra.}\]
Although the situation in respect of consent is described in rather different terms by the three military doctrines, there is general agreement that it plays at least some role in middle ground operations. Consent, in this context, is artificial, incomplete, imperfect and/or unstable and thus can never be counted upon. Nevertheless, all three states stress the need to try to nurture and strengthen whatever consensual framework is present in the theatre of operations.

There is some discrepancy among the three doctrines concerning the importance of impartiality to the middle ground, though overall agreement in this area is nonetheless strong. While the UK and France see impartiality as indispensable to middle ground operations, the US merely considers it "desirable", expressing a willingness to do without it, should circumstances so dictate. Part of this difference appears to stem from the US belief, which the UK shares, that the impartiality – or, at least, perceived impartiality – of these operations will be difficult to sustain in practice. In any case, all three states understand impartiality to mean the even-handed implementation of the mandate, which means that the actions of the force are motivated by one concern – to ensure that all parties comply with the terms of the mandate.

Whether implicitly or explicitly, the three military doctrines recognize that peace-keeping and enforcement action must not be mixed; peace-keeping and the middle ground are seen as clearly distinct categories. All three doctrines admit, however, the possibility of transitions from one type of operation to the other, provided these are deliberate and properly prepared.
A DEFINITION OF PEACE ENFORCEMENT

The first step in our elaboration in this chapter of an operational definition of peace enforcement involves a brief review and analysis of the case studies undertaken in chapters 2 to 5.

The United Nations Operation in the Congo (ONUC) did not provide any real basis for the post-Cold War development and application of the concept of peace enforcement. The selective attribution of enforcement or quasi-enforcement functions to a force initially mandated for peace-keeping had little value as a long-term precedent, although the confusion between peace-keeping and enforcement action reflected in ONUC did carry over into the adoption for subsequent UN peace-keeping operations of an extended formulation of the self-defence principle. We saw in both chapters 3 (UNOSOM I) and 4 (UNPROFOR) that, although the latter formulation has consistently figured in the mandates of peace-keeping operations, it has had little or no practical effect on peace-keeping practice, which has remained non-coercive.

As described in chapter 1,\textsuperscript{1} the concept of peace enforcement sketched out in paragraph 44 of An Agenda for Peace and the related Foreign Affairs article has three principal characteristics. First, it involves enforcement action, i.e. the use of force beyond that for self-defence. Second, peace enforcement operations are conducted in environments of imperfect consent. Although the warring parties have agreed to the objectives the peace enforcement operation is mandated to secure (for example, a cease-fire), they subsequently fail, or can be expected to fail, to abide by these commitments. Finally, these operations are impartial as between the warring factions. Action is taken only to ensure compliance by the parties with their commitments.

Somalia was the setting for the first trial of the

\textsuperscript{1} See first pages of "Peace Enforcement" section in that chapter, \textit{supra}. 
concept, specifically in the form of the second United Nations Operation in Somalia (UNOSOM II) which, along with the Implementation Force (IFOR) and Stabilization Force (SFOR) operations in Bosnia, constitutes the closest application of the chapter 1 model among the case studies. The Unified Task Force (UNITAF), deployed to Somalia just in advance of UNOSOM II, also shares the characteristics of peace enforcement mentioned above, except for the absence of prior consent. The operation was imposed on the Somali factions, though UNITAF, like IFOR and SFOR, worked to promote party cooperation in pursuing its goals.

From 1992-95, Bosnia-Herzegovina was the setting for a disastrous experiment in mixing peace-keeping and enforcement action, even, in the case of the protection of the safe areas, within the context of the same task. Neither the enforcement component of the safe areas mission nor the NATO operation to enforce compliance with the no-fly zone can be said to approximate the model of peace enforcement derived from the 1992 Agenda given the lack of impartiality in the two measures as conceived — both being directed, in reality, against the Bosnian Serbs. The safe areas mission involved a direct denial of Bosnian Serb war aims, while the enforcement of the no-fly zone involved the elimination of the Bosnian Serb advantage in air power. The IFOR and SFOR operations, deployed to Bosnia to secure implementation of the Dayton accords, have, by contrast, been impartial as between the three Bosnian factions and will ground, in part, our analysis of the characteristics of peace enforcement.

Four of the operations we have studied thus far conform to the model of peace enforcement sketched out in chapter 1: UNITAF, UNOSOM II, IFOR and SFOR. In each case, we have an enforcement mandate, imperfect consent and impartiality. While our set of cases is thus limited to only two conflict zones, this is entirely sufficient to the task at hand — involving the elaboration of an operational definition of peace enforcement.
on the basis of politically influential practice. In fact, the successes and failures of the operations in Somalia and Bosnia have largely determined the course of UN-sanctioned enforcement action in the 1990s. This evolution has involved, on the one hand, a marked shift away from UN-conducted enforcement action towards military enforcement which, though authorized by the UN, is conducted by regional organizations or ad hoc coalitions of interested states. At the same time, the 1990s has seen the progressive sharpening of the distinction between peace-keeping and peace operations of an enforcement nature.

Not coincidentally, the US, UK and France have been the key players in the operations reviewed in chapters 3 to 5. The armed forces of all three countries have taken the leading roles in the IFOR and SFOR operations in Bosnia. The US took the lead in the UNITAF and UNOSOM II (peace enforcement phase) operations in Somalia with strong French participation. The UK's involvement in Somalia was limited to a modest supporting role vis-à-vis UNITAF.

This emphasis in the dissertation on operations involving joint US-UK-French participation explains the exclusion from the study of Opération Turquoise and the ECOMOG enforcement operation, in Rwanda and Liberia respectively. Multinational participation in Opération Turquoise, mounted by France in June 1994 in the late stages of the Rwandan genocide, was limited to Senegal and Guinea Bissau. Western industrialized countries held differing views on the French operation, but did not, in any case, participate in it, limiting its value as precedent. The ECOWAS Monitoring Group (ECOMOG) was created by the Economic Community of West African States (ECOWAS) in August 1990 for the purpose of taming the Liberian civil war. This was a West African force, comprised of contingents from various states in the sub-region, with Nigeria in a leading role.

Also excluded from the dissertation are the military operations mounted by the Russian Federation over the course of the 1990s in various Commonwealth of Independent States (CIS)
countries. Independent of the question of relative Russian influence in the post-Cold War world, none of the Russian "peace missions" appears to have much value as broad precedent given, in particular, their lack of true multinational composition and their departure from established norms, even when moulded on traditional lines. In any case, the forces in Georgia (South Ossetia and Abkhazia) and Moldova (Transdnestr) have been peace-keeping forces - at least in the sense that they have been largely non-coercive in nature. While the fourth operation, undertaken in Tajikistan, has had an enforcement component, it has strayed rather far from the middle ground sketched out in the 1992 Agenda for Peace as a result, notably, of its lack of impartiality; the force has assisted one party, the Government of Tajikistan, against its armed opponents.

Also absent from the case studies is the United Nations Iraq-Kuwait Observation Mission (UNIKOM), though the US, UK and France have all provided military personnel to it. The Force has been mandated, since February 1993, to prevent violations of the demilitarized zone and of the newly demarcated border between Iraq and Kuwait, yet does not have enforcement powers. It is a peace-keeping force.

In contrast to peace-keeping, the practical and theoretical development of an enforcement option within the peace operations spectrum has necessarily rested with those states possessing the requisite political influence and military capability. As we saw in chapter 6, US, UK and French military doctrine recognize a type of peace operation with the same characteristics as the chapter 1 model of peace enforcement and the four cases conforming to the same. Practice has strongly

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influenced the development of military doctrine, so the close compatibility we find between the two is hardly surprising. This link between practice and doctrine, coupled with the fact that the US, UK and France have tended to work together in the peace enforcement operations under consideration, also explains, in large measure, why these countries have taken substantially the same approach in their military doctrine to the heretofore contentious issue of a middle ground in peace operations.

It is submitted that the question implicitly raised in the 1992 Agenda and debated by scholars before and since the latter's publication, concerning the existence and characteristics of a middle ground in peace operations, has now been settled. We shall call the middle ground "peace enforcement" in line with the 1992 Agenda and US and UK military doctrine.

The case studies and military doctrine previously examined reveal that peace enforcement involves, quite simply, the enforcement of peace. As articulated in US, UK and French military doctrine, the basic mission of a peace enforcement operation is to maintain or restore peace and order in situations of armed conflict or general instability. A common function of the four peace enforcement operations identified as such above was the enforcement of a cease-fire and related disarmament or weapons control process among belligerent factions. Within the context of their broad mandate to ensure the implementation of the Dayton accords, IFOR and SFOR have had the widest range of functions of any of the four peace enforcement operations — including tasks of a civilian nature governing freedom of movement, the return of refugees and displaced persons, and the arrest of indicted war crimes suspects — yet these have had the same underlying aim as their other peace enforcement functions, namely the restoration and

5 With respect to the UK, see chapter 6, text accompanying notes 616-17, supra.
preservation of peace.

Certain of the enforcement measures examined in chapters 3-5, while sharing the conflict-dampening rationale of those described above, had a specific, humanitarian focus. One such measure, a component of both the UNITAF and UNOSOM II mandates examined in chapter 3, was the protection of relief assistance. Two others, studied in chapter 4, were the joint UN-NATO mission for the protection of the Bosnian safe areas and the enforcement, by NATO, of the no-fly zone over Bosnia. While, as previously explained, failing the test of impartiality, neither of the latter measures can be characterized as peace enforcement, one could envisage a broad range of humanitarian measures, including the establishment and supervision of protected zones or weapons exclusion zones, which would be impartial and thus constitute peace enforcement.

The first characteristic of peace enforcement is, as the name indicates, its enforcement nature. A force mandated for peace enforcement is authorized to use force beyond that for self-defence; for the purposes set out in its mandate, it may take the initiative in the use of force. Nevertheless, the exercise of these enforcement powers is subject to the requirement of restraint. This means, in the first instance, that force is to be used only as a last resort; armed confrontation with the belligerent factions is to be avoided wherever possible. Second, where force has to be used, it must be closely tailored to the specific objectives being pursued. Peace enforcers are to use only such force as is necessary to accomplish the task at hand, keeping civilian casualties and unintended property damage (so-called "collateral damage") to an absolute minimum. While, as explained in chapter 3, this policy also applied to UNOSOM II, some of the measures it took for the purpose of capturing, and even assassinating, faction leader Aideed seriously undermined it. None of the other peace enforcement operations studied earlier was involved in armed clashes of such scale.

6 See "UNOSOM II: The Use of Force" section, supra.
The second characteristic of peace enforcement is imperfect consent. A peace enforcement operation will typically encounter some degree of consent on the part of the belligerent factions — both to the objectives whose fulfilment the operation is mandated to enforce and to that same enforcement mandate. This consent is often expressed in the form of a comprehensive peace agreement aimed at a final settlement of the particular conflict. Nevertheless, such consent is, or can be expected to reveal itself as being, imperfect: i.e., incomplete, artificial and/or unstable.

