

*The Co-operation between the United Nations
and Regional Organisations in
Conflict-related scenarios:
Lessons from the Last Yugoslav Wars*

Ph.D. Thesis of Mr. Ugo Caruso

TABLES OF CONTENTS

<i>Introduction</i>	5
<i>Section I - Country-by-Country Analysis</i>	
Analysis of the Interplay in Croatia	
Historical Background	9
Co-operation at the Headquarters level	19
Co-operation in the Field	28
Evaluation of the Co-operation	33
Analysis of the Interplay in Bosnia-Herzegovina	
Historical Background	37
Co-operation at the Headquarters level	54
Co-operation in the Field	63
Evaluation of the Co-operation	114
Analysis of the Interplay in the FRY	
Historical Background	121
Analysis of the Co-operation	123
Analysis of the Interplay in Kosovo	
Historical Background	131
Co-operation at the Headquarters level	139
Co-operation in the Field	155
The Kosovo Declaration of Independence and the International Community	158
Evaluation of the Co-operation	171
Lessons UN-Learned from Bosnia	177
Analysis of the Interplay in FYR of Macedonia	
Historical Background	179
Co-operation at the Headquarters level	185
Co-operation in the Field	187
Evaluation of the Co-operation	190

Section II - co-operative trends, Lessons learned & Normative Dimension

Inter-organizational co-operation, Trends of an evolving attitude

The United Nations and the co-operation with Regional Arrangements or Agencies 195

The evolution of NATO and its approach to international co-operation 206

The Organisation for Security and Co-operation in Europe 218

The European Union – cooperative modalities in the frame of civil and military capacity building 225

Lessons learned and co-operative trends 235

The Normative Relevance of ‘International Cooperation’ – First Possible

Conclusions

The guidance provided by the UN Charter 245

Final considerations 260

Bibliography 267

INTRODUCTION

The analysis of the interplay between international organisations involved in conflict-related scenarios is today a matter of priority for the modern peace operations. Multifunctional peace operations normally take place in difficult political, security, economic and humanitarian environments and therefore require effective co-operation and coordination. However, the question of who should carry out such activities has resulted in overlapping of interests and responsibilities.

The present research, initiated in the context of the MIRICO Project “*Human and Minority Rights in the Life Cycle of Ethnic Conflicts*”, attempts to provide for an overview of the state of co-operation between the United Nations and regional organizations like the CoE, OSCE, EU and NATO during the last Yugoslav wars, considering the 1991-2008 period. In this case, the “reconstruction” of what the organisations did in each of the countries involved in the conflicts, the *country-by-country* approach used in writing the research and the consideration of both headquarters and field level should facilitate the understanding of the state of things at that time. The “evaluation of the co-operation” at the end of each country analysis is functional to the identification of final lessons learned. Furthermore, the reference to the broad concept of “peace operations” has been intentionally used in the study to include the different typologies of international intervention in conflict-related scenarios (from conflict prevention to peacebuilding and reconstruction).

The research further includes an analysis of the co-operative trends developed by the considered international organisations since the beginning of the 1990s and is

concluded by a reflection on the normative relevance of the issue of “international cooperation”. In this case, the intention of the author was to go beyond the general policy level approach used for the description of UN-regional organizations interaction and propose a re-consideration of the concept of “international co-operation” as a possible normative tool in guiding the so far nebulous division of tasks of international actors in conflict-related scenarios. In this case, the concise description of the general framework for co-operation under Chapter VIII of the UN Charter, already matter of wide debate by academics and practitioners, sets the frame for a more elaborate, and hopefully innovative, consideration of the notion of “international cooperation”. This, of course, is to be contextualised to the lessons learned extrapolated from the case study. Other cases of co-operation among UN-regional organisations have not been considered in the research, being the eventual comparative analysis, with a different case study, not grounded on an equally comprehensive investigation of the inter-organizational interaction both at headquarters and in the field.

Finally, given the magnitude of dramatic events happening in the former Yugoslavia the process of extrapolation of hopefully valuable lessons learned cannot be considered exhaustive nor closed to eventual further elaborations.

SECTION I

COUNTRY-BY-COUNTRY ANALYSIS

ANALYSIS OF THE CO-OPERATION IN CROATIA

I. HISTORICAL BACKGROUND

The War in Croatia began in autumn 1991, yet as early as August the Serbs from Krajina already strongly opposed the Croatian government.¹ A major escalation began in February 1991 when Serb militia attempted to broaden their area of control by seizing a police station and municipal building in the small town of Pakrac in western Slavonia. Later on, an attempt to take control of the Plitvice national park complex followed in late March, after the HDZ² had established an all-Croatian new police station in the local town of Titova Korenica, provoking clashes with the Croatian National Guard.³ During the spring of 1991, the Krajina Serbs began asserting their own independence through actions hostile to the Croatian government. Radical SDS⁴ members seized government police stations and erected barricades at the entrances of Serb-populated towns while the SDS demanded Eastern Slavonia's annexation to

¹ In spring 1990, the first post-communist elections in Croatia saw the victory of the HDZ and Franjo Tudjman was elected as President. Propaganda from Belgrade and the discriminatory policies resulted in violent incidents in the Krajina in August 1990. The Yugoslav National Army (JNA), under Mr. Milosevic's control, prevented the Croatian authorities from restoring law and order.

² HDZ is the acronym of the party *Hrvatska Demokratska Zajednica* (Croatian Democratic Union).

³ Craig R. Nation, *War in the Balkans, 1991-2002*, Strategic Studies Institute, U.S. Army War College August 2003, 104.

⁴ SDS is the acronym of Serbian Democratic Party, which was created in the Krajina area of Croatia in response to the Croatian nationalism. The Party formally recognised the independence of Slovenia in date 4 July 1991.

Serbia, along with Krajina's independence.⁵ In May 1991, Serb leaders, going against the established rotation procedure, prevented Stjepan Mesic from becoming the new Yugoslav President and Commander-in chief of the Yugoslav National Army. In the referendum on 19 May 1991 Croatia supported independence; the outcome, however, was not accepted by the Serbs of Krajina, who in fact asked for the unification with Serbia. Furthermore, on 24 July 1991 Zagreb and Slovenia announced their "dissociation" from the Yugoslav federation. A decision that triggered the deployment of Serbian Federal Army within Slovenia to reassert control over the state border.⁶

A. International intervention and the Brioni agreement

Following the reaction of Belgrade, the Slovenian government requested diplomatic mediation on the part of the European Community (EC)⁷ and of the Conference on Security and Cooperation in Europe (CSCE). On 27 June 1991, EC Ministers, accepting the request, concurred not to recognize the Slovene and Croat secessions and called for the restoration of the territorial integrity of Yugoslavia. Following this decision an EC Troika, composed of Foreign Ministers of Luxembourg, Italy and the Netherlands, was dispatched to help mediate the Slovene conflict.⁸ The Troika brokered a cease-fire agreement: the withdrawal of JNA troops in exchange for three-month suspension on Slovene and Croat independence. This was in fact the content of the Brioni Agreement signed on 7 July 1991 under the political sponsorship of the EC.⁹ As per agreement, both of the separatist republics were also requested to accept the presence on their territory of an international observer mission organized by the EC in support of the CSCE.¹⁰ The monitoring body, namely the European Community Monitor Mission (ECMM), was composed of both civilian and military monitors, all of whom were unarmed. Its mandate was to help stabilise the cease-fire and monitor the implementation of the Brioni Agreement commitments. in this case it worth noting that

⁵ Alan Hanson, "Croatian Independence from Yugoslavia, 1991-1992", in Melanie C. Greenberg, John H. Barton and Margaret E. McGuinness (eds.), *Words over War: Mediation and Arbitration to Prevent Deadly Conflicts*, Carnegie Commission on Preventing Deadly Conflict, New York 2000, 83.

⁶ Jože Pirjevec, *Le Guerre Jugoslave 1991-1999*, Einaudi, Torino 2002, 35-63.

⁷ The term is to be considered as reflecting the pre-Maastricht institutional set-up and the coexistence of *Communities* like ECSC, EEC and EAEC. In this context, however, prominent role was played by the then European Economic Commission.

⁸ In fact two missions were rapidly mounted to Yugoslavia.

⁹ Jože Pirjevec, *op.cit.* note 6, 85.

¹⁰ Craig R. Nation, *op.cit.* note 3, 104.

the mission was anticipated by a ‘good offices mission’ organised by CSCE and mandated to work in tandem with the mediation effort of the EC and aimed to “facilitate the political dialogue among the parties concerned.”¹¹

Regarding the Brioni Agreement it has to be clarified that the accord, even considering the increased stability of the region, actually spelled the end of the Yugoslav Federation. It merely established a moratorium on the implementation of independence but not a prohibition on the right of unilateral secession for Slovenia and Croatia. In the meantime, the area controlled by the Krajina Serbs expanded rapidly into the summer of 1991; Serb militias were reinforced by the interventions of the JNA, whose action objectively supported local aggression on the ground.

B. From EC to UN administration

Following the Brioni Accord of 7 July 1991, and preparations for EC-sponsored general settlement negotiations, the EC authorized the Peace Conference on Yugoslavia and appointed Lord Carrington as chair. The EC Peace Conference (EPC) constituted the EC’s primary mediation vehicle during the first year of the Yugoslav crisis.¹² In addition, in July and August, the EC dispatched a new Troika, composed of the Foreign Ministers of Luxembourg, the Netherlands and Portugal¹³, to negotiate through the intermediary of the rump Yugoslav Federal Presidency.¹⁴ Furthermore, the European Community, in its declaration of 27 August, confirmed to “stand idly by as the bloodshed in Croatia increases day by day” and urged the parties to accept a peace conference and the setting up of “an arbitration procedure”.¹⁵ The EPC was actually established in conjunction with an arbitration procedure through which participants in the Conference could submit their differences for judicial consideration. The Commission overseen the arbitration procedure (the so-called Badinter Commission, named after its chair Judge Robert Badinter of France) was composed of five members chosen from the Constitutional Courts of EC member countries and appointed respectively by the Yugoslav Federal Presidency and the EC. Officially

¹¹ Offer of CSCE Good Offices Mission to Yugoslavia (Prague, 4 July 1991) in Mark Weller, *The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia*, in *American Journal of International Law*, Vol. 86 (1992), 569-607, 573.

¹² Alan Hanson, *op.cit.* note 5, 86.

¹³ Mark Weller, *supra* note 11, 571.

¹⁴ The Federal Presidency disappeared with the creation of the new Federal Republic of Yugoslavia in April 1992.

¹⁵ See EPC Declaration of 27 August 1991, EPC Press Release 82/91, Brussels.

convening the Peace Conference depended upon two related prerequisites: the first prerequisite was the signing of a cease-fire agreement among the six republics and the federal government; the second was the extension of the ECMM's mandate to include monitoring of the implementation of this cease-fire.¹⁶ The value of the Conference negotiations were nevertheless, and despite the efforts, undermined by the precariousness of the cease-fire agreement; in fact on 1 September it was violated. At this point, contrary to EC intent, the Conference had been convened while hostilities among the Croatian National Guard, Serb paramilitaries, and the JNA¹⁷ continued to erupt; in fact, since September, the fighting in Croatia had escalated dramatically. In these circumstances, the United Nations Security Council (UNSC), through the adoption of Resolution 713 and recalling *inter alia* provisions of Chapter VIII of the Charter, commended "the efforts undertaken by the European Community and its member States, with the support of the States participating in the CSCE, to restore peace and dialogue in Yugoslavia, through, *inter alia*, the implementation of a cease-fire including the sending of observers, the convening of a Conference on Yugoslavia, including the mechanisms set forth within it, and the suspension of the delivery of all weapons and military equipment to Yugoslavia".¹⁸

From the political point of view, EPC started to understand its weakness during its plenary session held on 18 October 1991 when Carrington presented his "Arrangement for General Settlement", the plan for the constitutional reorganization of the federation. Following the presentation, on 30 October 1991, Serbia and Montenegro jointly proposed an amendment to Article 1 of the plan.¹⁹ Carrington's refusal of the amendment and relative rejection of the Serb ambitions determined the fall of interest in the general settlement by the Serbs. The EPC never moved beyond this point.²⁰ In addition, there was also another obstacle in the progress toward a general settlement: the persistence of war in Croatia. From their side, Serbia decided to achieve on the ground what they would never achieve through negotiations with Carrington. On 4 October, the day on which all participants to the EPC agreed to the fundamental

¹⁶ "Cease-Fire Agreement" and "Memorandum of Understanding on the Extension of Monitoring Activities of the Monitor Mission to Yugoslavia", in *Review of International Affairs* vol. xlii (5.X-5.XI 1991), 24 and 26.

¹⁷ JNA is the acronym of the Yugoslav People's Army.

¹⁸ UNSC Resolution 713, S/RES/713, 25 September 1991.

¹⁹ The amendment regarded the request for the Serbian succession to the Yugoslav State comprising of all non seceding republics.

²⁰ Andreas G. Kintis, "The EU's CFCP: The Politics of Procedure", in Holland Martin (ed.), *Common Foreign and Security Policy. The Records and Reforms*, Pinter Publishers, London 1997, 151.

principles of peace, coincided with the most violent attack conducted by Serbian forces. A combined Serb–JNA force bombarded Vukovar from the ground and the air and attacked the city hospital. The destruction of Vukovar, followed by Dubrovnik had a great impact on the world opinion, and a negative effect on the Serb position in the conflict.²¹ A lack of results contributed to the gradual effacement of the EC’s mediation role in favour of the United Nations (UN). On 25 September 1991, in response to a request presented by Belgium, France, Great Britain and the same Yugoslavia, the UN declared an arms embargo against all conflicting parties. On October 8, former U.S. Secretary of State Cyrus Vance was appointed by the then UN Secretary-General Javier Pérez de Cuéllar as his personal representative to the region. Under Vance the UN’s role expanded rapidly, and it was under UN auspices that a ceasefire agreement (the fifteenth) was finally accepted by the warring factions and signed on 2 January 1992. Considering the context and the importance of the cease-fire agreement, it should be underlined that even if different from the one supported by the EPC, the UN was able to achieve a cessation of hostilities in Croatia. The Implementing Accord provided for a sustainable cease-fire that enabled the UN to deploy the UN PROTECTION FORCE (UNPROFOR) and created the conditions for political track negotiations. The EC’s inability to stop the fighting significantly undermined its ability and credibility to reach a political solution to the Yugoslav crisis.²² On the Serbian side, Milosevic was supporting the idea of a UN Peacekeeping Operation, this pursuant his will to consolidate the territorial gains that Serb forces made in the war against Croatia. However, while the peacekeeping force effectively carried out the cease-fire agreement, it also gave Serbia the opportunity to re-deploy troops in Bosnia–Herzegovina, the next battleground for Serb supremacy. Later on, in February 1992, the UNSC Resolution 743 finally decided for the deployment of what was a 14,000 UN Protection Force (UNPROFOR) involving more than thirty nations, the second largest UN peacekeeping contingent ever assembled, and establishing the UN Protected Areas (UNPAs) inside Croatia.²³ The original UNPROFOR headquarters, however, was incongruously established in Sarajevo. In the light of UN

²¹ Misha Glenny, *The Fall of Yugoslavia: The Third Balkan War*, Penguin, Harmondsworth 1992, 136.

²² Alan Hanson, *op.cit.* note 5, 79.

²³ The UNPAs were non-contiguous areas established in Eastern and Western Slavonia and Northern and Southern Krajina, known as sectors East, West, North, and South. See UNSC Resolution 743, S/RES/743 (1992), 21 February 1992. The work of UNPROFOR in light of the UN Security Council Resolution 743 will be analysed in the following chapter on Bosnia and Herzegovina.

deployment, the CSCE clarified its position explaining that “the stationing of peacekeeping forces must not in any way endorse the seizure of territory by force”.²⁴

C. The German recognition and its consequences

After 11 December 1991 and actually during the UN cease-fire, German Minister for Foreign Affairs Hans-Dietrich Genscher informed the EC ministers that Germany planning to break ranks with EC foreign policy and recognise Croatian sovereignty unilaterally. In light of the impending German defection, the EPC Council of Foreign Ministers was convened in an extraordinary Ministerial Meeting on 15-16 December to settle the recognition issue between the German coalition and other EC member states. Without considering the view of the other member states, Germany unilaterally recognized the sovereignty of Croatia and Slovenia on 23 December 1991. The early recognition arrived before the Badinter Commission’s opinion as to their qualifications. On 11 January 1992 when the opinion was issued, the Badinter Commission found that Croatia failed, without reservation, to qualify for EC recognition under the EC guidelines. Concurrent with the issuance of the Badinter Commission opinion regarding Croatia, Genscher proclaimed that it did not have legally binding effect for EC member states, because it was a device of arbitration not of international law. Following Germany’s lead, on 15 January 1992, the whole EC recognized Croatian sovereignty despite the findings of its own arbitral tribunal.²⁵ In this context, the risks of the German recognition were very well understood by the UN and by the same Lord Carrington. Secretary-General Perez de Cuellar even dispatched a letter to Minister Van den Broek, by then the Netherlands was holding the Presidency of EC, on 10 December 1991, stating in explicit terms that premature, selective recognition of Croatian independence would lead to disastrous consequences for the EPC and the Republic of Bosnia-Herzegovina.²⁶ On 13 December 1991, in a letter to the UN Secretary-General, German Foreign Minister Genscher wrote:

“[...] To refuse recognition to those republics which desire their independence must lead to a further escalation of the use of force by the national Army which would construe it as a validation of its policy of conquest...[P]ursuant to the Final Act of Helsinki and the Charter of

²⁴ Mark Weller, *op.cit.* note 11, 584.

²⁵ Alan Hanson, *op.cit.* note 5, 104.

²⁶ See “Letter dated 10 December 1991 from the Secretary-General of the United Nations to the Ministry for Foreign Affairs of the Netherlands”, UN Doc. S/23289, Annex IV.

Paris the border in Europe are inviolable and must not be changed by force. Therefore, the EC had demanded respect for the internal and external boundaries of Yugoslavia.”²⁷

Lord Carrington, on his side, recognized immediately that the premature unilateral recognition not only would have destroyed his fragile peace initiative, but also would have effectively forced the EC to question the recognition to every remaining Yugoslav republic. For instance, President Izetbegovic of Bosnia-Herzegovina in this case could not refuse to declare independence in the current political climate of nationalist separatism and Serb aggression. Finally, as Slovenia and Croatia were recognised as independent states by the whole EC in January 1992, the war in Bosnia started in April the same year. In February 1992, the UNSC authorized the deployment of a military liaison mission of a total of 75 officers and requested the Secretary-General to expedite his preparations for a United Nations peace-keeping operation so as to be prepared to deploy immediately after the Council to do so.²⁸ The request paved the way for the subsequent deployment of the UNPROFOR mission.²⁹ In May 1992, with the adoption of Resolution 752, the UNSC further requested the Secretary-General to keep under review the feasibility of protecting international humanitarian relief programmes and ensuring safe and secure access to the Sarajevo airport.³⁰ Few weeks later, deploring the fact that the demands in Resolution 752 have not been complied the Security Council, acting for the first time expressly under Chapter VII of the UN Charter, demanded that “all parties and others concerned immediately create the necessary conditions for an impeded delivery of humanitarian supplies to Sarajevo and other destinations in Bosnia and Herzegovina, including the establishment of a security zone encompassing Sarajevo and its airport”.³¹

D. After recognition – fragility of the UN cease-fire

The UN-brokered ceasefire was fragile from the start; in fact sporadic shelling continued throughout the 1992-1993 period. Continued tension resulted in military operations such as in early 1993 when Croatian forces successfully took the Maslanica

²⁷ Mark Weller, *op.cit.* note 11, 587.

²⁸ See UNSC Resolution 740, S/RES/740 (1992), 7 February 1992.

²⁹ See UNSC Resolution 743, *op.cit.* note 22.

³⁰ See UNSC Resolution 752, S/RES/752 (1992), 15 May 1992.

³¹ See UNSC Resolution 757, S/RES/757 (1992), 30 May 1992. A more detailed analysis is offered in the following chapter on Bosnia and Herzegovina.

Bridge and several other strategic areas from rebel Serb forces. Although another ceasefire was renegotiated in 1994, at this point the balance of forces in the area was turning against the Serbs. To take advantage of the situation, at the beginning of August 1995, the Croatian army launched an offensive, called OPERATION STORM, and regained control of the former sectors north and south of the UN Protected Areas (Krajina).³² This operation came precisely after another one conducted a month before by the Croatian Army, under the code-name OPERATION FLASH; the latter was launched in order to remove Serb Krajina forces from Western Slavonia.³³ Furthermore, when the Croatian Army attacked the self-declared republic of Serbian Krajina in August 1995, Milosevic chose to ignore the Prijedor Agreement, a mutual defence treaty signed in October 1992 by the Yugoslav Army, the Bosnian Serb Army and the Army of the Serb Republic of Krajina.³⁴ Considering the situation at the time, the Croatian decision to use military force could also be seen in the light of the failure of the international community to protect the population of safe areas in Bosnia and Herzegovina.

E. From UNPROFOR to UNTAES

Following repeated protest about UNPROFOR's inefficiency, President Tudjman announced in January 1995 that Croatia would not have accepted the renewal of UNPROFOR's mandate. According to Tudjman's opinion despite its endeavours, UNPROFOR had been unable to implement most important provisions of the Vance plan and subsequent Security Council Resolutions, and failed to establish control of Croatia's international borders. However, widespread international pressure led to a joint statement by President Tudjman and US Vice-President Gore on 12 March 1995, indicating Croatia's acceptance of continued UN presence, but under a new name and revised mandate.³⁵ Following further negotiations, and acting under Chapter VII of the UN Charter, on 31 March 1995, the UNSC adopted Resolution 981 creating the UN

³² The Operation STORM was conducted in conjunction with the Army of the Republic of Bosnia and Herzegovina, from 4 to 8 August 1995.

³³ The Operation FLASH was conducted from 1 to 3 May 1995.

³⁴ Alexander Lupis, "Assessing the mandate of the OSCE Kosovo Verification Mission proposed at Rambouillet: An insider's perspective from the OSCE Mission to Bosnia and Herzegovina", in *Helsinki Monitor 1999*, No. 3.

³⁵ See Sophie Jeleff, *A Fractured Peace: The Former Yugoslavia*, Council of Europe Publishing (1998), 15. The overview of the UNPROFOR re-organisation after March 1995 is provided in Chapter II on the co-operation on Bosnia and Herzegovina.

CONFIDENCE RESTORATION OPERATION IN CROATIA (UNCRO).³⁶ As from Resolution 981, UNCRO was mandated, *inter alia*, to: a) perform functions envisaged in the March 1994 cease-fire agreement; b) facilitate the implementation of all relevant Security Council Resolutions; c) facilitate the delivery of international humanitarian assistance to the Republic of Bosnia and Herzegovina through the territory of the Republic of Croatia.³⁷ The Operation was conceived as an “interim arrangement to create the conditions that will facilitate a negotiated settlement consistent with the territorial integrity of the Republic of Croatia and which guarantees the security and rights of all communities living in a particular area of the Republic of Croatia, irrespective of whether they constitute in this area a majority or minority.”³⁸ In this respect, Member States, acting nationally or through regional organizations or arrangements, were mandated to take, under the authority of the Security Council and subject to close coordination with the Secretary-General and the UN Theatre Force Commander, necessary measures to extend close air support to the territory of the Republic of Croatia in defence of UNCRO personnel in the performance of UNCRO's mandate.³⁹ On 28 April 1995, the Security Council, by its Resolution 990 (1995) finally authorized the deployment of UNCRO. Implementation of the UNCRO's, however, proved to be hardly feasible due to the continuing hostilities on the ground; the then consequent impossibility for UNCRO to effectively manage conflict dynamics in Croatia prompted the Security Council, through the adoption of its Resolution 994 (1995), to call for an early re-establishment of UNCRO's authority.⁴⁰ Following the Croatian takeover of Sector West, tensions remained high. In August 1995, the Croatian Army launched an attack in the Krajina region with almost no considerations for the Security Council requests to cease military activities. In trying to halt the offensive, a total of 98 UN observation posts were destroyed and UN peacekeepers were used as human shields.⁴¹ By then, the situation in Eastern Slavonia, Baranja and Western Sirmium deteriorated rapidly with both the Croatian Army and Serb forces taking an aggressive attitude towards UNCRO. Shortly thereafter, the UN Special Representative of the Secretary-General (SRSG) established a humanitarian crisis cell

³⁶ See UNSC Resolution 981, S/RES/981 (1995), 31 March 1995.

³⁷ *Ibid.*, para. 3.

³⁸ *Ibid.*, para. 4.

³⁹ *Ibid.*, para. 5.

⁴⁰ See UNSC Resolution 994, S/RES/994 (1995), 17 May 1995.

⁴¹ United Nations, *The Blue Helmets. A Review of United Nations Peace-keeping*, United Nations Publication, New York 1996, 552.

to collate information and coordinate international humanitarian responses.⁴² In communication with other international organisations involved in humanitarian affairs this *ad hoc* unit coordinated other four human rights actions teams deployed in the field to report on the observance of human rights.⁴³ In November 1995 with the signing of the Basic Agreement on the Region of Eastern Slavonia, Baranja and Western Sirmium the Security Council expressed its readiness to consider the request to establish an international transitional administration supported by an adequate international force.⁴⁴

Requested by the Security Council to report on the feasibility of such international administration and force for the implementation of the Basic Agreement⁴⁵, the Secretary General concluded on the necessity to pursue for a strong mission's mandate, adopted under Chapter VII of the UN Charter, with capacity to take all necessary actions to maintain peace and security. On 15 January 1996 with Resolution 1037 (1996), the Security Council established the UN TRANSITIONAL ADMINISTRATION FOR EASTERN SLAVONIA, BARANJA AND WESTERN SIRMIUM (UNTAES).⁴⁶ Established for an initial period of 12 month the transitional administration was deployed with both military and civilian components. Co-ordination between the operation's components was enhanced through the establishment of a single chain of command under the direction of the UN Transitional Administrator. The Administration was headed by a "Transitional Administrator" with authority over both civilian and military components of the mission.⁴⁷ Upon request of the Security Council, UNTAES was further requested to cooperate with IFOR and the EU High Representative; in doing so the mission was then conceived as part of a broader regional framework for peace.⁴⁸

In presenting UNTAES it has to be mentioned that one of the success stories of the administration was that both civilian and military components participated in the pooling of resources to meet the logistical and administrative needs of the Mission.

⁴² This development in the institutional structure of the mission came as a result of the agreement concluded between the UN SRSG and the Croatian Commission for Relations with UNCRO. For further information see Letter of the Secretary General to the President of the Security Council, S/1995/666, 7 August 1995, Annex III.

⁴³ United Nations, *The Blue Helmets*, *op.cit.* note 41, 553.

⁴⁴ See UNSC Resolution 1023, S/RES/1023 (1995), 22 November 1995. The establishment of a transitional administration and peacekeeping force was envisaged in the Basic Agreement for an initial period of 12 months.

⁴⁵ *Ibid.*

⁴⁶ See UNSC Resolution 1037, S/RES/1037 (1996), 15 January 1996.

⁴⁷ *Ibid.*, para. 5.

⁴⁸ Darya Pushkina, "Towards Successful Peacekeeping. Remembering Croatia", in *Cooperation and Conflict* Vol. 39(4), 2004, 393-415, 400.

Compared to its predecessor, UNTAES was better equipped and could count on stable political support from UN member states.⁴⁹ In order to avoid friction between the civilian and military components, UNTAES further developed and co-located integrated support teams, such as the Joint Logistics Operations and the Movement Control Centre.⁵⁰ This arrangement proved to be effective and improved understanding and cooperation within the mission.⁵¹

II. CO-OPERATION AT THE HEADQUARTERS LEVEL

A. *International Organisations at the Beginning of the 1990s*

The analysis of co-operation among international actors should be preceded by an assessment of the position of those same actors at the beginning of the 1990s; such an initial overview should be of help in analysing the instruments at disposal of an international community, by that time still considered “in transition.”

1. The European Community

The EC was not ready for the crisis in Yugoslavia. The members of the European Community were just about to start the final phase of the negotiations leading up to the Maastricht summit of December 1991. The strengthening of cooperation in foreign policy among the members of the EC, and the transformations of this cooperation into a common foreign policy were still controversial issues. In addition, the EC’s first diplomatic initiatives, namely the Troikas, were still under the so-called European Political Cooperation, a document of 1970 formalised in 1987. Anyhow, the European Political Cooperation would be replaced by the Common Foreign and Security Policy (CFSP) in 1992 within the Maastricht Treaty and the same policy would further be defined and broadened in 1997 thanks to the Amsterdam Treaty.

⁴⁹ *Ibid.*

⁵⁰ For further information about the Peacekeeping logistics organization please see Kamran Baig, *Logistical Support to United Nations Peacekeeping Operations: An Introduction*, UNITAR Training Programme of Correspondence Instruction in Peacekeeping Operations, Geneva 2002.

⁵¹ UN Department of Peacekeeping Operations, “*The United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (UNTAES), January 1996-January 1998*”, UN-DPKO Lessons Learned Unit, July 1998.

2. The Conference on Security and Cooperation in Europe

The CSCE was just in a process of transformation from a mechanism dedicated to maintaining crisis stability in Cold War Europe to a standing organisation capable of providing for collective security measures within Europe.⁵² The CSCE was the first international organisation to react to the Yugoslav crisis.⁵³ Moreover, the Charter of Paris for a New Europe adopted in 1990, although not considering the peacekeeping operation directly, marked the beginning of an institutionalisation of the CSCE and the idea of “common efforts in the field military security.” The Charter further foresaw the creation of the Conflict Prevention Centre (CPC)⁵⁴ and of the Committee of Senior Officials (CSO); the latter mandated to consider “serious emergency situation(s) which may arise from a violation of one of the Principles of the Final Act or as the result of major disruptions endangering peace, security or stability”.⁵⁵ In 1991, the Committee of Senior Officials (CSO) held five emergency sessions on the situation in the Socialist Federal Republic of Yugoslavia (SFRY) and successfully pushed the UN to establish an arms embargo in the area and the EC to establish an observer mission to Yugoslavia, later to be integrated by CSCE observers on 8 August 1991.⁵⁶ In July 1991, the Consultative Committee of the CPC in a statement on 1 July 1991 underlined the importance of an immediate and complete cessation of hostilities by all parties involved.⁵⁷ In Madrid, the CSCE participating states then established a Parliamentary Assembly, under provisions of the Paris Charter.⁵⁸ In addition, the section on the Human Dimension in the 1992 Budapest Declaration of the CSCE Parliamentary Assembly “stressed the need to avoid unnecessary duplication and to make full use of

⁵² Alexander Lupis, *op.cit.* note 34, 571.

