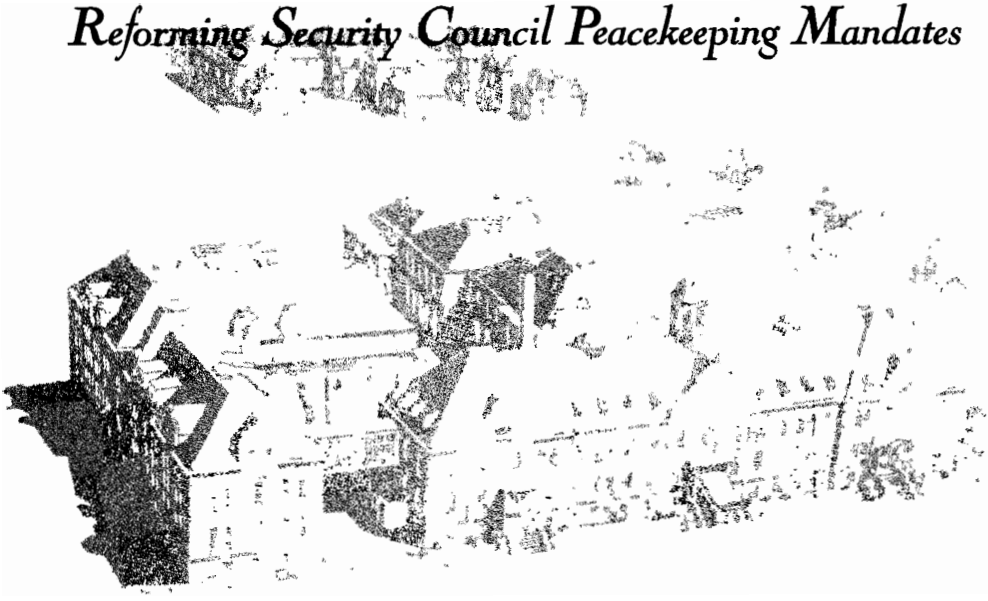
The Newport Papers

Twelfth in the Series

What Color Helmet?

Reforming Security Council Peacekeeping Mandates



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WHAT COLOR HELMET?

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Myron H. Nordquist

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Foreword

I am delighted to introduce this important and timely paper written by a scholar with distinguished credentials and strong connections to the military and the Naval War College. Dr. Nordquist holds a doctorate in juridical science from the University of Virginia and earned a diploma in international law at Cambridge, where he attended Grey's Inn of Court. After active duty in the U.S. Marines, including service in Vietnam, he joined the State Department as an attorney and legislative counsel. Leaving government service for several years of private practice, he later returned to become Deputy General Counsel of the U.S. Air Force, serving as Acting General Counsel for six months in 1993. Since August of that year he has been a professor of law at the U.S. Air Force Academy. In 1995–96 he was the Charles H. Stockton Professor of International Law at the Naval War College. It was in that academic year that he produced this Newport Paper.

Dr. Nordquist's study reviews past peacekeeping operations and the aspects of the Charter of the United Nations that govern the use of force. He proposes that, given the end of the Cold War, distinctions in the UN Charter framework between traditional peacekeeping and enforcement actions can and ought to be reflected in future Security Council peacekeeping mandates. He also offers realistic peace-enforcement scenarios illustrating how updated mandates might operate.

This overview of the Charter and the challenges of modern peace operations provides a better understanding of the legal and institutional nature of the Security Council, of why existing peacekeeping mandates now lack consistency, and of the importance of dealing with these issues.

Dr. Nordquist's work exemplifies the purposes of our Newport Papers series—it is current, insightful and relevant. I commend it to those policy makers who will shape the peace operations of the future as well as the military commanders and their staffs who will carry them out.

J. R. STARK
Rear Admiral, U.S. Navy
President, Naval War College

Acknowledgments

The United States Air Force Institute for National Security Studies provided the grant for most of the original research that supported this study, and it is with appreciation that I acknowledge that contribution. The writing was largely accomplished while the author was in residence at the Naval War College, where he held the Charles H. Stockton Chair of International Law during the 1995–1996 term.

Introduction

This study is divided into five chapters. The first focuses on the legal framework for peacekeeping and enforcement operations under the United Nations Charter and the North Atlantic Treaty. The general approach here is an article-by-article review of the pertinent texts, without delving into nuances of meaning or legislative history. An occasional prescriptive comment will be made in relevant context, but by and large the fundamental idea is that an overview of the Charter's principles and rules will facilitate a better understanding of the legal and institutional framework in which the Security Council issues peacekeeping mandates. As will be shown, much of the confusion over current peacekeeping practice lies in inadequately considered departures from what States actually agreed to do in the United Nations and Nato. Chapter II is a brief summary of the forty peacekeeping operations in which the United Nations engaged from June 1948 through the end of 1995. Again, to foster a reform-minded policy outlook, only a skeletal description of the mandate for each UN peacekeeping operation is given. Marshaling such an outline of peacekeeping operations is instructive in that even the bare recitation of this fifty years of practice reveals a remarkable range of experiences. It is easy to discern why Security Council mandates on peacekeeping lack consistency. Chapter III of this study contains an analysis of UN peacekeeping practice and of key points that ought to be dealt with in reformulating traditional peacekeeping and enforcement actions under Security Council mandates. In Chapter IV, several scenarios are presented to illustrate how properly mandated peacekeeping and enforcement operations might work in the post-Cold War era. To emphasize the critical distinctions between different use of force mandates and the corresponding legal status of the individuals involved, the illustrations refer to white, blue, and green helmet participants. Chapter V of this study proposes a few suggestions to improve Security Council mandates for "mixed" traditional peacekeeping and enforcement actions.

A threshold comment is needed for clarification about the use of the term "peacekeeping" in this study. When the term appears alone, it refers to the great variety of activities that have been mandated and therefore formally designated as "peacekeeping" operations. As will be explained, peacekeeping is a generic label that, *inter alia*, obscures an important legal distinction between traditional peacekeeping and enforcement actions. Fuzzy definitions can be useful for shorthand communication, but they can also contribute to fuzzy thinking. From

a legal perspective, it is important to know what is meant by the term "peacekeeping." However, efforts to use more precise words with better defined meanings may also pose problems. For instance, the term "peace enforcement" is now heard and often seen in the literature. While this is an understandable effort to distinguish operations based on consent from those that are not, the term is not taken from the Charter, is ill-defined in actual practice, and is logically inconsistent as a phrase. The approach preferred in this study is to use words taken from the text of the Charter or with an agreed meaning in State practice. However, bowing to overwhelming usage, an exception to this preference for precise language is made in the case of the term "peacekeeping." Accordingly, the term is used in this study generically to cover the entire spectrum of activities ranging from traditional peacekeeping to enforcement actions. Finally, a cut-off date is necessary for publication purposes. Unless otherwise indicated, the date used for this study is 31 December 1995.

I

UN Charter and North Atlantic Treaty

THE CHARTER OF THE UNITED NATIONS entered into force on 24 October 1945. Amendments to Articles 23 and 27 of the Charter were adopted by the General Assembly and came into force on 31 August 1965. The only other Charter amendments—to Article 61 (enlarging the Economic and Social Council) and to Article 109 (relating to a review of the Charter)—are not germane to this study.

The amendment to Article 23 enlarges the membership of the Security Council from eleven to fifteen. The amended Article 27 provides that decisions of the Security Council on procedural matters shall be made by an affirmative vote of nine Members (formerly seven). Decisions of the Security Council on all other matters require an affirmative vote of nine Members, including the concurring votes (which may be abstentions) of the five Permanent Members.

Chapter I of the Charter consists of two articles outlining the purposes of the United Nations. Article 1 (1) reads: "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...." Paragraph 2 lists developing friendly relations among nations based on, *inter alia,* self-determination of peoples, while paragraph 4 identifies the United Nations as a center for harmonizing the actions of nations in the attainment of these ends.

A threshold point is that the United Nations is a compact between sovereign States that agree to take collective action to attain international peace and security. There is no residual clause that places unallocated power in the hands of "the people" as does Amendment X of the U.S. Constitution. Agreement

between sovereign States is the legal glue of the UN Charter. That is all there is; and absent agreement, there is no legal basis for action. It follows that the rules regarding what States may or may not do ultimately must be found within the text of the UN Charter that embodies their agreement. Subsequent practice that is consistent with the rights and obligations expressed in the Charter may be accepted by States as part of the Charter legal regime. But if binding legal obligations are inferred from State practice, such acts of acceptance must be unmistakable. Implied legal obligations are not lightly imposed on sovereign States. Their agreement to be bound must be real, and this is usually clearer where expressed in writing, e.g., in treaties rather than inferred from State practice, e.g., customary law.

Article 2 reflects the fundamental premise that sovereign States are the building blocks of the UN Charter by providing that the Organization is "based on the principle of the sovereign equality of all its Members." The heart of the Charter is found in Article 2(4) that requires Members to refrain from the threat or use of force against the territorial integrity or political independence of any State. Paragraph 7 of Article 2 is especially germane for peacekeeping operations in that it prohibits the United Nations from intervening in "matters which are essentially within the domestic jurisdiction of any state. . . ." The fact that the Security Council declares a particular situation, as it did in the 1993 peacekeeping intervention in Haiti, to be a "threat to international peace and security" may or may not satisfy all Charter legal requirements. This issue is of importance to future Security Council mandates regarding peacekeeping and will be discussed later in this study. At this stage, note that a Security Council mandate may meet the procedural, but not the substantive, requirements of the Charter. Article 2(7) finishes by providing that "this principle shall not prejudice the application of enforcement measures under Chapter VII."

The distinction between traditional peacekeeping and enforcement actions is a critical part of this study. Traditional peacekeeping activities are based on consent. Enforcement measures, including enforcement actions, by contrast, are the opposite; that is, they are nonconsensual or coercive in nature. The Secretariat of the United Nations as an institution is not well-constituted, either legally or practically, to engage in the coercive use of military force. This is evidenced by the fact that the Secretary-General and his staff are international civil servants, not military professionals. It is recognized in Article 2(7) of the Charter that it may be necessary to intervene in the domestic affairs of a State to carry out enforcement measures authorized by the Security Council. Such intervention is an agreed upon role for sovereign States, acting collectively, to undertake as provided in the Charter. However, as we shall see, peacekeeping practice evolved to fill a gap left in the

Charter between peaceful resolution of disputes and collective enforcement measures. It was practice, not Charter mandate, that revealed the need for UN forces to play a neutral, third-party military role. Indeed, this role for the Secretariat was not anticipated at all in the Charter.

The principal problem with the way the Charter was written with respect to security and use of force issues was that the Permanent Members of the Security Council did not cooperate as fully as expected due to the Cold War. With the breakup of the Soviet bloc, the question now is whether the United Nations can function, more or less, as originally expected. The thesis developed in this study is that, while perfection is impossible, the letter and spirit of the UN Charter now can, and should, be followed more faithfully in peacekeeping activities. The Secretary-General ought to remain in charge of traditional peacekeeping operations. At the same time, the Secretary-General should not have "command and control" of operations to implement military enforcement measures. The Security Council should, instead, mandate enforcement action leadership either to an appropriate Chapter VIII regional collective security organization or to a Chapter VII coalition command constituted for the purpose by contributing Members. In mixed "war-peace" peacekeeping operations, whatever enforcement entity is mandated must, as a practical matter, cooperate closely with the Secretary-General, who is the leader of traditional peacekeeping efforts. But enforcement entities should report directly to the Security Council and future Security Council mandates should be crystal clear on this point. Equally, the Secretary-General and his staff should never be mandated to engage in enforcement. His proper and legal role is to "keep peace," not to "wage war."

In Chapter II of the Charter, Members are defined as "states," and Article 5 provides for the suspension of membership for States against whom preventive or enforcement action has been authorized by the Security Council. Chapter III establishes, *inter alia*, the General Assembly, Security Council, and Secretariat as principal organs of the United Nations. This chapter also authorizes the establishment of necessary UN subsidiary organs.

Chapter IV describes the functions and powers of the General Assembly. Any matter may be discussed in the General Assembly, including international peace and security. Except as provided in Article 12, it may make recommendations to Members or to the Security Council. But questions on what action is necessary must be referred to the Security Council. Article 12 provides that, while the Security Council is exercising its functions with regard to any dispute or situation, the General Assembly shall make no recommendation with regard to that dispute or situation unless requested by the Security Council. Otherwise, the General Assembly may recommend measures for the peaceful adjustment

of any situation. This chapter also empowers the General Assembly to apportion the expenses to be borne by Members.

Article 18 grants each Member of the General Assembly one vote. Decisions on "important" questions are to be made by a two-thirds majority. Such questions include recommendations with respect to the maintenance of international peace and security.

Chapter V lays out the composition, powers, and functions of the Security Council. China, France, Russia, the United Kingdom, and the United States are the five Permanent Members. The General Assembly elects ten other members for two-year terms. Under Article 24, the Security Council is given the "primary" responsibility for the maintenance of international peace and security. Members specifically agree that the Security Council acts on their behalf in carrying out its duties. Moreover, Members expressly agree, in Article 25, to accept and carry out Security Council decisions. This latter undertaking is a binding legal duty by all Members to obey properly rendered decisions of the Security Council.

Each Member of the Security Council has one vote. Decisions on procedural matters require an affirmative vote of nine Members. All other matters, i.e., substantive matters, require an affirmative vote of nine Members, including the concurring votes of the Permanent Members. In this regard, the long-standing practice of the United Nations is that an abstention by a Permanent Member does not constitute a veto. The Security Council may invite Members (or even non-Members) who are not on the Security Council to participate, without voting, in discussions of their disputes or where their interests are specially affected.

Chapter VI is titled "Pacific Settlement of Disputes." So-called Article 33 disputes are those "likely to endanger the maintenance of international peace and security." Parties to these disputes are first to resort to peaceful means of their own choice. The Security Council may investigate to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security. Article 35 empowers any Member to bring any such dispute or situation to the attention of the Security Council or the General Assembly. Article 36 provides that the Security Council may recommend appropriate procedures or methods to the parties whereby peaceful settlement of Article 33 disputes may be achieved. The thrust of Chapter VI is for voluntary resolution of disputes by the parties. The parties are obligated, in the event that the hoped-for peaceful means are unsuccessful, to refer the dispute to the Security Council. The Security Council may recommend actual terms of settlement in such cases, especially when requested by the parties.

If the Security Council determines the existence of any threat to the peace, breach of the peace, or act of aggression, it may take actions in accordance with Chapter VII to maintain or restore international peace and security. To prevent aggravation of the situation, Article 40 empowers the Security Council to call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. The Security Council may next decide, under Article 41, on measures by Members that do not involve the use of armed force. These may include interruption of economic relations and means of communication or the severance of diplomatic relations. If the Security Council finds Article 41 measures inadequate, it may authorize an escalation, pursuant to Article 42, to such "action by air, sea, or land forces as may be necessary to maintain or restore international peace and security." Article 42 actions may include blockade and other military operations by Members' forces. Note here that the Charter mentions only "Members' forces" in connection with Chapter VII enforcement measures. There is no hint here or, for that matter, anywhere in the Charter of standby military forces to serve under the command of the Secretary-General. Instead, Article 43 imposes an affirmative obligation on Members to contribute armed forces, assistance, and facilities at the call of the Security Council. According to the Charter text, these contributions were supposed to be made available in accordance with special agreements entered into for this purpose. The agreements were to cover the number and type of forces, readiness, and location, and the nature of the facilities and assistance. The agreements between the Security Council and Members, or groups of Members, were to be subject to ratification by the signatory States in accordance with their respective constitutional processes. As of this writing, no such agreements have been concluded as envisioned in the Charter.

Article 45 contemplates Members holding "immediately available national air-force contingents for combined international enforcement action." Plans to use armed force under UN authorization were to be made with the assistance of the Military Staff Committee. Pursuant to Article 47, the Military Staff Committee is made up exclusively of representatives from the five Permanent Members. Its stated purpose in the Charter is "to advise and assist the Security Council on all questions relating to the Security Council's military requirements. . . ." In that capacity, the Military Staff Committee is supposed to be responsible for the strategic direction of any armed forces acting under the Security Council. In fact, the Military Staff Committee has never functioned as intended. Permanent Five representatives to the Committee do meet regularly at UN Headquarters, but meetings are perfunctory and substantively meaningless.

Article 48 specifically requires all Members to carry out the actions decided by the Security Council under Chapter VII. These actions may be done directly or, going beyond the more general obligations contained in Article 25, through international agencies of which they are members. The obligatory nature of Article 48 with respect to enforcement actions makes this provision one of the most legally significant provisions in the Charter. For example, Member States are obligated to pursue policies in the World Bank that are consistent with Security Council decisions with respect to States against whom Security Council enforcement actions are underway.

But the most important principle pertaining to the use of force in the UN Charter is found in Article 51, the last article in Chapter VII. The first sentence of Article 51 reads:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defense 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.