The basic problem, seen in the case of the UNOSOM II and I/SFOR operations, is that the formal peace agreement masks the underlying opposition of one or more factions to the peace process and/or the peace enforcers' role in it. Even though, in an extreme case, such as that faced by UNOSOM II, such opposition can give rise to open, armed rebellion against the peace enforcement operation, the latter typically retains the support of other factions and other groups within the particular society. Consent, though not full and continuous, as in peace-keeping, is never wholly absent either.

Although, as just indicated, consent in peace enforcement can never be counted upon, both practice and military doctrine stress the importance of trying to preserve and strengthen whatever consent is present in the theatre of operations. Thus, the cooperation of concerned parties in the fulfilment of mission objectives is solicited through a continuing process of dialogue and discussion designed to enhance trust, promote understanding of the mandate, and resolve problems arising in respect of mandate implementation in the simplest possible way. UNOSOM II, criticized by many observers for its more confrontational tactics, was again the exception among the four peace enforcement operations in this regard. Yet, it must be noted that the largely successful efforts of the three other operations to promote party cooperation invariably relied on the implicit, and occasionally explicit, threat of enforcement action.
The third characteristic of peace enforcement is impartiality, understood as the even-handed implementation of a mandate which does not, in some sense, target a particular faction (as in the cases of no-fly zone and safe areas enforcement in Bosnia-Herzegovina) but is, rather, of general application. "Even-handed implementation" means that the force bases all action on the sole fact of party compliance or non-compliance with the mandate. The peace enforcement operation has no prior bias against or in favour of any faction, but requires simply that each comply, to the same extent, with the terms of the mandate.

Even though a peace enforcement operation is rigorously even-handed in implementing a mandate of general application, it will often affect the prevailing balance of power among the factions or between the factions and other actors in the society, especially where it has to use force against an exceptionally recalcitrant party, as in the case of UNOSOM II. While this does not negate the actual impartiality of the force, it does make it difficult for it to sustain the perception of impartiality from the standpoint of the factions, especially those most affected by its actions. Both UNOSOM II's harsh military campaign against the USC/SNA and SFOR's efforts to back one group of Bosnian Serbs seen as more inclined to cooperate in the implementation of the Dayton accords were, it has been argued, impartial in the sense described above, yet they were not always perceived as such.

Before situating peace enforcement within the wider spectrum of military operations, brief mention should be made of the relationship between the three characteristics of peace enforcement. It is precisely the lack of the full and continuous consent found in peace-keeping which makes an enforcement mandate necessary in the case of the middle ground. Yet, to the extent that a peace enforcement operation succeeds in preserving and strengthening the limited consensual framework present in the theatre of operations, it can, for all practical purposes, dispense with — i.e., hold in reserve — the
actual use of force, though the threat of such use remains a powerful tool for securing party cooperation in the fulfilment of mission objectives. The task of preserving and strengthening the existing consensual framework is, in turn, assisted by a peace enforcement operation's continuing restraint in using force and by its impartiality.

The national military doctrine examined in chapter 6 articulates, with remarkable consistency among the three states studied, a spectrum of military operations which stretches from peace-keeping, at one end, through peace enforcement, in the middle, to a third category of peace operations (according to French doctrine) and war (according to all three doctrines), at the other end of the spectrum.

Peace-keeping, involving the non-use of force except in self-defence, full consent and impartiality, occupies the non-coercive end of this spectrum. At the other end, one finds enforcement operations conducted in the total absence of consent against a pre-determined adversary (no impartiality). Thus, peace enforcement, in a very real sense, occupies a "middle ground". Unlike peace-keeping, but like the opposite end of the spectrum, it involves enforcement; like peace-keeping, but unlike the other end of the spectrum, it is impartial in nature. It occupies a middle ground with respect to consent in that peace enforcement operations are deployed in environments where consent is imperfect (incomplete, artificial and/or unstable), unlike peace-keeping where consent is typically full and continuous or the other end of the spectrum where consent is wholly absent.

While the characteristics of enforcement and impartiality serve as relatively sharp dividing lines between peace enforcement and other kinds of military operation, that of consent may not – at least not within the operational / political framework of the present chapter. Consent has often been less than perfect or stable in peace-keeping. Examples, which are
numerous, include the UNPROFOR and UNTAC missions mentioned in chapter 1. Nevertheless, if the loss or lack of consent in peace-keeping is too great, peace-keeping becomes untenable and, if mission objectives are to be fulfilled, it must be replaced with something else – for example, peace enforcement. No sharp line distinguishes the level of consent needed for peace-keeping, as opposed to peace enforcement, yet the two regimes are distinct. The degree of consent found in any viable peace-keeping operation will exceed that found in peace enforcement.

This scheme, obviously, leaves no room for the mixing of peace-keeping and enforcement action, widely discredited since the disastrous joint UN-NATO mission for the protection of the Bosnian safe areas. Recent practice and the military doctrine do, however, admit the possibility of deliberate transitions between the different categories of peace operations enumerated above.

While our subject of study is, obviously, the mid-point of the military operations spectrum, it is worth commenting briefly on the characteristics of the far end, characterized by the prior designation of an adversary or target. In place of the term "imposition de la paix" ("peace enforcement"), used in French doctrine, we will employ the term "military sanctions" to refer to the third category of peace operations described in that doctrine. There are, in fact, important distinctions to be made between military sanctions and "war" which, until now, we have lumped together at the one end of the spectrum.

Specifically, as described in French doctrine, military sanctions aim, not to destroy a target state or faction, but rather to force a change of behaviour which disrupts international peace and/or violates international law. Examples

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7 See text accompanying notes 48-50, supra.
8 See "Conclusion: The Role of Peace Enforcement", pp. 222-23, infra.
9 Note that former UN Secretary-General Boutros-Ghali and the UN Security Council have both affirmed that the modification of behaviour, not
include bringing an act of inter-state aggression to a halt and preventing a state from committing acts of repression or violence against part of its own population. The means employed for such ends are limited. The use of force is closely tailored to the specific objectives being pursued, while escalation to extreme force levels, especially those involving the use of weapons of mass destruction, is scrupulously avoided.

As outlined in the military doctrine governing peace operations, examined in chapter 6, such constraints do not bind "war" where the aim is the achievement of military victory, including, where necessary, the disabling or destruction of one's adversary. The methods used in war also appear free of the requirement of restraint which controls the use of force in all peace operations (peace enforcement and military sanctions).

An interesting legal question arises with respect to the category of war, namely whether its goals and methods, as defined in contemporary military doctrine, are compatible with international law (jus ad bellum, jus in bello). In the age of the United Nations Charter, governing the recourse to force in international relations, and the Hague and Geneva conventions, governing the conduct of international and internal armed conflict, one would assume that the category of war is no longer valid, leaving military sanctions alone at the end point of our military operations (in fact, peace operations) spectrum. Yet, considering the peripheral nature of this question to our subject, we will leave aside the comprehensive examination of law and military doctrine which would be required to answer it definitively. We will, instead, retain our focus on the middle ground, complementing the definition of peace enforcement offered in this chapter with a determination of its legal basis in the next.

8 THE LEGAL BASIS OF PEACE ENFORCEMENT

Our task in this chapter is to identify the legal basis of the UN Security Council's power to establish and conduct — or authorize others to establish and conduct — peace enforcement operations. Our frame of reference in the course of this enquiry will be the constituent instrument of the United Nations, namely the UN Charter.¹ An Agenda for Peace (June 1992)² was the former UN Secretary-General's response to the request made to him by the Security Council at its summit meeting of 31 January 1992:

to prepare ... his analysis and recommendations on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peace-keeping.¹

As Thierry has noted, this excluded the question of Charter reform from consideration and meant that the proposals made by the Secretary-General, including that for the creation of peace-enforcement units, were to be in conformity with the Charter.⁴

As the definition of peace enforcement enunciated in chapter 7 did not stray, in its fundamentals, from that derived from paragraph 44 of the 1992 Agenda in chapter 1, it is entirely appropriate to take the UN Charter as the framework for our legal analysis. While the Security Council statement quoted above does not predetermine the question of peace enforcement's compatibility with the Charter, we will see, notwithstanding the

² Supra, note 4.
scepticism of some commentators,⁵ that the UN Charter, as it stands, furnishes an entirely adequate legal basis for peace enforcement operations.

Note that our focus will lie, exclusively, with the Security Council. It is no coincidence that all of the military enforcement operations examined in chapters 2 to 5 were established or authorized on the basis of Security Council resolutions. The Council is, in fact, the only UN organ empowered to take enforcement action⁶ for the purpose of maintaining or restoring international peace and security, specifically within the framework of chapter VII of the Charter.

It was the General Assembly which established the First United Nations Emergency Force (UNEF I, 1956-67), typically considered to mark the beginning of UN peace-keeping.⁷ Its power to do so under the Charter was confirmed by the International Court of Justice in its Certain Expenses case⁸ and most probably subsists to this day, though the Security Council has long since

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⁷ Other UN military missions which predated UNEF I, including the United Nations Truce Supervision Organization (UNTSO, established in 1948) and the United Nations Military Observer Group in India and Pakistan (UNMOGIP, established in 1949), are usually put in the separate category of "observer missions". Concerning the "launch date" of UN peace-keeping and the distinction between observer missions and "peace-keeping forces", see: Ratner, supra, note 51, pp. 9-10; Blue Helmets, supra, note 20, pp. 8-9.

had a monopoly on the establishment of peace-keeping forces. Nevertheless, peace-keeping, as already explained, does not involve enforcement action. General Assembly involvement in the enforcement area was effectively ruled out by the International Court in the same case which confirmed its powers in respect of peace-keeping, this notwithstanding the earlier Uniting for Peace resolution wherein the Assembly, under certain conditions, gave itself the power to recommend military enforcement action by member states.

Security Council practice is of little or no help in our search for the Charter basis of peace enforcement. Even during the Cold War, the Security Council showed a marked reluctance to cite specific Charter articles as the basis for its actions, under chapter VII of the Charter, for the maintenance or restoration of international peace and security. Although Security Council activity of this kind increased dramatically following the end of the Cold War, especially during the first half of the 1990s, Council practice has changed little. With rare exceptions, Security Council action under chapter VII in the post-Cold War period has been signalled by a simple acknowledgement of that fact, without more — although there are

9 Recent General Assembly involvement in peace-keeping, broadly defined, has been limited to the authorization of a handful of electoral and human rights missions. See Ratner, supra, note 51, pp. 56 and 63.

10 Certain Expenses, supra, note 710, pp. 164-65 and 171.

11 See GAR 377 (V), 3 Nov. 1950, part A, sec. A.

12 Thus, the Security Council resolutions which established ONUC and defined its mandate (see ch. 2) do not indicate the Force's legal basis. And see: Goodrich, Hambro and Simons, supra, note 708, p. 303; Thomas BRUHA, "Security Council" (IN United Nations: Law, Policies and Practice, ed. by R. Wolfrum and C. Philipp, Dordrecht, The Netherlands, Martinus Nijhoff, 1995), p. 1150.

13 One notable exception is Resolution 660 (2 Aug. 1990), adopted just hours after Iraq's invasion of Kuwait, in which the Council specifies Charter articles 39 and 40 as the legal basis (preambular para. 3) for its demand for an immediate and unconditional withdrawal of Iraqi forces (para. 2).