⁵³ See CSCE Ministerial Council’s Declaration on Yugoslavia, Berlin 20 June 1991.

⁵⁴ The CPC was also empowered to hold meetings on “unusually military activities”.

⁵⁵ Supplementary Document to give effects to Certain Provisions Contained in the Charter of Paris for a New Europe sec. I(B) and Summary of conclusions of the Berlin Meeting of the Council, including Arrangements and Consultation in Emergency Situations and Peaceful Settlement of Dispute, Ann. 2 (21 June 1991).

⁵⁶ The CSO assigned Canadian, Polish and Swedish monitors to the then EC monitoring missions.

⁵⁷ Chairman’s Statement on the results of the Meeting of the Consultative Committee of the Conflict Prevention Centre, 1 July 1991.

⁵⁸ See CSCE Madrid Meeting, 2-3 April 1991. The idea of such an assembly was first raised at the London NATO Summit in July 1990 and further developed in the Charter of Paris. The first meeting of the CSCE Parliamentary Assembly took place in Budapest in July 1992 and attended by members of the Council of Europe parliamentary Assembly (PACE) and the North Atlantic Assembly. See Thomas M. Buchsbaum, “The CSCE and International Organisations: Expanding Cooperation with the Council of Europe”, in Michael R. Lucas (ed.), *The CSCE in the 1990s: Constructing European Security and Cooperation*, Nomos Verlagsgesellschaft, Baden-Baden 1993, 137.

the expertise of existing organisations, and especially of the CoE”.⁵⁹ Shortly before, the Parliamentary Assembly of the Council of Europe (PACE) considered “that the human dimension of the CSCE could greatly benefit from the expertise of the Council of Europe (CoE) in this field,” that “co-operation between the CSCE and the CoE should also develop in fields relating to culture and education, promotion of a multicultural society and rights of minorities” and “believes that the presence of members in the respective national delegations to the CSCE Assembly could contribute to a better co-ordination of the work of both Assemblies.”⁶⁰ Furthermore, the PACE recommended for the CoE Committee of Ministers to “develop in the near future a close co-operation with the CSCE institutions and structure, negotiate with the CSCE competent bodies the modalities of such co-operation..., define the modalities of associating CSCE participating States [that are] not members of the Council of Europe with specific Council of Europe projects, ...[and] promote the implementation of a charter between the Council of Europe and the CSCE, establishing the principles and modalities on which their indispensable Europe-wide co-operation is based”.⁶¹ In February 1993, the second meeting of the PACE concluded on the importance to “[...] continue to take a close interest in the proper establishment of the Parliamentary Assembly of the CSCE to assure that the work of both assemblies remain complementary and to avoid any unnecessary duplication.”⁶² Representatives of the CSCE Parliamentary Assembly were also invited to participate in the Parliamentary Conference (June 1993) on “Progress of Economic Reform in Central and Eastern Europe. Lessons and Prospects”, organised by PACE. To further demonstrate its interest in the CSCE, the PACE established an “Ad Hoc Committee on the CSCE”, which took up its work in early 1993 and was composed of members of the Bureau of the Parliamentary Assembly, the Political Affairs Committee, the Committee on Legal Affairs and Human Rights, and the Committee on relations with European Non-Member countries.⁶³ In this scenario, the CSCE Prague Document on “Further

⁵⁹ See Declaration of the CSCE Parliamentary Assembly, 5 July 1992, para. A.3. The same approach *vis-à-vis* the co-operation with the Council of Europe will be pursued in its 1999 Budapest Declaration for a Greater Europe without Dividing Lines, adopted by the Committee of Ministers on 7 May 1999.

⁶⁰ See Parliamentary Assembly of the Council of Europe (PACE), Report on the work of CSCE on the eve of the 3rd summit (Helsinki, 9-11 July 1992), Report No. 6607 of 5 May 1992, para. 9.

⁶¹ See Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1184 (1992) on the work of the CSCE on the eve of the 3rd Summit (Helsinki July 9-11, 1992), adopted on 6 May 1992 (5th Sitting).

⁶² See Parliamentary Assembly of the Council of Europe (PACE) Recommendation 993 (1993) on the General Policy of the Council of Europe, adopted on 3 February 1993 (25th Sitting).

⁶³ Thomas M. Buchsbaum, *op.cit.* note 58, 138.

Development of CSCE Institutions and Structure” put on the agenda, for the first time, the idea of CSCE peacekeeping and a possible CSCE role in peacekeeping.⁶⁴ In the CSCE Helsinki Summit of December 1992, Participating States also supported the idea of a traditional peacekeeping role based on military participation within the CSCE framework, while others insisted on developing limited CSCE capacity of middle-size missions with a mandate to observe and monitor cease-fire, and calling upon the North Atlantic Treaty Organisation (NATO) and the Western European Union (WEU) where larger operations with a military component were needed. The 1992 Helsinki Document “The Challenge of Change” finally defined CSCE peacekeeping as an “important operational element of the overall capability of the CSCE for conflict prevention and crisis management intended to complement the political process of dispute resolution”.⁶⁵ However, in consideration of the limited resources to address the entire range of tasks of a peacekeeping operation alone, it was suggested to rely on resources and expertise of other organisations such as the EC, NATO and WEU. In this case, CSCE involvement would be agreed on a case-by-case basis. Two years later, with the 1994 Budapest document of “Towards a Genuine Partnership in a New Era” confirmed the necessity for a further enhancement of the organisation’s role and capabilities in early warning, conflict prevention and crisis management, including peacekeeping operations and missions.⁶⁶

3. The North Atlantic Treaty Organisation

The organisation pushed for its own transformation and in fact the so-called “Alliance Strategic Concept”, agreed at the London Summit in 1991, considered the major changes in the international environment with a view to their implication in NATO’s objectives and security function.⁶⁷ However, a communiqué issued by the Heads of State at a NATO meeting in November 1991 called on all parties to “comply fully with principles of the CSCE” and to avoid “attempts to change existing borders through the use of force.” The communiqué is known as the Rome Declaration on Peace and

⁶⁴ See Prague Meeting of the CSCE Council, Prague Document on Further Development of CSCE Institutions and Structure, 30-31 January 1992.

⁶⁵ See CSCE Helsinki Document “The Challenge of Changes”, Helsinki Summit Declaration, 9-10 July 1992, para. 25.

⁶⁶ See CSCE Budapest document, “Towards a Genuine Partnership in a New Era”, 5-6 December 1994.

⁶⁷ NATO Alliance New Strategic Concept adopted in the occasion of the Meeting of the North Atlantic Council in London, July 1990.

Cooperation.⁶⁸ In December 1991, NATO re-emphasised the need to create “new security architecture” to be achieved by “a framework of interlocking institutions tying the countries of Europe and North America.”⁶⁹ In May 1992, the Ministerial meeting of the Defence Planning Committee (DPC) and the Nuclear Planning Group (NPG) in Brussels suggested for NATO to support, in principle, the conflict prevention and crisis management mechanism developed by the CSCE and would provide resources and expertise for CSCE peacekeeping activities. Furthermore, the North Atlantic Council (NAC) Ministerial meeting in Oslo in June 1992 stressed NATO readiness to support, on a case-by case basis, peacekeeping activities under the responsibility of the CSCE, including making available resources and expertise.⁷⁰ Few months later, in December 1992, the Brussels NAC Ministerial Meeting clarified NATO support not only for CSCE peacekeeping but also, on a case-by-case basis, to “peacekeeping operation under the authority of the UN Security Council, which has the primary responsibility for international peace and security”.⁷¹ In 1993 an Ad Hoc Group on Co-operation in Peacekeeping (AHG) was set up within the framework of the newly established North Atlantic Co-operation Council (NACC).⁷² The AHG put down the principle of co-operation among the NACC members and between NACC-UN-CSCE, as well as measures for practical co-operation in peacekeeping. Furthermore, in accordance with the decision taken at the NACC meeting on 18 December 1992, an *Ad Hoc* Group on Co-operation in Peacekeeping was established with the aim of developing a common understanding on the political principles and the tools for peacekeeping, and sharing experience and thereby developing common practical approaches and co-operation in support of peacekeeping under the responsibility of UN or CSCE.⁷³ The 1994 Brussels Summit Declaration then reaffirmed NATO’s support to UN and CSCE/OSCE peacekeeping missions. The concept of Command

⁶⁸ See Press Communiqué, “The Situation in Yugoslavia”, statement issued by the heads of state and government participating in the meeting of the North Atlantic Council in Rome, *NATO Press Service*, 8 November 1991, para. I.

⁶⁹ Final Communiqué, issued by the Defence Planning Committee of the North Atlantic Treaty Organisation meeting in Ministerial Session in Brussels on 12-13 December 1991, *NATO Press Service*, 13 December 1991, para. 2.

⁷⁰ See Final Communiqué of the Ministerial Meeting of the North Atlantic Council, Oslo, 4 June 1992.

⁷¹ See Final Communiqué of the Ministerial Meeting of the North Atlantic Council, Brussels 17 December 1992, para. 4.

⁷² The North Atlantic Cooperation Council (NACC) was established by the Allies on 20 December 1991 as a forum for dialogue and cooperation with NATO’s former Warsaw Pact adversaries. See North Atlantic Cooperation Council Statement on Dialogue, Partnership and Cooperation, 20 December 1991.

⁷³ Nicholas Gammer, *From Peacekeeping to Peacemaking. Canada’s response to the Yugoslav crisis*, McGill-Queen’s University Press 2001.

Joint Task Force as a mean to facilitate contingency operations and to provide “separable but not separate military capabilities” to be employed by NATO or the WEU was endorsed.⁷⁴

4. The Council of Europe

At the beginning of the conflict the CoE supported the initiatives undertaken in the frame of the EC. Later in 1993, the organisation started being operative in the field through its Local Democracy Embassies. More involved in the post-conflict phase, the CoE, though institutions such the Venice Commission and Framework Convention for the Protection of National Minorities (FCNM), started monitoring the honouring of obligations coming from the Croatian full membership in the organisation.⁷⁵ Besides, the CoE set up its *ad hoc* Committee of Experts to exchange Views on Standard Setting Activities of the CSCE in the Field of Human Rights (CAHSC).⁷⁶

B. Co-operation during the conflict

When the hostilities started the shock of the armed conflict of Slovenia was particularly acute for neighbouring states, and both Italy and Austria immediately appealed for explanations through the CSCE.⁷⁷ By then EC and the CSCE were the two major actors, apart from the UN, involved in trying to politically contain the desegregation of the Socialist Federal Republic of Yugoslavia (SFRY). At the beginning the EC, with support from the CSCE, was the first to intervene in the field deploying its ECMM. The EC’s initial intent was to prevent the development of a destabilising chain reaction in Eastern Europe. Aware that it did not have justification to interfere in Eastern Europe, the EC went before the CSCE to seek approval for its actions.⁷⁸ The CSCE indeed supported the EC diplomatic initiatives.⁷⁹ Early in August

⁷⁴ See Declaration of the Heads of State and Government Participating in the Meeting of NAC, Brussels, 11 January 1994, para. 8-9.

⁷⁵ Rianne M. Letschert, *The Impact of Minority Rights Mechanisms*, TMC Asser Press, The Hague, 2005, 384. Croatia became a member of the Council of Europe on 6 November 1996.

⁷⁶ Thomas M. Buchsbaum, *op.cit.* note 58, 139-140. Because of the shift of emphasis of CSCE human dimension work to implementation and cooperation and support activities, the new CSCE structures, and the enhanced practical cooperation between the CSCE and the CoE, the CAHSC was renamed the “Ad Hoc Committee of Experts on CSCE Human Dimension Issues” (CAHDH) and given the mandate “to exchange opinions with view to facilitating co-ordination of action on CSCE human dimension issues and relevant Council of Europe human rights activities.”

⁷⁷ “Italia and Austria attivano la diplomazia della CSCE”, *Corriere della Sera*, 28 June 1991, 6.

⁷⁸ Jon Roper, “Yugoslavia and European Security”, *Review of International Affairs*, Belgrade, Yugoslavia, March 1992, 4.

when the violence in Croatia increased, Luxemburg's Foreign Minister Jacques Poos suggested that the EC might need to consider military interposition forces. This view was echoed by the foreign ministers of Netherlands, Germany and France, but in the end the majority of the members decided that it was better not to be involved with the crisis; this considering the British opinion and in the view of the possible effects on the situation in the Soviet Union.⁸⁰ The intervention also found the opposition of the CSCE, which did not approve the military option and through the CSO stated "that any recourse to the use of force in the present crisis in Yugoslavia continues to be absolutely inadmissible."⁸¹ As already said, thanks to the initiative taken by the CSCE and EC together, a Good Offices Mission to Yugoslavia was established in July 1991. The CSO in tandem with the mediation efforts of the EC decided for the Good Office with the aim of "*facilitating the political dialogue among the parties concerned*".⁸² In this context, the CoE through its Committee of Ministers expressed support to efforts undertaken in the frame of the European Community.⁸³

For what concerns the position of NATO in the Croatian conflict, the organisation following what was stated in the NAC Ministerial meeting in Brussels in December 1992, contributed with naval forces in co-operation with the WEU, in monitoring the compliance of the embargo imposed by the UNSC Resolutions against the Federal Republic of Yugoslavia.⁸⁴ The Republic of Croatia, however, welcomed the NATO Partnership for Peace (PfP) invitation issued in the 1994 NAC Meeting in Brussels.⁸⁵ In this context, the intention to replace the lack of results on side of the EC, the UN recognised the role and efforts made by the organisation and by the CSCE. In Resolution 713 the Security Council commended:

[...] the efforts undertaken by the European Community and its member States, with the support of the States participating in the Conference on Security and Co-operation in Europe, to restore peace and dialogue in Yugoslavia, through, inter alia, the implementation of a cease-fire including the sending of observers, the convening of a conference on Yugoslavia, including the

⁷⁹ Raymond E. Johns. Jr., *Bosnia and Collective Security UN, EC, NATO, OSCE, WEU – Which task to whom*, Industrial College of Armed Force, Executive Research Project, Washington 1993, 16.

⁸⁰ Mark Weller, *op.cit.* note 11, 575.

⁸¹ *Ibid.*, 573.

⁸² See Offer of CSCE Good Offices Mission to Yugoslavia, in Mark Weller, *op.cit.* note 11, 573.

⁸³ See Council of Europe, Committee of Ministers, Recommendation 1175 (1992) on the situation in Yugoslavia, 5 February 1992.

⁸⁴ The practical role of NATO will be explained in the analysis of the co-operation in the field, in the part dedicated to the Sanction Assistance Missions SAMs.

⁸⁵ The PfP Framework Document was at the end signed on 25 May 2000.

mechanisms set forth within it, and the suspension of the delivery of all weapons and military equipment to Yugoslavia,

Recalling the relevant principles enshrined in the Charter of the United Nations and, in this context, noting the Declaration of 3 September 1991 of the States participating in the Conference on Security and Co-operation in Europe that no territorial gains or changes within Yugoslavia brought about by violence are acceptable, [...] ⁸⁶

With reference to the position taken by the United States it worth recalling that, together with the then European Community, the US publicly reiterated support for Yugoslav unity and the EC's offer to support the economic reform. Furthermore, in March 1991 the United States insisted that border alterations should only result from "peaceful consensual means."⁸⁷ However, as the fighting erupted between Serbia and Croatia during June 1991 Bush and senior U.S. military figures publicly stated that the emerging conflict in the Balkans did not threaten vital U.S. interests. In December 1991, UNSC Resolution 724 was adopted establishing for an advance team to be dispatched in Belgrade.⁸⁸ In January 1992, with the adoption of UNSC Resolution 727, a military liaison mission was dispatched to promote the maintenance of the cease-fire.⁸⁹ In July 1992, President Bush attended the annual meetings of the WEU and the CSCE where he stated that while the United States would have supported humanitarian relief for the region, no U.S. ground forces would have joined their European counterparts. Arguing that the conflict was primarily a European concern, Bush opposed UN intervention and suggested for NATO no to engage "out of area".⁹⁰

The United States called for Europe to take the lead in addressing what was perceived as essentially a European problem. On this point, the 1992 EC Maastricht Summit concluded for the Yugoslav crisis to be considered as "a challenge wherein the new

⁸⁶ The resolution then backed the collective efforts undertaken by the OSCE and EU.

⁸⁷ See U.S. Department of State Dispatch 2, No. 22, 3 June 1991, 395-396.

⁸⁸ The advance team was composed of military personal as well as civilian police and supporting staff. The Resolution further recognized the absence of the conditions necessary for establishing a UN peacekeeping operation. See UNSC Resolution 724, S/RES/724 (1992), 15 December 1991.

⁸⁹ See UNSC Resolution 727, 8 January 1992. Here again circumstances on the ground were recognized by the Security Council as inappropriate for the deployment of a peacekeeping mission. Liaison officers arrived on January 14, exactly the day before the EC recognition of Slovenia and Croatia. See Mark Weller, *op.cit.* note 11, 584-585.

⁹⁰ Richard Rupp, "The Balkan Conflict: the test case for European Security Cooperation", in Mary M. Mckenzie and Peter H. (eds.), *The Promise and Reality of European Security Cooperation. States, interests and institutions*, Praeger, Westport 1998, 157 to 174.

political ambitions of the [European] Community would be submitted to a real-life test.”⁹¹

C. Co-operation after the end of the conflict

In 1995 when the attention of the international community moved to the post-conflict phase, the international community in Bosnia and Herzegovina was called to follow-up on the institutional design created by the General Framework Agreement for Peace (GFAP or Dayton Agreement) by trying to provide for an effective and meaningful reconstruction process. In the background, the Council of Europe immediately took a position by offering “...a major contribution to reconstruction in the fields of its experts.”⁹² One year later, on 6 November 1996, Croatia became member of the Council of Europe. The Parliamentary Assembly was charged to monitor the honouring of the commitments coming from the membership and, with its opinion 195 (1996), also instructed Croatia to ratify the Framework Convention for the Protection of National Minorities (FCNM). In 1998, together with the FCNM, OSCE Mission in Croatia, the OSCE Office of Democratic Institutions and Human Rights (ODIHR) and High Commissioner on National Minorities⁹³ analysed Croatia’s electoral law, especially the provision regarding the participation of persons belonging to national minorities in elections.⁹⁴ In this context the Venice Commission started working in the drafting process of the Constitutional Law. In 2001, the Office of the OSCE High Commissioner on National Minorities (HCNM), in co-operation with the Venice Commission was involved in assisting the Croatian authorities in drafting the new Constitutional Law on Minorities.⁹⁵ The European Union remained in the field with its Monitor Mission, the ECMM; the Mission provided a constant information source for the other organisations and after the Croatian conflict remained in the territory co-

⁹¹ Mihailo Crnobrnja, *Le drame Yougoslave*, Apogée, Rennes 1992, 140.

⁹² See Parliamentary Assembly of the Council of Europe (PACE), Doc. ADOC7440, Report on refugees, displaced persons and reconstruction in certain countries of former Yugoslavia, 19 December 1995, para. 69: “...[I]n the opinion presented by the Committee on Migration, Refugees and Demography to the debate at the end of which this resolution was adopted, the committee proposed that the Council of Europe make use of its know-how in fields such as assistance to governments with the drafting of legislation on the rights of minorities and on the citizenship of displaced Yugoslav nationals, the setting up of democratic institutions, the operation of independent media, the restoration and protection of the natural and cultural heritage, youth, etc.”

⁹³ The activities of the HCNM in Croatia began on 14 December 1995, exactly the day that the Dayton Agreement was signed.

⁹⁴ See OSCE Secretary General, Annual Report 1999 on OSCE Activities, 17 November 1999, para. 2.2.

⁹⁵ See OSCE Secretary General, Annual Report 2001 on OSCE Activities, 26 November 2001, 77.

operating with field missions conducted by OSCE and CoE. Within the EU, the interest in Croatia increased after its inclusion in the Stabilisation and Association Agreement (SAA), signed in October 2001 and with the application for the accession to the EU on 21 February 2003; an interest that culminated with the acceptance of Croatia as candidate country by the EU in June 2004. Finally, with the announcement of the Membership Action Plan with NATO in May 2002, Croatia reached its objective to become part of the Euro-Atlantic community. On 12 December 2002 the Croatian Parliament also approved participation of Croatian troops in the NATO International Security Assistance Force (ISAF).⁹⁶

III. CO-OPERATION IN THE FIELD

A. Co-operation during the conflict

1. Sanctions Assistance Missions (SAMs)⁹⁷

The initial international response to on-going situations in the field passed through the deployment of the Sanction Assistance Missions (SAMs).⁹⁸ SAMs were mandated to advise host countries' authorities on the implementation of sanctions imposed in accordance with the UN Security Council Resolutions 713 (arms embargo against all former Yugoslav Republics), 757 (sanctions against Serbia and Montenegro), 787 (transshipment interdiction for sensitive goods) and 820 (further tightening of sanctions, inclusion of the services sector) and to provide practical assistance to help these authorities to enforce sanctions rigorously. As the CSCE declared, on this issue there was a close CSCE/EC practical cooperation in the field.⁹⁹ On 4 February 1993, the CSO appointed a Sanctions Co-ordinator who was tasked to: a) ensure the oversight of sanctions; b) assess the implementation; and, c) advise on measures to implement

⁹⁶ The final decision was taken by the President Mr. Stjepan Mesic on 13 February 2003.

⁹⁷ The analysis on SAMs continues in the Chapter on the co-operation in the Federal Republic of Yugoslavia.

⁹⁸ For further information about the SAMs see Ettore Greco, *L'Europa senza muri: le sfide della pace fredda. Un anno di Presidenza Italiana della CSCE*, Franco Angeli Edizioni, Milano 1995, 31-40, 113-115, 119-126.

⁹⁹ See CSCE Annual report 1993 on CSCE Activities, 3 November 1993, para. 2.7.

sanctions more effectively, as well as provide countries in the region with advice and assistance as requested.¹⁰⁰

Although the CoE was not directly involved in the field, it joined the group from the headquarters. As instructed by Order No. 483 (1992)¹⁰¹, the CoE Political Affairs Committee of the Parliamentary Assembly expressed its support about the initiative:¹⁰²

[...]

4. The application of the embargo against Serbia and Montenegro has occasioned many practical problems for the neighbouring states. In order to help them, the CSCE decided in September 1992, on a proposal made by the United Kingdom in close co-operation with the Commission of the European Communities and the United States of America, to deploy Sanctions Assistance Missions (SAMs) and to set up a communications centre (SAMCOMM) to facilitate communications and co-ordination between the SAMs and the authorities of the countries concerned.

5. The Assembly welcomes the stationing of SAMs in Albania, Bulgaria, Croatia, Hungary, Romania, Ukraine and the Former Yugoslav Republic of Macedonia. It is gratified to note that the staffs of the SAMs and SAMCOMM, who are mainly customs officers, have been provided by thirteen Council of Europe member states plus Canada, the United States and the Commission of the European Communities.

[...]

7. The Assembly welcome the appointment by the European Community and CSCE of a sanctions co-ordinator, who co-operates closely with the SAMs and SAMCOMM.¹⁰³

Furthermore, the Assembly called upon the governments of Council of Europe member states and of states whose parliaments enjoy special guest status: “[...] (iii.) to co-operate closely with the sanctions co-ordinator appointed by the European Community and the CSCE; (iv.) to provide the Sanctions Assistance Missions (SAMs) and communications centre (SAMCOMM) with the necessary technical resources and staff needed to carry out their tasks efficiently; [...]”¹⁰⁴

¹⁰⁰ At time of the conflict there were seven SAMs, in the case of Croatia the Mission was established on 27 January 1993. The analysis of the SAMs continues in the chapter dedicated to the Federal Republic of Yugoslavia (FRY).

¹⁰¹ In Recommendation 1198 (1992) on the crisis in the former Yugoslavia, adopted on 5 November 1992, the Assembly reserved the right to exclude from its midst national delegations of member states or states whose parliaments enjoy special guest status, if it considered that those states were not enforcing the embargo against Serbia and Montenegro. In order to be able to exercise this right, the Assembly on the same day adopted Order No.483 (1992), in which it instructed the Political affairs Committee to monitor compliance with the United Nations embargo against Serbia and Montenegro by member states and states whose parliaments enjoy special guest status, and to report back to the Assembly at regular intervals.

¹⁰² See Parliamentary Assembly of the Council of Europe (PACE), Doc. ADOC6863, 1403-9/6/93-3-E, Report on the United Nations embargo against Serbia and Montenegro, 11 June 1993, para. 1.

¹⁰³ *Ibid.*, para. 2.

¹⁰⁴ *Ibid.*, para. 3.

2. The CoE's Local Democracy Embassies

The Local Democracy Embassies (LDE) were created in 1993, during the Standing Conference of the Council of Europe Congress of Local and Regional Authorities of Europe (CLRAE) with the approval of Resolution 251 (1993). The idea behind the creation of the LDAs was to provide humanitarian assistance to the war-ravaged regions and municipalities in the former Yugoslavia. The same year, two embassies were then created: the first one in Subotica, Serbia and Montenegro, and the second one in Osijek, Croatia.¹⁰⁵ On 28 May 1998, with Resolution 73 (1998) the Standing Committee of the CLRAE decided to change the name of the programme from “Local Democracy Embassies”, as adopted in 1993, to “Local Democracy Agencies (LDAs).”¹⁰⁶

In 1999, due to the increasing number of LDAs and the scale of their activities, the CLRAE created the Association of Local Democracy Agencies (ALDA) as an umbrella organisation to co-ordinate the network of the LDAs. As from Article 3.5 of the Statute, the Association was set up with the aim to: “[...] *manage the LDA network so as to promote local democracy, involving the organs of the Council of Europe (the Secretary General, the Committee of Ministers, the Parliamentary Assembly, the Congress, etc.) and the European Union (the European Commission, the European Parliament, the Committee of the Regions) in the decision-making bodies and fostering co-operation between the Local Democracy Agencies; [...].*”¹⁰⁷

The core funding for the Agencies and the Association comes from the partnerships’ support from the CoE, the CLRAE, the EC, the UN, and the Organization for Security and Co-operation in Europe (OSCE). The LDAs also played a significant role in the

¹⁰⁵ For further information on the LDAs see Jessica Biondani, *Local Economic Development in the Balkans: the Associations of Local Democracy Agencies’ Approach*, thesis degree Università degli Studi di Modena e Reggio Emilia, Academic year 2004-2005.

¹⁰⁶ The concept of "Local Democracy Agency" was introduced (in collaboration with Médecins sans Frontières and Amnesty International of Belgium) and proposed by Causes Communes Belgique, supported by Causes Communes Suisse, discussed with the Helsinki Citizens Assembly, incorporated into CLRAE Resolution 251 (1993)¹², and later developed and clarified by the Monitoring Committee set up under CLRAE auspices. The concept was further developed in Resolutions 25 (1995), 39 (1996) and 56 (1997) and Recommendations 15 (1995), 24 (1996) and 33 (1997) of the Congress of Local and Regional Authorities of Europe (CLRAE). In the Resolution 251 (1993) the Standing Committee of the CLRAE established the principles of the Local Democracy Agencies.

¹⁰⁷ Council of Europe, Statute of the Association of Local Democracy Agencies, signed on 14 December 1999.

Stability Pact for South East-Europe and they were members of the Steering Committee on Local Democracy and Trans-border Co-operation.¹⁰⁸

3. The European Commission Monitor Mission

Following the Brioni agreement, on 15 July 1991, the first group of EC Monitors arrived in Slovenia. On 29 July 1991, at the EC foreign minister meeting in Brussels it was decided to increase the number of monitors and include Croatia in its mission. Until the UNPROFOR deployment the European Commission Monitoring Mission (ECMM) had mainly been monitoring ceasefire lines, but thereafter its role changed, with the ECMM taking responsibility for monitoring the “pink zones”.¹⁰⁹ At the end of 1992 ECMM started monitoring airfields in Croatia in compliance with the established no-fly zone over Bosnia-Herzegovina; shortly after the mission moved back to Bosnia and Herzegovina. Regarding the structure of the Mission, ECMM was structured with a mayor Headquarter in Zagreb and seven Regional Centres (RCs).¹¹⁰ RCs were then divided into smaller Coordination Centres (CCs). One of the main tasks of the ECMM was to collect information about the military situation in the areas where they were active through daily reports or periodic communications. ECMM provided information to others institutions and organisations such as the UN, OSCE, CoE as well as and international governmental and non-governmental agencies.

In December 2000 The ECMM which had been operating in the Western Balkans since July 1991 thereby became the European Union Monitoring Mission (EUMM).¹¹¹ The EU mission would then remain in the territory even after the end of the conflict.

¹⁰⁸ For a description of the role played by the LDAs in the Stability Pact see Council of Europe/ALDA Doc. CG/ASS/ADL (8) 82, “The added value of the city co-operation to the democratisation and stabilisation process in SEE. The support of the Association of Local Democracy Agencies.” Paper from the Working Table I, Stability Pact, Istanbul, 12-13 June 2002.

¹⁰⁹ The concept of “pink zones”, under the UN terminology, refers to certain areas of Croatia controlled by the JNA and populated by then largely by Serbs, but which were outside the agreed UN Protected Areas (UNPA) boundaries.

¹¹⁰ Exactly in Zagreb, Knin, Zenica, Belgrade, Szeged, Sofia and Tirana.

¹¹¹ See Council of the European Union, Council Joint Action 2000/811/CFSP on the European Union Monitoring Mission, 22 December 2000.