Members are still obliged to inform the Security Council immediately of the measures they exercise in their self-defense. And, the use of Article 51 self-defense measures does not relieve the Security Council of its obligations to take necessary actions to maintain or restore international peace and security. Experts debate whether Article 51 creates an independent right of self-defense or simply recognizes that such a right exists under customary law. Perhaps it does both, although each legal theory carries different legal nuances. The text in the Charter imposes a condition precedent of an "armed attack" (at least in the English translation) and a condition subsequent of "until" the Security Council acts, presumably in an effective manner. These specific limitations do not exist in pre-Charter customary international law. In fact, the view that customary law rights (and duties) of self-defense coexist with Article 51 gives expanded scope to use of force by States. While the temptation is great to delve more into the debate about what is the true meaning of self-defense, this urge must be resisted due to the scope of this study. The reader is referred, instead, to other sources that are focused solely on the topic of self-defense and Article 51.[1]

Birth of Peacekeeping

The Chapter VII enforcement measures provided in Articles 41 and 42 are the backbone of the Charter's collective security system. The underlying premise

in this system is that the five Permanent Members in the Security Council can agree sufficiently on the use of armed force that none consistently vetoes required actions. A correlative premise is that the Security Council may not mandate enforcement actions affirmatively opposed by any one of the Permanent Five. Frequently, on peacekeeping votes, a Permanent Member expresses neutrality in the form of an abstention. As noted above, the time-honored practice of the Security Council is that an abstention is not a veto. Nevertheless, consistent lack of enthusiasm, as has been the case with China, should not be dismissed as an insignificant political attitude. Any Member of the Permanent Five is capable of crippling the Security Council's effectiveness. That is the safeguard that Member States wanted, and therefore so provided in the Charter, prior to the United Nation's taking affirmative action on international peace and security matters. This hard-core political reality provides the central legal and institutional framework within which peacekeeping mandates must be formulated. At the same time, while the Chiefs of Staff of the Permanent Five also make up the Military Staff Committee that was to plan Security Council military activities under the Charter, there is no indication that peacekeeping planning will be entrusted to that committee. And, of course, there is no legal obligation on the part of the Security Council to use the Military Staff Committee as originally planned.

The cooperation of the Permanent Five after World War II, which permitted the founding of the United Nations, dissipated shortly after the Charter entered into force. The Cold War ensued with the Soviet Union and its Eastern Bloc allies on one side and with the United States, France, and Great Britain and their allies on the other. The Republic of China government soon no longer exercised sovereignty over the territory of mainland China, and China's seat on the Security Council was eventually taken in the mid-1970s by a communist regime. This further handicapped cooperation among the Permanent Five and effective functioning of their Military Staff. The result was to cripple the collective security arrangements envisioned in the Charter.

At the same time, new conflicts arose that commanded the attention of the United Nations. In particular, the process of decolonization unleashed ethnic strife and destabilized various regions. Where armed crises developed, Members of the United Nations felt pressured into finding ways to contain hostilities and to control conflicts outside the legal parameters expressly provided within the four corners of the Charter text.

As peacekeeping operations were not anticipated by the Charter draftsmen, no description of the practices is given in Charter text. At first, the Security Council formulated mandates tailored to the particular circumstances of each

crisis, and peacekeeping practice "just grew," case by case, over a period of time. The characteristics of a peacekeeping doctrine therefore emerged gradually as the United Nations responded to various conflict situations in which the international community expected it to act in the interests of world peace. Most frequently, a peacekeeping activity was a UN operation using military personnel, not in a fighting or enforcement role but rather in an observer or "buffer" role. The peacekeeping forces derived their legitimacy from the fact that the contending State parties wanted them in their sovereign territory and expressly agreed to their presence. They did not expect to fight in the first instance.

Since the peacekeepers were in the host State with the consent of the contending parties, including the host government recognized by the United Nations, the host Member nation was expected to cooperate with the peacekeeping efforts. The peacekeepers were, accordingly, lightly armed and, in principle, were to engage only in their individual or unit self-defense. Use of force was clearly a last resort. Most importantly, these UN "blue helmets" were neutrals with orders to act impartially. The core idea was that the traditional peacekeepers were invited guests of the recognized government and were expected to achieve peacekeeping objectives more by moral authority than by force of arms. It was understood by all that UN forces would act in self-defense, in the personal protection sense, when resort to the use of armed force was truly unavoidable. But the real role of the traditional peacekeeper was keeping peace between consenting nations, not taking enforcement actions against unwilling parties.

The term "peacekeeping" initially may have come into general use around 1956 when the United Nations created a "Special Committee on Peace-keeping Operations." Typically, these peacekeeping operations involved supervision and maintenance of cease-fires, assistance in troop withdrawals, and provision of buffer zones between opposing forces. The legal mandate was always to maintain or restore international peace and security. The operations were also conducted in a political climate where the primary responsibility for success or failure lay with civilian personnel.

A point to note at this stage is that the traditional peacekeeping doctrine that evolved through *ad hoc* practice was less peaceful than was envisioned in Chapter VI and less forceful than the doctrine that was contemplated in Chapter VII of the Charter. This led to the oft-cited observation of the late Secretary-General Dag Hammarskjold that these kinds of traditional peacekeeping activities were authorized under a nonexistent Chapter "six and one-half" of the UN Charter.

North Atlantic Treaty

The important role to be played by regional organizations in the maintenance of international peace and security is primarily recognized in Chapter VIII of the Charter. Article 52 provides that regional arrangements may deal with peace and security issues "consistent with the Purposes and Principles of the United Nations." Indeed, paragraph 2 of Article 52 requires Members in such agencies to "make every effort to achieve peaceful settlement of local disputes through such regional arrangements ... before referring them to the Security Council." In turn, the Security Council is to encourage pacific settlement of local disputes through such regional arrangements. In essence, the security system in the Charter is predicated upon action by a regional organization prior to the stage when the United Nations, as a global entity, must become involved.

Article 53 provides that the Security Council may utilize regional arrangements for enforcement action taken under its authority. At the same time, this Chapter VIII article is quite specific in prohibiting enforcement action by regional agencies without the authorization of the Security Council. A collateral note here is that there is no Charter prohibition to preclude Nato as a legal entity from being itself a party to a Charter VIII collective security arrangement. Indeed, this possibility could be a key for a new collective security alliance in Europe. Lastly, Article 54 requires that the Security Council be kept fully informed about the international peace and security activities of regional agencies.

The North Atlantic Treaty that charters Nato entered into force on 24 August 1949. The parties to this agreement are: Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Turkey, the United Kingdom, and the United States.

The North Atlantic Treaty text begins with a reaffirmation of the UN Charter. The Parties express a resolve to "unite their efforts for collective defense and for the preservation of peace and security." In Article 1, the Parties pledge themselves to the peaceful settlement of disputes and to refrain "from the threat or use of force in any manner inconsistent with the purposes of the United Nations." Article 2 deals with economic collaboration and stability. Article 3 provides that the Parties "will maintain and develop their individual and collective capacity to resist armed attack." By Article 4, the Parties agree to consult when the "territorial integrity, political independence or security of any of the Parties is threatened." Article 5, the heart of the commitment in the Nato alliance, reads in its entirety as follows:

> The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.
>
> Any such armed attack and all measures taken as a result thereof are to be immediately reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

Article 6 defines an Article 5 armed attack to include an armed attack on the territory of any of the Parties in Europe or North America or on the vessels or aircraft in this area.

Article 7 provides that the Treaty does not affect the Members' rights and obligations under the UN Charter or the primary responsibility of the Security Council for the maintenance of international peace and security. Article 9 establishes the Nato Council, and the remainder of the articles are largely procedural.

The collective response contemplated in the North Atlantic Treaty is predicated on an armed attack against a Party's territory in Europe or North America. But, as noted at the beginning of this heading, enforcement through the regional arrangement scheme provided in Chapter VIII of the UN Charter is subordinate to the Security Council where any Permanent Five Member can veto action. Clearly, however, the Western Powers that formed Nato did not want to be under the control of an organ in which the Soviet Union held a decisive veto. The purpose of Nato was to defend against the Soviet bloc, and the North Atlantic Treaty understandably makes no mention of any relationship to the Security Council as a "regional arrangement" under Chapter VIII. Nato is set up to use armed force without Security Council authorization, and there is no requirement that the alliance take military enforcement action only after receiving authorization from the Security Council. Instead, the North Atlantic Treaty is expressly founded on the "collective self-defense" theory in Article 51 of the UN Charter. Consistent with that, the Treaty simply requires immediate reporting to the Security Council of "all measures taken" in response to an armed attack.

No definition of "regional arrangement" is given in the UN Charter, and experts have not always agreed on Nato's status in this regard. Nothing in the UN Charter itself precludes Nato from assisting the Security Council in enforcement actions. At the same time, such a role for Nato was not envisioned in the North Atlantic Treaty.

As a matter of international law, a fundamental difference exists between a regional organization founded on the principle of self-defense in Article 51 and one founded on the collective security principles in Article 53. The latter entity is expressly prohibited from taking enforcement actions "without the authorization of the Security Council...." From a U.S. domestic law standpoint, the difference is also legally significant. The U.S. Senate did not give its "advice and consent," as required by the U.S. Constitution, to a North Atlantic Treaty whereby Nato was to perform collective security duties under Security Council direction. Nato was to defend against armed attacks against the Parties' territory, aircraft, or vessels in North America or Europe. This agreement was approved by the U.S. Senate as an Article 51 self-defense organization under Chapter VII, not as an Article 53 collective security organization under Chapter VIII.

UN Secretariat and Military Staff Committee

Article 97 creates the UN Secretariat consisting of the Secretary-General and such staff as the Organization may require. The Security Council recommends a candidate for Secretary-General who is then appointed by the General Assembly. The Secretary-General is expressly denoted in Article 97 as the chief administrative officer of the United Nations. Among other powers, the Secretary-General may bring matters which threaten peace and security to the attention of the Security Council. Other articles emphasize that the first loyalty of Secretariat employees is to the United Nations and lay out other details.

As the Chief Administrative Officer of the United Nations, the Secretary-General has considerable latitude in determining the size of the staff needed to fulfill the functions of the Secretariat. One possible reading of the lack of limitations in Article 97 is that the Security Council, or even the General Assembly, could authorize permanent UN Forces, a "standing army," to serve under the command of the Secretary-General. An argument can be made, for example, that he already recruits security forces to guard UN Headquarters. The forces could be expanded to help "police the world." However, the power to create and control the staff required by the Organization for its internal security is far different from the power to command troops for enforcement actions in

the name of the United Nations. This idea of a UN Guard was carefully considered and the concept rejected.[2]

An objective reading of the Charter reveals virtually no support for the notion that a leading role for the Secretary-General was planned regarding the use of force. In truth, in Article 47, a large role for the Military Staff Committee was contemplated in advising the Security Council on the use of UN armed forces. The Committee was to consist of the Chiefs of Staff of the Permanent Members of the Security Council or their representatives. As such, the Military Staff Committee was expected to be competent to give "strategic direction" to the armed forces placed at the disposal of the Security Council. In addition, to obtain such forces, the Security Council was to conclude agreements to make forces available upon its call.

An early effort was undertaken to have the Military Staff Committee provide the strategic direction and other services outlined above, as provided in the Charter. But once again, the lack of political consensus among the Permanent Five Members caused these efforts to be abandoned in August 1948.[3] The most insurmountable problem was an inability to agree on the total size of the forces and on the relative sizes of the contributions of the Permanent Five. A second basic disagreement arose over the location of the forces pending their use by the Security Council. The third disagreement concerned provision of assistance and facilities, including rights of passage, for armed forces. Essentially, this question revolved around the extent to which a Member would commit in advance for the use of its territory by the armed forces operating under the Security Council. The fourth major disagreement was over the obligation in Article 29 to provide full logistical support for the forces contributed. At their core, all the disagreements arose from political distrust related to the East-West rivalry.

The lack of support to make use of the Military Staff Committee, as provided in the Charter, does not inevitably lead to the conclusion that the Secretary-General must, or even should, step in to play that role. Granted, the Security Council needs more professional advice on military matters than it has at the present. The creation of the Department of Peace-keeping Operations and the subsequent establishment of the Peace-keeping Situation Centre in April 1993 were constructive steps in this regard. The Centre will improve the monitoring and information exchange between UN Headquarters and peacekeeping missions in the field. This should enhance the effectiveness of the United Nations in traditional peacekeeping operations. But there are definite limits to what to expect from UN officials as military planners in the enforcement arena. For example, no major power is yet ready to entrust sensitive intelligence

information either to UN civil servants or to the Military Staff Committee composed of all Members of the Permanent Five. And, as establishment of the Situation Centre illustrates, real-time information is indispensable to effective military planning and operations. The point is that military planners assigned to UN Headquarters, who must gear up for intense enforcement actions, face not only formidable legal and institutional barriers but also inherent operational constraints.

Uniting for Peace Resolution

On 25 June 1950, the United States informed the Secretary-General that North Korean forces had invaded the territory of the Republic of Korea and requested an immediate convening of the Security Council to consider the situation. By coincidence, the Soviet Union was boycotting Security Council meetings to protest the presence of the Republic of China in the permanent seat designated for the representative of China. Nevertheless, the Council met and the Secretary-General characterized the Korean situation as a "threat to international peace."[4] On 27 June, the Council adopted a resolution with a determination that the North Korean armed attack constituted a breach of the peace. The Council recommended that Members furnish assistance, under Article 43, to repel the armed attack and to restore international peace and security. Subsequently, sixteen Members provided military assistance and, pursuant to another resolution adopted on 7 July 1950, authorized a unified command structure under United States leadership.

The Soviet representative ended his boycott of the Security Council in August. By resuming his seat on the Council and regaining his nation's veto power, further authorization for enforcement action by the Security Council on the Korean issue was stopped. The General Assembly, faced with an obvious threat to international peace and security caused by a classic unwarranted act of aggression, stepped in to pass, on 3 November 1950, the "Resolution on Uniting for Peace."[5] The General Assembly noted the failure of the Security Council to discharge its duties, citing overuse of the veto and the non-implementation of its Article 43 call to arms. Section A of the Resolution provided "that if the Security Council, because of lack of unanimity of the permanent Members, fails to exercise its primary responsibility for the maintenance of international peace and security in any case where there appears to be a threat to the peace, breach of the peace, or act of aggression, the General Assembly shall consider the matter immediately with a view to making appropriate recommendations to Members for collective measures, including in the case of

a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security."

The implicit legal rationale for the Uniting for Peace Resolution was that the General Assembly may do by recommendation under Chapter IV what the Security Council may do by decision under Chapter VII. This is a fundamentally flawed legal rationale. It is true that the Security Council is given "primary" and not "exclusive" responsibility in matters affecting international peace and security. It is equally true that the General Assembly has a proper advisory role on such matters as outlined in the Charter. But nowhere is it contemplated in the Charter that the General Assembly may authorize enforcement actions on behalf of the United Nations. As its very name implies, that role was entrusted to the Security Council under the express language of the Charter. The General Assembly may offer opinions on such matters, and may even urge Members with recommendations; the Charter does not, however, constitute it as an action body for dealing with international peace and security. Moreover, considering that the Security Council did initially authorize a collective response to North Korea's aggression, the Korean War case provides a weak precedent for claiming expansive enforcement action powers being exercised by the General Assembly. A large role for the General Assembly in traditional peacekeeping is, of course, an entirely different matter. When done properly, they are undertaken with the consent of the sovereign States impacted. Suffice to note here that, hopefully, the General Assembly will never again have to fill a void caused by the unwillingness of the Security Council to meet its enforcement action responsibilities under the Charter.

II

Peacekeeping Practice

AS NOTED AT THE OUTSET of this study, the term "peacekeeping" does not appear in the UN Charter, and there is no universal agreement about the precise content of its doctrine. However, over time, certain characteristics of UN peacekeeping operations emerged in practice. The most notable aspect is that traditional peacekeeping operations were conducted with the *agreement or consent* of the parties to the conflict. This was true whether the peacekeepers were deployed under the direct command and control of the UN Secretary-General or under Member States operating with delegated authority from the Security Council. Military operations undertaken by UN-authorized forces in either case might have been, for example, to monitor and facilitate implementation of an existing truce agreement in support of diplomatic efforts to reach a political settlement. In such an instance, the consent of the disputants is important not only for the safety of the peacekeepers but also as positive evidence that the contending parties are sincere about concluding a lasting peace. The contending parties typically must agree upon many details of the deployment, including the nationality of the troops in the peacekeeping military forces.

Another key characteristic, in addition to host State agreement or warring factions' consent, is that the traditional peacekeeper was to maintain *strict impartiality*. A fundamental Charter principle, clearly expressed in Article 2(7), is the rule of nonintervention in the domestic affairs of any State. Absent consent by the legitimate government, UN traditional peacekeeping operations are not legally empowered to interfere in the internal affairs of Member States. The traditional peacekeepers' mandate is suspect if the mission cannot

be executed on the basis of the good faith consent and reliable cooperation of the contenders in the conflict. To stay within the terms of the Charter, traditional UN peacekeepers are not to use armed force against one domestic faction in favor of another. The neutrality of the UN forces is lost when they take sides. An additional consequence of taking sides is the loss of moral authority, an aspect critical to the maintenance of the long-term credibility and effectiveness of UN forces.

A third important element is that a traditional peacekeeper is *not to resort to the use of force* except in strictly construed instances of individual or unit self-defense. Armed conflict is to be avoided in the deployment strategy and in the mind-set of the UN peacekeepers. The troops are not encouraged to engage in armed conflict, because they thereby become swept up in the conflict. Use of force by UN peacekeepers only adds fuel to the fire they are trying to help extinguish. But when peacekeepers do use force affirmatively, they must expect to be judged by the customary laws of armed conflict. Military troops who voluntarily engage in combat cannot have it both ways. UN traditional peacekeepers deserve special immunity and treatment as neutrals or "experts on mission" only when they protect themselves or noncombatants entrusted to their protection.[6] But if they resort to the non-self-defense use of force, i.e., engage in enforcement actions, they must rightly expect to be treated as combatants by their adversaries, against whom they may be employing deadly force. Combatant activities are inextricably linked to combatant legal status for the individual military participant, including treatment as a prisoner of war if captured. To avoid this, i.e., to be entitled to be treated as, e.g., "experts on mission" as distinguished from "combatants," enforcement action mandates should not be given to traditional peacekeeping operations. Likewise, peacekeeping labels should not be attached to enforcement action operations. Enforcement actions should carry enforcement legal consequences, even if labeled "peace enforcement" or "peace implementation," to broaden public appeal.

Throughout history, responsible nations have made commendable efforts to gain universal acceptance of conventional and customary rules for armed conflict that foster clarity between friend and foe. Individual soldiers, whose lives are on the line, cannot be left in doubt about either their own status or the status of their enemy. Political leaders, whether at the United Nations or in Member States, should avoid policies or decisions that leave deliberate doubt in an armed conflict on the critical question of whether individual troops are noncombatants, combatants, or neutrals.

