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UNITED NATIONS OPERATIONS:

WHO SHOULD BE IN CHARGE?

A Thesis  
Presented to  
The Judge Advocate General's School  
United States Army

The opinions and conclusions expressed herein are those of the author and do not necessarily represent the views of The Judge Advocate General's School, The United States Army, The Canadian Forces, or any other governmental agency.

by Lieutenant Commander M. Holly MacDougall

Canadian Forces

42ND JUDGE ADVOCATE OFFICER GRADUATE COURSE  
April 1994

## UNITED NATIONS OPERATIONS:

### WHO SHOULD BE IN CHARGE?

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ABSTRACT: This thesis examines the legal and practical reasons for United Nations political control and strategic direction of United Nations authorized military operations. It also surveys five United Nations authorized military operations (Korea, Southern Rhodesia, the Gulf, Somalia and Bosnia and Herzegovina) with a view to determining if United Nations political control and strategic direction furthered or hindered the accomplishment of the mission. It determines that there are overwhelming legal and practical reasons for requiring United Nations political control and strategic direction. It concludes with recommended changes to the current United Nations structure to enhance the United Nations ability to exercise political control and strategic direction.

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*The UN is an imperfect human institution and can always be improved, but it must be supported as one of the few things that stands between humanity and the law of the jungle.<sup>1</sup>*

## I. INTRODUCTION

The United Nations Charter (Charter) was the final step in the introduction of a new concept to international law: a general prohibition of the unilateral resort to force by states, combined with a collective security system.<sup>2</sup> The reality of a world security system dominated by a balance of power between the United States and the former Soviet Union prevented the realization of the collective security system envisioned by the Charter. The end of the cold war has lead to renewed hope that favorable, new international circumstances have enabled the United Nations (UN) to begin to fulfil effectively its primary responsibility for the maintenance of international peace and security.<sup>3</sup>

This renewed hope will be quickly dashed "if the design is misinterpreted as simply a continuation of that old legal order it was specifically intended to replace: the unilateral war system."<sup>4</sup> A former Secretary-General to the UN, U Thant, described the basis of both the League of Nations and the UN as a pledge by sovereign states to co-operate, a pledge which involved some measure of sacrifice of sovereignty in the common interest. Much has been said recently about the vision of a new world order which promotes peace and world harmony through the collective

security process of the UN.<sup>5</sup> But are we progressing towards a new world order or have we "barely reached the stage of the development of the American Wild West, when frontiersmen took the law into their own hands, or organized into posses to round up horse thieves and cattle rustlers"?<sup>6</sup>

This thesis will show that political control and strategic direction of UN authorized military missions must rest with the UN to achieve this new world order. Parts I and II provide introductory and definational material. Parts III and IV provide proof of this thesis by showing that overwhelming legal and practical reasons require UN political control and strategic direction of these types of missions. Part V analyzes five UN authorized military actions and demonstrates that UN political control and strategic direction either furthered or would have furthered the accomplishment of the mission. Finally, in Part VI, I will conclude with recommendations for the strengthening of UN headquarters designed to ensure adequate capabilities to provide this political control and strategic direction and to meet the practical realities of today's UN.

The practical application of this thesis requires a commitment by the members of the UN to the Charter's collective security system and the implementation of the new world order. Statements, such as those made by the president of the Security Council in January 1991, reaffirming the Security Council's commitment to the Charter's collective security system to deal with threats to peace and reverse acts of aggression, are

encouraging.<sup>7</sup> However, actions speak louder than words and the United States, the only remaining world power, has paid little more than lip service to the commitment. Strategic control of U.S. military forces in both the Gulf conflict and, for the most part, United Nations Operation in Somalia II (UNISOM II) remained with the United States. As President Bush noted, "A new world order is not a fact; it is an aspiration and an opportunity . . . to build a new international system in accordance with our own values and ideas."<sup>8</sup> This thesis will demonstrate that, provided the political commitment to collective security as envisioned in the UN Charter is alive and well, UN political control and strategic direction of UN authorized military actions is a legal and practical requirement.

## II. COMMAND AND CONTROL DEFINITIONS

To facilitate the thesis analysis, I must address the level at which the integration of command and control of multinational forces would occur.<sup>9</sup> Universally accepted definitions of command and control concepts are virtually non-existent. Therefore, for purposes of this thesis, the four command and control terms that will form the basis of the discussion are defined as follows:

### *Political Control*

The authority vested in a government or international organization to determine the policies and political objectives of a particular action. For UN actions, this political control



would be exercised through Security Council or General Assembly resolutions authorizing UN missions in conformity with the Charter and establishing the mandate for these missions.

*Strategic Direction*

The translation of the political policies and objectives into military terms.<sup>10</sup>

*Operational Command*

The authority granted to a commander to assign missions or tasks to subordinate commanders, to deploy units, to reassign forces, and to retain or delegate operational and/or tactical control as may be deemed necessary.<sup>11</sup>

*Full Command*

The military authority and responsibility of a superior to issue orders to subordinates. It covers every aspect of military operations and administration, including discipline, and exists only within national services.<sup>12</sup> Typically, nations assign military forces to the UN only under operational command.

### III. LEGAL ANALYSIS OF UN AUTHORIZED MILITARY ACTIONS

A point of clarification is required to identify the types of UN authorized actions which this thesis will analyze. I will deal with those UN authorized actions where the use of force is implicitly or explicitly authorized; an area which in recent years has been increasing exponentially.<sup>13</sup> These UN military actions have been depicted as a continuum; at one end are the

lowest intensity operations (peacekeeping) and at the opposing end, Chapter VII enforcement operations.<sup>14</sup> For purposes of analysis in this thesis, UN authorized military actions will be divided into four categories; peacekeeping, self-defence, enforcement measures under Chapter VII of the Charter and humanitarian intervention.

These categories reflect the four possible exceptions to the general prohibition of the unilateral use of force set out in Article 2(4) of the Charter. This prohibition has been reaffirmed many times<sup>15</sup> and is the cornerstone of contemporary international law.<sup>16</sup> I will first address the category of UN peacekeeping operations to ascertain whether the use of force by UN peacekeepers is a separate exception to this prohibition. Then, I will examine self-defence<sup>17</sup> and the collective use of force if the Security Council determines there is any "threat to the peace, breach of the peace, or act of aggression."<sup>18</sup> These are the two exceptions to this prohibition specifically recognized by the Charter. Finally, I will look at the doctrine of humanitarian intervention which many jurists claim is a lawful ground for forceful intervention in the affairs of another state. My examination of these four categories will prove there is a legal requirement for UN political control and strategic direction of the last two categories. Thus, the primary focus of this legal analysis will be enforcement measures under Chapter VII of the Charter and humanitarian intervention. I will also conduct a cursory review of the law as it pertains to the use of

force for the other two categories. This will enable the reader to understand the analysis offered in the section of the thesis entitled "Five UN Authorized Military Actions."

#### A. *Peacekeeping*

Although not specifically provided for in the UN Charter, there is wide acceptance of the UN's entitlement to engage in peacekeeping operations. The advisory opinion of the International Court of Justice (I.C.J.) in *Certain Expenses of the United Nations* has finally laid this issue to rest.<sup>19</sup> But what is the nature of these operations and are they an exception to the general prohibition on the unilateral use of force?

Peacekeeping is a *noncoercive* instrument of conflict control which evolved at a time when Cold War constraints prevented the Security Council from taking more forceful steps.<sup>20</sup> Conceived by Lester Pearson and institutionalized by Dag Hammarskjold, it came to symbolize international stabilization and containment of local conflicts. The creation of buffer zones and other neutral approaches to conflict resolution, executed by multinational forces under the operational command of a UN Force commander, were the methods selected to achieve these results.<sup>21</sup> Peacekeeping operations have consistently honored three limitations: first, the measures are undertaken without prejudice to the rights, claims or positions of the parties concerned; second, the peacekeeping operations are undertaken

with the consent of all parties concerned and particularly with the consent of the host nation in which the force is stationed; and third, peacekeepers may only use force in self-defence.<sup>22</sup>

The rôle of peacekeeping troops has been compared to that of an umpire or referee. The referee's success depends "on the consent of the players and their understanding of the rules of the game but never on the pugilistic skills of the referee himself."<sup>23</sup>

Although the Secretary General's recent report to the Security Council, indicating that he has authorized his civilian representative in Bosnia to call in airstrikes if the Serbs attack UN operations, has received a great deal of publicity,<sup>24</sup> it is simply another example of peacekeepers potentially using force in self-defence.

Thus, peacekeeping operations are not an exception to the prohibition to the unilateral use of force. There is no deployment of a peacekeeping force without the express consent of the parties to the conflict. Their intervention is consensual, rather than one executed by military force. Although most peacekeeping forces are deployed under the operational command of the UN, this is a historical practice rather than a legal requirement. One of the most outstanding, but least publicized, success stories in Middle East peacekeeping is the Multinational Force and Observers (MFO) in the Sinai.<sup>25</sup> Despite the success of this non-UN peacekeeping force, it is highly unlikely that non-UN peacekeeping operations will become the norm. The difficulties of financing these types of operations, as well as obtaining the

consent of all parties to the conflict to the deployment of a non-UN multinational force, leads one to believe that peacekeeping will remain within the purview of the UN for the foreseeable future.

#### *B. Self-Defence*

Customary international law and specifically Article 51 of the Charter recognizes the right of states to use armed force in self-defence. A victim of an armed attack may use force to defend itself provided such force is necessary and proportionate. The same conditions apply to collective self-defence. Legitimate, individual or collective self-defence "provides an exception to the prohibition against armed force in Article 2(4) of the Charter."<sup>26</sup>

In this thesis, I will not debate the contentious issue of whether the only legal right of self-defence now available is that found in Article 51. In other words, I will not deal with the issue of whether there is a right to anticipatory self-defence and a state may only resort to self-defence "if an armed attack occurs."<sup>27</sup> The particular objective here is to look at the right to exercise collective self-defence in response to armed attack as preserved by Article 51 of the Charter.

Even the definition of the term collective self-defence is the subject of much debate. The use of force in self-defence by two or more states is envisaged by this term. Does this mean,

however, "that all states exercising the right of self-defence must have been subject to individual attacks or can states which have not been attacked come to the aid of the victims?"<sup>28</sup> The essence of collective self-defence is "that the participants base their action on a violation of their own legally protected rights or interests."<sup>29</sup> Based on this theory it has been suggested as follows:

[T]he situation which the Charter envisages by the term is . . . a situation in which each participating state bases its participation in collective action on its own right of self-defence. It does not, therefore, generally extend the right of self-defence to any state which desires to associate itself in the defence of a state acting in self-defence.<sup>30</sup>

The contrary view to this approach is argued as follows:

If the provision for collective self-defense in the United Nations Charter has any point, it is the recognition that, in particular contexts, an unlawful attack upon one component of a group may, in its objectives, dimensions, and probable effect, so involve and endanger the whole as to make prompt response by the group necessary, meet, and reasonable. Community authority joins, we submit, with realistic observation in recognizing that the "self" systems by and on behalf of which claims to exercise defending coercion may be reasonably asserted may exhibit differing measures of comprehensiveness. These systems range from the primary "self" of a single state, through a more comprehensive group "self" established by two or a few states, to the most inclusive "self" that may be organized in a particular situation and which may include the bulk of the community of states.<sup>31</sup>

This approach appears to be the basis for such military alliances as the North Atlantic Treaty Organization (NATO) and the Warsaw Pact.

The decision of June 27, 1986, by the I.C.J. in the case of *Nicaragua v. United States of America* contains the authoritative

interpretation of the law governing the right to self-defence.<sup>32</sup> The Court held in the *Nicaragua* case that "a state may use force in 'collective self-defense' in support of another only if the victim state has declared itself to have been the object of an armed attack and has requested assistance in collective self-defence."<sup>33</sup> Although a decision of the I.C.J. is not binding on states other than the parties to the case, they are highly probative in determining rules of law. Thus, it appears to be the better view that collective self-defense authorizes states which have not been the object of armed attack to come to the aid of the victim if the victim state has declared itself to have been the object of an armed attack and has requested assistance in collective self-defense.

In looking at the right to exercise collective self-defense in response to armed attack under Article 51, we must address one further issue: when the Security Council is actively seized with a matter and the procedural measures set out in Chapter VII are being implemented, does this action pre-empt the right to collective self-defense under Article 51? The answer to this question lies in interpreting the words of Article 51 which reads as follows:

*Article 51.* Nothing in the present charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

Do "measures necessary to maintain international peace and security" encompass Security Council debate of the issues or the passing of a set of intermediate measures such as economic sanctions and blockades? Or do they only encompass a legally binding decision by the Security Council terminating the collective defensive action?

Legal scholars are split into two schools of thought on this issue. One school interprets Article 51 as retaining the customary right of states to defend themselves until the Security Council takes affirmative action to suspend this right. This school adopts the following reasoning:

[T]he Charter rule is that the exercise of the right of self-defense does *not* suspend the jurisdiction of the Security Council and that the assumption of jurisdiction by the Security Council does *not* suspend the "inherent" right of states to defend themselves. Under the Charter the Security Council has the last word, and can stop a war of self-defense by deciding it has become a breach of the peace. But there is all the difference in the world between a right of self-defense which evaporates when an item is put on the Security Council's agenda and a war of self-defense which can be stopped only by a Security Council resolution subject to the veto of the permanent members."<sup>34</sup>

The other school of thought argues the contrary.<sup>35</sup> The legal scholars who support this position argue that "Article 51 is not an affirmative grant of a right of self-defense but a statement of the situations in which the exercise of an 'inherent right' is not precluded by the Charter."<sup>36</sup> They further argue that these situations are subject to a time limit and endure only "until the Security Council has taken the measures necessary to



maintain international peace and security."<sup>37</sup> This position is more fully explained by the following statement:

When the Security Council is actively seised with a matter and the procedural measures set out in Chapter VII are being implemented - until the gulf conflict a rare event indeed - the collective security system cannot be ignored in deference to some unilateral action . . . taken pursuant to a claimed right of collective self-defense. An act of collective self-defense may conflict with the enforcement strategy and actions the Security Council has approved and implemented.<sup>38</sup>

The correct interpretation of Article 51 falls somewhere between these two positions and is the one adopted by Bowett. Bowett's description of the *travaux preparatoires* for the Charter relating to Article 51 makes it clear that the assertion that Article 51 is merely a statement of the situations in which the exercise of self-defence is not precluded by the Charter is wrong. It is clear that the drafters of the Charter anticipated that the right to self-defence would remain unimpaired.<sup>39</sup> Article 51 was merely added for clarification purposes: to be sure there was clear recognition of the right of a country to defend its sovereignty and to call on its friends to assist in this defence.

This, however, does not address the meaning of the phrase that "[n]othing in the present Charter shall impair the inherent right . . . of self defence . . . until the Security Council has taken the measures necessary to maintain international peace and security" contained in Article 51. Again Bowett's analysis of this issue is the correct one. A determination of whether the

necessary measures have been taken must be an objective one, based on the facts of a particular case. Thus, in cases where the Security Council and a defending state are satisfied that interim measures taken by the Security Council adequately protect the defending state's interests, these will be "measures necessary to maintain international peace and security."<sup>40</sup> Cases where agreement cannot be reached should be rare, but in those cases where the individual's rights may be sacrificed to the more general interest of international peace and security, the Security Council determination must prevail. This does not mean that any interim measures taken by the Security Council are deemed to be "necessary measures" as appears to be implied in the analysis of the second school of thought. Quite the contrary. The Security Council must make a definitive determination they have taken "measures necessary to maintain international peace and security." There is no reason why the Council has to be explicit on this point as long as its intentions are clear. A resolution ordering a cease-fire for all parties would be adequate to preclude the use of force in self-defence. But a resolution for economic sanctions would not preempt armed self-defence unless that intention was expressly or clearly implied in the resolution or in statements by Council members.<sup>41</sup>

*C. Enforcement Measures Under Chapter VII Of The Charter*

Chapter VII of the UN Charter contains the legal framework for UN enforcement action. According to Article 39, measures shall be taken to maintain or restore international peace and security when the Security Council has determined the existence of and threat to the peace, breach of peace, or act of aggression. The Charter establishes two kinds of enforcement measures: measures not involving and measures involving the use of armed force.<sup>42</sup> For purposes of this thesis, I will only discuss measures involving the use of armed force. The measures to be taken by the Security Council involving the use of armed force include "action by air, sea, or land forces as may be necessary to maintain or restore international peace and security."<sup>43</sup> Article 43 sets out the provisions whereby the Security Council will have at its disposal the armed forces necessary to take the measures decided upon pursuant to Article 42. It requires the completion of special agreements between the Security Council and member states whereby member states agree to maintain armed forces and facilities on call for Security Council action. Finally, Article 106 provides for joint action by the five permanent members of the Security Council pending the coming into force of the special agreements provided for in Article 43.