B. Co-operation after the end of the conflict

Following the report of the OSCE fact-finding Mission to Croatia in October 1995 and the Personal Representative of the Chairman-in-Office¹¹², the PC decided on 17 April 1996 to establish a long-term OSCE mission, at the invitation of the Croatian Government.¹¹³ Following the invitation, the OSCE Mission to Croatia became operational on 5 July 1996. According to its mandate, in carrying out its tasks, the Mission was mandated to cooperate with other OSCE Institutions as well as other international organisations.¹¹⁴ Besides, the mission was requested by the PC to cooperate closely with UNTAES.¹¹⁵

When the UNTAES ended its work in 1998, the OSCE Mission took over its tasks and monitored the implementation of the various agreements the UN Transitional Administration had concluded with the Croatian authorities.¹¹⁶ From the analysis of the mandate it is easy to perceive that the cooperation was one of the main topics of the OSCE Mission. Furthermore, as formalized in the 1997 OSCE annual report:

“[C]lose co-operation has been established with the European Commission Monitoring Mission (ECMM) and the United Nations High Commissioner for Refugees (UNHCR), who are participating in the co-ordination of field operations and in information-sharing through liaison officers working out of OSCE headquarters. Co-operation is maintained with the OSCE High Commissioner on National Minorities, the Council of Europe, the United Nations High Commissioner for Human Rights and also with relevant non-governmental organizations. Particularly close co-operation has been established with the UN Transitional Administration in Eastern Slavonia in view of its forthcoming withdrawal from the region.”¹¹⁷

¹¹² Country visit held in February 1996.

¹¹³ Experts from the CoE joined the fact-finding and the follow-up mission, which also visited Eastern Slavonia and Krajina. See Committee of Ministers, Council of Europe, doc. CM/Del/Dec/Act(96)557/3.1b, “Refugees, Displaced persons and Reconstruction in Certain Countries of the Former Yugoslavia”, Parliamentary Assembly Recommendation 1287 (1996), prepared by Enlarged Rapporteur Group (GREL), 10 May 1996, para. 6.

¹¹⁴ For instance, the OSCE High Commissioner (HCNM) and Office for Democratic Institutions and Human Rights (PDIHR), the CoE, the ECMM as well as UNHCR and ICRC. See Permanent Council, Decision, PC.DEC/112, 18 April 1996, para. 2 (Tasks).

¹¹⁵ See OSCE Annual Report 1996 on OSCE Activities, 15 January 1997, para. 2.1.11.

¹¹⁶ Nicole Renvert, “Begegnungen mit Kroatien”, in: Institute for Peace Research and Security Policy at the University of Hamburg (ed.), *OSCE Yearbook 1999*, Nomos Verlagsgesellschaft, Baden-Baden, 2000, 345-361. In this perspective the Mission was reinforced by Permanent Council Decision No. 176 (26 June 1997), which authorized the gradual increase of personnel up to a ceiling of 250 international staff.

¹¹⁷ See OSCE Annual Report 1997 on OSCE Activities, 18 December 1997, para. 2.1.10.

In this context, it worth mentioning that in spite of the close relations established by UNTAES with the regional organizations operating in the field, the transfer of certain assets to the OSCE was nevertheless affected by a lack of early consultation practices between the missions.¹¹⁸

In 1997, the Mission promoted the reform of electoral legislation and the media. These issues form part of the commitments undertaken by Croatia in acceding to the Council of Europe (CoE) in 1996; for such a task, the Mission closely cooperated with the CoE.¹¹⁹ In 1998 together with the UNHCR and the ECMM, the Mission established the Return Facilitation Groups for the coordination of international monitoring of and support for the Return Programme.¹²⁰ The Mission also cooperated with the ECMM in monitoring the performances of the so-called Housing Commissions, whose mandate is to implement the Return Programme.

In 2004, together with the Ministry of Interior, the OSCE Police Affairs Unit developed a "Road Map" for the creation of a modern police service in line with European Standards.¹²¹ The implementation of the Road Map was to be monitored by a Joint (OSCE-EU) Co-ordination Group.¹²² Besides, the Mission continued to coordinate the international support chair to the International Donor Co-ordination Group on Police Assistance to Croatia.¹²³

IV. EVALUATION OF THE CO-OPERATION

The management of the conflict in Croatia can be seen as an exercise of “soft-measures” (monitoring, embargo and relative sanctions, political solutions) by the

¹¹⁸ UN Department of Peacekeeping Operations, *op.cit.* note 51.

¹¹⁹ See OSCE Annual Report 1999 on OSCE Activities, 17 November 1999, para. 1.1.3.

¹²⁰ In 1999, as a result of Decision 112 of the Permanent Council (18 April 1996), the Mission was tasked to provide assistance and expertise to the Croatian authorities, individuals and groups in the field of human rights and minority rights as well as to assist and advise on the full implementation of legislation. Furthermore, Decisions No. 176 (26 June 1997) and No. 239 (25 June 1998) amended the mandate of the Mission to assist with and to monitor the implementation of Croatian legislation, and agreements and commitments entered into by the Croatian Government on the two-way-return of all refugees and displaced persons and on the protection of persons belonging to national minorities.

¹²¹ See OSCE Annual Report of the Secretary General on Police Related Activities in 2004, 29 June 2005, para. 2.4.

¹²² *Ibid.*, para. 2.11. The OSCE/CoE Co-ordination Group was established in December 2004. It aims to move the process of co-operation forward by identifying areas for enhanced co-operation and appointing focal points for them.

¹²³ *Ibid.*, para. 2.15. The Group comprised representatives of Embassies, the then EC Delegation to Croatia, the International Organisation for Migration (IOM) and relevant Croatian Authorities.

international community. It can be argued that military action was necessary but the fact remains that both the EC and the CSCE were not prepared to deploy military units into the conflict. They were able to provide security mechanisms, but they did not possess the same capabilities of the United Nations and NATO. The first tangible evidence of lack of cooperation can be found within the same European Community; for instance, the early recognition by the Germans, the non-consideration of the role of the Badinter Commission, and ultimately the passive behaviour of the other member states of the EC in following the German decision. The failure revealed problems in the decision-making process, where strong member states could influence the common policy.¹²⁴ However, this was not a problem unique to the EU: lack of consistent principles and effective coordination and different approaches to conflict management were elements that were common in other international organisations as well.

A. Co-operation and minority rights

In the phase of post-conflict, the co-operation was mainly focused on setting the minority rights issues and relative legal means. Around this topic there was a context of cooperation in exchanging information and sharing knowledge but this came as a support in reaching the main objective: help Croatia in honouring the commitments accepted within the context of some organisations. Improving minority rights at national level in order to reach the criteria established at international level was more a burden which came from the early and negative recognition of Croatian independence by the International Community. The then EC recognised Croatia as an independent state, but despite the opinion expressed by the Badinter Commission; the main reason was in fact Croatia's non-compliance with minority rights.¹²⁵ However, even in this praiseworthy action (help Croatia in honouring the commitments), there was a lack of cooperation at least regarding the different positions taken by each organisation. For instance, different CoE, OSCE bodies have been involved in setting the minority right issues in the country. The CoE Venice Commission and FCNM, the OSCE's Mission to Croatia and HCNM contributed with their respective expertise. In this context, the main evidence of lack of coordination came from the same definition of minorities in

¹²⁴ For instance, the Greek veto in the case of Macedonia.

¹²⁵ See Opinion No. 5 of the Arbitration Commission, reproduced in 31 ILM (1992), 1505; in Gaetano Pentassuglia, "The EU and the Protection of Minorities: The Case of Eastern Europe", in *European Journal of International Law*, Vol. 12 No. 1-2001, 17.

Article 5 of the Constitutional Law on the Rights of National Minorities in Croatia. The Opinion of the Venice commission went against the opinion of the HCNM and the Advisory Committee of the FCNM.¹²⁶ The discrepancy concerned the consideration of the citizenship among the elements of the definition of national minorities. In the light of sure regular contacts among the organisations the difference might be sought in the nature of the bodies.¹²⁷

¹²⁶ Rianne M. Letschert, *op.cit.* note 75, 391.

¹²⁷ For a complete overview on the topic for all three bodies see Council of Europe European Commission for Democracy Through Law (Venice Commission), “Report on Non-Citizens and Minority Rights”, adopted by the Venice Commission at its 69th Meeting (Venice 15-16 December 2006), CoE Doc. CDL-AD (2007) 001.

ANALYSIS OF THE CO-OPERATION IN BOSNIA AND HERZEGOVINA

I. HISTORICAL BACKGROUND

The Bosnian conflict officially started in 1992, however, the preparation for the war started well prior to the outbreak of the hostilities. In the time of 1991, the Patriotic League was set up by Izetbegovic leadership as an organ for self-defence. The League was subordinated to a Council for the National Defence of the Muslim Nation based in Sarajevo.¹²⁸ On 5 July 1992, the Patriotic League later formed part of the Army of Bosnia-Herzegovina (ABH) under the command of the Muslim General Šefer Halilović. Almost at the same time, Bosnian Croat military units were set up in Croatia. In the first months of 1992 they were attached to a Croat Defence Council with its headquarters in Kiseljak, subordinated to the leadership of the HDZ. The SDS also created an armed militia on the basis of existing territorial defence assets and volunteer units, armed and organized by the JNA. These varied units, coordinated by the JNA command structure and supported by JNA firepower, would be militarily dominant in the first phase of the war. In this context, Sarajevo conducted its referendum on independence in 1992. The Muslim and Croat communities voted for independence; exactly 99.4 % of the electorate (63 % participated) voted in support of

¹²⁸ At the outset, the Patriotic League had approximately 35, 000 personnel at its disposal, coordinated by a rudimentary organisational structure. Furthermore, the Patriotic League together with the Green Berets and local Territorial Defence Units formed part of the ABH.

the proposition; on the other side the Bosnian Serb boycotted the election. Furthermore, following the results of the election, the Bosnian government declared independence on 27 March 1992 and after a few days the formal recognition by the EC and the United States arrived. On 30 April, Bosnia-Herzegovina (hereinafter also BiH) became the 52nd member of the CSCE, and on 22 May it was admitted to the United Nations. SDS activists determined to resist separation from Yugoslavia began to erect barriers in Sarajevo in the first days of March.¹²⁹ Fighting between Croat and Serb militias and regular forces in the Bosanska Krajina, Posavina, and eastern Bosnia erupted shortly thereafter, and immediately after the declaration of independence skirmishes between Serb militias and local police forces reinforced by Muslim militias and criminal gangs broke out in the outskirts of Sarajevo. On 6 April the shelling of Sarajevo by Serb artillery was initiated. The day after, the Assembly of Serbian People in Bosnia-Herzegovina, meeting in Banja Luka, declared the independence of the Serb Republic of Bosnia-Herzegovina, renamed the Serb Republic on 13 August 1992. The HDZ publicly supported the government in Sarajevo, and on 7 April Zagreb accorded Bosnia-Herzegovina diplomatic recognition, but simultaneously sought to reinforce the autonomy of Herceg-Bosna¹³⁰ with the intent of promoting its eventual attachment to Croatia. This goal was partially realized on 3 July 1992 when Herceg-Bosna declared itself to be an independent state with its own flag and armed forces. However, when it was clear where Bosnia-Herzegovina was going, the only party who protested were the citizens of Bosnia themselves. On 5-6 April, after a week of country-wide demonstrations, tens of thousands of protestors assembled before the Bosnian Parliament in Sarajevo to demand new elections and a policy of reconciliation. The crowd was dispersed on the evening of 6 April by sniper fire.¹³¹

Despite the confused nature of the fighting, the strategic goals of the warring factions were clear: securing compact territories, controlled militarily, and, by so doing, attaching them to their respective homelands. That meant a *de facto* partition of Bosnia-Herzegovina between Serbia and Croatia. However, from their side, the Muslim party sought to ward off such outcomes at all costs by maintaining control of

¹²⁹ See Xavier Bougarel, "Bosnia and Herzegovina. State and Communitarianism" in David A. Dyker and Ivan Vejvoda (eds.), *Yugoslavia and After: A Study in Fragmentation, Despair and Rebirth*, Longman, London 1996, 101.

¹³⁰ The Community of Herceg-Bosna and Bosanska Posavina had been created by the HDZ in November 1991 as Autonomous Regions; this after the declaration of the Serb Republic of Bosnia-Herzegovina by the Parliament of the Serb Nation in Bosnia on 21 November 1991.

¹³¹ Xavier Bougarel, "Bosnie: Anatomie d'un conflit", in *La Découverte*, (Paris 1996), 57-58.

the capital, insisting upon the integrity of Bosnia-Herzegovina, banking on international recognition as a guarantor of survival, and resisting Serb and Croat territorial encroachments wherever possible. In order to achieve this goal, the first action was to secure control of the frontier with Serbia along the valley of the Drina. In the first weeks of April, Serb paramilitary formations, aided by regular units of the JNA, pushed into municipalities such as Zvornik, Višegrad, Bratunac, Srebrenica, and Foča, beating down inadequate defences and expelling the Muslim populations. Other towns in the Drina valley, including Goražde, and Žepa, were placed under siege. The fall of Bijeljina opened the season of massacres. The Serbs also succeeded in opening a corridor from Zvornik to Serb-controlled areas surrounding Sarajevo, but in May and June the overextended Army of the Serb Republic (VRS) forces were pushed out of Srebrenica and besieged in Doboj. By the end of 1992 the first phase in the history of the Bosnian conflict had culminated with the Serb faction dominating nearly 70% of the national territory. The Croat Defence Council (HVO), precariously aligned with Muslim forces, controlled the predominantly Croat areas of western Herzegovina, while Izetbegovic found his authority reduced to a small area in central Bosnia stretching from Tuzla to Kiseljak, Sarajevo, and the handful of exposed eastern Bosnian enclaves. It has to be clarified that during this season the intensity of violence in Bosnia-Herzegovina from the spring of 1992 onward took observers by surprise, and provoked hasty efforts to bring the fighting under control; as a consequence, in the early summer of 1992 the UNPROFOR mandate was extended to Bosnia-Herzegovina. The original purpose of the deployments was to support the delivery of humanitarian assistance, but the mission was steadily expanded to include the protection of Sarajevo Airport, mounting guard for convoys, oversight of ceasefires, monitoring of military exclusion zones, and deterrence of local aggression. On 3 April 1993 the regional centre Banja Luka was occupied by the JNA and transformed into the political centre of a Serb-dominated western Bosnia. In October the VRS finally forced the Croatian Army (HV) and HVO forces out of Bosanski Brod and by December a tenuous hold on the Posavina or Northern Corridor had been re-established.¹³² In this context, Sarajevo quickly became a focal point of international attention. The siege of the city actually served to demonstrate the precariousness of Bosnia's legally constituted government, but, like the siege of Dubrovnik during the previous year, it had a devastating impact

¹³² The Corridor establishing geographical contiguity between the emerging Serb entities of Croatia and Bosnia-Herzegovina and northern Serbia was a strategic imperative.

upon the credibility of the Serb cause. The military cooperation agreement in May 1993 between Izetbegovic and Tudjman was one of the most important events of this season, and it led to the rapid consolidation of the Army of Bosnia-Herzegovina (ABH) from May onward which enabled Croat and Muslim forces to reinforce their positions in central Bosnia.

Meanwhile, during 1993, the Serb faction focused its operations to broaden the Posavina Corridor and consolidate areas of control in the Drina valley. Fighting in the Drina valley was initiated by the Muslim faction, when on 7 January 1993, the local commander Naser Orić launched a series of raids from within the Srebrenica enclave, burning villages and setting the stage for what would become a tragic revenge. The Serbs responded by closing on Srebrenica and threatening to seize it, advancing by April 15 to within several kilometres of the city centre. However, in response to international pressure the assault was called off, and the status quo preserved, but the exposure of the eastern Bosnian enclaves had been clearly demonstrated. The most significant strategic development of the 1993 campaigning season was the breakdown of the Croat-Muslim alliance and the emergence of a series of new battle areas in central Bosnia.¹³³ In January 1993, Croat-Muslim fighting erupted in Gornji Vakuf, and in April the Croat-Muslim contest became a war within the war.¹³⁴ Between May 1993 and January 1994, not even attracting the same international attention, the HVO prosecuted a siege of Muslim-controlled east Mostar, in tandem with the Serb siege of Sarajevo. Over time, the course of the Croat-Muslim war in central Bosnia went in favour for the Muslim faction and by September the momentum of the Croat offensive had been reversed, with the ABH once again in control of significant parts of central Bosnia. In direct contravention of the safe area concept, several of the enclaves were used by Muslim forces as sanctuaries for launching raids against Serb-held territories. By assuming responsibility for their protection, UNPROFOR was not prepared to honour itself with the responsibility it took and extended its mandate to the breaking point.¹³⁵ The alternative offered by the Clinton administration became known as “Lift and Strike”: lifting the arms embargo against the Muslim party in order to allow it to organize a more effective defence and selective air strikes under NATO auspices to

¹³³ Already in October 1992 local fighting between Croats and Muslims erupted in Novi Travnik, Prozor and Vitež.

¹³⁴ On 16 April 1993 HVO forces moved an offensive towards the inhabitants of the predominant Muslim village of Ahmići in western Bosnia’s Lašva valley.

¹³⁵ Laura Silber and Alan Little, *Yugoslavia: Death of a Nation*, Penguin Books, London 1996, 275.

punish Serb violations.¹³⁶ In addition, the U.S. called for a selective end to the arms embargo; this while the other European allies were already significantly engaged in the ground.

At the United Nations, the Security Council in response to the siege at Srebrenica in March 1993 and with the intention to solve current UN inability to deliver humanitarian aid the Security Council unanimously passed Resolution 819 establishing Srebrenica as a “Safe Area”.¹³⁷ Over the next two months, the UNSC further elaborated its safe-haven policy with the UNSC Resolution 824 of 6 May 1993 that extended the safe area concept to the cities of Bihac, Gorazde, Sarajevo, Tuzla and Zepa. The UNSC, unfortunately, did not provide for any enforcement to the safe areas.¹³⁸ In June, UNPROFOR mandate was extended by the UNSC through Resolution 836. Adopted under Chapter VII of the UN Charter, the Resolution requested UNPROFOR to: deter attacks on the safe areas; monitor the withdrawal of military and paramilitary from the area and assist in the delivery of humanitarian aid.¹³⁹ Through the same resolution, the UNSC positively responded to the June 1993 NAC declaration of readiness to support UNPROFOR in the protection of the six “safe areas.”¹⁴⁰ At the beginning of August 1993, on the basis of a broader interpretation of Resolution 836, the NAC confirmed its readiness to execute air strikes against positions of the Bosnian Serbs in order to prevent further strangulation of the safe areas. In fact, in paragraph 10 of the Resolution, the UNSC decided that: “

“Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures, through the use of air power, in

¹³⁶ See U.S. Department of State, Office of the Assistant Secretary, “Statement by U.S. Secretary of State Warren Christopher”, 10 February 1993, 2-4.

¹³⁷ See UNSC Resolution 819, S/RES/819 (1993), 16 April 1993. The resolution required the Bosnian Serb paramilitary units in the area to withdraw and the Federal Republic of Yugoslavia to cease supplying Bosnian Serb units.

¹³⁸ It may have been counting on the Vance-Owen negotiations to bring about a peace agreement. However, in mid-May the Bosnian Serbs overwhelmingly rejected the plan.

¹³⁹ See UNSC Resolution 836, S/RES/836(1993), 4 June 1993. See Jane Boulden, *NATO and the United Nations During UNPROFOR*, NATO Research Fellowships 1999-2001, NATO Academic Forum, Brussels 2002, 11.

¹⁴⁰ As stated by NAC, “[I]n response to UNSC Resolution 836 and the expanded UNPROFOR mandate related to safe areas, we offer our protective airpower in case of attack against UNPROFOR in the performance of its overall mandate, if it so requests. We have asked the NATO Military Authorities, who have already undertaken preliminary work, to proceed rapidly with detailed planning for the air support that we are ready to provide, in coordination with UNPROFOR and other participating states”. See Ministerial Meeting of the North Atlantic Council, Final Communiqué, M-NAC-1 (93)38, 10 June 1993.

and around the safe areas [...] to support UNPROFOR in the performance of its mandate [...].”¹⁴¹

On the basis of the Resolution, Member States—*acting nationally or through regional organizations or arrangements*—would be able to use force by their air capability for the defence UN blue helmets and to deter attacks on the safe areas.¹⁴² The Security Council further requested Member States concerned, the Secretary-General and UNPROFOR to “coordinate closely” on the measures “they are taking to implement paragraph 10” and to report “to the Council through the Secretary-General”.¹⁴³ The Resolution, however, was unclear on who should decide when to use force and for which purpose. After noting NATO’s willing to offer protective air power, the Secretary-General solved the impasse by noting “[...] it is of course understood that the first decision to initiate the use of air resources in this context will be taken by the Secretary-General in consultation with the members of the Security Council”.¹⁴⁴ Within the framework provided by Resolution 836, the use of force refers to the “close air support”. The latter is to be distinguished from the “air strikes”. The Secretary-General clarified the difference in his letter of 28 January 1994:

“Should UNPROFOR be attacked in the implementation of the plans, I would not hesitate to initiate use of close air support without delay. To this end arrangements have been made with NATO, which has already authorized its forces to provide close air support to UNPROFOR in case of self-defence. It is important in this context to make clear that a distinction exists between close air support, which involves the use of air power for purposes of self-defence, and air strikes, which involves the use of air power for pre-emptive or punitive purposes. Whereas the NAC has already authorized close air support, I have been informed by the Secretary-General of NATO that NATO forces are not authorized to launch air strike, which would require a further decision of the NAC”.¹⁴⁵

The UNSC’s safe-haven policy, however, did little to defuse the crisis. The Bosnian Serbs shelled Goradze throughout the month of June 1993, and early in July, the heavy artillery attacks on Sarajevo began. Responding to these renewed hostilities the U.S.

¹⁴¹ See UNSC Resolution 836, *op.cit.* note 139.

¹⁴² Dan Sarooshi, “The Security Council’s Authorization of Regional Arrangements to Use Force: The Case of NATO”, in *Vaughan Lowe et. al. (eds.), The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*, OUP New York 2010, 227-247, 232.

¹⁴³ See UNSC Resolution 836, *op.cit.* note 139, para. 11.

¹⁴⁴ See Report of the Secretary General pursuant to Security Council Resolution 836(1993), 17 June 1993, UN Doc. S/25939, para. 2. See also Dan Sarooshi, *supra.* note 142, 233.

¹⁴⁵ See Letter from the Secretary-General to the Security Council, S/1994/94, 28 January 1994, para. 2.

advanced at NATO a more concrete proposal to subject Serb gunners surrounding Sarajevo to NATO's air power. Despite UNSC Resolution 836, which authorised UNPROFOR to deter attacks against the designated safe areas, by December 1993 the UN commander in Bosnia was reporting that at least three of the enclaves, Srebrenica, Zepa and Goradze, were "in imminent danger of being overrun" by the Bosnian Serbs.¹⁴⁶ The commander of UNPROFOR had estimated that in order to ensure full respect for the safe areas, the force would need approximately 34,000 additional troops.¹⁴⁷ Unfortunately, as we know, the UNSC Resolution 844 of 18 June 1993 approved only a light option of some 7,500 troops, with a delay in the deployment of over a year.¹⁴⁸ UNPROFOR was neither structured nor equipped for combat and never had sufficient resources, even with air support to defend the safe areas against a deliberate attack or to hold ground.¹⁴⁹ In the summer of 1993, with Mostar under siege and the Muslims' strategic position temporarily declining, Izetbegovic began to entertain concessions; but as the Muslims' military fortunes improved, willingness to compromise melted away. All parties to the conflict continued to perceive the war instrumentally, as a means toward the achievement of political goals. Months later, exactly on 5 February 1994, a mortar shell landed in the Markale market in Sarajevo, killed 65 and wounding over 200.¹⁵⁰ The dramatic event functioned as a cathartic event. On 7 February, the Atlantic Alliance set a 10-day ultimatum for the withdrawal of Serb heavy weapons and mortars from a twenty kilometres "Total Exclusion Zone (TEZ)" around Sarajevo.¹⁵¹ As an alternative, the Serbs were instructed to establish nine weapons storage sites outside the zone, to be

¹⁴⁶ See "UN commander wants more troops, fewer resolutions", in *The New York Times*, 31 December 1993, A3.

¹⁴⁷ See Report of the Secretary-General pursuant to Security Council Resolution 836(1993), *op.cit.* note 144, para. 5.

¹⁴⁸ See Report of the Secretary-General pursuant to Security Council Resolution 959(1994), S/1994/1389, 1 December 1994, para. 2.

¹⁴⁹ See Report of the Secretary-General pursuant to Security Council Resolution 844(1993), S/1994/555, 9 May 1994, para. 13.

¹⁵⁰ The investigation team set up by UNPROFOR and composed of officers from Canada, France, Pakistan, Russia and Spain concluded that "there is insufficient physical evidence to prove that one party or the other fired the mortar bomb. The mortar bomb in question could, therefore, have been fired by either side". See Letter from the Secretary-general to the President of the Security Council, S/1994/182, 15 February 1994.

¹⁵¹ The establishment of the weapons exclusion zone around Sarajevo was not directly related to any Security Council provision and was due to decisions taken by the NAC. On this point, it worth noting that Russia unsuccessfully sponsored for a new Security Council Resolution. On this issues please see Jane Boulden, *op.cit.* note 139.

controlled by UNPROFOR but accessible in case of a Bosnian Muslim attack. After complicated negotiations, the Bosnian Serbs finally agreed on the conditions¹⁵²

At the beginning of 1994, with the Clinton administration facing the mid-term elections, the conflict had begun to have a higher position within the U.S. agenda. This combination of interests provoked a concerted effort to devise an effective strategy for bringing the conflict under control. In addition, in February-March 1994, Western pressure achieved the reopening of Tuzla Airport as a means to facilitate the delivery of humanitarian aid. On 27 February 1994, in line with the strategic reappraisal underway, NATO aircrafts shot down several Yugoslav jet fighters that had passed the no-fly zone near Banja Luka.¹⁵³ The international community proved its more assertive military posture during the following months of 1994 and actually this policy was also matched by a new diplomatic approach. In January 1994 representatives of the Muslim and Bosnian Croat factions came together under U.S. auspices in the Petersberg conference centre near Bonn. Three months later, on 18 March 1994, the Washington Agreement announced the creation of a Bosnian Croat-Muslim Federation. The federation, with the assistance of UNPROFOR monitors, allowed contending Muslim and Croat forces in central Bosnia to disengage, and to permit the siege of Mostar to be lifted. Military pressure against Serb positions was correspondingly increased. Strategically, the accord created an objective foundation for the U.S. determination to direct cumulative pressure against the Bosnian Serbs.¹⁵⁴ At the end of March, an unexpected Serb offensive against Goradze began and within a week the Serbs appeared to be on the verge of overrunning the city. Several NATO air strikes followed, but the Serb offensive showed no signs of abating. Finally, on 22 April, NATO issued an ultimatum; Serb forces were to withdraw three kilometres from the centre of Goradze and Serb heavy weapons were to be removed from the twenty kilometres TEZ around the city.¹⁵⁵ By April 26 Bosnian Serb forces began to withdraw

¹⁵² See Brana Markovic, *Yugoslav Crisis and the World: Chronology of Events January 1990-October 1995*, Institute of International Politics and Economics, Belgrade 1996, 116-118.

¹⁵³ This was the first combat action undertaken by the Alliance since its establishment in 1949.

¹⁵⁴ Ivo H. Daalder, *Getting to Dayton: The Making of America's Bosnia Policy*, Brookings Institution Press, Washington D.C. 2000, 27.

¹⁵⁵ The ultimatum was subsequent to the agreement with the UN Secretary-General. In his letter dated 18 April 1994, the Secretary-General stated: "The tragic events which are currently taking place in Goradze demonstrate the need for the North Atlantic Council to take a similar decision with respect to the five other safe areas declared by the Security Council, namely the towns of Tuzla, Zepa, Goradze, Bihac and Srebrenica and their surrounding areas. I should accordingly be grateful if you could take action to obtain, at the earliest possible date, a decision by the North Atlantic Council to authorize the Commander-in-Chief of NATO's Southern Command to launch air strikes, at the request of the United

on their own initiative and fighting within the enclave came to a halt. During the summer, however, violations of the Sarajevo exclusion zone by both sides multiplied. On 26 October the Bosnians launched an offensive southward from Bihac which overran several Serb villages. On 6 November the Serbs launched a counterattack and within a week Bihac was under siege by Serb forces. Serb aircrafts based in Krajina attacked Bihac on 18 November, leading to a NATO strike on the airfield at Udbina, located on Croat soil, on 21 November. On 24 November 1994, NATO failed to issue an ultimatum to the Serbs to withdraw from Bihac due to disagreements within the Alliance. On 26 November a NATO raid on Surface to Air Missile (SAM) missile sites was vetoed by the then UN Special Representative of the Secretary-General (SRSG), Yasushi Akashi, and General Rose, ending NATO involvement in the Bihac crisis. Serb forces, for their part, halted their advance into the city and the crisis passed. Soon after the Bihac crisis, former U.S. President Jimmy Carter arrived in Bosnia and, working with Akashi, succeeded in brokering a cease-fire agreement among the parties; the accord came into effect on 1 January 1995. Above all, the events of 1994 demonstrated the difficulties of employing air strikes in support of safe areas and TEZs. The absence of additional UN contingents to police the safe areas meant that both sides could violate the UN resolutions on protected zones with impunity. This was evident in Bihac, where, after the pull-out of French troops, the UN was left with a small force of poorly armed Bangladeshi troops.

