



1993

The Command and Control of United Nations Forces in the Era of "Peace Enforcement"

James W. Houck

Penn State Law

Follow this and additional works at: http://elibrary.law.psu.edu/fac_works

 Part of the [International Humanitarian Law Commons](#), [International Law Commons](#), [Military, War, and Peace Commons](#), and the [National Security Law Commons](#)

Recommended Citation

James W. Houck, *The Command and Control of United Nations Forces in the Era of "Peace Enforcement"*, 4 *Duke J. Comp. Int'l L.* 1 (1993).

This Article is brought to you for free and open access by the Faculty Works at Penn State Law eLibrary. It has been accepted for inclusion in Journal Articles by an authorized administrator of Penn State Law eLibrary. For more information, please contact ram6023@psu.edu.

ARTICLES

THE COMMAND AND CONTROL OF UNITED NATIONS FORCES IN THE ERA OF "PEACE ENFORCEMENT"

JAMES W. HOUCK*

I. INTRODUCTION

Since the beginning of our nation, United States armed forces have fought "from the Halls of Montezuma to the Shores of Tripoli" in almost every type of conflict imaginable. No matter where United States forces have fought, however, the American people have nearly always been certain that when their sons and daughters went in harm's way, they did so under the command of United States generals and admirals who took their orders from the President of the United States.¹ Today, however, this article of faith has been challenged,

* Force Judge Advocate for the Commander, United States Naval Forces Central Command, Bahrain. B.S. 1980, United States Naval Academy; J.D. 1985, University of Michigan Law School; L.L.M. 1993, Georgetown University Law Center. The views expressed in this Article are those of the author and do not reflect the official policy or position of the United States government. I wish to thank Professor Jane Stromseth of the Georgetown University Law Center for her encouragement as well as helpful commentary on a previous draft of this Article. In addition, it would have been impossible to write this Article without the patience of my wife, Susan, and the tireless administrative support of my parents, who, as they always do, have gone the second mile and beyond to help me.

1. The only noteworthy historical exceptions to this principle occurred during the World Wars, when:

United States forces served under the command of non-American officers. French Field Marshal Foch commanded allied forces in World War I. And in World War II, United States forces in Africa served under [Great Britain's] Field Marshal Montgomery. And [Great Britain's] Lord Mountbatten commanded allied forces fighting in the Asian continent in the China-Burma-India theatre.

Defense Department Regular Briefing, Federal News Service, Mar. 2, 1993, available in LEXIS, Nexis Library, CURRNT File (statement of Defense Department Spokesperson Bob Hall). Prior to 1993 the only time the United States had placed a military unit under the direct command of the United Nations was a small air transport unit in New Guinea in 1962. See Steven A. Holmes, *Clinton May Let U.S. Troops Serve Under U.N. Chiefs*, N.Y. TIMES, Aug. 18, 1993, at A1 (citing WILLIAM J. DURCH, *THE EVOLUTION OF U.N. PEACEKEEPING* (1993)). As

and, indeed, as American forces have fought and died in Somalia, it has become the subject of national debate. Given the long tradition of exclusive United States control over United States forces, how has command and control become a subject of controversy so quickly?

As with so many questions today, the answer originates in the fall of communism. After nearly fifty years of global vigilance against the Soviet threat, the United States seems no longer inclined to assume the role of "global police force" for the post-cold war world. At the same time, however, there remains a realization that traditional isolationism is not possible, and that somehow the United States must remain internationally engaged. As President Bill Clinton took office in January 1993, many in the new Administration concluded that the United States should provide increased support to the United Nations in the hope that the United Nations might finally begin to fulfill its potential as a guarantor of world peace.²

Both the United States and the United Nations quickly came to realize, however, that if the United Nations were to play a larger role in the maintenance of international peace and security, it would have to pursue its increasingly challenging mandates more aggressively.³

of March 2, 1993, the United States had "520 U.S. military personnel serving with U.N. operations in seven different operational areas." *Defense Department Regular Briefing, supra*. In addition to United Nations operations, the United States has "two battalions currently assigned to the multinational force of observers organization in the Sinai, where the command rotates among the nations contributing forces, with the exception of the United States." *Id.* United States forces have long served under NATO command, although they have never fought under NATO command.

2. As Secretary of State Warren Christopher has said:

America cannot be the world's policeman. We cannot be responsible for settling every dispute or answering every alarm. . . . Our imperative is to develop international means to contain and . . . prevent these conflicts before they erupt. Here it is critical that we use the United Nations in the manner its founders intended, and there is high new hope that this may take place.

Secretary of State Christopher Discusses Strategy, CNN, Mar. 22, 1993, available in LEXIS, Nexis Library, CURRNT File; see also United States Ambassador to the United Nations Madeleine Albright Address to the International Women's Media Foundation, Reuter Transcript Report, Apr. 19, 1993, available in LEXIS, Nexis Library, CURRNT File. ("[W]hether we like it or not, the United States cannot walk away from [the] United Nations agenda. . . . The United Nations needs us and we need it. . . . There simply is no other way.")

3. See Paul Lewis, *United Nations is Developing Control Center to Coordinate Growing Peacekeeping Role*, N.Y. TIMES, Mar. 28, 1993, at A10.

As the demand for peacekeeping has grown sharply, the Security Council seems more willing to mount forceful interventions. . . . The Security Council is moving towards greater interventionism because in many tragedies public opinion perceives a human imperative that transcends everything else. . . . We are using more force because we are encountering more resistance.

Id. (quoting United Nations Under Secretary General for Peacekeeping Operations Kofi Annan).

In certain cases, this would require a military capability—a capability that the United Nations does not have, and, to a large extent, that only the United States can provide.⁴ Consequently, as the United Nations sought to become more “muscular” and the United States pursued internal renewal, a mutual security partnership seemed to hold great promise.⁵

Following his inauguration, President Clinton took practical steps to make this promise a reality. He authorized United States logistics forces to serve under the command of the United Nations Operation in Somalia (UNOSOM), in what many hoped would be a model for future United States support.⁶ In addition, the President directed his Administration to undertake a comprehensive review of United States support for the United Nations, which produced a recommendation from senior Administration policymakers that United States forces be permitted to serve under the “operational control” of future United Nations commands.⁷ While some expressed reservations with the direction of Administration policy,⁸ it seemed as if a new era was beginning in the United States/United Nations security partnership.

Beneath the promise, however, was great uneasiness. As the United Nations effort to capture Somali warlord Mohammed Farah Aidid floundered, criticism of the United Nations became more frequent, particularly within the United States Congress. Influential lawmakers from both political parties grew bolder in their calls for clarification of the United States mission in Somalia.⁹ Thus, it came

4. R. Jeffrey Smith & Julia Preston, *U.S. Plans Wider Role in U.N. Peacekeeping*, WASH. POST, June 18, 1993, at A1 (quoting United Nations officials as acknowledging the United Nations's need for United States help). See generally THE CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, *OPTIONS FOR UNITED STATES MILITARY SUPPORT TO THE UNITED NATIONS* (1992).

5. Madeleine Albright, United States Ambassador to the United Nations, has described the United States's commitment to employing military force in concert with other nations under United Nations authority as “assertive multilateralism.” Smith & Preston, *supra* note 4, at A1.

6. *Id.*

7. Barton Gellman, *Wider U.N. Police Role Supported*, WASH. POST, Aug. 5, 1993, at A1 (noting restraints in the resulting presidential directive which temper somewhat the previous campaign commitments made by President Clinton); Holmes, *supra* note 1, at A1; Elaine Sciolino, *U.S. Narrows Terms for Its Peacekeepers*, N.Y. TIMES, Sept. 23, 1993, at A8.

8. See, e.g., Robert C. Byrd, *The Perils of Peacekeeping*, N.Y. TIMES, Aug. 19, 1993, at A23 (Senator Byrd's criticism of Administration plans to place United States troops under foreign command); Ronald A. Taylor, *Foreign Command of U.S. Peacekeepers Debated*, WASH. TIMES, Aug. 19, 1993, at A3 (quoting senators opposed to the idea of placing United States troops under foreign command).

9. Bill Gertz, *Nunn Questions Somalia Mission*, WASH. TIMES, Sept. 27, 1993, at A1; Eric Schmitt, *U.S. Vows to Stay in Somalia Force Despite an Attack*, N.Y. TIMES, Sept. 26, 1993, at

as little surprise that the President struck a decidedly conservative tone during his first address to the United Nations General Assembly in September 1993, when he proclaimed that the "United Nations simply cannot become engaged in every one of the world's conflicts. If the American people are to say yes to U.N. peacekeeping, the United Nations must know when to say no."¹⁰

In a news conference following his address to the General Assembly, the President outlined a new and rigorous set of preconditions upon which he would insist before allowing United States participation in a peacekeeping force in the Balkans.¹¹ Several weeks later, following media reports of dead United States servicemembers being dragged through the streets of Mogadishu, the President continued to distance himself from the United Nations by announcing that United States troops will participate in United Nations operations only if they serve under a United States chain of command.¹²

While the President's new conservatism toward the United Nations may reflect a degree of prudent realism, it leaves unanswered several fundamental questions regarding the future of the United States participation in United Nations operations. Given the President's commitment to an increased United Nations role in world affairs, further United States participation in United Nations operations seems likely. However, if the United States reserves the right to go its own way during these missions, what will prevent other nations from doing the same? Moreover, who will define the political objectives for these missions? Who will make the crucial strategic decisions required to translate political objectives into military reality? Who will command the forces required to execute strategic decisions?

A1.

10. *President Bill Clinton Addresses the General Assembly of the United Nations*, Federal News Service, White House Briefing, Sept. 27, 1993, available in LEXIS, Nexis Library, CURRNT File.

11. Thomas Friedman, *Clinton, at U.N., Lists Stiff Terms For Sending U.S. Force to Bosnia*, N.Y. TIMES, Sept. 28, 1993, at A1, A16; Carla Anne Robbins, *Clinton Rethinks U.S. Global Peacekeeping Role, Draws New Criteria for Joining U.N.-Led Missions*, WALL ST. J., Sept. 27, 1993, at A24.

12. See David Lauter & Paul Richter, *Clinton to Insist on U.S. Control of GIs in U.N. Roles*, L.A. TIMES (Wash. ed.), Oct. 15, 1993, at 1.

My [President Clinton's] experiences in Somalia would make me more cautious about having any Americans in a peacekeeping role where there was any ambiguity at all about what the range of decisions were, which could be made by a command other than an American command with direct accountability to the United States.

Id.

Ultimately, the fundamental concerns in United Nations headquarters and in Washington revolve around authority—specifically, the authority to make the political, strategic, and operational decisions that together comprise the right to command and control United Nations forces. If the United Nations is to fulfill its promise of peace, these questions must be addressed. This Article explores how these concerns might be reconciled within the framework of the United Nations Charter to create a contemporary and more enduring regime for the command and control of United Nations forces.

As Part II demonstrates, command and control issues are not new to the United Nations; indeed, in 1945 the signatories to the United Nations Charter created a model for the command and control of United Nations forces. While the cold war ensured that this model was never used, it remains the necessary point of departure for any current discussion of United Nations command and control. As discussed in Part III, this Charter model was originally replaced by systems of command and control which evolved to meet the needs of two quite distinct United Nations missions: large-scale enforcement and peacekeeping. Though these command and control regimes evolved outside the Charter's express constitutional framework, they have arguably been the only alternatives available given the cold war context in which they developed.

The end of the cold war, however, has blurred the once clear distinction between the enforcement and peacekeeping missions. As described in Part IV, a new mission has emerged with characteristics of both enforcement and peacekeeping. This new "peace enforcement" mission requires that United Nations forces attempt to maintain neutrality between disputants much as they would in a peacekeeping operation, but that they also be prepared to use force against any disputant who breaches the peace, much as they would in an enforcement action. While the fundamental characteristics of the new peace enforcement missions have become reasonably clear, a command and control regime to govern these missions has not, as evidenced by the series of command arrangements that have evolved throughout the course of the United Nations intervention in Somalia. In addition, the United Nations and members of the North Atlantic Treaty Organization (NATO) struggled throughout 1993 to reach agreement on the command and control arrangements for a potential peacekeeping force in the former Yugoslavia.

One school of thought argues that the United Nations must control missions conducted in its name, while another argues that ad hoc coalitions between the United States and certain member states, in which participating states maintain control over their national contingents, are better suited to the current capabilities of the United Nations. While the Clinton Administration appears to have adopted the latter view, the question remains whether reliance on these ad hoc arrangements is sound policy for the long term. Part IV acknowledges the advantages of the ad hoc approach, but also considers how it ultimately leaves both the United States and the United Nations vulnerable.

Part V begins by examining recent efforts within the United Nations Secretariat to improve the United Nations's ability to oversee operations conducted in its name, as well as the Clinton Administration's attempt to fashion a new policy toward the United Nations. While many of the changes currently in progress are positive as far as they go, they do not address the complex issues underlying the current debate over command and control. Moreover, the current proposals have been initiated with little reference to the original Charter model for command and control. Part V evaluates this development, and suggests that both the United Nations and its member states might benefit from a return to a more structured, Charter-based model for command and control: a contemporary model that incorporates the strengths of the system envisioned in 1945 without ignoring the experiences of intervening years. Part V offers suggestions for creating such a "neo-Charter" model, and proposes that it might serve as the necessary confidence-building mechanism through which the United Nations, the United States, and other key member states might work to forge a security partnership adequate for the changed political and military demands of the post-cold war world.

II. THE CHARTER VISION FOR UNITED NATIONS COMMAND AND CONTROL

When the international community founded the United Nations in 1945, it hoped to create a system of collective security to ensure that no state could ever again drive the world to war.¹³ The signatories to the United Nations Charter expected that an essential element

13. See, e.g., LELAND M. GOODRICH & EDVARD HAMBRO, CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 6-10, 22-44 (2d ed. 1949).

of the new collective security system would be a network of national military contingents that together would comprise the United Nations armed forces.¹⁴ While the cold war rendered this plan irrelevant, it remains the only coherent vision agreed upon for the creation, command, and control of a universal military capability. As such, it is the necessary starting point for any discussion of the contemporary possibilities for a United Nations command and control regime.

A. The Security Council's Responsibility for Political Control over United Nations Forces

The United Nations Security Council was designed as the bulwark of the United Nations's experiment in collective security. The Security Council was given "primary responsibility for the maintenance of international peace and security,"¹⁵ and United Nations member states agreed to abide by Security Council decisions concerning such matters.¹⁶ The signatories hoped that the Security Council would encourage the "pacific settlement of disputes."¹⁷ If such efforts failed, however, the Security Council was expected to rely on its authority under Chapter VII of the United Nations Charter.

Chapter VII gives the Security Council a range of options for responding to any "threat to the peace, breach of the peace, or act of aggression."¹⁸ The Security Council is authorized to call on disputants to comply with "provisional measures" such as negotiations or a cease-fire. Alternatively, the Security Council may make nonbinding recommendations to member states regarding action they should take to restrain disputants, or may render binding decisions on the proper course of action, including the use of military force.¹⁹

To enhance the Security Council's ability to apply military force in furtherance of United Nations principles, the signatories authorized the Security Council to establish a United Nations armed force under

14. *Id.* at 29, 35-36; *see also* U.N. CHARTER art. 26.

15. U.N. CHARTER art. 24, para. 1.

16. *Id.* arts. 25, 48, para. 1.

17. *Id.* ch. VI.

18. *Id.* art. 39.

19. *Id.* art. 40. The Security Council may enforce its decisions without using armed force by employing measures such as the severance of diplomatic relations or the interruption of commerce or communication with an offending state. *Id.* art. 41. If the Security Council determines that such measures have been or will be inadequate, it may take whatever military action "may be necessary to maintain or restore international peace and security." *Id.* art. 42.

Article 43,²⁰ and gave the Security Council responsibility for making plans for the application of the armed forces it controlled.²¹ In addition, national contingents comprising the force were to be kept available for the Security Council “on its call.”²² Once forces were deployed, the Military Staff Committee, under the Security Council, would be responsible for their strategic direction.²³ In short, the signatories intended the Security Council to exercise complete political control over any forces operating under its authority. Given the Security Council’s plenary authority in all matters of peace and security, it is no surprise that the signatories intended that the Security Council exercise the international community’s authority over international armed forces.

B. The Military Staff Committee’s Responsibilities

Because the Security Council was a civilian political organ, the signatories foresaw a need for professional military assistance. Having observed the World War II defeat of the Axis Powers by the largest multinational military effort in history, the signatories envisioned that postwar peace would be maintained through similar cooperation at the highest military levels,²⁴ and the desire to institutionalize this cooperation resulted in the creation of the Military Staff Committee.²⁵

The signatories envisioned several functions for the Military Staff Committee.²⁶ The Military Staff Committee was responsible for

20. *Id.* art. 43, para. 1. Although the United States, Great Britain, and the Soviet Union considered creating a standing United Nations army, they ultimately decided against such a plan. See ROBERT C. HILDERBRAND, *DUMBARTON OAKS: THE ORIGINS OF THE UNITED NATIONS AND THE SEARCH FOR POSTWAR SECURITY* 140-42 (1990). Instead, the signatories settled on a plan authorizing the Security Council to enter into “special agreements” with member states that would guarantee the availability of “armed forces, facilities, and assistance.” *Id.* at 156. These Article 43 forces would be composed of national contingents and would be available to the Security Council at all times. U.N. CHARTER art. 43, para. 1. The special agreements would specify the “numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.” *Id.* para. 2.

21. U.N. CHARTER art. 46.

22. *Id.* art. 43, para. 1.

23. *Id.* art. 47, para. 3.

24. See RUTH B. RUSSELL, *A HISTORY OF THE UNITED NATIONS CHARTER* 44, 50-56, 58, 92, 470-72 (1958).

25. Cf. U.N. CHARTER art. 47, para. 1. The Military Staff Committee consists of the Chiefs of Staff (or their representatives) of the five permanent members of the Security Council: the United States, Great Britain, Russia, France, and China. *Id.* art. 47, para. 2; GOODRICH & HAMBRO, *supra* note 13, at 48.

26. U.N. CHARTER arts. 46, 47, paras. 1, 3-4.

“advising and assisting” the Security Council on all questions relating to “military requirements,”²⁷ and was expected to assist the Security Council in making “[p]lans for the application of armed force.”²⁸ Together, these provisions gave the Military Staff Committee an important role both in creating United Nations forces and in determining how they might be used.

The Charter also gave the Military Staff Committee an important role once United Nations forces were committed to combat. The Military Staff Committee was to “advise and assist” the Security Council on the “employment and command of forces placed at [the Security Council’s] disposal.”²⁹ In addition, the Military Staff Committee was made responsible, under the direction of the Security Council, for the “strategic direction of any armed forces placed at the disposal of the Security Council.”³⁰

While the precise meaning of “strategic direction” is not obvious from the Charter text, some insight into the term can be gained by considering the World War II function of the Allied Combined Chiefs of Staff, which served as the model for the Military Staff Committee.³¹ During World War II, the British and American service chiefs consulted with each other on a daily basis regarding the broad objectives of the war.³² After establishing a common position on a given issue, they would make a recommendation to their respective civilian leaders. In turn, they would translate political direction received from the civilian leadership into a military plan that was conveyed to the operating forces for execution.³³

Considered in this context, it seems clear that the term “strategic direction” was meant to describe a process in which the Military Staff Committee would serve as a vital link in the chain of command between the Security Council and an operational commander. After

27. U.N. CHARTER art. 47, para. 1; *see also id.* art. 45 (noting a role for the Military Staff Committee in the negotiation of special agreements under Article 43).

28. *Id.* art. 46. Additionally, the Military Staff Committee was made responsible for “the regulation of armaments, and possible disarmament.” *Id.* art. 47, para. 1. Presently, however, the Committee’s arms control functions have largely been taken over by other agencies and organs. *See* RALPH M. GOLDMAN, IS IT TIME TO REVIVE THE UN MILITARY STAFF COMMITTEE? 6 (Occasional Paper Series of the Ctr. for the Study of Armament and Disarmament, Cal. State Univ., L.A., No. 19, 1990).