14 The typical formulation is: "Acting under Chapter VII of the Charter of the United Nations".
instances where not even this is on offer.\textsuperscript{15}

In the face of the Security Council's persistent failure to enunciate the legal basis of its actions under chapter VII, legal scholars, in certain instances, have sought to fill the gap. At this point in our analysis, it becomes necessary to distinguish between those peace enforcement operations which remain under UN command and control, as was the case with UNOSOM II, and those peace enforcement operations which, while authorized by the UN, are commanded by others, specifically: individual states acting alone or in concert with one or two others;\textsuperscript{16} ad hoc coalitions;\textsuperscript{17} or regional organizations such as NATO.\textsuperscript{18} We will first look at UN-conducted peace enforcement operations, leaving the subject of their UN-authorized counterparts for later.

\textbf{UN-CONDUCTED PEACE ENFORCEMENT}

Unfortunately, legal doctrine is of limited help in determining the Charter basis of UN-conducted peace enforcement operations. An initial problem is that legal scholars, like their colleagues in other disciplines, have, to date, failed to identify "peace enforcement" as a distinct category of peace operation. If we consider legal opinion in respect of the broader range of UN-conducted military enforcement operations –

\textsuperscript{15} Freudenschuss identifies two Security Council resolutions, Resolution 665 and 773, both relating to the Iraq-Kuwait conflict, which were not explicitly adopted under chapter VII, but which can hardly be situated elsewhere in the Charter. See Helmut FREUDENSCHUSS, "Between Unilateralism and Collective Security: Authorizations of the Use of Force by the UN Security Council", \textit{European Journal of International Law}, vol. 5(4), 1994, pp. 493-96, 501 and 523.

\textsuperscript{16} – for example, the authorization of the use of force by the United Kingdom for the purpose of enforcing an oil embargo against the former Southern Rhodesia. See SCR 221, 9 April 1966, para. 5.

\textsuperscript{17} – \textit{e.g.}, UNITAF.

\textsuperscript{18} – \textit{e.g.}, IFOR and SFOR.
whether or not these conform to the definition of peace enforce-
ment reached in chapter 7 — we encounter further problems. In
general, legal scholars have paid scant attention to these
operations. In the one case which they have scrutinized closely,
namely ONUC, they do not agree among themselves — not only on
the question of the operation's legal basis, but, more
fundamentally, on the question of whether or not, at some stage,
it involved enforcement action.

There is general agreement in the literature that ONUC, on
the basis of the three initial Security Council resolutions
adopted in July-August 1960, had no enforcement powers. Many
legal scholars deny ONUC ever acquired such powers.\textsuperscript{19} This, as
mentioned in chapter 2, was Secretary-General Hammarskjöld's
view.\textsuperscript{20} It was also the view of the International Court of
Justice.\textsuperscript{21} Much of this opinion turns on the belief that enforce-
ment action cannot be mounted against non-state entities, a
point which will be addressed later in this chapter. For now, it
is sufficient to note that this view was not universally shared,
with several legal scholars, in the face of the authority just
cited, leaning towards the conclusion that, in its later stages,
ONUC did acquire enforcement powers and that these were
necessarily based on Charter article 42 which, alone, empowers
the Security Council to take coercive military action.\textsuperscript{22}

For further examples of UN-conducted military enforcement
operations we have to turn to the post-Cold War period. While
the Gulf War (1990-91) prompted a vigorous, yet inconclusive,
debate among legal scholars concerning the legal basis of the

\textsuperscript{19} See: Higgins, \textit{supra}, note 88, pp. 57-58; Bowett, \textit{supra}, note 119, p. 176
(also pp. 201-03 and 278-79); Simmonds, \textit{supra}, note 110, p. 62.

\textsuperscript{20} See text accompanying notes 121-23 and 153-54, \textit{supra}. See also, Abi-Saab,
\textit{supra}, note 88, pp. 103-04.

\textsuperscript{21} \textit{Certain Expenses}, \textit{supra}, note 710, pp. 166 and 177.

\textsuperscript{22} See: Abi-Saab, \textit{supra}, note 88, pp. 104-06 and 165; Seyersted, \textit{supra}, note
110, p. 140. For the present author's opinion on the question of whether or
not ONUC had enforcement powers, see chapter 2, especially the "Con-
clusion".
measures taken to force Iraq out of Kuwait, it does not form part of our analysis in this section since these operations were authorized, not conducted, by the UN. Unfortunately, since the Gulf War, there has been a pronounced lack of interest on the part of legal scholars in determining the legal basis of UN enforcement action, whether authorized or conducted by the Organization. This undoubtedly stems, at least in part, from the Security Council's tendency, in drafting resolutions under chapter VII of the Charter, to ignore the formal requirements and substantive distinctions embodied in that chapter and in the Charter generally.  

Nevertheless, a few legal scholars have considered the question of the Charter basis of recent UN-conducted military enforcement operations. Bothe has concluded that UNOSOM II was established under article 42. Freudenschuss reaches the same conclusion in respect of both UNOSOM II and UNPROFOR, "[u]nless one requires the fulfilment of all Chapter VII-provisions including the conclusion of Article 43 agreements and the activation of the Military Staff Committee before speaking of UN enforcement action".

Former Secretary-General Boutros-Ghali's assertion, in An Agenda for Peace (1992), that his proposal for "peace-
enforcement units [would] be warranted as a provisional measure under Article 40 of the Charter", \(^{27}\) has also attracted legal comment – though again fairly sparse. As in the case of ONUC, opinion on this issue is divergent. Legal scholars have: agreed with the former Secretary-General that article 40, "broadly interpreted", could furnish the legal basis for his "peace-enforcement units"; \(^{28}\) voiced scepticism that article 40 is a satisfactory basis, though without offering an alternative; \(^{29}\) and rejected article 40 entirely in favour of article 42.\(^{30}\)

To sum up, there is a failure in the legal doctrine to agree on some of the most basic questions of concern to us, including, as in the case of ONUC, the question as to whether specific operations involve enforcement action or not. Yet, the larger problem is arguably a failure to debate such questions at all – especially in the years following the 1990-91 Gulf War, when the UN became much more active in the enforcement realm.

We thus see that neither Security Council practice, nor legal doctrine, nor any other interpretive source offers more than tentative clues as to the legal basis of UN-conducted peace enforcement. The Security Council merely puts us within the framework of chapter VII of the UN Charter. Legal doctrine, though by nature far more specific, is, on the whole, inconclusive, although those legal scholars who have studied UN-conducted military enforcement operations and identified these as such, typically look to article 42 for their legal foundation. At the same time, the former UN Secretary-General, with some support in

\(^{27}\) An Agenda for Peace, supra, note 4, para. 44.

\(^{28}\) Thierry, supra, note 706, p. 382. The original French text, just quoted in translation, reads "largement interprété".


the legal doctrine, has asserted that the "peace-enforcement units", proposed in his 1992 *An Agenda for Peace*, would be based on Charter article 40. In light of these sources, it would appear that we are faced with a choice between articles 40 and 42. Yet, before considering in detail the argument that one or other of these articles provides UN-conducted peace enforcement's legal basis, we will canvass the UN Charter more widely to see if it offers other possibilities.

**Narrowing the Field**

Halderman has argued that a primary, even sufficient, legal basis for the establishment and deployment of UN armed forces, including those of an enforcement nature, is contained in Charter article 1(1):

> The Purposes of the United Nations are:

> 1. 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 the peace, ...  

In fact, article 1(1), as formulated, is sufficiently broad in scope to accommodate military enforcement measures, including peace enforcement operations. At the same time, it appears that nothing in the Charter preparatory works would limit the scope of this provision. Yet, article 1(1) is not a sufficient legal basis for the establishment and deployment of UN armed forces.

The overriding concern of those who drafted chapter 1 of

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the Charter ("Purposes and Principles"), within which article 1 resides, was to prescribe broad limits to the exercise, especially by the Security Council, of those powers assigned elsewhere in the Charter. That chapter 1 was not intended to serve — in fact, cannot serve — as a source of substantive power emerges clearly from the fact that it makes no mention of any UN organ, referring only to "the United Nations" and its "Members". As Bowett has suggested, if we conclude that article 1(1) confers certain powers on the Security Council, then it must follow that it confers these same powers on the UN's other principal organs, such as ECOSOC — which is clearly untenable in light of the attributions of competence made elsewhere in the Charter. At most, article 1(1) tells us that the UN, as a whole, may "take effective collective measures" for the stated purposes. The question of what exact powers specific UN organs may possess along such lines is addressed elsewhere in the Charter.

Having already excluded the General Assembly from our analysis, we necessarily turn to those Charter articles conferring specific powers on the Security Council. We need not consider the possibility that the Council possesses "inherent", "implied", "general" or "residual" powers. These doctrines only

33 See the sources cited ibid., especially Russell, pp. 655-56. And see UN Charter, art. 24(2).

34 See Bowett, supra, note 119, p. 179.

come into play where the Charter does not make specific provision for the activity under consideration, which, as we will see, is not the case with UN-conducted peace enforcement.

Within chapter VII of the Charter, we can eliminate from consideration articles 48(1) and 49. Article 48(1) basically "reaffirms", within the framework of chapter VII, the obligation of member states "to accept and carry out the decisions of the Security Council" under Charter article 25, while specifying, probably unnecessarily, that the Council may require only selected member states, as opposed to the entire membership, to carry out certain decisions.

As for article 49, whatever one thinks of the clarity of the text, its core meaning is not much in dispute — member states are to assist each other in implementing "measures decided upon by the Security Council", whether they are directly mandated with such implementation or not. While the practical significance of article 49 appears rather less certain, especially when considered in relation to article 43, the main points of controversy concern article 49's relationship with

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38 See: Eisemann, supra, note 738, p. 751; Bryde, ibid., pp. 652-53.


41 Compare: Eisemann, ibid., p. 759; Bryde, ibid., p. 657.
articles 25 and 50 of the Charter.  

These debates need not detain us here. Neither article 49 nor article 48(1) provide a legal basis for the establishment, by the Security Council, of a military force, whether mandated for enforcement or not, since, on any interpretation, they govern only the modalities of implementation of Security Council decisions (art. 48(1)) or measures (art. 49) taken on the basis of other chapter VII provisions. They do not provide independent, or even supporting, authority for the taking of these decisions or measures. 

This process of elimination leaves us with three articles, all situated within chapter VII, as potential legal bases for UN-conducted peace enforcement.

**Article 39**

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and

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43 Pursuant to the interpretation of the two provisions suggested here, article 48(1) would only involve legally binding "decisions of the Security Council", such as those imposing economic sanctions under article 41, whereas article 49 would apply to all "measures decided upon by the Security Council", whether legally binding or not. The words "decided upon" in the latter provision would simply refer to the formal Council voting procedure, set out in Charter article 27. Although only article 48(1) is clear on this point ("decisions ... for the maintenance of international peace and security"), both provisions would apply solely within the framework of chapter VII. Note that the French text of article 49 ("mesures arrêtées") supports the argument that the "measures" referred to in the English version of that provision are different from the "decisions" ("décisions") mentioned in article 48(1). Eisemann, however, asserts that they are one and the same (*ibid.*, pp. 760-61). On the distinction between "binding and nonbinding decisions" and its application to article 48(1), see Schachter, supra, note 737, p. 463 (n. 31).