By the end of 1994 the situation in Bosnia appeared to have reached a deadlock. The Serbs had seized most ethnically mixed Serb-Muslim areas in eastern and central Bosnia and the Posavina region of mixed Serb, Croat and Muslim population in the north. Mostar remained a divided city, even under the EU administration, and the provinces where fighting occurred during in 1993 remained under the control of the local paramilitary forces, despite efforts to create local government organs in which both Croats and Muslims would be represented. In this context, notwithstanding their advances in western Bosnia, the Pale Serbs continued to be politically isolated, overextended, and vulnerable in spots. On the policy front, 1994 was marked by growing agreement between the Americans and the Europeans on the need to find a political settlement to the Bosnian conflict. The catalyst for this change was the NATO

Nations, against artillery, mortar positions or tanks in or around the above-mentioned safe areas which are determined by UNPROFOR to be responsible for attacks against civilian targets within those areas.” See Letter from the Secretary-General to the President of the Security Council, UN Doc. No. S/1994/466, 19 April 1994, 2-3.

ultimatum of 9 February, following the Markale market massacre of 5 February. For the first time, the Americans were seized with a sense of urgency about the Bosnian situation, and became actively involved in finding ways to end the fighting. In March 1995, reporting to the UNSC, the UN Secretary-General observed that it increasingly appeared that the parties' principle objective in agreeing to the January ceasefire was to reorganise and train in preparation for a future offensive.¹⁵⁶ One month later, the ceasefire was broken by an offensive of the Bosnian Government near Tuzla.¹⁵⁷ Almost at the same time, the Serbs violated the heavy weapons exclusion zone around Sarajevo and recommenced their bombardments. In response, in May 1995, NATO aircraft launched several attacks against Bosnian Serb targets to enforce a ceasefire in the Sarajevo exclusion zone. In retaliation, Pale seized UN peacekeepers as hostages. Some of these hostages were chained to potential targets in the guise of human shields. On June 3 the Rapid Reaction Force (RRF) was created to protect UNPROFOR contingents from further harassment, and at the end of July the British-French led force was redeployed from bases in central Bosnia to Mount Igman, at a critical juncture of the Sarajevo front.¹⁵⁸ Despite these efforts, on July 11 and 25, the Bosnian Serbs seized the UN safe areas of Srebrenica and Žepa, in the former case pushing aside a small force of Dutch Blue Helmets and executing over 8,000 prisoners. In these circumstances, the operation confusion on side of the UNPROFOR did if not everything but to facilitate Serb aggression. The UNPROFOR command was, in fact, not willing to approve timely NATO air attacks on the Srebrenica front, and the limited strikes launched on 11 July were too little and too late. The small Dutch UNPROFOR contingent, incapable of resisting a major combined arms offensive, withdrew from the city to their operational base at Potočari, followed by a desperate mass of refugees. The international community, which had originally pledged 7,000 peacekeepers to Srebrenica, had never taken serious measures to ensure that its safe areas were safe in fact as well as in name. Following Srebrenica, the Žepa enclave, defended by a grand total of 68 Ukrainian Blue Helmets, fell in a matter of days.¹⁵⁹ The Security Council responded to the fall of Srebrenica with a resolution condemning the Bosnian Serb actions and calling for the restoration of Srebrenica as a safe area.

¹⁵⁶ See Report of the Secretary-General pursuant to Security Council Resolution 947 (1994), UN Doc. S/1995/222, 22 March 1995, para. 23.

¹⁵⁷ Elinor C. Sloan, *Bosnia and the New Collective Security*, Praeger, Westport 1998, 38.

¹⁵⁸ UNSC Resolution 836 and 998 did provide the legal basis for the RRFs participation in military enforcement action to protect UN safe areas.

¹⁵⁹ Craig Nation, *op.cit.* note 4, 190.

Resolution, however, was only declaratory.¹⁶⁰ In this scenario, the London Conference of 21 July 1995, was convened after the fall of the Srebrenica and Žepa with the goal of saving Gorazde from the Bosnian Serbs. The Conference leaders issued a warning to the Bosnian Serbs that an attack on Gorazde would trigger NATO's air strikes.¹⁶¹ In London, conference leaders also seized the opportunity to streamline the UN-NATO 'dual key' structure; with this aim the UN Secretary-General decided to delegate his 'UN-key' to the UNPROFOR Commander in the field, General Janvier, hence bypassing his special envoy. Depending on the operational circumstance, UNPROFOR Commander was authorized to further delegate to the UNITED NATIONS PEACE FORCES HEADQUARTERS (UNPF) Commander.¹⁶² On July 25, the NAC decided to implement approved the decisions taken at the London Conference.¹⁶³ The next day, with the intention to prevent an attack to the larger enclave of Goražde, the NAC pledged "*prompt and efficient*" action in the event that Goražde was attacked.¹⁶⁴ Already overstretched following their offensives against Srebrenica and Žepa, the Bosnian Serb forces held back. On 27 July, a meeting was held in Zagreb to coordinate air planning based on the political decisions handed down by the recent London Conference and NAC decisions. Also on 28 July, NATO-UN meeting in Brussels addressed a number of issues on air strike planning; the two organisations also reached an agreement on the

¹⁶⁰ The Council made no provision and took no decisions to follow through on its terms. See UNSC Resolution 1004, 12 July 1995.

¹⁶¹ David L. Dittmer and Stephen P. Dawkins, *Deliberate Force: NATO's First Extended Air Operation*, (The Centre for Naval Analysis (CNA), Washington D.C., June 1998).

¹⁶² *Ibid.* See also S/1995/623, 27 July 1995 in Jane Boulden, *op.cit.*, note 139, 20-21.

¹⁶³ Speaking after the NAC meeting, NATO's Secretary-General stated: "The planning we have undertaken is built upon the Council's decisions of August 1993 and April 1994 and falls under the authority of existing UN Security Council resolutions. Over the past few days, I have had contacts with Secretary-General Boutros Boutros-Ghali and after the Council tonight I made the first reports over the phone regarding the decisions and I have immediately sent to Secretary General Boutros Boutros-Ghali a detailed summary of our decisions so that he has the opportunity with his experts to study immediately the contents of the decisions made by the NAC. NATO will now be working urgently together with the UN to ensure the necessary coordination. [...] NATO's planning is designed to ensure that military preparations by the Bosnian Serbs which are judged to present a direct threat to Gorazde, or direct Bosnian Serb attacks on Gorazde, will be met with the firm and rapid response of NATO's air power. The planning provides for NATO and the UN to take the necessary decisions to launch significant air strikes in the event of such actions. There is a strong feeling among Allies that such operations, once they are launched, will not lightly be discontinued. In the face of the inherent risks, the Alliance is determined." Press Statement by the Secretary-General following North Atlantic Council Meeting on 25 July 1995. See also Jane Boulden, *op.cit.*, note 139, 20.

¹⁶⁴ These facts were anticipated by the a four-member delegation visit to General Mladic on 23 July to deliver the ultimatum set forth by the London Conference. The four-member delegation, composed of representative from the United States, United Kingdom, and France, was headed by U.K. Air Chief Marshall William Wratten and included U.S. Deputy Commander in Chief, European Command, General James Jamerson.

authority required to stop the air strikes.¹⁶⁵ On 1 August 1995, the NAC reconvened to define zones of action (ZOAs) three other safe areas, namely: Sarajevo, Bihac, and Tuzla.¹⁶⁶ On the very same day British, French and American generals warned Bosnian Serbs general Ratko Mladic that NATO and the UN would meet any further attacks on UN safe areas with “disproportionate” and “overwhelming” force.¹⁶⁷ On 10 August 1995, NATO and UN commanders signed a Memorandum of Understanding (MoU) on the execution of NATO air operations for the protection of UN-designated "safe areas" in Bosnia-Herzegovina.¹⁶⁸ On 28 August the Sarajevo market explosion triggered NATO action against the Bosnian Serbs.¹⁶⁹ Based on the streamlined UN-NATO dual key system, the UNPROFOR Commander in Sarajevo initiated a request for air strikes to which the NATO Commander agreed; an ultimatum was then issued to the parties requiring their compliance with the exclusion zone.¹⁷⁰ On 30 August 1995, NATO initiated a bombing campaign, designated OPERATION DELIBERATE FORCE, focused on disrupting Bosnian Serb communication assets and breaking the siege of Sarajevo. In 2 weeks of concentrated attacks, NATO aircraft flew 3,315 sorties and 750 attack missions directed against 56 target complexes. Assisted by the strikes, Muslim and Croat ground forces were able to accelerate their advance. As a result, the 51:49 percent territorial divisions, foundation of the Contact Group’s peace plan, came to be mirrored by realities on the ground. Decisive intervention inspired by the United States and spearheaded by NATO air power had restored a regional balance of power, and in so doing created an objective foundation for a negotiated peace. DELIBERATE FORCE was conducted in coordination with the UN's RRF deployed on the ground. The bombing was halted from 1-4 September to allow UNPROFOR to withdraw from close contact with Serbs and hence reduce the threat of Serbs taking

¹⁶⁵ See David L. Dittmer and Stephen P. Dawkins, *supra* note 161, 14.

¹⁶⁶ *Ibid.*, 9.

¹⁶⁷ See “Turn of the Tide?” in *The Economist* (5 August 1995), 47; and, “NATO Gets Tough”, *The Economist*, (2 September 1995), 17. See also Nadia Boyadjieva, *NATO on the Balkans: Pattern of Peace-Keeping in the Post-Cold War Era (The Cases of Bosnia and Herzegovina and Kosovo)*, NATO/EAPC Research Fellowship 2001-2003, June 2003.

¹⁶⁸ Due to the MoU, the CINC could now strike at any Bosnian integrated air defence system (IADS) within the area of operations without further "agreement or concurrence" of the UN ground commanders. Thus, the UN had no authority to negate a strike against IADS.

¹⁶⁹ David L. Dittmer and Stephen P. Dawkins, *op.cit.* note 161, 18.

¹⁷⁰ The Council decisions required both the Bosnian Serbs and the Government of Bosnia to remove their heavy weapons within ten days, and required the Bosnian government “to refrain from attacks launched from within the current confrontation lines”. It also stated that within ten days “heavy weapons of any of the parties found within the Sarajevo exclusion zone, unless controlled by UNPROFOR, will, along with their direct and essential military support facilities, be subject to NATO air strikes.” See North Atlantic Council, Decisions taken at the Meeting of the North Atlantic Council in Permanent Session, 9 February 1994; in Jane Boulden, *op.cit.*, note 139, 15.

UN soldiers as hostage. This reposition further permitted a more aggressive action against the Serbs.¹⁷¹ Meanwhile, in July and August, a large-scale HV offensive, code-named OPERATION STORM ran over the entire Republic of Serbian Krajina.¹⁷² Regarding the Croatian offensive of 1995, and on the merit of the action taken by international community towards the problems in Krajina during the years 1994-1995, Ambassador Thorvald stated:

“[...] Your question is based on a false assumption – namely, that the international community was impartial. That’s not the case. They were partial, in supporting the Muslims or Bosniaks. They turned a blind eye to the Croats and were against the Serbs. You may discuss whether this was justified or not, but it was a fact; there’s no doubt about it. You mentioned Krajina. We can discuss whether one should turn a blind eye to the Croats. But we can’t hide from the fact that this was the case. This was how it operated the whole time. There was not really impartiality – at least not in 1994 and 1995.”¹⁷³

Military action was paralleled by the U.S.-led diplomatic initiative. The outline of the U.S. “Endgame Strategy” proposed a comprehensive settlement for the Bosnian crisis that included maintaining a united Bosnia-Herzegovina with a capital at Sarajevo that would be internally divided between “entities” representing the Croat-Muslim federation and the Republika Srpska defined territorially according to the Contact Group plan.¹⁷⁴ The negotiation with the Balkan regional leaders was assigned to Richard Holbrooke. On 5 October Clinton was able to announce a 60-day ceasefire, to be accompanied by the creation of a NATO-led PEACE IMPLEMENTATION FORCE (IFOR). The stage was now set for the proximity talks conducted under strict U.S. supervision at Dayton, Ohio, from 2 to 21 November. Furthermore, those directly affected by the treaty were not permitted to function as direct parties in the talks.¹⁷⁵ The critical issue of control over the Brčko strategic point was placed into the hands of international arbitrators. At the end the GFAP was formally signed in Paris on

¹⁷¹ David L. Dittmer and Stephen P. Dawkins, *op.cit.* note 161, 33-34.

¹⁷² For further information see Giacomo Scotti, *Croazia, Operazione Tempesta: La “liberazione” della Krajina ed il genocidio del popolo serbo*, Gamberetti Editrice, Roma 1996.

¹⁷³ Wolfgang Bierman “From Stoltenberg-Owen to Dayton”, in Wolfgang Bierman and Martin Vadset, *UN Peacekeeping in Trouble: Lessons Learned from the Former Yugoslavia*, Ashgate Publishing, Aldershot 1998, 9.

¹⁷⁴ See “1995-07-20A, NSC Paper re Bosnia Endgame Strategy,” Clinton Digital Library, available at <<https://clinton.presidentiallibraries.us/items/show/12499>>.

¹⁷⁵ Karin Oellers-Frahm, “Restructuring Bosnia-Herzegovina: A Model with Pit-Falls” in *Max Planck Yearbook of United Nation Law*, Vol. 9 (2005), 189. In particular, the delegation of the Republika Srpska (RS) was not represented by a Bosnian Serb, but by President Milosevic of Serbia, who also represented the FRY.

December 14. During the Paris sessions a leftover issue from the Serbian-Croatian conflict was resolved by the accord concluded on 12 November 1995 in the Slavonian town of Erdut, establishing mechanisms for the peaceful transfer of eastern Slavonia, Baranja, and western Srijem back to Croatian sovereignty, a process that was completed without incident in the course of 1996. Although the Croatian territory was not subject to the Dayton agreement *per se*, the Erdut Agreement was negotiated and signed as part of the wider political deal, which allowed Dayton to become a reality.¹⁷⁶ The International Criminal Tribunal for the former Yugoslavia (ICTY) was not formally associated with the Dayton process, but the Dayton Accord mandated signatories to “cooperate” with its work, which was generally viewed as an integral part of the peace-building effort.¹⁷⁷ Additional instruments to the Dayton agreement were signed in London, Brussels and Bonn. In particular, conclusions of the London conference have been of relevance for the military implementation of the agreement.

A. Peacemaking initiatives

1. The Carrington-Cutileiro plan

The plan resulted from the EC Peace Conference held in September 1991, proposed ethnic power-sharing on all administrative levels and the devolution of central government to local ethnic communities. Initially, the plan was accepted by all three sides but later on Izetbegovic withdrew his consent.

2. The London Conference

Held in August 1992, its specific goals were “to alleviate the humanitarian nightmare in Bosnia; to support the negotiating process; to punish the aggressors [by] tighten[ing] the economic and political isolation of Serbia and Montenegro; to quarantine and contain the conflict and prevent its widening; and, ultimately, to bring peace to the peoples of the former Yugoslavia.”¹⁷⁸ The conference paved the way for expanding UNPROFOR’s mandate to include escorting humanitarian assistance convoys; united the peacemaking efforts of the EC and the UN by creating a permanent negotiating

¹⁷⁶ Rianne M. Letschert, *op.cit.* note 75, 334.

¹⁷⁷ See General Framework Agreement for Peace (GFAP) in Bosnia and Herzegovina, Annex 1A, Article IX-X.

¹⁷⁸ See Acting U.S. Secretary of State Lawrence Eagleburger, “London Conference to Galvanise International Action”, communication released after the London Conference on Yugoslavia, 28 August 1992, U.S. Department of State Dispatch, No. SUP6-7 September 1992, 7.

forum called the International Conference on the Former Yugoslavia; and reached consensus on measures to strengthen the sanctions regime.¹⁷⁹ However, the international community clearly showed its attitude towards the conflict through the UNSC Resolution 770.¹⁸⁰ In fact, by calling the states to take all measures to facilitate the delivery of humanitarian aid in Bosnia, UNSC Resolution 770 indicated that the Western powers were not prepared to use force to compel the warring parties to negotiate a cease-fire, much less a peace settlement.¹⁸¹ In turn, the agreement reached in London in August 1992 was never implemented; for instance, the failure to establish control over heavy weapons is a regrettable example of the kind of troubles UNPROFOR would face in the months to follow.¹⁸² To fully evaluate the situation, it must be observed that the UN Secretary General was not invited to attend the London Conference. Regarding the meeting as an exercise of preventive diplomacy undertaken by regional organizations or arrangements, the UN Secretary General made clear that the primary responsibility in such matters is up to the Security Council. In his view “[...] in other instances when the United Nations and a regional organization have both been involved in an international peace and security situation, care has to be taken that the primacy of the world organization has not been compromised”.¹⁸³

3. The International Conference on the Former Yugoslavia

Opened in continuous session in Geneva on 3 September 1992, it was co-chaired by Lord David Owen, representing the EC, and Cyrus Vance, representing the UN; its goals were to end the bloodshed and to draw up a negotiated settlement regarding the situation in Bosnia.¹⁸⁴ In the light of these goals, a working group was established with the aim to end hostilities, demilitarise Sarajevo, and draft a constitution that would respond to the aspirations of the three constituent nations, providing a string protection for human and minority right through enforcement mechanisms.¹⁸⁵ According to the

¹⁷⁹ Elinor C. Sloan, *op.cit.* note 157, 46.

¹⁸⁰ UNSC Resolution 770 (1992), S/RES/770 (1992), 13 August 1992.

¹⁸¹ Michael R. Gordon, “Limits of U.S. role: White House is seeking to minimize any use of military in Balkan conflict” in *The New York Times* (11 August 1992), A6.

¹⁸² Mark Weller, “Peace-Keeping and Peace-Enforcement in Bosnia and Herzegovina” in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* No. 56 (1996), 93.

¹⁸³ Report of the Secretary General, S/24333, 21 July 1992, para. 8.

¹⁸⁴ Lawrence Eagleburger, *op.cit.* note 178, 7.

¹⁸⁵ David Owen, *Balkan Odyssey*, Harcourt Brace & Company, New York 1995, 58.

plan the significant functions of the state would be carried out by between four and ten regions.¹⁸⁶

4. The Vance-Owen Plan

The plan came as an outcome of the above-mentioned negotiations and it was presented to the parties in plenary session on 2 January 1993. The plan comprised a three-part package of 10 constitutional principles, a detailed cessation of hostilities agreement and a map. It called for a confederation of 10 autonomous provinces, with 3 provinces being controlled by each of the ethnic groups and Sarajevo being shared by all.¹⁸⁷ Facing the rejection of the Bosnian Serbs the great powers were divided on how to respond to it. Britain, France and Russia favoured concerted diplomatic pressure on the warring parties to force them into accepting the plan. At this point, and in the view of going ahead with the peace plan even though the Bosnian Serbs rejected it, Russia called for a special meeting of UNSC foreign ministers on how the powers could impose the plan. However, with the refusing to engage in the diplomatic effort—Americans disagreed with the plan due to the percentage of territory recognised to Serbs—the proposed UNSC meeting was cancelled and the Vance-Owen peace plan abandoned.¹⁸⁸ The plan was also criticised by the Experts' Committee on the Former Yugoslavia in 1993.”¹⁸⁹

5. The Owen-Stoltenberg Plan

Following the demise of the Vance-Owen peace plan, Owen and Stoltenberg, who replaced Vance as co-chair of the International Conference on the Former Yugoslavia in April 1993, developed a third peace plan for Bosnia. According to the plan, the Bosnian Serbs would control 52,5 % of Bosnian territory, the Croats 17,5 %, and the Muslims 30%. The three parts of Bosnia would be joined in a loose union with a common Presidency, Council of Ministers, Supreme Court, Constitutional Court and Court of Human Rights. However, when the Muslims demanded the control over the

¹⁸⁶ *Ibid.*, 62.

¹⁸⁷ Elinor C. Sloan, *op.cit.* note 157, 48.

¹⁸⁸ *Ibid.*, 51.

¹⁸⁹ See, the author's previous research on the *Interplay between the Council of Europe, OSCE, EU and NATO*, European Academy Bozen-Bolzano, 2017, 42

predominantly Muslim towns and the access to the sea were met by Serb and Croat refusal, negotiations broke down.¹⁹⁰

6. The European Union Action Plan

During the autumn of 1993, Owen and Stoltenberg developed a fourth peace plan for Bosnia. The initiative sought to revive the Owen-Stoltenberg approach by increasing pressure on the Muslim faction to accept an agreement that satisfied most of its territorial demands, and offering to suspend sanctions against Yugoslavia.¹⁹¹ The plan was in fact a modified version of the union of three republics. The plan was presented to the parties at a November 1993 meeting in Geneva, but the talks ultimately brought no agreement. Facing no threat of force, the Bosnian Serbs did not feel compelled to give up land that they controlled. Both the Serbs and the Muslims effectively rejected the plan.¹⁹²

7. The Contact Group Peace Plan

On 25 April 1994, American, Russian and British officials announced the establishment of a formal coordinating group to be composed of Britain, France, Germany, Russia and the United States. The Contact Group, as it was called, also contributed to the U.S. and Russia full involvement in the peace efforts. At their inaugural meeting at the U.S. embassy in Geneva on 13 May 1994, the Contact Group presented a peace formula that would give the Muslim-Croat Federation 51% of Bosnian territory and the Bosnian Serbs 49%. At the second meeting, held this time at the Russia mission to the UN on 5 July 1994, the powers formally approved the detailed map of the plan. They also agreed on a series of incentives and disincentives “designed to focus the minds of Serbs and Muslims on the consequences of pursuing the war”.¹⁹³ The Bosnian Muslim and Croat factions accepted the plan without conditions. The Milosevic government, whose ability to pressure the Bosnian Serbs was considered to be critically important, supported the concept. But the Bosnian Serbs, who were asked to make territorial concessions but also rewarded with international recognition and the capacity to retain independent armed forces, remained

¹⁹⁰ See also “They Call it Peace” in *The Economist* (28 August 1993), 46.

¹⁹¹ This in exchange for more flexibility on territorial-related issues. See Craig Nation, *op.cit.* note 4, 177.

¹⁹² Elinor C. Sloan, *op.cit.* note 157, 55.

¹⁹³ David Owen, *op.cit.* note 185, 285.

recalcitrant. The July 20 deadline was repeatedly extended as the Serb faction raised new conditions and at the end, in a plebiscite of August 1994, the Bosnian Serbs voted to reject the peace plan. Later on, exactly on 8 September 1995, after NATO's air campaign, the foreign ministers of Serbia, Croatia and Bosnia met in Geneva with the Contact Group foreign Ministers, under the chairmanship of Holbrooke, and agreed that the Contact Group's plan would form the basis of negotiations for the final peace agreement.

II. CO-OPERATION AT THE HEADQUARTERS LEVEL

A. Co-operation at the beginning of the conflict

First and foremost, an assessment on the position of Bosnia-Herzegovina at international level is indeed extremely helpful in understanding the efforts made by the international community in managing the ethnic conflict which invested BiH in the 1990s. Thus, it is noteworthy to remind that on 6 April 1992, BiH was recognised by the EC while on 30 April became the 52nd member of the CSCE, and on 22 May it was admitted to the UN. The parliament of Bosnia finally obtained special guest status to the PACE on 29 January 1994 and on 10 April 1995, BiH applied for the CoE membership. Then, once the conflict started, the country's position in the international agenda prompted the EC, aware that it had no justification to interfere in Eastern Europe, to seek CSCE's approval for its actions.¹⁹⁴ The EC crisis management, however, highlighted the external policy shortcomings of the 1992 Common Foreign and Security Policy (CFSP).¹⁹⁵ As for Croatia, the initial policy was aimed at keeping the Yugoslav federation together; two basic approaches, mediation and impartiality, have been applied and later shifted to enforcement.¹⁹⁶ Furthermore, EC attempts to arrange cease-fire agreements and the sending of unarmed observers to the field failed to produce the desired effect and did not prevent the continuation of fighting. The lack of results then contributed to the gradual shift of the EC's mediation role in favour of

¹⁹⁴ Jon Roper, *op.cit.* note 78, 4.

¹⁹⁵ Helen Wallace and William Wallace, *Policy-Making in the European Union*, Oxford University Press, New York 2000, 461.

¹⁹⁶ Attila Süle, *The European Union in Peace Operation: Limits of Policy-Making and Military Implementation*, thesis for the Master of Science in International Security and Civil-Military Relations, Naval Postgraduate School, Monterey March 2003, 37.

the UN which on, February 1992, through the UNSC Resolution 743 decided for the deployment of UNPROFOR. The latter was expanded in the mandate as soon as the situation worsened whilst in July 1992 NATO was asked to provide for command and control structure for UNPROFOR but France blocked the action in the NAC.¹⁹⁷ The UN, from its side, preferred not to take the leadership role in the initial phases of the conflict; the position of Russia and relative use of veto power to block a more aggressive UN effort in the country was indeed considered with fear. Later, when it became evident that the EC was unable to resolve the conflict, the UN was called to assume control by France and US. In this context, an example of lack of co-operation with the EU came from the same UN Secretary-General Boutros Boutros-Ghali: “[T]he UN did not participate in the negotiation of the London Agreement. Only on the eve of its signature were my staff informed of the request...It is most unusual for the UN to be asked to help carry out a political-military agreement in whose negotiation it has played no part”.¹⁹⁸

Though having formally recognised Bosnia in 1992, the CSCE decided to act only when the UN Secretary-General called for support.¹⁹⁹ The organisation confirmed its availability to send a mission to investigate the detention camps and observers to Kosovo to try to prevent the conflict from spilling over.²⁰⁰ In September 1992 the Moscow Human Dimension Mechanism was activated for the first time on reports of atrocities and attacks on unarmed civilians in Croatia and Bosnia-Herzegovina.²⁰¹ The Bosnian conflict, however, showed the CSCE’s lack of any type of enforcement or compliance instrument; the record of the CSCE/OSCE involvement in trying to solve this war was in fact poor, and so was the record of the combined efforts of the international community.²⁰² In this context the London Conference paved the way for expanding UNPROFOR’s mandate to include escorting humanitarian assistance convoys; to merge the peacemaking efforts of the EC and the UN by creating a permanent negotiating forum called the International Conference on the Former

¹⁹⁷ Anyhow, the intervention came later as a contribution of the member states, which acted on their own and not under NATO.

¹⁹⁸ See Boutros Boutros-Ghali, Report of the Secretary General on the Situation in Bosnia-Herzegovina, UN Doc. No. S/24333, 21 July 1992.

¹⁹⁹ See “CSCE to support Peacekeeping Activities in Bosnia” in *Reuters News Service* 15 August 1992.

²⁰⁰ *Ibid.*

²⁰¹ See CSCE Annual Report 1993 on CSCE Activities, *op.cit.* note 98, para. 4 - Human Dimension.

²⁰² Joachim Krause, *The OSCE and Co-operative Security in Europe: Lessons for Asia*, OSCE ASEAN Regional Forum - ARF, 2000, 28.

Yugoslavia²⁰³; and to reach consensus on measures to strengthen the sanctions regime.²⁰⁴

B. Co-operation during the conflict

In 1992, the refusal to consider military means by the IC led to a long series of feeble gestures - UN resolutions (no less than 54 UN resolutions on the Yugoslav conflict were issued by December 1993), sanctions, embargos, peacekeepers, empty threats, and endless mediation - that produced considerable sound and fury but did little to deter the dynamic of conflict on the ground. Economic sanctions against the Federal Republic of Yugoslavia imposed by the EC in November 1991 were reinforced on 30 May 1992, by UNSC Resolution 757, blocking commercial transactions, freezing credit, and closing down international air travel. Moreover, as reported from the Secretary General, in pursuit of Resolution 757 an agreement was concluded between the Government of the Republic of Bosnia and Herzegovina and the Serb party to re-open the Sarajevo airport.²⁰⁵ The agreement further foreseen the creation of security corridors between the airport and the city and the delivery of humanitarian aid under the supervision of the UN.²⁰⁶ Such a plan was officially endorsed by the UNSC in its Resolution 758²⁰⁷ and with the adoption of Resolution 761 the Security Council quickly reacted to the initial lack of co-operation of both parties.²⁰⁸ With Resolution 761, the Security Council formally authorized to increase the strength of UNPROFOR to secure the functioning of Sarajevo airport and ensure the delivery of humanitarian assistance.²⁰⁹ Shortly after, facing continuing lack of cooperation and the impossibility to open security corridors to secure unimpeded humanitarian aid the Council decided to further increased UNPROFOR troops.²¹⁰

²⁰³ Elinor C. Sloan, *op.cit.* note 157, 46.

²⁰⁴ Kari Möttölä, "Prospects for Cooperative Security in Europe: The Role of the CSCE", in Michael R. Lucas (ed.), *The CSCE in the 1990s: Constructing European Security and Cooperation*, (Nomos Verlagsgesellschaft, Baden-Baden 1993), 27.

²⁰⁵ As from the agreement, UNPROFOR would have guaranteed for the security of the airport facilitate the delivery of humanitarian aid and related personnel. See Report from the Secretary-General Pursuant to UNSC Council Resolution 757 (1992), S/24075, 6 June 1992.

²⁰⁶ *Ibid.*, para. 7-8. UNPROFOR was further requested to ensure the safe movement of humanitarian aid.

²⁰⁷ See UNSC Resolution 758, S/RES/758(1992), 8 June 1992.

²⁰⁸ See UNSC Resolution 761, S/RES/761(1992), 29 June 1992. In the Resolution the Council declared its readiness to adopt "[...] other measures to deliver humanitarian assistance to Sarajevo and its environs".

²⁰⁹ *Ibid.*

²¹⁰ See UNSC Resolution 764, S/RES/764 (1992), 13 July 1992.

Besides, in June 1992, the political basis for NATO's role in the former Yugoslavia was established in coincidence with NATO foreign ministers' support to peacekeeping activities under the aegis of the CSCE, subsequently renamed the Organization for Security and Cooperation in Europe (OSCE) in 1994.²¹¹ In December 1992, the NATO foreign ministers stated their readiness to support the UNPROFOR peacekeeping operations under the authority of the UN. This marked the start of several NATO operations conducted in support of the UN over the next 4 years. During the years 1994-1995 meetings on the theme of "Co-operation in Peacekeeping Operations" had also been organised and attended by international organisations involved in the managing of the conflict in Bosnia and Herzegovina. In this context, in 1994 the CSCE continued its contacts with the NACC and its *ad hoc* group on co-operation in peacekeeping,²¹² whilst on 3 June 1995 the UNPROFOR's RRF was created to protect the UN contingents from further harassment.²¹³ In October 1995, the second high-level ("2+2") meeting between the OSCE and the CoE was held in Prague. Attended by the OSCE Chairman-in-Office (CiO), the Secretary-General, the HCNM, the Director of the Office for Democratic Institutions and Human Rights (ODIHR) and CoE Secretary-General, during the meeting themes like cooperation in former Yugoslavia, exchange of experiences in the field of compliance monitoring, cooperation in election monitoring, confidence-building measures (CBMs) and information exchange, had been analysed.²¹⁴

²¹¹ See CSCE Budapest Summit Declaration, "Towards a Genuine Partnership in New Era", December 1994.

²¹² See CSCE Annual Report 1994 on CSCE Activities, Vienna 14 November 1994, 23.

²¹³ See UNSC Resolution 998, S/RES/998(1995), 16 June 1995.

²¹⁴ See OSCE Annual Report 1995 on OSCE Activities, 30 November 1995, 37.