29. U.N. CHARTER art. 47, para. 1.

30. *Id.* art. 47, para. 3.

31. GOODRICH & HAMBRO, *supra* note 13, at 290; *see also* RUSSELL, *supra* note 24, at 472 (explaining the British concept of the Military Staff Committee).

32. WINSTON S. CHURCHILL, THE GRAND ALLIANCE 686-87 (1950).

33. *Id.* at 687.

considering the views of the operational commander, the Military Staff Committee would offer military advice to the Security Council; similarly, after a Security Council decision, the Military Staff Committee would translate Security Council political objectives into a military plan, which would be conveyed to commanders in the field for execution.³⁴

The Military Staff Committee was not expected to be involved in "command," which referred to the operational or tactical control of forces in the field.³⁵ The Charter drafters agreed that no committee could exercise this function and that an individual was better suited to making the numerous and detailed decisions required in a tactical environment.³⁶ Thus, when Article 47(3) provided that questions relating to the command of United Nations forces were to be "worked out subsequently,"³⁷ it did so not because the drafters were unable to agree on the meaning of "command," but because they were unable to agree on a mechanism for selecting commanders.³⁸ By default, therefore, they agreed that selection of individual commanders would turn on the requirements of each case.³⁹

In February 1946 the Security Council ordered the Military Staff Committee to develop a plan for implementing Article 43 as its first task.⁴⁰ Despite significant differences on other issues, the Military Staff Committee was generally of one mind on questions of command and control.⁴¹ The resulting Military Staff Committee report to the Security Council recommended that United Nations forces remain

34. See D.W. BOWETT, UNITED NATIONS FORCES 359 (1964) (defining strategic direction as "the translation of . . . political directives into military terms"); see also *Crisis in the Persian Gulf: Sanctions, Diplomacy and War: Hearings Before the House Comm. on Armed Services*, 101st Cong., 2d. Sess. 539 (1991). Planning, establishment of objectives and deployment are not decided in a vacuum by the Joint Chiefs of Staff just sitting over in the Pentagon or by the commanders in the field. They flow directly from political decisions and national security strategy. *Id.* (statement of General Colin Powell, Chairman of the Joint Chiefs of Staff).

35. See, e.g., FINN SEYERSTED, UNITED NATIONS FORCES IN THE LAW OF PEACE AND WAR 30 (1966).

36. GOODRICH & HAMBRO, *supra* note 13, at 291-92.

37. U.N. CHARTER art. 47, para. 3.

38. See, e.g., HILDERBRAND, *supra* note 20, at 157-58.

39. *Id.*

40. 1946-47 U.N.Y.B. 423, U.N. Sales No. 1947.1.18.

41. See generally *Report of the Military Staff Committee, General Principles Governing the Organization of the Armed Forces Made Available to the Security Council by Member Nations of the United Nations* [hereinafter *Military Staff Committee Report*], U.N. SCOR Supp. (No. 1), U.N. Doc. S/336 (1947), reprinted in 1946-47 U.N.Y.B., *supra* note 40, at 424-43.

under exclusive national command "except when operating under the Security Council."⁴²

Once called by the Security Council, the forces would "come under the control of the Security Council," and the "Military Staff Committee shall be responsible, under the Security Council, for their strategic direction."⁴³ The Military Staff Committee also agreed that "command of national contingents will be exercised by commanders appointed by the respective Member Nations,"⁴⁴ and that the Security Council could appoint a supreme or overall commander. The Military Staff Committee was unable, however, to agree unilaterally on whether the Security Council should also appoint commanders in chief of air, sea, and land forces acting under the supreme commander.⁴⁵

C. The Chapter VII Model

As the foregoing demonstrates, Chapter VII of the United Nations Charter provided a relatively clear model for the command and control of United Nations forces. Subject to Security Council approval, the Military Staff Committee was expected to determine the military requirements of a United Nations force and to develop plans necessary for its effective deployment. The Security Council was given political control over the force to ensure its consistency with the international community's desires. Once forces were deployed, the Military Staff Committee was charged with providing strategic direction, i.e., advising political leadership and translating the Security Council's political direction into military objectives, while command would be exercised by a single military officer in the theater of operation.

Other disagreements within the Military Staff Committee that prevented implementation of Article 43 foreshadowed the larger divisions between the Soviets and their western counterparts that soon eliminated any hope of the Security Council becoming an instrument of global collective security. In the years that followed, United Nations forces would respond to breaches of the peace; however, they would be organized and controlled in a fashion much different from that anticipated in 1945.

42. *Military Staff Committee Report*, *supra* note 41, art. 36.

43. *Id.* arts. 37, 38.

44. *Id.* art. 39.

45. *See id.* art. 41.

III. TWO MISSIONS, THREE MODELS: UNITED NATIONS COMMAND AND CONTROL DURING THE COLD WAR

A. Command and Control in Enforcement Actions

Despite the fact that the Security Council authorized only two enforcement actions during the forty-five year period from 1947 to 1992,⁴⁶ the operations against North Korea and Iraq provide a useful basis for generalization about the command and control of United Nations forces during large-scale enforcement actions.

1. *Political Control and Strategic Direction.*

a. *The Korean conflict.* Within hours of North Korea's invasion of South Korea in June 1950, the United States requested that the Security Council demand an immediate North Korean withdrawal north of the Thirty-eighth Parallel.⁴⁷ North Korea's refusal to comply resulted in a Security Council resolution recommending that member states take action "necessary to repel the armed attack and to restore international peace and security in the area."⁴⁸ In Security Council Resolution 84, the Security Council recommended that all members pursue the previously declared objective by providing military forces to a unified command under the United States.⁴⁹ None of the resolutions provided for Security Council control over the ensuing operation, despite the fact that it would be conducted under Security Council authorization. In effect, the Security Council had

46. Oscar Schachter, *Authorized Uses of Force by the United Nations and Regional Organizations*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER* 65, 66 (Lori Fisler Damrosch & David J. Scheffer eds., 1991).

47. S.C. Res. 82, U.N. SCOR, 5th Sess., 473d mtg. para. 1, U.N. Doc. S/INF/5/Rev.1 (1950).

48. S.C. Res. 83, U.N. SCOR, 5th Sess., 474th mtg. at 5, U.N. Doc. S/INF/5/Rev.1 (1950).

49. Security Council Resolution 84 of July 7, 1950, provided that:

[The Security Council], [h]aving recommended that Members of the United Nations furnish such assistance to the Republic of Korea as may be necessary to repel the armed attack and to restore international peace and security in the area, . . .

3. *Recommends* that all Members providing military forces and other assistance pursuant to the aforesaid Security Council resolutions make such forces and other assistance available to a unified commander under the United States of America;

4. *Requests* the United States to designate the commander of such forces;

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

6. *Requests* the United States to provide the Security Council with reports as appropriate on the course of action taken under the unified command.

S.C. Res. 84, U.N. SCOR, 5th Sess., 476th mtg., U.N. Doc. S/INF/5/Rev.1 (1950).

given the United States an open-ended objective and complete authority with which to achieve it.⁵⁰ During the negotiations preceding authorization of the unified command, Secretary General Trygve Lie had proposed a "Committee on co-ordination of Assistance for Korea," consisting of troop contributing states and the Republic of Korea. As described by Lie:

The explicit purpose of the Committee was to stimulate and coordinate offers of [personnel and material to the United Nations effort]. Its deeper purpose was to keep the United Nations "in the picture. . . ." The delegates of the United Kingdom, France, and Norway liked the idea of such a committee; the United States Mission promptly turned thumbs down. The Pentagon was much opposed.⁵¹

Once the United States indicated that it would not accept direction from this committee, it persuaded the British and French to introduce Resolution 84.⁵²

Soon after its expansive grant of authority to the United States, the Security Council was immobilized by the return of the Soviet Union, which had been boycotting Security Council proceedings.⁵³ Ironically, the Soviet return ensured that *de facto* and *de jure* political control over the United Nations Command remained vested in the United States, as there was no other United Nations organ legally entitled to assert political control over the operation.⁵⁴

From the outset of the Korean conflict, the United States exercised both political control and strategic direction over the operation:

[T]he United Nations Command took its orders from the United States Government, as the Unified Command, and not from the

50. The Security Council did, however, request that the United States file reports "as appropriate." *Id.* para. 6.

51. TRYGVE LIE, IN THE CAUSE OF PEACE 334 (1954). *But see* Letter From the United States Representative at the United Nations (Austin) to the Secretary of State, in [7 Korea] UNITED STATES DEPARTMENT OF STATE, FOREIGN RELATIONS OF THE UNITED STATES 1950, at 306-07 (1950) (describing how the British and French shared the United States view that the Security Council's role in overseeing the course of combat should be minimal). While Anglo-French support of Lie's proposal and opposition to Security Council involvement are not necessarily inconsistent, it is possible that the British and French either initially supported Lie's proposal and were subsequently persuaded by the United States to back away from all forms of active United Nations oversight, or may have acknowledged Lie's proposal all along.

52. *See* U.N. SCOR, 5th Sess., 476th mtg. at 3-5, U.N. Doc. S/PV.476 (1950) (statement of Sir Gladwyn Jebb of the United Kingdom).

53. SEYERSTED, *supra* note 35, at 34.

54. [2 Asia] ROSALYN HIGGINS, UNITED NATIONS PEACEKEEPING, 1946-1967, DOCUMENTS AND COMMENTARY 178-79 (1970).

United Nations, nor from the other States contributing forces or from any common organ (committee) of these. The United States Government, for its part, did not take orders from anybody, although it did consult and seek political guidance from the United Nations and from some of the states contributing forces. The United Nations did not interfere at all in the purely military aspects of the operations. And even in political matters it confined itself to making "recommendations."⁵⁵

This United States dominance of strategic decision-making proceeded smoothly until the North Koreans had been driven north across the Thirty-eighth Parallel, and the unified command faced the difficult decision whether or not to pursue a complete North Korean defeat or to stop at the Thirty-eighth Parallel to allow pursuit of a negotiated settlement.⁵⁶ The Secretary General, as well as certain nonaligned states, were opposed to immediately pressing the conflict beyond the Thirty-eighth Parallel.⁵⁷ Once again, however, the United States prevailed, with a clear endorsement from the General Assembly.⁵⁸ The ensuing decision to cross the Thirty-eighth Parallel led to Chinese intervention in the conflict and a series of difficult choices regarding the pursuit of opposition aircraft across the Manchurian border, the bombing of Yalu River bridges, the wisdom of involving Chinese nationalist troops, and the imposition of an economic and arms blockade on China.⁵⁹ The conflict eventually ended in a military and political stalemate.⁶⁰

Would more assertive political direction by nonaligned and Western states have changed the outcome in Korea? This is difficult to say. Indeed, despite an occasional difference of opinion with the

55. SEYERSTED, *supra* note 35, at 41; *see also* RUTH B. RUSSELL, UNITED NATIONS EXPERIENCE WITH MILITARY FORCES: POLITICAL AND LEGAL ASPECTS 31 (1964), *quoting* LELAND M. GOODRICH, KOREA: A STUDY OF UNITED STATES POLICY IN THE UNITED NATIONS 121 (1956).

General MacArthur regarded himself as acting primarily in the role of Commander-in-Chief of United States forces in the Far East. His connection with the United Nations he viewed as largely nominal. Direct controls over him were purely American. . . . The reports to the United Nations on military operations in Korea, while prepared in the first instance by General MacArthur as a matter of procedure, were subject to revision by his superiors in Washington and were presented to the Security Council by the United States representative on the Security Council.

Id.

56. *See* HIGGINS, *supra* note 54, at 256-57.

57. *See* MAX HARELSON, FIRES ALL AROUND THE HORIZON 49-50 (1989).

58. G.A. Res. 376(V), U.N. GAOR, 5th Sess., Supp. No. 20, at 9, U.N. Doc. A/1775 (1950). The final vote was forty-seven in favor, five opposed, and seven abstentions. 1950 U.N.Y.B. 265, U.N. Sales No. 1951.I.24.

59. BOWETT, *supra* note 34, at 45.

60. *See generally* HIGGINS, *supra* note 54, at 251-309.

Secretary General and certain nonaligned states, the United States received generally consistent support for its actions.⁶¹ Nonetheless, the pattern of United States dominance and United Nations acquiescence led one commentator to remark that, from a United Nations perspective, the "weakness of strategic and political control is perhaps the most significant fact that emerges . . . about the use of United Nations Forces [in Korea]."⁶² Indeed, in hindsight, one might argue that a more genuine multinational structure for exercising political control might have actually served the United States interests as well.⁶³

b. *The Persian Gulf War.* Forty years later, the Security Council again authorized member states to use force against an aggressor—this time against Iraq following its invasion of Kuwait. While there is little about the ultimate outcome of the Persian Gulf conflict that resembles the stalemate in Korea, the two operations have important similarities from a command and control perspective.

As in the Korean conflict, the Security Council established a broad objective and authorized member states wide latitude in achieving it. Security Council Resolution 678 authorized member states to use "all necessary means to uphold and implement [the Iraqi withdrawal from Kuwait] and . . . to restore international peace and security in the area."⁶⁴ Resolution 678 did not, however, provide for political control by the Security Council, requesting only that "the States concerned . . . keep the Security Council regularly informed on the progress of actions undertaken."⁶⁵

Unlike the Korean conflict, the United States and its coalition partners won a decisive military victory against Iraq. On balance, the

61. *See id.* at 195-308.

62. BOWETT, *supra* note 34, at 45.

63. As one commentator noted, "an earlier effort on the part of the United States . . . to see that its direction of military operations reflected the consensus of the participating members, would have usefully enhanced the international character of the operation, as well as protected the Government against criticism when things went wrong." RUSSELL, *supra* note 55, at 38.

64. S.C. Res. 678, U.N. SCOR, 45th Sess., 2963d mtg. at 1, U.N. Doc. S/RES/678 (1990).

65. *Id.* at 2. *See* Burns H. Weston, *Agora: The Gulf Crisis in International and Foreign Relations Law, Continued: Security Council Resolution 678 and Persian Gulf Decision Making: Precarious Legitimacy*, 85 AM. J. INT'L L. 516, 525-28 (1991) (stating that the Security Council gave the United States *carte blanche* to conduct the war); Eugene V. Rostow, *Agora: The Gulf Crisis in International and Foreign Relations Law, Continued: Until What? Enforcement Action or Collective Self-Defense?*, 85 AM. J. INT'L L. 506, 509 (1991) ("During the period of active hostilities, neither the Secretary-General nor any other part of the United Nations Secretariat attempted to exercise control over military operations.").

ad hoc coalition working under broad United Nations authorization worked well as military objectives were defined with minimum disagreement.⁶⁶ No doubt an important factor in maintaining unity until the operation's conclusion was the decision of the United States not to pursue Iraqi forces deep into Iraq after driving them from Kuwait. While United States leaders later defended this decision against domestic criticism partially on the grounds that the United Nations had not authorized such action,⁶⁷ it is likely that the cease-fire decision was motivated more by diplomatic and long-term domestic political concerns than any legal constraint in Resolution 678.⁶⁸ Resolution 678's authorization to "restore international peace and security in the area"⁶⁹ could have been interpreted to permit aggressive pursuit to Baghdad,⁷⁰ just as similar language served as the basis for crossing the Thirty-eighth Parallel in Korea.⁷¹

Whatever its motivation, the United States avoided any Thirty-eighth Parallel-type disagreements with the United Nations with regard to termination of the Persian Gulf War. Such was not the case in January 1993, however, when United States cruise missile attacks on Baghdad led to criticism of United States actions not only from former partners in the United States-assembled anti-Iraq coalition, but from other Security Council members as well.⁷² While much of the controversy surrounding this attack arose because it was conducted pursuant to Security Council Resolution 688⁷³—a resolution that did not expressly authorize the use of force—it also served as a reminder of the lesson learned in Korea: whenever the United Nations

66. See, e.g., UNITED STATES DEPARTMENT OF DEFENSE, CONDUCT OF THE PERSIAN GULF WAR: FINAL REPORT TO CONGRESS app. 493-501 (1992); Rone Tempest & Kim Murphy, *Western, Arab Allies Stand Firmly Behind United States Ultimatum to Baghdad*, L.A. TIMES, Feb. 23, 1991, at A8. But see Leonard Doyle, *United Nations 'has no role in running war,'* THE INDEPENDENT, Feb. 11, 1991, at 2 (describing former United Nations Secretary General Javier Perez de Cuellar's misgivings about the Security Council's lack of an oversight role despite United Nations authorization).

67. See H. NORMAN SCHWARZKOPF, IT DOESN'T TAKE A HERO 497-98 (1992).

68. Weston, *supra* note 65, at 534.

69. S.C. Res. 678, *supra* note 64, at 1.

70. Schachter, *supra* note 46, at 65, 74-75; Weston, *supra* note 65, at 525.

71. S.C. Res. 84, U.N. SCOR, 5th Sess., 476th mtg., U.N. DOC. S/INF/5/REV. 1 (1950); see also Bruce Russett & James Sutterlin, *The U.N. in a New World Order*, FOREIGN AFF., Spring 1991, at 69, 76.

72. See Leonard Doyle, *Confrontation with Iraq: U.N. Sees Baghdad's Point of View*, THE INDEPENDENT, Jan. 20, 1993, at 8; Julia Preston, *United States Raids Test U.N.'s Crisis Power*, WASH. POST, Jan. 22, 1993, at A23.

73. S.C. Res. 688, U.N. SCOR, 46th Sess., 2982d mtg., U.N. Doc. S/RES/688 (1991).

subcontracts its enforcement responsibilities, there will always be potential for disagreement over strategic ends and tactical means.

2. *Command and Composition of Forces.*

a. *The Korean conflict.* Following creation of the unified command in Korea on July 7, 1950, President Harry S Truman immediately named General Douglas MacArthur as the commander for all United Nations forces in Korea.⁷⁴ Ultimately, sixteen nations fought under the United Nations flag.⁷⁵ National units were integrated into United States divisions in an effort to ensure both effective operational command as well as an effective logistics and supply line.⁷⁶ While the chain of command from President Truman to General MacArthur was essentially identical to what one would expect for a unilateral United States operation,⁷⁷ lower level commands, particularly the Eighth Army command in Tokyo, were multinational in character.⁷⁸ The senior military representative of each participating member state was granted direct access to General MacArthur on "matters of major policy affecting the operational capabilities of the forces concerned."⁷⁹

b. *The Persian Gulf War.* While the United States was the leader of the campaign to drive Iraqi forces from Kuwait, theater command relationships were more complex than those in Korea, due primarily to United States dependence on Saudi Arabia and its regional neighbors for basing and political support. Immediately following Iraq's invasion of Kuwait, the United States entered into consultations with Saudi Arabia that resulted in Saudi authorization for the United States to establish a defensive presence on Saudi soil.⁸⁰ From the beginning, a dual command structure was established. United States forces were commanded by President George

74. HIGGINS, *supra* note 54, at 195-96 (noting that General MacArthur's appointment was not made subject to United Nations approval).

75. SEYERSTED, *supra* note 35, at 35.

76. *Id.* at 33-44.

77. *Id.* at 34-36. The chain of command ran from the President down through the Secretary of Defense, the Joint Chiefs of Staff, the Chief of Staff of the Army, and General MacArthur. The United States Eighth Army fell under the command of General MacArthur and incorporated the ground forces contributed by all participating members and the Republic of Korea, the Far Eastern Air Force, and the Seventh United States Fleet (including naval units contributed by members).

78. *Id.* at 35-36.

79. *Id.* at 36.