To date, no nation has entered into a special agreement with the UN<sup>44</sup> and a body of opinion has emerged which regards action by the Security Council under Article 42 as impossible in the absence of Article 43 special agreements.<sup>45</sup> The net effect of acceptance of this body of opinion would be the inability of the

Security Council to establish a UN Force. This was the position taken by the United Kingdom delegation with respect to the Security Council resolutions establishing the force in Korea. The United Kingdom "took the position that the United Nations was precluded from itself appointing a commander, because the agreements provided for in Article 43 had not been concluded, and because the action could not therefore be based upon Article 42."<sup>46</sup>

Some legal scholars argue that Article 42's dependent relationship with Article 43 is explicitly acknowledged in Article 106 of the UN Charter by the words "[p]ending 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 . . . ."<sup>47</sup> It is, however, generally accepted that Article 106 was intended to be a transitional and temporary provision and the failure to implement Article 43 agreements cannot have extended its provisions indefinitely.<sup>48</sup>

The contrary position, and the preferred one, to this body of opinion is simply that the absence of agreements under Article 43 would not prevent States from agreeing on an ad hoc basis to placing forces at the disposal of the Security Council.<sup>49</sup> The *travaux preparatoires* of the Charter provide some assistance in explaining why a special mechanism for providing the Security Council with armed forces was included:

It is to avoid being taken unawares that the Dumbarton Oaks Proposals [the plans for a world organization drawn up by China, Great Britain, the former Soviet Union and the United States in 1944, and the basic model for the Charter] provide that members of the Organization shall conclude a general collective agreement or special agreements to be submitted for the Council's approval, determining *in advance* the importance and nature of the assistance each country is prepared to furnish on request from the Council.<sup>50</sup>

The possibility of resort to other methods than those mentioned in Article 43 was not either explicitly or implicitly excluded. The absence of agreements under Article 43 merely means that the Security Council is unable to compel nations to contribute to UN operations until authorized under Article 42.<sup>51</sup> Thus, in situations where the Security Council relies on forces recruited by voluntary contributions of member states, "Article 42 seems to stand very well by itself as a specific source of authority enabling the Council to proceed to the application of armed force."<sup>52</sup>

Even if one does not accept the argument that Article 42 provides authority for Security Council action absent Article 43 agreements, there is ample authority found elsewhere in the Charter for Security Council action. One legal writer argues that a UN force may be "established by a recommendation under Article 39 *simpliciter*."<sup>53</sup> A more convincing argument lies in the doctrine of implied powers recognized in the I.C.J. advisory opinion concerning *Reparations for Injuries Suffered in the Service of the United Nations*.<sup>54</sup> The Court stated that the UN "must be deemed to have powers which, though not expressly

provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties."<sup>55</sup> Before attempting to rely on implied powers one must determine whether the Charter forbids certain actions. In other words: does the existence of Articles 39, 42 and 43 render invalid the authority of the Security Council to establish a UN force under general inherent or implied powers? The argument in support of an affirmative answer to this question is that this interpretation must be correct, otherwise the specific Charter provisions become meaningless.<sup>56</sup> The reason for these specific provisions has already been explained; it was to enable the Security Council to act promptly under binding decisions. Further, the I.C.J. has refused to interpret the specific provisions in this manner stating as follows:

Moreover, an argument which insists that all measures taken for the maintenance of international peace and security must be financed through agreements concluded under Article 43, would seem to exclude the possibility that the Security Council might act under some other Article of the Charter. The Court cannot accept so limited a view of the powers of the Security Council under the Charter. It cannot be said that the Charter has left the Security Council impotent in the face of an emergency situation when agreements under Article 43 have not been concluded.<sup>57</sup>

Thus, there is ample legal authority for the Security Council to establish a UN Force to take action to maintain or restore international peace and security in the absence of Article 43 agreements.

But is it necessary for the Security Council to establish a UN Force to meet its mandate to maintain international peace and

security or can the Security Council implement its actions to maintain or restore international peace and security in another manner? There are two sources within the Charter to assist us in finding the answers to these questions. They are the specific provisions of Chapter VII and the general purposes and principles of the Charter. The specific provisions of Chapter VII make it very clear that the drafters of the Charter anticipated the Security Council meeting its mandate by the formation of a UN Force composed of the combined armed forces of all or several members "unified by being placed at the disposal and under the command and the strategic direction of a single body, the Security Council, assisted by a Military Staff Committee."<sup>58</sup> But the specific provisions of Chapter VII have never been implemented. Therefore, it is necessary to turn to the general purposes and principles of the Charter to ascertain, in a realistic context, the correct responses to the question posed.

Most intergovernmental organizations, as opposed to those of states, are defined and thereby limited by the *purposes* of the organization as set out in their constitution. Therefore, the organization is "not constitutionally entitled to perform acts designed to further other purposes."<sup>59</sup> The Security Council's implied powers to utilize any reasonable means to take action to maintain or restore international peace and security is limited to utilizing means which comply with the general purposes of principles of the Charter. Collective Security, an expression not referred to in the Charter, is widely regarded as the

principle goal of the UN.<sup>60</sup> The Charter itself refers to collective measures. Article 1(1) of the Charter reads in part as follows:

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 . . . .

Based on this stated purpose, a strong argument can be made that any armed measures utilized as enforcement measures by the Security Council, in furtherance of its mandate to maintain international peace and security, must be *collective measures*.

But what are collective measures? The potential answer to this question covers a whole spectrum of responses from the Security Council authorizing one state to act on its behalf through such measures as may be necessary, to a true UN Force. More importantly, can a resolution by the Security Council authorizing a state or force to act on its behalf, which imposes no control or direction on that state or force, really be considered a collective measure? What happens if the measures taken by the state or force cease to have the endorsement of the majority of the Security Council?<sup>61</sup> The importance of collective measures is not in the tool selected to execute the mission. This may be one or many states. The importance of collective measures is that international will must be represented in the continued direction of the operation as well as in the decision to act. "Collective must mean the subordination of control of



sovereign armed forces to a centralized instrument, authorized to act by the larger community in the event of a crisis."<sup>62</sup> In terms of this thesis collective measures must, at a minimum, mean subordination of control of sovereign armed forces to UN political control and strategic direction. The Security Council need not establish a UN force to meet its mandate to maintain or restore international peace and security. It can utilize the armed forces of any of its members, if the members so agree, provided the Security Council exercises political control and strategic direction of these forces.

I must address a final issue and that is what, if any, real impact this requirement has on limiting Security Council action? In other words, if the Security Council fails to exercise political control and strategic direction of these forces, what is the practical result? Some would argue none, since the Security Council is the final arbitrator of its own authority. The I.C.J. addressed this issue in the *Certain Expenses Case* as follows:

In legal systems of states, there is often some procedure for determining the validity of even legislative or governmental act, but no analogous procedure is to be found in the structure of the United Nations. Proposals made during the drafting of the Charter to place the ultimate authority to interpret the Charter in the International Court of Justice were not accepted; the opinion which the Court is in the course of rendering is an *advisory* opinion. As anticipated in 1945, therefore, each organ must, in the first place at least, determine its own jurisdiction.<sup>63</sup>

The Security Council may be entitled to determine its own jurisdiction "in the first place at least," but its role is

determined by the Charter, a legal treaty between nations.<sup>64</sup> Members of the UN have agreed "to accept and carry out the decisions of the Security Council" provided they are taken "in accordance with" the Charter.<sup>65</sup> If these decisions are not made in accordance with core Charter principles, i.e. collective security, surely the Security Council is bound by the Charter requirement that no alterations to the Charter will take place unless agreed to by a "General Conference of the Members of the United Nations."<sup>66</sup>

There is no essential legal obstacle preventing the reform of the Charter outside the ordinary formal procedures if practice reflects the will of the member states. This reform can only take place if the parties to the treaty give their consent, express or implied, to the changes in question.<sup>67</sup> As will be demonstrated later in this thesis, there have been no enforcement actions authorized by the Security Council where member states have expressly or impliedly consented to reform of the Charter. Each of the five enforcement actions that have had UN Security Council authorization either had the requisite political control and strategic direction by the UN or did not legally require this political control and strategic direction because they were an exercise of collective self-defence. Thus, although the I.C.J. only has authority to give advisory opinions on legal matters referred to it by the General Assembly or Security Council,<sup>68</sup> there is a "higher appeal court" which can judge the legality of Security Council action; that is the member states of the UN.

#### *D. Humanitarian Intervention*

It is beyond the scope of this thesis to canvas the extended legal arguments that have been made in support of and against a legal right to unilateral intervention on humanitarian grounds. To do justice to such an exercise would require a separate thesis in its own right. Nevertheless, states cannot ignore statements such as those made by former Secretary-General Javier Perez de Cuellar to the effect that "[w]e are clearly witnessing what is probably an irresistible shift in public attitudes towards the belief that the defense of the oppressed in the name of morality should prevail over frontiers and legal documents"<sup>69</sup> and Secretary-General Boutros Boutros-Ghali that "[t]he time of absolute and exclusive sovereignty, however, has passed; its theory was never matched by reality."<sup>70</sup> They demand a review of the majority position that unilateral forceful intervention based simply on humanitarian grounds cannot be reconciled with the UN Charter and is illegal,<sup>71</sup> in light of the recent, unprecedented humanitarian interventions in Iraq and Somalia.

Before entering into this analysis, it is necessary to define the term humanitarian intervention. The term will be used in the context of this thesis to mean the threat or use of armed force by an international organization or state with the purpose of protecting human rights.<sup>72</sup> A distinction between forcible and nonforcible intervention is necessary because "it is now well established that the United Nations, in fulfillment of the human

rights provisions of Articles 55 and 56 of its Charter, can properly debate violations of human rights in a member country and adopt recommendations addressed to that country, including condemnations of its human rights practices."<sup>73</sup> In analyzing the legitimacy of the majority position with respect to humanitarian intervention it is essential to apply three basic components. They are: the Charter, including its text and its interpretation by states and the I.C.J., state practices, and prudential grounds which incorporate states' expressed concerns with the adoption of such a doctrine of humanitarian intervention.<sup>74</sup>

#### 1. *The Charter*

The Charter sets out the most authoritative statement on the rules of international law governing the use of force. The following articles of the Charter are the most important to the present analysis:

*Article 2(3).* All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

*Article 2(4).* All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

. . . .

*Article 2(7).* Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present

Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII.  
. . . .

*Article 39.* The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42 , to maintain or restore international peace and security. . . .

*Article 51.* Nothing in the present charter shall impair the inherent right of individual of collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

The Charter prohibits intervention "in matters essentially within the domestic jurisdiction of any state." However, provided the Security Council determines that a humanitarian crisis constitutes a threat to international peace and security, the UN can intervene.<sup>75</sup> This position is consistent with the I.C.J. decision in *Nicaragua*<sup>76</sup> which provides an authoritative statement of the law as it relates to the unilateral use of force. In that case the Court made a determination that the only exception to Article 2(4) is Article 51.<sup>77</sup>

## *2. State Practices*

Now that it is clear that the provisions of the Charter only permit *UN* intervention for humanitarian purposes and only under limited circumstances, i.e. threats to international peace and security, my analysis must address whether state practice has carved out an exception to the rule embodied in the Charter.

Legal scholars who assert a pattern of such state practice typically rely on at least three cases - India in Bangladesh in 1971, Vietnam in Cambodia in 1978 and Tanzania in Uganda in 1979 - to support their position.<sup>78</sup> Yet India, Vietnam and Tanzania ignored the doctrine of humanitarian intervention when they sought to justify their actions under international law choosing to rely on a claim of self-defence from an armed attack.<sup>79</sup> Thus, these cases offer little evidence of state practice carving out an exception to the Charter. What impact then do the recent humanitarian interventions in Iraq and Somalia have on the respective positions in this debate? Both these operations support the majority view that international law only permits humanitarian intervention when there is a determination by the Security Council that the humanitarian crisis constitutes a threat to international peace and security.

Security Council Resolution 688<sup>80</sup> condemned the repression of the Iraqi civilian population that led to a massive refugee crisis and described its consequences as threats to "international peace and security in the region." The Security Council's adoption of Resolution 688 established a right to interfere on Iraqi territory for humanitarian reasons.<sup>81</sup> It matters not whether one accepts the American, British and French position that resolution 688 authorized military deployments in Northern Iraq to create *de facto* safe havens that would draw Kurds back into their own country<sup>82</sup> or the alternative argument that the operation represented a nonforcible intervention.<sup>83</sup> The

important point is that all parties recognized the intervention as one that required authorization by the Security Council. It was a humanitarian intervention undertaken with Security Council authorization.

Somalia is an even clearer example of recent state practice rejecting a right to undertake humanitarian intervention without Security Council authorization as opposed to creating customary law supporting it. In fact there is a reasonable argument that the Security Council's recent limitations of the Somalia mandate<sup>84</sup> is a clear indication that "American and European governments have decided to cross off the bold idea that the international community has a clear duty to intervene to halt politically inspired slaughter or chaos in member states of the United Nations."<sup>85</sup> Regardless of whether one accepts this argument or not, Somalia is the first forceful intervention where it is absolutely clear that a humanitarian crisis was the exclusive driving force behind the operation. Security Council Resolution 794 determined that the "magnitude of the human tragedy caused by the conflict in Somalia . . . constitutes a threat to international peace and security" and authorized the use of "all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia."<sup>86</sup> Thus, the only true humanitarian intervention in recent history is one where the Security Council authorized Chapter VII enforcement action and not one where Security Council

authorization was deemed unnecessary for humanitarian intervention.

### 3. *Prudential Grounds*

Finally, this analysis requires one to address the prudential grounds for acceptance or rejection of one position or the other. Again, as with the analysis of the Charter and state practice, prudential grounds argue against a right to humanitarian intervention without Security Council authorization. A substantial minority of the members of the UN are less than fully functioning democracies. To set aside the Charter provisions and permit military interventions without Security Council authorization on the basis of humanitarian crises would open a Pandora's box. This would permit individual governments too much latitude in the affairs of other sovereign nations.

Individual governments would be free to decide on the reality of democracy and respect for human rights in other countries and to launch military operations whenever they considered it necessary. Such a situation would be destructive to the cause of world peace. Also, it is doubtful, too, if it would serve the long-term interest in promoting freedom.<sup>87</sup>

China is a key proponent of the sovereign equality of states and the duty of non-intervention by states in the internal affairs of each other. Whilst supporting the decision for humanitarian intervention in Somalia, the Chinese delegate to the Security Council emphasized that the military operation was "an exceptional action under the unique situation in Somalia."<sup>88</sup>



Surely, prudential concerns argue against the adoption of a legal right to humanitarian intervention without Security Council authorization when at least one permanent member of the Security Council and the substantial majority of third world countries strenuously oppose it. Protection of human rights cannot outweigh a serious risk to world peace.

In conclusion, even if one accepts the statement that the claims of human rights are becoming clamorous and more effective,<sup>89</sup> they have not reached the level where international law recognizes military intervention without Security Council authorization on the basis of human rights abuses.

#### *E. Summary*

The foregoing examination of the UN military actions continuum proves the following conclusions:

1. There is no legal requirement that peacekeeping operations be under the political control and strategic direction of the UN, although as a practical matter this is likely to occur.
2. States which have not been the object of armed attack may come to the aid of victim states until such time as the Security Council makes an affirmative determination that interim measures taken by the Security Council are the measures necessary to maintain international peace and security. Until the Security

Council makes this determination, political control and strategic direction may remain with the individual states exercising collective self-defence.

3. Enforcement measures taken by the Security Council under Chapter VII of the Charter, as collective measures, must be under the political control and strategic direction of the UN.

4. Humanitarian intervention is only legal under international law if the intervention is an enforcement measure taken by the Security Council under Chapter VII of the Charter. Therefore, political control and strategic direction of humanitarian intervention operations must rest with the UN.

These conclusions support the thesis that there is a legal requirement that all UN authorized military actions, other than peacekeeping and self-defence, be under the political control and strategic direction of the UN.