Co-operation after the end of the conflict

1. Co-operation in the context of the Dayton Peace Agreements

An analysis of the implementation of the Dayton Peace Agreement (DPA) should commence by referring to the Office of the High Representative (OHR). Created in 1995 as an *ad hoc* institution under the GFAP in BiH, the OHR did not enjoy wide powers of direct rule. Direct decision-making powers were given after the adoption by the Peace Implementation Council (PIC)²¹⁵ of the Bonn Conclusions in December 1997 in response to difficulties moving forward in the implementation of the Dayton Agreement. Elaborating on Annex 10 of the GFAP, the Bonn Powers were then considered by the PIC to be within the High Representative's authority under the Dayton Agreement.²¹⁶ Prior to that, the High Representative could make recommendations to the Steering Board²¹⁷ of the PIC if the parties were at an impasse, but did not pass laws or regulations that were directly implemented.²¹⁸ According to the PIC, the adoption of Bonn Powers was justified by the necessity to maintain peace and enforce human rights guaranteed under the Dayton Agreement, in order to prevent a regression to ethnic conflicts.²¹⁹ The UNSC, acting under Chapter VII of the UN

²¹⁵ The Peace Implementation Council replaced the International Conference on the Former Yugoslavia, see Conclusions of the Peace Implementation Conference held at Lancaster House, London, December 1995 in UN Doc. S/1995/1029 (Lancaster House Agreement), para. 3. The PIC comprised 55 countries and agencies that support the peace process in many different ways by assisting it financially, providing troops for SFOR, or directly running operations in Bosnia and Herzegovina. Since the London Conference, the PIC has come together at the ministerial level another five times to review progress and define the goals of peace implementation (in June 1996 in Florence; in December 1996 for a second time in London; in December 1997 in Bonn; in December 1998 in Madrid, and in May 2000 in Brussels).

²¹⁶ Due to the 'intransigence of the former warring parties during the first two years,' the PIC 'welcome[d] the High Representative's intention to use his final authority in theatre regarding interpretation of the [Dayton Agreement] in order to facilitate the resolution of difficulties by making binding decisions, as he judges necessary.' See Peace Implementation Council Bonn Conclusions, 10 December 1997.

²¹⁷ The London Peace Implementation Conference also established the Steering Board of the PIC to work under the chairmanship of the High Representative as the executive arm of the PIC. The Steering Board members are Canada, France, Germany, Italy, Japan, Russia, United Kingdom, United States, the Presidency of the European Union, the European Commission, and the then Organisation of the Islamic Conference, which is represented by Turkey. The Steering Board provides the High Representative with political guidance. In Sarajevo, the High Representative chairs weekly meetings of the Steering Board. In addition, the Steering Board meets at the level of political directors every three months.

²¹⁸ Lindsey Cameron, *Accountability of International Organisations Engaged in the Administration of Territory*, (University of Geneva, Centre for International Humanitarian Law, paper presented at the Price Henry Dunant 2006), 32.

²¹⁹ The PIC opened its conclusions at the Bonn Conference by 'deplor[ing] the fact that the protection of human rights in Bosnia and Herzegovina is still inadequate' and 'reiterat[ing] that the extensive list of human rights obligations, which form part of the Constitution of Bosnia and Herzegovina and the Peace Agreement, must be respected and that current laws must be reviewed to determine their compatibility with international standards of human rights.' See Bart M. J. Szewczyk, *The EU in Bosnia and*

Charter, subsequently endorsed this interpretation of the HR's authority under the Dayton Agreement.²²⁰ The new powers, however, were given without substantive or procedural checks on their use.²²¹ Regrettably, conceived as of "extraordinary authority" the Bonn Powers finally become ordinary and hence part of the ongoing stable functioning of Bosnia.²²² On this point, part of the international community strongly criticized such a development defining the Bonn Powers as 'ad hoc', 'arbitrary,' or even 'dictatorial', and repeatedly called for an end to the so-called 'international protectorate'.²²³ In February 2002, the EU General Affairs Council (GAC) appointed the High Representative the EU's Special Representative (EUSR) in BiH. Located in the same headquarters, their staff members were also formally double-hatted so as to serve under both entities.²²⁴

The mentioned "change of powers," however, had an impact on the functioning of the Human Rights Ombudsman whose establishment was provided for in the GFAP and limited in its jurisdiction to actions of the Parties to the Agreement.²²⁵ The jurisdictional limitation, logical at that time considering that the High Representative was not granted direct administrative powers, should have been amended together with its powers. This did not happen and the consequential lack of coherency resulted in an institution, the Human Rights Ombudsman, incapable of bridging the accountability

Herzegovina: powers, decisions and legitimacy, (European Union Institute for Security Studies, Occasional Paper 83, March 2010), 32.

²²⁰ See UNSC Resolution 1174, S/Res/1174 (1998), 15 June 1998. Moreover, the Bosnian Serb member defined the Bonn Powers as "'alarming and humiliating' pressure" from the international community. Reaction of the tripartite Bosnian Presidency has been contradictory: the Bosnian Serb members promptly objected the adoption of the Bonn Powers whilst the Bosnian Muslim ('Bosniak') and Bosnian Croat members of the Presidency welcomed the initiative. See Bart M. J. Szewczyk, *ibid.*, 30.

²²¹ Gerald Knaus and Martin Felix, *Lessons from Bosnia and Herzegovina: Travails of the European Raj* in *Journal of Democracy* 14(3) 2003, 64; in Elena B. Stavrevska, *What Happens after the Mandate Completion? Evaluating Outcome Sustainability of ESDP Police Missions in the Balkans*, (Institut für Europäische Politik (IEP). Study Programme on European Security (SPES) Policy Papers, Berlin November 2010), 6.

²²² Paddy Ashdown, *Swords and Ploughshares: Bringing Peace in the 21st Century*, (Weidenfeld & Nicholson, London 2007), 219; in Bart M. J. Szewczyk, *op.cit.* note 219, 43. The same Powers were nevertheless viewed as preventing local ownership and responsibility over decision-making, producing over-dependence on the HR/SR to reach political compromise, and fundamentally inconsistent with Bosnian accession negotiations with the EU.

²²³ For instance, During Ashdown's particularly active term as HR/SR between 2002 and 2006, the Director of the European Stability Initiative described his office as 'imperial,' insofar as it controlled 'the commanding heights of what amounts to a system of "indirect rule,"' over a country 'where expatriates make major decisions, where key appointments must receive foreign approval, and where key reforms are enacted at the decree of international organizations.' See Bart M. J. Szewczyk, *op.cit.* note 219, 31-32.

²²⁴ *Ibid.*, 29.

²²⁵ See GFAP, Annex 6, Article V Section 2.

gap in the administration.²²⁶ As to the co-operation with other international entities, the High Representative was expected to remain in close contact with the IFOR Commander, as part of a Joint Consultative Committee or through the Joint Military Commission; and to convene and chair a Joint Civilian Commission composed of political representatives of the parties, IFOR commander and representatives of civilian organizations.²²⁷ If necessary, Joint Civilian Commissions at local levels could also be established by the OHR.²²⁸ The Joint Military Commission, was established to serve, *inter alia*, “as the central body for all Parties to this Annex to bring any military complaints, questions, or problems that require resolution by the IFOR Commander[...]”.²²⁹ Local subordinate military commissions could also be established for the purpose of “providing assistance in carrying out the functions” described in Art. VIII (2a) of the GFAP.²³⁰

Furthermore, the OHR set up a Rule of Law Task Force Tracking Coordination’ to coordinate its members on issues such as judicial reform, law enforcement, and reform and human rights. In addition, to respond to the call for coordination of human rights implementation efforts and to support the work of the office in the area, the High Representative established the Human Rights Coordination Centre (HRCC) within his office.²³¹ The HRCC includes representatives from the OSCE, the UN International Police Task Force (IPTF), the UN Office of the High Commissioner for Human Rights (OHCHR), as well as liaisons from the ECMM, the UN High Commissioner for Refugees (UNHCR) and the International Committee of the Red Cross (ICRC).²³²

²²⁶ Lindsey Cameron, *op.cit.* note 218, 92.

²²⁷ See GFAP Annex 10 Art. II (2). See also Ettore Greco, *The Evolving Partnership Between the United Nations and NATO: Lessons from the Yugoslav Experience*, (NATO Research Fellowship 1995-1997), para. 3.3. As from Art. II. (5): “the High Representative or his representative shall remain in close contact with the IFOR Commander or his designated representatives and establish appropriate liaison arrangements with the IFOR Commander to facilitate the discharge of their respective responsibilities”.

²²⁸ *Ibid.*, Art. II (3).

²²⁹ *Ibid.*, 1 Art. VIII (2a). The Commission was also mandated to receive reports and agree on specific actions to ensure compliance with the GFAP and assist the IFOR Commander in determining and implementing a series of local transparency measures between the Parties.

²³⁰ *Ibid.*, 1 Art. VIII (8).

²³¹ The need for such a body was expressed by participants in the first Human Rights Task Force meeting in Brussels on 26 January 1996 who agreed on the need to create a central point for collection of human rights information and coordinate the day-to-day activities on human rights.

²³² Office of the High Representative report to the Peace Implementation Council (PIC), “Implementation of the Human Rights Provision of the Peace Agreement”, PIC Main Meeting of 13 June 1996, 6. See also UN Doc. UNSC S/1996/542, 10 July 1996. The HRCC was also responsible for the producing, through the then *Quarterly Human Rights Reports*, public and human rights reporting of the international organisations in BiH. The HRCC further produced the *HRCC Council of Europe Updates*: monthly updates of the progress of Bosnia and Herzegovina towards meeting the accession requirements of the Council of Europe. In May 1999, the Council of Europe identified 13 requirements

Through the creation of the HRCC substantial progresses have been made in creating an information clearinghouse for reporting from the major implementing organisations.²³³ Within the HRCC, a Civil Society Co-ordination Group was also set up with the aim of developing a co-ordinated concept for a long-term sustainable civil society in BiH in order to avoid duplication of efforts within the IC.²³⁴ An important function of the HRCC was to support the work of the Human Rights Steering Board (HRSB) and the Regional Human Rights Working Groups (HRWGs). The HRSB was an inter-agency body comprised of senior human rights personnel from OHR, OSCE, UNMIBH, UNHCR, OHCHR, and the CoE.²³⁵ The HRWGs were multi-agency groups, comprised of field level staff, and engaging directly on human rights issues throughout the country.²³⁶ In this frame, besides coordinating the HRSB itself, the HRCC was responsible to make sure that policy developments at the HRSB level were communicated to the field, either in the form of guidelines or other resources.²³⁷

In 2002, due to an extensive study carried out by the Office of the High Representative at the request of the Peace Implementation Council the coordinating structure of the International Community in Bosnia and Herzegovina was "streamlined so as to eliminate overlapping effort and responsibilities and increase effectiveness".²³⁸ As part of this process a "Board of Principals" was established, under the chairmanship of the OHR, to serve as the main coordinating body in BiH. The Board of Principals meets once a week in Sarajevo with participation from the OHR, EUFOR, NATO, OSCE, UNHCR, EUPM and the EC. International financial institutions such as the World Bank, the International Monetary Fund (IMF) and the UN Development Programme (UNDP) were also regularly present. Besides, because of the double-hatting procedure with the EUSR, these weekly meetings were also aimed at narrowing the distance

for BiH to be admitted into the Council of Europe, of which 7 accession requirements pertain to human rights (totalling 40 separate tasks).

²³³ *Ibid.*, The HRCC further received *ad hoc* reporting from international and local NGOs on the human rights situation in Bosnia and Herzegovina.

²³⁴ See OSCE Annual Report 2000 on Interaction between Organisations and Institutions in the OSCE Area, 24 November 2000, 34.

²³⁵ The HRSB met monthly to share information and set policy for the human rights community. Each year the HRSB engaged in a planning exercise which establishes priorities for the coming year.

²³⁶ The HRWGs were based in the regional centres of Sarajevo, Mostar, Brcko, Tuzla, and Banja Luka.

²³⁷ The HRCC also ensured that important issues emerging in the Sarajevo-based Coordinating Groups were addressed by the HRSB, and that the field was aware of and included in policy discussions being undertaken in those groups. Numerous *Sarajevo-based Coordinating Groups*, which brought together representatives of international and local agencies to set policy and action plan, have been set up on the following topics: Judicial Reform; Trial Monitoring; Missing Persons; Social and Economic Rights; Gender Equality; Property; Legal Aid; Education; Human Rights Institutions; Civil Society; Minorities; and Health. See OHR Human Rights/Rule of Law Department, Update May 2000.

²³⁸ See OHR Board of Principals, OHR website at <http://www.ohr.int/?page_id=1236>.

between initiatives undertaken at the field level and the EU Presidency.²³⁹ This new input in overcoming the deficiencies of the Dayton Agreement was enhanced by a strong incentive to accelerate the re-organization of the state in view of the NATO Partnership for Peace and the EU membership.²⁴⁰

In June 2006 the PIC announced its intention to close down the OHR, along with the Bonn Powers, within a year time.²⁴¹ Eight months later, however, the same body revised its decision and since then the OHR's mandate has been repeatedly extended because in light of an "unstable and unacceptable" situation on the ground.²⁴² A decision, the latter, supported by the European Parliament.²⁴³ This unfortunate development, however, was indeed contrary to the guidance the EU Special Representative was supposed to provide on the EU accession.²⁴⁴ The same EU member states joined the PIC Steering Board in reiterating that "...an EU membership application by BiH cannot be considered as long as the OHR exists."²⁴⁵ Facing such a scenario the PIC Steering Board at their meeting in February 2008 set out the objectives that need to be achieved by the BiH authorities prior the closure of the OHR and the transition to the EUSR. The OHR closure and transition to the EUSR has then made it condition to the situation in BiH. To amplify the contradiction, in 2009 the EU High Representative Javier Solana stated that the '*Bonn Powers are not needed anymore,*' because '*intended for a situation which is very different from the current*

²³⁹ Jari Mustonen, *Coordination and Cooperation on Tactical and Operational Levels. Studying EU-ESDP Crisis Management Instruments in Bosnia and Herzegovina*, Crisis Management Centre (CMC) Finland Civilian Crisis Management Series Vol. 1, Nr. 1/2008, 28.

²⁴⁰ Darin Oellers-Frahm, "Restructuring Bosnia-Herzegovina: A Model of Pit-Falls" in *Max Planck Yearbook of United Nations Law*, Vol. 9 (2005), 209-210.

²⁴¹ See Communiqué of the PIC Steering Board, 23 June 2006.

²⁴² In June 2007 the PIC was of the opinion that 'political situation in Bosnia and Herzegovina is of grave concern,' given 'a severe deterioration in the political atmosphere, as well as threats by some non-state actors to take security into their own hands' (See Declaration by the Steering Board of the Peace Implementation Council, 19 June 2007). Similarly, in November 2008 it 'expresse[d] its deep concern about the frequent challenges to the constitutional order of BiH and, in particular, to the sovereignty and territorial integrity of BiH' (See Communiqué of the Steering Board of the Peace Implementation Council, 20 November 2008). In June 2009, the PIC continued to 'express its concern and disappointment with the level of progress' in Bosnia and insisted that '[s]tatements and actions challenging the sovereignty and constitutional order of BiH . . . display open disrespect for the fundamental principles of the GFAP, are unacceptable and have to stop' (See Communiqué of the Steering Board of the Peace Implementation Council, 30 June 2009). In November 2009, it stressed that 'personal attacks and threats of legal action against the High Representative and his staff are unacceptable' (See Communiqué of the Steering Board of the Peace Implementation Council, 19 November 2009).

²⁴³ See European Parliament Recommendation to the Council of 15 March 2007, para. L and 32.

²⁴⁴ The role and functioning of the EU Special Representative in Bosnia and Herzegovina will be analysed later in the chapter.

²⁴⁵ See Communiqué of the Steering Board of the Peace Implementation Council, 19 November 2009.

one.²⁴⁶ In view of this, it can be concluded that efforts undertaken have not produced the expected results and there are no indicators of future success. The risk of failing again and, quoting the former High Representative Paddy Ashdown, ‘...*destroy its credibility as a foreign policy player*’ is still pressing the EU.²⁴⁷

III. CO-OPERATION IN THE FIELD

A. Co-operation during the conflict

1. The United Nations Protection Force

In June 1992, as the conflict intensified and extended to BiH UNPROFOR’s mandate and strength were enlarged in order to ensure the security and functioning of the Sarajevo airport, and the delivery of humanitarian assistance to its surrounding. In September 1992, UNPROFOR’s mandate was further enlarged to support efforts undertaken by the UNHCR in delivering humanitarian relief and civilian protection.²⁴⁸ By then in recognizing some of the new and unusual task, for instance armed convoy protection, the UN Secretary General concluded:

“[...] in convoy protection duties, United Nations troops may have to move beyond the usual peacekeeping mode of impartiality between two parties to a conflict who have both agreed to the United Nations role. They themselves may become a party to a conflict with whoever tries to block, rob or destroy the convoy which they are protecting.”²⁴⁹

UNPROFOR, however, very rarely (even when attacked) resort to the use of force, and for example was incapable to resist to the murder of Hakija Turajlic, Deputy Prime Minister for Economic Affairs of the Republic of Bosnia and Herzegovina.²⁵⁰ Witnessing such events, the UNSC decided to abandon the traditional peacekeeping in favour of Chapter VII measures with the adoption of Resolution 770. Adopted under

²⁴⁶ Statement of 17 June 2009 in Bart M. J. Szewczyk, *op.cit.* note 219, 42.

²⁴⁷ ‘In Balkans, a daunting money pit for the EU’, in *The International Herald Tribune*, 1 October 2009.

²⁴⁸ See UN Security Council Resolution 776, S/RES/766 (1992, 14 September 1992. Although not adopted under Chapter VII of the UN Charter, the Resolution referred to the enlargement of UNPROFOR’s mandate and strength “in the implementation of paragraph 2 of Resolution 770(1992)” that in fact was adopted under Chapter VII of the Charter.

²⁴⁹ See Report of the Secretary General Pursuant to Security Council Resolution 743 (1992), S/24848, 9 November 1992, para. 9. See also Mark Weller, *op.cit.* note 182, 96.

²⁵⁰ He was killed by Bosnia Serb forces while under UNOPROF protection. See Statement by the President of the Security Council S/25079, 8 January 1993.

Chapter VII of the UN Charter, Resolution 770 called “States to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery by relevant United Nations humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina”.²⁵¹ The operation was then to be run by states—acting nationally or through regional agencies or arrangements—while being coordinated by the UN; enforcement tasks were then transferred from the UN to regional organizations. With Resolution 776, however, initiatives were brought back up to UNPROFOR, rather than individual states or regional organizations; in so doing the Security Council opted for a return to peace-keeping, rather than peace-enforcement mandate.²⁵² Resolution 776 was extending UNPROFOR’s mandate to armed convoy protection “in implementation to paragraph 2 of Resolution 770 (1992)”.²⁵³ By taking back functions previously assigned to states or regional organizations it seems reasonable to conclude on that the Security Council, fearing initiatives to be undertaken without its control, tried to diminish what previously adopted in Resolution 770.²⁵⁴ Resolution 776, therefore, not only removed the possibility of operations outside UNPROFOR’s control but further reduced options previously envisaged under Resolution 770 (e.g. “the necessary measures”) to just traditional peace-keeping restrictions.

In February 1993, continuing in adjusting mandate and authority of the mission in light of events happening in the field, the UNSC adopted Resolution 807, hence moving again from traditional peace-keeping to Chapter VII mandate.²⁵⁵ In April 1993, with Resolution 819 the Security Council declared that Srebrenica and its surrounding should be treated as “safe area”.²⁵⁶ The resolution, however, was conceived as a temporary measure.²⁵⁷ In this period, UN efforts were concentrated in trying to address the worsening situation of determinate enclaves.²⁵⁸ Pursuant to Resolution 819 a small

²⁵¹ See UNSC Resolution 770 (1992), *op.cit.* note 149.

²⁵² Mark Weller, *op.cit.* note 182, 99.

²⁵³ See UNSC Resolution 776, S/RES/776 (1992), 14 September 1992.

²⁵⁴ See Report of the Secretary General on the situation in Bosnia-Herzegovina, S/24540, 10 September 1992, para. 18.

²⁵⁵ See UNSC Resolution 807, S/RES/807 (1993), 19 February 1993. The Resolution ensured the security of UNPROFOR, demanding full respect for UNPROFOR’s unimpeded movement.

²⁵⁶ See UNSC Resolution 819, *op.cit.* note 137.

²⁵⁷ Mark Weller, *op.cit.* note 182, 102.

²⁵⁸ For instance, in April 1993 the UN Secretary General stated that “it is becoming evident that a massive humanitarian tragedy may be unfolding in Eastern Bosnia and Herzegovina, as the result of

unit of UNPROFOR troops was deployed in the safe area while representatives of the Security Council were also dispatched to report on developments in the field.²⁵⁹ In this scenario, the Government of the Republic of Bosnia and Herzegovina reluctantly concluded with General Mladic to disarm its own troops in the enclave. Surprisingly enough, UNPROFOR supervise the negotiations but did not inform the Security Council that in fact discussed Resolution 819 without knowing it.²⁶⁰ Later on, upon request of the same Mission, the Security Council extended the status of safe areas, by then limited to Sarajevo and Srebrenica, to Tuzla, Zepa, Gorazde and Bihac.²⁶¹ Resolution 824 ordered the deployment of UNPROFOR troops to just monitor the areas.²⁶² In spite of such attempts, safe areas continued to be exposed to violence and atrocities. In a further attempt to handle the deteriorating circumstances, the Security Council decided, acting formally under Chapter VII of the UN Charter, to:

“ [...] extend the mandate of UNPROFOR in order to enable it, in the safe areas referred to in resolution 824 (1993), to deter attacks against the safe areas, to monitor the cease-fire, to promote the withdrawal of military or paramilitary units other than those of Government of Republic of Bosnia and Herzegovina and to occupy some key points on the ground, in addition to participating in the delivery of humanitarian relief to the population as provided for in resolution 776 (1992)”.²⁶³

UNPROFOR was then authorized to act in self-defence and take the necessary measures, including the use of force, in reply to bombardments or armed incursion into the safe areas or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR and humanitarian convoys.²⁶⁴ Furthermore, with Resolution 836 the Security Council decided that member states, acting nationally or through regional organizations or arrangements, might take under the authority of the Security Council and subject to close coordination with the Secretary General and UNPROFOR, “all necessary measures”, including the use of air power to support

defiance by Serb elements of the resolutions of the Security Council.” See Letter from the Secretary-General to the President of the Security Council, S/25456, 22 March 1993.

²⁵⁹ The Mission described the enclaves as an “open jail in which its people can wander around but are controlled and terrorized by the increasing presence of Serb tanks and other heavy weapons in its immediate surroundings”. See Report of the Secretary-General Pursuant to Security Council Resolution 819 (1993), S/25700, 30 April 1993, para. 18.

²⁶⁰ Mark Weller, *op.cit.* note 182, 103. Nevertheless, representatives of the Security Council dispatched in the filed expressed some understanding from the action of UNPROFOR.

²⁶¹ See UNSC Resolution 824, S/RES/824 (1993), 6 May 1993.

²⁶² *Ibid.*, para. 6. Chapter VII was invoked but only for the protection of UNPROFOR and relative freedom of movement.

²⁶³ See UNSC Resolution 836, *op.cit.* note 139, para. 5.

²⁶⁴ *Ibid.*, para. 9.

UNPROFOR in the performance of its mandate.²⁶⁵ Later on, despite an initial request of 34,000 troops, the UNSC authorized only light increase of 7,600 peacekeepers for UNPROFOR.²⁶⁶ In this context, NATO was authorized to use air power in support of UNPROFOR's mandate. However, it is crucial to highlight that UNPROFOR was authorized to use force, apart from cases of self-defence, solely in the implementation of paragraph 9 of the Resolution and hence to defend the safe areas. NATO airpower, on the contrary, was given a further supporting role being allowed to back UNPROFOR in the implementation of paragraph 5 and 9 of the Resolution. A close consideration of the objectives foreseen in paragraph 5 of the Resolution²⁶⁷ would suggest a division of functions shaped around the idea of safeguarding, as much as possible, UNPROFOR's neutral status.²⁶⁸ NATO's action was anyway to be taken "under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR".²⁶⁹ In June 1993, NATO offered "protective airpower in case of attack against UNPROFOR in the performance of its overall mandate, it is so requests".²⁷⁰ On 2 August, the Alliance decided to "make immediate preparation for undertaking, in the event that the strangulation of Sarajevo and other areas continues, including wide-scale interference with humanitarian assistance, stronger measures including air-strikes against those responsible [...]".²⁷¹ NATO action, however, would be placed under the authority of the UN Security Council and in full respect of relevant UN Resolutions.²⁷² More on the co-operation with UN, the NAC decided to:

"[...] approve, recalling the assessments set forth in the covering memorandum, the 'Operational Options for Air Strikes in Bosnia-Herzegovina' forwarded by the Military Committee pursuant to the Council's 2 August decision, including the targeting identification process and NATO/UN command and control arrangements for air strikes. In particular, the Council agrees with the position of the UN Secretary-General that the first use of air power in the theatre shall be authorized by him. With respect to NATO, the NAC shall be the political

²⁶⁵ *Ibid.*, para. 10.

²⁶⁶ See UNSC Resolution 844, S/RES/844 (1993), 18 June 1993.

²⁶⁷ Namely to: 1) deter attack in wider sense; 2) achieve the withdrawal of heavy weapons (other than those of the Government of Bosnia and Herzegovina); 3) assist UNPROFOR in occupying key positions on the ground; and, 4) to monitor the situation, in addition to participating to the delivery of humanitarian aid.

²⁶⁸ Mark Weller, *op.cit.* note 182, 110.

²⁶⁹ See UNSC Resolution 816, S/RES/816(1993), 31 March 1993. The Secretary General was anyway requested to consult with the Security Council.

²⁷⁰ See NATO Ministerial Meeting of the North Atlantic Council of June 1993, *op.cit.* note 140.

²⁷¹ See NATO Press Statement by the Secretary General Following the Special Meeting of the North Atlantic Council in Brussels on 2 August 1993.

²⁷² Namely UNSC Resolution 770 (1992), 776 (1992) and 836 (1993).

authority that will decide on the conduct of air strikes, which will be carried out in accordance with the UN".²⁷³

Later on the UN Secretary-General in a letter to the President of the Security Council reported that "[...] following the necessary training exercises in coordination with the North Atlantic Treaty Organization (NATO), the United Nations now has the initial operational capability for the use of air power in support of the United Nations Protection Force (UNPROFOR) in Bosnia and Herzegovina."²⁷⁴ On 11 January, NAC re-affirmed NATO's readiness under the authority of the UNSC and in accordance with previous decision taken on 2 and 9 August, to carry out air strikes in order to prevent the strangulation of Sarajevo, the safe areas and other threatened areas in BiH.²⁷⁵ Furthermore, events in Tuzla prompted a clarification from the UN Secretary General from air strikes – which involve the use of air power for pre-emptive or punitive purposes – from close air support, to be anyway conceived in its view as an element of self-defence.²⁷⁶ As said, the mortar attack on Sarajevo in February 1994 triggered the reaction of the International Community. On 6 February reverting the previous hesitant approach towards the air-strikes option, the UN Secretary-General requested NATO to "take action to obtain, at the earliest possible date, a decision by the North Atlantic Council to authorize the Commander-in-Chief of NATO's Southern Command to launch air strikes, at the request of the United Nations, against artillery or mortar positions in or around Sarajevo which are determined by UNPROFOR to be responsible for attacks against civilian targets in that city".²⁷⁷ Few days later, responding the request coming from the UN Secretary General, NATO decided that:

"[...] heavy weapons of any of the parties found within the Sarajevo exclusion zone, unless controlled by UNPROFOR, will, along with their direct and essential military support facilities, be subjected to NATO air strikes which will be conducted in close coordination with the UN Secretary-General and will be consistent with the North Atlantic Council's decision of 2nd and 9 August 1992.

(11) Accept [...] the request of the UN Secretary-General of 6th February and accordingly authorizes the Commander-in-Chief, Allied Forces Southern Europe to launch air strikes, at the

²⁷³ See Meeting of the North Atlantic Council of 9 August 1993, Press Release (93) 52.

²⁷⁴ See Letter from the Secretary General to the President of the Security Council, S/26335, 20 August 1993.

²⁷⁵ Mark Weller, *op.cit.* note 182, 114.

²⁷⁶ See Letter from the Secretary-General to the Security Council, S/1994/94, *op.cit.* note 145.

²⁷⁷ See Letter from the Secretary-General to the Security Council, S/1994/131, 6 February 1994. See also Letter from the Secretary-General to the President of the Security Council, S/1994/466, 18 April 1994.

request of the United Nations, against artillery or mortar positions in or around Sarajevo (including any outside the exclusion zone) which are determined by UNPROFOR to be responsible for attacks against civilian targets in that city...”.²⁷⁸

On 11 February the UN Secretary-General instructed his Special Representative Yasushi Akashi, and through him the Force Commander of UNPROFOR, to “finalize with NATO Commander-in-Chief detailed procedures for the initiation and conduct of air strikes.”²⁷⁹ In so doing, he delegated “the necessary authority to my Special Representative, including, as has been suggested in the North Atlantic Council, authority to approve a request from the Force Commander of UNPROFOR for close air support for the defence of United Nations personnel anywhere in Bosnia and Herzegovina”.²⁸⁰ The delegation of power was justified by the Secretary-General as “necessitated not only by his responsibility for the security of the personnel, including unarmed civilians, under his control, but also out of regard for the integrity of the humanitarian and other mandates entrusted to UNPROFOR by the Security Council.”²⁸¹

According to this long chain of command, requests of close air support coming from the field should have passed through the consideration and approval of the Force Commander for BiH and UNPROFOR Headquarters in Sarajevo before reaching Akashi. In this context, it must be noted that NATO actions other than close air support (e.g. air strikes) remained under the responsibility and decision-making power of the Secretary-General.

Contextually the protection of the safe areas was becoming a real issue for the UN. Facing the impossibility to count on additional troops ready for immediate deployment the UN Secretary-General concluded that “[...] in the absence of a substantial number of troops, equipped adequately to counter the besieging forces and defend UNPROFOR positions. Without such resources, it is impossible to defend the safe areas, not least because they are totally surrounded by hostile forces.”²⁸²

²⁷⁸ See Meeting of the North Atlantic Council on 9 February 1994, Press Release (94) 15, 9 February 1994, para. 10-11.