44 On this point, with respect to article 48(1), see: Bowett, supra, note 119, pp. 284-85; Bryde, *supra*, note 739, p. 652.
shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

One key aspect of article 39 is procedural in nature; this provision, which opens chapter VII, defines the circumstances in which the other provisions of chapter VII apply. Before taking any action under this chapter, the Security Council must determine that the situation under consideration constitutes a "threat to the peace, breach of the peace, or act of aggression". Clearly, this requirement must also be met where the Security Council, exercising the substantive powers conferred upon it within the framework of chapter VII, decides to establish a peace enforcement operation. At issue here is whether article 39 furnishes, in whole or in part, a substantive basis for peace enforcement.

In addition to its procedural significance, article 39 also has substantive importance, deriving, specifically, from the following passage of the article's English text:

The Security Council ... shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.\footnote{Note however that, in practice, the Security Council has often failed to make such a determination, at least explicitly. For several recent examples, see Freudenschuss, supra, note 717, p. 523. Concerning the question of whether an "implicit determination" suffices for the purposes of article 39 and what, exactly, such a determination would involve, see: Gérard COHEN JONATHAN, "Article 39" (DANS La Charte des Nations Unies, supra, note 738), pp. 651 and 653-54; Jochen Abr. FROWEIN, "Article 40" (IN The Charter of the United Nations, supra, note 112), p. 618; Jochen Abr. FROWEIN, "Article 42" (IN The Charter of the United Nations, supra, note 112), p. 631.}

\footnote{45} Note however that, in practice, the Security Council has often failed to make such a determination, at least explicitly. For several recent examples, see Freudenschuss, supra, note 717, p. 523. Concerning the question of whether an "implicit determination" suffices for the purposes of article 39 and what, exactly, such a determination would involve, see: Gérard COHEN JONATHAN, "Article 39" (DANS La Charte des Nations Unies, supra, note 738), pp. 651 and 653-54; Jochen Abr. FROWEIN, "Article 40" (IN The Charter of the United Nations, supra, note 112), p. 618; Jochen Abr. FROWEIN, "Article 42" (IN The Charter of the United Nations, supra, note 112), p. 631.

\footnote{46} Note that the same passage in the French version of the text lacks the two commas: "Le Conseil de sécurité ... fait des recommandations ou décide quelles mesures seront prises conformément aux Articles 41 et 42 pour maintenir ou rétablir la paix et la sécurité internationales."
With its two commas, this text ties the Security Council's power of decision to articles 41 and 42 alone, leaving it a general power of recommendation under chapter VII which is limited only by the purpose of maintaining or restoring international peace and security. We will reserve for later the question of whether the Security Council's power of decision is really limited, within chapter VII, to articles 41 and 42, specifically when we consider the extent of the Security Council's powers under article 40. For now, we merely need to determine whether the Council's general, chapter VII power of recommendation, suggested by the English text of article 39, could provide a legal basis for peace enforcement.

It has been argued in the literature that the Security Council can set up a military force on the basis of recommendations made under article 39. Yet, we need not consider the merits of this claim as it is not relevant to the scenario presently under scrutiny — that of a UN-conducted peace enforcement operation. While the establishment of a UN-conducted force could be accompanied by a Security Council recommendation to member states to contribute troops and/or equipment to it, the establishment of the force itself would be effected, not through a recommendation, but rather, as it is a UN force, through a decision directing the UN Secretary-General or some other UN body, such as the Military Staff Committee (article 47), to carry out the steps needed to set up and eventually deploy the force. To conclude therefore, article 39 does not provide a legal basis for UN-conducted peace enforcement.

Before embarking upon a detailed consideration of articles

40 and 42 as possible legal bases of peace enforcement, a brief reiteration of the latter's main features is in order. First, peace enforcement, whether it encompasses a more specifically humanitarian mission or not, always involves, as its basic aim, the restoration and/or preservation of peace. It has three main characteristics: its enforcement nature; its employment in environments of imperfect consent; and impartiality, understood as the even-handed implementation of a mandate which is of general application.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Turning now to article 40, dealing with provisional measures, we find a remarkable similarity between the basic purpose of these measures, "to prevent an aggravation of the situation," and the basic ends of peace enforcement mentioned above, especially where one assumes that "the persistence of hostilities is always an aggravation in the sense of Art.40". Indeed, as applied by the Security Council, provisional measures, like peace enforcement, have been designed to bring hostilities to a halt and pave the way to a lasting peace.

Typical examples of provisional measures adopted by the

Security Council include⁴⁹ Security Council directives to belligerents to respect agreed cease-fires or otherwise cease hostilities,⁵⁰ to withdraw their forces from the zone of conflict,⁵¹ and to negotiate with a view to the peaceful resolution of their differences.⁵² Provisional measures may also take the form of Security Council directives to other states to refrain from any action which could contribute to the aggravation of the conflict⁵³ and, arguably, the imposition, by the Council, of embargoes on the delivery of weapons and military equipment to the belligerents.⁵⁴

The second-to-last sentence of article 40 articulates a second, key characteristic of provisional measures and another point of correspondence with peace enforcement:

⁴⁹ Note that the following list is by no means exhaustive. Pursuant to the terms of article 40, the Security Council has virtually unlimited freedom to adopt whatever provisional measures "it deems necessary or desirable" to achieve the basic purpose already described. Goodrich, Hambro and Simons, supra, note 708, p. 308. Denys SIMON, "Article 40" (DANS La Charte des Nations Unies, supra, note 738), p. 680. For further examples of provisional measures and associated Security Council resolutions, see Simon, pp. 680-81.


⁵² See: SCR 502, 3 April 1982, para. 3; SCR 598, 20 July 1987, para. 4; SCR 660, 2 Aug. 1990, para. 3; SCR 713, 25 Sept. 1991, para. 5. Note that such measures may also be seen as falling under chapter VI of the UN Charter, relating to peaceful dispute settlement. Concerning the Security Council's power to recommend provisional measures under chapter VI, see Goodrich, Hambro and Simons, supra, note 708, pp. 278-79 and 305.


⁵⁴ See: SCR 713, 25 Sept. 1991, para. 6; SCR 733, 23 Jan. 1992, para. 5. Note, however, that some legal scholars have persuasively argued that arms embargoes actually fall under article 41 of the Charter, as opposed to article 40. See: Combacau, supra, note 725, pp. 152-53; Kooijmans, supra, note 731, pp. 295-96.
Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned.

Implicit in the "without prejudice" clause is the notion of impartiality. Yet, before concluding that impartiality in article 40 and peace enforcement are one and the same, we need to examine this provision in some detail.

On one interpretation, the "without prejudice" clause merely prevents the Security Council from taking measures which would affect the parties legal rights. Yet, as written, the clause goes much further than this. It refers, not only to the "rights ... of the parties concerned", but also their "claims, or position". Moreover, the text suggests that it is not simply the purpose of provisional measures which matters, but also their actual effect: "Such provisional measures shall be without prejudice ..." (emphasis added). As we have seen, peace enforcement, though impartial in its means (even-handed implementation ...) and ends (... of a mandate of general application), is not necessarily impartial in its effects.

It has been pointed out that the broader interpretation of the "without prejudice" clause, though faithful to the actual wording of the provision, would deprive article 40 of any practical value. Indeed, even the most characteristic type of provisional measure, namely an order for the cessation of hostilities, will, in practice, often prove disadvantageous to one or other of the parties concerned.

Strictly speaking, by its terms, article 40 demands a tradeoff between the realization of the purpose of provisional measures, "to prevent an aggravation of the situation," and the requirement that these measures be "without prejudice". Clearly,


56 Kelsen, supra, note 737, p. 743.

57 Simon, supra, note 751, p. 685.
the restoration and/or preservation of peace will almost always adversely affect the military and/or political "position" of one or more of the parties concerned.58

In practice, the Security Council has not allowed difficulties of this kind to hinder its action under article 40, rejecting, in effect, strict adherence to the "without prejudice" clause. As applied by the Security Council, provisional measures are not impartial in their effects.59 One could argue, further, that, in contrast to peace enforcement, they are not always impartial in their ends either. A good example of this would be those orders addressed by the Security Council to only one party to withdraw their troops from disputed territory.60 In any case, it is clear that the requirement of impartiality enunciated in article 40, as interpreted by the Security Council, is not so strict so as to preclude the application of article 40 to peace enforcement.

As noted previously, former UN Secretary-General Boutros-Ghali, in outlining, in An Agenda for Peace, his proposal for "peace-enforcement units", indicated that these should be considered provisional measures, established pursuant to article 40 of the Charter.61 Although this assertion is not explained, it appears to derive from the fact that the only function of the "peace-enforcement units" specifically mentioned in Agenda, paragraph 44 is the restoration and maintenance of a cease-fire, itself one of the most characteristic forms of provisional

58 See: Goodrich, Hambro and Simons, supra, note 708, p. 308; Simon, supra, note 751, p. 685.


60 Examples include SCR 502, 3 April, 1982, para. 2 (ordering the withdrawal of Argentine forces from the Falkland / Malvinas Islands) and SCR 660, 2 Aug. 1990, para. 2 (ordering the withdrawal of Iraqi forces from Kuwait). Legal scholars typically see such measures as provisional measures, even where, as in SCR 502, article 40 is not stated as the legal basis. See: Simon, supra, note 751, p. 681 (n. 1); Frowein, "Article 40", supra, note 747, p. 619.

61 See An Agenda for Peace, supra, note 4, para. 44, second-to-last sentence.
measure.

This notion that mechanisms set up to oversee party compliance with provisional measures are themselves provisional measures, more specifically "second degree" provisional measures, has been advanced in the legal doctrine. Peace-keeping operations arguably fall into this category. In any case, article 40 is often cited in the legal doctrine as a possible, even preferred, legal basis for UN peace-keeping. As noted earlier, peace-keeping, like peace enforcement, is impartial. Moreover, it seems clear that peace-keeping, in general, has the same conflict-dampening rationale as peace enforcement — preserving, though not itself restoring, peace over the short-, medium- and long-term.

Nevertheless, as previously noted, the differences between the two types of peace operation are fundamental. The full and continuous consent, necessary to peace-keeping, is typically lacking in peace enforcement, even though some degree of consent to the operation exists. Underlying this difference is another — probably the key point of distinction between them. Peace enforcement, in contrast to peace-keeping, involves the use of

63 See Simon, supra, note 751, pp. 681-82.
64 See: Bowett, supra, note 119, p. 283; Higgins, supra, note 88, vol. IV, 1981, p. 144; Abi-Saab, supra, note 88, p. 103 (n. 163). Support for this conclusion can be found in the Certain Expenses case, wherein the International Court of Justice states: "Articles of Chapter VII of the Charter speak of 'situations' as well as disputes, and it must lie within the power of the Security Council to police a situation even though it does not resort to enforcement action against a State." Supra, note 710, p. 167. Note that the only article in chapter VII which employs the word "situation" is article 40. The point is also valid for the French versions of the International Court's judgement (p. 167) and the UN Charter ("situation"). For an overview of the debate concerning peace-keeping's legal basis, see: Ratner, supra, note 51, pp. 56-57; Eric SUY, "Peace-keeping Operations" (IN A Handbook on International Organizations, ed. by R.-J. Dupuy, Dordrecht, The Netherlands, Martinus Nijhoff, 2nd ed., 1998), p. 544.
65 Concerning the somewhat different functions of "first" and "second generation" peace-keeping, see text accompanying note 58, supra.
force beyond that for self-defence. It is this characteristic which also tends to distinguish peace enforcement, viewed as a "second degree" provisional measure, from the "first degree" provisional measures whose implementation it is mandated to enforce.