Part of this study is directed toward reducing confusion over mandates in UN or Nato-led peacekeeping operations. Perfect clarity in military operations is a goal that is seldom achieved, even in the classic warfare settings such as were the norm in World War II. However, it is painfully evident that vague rules of engagement are being applied in mixed "war-peace" settings, all grouped under the broad-brush rubric of peacekeeping. The lines between traditional peacekeeping and genuine enforcement actions are being blurred, both consciously and unconsciously. Whatever the reasons for this development, a pressing need exists for a clearer consensus among UN Members on a military doctrine for peacekeeping operations and on the Security Council's conferring mandates consistent with such doctrine. The place to start is in reforming Security Council peacekeeping mandates by drawing bright lines between traditional peacekeeping operations and enforcement actions. This approach is, in fact, what was envisioned in the UN Charter. Once that principle is understood and accepted, it can be demonstrated how "mixed" operations ought to be conducted. A modest effort to illustrate this idea is given in several scenarios in Chapter IV of this study.

Fifty years after the founding of the United Nations, the fundamental legal and institutional arrangements in the Charter for dealing with international peace and security issues are still workable. The political premise is still valid that the United Nations ought not to venture into the realm of armed conflict in the face of affirmative opposition from any of the five powerful nations that sit permanently on the Security Council. Despite the economic strength of nations such as Germany and Japan, the rationale in the Charter for entrusting the Security Council, as presently constituted, with UN multilateral use-of-force decisions, remains basically valid. In the serious realm of UN use of force, it is prudent to try to make better that which is known to work than to experiment with unknowns. This is not to suggest that wealthy States cannot play a leading role in peacekeeping. Military ventures are expensive operations, as the United Nations has come to recognize. If wealthy nations want to pay disproportionately for peacekeeping operations, creative means should be found to permit them to have political clout on peacekeeping issues that are commensurate with their additional financial contributions. Absent such an unanticipated infusion of funds, the United Nations cannot afford to maintain peacekeeping activities at the level it has in the past. It cannot afford to do so not only because its legal basis to do so is questionable, but also because it will exhaust its funds for other purposes if it does.

Ambitious peacekeeping experience since the end of the Cold War has provided UN Members with poignant lessons about the high cost of military

operations. The Security Council has the clear legal duty under the Charter to monitor peace-threatening situations and to authorize collective intervention by armed force as a last resort. But, absent disproportionate financial commitments such as the United States made to the Security Council for Haiti, Members volunteer military personnel for peacekeeping operations and the General Assembly authorizes payment for them. This latter action is based on the assumption that the United Nations can raise the money to pay for very expensive UN peacekeeping operations. Peacekeeping decisions by the General Assembly must take into account its finite resources and the fact that the United Nations does some things better than other things. Money devoted to expensive military ventures that it does not do particularly well may take away resources from activities that it does do well. Moreover, unlike military operations, the diminished activities may well be ones that the United Nations itself was set up to do. When the United Nations takes on tasks that it is legally and institutionally ill-equipped to do, it is also more likely to suffer failures. Failures do not promote lasting peace and hurt the overall credibility of the United Nations. Thus, there are major drawbacks to consider when the United Nations faces what may superficially appear to be laudable tasks in the pursuit of peacekeeping, unless there is genuine political will and dedicated financial means to achieve the mandate. Nations will not continue to send their citizens in harm's way unless the contributing governments know what to expect, both operationally and financially. In recent years, the Security Council has not always gotten it right. Sometimes the mandate provides too much guidance and sometimes too little with respect to UN sanctions or the use of force.

Improvement in Security Council mandates and in General Assembly finances is essential for the United Nations to remain effective in both traditional peacekeeping and enforcement action operations. Too much responsibility for military planning has recently been sought by, delegated to, and accepted by the Secretary-General with respect to peacekeeping mandates. In sorting out proper mandates, it cannot be overemphasized that the Security Council alone retains not only the primary but also the residual power and duty to deal with international peace and security issues under the UN Charter. The enforcement job was never intended for the Secretary-General and his staff of professional international civil servants. Traditional peacekeeping, based on the consent of the warring factions, is in principle entirely different. The main idea is that the Security Council cannot claim authority without taking responsibility and accountability for global peace and security. The Charter has it about right; and UN quasi-successes and failures in the realm of peacekeeping have come largely

from not following the Charter's fundamental distinctions with respect to defensive and offensive use of force, as intended and as written.

The mandates for the forty "peacekeeping" operations authorized by the Security Council since the founding of the United Nations through the end of 1995 are highlighted in the following review. This survey provides a factual context for assessing how to reform peacekeeping mandates, particularly by emphasizing the distinction between traditional peacekeeping and enforcement actions. Peacekeeping operations still underway at the end of 1995 are identified with an asterisk.

1.* UNTSO. The UN Truce Supervision Organization was the first peacekeeping mission. It was authorized in May 1948 by Security Council Resolution (SCR) 50. The Security Council called for a halt to the first Arab-Israeli war and placed military observers in the region near Palestine to monitor cease-fires, to supervise armistice agreements, to deter incidents, and to assist in later peacekeeping operations, especially by providing Military Observers to UNIFIL and UNDOF. UNTSO had 194 Military Observers in 1995, who cost the United Nations an estimated annual amount of $28.6 million. UNTSO has incurred 38 fatalities over 47 years of operation.

2.* UNMOGIP. The UN Military Observer Group in India and Pakistan was authorized by the Security Council in SCR 47 and established in January 1949. The mandate for UNMOGIP, provided in SCR 91, is to monitor the 1949 Karachi Agreement cease-fire between India and Pakistan and to discourage further fighting over the disputed state of Jammu and Kashmir. UNMOGIP's operations cost an estimated annual $7.2 million to the United Nations during 1995. This pays for about 44 Military Observers who have sustained 9 fatalities over 47 years.

3. UNEF I. The first UN Emergency Force served between November 1956 and June 1967, after Egypt nationalized the Suez Canal. France, the United Kingdom, and Israel had intervened with armed forces. The involvement of two of the Permanent Five nations with veto powers prevented the Security Council from responding to what was an obvious threat to international peace and security. An emergency General Assembly session resulted in General Assembly Resolution 1000 (adopted without a negative vote cast) more or less authorizing the first armed UN peacekeeping force. UNEF I troops supervised the withdrawal of the outside forces and acted as a buffer between the disputants. UNEF I left

after Egypt withdrew consent for it to be on Egyptian territory. One month later, the June 1967 "six-day war" erupted.

4. UNOGIL. The peacekeeping mandate for the UN Observation Group in Lebanon arose out of SCR 128 and lasted from June 1958 to December 1958. Lebanon had charged Syria with interference in its internal affairs. UNOGIL observers ensured that personnel, arms, and materials were not infiltrated across Lebanese borders. The mission was terminated, and UNOGIL withdrew when tensions eased.

5. ONUC. The Operation des Nations Unies au Congo was a large-scale operation in the Congo that technically lasted from July 1960 to June 1964. SCR 143 authorized the Secretary-General to take the "necessary steps" for military assistance and related activities to assist a newly independent government restore order. ONUC went well beyond traditional peacekeeping. Congolese troops had mutinied and Belgian forces had intervened. The Security Council authorized the establishment of a UN operation that eventually required some 19,000 armed troops. For a while, the United Nations even assumed responsibility for the territorial integrity and political independence of the Congo. After four years, the Congolese government did not ask to extend ONUC, and the Secretary-General ordered its withdrawal.

6. UNTEA/UNSF. The UN Security Force in West Irian served as a Temporary Executive Authority and security force. The General Assembly (with no negative votes cast) authorized the Secretary-General in General Assembly Resolution 1752 to carry out certain agreed upon tasks with respect to the hostilities between the Netherlands and Indonesia over West Irian. A cease-fire arrangement gave the United Nations administrative responsibility for the territory pending its transfer to Indonesia. This mission, largely devoted to upholding the authority of UNTEA, lasted from October 1962 to April 1963.

7. UNYOM. The Yemen Observation Mission arose out of a report by Secretary-General U Thant and a subsequent SCR 179, during June 1963, that the support by Egypt and Saudi Arabia for competing factions in Yemen's civil war threatened a wider conflict that endangered international peace and security. The Secretary's peace initiative led to an agreement on disengagement, and the Security Council established UNYOM, which oversaw implementation of the agreement from July 1963 to September 1964.

8.* UNFICYP. The UN Peacekeeping Force in Cyprus was established in March 1964 by SCR 186, with a mandate to serve on Cyprus to help prevent violence between Greek-Cypriot and Turkish-Cypriot communities. The mandate has been renewed at six-month intervals ever since. Since 1974, UNFICYP has also been deployed along a buffer zone between the Greek Cypriot National Guard and Turkish military forces. The civilian police numbered 35 in 1995, while the troop strength was 1,166. UNFICYP sustained 167 fatalities over 32 years of operation.

9. DOMREP. The Dominican Republic Representative peacekeeping mission involved the dispatch, pursuant to SCR 203, of a Special Representative of the Secretary-General to the Dominican Republic in May 1965. The Organization of the American States sent a peace force and the United Nations sent military observers to monitor a cease-fire between rival government forces. This was the first time a UN peacekeeping mission dealt with the same matters at the same time as a regional organization. After a new government was installed, the Dominican Republic requested the withdrawal of the UN Mission, which was accomplished by 22 October 1966.

10. UNIPOM. The UN India-Pakistan Observation Mission also involved India and Pakistan's continuing dispute over the territory of Kashmir. The Security Council established the UNIPOM, pursuant to SCR 211, during September 1965 to consolidate a cease-fire along the international border and to supervise the withdrawal of the contending States' respective forces. UNIPOM worked closely with the already existent UNMOGIP. UNIPOM was disbanded, and UNMOGIP reverted to its original monitoring role after UNIPOM's mission was accomplished in March 1966.

11. UNEF II. The Second UN Emergency Force was created by the Security Council in SCR 340 during October 1973. Egypt and Israel were at war in the Suez Canal and Sinai regions. With the consent of the belligerents, UNEF II was interposed in the Suez Canal sector between the opposing forces. After the belligerents agreed to withdraw, UNEF II was disbanded in July 1979.

12.* UNDOF. The UN Disengagement Observer Force began operations in June 1974, pursuant to SCR 350. In May 1974, an uneasy truce between Israel and Syria was brokered by the United States for the Golan Heights. The Security Council mandate established UNDOF to maintain a cease-

fire to supervise the agreement on areas of separation and to ensure that other limitations were observed by both sides. The estimated annual cost to the United Nations for UNDOF is $32.2 million at the 1995 force level of approximately 1,200 personnel. UNDOF sustained 36 casualties over a 21–year span. UNDOF's mandate continued throughout 1996.

13.* UNIFIL. The UN Interim Force in Lebanon was established by the Security Council in SCR 425 during March 1978. Israel retaliated against a PLO commando raid by attacking PLO bases in southern Lebanon. UNIFIL's mandate was to confirm Israeli withdrawal from Lebanon and to assist the Lebanese government in restoring its effective control in the area. The Interim Force was unable to deploy fully, as instructed, because Israel insisted on maintaining a "security zone" north of the Lebanese border and handed over part of the area to Lebanese *de facto* forces. The Interim Force remained to dampen violence, to promote stability, and to provide humanitarian assistance to the local populace. The estimated annual cost to the United Nations for UNIFIL in 1995 was $142.3 million. This sum supports approximately 4,700 troops who have sustained 207 fatalities over 17 years. The mandate for UNIFIL was streamlined in 1995 and the operation was continued throughout 1996.

14. UNGOMAP. This peacekeeping activity involved the provision of a UN Good Offices Mission in Afghanistan and Pakistan. The invasion of Afghanistan by the Soviet Union in late 1979 predictably resulted in a deadlocked debate in the Security Council. The matter was referred, under the "Uniting for Peace" procedure, to an emergency session of the General Assembly, which strongly condemned the Soviet armed intervention. In early 1981, the Secretary-General sent his personal representative to the region to help negotiate a resolution of the conflict. On 8 April 1988, Geneva Accords were finalized between the Soviet Union, Afghanistan, Pakistan, and the United States, providing for the Soviet withdrawal and for noninterference by Afghanistan and Pakistan. The Security Council, in SCR 622, confirmed the arrangements in the Geneva Accords. UN monitors were dispatched, Soviet forces left, and UNGOMAP's mandate was terminated 15 March 1990.

15. UNIIMOG. The UN Iran-Iraq Military Observer Group's mandate was set out in SCR 598, during July 1987, when the Security Council

authorized direct talks under the auspices of the Secretary-General. Iran and Iraq finally agreed in mid–1988, after eight years of bloody fighting, to a cease-fire and the placement of UN observers in a classic buffer role. UNIIMOG itself thus actually functioned from August 1988 to February 1991. UNIIMOG forces were disbanded after confirming the withdrawal from the territories respectively occupied by the forces of both Iran and Iraq.

16. UNAVEM I. The UN Angola Verification Mission was established by SCR 626 in December 1988, pursuant to a request from the governments of Angola and Cuba. A 1978 Security Council resolution, SCR 435, dealt with the independence of Namibia and the withdrawal of Cuban troops from Angola. Intensive mediation by the United States led to agreement between Angola, Cuba, and South Africa for a phased withdrawal of Cuban troops from Angola. The role of the UN peacekeepers was to verify their withdrawal, as agreed. UNAVEM I deployed from January 1989 to the successful fulfillment of its mandate in June 1991.

17. UNTAG. The UN Transition Assistance Group's peacekeeping mission in Namibia lasted from April 1989 to March 1990. The Security Council adopted SCR 435 during September 1978, which contained a detailed plan for Namibia's transition to independence through free and fair elections. South Africa resisted this effort for ten years, but the UNTAG operation, with many unique elements, was finally launched in 1989. The Security Council gave the Secretary-General a far-reaching mandate which involved the United Nations deeply in the political process of Namibia's transition from an occupied territory to a sovereign and independent State. Eventually, some 8,000 military and civilian personnel from 120 nations participated in UNTAG. The UN's efforts resulted in Namibia's joining the United Nations in April 1990, after holding successful democratic elections.

18. ONUCA. The UN Observer Group in Central America peacekeeping operation, approved by SCR 644, ran from November 1989 to January 1992. The Observer Group was part of extensive UN involvement in assisting five Central American governments to keep their security commitments. The Security Council established ONUCA to assist in verifying that the governments in the region were no longer providing arms and other aid to irregular forces. ONUCA forces later supported the voluntary demobilization of over 20,000 members of the Nicaraguan Resistance.

19.* UNIKOM. The UN Iraq-Kuwait Observation Mission was authorized in SCR 689, following the suspension of hostilities after the U.S. and Saudi Arabian-led multinational coalition had restored peace and security in the region by expelling Iraq from Kuwait. UNIKOM began in April 1991 with a mandate to monitor the Khor Abd Allah waterway and the demilitarized zone along the border between Iraq and Kuwait. The mandate was expanded in January 1993 by SCR 806 with the addition of an infantry battalion. The estimated annual cost to the United Nations in 1995 for the UNIKOM peacekeeping operation was $63.1 million to provide a force level of about 1,100, which has sustained three fatalities.

20. UNAVEM II. The UN Angola Verification Mission II, authorized by SCR 696 and established in June 1991, continues through UNAVEM III. When UNAVEM I finished, Angola requested assistance from the United Nations in implementing cease-fire agreements between its government and the National Union for the Total Independence of Angola (UNITA). UNITA resisted acceptance of the results of democratic elections held on 30 September 1992. UNAVEM II, which lasted until 8 February 1995, helped to end a 16-year civil war by providing military personnel to observe a cease-fire and by supporting implementation of the "Acordos de Paz."

21. ONUSAL. The UN Observer Mission in El Salvador was authorized by the Security Council in May 1991 by SCR 693. SCR 991, passed in April 1995, terminated ONUSAL's mandate. ONUSAL was a combined military and civilian operation that monitored agreements between the Salvadoran government and the FMLN (Frente Farabundo Marti Para la Liberacion Nacional) to end more than a decade of civil war. Civilians from ONUSAL began work before the declaration of a cease-fire and military personnel were sent by the Security Council to help implement the agreements. The mandate for ONUSAL was terminated following the signing of a program of work to complete the Peace Accord.

22.* MINURSO. The UN Mission for the Referendum in Western Sahara, authorized in April 1991 by SCR 690, became operational in September 1991. In August 1988, the government of Morocco and the Polisario Front (Frente Popular Para la Liberacion de Saguia el Hamra y de Rio de Oro) agreed to a settlement plan in the disputed territory of Western Sahara to determine its political future. MINURSO's mandate is to complete the process of identifying registered voters and to verify the cessation of

hostilities. The Security Council extended MINURSO's mandate throughout 1996. MINURSO's 1995 force level of 379 personnel cost the United Nations an estimated $40.5 million. The MINURSO operation had sustained seven fatalities by the end of 1995.

23. UNAMIC. The UN Advance Mission in Cambodia was launched in October 1991 by SCR 717 and terminated in February 1992 by SCR 745. This advance mission of military observers paved the way for the UN Transitional Authority (UNTAC) operation in Cambodia that immediately followed.