²⁷⁹ Letter from the Secretary-General to the President of the Security Council S/1994/159, 11 February 1994.

²⁸⁰ *Ibid.*

²⁸¹ See Report of the Secretary-General Pursuant to Security Council Resolution 871(1993), S/1994/300, 16 March 1994, para. 15.

²⁸² *Ibid.*, para. 32.

On 10 and 11 April when Serbs started to shell Gorazde two NATO missions were flown at request of General Rose, UNPROFOR Commander in Sarajevo. Conducted under the authority of UNSC Resolution 836 (1993), the missions were presented as close air support to protect UN personnel trapped in the town.²⁸³ On 21 April 1994, concerned by the ongoing situations in and around Gorazde the UNSC adopted Resolution 913 condemning “in the strongest possible terms the Bosnian Serb forces for their continued offensive against the safe area of Gorazde”. The Resolution further paved the way for NATO air action in enforcement of weapons exclusion zones around Gorazde.²⁸⁴ The day after, the NAC confirmed NATO’s readiness to “provide close air support in the event of Bosnian Serbs forces attack UNPROFOR or other UN and relief agency personnel throughout Bosnia-Herzegovina or forcibly interfere with the conduct of their members.”²⁸⁵ The Commander-in-Chief of AFSOUTH (CINCSTOUH) was then authorized by NAC to conduct air strikes against Bosnian Serbs heavy weapons and other military targets within a 20 km radius of the centre of Gorazde in accordance with already agreed NATO-UNPROFOR procedural arrangements.²⁸⁶ However, the adoption of Resolution 913 and relative NATO’s response were accompanied by critics expressed by several UN member states which were expecting for both organizations to go beyond the mere “close air support” and finally take more “concrete” action in the implementation of the concept of safe areas.²⁸⁷ Developments relating to Gorazde prompted a reconsideration of the ‘safe-area’ concept on side of the UN. Invited by the Security Council to reconsider this concept the Secretary-General recognized that:

“The failure of the warring parties to understand or fully respect the safe area concept is a particularly serious problems that has become starkly evident in Gorazde. The Bosnian Government expected UNPROFOR to intervene and protect as much of the territory under its control as possible, and called for the early employment of large-scale air strikes in order to break the offensive capability of Serb forces. Government forces armed themselves and conducted military activities from within the safe area. The Bosnian Serbs, on the other hand, regarded UNPROFOR’s very limited use of close air support as an intervention on behalf of their opponents, and did not hesitate to attack a populated area. UNPROFOR’s neutrality and credibility were strongly challenged [...]”²⁸⁸

²⁸³ See *NATO Press Note PL 218*, 13 April 1994.

²⁸⁴ See UNSC Resolution 913, S/RES/913 (1994), 21 April 1994.

²⁸⁵ See Meeting of the North Atlantic Council on 22 April 1994, *Press Release (94) 31*.

²⁸⁶ *Ibid.*

²⁸⁷ For instance, Turkey, Egypt and Morocco.

²⁸⁸ See Report of the Secretary-General Pursuant to Resolution 844(1993), *op.cit.* note 149, para. 14.

In addition, the dramatic situation of insecurity experienced in the “safe” areas together with the difficulties faced by UNPROFOR in maintaining its neutrality status were to be address, in the opinion of the Secretary-General, through a redefinition of role of the mission.²⁸⁹ By then, in contrast with the approach followed by UNPROFOR so far and the initial ideas for the implementation of the safe areas concept (which in fact foreseen a gradual expansion the mission’s territorial application), the Secretary-General proposed for UNPROFOR to abandon the reference to “towns and surroundings” envisaged in Resolution 824(1993) and concentrate on the effectiveness and credibility of the protection offered to the population within the area.²⁹⁰ The redefinition proposed by the Secretary-General was aimed at reducing the geographic scope of the safe areas concept: from towns and surrounding, as envisaged by the Council, in favour of densely populated areas.²⁹¹

In July 1994, the EU together with the Russian Federation, the United Kingdom and the United States issued a Communiqué on BiH taking a different position *vis-à-vis* the plan proposed by the Secretary-General. They further expressed their commitment “to strengthen the regime of safe areas and requested finalization of planning to permit strict enforcement and extension of exclusion zones, including at each stage appropriate provision for the safety of UNPROFOR troops.”²⁹² In this context, NATO air power continued to be utilized.²⁹³ In November 1994, the attack to the safe area of Bihac was strongly condemned by the UNSC; the attack prompted Croatia to consent to NATO air operations directed against the Serb forces operating from its territory.²⁹⁴ In response to such events, the UNSC extended the terms of Resolution 836 (1993) so as to authorize air operation on the territory of Croatia. In so doing the Security Council, acting under Chapter VII of the UN Charter, adopted Resolution 958;²⁹⁵

²⁸⁹ *Ibid.*, para. 15.

²⁹⁰ *Ibid.*, para. 18.

²⁹¹ For a detailed account on the redefinition of the UNPROFOR’s role proposed by the Secretary-General please see Mark Weller, *op.cit.* note 182, 132-133.

²⁹² See Letter from the Representatives of France, the Russian Federation, the United Kingdom and the United States of America to the United Nations, addressed to the President of the Security Council, S/1994/916, 1 August 1994.

²⁹³ On 5 August 1994, NATO aircrafts attacked a target with the Sarajevo exclusion zone. On 22 September 1994 a further attack was carried out against a Serb tank within the Sarajevo exclusion zone.

²⁹⁴ The Bihac safe area was attacked by aircraft from the Krajina forces in Croatia.

²⁹⁵ See UNSC Resolution 958, S/RES/958 (1994), 19 November 1994.

therefore extending the authorization given to NATO to support to UNPROFOR also to measures taken in the Republic of Croatia.²⁹⁶

In 1995, violations of the terms of Resolution 836 (1993) and pressure over the safe areas continued.²⁹⁷ On 25-26 May, NATO air strikes against Serb ammunition depot near Pale were agreed mutually by UNPROFOR and CINCSOUTH.²⁹⁸ Serb forces reacted immediately by taking UNPROFOR troops and EU monitors as hostages and using some of them as human shields. Shortly after, in the occasion of the Paris meeting called by EU and NATO contributing countries to UNPROFOR it was decided for the UNPROFOR's RRF to be created. Operating under UN command and in support of UNPROFOR's mandate the RRF was mandated to: a) ensure that UNPROFOR could fulfil its operational mandate; b) maintain the UNPROFOR presence in the safe areas; c) ensure freedom of movement for UNPROFOR, especially with respect to safe areas; d) increase the level of equipment for UNPROFOR; and, d) maintain the option of NATO air strikes in support of UNPROFOR.²⁹⁹ As clarified by the same Secretary-General, by deploying the RRF UN force should get a capacity between 'the strong protest and air strikes'; it would increase tactical operation flexibility and would be intended to have a deterrent effect but it would not change the United Nations rule to peace-operations; the status of UNPROFR and its impartiality would be unaffected...³⁰⁰ Contextually, confusion on side on the UN on the future of UNPROFOR continued. The UN was still looking at UNPROFOR as a merely peacekeeping operation while some member states were requesting for the implementation of its enforcement responsibilities.³⁰¹ The deployment of the RRF, decided with the adoption of Resolution 998 (1995), was also

²⁹⁶ By referring to paragraph 5 of Resolution 836 (1993) the Security Council indirectly reaffirmed the authorization given to NATO to pursue for wider aims related to the protection of the safe areas in comparison to the limited enforcement mandate given to UNPROFOR under paragraph 9 of the Resolution.

²⁹⁷ In light of continued shelling of Sarajevo, the Government of Bosnia and Herzegovina was considering redeploying its forces to respond to Serbian attacks.

²⁹⁸ In this case UNPROFOR Deputy Commander, General Crabbe, and CINCSOUTH Admiral Smith. See NATO Press Release 95-12, 25 May 1995. It worth noting that differently from pervious strikes, this time a violation of the weapon exclusion zone triggered an air strikes directed to Serb logistics facilities. This seems to be in line with the decision taken by NAC in April 1994 in regard to Gorazde "CINCSOTH is authorized to conduct air strikes against Bosnian Serb heavy weapons and other military targets..."

²⁹⁹ See UNSC Resolution 998, *op.cit.* note 213.

³⁰⁰ See Letter from the Secretary General Addressed to the President of the Security Council, S/1995/470, 9 June 1995.

³⁰¹ Mark Weller, *op.cit.* note 182, 151-152.

unclear.³⁰² By deploying the mission, no clarifications were provided on the relation between the RRF and UNPROFOR. As from the resolution, RRF was granted no additional authority in respect to UNPROFOR; therefore, seems that the RRF was created to protect UNPROFOR in the delivery of its peacekeeping functions.³⁰³ Contrary to the vagueness on its role, the chain of command in the field was clearly outlined. As from Resolution 998, the RRF was requested to operate under the direct command of UNPROFOR. As for the air support, being the command structure clearly outlined it would be legitimate to question the reasons for UNPROFOR's reluctance in "activating" the RRF in the occasion of Srebrenica.

As just mentioned, in July the Serb offensive to the safe area of Srebrenica took place. As known, the reaction from the international community, notably the UN and NATO, arrived too late and was by then inadequate. As reported by the Dutch battalion operative in the safe area despite the request of intervention, "extremely limited air support was provided only after the Serb offensive had already gone too far [...]".³⁰⁴ The limited and inadequate UN-NATO response raised serious questions on the capability of the two organizations; the situation was worsened by consideration on the evolution of UN-NATO partnership in the protection of the safe areas. Before Srebrenica, both organizations repeatedly declared their decisions to react firmly and beyond the mere "self-defence", for UNPROFOR troops, and the "close air support", on side of NATO for violations and incursions in the safe areas.³⁰⁵ The dramatic dissonance between mandate and performance was again due to confusion. In spite of the reference to Chapter VII of the Charter, both organizations found themselves trapped in an obstinate insistence on neutrality and self-defence proper of traditional peacekeeping doctrine.³⁰⁶ In particular the Atlantic Alliance remained confined to the "close air support".

³⁰² See UN Security Council Resolution 998, *op.cit.* note 213.

³⁰³ As happened before, the Resolution was adopted under Chapter VII of the Charter but with reference to the freedom of movement, security of UN forces (self-defence), delivery of humanitarian aid and the response to incursion or attack in the safe areas.

³⁰⁴ The possibility of air support was discussed with Senior UN commanders as early as 6 July. For a detailed account please see Mark Weller, *op.cit.* note 182, 140-141.

³⁰⁵ The situation was further worsened by the fact the pressure exerted (e.g. by the UNPROFOR Commander) on the Bosnian Government to achieve voluntary demilitarization of the Srebrenica. Please see the criticism expressed by the Secretary General in his report S/25700 of 30 April 1993 (see note 255).

³⁰⁶ Both UN and NATO repeatedly confirmed such an approach. For the UN, for instance, please see Report of the Secretary General Pursuant to Security Council Resolutions 982 (1995) and 987 (1995),

While the international community was struggling to restore the status of Srebrenica, no meaningful actions were taken to protect Zepa, another safe area likely to be the next target of Serb offensive. In an attempt to address the ongoing crisis, a conference was called in London.³⁰⁷ Held on 21 July 1995, the London Conference requested a return to the use of air power as envisaged in Resolution 836 (1993). Favoured by NATO³⁰⁸, this decision was also welcomed by the UN Secretary-General.³⁰⁹ The latter requested UN commanders in BiH to liaise with NATO in planning eventual air strikes. Reflecting on the UN-NATO dual key arrangement he decided to streamline the UN's decision-making procedure by delegating to the UN Force Commander General Janvier the authority on air strikes and close air support. On the latter, the authority could be further delegated to the UNPROFOR Force Commander General Smith.³¹⁰ On this point the Secretary-General clarified the position as follows:

“In order to streamline decision-making within the United Nations chain of command [...] as regards close air support to defence UN peacekeepers, my Special Representative has today delegated the necessary authority to Force Commander, who is authorized to delegate further to the Commander of the UNPROFOR when operational circumstances so require [...] I should like to stress that the above measures are all being taken with a view to implementing existing Security Council resolutions, in particular resolution 836 (1993), and are consistent with that resolution”.³¹¹

On 10 August 1995, consultations between UN and NATO were formalized in a Memorandum of Understanding (MoU) on the execution of NATO air operations for the protection of the safe areas.³¹² On 28 August the bombardment of Sarajevo took place; reacting firmly to the offensive two days later, on 30 August 1995, NATO initiated attacks on Bosnian Serb military targets under the provisions of OPERATION DELIBERATE FORCE. As explained by NATO Secretary General, “...operations were

S/1994/444, 30 May 1995. For further information, see General Rose, “A Year in Bosnia: What has been achieved” in *Royal United Services Institute Journal*, June 1995, 22-23.

³⁰⁷ Besides the U.K. the conference was attended by Bangladesh, Belgium, Canada, Denmark, France, Germany, Italy, the Netherlands, Norway, Russia, Spain, Sweden, Turkey, the Ukraine, the U.S.A. as well as the UN, EU and NATO.

³⁰⁸ See Decision taken by NAC on 25 July 1995. NAC asked its military authorities to formulate, in co-operation with UNPROFOR, proposals on the eventual use of air power in case of risk for Sarajevo and Bihac.

³⁰⁹ In his letter to the President of the Security Council, the Secretary-General agreed that “an attack by Bosnian Serbs on Goradze should be met by a firm and decisive response, including air strikes”. See Letter from the Secretary-General to the President of the Security Council, S/1995/623, 26 July 1995.

³¹⁰ *Ibid.* Previously, authority on the air strikes was held by the Secretary General while close air support was to be authorized by the UN Special Representative Akashi.

³¹¹ *Ibid.*, 2-3.

³¹² David L. Dittmer and Stephen P. Dawkins, *op.cit.* note 161, 15-16.

jointly approved by NATO CIC Allied Force Southern Europe (AFSOUTH) and the Force Commander, UN Peace Forces, under UNSC Resolution 836, and in accordance with the NAC's decisions of 25 July and 1 August, which were endorsed by the UN Secretary-General."³¹³ The air campaign was complemented by operations conducted on the ground by the RRF. As explained by NATO Secretary-General, the operation was aimed at "attaining compliance of the Bosnian Serbs to cease attacks on Sarajevo or other safe areas; the withdrawal of Bosnian Serb heavy weapons from the total exclusion zone around Sarajevo, without delay; complete freedom of movement for UN forces and personnel and NGOs and unrestricted use of Sarajevo airport."³¹⁴ Despite several suspensions the operation ended in September only and because of the compliance of Bosnian Serbs. Resolution 1016 (1995) was then adopted by the Security Council calling for an immediate cease-fire in the territory of the Republic of Bosnia and Herzegovina.³¹⁵

1.1 UN-NATO 'dual-key' arrangement

In June 1993 UN and NATO adopted a 'dual-key' procedure for releasing Close Air Support (CAS) and Offensive Air Support (OAS) strikes; the procedural arrangement required for officials in both the organisations to "turn" their keys before NATO aircrafts could initiate an attack. The decision-making process was different depending on the kind of operation to be authorised. CAS operations were to be approved by any military commander from the Command Air Operations Centre (CAOC) director up, for NATO, while for the UN the authority was initially in the hand of Yasushi Akashi. For OAS operation, the keys were to be activated by Commander in Chief of AFSOUTH (CINCSOUTH), for NATO, and the Secretary-General Boutros Boutros-Ghali for the UN.³¹⁶ The 'dual key' structure that regulated the relation between UN and NATO in Bosnia is a paradigm of the lack of command and communication which characterized the action of the international community in Bosnia. Due to the then UN-NATO decision-making process, NATO's air support was placed under the political control of the UN whose authorization was to be given on a case-by-case basis. In this context, Appropriate arrangements between NATO and UNPROFOR were further

³¹³ See Statement by the Secretary General of NATO, *NATO Press Release 95-73*, 30 August 1995.

³¹⁴ See NATO Press Release 95-79, Secretary General, Statement on 5 September 1995.

³¹⁵ On 5 October, a general cease-fire was agreed by the parties which entered into force on 10 October.

³¹⁶ Robert C. Owen, "The Balkans Air Campaign Study: Part 1" in *Airpower Journal*, Summer 1997, 9.

established.³¹⁷ Furthermore, as clarified by the NAC, air strikes were to be considered in “[...] support of humanitarian relief, and must not be interpreted as a decision to intervene militarily in the conflict.”³¹⁸ The ‘dual key’ structure, however, proved to be extremely time consuming and, in several cases, the hierarchical levels of both organizations involved in the decision-making process had a paralyzing effect.³¹⁹ In the case of Srebrenica, for instance, the delay caused by the deficit in command and communication was worsened by the problem of coordination within the same UN whose activation of the ‘key’ was obstructed by the hierarchy of UNPROFOR/UNPF.³²⁰ When UN peacekeepers protecting Srebrenica called for CAS, NATO aircrafts were ready to attack but the UN refused to turn its key.³²¹ Fearing for Zepa to be the next in line under Serb attack foreign ministers of 16 intervening states met in London on 21-25 July to prepare the way or a more forceful intervention.³²² On 25 July, facing NAC’s decision to initiate an air campaign against Serbs, UN Secretary General Boutros Boutros-Ghali transferred the UN keys for offensive air strikes and CAS to General Janvier, the UNPROFOR Commander.³²³ Military commanders in the field were then the sole responsible for the activation of air strikes.

2. NATO’s role and operation during the conflict³²⁴

Co-operation in the field started with the NATO/WEU joint contribution in the Sanction Assistance Missions (SAMs) aimed at monitoring the compliance of the

³¹⁷ See North Atlantic Council, Press Statement by the Secretary-General, 2 August 1993; in Jane Boulden, *op.cit.* note 139, 13. Common targeting procedures for the air strikes mission were defined by the two organizations at the beginning of 1994. See Ettore Greco, *op.cit.* note 227, para. 3.2.3.

³¹⁸ See Decisions Taken at the Meeting of the North Atlantic Council on 9 August 1993, *Press Release* (93) 52.

³¹⁹ For instance, in March 1994 NATO was reportedly unable to fulfil the first UNPROFOR's request for close air support in the Bihac area because of the complicated procedure for political authorization. See Ettore Greco, *op.cit.* note 227, para. 3.2.3.

³²⁰ See Manuel Frölich, “Keeping the track of UN Peacekeeping - Suez, Srebrenica, Rwanda and the Brahimi Report”, in *Max Planck Yearbook of United Nation Law*, Vol. 5 (2001), 230-231. On 6 July when the attack on Srebrenica started, the Dutch-bat Commander in Srebrenica rightly contacted the UNPROFOR Commander who, once approved the request, contacted the UNPROFOR Commander in Sarajevo for authorization. From Sarajevo, once approved the request by the Commander or his Deputy, the request for close air support was to be transmitted to UNPF Commander in Zagreb and from there recommended to Akashi. The latter should then ask the Secretary-General Boutros Boutros-Ghali to decide the matter before it was NATO’s turn to implement the request.

³²¹ Robert C. Owen, *op.cit.* note 316, 17.

³²² *Ibid.*, 19.

³²³ *Ibid.*, 21.

³²⁴ The analysis is based on the study conducted by Larry K. Wentz, *Lessons From Bosnia: The IFOR Experience*, CCRP Publication, 1997. For further information about the NATO Naval Co-Operation see Joel Sokolsky, *Protecting Stability: NATO and Multilateral Naval Cooperation in the Post-Cold War Era*, NATO Fellowship Program 1995-1997.

UNSC Resolutions. Together with the WEU, NATO monitored the Adriatic Sea with its own two missions, respectively called operation MARITIME MONITOR and operation MARITIME GUARD. In this case, in paragraph 12 of resolution 787, the UN Security Council, acting under Chapters VII and VIII of the UN Charter called:

“[...] upon States, acting nationally or through regional agencies or arrangements, to use such measures commensurate with the specific circumstances as may be necessary *under the authority* of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions of resolutions 713 (1991) and 757 (1992)”³²⁵

In this case, the formula “*under the authority*” implied an activity role of the Security Council in the supervision of military activities performed by States or regional organizations implementing its resolution.³²⁶ Furthermore, it should be mentioned that the Council requested States concerned—acting nationally or through regional agencies or arrangements—to “co-ordinate with the Secretary-General *inter alia* on the submission of reports to the Security Council” regarding action taken in pursuance of paragraph 12 and 13 of the resolution to “facilitate the monitoring of the implementation of the resolution”.³²⁷ The role recognized to the Secretary-General and the relative reporting requirement were then pivotal for the Council’s overall authority and control over the use of its delegated powers.³²⁸

As to the functioning of the missions, NATO was criticised for the absence of a central coordinating body in charge of the implementation and management of the operations; in fact the operational guidelines followed revealed serious differences among the participating members in regard of funding, deployment and mandate of their naval forces.³²⁹ At the joint session of the NAC and the Council of WEU on 8 June 1993, the combined NATO/WEU operation SHARP GUARD was approved.³³⁰ By then, the UNSC Resolution 820 prompted the establishment of the mission by reaffirming “the

³²⁵ UNSC Resolution 787, S/RES/787 (1992), 16 November 1992.

³²⁶ See Andrea de Guttry, “How Does the un Security Council Control States or Organizations Authorized to Use Force? A Quest for Consistency in the Practice of the UN and of Its Member States”, in *International Organization Law Review*, 11(2014) 251-293, 270. As analyzed by De Guttry, this has remained quite a unique practice.

³²⁷ *Ibid.* For further info see George Politakis, “UN Mandated Naval Operations and the Notion of Pacific Blockade: Comments on Some recent Developments”, in *African Journal of International & Comparative Law* 6 (1994), 173-182.

³²⁸ Dan Sarooshi, *The United Nations and the Development of Collective Security. The Delegation by the UN Security Council of its Chapter VII Powers*, Clarendon Press, Oxford 1999, 264.

³²⁹ Nicholas Gammer, *op.cit.* note 73, 109.

³³⁰ See *NATO Press Release* (93)41, Brussels, 8 June 1993.

authority of States under paragraph 12 of resolution 787 (1992)".³³¹ In trying to solve problems on co-ordination encountered in the previous operations, the session went so far as to approve of establishment of a single NATO/WEU command structure and relative combined task force, operating under the authority of the councils of the two organisations to "monitor and enforce compliance with UN sanctions in accordance with United Nations Security Council Resolutions 713, 757, 787 and 820".³³² The Resolution allowed for the use of coercive force in the naval operation in the Adriatic.³³³

Relevant for the co-operation with WEU, in 1994 NATO's new crisis-management functions registered the creation of the concept of Combined Joint Task Forces (CJTF) designed to facilitate asset-sharing between NATO and WEU.³³⁴ Launched in late 1993 and endorsed at the Brussels Summit of January 1994, the concept reflected the readiness to make NATO "assets and capabilities" available, on case-by-case and upon decision taken by NAC, for operations undertaken by the European allies under the WEU.³³⁵ Due to problems encountered in its implementation, further modalities for the operationalization of the CJTF concept were formalized in the NATO Ministerial Meetings held in Berlin in July 1996.³³⁶ In October 1992, pursuant to the UNSC Resolution 781, NATO started OPERATION SKY MONITOR aimed at monitoring the no-fly zone over Bosnia. In underlining the humanitarian context, UNSC Resolution 781 authorized Member States "[...] acting nationally or through regional agencies and arrangements, to take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures [...] to ensure compliance with the ban on flights [...] and proportionate to the specific circumstances and the nature of the flights".³³⁷ After that, the enforcement of the no-fly zone was pursued through OPERATION DENY FLIGHT. The operation began on 12 April 1993 as a result of the authorization coming from the March 1993 UNSC

³³¹ UNSC Resolution 820, S/RES/820 (1993), 17 April 1993.

³³² *Ibid.*

³³³ Compared to resolution 787, resolution 820 did not provide for additional powers but expanded the zone of operation to include the territorial sea of the former Yugoslavia.

³³⁴ Further information available at: <http://www.nato.int/docu/comm/1999/9904-wsh/pres-eng/16cjtf.pdf>

³³⁵ Edward L. Killham, *NATO and OSCE, Partners Or Rivals?*, NATO Research Fellowship, Brussels 2001.

³³⁶ See Ministerial Meetings of the North Atlantic Council (NAC)/North Atlantic Cooperation Council (NACC), Berlin, 3-4 July 1996. Available at: <http://www.nato.int/docu/comm/1996/9606-brl/9606-brl.htm>

³³⁷ See UNSC Resolution 781, S/RES/781 (1992), 9 October 1992. The Security Council further indicated that the "establishment of a ban on military flights in the airspace of BiH constitutes an essential element for the safety of the delivery of humanitarian assistance."

Resolution 816; the use of force was then authorized to enforce measures previously established through Resolution 781.³³⁸ Deny Flight was to be performed by NATO in close coordination with the UN Secretariat.³³⁹

In the two operations, NATO acted in parallel with the UN and the ECMM.³⁴⁰ With reference to operation DENY FLIGHT it worth recalling that over months NATO and UN added other tasks to Operation DENY FLIGHT.³⁴¹ To coordinate planning and targets identified for attacks in such missions, NAC activated a Joint Target Coordination Board (JTCB) composed of NATO and UN tactical commanders. This mechanism and the relative planning activities constituted the evolutionary process that laid the foundations of operation DELIBERATE FORCE which, technically, was just a phase of DENY FLIGHT.³⁴² The flow of information, however, was made difficult by the absence of a centralized system of data collection, analysis and sharing.³⁴³ Moreover, to worsen the situation neither the NATO's 5th Allied Tactical Air Force (ATAF) nor Regional Headquarters AFSOUTH were organised or equipped to handle the scale and complexity of an operation like Deny Flight.³⁴⁴ To fully understand the situation, it must be recalled the almost total absence of any existing body of doctrine for such, by then unique and unprecedented, UN-NATO cooperation.³⁴⁵ From 30 August to 20 September 1995, in response to a Bosnian Serb mortar attack on Sarajevo NATO conducted a series of air attacks on Bosnian Serb military targets; the operation, code-named Operation DELIBERATE FORCE, was conducted until the Bosnian Serbs complied with the conditions set down by the UNPROFOR commander.³⁴⁶ In support

³³⁸ See UNSC Resolution 816, *op.cit.* note 269.

³³⁹ According to the then UN Commander, General Lars Eric Wahlgren, the proposed enforcement action would weaken the capability of UNPROFOR in terms of delivery of humanitarian aid and safety of UN and other personnel. See Letter from the Secretary-General to the President of the Security Council S/25457 of 22 March 1993, in Mark Weller, *op.cit.* note 182, 83.

³⁴⁰ The Atlantic Alliance made use of its Airborne Warning and Control System (AWACS) aircraft while the UN and the EUMM relied on their monitors deployed in Croatia, Bosnia-Herzegovina and the then Serbia and Montenegro.

³⁴¹ Close Air Support (CAS) to protect UN personnel, and offensive air support (OAS) to punish factions violating UNSCRs, and suppression of enemy air defences (SEAD) to protect NATO aircrafts.

³⁴² Robert C. Owen, , *op.cit.* note 316, 9.

³⁴³ Ettore Greco, *op.cit.* note 227, para. 3.2.2.

³⁴⁴ Robert C. Owen, *op.cit.* note 316, 11.

³⁴⁵ Maris McCrabb, "US and NATO Doctrine for Campaign Planning", in Robert C. Owen (ed.), *Operation Deliberate Force: A Case Study on Humanitarian Constraints in Aerospace Warfare*, (The Carr Centre for Human Rights Policy, Harvard University, Vol. 1 Working Papers 2001).

³⁴⁶ As explained by Robert C. Owen, *op.cit.* note 316, "NATO focused its attacks on a list of targets categorized as 'Options 1, 2 and 3'. Options 1 targets mainly consisted of Serb artillery, mortar, and other combat system directly involved in attacks on Bosnian 'safe areas'. NATO planners presumed that these targets could be attacked with minimal risk of collateral damage to non-combatants and their property. Option 2 targets consisted of other heavy weapons, munitions storage sites, and air defence

of OPERATION DELIBERATE FORCE, from 9 September to 14 September 1995 NATO conducted suppression of enemy air defence (SEAD) actions, under the operation code-named DEAD EYE, against the Bosnian Serb integrated air defence system (IADS) targets throughout Bosnia. Differently from previous operation DEAD EYE had no geographical restrictions placed on CAS and OAS strikes. Another interesting feature of Operation DELIBERATE FORCE was the disconnection between its operative execution, in the person of General Ryan, and the parallel international negotiation, in the person of Ambassador Holbrooke.³⁴⁷ In this case, since both the international diplomatic negotiation and NATO's operation were undertaken in the frame of the UN, the same General Ryan argued for an optimum of cooperation between soldier and diplomats to be pursued at the strategic level and with close attention to information flow between NAC and UN leaders.³⁴⁸ Reflecting on this issue, Ambassador Holbrooke wrote, "*I regret greatly that...I did not have direct contact with Ryan; it might have allowed us to follow a different, and perhaps tougher strategy*".³⁴⁹

NATO's operation role further demonstrates a qualitative expansion of NATO's role—initiated with OPERATION SHARP GUARD and continued with OPERATION DENY FLIGHT—*vis-à-vis* efforts undertaken by the UN. An autonomy model that the Alliance has maintained—most notably in Kosovo—by reserving, being formally a collective defence organization, for itself the right of use force without authorization of the UNSC.³⁵⁰

3. The EU and its Monitoring Mission

Finally, International efforts in the field have been complemented by the EU which, though already present with its ECMM, at invitation of the signatories of the Washington agreement took on full responsibility for the administration and

systems in the vicinity of the safe areas and presenting only "medium" risk of collateral damage if attacked. Option 3 targets were dispersed throughout Bosnia-Herzegovina, including the full array of Serb munitions and fuel depots, and their anti-aircrafts and communication systems. These options were described in NATO planning documents as campaign phases to bring increasing pressure against the Serbs." A close evaluation of the attack would then reveal that in fact NATO commanders chose to concentrate their offensive on operational and strategic objectives rather than tactical ones.

³⁴⁷ For a detailed account see Robert C. Owen, *The Balkans Air Campaign Study: Part 2, Airpower Journal*, Summer 1997, 17.