While provisional measures may take the form of binding Security Council decisions, as well as non-binding recommendations, this is not enforcement. The failure of certain parties to comply with binding Security Council decisions under article 40 may lead the Council to take enforcement measures for the purpose of securing compliance with the same, as suggested in the last sentence of article 40:

The Security Council shall duly take account of failure to comply with such provisional measures.67

Yet, the Security Council has no basis for taking enforcement action under article 40 itself.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other

66 The legal doctrine, though not unanimous, solidly backs this conclusion. See: Kelsen, supra, note 737, pp. 740-41; Bowett, supra, note 119, pp. 281-82; Simon, supra, note 751, pp. 686-88; White, supra, note 749, p. 90; Frowein, "Article 40", supra, note 747, pp. 620-21; Jean COMBACAU et Serge SUR, Droit international public (Paris, Montchrestien, 3e éd., 1997), p. 650. Note that the Security Council, since its earliest days, has assumed it has the power to take binding decisions under article 40. See, for example: SCR 54, S/902, 5 July 1948, paras. 2, 5 and 8; SCR 598, 20 July 1987, para. 1; SCR 660, 2 Aug. 1990, para. 2. Concerning the mandatory intent behind the latter provision, see also SCR 678, 29 Nov. 1990, pream. paras. 2 and 4.

67 And see Simon, supra, note 751, pp. 688-89.
operations by air, sea, or land forces of Members of the United Nations.

As indicated earlier, legal doctrine, to the extent it has dealt with the question at all, tends to look to article 42 for the legal basis of UN-conducted military enforcement operations. This is entirely logical since, under the Charter, only article 42 confers on the Security Council explicit authority to take military action for the purpose of maintaining or restoring international peace and security. There can be little doubt that the "action by air, sea, or land forces" that article 42 refers to is coercive military action, i.e. the use of armed force beyond that for self-defence. Which is to say that article 42, uniquely, captures two crucial characteristics of peace enforcement operations: their enforcement nature and their employment in environments of imperfect consent.

Nevertheless, there are two arguments which, if accepted, would rule out article 42 as a possible legal basis of UN-conducted peace enforcement. The first would deny article 42 any applicability as a result of the failure of UN member states to conclude, pursuant to article 43, "special agreements" for the provision of armed forces and other forms of assistance to the Security Council when it takes action for the maintenance of international peace and security, while the second would limit article 42's applicability to interstate, as opposed to intrastate, conflict.

In the absence of article 43 agreements, it appears clear that the Security Council cannot oblige UN member states to supply armed forces for military enforcement action under article 42. Yet, can it be said that such action can only be


conducted through the mechanisms sketched out in articles 43 to 47 of the Charter? This was the prevailing view in the UN's early days, held by UN member states\(^{70}\) and many others,\(^{71}\) though both former UN Secretary-General Hammarskjöld and the International Court of Justice kept the question of article 42's potential applicability open.\(^{72}\) There are those who continue to believe that, without any article 43 agreements, the Security

161-62; Goodrich, Hambro and Simons, supra, note 708, p. 316; Schachter, supra, note 7, p. 394; Rosalyn HIGGINS, Problems and Process: International Law and How We Use It (Oxford, Clarendon Press, 1994), pp. 265-66; Frowein, "Article 42", supra, note 747, p. 633. Of course, if the Security Council army to be established in accordance with article 43 was fully internationalized, in the sense of remaining continuously under Security Council command and control, then there would be no need for the Council to direct member states to provide the forces and other forms of assistance agreed under article 43 for specific operations. Yet, this is only one possible means of organizing such a force. If the relevant forces remained under national command and control, except when participating in specific UN operations, then the Security Council would need to issue binding directives to those states which had concluded article 43 agreements to make their agreed contribution or some part thereof for the operation in question (thus transferring command and control over the relevant forces to the Security Council). In fact, the latter scenario seems to be the one envisaged in article 43, which refers to the provision of forces and other assistance to the Security Council "on its call" (para. 1). For additional comment concerning the type of force organization contemplated in articles 43-47, see: Goodrich, Hambro and Simons, pp. 317-18 and 328; Kelsen, supra, note 737, pp. 748 and 762-68.

\(^{70}\) Western nations and their East bloc rivals shared the view that the failure to conclude the article 43 agreements rendered action under article 42 impossible, although they disagreed on the broader consequences of this failure. While the West believed that other forms of military action outside the framework of article 42, such as peace-keeping, were still possible, the Soviet Union and its allies insisted that the Security Council could take no military action of any kind. See: Higgins \textit{ibid.}, pp. 263-64; Seyersted, supra, note 110, pp. 129-30 and 163; Goodrich, Hambro and Simons, supra, note 708, p. 316. But see Frowein, "Article 42", supra, note 747, p. 633.

\(^{71}\) See: Kelsen, supra, note 737, pp. 756-57; Seyersted, supra, note 110, p. 130; Schachter, supra, note 7, p. 393 (n. 13).

\(^{72}\) The point is made by Higgins, supra, note 771, pp. 264-65. See: A/3302, 6 Nov. 1956, paras. 9-10; A/3943, 9 Oct. 1958, para. 155; \textit{Certain Expenses}, supra, note 710, pp. 165-67. Note that the International Court rejected the theory of article 43 linkage, but only with respect to peace-keeping. It did not consider the question in relation to UN military enforcement operations.
Council cannot act on the basis of article 42. Nevertheless, since the UN's early years, the legal doctrine has swung decisively behind a reading of article 42 which affirms its autonomy from articles 43-47.

The best support for the theory of article 42/43 linkage is provided by article 106 of the Charter, dealing with "transitional security arrangements", specifically the first words of the provision:

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, ...

The arguments against linkage are, however, far stronger. As several legal scholars have pointed out, the provisions which are supposed to be linked contain no language which would indicate this. In fact, "[t]he wording of Article 42 is broad, leaving open both the method of recruiting the Forces and the precise nature of their command." Thus, the last sentence of article 42, which envisages "action ... by air, sea, or land forces of Members of the United Nations", would appear to involve forces independent of those to be put at the disposal of

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the Security Council pursuant to article 43.\textsuperscript{77}

Nor is the theory of linkage supported in the Charter preparatory works.\textsuperscript{78} It is submitted, rather, that the latter indicate quite clearly that the Security Council's use of its enforcement powers under article 42 did not depend on the conclusion of article 43 agreements \textit{per se}, but merely on the Council's acquisition of such capacity as would enable it to take enforcement action – whether by the means outlined in article 43 or through some other mechanism.\textsuperscript{79}

The assessment as to whether or not the Security Council had such capacity rested with the Council itself. It was to determine when its authority under article 106 terminated and its powers under article 42 became effective.\textsuperscript{80} In light of the practice described elsewhere in the dissertation – including, in particular, the UN-conducted military enforcement operations in the Congo (ONUC) and Somalia (UNOSOM II) – it seems safe to conclude that the Security Council has, at least implicitly, determined that it has the capacity to act under article 42.\textsuperscript{81}

\textsuperscript{77} See Frowein, "Article 42", \textit{supra}, note 747, p. 633. This point will be developed further in the section of the chapter dealing with UN-authorized peace enforcement operations, \textit{infra}.

\textsuperscript{78} See: Amerasinghe, \textit{supra}, note 734, pp. 90-91 and 100; Seyersted, \textit{supra}, note 110, pp. 130 and 131 (n. 20).


\textsuperscript{80} This is reflected in the first words of article 106: "... as in the opinion of the Security Council ...". Concerning this phrase, see: \textit{UNCIO Documents}, vol. 12, pp. 651-52 (Doc. WD 68 (Engl.), III/3/A/2, 1 June 1945); \textit{idem}, vol. 12, pp. 419-21 (Doc. 765 (Engl.), III/3/39, 3 June 1945); \textit{idem}, vol. 12, pp. 533-37 (Doc. 1089 (Engl.), III/3/49, 19 June 1945 and Doc. 1104 (Engl.), III/3/49 (1), 20 June 1945); \textit{idem}, vol. 11, p. 189 (Doc. 1150 (Engl.), III/12, 22 June 1945); Russell, \textit{supra}, note 734, pp. 682-83.

\textsuperscript{81} It is submitted that the broad wording of article 106, specifically the phrase "as in the opinion of the Security Council", would allow the necessary Security Council determination to be implicit in the sense that it would follow from a series of Council decisions to take military enforcement action in specific cases. The assumption that the Security Council can take enforcement action under article 42 is, in fact, reflected
A second argument which, if accepted, would largely rule out article 42 as the Charter basis for peace enforcement is that enforcement action under the Charter is to be conducted only against states and, as such, can have little or no application to internal conflicts. Probably the most important formulation of this position is to be found in the Certain Expenses case:

it can be said that the operations of ONUC did not include a use of armed force against a State which the Security Council, under Article 39, determined to have committed an act of aggression or to have breached the peace. The armed forces which were utilized in the Congo were not authorized to take military action against any State. The operation did not involve 'preventive or enforcement measures' against any State under Chapter VII and therefore did not constitute 'action' as that term is used in Article 11.  

The phrase "preventive or enforcement measures", used by the Court, is in fact taken from Charter article 50 which expressly associates such measures with states. It is also claimed in the doctrine that the Charter preparatory works justify a narrow reading of enforcement action under chapter VII.

There is a strange inconsistency in the Court's line of

in a wide range of UN practice, both old and new. See: Schachter, supra, note 7, pp. 393-94; Frowein, "Article 42", supra, note 747, pp. 633-34; Franck, supra, note 777, pp. 300-04.

82 Certain Expenses, supra, note 710, p. 177. And see p. 166.

83 The relevant phrase reads: "If preventive or enforcement measures against any state are taken by the Security Council, ...".

84 See Miller, supra, note 103, p. 8. The present author was unable to assess the merits of Oscar Schachter's claim (writing under the name "E.M. Miller") since the references he provides to the relevant Charter preparatory works - specifically, "12 U.N.C.I.O. Docs. 334 et seq., 580-581" - are incorrect.
argument in *Certain Expenses*. In advance of the passage quoted above, the Court determined that the limitation on the powers of the General Assembly contained in the last sentence of Charter article 11(2) applied only where the "action" in question was "coercive or enforcement action." 85 Such action, the Court stated:

> is solely within the province of the Security Council ... [i.e.]
> that which is indicated by the title of Chapter VII of the
> Charter, namely 'Action with respect to threats to the peace,
> breaches of the peace, and acts of aggression'. 86

In determining, 12 pages later in the judgement, that ONUC's military operations did not involve "action" within the meaning of article 11(2), the Court dropped one of the three grounds just cited for Security Council action under chapter VII, namely "threats to the peace". 87 The Court, in effect, derived its conception of enforcement action exclusively from the two other grounds enumerated in article 39 — "breaches of the peace" and "acts of aggression" — both of which contemplate interstate conflict, in contrast to "threats to the peace" which, as will now be explained, can encompass both intra- and interstate conflict. 88

> Article 39 in fine indicates that, within the framework of chapter VII, the Security Council acts "to maintain or restore international peace and security" (emphasis added). 89 Arguably then, each of the specific grounds for Security Council action under chapter VII, set out in the first part of article 39, should be read in this light; the relevant prerequisites for Council action are, in effect, a threat to international peace,

85 *Certain Expenses, supra*, note 710, p. 164. And see pp. 165 and 171.