24.* UNPROFOR. The UN Protection Force in the former Yugoslavia was established in February 1992 by SCR 743, primarily with a humanitarian assistance mandate. Approximately four years later, UNPROFOR's greatly expanded mandate was terminated upon the transfer of its authority to IFOR (Implementation Force). The mandate for IFOR was authorized by the Security Council in SCR 1031 on 15 December 1995, one day after the signing in Paris of the Dayton General Framework Agreement for Peace in Bosnia and Herzegovina. IFOR is a multinational military force under unified control that is composed of both Nato and non-Nato units. IFOR's legal successor will be a multinational stabilization force (SFOR), also under unified command. In SCR 713 of 25 September 1991, the Security Council decided, under Chapter VII, to "immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia. . . ." During 1995, the complex situation in the former Yugoslavia was the subject of more than 50 of the 129 resolutions adopted and presidential statements issued by the Security Council. Active involvement by the Security Council, begun after UN mediation, with European support, produced a cease-fire between the Yugoslav National Army and ethnic militias. Warring factions next requested a UN peacekeeping operation to end months of bitter fighting. The operational mandate of UNPROFOR was extended to five republics of the former Yugoslavia-Croatia, Bosnia and Herzegovina, Macedonia, Montenegro, and Serbia—and liaison to a sixth, Slovenia. In Croatia, the UN Protection Force was to separate Croatian and Krajina Seth forces, maintain cease-fires, defend four protected areas (UNPAs) and assist refugees. In Bosnia and Herzegovina, UNPROFOR (with Nato air support) was to provide humanitarian escort operations, monitor "no fly" zones and six "safe area" zones, and facilitate negotiations between the Bosnian government and Bosnian Serbs. The goal of the negotiations is to foster peaceful development of a Bosnian State consisting of two

entities, the Federation of Bosnia and Herzegovina and the Republika Srpska. In the former Yugoslav Republic of Macedonia, UNPROFOR's mandate was for a preventive deployment to keep the conflict from spreading into that country. In SCR 757, passed in May 1992, the Security Council acted under Chapter VII to impose an economic and air boycott as well as an embargo on the Federal Republic of Yugoslavia (Serbia and Montenegro). In SCR 787, sanctions were expanded to include a shipping embargo. SCR 820 authorized the impoundment and forfeiture of "all vessels, freight vehicles, rolling stock and aircraft belonging to the Federal Republic of Yugoslavia (Serbia and Montenegro) found violating Security Council resolutions." UNPROFOR police monitors were deployed to Macedonia at the request of the government in the former Yugoslav Republic of Macedonia, by SCR 795. In March 1995, by SCR 982, UNCRO in Croatia was separated from UNPROFOR and, by SCR 983, UNPREDEP in Macedonia was likewise split off. This restructuring of UNPROFOR left three separate peacekeeping missions under a single command (UNPF). UNPF consists of the UN Confidence Restoration Operations in Croatia (UNCRO), the UN Preventive Deployment Force (UNPREDEP) within the former Yugoslav Republic of Macedonia, and UNMIBH in Bosnia and Herzegovina. In SCR 1035, passed on 21 December 1995, the Security Council established an International Police Task Force (IPTF), a UN-run civilian police operation called for under the Dayton Agreement. Also following the Dayton Agreement, the Council lifted the arms embargo on the former Yugoslavia and suspended the sanctions imposed in 1992 on the Federal Republic of Yugoslavia (Serbia and Montenegro). The approximate cost to the United Nations for UNPROFOR in 1995 was about $1.6 billion, or about half of the entire UN peacekeeping budget. The level of the UNPROFOR forces reached some 40,000 personnel in 1995, while 192 fatalities have occurred since March 1992.

25. UNTAC. The UN Transitional Authority in Cambodia deployment was authorized in March 1992 by SCR 745, and its work was largely completed by the end of 1993. UNTAC was established by the Security Council to implement the Paris Agreements signed on 23 October 1991 by the four warring factions in Cambodia. UNTAC's mandate was to consolidate the cease-fire, to help administer the country, and to bring about free and fair elections. The Party of Democratic Kampuchea (PDK) faction consistently failed to meet its obligations under

the Agreements and did not participate in the electoral process. UNTAC ultimately grew to a combined civilian/military deployment of some 22,000 personnel. UN certified elections were held from 23–28 May 1993. SCR 880 noted the adoption of a constitution and the termination of UNTAC's mandate after the establishment of a new government on 24 September 1993.

26. UNOSOM I. The first UN Operation in Somalia was authorized in April 1992 by SCR 751. The mandate was initially set up by the Security Council to monitor a cease-fire between rival factions and to provide security for the delivery of humanitarian relief supplies. A weapons embargo imposed by SCR 733 had proved ineffectual, and the humanitarian situation steadily deteriorated. SCR 794, passed in December 1992, authorized Member States to "use all necessary means" to protect relief operations. A Unified Task Force led by the United States operated with a peak strength of 37,000 troops until UNOSOM I was terminated in March 1993 by the creation of UNOSOM II, in SCR 814.

27. UNOMSA. The UN Observer Mission in South Africa was established in August 1992 by SCR 772 to monitor implementation of the National Peace Accord. Upon submission of the final report of the Secretary-General that a "united, non-racial and democratic South Africa" existed, UNOMSA was terminated in June 1994 by SCR 930.

28. ONUMOZ. The UN Operation in Mozambique was established by the Security Council in December 1992 by SCR 797 to monitor and guarantee the implementation of a general peace agreement between the government of Mozambique and the Resistencia Nacional Mocambicana (RENAMO) that ended 14 years of civil war. The agreement included a cease-fire, the holding of presidential and legislative elections, and a force demobilization. Considerable delay in implementation of the agreement occurred, particularly with respect to disarmament of irregular troops. In SCR 898, the Security Council authorized the deployment of 1,144 UN police observers. SCR 957 set 15 December 1994 to terminate ONUMOZ's mandate as satisfactory elections took place on 27 and 28 October 1994. ONUMOZ's peacekeeping operations actually finished in January 1995.

29. UNOSOM II. The original UN Operation in Somalia was expanded from the Unified Task Force (UNITAF) and UNOSOM I through the establishment of UNOSOM II in SCR 814, passed in March 1993.

UNOSOM II's broad mandate was to provide humanitarian assistance, to help in the repatriation of refugees, to assist in the reestablishment of infrastructure, to cooperate in the removal of mines, and to aid in political reconciliation. Acting under Chapter VII, the Security Council asked the Secretary-General to support the arms embargo using UNOSOM II's forces and to provide security for repatriation of refugees. The Security Council requested the Secretary-General to direct the Force Commander of UNOSOM II to assume responsibility for a phased transition from UNITAF to UNOSOM II. On 6 June 1993, in SCR 837, the Security Council strongly condemned armed attacks by the United Somali Congress forces against UNOSOM II troops contributed from Pakistan. The Security Council reaffirmed that the Secretary-General was authorized to take "all necessary measures" against those responsible for the armed attacks. The Security Council also encouraged Member States to contribute military support to meet the full requirement of a force of 28,000 personnel. On 22 September 1993, in SCR 865, the Security Council called upon the Secretary-General to prepare a detailed plan covering UNOSOM's humanitarian, political, and security strategy for Somalia. The Secretary-General was asked to assist in rebuilding Somali political institutions and in reestablishing its police, judicial, and penal systems. In SCR 897, passed in February 1994, the Security Council noted "that the people of Somalia bear the ultimate responsibility for setting up viable national political institutions and for reconstructing their country." The Council also authorized the reduction of the UNOSOM II force level to 22,000. SCR 923, passed on 31 May 1994, contained an acknowledgment of "the absence of a government in Somalia. . . ." In March 1994, the leaders of major Somali factions signed a Declaration of National Reconciliation. SCR 954 terminated UNOSOM's mandate on 31 March 1995 after UNOSOM II forces completed their withdrawal.

30. UNOMUR. The UN Observer Mission Uganda-Rwanda was established by SCR 846 in June 1993 in response to a request from the two governments for the deployment of UN observers along their common border. UNOMUR was deployed entirely in Uganda to verify that no military assistance reached Rwanda where fighting raged between the government of Rwanda and the Rwandese Patriotic Front (RPF). The Secretary-General also supported the peace efforts of the Organization of African Unity (OAU) by providing military experts to assist its Neutral Military Observer Group. In May 1994, the Security Council extended

UNOMUR's observation and monitoring activities to the entire Uganda/Rwanda border. In SCR 928, passed in June 1994, a phased withdrawal was authorized and UNOMUR's mandate was terminated in September 1994.

31.* UNOMIG. The UN Observer Mission in Georgia was established in August 1993 by SCR 858 as a prelude to the possible establishment of a peacekeeping mission to Abkhazia. A cease-fire agreement signed on 27 July 1993 between the Republic of Georgia and forces in Abkhazia was followed by a Memorandum of Understanding signed on 1 December 1993. The dispute centers around the future political status of Abkhazia, where local authorities tried to separate from the Republic of Georgia. On 14 May 1994, the same parties also signed an Agreement on a Cease-fire and Separation of Forces. To monitor compliance with the cease-fire, a Commonwealth of Independent States (CIS) peacekeeping force was deployed, as requested by the leaders of Georgia and Abkhazia. The Security Council, in SCR 937, increased the strength of UNOMIG's military observer force and expanded its mandate to monitor the CIS peacekeeping operation. The mandate of UNOMIG extended throughout 1996, in part to deal with mounting concerns over human rights. The approximate annual cost to the United Nations for UNOMIG's force of 132 personnel in 1995 was $10.9 million.

32.* UNOMIL. The UN Observer Mission in Liberia was established by SCR 866 in September 1993 after an embargo on munitions deliveries to Liberia was imposed by the Security Council, under Chapter VII, late in 1992. The Cotonou Peace Agreement, signed by three warring factions on 25 July 1993, assigned to the Economic Community of West African States Cease-fire Monitoring Group (ECOMOG) the primary responsibility to supervise implementation of military provisions directed at restoring peace, security, and stability in Liberia. The Security Council established UNOMIL with a mandate to monitor and verify this process and extended its mandate throughout 1996. The approximate annual cost to the United Nations for UNOMIL's deployment in 1995 of 91 military observers was $1.1 million.

33.* UNMIH. The UN Mission in Haiti was authorized in September 1993 by SCR 867. From the outset, the Security Council characterized the circumstances in Haiti as "unique and exceptional." In an agreement signed on Governors Island in New York City, both Haiti's previously

exiled president, Jean-Bertrand Aristide, and its then commander-in-chief of the armed forces, Raoul Cedras, requested UN assistance in creating a new police force for Haiti and in modernizing its armed forces. In response, the Security Council dispatched 567 UN police monitors and a 700-person military construction unit to assist Haiti. However, "armed forces" there prevented the UNMIH personnel from starting their work. In SCR 873, passed in October 1993, the Security Council determined that the failure of the military authorities in Haiti to fulfill their obligations under the "Governors Island Agreement" and to comply with relevant Security Council resolutions constituted a "threat to peace and security in the region." Accordingly, the Security Council reimposed a strict embargo on arms and petroleum products that was to remain in effect until democratically elected President Aristide was reinstated and Haiti was in full compliance with Security Council resolutions. In May 1994, the Security Council imposed further economic sanctions that were not to be lifted until senior police and military leaders in Haiti stepped down. At the end of July 1994, acting under Chapter VII of the Charter, Member States were authorized to form a multinational force under unified command and control. Within that framework, the force was authorized to use "all necessary means to facilitate the departure from Haiti of the military leadership, consistent with the Governors Island Agreement, the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure and stable environment that will permit implementation of the Governors Island Agreement, on the understanding that the cost of implementing this temporary operation will be borne by the participating Member States." As a practical matter, this meant that the multinational force that landed on 19 September 1994 was provided and funded almost entirely by the United States. It was determined in SCR 975, passed in late January 1995, that Haiti was secure and stable, and plans were launched to pass full responsibility from the multinational force to UNMIH by 31 March 1995. Presidential elections were held on 17 December 1995 and a new president inaugurated shortly thereafter. The situation generally stabilized while the Security Council extended UNMIH's mandate throughout 1996. The approximate cost to the United Nations for UNMIH in 1995 was $1.1 million for an authorized level of personnel of 6,567. UNMIH had suffered six fatalities through 1995.

34. UNAMIR. The UN Assistance Mission in Rwanda was established by SCR 872 in October 1993 to assist in implementing the Arusha Peace Agreement between the Hutu-dominated government of Rwanda and the Tutsi Rwanda Patriotic Front (RPF). UNAMIR was integrated administratively with UNOMUR. On 6 April 1994, however, the presidents of Rwanda and Burundi were killed in an airplane crash, triggering large-scale tribal genocide in Rwanda. In mid-May 1994, by SCR 918, the Security Council expanded the mandate of UNAMIR to include the creation of secure humanitarian areas and the provision of security for the distribution of relief supplies. The Council expressly recognized that UNAMIR personnel might be required to take action in their self-defense and authorized a force of up to 5,500 troops. An arms embargo was also imposed under Chapter VII. The Security Council deplored the displacement of some 1.5 million Rwandan refugees. In SCR 929 in June 1994, the Council stressed "the strictly humanitarian character of this operation which shall be conducted in an impartial and neutral fashion, and shall not constitute an interposition force between the parties." The Council also determined that the magnitude of the humanitarian crisis constituted a threat to peace and security in the region. The Security Council also approved France's offer to undertake a multinational operation under its command and control. This latter operation, whose cost was borne by the Member States participating, was authorized to use "all necessary means to achieve the humanitarian objectives. . . ." UNAMIR's mandate was extended by SCR 1029 in December 1995, providing for the withdrawal of UNAMIR's forces, starting on 8 March 1996. The approximate cost to the United Nations for UNAMIR in 1995 was $193.5 million at a strength level of 5,522 personnel. However, in view of the reservations about the UN presence expressed by the government of Rwanda in 1995, the mandate was adjusted to further reduce force levels. UNAMIR had sustained 26 fatalities through 1995.

35. UNASOG.The UN Aouzou Strip Observer Group was established by the Security Council in May 1994 by SCR 915. The mandate was to observe the implementation of the Surt Agreement signed by Chad and Libya on 4 April 1994 and to carry out the judgment of the International Court of Justice relating to their disputed territories around the Aouzou Strip. UNASOG's mission was successfully completed, and its mandate accordingly terminated by SCR 926 in June 1994.

36.* UNMOT. The UN Mission of Observers in Tajikistan was authorized in December 1994 by SCR 968. UNMOT's mandate was regularly extended and UNMOT's activities continued through 1996. UNMOT is to assist the Tajik government, as well as its opposition, in monitoring implementation of a cease-fire and in facilitating political discussions. A Commonwealth of Independent States peacekeeping force, largely composed of Russian troops, has been deployed along the Tajikistan border with Afghanistan since 1993. The estimated annual cost to the United Nations for the 44 military observers was $1.1 million in 1995. UNMOT had suffered one fatality as of the end of 1995.

37.* UNAVEM III. The UN Angola Verification Mission provided for in SCR 976 was established in February 1995. A new mandate for the peacekeeping operation in Angola was given, based on the Secretary-General's recommendation that more than 7,000 peacekeepers help rebuild the country. UNAVEM III's mandate is to supervise implementation of the "Acordos de Paz" and the Lusaka Protocol between the Angolan government and the National Union for the Total Independence of Angola (UNITA). The Secretary-General deployed peacekeepers in May and August 1995, and UNAVEM III's mandate was extended through 1996.

38.* UNMIBH. The UN Mission in Bosnia and Herzegovina was established by SCR 1035 in December 1995. The International Police Task Force (IPTF), a part of UNMIBH, continued its mission through 1996, carrying out the tasks set out in Annex II of the Dayton Peace Agreement. In particular, IPTF will assist in the restructuring of law enforcement agencies in Bosnia and Herzegovina.

39.* UNCRO. The UN Confidence Restoration Operation in Croatia was established in SCR 981, passed in March 1995. UNCRO was separated from UNPROFOR, whose mandate was to ensure the demilitarization of the UN Protected Areas (UNPAs) through the withdrawal or disbandment of all armed forces and to protect personnel in the UNPAs. The deployment of UNCRO military observers was authorized in April 1995 by SCR 990, with the mandate to control, monitor, and report on the borders between Croatia and its neighbors. In particular, emphasis was placed on normalizing relations between Croatia and the Federal Republic of Yugoslavia concerning the disputed issues pertaining to the Prevlaka peninsula. At the end of 1995, of UNCRO's 1,500 personnel, 16 had suffered fatalities.

40.* UNPREDEP. The UN Preventive Deployment Force for the former Yugoslav Republic of Macedonia, which arose out of SCR 983, and passed in March 1995, changed UNPROFOR in Macedonia to UNPREDEP. The mandate of UNPREDEP remains largely as originally set in SCR 795, passed in December 1992. UNPREDEP is to keep armed conflict from spreading to the former Yugoslavia Republic of Macedonia from either of its neighbors, Albania or the Federal Republic of Yugoslavia (Serbia and Montenegro). The expectation is that there will be a peaceful demarcation of the border between the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia. UNPREDEP's mandate was extended through 1996 to maintain stability. UNPREDEP consists of 1,150 military personnel and 23 civilian policemen. UNPREDEP forces had sustained four fatalities by the end of 1995.

41. UNTAES. The UN Transitional Administration for Eastern Slavonia, Baranja, and Western Sirmium was established in SCR 1037, passed in January 1996. A "Basic Agreement" on the region was signed in November 1995 by the government of the Republic of Croatia and the local Serb community to facilitate the peaceful return of the territories to Croatia. UNTAES' peacekeeping mandate is to promote confidence among all ethnic groups, monitor demilitarization and refugees, and promote peaceful integration during the transition. The mandate of UNTAES extended through 1996.

42. MINUGUA. The UN Mission for the Verification of Human Rights and of Compliance with the Comprehensive Agreement on Human Rights in Guatemala was established in SCR 1094 passed 20 January 1997. The mandate of MINUGUA is to verify observance of the peace accords between the government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) that started in early 1994. SCR 1094 authorized 155 military observers and requisite medical personnel to verify a cease-fire and demobilize URNG forces.

N.B. UNTAES and MINUGUA were mandated by the Security Council after the general cutoff date in this study of 1995.

III

Context for Reforming Peacekeeping Mandates

Traditional Peacekeeping Operations

IN CHAPTER II, attention was drawn to the "peacekeeping" label that has been placed on a wide variety of missions, some of which were carried out concurrently with humanitarian and enforcement action operations. In traditional peacekeeping deployments, at least four types of operations can be distilled from UN practice.