³⁴⁸ *Ibid.*, 22.

³⁴⁹ *Ibid.*, 21.

³⁵⁰ Dick A. Leurdijk, *UN Reform and NATO Transformation: The Missing Link*, Royal Institute for International Relations, Egmont Paper 10, Brussels November 2005, 24.

development of the city of Mostar for over a two-year period.³⁵¹ The administration lasted from July 1994 to July 1996 until a Special Envoy was appointed to perform the follow-up tasks until December 1996.³⁵²

B. Co-operation after the end of the conflict

1. Restructuring UNPROFOR (March 1995 – January 1996) and the UNPF-HQ

In March 1995, concerned about the capability of the mission, the Bosnian Government alluded to a possible not renewal of its consent over the redeployment of UNPROFOR.³⁵³ In light of this, the Security Council adopted Resolution 982 requesting the Secretary-General to report to the Council on the implementation of UNPROFOR.³⁵⁴ After having considered the proposal presented by the Secretary-General, the Security Council decided to restructure UNPROFOR, replacing it with three separate but interlinked peacekeeping operations.³⁵⁵ The Council extended the mandate of UNPROFOR in Bosnia and Herzegovina, established the UN CONFIDENCE RESTORATION OPERATION IN CROATIA (UNCRO), and decided that UNPROFOR within the former Yugoslav Republic of Macedonia should be known as the UN PREVENTIVE DEPLOYMENT FORCE (UNPREDEP). Their joint theatre headquarters, known as UN PEACE FORCES HEADQUARTERS (UNPF-HQ), was established in Zagreb. UNPF-HQ was responsible for liaison with the concerns Governments and NATO. Each of the three operations was headed by a civilian Chief of Mission and had its own military commander. Overall command and control of the three operations was exercised by the SRSB and the Theatre Force Commander. On 31 January 1996, following the termination of the mandates of UNCRO and UNPROFOR and the

³⁵¹ See Parliamentary Assembly of the Council of Europe (PACE), Report on refugees, displaced persons and reconstruction in certain countries of former Yugoslavia, 19 December 1995, Doc. No. ADOC7440, para. 59.

³⁵² The EU Administration of Mostar was established by Council Dec. 94/308/CFSP (1994) O.J. L134/1 and 94/790/CFSP (1994) O.J. L326/2, repeatedly extended and terminated by Dec. 96/442/CFSP (1996) O.J. L185/1, 96/476/CFSP (1996) O.J. L195/1, 96/508/CFSP (1996) O.J. L212/1 and 96/744/CFSP (1996) O.J. L340/1.

³⁵³ In the opinion of the Bosnian Government, UNPROFOR was marginalizing, even disregarding, the Chapter VII authority adopted in the relevant Security Council Resolutions. See Mark Weller, *op.cit.* note 182, 148.

³⁵⁴ See UNSC Resolution 982, S/RES/982 (1995), 31 March 1995.

³⁵⁵ In adopting the Resolution, the Security Council made clear that all previous relevant resolutions relating UNPROFOR would remain in force until 30 November 1995.

establishment of two new UN missions on BiH and Croatia, the UNPF-HQ was phased out.³⁵⁶

2. UN Mission in Bosnia and Herzegovina (UNMIBH)

On 21 December 1995, in accordance with the Dayton Agreement, the Security Council established the UNMIBH, composed of the following components: the UN INTERNATIONAL POLICE TASK FORCE (IPTF) and the Civil Affairs (CA).³⁵⁷ In December 1997, the Mission was extended until 21 June 1998, with the provision that it will be further extended unless security arrangements being provided by SFOR changed significantly.³⁵⁸ Besides other tasks, UNMIBH was held responsible of facilitating, through the IPTF, with priority being given to ensuring the existence of conditions for free and fair elections.³⁵⁹ Its mandate would be later extended in the occasion of the 1996 London Conference in December so as to include the executive power to investigate allegations of human rights abuses by police officers. IPTF was structured in three regional headquarters and an IPTF Human Rights Liaison within the Human Rights Coordination Centre (HRCC).³⁶⁰ In implementing its mandate the IPTF worked closely with a number of non-governmental organizations which include UNHCR, the OSCE and the ICRC. In addition, close liaison was maintained with SFOR, which provided enforcement of certain IPTF directives.³⁶¹ Finally, UNMIBH activities came under the direction of a UN Coordinator, acting under the Secretary-General's authority and exercising authority over the IPTF Commissioner.³⁶² UNMIBH closely cooperated with the IFOR, authorized by the UNSC to help secure compliance with the provisions of the Peace Agreement; and continues to cooperate with the SFOR and with the Office of the High Representative.³⁶³

³⁵⁶ United Nations, *UN Peacekeeping. 50 Years 1948-1998*, United Nations Publication, New York 1992, 64.

³⁵⁷ See UNSC Resolution 1035, S/RES/1035 (1995), 21 December 1995.

³⁵⁸ See UNSC Resolution 1044, S/RES/1044 (1997), 19 December 1997.

³⁵⁹ United Nations, *UN Peacekeeping. 50 Years 1948-1998*, *supra.* note 356, 69. The IPTF was created to assist the parties in meeting their obligations to provide a safe and secure environment through the establishment of civilian law enforcement agencies.

³⁶⁰ See section II of the manuscript.

³⁶¹ Vincent Tigrat, "The United Nations Mission in Bosnia and Herzegovina", in *SFOR Informer*, 3 February 1997. See also See Office of the High Representative report to the Peace Implementation Council (PIC), "Implementation of the Human Rights Provision of the Peace Agreement", PIC Main Meeting of 13 June 1996, 7.

³⁶² See Report of the Secretary-General Pursuant to Resolution 1026 (1995), S/1995/1031, 13 December 1995. Activities were relating to humanitarian relief and refugees, demining, human rights, elections and rehabilitation of infrastructure and economic reconstruction.

³⁶³ United Nations, *UN Peacekeeping. 50 Years 1948-1998*, *supra.* note 356, 70.

3. The NATO-led Implementation Force (IFOR)

In light of the Military Annex 1-A of the Dayton Agreement, the Security Council was invited to adopt a resolution authorizing *member states or regional organizations and arrangements* to establish a multinational Implementation Force (IFOR). As from the Dayton Agreement such a force was to “operate under the authority and subject to the direction and political control of the North Atlantic Council through the NATO chain of command”.³⁶⁴ Besides its military responsibilities, IFOR was mandated of further additional “supportive tasks” which were to be performed within the limits of the already assigned principal tasks and available resources”. As from Article IV of the Military agreement such supportive tasks included: a) to help create secure conditions for the conduct by others of those tasks associated with the peace settlement, including free and fair elections; b) to assist the movement of organizations in the accomplishment of humanitarian missions; c) to assist the UNHCR and other international organizations in the humanitarian missions; d) to observe and prevent interference with the movement of civilian populations, refugees and displaced persons, and to respond appropriately to deliberate violence to life and person; and, e) to monitor the clearing of minefields and obstacles.³⁶⁵ In undertaking this analysis on IFOR it must be noted that in contrast to the extension of IFOR’s responsibility over additional non military tasks, the Annexes to the Dayton Agreement did not consider instances in which primarily military tasks were performed by non military organizations.³⁶⁶

At the beginning of December 1995, NATO deployed an enabling force of around 2600 personnel to prepare for the rapid and efficient arrival of the main body of IFOR following signature of the peace agreement and adoption of a Security Council Resolution. Such an enabling force was requested to operate in close coordination with UN forces. In this context, the deployment of NATO IFOR preparation team corresponded to a further extension of UNPROFOR mandate until 31 January 1996;

³⁶⁴ See GFAP, Annex 1-A, Article 1. As from Article VI, IFOR Commander shall have the authority, without interference or permission of any party, to do all that he or she judges necessary and proper, including the use of military force, to protect IFOR and to carry out its responsibilities.

³⁶⁵ *Ibid.*, Article II. Additional duties and responsibilities could also be established by NAC.

³⁶⁶ For instance, in the case of OSCE’s responsibility over confidence-building measures. In this situation, the possibility to invoke IFOR, in case of non-cooperation of the parties, is not formally established in the agreement. The only solution would then be for the IFOR Commander to decide, according to the authority assigned ex paragraph 5 of the Article VI, to extend IFOR functions and powers over such cases.

this time the UN mission was requested to work on the transfer of authority to the NATO-led mission.³⁶⁷ Around mid-December, the report on the transfer of authority from UNPROFOR to IFOR was presented by the Secretary-General:

10. Following authorization by the Security Council, arrangements will be made without delay to affect the transfer of authority from UNPROFOR to IFOR, a process that could occur within 96 hours of the Council's decision. The UNPF Force Commander will become the Deputy Commander of IFOR but will retain his UNPF authority during the transitional period and will thus continue to exercise operational control over those UNPROFOR units that do not transfer to IFOR, until their withdrawal from the theatre. The arrangement of having the UNPF Force Commander serve simultaneously as Deputy Commander of IFOR will, inter alia, facilitate the coordination of the withdrawal of UNPROFOR contingents with the arrival of IFOR elements. The repatriation of United Nations military personnel not required by IFOR, including all United Nations military observers, will begin immediately after the transfer of authority.³⁶⁸

On the following day, the Dayton Agreement entered into force. On 15 December the UNSC adopted Resolution 1031 and acting under Chapter VII of the Charter the Security Council authorized the establishment of IFOR.³⁶⁹ Shortly afterwards, the transfer of authority from UNPROFOR to IFOR was completed. Under the authority of UNSCR 1031 of 15 December 1995 NATO was made responsible for the military aspect of the peace agreement.³⁷⁰ The NATO-led IMPLEMENTATION FORCE (IFOR), in its code-named Operation JOINT ENDEAVOUR, had a unified command and operated under Chapter VII of the UN Charter.³⁷¹ The requirement to coordinate advice to the NATO SG and Council was made explicit in 1995 as IFOR deployed into Bosnia, and resulted in the establishment of a multi-disciplinary Crisis Management Task Force (CMTF) designated as Bosnia Task Force and subsequently as the Balkans Task Force.³⁷² In view of the importance of the civilian aspects of the Peace Agreement, IFOR provided increased support for civilian tasks within the limits of its existing mandate and available resources. On 10 December 1996, the NAC, meeting in

³⁶⁷ See UNSC Resolution 1026 (1995), 30 November 1995.

³⁶⁸ See Report of the Secretary-General Pursuant to Resolution 1026 (1995), *op.cit.* note 362, para. 10.

³⁶⁹ See UNSC Resolution 1031, S/RES/1031 (1995), 15 December 1995.

³⁷⁰ See GFAP, Annex 1A.

³⁷¹ On 16 December 1995, the NAC approved the Operational Plan (OPLAN) for IFOR: the deployment of the more than 60.000 troops began and was completed in mid-February 1996. Parts of UNPROFOR were integrated into the mission.

³⁷² The Crisis Management Task Force (CMTF) was a joint task force which contributed to the overall support for crisis management and conflict prevention provided by the NATO IS (international staff) and IMS (international military staff). This multi-disciplinary task force was an integral part of the NATO crisis management organisation and coordinated advice to the Secretary General and the drafting of proposals and recommendations, including for operational planning, to the NAC.

ministerial session, issued a statement on Bosnia and Herzegovina announcing that NATO was prepared to organize and lead a STABILIZATION FORCE (SFOR), authorized by the UNSC acting under Chapter VII of the UN Charter, to take over from IFOR and. On 12 December 1996, the UNSC adopted Resolution 1088 authorizing the establishment of SFOR as the legal successor to IFOR. The NATO-led SFOR was then activated on 20 December 1996, exactly when the IFOR mandate expired. In this frame, operational linkages between military and civilian organizations were ensured through NATO's Civil Military Cooperation (CIMIC) operational concept. CIMIC operations were instrumental in facilitating a wide variety of activities in support of the OHR and other organizations and agencies such as the OSCE, UNHCR, World Bank, EU and the ICRC. CIMIC personnel also participated in Joint Civil Commissions set up by the OHR to facilitate civil actions throughout Bosnia Herzegovina, and in the Common Security Policy Working Group in which military issues were discussed and coordinated together with the OHR, the UNMIBH, the OSCE and SFOR.³⁷³ In addition, Liaison and Observation Teams (LOTs) have been deployed throughout the area of responsibility to facilitate coordination and liaison with the international community, civil and police authorities and population.³⁷⁴

However, in spite of seemingly well-established overall structure, during the first years several problems occurred as far as the co-operation between IFOR/SFOR and civilian organisations was concerned. IFOR/SFOR's initial refusal to get involved in the execution of the civilian aspects of the Dayton Agreement resulted in rendering OSCE's tasks even more difficult. Furthermore, IFOR/SFOR initially did not arrest any persons indicted by the ICTY; this was especially troubling because the UN IPTF lacked this authority.³⁷⁵ This reluctance to assist civil authorities contributed to a security gap that was particularly evident in the area of policing. The lawlessness that followed proved to be beyond the ability of the local police forces to handle

³⁷³ Guergana Velitchkova, *NATO-OSCE Interaction in Peacekeeping: Experience and Prospects in Southeast Europe*, (NATO/EAPC Research Fellowship 2000-2002), 21-29.

³⁷⁴ Major General Virgil L. Packett *et al.*, *Bosnia and Herzegovina: Coalition Doctrine and LOT Houses*, *Military Review* March-April 2005, 71. The concept of enhancing interaction with the local community is not new: several variations of the concept were used in BiH during IFOR missions.

³⁷⁵ Jan Wouters and Frederick Naert, *How Effective is the European Security Architecture? Lessons From Bosnia and Kosovo*, (University of Leuven, Institute for International Law, Working Paper No 6 May 2001), 14.

effectively.³⁷⁶ In 2006, NATO Headquarters in Sarajevo, Skopje and Tirana were still involved in stabilisation activities.³⁷⁷

4. The OSCE's initiatives in Kosovo

As foreseen by the GFAP, the organisation was mandated to: organize general elections; monitor human rights and appoint an international human rights Ombudsman; and encourage confidence and security building measures as well as disarmament.³⁷⁸ As the Secretary-General of the OSCE wrote in his 1996 Annual Report: “The Budapest Ministerial decision on OSCE involvement in Bosnia and Herzegovina posed the greatest challenge ever confronted by the CSCE/OSCE. It tested the degree of preparedness of the Organization to take on the most complex tasks in the post-Cold War multi-institutional setup.”³⁷⁹

Meanwhile, the OSCE presence in the field was guaranteed through the deployment of its Mission to BiH.³⁸⁰ Established on 8 December 1995 at the fifth meeting of the OSCE Ministerial Council, the OSCE Mission to BiH was able to rely on the co-operation of the ECMM which deployed about 80 people in Bosnia under a Memorandum of Understanding (MoU) signed with the OSCE on 22 December 1995 in Vienna. Co-operation with international organisations in the field was maintained through the creation of several *ad hoc* bodies. For instance, the OSCE Mission's Joint Operations Centre (JOC) co-operated with SFOR on security matters through assigned liaison officers for information exchange purposes.³⁸¹ In 1999-2000, the OSCE Mission and SFOR were co-chairs of the Steering Board for the Restructuring of the Entity Armed Forces, and participated in the Standing Committee on Military Matters (SCMM). The OSCE Mission and SFOR worked together on the DARE program for computer data exchange and collaborated with the NATO Air Operational Co-

³⁷⁶ John G. Cockell, “Joint Action on Security Challenges in the Balkans”, in Michael Pugh and Waheguru Pal Singh Sidhu (eds.) *The United Nations & Regional Security. Europe and Beyond*, (Lynne Rienner Publishers, London 2003), 119.

³⁷⁷ In particular the NATO Advisory Teams in Skopje and Tirana has provided advice on defence restructuring, institution building, border security and reform of security and intelligence agencies. See Chris Morffew, “NATO Defense Reform and Reconstruction”, in Jean Dufourcq and David S. Yost (eds.), *NATO-EU Cooperation in Post Conflict Reconstruction*, NATO Defence College, Occasional Paper 15, 2006, 46-47.

³⁷⁸ See GFAP, *op.cit.* note 167, Annex 3.

³⁷⁹ See Budapest Ministerial Council Meeting, Decision on OSCE action for Peace, Democracy and Stability in Bosnia and Herzegovina, 7-8 December 1995, MC(5).DEC/1. See also OSCE Annual Report 1996 on OSCE Activities, *op.cit.* note 115, para. 1.

³⁸⁰ Victor-Yves Ghebali and Daniel Waner, *The Operational Role of the OSCE in South-Eastern Europe. Contributing to regional stability in the Balkans*, (Ashgate, London 2001).

³⁸¹ *Ibid.*, 34.

ordination Centre in conducting aerial observation flights in BiH. The Mission's emergency action plan was also developed for being closely co-ordinated with SFOR's own plan. Military issues were also discussed in the Common Security Policy Working Group (CSPWG) in which the OSCE, OHR, SFOR and UNMIBH jointly participated.³⁸² On the issue of education, the Mission's Human Rights Department participated in the Education Working Group chaired by the OHR, with participation of the World Bank, the EU and the CoE.³⁸³ The latter advised the OSCE Mission on the Law on Judicial Service and the Republika Srpska Ombudsman Law, on the merger of the Constitutional Court and the Human Rights Chamber.³⁸⁴ Besides, in 1995 the CoE started working in the field through the then Local Democracy Embassy in Tuzla in 1995³⁸⁵; later to be complemented by three other LDAs in BiH, namely in Zavidovici, Prijedor and Mostar. In April 1996, the organisation further established its Office of the Special Representative of the Secretary General (SRSRG) in BiH.³⁸⁶

5. The EU Family in Bosnia and Herzegovina

5.1 The European Union Special Representative (EUSR)

Since its inception in 2002, the EUSR has promoted overall political coordination among the EU different bodies and missions in BiH.³⁸⁷ As from the mandate the EUSR was held responsible for ensuring a coordinated and coherent EU approach to building self-sustaining peace and stability in BiH. Coherent and coordinated interaction with both EUPM and EUFOR was to be pursued by the EUSR while reporting to the Council of the European Union via the then Secretary General/High Representative.³⁸⁸ Besides, when for the first time the High Representative, Lord Ashdown, was double-

³⁸² See OSCE Annual Report 2001 on Interaction between Organisations and Institutions in the OSCE Area, 26 November 2001, 30.

³⁸³ *Ibid*, 35.

³⁸⁴ See Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1287 (1996), para. 35.

³⁸⁵ The first Embassy in Tuzla closed in 2003.

³⁸⁶ The office was established with the initial task, besides supporting Council of Europe's efforts to contribute to the implementation of Annex 6 of the GFAP, to assist Bosnia and Herzegovina to meet the criteria for the accession to the Council of Europe membership following its application for membership dated April 1995.

³⁸⁷ See Council of the European Union, Council Joint Action 2002/211/CFSP, 11 March 2002. The EUSR was also held responsible to maintain an overview of the whole range of initiatives in the field of the rule of law. See Council of the European Union, Joint Action 2004/570/CFSP and Ana E. Juncos, "Police Mission in Bosnia and Herzegovina" in Michael Emerson & Eva Gross (eds.), *Evaluating the EU's Crisis Missions in the Balkans*, (Centre for European Policy Studies, Brussels 2007), 55.

³⁸⁸ *Ibid*.

hatted as the first EU Special Representative, the EU emphasized that the “role of the EUSR shall not in any way prejudice the mandate of the High Representative in Bosnia and Herzegovina, including his coordinating role with regard to the activities of all civilian organisations [...]”³⁸⁹

Looking at its mandate, the EUSR was requested to: a) maintain an overview of the whole range of activities in the field of the Rule of Law; b) provide advice to the Secretary-General/High Representative (SG/HR) and the Commission; and, c) give direction to the Head of Mission/Police Commissioner of the EU Police Mission.³⁹⁰

Although the first year of its existence was not marked by remarkable achievements, the situation changed considerably in the 2004-2005 period when the EUSR political advice became more relevant.³⁹¹ Up until July 2004 the EUSR was in fact operating under the terms of the OHR mandate; this mandate was later revised and explicit linkages to the CFSP/ESDP instruments in BiH were agreed in order to maximise coherence of EU action in the country.³⁹² To achieve EU policy objectives in BiH, the EUSR was requested to: promote overall EU political coordination in BiH without prejudice to the Community competence and provide local political advice to the EUFOR Commander without prejudice for its chain of command.³⁹³ The EUSR should have further contributed to the reinforcement of internal EU coordination and coherence in BiH by chairing a coordination group composed of all EU actors present in the field. In pursuing for such an objective, he was then given the authority to direct the EUPM Head of Mission/Police Commissioner.³⁹⁴ In addition, as clarified by the Council Joint Action, the role of the EUSR was to be conducted without prejudice for the mandate of the High Representative in BiH, including his coordination role with regard to activities of civilian organisations and agencies as set out in GFAP and subsequent PIC conclusions and declarations.³⁹⁵ The EUSR was also mandated to liaise with other international and regional actors, in particular the OSCE.³⁹⁶ This change on the mandate was motivated by the adoption of the 2004 EU Security

³⁸⁹ See Council of the European Union, Council Joint Action 2002/211/CFSP, *op.cit.* note 387, Article 2.

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*, Article 20.

³⁹² See Council Joint Action 2004/569/CFSP of 12 July 2004 on the mandate of the European Union Special Representative in Bosnia and Herzegovina and repealing Council Joint Action 2002/211/CFSP, para. (2).

³⁹³ *Ibid.*, Article 3 (c).

³⁹⁴ *Ibid.*, Article 3 (d) and (g).

³⁹⁵ *Ibid.*, Article 5.

³⁹⁶ *Ibid.*, Article 9.

Strategy: Bosnia and Herzegovina/Comprehensive Policy and following deployment of the newly created EU military mission in BiH (EUFOR).³⁹⁷ The increased commitment taken by the EU through the deployment of its first military component was to be complemented by a revision of EUSR's mandate: in this case, its political advisory role for the EUFOR. In November 2005, the mandate of the EUSR was again amended. Requested to solve problems of co-operation between EUFOR and EUPM in the fight against organized crime, the Special Representative was held responsible for coordinating initiatives undertaken in this area.³⁹⁸ In 2007, the Special Representative was tasked to: a) provide political advice on the country's constitutional reform; b) liaise with local authorities in ensuring full cooperation with the ICTY; and, c) co-operate with other EU actors in the field.³⁹⁹ EUFOR military operations were then to be co-ordinated with the EUSR in order to consolidate EU consistency of actions in the field.⁴⁰⁰ Furthermore, with the 2007 revision of the mandate the EUSR was ordered to provide political guidance on military issues deemed to influence the local political dimension; the mission, therefore, moved beyond the mere advice previously envisaged for its mandate.⁴⁰¹ The EUSR was further tasked of providing the EUPM Head of Mission with local political guidance.

Consultative procedures, with EUFOR and EUPM, were then established for political actions estimated to impact on security.⁴⁰² The EUSR was requested, *inter alia*, to promote overall coordination and political direction in tackling organised crimes, without prejudice to the EUPM's leading role in policing aspects and the EUFOR military chain of command.⁴⁰³

³⁹⁷ See Council of the European Union, EU Security Strategy: Bosnia and Herzegovina/Comprehensive Policy, Brussels 14 June 2004, Doc. 10099/04.

³⁹⁸ See Article 3 (c) of the Council Joint Action 2005/825/CFSP of 24 November 2005 amending the mandate of the European Union Special Representative in Bosnia and Herzegovina: "promote the overall coordination of, and give local political direction to, EU efforts in tackling organised crime, without prejudice to the European Union Police Mission's leading role in the coordination of policing aspects of these efforts and to the ALTHEA (EUFOR) military chain of command."

³⁹⁹ See Council Joint Action 2007/87/CFSP, 19 November 2007: "In support of the EU crisis management operations, the EUSR, with other EU actors present in the field, shall improve the dissemination and sharing of information by EU actors in theatre with a view to achieving a high degree of common situation awareness and assessment."

⁴⁰⁰ Jari Mustonen, *op.cit.* note 239, 12.

⁴⁰¹ See Council Joint Action 2007/748/CFSP on the Mandate of the EUSR in BiH of 19 November 2007. Such guidance was foreseen in particular for sensitive operations such as the relations with local authorities and local media.

⁴⁰² Jari Mustonen, *op.cit.* note 239, 18.

⁴⁰³ See Council Joint Action 2007/748/CFSP on the Mandate of the EUSR in BiH of 19 November 2007 as amending Article 3 of the Council Joint Action 2007/87/CFSP, 19 November 2007.

Shortly after, with the adoption of the 2008 EU Civilian Headline Goals, the EUSR was granted even greater role in the frame of EU civilian crisis management.⁴⁰⁴ With reference to the EUPM, internal EU cooperation and coherence was guaranteed by placing the EUSR within the chain of command of the EU Police Mission and by tasking him of direct political guidance over the Head of Mission (HoM)/Police Commissioner.⁴⁰⁵ Such direct guidance led, for instance, to the conclusion of an agreement with EUFOR Force Commander on the Integrated Police Unit (IPU).⁴⁰⁶ In 2008 the EUSR mandate was again amended.⁴⁰⁷ Besides the activities on coordination confirmed in the 2008 extension of the mandate, the EUSR was requested to consult with the Head of the EUPM before taking political action of potential impact on the police and security situation.⁴⁰⁸ It is also interesting to note that Article 5 the Council Joint Action clarified that “the role of the EUSR shall not in any way compromise the mandate of the High Representative in BiH, including his coordinating role with regard to all activities of all civilian organisations and agencies as set out in GFAP and subsequent Peace Implementation Council (PIC) conclusions and declarations.”⁴⁰⁹ More on the coordination, article 13 of the Council Joint Action stated that “[...] In the field, close liaison shall be maintained with the Presidency, Commission and Member States, Heads of Mission who shall make best efforts to assist the EUSR in the implementation of the mandate, the EUSR shall also liaise with other international and regional actors in the field.”⁴¹⁰

Considered in all its components, the strategy pursued by the EU in BiH would immediately appear as fragmented and without an overall strategy until 2004. The latter, codenamed the European Security Strategy: Bosnia and Herzegovina/Comprehensive Policy⁴¹¹, not only committed all EU actors/instruments “whether political, military, police-related or economic” in its implementation, but went further by recognizing that “...a key challenge will be to ensure close co-

⁴⁰⁴ Strengthening the EUSR by establishing a clear structure and providing greater support was then identified as a priority in the Council Secretariat. See Annika S. Hansen, *Against all Odds – The Evolution of Planning for ESDP Operations Civilian Crisis Management from EUPM onwards*, Centre for International Peace Operations, Study 10/06, Berlin 2006, 36.

⁴⁰⁵ See Council of the European Union, Council Joint Action 2002/211/CFSP, *op.cit.* note 387.

⁴⁰⁶ Jari Mustonen, *op.cit.* note 239, 12.

⁴⁰⁷ See Council Joint Action 2008/130/CFSP of 18 February 2008 extending the mandate of the European Union Special Representative in Bosnia and Herzegovina, Article 3 (b).

⁴⁰⁸ *Ibid.*, Article 3 (k).

⁴⁰⁹ *Ibid.*, Article 5.

⁴¹⁰ *Ibid.*, Article 13.

⁴¹¹ See European Council, “European Security Strategy: Bosnia and Herzegovina/Comprehensive Policy”, Doc. No. 10099/04, 15 June 2004, note 397.

ordination and coherence of the EU actors/instruments in Bosnia and Herzegovina.”⁴¹² Broadly considered, such a strategy came as a result of the 2003 European Security Strategy and in fact demanded for a “more active, more coherent and more capable” EU to make “...[a] contribution that matches our potential”.⁴¹³ In 2004, with the adoption of the General Concept for EUFOR, it was decided for the following arrangements to be made available in Brussels and Sarajevo in order to maximise coherence of EU efforts in BiH.⁴¹⁴

- *Arrangements in Brussels:*

- The Council was tasked to promote maximum coherence of EU effort in BiH;
- Overall coherence of all CFSP/ESDP actors/instruments was to be ensured by the SG/HR. Together with the European Commission, he was further requested to promote unity of effort among all EU instruments/actors;
- In exercising its political control and strategic direction, the PSC was to promote maximum coherence of the EU efforts;
- Modalities for close liaison with the Operational HQ at Supreme Headquarters Allied Powers Europe (SHAPE), the EU Command Element at JFC(S) at the Force HQ in Sarajevo were to be established.

- *Arrangements in Sarajevo:*

- The EUSR was demanded to promote overall EU political co-ordination in BiH;
- As far the CFSP/ESDP instruments were concerned, explicit linkages were established with the EUSR in order to allow him to assist the SG/HR and the PSC in ensuring maximum coherence of EU efforts. The EU Force Commander was demanded, without prejudice for the chain of command, to take EUSR local political advice into account. The EUSR was also included in the EUPM chain of command. In addition, EU monitoring was to be ensured and complemented by dedicated support team;
- Close co-ordination with the EUSR was to be pursued for first and third pillar activities;

⁴¹² *Ibid.*

⁴¹³ See “A Secure Europe in A Better World, European Security Strategy”, Brussels 12 December 2003, § III on ‘Policy Implications for Europe’.

⁴¹⁴ See European Council, “European Security Strategy: Bosnia and Herzegovina/Comprehensive Policy”, *op.cit.* note 411, section on ‘EU Coherence’.

- Internal EU co-ordination was to be reinforced. In addition to the regular meetings of the EU Heads of Missions, it was decided for the EUSR to chair regular informal meetings of EU actors in BiH;
- Functions carried out by more than one actor in BiH were, if possible, to be pooled under the EUSR.
- Whenever possible and when considered beneficial, co-location was to be preferred. Operational areas for different EU actors/instruments were to have the same boundaries.

However, though well conceptualized by the time of its adoption the strategy/comprehensive policy was only partially able to cope with the new military duties posed into existence by EUFOR Althea. By the time of its adoption, specific cooperative modalities could have been extrapolated only from the EUSR-EUPM interaction. In trying to sort out this issue and with the intention to better respond to co-ordination requirements formalized in the Comprehensive Policy, the EU family opted to embark in a constant assessment and review process of its members' respective mandates.