86 *Certain Expenses, supra*, note 710, p. 165.

87 See quoted passage accompanying note 784, *supra*.

88 The following argument is derived from Kelsen, *supra*, note 737, pp. 19 and 731.

89 In the same vein, see Charter article 1(1).
breach of international peace, or act of international aggression. Where a breach of the peace or act of aggression is "international" in nature, it would have to involve at least one state, usually two. Yet, it seems clear that a threat to international peace may arise from intrastate, as well as interstate, conflict. In fact, nothing in the Charter limits the Security Council's discretion to determine that a situation of a purely internal nature poses a threat to international peace.\footnote{Recent examples of such a determination include: SCR 794, 3 Dec. 1992, 3rd pream. para. (Somalia); SCR 864, 15 Sept. 1993, sec. B, 4th pream. para. (Angola). Note that article 2(7) explicitly exempts chapter VII enforcement measures from its prohibition of UN intervention in the internal affairs of states. And see: Seyersted, supra, note 110, p. 139; Abi-Saab, supra, note 88, p. 104 (n. 165). Concerning the Security Council's broad interpretation of the notion of a threat to international peace, see: Higgins, supra, note 771, pp. 254-57; Jochen Abr. Frohwein, "Article 39" (IN The Charter of the United Nations, supra, note 112), pp. 609 and 611-12.}

Thus, the International Court's narrow conception of enforcement action appears quite arbitrary, largely the result of it shunting aside the first ground for Security Council action under chapter VII ("threat to the peace"). There is, really, nothing in the text of the Charter which justifies a narrow definition of enforcement action. Article 50, which, as previously mentioned, also seems to have pushed the International Court in this direction, addresses the distinct problem of compensating individual states for economic hardship resulting from the imposition of "preventive or enforcement measures" — in particular, economic sanctions — on another state.\footnote{Fischer, supra, note 776, p. 713.} Of far greater relevance to the question of enforcement action under the Charter are articles 39, 41 and 42; yet, these nowhere suggest that the Security Council cannot take enforcement action against non-state entities.\footnote{Abi-Saab, supra, note 88, p. 104 (n. 165). And see: Bowett, supra, note 119, p. 278; Seyersted, supra, note 110, p. 139.}

Not only does a narrow interpretation of enforcement action jar with the plain meaning of the relevant Charter provisions,
it is also at odds with much of the legal doctrine\textsuperscript{93} and, crucially, Security Council practice, both during the Cold War and since.\textsuperscript{94} It appears clear, then, notwithstanding claims to the contrary, that the Security Council can take military enforcement action against non-state entities on the basis of article 42. Which means that article 42 can indeed serve as a legal basis for UN-conducted peace enforcement.

\textit{Conclusion}

As we have seen, both article 40 and article 42 capture key features of peace enforcement. Article 40 captures the conflict-dampening ends of peace enforcement, along with the crucial characteristic of impartiality. Article 42 provides the indispensable legal foundation for the enforcement nature of these operations, together with the typically flawed consensual environment they work within. Note that there is no overlap. Each article captures a different set of characteristics. Only when put together do they provide a complete portrait of peace enforcement.

Thus, the question arises as to whether both articles 40 and 42 can supply peace enforcement's legal basis. The first

\textsuperscript{93} See: Kelsen, \textit{supra}, note 737, pp. 19 and 731; Seyersted, \textit{supra}, note 110, pp. 139-40; Abi-Saab, \textit{supra}, note 88, p. 104 (n. 165).

\textsuperscript{94} Concerning the Cold War period, see: Fischer, \textit{supra}, note 776, pp. 713-14; Peter KOOIJMANS, "The Security Council and Non-State Entities as Parties to Conflicts" (IN \textit{International Law: Theory and Practice – Essays in Honour of Eric Suy}, ed. by K. Wellens, The Hague, Martinus Nijhoff, 1998), pp. 334-35. Note that the two UN-conducted military enforcement operations examined earlier in the dissertation – in the Congo (ONUC) and Somalia (UNOSOM II) – both involved internal conflicts. Note also that the Security Council has imposed arms embargoes and other sanctions on non-state entities in the context of several internal conflicts during the post-Cold War period, including those in Angola, Liberia, Rwanda, Somalia, and the former Yugoslavia. For details, see: Kooijmans, pp. 335-37; Farid Wahid DAHMANE, "Les mesures prises par le Conseil de Sécurité contre les entités non-étatiques", \textit{African Journal of International and Comparative Law}, vol. 11(2), June 1999. And see note 792, \textit{supra}. 


sentence of article 40 suggests that the two types of measure are not to be combined:

the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. [emphasis added]

Yet, despite such wording, the Charter preparatory works make it clear that provisional measures and enforcement measures can be applied simultaneously.\(^{95}\) If these measures can be simultaneous, there is no reason why they cannot be combined within the framework of a single initiative, i.e. a peace enforcement operation.

Note that there is no incompatibility of a legal nature inherent in such a combination. Nothing in article 42 or elsewhere in the Charter precludes the Security Council from taking military enforcement action which is impartial in the sense previously described in relation to peace enforcement.\(^{96}\) At the same time, it is clear, both from the text of article 42 and the preparatory works, that while the Security Council must, at least implicitly, determine that economic sanctions would not be adequate to the task at hand, it need not actually impose such sanctions before taking military enforcement action under article 42.\(^{97}\)

Yet, while a UN-conducted peace enforcement operation would derive its legal basis from both articles 40 and 42 of the Charter, the two types of measure remain, even in this context,

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\(^{97}\) See: *UNCIO Documents*, vol. 18, p. 243 (Doc. WD 194 (Engl.), CO/83 (1), 5 June 1945); *idem*, vol. 17, p. 74 (Doc. WD 256 (Engl.), CO/107, 10 June 1945); *idem*, vol. 18, p. 244 (Doc. WD 330 (Engl.), CO/83 (2), 15 June 1945); *idem*, vol. 17, p. 153 (Doc. WD 442 (Engl.), CO/206, 5 Sept. 1945); *idem*, vol. 11, p. 234 (Doc. 1170 (Engl.), III/13, 23 June 1945).
conceptually distinct. Pursuant to article 40, the Security Council, in effect, orders the parties to the conflict to comply with specified provisional measures. These will often, yet not always, take the form of a comprehensive peace settlement that the parties themselves will have agreed to. In any case, these measures will necessarily share the conflict-dampening rationale implicit in article 40 and intrinsic to all the peace enforcement missions examined earlier in the dissertation. On the basis of article 42, party compliance with these measures is to be secured, if necessary, through the use of armed force beyond that for self-defence; at the outset of its mission, the peace enforcement operation will be authorized to take military enforcement action for this purpose.

This way of conceptualizing the combination of articles 40 and 42 within the framework of a single, albeit complex, Security Council initiative is entirely consistent with post-Cold War Security Council practice in the enforcement realm generally — where non-compliance with a Security Council decision leads directly to the imposition of enforcement, including military enforcement, measures, often within the scope of a single Council resolution. As noted previously, in its last sentence, article 40 itself suggests such a two-step approach.

UN-AUTHORIZED PEACE ENFORCEMENT

98 See Combacau, supra, note 725, pp. 150–51. Note that the basis for enforcement action in these cases, which include resolutions adopted against Iraq (1990) and Libya (1992-93), is not non-compliance with the Security Council decision per se, but rather the Council’s assessment that such non-compliance constitutes a threat to the peace, breach of the peace or act of aggression (article 39). On this point, see Kelsen, supra, note 737, p. 294.

99 See text accompanying note 769, supra.

100 Acknowledgement: The seminar paper of a fellow student at the Graduate Institute of International Studies (Geneva) served as a useful introduction to the subject matter of this section: Sarah HEATHCOTE, "The Nature of
To this point, we have been considering the specific legal basis of UN-conducted peace enforcement operations. In fact, among the four peace enforcement operations identified as such in chapter 7, only one, UNOSOM II, was conducted by the UN and, as noted earlier,\textsuperscript{101} even in this case, effective UN command and control was incomplete. The three other peace enforcement operations, while authorized and mandated by the UN Security Council, were under the operational control of an \textit{ad hoc} coalition (UNITAF) or regional organization (NATO, in the case of IFOR and SFOR).

Military enforcement action of this kind pushed the UN-conducted variety firmly to the sidelines during the 1990s, where it will likely remain for the foreseeable future as a result of the UN's continuing institutional and financial limitations\textsuperscript{102} and, above all, UN member states' deep-rooted reluctance to surrender sovereignty in the security realm. The question of the legal basis of UN-authorized peace enforcement is thus of considerable practical importance.

At first glance, it appears that articles 40 and 42 empower the Security Council, alone, to take the measures described therein:

\begin{quote}
[Article 40:] ... the Security Council may ... call upon the parties concerned ...
\end{quote}

\begin{quote}
[Article 42:] Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action ... [emphasis added]
\end{quote}

\textbf{Forcible Measures under Article 42 of the Charter and the Legality of the Practice of 'Contracting Out' these Measures to Member States, Coalitions or Regional Arrangements" (1996).}

\textsuperscript{101} See text accompanying notes 213-14, \textit{supra}.

\textsuperscript{102} – as acknowledged by the UN itself. See: \textit{Agenda Supplement, supra}, note 1, para. 77; \textit{Le Secrétaire général souligne le rôle majeur joué par l'ONU dans l'émergence des nouvelles règles du droit international} (Service de l'information de l'ONU (Genève), Communiqué de presse SG/SM/95/63/Rev.1, 22 mars 1995), p. 6.
It is, therefore, far from clear that these articles can provide the legal basis for UN-authorized peace enforcement operations. In considering other possibilities suggested by Security Council practice and legal doctrine, we will use a broad canvas; our focus will be on all military enforcement action authorized by the UN ("permissive enforcement"), whether or not such action conforms to the definition of peace enforcement set out in chapter 7.

As previously noted, the Security Council has consistently refrained from indicating the specific legal basis of its chapter VII enforcement actions. Article 39 was mentioned by the UK representative in the discussions preceding the Council's adoption of a key resolution in the Korean Crisis (1950-53). Yet, neither article 39, nor any other Charter provision, was mentioned in the three resolutions which formed the basis for the UN-sponsored military intervention in that country.

Security Council resolutions authorizing military enforcement action in the post-Cold War period have typically cited chapter VII, in general, as the legal basis. On rare occasions, where regional organizations have been involved in their implementation, chapter VIII of the Charter has also been mentioned in these resolutions.

The legal doctrine has tried to pin down the Charter basis of permissive enforcement with greater precision, yet has failed to reach anything remotely resembling a consensus on the matter.