Observation operations, as the name implies, are to observe, monitor, verify and report. This has been the most frequently used peacekeeping activity. UN observers are customarily unarmed, but there are circumstances where limited personal self-defense capabilities are necessary. Observer groups typically consist of military officers and equivalent civilians. The size of the force may range from a few to several hundred personnel. Missions may include observing cease-fire and demarcation lines, confirming withdrawal of foreign forces, monitoring for war preparations, reporting human rights abuses, verifying election processes, and inspecting for agreement compliance. An effective observer operation requires close liaison with the involved parties to maintain trust and to minimize incidents. Regular patrolling and the manning of observation posts further discourages armed conflict.

Interpositional operations try to keep opposing forces separated. This operation is often deployed immediately after the termination or suspension of hostilities. The peacekeepers, who are typically lightly armed, are positioned between the belligerents to create a buffer zone. The absence of direct contact between hostile forces is intended to help the parties negotiate a longer term peace settlement. Again, the size of the force varies with the location and the number of combatants. Interposition forces may have to move in quickly, especially to occupy key terrain. Operations involve patrolling actively, establishing checkpoints, and reacting promptly. If tensions decrease sufficiently, interpositional operations may revert to more passive observer functions.

Transition assistance operations can help a nation move to a stable political condition and a more peaceful existence after a struggle for independence or civil strife. The peacekeeping force may consist of police elements to contain violence and foster a return to normal life. The warfare may have left the country impoverished, and assistance may be expected from the peacekeepers in restoring infrastructure. Tasks may include civil administration, control of armed militia, collection and confiscation of weapons, disarmament of military forces, supervision of elections, maintenance of cease-fire zones, humanitarian aid and refugee assistance. Transition assistance operations typically require a large force with diverse capabilities. Personnel may or may not carry arms, depending on the danger involved, and UN activities may be under either military or civilian control. Effective coordination with other elements of the peacekeeping operation as well as with the local leaders in the host State is essential. As the situation stabilizes, civilian leaders should increasingly assume control from military commanders.

Preventive deployment normally occurs when the government or governments in whose territory the operation is to be conducted request the deployment of peacekeeping forces there to head off armed conflict. The peacekeepers may take up positions on both sides of a border, or even one side of a border, to discourage hostilities. Preventive deployment may include ground troops on the border or air and maritime forces patrolling far from specific conflict areas. Part of the mandate may be to demonstrate a "show of force," featuring military resolve, to discourage unwanted deployment of armed forces or to encourage negotiations on a political settlement. Operations may include patrolling and high visibility military training activities.

The UN and the Evolving European Security Structure

As outlined in Chapter I of this study, the legal and institutional structure for decision making in the UN Charter sets parameters for the conduct of both traditional peacekeeping and genuine enforcement actions. In the most basic sense, the Charter entrusts the Security Council with the primary responsibility to maintain international peace and security. The Security Council alone is expressly granted the power to authorize collective responses by UN Members, by passing resolutions that mandate enforcement actions, including the use of military force. As previously noted, the term "peacekeeping" is not mentioned anywhere in the UN Charter. A definition of these operations, therefore, must be discerned from what the United Nations has done and what its Member States have supported over the past 50 years. The legitimacy of the operations depends, however, not only on what is done and is tolerated, but also upon whether the activities comport with the purposes and allocations of power provided in the Charter itself. The point is that the legal standards in the UN Charter must be met. The Charter remains the constitution for UN activities. It is not legally sufficient merely to note: "It's alright because the United Nations did it and nobody complained." The core idea about the rule of law in this area is that the Charter must be respected by UN Members just as the United States Constitution must be respected by U.S. citizens. In the United Nations, legitimacy derives from the agreement made by the Member States, just as in the United States legitimacy comes from the consent of the governed citizens whose pact is expressed in the U.S. Constitution. It is not enough that government officials, temporarily in power, want to do something or even have done something without significant objection. Respect for the rule of law requires a thoughtful examination of the purposes and the allocations of power within the constituting document, viewed as a whole. Only after an assessment of the Charter text and whether the practice in question is consistent with it, can a determination be properly made whether past and future "peacekeeping" operations actually comport with the agreements made by the sovereign State Members. Unlike the U.S. domestic judicial review of constitutional issues, there is no review provided in the Charter for Security Council substantive decisions if the Security Council acts in accordance with its procedures. For example, the Security Council determined that the circumstances in Haiti constituted a threat to international peace and security. In one sense, this determination is all that is legally required. The procedures in the Charter are met. But another view is that substantive standards in the Charter still must be met, even if the procedures available for substantive review are not particularly effective. The idea is that

respect for the rule of law dictates that Security Council actions that are properly done as a matter of procedure are still open to substantive challenge. The principle that ought not to be lost in the rush of any crisis is that all nations, persons, and institutions must follow both the procedures and substantive standards of the rule of law, especially in the realm of UN peacekeeping in which use of force may be involved. The notion is straightforward: if it is the law, all must obey it. If the law is bad, change it. But to ignore law is to negate the force of the rule of law. And without the rule of law, the commitments in the Charter are meaningless. Nations either follow law, or they do not. In principle, there is no "pick and choose" option to suit political convenience.

The 40 UN peacekeeping operations officially designated as such through the end of 1995 are outlined in Chapter II of this study. The wide variety of activities revealed in this survey reinforces the conclusion that there are few universally followed rules governing either traditional peacekeeping or UN enforcement actions. Lack of doctrinal clarity does not, however, deter the Security Council from regularly adopting resolutions mandating peacekeeping operations. Unfortunately, the Security Council often does not clearly distinguish between consensual operations and enforcement actions.

Article 97 of the UN Charter specifically labels the Secretary-General as the "Chief Administrative Officer" of the United Nations. In the realm of peacekeeping practice, however, the Secretary-General has also assumed responsibility for the organization, conduct, and direction of military operations. When these duties entail extensive use of armed force, they can hardly be deemed purely "administrative" in any ordinary sense. Rather, these responsibilities are akin to those of the Commander-in-Chief under the Constitution of the United States. If this seems odd, recall that a leading role for the Military Staff Committee in planning for the Security Council's use of armed force was envisioned in the UN Charter. As we have seen, this proved politically impractical to implement. Although it is obvious that these duties ought to be performed by military professionals, and the Military Staff Committee has the potential to provide that service, there is no "hue and cry" to breathe life into the Committee, at least not to the extent the Charter provides. An alternative approach, to take advantage of the renewed cooperation among the Permanent Five on security matters, is for the United Nations to channel more enforcement actions into Chapter VIII "regional organizations." Member States, after all, do have professional military personnel who can be made available to deal with UN use of force problems under Security Council direction. The most influential Chapter VIII regional alliances pertain to Europe. And, while not a Chapter VIII entity, the most formidable military organization in the world,

Nato, is located there. The Security Council understandably has turned to Nato for help on the UN's most pressing security problem, the situation in the former Yugoslavia. As we previously noted, however, using Nato as a Chapter VIII enforcement entity is a legal problem, since Nato was not set up to serve under the Security Council as a collective security organization.

By contrast, the "Helsinki Summit Declaration" of 10 July 1992 made it clear that the Council of the Conference on Security and Cooperation in Europe (CSCE) was willing to undertake peacekeeping operations under Chapter VIII in cases of conflict within or among participating States. The Council is the central decision-making and governing body of the Conference, and it meets annually at either the Heads of Government or Foreign Minister level. Between Council meetings, the Committee of Senior Officials or its Permanent Committee in Vienna is responsible for management and decision making. In principle, decisions are made by consensus. The CSCE, which was created in 1975, was expanded to include not only the United States, Canada, and almost all European States but also all of the newly independent States of the former Soviet Union. In 1995, the CSCE was renamed the "Organization for Security and Cooperation in Europe," and its acronym changed to OSCE.

The 52 Members of the OSCE qualify, in their collective capacity, as a "Regional Arrangement" under Chapter VIII of the UN Charter. As such, the UN Charter provides that the Security Council may delegate authority to the OSCE to take enforcement action on behalf of the United Nations. Nato, in turn, has offered to provide military support for OSCE peacekeeping operations. From an international law point of view, there is nothing to preclude Nato from serving as a contributing entity to an OSCE peacekeeping operation. U.S. domestic law is another matter. The OSCE organization itself can play a direct role in conflict prevention activities such as fact-finding, mediation, and cooperation with other security organizations. Given its long experience, expertise, and available resources to support large-scale military operations, Nato is uniquely qualified, in a practical sense, to carry out peacekeeping assignments that require the use of any significant military force. To repeat, however, Nato was not set up to operate under the Security Council, as is required by Chapter VIII.

In December 1991, at the European Community summit in Maastricht, a dual role for the Western European Union (WEU) was announced. The WEU is to embody the European defense entity and to function as the European pillar within Nato. The ten-nation defense wing of WEU forces (out of the 15-nation European Union) are to be multinational, including the EUROCORPS (French-German), EUROFOR (French, Italian, Spanish, and Portuguese forces for rapid reaction in the southern region), and EUROMARFOR (all-Member maritime

force). These formations will be subordinate to Nato when they operate under it. However, it is likely to be only a matter of time until Nato assets will be used for peacekeeping and other military operations under the auspices of the WEU.

The WEU determined that WEU Members may not invoke the automatic military assistance provisions between WEU Members against a Nato Member nor may Article 5 of the North Atlantic Treaty be invoked against a WEU Member. Setting aside the vexing question of who has binding authority to interpret conflicts between WEU and Nato mandates, there is, without doubt, an overlap between the respective security roles now given to the EU and Nato. Any resulting confusion may be attributed to the fact that there is, as yet, no agreed upon policy among all the Member nations on the respective security and defense roles to be played by each organization. For that matter, there is no agreed upon strategy for international security in the North Atlantic region. The United States, for its part, has made it clear that Nato is the avenue through which security consultations are to be made and major issues determined. It remains to be seen how long this U.S. policy can be sustained. Partisan political controversy is likely to emerge in the United States over Nato's role, especially as the real financial costs in Bosnia surface. It is possible that a coalition of like-minded States may form between European Powers to assume (and pay for) a greater role in European security. A conservative U.S. Congress may even be happy to have them do so.

Another potential Chapter VIII regional organization in Europe is the North Atlantic Cooperation Council (NACC), whose genesis was in the Declaration on Peace and Cooperation issued at the Nato Summit Meeting in November 1991. NACC's primary role is to serve as the vehicle for western European support for reform occurring in the countries of central and eastern Europe. Nato Members were in favor of the steps being taken toward democratic reform and invited the nations concerned to participate in appropriate forums. The States of the former Soviet Union and post-Communist Europe joined the NACC, enlarging its membership to thirty-eight. This opened another new, post-Cold War venue for contact and consultation with countries, such as Russia, about military matters, including peacekeeping. NACC has the potential to be a Chapter VIII regional organization, but as a matter of stated policy, NACC itself currently has no operational role in peacekeeping. In fact, Nato leaders decided in 1992 to operate out of the region only under UN or OSCE mandate. For example, the Nato-led operation in Bosnia, which clearly is not in the territory of any Nato Members, is under UN mandate.

In Chapter I of this study, it was noted that Article 5 of the North Atlantic Treaty provides that an armed attack against any Party's territory in Europe or

North America shall be considered an attack against all Nato Parties. Nato was created to provide a collective security bulwark against aggression by Warsaw Pact Members, especially the Soviet Union. However, when the Warsaw Pact disintegrated, the collective self-defense rationale, upon which Nato was founded under Article 51 of the Charter, came into question. The original reasons for a Nato military organization to protect against an armed attack from the Soviet Union no longer existed. There are, of course, new threats, and few suggest that Nato be immediately disbanded. At the same time, Nato is under scrutiny; it inevitably must be reformed to respond to the new European security environment. The Cold War Nato, constituted under the North Atlantic Treaty as an Article 51 self-defense organization, is at the threshold of a period of adjustment.

In recognition of this reality, the Nato summit in January 1994 endorsed the concept of Combined Joint Task Forces and launched the Partnership for Peace initiative. The Combined Joint Task Force concept envisions a military operation using elements of the alliance's command structure but drawing forces only from Members willing to contribute. Twenty-two non-Nato countries, with diverse languages and cultures, have started to cooperate along these lines with Nato in various ways. Their first joint exercise, "Co-operative Bridge," was held in September 1994. The Nato Partnership for Peace/Combined Joint Task Force Program was expected to provide the principal means to integrate non-Nato troops into UN peacekeeping operations. With this in mind, Nato's Secretary-General released a study in mid–1995 on the question of Nato's enlargement eastward. The Partnership for Peace initiative had grown to 26 Members, including all 15 of the former Soviet republics. Although no decision on the admission of new parties to the North Atlantic Treaty is expected until 1997, or later, the importance of Nato's future membership raises critical security questions. Should former enemies of Nato become parties to the North Atlantic Treaty without completely rethinking Nato? What security threats does the Treaty now guard against? What type of collective security organization, if any, is needed for the new Europe? Would Russia ever agree to an expanded Nato? How about a less threatening Nato or Nato plus partners? Would Russia put its troops directly under Nato command? Likewise, would the United States put its troops under the operational command of Russians in some form of an expanded Nato? What are the costs and time-frames to integrate applicant States' personnel, equipment, and doctrine into a revised Nato? What will be the financial cost to the West for expanding Nato membership eastward? Would current Nato nations be willing to commit to take action in ethnic strife

between States or groups located in the former Warsaw Pact nations? In the final analysis, would expansion of Nato stabilize or destabilize Europe?

From a domestic U.S. perspective, would Congress approve new Nato Members from the former Communist East? What would be the financial or other costs to secure the votes of all 15 other Members of Nato who must agree to new Members as required by the North Atlantic Treaty?

The Nato alliance has enormous political, economic, and military significance, not only for Europe but also for the world. Nato nations rightly ought to proceed cautiously on expansion to avoid creating unrealistic expectations. Political rhetoric is important and symbolic generalizations to garner public support have their place. But Nato is in the business of life or death on a vast scale. Serious issues such as this merit open debate at the highest policy levels between the nations concerned and between the Clinton administration and the U.S. Congress. It is not clear that this debate has been encouraged. In any case, political acceptance as well as integration will be a slow process. Greater relative responsibility for Europeans in providing for their own defense may be one emerging trend. In the meantime, Nato has offered to play the role of executive agent for both the United Nations and, as noted above, for the OSCE, either in traditional peacekeeping or in Charter enforcement operations.

One practical response by Nato to the new security environment in Europe was to adopt the concept of the Rapid Response Corps. First, Allied Mobile Forces are to meet the need for small, immediate intervention operations. The next larger group is the Atlantic Alliance's Rapid Response Corps (ARRC), consisting of units from thirteen countries as of 1995. The ARRC is to be ready for action within one to two weeks after notice. The third level is Nato's principal defense forces in the nations of the sixteen Parties. The final military force is composed of reinforcements resulting from mobilization in individual Nato States. The ARRC is thus the main peacekeeping force available for crisis management planning in Nato. Plans are for the ARRC to have ten divisions amounting to 400,000 troops.[7] Some units will be genuinely multinational, while others will be formed principally, or entirely, from one country.

Peacekeeping Terminology

An important element in formulating mandates for peacekeeping operations that may be commanded by the United Nations or by Nato nations is agreed upon terms and definitions pertaining to the use of force. The starting point for analysis on this topic is the outlook at the United Nations that is provided in UN Secretary-General Boutros Boutros-Ghali's discussion of peace support

operations in "An Agenda for Peace."[8] This pamphlet, which was published in July 1992, defines four types of operations:

Preventive diplomacy is action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts, and to limit the spread of conflicts when they occur.

Peacemaking is action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the UN Charter.

Peacekeeping is the deployment of a UN presence in the field, hitherto with the consent of all the parties concerned, normally involving UN military and/or police personnel and frequently civilians as well.

Peacebuilding is action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict.

In a supplement to "An Agenda for Peace," dated 3 January 1995, the Secretary-General identifies six "Instruments for Peace and Security." These are: preventive diplomacy and peacemaking, peacekeeping, post-conflict peace-building, disarmament, sanctions, and enforcement action.[9] With respect to peacekeeping, the Secretary-General states: "[C]ertain basic principles of peace-keeping are essential to its success. Three particularly important principles are the consent of the parties, impartiality, and the non-use of force except in self-defense. Analysis of recent successes and failures shows that in all the successes those principles were respected and in most of the less successful operations one or the other of them was not."[10]

The Secretary-General went on to observe that "the logic of peace-keeping flows from political and military premises that are quite distinct from those of enforcement. . . . To blur the distinction between the two can undermine the viability of the peace-keeping operation and endanger its personnel."[11] The Secretary-General and his Secretariat obviously learned important lessons from UN peacekeeping experiences during the period from 1992, when "An Agenda for Peace" was published, and 1995, when the "Supplement" was issued. More realistic attitudes by the Secretary-General on peacekeeping operations are, indeed, welcome. Now the trick will be to persuade Security Council Members, particularly the United States, to be more disciplined in formulating and issuing peacekeeping mandates.

In the 1995 Supplement, the Secretary-General highlights the difference between traditional peacekeeping and enforcement actions by listing the latter

last in his new hierarchy of instruments for peace and security. Peacekeeping and enforcement action are not simply lumped together under a peacekeeping heading; three other listings are deliberately placed in between. Interestingly, the word "hitherto" (see above) is omitted in the more recent reference to the consent requirement in peacekeeping. This is not a mere drafting point but a signal of significance. One may conclude that the Secretary-General is expressing a renewed appreciation of the necessity for consent in peacekeeping operations that he supervises. However, the Secretary-General still clings to the hope that the United Nations, as such, "in the long run" will develop the capacity to "deploy, direct, command and control" enforcement operations.[12] Given no mention of a time frame, such theoretical musing is probably harmless, but it is still misguided. The Secretary-General is not set up, politically, institutionally, legally, financially, or in any other way, to provide command and control for enforcement action operations. On the one hand, the Secretary-General appears to recognize this point; on the other hand, he keeps the flame flickering to accept enforcement assignments from the Security Council.