80. SCHWARZKOPF, *supra* note 67, at 302-08.

Bush, with the United States Central Command exercising command in the theater. Islamic forces participated under Saudi operational command.⁸¹ The dual chains of command were coordinated through a joint headquarters and operations center where the United States and Saudi commanders, along with their staffs, worked closely to ensure a coordinated approach.⁸² Participating British and French units remained under the political control of their respective national command authorities, but their units operated under the tactical control of both the Americans and Saudis.⁸³

3. *The Single-State and Managed-Coalition Models.* As the foregoing demonstrates, command and control arrangements for the United Nations's two major enforcement actions differed sharply from the model envisioned in Chapter VII of the United Nations Charter. Security Council political control over both the Korean and Persian Gulf operations was limited to initial authorization—an arrangement due in large measure to political divisions within the Security Council⁸⁴ as well as military exigencies created by the invasions by well-armed aggressor states. Because the United States was the only state that could provide the necessary military capability, the United States filled the political vacuum as well.

The similarities between the Korean and Persian Gulf command and control arrangements, however, should not obscure their important differences. While the United States made what were essentially unilateral political and strategic decisions in Korea, similar decisions were made with respect to the Persian Gulf only after considerable consultation with the coalition partners. While General MacArthur dominated the decision-making process in the Korean theater of operations, General H. Norman Schwarzkopf's relationship

81. As was noted at the time:

The initial agreement allowing the entry of U.S. forces into Saudi Arabia provided for "strategic direction" of U.S. forces by the Saudi Military Command. . . . "Strategic direction" was never defined. After researching precedents, [United States Central Command] CENTCOM assumed the phrase to mean general guidance at a strategic level with no actual command authority.

UNITED STATES DEPT. OF DEFENSE, *supra* note 66, app. at 493.

82. *Id.* app. at 494, 497.

83. See *id.* app. at 501-05; see also *Crisis in the Persian Gulf Region: United States Policy Options and Implications: Hearings Before the Senate Comm. on Armed Services*, 101st Cong., 2d. Sess. 688-89 (1990) [hereinafter *Senate Persian Gulf Hearing*] (testimony of General Colin Powell) ("[T]here is not a single command and control structure . . . [; however,] coordination mechanisms that are in place would provide an effective command control system.").

84. These political divisions were less pervasive during the Persian Gulf conflict. See Rostow, *supra* note 65, at 508-10.

with his coalition counterparts was more collaborative. Finally, while there is little evidence that the fifteen nations participating with the United States in Korea had a significant impact on the ultimate outcome,⁸⁵ it is likely that the United States effort in the Gulf would have been more challenging, if not impossible, without the support of its coalition partners.⁸⁶

Thus, what emerges from the Korean and Persian Gulf conflicts are two similar, but distinct, models for United Nations command and control. The Korean conflict provides a "single-state" model in which the United Nations, after authorizing an operation, allows a dominant state to exercise political control, strategic direction, and operational command over forces which are provided by a single state acting alone or at the head of a nominally multinational coalition. The Persian Gulf conflict provides a "managed-coalition" model in which the United Nations, after authorizing the operation, allows a dominant state, such as the United States, to manage—but not dictate—political, strategic, and command decisions through an ad hoc and truly multinational coalition.

For the United Nations the primary advantage of the single-state model is its ability to provide an immediate and effective military response to a well-armed aggressor.⁸⁷ There will no doubt be situations in which a particular state may find such a military operation to its own advantage. However, the potential disadvantages of the single-state model are significant, not the least of which is that the single state stands to incur the majority of casualties. Likewise, the lack of multinational participation may contribute to a perception that the single state has ulterior motives for participating, with such perceptions potentially leading to adverse domestic and international

85. In Korea it is estimated that the United States provided 50 percent of the ground forces, 86 percent of the naval forces, and 93 percent of the air forces. BOWETT, *supra* note 34, at 40.

86. See *Operation Desert Shield/Desert Storm: Hearings Before the Senate Comm. on Armed Services*, 102d Cong., 1st Sess. 317 (1991) (statement of General Schwarzkopf) (noting that defeat of Iraq would have been "a far greater challenge" without cooperation from regional partners); *Senate Persian Gulf Hearing*, *supra* note 83, at 645-46 (statement of Richard Cheney, Secretary of Defense) (describing logistical contributions of various coalition partners); see also John Omicinski, *How Stands the Coalition?*, Gannett News Service, Jan. 24, 1991, available in LEXIS, Nexis Library, Wires File (describing significant operational contributions of coalition partners).

87. See Russett & Sutterlin, *supra* note 71, at 74 (noting that the advantages of the single-state intervention in Korea included the "expeditious action to resist aggression, . . . the unambiguous command structure needed for large-scale field operations, a practical way to meet the responsibilities of the United Nations, . . . and validation of the concept of collective security").

political consequences. Finally, unilateral decisions may sometimes not be as wise as collectively reached decisions.

From a single state's perspective, the managed-coalition model addresses many of these issues by allowing the militarily capable state to project power while sharing, at least to a degree, the political and military risks inherent in single-state intervention. Coalitions, however, are rarely built without a price. In addition to making a considerable diplomatic effort to assemble and maintain the coalition,⁸⁸ the coalition manager is usually required to make a predominant commitment of personnel and material to the operation itself.⁸⁹ While this may be acceptable in a conflict in which the coalition manager's vital interests are threatened, it is less acceptable in a conflict in which a prospective coalition manager's vital interests are not so clear.

From the perspective of the United Nations, the primary difficulty with both models is the extent to which they divest the Security Council of control over United Nations operations. The state in command may interpret United Nations goals differently from that of other Security Council members, or its aims may become more expansive in the course of the operation. "[M]any U.N. members will not view the military action as an appropriate application of collective security if the action appears to conflict with the Security Council's goals."⁹⁰

In addition, an operation may become identified with the policies of the state leading the effort rather than with the policies of the

88. See *Arming the United Nations Security Council—the Collective Security Participation Resolution*, S.J. Res. 325: Hearing before the Comm. on Foreign Relations United States Senate, 102d Cong., 2d. Sess. at S9853 (1992) [hereinafter *Senate Article 43 Hearing*] (statement of Senator Biden) ("The commitments garnered from our allies in the Persian Gulf did not come without at least implied commitments on economic and political fronts."); Weston, *supra* note 65, at 523-24 (describing commitments made by the United States to secure support of various states during the Persian Gulf War); see also Alan K. Henrikson, *How Can the Vision of 'A New World Order' be Realized?*, 16 FLETCHER F. OF WORLD AFF. 63, 78 (1992) ("The critical question . . . is whether a U.S.-led international enforcement action ever could be repeated. The costs . . . will be staggering.").

89. Without such a commitment, a prospective coalition manager's claim to authority likely would be diminished. *Senate Article 43 Hearing*, *supra* note 88, at S9854. Regarding the proposed relationship between the authority of the coalition manager and the amount of forces provided by the manager, see BOWETT, *supra* note 34, at 40 ("[T]he predominance of United States military assistance [in Korea] made the establishment of a Unified Command under the United States a logical step."). See, e.g., *Senate Persian Gulf Hearing*, *supra* note 83, at 703 (statement of Richard Cheney, Secretary of Defense) ("There is no question . . . that the bulk of the military capability in the Gulf is U.S. force.").

90. Russett & Sutterlin, *supra* note 71, at 76.

United Nations,⁹¹ which gives rise to two negative consequences. First, in a particular conflict, a clever aggressor may avoid the full force of international condemnation by raising concerns about the single state's or coalition manager's objectives. Second, in a more general sense, the United Nations's credibility and reputation for evenhandedness are jeopardized if it appears to be a front for national objectives.

B. Command and Control in Peacekeeping Operations

While hostility between the great powers blocked development of the collective security system envisioned in Chapter VII of the United Nations Charter, it nonetheless provided an alternative type of stability as the superpowers managed many conflicts within their bipolar order.⁹² The United Nations quickly discovered, however, that despite the dominance of the superpowers, these countries were unable or unwilling to supervise all conflicts and that a multinational alternative was necessary. A partial answer was found in the concept of peacekeeping.

Although peacekeeping is not mentioned in the United Nations Charter and peacekeeping doctrines have not been codified in an international convention, the effort has nonetheless developed distinctive characteristics. Peacekeeping operations have traditionally involved the deployment of international military and civilian personnel to help control international conflicts or internal conflicts with potential international consequences.⁹³ Once deployed, peacekeepers have monitored cease-fires and provided a buffer

91. In addition to potential disadvantages for the single state, this model has potential disadvantages for the United Nations as well. As described by Russett and Sutterlin, the disadvantages of the single-state intervention in Korea were that:

[t]he United Nations lacked control or influence over the course of military action or the precise purposes for which it was exercised. . . . The military operation became identified with the policy of the nation leading the effort rather than with the United Nations. . . . Divisive forces within the United Nations were encouraged by the dominant role of one member state pursuing goals not universally shared.

Id. at 74.

92. See, e.g., Boutros Boutros-Ghali, *Maintaining International Peace and Security: The United Nations as Forum and Focal Point, Remarks Before the American Publishers Association*, Federal News Service, Mar. 25, 1993, available in LEXIS, Nexis Library, CURRNT File.

93. See INDAR JIT RIKHYE, *THE THEORY AND PRACTICE OF PEACEKEEPING* 1-4 (1984); see also Roger Myers, *A New Remedy for Northern Ireland: The Case for United Nations Peacekeeping Intervention in an Internal Conflict*, 11 N.Y.L. SCH. J. INT'L & COMP. L. 1, 71 (1990).

between hostile countries by establishing a zone of disengagement.⁹⁴ Peacekeeping deployments have traditionally been made only with the consent of all parties involved, and, once deployed, the lightly armed peacekeeping forces have used force only in self-defense.⁹⁵

Just as distinct command and control models evolved in response to the needs of large-scale enforcement missions, a command and control model also evolved in response to the requirements of the peacekeeping mission.

1. *Political Control: The Roles of the Security Council and Secretary General.* Due to its lack of a constitutional basis, peacekeeping was plagued for many years by a degree of uncertainty regarding the legitimate source of authority for peacekeeping authorization and control. The Soviet Union and its allies, for example, believed that any United Nations action involving the use of force should rest solely within the scope of the Security Council's responsibilities.⁹⁶ Similarly, the Soviets contended that any assistance to the Security Council should come from the Military Staff Committee.⁹⁷ The majority of member states, including the United States, maintained a different position: as long as peacekeeping operations were conducted as consent operations outside the scope of Chapter VII's enforcement provisions, it was permissible, and even necessary, that the Secretary General exercise control over peacekeeping operations.⁹⁸

The conceptual impasse over the control of peacekeeping operations was eventually resolved by Secretary General Kurt Waldheim in October 1973, at which time the Security Council established the United Nations Emergency Force (UNEF II).⁹⁹ In his report on the new operation, Waldheim proposed that the Security Council have ultimate control over peacekeeping missions. Security Council authority would include the right to authorize an operation and approve any fundamental changes in its mandate.¹⁰⁰ Day-to-day

94. See RIKHYE, *supra* note 93, at 23-24; see also Anthony C. Arend, *The United Nations and the New World Order*, 81 GEO. L.J. 491, 506 (1993).

95. See UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, *THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACE-KEEPING* 5-6 (2d ed. 1990).

96. James O.C. Jonah, *The Management of UN Peacekeeping*, in *THE UNITED NATIONS AND PEACEKEEPING* 75, 76 (Indarjit Rikhye & Kjell Skjelsbaek eds., 1991).

97. RUSSELL, *supra* note 24, at 472.

98. Jonah, *supra* note 96, at 76.

99. *Id.*

100. *Id.*

supervision of the mission, however, would be exercised by the Secretary General, who would consult closely with the Security Council during the course of the operation.¹⁰¹ All operations that have taken place since UNEF II have followed this pattern, and it is now well established that the ultimate authority for peacekeeping operations resides in the Security Council while day-to-day supervision is vested in the Secretary General.¹⁰²

2. “*Strategic Direction.*” The United Nations has scrupulously avoided using Chapter VII terminology regarding enforcement when discussing peacekeeping. Thus, even though the term “strategic direction” is rarely used in the peacekeeping context, there is still a need to translate the political goals of a particular operation into military objectives. In peacekeeping operations, this function has been performed by the Secretary General’s Military Advisor.¹⁰³

a. *The Military Advisor.* The position of Military Advisor was created by Secretary General Dag Hammarskjold in late 1960 to assist in the management of peacekeeping operations.¹⁰⁴ The Military Advisor generally functions as an assistant to the Under Secretary General for Peacekeeping Operations.¹⁰⁵ In this capacity, the

101. *Id.*

102. See, e.g., UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, *supra* note 95, at 6-7 (describing the responsibilities of the United Nations Security Council and the Secretary General regarding military operations and personnel).

103. See, e.g., WILLIAM J. DURCH & BARRY M. BLECHMAN, KEEPING THE PEACE: THE UNITED NATIONS IN THE EMERGING WORLD ORDER 68 (1992) (highlighting the history of the post of Military Advisor to the Secretary General).

104. Jonah, *supra* note 96, at 84.

105. In February 1992 the Secretary General announced a major reorganization of the United Nations Secretariat. The reorganized Secretariat contains seven departments which report directly to the Secretary General. Three of the departments are responsible for the majority of the United Nations programs. The Political Affairs department is run by two Under Secretaries General; they manage the Office of General Assembly Affairs, the Office of Security Council Affairs, Peacemaking and Mediation, Research and Analysis, and Disarmament Affairs. The Economic Development department concentrates on economic matters, and the Department of Administration and Management oversees the Office of Conference Services and the Field Operations Division.

Four other departments with more specific functions, including the Office for Peacekeeping Operations, also report directly to the Secretary General. These departments include: Peacekeeping Operations (where the Military Advisor performs his or her duties), the Emergency Relief Coordinator, the Office of Legal Affairs, and the Department of Public Information. *Report of the Secretary General on the Work of the Organization*, U.N. GAOR, 47th Sess., Supp. No. 1, at 4, U.N. Doc. A/47/1 (1993); see also UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, SECRETARY-GENERAL ANNOUNCES CHANGES IN SECRETARIAT, U.N. Doc. SG/A/479 (1992).

Military Advisor's primary function is to ensure that the civilian leadership in the Secretariat receives sound military advice and that the requisite administrative and logistic arrangements for peacekeeping operations are coordinated with the Director of Field Operations Division.¹⁰⁶

The recent demand for peacekeeping has put unprecedented strain on the Military Advisor's capacity to stay abreast of events. The current Military Advisor, Canadian Brigadier General Maurice Baril, joined the Secretariat in July 1992, and has seen the number of deployed peacekeeping personnel grow to approximately 60,000.¹⁰⁷ Between July 1992 and January 1993, Baril's headquarters staff grew from six to thirty, with dozens of additional personnel assigned from member states to work on specific missions.¹⁰⁸

b. *The Secretary General's relationship with troop contributing states.* Because the United Nations first significant peacekeeping operation, the United Nations Emergency Force (UNEF), was not authorized by the Security Council but by the General Assembly,¹⁰⁹ the Secretary General requested a smaller body to which he could turn for counsel as UNEF progressed.¹¹⁰ The General Assembly complied by creating an "Advisory Committee" for the purpose of undertaking "the development of those aspects of the planning for the Force and its operation not already dealt with by the General Assembly and which do not fall within the area of the direct responsibility of the [force commander]."¹¹¹ Hammarskjold was made chairman of the committee.¹¹²

Hammarskjold valued the UNEF Advisory Committee's counsel, particularly in political matters.¹¹³ Thus, when the United Nations Operation in the Congo (ONUC) was established four years later,

106. Jonah, *supra* note 96, at 84-85.

107. Alan Ferguson, *The Canadian Who Leads the First Global Army*, TORONTO STAR, Jan. 26, 1993, at A17; Gellman, *supra* note 7, at A1.

108. Ferguson, *supra* note 107, at A17.

109. G.A. Res. 1000, U.N. GAOR, 1st Emergency Special Sess., 565th plen. mtg. at 2-3, U.N. Doc. ES-I (1956).

110. ROBERT C.R. SIEKMANN, NATIONAL CONTINGENTS IN UNITED NATIONS PEACEKEEPING FORCES 99 (1991).

111. G.A. Res. 1001, U.N. GAOR, 1st Emergency Special Sess., 567th plen. mtg. at 3, U.N. Doc. ES-I (1956).

112. SIEKMANN, *supra* note 110, at 99.

113. [1 Middle East] ROSALYN HIGGINS, UNITED NATIONS PEACEKEEPING 1946-1967: DOCUMENTS AND COMMENTARY 273 (1969).

Hammaraskjold sought the formation of another advisory committee.¹¹⁴ This time, however, the Security Council—which, after UNEF, had reclaimed political control over peacekeeping operations—ignored Hammaraskjold's request. He proceeded to establish an ONUC Advisory Committee on his own authority.¹¹⁵ The ONUC Advisory Committee was composed exclusively of representatives from troop contributing states, unlike its UNEF counterpart in which troop contribution had not been a prerequisite for membership.¹¹⁶ Despite the fact that the ONUC Advisory Committee again provided a valuable forum for the exchange of views,¹¹⁷ ONUC was one of the last operations in which consultation with troop contributing countries was formalized.¹¹⁸

3. *Command and Composition of Forces.* A peacekeeping operation is commanded by a force commander who is selected by the Secretary General, subject to approval by the Security Council; the force commander has full authority to assign all members of his or her staff.¹¹⁹ "Command," however, holds a somewhat different meaning in the peacekeeping context than it does in a conventional military operation.

The typical United Nations peacekeeping operation utilizes a dual command system in which the force commander or Chief Military Observer reports to the Under Secretary General for Peacekeeping Operations.¹²⁰ Typically, the force commander will exercise his or her command authority through a military chief of staff, who reports directly to the force commander.¹²¹ In addition, however, a civilian Chief Administrative Officer (CAO) will also report directly to the force commander and to the Field Operations Division in New York.¹²² The CAO supervises a staff of civilians and is responsible for executing budget and logistic matters pursuant to United Nations financial regulations. While this bifurcated chain of command has, on occasion, made the force commander's job more

114. SIEKMANN, *supra* note 110, at 101-02.

115. *See id.* at 102.

116. *Id.*

117. [3 Africa] ROSALYN HIGGINS, UNITED NATIONS PEACEKEEPING 1946-1967: DOCUMENTS AND COMMENTARY 64 (1980).

118. SIEKMANN, *supra* note 110, at 104.

119. UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, *supra* note 95, at 406.

120. DURCH & BLECHMAN, *supra* note 103, at 75.

121. Jonah, *supra* note 96, at 85.

122. *Id.* at 85-87.

complicated,¹²³ it is arguably justified on the grounds that military commanders are seldom familiar with United Nations financial procedures.¹²⁴

Despite the limits imposed on the force commander's authority by the CAO, the force commander exercises a significant degree of authority given the fact that the force is usually an amalgam of national contingents. The force commander has full authority with respect to all deployment and movement of national contingents and general responsibility for the good order and discipline of the operation.¹²⁵ In addition, the force commander is normally empowered to "make investigations, conduct inquiries and require information, reports and consultations for the purpose of discharging this responsibility."¹²⁶ While there may be close coordination between the force commander and the heads of national contingents regarding disciplinary matters, ultimate responsibility for the administration of discipline rests with the heads of the respective national contingents.¹²⁷

As peacekeeping operations expand in scope and complexity, both force commanders and CAOs will increasingly find themselves reporting to a civilian Special Representative of the Secretary General in the field. Because missions such as civilian police supervision, election observation, and civil administration are functions outside the traditional scope of a military officer's training, the Special Representative allows the Secretary General to maintain a political representative on scene to deal with the increasingly complex political demands of peacekeeping operations.¹²⁸

4. *The Peacekeeping Model.* The nature of the peacekeeping mission has had considerable influence on the command, control, and composition of peacekeeping forces. Because the mission requires that peacekeeping forces serve as a buffer between disputants, a premium is placed on ensuring that the buffer is neutral, both in fact and appearance.¹²⁹ The requirement for neutrality, in turn, has led

123. RIKHYE, *supra* note 93, at 215.

124. See DURCH & BLECHMAN, *supra* note 103, at 75.

125. UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, *supra* note 95, at 406-07.

126. *Id.* at 407; see also BOWETT, *supra* note 34, at 340-43 (describing the delineation of authority between the Secretary General and the force commander).

127. UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, *supra* note 95, at 407.

128. See DURCH & BLECHMAN, *supra* note 103, at 75-76.

129. See, e.g., Henry Wiseman, *Peacekeeping in the International Political Context: Historical Analysis and Future Directions*, in THE UNITED NATIONS AND PEACEKEEPING, *supra* note 96,

to a preference for the nonuse of force. A "peace-keeping force which descends into the conflict may well become part of the problem instead of the solution to it."¹³⁰

Without relying on arms, peacekeepers have come to rely heavily on the moral authority inherent in their status as representatives of the international community.¹³¹ Thus, to enhance the perception of internationalism, peacekeeping forces have traditionally been composed of a wide variety of troops from small or nonaligned states, with permanent members of the Security Council and other major powers making troop contributions only under exceptional circumstances.¹³²

The peacekeeping mission has thus produced a model for command and control much different from the single-state and managed-coalition models that have evolved out of large-scale enforcement actions. The neutrality requirement has precluded single-state domination of peacekeeping and has resulted both in more genuinely multinational forces as well as more multinational command structures over the forces. The peacekeeping model also differs from the Chapter VII model. While the Security Council continues to authorize peacekeeping operations, the Secretariat has provided a large measure of political control and strategic direction equivalent.

Although the multinational character of peacekeeping command and control has no doubt been the source of much of peacekeeping's success, it is, when combined with the exclusion of the major powers from peacekeeping management and participation, at least a partial source of peacekeeping's limitations.¹³³ Unless a diverse multinational force trains toward the goal of establishing tactical operations between the groups, it will be capable of little more than passive monitoring.¹³⁴ Thus, it would seem that traditional peacekeeping

at 32, 41-45.

130. Brian Urquhart, *Beyond the 'Sheriff's Posse,'* 32 SURVIVAL 196, 201 (1990).

131. See Kjell Skjelsbaek, *U.N. Peacekeeping: Expectations, Limitations and Results: Forty Years of Mixed Experience,* in THE UNITED NATIONS AND PEACEKEEPING, *supra* note 96, at 52, 62.

132. *Id.* at 65.

133. See Johan Jørgen Holst, *Enhancing Peacekeeping Operations,* 32 SURVIVAL 264, 268 (1990) ("The multinational composition of the force encompassing a diversity of professional and cultural traditions and attitudes makes it very hard to achieve uniform behaviour.").

134. See generally John MacKinlay & Jarat Chopra, *Second Generation Multinational Operations,* WASH. Q., Summer 1992, at 113. "Any laxity in a second generation operation will be extremely dangerous. If, for example, national interpretations of the use of force are allowed

forces will be capable of performing only limited missions unless the national contingents comprising the forces train together in methods generally unfamiliar to traditional peacekeepers.

IV. AD HOC RESPONSES TO A NEW MISSION: "PEACE ENFORCEMENT" IN SOMALIA AND YUGOSLAVIA

A. The Beginning of "Peace Enforcement"

Throughout the United Nations's first forty-five years, peacekeeping and enforcement missions were conducted in rigid isolation from one another. With the exception of ONUC, when United Nations forces used force to help defeat the attempted secession in the Katanga province of the Congo,¹³⁵ United Nations peacekeepers have been able to accomplish their limited objectives without reliance on an enforcement capability. Cold war politics generally ensured that peacekeepers operated in situations where it was unlikely they would encounter significant armed resistance to their mission; peacekeepers were, after all, deployed only with the consent of the parties.¹³⁶ The fall of Soviet communism changed this dynamic. By creating the possibility for cooperation in the Security Council and increasing the international community's willingness to confront conflicts that would have been off-limits under the old order, the revolution in Russia set the stage for a revolution in the United Nations as well.

In January 1992 the Security Council heads of state met in New York for the first ever Security Council summit meeting.¹³⁷ Sensing a historic opportunity for cooperation, the Security Council called on the new Secretary General, Boutros Boutros-Ghali, to report on ways in which the United Nations's capacity for maintaining world peace

to assert themselves in a multinational force, an overreaction by inexperienced troops may set back the development of a new option by several decades." *Id.* at 122-23.

135. See Stanley Meisler, *Crisis in Katanga*, *MHQ: THE Q.J. OF MILITARY HIST.*, Winter 1993, at 70, 70 (describing circumstances in the Congo that led to the authorization for United Nations peacekeepers to use force); cf. Lawrence S. Eastwood, Jr., Note, *Secession: State Practice and International Law After the Dissolution of the Soviet Union and Yugoslavia*, 3 *DUKE J. COMP. & INT'L L.* 299, 302-07 (noting that that United Nations does not recognize a right to secession).

136. When the United Nations faced a confrontation with Egypt over Egypt's withdrawal of consent for UNEF in 1967, peacekeepers were withdrawn from the Sinai Peninsula. See HIGGINS, *supra* note 113, at 480-81.

137. See U.N. SCOR, 47th Sess., 3046th mtg., U.N. Doc. S/PV.3046 (1992); see also Paul Lewis, *Leaders Want to Enhance U.N.'s Role*, *N.Y. TIMES*, Jan. 31, 1992, at A8.

could be strengthened. On June 17, 1992, Boutros-Ghali responded with *An Agenda for Peace*,¹³⁸ a report that explored the entire range of United Nations peace and security responsibilities. A significant portion of *An Agenda for Peace* is devoted to a discussion of the role of military force in future United Nations undertakings. Boutros-Ghali focused first on the Charter framework for maintaining peace and security, and called for the Security Council, with the assistance of the Military Staff Committee, to open negotiations for the conclusion of special agreements under Article 43.¹³⁹ Boutros-Ghali envisioned Article 43 forces serving as a limited deterrent while assuming that such forces would never be sufficiently large or equipped to deal with a threat from a major force.¹⁴⁰ Boutros-Ghali also reviewed the state of traditional peacekeeping, citing the increasing demand for peacekeeping services and the financial strain peacekeeping places on the United Nations.¹⁴¹

While the Secretary General's discussion generally reflected the traditional dichotomy between enforcement and peacekeeping, the most interesting aspect of the report was his identification of missions that would not be considered traditional peacekeeping or enforcement, such as allowing United Nations troops to use force to restore and maintain a cease-fire. As he noted, "[t]his task can on occasion exceed the mission of peace-keeping forces and the expectations of peace-keeping force contributors."¹⁴² To respond to such situations, he called for the creation of "peace enforcement" units, consisting of volunteers from member states.¹⁴³ These units would be more heavily armed than traditional peacekeepers and would be deployed with authorization of the Security Council and serve under the "command" of the Secretary General.¹⁴⁴

Regardless of the merits of his proposal for "peace enforcement" units, there is little doubt that Boutros-Ghali correctly identified an emerging challenge. As subsequently discussed by John MacKinlay and Jarat Chopra:

138. *An Agenda for Peace; Preventative diplomacy, peacemaking and peace-keeping: Report of the Secretary-General*, U.N. GAOR, 47th Sess., U.N. Doc. A/47/277 (1992) [hereinafter *An Agenda for Peace*].

139. *Id.* paras. 42-43.

140. *Id.* para. 43.

141. *Id.* paras. 46-54.

142. *Id.* para. 44.

143. *Id.*

144. *Id.*

In reality a second generation of U.N. military operations is already emerging, outside the parameters of traditional peacekeeping, to cope with the new commitments of a more effective Security Council. The enlarging span of legitimate military tasks can be depicted as a continuum: at one end are the lowest intensity operations, involving the smallest number of assets and the least risk of conflict to U.N. contingents; at the opposing end conflict level is high and involves commensurately larger military assets. . . . [T]he operational focus is already moving toward the center of the continuum, into the areas of maintaining law and order . . . and the protection of humanitarian assistance and refugees.¹⁴⁵

Indeed, even as *An Agenda For Peace* was submitted to the Security Council, the United Nations was involved in at least two operations that required more than traditional peacekeeping. In both Somalia and the former Yugoslavia, the United Nations was quickly confronting a difficult reality: successful intervention in this new generation of conflicts requires both the capability and the desire to project force—a capability and desire that United Nations peacekeeping operations have traditionally lacked.

B. The United States and United Nations Partnership in “Peace Enforcement”

There have been two major peacekeeping efforts between the United States and the United Nations, the first in Somalia and the second shortly thereafter in the former Yugoslavia.

1. *The Intervention in Somalia.* The United Nations established three different missions in Somalia: the United Nations Operation in Somalia (UNOSOM), the United Nations Interim Task Force

145. MacKinlay & Chopra, *supra* note 134, at 116-18. MacKinlay and Chopra have outlined what they perceive as the conflict continuum by listing each of the various stages in a conflict scenario. The various steps include “Conventional Observer Missions,” “Traditional Peacekeeping,” “Preventative Peacekeeping,” “Supervising a Cease-fire Between Irregular Forces,” “Assisting in the Maintenance of Law and Order,” “Protecting the Delivery of Humanitarian Assistance,” “The Guarantee of Rights of Passage,” “Sanctions,” and “Enforcement.” *Id.* at 117; see also Thomas G. Weiss, *New Challenges for U.N. Military Operations: Implementing an Agenda for Peace*, WASH. Q., Winter 1993, at 51.

These new kinds of operations are qualitatively and quantitatively different from their predecessors: the consent of the parties cannot be assumed, and the levels of military effectiveness that may be required from U.N. forces go far beyond the parameters of a traditionally lightly armed and ad hoc peacekeeping force, as do the dangers. *Id.* at 54; see also Brian Urquhart, *Who Can Stop Civil Wars?*, N.Y. TIMES, Dec. 29, 1991, §4, at 9.

(UNITAF), and UNOSOM II, which was a modified version of UNOSOM.

a. *Creation of UNOSOM and UNITAF.* In November 1991 heavy fighting broke out in Somalia's capital city of Mogadishu between supporters of Interim President Ali Mahdi Mohamed and supporters of General Mohammed Farah Aidid, Commander of the United Somali Congress (USC).¹⁴⁶ In addition, other heavily armed elements gained control of various parts of Mogadishu, including the port and airport. Some of these groups declared their alliance with one of the two main factions while others remained independent.¹⁴⁷ The resultant fighting created widespread death and destruction, forcing hundreds of thousands of civilians to leave the city.¹⁴⁸

The United Nations responded in early 1992 by sending United Nations Under Secretary James O.C. Jonah to Mogadishu for talks aimed at bringing a halt to the fighting and initiating relief efforts for civilians. This process led to a cease-fire between Mohamed and Aidid.¹⁴⁹ In April the Security Council established cease-fire monitoring operations and authorized the establishment of a fifty-person unarmed military observation unit in Mogadishu.¹⁵⁰ In addition, the UNOSOM security force was authorized to provide security for both United Nations personnel in Somalia and United Nations relief supplies delivered to Mogadishu.¹⁵¹ UNOSOM was comprised of Pakistani forces and eventually reached a peak strength of 715 soldiers, consisting of the fifty military observers, an infantry battalion, logistics personnel, and a small headquarters company and staff.¹⁵²

As time progressed, it became obvious that UNOSOM was overwhelmed. In a report to the Security Council on November 24,

146. *Clashes Go On in Somali Capital*, N.Y. TIMES, Nov. 20, 1991, at A8.

147. *Fact Sheet: Somalia—Operation Restore Hope*, in 3 U.S. DEP'T STATE DISPATCH, 898, 902 (1992) [hereinafter *Fact Sheet: Somalia*].

148. *Id.* at 899.

149. See Paul Lewis, *Warring Somali Factions Reach a Truce*, N.Y. TIMES, Feb. 15, 1992, at 5.

150. S.C. Res. 751, U.N. SCOR, 47th Sess., 3069th mtg. at para. 3, U.N. Doc. S/RES/751 (1992) [hereinafter S.C. Res. 751]; *The Situation in Somalia: Report of the Secretary-General*, U.N. SCOR, 47th Sess., at paras. 24-26, U.N. Doc. S/23829 (1992); Paul Lewis, *Reined In by U.S., U.N. Limits Mission to Somalia*, N.Y. TIMES, Apr. 26, 1992, at 15.

151. S.C. Res. 751, *supra* note 150, para. 14.

152. *Further Report of the Secretary-General Submitted in Pursuance of Paragraphs 18 and 19 of Resolution 794 (1992)*, U.N. SCOR, 48th Sess., para. 5, U.N. Doc. S/25354 (1993) [hereinafter *Report of 3 March*].

1992, Boutros-Ghali noted that the government of Somalia had completely disintegrated,¹⁵³ that the various armed factions were refusing to cooperate with UNOSOM,¹⁵⁴ and that international relief workers and United Nations personnel were coming under increasing attack.¹⁵⁵ Meanwhile, thousands were starving to death.¹⁵⁶ With classic diplomatic understatement, Boutros-Ghali declared that “the situation is not improving.”¹⁵⁷

On November 29, 1992, Boutros-Ghali presented the Security Council with five options in Somalia.¹⁵⁸ The first two options—proceeding with the status quo or withdrawing completely—were dismissed as unworkable. Boutros-Ghali determined that the third option, creating a “major show of force” by UNOSOM in Mogadishu, would give rise to too many difficult questions.¹⁵⁹ Instead, Boutros-Ghali focused on a choice between a “country-wide enforcement operation to be carried out under United Nations command and control,”¹⁶⁰ and an identical operation “undertaken by a group of Member States authorized to do so by the Security Council.”¹⁶¹ Boutros-Ghali favored the former option,¹⁶² though he realized it would be impractical under the circumstances.¹⁶³

The idea for a countrywide enforcement operation by a group of member states had originated with the United States.¹⁶⁴ The Bush Administration had begun giving serious consideration to several policy options in mid-November, and by November 25, 1992, the President settled on a plan to use United States ground forces to

153. See *Letter Dated 24 November 1992 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., at 3, U.N. Doc. S/24859 (1992) [hereinafter *Report of 24 November*].

154. See *id.* at 1.

155. *Id.* at 2, 3.

156. *Fact Sheet: Somalia*, *supra* note 147 (reporting that as many as 3,000 Somalis were dying weekly and that as many as 300,000 Somalis had died prior to December 1992).

157. *Report of 24 November*, *supra* note 153, at 4.

158. *Letter Dated 29 November 1992 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., at 1, U.N. Doc. S/24868 (1992) [hereinafter *Report of 29 November*].

159. *Id.* at 2-4.

160. *Id.* at 5.

161. *Id.* at 4.

162. *Id.* at 6 (stating that “[i]f forceful action is taken, it should preferably be under United Nations command and control”).

163. *Id.* at 6.

164. *Id.* at 5.

alleviate the humanitarian crisis.¹⁶⁵ Because General Colin Powell, Chairman of the Joint Chiefs of Staff, and other military officials had been insistent that the United States maintain command and control of its forces, the President directed acting Secretary of State Lawrence Eagleberger to convey to the Secretary General an offer of United States intervention, on the strict condition that the United States command the operation.¹⁶⁶ The United States initially wanted a public request from the Security Council that the United States command the operation, that the United States appoint the commander,¹⁶⁷ and that UNOSOM be placed under United States command,¹⁶⁸ but it eventually backed off from these requests.¹⁶⁹

In his letter of November 29, 1992, to the Security Council, the Secretary General made clear that he would not accept the United States offer without certain modifications.

If the members of the Security Council were to favour [an enforcement action undertaken by Member States], my advice would be that the Council should seek to agree with the Member States who would undertake the operation on ways of recognizing the fact that it had been authorized by the Security Council and that the Security Council therefore had a legitimate interest in the manner in which it was carried out.¹⁷⁰

To ensure this objective, the Secretary General recommended that the authorizing resolution for such an operation emphasize that the military operation was authorized in support of the "wider mandate entrusted to the Secretary General to provide humanitarian relief," and that the military operation would last for a specific time period, ultimately to be replaced by a United Nations peacekeeping operation as soon as was feasible.¹⁷¹ Boutros-Ghali also recommended that if military action is to be taken it should be under the command and control of the United Nations. In addition, the Security Council should appoint an ad hoc commission to oversee the entire operation.¹⁷²

165. Michael R. Gordon, *Somali Aid Plan Is Called Most Ambitious Option*, N.Y. TIMES, Nov. 28, 1992, at 6.

166. *See id.*

167. Paul Lewis, *Key U.N. Members Agree to United States Force in Somalia Mission*, N.Y. TIMES, Dec. 3, 1992, at A1, A14.

168. John M. Goshko, *United Nations Orders United States-Led Force into Somalia*, WASH. POST, Dec. 4, 1992, at A1, A20.

169. Goshko, *supra* note 168, at A20; Lewis, *supra* note 167, at A14.

170. *Report of 29 November*, *supra* note 158, at 5.

171. *Id.*

172. *Id.* at 5-6.

The Security Council responded with what was essentially a compromise. Security Council Resolution 794 implicitly accepted the United States offer to command the operation—to be known as UNITAF—by stating that the Security Council “[w]elcome[d] the offer by a Member State” to establish an operation necessary to provide a secure environment.¹⁷³ In addition, the Security Council provided the United States with an expansive mandate authorizing “all necessary means” to establish a secure environment for the delivery of humanitarian aid in Somalia.¹⁷⁴ While satisfying the United States’s fundamental concern that it remain in command of the operation, Resolution 794 also contained provisions of importance to the Secretary General. First, it authorized the Secretary General to participate in the necessary arrangements for “unified command and control of the forces.”¹⁷⁵ In addition, the Security Council appointed an ad hoc commission (recommended earlier by the Secretary General) to oversee the operation, and declined to place the already deployed UNOSOM force under United States command, opting instead to create a liaison between UNOSOM and the unified command.¹⁷⁶ Most importantly, the Security Council reserved the right to phase out the UNITAF stage of the operation in favor of a more traditional peacekeeping operation.¹⁷⁷

b. *The importance of UNITAF.* The Security Council’s action in Somalia represents an important departure from previous command and control models in several respects. First, although United States dominance of the UNITAF command structure closely resembled the single-state approach employed in Korea, and, to a lesser extent, the managed-coalition model employed in the Persian Gulf, Resolution 794 also provided the Security Council and Secretary General with limited, but important, control over the operation.¹⁷⁸ The authenticity of this control was evident in the tension that developed between the United States and the United Nations over the timing of the transition to the second phase of the operation, UNOSOM II. Throughout the UNITAF phase, neither the United States nor the

173. S.C. Res. 794, U.N. SCOR, 47th Sess., 3145th mtg. para. 8, U.N. Doc. S/RES/794 (1992).

174. *Id.* para. 10.

175. *Id.* para. 12.

176. *Id.* paras. 14-15.

177. *Id.* para. 18.

178. The Secretary General’s and Security Council’s increased political control over the operation was a significant theme in the Security Council deliberations preceding adoption of Resolution 794. See U.N. SCOR, 47th Sess., 3145 mtg. at 17, U.N. Doc. S/PV. 3145 (1992).

Secretary General hesitated to voice annoyance over the other's progress in accomplishing the transition.¹⁷⁹ The United States repeatedly insisted that the United Nations was too slow in assuming responsibility for the operation; the Secretary General insisted that the United States needed to do more to disarm violent segments of the population before the United Nations could assume control.¹⁸⁰ It seems highly unlikely that this sort of public discussion would have occurred during the Korean or Persian Gulf conflicts.

c. *The creation and importance of UNOSOM II.* On May 4, 1993, UNITAF was relieved of command in Somalia by UNOSOM II.¹⁸¹ The Security Council had approved this transition on March 26, 1993, authorizing a UNOSOM II force of 28,000 personnel.¹⁸² In many respects, UNOSOM II resembled a traditional peacekeeping operation. Troops from a wide variety of countries participated under the command of Turkish General Cevic Bir¹⁸³ in a mission which included ensuring that "all factions continue to respect the cessation of hostilities and other agreements to which they have agreed."¹⁸⁴ In addition, the entire operation was to be conducted under the close supervision of the Secretary General and the Security Council.¹⁸⁵

However, like UNITAF, UNOSOM II also broke important ground. For the first time since ONUC and the Katangan secession, forces assigned to an operation with the essential characteristics of a peacekeeping operation were also authorized to use force. In addition, UNOSOM II marked the first time that any significant number of United States forces have ever been placed under the command of an international organization.¹⁸⁶

While the significance of the latter development should not be minimized, it is important to note the many conditions placed on the

179. See, e.g., John Lancaster, *United States Beginning Pullout From Somalia; Slow Withdrawal Aimed Partly at Forcing United Nations to Take Responsibility*, WASH. POST, Jan. 19, 1993, at A1, A17; Evelyn Leopold, *U.N. Chief Spells Out Dispute with U.S. on Somalia*, Reuters Library Report, Dec. 21, 1992, available in LEXIS, Nexis Library, Wires File.