#### IV. PRACTICAL REASONS FOR UN POLITICAL CONTROL AND STRATEGIC DIRECTION

The preceding analysis of the UN military actions continuum proved there is a legal requirement for UN political control and strategic direction of at least some UN authorized military actions. I will now demonstrate there are over-whelming

practical reasons why UN political control and strategic direction must rest with the UN.

*A. Protection of the Legitimacy of the Charter Mandate for Collective Measures*

The protection of the legitimacy of the Charter mandate for collective security is a very strong practical reason supporting the thesis that there must be UN political control and strategic direction of UN authorized military actions. One advantage of protecting the legitimacy of this mandate is that this will encourage states, who have greater cultural, religious and linguistic resemblance to the countries being assisted and who would not or could not participate unless it was the exercise of UN collective measures, to participate in UN authorized actions.<sup>90</sup> Somalia is an excellent example of this type of situation. There is a growing consensus that the resolution of the Somalian crisis must be a regional one. Part of the solution involves African peacekeepers. Many African nations would not participate in a western-led coalition or could not participate without UN funding.

Collective measures also reduce the likelihood of the military action becoming identified with the policy and objectives of one government.<sup>91</sup> Such an identification can lead to accusations of neocolonialism under the guise of UN sponsorship<sup>92</sup> and claims that the special interests of one state

are being promoted at the expense of the community common interest.<sup>93</sup> Moreover, collective security "limits the ability of political and military factions in the country in crisis to appeal to outside forces to oppose or counteract the U.N. interaction."<sup>94</sup>

Finally, collective measures overcome the justifiable concerns that many nations of the world have with entrusting the role of global policeman to a single nation. Foreign Minister Edward A. Shevardnadze of the former Soviet Union expressed these concerns in the following manner:

The example of the action of the coalition forces in the Persian Gulf demonstrates the need for further improving the functioning of the U.N. Security Council. No single country, not even as powerful and rich as the United States can or has the right to play the role of global policeman. No country, even the smallest and weakest, would agree with the idea of restraining the violators of order in the world if the restraining were done by a single power.<sup>95</sup>

#### *B. Coordination of Military and Civilian Objectives*

The ever increasing complexity of UN mandates has made it very difficult to separate the military and non-military components of a mission.<sup>96</sup> Unlike traditional peacekeeping, where the mandate is primarily military, the more complex missions have more specifically civilian objectives (constitution building, election monitoring, human rights monitoring, public information and liaison functions, civil engineering and construction, and humanitarian assistance) and have much larger

civilian operational components.<sup>97</sup> The success of the mission depends on "tight coordination" of the military and civilian components because they are supporting the same objectives but with different means.<sup>98</sup> Failure to coordinate the actions of the military and civilian components may lead to action by either component which could undermine the very objectives of the mission.<sup>99</sup>

The practical solution to this requirement for "tight coordination" is political control and strategic direction of the actions of both components by the same organization, namely, the UN. This solution will resolve the critical issues of coordination of logistics, civil-military relations, protection of populations, delivery of humanitarian aid, and the safety and security of the civilian population. Any disputes between the two components could be quickly and finally resolved because their ultimate chain of command is the same.

### *C. Unity of Command*

Although there is widespread acceptance of the requirement for unity of command of military forces,<sup>100</sup> the achievement of this military principle in UN authorized operations is far from universal. Before relating a few examples of this lack of universality, it is necessary to review the meaning and purpose of the term unity of command.

The purpose for unity of command is to facilitate the attainment of the objective. This is best achieved at a tactical level by vesting authority in a single commander, but "at the strategic level it involves political and military coordination."<sup>101</sup> Ultimately, there must be the subordination of the military point of view to the political one.<sup>102</sup> To quote Clausewitz:

The subordination of the political point of view to the military would be contrary to common sense, for policy has declared the War; it is the intelligent faculty, war only the instrument, and not the reverse. The subordination of the military point of view to the political is, therefore the only thing which is possible.<sup>103</sup>

There can be little argument that there has to be a structure through which political control and strategic direction are exercised. Further, in keeping with the concept of unity of command, the exercise of political control and strategic direction must be singular. Otherwise, there is the potential for undermining the whole operation and increasing casualties. Contrary to popular belief, it was the failure to follow the unity of command principle that led, at least in part, to the tragic U.S. losses in Somalia.<sup>104</sup> "They acted without notification to or coordination with the United Nations command. This violation of the military requirement for command unity was the primary reason the Rangers were isolated for twelve hours and suffered extraordinary casualties."<sup>105</sup>

Problems with the implementation of the unity of command principle are not only evident in missions where the UN exercises

operational command. Operation Provide Comfort, a 1991 humanitarian operation aimed at providing relief to Iraq's Kurds, had similar problems with implementation of this principle. In this operation a number of nations already involved in the Gulf war formed a coalition to achieve this aim. U.S. General Shalikashvili commanded this international operation. Although General Shalikashvili was the commander of the international operation, he received his orders from his national headquarters. His national mission was to provide relief to displaced Iraqi civilians until international relief organizations could perform this function. The United Kingdom, another member of the coalition, emphasized that it would not withdraw British troops until there were suitable assurances of the safety of Iraq's Kurds. However, it was not operationally possible for British troops to remain in Iraq without American forces' support. American troops began their withdrawal serving to undermine the Kurdish leaders negotiating position with Iraq. The point is simple: the exercise of political control and strategic direction of this joint operation through two different national political structures undermined the whole operation.<sup>106</sup>

Based on this analysis, the question that must be answered is what is the best method of exercising singular political control and strategic direction of UN authorized missions? The best structure, in fact the only structure, is the UN. The UN is the only existing international organization that has a world-wide mandate to exercise such control and direction. It is also

the only internationally recognized and accepted organization that has an existing structure in place to implement the exercise of the required political control and strategic direction. Imperfect as the UN may be, it is far superior to no mandate or structure. Efforts should be concentrated on improving the existing structure not inventing a new one.

#### *D. Rules of Engagement (ROE)*

ROE are "directions issued by competent military authority which delineate the circumstances and limitations within which armed force may be applied to achieve military objectives in furtherance of . . . policy."<sup>107</sup> In other words, ROE translate the political limitations of a mission into military terms and are an integral part of strategic direction. ROE must be in conformance with international law. But they must also consider political factors which may limit the circumstances in which armed force may be used, even though there are no such limitations required under international law. These political limitations are particularly important for UN authorized operations because many missions today have primarily political objectives as opposed to military objectives. These political objectives may impact significantly on the limitations placed on the military mission through ROE. For example, if the primary political objective is humanitarian assistance, ROE for the



mission are likely to be more restrictive than a mission with a mandate similar to the coalition forces in the Gulf War.

Even for those missions that are primarily military, there may be practical and political considerations which should have significant impact on the mission ROE. Some of these considerations are currently surfacing in Bosnia and Herzegovina. Specifically, they revolve around the question of what will happen if a peace accord is reached in Bosnia and Herzegovina and NATO sends in an implementation force. Will a NATO implementation force have ROE authorizing use of force under Chapter VII of the Charter, while the United Nations Protection Force (UNPROFOR) in other parts of the former Yugoslavia, i.e. Croatia and Macedonia, operates under another ROE? Will NATO forces respond differently to non-compliance of an implementation plan than currently deployed UNPROFOR forces?<sup>108</sup> The resolution of these issues will not only have a significant impact on the potential success of any peace accord, but will also significantly impact on the safety and security of NATO and UNPROFOR personnel on the ground.

These observations lead one to conclude that the provision of clear, coordinated ROE, that have furtherance of the political objective and safety of personnel as the prime aim, are essential to the success of any UN authorized operation. These objectives are best met through strategic direction provided by the UN. It is the UN that sets the political objectives of the operation and it must be the UN that converts this political objective into

military terms. Otherwise, there is no guarantee that the political objectives can and will be met. Nations view international law through their own corrective lens and the safety of their troops is of paramount importance. Permitting national authorities to issue individual national ROE for UN authorized operations may jeopardize the mission. There is serious potential that these national ROE will permit such a liberal use of force, which may even be legal under international law, that the political objectives of the operation may be impossible to meet. This danger exists even if the UN sets the ROE. But the exercise of strategic direction by the same organization that sets the political objectives substantially reduces this risk.

#### *E. Summary*

The world community no longer accepts the exclusive determination of world policy by a few powerful nations. The participation of all states is required in developing "new norms of international life."<sup>109</sup> Participation can take many forms, but the collective exercise of political control of UN authorized actions is the form that provides the greatest opportunity for the maximum participation of all member states. The UN is the only internationally recognized and accepted organization currently capable of exercising this political control. Therefore ,it is imperative that it does so or we will see

heightened world tension over perceptions of neocolonialism and domination and control of international life by one or two powerful, western nations.

The exclusivity of military objectives in UN authorized operations is no longer the norm. The primary focus of recent UN authorized missions, i.e. Cambodia, Somalia, and the former Yugoslavia, has been political objectives, albeit with the requirement for the assistance of a military component to achieve these missions. The success of these missions requires the coordination of the civilian and military components and the singular exercise of political control and strategic direction over both these components. Mission ROE, that are an integral part of strategic direction, must also emanate from a singular source. The authority that exercises these functions must be the UN because it is the UN that establishes the mandate for the operation. The organization that sets the mandate is the only organization capable of directing and implementing the political objectives.

#### V. ANALYSIS OF FIVE ENFORCEMENT ACTIONS

Since the inception of the UN there have been five military operations authorized under Chapter VII of the Charter. They are Korea, the Southern Rhodesia case, the Gulf War, Somalia and the former Yugoslavia. I will now examine each operation with a view to determining whether the UN exercised political control and

strategic direction. For those operations where the UN exercised such control and direction, I will prove, where possible, that this contributed to the overall success of the mission. For those operations where there was no UN political control and strategic direction, I will explore the legal basis for the operation and show the negative impact of this lack of UN political control and strategic direction.

A. *Korea*

On first blush Korea appears to be the original example of a UN force exercising Chapter VII military sanctions to suppress external aggression and restore peace and security. But was it a UN operation taking collective measures to restore international peace and security<sup>110</sup> or was it an exercise in collective self-defence?<sup>111</sup> One must review the history of the operation to answer this question.

On 25 June, 1950 the United States informed the Secretary-General of the UN that North Korean forces had invaded the territory of the Republic of Korea and requested an immediate meeting of the Security Council.<sup>112</sup> In an attempt to deal with the situation, the Security Council passed three resolutions . On June 25, 1950 the Security Council adopted a resolution calling for the immediate cessation of hostilities and the withdrawal of North Korean forces to the 48th Parallel. It also called "upon all members to render every assistance to the UN in

the execution of this Resolution."<sup>113</sup> On June 27, 1950, the President of the United States "ordered United States air and sea forces to give the Korean Government troops cover and support."<sup>114</sup> After this order was issued and on the same day, the Security Council adopted a resolution recommending that "the Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area."<sup>115</sup>

After the adoption of the June 27 resolution, the issue of strategic direction of the operation had to be addressed. The Security Council could not utilize the Military Staff Committee as a means of obtaining military advice because of the presence of Major General Ivan A Skliarov of the USSR on the Committee.<sup>116</sup> Therefore, Secretary General Lie privately proposed to establish a "Committee on Coordination of Assistance for Korea" to include the United States, Australia, France, India, New Zealand, Norway and Great Britain, with the Secretary General acting as rapporteur and with the Republic of Korea invited to send a representative. The responsibilities of the Committee would include stimulating and coordinating offers of assistance and promoting continuing UN participation in and supervision of the military action.<sup>117</sup> The United states strongly opposed this proposal. According to then Secretary General Lie:

The delegates of the United Kingdom, France and Norway [Council Chairman at the time] liked the idea of such a committee. The United States Mission promptly turned thumbs down. The Pentagon was much opposed to such United Nations activity. Later it even proved a bit

difficult to arrange that reports of the United Nations Commander in Korea should be officially transmitted to the Security Council before being released to the press by the American attaches in Tokyo.<sup>118</sup>

On July 7, 1950 the Security Council adopted a resolution which included the following terms:

*Recommends* that all Members providing military forces and other assistance pursuant to the aforesaid Security Council Resolutions make such forces and other assistance available to a unified command under the United States:

*Requests* the United States to designate the commander of such forces:

*Authorizes* the unified command at its discretion to use the United Nations flag in the course of operations against North Korean forces concurrently with the flags of the various nations participating:

*Requests* the United States to provide the Security Council with reports as appropriate on the course of action taken under the unified command.<sup>119</sup>

The request for reports from the new command was the only provision for any UN strategic direction or political control of the operation. One legal scholar suggests the following:

[T]he resolution of July 7 asking the United States to establish a unified command was based on the assumption that the task of coordination, or strategic direction, could be performed by the Security Council, assisted by the periodic reports which the United States Government, in the exercise of its responsibility for establishing a unified command, was requested to make.<sup>120</sup>

Another legal writer suggests that the weakness of the supervisory provision stemmed "from the knowledge that the United States was not prepared to accept any formal element of United Nations direction."<sup>121</sup> Regardless of which interpretation one accepts, it is clear that General Assembly Resolution 376(V),<sup>122</sup>

authorizing "all appropriate steps" to ensure peaceful conditions and the establishment of a unified government - an objective that would require crossing the 38th Parallel - was the next exercise of political control over this operation by the UN.<sup>123</sup> Based on this brief history, there is a plausible case to be made that the three Security Council Resolutions of 25 June, 27 June and 7 July, 1950 and the General Assembly Resolution of 7 October, 1950 met the legal requirement for UN political control of the operation.

Strategic direction is a completely different matter. It was not until the Chinese intervention in the Korean conflict that the United States even invoked informal political consultations with the representatives in Washington of other members contributing armed forces.<sup>124</sup> These meetings of the "Committee of Sixteen" provided an opportunity for information on military situations and plans to be given to the contributing members and for these members to present their views on the situation and proposed plans of action. The United States, however, maintained that the responsibility for the conduct of the operations was theirs and as such it could disregard the views of the other contributing nations.<sup>125</sup> Hardly the vesting of strategic direction in the UN or even in a body representative of the contributing states. The fact that a UN flag flew over the troops seeking to reverse the aggression, that the UN sanctioned the war, that General Douglas McArthur referred to himself as "the United Nations Commander-in-Chief" and that reports

transmitted to the Security Council from the unified command via the United States Government referred consistently to "United Nations forces," "United Nations prisoners," "United Nations Commander" etc. have no impact on the reality of the strategic direction of the operation. They were simply window dressing for an operation in which strategic direction vested in the United States Joint Chiefs of Staff in Washington.<sup>126</sup> "For all their symbolic panoply of the United Nations flag and other emblems, the forces which finally prevailed in Korea were national forces carrying out a mission of collective self-defence under American direction, not a Security Council enforcement action."<sup>127</sup>

What then was the legal basis for the Korean operation if not collective enforcement measures under Chapter VII? The correct legal basis for the operation was collective self-defence under Article 51 of the Charter.<sup>128</sup> Strong support for this assertion is found in paragraph 1 of the Security Council Resolution of 7 July, 1950 in which the Council "[w]elcomes the prompt and vigorous support which governments and peoples of the United Nation have given to its Resolutions of June 25 and 27, 1950, to assist the Republic of Korea in defending itself against armed attack and thus to restore international peace and security in the area."<sup>129</sup> This resolution interprets the action of the Members of the UN in Korea as the exercise of the right of collective self-defence.<sup>130</sup> This interpretation is also consistent with the actions taken by the President of the United States in ordering United States forces to give the Korean



Government troops cover and support prior to the Security Council Resolution of June 27, 1950.

I must address one final matter with respect to the assertion that the legal basis for the Korean operation was collective self-defence. That pertains to the view that a literal interpretation of Article 51 would limit UN members' right of collective self-defence to situations where the attack has been made on a member state.<sup>131</sup> The Republic of Korea was not a member of the UN on June 24, 1950 and therefore any argument that the Korean operation was an exercise of collective self-defence must address this situation. It has been argued that the principle in Article 2(6) of the Charter (the UN shall ensure that non-members also act in accordance with the principles of the Charter) resolves the difficulty of relying on Article 51 where a non-member is concerned.<sup>132</sup> The better view is that such a right exists under customary international law and this right is unaffected by Article 51.<sup>133</sup> Regardless of which theory one accepts, it is clear that the fact that the Republic of Korea was not a member of the UN does not affect the right of UN members to come to its assistance as a legitimate exercise of collective self-defence.