The thinking of the North Atlantic Military Committee of the NACC on combined peacekeeping operations is discussed in a March 1994 paper entitled "Cooperation in Planning."[13] This document may now be overtaken by events, but it still contains useful insights for the purposes of this study. The goal of this unclassified paper was to provide a common NACC basis for peacekeeping planning. These Planning Guidelines were based on the principles, criteria, and definitions in the NACC Ad Hoc Group (NACC-AHG) Report endorsed by the Ministers in Athens, Greece, on 11 June 1993. This is a helpful guide to discuss issues that must be considered in formulating Security Council mandates for combined multinational "peacekeeping" operations.

The first problem encountered by the "Cooperation in Peacekeeping Planning Working Group" was a need for agreement between the United Nations and the OSCE on terminology and definitions about use of force terms in peacekeeping. Consideration was given to using the UN Secretary-General's term "peace support operations" as a general cover-term to describe all operations in support of the United Nations, e.g., conflict prevention, peacemaking, peacekeeping, humanitarian aid, peace enforcement, and peace-building. Proponents urged that the generic term covered all types of operations, emphasized the importance of peacekeeping expansion, recognized the difficulty in separating the range of operations, and met the demand for options beyond traditional peacekeeping.

The term was not adopted by the Working Group, however, because it is not in common use and acceptance. The belief was that even when it was used, it

was used inconsistently. Moreover, the term "peace support operations" glossed over the fact that conflict prevention, peacemaking, peace-building, and humanitarian aid in the first instance, peacekeeping in the second instance, and enforcement measures in the third instance, while inter-related, are very different. Moreover, and this was important for the Working Group, as "peace support operations" included "peace enforcement," the term exceeded the accepted scope of the NACC's policy mandate. This point might well be noted by the UN Secretary-General as well. The Group's main substantive concern, however, was about blurring the distinction between "peacekeeping" and "peace enforcement," and with the ambiguity and vagueness that results. The NACC-AHG stressed that the main difference between "peacekeeping" and "peace enforcement" was the consent of the parties and impartiality in the first case and the application of warfighting or coercive techniques in the second case. The chairman of the AHG emphasized that another important distinction was not the level of violence, but rather the change in the status of the combatants that occurs when enforcement troops take a side in the conflict. Again, the UN Secretary-General as well as the IFOR commanders ought to pay close attention to this point.

The difficulties with the expression "peace enforcement" have already been stressed throughout this study. Despite its widespread popularity, the term is a misnomer whose meaning obfuscates rather than clarifies thinking. While the look and sound of the phrase may appeal to the public at large, it is rife with mischief from misunderstanding. This is immediately evident by noting the contradiction between the words "peace" and "enforcement." If there is peace, what is there to enforce? If enforcement is required, how can peace be said to exist? It is easier to understand the concept of a peace to be kept than one that must be enforced or "implemented." Use of misleading terminology just to keep the term "peace" in the label should be discouraged, for it blurs the essential legal distinction under the Charter between traditional peacekeeping practices and genuine Chapter VII or VIII enforcement actions. Not surprisingly, the UN Charter is not the source of the phrase "peace enforcement." Rather, the UN Charter term that refers to general Chapter VII authorizations is "enforcement measures." The specific term, embodied in Article 42, to connote even greater use of armed force against a non-consenting party is "enforcement action." These Charter terms are used correctly in this study wherever possible. The term "enforcement measures," taken from Article 41, refers to coercive means such as economic sanctions, interruption of communications, and diplomatic pressures. It is also broad enough to include more direct use of military force. For this latter idea, however, the term "enforcement action," taken from Article

42, is even more accurate and is used in this study when the narrower meaning is intended.

Nato Peacekeeping Mandates

Principles. As we have seen, part of the reason that the term "peacekeeping" suffers from imprecision is that the concept derived from UN and State practice, not from express terms in the Charter. The advantage of the loose, ordinary sense in which it is commonly employed by the press and the general public is that the term conveys an idea that people perceive they understand. It is for that reason that the expression "peacekeeping operation" is used in this study to encompass both traditional peacekeeping and enforcement operations. It is stressed, however, that these two phrases refer to markedly different concepts under the UN Charter—the former to be run by the Secretariat and the latter by the Security Council. The most important result is that a traditional peacekeeping mandate implies, in principle, no need for the use of armed force while an enforcement action mandate authorizes, in principle, the use of armed force. Looked at in another way, traditional peacekeepers operate at the behest of all the parties to the conflict or dispute. Enforcement troops, by contrast, are tasked to enforce the will of the Security Council on the non-consenting factions or States.

When Nato leaders decided in 1992 that Nato would undertake peacekeeping operations out of the region only under UN or OSCE mandate, this decision was consistent with Nato's status as an Article 51 (Chapter VII) self-defense organization as distinguished from an Article 53 (Chapter VIII) collective security organization. But the door was left open for Nato to undertake peacekeeping operations within the region either as it was or as an expanded Nato, or as a regional organization composed of both Nato members and new "partners" from the former Soviet bloc. We now see IFOR operating outside the Nato treaty region in Bosnia and there is also discussion about using Nato forces clearly outside the Parties' territories in Nato's southern flank. Whatever form multilateral peacekeeping operations take within the Nato environment, development of a common doctrine for the use of armed force must be a priority. Joint exercises with diverse nation participation are highly desirable prior to an actual military deployment. Moreover, at the moment, they seem to play well politically. This encourages even greater efforts at coordination among the prospective nations, and that is all to the good. However, war games are not the same as actual engagement in armed conflict. An expanded Nato has a long way to go before new members will operate smoothly in truly hostile

situations without creating unacceptable dangers. Accordingly, careful attention ought to be given to the framing of Security Council mandates and the essential operating requirements to implement them well before the time arrives to deploy such Nato forces in combat.

Based on the foregoing review of the UN Charter and subsequent peacekeeping practice, the author concludes that a Security Council mandate for any combined multinational peacekeeping operation that might involve traditional peacekeeping as well as enforcement measures, possibly including expanded Nato military forces, ought to include the following principles:

1. Peacekeeping operations will be carried out only at the request and under the authority of either the UN Security Council under Chapter VII or the OSCE under Chapter VIII.
2. The UN Security Council or the OSCE will consult with contributing States on a case-by-case basis to determine command and control arrangements tailored to each peacekeeping operation.
3. Peacekeeping operations will be undertaken only to support the achievement of clearly defined and agreed upon political objectives as determined by the UN Security Council or OSCE mandating authority.
4. Peacekeeping operations will have clearly established conditions for withdrawal, termination, or escalation.
5. Firm financial commitments to pay for the peacekeeping operations will be agreed upon before military forces deploy.

Operating Requirements. The distinction between peacekeeping and enforcement action is fundamentally important for yet another reason. The status of individuals under international law is directly linked to their use or nonuse of armed force. Consistent with that line of reasoning, traditional peacekeeping forces ought to enjoy the status of neutrals, while multinational forces engaged in UN enforcement action ought to be treated as combatants. Despite the obvious need for clarity on this matter, Nato as well as other Member State forces may be tasked to perform operations broadly labeled as "peacekeeping" which, in fact, consist of a mixture of activities ranging from humanitarian assistance to full-fledged enforcement action. In this setting, Daniel and Hayes have identified a spectrum of operations with three benchmarks: traditional peacekeeping, inducement, and enforcement.[14] They propose thoughtful recommendations to deal, in particular, with what they refer to as inducement operations in the "middle ground."

The mixed "war-peace" setting is, indeed, the central problem that must be addressed in developing rational mandates to guide multinational military forces engaged in peacekeeping operations. The problem is most acute in situations where a wide range of UN-sanctioned activities is underway in the same area at the same time. The methodology chosen in this study, to stimulate discussion on how multinational forces ought to operate in "middle ground" settings, first distinguishes three groups by the colors of their helmets. For discussion purposes, "White Helmets" are declared to be noncombatants. "Blue Helmets" are the traditional, neutral UN peacekeepers. "Green Helmets" are the normal military combatants maintained by Member States.

The foremost requirement for any peacekeeping mission is a clearly defined objective. If the mandate is not easily understood, or if the guidance from political authorities keeps changing, or if the military goals are ambiguous or contradictory, peacekeeping forces will be confused. In addition, the troops of contending factions may become confused. Confused troops are prone to make deadly mistakes. Accordingly, the designated collective security command and its contributing Members must consult early and often to ensure that the mandate for the peacekeeping operation is fully understood at all levels. From the outset, the operational commander must know what is expected to ensure that suitable forces are selected for the specific mission. Once underway, "mission creep" should occur only by deliberate political decision. The temptation to be helpful will sometimes be overwhelming for commanders on the scene, but it must be resisted if the proposed activity does not contribute directly to accomplishment of the mission.

A second requirement, which applies only in the traditional peacekeeping operation, is that the Blue Helmets must remain strictly neutral and impartial. The credibility of UN forces as unbiased representatives of all nations preserving peace rests on conduct by its individual commanders and their troops that is, and is perceived by the disputants to be, even-handed. The Blue Helmets must not favor one faction or protect one contending group with greater vigor than another. Moreover, the protection or immunity that attaches to either White Helmet noncombatants or Blue Helmet neutrals is jeopardized wherever they and Green Helmet combatants are unnecessarily commingled physically. Blue Helmets cannot initiate the use of offensive military force and expect immunity from those they attack. Equally, Green Helmet combatants cannot hide behind a Blue shield when their rules of engagement allow offensive use of military weapons.

A third requirement is that warring parties to the conflict truly consent, in good faith, to the presence and planned operations of the Blue Helmets. From

an international law standpoint, one of the consenting parties that must agree to the presence of the UN-sanctioned peacekeeping forces is the legally recognized government of the host nation. The Security Council must not expect the Secretary-General to take on the role of an invading commander. For his part, when host nation consent is uncertain or unreliable, the Secretary-General must insist that the peacekeeping operations include appropriate war-fighters under national command who are authorized by the Security Council to engage in the affirmative use of armed force. If host nation consent is withdrawn, the UN Blue Helmets must leave the sovereign territory of the State where they are no longer welcome.

A fourth requirement is that peacekeepers must have the means to implement the respective mandates they are given. UN forces must not be seen as "paper tigers." The institutional effectiveness of the United Nations to promote peace in the long term is seriously harmed when Blue Helmets are assigned missions they cannot actually perform. The Security Council ought to include Green Helmets in its mandates where enforcement activities may arise. If the Secretary-General does not have the personnel, equipment, and other support necessary to fulfill the Security Council mandate, he must refuse to accept the peacekeeping mission. The Secretary-General has a solemn duty not to accept "mission impossible" mandates; he must insist upon an achievable mission, adequate resources and, if necessary, back-up forces supplied by Member States that are prepared for offensive military operations. Part of this point is that the United States and the other nations who are in the same category must pay their UN bills on time. Members in serious financial arrears ought to be restrained about requesting additional UN peacekeeping services. However, the essential concept is that the United Nations, as an institution, must be genuinely prepared not only with the political will to "stay the course" but also with the financial resources to ensure that the required military personnel and equipment will be available to fulfill the mandate. The United Nations and Member States such as the United States must not take on peacekeeping missions when the resources needed to achieve the mandate are in doubt. Concisely expressed, it is better not to go at all than to go and do badly. A related notion is that the United Nations simply cannot do all it wants to do any more than a national government can.

A fifth requirement for a multinational peacekeeping operation destined for a mixed setting is clear command and control over the respective groups deployed. The relationships between the White, Blue, and Green Helmets will be illustrated in the next section. To begin, written documents that provide for close coordination between those in charge of the humanitarian, traditional

peacekeeping and enforcement personnel must be in place in advance of deployment. One UN commander wearing a Blue Helmet must be in charge of all national military contingents dedicated to a particular traditional peacekeeping operation. An agreed upon representative in the theater of operations for all of the nongovernmental organizations involved in humanitarian assistance must be asked to sign on to the UN plan. If a White Helmet group is unwilling to sign such an agreement, the United Nations and its Member States should deny it any support whatsoever. Green Helmets, such as the regular military units in Nato, will undoubtedly have a single military officer commander who is empowered to act as commander for the combatants. The point is that authority, responsibility, and accountability for each helmet color must be clearly established at the outset of any UN operation potentially involving the use of force.

IV

Several Mixed Peacekeeping Scenarios

UN PEACEKEEPING PRACTICE has evolved over many years without articulation of a consistent and well-thought-out doctrine on the all-important issue of the use of force. Since peacekeeping operations were launched as practical responses by the United Nations to meet urgent demands that the organization play a constructive role in defusing international conflicts, the practice for multinational operations under UN auspices developed case by case. A central thesis in this study is that, with clarifications, the framework in the UN Charter provides an acceptable and workable basis for multinational peacekeeping operations. The point of view is that deficiencies in UN performance are not due to a fundamentally flawed Charter but rather are due to a misapplication of principles implicit in it. The most common error with respect to issuing peacekeeping mandates has been the failure of the Security Council to distinguish clearly between consensual and coercive activities. From a legal point of view, the Charter is founded on consent from sovereign States. And consent is a crucial legal principle in its own right in all legal systems. In the criminal law, for instance, the absence of consent can be the difference between lawful assisted suicide and unlawful murder. As a practical matter, the Security Council ought to pursue a more rational and consistent approach for peacekeeping activities within the existing framework, since amendment of the Charter is not only not imminent but also unnecessary. Several hypothetical scenarios follow that are intended to illustrate how peacekeeping practice might be conducted to comport better with the UN Charter as it is written. Part of the assumptions in the scenarios is that peacekeeping operations occur in a mixed setting between peace and war and that Nato's military capacity has been

expanded in some way to include Russia and other former Soviet Union nations.

Traditional peacekeeping operations are frequently referred to as "Blue Helmet" operations, because peacekeepers normally wear a blue covering on their heads to identify their affiliation with the United Nations. The operational commander of Blue Helmet forces is a regular military officer of a Member State who is temporarily detailed to service under the UN Secretary-General. The Clinton administration's policy on "Reforming Multilateral Peace Operations," issued in May 1994, places lead management and funding responsibility for U.S. participation in Blue Helmet operations in the hands of the U.S. State Department.[15] This policy decision is consistent with the view advanced in this study that UN forces should be strictly confined to consensual operations. Moreover, the author's view is that U.S. ground troops ought not to be deployed as peacekeepers wearing Blue Helmets. Prior to the breakup of the Soviet Union, none of the Permanent Members of the Security Council served as traditional peacekeepers. This practice has many advantages, not the least of which is the strong desire in the U.S. Congress that American forces not serve under foreign commanders save for an unexpanded Nato.

The characterization "Green Helmets" is used in the scenarios that follow to refer to the conventional air, ground, and sea military forces that are maintained by most Member nations. The color green was selected because that is the typical color of the helmet worn by ground combat troops. "Green Helmet" is simply a shorthand figure of speech selected to denote the conventional military combatant forces of Member States whose actions are governed by the customary laws of armed conflict. The premise in this study is that Green Helmets are presumptively combat forces who do not perform traditional peacekeeping tasks. The traditional peacekeeping role would be played by Blue Helmets who serve concurrently in the same "mixed" consensual and coercive conflict area with Green Helmets. In the UN peacekeeping context advanced in this study, Green Helmet forces participating in a mixed multinational peacekeeping operation would report directly to the professional military officers in their chain of command. The Green Helmets would not report to a UN commander. Green Helmet commanders would be nationals of a Member State that is either part of a Unified Command operation mandated by the Security Council under Chapter VII or a regional organization functioning in a collective security capacity, e.g., OSCE/Nato revised under Chapter VIII. The Unified Command or regional organization would establish its respective chain of command as directed by the contributing nations.

The main idea is that for enforcement actions that would be conducted only by Green Helmets, a single chain of command would be set up by the nations themselves. This chain would be clearly designated on an agreed upon basis with policy guidance set at political levels, e.g., North Atlantic Council or OSCE. Formal reports from the military command in the theater of operation would flow through the designated chain of command for interface with the United Nations elements first at political levels. One or more accredited representatives from major contributing nations to a mixed operation would report directly to the Security Council on the Green Helmet enforcement activities. As the mandate to enforce comes from the UN Charter, the contributing Members would have neither more nor less authority than that which the Security Council rightfully bestowed for the particular enforcement operations. To repeat, Green Helmets would not report formally to the Secretary-General or to any of his appointed military commanders. By contrast, the Secretary-General would continue to report to the Security Council on all Blue Helmet peacekeeping activities as he has traditionally done. A clear, political chain of command is absolutely necessary to facilitate complete cooperation between Blue and Green Helmet military commanders in the area of potential hostilities. Likewise, there must be extensive coordination between Green and Blue units at the operational level in a mixed "war-peace" setting. The working assumption must be that there is agreement on the mission mandate and the respective roles to be played by the Blue and the Green Helmets. In the United States, the Defense Department has the lead responsibility for oversight, management, and financial support of all U.S. participation in Green Helmet operations.[16] Again, this policy decision by the Clinton administration is consistent with the legal theory that Green Helmets are combatants who ought to be led by experienced military professionals.

The term "White Helmets," as used in this study, refers to an eclectic assortment of civilians or other noncombatant groups who may be affiliated with UN peacekeeping operations in a mixed setting. The United Nations itself has numerous specialized agencies, such as the World Health Organization, that are often heavily engaged in humanitarian activities in combat zones. These organizations often work side-by-side in the field with nongovernmental entities, e.g., the International Committee of the Red Cross. Customary law of war principles confer a protected status on civilians, including media personnel, civilian contractors, and other noncombatants indirectly associated with combat operations. Civilians who refrain from war-like activities are legally entitled to protected-person treatment that is consistent with their non-warlike activities. White Helmets will almost always be civilians, but could be military medical

doctors or nurses, for instance, providing humanitarian assistance. When Blue or Green Helmets are temporarily tasked to directly support humanitarian activities, temporary rules pertaining to their status for the purposes of the particular mission should apply, as discussed below.