180. See Lancaster, *supra* note 179, at A1, A17; Leopold, *supra* note 179.

181. Keith B. Richburg, *United Nations Takes Command of Troops in Somalia*, WASH. POST, May 5, 1993, at A23.

182. S.C. Res. 814, U.N. SCOR, 48th Sess., 3188th mtg. at 1, 3-5, U.N. Doc. S/RES/814(1993) [hereinafter S.C. Res. 814]; *Report of 3 March*, *supra* note 152, paras. 71, 74.

183. Eric Schmitt, *Most U.S. Troops Will Leave Somalia by April in United Nations Plan*, N.Y. TIMES, Feb. 13, 1993, at A1, A4.

184. *Report of 3 March*, *supra* note 152, para. 57.

185. S.C. Res. 814, *supra* note 182, para. 18.

186. See Richburg, *supra* note 181, at A30.

arrangement by the United States. First, United Nations orders affecting United States forces were transmitted from the United Nations commander to United States forces through the UNOSOM II Deputy Commander, United States Army Major General Thomas Montgomery.¹⁸⁷ General Montgomery, however, also served as the Commander of United States Forces Somalia (USFORSOM), and in this capacity exercised command over United States forces in Somalia and reported directly to the Commander in Chief, United States Central Command (USCINCCENT).¹⁸⁸ USCINCCENT retained command of USFORSOM and “delegate[d] operational, tactical, and/or administrative control of USFORSOM as required to support the Commander, UNOSOM II Force Command.”¹⁸⁹ In essence, the United States retained command of the United States forces but delegated certain attributes of the command to the United Nations.

In addition, United States forces under the United Nations command consisted only of logistics forces unlikely to encounter direct combat under the orders of the United Nations commander.¹⁹⁰ The United States units that carried out strikes against Aidid were not under United Nations command, but instead were part of a “tactical quick reaction force” commanded by the United States.¹⁹¹ Furthermore, while the United Nations commander was Turkish, Turkey is a NATO member, and General Bir’s selection was also reportedly blessed by General Powell.¹⁹² In addition to having significant influence in the choice of General Bir, the United States provided the Secretary General’s Special Representative, to whom

187. See *Defense Department Regular Briefing*, *supra* note 1.

188. See UNITED STATES DEPUTY SECRETARY OF DEFENSE, MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS, UNDER SECRETARY OF DEFENSE FOR POLICY, CHAIRMAN OF THE JOINT CHIEFS OF STAFF, COMPTROLLER OF THE DEPARTMENT OF DEFENSE, DIRECTORS OF DEFENSE AGENCIES: SUPPORT FOR UNITED NATIONS OPERATION IN SOMALIA (UNOSOM II) (June 8, 1993) (on file with author); see also Commander in Chief, United States Central Command, *Terms of Reference for U.S. Forces Somalia, United Nations Operation in Somalia Force Command*, Apr. 28, 1993 (on file with author).

189. UNITED STATES DEPUTY SECRETARY OF DEFENSE, *supra* note 188.

190. See John Goshko & Trevor Rowe, *U.S. Would Let Some GIs Serve Under U.N. Flag*, WASH. POST, Jan. 8, 1993, at A16; Schmitt, *supra* note 183, at A1.

191. See *Report of 3 March*, *supra* note 152, para. 71; Gellman, *supra* note 7, at A1.

192. Stuart Auerbach, *Somali Attacks Seen as Intensifying: Firefights Mar Turkish General's Arrival, Delay U.S. Handover in South*, WASH. POST, Feb. 23, 1993, at A12.

General Bir reported,¹⁹³ retired United States Navy Admiral Jonathan Howe.¹⁹⁴

d. *The hybrid model.* While UNITAF and UNOSOM II are significant in their own rights, perhaps the most interesting aspect of the intervention in Somalia is the fact that it is the first United Nations operation intended from the outset to join what are essentially single-state and peacekeeping models in the same operation. Faced with the first significant "peace enforcement" mission of the post-cold war era, the United Nations and United States have attempted to build an operation capable of moving along the continuum of conflict from a scenario requiring enforcement capabilities to one approximating traditional peacekeeping.¹⁹⁵ Of equal importance, by authorizing the use of force and maintaining a United States offshore presence, the United Nations preserved its ability to return to the enforcement end of the continuum in the event violence erupted again, as it eventually did.¹⁹⁶

The ultimate success of the United Nations intervention in Somalia may not be known for some time. Even if the United States and United Nations partnership in Somalia proves successful, however, an additional question remains: how useful is the hybrid model as a prototype for United Nations interventions? The answer is not obvious. One can imagine a scenario in which an initial single-state deployment—similar to that relied on during UNITAF—might be unavailable for any number of political or military reasons. Without a volunteer to assume the role of single-state leader, the United Nations will find the hybrid model unavailable. Likewise, even if a state is willing to participate in the initial stages of an intervention, it may be unwilling to participate on a sustained basis, fearing a disproportionate (and therefore unacceptable) investment of lives, resources, and capital. Given current United Nations capabilities, the timing of the single state's disengagement is critical: if done too early, the follow-up peacekeeping forces may be overwhelmed by residual resistance, resulting either in the intervention's failure or a requirement for renewed single-state participation.

193. *Report of 3 March*, *supra* note 152, para. 97.

194. *Retired U.S. Admiral to be Transition Envoy*, WASH. POST, Mar. 6, 1993, at A29.

195. MacKinlay & Chopra, *supra* note 134, at 116-18 (describing the conflict continuum from peacekeeping to enforcement).

196. *See also Report of 3 March*, *supra* note 152, para. 74 (reserving to the Secretary General the right to deploy additional troops).

2. *Command and Control in the Former Yugoslavia.* The ethnic conflict in the former Yugoslavia rivals Somalia as the United Nations's most intractable problem. While there are no doubt many lessons yet to be learned about the role of the United Nations in the crisis, it seems reasonable to conclude that the United Nations Protection Force (UNPROFOR)¹⁹⁷ has proven incapable of maintaining order.¹⁹⁸ As diplomatic events continue to unfold, it is unclear to what extent a more significant military presence may yet be required, but it seems that whatever the outcome, UNPROFOR, as presently constituted, will become increasingly irrelevant.

UNPROFOR's inability to maintain order in Yugoslavia parallels UNOSOM's inadequacy in Somalia, and a solution to the dilemma in Yugoslavia has proven equally difficult. The hybrid model of military intervention first relied on in Somalia has been unavailable to the United Nations in Yugoslavia because the United Nations has been unable to find a state willing to assume the role of single-state leader. With no credible military alternative, the United Nations has had no choice but to concede the first phase of the conflict and to stand aside in the face of shocking aggression.

If the warring factions eventually agree to a settlement, the conflict will likely enter a new phase requiring precisely the type of cease-fire "peace enforcement" the Secretary General envisioned in *An Agenda for Peace*.¹⁹⁹ If this comes to pass, the United Nations will need what it does not have: an enforcement-capable, truly multinational force able to accomplish a difficult mission without

197. UNPROFOR was established on Feb. 21, 1992. S.C. Res. 743, U.N. SCOR, 46th Sess., 3055th mtg. at 2, U.N. Doc. S/RES/743 (1992). UNPROFOR is built around a traditional United Nations command and control relationship with the usual rules of engagement. See *Further Report of the Secretary-General Pursuant to Security Council Resolution 721 (1991)*, U.N. SCOR, 46th Sess., paras. 11, 13, 20-26, U.N. Doc. No. S/23592 (1992).

198. See, e.g., Weiss, *supra* note 145, at 56.

The U.N.'s initial involvement in Croatia, with close to 14,000 peacekeepers, did not serve to prevent the ethnic cleansing, detention camps, refugees, and killing in neighboring Bosnia and Herzegovina. Europeans and the Western Alliance were unable to get the parties to halt their internecine fighting. . . . The 1,500 U.N. soldiers initially assigned to the Sarajevo area quickly proved inadequate; and in early September 1992 the Security Council authorized adding at least 5,000 more troops for the purpose of protecting humanitarian convoys and escorting detainees in Bosnia and Herzegovina.

Id.; see also Warren Strobel, *Ex-convoy sees Somalia-style Effort in Bosnia*, WASH. TIMES, Mar. 15, 1993, at A10 (quoting Robert Oakley, former United States special envoy to Somalia) ("The Serbs have stayed one step ahead of [UNPROFOR]. They've never been intimidated. [UNPROFOR] got behind at the beginning and they stayed behind.")

199. See *supra* text accompanying notes 138-44.

exposing any state to disproportionate risk. The United Nations's only hope in Yugoslavia is that NATO might provide such a force.

a. *NATO's current and future roles.* Having never fired a shot in anger during the cold war, NATO's initial role in the former Yugoslavia was to assume responsibility for enforcing the Security Council's "no-fly" zone over Bosnia.²⁰⁰ NATO aircraft patrolled designated sectors to ensure that Serbian aircraft were unable to use the skies for reinforcing their ground offensive.²⁰¹ While the military significance of the no-fly zone is debatable,²⁰² the political implications were potentially significant: by enforcing the no-fly zone and conducting maritime interception operations in the Adriatic, NATO demonstrated for the first time in its history a willingness to operate beyond the borders of its member states in furtherance of a United Nations objective.

How much NATO will be willing to do beyond its relatively low-risk commitment to enforcing the no-fly zone remains unclear. Initial enthusiasm within NATO for providing a "peace enforcement" force to guarantee the terms of a peace settlement waned quickly.²⁰³ Speculation that Bosnia might serve as a laboratory for the development of a new NATO peacekeeping/peace enforcement capability gave way to concern on the part of member governments about prolonged commitments and "quagmire[s]."²⁰⁴ As a result, NATO officials have experienced considerable difficulty gaining national commitments for the forces necessary to police a prospective settlement.

200. See, e.g., William Drozdiak, *NATO to Patrol Bosnian Skies Starting Monday*, WASH. POST, Apr. 9, 1993, at A1; see also S.C. Res. 816, U.N. SCOR, 48th Sess., 3191st mtg. para. 4, U.N. Doc. S/RES/816 (1993) (authorizing member states to act "nationally or through regional organizations or arrangements" to enforce the no-fly zone "under the authority of the Security Council and subject to close coordination with the Secretary General and UNPROFOR").

201. See *Americans Uneasy About Any Yugoslav Involvement*, Reuter Library Report, Apr. 10, 1993, available in LEXIS, Nexis Library, Wires File; see also *Italian General Rossetti to Head No-Fly Ban*, Reuter Library Report, Apr. 3, 1993, available in LEXIS, Nexis Library, Wires File.

202. See Paul Lewis, *U.S. Seeks Tougher Sanctions on Yugoslavia*, N.Y. TIMES, Apr. 7, 1993, at A15.

203. See Michael R. Gordon, *Limited U.S. Forces Held Still an Option in Bosnia*, N.Y. TIMES, Apr. 9, 1993, at A7.

204. See Nicholas Doughty, *Doubts Grow Over NATO Plans for Bosnia Peace Agreement*, Reuter European Community Report, Mar. 29, 1993, available in LEXIS, Nexis Library, Wires File (noting the reluctance of NATO members to intervene in Yugoslavia because the situation is a potential "quagmire"); see also Gordon, *supra* note 203, at A7 (describing the Clinton Administration's vain efforts to muster sufficient support within the NATO alliance for assembling the peacekeeping force for Bosnia even when it appeared possible the Serbs might sign the Vance-Owen accord).

The prolonged negotiations associated with planning a NATO peace enforcement deployment illuminated both the appeal and difficulty of relying on NATO as the nucleus of an ad hoc "peace enforcement" force. In Yugoslavia, for example, NATO could provide an enforcement capability to support a United Nations brokered peace accord.²⁰⁵ For the United States, NATO would provide a multinational vehicle for a mission that would be extremely difficult to perform unilaterally,²⁰⁶ while NATO participation would allow the United States considerable control: United States Army General George A. Joulwan is NATO's Supreme Allied Commander Europe (SACEUR),²⁰⁷ and United States Navy Admiral Jeremy M. (Mike) Boorda is NATO's Commander in Chief, Allied Forces Southern Europe (CINCSOUTH), with responsibilities including the former Yugoslavia.²⁰⁸ In addition, United States forces have operated within NATO for decades and are comfortable with NATO organization and procedure.

While both the United States and United Nations could thus find NATO a useful vehicle through which to pursue their respective interests, the command and control details for a prospective NATO force have provoked considerable debate. A NATO force would likely operate under United Nations authorization, but the difficult issues of political control, strategic direction, and operational command remain unsettled. The Secretary General has long insisted that a NATO operation be under United Nations "strategic and political control,"²⁰⁹ a position that was vigorously supported by

205. Recent reports indicate that NATO officials anticipate that "peace enforcement" in the former Yugoslavia will require 50,000 troops, including approximately 25,000 United States forces. Charles Aldinger, *U.S., NATO Move Cautiously on Peacekeepers*, Reuters, Sept. 13, 1993, available in LEXIS, Nexis Library, CURRNT File.

206. See, e.g., Henry A. Kissinger, *The Risks of a U.S. Enforcement Role in Bosnia: Reliving Vietnam or Beirut*, L.A. TIMES, Feb. 21, 1993, at M2; see also *Informal Notes for Testimony to the House Foreign Affairs Committee by Zbigniew Brzezinski*, Federal News Service, Feb. 18, 1993, available in LEXIS, Nexis Library, CURRNT File ("There is little predisposition in the United States for a major and potentially bloody full-scale military intervention—and in Europe, without which an American intervention would not be politically viable—even less so."); *Americans Uneasy About Any Yugoslav Involvement*, Reuter Library Report, Apr. 10, 1993, available in LEXIS, Nexis Library, Wires File.

207. Sue Pleming, *NATO's New European Commander Takes Over*, Reuters, Oct. 22, 1993, available in LEXIS, Nexis Library, CURRNT File.

208. John Lancaster, *Bosnia Peace Mission Could Involve 64,000 NATO Troops*, WASH. POST, Mar. 28, 1993, at A25.

209. Julia Preston, *Boutros-Ghali Asserts U. N. Role in Bosnia*, WASH. POST, May 5, 1993, at A24. But cf. Paul Lewis, *U.N. Leader Backs Takeover of Force in Bosnia by NATO*, N.Y. TIMES, Sept. 20, 1993, at A10 (reporting that Boutros-Ghali "would welcome NATO's taking

France.²¹⁰ While the United States had consistently favored NATO control over all operations,²¹¹ it made a significant concession in August 1993 by agreeing to a United Nations veto over airstrikes against Serb positions.²¹² More recently, President Clinton has stated that he will insist on NATO command over any Bosnian peacekeeping force.²¹³

Thus, while details regarding the command and control of a potential peacekeeping force remain unclear as of publication of this Article, Under Secretary General Kofi Annan speculated publicly in March 1993 that NATO's CINCSOUTH would be asked to command United Nations operations throughout all the former Yugoslavia except Bosnia and Herzegovina, where UNPROFOR would remain in command.²¹⁴ Under this plan, both commands would report to the Security Council through the Secretary General.²¹⁵

b. *The NATO model.* Given the demise of its cold war mission and the lack of any credible multinational enforcement capability, many have suggested that NATO make itself available on a regional basis to prevent "future Bosnias."²¹⁶ This idea retains a certain appeal, despite the tremendous effort required to obtain a NATO

full control" in Bosnia, but not clarifying precisely what full control would mean).

210. See Nicholas Doughty, *NATO Approves Secret Plans for Bosnia Peace Force*, Reuter European Community Report, Mar. 17, 1993, available in LEXIS, Nexis Library, Wires File.

211. *Id.*

212. Rick Atkinson & Barton Gellman, *NATO Endorses Plan for Bosnia*, WASH. POST, Aug. 10, 1993, at A10 (describing NATO agreement not to undertake air strikes without the prior approval of the Secretary General); Barton Gellman & Trevor Rowe, *U.S. Agrees to U.N. Veto on Bombing*, WASH. POST, Aug. 7, 1993, at A1 (describing the memorandum of understanding signed between Admiral Boorda and UNPROFOR Commander Lieutenant General Jean Cot giving Cot the authority to veto targets selected by NATO).

213. Friedman, *supra* note 11, at A1.

214. Lewis, *supra* note 3, at A10; Preston, *supra* note 209, at A24.

215. Lewis, *supra* note 3, at A10.

216. Secretary of State Warren Christopher, *NATO and United States Foreign Policy*, 4 DISPATCH 119, 120 (Dept. of State Bureau of Public Affairs, 1993) (excerpts from remarks to the North Atlantic Council, Feb. 26, 1993).

There can be no better way to establish a new and secure Europe than to have soldiers from Russia, Ukraine, Poland, Hungary, and the other new democracies work with NATO to address their most pressing security problems. We believe NATO and our Eastern colleagues should establish joint planning and training, and joint exercises for peace-keeping.

Id. at 120. Indeed, this process has already begun. NATO has indicated informally that it would intervene in a security matter if requested to do so by the United Nations or the Conference on Security and Cooperation in Europe. See Nicholas Doughty, *NATO's New Peace-keeping Plans to Include Combat*, Reuter Library Report, Jan. 24, 1993, available in LEXIS, Nexis Library, Wires File.

consensus for action on its very doorstep.²¹⁷ NATO is clearly the best developed multinational command and control structure available,²¹⁸ and represents on a regional level much of what the signatories to the United Nations Charter had hoped for from a United Nations collective security system.

NATO's utility outside Europe, however, is not as obvious. NATO, or particular NATO members, may not be welcome in certain political environments. While this problem can to some degree be alleviated by omitting a particular nation from an operation or by positioning NATO as the nucleus for a broader multinational coalition similar to that assembled in the Persian Gulf War, the more multinational such a force becomes, the more complicated command and control issues become as well, thereby reducing the efficiency that makes a NATO option appealing in the first place. More importantly, as the situation in Yugoslavia so vividly demonstrates, NATO states may decide that a particular conflict is not in their interest and may disagree among themselves over how or whether to respond.²¹⁹

217. *But see* James Adams, *NATO as Play-Doh: Why the Allied Forces in Europe Aren't Ready to Move into Bosnia*, WASH. POST, Apr. 4, 1993, at C2 ("If NATO is unable to respond to the Bosnian crisis, it is difficult to see how it can remain a credible defense organization.").

218. NATO INFORMATION SERVICE, *Collective Security in the Post-Cold War World: Joint Hearings Before the Subcomm. on Europe and the Middle East and International Security, International Organizations and Human Rights of the House Comm. on Foreign Affairs*, 103rd Cong., 1st Sess. (1993) (statement of David Abshire, Chair, Center for Strategic and International Studies and former United States Ambassador to NATO) ("The NATO template [for] joint operations and the staffing of NATO . . . is just the best in the world. They've reached a degree of perfection."); *see also* Strobel, *supra* note 198 (comparing sophisticated NATO command and control capability to almost nonexistent United Nations capability).

The NATO military organization consists of three primary elements: the NATO Military Committee, the International Military Staff, and NATO theater commanders. The NATO Military Committee is the highest military authority in NATO under the political authority of the North Atlantic Council. The NATO Military Committee is comprised of the Chiefs of Staff of each member nation except France. (France is represented by a military mission to the Military Committee. Iceland is represented by a civilian.) The Chiefs of Staff normally meet at least three times a year; however, each Chief of Staff appoints a permanent Military Representative as a member of the Military Committee in permanent session. The NATO Military Committee is responsible for developing NATO military plans and policies, training, logistics, interoperability, communications, and intelligence, and exercises command authority over the NATO theater commanders. *See* THE NORTH ATLANTIC TREATY ORGANIZATION: FACTS AND FIGURES 338-39 (11th ed. 1989).