103 See: Bowett, supra, note 119, p. 276; Seyersted, supra, note 110, pp. 129-30; White, supra, note 749, p. 106.


Article 51 has frequently been cited as the legal basis of the Korean\textsuperscript{107} and Persian Gulf\textsuperscript{108} interventions. Yet, article 51 presupposes a predetermined adversary and, as such, can have no application to peace enforcement which is necessarily impartial.

Other legal bases cited in respect of permissive enforcement which can be ruled out from further consideration include article 41,\textsuperscript{109} article 48,\textsuperscript{110} and article 106.\textsuperscript{111} While the relevance of the doctrine of implied powers ought not to be rejected at this stage, we will not need to invoke the doctrine of general or residual Security Council powers, whether based on Charter article 24(1)\textsuperscript{112} or on chapter VII as a whole,\textsuperscript{113} unless


\textsuperscript{109} Higgins has suggested that Security Council resolutions authorizing member states to use force for the purpose of ensuring compliance with mandatory economic sanctions can be based on article 41, like the sanctions themselves (supra, note 771, p. 258). This argument could be applied to peace enforcement where one holds that arms embargoes, a common feature of these operations, are also based on article 41. See note 756, supra. Yet, the argument, which basically involves an application of the doctrine of implied powers, must be rejected since the latter doctrine cannot lead to an increase of powers under the article (here, article 41) from which the additional powers are to be implied. I owe this point to my dissertation director, Professor Georges Abi-Saab.

\textsuperscript{110} For the arguments against the applicability of article 48, see: Schachter, supra, note 737, p. 463; Bryde, supra, note 739, p. 652; Freudenschuss, supra, note 717, p. 525; text accompanying notes 745-46, supra.

\textsuperscript{111} Paye mentions article 106 as a possible legal basis for permissive enforcement, assuming the provision is not obsolete. Supra, note 809, p. 252. In fact, as previously argued, the Security Council has at least implicitly determined that its authority under article 106 has terminated. See text accompanying notes 780-83, supra.

\textsuperscript{112} See Paye, supra, note 809, pp. 250-51 and 253-54.

\textsuperscript{113} See: Schachter, supra, note 737, pp. 459 and 461-62; Weston, supra, note 775, p. 522; Combacau, supra, note 725, p. 157.
we find no specific Charter basis for UN-authorized peace enforcement.

In fact, two Charter provisions would appear to offer at least plausible legal bases for these operations. The Security Council's general chapter VII power of recommendation, suggested by the English text of article 39, has been seen by some legal scholars as the source of its authority in this area.\footnote{See: Bowett, \textit{supra}, note 119, pp. 32-36 and 276-77; Goodrich, Hambro and Simons, \textit{supra}, note 708, pp. 301 and 315; White, \textit{supra}, note 749, pp. 104-08. For an opposing view, see: Frowein, \textit{supra}, note 792, pp. 614-16.} In addition, article 53 specifically empowers the Council to "utilize ... regional arrangements or agencies for enforcement action under its authority."\footnote{Article 53 has been identified by several commentators as a legal basis of NATO's involvement in Bosnia-Herzegovina, including the IFOR and SFOR peace enforcement operations. See: N.D. WHITE and Özlem ÜLGEN, "The Security Council and the Decentralised Military Option: Constitutionality and Function", \textit{Netherlands International Law Review}, vol. XLIV, issue 3, 1997, p. 389; James SUTTERLIN, \textit{The United Nations and the Maintenance of International Security} (Westport, Connecticut, Praeger, 1995), p. 95.}

Yet, article 53 is of limited application. Although, as will be explained later, the term "regional arrangement or agency" has been interpreted broadly, at least in the post-Cold War period, article 53 almost certainly does not encompass action taken by \textit{ad hoc} coalitions, let alone that of individual states acting alone or in concert with one or two others. As for article 39, although it is of general application, it does not allow for any distinction between peace enforcement and other types of military enforcement action, such as "military sanctions".\footnote{See the end of chapter 7, \textit{supra}.} Nor, for that matter, does article 53.

\textit{Article 42 is also cited in the legal doctrine as a legal basis for UN-authorized military enforcement operations.}\footnote{See: Frowein, "Article 42", \textit{supra}, note 747, p. 634; White, \textit{supra}, note 749, pp. 102-03; White and Ülgen, \textit{supra}, note 817, generally (and pp. 381}
question arises, therefore, as to whether articles 40 and 42 could provide the legal basis for UN-authored, as well as UN-conducted, peace enforcement, notwithstanding the reservations expressed earlier in this regard. The delegation, by the Security Council, of military enforcement action to regional arrangements and agencies under article 53 would involve the delegation of the Council's article 42 powers. Yet, does the Council have a broader power of delegation of its article 42, and also article 40, powers — in favour of ad hoc coalitions and individual states, as well as regional arrangements and agencies?

In this regard, one should first note that the Security Council's powers of delegation do not stop at article 53, as claimed in some quarters. Articles 7(2), 29 and 98 of the Charter provide clear proof of this, although the delegation of Security Council powers is made in favour of "subsidiary organs", in the first two cases, and the UN Secretary-General in the last. However one defines the term "subsidiary organ", it is clear that the Security Council must retain a significant degree of control over the exercise of delegated powers. The powers enumerated in the UN Charter are given by the member

and 411, more specifically); Schachter, supra, note 737, p. 462. Concerning Schachter's assertion that both articles 42 and 51 could serve as the legal basis of SCR 678 (29 Nov. 1990), authorizing military enforcement action against Iraq by a US-led coalition, see: Georges ABI-SAAB, commentaires (DANS Le chapitre VII de la Charte des Nations Unies, Paris, Pedone, 1995), p. 108; Frowein, p. 635. Those who have argued that article 42 cannot provide a legal basis for UN-authored military enforcement operations include: Carl-August FLEISCHHAUER, "Inducing Compliance" (IN United Nations Legal Order, ed. by O. Schachter and C. Joyner, Cambridge, Cambridge U. Press, 1995), p. 233; Freudenschuss, supra, note 717, p. 524; and former UN Secretary-General Boutros-Ghali (An Agenda for Peace, supra, note 4, paras. 42-43).


119 See: Bothe, supra, note 737, pp. 73-74.

120 For a broad interpretation of the term, see Mackinlay and Chopra, supra, note 4, p. 127.
states to specific UN organs. Delegated action must remain action of the organ. \(^{121}\) We will deal later with the question of the nature and degree of control that the Security Council must, constitutionally, retain over the military enforcement operations which it authorizes. At this point, it is sufficient to note that the Council's powers of delegation, though clearly admitted by the Charter, are nonetheless constrained along the lines just indicated.

The Security Council's delegation of its article 40 powers poses no particular problem. Provisional measures are, in principle, "without prejudice to the rights, claims, or position of the parties concerned" and, crucially, do not themselves involve the use of force. It is submitted that a Security Council power to delegate article 40 measures can be implied from article 40 itself. Adopting a narrow interpretation of the doctrine of implied powers, which ties the latter to specific enumerated powers, \(^{122}\) it appears reasonable to conclude that the power to delegate action designed to oversee party compliance with provisional measures \(^{123}\) is necessary to the effective exercise of the Security Council's article 40 powers, at least in those instances where the UN's modest institutional capacities for the maintenance of international peace are exceeded.

Yet, while the Security Council's powers of delegation clearly extend beyond article 53, they do not necessarily include a broader power of delegation of military enforcement action. The use of force by the Security Council pursuant to article 42 constitutes an exception to the prohibition of the use of force enunciated in Charter article 2(4), a linchpin, not merely of the law of the Charter, but of the international legal order as a whole. Yet, it is submitted that a broad power of


\(^{122}\) See the sources cited in relation to implied powers in note 737, \textit{supra}.

\(^{123}\) – \textit{i.e.}, the power to delegate the implementation of "second degree" provisional measures. See text accompanying note 764, \textit{supra}.
delegation of military enforcement action can be accommodated within the Charter – more specifically within the framework of those Charter provisions which define the exception, in favour of the Security Council, to article 2(4).

Article 53 does not preclude a wider power of delegation of military enforcement action. Despite certain theoretical limitations on the notion of "regional arrangement or agency", enunciated in article 52(1), in practice, the term has been interpreted very broadly, at least in the post-Cold War period. There are, in other words, only modest restrictions on the type of entity to which the Security Council can delegate military enforcement action under article 53. There appears, then, to be no reason why such action could not also be delegated to ad hoc coalitions or individual member states, provided such entities and activities are also "consistent with the Purposes and Principles of the United Nations" (article 52(1)). This will presumably be the case where the requirement of Security Council supervision, referred to earlier, is met.

It is submitted that article 42, as written, constitutes a sufficient legal basis for a broad Security Council power of delegation of military enforcement action, specifically in its second sentence:

Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

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124 See Akehurst, supra, note 708, p. 177.

125 See: Pierre-Marie DUPUY, "Le Maintien de la paix" (IN A Handbook on International Organizations, supra, note 766), pp. 599-603; An Agenda for Peace, supra, note 4, paras. 61-62. Note also that, in SCR 816 (31 March 1993), the Security Council implicitly categorized NATO, which was to enforce the Bosnian no-fly zone pursuant to this resolution, as a "regional arrangement or agency" (see: pream. para. 6; op. para. 4). This was often disputed during the Cold War. For contrasting views on this issue, see: Bowett, supra, note 119, pp. 306-07; Akehurst, supra, note 708, pp. 179-80.

This provision has the obvious function of indicating what kinds of measures "action" under article 42 could include. It is submitted that it also illustrates a means of taking such action which is different from that mentioned in the first sentence. The word "it", meaning the Security Council, in the first sentence - "it may take such action ..." - stands in marked contrast to the phrase "air, sea, or land forces of Members of the United Nations", in the second. In the first sentence, it appears, the military forces are the forces of the Security Council, while in the second they are the forces of UN members – two different means of implementation.

In the first sentence of article 42, the forces, whether provided pursuant to the special agreements envisaged in article 43 or on an ad hoc basis, as in the case of UNOSOM II, are under the operational control of the Security Council or some other UN body, such as the Military Staff Committee (article 47), directly controlled by it. In the second sentence of article 42, operational control is delegated down to the ad hoc coalition or individual state or states responsible for the military enforcement action. Yet, we have already noted that, even in this second case, such enforcement action must remain action of the Security Council in some significant sense. It is time to consider the question of the nature and degree of control that the Security Council must, constitutionally, retain over the military enforcement operations which it authorizes.

Article 53, as written and applied, is not much help in answering this question. Even assuming it makes sense to distinguish those situations where the Council "utilize[s]" a regional arrangement or agency "for enforcement action under its


129 See Sarooshi, supra, note 820, p. 142.
authority" from those where it "authoriz[es]" enforcement action taken at the initiative of a regional entity,\textsuperscript{130} the text of article 53 remains vague on the question of Security Council control. Focusing solely on the former scenario, the word "utilize", suggesting operational control, is juxtaposed with the phrase "under [the Council's] authority", which need not amount to anything more than political authority.

What practice exists with respect to article 53 is equally contradictory. As we have seen, UN control over NATO missions in Bosnia-Herzegovina has ranged from minimal, in the case of no-fly zone enforcement and the IFOR and SFOR operations, to partial, in the case of safe areas protection. This is indicative of the fact that post-Cold War practice in respect of permissive enforcement, whether based on article 53 or not, has been quite mixed.