Keeping in mind three categories—noncombatants, neutrals, and combatants that generally correspond to White, Blue, and Green Helmets—imagine the following scenario. A European Member of the United Nations has been subjected to protracted civil strife with rival ethnic groups pitted against one another. The armed conflict sometimes spills over to neighboring countries. The UN Secretary-General, with the support of several European regional organizations, brokers an uneasy truce. The contending forces, including the legally recognized representatives of the host State that is a Member of the United Nations, sign a peace accord. The accord, *inter alia*, invites UN peacekeepers into that country's sovereign territory to help with a deteriorating humanitarian situation and to enforce the peace settlement as provided in the accord.

The Security Council passes a resolution on the situation with three distinct mandates. The first is that the Secretary-General is urged to facilitate humanitarian assistance efforts and to support those who are engaged in UN-approved relief activities. The second is that the Secretary-General is asked to prepare a Blue Helmet operation for the host nation that will be funded through the General Assembly. The Blue Helmets' mission includes providing civilian policemen to assist in re-establishing domestic law and order and military observers to monitor neutral zones designated in the peace accord to separate the warring factions. As traditional peacekeepers, the Blue Helmets are lightly armed and are authorized to use deadly force only as a last resort for personal or unit self-defense. The third portion of the Security Council mandate accepts an offer from a European regional organization to lead and to fund a Unified Coalition of Member States who will provide the Green Helmets for the operation in this mixed "war-peace" setting. The mission of the Green Helmets, who will be drawn from a Nato plus other nations coalition, is to enforce the peace accord that was signed by warring faction leaders. The Green Helmets may also respond to requests from the Blue Helmet commander to employ levels of force beyond the Blue Helmet's capabilities.

Assume further that White, Blue, and Green Helmets are now on the ground in the host State's territory as mandated by Security Council resolutions. Prior to the in-country deployment of either the Blue or Green Helmets, several agreements were executed. An aide mémoire between the UN Secretariat and the troop-contributing countries laid out the guidelines for assigning personnel and equipment for Blue Helmet service. None of the Blue Helmets are from

a nation with permanent membership on the Security Council. A status of forces agreement (SOFA) between the United Nations and the host nation representatives is reached that defines the legal relationships between the Blue Helmets and the host nation. In this case, a model SOFA on file with the Secretary-General had been incorporated by reference in the Peace Accord and declared provisionally applicable. It is stipulated that the Peace Accord was properly executed by appropriate political representatives in the host nation, including the government recognized by the States involved. The Peace Accord provides that Blue Helmet personnel will be entitled to the privileges and immunities accorded "experts on mission," i.e., the status enjoyed by UN agents while engaged in official duties. Supplementary administrative and operating regulations tailored to this particular operation will be issued as circumstances require and time permits. The Blue and Green Helmet military commanders have jointly prepared and issued a combined strategic operations plan that, *inter alia*, spells out compatible but clearly separate rules of engagement geared to their respective military roles. One important agreed upon rule is that the Green Helmets may only initiate offensive operations against forces deemed hostile to the Blue Helmets when asked to do so by the Blue Helmet command. Once engaged in hostilities initiated at the request of the Blue Helmets, the Green Helmets will disengage either when the requested mission is accomplished, consistent with the safety of Green Helmets, or when the Blue Helmet command asks them to cease operations. The Green Helmets have no obligation to cease operations in a way that is inconsistent with their customary law rights of self-defense. In fact, an important principle expressed in the combined operations plan is that neither Blue nor Green Helmet forces ever relinquish their inherent right and duty of individual or unit self-defense. Lastly, a UN advance team had concluded memoranda of understanding (MOUs) with the International Committee of the Red Cross and several other humanitarian groups active in the host nation. These MOUs were directed primarily at practical ways to maintain the distinction between the purely humanitarian activities of the White Helmets, the UN traditional peacekeeping operations of the Blue Helmets, and the UN enforcement actions of the Green Helmets. The MOUs also establish effective communication networks to ensure that there are practical means for close consultation on humanitarian activities between the White and Blue Helmets on the one hand and close coordination on operational use of force matters between the Blue Helmets and the Green Helmets on the other.

A condition for UN support for the White Helmets is that they be present in the area of potential hostilities at the request of all contending factions in the

host nation. The White Helmets are likely to become engaged in activities such as in distributing food and providing medical assistance throughout the host nation. In these activities, the White Helmets may be assisted from time to time by either Blue or Green Helmet military units. For example, the U.S. Army Corps of Engineers units serving as Green Helmets may make available to the White Helmets the personnel and material needed to build water purification facilities. The U.S. Air Force may also provide C-17 aircraft to ferry supplies into the host nation to support the White Helmet humanitarian assistance efforts.

The White Helmets consist of numerous organizations with various nationals from around the world. In this scenario, the Blue Helmet forces are drawn from the Netherlands, Norway, and Poland and are led by a Dutch brigadier general. The expanded Nato-led Green Helmet combatants are drawn from seven contributing nations, including Russia and the United States. The commander in the host nation of these expanded Nato-led forces is a national of France; his deputy is a national of Russia. The Green Helmet air units are under the combined command of a United States Air Force officer.

What is the status of the respective individuals participating in this mixed UN peacekeeping operation? What rules govern their use or nonuse of force?

The White Helmet civilians are noncombatants who are entitled to the protections afforded in the Fourth 1949 Geneva Convention Relative to the Protection of Civilian Persons in Time of War. The White Helmets are not obligated to wear a uniform, but it is desirable that they take care to distinguish themselves from indigenous factions who may be lawful hostile fire targets. The White Helmets should, in principle, not carry arms or engage directly in combatant activities. Their legal right to carry arms is the same as that of an ordinary citizen in the host nation who might carry small arms strictly for personal self-defense. To avoid jeopardizing their protected person status under international law, they should confine their activities to humanitarian work and not willingly become directly engaged in hostilities. Legally, the White Helmets are not to be captured or treated as combatants. Killing them deliberately is the crime of murder under the laws of the host nation and may be a grave breach of the laws of war under international law.

The Blue Helmet troops that assist the White Helmets incur no change in legal status by rendering humanitarian assistance. They wear uniforms and carry small arms openly. The main duty of all UN Blue Helmet peacekeepers is to help all humanity in an impartial manner. Therefore, it is important that the Blue Helmets make every effort to treat all host nation groups impartially. After all, the Blue Helmets are representatives of the United Nations as a whole. The

UN Blue Helmet troops' arms are appropriate for the police-like functions and related neutral duties they undertake to perform with the prior consent of the host nation. Likewise, the SOFA rules conferring privileges and immunities for UN "experts on mission" apply to the Blue Helmets. Blue Helmets are not to be captured by hostile forces or treated as prisoners of war. If detained or taken into custody by hostile forces, they are entitled to immediate release.

Green Helmet forces, such as military engineers or cargo aircraft crews directly assisting White Helmets, also ought to have the same neutral status as Blue Helmet forces have, so long as these Green Helmets are directly engaged solely in humanitarian activities. To be legally entitled to the privileges and immunities granted to Blue Helmets, however, the Green Helmets must assume the burdens that go with the benefits of that status. The SOFA must expressly confer Blue Helmet neutral status on Green Helmets while they are under orders to directly support humanitarian activities. During that time, the Green Helmets should wear distinctive insignia on their helmets and uniforms to identify their temporary Blue Helmet status. If they comply, but are, nevertheless, captured, they are legally entitled to "expert on mission" status and are not to be treated as prisoners of war. Consistent with their status as neutrals, the arms that Green Helmet forces may carry while rendering direct assistance to White Helmets must be comparable to what the Blue Helmets would carry insofar as practicable. To remain entitled to Blue Helmet status, the Green Helmet's vehicles, vessels, aircraft, and other equipment should be clearly marked to indicate that they are temporarily engaged in noncombatant activities. Absent clear indications to the contrary, Green Helmets will be correctly presumed by hostile forces to be combatants. There is, of course, no obligation on the part of Green Helmets to claim the status of Blue Helmets. They may elect to remain as combatants even while helping the White Helmets. In such a case, there is no issue about the extent of the military hardware carried. But, as such, they remain combatants and are prisoners of war if captured by hostile forces. White Helmets, however, may prefer that Green Helmet forces actually claim the status of (and wear the insignia of) Blue Helmets during humanitarian assistance activities, since Green Helmets may draw fire as legitimate targets by hostile forces even though directly engaged in humanitarian activities. The most important law of war principle to bear in mind throughout all the above circumstances is that the reason to maintain a clear distinction between combatants, neutrals and noncombatants is to protect noncombatants from hostile use of force.

Next, assume that a White Helmet motor transport convoy carrying food and medicine under the direction of a medical doctor from the UN World

Health Organization is en route to a geographic center from which humanitarian supplies are distributed to anyone in need. However, the center is located in a region of the host nation that is predominately inhabited by one of the warring ethnic groups. As a practical matter, this means that almost all of the humanitarian assistance activities at the center inure to the benefit of one particular ethnic group. The convoy is stopped by a rogue band made up of paramilitary forces from another ethnic group that is embittered by what they consider to be the human rights violations committed by individuals who are of the same ethnic group as the inhabitants near the distribution center. Providing supplies to the distribution center is seen by the rogues as a belligerent act that directly aids their enemies. The convoy is protected by Blue Helmets under the command of a Norwegian major, who rides at the front of the convoy in his white radio jeep that is prominently flying a UN flag. The drivers and the trucks transporting the supplies are from a Green Helmet unit on temporary detail from a Turkish military detachment. As authorized in the SOFA for this type of situation, the Turkish troops wear blue plastic covers stretched over their green helmets and have plastic UN banners clearly displayed on their vehicles. The leader of the rogue band that surrounds the convoy demands that all the cargo and supplies be relinquished to his forces.

For dealing with potential hostilities, it was agreed by MOU in advance that the UN's Norwegian Blue Helmet officer would assume command and control of the humanitarian convoy operation. The United Nations is responsible for the safe passage of the White Helmets and for their shipment of humanitarian supplies. We may assume that the Turkish troops, who are openly assisting the White Helmets, have complied with the legal requirements detailed in the SOFA and MOUs. Accordingly, they are temporarily entitled to Blue Helmet noncombatant status while performing this humanitarian assistance role. Of course, the Turkish forces must continue to act like Blue Helmets to be entitled to be treated like Blue Helmets.

This situation illustrates why it is absolutely essential that Green Helmet troops, who are highly trained for immediate reaction in combat situations, clearly understand their status and the applicable rules of engagement prior to the time that hostile incidents arise. Assume in this case that the Norwegian major has an opportunity to negotiate with the leader of the rogue band. In addition to explaining carefully the noncombatant or neutral status of all the individuals for whom he is responsible, the major points out that he is in radio communication with Green Helmets whose F-16 tactical support aircraft are circling overhead. He also informs the rogue commander that the route was planned in advance and, therefore, has pre-plotted targets. Part of the contin-

gency planning for the convoy operation was that the Green Helmets programmed naval gunfire and heavy artillery on likely ambush sites such as this. While the rogue band firepower may be superior to that of the Blue Helmet protection force, the Green Helmets are on stand-by to render rapid strike assistance if requested. The major explains that, unlike the Blue Helmets, the Green Helmets are ready and willing to engage, consistent with the laws of armed conflict, in all-out warfare against the rogue band.

In the above scenario, the Blue Helmet major may or may not talk his way out of hostilities with the rogue band. But certainly his chances of avoiding conflict seem better by having ready recourse to the Green Helmet's war-making capability. If hostilities ensue, in spite of the UN officer's efforts to avoid them, the Green Helmets are militarily equipped to enforce the UN mandate by deadly use of force actions. This capability should help maintain respect for the overall UN peacekeeping efforts. Moreover, the hands of the Blue Helmet are kept morally "cleaner" than if the major were threatening to use force with his own Blue Helmets. Future contacts between the rogue's ethnic allies and the Blue Helmets should not be as confrontational as would be the case if the Blue Helmets were forced into either backing down or themselves engaging in direct armed conflict. At the same time, the Green Helmets are, rightly, more interested in rogue fear than friendship. The Green Helmet mind-set and mission remain clear. If called into combat, they are not confused about their mandate: their mission is to find and destroy the enemy.

Assume another scenario. The Blue Helmets' mission is to provide security for a UN-designated "safe haven" where refugees may gather away from armed hostilities to receive medical care, food, and related humanitarian assistance. At an earlier stage in the strife, the principal leaders of the contending forces agreed to the establishment of this safe haven site. However, the Blue Helmet commander now has reliable intelligence that armed forces composed of one ethnic group turned "rogue" are planning to launch an attack on the safe haven. The camp is filled with refugees from an ethnic group who are mortal enemies of the armed forces expected to attack. In better times, UN political leaders had widely broadcast that the safe haven would be a sanctuary under UN protection for all refugees who fled there. The Blue Helmet commander lacks the troops and weapons to repel the attack. What can he do?

Assume that the political will exists in the Security Council and on the part of the Secretary-General to protect the refugee safe haven and that the Green Helmets have received an appropriate urgent authorization to provide "all necessary means" of assistance to the Blue Helmet commander. The Dutch Blue Helmet commander makes direct contact with the French Green Helmet

commander to request military assistance from the Green Helmets to defend the safe haven refugee site. At the stage when "all necessary means" use of force assistance is requested from the Green Helmets, the Blue Helmets are obligated by MOUs to provide all their available intelligence about hostile forces and the military situation pertaining to the camp.

The Blue Helmet commander may tell the Green Helmet commander what the military force assistance mission is, but not how the Green Helmets are to accomplish it. Maintenance of a viable symbiotic relationship between the Blue and Green Helmets in mixed "war-peace" settings is dependent upon close and continuous coordination between the two forces. But the Green Helmet commander is under no obligation to risk his troops on mission requests encumbered with unacceptable terms and conditions imposed by the Blue Helmet commander. Likewise, the Blue Helmet commander should not request assistance if he judges that the rogue group's likely reaction to the Green Helmet intervention outweighs the benefit of requesting combatant assistance. The nature of the agreed relationship is that the Blue Helmet commander requests the mission and the Green Helmet commander may accept it or reject it. If he accepts it, the Green Helmet commander executes it as he sees fit until the mission is over. The point is that military necessity dictates that the ultimate selection of the means to accomplish a combatant mission is decided by the Green Helmet commander.

Assume in this case that the mission portrayed by the Blue Helmet commander is for the Green Helmets to protect the safe haven refugee camp from an anticipated attack by a rogue ethnic band. This mission assignment is accepted by the Green Helmet commander.

The Green Helmet commander tasks a reinforced battalion of U.S. Marines located on an offshore assault ship to undertake an urgent, initial deployment to commence accomplishment of the mission. Assume that this unit is forward deployed expressly to support UN operations as part of a Nato amphibious task force that is on station in the Mediterranean Sea. Within a few hours of receiving the mission request, contingent operations plans are appropriately adapted, and the Marines are helicoptered to the safe haven site area in the host nation. Within another few hours, the Marines establish an outer defensive perimeter around the Blue Helmet's inner security ring around the refugee camp. Additional equipment and personnel continue to arrive, including a British psychological operations unit that erects a large radio broadcast tower. This unit will concentrate on informing the populace in the host nation of the reasons for the UN-sponsored military activities that are being undertaken with the consent of the legitimate government. Six pieces of Russian heavy artillery are brought in

by U.S. Air Force C-17 aircraft, which are able to land on the makeshift former commercial landing strip now secured within the Marines' defensive perimeter. The Russian combat troops are under the command of a Russian artillery captain who reports through the single Green Helmet chain of command for all expanded Nato forces engaged in enforcement action in the host nation.

Prior to deployment, Russian political representatives had agreed to the contribution of the Russian troops and equipment for this operation. U.S. Navy and Marine close air support aircraft have been flying overhead since accompanying the initial helicopter assault forces into the combat area. In short, all of the usual warfighting activities necessary for a successful military operation are put into motion by the military professionals in the expanded Nato. One unusual command and control aspect is that the French Green Helmet commander, in addition to his deputy from Russia, has at least one senior officer on his personal staff, either from each of the nations contributing forces or their designated proxy. These officers are empowered to make recommendations, at any stage, to their respective national military commands regarding the conduct of the combat operations being conducted by expanded Nato forces. Such recommendations could include termination of that nation's voluntary support of any UN enforcement action, including this one, which is to protect the safe haven refugee camp. Part of the advance agreement between the contributing Member States is that such withdrawal will not be implemented in a way that unduly jeopardizes the lives of other Nato forces continuing in the engagement.

The Green Helmets will provide protection for the safe haven until asked to leave by the Blue Helmet commander or by the lawful government of the host nation. The Green Helmets would of course also leave when ordered to do so by the Green Helmet operational commander.

The Blue Helmet commander may decide that it is too risky to ask for Green Helmet assistance, and the Blue Helmets are under no obligation to request assistance. But it should be obvious that the Blue Helmets cannot accomplish their mission as mandated by the Security Council without the genuine cooperation of the armed factions in the host nation. When faced with hostilities, the Blue Helmets retain the discretion to decide whether to stay in command and control. They may not want to pass operational command and control to the Green Helmets. But once passed, forces hostile to the UN troops must understand that when the Green Helmets decide to use a particular type or amount of armed force against an enemy, that is a matter between the Green Helmets and the enemy. The Blue Helmets are out of the decision loop. Even without a Blue Helmet request, the Green Helmets are under no obligation to stand by helplessly and watch a slaughter of civilians or other innocents,

including Blue Helmets. Green Helmet political leaders may decide on their own to take hostile action against rogues, or any other enemy. But such use of force in the peacekeeping area of operations must be lawful either under the UN Charter, pursuant to Security Council mandate, or by agreement with the host State. To keep their status as a legitimate enforcement agent for the Security Council, for example, the Green Helmets would be required to act within the legal parameters of the resolutions authorizing their involvement. If the UN mandate were too restrictive, the political leaders controlling an expanded Nato's military forces should refuse to take the mission. They should also refuse missions where the mandate from the Security Council is ambiguous.