219. One commentator has observed that:

[t]wo years ago, NATO claimed to have more than 3 million men and women under arms. Today, that same organization is unable to find the 70,000 or so peacekeepers needed for Bosnia This demonstrates . . . how ill equipped the organization is to deal with the problems posed in the post-Cold War era. Despite their enthusiasm for finding a new role for NATO, its members seem to be only too keen to find excuses to do nothing.

C. A Need to Move Beyond Existing Models?

While conclusive judgements are premature, it remains possible that the command and control model devised for United Nations forces in Somalia will be successful; likewise, the NATO model may yet prove useful in the former Yugoslavia. The question for both the United States and the United Nations, however, is whether reliance on these, and other ad hoc models, is sound policy in the long run.

From the United States perspective, the answer to this question depends on its view of the proper role for the United Nations. Clearly, there are those who believe that a weak United Nations is in the United States's interest, or that the United Nations is too weak to ever serve the United States's interests, and who will favor continued ad hoc relationships.²²⁰ Even among those who see a stronger United Nations as a desirable United States goal, however, are those who believe that ad hoc arrangements are adequate, desirable, and in any event, all that are possible. Their reluctance to pursue a more permanent United Nations security structure has several sources. First, any proposal for reforming the United Nations security capability would entail a transfer to the United Nations of both authority and resources, and some believe the United Nations is institutionally incapable of exercising that authority or using those resources wisely.²²¹ As even Ambassador Albright has observed,

Doughty, *supra* note 204.

220. See, e.g., Ricardo Chavira, *Who Will Keep the Peace?*, DALLAS MORNING NEWS, Feb. 21, 1993, at J1 ("Analysts, particularly conservatives, also doubt that the U.S.-U.N. partnership ideally meets American national security needs. Until a few years ago, they point out, the United Nations was notorious for opposing U.S. interests."); William Safire, *The Case for 'Compellance'*, N.Y. TIMES, Apr. 19, 1993, at A19 (describing President Clinton as "the captive of his post-Vietnam multilateral rhetoric, so taken with fear of 'going it alone' that he is incapable of going first"); George F. Will, *Sovereignty and Sophistry*, WASH. POST, Apr. 11, 1993, at C7 (criticizing current proposals to revive Article 43 as an unwise derogation of United States sovereignty advocated by those with "extravagant hopes [that] the United Nations could relieve the United States of the burdens of being the only superpower").

221. See *Management Structure of the United Nations*, Hearing of International Security, International Organizations, and Human Rights Subcommittee of the House Foreign Affairs Committee, Federal News Service, Mar. 5, 1993, available in LEXIS, Nexis Library, CURRNT File (statement of Richard Thornburgh, former United Nations Under Secretary General for Administration and Management); *Senate Article 43 Hearing*, *supra* note 88, at 6 (statement of Senator David Boren) ("I would agree with the United Nations' critics that the time for reform is long overdue, that there must be a solid institutional foundation for any collective security force."); John M. Goshko & Barton Gellman, *Idea of a Potent U.N. Army Receives a Mixed Response*, WASH. POST, Oct. 29, 1992, at A22 (noting that many within the Department of Defense are skeptical of the competence of United Nations peacekeeping authorities).

“there are genuine questions at the moment about the U.N. having its own anything.”²²² Others doubt that the current cooperation on the Security Council can be maintained and believe that any significant investment in United Nations capabilities is ill-advised because of the potential for conflict between member states.²²³ Some worry that vesting greater military capability in the United Nations will undermine the United Nations’s important role as a mediator.²²⁴

Even if these objections can be met and a more structured approach is possible, some commentators dispute its necessity. The Persian Gulf coalition and the UNITAF phase of the Somalia intervention have demonstrated that successful command and control structures can be organized on an ad hoc basis. The conflict in the former Yugoslavia may yet prove NATO’s potential as an additional model. In each instance, United States leadership was, or may be, able to galvanize support for a coalition tailor-made to the circumstances of a particular conflict. Moreover, advocates of this view might argue that the energy and expense required to build a more permanent organization is as intimidating, if not more so, than the effort required to create forces and establish suitable command and control arrangements in an ad hoc manner.²²⁵ From this perspective, the United States’s efforts are better spent continuing to nurture

222. Holmes, *supra* note 1, at A1.

223. See Paul H. Nitze, *International Security in a New World*, 81 GEO. L.J. 481, 488 (1993) (“[I]t remains to be seen whether the cooperation between the United States, the Soviet Union, and China . . . will continue.”); see also William Branigin, *As China Builds Arsenal and Bases, Asians Fear a ‘Rogue in the Region,’* WASH. POST, Mar. 31, 1993, at A21 (detailing China’s recent military build-up and increased international assertiveness); Daniel Williams, *Moscow’s Regional Interests May Threaten Cooperation With U.S.*, WASH. POST, Apr. 3, 1993, at A18 (observing a move “toward a more assertive Russian foreign policy”).

224. See, e.g., John Gerard Ruggie, *No, the World Doesn’t Need a United Nations Army*, INT’L HERALD TRIB., Sept. 26, 1992, available in LEXIS, Nexis Library, CURRNT File.

[E]ven a move toward small-scale UN combat forces undermines the legitimacy of the United Nations in international conflict resolution. The history of peacekeeping shows that its strength lies in impartiality, the interposed character of its forces, and their provision of support structures and services to peoples under stress. A compellence capability potentially contradicts each of these.

Id.

225. Cf. MacKinlay & Chopra, *supra* note 134, at 123-24.

There are known disagreements on the use of force, intelligence, the maintenance of law and order, powers of arrest, and the principles of logistic support. There will be serious problems of equipment interoperability. There are enormous differences in members’ military experience and competence. Several important major power and middle nations will be politically unable to participate in UN operations that have a greater capacity to use force These problems do not constitute an overwhelming reason to abandon the development of a more effective instrument to uphold the Charter, but they do lead to a formidable dilemma.

Id.

the worldwide network of bilateral relationships that proved so useful for coalition building immediately prior to the Persian Gulf War.²²⁶

These are persuasive arguments, which may very well prove correct. The continued reliance on an ad hoc approach, however, is not without risks. Just as the hybrid model in Somalia was of little value in the Yugoslavian context, the NATO model may not be helpful in organizing a response to a conflict elsewhere.²²⁷ If a conflict develops tomorrow in a region where the United States perceives that its vital interests are not at stake, as they appear not to be in Somalia and Yugoslavia, the United States will have limited alternatives.²²⁸ One alternative will be to ignore the conflict and anticipate that others will solve it. The current conflicts suggest, however, that domestic indifference can no longer be relied on as a basis for policy.²²⁹ Likewise, no nation other than the United States has demonstrated the will or ability to organize an ad hoc response of lasting value.²³⁰ Assuming that unilateral United States intervention

226. See, e.g., *Collective Security in the Post-Cold War World*, Hearing Before the House Foreign Affairs Committee, Subcommittee on International Security, International Organizations, and Human Rights, FED. NEWS SERVICE, Mar. 17, 1993, available in LEXIS, Nexis Library, CURRNT File (statement of Alexander M. Haig, former Secretary of State).

[W]e need a coalition led by the United States that acts on behalf of democratic principles, whether it is to prod U.N. action or if that is not possible, to take collective action nonetheless. These coalitions are not always easy to form or to operate. But . . . they are the best instrument we have to build the world we want . . . [F]or some reason, many pundits today would like to abandon [the idea of United States-led coalitions as represented by NATO and the United States alliance with Japan] on behalf of the nonexistent new world order or a U.N. manifestly unable to guarantee the peace. As for me, I would like to be sure that the alternatives are workable before we abandon the arrangements that took us safely through the Cold War and built up successful democracies in Europe and Asia.

Id.

227. See generally Lewis, *supra* note 3, at A10; Strobel, *supra* note 198, at A10.

228. See Lewis, *supra* note 3, at A10 (predicting that Rwanda, Liberia, Ethiopia, Zaire, and Georgia will be strong candidates for the next United Nations peacekeeping operation).

229. See *CNN Specials: Our Planetary Police: Intervention Lessons Learned* (CNN television broadcast, Mar. 7, 1993), Transcript #320-5, available in LEXIS, Nexis Library, CURRNT File (United Nations officials, academics, and journalists all agreeing that news coverage drives governments to intervention they might otherwise wish to avoid); see also Goshko & Gellman, *supra* note 221, at A24.

230. See, e.g., *CNN Specials: Our Planetary Police: Madeleine Albright Speaks Out* (CNN television broadcast Mar. 7, 1993), Transcript #320-4, available in LEXIS, Nexis Library, CURRNT File (statement of Madeleine Albright, United States Ambassador to United Nations) ("People look to the United States for leadership. They say over and over again, 'You now are the only superpower. You are the ones that know how to exert leadership. Help us. Be our leader.'").

Although the United States is understandably reluctant to play the leadership role in crises so far from its shores, countries . . . look to the United States, not the European Community or the United Nations, for leadership. As the only superpower, the United

will be an unacceptable alternative, the only remaining option is for the United States to take the lead in assembling an ad hoc coalition. As previously discussed, this approach may be useful in certain circumstances, but it is not without drawbacks of its own.²³¹

V. TOWARD A CONTEMPORARY VISION FOR UNITED NATIONS COMMAND AND CONTROL

Unless the United States and United Nations are willing to rely on existing models for the command and control of future United Nations operations, they must consider possibilities for creating a more enduring structure. While the Clinton Administration appears to have recognized this reality, the experience in Somalia has also forced the President to recognize that neither the American people nor the United Nations were fully prepared for the respective sacrifices and challenges inherent in the United Nations command of United States forces in a difficult peace enforcement mission.

A. Clinton Administration Proposals for Improving United Nations Capabilities

In his September 27, 1993, address to the United Nations General Assembly, President Clinton expressed support for continued United Nations peacekeeping missions, and also pledged to "support the creation of a genuine U.N. peacekeeping headquarters with a planning staff, with access to timely intelligence, with a logistics unit that can be deployed on a moment's notice, and a modern operations center with global communications."²³²

Perhaps what is most noteworthy about the President's address, however, is what he did not say. In the weeks prior to the President's address, media reports indicated strong support at the subcabinet level for a draft Presidential Decision Directive 13 (PDD-13), a document designed to serve as a comprehensive policy guidance to senior officials regarding Administration policy toward the United Na-

States may not want special responsibilities, but, like it or not, the United States has them.

139 CONG. REC. H1227 (daily ed. Mar. 11, 1993) (remarks of Rep. Skelton).

231. See *Senate Persian Gulf Hearing*, *supra* note 83, at 703; Russett & Sutterlin, *supra* note 87, at 76-77.

232. See *President Bill Clinton Addresses the General Assembly of the United Nations*, *supra* note 10, at 7.

tions.²³³ The draft PDD-13 contained several changes in United States policy toward the United Nations. To begin with, previous United States involvement in United Nations missions was limited to situations in which the United States could make a "unique military contribution" to the mission, i.e., no other state could provide the capability.²³⁴ Draft PDD-13 proposed, however, that the President authorize participation in any peacekeeping operation, in any capacity, so long as such participation served United States interests.²³⁵

An additional aspect of the draft PDD-13 that attracted considerable attention was the document's proposal that United States forces serve under United Nations commanders, i.e., the fact that a United Nations operation would be commanded by a non-American would no longer prevent United States forces from serving under the officer's command.²³⁶ While the criticism this proposal received from legislators and editorial writers gave the impression that this was a radical step forward,²³⁷ in fact, media reports of the draft's substance indicated that the Administration intended to retain a degree of control over the United States forces committed to United Nations command that would have dramatically limited the new policy's impact. The draft reportedly provided, for example, that the immediate commanders of United States forces serving under United Nations commands would maintain a separate chain of command to United States authorities, and that the commanders would have been authorized to disregard orders that were judged beyond the United Nations mandate for the operation.²³⁸ In addition, the commanders of United States forces would have had the authority to disregard orders that were "illegal or 'militarily imprudent.'"²³⁹ Taken together, these reservations would have guaranteed that United States

233. See Barton Gellman, *U.S. Reconsiders Putting GIs Under U.N.*, WASH. POST, Sept. 22, 1993, at 1; Sciolino, *supra* note 7, at A8.

234. Cf. Smith & Preston, *supra* note 4, at A1.

235. *Id.*

236. See sources cited *supra* note 1 and accompanying text (describing past examples of foreign control of United States soldiers).

237. See sources cited *supra* note 8 (describing Senate reaction to placing troops under foreign command).

238. See Gellman, *supra* note 7, at A1.

239. *Id.* This draft provision was later modified after vigorous protests from the Secretary General that such a policy would inevitably lead to chaos as other nations would feel compelled to adopt similar policies. The revised draft provided that United States participants in United Nations commands would first be required to appeal a questionable order up the United Nations chain of command before raising the issue with their commanders.

forces serving under United Nations commanders would not, in fact, be under total United Nations "command."

The draft PDD-13 also took a conservative approach with regard to United States willingness to make advance commitments of forces, facilities, and equipment to United Nations operations. For example, during their respective confirmation hearings, Secretary of State Warren Christopher and United Nations Ambassador Madeleine Albright expressed support for exploring the possibility of creating a United Nations "rapid deployment force" and for negotiating Article 43 agreements with the United Nations.²⁴⁰ Both were echoing the support for a rapid deployment force expressed by President Clinton in the months preceding his election.²⁴¹ The draft PDD-13, howev-

240. See *Confirmation Hearing for Warren Christopher as Secretary of State before the Senate Foreign Relations Committee*, Federal News Service, Jan. 13, 1993, available in LEXIS, Nexis Library, CURRNT File (statement of Warren Christopher) ("[M]y general feeling is to support [the establishment of a permanent stand-by force for peacekeeping operations], or at least support the exploration of how that can be done."); see also *Confirmation Hearing for Madeleine Albright as United States Ambassador to the United Nations before the Senate Foreign Relations Committee*, Federal News Service, Jan. 21, 1993, available in LEXIS, Nexis Library, CURRNT File.

[W]e need to really explore and think about how we use the various options that we have for fulfilling the promise of Article 43. President Clinton has spoken about the importance of creating a rapid deployment force or a force that would be available to deal with problems. . . . I think that we ought to give life to Article 43 and I think that what we need to do is to make sure that our constitutional prerogatives are properly preserved and that we in fact see how we can create a way that the United Nations can have some teeth.

Id. For a discussion of Article 43, see *supra* notes 20, 22 and accompanying text.

241. See Governor Bill Clinton, Statement to the United Nations Association of the USA (UNA-USA) (Sept. 1992) (on file with the author). It seems reasonable to conclude that then-Governor Clinton was receiving considerable advice from those inclined to support a greatly expanded United States partnership with the United Nations. See, e.g., *Special Report: Policymaking for a New Era*, FOREIGN AFF., Winter 1992/93, at 175, 187-88 (containing the recommendations of a bipartisan commission to the then President-elect on United States policy toward the United Nations). Prior to his current appointment, Director of Central Intelligence R. James Woolsey chaired a study that advocated a more formal United States military relationship with the United Nations. See UNITED NATIONS ASSOCIATION, PARTNERS FOR PEACE, STRENGTHENING COLLECTIVE SECURITY FOR THE 21ST CENTURY 32-33 (1992). The authors proposed a three-tier United Nations force. The first tier would involve a small, ready-reaction force of a few units under permanent United Nations command; the second, a rapid deployment force of "several tens of thousands of troops" that could be transferred from national armies under a unified United Nations command on short notice; the third, large-scale forces under a unified United Nations command capable of mounting a major military operation such as the Persian Gulf campaign against Iraq.

A more formal United States military commitment to the United Nations has had support in Congress as well, with the most active and detailed support coming from Senate Foreign Relations Committee member Joseph Biden and Senate Intelligence Committee Chair David Boren. Senator Boren has actively advocated the creation of a United Nations rapid deployment force. During the 102d Congress, Senator Biden introduced S.J. Res. 325, which

er, stopped well short of these ambitious proposals. In addition to failing to endorse the initiation of Article 43 negotiations or creation of a rapid deployment force, the draft PDD-13 failed to make any advance commitment to supply the United Nations with even the most generic capabilities, such as combat engineering or air cover.²⁴² Instead, the United States would have evaluated mission requirements on a case by case basis, and would have provided United States assistance to the extent such assistance is consistent with perceived United States interests.²⁴³

As demonstrated by the foregoing, the draft PDD-13 embodied a relatively conservative approach toward creation of a more comprehensive United States security relationship with the United Nations.²⁴⁴ The President's failure to endorse many of the initiatives proposed in the draft PDD-13 demonstrates how politically difficult it had become to support further United Nations initiatives. Thus, while the Administration's retreat from earlier objectives is understandable and reflects a degree of necessary realism, the United States has proposed little that will alter command and control structures for future United Nations operations. While the commitment to an expanded capability United Nations headquarters is important, "command and control" also encompasses important issues regarding the distribution of authority between the Security Council, the Secretary General, troop contributing states, and military commanders in the field. These issues, however, remain unaddressed. Until the features of a comprehensive command and control structure are addressed, the United States and United Nations should expect continued uncertainty regarding the willingness of states to contribute forces to United Nations operations and the willingness of states to support United Nations operations once they are underway.

encouraged President Bush to begin negotiating an Article 43 agreement with the Security Council. See S.J. Res. 325, 102d Cong., 2d Sess. (1992), 138 CONG. REC. S9853 (daily ed., July 2, 1992). During a Senate Foreign Relations Committee hearing on Resolution 325, Senators Biden, Boren, Paul Simon, and Committee Chair Claiborne Pell all expressed support for the negotiation of an Article 43 agreement as well as the creation of some form of United Nations force. See generally *Senate Article 43 Hearing*, *supra* note 88. In addition to the aforementioned senators, Mr. Woolsey also testified in support of their respective proposals.

242. Gellman, *supra* note 7, at A1.

243. *Id.*

244. *But see* sources cited *supra* note 242.

B. Toward a Neo-Charter Model of Command and Control

What principles should guide the development of a United Nations command and control structure adequate for the demands of the post-cold war world? First, any nation seeking to enjoy the benefits of a truly collective security system must recognize that the price is increased United Nations political control over particular operations. To be effective, the United Nations must be credible; to be credible, the United Nations must exercise political control over the operations conducted in its name. The United States should not reflexively oppose this change: when a state acts alone, it risks failing alone; even when it succeeds, success may carry an exorbitant price. If nothing else, self-interest dictates that the United States be willing, under the proper circumstances, to cede a degree of decision-making authority to the Security Council and Secretary General.

The case for reform, however, involves more than merely returning control of all operations to the Security Council and its agent, the Secretary General. First, states contributing forces to an operation should be asked to cede decision-making authority over their forces only if the decision-making surrogate is competent to be trusted with life and death decisions. Likewise, any nation making a large troop contribution to a particular operation should have a voice in the operation commensurate with its contribution. While the United Nations is beginning to make informal progress on both these fronts,²⁴⁵ much remains to be done. Moreover, there is no institutional structure in place to ensure the continuity of this process.

Finally, and perhaps most controversially, the United Nations should consider a break with cold war tradition by creating a unified structure for command and control over the entire range of United Nations operations. Today, the United Nations must be capable of managing peacekeeping at one end of the conflict continuum and enforcement at the other end, and, with increasing frequency, the difficult "peace enforcement" missions lying somewhere in between. The continued separation of infrastructure management from operational command and control of peacekeeping and enforcement

245. See *Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects, Special Report of the Special Committee on Peace-keeping Operations*, U.N. GAOR, 47th Sess. para. 23, U.N. Doc A/47/253 (1992) [hereinafter *Special Committee on Peace-keeping Operations Report*]; see also U.N. CHARTER art. 44; Lewis, *supra* note 3, at A10.

functions is inconsistent with a world where disputants increasingly refuse to recognize such distinctions.