The UN was shunted aside at the beginning of the 1990s, during the Gulf War (January-February 1991)\textsuperscript{131}, and again, towards the end of the decade, during the US-UK air strikes against Iraq (December 1998)\textsuperscript{132} and the NATO air campaign against the FRY in relation to Kosovo (March-June 1999)\textsuperscript{133} – although the latter two initiatives do not really fall within the scope of our study of UN-authorized operations as they had received no such authorization. In any case, throughout most of the 1990s,

\begin{itemize}
  \item See: Weston, \textit{supra}, note 775, pp. 525-26; SCR 678, 29 Nov. 1990, paras. 2 and 4.
\end{itemize}
UN-authorized military enforcement operations were, in fact, subject to relatively close UN supervision, with political, though not operational, control residing firmly with the Security Council.\textsuperscript{134}

Control of this sort is now seen by most legal scholars as validating the practice of permissive enforcement, the legality of which was contested in some quarters in the aftermath of the 1991 Gulf War.\textsuperscript{135} Generally, the legal doctrine affirms the need for the states or groups of states authorized to take military enforcement action to be seen to act on behalf of the UN.\textsuperscript{136} More specifically, legal scholars emphasize the importance of regular UN monitoring of the operation\textsuperscript{137} and, above all, the need for a clear, specific and carefully delimited UN mandate.\textsuperscript{138}

Absent any authoritative pronouncement on the question, in particular from the International Court of Justice, it seems reasonable to conclude that the practice of permissive enforcement can only be compatible with the Charter where it adheres to principles of this kind. At this stage in the development of Charter law, one cannot be any more precise.

\textsuperscript{134} See: White and Ülgen, supra, note 817, pp. 381, 387 and 396-412; Lobel and Ratner, supra, note 834, pp. 141-42; SCR 940, 31 July 1994, paras. 4-8 and 13 (authorizing the 1994 military intervention in Haiti). Note, however, that these operations typically involved situations of modest strategic importance for the major powers. Lobel and Ratner, pp. 143-44.

\textsuperscript{135} See Freudenschuss, supra, note 717, p. 526.

\textsuperscript{136} See Mackinlay and Chopra, supra, note 4, p. 127. Note that in the preamble to the UN Charter, member states undertake "to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest".

\textsuperscript{137} See: White and Ülgen, supra, note 817, pp. 387 and 410; Sarooshi, supra, note 820, pp. 155, 159-63, and 249-50.

\textsuperscript{138} See: Mackinlay and Chopra, supra, note 4, p. 127; White, supra, note 749, pp. 103-04; Luigi CONDORELLI, "Le Statut des forces de l'ONU et le droit international humanitaire", Rivista di Diritto Internazionale, vol. 78(4), 1995, p. 906; Gaja, supra, note 732, p. 46; White and Ülgen, supra, note 817, p. 387; Lobel and Ratner, supra, note 834, pp. 125, 127-29, and 142-44; Sarooshi, supra, note 820, pp. 44-46, 155-59, and 249-50.
Subject, then, to the above proviso, it is submitted that the second sentence of article 42 can serve as a legal basis for UN-authorized military enforcement operations. Returning to our principal subject of interest, UN-authorized peace enforcement operations would involve a delegation of the Security Council's powers under articles 40 and 42 on the basis of article 40 (an implied power) and the second sentence of article 42 — subject, once again, to the conditions relating to Security Council control outlined in the preceding paragraphs. Which is to say, simplifying only slightly, that UN-conducted and UN-authorized peace enforcement operations share the same legal basis — articles 40 and 42 of the Charter.

If one assumes that the preferred legal basis for peace-keeping operations is article 40, alone,\(^{139}\) and that UN-conducted or authorized "military sanctions" — lacking impartiality and the strict conflict-dampening rationale of peace enforcement\(^ {140}\) — would be based on article 42, alone, then peace enforcement's intermediate, yet distinct, position on the "peace operations spectrum", described in chapter 7,\(^ {141}\) has its legal corollary. Combining features of both peace-keeping and military sanctions, peace enforcement, whether conducted or authorized by the Security Council, also combines their respective legal bases to form a unique legal entity based on both articles 40 and 42 of the UN Charter.

\(^{139}\) See text accompanying note 766, supra.

\(^{140}\) See: chapter 6, paragraph accompanying note 693, supra; end of chapter 7, supra.

\(^{141}\) See the final pages of the chapter. Note that, for the sake of argument, it is assumed here that the category of "war" does indeed violate international law, leaving military sanctions alone at the end point of our spectrum.
CONCLUSION: THE ROLE OF PEACE ENFORCEMENT

In this final section of the dissertation, we turn to the question of peace enforcement's functional specificity in the context of the broader range of instruments developed by the UN for the maintenance of international peace and security. What is the role of peace enforcement in relation to peace-keeping and military sanctions?

In the course of the dissertation, we have identified three distinct types of peace operation using the three parameters of the use of force, consent, and impartiality. In peace-keeping, the use of force is limited to self-defence, whereas in both peace enforcement and military sanctions force may be used to implement the mandate, subject, in both cases, to the requirement of restraint. Consent is full and continuous in peace-keeping, imperfect (incomplete, artificial and/or unstable) in peace enforcement and wholly absent in the case of military sanctions. While both peace-keeping and peace enforcement are impartial, military sanctions, involving the prior designation of an adversary or target, are entirely partial.

As we saw earlier, the range of functions that peace enforcement operations perform is quite wide. These may or may not have a specific humanitarian focus; yet, in every case, the underlying aim is the restoration and/or preservation of peace. This basic function of peace enforcement is applicable to both intrastate and interstate conflict.

As indicated previously, the concept of peace enforcement was developed in the early 1990s in response to the UN's increasing involvement in internal conflict and the problems often encountered, in that context, by UN forces operating under traditional peace-keeping rules. The four peace enforcement

1 See: chapter 6, third paragraph of the "Conclusion", supra; chapter 7, pp. 173-74, supra.

2 See: Introduction, pp. 1-2, supra; chapter 1, pp. 16-17 and 20, supra.
operations identified as such in chapter 7 were all deployed in situations of internal conflict. One of these operations, namely UNITAF, was basically involved in freezing a conflict in place – preserving the status quo in the temporary absence of longer-term political solutions.³

Yet, the three other peace enforcement operations (UNOSOM II, IFOR and SFOR) were all mandated to help implement a peace settlement – essentially facilitating the peaceful change of the prevailing status quo. This distinction between peace enforcement operations designed to preserve the status quo and those which are supposed to help change it, parallels the distinction often made, since the end of the Cold War, between traditional or "first generation" peace-keeping operations and the "second generation" variety.⁴ It is a distinction which can also be applied to interstate conflict, although there is a complete lack of practice to date insofar as peace enforcement is concerned.⁵

In chapter 6, we saw that US, UK and French military doctrines all admit the possibility of transitions from one type of peace operation to another. There were several examples of such transitions during the first half of the 1990s. In Somalia, for example, the sequence ran from peace-keeping (UNOSOM I) to peace enforcement (UNITAF, UNOSOM II) and back to peace-keeping (UNOSOM II from October 1993). The situation in Bosnia-Herzegovina was rather more muddled in the sense that varying types of military intervention tended, up until December 1995, to overlap. Nevertheless, one can identify a broad shift from peace-keeping (UNPROFOR) to military sanctions (Operation

³ See chapter 3, "UNITAF" section, supra, especially pp. 53-55 concerning the latter's policy of "weapons management" as opposed to real disarmament. Note also that the cease-fire enforcement function of former Secretary-General Boutros-Ghali's "peace-enforcement units" would, without more, also involve the preservation of the prevailing status quo.

⁴ See chapter 1, p. 19, supra.

⁵ As noted earlier, the United Nations Iraq-Kuwait Observation Mission (UNIKOM) does not have enforcement powers (text accompanying note 697, supra).
Deliberate Force) and, since December 1995, peace enforcement (IFOR and SFOR).

Other examples of such transitions in the context of intrastate conflict include Haiti and Rwanda over the 1993-95 period. An example in the interstate realm is the transition from military sanctions (Operation Desert Storm) to peacekeeping (UNIKOM)\textsuperscript{6} in the case of the Iraq-Kuwait conflict. Clearly, peace enforcement is typically just one component of a much broader series of actions designed to bring a particular armed conflict to an end. Its role in relation to peace-keeping and military sanctions cannot, however, be defined in terms of function.

Whether in the context of intrastate or interstate conflict, whether for purposes of preserving the status quo or peacefully changing it, peace enforcement has only one basic function – the restoration and/or preservation of peace. In this, it is really no different from peace-keeping and, in the long-term, military sanctions.

Peace enforcement finds its vocation in those conflict zones which lack the full and continuous consent necessary to peace-keeping. This makes an enforcement mandate necessary, yet peace enforcement is not directed, \textit{a priori}, against any party to the conflict; it is impartial in both its means (the even-handed implementation ...) and ends (... of a mandate of general application).

Peace enforcement, in other words, is defined by its characteristics, not its function or functions. As explained in chapter 8, these characteristics have legal significance. Put most simply, the role of peace enforcement is to fulfil what was probably the principal aspiration of the signatories of the UN Charter – "to save succeeding generations from the scourge of war".\textsuperscript{7} Its specificity in the context of the broader range of

\textsuperscript{6} See text accompanying note 697, \textit{supra}.

\textsuperscript{7} UN Charter, preamble.
instruments developed by the UN for this same purpose derives from its principal characteristics of enforcement, imperfect consent and impartiality.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tr>
<td>AFP</td>
<td>Agence France-Presse</td>
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<td>AP</td>
<td>The Associated Press</td>
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<td>AWSS</td>
<td>authorized weapons storage site</td>
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<td>CIS</td>
<td>Commonwealth of Independent States</td>
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<td>ECOMOG</td>
<td>ECOWAS Monitoring Group</td>
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<td>ECOSOC</td>
<td>Economic and Social Council</td>
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<td>ECOWAS</td>
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<td>FRY</td>
<td>Federal Republic of Yugoslavia</td>
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<td>GAR</td>
<td>General Assembly Resolution</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the Former Yugoslavia</td>
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<td>IFOR</td>
<td>Implementation Force</td>
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<td>International Herald Tribune</td>
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<td>United Nations International Police Task Force</td>
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<td>LAT</td>
<td>Los Angeles Times</td>
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<td>MOOTW</td>
<td>military operations other than war</td>
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<td>NAC</td>
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<td>United Nations Operation in the Congo</td>
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<td>UNCIO</td>
<td>United Nations Conference on International Organization (San Francisco, 1945)</td>
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<td>UNIFIL</td>
<td>United Nations Interim Force in Lebanon</td>
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<td>UNIKOM</td>
<td>United Nations Iraq-Kuwait Observation Mission</td>
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<td>Unified Task Force</td>
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<td>UNMOGIP</td>
<td>United Nations Military Observer Group in India and Pakistan</td>
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<td>UNOSOM</td>
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<td>United Nations Protection Force</td>
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<td>The Washington Post</td>
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8 See note 5, supra.  

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