In the above scenarios, the Blue and Green Helmets' use of armed force is consistent with the UN Charter as well as with accepted conventional and customary international law. The troops know their status—if in doubt, they can check the color of their helmets. Blue Helmets are not neutrals one moment and combatants the next. Likewise, Green Helmets are combatants unless they carefully comply with previously agreed upon arrangements negotiated with the host nation whereby they may temporarily enjoy "expert on mission" status. Equally important, all others, including potential hostile forces, should be able to readily identify the status of individuals and their equipment. If rogue forces kill a White or Blue Helmet, this is the domestic crime of murder with only the defenses and mitigation permitted under the judicial system of the host nation. The act may also be a war crime within the jurisdictional competence of an international criminal court. If rogue forces kill a Green Helmet in combat, it is not murder anymore than it is murder if one of the rogue forces is killed by the Green Helmets. Both are full-fledged combatants whose conduct is governed by the laws of armed conflict. The principle is that establishing a clear status for different categories of troops in mixed hostilities is indispensable considering the legal consequences that follow from that status.

From the point of view of command and control, Blue Helmets are ultimately responsible to the Secretary-General who, in turn, on traditional peacekeeping missions, reports to the Security Council. The Secretary-General is also accountable to the General Assembly, who must pay the bills for the peacekeeping operations he supervises. By contrast, the Green Helmet chain of command flows through a Unified or Coalition commander, probably designated by Nato, perhaps under a regional organization such as the OSCE. The OSCE qualifies as a regional collective security organization that is entitled, under Article 53 in Chapter VIII of the UN Charter, to assist the Security Council in carrying out Chapter VII enforcement actions. Nato does not presently so qualify, but the North Atlantic Treaty could be re-negotiated to allow this legal possibility.

An interesting variation is that Nato could serve as one entity contributing forces to a newly created Chapter VIII collective security arrangement for the North Atlantic region. The other contributing entities could be expanded Nato member States participating in their individual, as distinguished from their collective, capacity. From a domestic perspective, this would entail obtaining the advice and consent of the United States Senate. To elaborate: it is not unlawful from the perspective of international law for Nato to be used as a Chapter VIII regional enforcement organization so long as the activities are approved by the Nato heads of State or their agents. At the same time, it is not lawful under the domestic Constitutional processes in the United States to use Nato as a Chapter VIII collective security organization without obtaining the advice and consent of the U.S. Senate. As is evident from the text of its Article 5, the Senate only approved the North Atlantic Treaty as an Article 51, Chapter VII self-defense organization.

The legal rules governing peacekeeping operations in mixed "war-peace" settings are not easy to unravel, but they can be sorted out with clear thinking and mental discipline on the part of political leaders. The Secretary-General can serve as an even-handed representative of all sovereign Members, and traditional peacekeeping that has been successful when done properly can continue under the UN Charter as written. There is little that is unusual about the combined-color Helmet operations described in this study except the notion that the Blue Helmet commander has the authority to withdraw his request for Green Helmet assistance on missions undertaken at Blue Helmet request.

As noted earlier, in the United States, the Department of Defense, pursuant to the May 1994 presidential decision, has lead management and funding responsibility for U.S. participation in Green Helmet operations, whether they occur under traditional peacekeeping or enforcement action mandates from the Security Council. Significantly, the approach suggested in this study does not contemplate UN funding for Green Helmets, whose actions are focused almost exclusively on enforcement. The costs of Green Helmets are to be paid by the contributing Members who must also pay their UN-determined share to other nations who provide troops for traditional UN peacekeeping Blue Helmet operations. It is expected that the approach outlined in this study will discourage the United Nations from overreaching into risky and expensive ventures with traditional peacekeepers, as the policy of the Security Council will be to leave enforcement to Member State forces who do not report to the Security Council through the Secretary-General.

One downside to this approach is that the United States and other States with the ability to influence Security Council mandates paid by the United Nations would have to pay for the enforcement actions they support out of their national budgets. In addition, the lives laid on the line for UN enforcement operations would be those of nationals from the Member States whose military services would be doing the enforcing. The perceived advantage of cost-sharing for enforcement operations from Germany, Japan, and other UN Members in general would be lost. Still, the net effect of the approach is that the United Nations as such would be kept away from enforcement operations it cannot afford and should not be involved in anyway. An additional result under this approach is that the United States and other nations contributing Green Helmets would be discouraged from entering into enforcement operations. Certainly, the U.S. Congress would have more input into Green Helmet decisions than it does now when there is confusion about whether the commitment is for a Blue or Green Helmet operation. From the perspective of the United States, any Administration is less likely to commit U.S. military forces to Green Helmet operations without consultation with Congress. The mere fact that such consultation will occur is likely to act as a brake on the commitment of forces overseas.

V

Reforming Security Council Peacekeeping Mandates

THE SECURITY COUNCIL SHOULD return to the basic principles in the UN Charter and apply its provisions regarding use of force clearly and consistently with respect to all peacekeeping operations. In doctrine and application, personnel should have no confusion about their roles: White Helmets are unarmed noncombatants; Blue Helmets are lightly armed neutrals; and Green Helmets are fully armed combatants. Civilians may command White Helmets; the Secretary-General's military commander may command Blue Helmets; and a UN-approved Member-State coalition or regional collective security organization's military commander may command Green Helmets.

The structure of the UN Charter provides for a gradual escalation from low-key preventive diplomacy by the Secretary-General to full-scale offensive military action (when authorized by the Security Council) by Member States to maintain international peace and security. The Security Council is obligated to exhaust Chapter VI measures before invoking "Chapter VI and a half" traditional peacekeeping actions. Chapter VII enforcement measures are to be led by collective security alliances consisting of Member States, not by the Secretary-General. The North Atlantic Treaty needs to be renegotiated before Nato is legally empowered under U.S. law to act other than as an Article 51 self-defense force in the current parties' territories. In any event, the role of the Secretary-General is consistent with the UN Charter when limited to traditional peacekeeping. The Security Council has a responsibility to provide sufficiently clear guidance so that agreed upon rules of engagement detail the exact circumstances under which military armed force is authorized in all UN operations. The need for consistent UN use of force doctrine has never been

greater, given the current trend to lace together diverse coalitions with both police and combatant functions that are expected to be performed in mixed "war-peace" settings. Moreover, to cope with the greater number of regional conflicts since the end of the Cold War, the United Nations is likely to make greater use of Chapter VIII regional peacekeepers. Truly combined multinational forces, with rapid response capabilities, are emerging to meet that need in the Nato context. Proper Security Council mandates should draw a bright line between UN command and control for traditional self-defense peacekeeping and national command and control for offensive enforcement actions.

Fifty years after its founding, the United Nations has reached another threshold. UN credibility with respect to international peace and security is being challenged at a time when the opportunity to fulfill the commitments in the UN Charter are the best since the end of World War II. There is also a pressing need for greater selectivity in undertaking UN peacekeeping missions. The UN's financial crisis is serious and will simply worsen when the United States reduces its share of funding to a more realistic 25 percent contribution. A major problem in peacekeeping is that both the Secretary-General and the Security Council must learn to "just say no." Each must restrict itself to roles and missions that are consistent with the legal requirements in the UN Charter. The United Nations must face its limitations realistically, and Member States, particularly the United States, must discipline themselves to seek only achievable goals.

Prominently, the UN Charter expressly prohibits intervention in the domestic affairs of sovereign States. The Clinton administration conceptually came to grips with the problem of when to support a peacekeeping operation in its May 1994 policy announcement. After listing a collection of factors such as national interest, threat to the peace, clear objectives and the like, the Administration stated that it would apply even stricter standards for U.S. participation in what amounted to an enforcement action operation, i.e., risking combat. This is sound policy, but it needs to be implemented in deeds as well as in words. The Security Council cannot afford to take enforcement action in every nation where there are significant human rights violations or a defective form of democratic government. In fact, these defects have always existed in a majority of the Member States in the United Nations. The organization rightfully lacks the political will and the resources to deal with these matters on a consistent basis throughout the globe.

The Security Council must institute a more selective review process for both the operational activities and financial aspects of its peacekeeping mandates. Far too often the Security Council has too readily, almost automatically, extended

or expanded peacekeeping mandates. The Security Council should terminate peacekeeping missions outright when domestic factions lack the political will to live in peace without UN peacekeepers. The notion ought to be accepted that domestic armed conflicts have a cycle that must be run until the hostile forces want to stop fighting. Premature involvement by the United Nations may yield short-term gains but is highly unlikely to be successful in the long run. In some instances, the United Nations has assumed virtually a permanent presence in host nations akin to that of an occupying power, even when individual Members can be easily identified as sponsors of one or another warring faction. Let the State sponsors of the conflict pay for the UN presence or pull the peacekeepers out. If necessary, the Security Council can utilize its mandatory powers to impose political and financial accountability on individual Members that support threats to international peace and security. While this tough-minded approach may lead to the extraction of UN forces from places such as Cyprus, it will also, for example, place responsibility for that crisis squarely on the nations responsible: Turkey and Greece. The Security Council and Nato have the political and military means to deal with whatever may arise as a result of closing down the UN occupation there. As it is, the world community is footing the bill for a bilateral problem which neither offending state has any incentive to settle, and the problem just continues to fester.

VI

Conclusion

THE UN CHARTER IS FAR FROM PERFECT, but it is the most important agreement that the world has ever concluded to constrain aggressive war. With the thaw in the Cold War, a fleeting window of opportunity has opened to follow the Charter on security issues almost as originally intended fifty years ago. Unfortunately, overreaching by the Secretary-General, lack of discipline by political leaders in the United States and elsewhere, as well as other factors, have caused the essential legal distinction between consensual and coercive measures to be blurred. The post-Cold War reality is that UN-sponsored forces are likely to be placed in mixed "war-peace" settings involving ethnic strife where several categories of peacekeepers must deal simultaneously with a spectrum of activities ranging from humanitarian assistance to enforcement action. The author's view is that Blue Helmets should always restrict themselves to traditional peacekeeping and that conventional war-fighters from Member States should presumptively retain their status as full combatants. Only when circumstances in the field require Green Helmets to serve in a support capacity under Blue Helmet command should the Green Helmets become legally entitled to temporary status as UN "experts on mission." The principal conclusion advanced is that the all-important distinction laid out in the UN Charter between self-defense and enforcement use of force categories can, and should, be maintained. Finally, while the UN Charter suffices as written as a legal basis for generic peacekeeping activities (once properly distinguished), the North Atlantic Treaty has clearly been overtaken by post-Cold War events. A new North American-European collective security scheme should reconstitute Nato to allow it to function, as in the past, as an Article 51 self-defense organization

under Chapter VII, but also as a contributor entity itself to a Chapter VIII collective security agency mandated by the Security Council.

Notes

1. The best is *Self-Defense in International Law* by D.W. Bowett (New York: Praeger, 1958).
2. See Report of Secretary-General on a United Nations Guard, UN Doc. A/656, p. 7.
3. Off. Rec. S.C., 2nd yr., Spec. Supp. No. 2 (s/336), pp. 1–32.
4. Off. Rec. S.C., 5th Sess., No. 15, 473rd mtg., p. 3.
5. G.A. Res. 377A (V), Nov. 3, 1950.
6. See Article 1 of Convention on the Safety of United Nations and Associated Personnel. Off. Rec. G.A., A 49/49 (Vol. I), 9 December 1994. Article 2 of Appendix B to Annex 1-A (Military Aspects) of the Dayton Peace Accord apparently confers "experts on mission" privileges on combat troops who are following "robust" rules of engagement. This illustrates the confusion that arises by not clearly distinguishing between traditional peacekeeping and enforcement actions. The troops on the ground are placed in unrealistic circumstances when they are asked to act as combatants against hostile forces and yet be treated as noncombatants when captured by the same hostile forces. For example, is it realistic to expect "prompt release" and "no interrogation" of IFOR forces who are captured while using deadly force against their captors?
7. FBIS-WEU, 94-195, 7 October 1994, p. 1.
8. UN Doc. A/47/277-S/24111, 31 January 1992. "An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations."
9. Off. Rec. G.A., A/50/60 and S/1995/1, 3 January 1995. Supplement to "An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations."
10. Id., para. 33.
11. Id., para. 35.
12. Id., para. 77.
13. NACC Planning Principles and Guidelines for Combined Peacekeeping Operations, 17 March 1994, p. 5.
14. D. Daniel and B. Hayes, "Securing Observance of UN Mandates through the Employment of Military Forces," Strategic Research Department Research Report 3-95, Occasional Paper of the Center for Naval Warfare Studies, U.S. Naval War College.
15. "The Clinton Administration's Policy on Reforming Multilateral Peace Operations," Dept. of State Pub. 10161, May 1994, pp. 12–13.
16. Id., p. 13.

Glossary

ARRC	Atlantic Alliance's Rapid Response Corps
CIS	Commonwealth of Independent States
CSCE	Council on the Conference on Security and Cooperation in Europe (renamed OSCE)
DOMREP	Mission of the Representative of the Secretary-General on the Dominican Republic
ECOMOG	Economic Community of West African States Cease-fire Monitoring Group
EU	European Union
EUROCORPS	French-German WEU forces
EUROFOR	French, Italian, Spanish, and Portuguese WEU forces
EUROMARFOR	All-Member Maritime Force (WEU)
FMLN	Frente Farabundo Marti Para la Liberacion Nacional
IFOR	Implementation Force
IPTF	International Police Task Force
MINUGUA	UN Mission for the Verification of Human Rights and of Compliance with the Comprehensive Agreement on Human Rights in Guatemala
MINURSO	UN Mission for the Referendum in Western Sahara
MOU	Memorandum of Understanding
NACC	North Atlantic Cooperation Council
NACC-AHG	North Atlantic Cooperation Council Ad Hoc Group
OAU	Organization of African Unity
ONUC	Operation des Nations Unies au Congo
ONUCA	UN Observer Group in Central America
ONUMOZ	UN Operation in Mozambique
ONUSAL	UN Observer Mission in El Salvador
OSCE	Organization for Security and Cooperation in Europe (formerly CSCE)
PDK	Party of Democratic Kampuchea
Polisario Front	Frente Popular Para la Liberacion de Saguia el Hamra y de Rio de Oro
RENAMO	Resistencia Nacional Mocambicana
RPF	Rwandese Patriotic Front
SCR	Security Council Resolution
SFOR	Stabilization Force (successor to IFOR)
UNAMIC	UN Advance Mission in Cambodia
UNAMIR	UN Assistance Mission for Rwanda
UNASOG	UN Aouzou Strip Observer Group
UNAVEM I	UN Angola Verification Mission I
UNAVEM II	UN Angola Verification Mission II
UNAVEM III	UN Angola Verification Mission III
UNCRO	UN Confidence Restoration Operation (in Croatia)

UNDOF	UN Disengagement Observer Force
UNEF I	UN Emergency Force I (1956-1967)
UNEF II	UN Emergency Force II (1973-1979)
UNFICYP	UN Peacekeeping Force in Cyprus
UNGOMAP	UN Good Offices Mission in Afghanistan and Pakistan
UNIFIL	UN Interim Force in Lebanon
UNIIMOG	UN Iran-Iraq Military Observer Group
UNIKOM	UN Iraq-Kuwait Observation Mission
UNIPOM	UN India-Pakistan Observation Mission
UNITA	National Union for the Total Independence of Angola
UNITAF	Unified Task Force
UNMIBH	UN Mission in Bosnia and Herzegovina
UNMIH	UN Mission in Haiti
UNMOGIP	UN Military Observer Group in India and Pakistan
UNMOT	UN Mission of Observers in Tajikistan
UNOGIL	UN Observation Group in Lebanon
UNOMIG	UN Observer Mission in Georgia
UNOMIL	UN Observer Mission in Liberia
UNOMSA	UN Observer Mission in South Africa
UNOMUR	UN Observer Mission Uganda-Rwanda
UNOSOM I	UN Operation in Somalia I (1992-1993)
UNOSOM II	UN Operation in Somalia II (1993-1995)
UNPA	UN Protected Area
UNPF	UN Confidence Restoration Operations in Croatia (UNCRO); UN Preventive Deployment force (UNPREDEP) within the former Yugoslav Republic of Macedonia; and UNMIBH in Bosnia and Herzegovina
UNPREDEP	UN Preventive Deployment Force
UNPROFOR	UN Protection Force
UNTAC	UN Transitional Authority in Cambodia
UNTAES	UN Transitional Administration for Eastern Slavonia, Baranja, and Western Sirmium
UNTAG	UN Transition Assistance Group
UNTEA/UNSF	UN Security Force serving as a Temporary Executive Authority (and security force)
UNTSO	UN Truce Supervision Organization
UNYOM	UN Yemen Observation Mission
URNG	Unidad Revolucionaria Nacional Guatemalteca
WEU	Western European Union

About the Author

Dr. Nordquist holds a doctorate in juridical science from the University of Virginia, a diploma in international law from Cambridge (where he attended Grey's Inn of Court), a certificate from The Hague Academy of International Law, and a juris doctorate from California Western University. After attending law school following active duty in the U.S. Marine Corps with service in Vietnam, Dr. Nordquist was an attorney and legislative counsel in the Department of State. He then continued his practice as a partner in a private law firm in Washington, D.C., for twelve years. In 1990 Dr. Nordquist became Deputy General Counsel of the U.S. Air Force, and for six months in 1993 served as Acting General Counsel. Since August 1993 he has been a professor of law at the U.S. Air Force Academy.

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