These principles are not radical; indeed, in many respects, they infused the original Chapter VII model. Today, the challenge lies in developing a contemporary model that incorporates the strengths of the system envisioned in 1945 without ignoring the experiences of intervening years. In short, what is needed is a “neo-Charter” model for command and control—a model that reaffirms the Chapter VII principles of collective security, authentic Security Council oversight of United Nations operations, and big power superintendence of all peace and security matters, while assimilating the contributions of the Secretary General and a host of middle and smaller states.

1. *Reaffirming the Security Council's Political Control over United Nations Operations.* Although the signatories to the United Nations Charter intended for the Security Council to exercise political control over United Nations operations, the Security Council has generally been unable or unwilling to perform this function. In the peacekeeping context, vague Security Council mandates have often created ambiguity where peacekeepers and disputants would have been better served by clarity;²⁴⁶ in the enforcement context, broad mandates have created at least the potential for overreaching on the part of state actors executing United Nations mandates.²⁴⁷

This history is cause for concern at a time when the need for a more effective United Nations is dire. After all, if the purpose of a collective security system is to express and execute the security preferences of the international community, the system is surely weakened when its agent takes only a limited role in clarifying the political objectives of operations conducted in the community's name. The Security Council should move, as it demonstrated some willingness to do in Somalia,²⁴⁸ to exercise more dynamic political control over operations conducted under its authority.

Even in a post-cold war environment, however, this will not be easy. While there is obvious reason to believe that political consensus

246. See, e.g., DURCH & BLECHMAN, *supra* note 103, at 39-42; Indarjit Rikhye, *The Future of Peacekeeping*, in THE UNITED NATIONS AND PEACEKEEPING, *supra* note 96, at 170, 175-76.

247. See generally *supra* notes 47-58, 66-68 and accompanying text (asserting that the United States had complete authority over military matters, and almost complete control over political decisions, through the force of the Unified Command, which was established after unanimity among the Security Council members was no longer possible).

248. See *supra* notes 178-80 and accompanying text.

among the five permanent Security Council members will be more easily achieved than during the cold war, recent events demonstrate how the limited interests of one member can still impede a unified Security Council position on a vital concern.²⁴⁹ In such circumstances, a deliberately ambiguous mandate may be the only device that permits international action of any kind.²⁵⁰ As long as the international community chooses to vest constitutional authority for the authorization of force in a Security Council governed by veto, there seems to be no way of avoiding this problem. This should not, however, prevent the Security Council from exercising more assertive control in those instances in which consensus is possible.

There is, however, yet another obstacle to greater Security Council control. Even if consensus regarding the aims of an operation exists within the Security Council, there remains the issue of authority over forces responsible for carrying out the operation—an issue that will persist as long as the United Nations relies on a single state or managed coalition of states to conduct United Nations operations. In response to this dilemma, some have suggested that the United Nations ought to require future single-state or coalition force commanders to consult with, or be subject to, the Security Council (or some form of military authority appointed by the Council) regarding the political objectives and strategic direction of the operation.²⁵¹ This, it is suggested, would enable the United Nations

249. See, e.g., Julia Preston, *United Nations Tightens Yugoslav Sanctions*, WASH. POST, Apr. 18, 1993, at A1 (describing difficult Security Council negotiations with Russia prior to the Russian referendum regarding a resolution to intensify trade sanctions against Yugoslavia in order to increase pressure on the Serbs to cease attacks in Bosnia-Herzegovina).

250. DURCH & BLECHMAN, *supra* note 103, at 41; see also Horst, *supra* note 133, at 268-69 (noting the need to strike a balance in drafting a mandate sufficiently precise to prevent any misunderstanding over objectives but sufficiently vague to allow flexibility in the face of changed circumstances).

251. See Russett & Sutterlin, *supra* note 87, at 77-78.

One [solution] would be a variant of the procedure followed in Korea. National forces could be brought together in ad hoc fashion under a unified U.N. command, with the commander designated by whichever happened to be the major troop-contributing country. The problems that arose in the Korean case could conceivably be alleviated if the unified commander were required to consult with the Security Council, or with some form of military authority appointed by the council, on the mission of the military operation and the basic strategy to be followed in achieving it. . . . It would have the distinct advantage of maintaining a close U.N. identification with all action taken and of giving the Security Council some influence, if not control, over any military action.

Id.; see also MacKinlay & Chopra, *supra* note 134, at 124-29 (proposing that future operations might be conducted by a single state or managed coalition which would take political and strategic direction from the Security Council and Secretary General).

to accomplish United Nations objectives without losing control over United Nations operations.

While the idea of Security Council control and mandatory consultation is potentially useful and, in fact, was employed, at least in theory, during the UNITAF phase of the Somalia operation,²⁵² there are at least two significant issues that it leaves unaddressed. First, there traditionally has been no capacity within the United Nations to provide military direction of any kind.²⁵³ Thus, the notion of the United Nations "controlling" operations is, at least at the moment, unrealistic. Second, although the United Nations may have leverage to insist on control or consultation when the single-state or managed-coalition commander desires United Nations legitimization of an operation, the United Nations's leverage fades when an operation is less in the single state's or managed coalition's interest. In these cases, it will be difficult enough to persuade a single state or managed coalition to act at all, let alone cede control of its forces to the Security Council and Secretariat.

Thus, while Security Council control over United Nations operations is a desirable goal, it is not an inevitable consequence of the changed international environment. If the Security Council is ultimately to regain the control envisioned for it by the Charter signatories, it must promote two distinct and fundamental changes. First, the Security Council must encourage the development of a capacity within the United Nations for managing complex multinational operations; second, it should promote development of a greater capacity within and between states to conduct the peace enforcement operations the United Nations seems likely to confront. The successful achievement of both of these goals will depend, in large measure, on the extent to which all participants perceive they are able to cooperate without compromising their vital interests. A state will be more likely to cede control of its forces to a multinational command structure if it is confident it will have an input into the command decisions commensurate with its contribution, and that the command is competent to receive and act upon this input. This suggests the need for a confidence-building structure that allocates authority for political, strategic, administrative, and operational decision-making in a predictable and mutually satisfactory fashion.

252. See *supra* notes 178-79 and accompanying text.

253. See *supra* notes 51-53 and accompanying text.

Today, however, such a structure does not exist. What follows are steps the Security Council might consider to promote such a structure.

2. *Affirming the Secretary General's Executive Role.* While Chapter VII originally envisioned that the Security Council would receive its primary assistance in peace and security matters from the Military Staff Committee, forty-eight years of experience suggests that this mantle should fall today on the Secretary General. From Hammarskjold's initiation of UNEF through Boutros-Ghali's central role in the Somalia operation, the Secretary General has become the source of focus and direction for United Nations military and paramilitary operations. The Secretary General, as the United Nations's chief executive, is institutionally positioned both to provide the Security Council with focused recommendations and to execute Security Council mandates with efficiency and dispatch.²⁵⁴ In addition, the Secretary General gives the Security Council a necessary, if not always welcome, political perspective it would not receive from a panel of its own military officers. Thus, the Military Staff Committee, or any other group of military advisors, should report to the Security Council through the Secretary General.²⁵⁵

The fact that the Charter signatories made no mention of the Secretary General in Chapter VII does not prohibit the Security Council from placing military advisors at the Secretary General's disposal. The Charter makes clear, for example, that the Military Staff Committee "serves at the pleasure of the Security Council."²⁵⁶ The three articles dealing with the Military Staff Committee—Articles 45, 46, and 47—all use the word "assistance" when describing the Military Staff Committee's function *vis-à-vis* the Security Council.²⁵⁷ If the Security Council determines that the Military Staff Committee or some other military advisory body could best provide "assistance"

254. See generally Paul C. Szasz, *The Role of the U.N. Secretary General: Some Legal Aspects*, 24 N.Y.U. J. INT'L. L. & POL. 161 (1991) (describing some of the legal aspects of the Secretary General's position such as term of office and selection, as well as administrative, coordination, and political functions).

255. See *Senate Article 43 Hearing*, *supra* note 88, at 40 (statement of Leon A. Edney, former Commander in Chief, United States Atlantic Command) ("Strategic guidance and policy should come from the heads of state through the Secretary General to the military staff committee."). But see UNITED NATIONS ASSOCIATION, *supra* note 241, at 36 ("[F]or broad policy and strategic guidance, the commander of [a] multinational force should look not to the Secretary General but to the Military Staff Committee.").

256. David Scheffer, *Commentary on Collective Security*, in *LAW AND FORCE IN THE NEW INTERNATIONAL ORDER*, *supra* note 46, at 101, 106.

257. *Id.*

by reporting through the Secretary General, the Charter will not contradict this determination.²⁵⁸

3. *Creating a More Effective United Nations Command Capability.*

a. *Current changes within the Secretariat.* A fundamental reason why the United States and other militarily capable states have been reluctant to place their forces at the disposal of the United Nations is its lack of a headquarters for military planning and command capability.²⁵⁹ The Military Staff Committee has been dormant since 1948, and, despite a central role in peacekeeping operations, the Secretary General's military staff has long been a borderline operation incapable of managing modern military operations.²⁶⁰ There is strong evidence today, however, that this situation may be changing.

Under Secretary General for Peacekeeping Operations Kofi Annan has announced his plans to (1) develop a twenty-four hour operations center within the Secretariat, staffed with over one hundred officers, (2) enhance peacekeeping intelligence capabilities, (3) reorganize the peacekeeping department to develop a permanent

258. As Scheffer has observed, "there is a considerable degree of flexibility that can be accommodated in the operation of the Military Staff Committee." *Id.*

259. See, e.g., Goshko & Gellman, *supra* note 221, at A22.

260. See *Special Committee on Peace-keeping Operations Report*, *supra* note 245, at para. 23 (noting the "obvious necessity to strengthen substantially the Secretariat capability to plan, mount, coordinate and sustain peace-keeping operations"). For a revealing description of how the United Nations peacekeeping infrastructure has weakened, see MacKinlay & Chopra, *supra* note 134, at 115.

[T]here [has been] little pressure on [peacekeepers] to be militarily effective. In the field, there was no need for total operational reliability by day and night, and gaps in logistic arrangements were tolerated because they did not diminish results. This in turn removed pressure on the Secretariat to maintain an effective staff capability in New York. There was seldom any need, or facility, to maintain elaborate map rooms, with 24-hour vigilance and daily situation briefings. When the need arose, contingency planning could be carried out by co-opted staff officers who came and went on an ad hoc basis. Operational lessons were lost, UN equipment became obsolete, and military functions were largely conducted by a largely civilian Secretariat. Although the deployment of each new peacekeeping force began with minor blunders, once the modus operandi was established, lessons were soon forgotten. With the cold war stalemate in the Security Council, member nations had no incentive to improve military competence.

Id. For an operational perspective on United Nations headquarters support, see Simon Jones, *Gen. MacKenzie slams U.N.'s nine-to-fivers*, THE INDEPENDENT, Jan. 31, 1993, at 12 (quoting Canadian Major General Lewis MacKenzie, former head of United Nations forces in Sarajevo, as describing the United Nations as an incompetent "nine-to-five civilian operation. . . . Do not get into trouble as a commander in the field after 5 p.m. New York time, or Saturday and Sunday. There is no one to answer the phone.").

planning unit for future operations, and (4) increase the size of his personal staff.²⁶¹

In addition, the Military Advisor's office has begun plans to establish a stand-by peacekeeping force for which member states will be asked to provide troops and equipment on short notice for new missions, thereby avoiding the long delays that have plagued earlier operations.²⁶²

These are positive developments. What remains unclear, however, is whether the changes currently planned will be sufficient to make a difference in the long term. In addition to strengthening its capacity to support ongoing peacekeeping operations (which the current plans seem to do), the Secretariat should consider what specific steps it might take to encourage member states to enhance their individual and collective capacities to confront the "peace enforcement" missions that seem so likely in the future. Many of the nations that traditionally participate in peacekeeping operations are ill-equipped to deal with the new demands of "peace enforcement."²⁶³ If peacekeepers intend to do more than passively monitor these "second generation" aggressions,²⁶⁴ they will require new training and the ability to perform coordinated operations in a multinational context.²⁶⁵ Larger, more enforcement-oriented powers such as the United States can play a vital role in this process by offering both resources and expertise.²⁶⁶ Likewise, larger powers

261. See Lewis, *supra* note 3, at A10.

262. According to the current Military Advisor, General Maurice Baril, by the end of 1993 the Secretariat hoped to have a data bank that will list what sort of support each country is prepared to give.

Then, when the secretary-general takes a political decision, we can punch it out in the computer and say, 'We can have 5,000 men ready in seven days coming from these seven countries.' Short of a standing army, which would be nice, this is the way ahead. Ferguson, *supra* note 107, at A17. Creation of peacekeeping stand-by units would fulfill a need recognized by "some delegations." See *Special Committee on Peace-keeping Operations Report*, *supra* note 245, para. 17; see also *An Agenda for Peace*, *supra* note 138, para. 51.

263. See Weiss, *supra* note 145, at 61 ("Accomplishing the tasks in these operations would go far beyond both the expectations and the capacities of most countries that have contributed troops to UN peacekeeping operations during the Cold War.").

264. For a general discussion of "second generation" operations, see MacKinlay & Chopra, *supra* note 134, at 116-18.

265. Weiss, *supra* note 145, at 61 ("[Peace enforcement operations] would require a level of military professionalism and discipline not commonly found in previous UN peacekeeping operations. They would necessitate participation by the armies of major powers.").

266. See, e.g., DURCH & BLECHMAN, *supra* note 103, at 31, 88-89 (noting the essential contributions the permanent members can make but stating that operational military participation will be unwise if it would threaten the United Nations's reputation for even-handedness by making peacekeeping operations appear to be an instrument of domination by

can learn from states that have become expert in the peacekeeping methods that remain relevant in the new environment. Today, no one can claim a monopoly of expertise with respect to the challenges posed by the new "peace enforcement" missions. All of this suggests that the planning and support of such operations should be accomplished within a single organization that integrates the assets of the traditional peacekeeping states as well as of the larger powers.

This proposed "militarization" of the peacekeeping bureaucracy will no doubt make some nervous. When the Secretary General called for a revival of the Military Staff Committee in *An Agenda for Peace*, for example, he was quick to add that "the role of the Military Staff Committee should be seen in the context of Chapter VII, and not that of the planning or conduct of peace-keeping operations."²⁶⁷ His reluctance to involve the major military powers in peacekeeping operations is representative of deep-seated suspicion of military might held by United Nations Secretariat personnel as well as by a number of smaller and traditional peacekeeping states.²⁶⁸ While the sources of these misgivings are varied, one of the most significant concerns is that a failure to maintain a clear distinction between enforcement and peacekeeping will compromise the neutrality so essential for the latter's success.²⁶⁹ This is indeed a legitimate concern with respect to the composition of peacekeeping forces as well as the willingness of such forces to use power. Even as cold war memories fade, it is conceivable that the presence of a major power would inhibit the

the great powers); Rikhye, *supra* note 93, at 40 ("There is a pressing need for the United Nations to have available expertise in the conduct of limited police actions. Consideration should be given to engaging the [Military Staff Committee] for this purpose.").

267. *An Agenda for Peace*, *supra* note 138, para. 43.

268. See Augustus R. Norton & Thomas G. Weiss, *Rethinking Peacekeeping, in THE UNITED NATIONS AND PEACEKEEPING*, *supra* note 96, at 22, 29-30. Some states may harbor lingering cold war fears and resentment of superpower exploitation, while others, often those with military juntas in their past, share an aversion to all things military and find it difficult to countenance greater military influence in what has been, from their perspective, a relatively pacifist enterprise. DURCH & BLECHMAN, *supra* note 103, at 16. It seems these fears can be partially addressed by keeping cold war and colonial powers on the operational sidelines in appropriate circumstances. *Id.*

269. This theme was prominent during the August 1992 deliberations of the Special Committee on Peacekeeping Operations, which issued a special report commenting on various aspects of *An Agenda for Peace*. A number of states expressed strong reservations about the more aggressive aspects of *An Agenda for Peace*, including the concern that peace enforcement would compromise the neutrality of operations and could lead to a general tendency to overemphasize military solutions. See *Special Committee on Peacekeeping Operations Report*, *supra* note 245, paras. 21, 40, 43.

success of certain missions.²⁷⁰ Likewise, the disciplined nonuse of force will remain the key to the success of many missions.²⁷¹

Recognition of these realities, however, should not prevent the United Nations from developing a headquarters organization that is capable of supporting those operations that demand more than traditional peacekeeping, nor should it prevent the United Nations from playing a key role in accelerating the development of a greater multilateral capacity to conduct such operations. If the United Nations hopes to be relevant in the era of "peace enforcement," the Secretariat must be sufficiently flexible, and multinational forces must be sufficiently versatile, to conduct operations across all points on the conflict continuum. "Peace enforcement" scenarios may not always offer the luxury of a methodical transition between the force capabilities suited for different phases of an operation. If new capacities are to be developed to confront these exigencies, it seems clear that the traditional peacekeeping states must be capable—at least in certain conditions—of employing greater force, and that the larger powers such as the United States can no longer remain aloof from active planning and participation.

b. *Creating a United Nations Peace and Security Committee.* While many of the current developments within the Secretariat are encouraging, it is reasonable to ask whether the process should continue to evolve informally or whether an effort should be made to institutionalize these and other necessary changes. There are at least two reasons why an informal approach may be wise. First, any attempts to institutionalize an enhanced Secretariat staff might actually impede further progress: certain states may be willing to allow Under Secretary General Annan (and his United States supporters) to build an enhanced staff, but may be unwilling or unable to formally approve this development. In addition, from the United States perspective, an informal process seems likely to provide significant flexibility and influence while minimizing opportunities for interference that a more formal structure might promote.

Even so, a case can be made that a failure to promote an institutional basis for the emerging capability may be short-sighted. Establishment of a permanent Secretariat staff, complete with a clear

270. See DURCH & BLECHMAN, *supra* note 103, at 89 (noting that big power states "should never be included in an operation if that would threaten the United Nations's reputation for disinterested even-handedness").

271. See Urquhart, *supra* note 130, at 202.

mission statement, established personnel assignment procedures, professional development programs, etc., could help guarantee the successful (and efficient) evolution of the process currently underway. Apart from the benefits that institutionalization may provide the United Nations as a whole, there are also parochial reasons why the United States may wish to pursue more permanent arrangements. While the United States currently exercises considerable influence within the United Nations peace and security bureaucracy, it is not clear to what extent this is a function of a dominant troop contribution to what is currently the United Nations's biggest operation. It may be wise to use the current opportunity to fashion a more permanent structure that will help guarantee a continued influence which is not dependent on the contribution of massive forces to a particular operation.

If the United States is to promote a new peace and security structure within the United Nations, what should its significant features be? Clearly, any discussion of a military staff organization within the United Nations must begin with the Military Staff Committee. While there has been considerable discussion lately concerning a revival of the Military Staff Committee, a number of observers, including the Secretary General,²⁷² have rightly acknowledged that the Military Staff Committee, as currently constituted, is not representative of the states that shoulder much of the peace and security burden.²⁷³ Thus, while the Military Staff Committee might serve as the basis for a new military advisory body within the United Nations, perhaps the ideal staff would integrate the current Military Staff Committee member state capabilities with the experience of states that have served on peacekeeping's front lines.

272. *An Agenda for Peace*, *supra* note 138, para. 43 (advocating support of the Military Staff Committee to the Security Council in negotiating Article 43 agreements); *cf.* Weiss, *supra* note 145, at 58 (arguing that the wisdom of Boutros-Ghali's proposal in *An Agenda for Peace* to revive the Military Staff Committee is "doubtful").