Even though the Korean operation was legal, it was not a success. What had primarily been an operation to repel the armed attack against South Korea and restore international peace and security in the area became "a clash between the major powers [United States and China]; the overriding aim became to prevent

its spread beyond the limited war in Korea."<sup>134</sup> Although it is impossible to state with certainty, it is likely that the lack of UN strategic direction was a contributing factor to the escalation of the conflict. The Americans "crossed the 38th Parallel to destroy the North Korean army and government, precipitating Chinese intervention."<sup>135</sup> The establishment of a ceasefire at the 38th Parallel would have met the UN objectives of repelling aggression and restoring international peace and security . The achievement of the aim of a unified, democratic Korea would have been sought by peaceful means.<sup>136</sup> Had the UN exercised strategic direction of the operation, a more cautious and conservative approach to what was required militarily to achieve the aim may have avoided the "successive political crisis involved in the decisions . . . to take up hot pursuit of aircraft across the Manchurian border, to bomb the bridges on the Yulu, to enlist the support of Chinese nationalist troops"<sup>137</sup> and avoided Chinese intervention. This in turn would have led to a more satisfactory resolution of the conflict.

#### *B. Southern Rhodesia*

One of the clearest examples of the UN using military enforcement action under Chapter VII to uphold its decisions was the action that followed the seizing of power by the white minority in Southern Rhodesia on November 11, 1965. The world community actively opposed this Unilateral Declaration of

Independence by less than 5% of the population. This opposition led to a number of Security Council Resolutions that condemned "this racist minority regime" and called for economic sanctions "including an embargo on oil and petroleum products."<sup>138</sup>

Initially, economic sanctions were unsuccessful and the United Kingdom, the former authority in Rhodesia, sought further Security Council authorization to enforce the embargo. This authorization was granted in a resolution adopted on 9 April 1966. It stated, in part, that the Security Council:

5. *Calls upon* the Government of the United Kingdom of Great Britain and Northern Ireland to prevent, by the use of force if necessary, the arrival at Beira of vessels reasonably believed to be carrying oil destined for Southern Rhodesia and empowers the United Kingdom to arrest and detain the tanker known as the *Joanna V* upon her departure from Beira in the event her cargo is discharged there.<sup>139</sup>

On the morning of 10 April, 1966, *H.M.S. Berwick* intercepted and boarded the tanker *Manuella* which was 180 miles south of Beira. The ship's master was ordered to change the ship's destination and, in compliance with this order, the master agreed to proceed to Lourenco Marques. The *Joanna V* left Beira without discharging oil. The "Beira patrol" was maintained by British warships until 1975.<sup>140</sup>

Did the Security Council exercise sufficient political control and strategic direction of the British actions to meet the requirements for collective measures? The following quote provides the correct answer:

The delegation of an enforcement action involving the use of armed force to a member state . . . may be

acceptable under the following conditions. First, it should be clear that the state or group of states is acting on behalf of the organization, and that the link between the two be direct. Resolution 221 (1966) explicitly states in paragraph 5 that the Security Council is calling upon the United Kingdom to act on its behalf. Second, given that the command of the operation is not functionally part of the UN's administration the instructions from the organization to its agent must be clear, specific, and incontestable. Resolution 221 states that use of force is permissible; it identifies against whom force is to be used - namely, vessels arriving at Beira "reasonably believed to be carrying oil destined for Rhodesia"; and it describes the manner in which force is to be used and its immediate purpose: "to avert and detain the tanker known as the *Joanna V* upon her departure from Beira in the event her oil cargo is discharged there." Third, the agent must be responsible to the authority of the organization. The United Kingdom recognized in the Security Council that the authority to act lay not with itself, despite its physical power and ability to do so, but with the organization.<sup>141</sup>

Thus, it can be seen that for this limited enforcement action, interdiction of oil tankers on the high seas, there was sufficient political control and strategic direction exercised by the Security Council. This is not to suggest, however, that for more serious forms of aggression that may require a more destructive, dangerous and complex response, strategic direction may be exercised through UN resolutions. This will be the exception rather than the rule.

It is impossible to state with any degree of certainty whether the procedures adopted in the Southern Rhodesian case, i.e. UN political control and strategic direction of the operation, contributed to the overall success of the mission. The operation was not of sufficient complexity and danger to draw any conclusions, one way or the other. I can at least state with

assurance that it did not inhibit the achievement of the mission.

*C. The Gulf*

On 2 August, 1990 Iraq invaded Kuwait under the guise of extending military assistance to young Kuwaiti revolutionaries involved in an uprising. On 8 August, 1990, the Iraqi regime announced that it had formally annexed Kuwait because it was originally part of Iraqi territory. No member of the Security Council regarded Iraq's claim to Kuwait as part of former Iraqi territory as a legal justification.<sup>142</sup>

The Security Council reacted to this unlawful invasion by demanding the immediate and unconditional withdrawal of Iraqi forces<sup>143</sup> and imposing a mandatory trade and financial embargo against Iraq.<sup>144</sup> Alarmed by the initial failure of the embargo, the Security Council adopted the first of a number of resolutions authorizing the use of force. The Council called on states "cooperating with the Government of Kuwait . . . to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation" of the embargo.<sup>145</sup> On 29 November, 1990, the Security Council, persuaded that military action was necessary to compel Iraq to withdraw from Kuwait, adopted Security Council Resolution 678 which authorized "Member States co-operating with the Government of Kuwait . . . to use all necessary means to uphold [the earlier Resolutions] and to restore international

peace and security in the area."<sup>146</sup> The authorization was to be effective 16 January, 1991 if Iraq did not withdraw from Kuwait by that date. There is no need to go into further details on the history of this conflict. Suffice to say that Iraq did not comply and the coalition forces applied overwhelming force to restore international peace and security.

The issue that must now be addressed is whether the Security Council exercised sufficient political control and strategic direction over the coalition forces to legitimately call the coalition forces' actions collective measures under Chapter VII of the Charter. In my view, it did not. The UN "eschewed direct UN responsibility and accountability for the military force that ultimately was deployed, favoring, instead, a delegated, essentially unilateralist determination and orchestration of world policy, coordinated and controlled almost exclusively by the United States."<sup>147</sup>

[There was] wide recognition at the early stages of the conflict, the [UN] served as the principle focal point for diplomatic efforts to resolve the crisis. But once the Security Council passed Resolution 678 on November 29, allowing nations to "use all necessary means" to remove Iraq from Kuwait, diplomacy was effectively abandoned and war became inevitable. The United Nations was pushed from the stage and all attention shifted to politicians in Washington and a U.S. general in Saudi Arabia . . . .<sup>148</sup>

This statement is consistent with former Secretary-General Perez de Cuellar's statement to the press on February 10, 1991 where he remarked that the Gulf War was not "a classic United Nations war in the sense that there is no United Nations control

of the operations, no United Nations flag, blue helmets, or any engagement of the Military Staff Committee."<sup>149</sup> He further remarked:

What we know about the war . . . is what we hear from the three members of the Security which are involved - Britain, France, and the United States - which every two or three days report to the Council, after the actions have taken place.

The [Security] Council, which has authorized all this, is informed only after the military action has taken place.<sup>150</sup>

This evidence of complete lack of UN political control and strategic direction over the Gulf War is also supported by Security Council Resolution 687 adopted on 3 April, 1991 which set out the terms of a permanent cease-fire. The resolution welcomed the restoration of Kuwaiti sovereignty and noted the intention expressed by "the Member States cooperating with Kuwait under paragraph 2 of Resolution 678 (1990) to bring their military presence in Iraq to an end as soon as possible."<sup>151</sup> In essence, the Security Council treated the military campaign as the affair of Kuwait and its allies and not the UN.<sup>152</sup>

The conclusion that the Gulf War was not a collective enforcement measure under Chapter VII of the Charter leads us to the same question that was asked for the Korean conflict: what was the legal basis for the military operation? Again, as with Korea, the legal basis was collective self-defence.<sup>153</sup> The evidence supporting this assertion is decisive. Two Security Council Resolutions are particularly cogent in this regard. Security Council Resolution 661, in its preamble, affirmed "the

inherent right of collective self-defence, in response to the armed attack of Iraq against Kuwait . . . ."<sup>154</sup> The practices of states involved in assisting Kuwait in their self-defence was also consistent with this clear statement by the Security Council affirming the right to collective self-defence. The United States and Great Britain, who sent armed forces to the Gulf prior to Resolution 678, based their actions on the collective self-defence provisions of Article 51.<sup>155</sup>

The words of Security Council Resolution 678 authorizing member states co-operating with Kuwait to use all necessary means to uphold earlier resolutions and restore international peace and security clearly encourage and support an effort of collective self-defence. But if this so, why the use of the word *authorizes* in Resolution 678 or, indeed, why a resolution at all? With respect to the issue of why a resolution at all, I adopt the reasoning of Oscar Schachter in this regard.<sup>156</sup> Many governments supporting action against Iraq regarded UN authorization as an important domestic political consideration. The resolution served the purpose of underlining UN support for military action. The issue of the use of the word *authorizes* is also easily resolved. Resolution 678 is permissive and is not legally binding on UN members. The decision to cooperate with a coalition to liberate Kuwait is discretionary and thus the word *authorizes* is used in the same manner as Resolution 83 of June 27, 1950, during the Korean War. It merely authorizes or recommends



action. It "should not therefore be considered to transform a military campaign of self-defense into an enforcement action."<sup>157</sup> Thus, as with the Korean Conflict, the legal authority for military action in the Gulf War lies not with UN enforcement action under Chapter VII but with collective self-defence.

The lack of UN political control and strategic direction of the Gulf conflict had no negative impact on the achievement of the military mission. The coalition forces were very successful in quickly forcing Iraq to withdraw from Kuwait. But there were immeasurable, negative political consequences which cannot be discounted. After all, political considerations persuaded the United States to seek UN authorization in the first place.<sup>158</sup> Many of the criticisms leveled against the United States could have been avoided if the UN has retained political control and strategic direction. These criticisms included the accusation that the U.S. hijacked the UN to secure a cheap supply of oil, as well as the accusation that the U.S. military command conducted an over-zealous bombing operation that resulted in wide spread civilian suffering. A nation that sees itself as the leader in democracy and human rights does not want to be the recipient of such criticisms.

#### *D. Somalia*

Somalia was the first post-Cold-War situation where the United States as the sole super power was to demonstrate

something of the "New World Order": humanitarian peace enforcement in a place where U.S. strategic interests were not involved.<sup>159</sup> The main focus of this section will be the Unified Task Force (UNITAF). I will also briefly discuss some aspects of United Nations Operation Somalia II (UNOSOM II) because of the important lesson it teaches us with respect to the requirement for singular UN political control and strategic direction.

The decision to authorize the use of armed force to establish a secure environment for relief operations in Somalia was based on the realization that traditional peacekeeping methods, which were the basic premise and principle of the UN effort in Somalia, were not working.<sup>160</sup> The Secretary-General's report to the Security Council of 24 November, 1992, stated "that the situation is not improving" and that conditions were so bad that it would be "exceedingly difficult" for the UN's "existing operation in Somalia to achieve its objectives."<sup>161</sup> The conditions that the Secretary-General was referring to were the continuing 18 month civil war that had lead to hundreds of thousands of refugees fleeing Somalia and to 1.5 million people being threatened with starvation and another 3.5 million in urgent need of food.<sup>162</sup> The causes of this threatened mass starvation in this Horn of Africa nation were not drought conditions or shortage of food. It was the "stranglehold on food distribution exercised by the leadership of certain armed bands operating in the south-central part of the country."<sup>163</sup> The realization that military force was required to support food

distribution to avert mass starvation was the decisive factor in the Security Council determination to create UNITAF pursuant to Security Council Resolution 794.<sup>164</sup>

It is necessary at this point to examine the circumstances and discussions that immediately preceded Security Council Resolution 794. Some light is shed on the background to the American initiative by the following excerpt from an article in the 18 October, 1993 issue of *Time*:

[A]t a National Security Council meeting the day before Thanksgiving, aides laid three options before Bush: the first was an expanded peacekeeping operation, with about 3,500 American troops joining the Pakistanis participating only in a supporting role. A second was an expanded peacemaking operation (distinguished from peacekeeping because in some circumstances the troops could shoot first); the U.S. would supply airlift and other support, but no ground troops. The third option, unexpectedly prepared by the Pentagon, was to send in a whole U.S. division under U.N. auspices, but American command and control. Bush surprised everyone by immediately choosing that option. His reasoning: only an all-American force could go in quickly, and there was no time to lose; the famine, disease and fighting were snuffing out 1,000 lives a day.<sup>165</sup>

Acting Secretary of State Lawrence S. Eagleburger presented the Bush plan to the Secretary-General on 25 November, 1992 and, when asked whether the U.S. deployment would be a UN operation or under American command, responded unequivocally that the United States would command.<sup>166</sup>

On November 29, 1992, the Secretary-General presented the Security Council with five options for its consideration.<sup>167</sup> The fourth option, a "country-wide enforcement operation undertaken by a group of Member States authorized to do so by the Security

Council,"<sup>168</sup> was essentially the Bush plan. Specifically, it provided that "the United States would be ready to take the lead in organizing and commanding such an operation."<sup>169</sup> The Secretary-General then went on to recommend that, if the Security Council favored this option, "the Council should seek to agree with the Member States who would undertake the operation on ways of recognizing the fact that it had been authorized by the Security Council and that the Security Council therefore had a legitimate interest in the manner in which it was carried out."<sup>170</sup> The fifth option, and the Secretary-General's preferred one, was "a country-wide enforcement operation to be carried out under United Nations command and control."<sup>171</sup>

What followed was three days of intense negotiation designed to accommodate U.S. insistence on retaining control over American troops and third world members insistence that Washington not be given a blank check.<sup>172</sup> The culmination of these negotiations was Security Council Resolution 794 which reads in part as follows:

The Security Council, . . .

7. Endorses the recommendation by the Secretary-General in his letter of 29 November 1992 (S/24868) that action under Chapter VII of the Charter of the United Nations should be taken in order to establish a secure environment for humanitarian relief operations in Somalia as soon as possible;

8. Welcomes the offer by a Member State described in the Secretary-General's letter to the Security Council of 29 November (S/24868) concerning the establishment of an operation to create such a secure environment;

9. Welcomes also offers by other Member States to participate in that operation;

10. Acting under Chapter VII of the Charter of the United Nations, authorizes the Secretary-General and Member States cooperating to implement the offer referred to in paragraph 8 above to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia; . . .

12. Authorizes the Secretary-General and the Member States concerned to make the necessary arrangements for the unified command and control of the forces involved, which will reflect the offer referred to in paragraph 8 above;

13. Requests the Secretary-General and the Member States acting under paragraph 10 above to establish appropriate mechanisms for coordination between the United Nations and their military forces;

14. Decides to appoint an ad hoc commission composed of members of the Security Council to report to the Security Council on the implementation of this resolution;

15. Invites the Secretary-General to attach a small UNOSOM liaison staff to the Field Headquarters of the unified command; . . .

18. Requests the Secretary-General and, as appropriate, the States concerned to report to the Council on a regular basis, the first report to be made no later than fifteen days after the adoption of this resolution, on the implementation of this resolution and the attainment of the objective of establishing a secure environment so as to enable the Council to make the necessary decision for a prompt transition to continued peace-keeping operations;

19. Requests the Secretary-General to submit a plan to the Council initially within fifteen days after the adoption of this resolution to ensure that UNISOM will be able to fulfil its mandate upon the withdrawal of the unified command.<sup>173</sup>

Lieutenant General Robert B. Johnston, USMC was designated by US Central Command to be the Commander of UNITAF, a combined task force consisting of forces from twenty nations.<sup>174</sup> The mission statement read as follows:

When directed by the National Command Authority, [United States Commander-in-Chief Central Command] will conduct joint/combined military operations in Somalia, to secure major air and sea ports, to provide open and free passage of relief supplies, to provide security for relief convoys and relief organizations, and to assist the United Nations/non-governmental organizations in providing humanitarian relief under UN auspices.<sup>175</sup>

In other words, the mission was to provide security for delivery of relief supplies in Somalia.

Did the UN maintain sufficient political control and strategic direction over the UNITAF operation? The answer is yes. There is no question that the United States was given full authority to exercise operational command of the mission. Paragraphs 8 and 12 of Resolution 794 make this clear. This was also the understanding of members of the Security Council. Sir David Hannay, Britain's ambassador to the UN is quoted as saying that "[t]he reference to the Secretary-General's letter is a way of making clear that the command is being given to an American general without actually saying so."<sup>176</sup> But the unprecedented oversight functions given to the Secretary-General and the Security Council provided sufficient political control and strategic direction of the UNITAF mission. From the beginning, UNITAF had a limited mandate and limited duration. The objectives were the establishment of a secure environment for the delivery of humanitarian aid and the prompt transition to "continued peace-keeping operations."<sup>177</sup> The intent that the military coalition efforts were to be brief was expressed in the Security Council's request to the Secretary-General to submit a

plan, within 15 days, for the turning over of UNITAF command to UNOSOM.<sup>178</sup> These specific directions with respect to the mandate of the mission as well as its duration comprised sufficient UN political control. In addition, the delineation of specific functions for the Secretary-General and the Security Council and the exercise of these functions fulfilled the required elements of strategic direction.<sup>179</sup> Of particular note are the provisions providing for the establishment of "appropriate mechanisms for coordination between the United Nations and [member state] military forces"<sup>180</sup> and the Security Council reservation for itself to decide when the UNITAF operation should end.<sup>181</sup>

The Secretary-General advised the Security Council of the establishment of the following mechanisms for coordination:

7. The following mechanisms for coordination have been established:

(a) At United Nations Headquarters:

- (i) A policy group on Somalia is chaired by the Secretary-General and meets regularly with senior representatives of the United States Government. It reviews the progress of the operation, composition of the Force, funding and planning for the future role of UNOSOM;
- (ii) An operational task force (chaired by the Under-Secretary-General for Peace-keeping Operations), comprising representatives from Secretariat departments concerned and representatives of the United States, meets weekly;
- (iii) A liaison team composed of United States officers has been attached to the Department of Peace-keeping Operations since early January;
- (iv) A UNOSOM planning team is now in place in the Department of Peace-keeping Operations.

(b) At UNOSOM headquarters, Mogadishu, the UNOSOM Force Commander and the Commander of UNITAF are working closely in order to ensure coordination of the activities of the two Forces. Much of the detailed planning of the transition will take place in Mogadishu and, as already noted, UNOSOM headquarters is being strengthened for this purpose. A UNOSOM liaison staff has been working with UNITAF headquarters.

8. Several of the Member States that are cooperating with the United States in UNITAF have asked to be consulted on the current operations of the Force and progress on planning for the transition. I have initiated regular meetings to which all States participating in the Force are invited.<sup>182</sup>

Perhaps not a UN commanded force but, as Belgium's ambassador, Paul Noterdaeme, stated, "a major innovative and historical step" in that direction<sup>183</sup> and insurance that strategic direction and political control could and would be exercised by the UN.

In addition, the Security Council exercised its reservation to end UNITAF's mission by requesting the Secretary-General "to direct the Force Commander of UNOSOM II to assume responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia . . . and in this regard to organize a prompt, smooth and phased transition from UNITAF to UNOSOM II."<sup>184</sup> Additional evidence that, although operational control of the mission rested with the United States, political control and strategic direction remained with the UN.

UNITAF was a total success, both from a political and military perspective. The Third World nations were satisfied that there sufficient checks and balances contained within the mandate to prevent any aspect of neocolonialism being exercised



by western nations. The United States and its partners in UNITAF were satisfied that they had sufficient operational freedom and strategic direction to successfully accomplish the mission. The only area where there was a lack of strategic direction was the lack of UN ROEs, but this was resolved by the adoption of compatible ROEs by all the national contingents involved in UNITAF.<sup>185</sup>

It was not until after the transition from UNITAF to UNOSOM II occurred that the political and military situation deteriorated. The exercise of political control and strategic direction by the UN did not cause this deterioration. Quite the contrary. One of the major reasons for the deterioration of the military situation was the lack of singular political control and strategic direction by the UN. Individual UN contingents were executing their missions under the strategic direction of their national capitals; many times with no coordination with the UN commander on the ground.<sup>186</sup> This lack of singular strategic direction was a major contributing factor to the tragic loss of U.S. lives in Somalia.<sup>187</sup>

The Somalia operations offer the best evidence supporting the thesis that political control and strategic direction of UN authorized operations must rest with the UN. UNITAF was a highly successful operation conducted under UN political control and strategic direction. UNISOM II has been a disaster. This is due, in no small part, to the lack of singular UN political control and direction.

*E. Bosnia and Herzegovina*

I do not intend to conduct a detailed analysis of the military mandate in Bosnia and Herzegovina because the major difficulties being encountered there have nothing to do with UN political control or strategic direction. The mission in Bosnia and Herzegovina is essentially a humanitarian one and not one designed to stop the conflict. An end to the conflict will only occur as a result of a political solution and not military intervention. One may argue that the world community should do more and perhaps this is correct. But UN political control and strategic direction is not the cause of this failure to do more. It is the reluctance of the world community to become more involved militarily in Bosnia and Herzegovina. If the UN wasn't in Bosnia and Herzegovina, there is a significant chance that there would be no military presence at all. The recent negative publicity the UN has received with respect to delays in calling in close air support for UN troops under attack, also has nothing to do with political control and strategic direction.<sup>188</sup> This criticism relates solely to the issue of operational command and the stream-lining of operational command authority.

Although a detailed analysis of the situation in Bosnia and Herzegovina can neither assist in proving or refuting the thesis, a brief discussion on the role of the UNPROFOR and NATO in Bosnia and Herzegovina is extremely topical in view of the recent threat

of NATO airstrikes in Sarajevo and the even more recent enforcement of the "no fly" zone in Bosnia and Herzegovina by NATO.<sup>189</sup> It is also necessary to complete my examination of all five military operations authorized under Chapter VII of the Charter and to determine the extent of UN political control and strategic direction exercised in each operation.

Prior to 29 June, 1992, UNPROFOR had no official mission in Bosnia-Herzegovina, although the approximately 120 UNPROFOR personnel located in Sarajevo found themselves leading negotiations between the parties for an overall cease-fire.<sup>190</sup> In Security Council Resolution 761, the Security Council authorized UNPROFOR to ensure the security and functioning of Sarajevo airport and the delivery of humanitarian aid.<sup>191</sup> On 13 August, 1992 the Security Council adopted Resolution 770, in which, acting under Chapter VII of the Charter, it called upon all states to take "all measures necessary" to facilitate the delivery of humanitarian assistance.<sup>192</sup> Further discussions lead to the decision that this task would be entrusted to UNPROFOR.<sup>193</sup> In Resolution 776, which made no reference to Chapter VII, the Council authorized the enlargement of UNPROFOR's mandate and strength to provide protection to the United Nations High Commission for Refugees organized humanitarian convoys, if requested by the International Committee of the Red Cross.<sup>194</sup> On 9 October, 1992, the Security Council adopted Resolution 781 which established a ban on military flights in the airspace of

Bosnia and Herzegovina and authorized UNPROFOR to monitor compliance with the ban.<sup>195</sup>

The failure of the parties to the conflict to respect this ban lead to the first potential use of force by NATO in Bosnia and Herzegovina.<sup>196</sup> Security Council Resolution 816 read, in part, as follows:

4. Authorizes Member States, . . . 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 means in the airspace of the Republic of Bosnia and Herzegovina, in the event of further violations, to ensure compliance with the ban on flights [by all fixed-wing and rotary-wing aircraft in the airspace of the Republic of Bosnia and Herzegovina], and proportionate to the specific circumstances and nature of the flights;

5. Requests the Member States concerned, the Secretary-General and UNPROFOR to coordinate closely on the measures they are taking to implement paragraph 4 above, including the rules of engagement, and on the starting date of its implementation, . . . and to report the starting date to the Council through the Secretary-General.<sup>197</sup>

In a letter dated 9 April, 1993, the Secretary-General advised the Security Council that "Member States concerned, acting nationally as well as through the regional arrangement of [NATO], have been closely coordinating with me and [UNPROFOR] the measures they are taking to ensure compliance with the ban on all flights in the airspace of Bosnia and Herzegovina." He further advised that "[t]he rules of engagement established by the Member States concerned are in conformity with the requirements set out in operative paragraph 4 of Security Council Resolution 816 (1993)." Finally, the letter stated the following:

In order to ensure continued communication and coordination, liaison cells have been established at UNPROFOR's headquarters in Zagreb and at the headquarters of UNPROFOR's Bosnia and Herzegovina Command in Kiseljak. In addition, UNPROFOR will dispatch a liaison team to the command headquarters designated by the Member States concerned for the operation.<sup>198</sup>

On 4 June 1993, Resolution 836 extended UNPROFOR's mandate to include:

[A]cting in self-defence, [UNPROFOR is authorized] 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.<sup>199</sup>

Resolution 836 also contained the authority for the use of airstrikes to support UNPROFOR in the performance of its mandate.

The exact words used to authorize airstrikes were as follows:

Decides that . . . 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-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 . . . ."<sup>200</sup>

Thus, it can be seen that the decision to invoke NATO airstrikes in Bosnia and Herzegovina will only be made if the Secretary-General and his UNPROFOR commanders and advisors make a determination that such action is necessary to support the fulfillment of UNPROFOR's mandate.

The New York Times summarized NATO's functions in Bosnia and Herzegovina as follows:

The aircraft in the NATO operation have three functions: to prevent unauthorized intrusions into Bosnian airspace, to provide "protective air cover" for United Nations forces on the ground and "to conduct air strikes" to support United Nations relief efforts, if authorized by NATO and in coordination with the United Nations.<sup>201</sup>

A simplification, perhaps, but a good summary of NATO's involvement in Bosnia and Herzegovina.

But what of political control and strategic direction of these functions? It is unquestionable that the political control, strategic direction and operational command of UNPROFOR in Bosnia and Herzegovina rests with the UN. It is equally clear that the political control and strategic direction of the enforcement of the "no-fly" zone and the invocation of airstrikes also rests with the UN. In the case of enforcement of the "no-fly" zone, the UN has exercised political control and strategic direction of the operation through the provisions of paragraph 4 and 5 of Resolution 816. The political decision to enforce the "no-fly" zone has already been made and strategic direction has already been given. NATO has simply been given operational command of the mission. With respect to the invocation of airstrikes, NATO has again been given operational command of the operation *if the decision is made by the UN* that such action is necessary.<sup>202</sup>

## VI. RECOMMENDATIONS FOR CHANGES

### A. Introduction

The majority of this thesis has been devoted to the theme that political control and strategic direction of UN authorized operations should rest with the UN. This is not to say that the present UN system is perfect or fully equipped to assume full responsibility for these onerous tasks. The remarks of Major-General (Retired) Lewis MacKenzie, the former UNPROFOR commander in Bosnia and Herzegovina, are apropos in this regard: "[d]o not get in trouble as a commander in the field after five o'clock New York time or on Saturday or Sunday; there is no one to answer the phone."<sup>203</sup> As well, the ever increasing propensity of national contingent commanders to refer to their national capitals for strategic direction<sup>204</sup> is a reflection of the lack of credibility from which the present UN command and control structure suffers.

But the UN organization should not bear the exclusive blame for what is really a failure on the part of member nations to permit the organization to develop a credible strategic direction capacity. The remainder of this thesis will focus on an analysis of the present and future headquarters structure of the UN in New York and offer recommendations for improving the structure that will enhance the UN's ability and credibility in this regard. The recommendations offer a modest and cautious approach in this regard, in keeping with the political realities of the situation.<sup>205</sup> Finally, I will offer some recommendations on how to prevent the "recipe for disaster" that occurs when member states give conflicting orders to their national contingents involved in UN operations.<sup>206</sup>

## *B. Present and Future Structure*

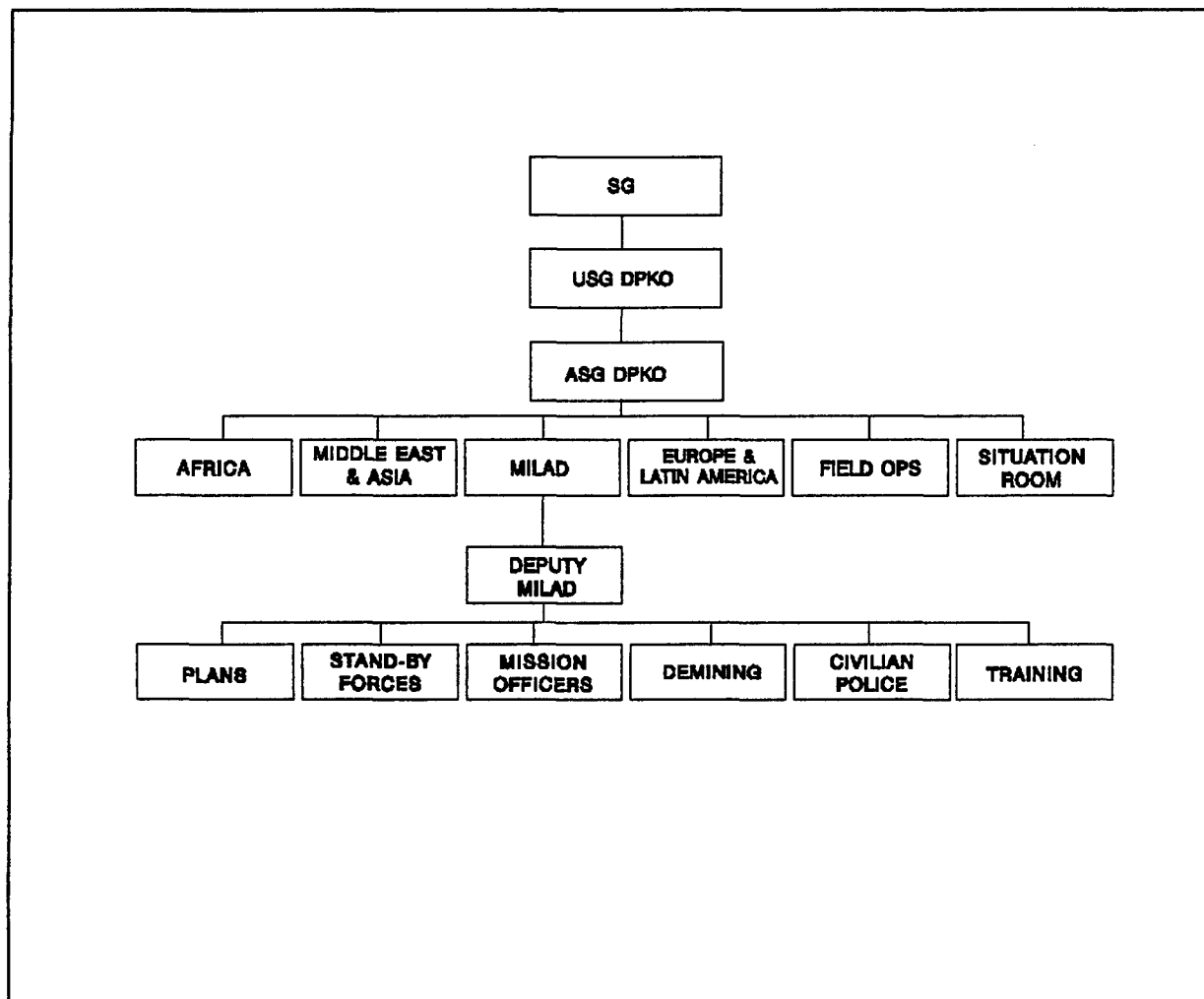
To understand what changes are desirable to enhance UN capacity to provide credible strategic direction, it is necessary to have an understanding of the present and future structures. In considering these structures, one must understand that three different levels of organization and administrative interaction currently exist within the UN. They are the planning and decision-making structures at headquarters in New York, the organization of the forces in the area of deployment, and the relationship between the Secretariat in New York and the forces in the field.<sup>207</sup> This thesis will only focus on the headquarters structure in New York as this level provides strategic direction.

Although direction of UN operations rests with the Secretary-General as an inherent part of his executive office, responsibility for mission planning of a Security Council approved operation rests primarily with the Department of Peacekeeping Operations (DPKO) which forms part of the Secretariat in New York. In practical terms this means that the DPKO is involved in three stages of an operation. First, it assumes the lead role in preparing the implementation plan for the proposed operation which is presented by the Secretary-General to the Security Council as the basis of the resolution. Second, the DPKO recruits the military contingents required for



the operation. Finally, it is responsible for the coordination of the operation once the mission is deployed in the field.<sup>208</sup>

Since January 1992, the Secretary-General has directed that a number of changes to the Secretariat's structure be implemented.<sup>209</sup> These changes have been initiated in an attempt to ensure that the DPKO can more effectively meet its planning and execution responsibilities in ever increasing and varied missions. As of January 1994, the DPKO was organized in the manner shown below.<sup>210</sup>



The following explanatory comments are made to facilitate a better understanding of this organization:

NOTES:

(1) The Field Operations Division (FOD) has primary responsibility for pre-deployment planning and continuous operational support for logistics, finance and field support.<sup>211</sup> Until January 1994, the director of FOD reported to the Under-Secretary-General for Administration and Management. This resulted in extremely limited control of logistic planning and coordination difficulties within the DPKO. It is anticipated that the recent change in FOD's reporting chain will alleviate the major difficulties encountered in the previous arrangement.<sup>212</sup>

(2) The Situation Center is not a military operations center. Its mission is to monitor UN operations *not* exercise strategic direction or operational command.