273. UNITED NATIONS ASSOCIATION, *supra* note 241, at 39 (suggesting the possible need to improve Military Staff Committee membership by including senior officers in order to provide advice in an enforcement context); *see also* *Senate Article 43 Hearing*, *supra* note 88, at 40 (statement of Leon A. Edney). Former Military Advisor and Retired Indian Major General Indarjit Rikhye does not address the membership issue, but foresees only a limited role for the Military Staff Committee, proposing that the Military Staff Committee provide advice only "in the conduct of limited police actions." Rikhye, *supra* note 246, at 40. Rikhye reasons that states will wish to maintain complete control of "major enforcement actions," and that peacekeeping is best managed by the Secretary General. *Id.* at 37, 39.

This formula offers several advantages. First, by including current Military Staff Committee members, it draws upon their many assets (and hopefully encourages their political support). By assimilating a limited number of traditional peacekeeping states, it draws upon their expertise while acknowledging, within practical limits, the important contributions of medium- and small-sized states to the maintenance of peace and security in the contemporary environment. Both groups of states could be integrated in a single organization where decisions are taken by consensus, or, failing consensus, by some form of majority vote, so as not to paralyze the committee.

While the creation of a new United Nations Peace and Security Committee could be accomplished under Article 47(2), which provides that the Military Staff Committee can invite any United Nations member state to be “associated” with the Military Staff Committee when “the efficient discharge of the Committee’s responsibilities [so] requires,”²⁷⁴ it is arguably more appropriate for the Security Council to establish the new staff under the authority of Article 29, which provides that “[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.”²⁷⁵ Establishing the committee as a subsidiary organ would suggest a permanence that is lacking in Article 47. The subsidiary organ would also send a signal to the new members that they are equal partners in the enterprise and not merely participants at Military Staff Committee sufferance.

The new Peace and Security Committee might perform many of the functions originally intended for the Military Staff Committee. The Charter provides that the Military Staff Committee shall advise the Security Council on “military requirements,”²⁷⁶ and also that the Military Staff Committee should assist the Security Council in making “[p]lans for the application of armed force.”²⁷⁷ While neither function has ever been defined, it seems reasonable, with or without Article 43 special agreements, to read these provisions as a mandate for “force planning” to include: force structure decisions, negotiation of necessary standby agreements, planning of joint training exercises, and development of national contingent training programs. As Under Secretary General Annan has recognized, these functions will be

274. U.N. CHARTER art. 47, para. 2.

275. *Id.* art. 29.

276. *Id.* art. 47, para. 1.

277. *Id.* art. 46.

necessary if the United Nations is to develop a more advanced enforcement capability than it currently possesses. The proposed Peace and Security Staff Committee would, of course, require staff support. While the organizational details and personnel assignment policies of such a staff are beyond the scope of this Article, it could resemble the staff currently being constructed in the Secretariat.²⁷⁸

4. *Involving Troop Contributors in Strategic Direction.* While the proposed Peace and Security Committee seems capable of making its most valuable contributions in the realm of force planning, it is less clear whether it has a contribution to make in other areas originally designed for Military Staff Committee involvement. This is particularly true of the strategic direction function. While professional strategic direction remains a vital part of any military operation, a strong case can be made that the Security Council and Secretary General should be assisted in this regard not by a large standing committee, but by a smaller group composed of the states that put their forces at risk in service of particular United Nations missions. The rationale is straightforward: the more control nations have over deployment of their forces by a United Nations command, the more likely they will be to commit their forces to such a command.

To some extent, the objective of contributing state control has been served in the past by assigning the force commander and deputy force commander from states making significant troop contributions.²⁷⁹ This practice, however, provides representation for only a few states. In addition, it does nothing to address the lack of representation that currently exists at the strategic level. Once forces have been committed to a United Nations operation, there is no

278. Alternatively, such a staff might be patterned on the NATO model. The NATO Military Committee is supported by the International Military Staff, which is comprised of about 150 officers, 150 enlisted personnel, and 100 civilian employees. Military personnel are generally seconded from national military establishments. The Director of the International Military Staff is normally:

an officer of three-star rank who is nominated by the member nations and selected by the Military Committee. He or she may be from any of the member nations but must be a different nationality than the Chairman of the Military Committee. The Director is assisted by six Assistant Directors of flag or general officer rank.

NATO INFORMATION SERVICE, *supra* note 218, at 338-39. As the executive agent of the Military Committee, the International Military Staff is responsible for ensuring that the policies and decisions of the Military Committee are implemented as directed. *Id.* at 340-43.

279. Cf. UNITED NATIONS ASSOCIATION, *supra* note 241, at 36 (“[I]n any situation where a substantial share of the forces mobilized for an enforcement operation comes from a single country, the nation supplying them will have a justifiable claim to furnish the commander of the multinational force.”).

established mechanism through which troop contributing states can provide input on the use of their forces in a particular operation.²⁸⁰

To say that there is no established *mechanism* for troop contributor participation is not to say that the Charter provides no *basis* for troop contributor participation. Indeed, the signatories attempted to address this issue in two separate articles. Article 44 requires the Security Council to invite a potential troop contributor to “participate in the decisions of the Security Council concerning the employment of contingents of that Member’s armed forces.”²⁸¹ Article 44, however, has never been invoked.

Article 47(2) also provides a basis for contributing state input into deployment decisions, providing that:

[a]ny Member of the United Nations not permanently represented on the [Military Staff] Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee’s responsibilities requires the participation of that Member in its work.²⁸²

This language contains several ambiguities. First, it is not clear “when the efficient discharge of the Committee’s responsibilities requires the participation” of troop contributors. In addition, even if a troop contributor is invited to “be associated” with the committee, it is unclear what this right of association involves. Presumably an associated state would be given some input into strategic decision-making, though the parameters of that input are unclear.

The Security Council could benefit from the flexibility in Articles 44 and 47(2) by creating a structure to ensure that troop contributing states have the maximum possible voice in the strategic direction of their forces. This could be accomplished by creating strategic councils of troop contributing states to advise the Secretary General on the strategic direction of United Nations forces. Membership on the councils would not be permanent, but would vary depending on the

280. See, e.g., Alan Ferguson, ‘Big Five’ Still Dominate Key United Nations Decisions, *TORONTO STAR*, Apr. 11, 1993, at F1 (asserting that major Security Council decisions are made at secret meetings of “the permanent five”). There has been extensive consultation between the United States and the United Nations throughout the course of the Somalia intervention. For a description of the consultative mechanisms established between the United Nations and the United States with respect to Somalia, see *Report of 3 March*, *supra* note 152, para. 7. See also Stanley Meisler, *U.S., U.N. Apparently Agree on Somali Command*, *L.A. TIMES*, Feb. 23, 1993, at A19 (reporting that despite “public bickering,” Boutros-Ghali consulted extensively with the United States while preparing his March 3 report to the Security Council, and, as a result, the United States did not expect to be “surprised or troubled in any way by his conclusions”).

281. U.N. CHARTER art. 44.

282. *Id.* art. 47, para. 2.

composition of a particular operation. These strategic councils would have no authority to exercise command over deployed forces, but the Secretary General would be required to consult with the councils. In addition, they would be the preferred means for the communication of military guidance to deployed forces.²⁸³

Because the purpose of a strategic council would be to ensure a voice for those nations making the largest personnel contributions to a particular United Nations operation, factors such as geographical diversity and ideological representation would carry little weight in determining membership for each council. For example, if Turkey, Belgium, and India were the three largest troop contributors in a particular operation, they would hold seats on the strategic council for that operation. Likewise, if the United States, Great Britain, and France were the largest contributors, they would fill strategic council seats. The largest troop contributing state might serve as chair of the council and would speak on its behalf; of course, other members would not be prevented from expressing dissenting views.²⁸⁴

The proposal to create an institutionalized role for troop contributors raises an interesting issue of Charter interpretation. Article 47(3) states that the Military Staff Committee shall be responsible for strategic direction "under the Security Council."²⁸⁵ While the Security Council can direct the Military Staff Committee to perform its strategic direction function under the direction of the Secretary General (either on its own accord or as part of an Article 29 Peace and Security Committee), the Charter's plain language does not clearly indicate that the Security Council may completely divest the Military Staff Committee of its strategic direction function.²⁸⁶

283. Parallel lines of communication would be required for peacekeeping operations, requiring the Special Representative to communicate directly with the Secretary General, and the strategic council to communicate with the force commander on military matters.

284. The idea to provide troop contributing nations an institutionalized voice in the Secretary General's decision-making process is not unprecedented. See *supra* notes 109-18 and accompanying text.

285. U.N. CHARTER art. 47, para. 3.

286. As long as Article 43 agreements are not in place, this provision may be no restraint at all. Under Article 47(3), the Military Staff Committee is responsible for the "strategic direction of any *armed forces placed at the disposal of the Security Council*." U.N. CHARTER art. 47, para. 3 (emphasis added). This language seems to refer to forces that have been assembled pursuant to Article 43 agreements. Until Article 43 agreements are concluded, forces arguably have not been "placed at the disposal of the Security Council," and the Military Staff Committee has no forces over which to exercise "strategic direction." This view is certainly consistent with Security Council practice in the absence of Article 43 agreements.

The most obvious answer to this objection is to note that creation of the strategic council as a subsidiary organ under Article 29 is consistent with what might be accomplished pursuant to Article 47(3), under which troop contributing countries could be associated with the Military Staff Committee, and then constituted as a subcommittee of the Military Staff Committee. The subcommittee could then be delegated authority to perform the strategic direction function on behalf of the Military Staff Committee.

5. *Remaking the Military Advisor.* Under the framework described above, the primary role of the proposed Peace and Security Committee would be to serve as a force planning organ, reporting to the Security Council through the Secretary General. The proposed strategic councils would provide strategic advice and direction under supervision of the Secretary General and Security Council. This structure, however, lacks a crucial element: with the Peace and Security Staff providing infrastructure and force planning and a variety of strategic councils providing strategic advice on particular operations, the Secretary General would lack a single contact to coordinate the various sources of military input. Traditionally, the Secretary General's institutional source of military advice has been the Military Advisor.²⁸⁷ It may be argued, however, that if member states are asked to participate in a United Nations command structure in which additional authority is vested in the Secretary General, member states should also have more input into the selection of the officer who will serve as the primary conduit of military advice affecting their forces.

An obvious way to guarantee such input would be to have the Military Advisor approved by the Security Council after nomination by the Secretary General. This is not the radical step it seems, for it would merely make the selection process for the Military Advisor consistent with the selection process for peacekeeping force commanders and special representatives.²⁸⁸

In addition, further steps are appropriate. The Security Council, for example, should mandate that the Military Advisor serve a fixed two or three year term, which would guarantee continuity of advice²⁸⁹ but also ensure a periodic fresh perspective. The Military

287. See DURCH & BLECHMAN, *supra* note 103, at 68.

288. See *supra* text accompanying note 119.

289. See *Senate Article 43 Hearing*, *supra* note 88, at 40 (statement of Admiral Edney). The Chairman of the NATO Military Committee is elected by the Chiefs of Staff for a three-year

Advisor might also be nominated from a Peace and Security Staff member state and be required to have previous significant United Nations command experience.²⁹⁰

These proposals seem appropriate given the anticipated increase in the Military Advisor's responsibilities. The Military Advisor would have an opportunity to make final recommendations to the Secretary General across the range of force planning issues considered by the Military Staff Committee and would have a right to participate in strategic council deliberations as well, even though this participation would be in an advisory capacity only.²⁹¹ Of necessity, the Military Advisor, with the assistance of the Peace and Security Staff discussed earlier, would also fulfill an essential coordinating function between the Peace and Security Committee and the various strategic councils.

Reform of this type could not be accomplished by Security Council fiat. The Military Advisor is currently appointed pursuant to the Secretary General's authority to name Secretariat staff under regulations established by the General Assembly.²⁹² While the Secretary General would presumably not yield such a prerogative lightly, the loss of complete discretion over the Military Advisor's selection would be accompanied by a considerable gain in overall authority—a gain that should facilitate this change.

Appendix I demonstrates how the Security Council, the Secretary General, the Military Advisor, the proposed Peace and Security Committee and staff, and the strategic councils would be integrated in a neo-Charter United Nations headquarters model.

6. *Maintaining Flexibility in the Selection of Quality Commanders.* Ironically, the one element of the Charter's original command and control model that has gained an element of predictability from years of consistent practice is the method of selecting theater or force commanders. During the United Nations's large-scale enforcement operations, commanders have been provided by the United States with no approval by the United Nations. For peacekeeping operations, the selection of commanders has consistently been made by the Secretary General subject to the approval of the Security Council.

term. NATO INFORMATION SERVICE, *supra* note 218, at 339.

290. The requirement of previous United Nations command experience might be waivable until a large enough pool of experienced commanders is developed.

291. The Military Advisor would also be permitted to participate in meetings between the chair of a given strategic council and the Secretary General.

292. U.N. CHARTER art. 101, para. 1.

There seems to be no reason to change the basic practice. If the United Nations has occasion to rely on the single-state model, it is appropriate that the state should select its force commander.²⁹³ As force composition becomes more diverse, however, the Secretary General should make the selection. While it would be helpful to have an approved roster of commanders from which the Secretary General could choose,²⁹⁴ the selection of the commander for a particular operation will depend on the composition of the force as well as the mission's unique military and political requirements.

VI. CONCLUSION

If the United Nations is to assume greater responsibility for the maintenance of international peace and security in the era of peace enforcement, both the United States and the United Nations must come to terms with present weaknesses in the United Nations's ability to command and control the military operations conducted in its name. Recent events suggest some progress in this regard. The Secretariat has initiated important changes to build an enhanced headquarters capability with which to oversee its new operations, and the Clinton Administration supports this progress. In addition, despite its flaws, the ad hoc command and control arrangements devised for Somalia demonstrate a vital adaptive capacity within the United States and United Nations relationship that should serve both parties well in future operations. While the complete extent of NATO involvement in the former Yugoslavia remains unclear, there is at least some prospect that a newly energized NATO might serve both as a multinational manager for future United Nations-authorized coalitions as well as a multinational vehicle for United States participation in such operations.

Given the current state of United Nations capabilities and the inherent difficulty of organizing collective security in a diverse international organization, it may be that a newly organized NATO force operating under a United Nations mandate, in addition to an incrementally reformed peacekeeping bureaucracy, is as much as the United States or the United Nations can hope for. Before settling on this approach, however, both the United States and the United

293. *But see* MacKinlay & Chopra, *supra* note 134, at 128 (noting that the Security Council should appoint the commander of a force operating under United Nations mandate, even if it is designed to meet a situation internal to the regional organization itself).

294. *See* Norton & Weiss, *supra* note 268, at 29.

Nations ought to realize what they will be missing. NATO is not sufficiently diverse to serve as a substitute for the international community, and NATO goals will inevitably diverge from United Nations goals.²⁹⁵ Likewise, NATO is not sufficiently separate from the United States to shield it from the burdens of fighting and dying—NATO's battles are likely to remain United States battles. Neither NATO nor any other existing command and control model seems likely to remove the inherent tension from a United States and United Nations relationship in which each party recognizes its need for the other but continues to find accommodation difficult for fear that its vital interests will be compromised in the process.

In many respects, the model proposed here is heir to the original Chapter VII model that envisioned real political authority for the Security Council and a significant role for the large powers, including the United States. The new model recognizes, however, that many of Chapter VII's original assumptions have changed, and that the maintenance of peace and security is no longer the exclusive province of the permanent five members.

Because this neo-Charter model of command and control asks each of its participants to forfeit something, there is no reason to believe that implementation will be easy. Current Military Staff Committee members would be asked to accept the potential dilution of influence inherent in expanded committee membership and supervision by the Secretary General. Traditional peacekeeping states would be asked to cooperate with states that have traditionally been only remotely involved in peacekeeping. The Secretary General would be asked to rely more heavily on the professional expertise of the Military Staff Committee and troop contributing states and to yield control over his or her closest source of professional military advice. Perhaps most importantly, the United States would be asked to cede a degree of political and strategic authority to the Security Council as well as the Secretariat. All of this might lead participants

295. Cf. Frederick Bonnard, *A United Nations Command for a New Force*, INT'L HERALD TRIB., Mar. 4, 1993 ("NATO cannot appear to become the world's policeman. This role is properly that of the United Nations."); Weiss, *supra* note 145, at 63 ("The United Nations is the logical convener of future international military operations. Rhetoric about regional organizations risks slowing down or even making impossible more timely and vigorous action by the UN, the one organization most likely to fulfil adequately the role of regional conflict manager.").

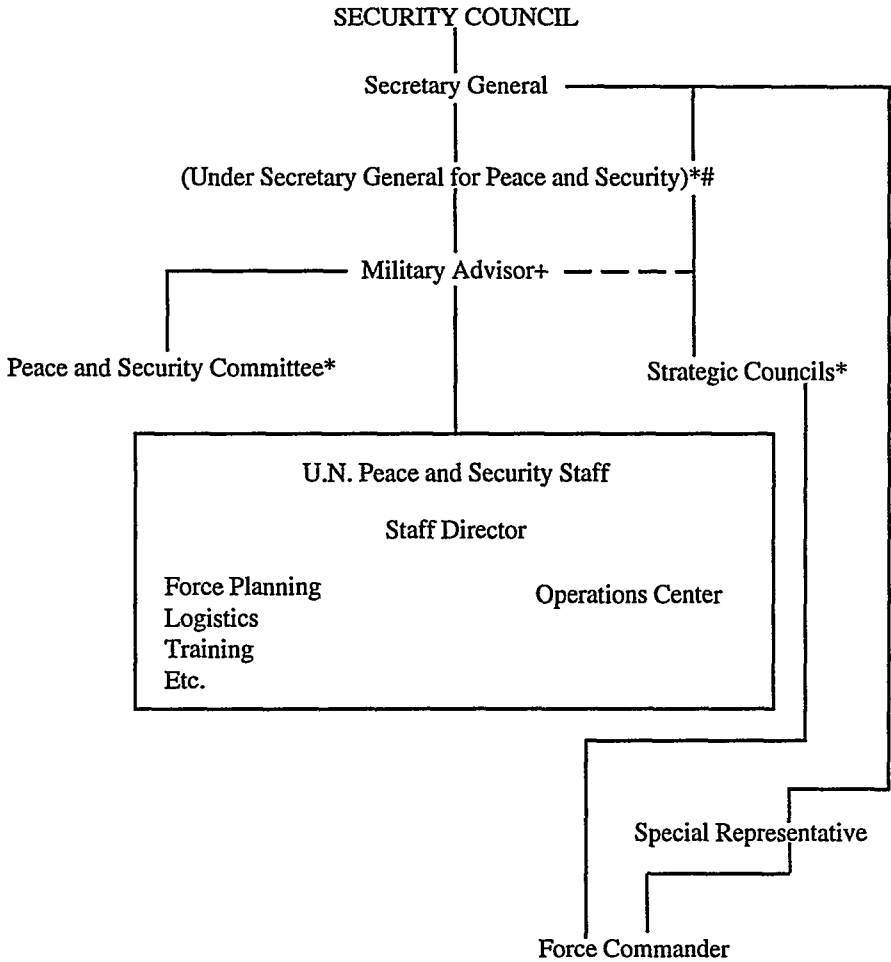
to conclude that this neo-Charter model is “too much, too fast,” especially if they perceive that ad hoc, informal measures are meeting current needs.

Even so, a United Nations command and control regime that allows all participants to contribute to the development of an important international capacity without compromising their vital interests is worth the effort in the long term. While we would do well to realize, as has the Secretary General, that this is “not a time to be utopian [and] the margin by which the UN can affect critical situations is narrow,” it also seems that “we do not have the luxury of lowering our sights.”²⁹⁶ As the Secretary General has astutely observed, and as current events remind us, “We live in a globalized world. There are needs which only the United Nations can meet.”²⁹⁷

296. Boutros-Ghali, *supra* note 92, at 11.

297. *Id.*

APPENDIX I: PROPOSED ORGANIZATION



* Does not exist.

Similar to an idea originally proposed by DURCH & BLECHMAN, *supra* note 103, at 98.

+ Exists, but nature of position is changed under proposed structure.