(3) The Stand-By Forces Unit has a mandate "to develop a system of stand-by forces, able to be deployed as a whole or in part, anywhere in the world, at the Secretary-General's request, within an agreed response time, for UN duties, as mandated by the Security Council."<sup>213</sup> Within this context develop means "designing the forces which will be required in future UN missions, and entering into exploratory discussions with interested member countries to secure contributions."<sup>214</sup> The unit has identified what will be needed in future UN missions and identified four categories: personnel, equipment, services and voluntary contributions. It has also designed a force model which is capable of supporting the UN to accomplish any one of four missions: preventative deployment, peace-making, peacekeeping and post-conflict peace building. It is important to note that the force model is *not* structured to support enforcement actions. In keeping with recent experience, the force model is multi-roled and comprised of civilian as well as military elements. It is based on the premise that a typical mission may consist of some or all of the following components:

- Head of mission, staff and headquarters;
- Military component, including protected infantry battalions;
- Reserve units which might remain under national command until they are called to action;

- UN Military Observers;
- Civilian police component;
- Civil affairs element, including information specialists;
- Support elements, including medical, communications, engineers and logistics;
- Administrative component;
- Electoral component;
- Repatriation component;
- Rehabilitation component, including human rights staff;
- Political advisory staff;
- Training teams (eg. for demining, police duties, and administration); and
- Liaison teams from non-governmental organizations (NGOs).<sup>215</sup>

The final stage to this process will be the identification of member nations who are willing to commit resources or personnel to this initiative.

The January 1994 organizational structure does not represent the final solution as the organization of the DPKO remains in a state of flux and the proposed organization changes weekly.<sup>216</sup> Therefore, it is impossible to state with any certainty what the final organization will look like at the completion of this process. However, it is possible to outline the basic structure that these changes are working towards and to summarize the driving forces behind the changes. There are three main themes driving the reorganization of the present structure. First, there is an urgent requirement to better coordinate the political, civilian and military aspects of every mission. Second, there is a growing acceptance of the requirements for additional military expertise in the DPKO. Finally, there is recognition that the crucial elements of logistics and support must be given more emphasis, not only in the operational phase of

the mission but, more importantly, in the long term planning stages.

In recognition of these themes, the following initiatives will be undertaken:

1. The future DPKO will have two Assistant-Secretary-Generals (ASG); one responsible for operations and one responsible for planning, logistics and support.<sup>217</sup>

This indicates a growing emphasis in the areas of planning, logistics and support. In the context of the Military Advisor's (MILAD) office, it will cease to exist in its present form and military personnel will serve in all areas of the DPKO. The present plans cell, stand-by forces unit, civilian police cell and training cell will be responsible to the ASG DPKO planning, logistics and support and under the direct command of the Deputy Military Advisor.

2. Although the numbers are not final, there is and will continue to be a significant increase in the number of military personnel serving in the department. For example, in mid-July 1993 there were eight military officers attached to the MILAD's office.<sup>218</sup> In 1994 this number will increase to at least forty-four military officers.<sup>219</sup>

3. The present operations sections of the MILAD's office (Mission Desk Officers and Demining Unit) will amalgamate with the three regional divisions in the

DPKO (Africa, the Middle East and Asia and Europe and Latin America) to enhance political, civilian and military coordination of all missions.<sup>220</sup>

4. The Situation Center will not belong to either ASG but will report directly to the USG DPKO.

5. The MILAD will advise and report directly to the Secretary-General.

#### *C. Recommendations for Additional Changes*

The results of the above outlined changes can only "strengthen and make more efficient the UN capacity for preventive diplomacy, peace-making and peace-keeping."<sup>221</sup>

Inherent in these outlined changes is an increase in the ability to exercise effective strategic direction. But is it enough? In a traditional military organization, the design and implementation of a structure fully capable of exercising such direction would present few difficulties. But the UN is not a military organization and any recommended changes must recognize the dilemma of resolving the desire to improve UN capabilities with the lack of political will to give the Secretariat the human and material resources to accomplish this task.<sup>222</sup> Dr. David Owen, in an address to the General Assembly in 1977, stated the following:

We are prepared to see our doctors, agriculturalists, sociologists, and economists working together and pooling their expertise within the UN institutional

framework, but we are reluctant to see our generals and admirals and our strategic thinkers working within such a framework on behalf of world security.<sup>223</sup>

The improvement in the military staff in the Secretariat since 1992 has been significant. But there is still a long way to go. The following recommendations will attempt to reconcile the need for improvement of the military staff capabilities with the tenuous political will to provide the necessary human and material resources. The recommendations are broken down into four categories: staffing, plans, operations and augmentation.

#### *1. Staffing*

As previously highlighted, the UN has taken recent measures to address the quantitative issue of military manning of the organizational structure. Most would agree that it is barely adequate, but in times of budget restraint with many member nations either unable or unwilling to pay their dues, it is as much as can reasonably be expected. These strict limit on numbers make it is imperative that there be continuity in the organization and that each position be staffed with fully qualified, competent military officers. This statement is consistent with Major General (Retired) Rikye remarks that "[t]he UN does not have a filing system for experience that has been gained. There is an urgent need for adequate military staff. It need not be large, but there must be some continuity."<sup>224</sup>

An even more basic problem than lack of continuity that exists is lack of headquarters staff selection criteria. To a certain extent, global quotas will always influence the selection of a candidate for a staff position in the UN. But this political reality does not mean that these quotas must be met by accepting unqualified people to fill the positions. There must be minimum standards set for the positions to be filled and member nations must understand that "only the qualified need apply." At a minimum, a good working knowledge of English, staff training and previous service in a UN operation should be mandatory for all military positions in the DPKO.<sup>225</sup>

The length of a tour also contributes significantly to the competence of the staff. It is recommended that all tour lengths for mission planners and operators' positions be four years.<sup>226</sup> During the first year of service with the UN, staff members should be required to serve in an on-going UN mission. The second year they would serve in the operations cell and the final two years would be spent in the plans cell.

With these recommended changes in place, the confidence of member nations in the military staff in the DPKO should improve. The knowledge that competent, experienced professional military officers are responsible for the provision of strategic direction can only enhance the credibility of the UN.

## *2. Plans*

A military organization's command and control functions "are best conducted within a professional military staff with instituted procedures and systems."<sup>227</sup> This is equally true for strategic direction functions. At least until recently, planning for every mission in the UN was done on an ad hoc basis.<sup>228</sup> Within the UN, there are no position descriptions to define authority and responsibility, no organizational manuals, no standard operating procedures and no organizational charts.<sup>229</sup> Some experts have suggested that a strategic planning cell be given the mandate to fill these voids as well as developing concept plans for regional contingencies that reflect a wide variety of conflict situations.<sup>230</sup> The present Stand-by Forces Unit is certainly moving in this direction. It is recommended that their mandate be expanded to include enforcement actions or that the Plans Cell in the DPKO use the Stand-by Forces Unit's work as a model to develop contingency plans for the whole spectrum of conflict situations.

Every military planner would agree that it is desirable and credibility enhancing to conduct command post exercises for any plan prior to implementation. This presents major difficulties for the UN because under the present system there is no way of knowing the likely contingent composition of an operation until the implementation phase. Again, the work of the Stand-by Forces Unit may provide a solution. If the final stage of the Unit's process is successful and the UN is able to get commitments from member states to earmark troops and equipment from their national



militaries for specific types of UN operations, the Plans cell could develop scenarios to conduct command post exercises with some or all of these committed states. Eventually the concept could be expanded to the whole spectrum of conflict situations.<sup>231</sup>

### *3. Operations*

Even if "the UN headquarters may shut down at the end of the day and not operate on week-ends, the sun never sets on forward deployed UN soldiers."<sup>232</sup> Thus, from a military perspective it is imperative that the Operations cell in the DPKO has a "peace room"<sup>233</sup> capable of keeping in touch with the field twenty-four hours per day.<sup>234</sup> The implementation of such an operations center would significantly decrease the dissatisfaction expressed by many military officers who have served with the UN in a senior capacity.<sup>235</sup>

### *4. Augmentation*

A staff of forty-four military personnel cannot provide credible strategic direction to some fourteen missions involving 50,000 troops or more.<sup>236</sup> Therefore, for major operations, there is an absolute requirement for augmentation of the military staff at the DPKO. It is recommended that the augmentees come from the military forces of the contributing contingents and initially work in the Plans cell involved in the detailed development of

the military mission. This should alleviate a repeat of the past, where two officers put together a mission in twenty-four hours.<sup>237</sup> Once the plan has been completed, augmentees would transfer to the Operations cell until the mission is complete.<sup>238</sup> This would create continuity for the operation and enhance the credibility of the military staff in the DPKO. It should also have the spin-off effect of discouraging a separate chain of command to national capitals. Member nations would be convinced that the safety and security of their national forces will be well represented by the operational staff.

The foregoing is not the ideal military solution to the provision of a credible strategic direction capability. It is a solution based on reality: there will not be any large UN general staff created now or in the near future.<sup>239</sup> Nor is it absolutely necessary at a time when there appears to be increased interest in enhancing cooperation between the military and civilian components of the UN. The recent and recommended organizational changes to the DPKO are a reasonable compromise between the ideal military solution and the realities of the political situation.

5. *Recommended solution to the problems of lack of unity of command and commitment to the mission*

As UN operations become more complex, difficult and dangerous, the tendency of national capitals to exercise

operational control of their individual contingents will continue unless the politicians are satisfied that their concerns are being adequately considered by those in charge of the mission.<sup>240</sup> The following remarks, with respect to major lessons learned from Somalia, are particularly telling in this regard: "[the UN] must have authority and military expertise to impose undisputed unified command on a large peace-keeping force . . . . It must be sure that the countries sending troops are prepared to stick with a mission even when it gets tough . . . ." <sup>241</sup> If a solution to these two problems, i.e. lack of unity of command and lack of political commitment to see the mission through to completion, cannot be found, the UN will continue to be subject to criticism and to suffer from lack of credibility.

The causes of these problems are two-fold; lack of representation by the contributing nations in the political control and strategic direction of the mission and failure to provide sufficient information to the nations being asked to contribute forces to enable the nations to make a proper risk assessment. The following solutions to these problems are suggested:

*a. Political Control*

The political authority that assumes political control of a mandate must be realistically representative of the states supporting the action.<sup>242</sup> Therefore, some mechanism must be established within the Security Council for the co-opting of contributing

nations "onto the committee or other body assuming political control where these are not already represented."<sup>243</sup>

*b. Strategic Direction*

As I have previously suggested, the augmentation of the permanent military staff in the DPKO should provide sufficient representation with regard to strategic direction.

*c. Risk Assessment*

At present, the *note verbale*<sup>244</sup> simply specifies the requested contribution with no details of the mission, duration of commitment or command and control relationships.<sup>245</sup> If member nations were to conduct a proper risk assessment prior to commitment of troops, there would be less likelihood of nations withdrawing from missions due to political pressure at home because of unexpected casualties. The attachment of the specific information identified above to the *note verbale* would enable member nations to make this critical risk assessment.

VII. CONCLUSION

Legally, the UN must exercise political control and strategic direction of Chapter VII enforcement actions. In addition to this legal requirement, there are overwhelming

practical reasons for requiring UN political control and strategic direction. The present UN structure is not perfect nor even fully equipped to assume full responsibility for these tasks but efforts should be concentrated on improving the present structure not creating a new one.

The UN can never be larger than its member nations.<sup>246</sup> The UN's ability to play an effective role in world security comes "down to a matter of commitment and will: commitment to looking more open-mindedly at the UN's potential contribution to this important part of human affairs; and will to make the necessary changes in the UN's organizational structure and to provide the resources needed to make such potential a reality."<sup>247</sup> Member states must act as part of an international team rather than parallel players marching to a national interests drummer.<sup>248</sup> Unfortunately, the US appears to be withdrawing from what initially appeared to be support by the Clinton administration for a central tenet of multilateralism.<sup>249</sup> Lack of US leadership and support for collective measures may permanently cripple the only existing organization that has the potential to maintain international security "in a world where the most troubling conflicts often do not threaten the interests of the major powers."<sup>250</sup>

The Security Council cannot continue to pass resolutions that they treat as if they were self-executing.<sup>251</sup> The political desire to be seen to be doing something, without the commitment of the required resources, impairs the credibility of the UN and

makes it impossible for the UN to fulfill its primary responsibility for maintaining international peace and security. The world community must be willing to pay the high price of maintaining international peace and security in "blood and resources." <sup>252</sup>

1. Bernard Wood, *The Gulf Crisis and the Future of World Order*, 20 No. 5 CAN. DEF. Q. 22, 24 (1991).
2. Until the birth of the League of Nations in 1919, the sovereign right to resort to war was the governing international legal principle. In 1928 the Covenant of the League of Nations was supplemented by the General Treaty for the Renunciation of War, otherwise known as the Kellogg-Briand Pact. This treaty represented the first attempt to outlaw war completely. The evolution of the prohibition of the unilateral resort to force by states was complete with the United Nations Charter.
3. U.N. SCOR, 47th Sess., 3046 mtg. at 139, U.N. Doc. S/PV.3046 (1992).
4. Thomas M. Frank & Faiza Patel, *Agora: The Gulf Crisis in International and Foreign Relations Law: UN Police Action in Lieu of War: "The Old Order Changeth"*, 85 AM. J. INT'L L. 63, 63 (1991).
5. President Bush popularized this idea of a new world order when he described the coalition to free Kuwait as " a big idea ... a new world order, with new ways of working with other nations ... peaceful settlement of disputes, solidarity against aggression, reduced and controlled arsenals and just treatment of peoples." See WILLIAM H. LEWIS, *MILITARY IMPLICATIONS OF UN PEACEKEEPING OPERATIONS* 85 (1993).
6. WILLIAM R. FRYE, *A UNITED NATIONS PEACE FORCE* 46 (1957).

7. U.N. SCOR, *supra* note 3, at 6.
8. Lieutenant Colonel Philip F. Federle, United Nations Peace Force Operations: Collective Engagement and Reforming the UN Military Staff 4 (March 15, 1993) (unpublished manuscript, on file with the Army War College, Carlisle Barracks, Penn.).
9. Bruce Russett & James S. Sutterlin, *The U.N. in a New World Order*, 70 FOREIGN AFF. 69, 81 (Spring 1991).
10. D. W. BOWETT, UNITED NATIONS FORCES 359 (1966).
11. ALLIED ADMINISTRATIVE PUBLICATIONS 6, NATO GLOSSARY OF TERMS AND DEFINITIONS 2-O-2 (1 Feb. 1989).
12. *Id.* at 2-F-4.
13. From 1988 to 1992, 14 new UN operations were established. By the end of 1992, the number of UN soldiers exceeded 50,000. See Boutros Boutros-Ghali, *Empowering the United Nations*, 71 FOREIGN AFF. 89, 91 (Winter 1992-93).
14. John Mackinlay & Jarat Chopra, *Second Generation Multinational Operations*, 15 WASH. Q. 113, 117 (Summer 1992).
15. See, e.g., *Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty*, G.A. Res. 2131, U.N. GAOR, 20th Sess., U.N. Doc. A/6220 (1965); *Declaration of the Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625, U.N. GAOR, 25th Sess., U.N. Doc. A/8082 (1970); *Definition of Aggression*, G.A. Res. 3314, U.N. GAOR, 29th



Sess., U.N. Doc. A/9890 (1974); Military and Paramilitary Activities, (Nicar. v. U.S.), 1986 I.C.J. 4 (June 27).

16. David J. Scheffer argues that it is only the traditional school that "preserves the key normative provision of the UN Charter - article 2(4) - as the cornerstone of contemporary international law." See David J. Scheffer, *Introduction: The Great Debate of the 1980s*, in RIGHT V. MIGHT 1, 3 (1991). I disagree with this statement. If there is not widespread recognition and acceptance of the ban on resort to force, why has every state attempted to legitimize their actions on the basis of accepted exceptions to this general rule?
17. See U.N. Charter art. 51.
18. In Martin Dixon's analysis of the Charter, he asserts the following:

Under the UN collective security system as originally envisaged, the Security Council was to be the organ through which international peace and security was to be maintained. It was given specific powers in Chapter VII of the Charter to act on behalf of all states, even if this meant using force itself.

MARTIN DIXON, TEXTBOOK ON INTERNATIONAL LAW 183 (1990).

19. Certain Expenses of the United Nations, 1962 I.C.J. 151 (July 20).
20. Boutros-Ghali, *supra* note 13, at 89.
21. Federle, *supra* note 8, at 14.
22. Russett & Sutterlin, *supra* note 9, at 70.
23. Mackinlay & Chopra, *supra* note 14, at 115.
24. Julia Preston, *Boutros-Ghali Backs Airstrikes in Bosnia*,

WASH. POST, Jan. 29, 1994, at A14.

25. Lieutenant (Navy) Bruce Fenton, *The Multinational Force And Observers In The Sinai: A Quiet Success Story*, in 1 WAR STUDIES PAPERS: STUDIES IN PEACEKEEPING 103, 103 (Lieutenant-Colonel Joseph P. Culligan et al. eds., 1993).
26. Oscar Schachter, *Authorized Uses of Force by the United Nations and Regional Organizations*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 65, 77 (Lori F. Damrosch & David Scheffer eds., 1991).
27. For a good discussion on both sides of this issue see DIXON, *supra* note 18, at 18.
28. *Id.* at 19.
29. D. W. BOWETT, SELF-DEFENCE IN INTERNATIONAL LAW 206 (1958).
30. *Id.* at 216.
31. MYRES S. MCDUGAL & FLORENTENO P. FELICIANO, LAW AND MINIMUM WORLD PUBLIC ORDER 250 (1960).
32. Military and Paramilitary Activities, (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27).
33. Louis Henkin, *Use of Force: Law and U.S. Policy*, in RIGHT V. MIGHT, *supra* note 16, at 37, 48.
34. Eugene V. Rostow, *Agora: The Gulf Crisis in International and Foreign Relations Law, Continued: Until What? Enforcement Action or Collective Self-Defense?*, 85 AM. J. INT'L L. 506, 513 (1991); See also Y. DINSTEIN, WAR, AGGRESSION AND SELF-DEFENCE 142-43 (1988).
35. See Abram Chayes, *The Use of Force in the Persian Gulf*, in

LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, *supra* note 26, at 3, 5; Rein Mullerson, *Self-Defense in the Contemporary World*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, *supra* note 26, at 13, 22; David J. Scheffer, *Use of Force After the Cold War; Panama, Iraq, and the New World Order*, in RIGHT V. MIGHT, *supra* note 16, at 109, 128; and HANS KELSON, THE LAW OF THE UNITED NATIONS 928 (1951).

36. Chayes, *supra* note 35, at 5.

37. *Id.*

38. Scheffer, *supra* note 35, at 128.

39. BOWETT, *supra* note 29, at 182.

40. *Id.* at 195. This interpretation would also appear to resolve Kelsen's dilemma (see KELSEN, *supra* note 35, at 935) with respect to the Korean conflict. Kelsen argues the Security Council Resolution of June 25, 1950 calling for immediate cessation of hostilities and for the withdrawal of North Korean troops to the 38th parallel were "measures necessary to maintain international peace and security" that terminated the exercise of collective self-defence. Yet, the Security Council Resolution of July 7, 1950, interprets the actions of members of the UN in Korea as assistance to the Republic of Korea "defending itself against armed attack"; that is, an exercise of the right of collective self-defence. The requirement that the Security Council make a definitive determination of whether the right to collective self-defence has terminated would mean Kelsen's

argument that the Resolution of June 25 terminated the right to collective self-defence is without merit and would be consistent with the Security Council Resolution of July 7, 1950.

41. Oscar Schachter, *Authorized Uses of Force by the United Nations and Regional Organizations*, in *LAW AND FORCE IN THE NEW WORLD ORDER*, *supra* note 26, at 65, 79.
42. U.N. Charter arts. 41 & 42.
43. U.N. Charter art. 42.
44. BOUTROS BOUTROS-GHALI, *AN AGENDA FOR PEACE* 25, U.N. Doc. A/47/277-S/24111, U.N. Sales No. A6/X70714 (1992); and Scheffer, *supra* note 35, at 131.
45. See D. J. HARRIS, *CASES AND MATERIAL ON INTERNATIONAL LAW* 681 (4th ed. 1991); KELSEN, *supra* note 35, at 756; Burns H. Weston, *Agora: The Gulf Crisis, Continued: Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy*, 85 AM. J. INT'L L. 516, 519 (1991).
46. FINN SEYERSTED, *UNITED NATIONS FORCES IN THE LAW OF PEACE AND WAR* 163 (1966).
47. Weston, *supra* note 45, at 519.
48. See BOWETT, *supra* note 10, at 277; See also John W. Halderman, *Legal Basis for United Nations Armed Force*, 56 AM. J. INT'L L. 971, 985 (1962).
49. D.W. BOWETT, *THE LAW OF INTERNATIONAL INSTITUTIONS* 36 (1963).
50. C. F. Amerasinghe, *The Charter Travaux Preparatoires and United Nations Powers to Use Armed Force*, 4 CAN. Y.B. INT'L

L. 81, 91 (1966).

51. BOWETT, *supra* note 10, at 277.
52. Halderman, *supra* note 48, at 985.
53. BOWETT, *supra* note 10, at 277.
54. 1949 I.C.J. 174 (April 11).
55. *Id.* at 182.
56. BOWETT, *supra* note 10, at 310.
57. Certain Expenses of the United Nations, 1962 I.C.J. 167 (July 20).
58. KELSEN, *supra* note 35, at 768.
59. SEYERSTED, *supra* note 46, at 156.
60. In opening the Security Council session of 31 December 1992, the Council President stated Council members were united by their commitment to "strengthen the wider community to which we belong, to reinforce collective security and to maintain international peace and security." See U.N. SCOR, *supra* note 3, at 2.
61. Russett & Sutterlin, *supra* note 9, at 76.
62. Mackinley & Chopra, *supra* note 14, at 126. Weiss sees the important elements of collective intervention as "the decision to intervene as well as continued monitoring of the overall operational directions of an individual intervention." See Thomas G. Weiss, *Intervention; Whither the United Nations*, 17 WASH. Q. 110, 116 (Winter 1994).
63. Certain Expenses of the United Nations, 1962 I.C.J. 168 (July 20).
64. Rosalyn Higgins, *The Place of International Law in the*

*Settlement of Disputes by the Security Council*, 64 AM. J.

INT'L L. 1, 1 (1970).

65. Louis B. Sohn, *The Authority of the United Nations to Establish and Maintain a Permanent United Nations Force*, 52 AM. J. INT'L L. 229, 229 (1958); U.N. Charter art. 25.
66. U.N. Charter arts. 108 and 109; Burns Weston makes this same argument. See Weston, *supra* note 64, at 518.
67. JORGE CASTANEDA, *LEGAL EFFECTS OF UNITED NATIONS RESOLUTIONS* 104 (1969).
68. U.N. Charter art. 96.
69. David J Scheffer, *Three Views on the Issue of Humanitarian Intervention: Challenges Confronting Collective Security: Humanitarian Intervention 9* (1992) (unpublished manuscript, on file with the United States Institute of Peace).
70. BOUTROS-GHALI, *supra* note 44, at 9.
71. See Ian Brownlie, *Humanitarian Intervention*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 217 (John N. Moore ed., 1974); Tom J. Farer, *An Inquiry into the Legitimacy of Humanitarian Intervention*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER*, *supra* note 26, at 185, 192; Vladimir Kartashkin, *Human Rights and Humanitarian Intervention*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER*, *supra* note 26, at 202, 206; Lori F. Damrosch, *Commentary on Collective Military Intervention to Enforce Human Rights*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER*, *supra* note 26, at 215, 215; Louis Henkin, *Use of Force: Law and U.S. Policy*, in *RIGHT V. MIGHT*, *supra* note 16,

- at 37, 41; Scheffer, *supra* note 69, at 6; and Richard N. Gardner, Three Views on the Issue of Humanitarian Intervention: International Law and the Use of Force 21 (1992) (unpublished manuscript, on file with the United States Institute of Peace) for the majority view. *But see* Michael Reisman & Myles S. McDougal, *Protecting the Ibos*, in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 167 (Richard B. Lillich ed., 1973); John N. Moore, *The Control of Foreign Intervention in Internal Conflict*, 9 VA. J. INT'L L. 206, 263 (1969); Richard B. Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a Plea for Constructive Alternatives*, in LAW AND CIVIL WAR IN THE MODERN WORLD, *supra* note 71, at 228; and FERNANDO R. TESON, HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY 5 (1988) for the minority view.
72. *See* Brownlie, *supra* note 71, at 217.
73. Gardner, *supra* note 71, at 240.
74. These were the three criteria that a British Foreign Policy Document used to demonstrate that there is no international legal recognition of the principle of unilateral humanitarian intervention. *See* Theodor Meron, *Commentary on Humanitarian Intervention*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, *supra* note 26, at 212, 213.
75. *See* Brownlie, *supra* note 71, at 223; Scheffer, *supra* note 71, at 230; Derek W. Bowett, *The Interrelation of Theories of Intervention and Self-Defense*, in LAW AND CIVIL WAR IN THE MODERN WORLD, *supra* note 44, at 38, 45.

76. Military and Paramilitary Activities, (Nicar. v. U.S.), 1986 I.C.J. 4 (June 27).
77. Meron, *supra* note 74, at 213.
78. See Farer, *supra* note 71, at 192; Scheffer, *supra* note 35, at 170 fn 111; TSON, *supra* note 71, at 155.
79. Farer, *supra* note 71, at 193.
80. S.C. Res. 688, U.N. SCOR, 46th Sess., U.N. Doc. S/RES/688 (1991).
81. Scheffer, *supra* note 35, at 170 n.113.
82. *Id.* at 146.
83. Scheffer, *supra* note 71, at 14.
84. Julia Preston, *Towards New Role in Somalia*, WASH. POST, Feb. 5, 1994, at A14.
85. Jim Hogland, *Retreat From Intervention*, WASH. POST, Dec. 23, 1993, at A13.
86. S.C. Res. 794, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/794 (1992).
87. Gardner, *supra* note 71, at 29.
88. See MATS R. BERDAL, *WHITHER UN PEACEKEEPING?* 74 (1993).
89. D'AMATO, *INTERNATIONAL LAW: PROCESS AND PROSPECT* 226 (1987); See also Farer, *supra* note 71, at 199.
90. See Andrew S. Natsios, *Whither Intervention: Food Through Force: Humanitarian Intervention and U.S. Policy*, 17 WASH. Q. 129, 138 (Winter 1994).
91. During the Gulf war, the Desert Storm coalition became identified with U.S. policy and objectives. See Andrew S.



Miller, *Universal Soldier: U.N. Standing Armies and the Legal Alternatives*, 81 GEO. L.J. 773, 817 (1993); See also Russett & Sutterlin, *supra* note 9, at 74 (arguing that this was also the case in Korea).

92. This was the concern expressed by a number of African and third world nations prior to the passing of Security Council Resolution 794. See John M. Goshko, *U.N. Orders U.S. Forces Into Somalia*, WASH. POST, Dec. 4, 1992, at A1.
93. John N. Moore, *Towards an Applied Theory of the Regulation of Intervention*, in LAW AND CIVIL WAR IN THE MODERN WORLD, *supra* note 71, at 3, 13.
94. Natsios, *supra* note 90, at 138.
95. Quoted by Benjamin Rivlin in *Regional Arrangements and the UN System for Collective Security and Conflict Resolution: A New Road Ahead*, 21 INT'L REL. 95, 96 (August 1992).
96. For example, in Somalia, Canadian military forces were not only involved in the creation of a secure environment for the delivery of humanitarian aid as part of the Unified Task Force's (UNITAF) mandate, but also assisted in the rebuilding of communities, the reopening of schools and generally assisted in setting up civil administration. These actions were consistent with the Secretary-General's briefing to a Washington delegation that he wanted the coalition to not only disarm the Somalia factions but also to clear mines in the country, set up civil administration and begin training civilian police. See John R. Bolton, *Wrong Turn In Somalia*, FOREIGN AFF. 56, 59 (Jan/Feb 1993).

97. William J. Durch & Barry M. Blechman, *Keeping the Peace: The United Nations in the Emerging World Order* 74 (1992) (unpublished special report of the Henry Stimson Center, Washington).
98. Boutros-Ghali, *supra* note 13, at 92. See also Kofi Annan, *The U.N.'s Power in Bosnia*, WASH. POST, Mar. 28, 1994, at A21 (arguing that "[t]he military objective [in Bosnia] must be assessed in its political, security and operational context).
99. This danger was illustrated most clearly on 12 July 1993 when a US helicopter strike against a 'command and control center' in Mogadishu ... killed several key religious leaders and clan elders on whom the UN so critically depends for a long-term political solution. Furthermore, in addition to undermining the prospects for national and political reconciliation, US-led military operations in Mogadishu have critically hampered humanitarian relief operations, another key objective at the outset of the operation.
- BERDAL, *supra* note 88, at 24.
100. See DEP'T OF ARMY, FIELD MANUAL 100-5, OPERATIONS 2-5 (14 June 1993).
101. HARRY G. SUMMER, JR., ON STRATEGY 127 (1982).
102. This a reoccurring problem in the former Yugoslavia where there are reports that former United Nations Protection Force (UNPROFOR) Commander General Jean Cot disputed strategy with his political bosses. See John Ferguson, *UN's Feuding Commander in Bosnia, Jean Cot, Can Barely Conceal his Contempt for Civilian Bosses*, TORONTO STAR, Jan. 17, 1994, at A13.
103. CARL VON CLAUSEWITZ, ON WAR 405<sup>3</sup> (Anatol Rapport ed., 1968).

104. Interviews with Military Advisor's (MIILAD) staff in UN, New York (Jan. 27, 1994); See also John Lancaster, *Mission Incomplete, Rangers Pack Up*, WASH. POST, Oct. 21, 1993, at A1.
105. Eugene J. Carroll, Jr., *Military Principle Was Violated in Somalia*, N.Y. TIMES, Oct. 17, 1993, at Sec. 4, 16.
106. LEWIS, *supra* note 5, at 11.
107. CANADIAN FORCES PUBLICATION (J)5(4)-24, USE OF FORCE IN JOINT OPERATIONS, Chap. 3, para. 6 (19 May 1993).
108. Based on NATO's recent enforcement of the "no fly" zone in Bosnia and Herzegovina, there is some evidence that the response to this question would be yes.
109. U.N. SCOR, *supra* note 3, at 9.
110. See Halderman, *supra* note 48, at 974; BOWETT, *supra* note 10, at 34 for support of the collective measures theory.
111. See Kelsen, *supra* note 35, at 936; STONE, LEGAL CONTROLS OF INTERNATIONAL CONFLICT 232-35 (1954) for support of the collective self-defence theory.
112. BOWETT, *supra* note 10, at 30.
113. S.C. Res. 82, U.N. SCOR, 5th Sess., U.N. Doc. S/1501 (1950).
114. Kelsen, *supra* note 35, at 931.
115. S.C. Res. 83, U.N. SCOR, 5th Sess., U.N. Doc. S/1511 (1950).
116. BOWETT, *supra* note 10, at 41.
117. RUTH B. RUSSELL, UNITED NATIONS EXPERIENCE WITH MILITARY FORCES: POLITICAL AND LEGAL ASPECTS 26 (1964).
118. LIE, IN THE CAUSE OF PEACE 334 (1954).

119. S.C. Res. 84, U.N. SCOR, 5th Sess., U.N. Doc. S/1588 (1950).
120. FRYE, *supra* note 6, at 191.
121. RUSSELL, *supra* note 117, at 27.
122. G.A. Res, 376(V), U.N. GAOR, 5th Sess., (1950).
123. The United States took the position that the Security Council resolution of 7 July, 1950 gave the unified command adequate authority to cross the line as a military measure but decided to make the decision to cross the Parallel a collective one to strengthen its political force. See RUSSELL, *supra* note 117, at 34.
124. See FRYE, *supra* note 6, at 192; RUSSELL, *supra* note 117, at 38.
125. FRYE, *supra* note 6, at 193.
126. BOWETT, *supra* note 10, at 34.
127. Eugene V. Rostow, *Agora: The Gulf Crisis in International Law and Foreign Relations Law, Continued: Until What? Enforcement Action or Collective Self-Defence?*, AM. J. INT'L L. 506, 508 (1991).
128. See KELSEN, *supra* note 35, at 936-37; STONE, *supra* note 111, at 232. But see BOWETT, *supra* note 10, at 34.
129. S.C. Res. 84, U.N. SCOR, 5th Sess., U.N. Doc. S/1588 (1950).
130. KELSEN, *supra* note 35, at 936.
131. STONE, *supra* note 111, at 246 n.20.
132. *Id.* at 234 n.33.
133. See BOWETT, *supra* note 29, at 193; BOWETT, *supra* note 10, at 303.

134. RUSSELL, *supra* note 117, at 36.
135. David Callahan, *Uneasy Tango: U.S. Foreign Policy and the United Nations*, FOREIGN SERV. J. 35, at 38 (July, 1992).
136. RUSSELL, *supra* note 117, at 40.
137. BOWETT, *supra* note 10, at 45.
138. See S.C. Res. 216, U.N. SCOR, 20th Sess. (1965); S.C. Res. 217, U.N. SCOR, 20th Sess. (1965).
139. S.C. Res. 221, U.N. SCOR, 21st Sess. (1966).
140. The previous history is a compilation of the facts related in 3 sources. See JERICHO NKALA, THE UNITED NATIONS, INTERNATIONAL LAW, AND THE RHODESIAN INDEPENDENCE CRISIS 91-99 (1985); DIXON, *supra* note 18, at 887-90; Thomas G. Weiss & Jarat Chopra, United Nations Peacekeeping: An ACUNS Teaching Text 24-26 (1992) (unpublished report of The Academic Council on the United Nations System).
141. Weiss & Chopra, *supra* note 140, at 26.
142. Oscar Schachter, *United Nations Law in the Gulf Conflict*, 85 AM. J. INT'L L. 452, 452 (1991).
143. S.C. Res. 660, U.N. SCOR, 45th Sess., U.N. Doc. S/RES/660 (1990).
144. S.C. Res. 661, U.N. SCOR, 45th Sess., U.N. Doc. S/RES/661 (1990).
145. S.C. Res. 665, U.N. SCOR, 45th Sess., U.N. Doc. S/RES/665 (1990).
146. S.C. Res. 678, U.N. SCOR, 45th Sess., U.N. Doc. S/RES/678 (1990).

147. Weston, *supra* note 45, at 517.
148. Jim Wurst, *The United Nations after the Gulf War*, WORLD POL'Y J. 528, 537 (Summer 1991).
149. Weston, *supra* note 45, at 533.
150. *Id.*
151. S.C. Res. 687, U.N. SCOR, 46th Sess., U.N. Doc. S/RES/687 (1991).
152. This is the argument presented by Rostow, *supra* note 125, at 509. The view that the Gulf war was not a collective security action under the Charter is also held by Callahan, *supra* note 133, at 32 and Schachter, *supra* note 140, at 459-60.
153. *But see* Scheffer, *supra* note 35, at 126-29; Chayes, *supra* note 35, at 5; Weston, *supra* note 45, at 520-21.
154. S.C. Res. 661, *supra* note 142.
155. *See* Schachter, *supra* note 41, at 78; Scheffer, *supra* note 35, at 126.
156. Schachter, *supra* note 142, at 460.
157. Rostow, *supra* note 127, at 509.
158. Scheffer, *supra* note 35, at 129.
159. Dent Ocaya-Lakidi, *Regional Conflicts, Regional Coalitions and Security cooperation in Africa and the Middle East: The Roles of the United Nations and the United States Military 4* (Nov. 2, 1993) (unpublished paper prepared for presentation at the National Defense University symposium).
160. *Letter Dated 24 November 1992 from the Secretary-General Addressed to the President of the Security Council*, U.N.

- SCOR, 47th Sess., U.N. Doc. S/24859 (1992).
161. *Id.* at 4; *See also* Bolton, *supra* note 96, at 57.
162. Lieutenant Commander James P. Winthrop, *The Impact of Operation Restore Hope on the Doctrine of Humanitarian Intervention* 12 (March 1993) (unpublished manuscript, on file with the Judge Advocate General's School, United States Army, Charlottesville).
163. Walter S. Clark, *Testing the World's Resolve in Somalia*, 23 No.4 PARAMETERS 42, 45 (Winter 1993-94).
164. S.C. Res. 794, *supra* note 86.
165. George J. Clark, *Anatomy of a Disaster*, TIME, Oct. 18, 1993, at 40.
166. Bolton, *supra* note 96, at 57-8.
167. *Letter Dated 29 November 1992 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24868 (1992).
168. *Id.* at 4.
169. *Id.* at 5.
170. *Id.*
171. *Id.*
172. Goshko, *supra* note 92, at A1.
173. S.C. Res. 794, *supra* note 86, at 3-4.
174. F.M. Lorenz, *Law and Anarchy in Somalia*, 23 No.4 PARAMETERS 27, 27 (Winter 1993-94).
175. *Id.* at 40 n.2.
176. Goshko, *supra* note 92, at A1.
177. S.C. Res. 794, *supra* note 86, at 3-4.

178. Bolton, *supra* note 96, at 58.
179. S.C. Res. 794, *supra* note 86, at 4.
180. *Id.*
181. *Id.*
182. *United Nations Security Council; Further Report of the Secretary-General Submitted in Pursuance of Paragraphs 18 and 19 of Resolution 794 (1992)*, U.N. SCOR, 47th Sess., at 4, U.N. Doc. S/24868 (1992).
183. Goshko, *supra* note 92, at A1.
184. S.C. Res. 814, U.N. SCOR, 48th Sess., U.N. Doc. S/RES/814 (1993).
185. Interview with Commander William Fenrick, Director of Law/Operations and Training, Judge Advocate General's Office, Ottawa, Canada (Mar. 4, 1994).
186. The following quotes illustrate this point:

Individual contingents remain, as they have been historically, extremely reluctant to accept the chain of command within missions and have placed their loyalty to Force Commanders in doubt by referring matters to national authorities. . . . The case of Italian "insubordination" in Somalia in July 1993, when the Italian contingent commander defied the orders of the Turkish Force Commander, General Civek Bir, is merely the most published case. It is well known that French and British soldiers in the former Yugoslavia refer to Paris and London before, if at all, consulting with the UN Secretariat in New York. Among officers serving in Bosnia, the Spanish battalion is known to refer practically all operational issues that arise on the ground to authorities in Madrid. Similarly, Indonesian forces in Cambodia were notorious for their tendency to take directions from the Indonesian ambassador in Phnom Penh rather than from Lieutenant-General John Sanderson, UNTAC's Force Commander.



BERDAL, *supra* note 59, at 42; and

Further complicating the Somali operation has been a reluctance by participating governments to cede control over their forces.

"Montgomery didn't have control of his own troops. Everything was on a string back to Washington or [Central Command headquarters in] Tampa," a U.S. official said. "Gen. Bir would ask the French or Italians to do something, and they'd have to check with Paris or Rome first."

A senior officer agreed: "The basic problem is that most commanders have to call home before they say 'yes, sir' to the force commander. It's intolerable to have national capitols involved in tactical issues when they're thousands of miles away."

Rich Atkinson, *U.S. to Leave Somalia with its Guard Up*, WASH. POST, Dec. 8, 1993, at A29.

187. Lancaster, *supra* note 104, at A1.

188. John Lancaster, *U.N. Faulted on Bosnia Air Support*, WASH. POST, Mar. 15, 1994 at A14.

189. See Julia Preston, *Boutros-Ghali Gets Ready for Airstrikes*, WASH. POST, Feb. 12, 1994, at A15; See also John Lancaster, *U.S. Jets Down 4 Serb Bombers Over Bosnia; NATO Says Pilots in "No-Fly" Zone Were Warned*, WASH. POST, Mar. 1, 1994, at A1.

190. UNPROFOR's headquarters for its Croatian operation was originally located in Sarajevo, which ironically was chosen as a neutral location unaffected by the conflict in Croatia. When the bulk of UNPROFOR's headquarters moved to Belgrade and then to Zagreb, UNPROFOR left behind some 120 persons in Sarajevo. See *Further Report of the Secretary-General Pursuant to Security Council Resolution 743 (1992)*, U.N.

- SCOR, 48th Sess., U.N. Doc. S/25264 (1993).
191. S.C. Res. 761, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/ 761 (1992).
192. S.C. Res. 770, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/770 (1992).
193. *The Situation in Bosnia and Herzegovina: Report of the Secretary-General*, U.N. GAOR, 47th Sess., at 9, U.N. Doc. A/47/747 (1992).
194. S.C. Res. 776, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/776 (1992).
195. See S.C. Res. 781, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/781 (1992); S.C. Res. 786, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/786 (1992).
196. NATO had been previously involved in Bosnia and Herzegovina by providing technical assistance to UNPROFOR in furtherance of UNPROFOR's mandate to monitor the ban on military flights.
197. S.C. Res. 816, U.N. SCOR, 48th Sess., U.N. Doc. S/RES/816 (1993).
198. *See Letter Dated 9 April 1993 From the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 48th Sess., U.N. Doc S/25567 (1993).
199. S.C. Res. 836, U.N. SCOR, 48th Sess., at 3, U.N. Doc. S/RES/836 (1993). The "safe areas" referred to in S.C. Res. 836 are the following: Sarajevo, Tuzla, Zepa, Gorazde, Bihac and Srebrenica.
200. *Id.*

201. Alan Cowell, *Pilots at U.S. Air Base in Italy Ready to Fly Raids in Bosnia*, N.Y. TIMES, Jan 16, 1994, sec. 1, 14.
202. Reporter Martha Raddatz characterized this issue as follows:
- The person in charge of Operation Deny Flight is NATO commander U.S. Admiral Jeremy Boorda out of Naples, who would also be in charge in the event of air strikes. But, unlike air strikes, Boorda does not need the go-ahead from the U.N. to enforce the no-fly zone. That authority comes with Resolution 816.
- National Public Radio, Morning Edition* (transcript # 1291-1, Feb. 28, 1994).
203. Major-General Lewis MacKenzie, *Peacekeeping: Into the Grey Zone*, in CANADIAN FORCES IN THE MODERN WORLD 25, 38 (David E. Code & Ian Cameron eds., 1993).
204. BERDAL, *supra* note 88; Atkinson, *supra* note 186.
205. During an interview with the Military Advisor (MILAD) to the Secretary-General, Major-General Maurice Baril, he indicated that the neither the member states of the UN or the UN civilian bureaucracy are prepared to endorse a military headquarters with full command and control capabilities. Interview with Major-General Baril, UN, New York (Jan. 27, 1994).
- This is consistent with Major-General MacKenzie's perception of the situation as well. See MacKenzie, *supra* note 203, at 38.
206. A "recipe for disaster" was the term used by Andrew S. Miller to characterize this type of interference. See

Miller, *supra* note 91, at 806.

207. Berdal uses these three levels of the UN structure in his critique of the present structure. See BERDAL, *supra* note 88, at 52.
208. *Id.* at 52.
209. The "30-Nation Initiative" was responsible to a great measure for these changes. In the fall of 1991, this diverse group of 30 member states suggested that the time was ripe for the UN Secretariat to reinvent itself. See Durch & Blechman, *supra* note 95, at 64.
210. Interviews with MILAD staff at UN, New York (Jan. 27, 1994).
211. BERDAL, *supra* note 59, at 55.
212. Interviews with logistic personnel at the DPKO, UN, New York (Jan. 27, 1994).
213. Interview with members of the Stand-By Forces Unit at UN, New York (Jan. 28, 1994).
214. *Id.*
215. *Id.*
216. Telephone interview with Lieutenant Colonel Hinse, Stand-By Forces Unit, UN, New York (Mar. 9, 1994).
217. The addition of two ASGs to the DPKO was suggested by Durch & Blechman. See Durch & Blechman, *supra* note 97, at 98.
218. BERDAL, *supra* note 88, at 53.
219. Baril, *supra* note 205.
220. Hinse, *supra* note 216.
221. At the Security Council session of 31 January 1992, the Security Council asked the Secretary-General to make

recommendations on ways to strengthen and make more efficient the UN capacity for preventive diplomacy, peace-keeping and peace-making. See U.N. SCOR, *supra* note 3, at 144.

222. Federle, *supra* note 8, at 29.

223. *Id.*

224. JOHN MACKINLAY, THE PEACEKEEPERS: AN ASSESSMENT OF PEACEKEEPING AT THE ARAB-ISRAELI INTERFACE 3 (1989).

225. Lieutenant Colonel L. Randall Gordon, A Command and Control System for the United Nations 14 (April 4, 1993) (unpublished manuscript, on file with the Army War College, Carlisle Barracks, Penn.).

226. Durch and Blechman recommend three to five year assignments for staff filling these types of positions. See Durch & Blechman, *supra* note 97, at 200.

227. Gordon, *supra* note 225, at 9.

228. See Federle, *supra* note 8, at 26; See also LEWIS, *supra* note 5, at 31.

229. Federle, *supra* note 8, at 26. This information was also confirmed by personal interviews with personnel serving in the DPKO.

230. See Federle, *supra* note 226, at 26; See also LEWIS, *supra* note 5, at 31.

231. The concept of earmarking troops and equipment was also recommended by Weiss & Chopra. See Weiss & Chopra, *supra* note 140, at 65.

232. Federle, *supra* note 8, at 204

233. Weiss and Chopra refer to a UN operations center as a peace room instead of a war room. See Weiss & Chopra, *supra* note 140, at 66.

234. Such an operations center has been suggested by several writers. See Gordon, *supra* note 225, at 21; Federle, *supra* note 8, at 27; Weiss & Chopra, *supra* note 140, at 66; Durch & Blechman, *supra* note 97, at 108.

235. MacKenzie, *supra* note 203, at 38.

236. See Boutros-Ghali, *supra* note 13, at 91.

237. General MacKenzie describes the mission planning for UNPROFOR in Croatia in the following manner:

In March of 1992 yours truly and 23 other people showed up in New York for a short 48-hour meeting to put the 14,000 man force, (\$634 million on paper) together. A day of this was spent in relatively inefficient personal administration. So we had a day to put it together. Only half the reconnaissance party spoke English, however, so in fact a couple of us put it together - a Dane and myself.

MacKenzie, *supra* note 203, at 28.

238. See Gordon, *supra* note 225, at 19.

239. Beril, *supra* note 205.

240. The Security Council agreed in 1947 that contributing nations should have the right to communicate directly with the commanders of national contingents that they provided to the Security Council under Article 43 agreements. See Miller, *supra* note 91, at 806.

241. Julie Preston, *U.N. Faces Fiscal Crisis and Uncertain Role*, WASH. POST, Sept. 27, 1993, at A16.

242. FRYE, *supra* note 6, at 193.
243. BOWETT, *supra* note 10, at 358.
244. A *note verbale* is the diplomatic document sent to member states by the UN requesting contributions.
245. Interview with Colonel Mintz, the military attache to the Canadian Mission to the UN, New York (Jan. 28, 1994).
246. Julie Preston, *U.N. Officials Scale Back Peacekeeping Ambitions*, WASH. POST, Oct. 28, 1993, at A40.
247. Durch & Blechman, *supra* note 97, at 95.
248. Ocaya-Lakid, *supra* note 159, at 3.
249. Daniel Williams, *Clinton Peacekeeping Policy to Set Limits on Use of U.S. Troops*, WASH. POST, Feb. 6, 1994, at A24.
250. Preston, *supra* note 246, at A40.
251. This was the phrase used by Berdal in describing the more than 15 mandates that have been approved by the Security Council with respect to UNPROFOR. See Berdal, *supra* note 88, at 31. Former Bosnian UNPROFOR Commander, Lieutenant General Briquemont severely criticized the Security Council for issuing "pretty-sounding resolutions without giving me the means to realize them." See John Pomfret, *U.N.'s Chief in Bosnia Reviles Its Efforts*, WASH. POST, Jan. 22, 1994, at A11.
252. Cedric Thornberry, the Civil Affairs Director of UNPROFOR, said that "[t]he international community should not intervene unless it is willing to pay a high price in blood and resources." See Preston, *supra* note 246, at A40.