On the co-operation between HQs and field mission, the comprehensive policy was instrumental in suggesting cooperative arrangements for both Brussels and Sarajevo. In this context, the EUSR was to report to the SG/HR and the PSC on the implementation of their respective recommendations.⁴¹⁵

At the field level, contacts with the other EU actors were reinforced through the creation of a specific Co-ordination Group, chaired by the EUSR.⁴¹⁶ Informal meetings between the EU Force Commander, EUPM, EUMM and EU Presidency were also frequently organized and chaired by the same EUSR. The EUSR was also used to an additional EU Heads of Missions meeting once a month for a briefing on prevailing key issues.⁴¹⁷

⁴¹⁵ The European Council was also included in the reporting process. In addition, with the intention to maximise coherence at the strategic level stronger role was given to the Council of Permanent Representatives (COREPER) *vis-à-vis* the SG/HR and the then European Commission. Furthermore, the PSC, being responsible of the political control and strategic direction, was requested to liaise directly with the EU mission in Bosnia and Herzegovina.

⁴¹⁶ See Council of the European Union, "Civil Military Co-ordination (CMCO)", Council Doc. 14457/03, Brussels, 7 November 2003, para. 16.

⁴¹⁷ Thematic meetings such the one on press and media issues, have also been organised; such issues were in fact discussed in meeting convened by the INFO OPS Working Group, chaired by the EUSR's Head of Communications and composed by representatives of the whole EU institutions in Bosnia.

Co-operation between the EUPM, EUFOR and EUSR was initially devoted to the fight against organised crime: together with the State Prosecutor's Office, the EU institutions bi-weekly meetings were organised in the frame of the ESDP Targeting Board. Chaired by the EUPM and with participation from EUFOR, EUSR, OHR and the Prosecutor's Office, the ESDP Targeting Board provided support to BiH authorities in their efforts to fight organized crime, corruption and terrorism and was responsible for the level and type of EUFOR support to be provided to local BiH police operations.⁴¹⁸

By considering the whole range of its tasks, it would appear clear how the EUSR evolved from a political stand to a more operational role.⁴¹⁹ Common denominator in such evolution, however, was the contradiction between internal resources and assigned tasks.⁴²⁰ A clear indication of the weak institutional structure can be encountered in the initial absence of dedicated staff at the time of its deployment; an issue later to be partially solved through the institutional mandates' revision process. However, the evaluation of the EUSR's work in BiH would be incomplete without paying due attention to the historical reality encountered by the time of his deployment. BiH was the first time in which the EU Special Representative was deployed. Moreover, by the time of its deployment the Special Representative was also called to deal with the difficult task of facilitating the integration of the EUFOR ALTHEA within the 'family' of the EU actors in Bosnia; a situation worsened by the fact the missions were not planned nor deployed simultaneously.⁴²¹ Coordination and liaison structures certainly enhanced the coordination within the EU family in Bosnia; but such interaction, regrettably, could not reach the level of consistency and coherence proper of co-ordination.

⁴¹⁸ Susan E. Penska, *Policing Bosnia and Herzegovina 2003-2005. Issues of Mandate and Management in ESDP Missions*, (Centre for European Policy Studies (CEPS) Working Document No. 255/December 2006), 21.

⁴¹⁹ Annika S. Hansen, *op.cit.* note 404, 36.

⁴²⁰ For instance, the first EUSR Lord Ashdown had no EUSR-dedicated staff until 2005 and could only rely on double-hatted OHR/EUSR personnel, hence limiting the implementation of his mandate.

⁴²¹ Jari Mustonen, *op.cit.* note 239, 20.

The European Union Police Mission (EUPM)

5.2.1 Overview

In 2002, the EU formalized its readiness to take over from the IPTF.⁴²² Since its inception EUPM was presented as a mission that would follow-on, not replace, UNMIBH/IPTF. The Council of the European Union made clear that the EUPM was conceived to help establishing “*sustainable policing arrangements under BiH ownership in accordance with best European and international practice, and thereby raising current BiH police standards.*”⁴²³ In 2003, taking over from the UNMIBH the EU deployed the EU Police Mission in Bosnia and Herzegovina (EUPM) as the first operation launched under the European Security and Defence Policy (ESDP).⁴²⁴ Entrusted with the necessary authority to monitor, mentor and inspect the mission was initially expected to achieve its goal by the end of 2005.⁴²⁵ As to its chain of responsibility, the Head of Mission/Police Commissioner was mandated to: lead the mission, assume its day-to-day management and report to the SG/HR through the EUSR.⁴²⁶

On the suitability of a follow-up mission the Office of the High Representative (OHR) stated: “*A successor mission should focus on ‘qualitatively raising police standards, motivation and performance to the level where police independently uphold law enforcement standards expected in a multi-ethnic and democratic society.’*”⁴²⁷ The UN, through its UNSC Resolution 1396 welcomed the operation without formally creating it: “*UN welcomes the acceptance by the Steering Board of the PIC on 28 February 2002 of the offer made by the EU to provide an EU Police Mission.*”⁴²⁸

The EUPM officially started on 1 January 2003 with a three-year mandate but was preceded by a Planning Team deployed from April to December 2002 to ensure a

⁴²² Ana E. Juncos, *op.cit.* note 387, 51.

⁴²³ See Council Joint Action 2002/210/CFSP, 11 March 2002. See also Gemma Collantes Celador, *The European Union Police Mission: The Beginning of a New Future for Bosnia and Herzegovina?* (IBEI Working Papers 2007/9), 8.

⁴²⁴ In the feasibility study conducted by the Commission, police reform was one of the key requirements for BiH to initiate negotiations on the Stabilisation and Association Agreement. See Ana E. Juncos, *op.cit.* note 387, 62.

⁴²⁵ See Council Joint Action 2002/210/CFSP, *supra* note 423, Article 1.3.

⁴²⁶ *Ibid.*, Article 3.

⁴²⁷ See Office of the High Representative, “OHR Report on a Police Follow-on Mission to UNMIBH and the UN International Police Task Force”, OHR Sarajevo 2001, 7.

⁴²⁸ See UNSC Resolution 1396, S/RES/1396 of 5 March 2002.

smooth transition from IPTF.⁴²⁹ In turn, the deployment of the Planning Team was anticipated by a five-day visit of a Fact-Finding Mission to Sarajevo in April 2002.⁴³⁰ As already mentioned EUPM was conceived as an assistance mission to the Bosnian police forces, with no executive power.⁴³¹ The mission had four primary objectives: 1) the development of police independence and accountability; 2) the fight against organized crime and corruption; 3) the financial viability and sustainability of the local police; and, 4) the institution and capacity building for BiH.⁴³² In line with the objectives, four strategic priorities have been identified: a) the fight against organized crime and human trafficking; b) the safety of returnees; c) the strengthening of state-level law enforcement institutions; d) the de-politicisation and financial sustainability of police forces.⁴³³

As from the Council Joint Action, co-operation between HQ (the SG/HR) and the field (the Head of Mission/Police Commissioner) was to be ensured by the EUSR.⁴³⁴ In the field, the EUPM counted with the main HQs in Sarajevo and variable number of Liaison Officers mandated to work with other international organisations present on the ground.⁴³⁵ In this context, co-operation with NATO-led SFOR was also formally established, the mission was in fact mandated to “liaise with SFOR on public security issues including for ensuring SFOR support in extremis.”⁴³⁶ With other international organisations, and especially the Office of the High Representative, the Mission was

⁴²⁹ See Council Joint Action 2002/210/CFSP, *op.cit.* note 423, Article 1 and 2.3. The EU Planning Team did not have any ‘manual/official guidelines’ for crisis management procedure and was requested to work in close cooperation with the IPTF. EUPM initiatives were officially oriented toward bringing police reform in Bosnia closer to sustainability and local ownership, while preserving the achievements attained by the UN mission. For further information see Annika S. Hansen, *op.cit.* note 404, 19.

⁴³⁰ *Ibid.* It was the first time that the preparation of a EU mission could count on the early deployment of a Planning Team and a Fact-Finding Mission.

⁴³¹ *Ibid.*, Annex Mission Statement for EUPM, para. 1.3 “The Mission will not include executive powers or the deployment of an armed component”.

⁴³² Eva Gross, “Civilian and Military Missions in the Western Balkans”, in Michael Emerson & Eva Gross (eds.), *op.cit.* note 432, 140.

⁴³³ Therry Tardy and Erik Windmar, *The EU and Peace Operation*, proceedings of the workshop held at the Geneva Centre for Security Policy (GCSP), 22-23 September 2003, 9. To achieve its objectives, the EU Police Mission was provided with around 500 police officers, 50 international civilian experts and 300 local staff deployed in 24 monitoring units. At the beginning, the mission counted on 33 contributing states: 15 EU member states and 18 third countries. See also Gemma Collantes Celador, *op.cit.* note 423, 9.

⁴³⁴ See Council Joint Action 2002/210/CFSP, *op.cit.* note 423, Article 7. With reference to its chain of command, the EUSR was positioned within the EUPM chain of command and given central role in the reporting system between Sarajevo and Brussels.

⁴³⁵ *Ibid.*, Article 3.

⁴³⁶ *Ibid.*, Annex Mission Statement for EUPM, para. 6. The EU Police Mission was also mandated to develop, in close cooperation with SFOR, specialised information sharing in support of the state level capability and other appropriate authorities.

requested to coordinate in the furtherance of the international community overall objectives in the field of rule of law.⁴³⁷

Since its deployment the mission was exposed to internal revision and changes, in its structure and functioning, in order to better respond to developments in the field. Albeit adjusted in scope and size, EUPM's mandate was hence repeatedly extended by the Council of the European Union. In October 2005, the BiH authorities invited the EU to deploy a "refocused" EUPM in BiH.⁴³⁸ The refocused mission was placed under the guidance and coordination of the EUSR and aimed at, through, mentoring, monitoring and inspecting, at establishing a sustainable, professional and multiethnic police service operating in accordance with best European and International standards.⁴³⁹ In this case a specific six-month review process was formalized to enable adjustments on the activities of the mission.⁴⁴⁰ Differently from the 2002 Joint Action, the PSC was granted the powers to amend the OPLAN and the chain of command.⁴⁴¹ In 2007 with the adoption of the Council Joint Action 2007/749/CFSP the EUPM was mandated to assist local authorities in planning and conducting investigations in the fight against organised crime.⁴⁴² In 2009, through the Joint Action 2009/906/CFSP, the mission statement was changed: as part of the broader rule of law approach in BiH and in the region: EUPM while retaining residual capacities in the field of police reform and accountability, was primarily asked to support BiH relevant Law Enforcement Agencies in the fight of organised crime and corruption.⁴⁴³ According to the revised mandate the EUPM was to provide operational advice to the EUSR and support him in his role.⁴⁴⁴ Coherently with the 2007 Joint Action, the Head of Mission was demanded to coordinate with other EU actors on the ground and receive, without prejudice of the chain of command, local and political guidance from the EUSR.⁴⁴⁵ Coordination with the EU Delegation in BiH, the EU heads of Mission as well as other international

⁴³⁷ *Ibid.*

⁴³⁸ See Council Joint Action 2005/824/CFSP of 24 November 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH).

⁴³⁹ *Ibid.*, Article 2.

⁴⁴⁰ *Ibid.*, Article 3.

⁴⁴¹ *Ibid.*, Article 9.

⁴⁴² See Council Joint Action 2007/749/CFSP on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), 19 November 2007, Article 2.

⁴⁴³ See Council Joint Action, 2009/906/CFSP of 8 December 2009 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), Article 2 and 3.

⁴⁴⁴ *Ibid.*

⁴⁴⁵ *Ibid.*, Article 6.7.

organisations, in particular OSCE and the Council of Europe, was also formalized in the 2009 Council Joint Action.⁴⁴⁶

5.2.2 Transition from the IPTF

As already mentioned, the planning phase of the EUPM was greatly influenced by the outcomes of the EU Planning Team/Fact-Finding Mission as well as the information received from IPTF.⁴⁴⁷ The Planning mission was dispatched nine months prior to the official handover from the UN. To facilitate the transition and take advantage from the previous UN's experience, EUPM mostly relied on the re-appointment of former IPTF officials⁴⁴⁸; this approach, unfortunately, led to confusion on the interpretation of the mandate of the mission.⁴⁴⁹ In spite of the positive attitude, the ESDP mission was nonetheless requested to be 'different' from the earlier UN operation; an attitude that led to institutional competition in the first phase of the transition period.⁴⁵⁰ Further to this, the UN mission left without tackling key issues of its police reforms; reforms operated by the UNMIBH, including the IPTF, were in truth not fully completed.⁴⁵¹ For instance, the disparity in the so-called police-population *ratio* added unnecessary difficulties to the transition period.⁴⁵² The evaluation conducted by the Civilian Aspects of Crisis Management (CIVCOM) further revealed a transition process largely affected by the reluctance of the UN to share all necessary information for the

⁴⁴⁶ *Ibid.*, Article 14.

⁴⁴⁷ EUPM, "European Union Police Mission-the first mission under the European Security and Defence Policy. Bosnia and Herzegovina, 2003-2005", Sarajevo 2006, 14; in Elena B. Stavrevska, *op.cit.* note 221, 7.

⁴⁴⁸ Including Mr Sven Frederiksen who served as the last IPTF Commissioner, then Head of the EU Planning Mission in BiH and, finally as the first EUPM Commissioner. The EU police mission resembled IPTF in its operational level. See Jari Mustonen, *op.cit.* note 239, 19.

⁴⁴⁹ Ana E. Juncos, *op.cit.* note 387, 53. Besides, there was no system for transmitting documents ongoing issues between the missions. See Richard Gowan and Daniel Korski, "The Security Council and Peacekeeping in the Balkans, 1999-2010", in International Peace Institute (IPI), *Maintaining International Peace and Security: A Summit Meeting of the UN Security Council*, New York June 2011, IPI Policy Papers. NY June 2011, 16-24, at 23.

⁴⁵⁰ Eva Gross, *op.cit.* note 432, 141. Furthermore, it took six/seven months to get basic logistic requirement in order. See Thorsten Benner *et al.*, *Learning to Build Peace? United Nations Peacebuilding and Organizational Learning: Developing a Research Framework*, GPPI Research Paper Series No. 7 (2007), Berlin 2007.

⁴⁵¹ The assessment on the remaining tasks to be finalized to complete the police reform was undertaken by the UN, before its departure, and not by the EU. See International Crisis Group (ICG), *Policing the Police in Bosnia: a Further Reform Agenda*, (Europe Report No. 130, Sarajevo & Brussels 2002), (i).

⁴⁵² The EU has applied a ratio of 1 officer per 1000 inhabitants in urban areas, 1 per 2000 inhabitants in rural areas while the UNMIBH/IPTF in the Systems Analyses of Law Enforcement Agencies applied a ratio of 1 officer per 300 inhabitants in urban areas, 1 per 500 in rural areas. The UN mission defined its ratio as the prevailing international standards. See European Commission, "Final Assessment Report – Financial, Organisational and Administrative Assessment of the BiH Police Forces and the State Border Service", Sarajevo 2004, 18; in Gemma Collantes Celador, *op.cit.* note 423, 18.

deployment of the EU mission.⁴⁵³ The EUPM then inherited, without questioning, what previously done or not done by IPTF.⁴⁵⁴ This is not without relevance counting that from January to June 2003 a small UN liaison team (approximately 11 officials) remained at the EUPM Headquarters to provide support to the EU mission.⁴⁵⁵ Moreover, the review undertaken by the Council on the first 100 days of the mission revealed operational weaknesses such as: problematic communication between the EUPM headquarters and personnel in the field, lack of full deployment and lack of advance planning for a media strategy.⁴⁵⁶ After one year of deployment, results coming from the mission were defined as ‘*depressing*’ by the International Crisis Group (ICG); the latter recommended to shut down the mission and replace it with an entirely new one with a more extensive mandate on the footprint of the one enjoyed by UNMIBH/IPTF.⁴⁵⁷ In addition, two factors influenced the way the Planning Team carved out the EUPM I mandate, which ultimately negatively affected its effectiveness. First, the planning missions were rather brief and visited the BiH Capital only; and second, the planning was erroneously based on the assumptions that the IPTF programmes would have reached an advanced stage of development by the end of 2002, deadline envisaged for the transfer of authority.⁴⁵⁸ In spite of this, the first report of the EU mission to the UNSC, on the first six months of the mission, stated that “the EUPM is the first experience of cooperation in the field between the UN and EU and illustrates that a smooth and efficient transition of responsibility from the UN to EU in a crisis management operation is no longer an aspiration but a concrete component of our cooperation.”⁴⁵⁹

⁴⁵³ Ana E. Juncos, *op.cit.* note 387, 53.

⁴⁵⁴ Therry Tardy and Erik Windmar, *op.cit.* note 433, 10.

⁴⁵⁵ Sven Biscop and Valérie Arnould, “Global Public Goods: An Integrative Agenda for EU External Action”, in Espen Barth Eide (ed.), *‘Effective Multilateralism’: Europe, Regional Security and a Revitalised UN*, The Foreign Policy Centre and British Council Brussels, 2004.

⁴⁵⁶ Eva Gross, *op.cit.* note 432, 142. See also Council of the European Union, A Review of the first 100 days of the EU Police Mission in Bosnia and Herzegovina (EUPM), Doc. No. 11760/03, Council Secretariat, Brussels, 23 July 2003.

⁴⁵⁷ See International Crisis Group (ICG), *Bosnia’s Stalled Police Reform: No Progress*, (Europe Report No. 164, Sarajevo & Brussels 2006), 12.

⁴⁵⁸ See EUPM, *op.cit.* note 423, 15.

⁴⁵⁹ See Letter dated 14 July from the Secretary-General and High Representative for the CFSP of the European Union to the Secretary-General of the United Nations. Annex to the letter dated 17 July from the Secretary-General of the United Nations to the President of the Security Council, Doc No. S/2003/732, 21 July 2003, p. 7. Since the deployment of the mission the EU was requested to keep the UNSC regularly informed on the activities of the EUPM; reports were issued every six months.

5.2.3 Cooperation with other EU actors and other IOs

Co-operation with the EUSR was ensured through the creation of a joint command structure. With the EC the interaction was facilitated by the creation of an informal Joint Coordination Group; a small CARDS team was also co-located at the EUPM headquarters.⁴⁶⁰ To ensure institutional coherence, the Joint Action went further to stress the need for coordination arrangements in Brussels and Sarajevo and noted “*the intention of the Commission to direct its action towards achieving the objectives of this Joint Action, where appropriate, by relevant Community measures.*”⁴⁶¹ Such coherence, however, was hardened by the sometimes conflicting perception of the EUPM within the EU pillar structure. With direct impact on the effectiveness of the mission, the timeframe envisaged by the Council, focused on short-term objectives of the police reform, and the long-term institutional building of the Commission conflicted. The coordination at the HQ level between the Council Secretariat and the Commission was also influenced by the conflicting perception on the role of EUPM.⁴⁶² Furthermore, although the 2002 Council Joint Action stated for the PSC to create a Committee of Contributors for the EUPM—in line with the document on ‘Consultation and Modalities for the Contribution of non-EU states to EU Civilian Crisis Management’⁴⁶³—it was only in 2005 when relevant decisions on the development of the Committee were in fact formalized and implemented.⁴⁶⁴

Cooperation between EUPM and EUFOR was to take place in the frame of the EU comprehensive civilian and military approach to crisis management. In theory, the two missions were mandated to contribute to the broader EU strategy with EUPM pursuing for the long-term capacity-building of the police forces and EUFOR focusing on the short-term approach centred on deterrence. In theory, conflicts between the two missions were to be avoided thanks to the nature of the respective mandates: EUPM non-executive (monitor, mentor and inspect) *vis-à-vis* EUFOR executive (possibility to resort to the use of force if necessary) character.⁴⁶⁵ On the ground, however, reality

⁴⁶⁰ Ana E. Juncos, *op.cit.* note 387, 57.

⁴⁶¹ *Ibid.*, Article 10.

⁴⁶² For Pillar I (Community actions), police missions were conceived as a long-term tool to support development projects. For Pillar II (CFSP), missions were a short-term instrument of security. For pillar III (justice and home affairs), these were a preventive instrument to fight against organised crime and secure EU borders. See Ana E. Juncos, *op.cit.* note 387, 57-58.

⁴⁶³ Approved by the Council on 10 December 2002.

⁴⁶⁴ See Council Joint Action 2005/143/CFSP of 17 February 2005 amending Joint Action 2002/210/CFSP on the European Union Police Mission.

⁴⁶⁵ Ana E. Juncos and Gemma Collantes Celador, *Security Sector reform in the Western Balkans. The Challenge of Coordination and Long-Term Strategy*, paper presented at the conference “The EU and the

proved to be different.⁴⁶⁶ In the initial phase of the co-deployment, interaction between EUPM-EUFOR was characterized by frictions coming from unclear and partially overlapping responsibilities, especially on the fight against organised crime.⁴⁶⁷

To solve this impasse, at the end of 2005 the representatives of the EUPM, EUFOR and EUSR agreed on the “Seven Principles and Guidelines on enhanced co-operation between the EUSR, EUFOR and EUPM.”⁴⁶⁸ Due to the agreed principles and guidelines a joint action plan was developed to set goals and define tasks for each of the EU institutions. According to the guidelines, the EUPM would take the lead in the policing aspects of the ESDP while the EUFOR would provide operational support, conditioned to the EUPM assessment, to local authorities and under the political coordination of the EUSR. According to the agreed co-operative modalities:

1. Complementarity and co-operation among EUPM, EUFOR and EUSR/Office of the High Representative was to be strengthened in the fight against organised crime;
2. The EUSR was held responsible for this coordination and would chair the Crime Strategy Working Group;⁴⁶⁹
3. The relevant EU players agreed to observe the general guidelines for increasing cooperation;
4. The EUPM agreed to take the lead in coordinating the policing aspects of ESDP in BiH;
5. The EUFOR was requested to coordinate and align its future anti-organised crime operations with the EUPM;
6. A task force would be set up to develop a joint action plan delineating the tasks, goals and benchmarks for the relevant EU instruments;
7. The joint action plan was envisaged in support of the efforts of Bosnian authorities.

Promotion and Stabilisation of Conflict Settlements” organized by the University of Nottingham on 22-23 November 2007, 8.

⁴⁶⁶ By then, it seemed easy to complement a police mission with a non-executive mandate with a military mission with an executive nature and enforcement tools at its disposal.

⁴⁶⁷ Elena B. Stavrevska, *op.cit.* note 221, 6.

⁴⁶⁸ See EU Police Mission (EUPM), EU Military Force in Bosnia and Herzegovina (EUFOR) and EU Special Representative (EUSR), “Guidelines for Increasing Cooperation between EUPM–EUFOR and EUSR”, Sarajevo 2005.

⁴⁶⁹ Chaired by the EUSR, the working group was created to ensure cooperation of EU-ESDP actors in support of the local authorities’ fight against organised crime and corruption.

The agreement on the Seven Principles was the first official step toward an effective EU internal division of the tasks. In November 2005, these principles were reaffirmed in the revised mandates of both EUSR and EUPM.

In the same year, the Bosnian political authorities accepted the three European Commission police principles.⁴⁷⁰ In this context, the EU police mission was extended but with a revised mandate and modified in its size. The new mission – codenamed EUPM II – was requested to take “the lead in the coordination of policing aspects of the ESDP efforts in the fight against organised crime, without prejudice to the agreed chains of command.”⁴⁷¹ Developed in line with the 2005 co-operation guidelines, the stronger and more proactive role of EUPM II in the fight against organised crime should end previous confrontations between the EU Police Mission and EUFOR.⁴⁷² In its revised mandate, the new EU police mission was devoted to the implementation of three main objectives: a) supporting the local police in the fight against organised crime; b) conducting inspections and monitoring police operations; and, c) supporting the implementation of police restructuring.⁴⁷³ As from the revised mandated the role of EUPM II on policing was widened⁴⁷⁴; and the Criminal Justice Interface Unit was set up to address problems regarding cooperation between the police and the prosecutorial authorities. In addition, press and public information functions were transferred to the EUSR in order to facilitate coordination.⁴⁷⁵ On the co-operation between Brussels and Sarajevo (to be developed three years earlier according to the EUPM I mandate) the new mandate remained similar; the Council even stated that “arrangements already exist in the Mission area as well as in Brussels”.⁴⁷⁶ In the same period, the need for a more coherent approach was acknowledge by the Council of the European Union both at the political and operational level; with the adoption of the EU Concept for ESDP Support to Security Sector Reform the Council of the European Union clarified that “during the preparation, planning and conduct of the EU action by

⁴⁷⁰ The three criteria were: 1) exclusive competence (including legislative and budgetary) for all police matters at the state level; 2) no political interference with operational policing; and 3) Functioning Local Police Areas must be determined on the basis of technical policing criteria, where operational command is exercised at the local level. See International Crisis Group (ICG), *Bosnia's Stalled Police Reform: No Progress*, *op.cit.* note 457, 5.

⁴⁷¹ See Council of the European Union, Council Joint Action 2005/824/CFSP, *op.cit.* note 438, Article 2.

⁴⁷² Jari Mustonen, *op.cit.* note 239, 31.

⁴⁷³ See Council of the European Union, Council Joint Action 2005/824/CFSP, *op.cit.* note 438, Article 2.

⁴⁷⁴ Susan Penksa, *Policing Bosnia and Herzegovina 2003-05. Issues of Mandates and Management in ESDP Missions*, CEPS Working Document No. 225/December 2006, 16.

⁴⁷⁵ Ana E. Juncos, *op.cit.* note 387, 75.

⁴⁷⁶ See Council of the European Union, Council Joint Action 2005/824/CFSP, *op.cit.* note 438, Article 13(2).

the appropriate Council bodies, the comprehensive integration of civilian and military aspects will, as appropriate, need to be ensured”.⁴⁷⁷

In May 2006, EUFOR and EUPM agreed on the “Common Operational Guidelines for EUPM – EUFOR support to the fight against organised crime” (herein after the common operational guidelines).⁴⁷⁸ Aim of the common operational guidelines was to lead EUFOR and EUPM personnel and units to establish an operational partnership in line with the newly mandated EUPM.⁴⁷⁹ The latter took the lead in coordinating the policing aspects of the ESDP efforts in BiH (in supporting the fight against organised crime).⁴⁸⁰ The common operational guidelines specified the procedures and methods to be used in cases of EUFOR support (to be endorsed by EUPM) to local law enforcement agencies.⁴⁸¹

EUFOR operations carried out in pursuance of the Dayton Agreement, including operations to maintain a Safe and Secure Environment (SASE), were to be considered an exception to the scope of the common operational guidelines. The latter further established cooperation modalities at the tactical and operational level; for the latter, besides the already mentioned Crime Strategy Group, the common operational guidelines considered other coordination mechanisms such as: the EU-ESDP Targeting Board⁴⁸²; the EUFOR Targeting Board⁴⁸³; and, several other *ad hoc* structures under the EUPM Organised Crime Policy and Coordination.⁴⁸⁴

⁴⁷⁷ See Council of the European Union, *EU Concept for ESDP Support to Security Sector Reform (SSR)*, No. 12566/4/05, Brussels 13 October 2005, para. 10.

⁴⁷⁸ See Council of the European Union, “Common Operational Guidelines for EUPM-EUFOR support to the fight against organised crime”, Doc. No. ST 10769/06 Restraint UE, Brussels 21 June 2006. The guidelines required adjustments to EUPM and EUFOR roles in supporting the Bosnian Law Enforcement Agencies.

⁴⁷⁹ *Ibid.*, para. 2.

⁴⁸⁰ *Ibid.*, para. 1 (a).

⁴⁸¹ *Ibid.*, para. 1 (c). As from para. 13, EUPM-EUFOR cooperation in support of local laws enforcement agencies was conceived in 5 main areas: intelligence, planning, operations, post-operational assessment and follow-up activities.

⁴⁸² Chaired by the EUPM and established under the authority of the CSG is attended, inter alia, by representatives from EUPM; EUFOR, EUSR, OHR. See *Ibid.*, para. 8 (b.). The EU-ESDP Targeting Board was mandated to: coordinate law enforcement agencies requirement for EUFOR support; identify EUPM priorities for EUFOR intelligence collection operations and coordinate post operational assessment and follow-up activities.

⁴⁸³ As from para. 10 of the Guidelines it was mandated to: a) direct targeting for EUFOR intelligence collection operations; b) direct the level and type of EUFOR support; c) direct targeting for EUFOR SASE and Dayton operations; d) de-conflict EUFOR operation and Local Police operation not requiring EUFOR support; e) coordinate EUFOR post operational assessment.

⁴⁸⁴ Namely the Organised Crime Co-Ordination Cell (OCCC), the Interface Cell for Criminal Intelligence (ICCI), the Criminal Justice Interface Unit (CJIU) and the Communication Centre.

In comparison with the earlier Seven Principles, the common operational guidelines paid due attention to the inclusion of cooperation at the tactical level to ensure coherence between HQ and field missions.⁴⁸⁵

At the end of 2007, the Council further extended EUPM's mandate for another two years, until the end of 2009. This time the major change in the mandate was on the management of the mission and due to the adoption by the Council of the European Union of the June 2007 "Guidelines for Command and Control Structure for EU Civilian Operations in Crisis Management" (guidelines for command and control).⁴⁸⁶ The guidelines for command and control provided for the creation of a Civilian Operation Commander to exercise command and control at strategic level for the planning and conduct of all civilian crisis management operations, under the political control and strategic direction of the Political and Security Committee (PSC) and the overall authority of the SG/HR.⁴⁸⁷ Furthermore, the guidelines provided that the Director of the Civilian Planning and Conduct Capability (CPCC)⁴⁸⁸, established within the Council Secretary, would be the Civilian Operation Commander for EUPM and all civilian crisis management operations.⁴⁸⁹ The Civilian Operation Commander was then to exercise command and control on the EUPM at the strategic level, while the Head of Mission was retaining command and control of the theatre level.⁴⁹⁰ Due to the new structure, the EUSR was removed from EUPM's chain of command and able to provide for local political guidance only.⁴⁹¹

⁴⁸⁵ Due to the adoption of the guidelines, the support from EUFOR to local police was limited to cases in which the local police forces were lacking the capacity to intervene and the need for EUFOR assets was considered to be essential by EUPM. The same guidelines also regulated IPU's actions under the EU flag; IPU operations under NATO command were not bounded by the Common Operational Guidelines. See Jari Mustonen, *op.cit.* note 239, 25-26.

⁴⁸⁶ See Council of the European Union, Guidelines for Command and Control Structure for EU Civilian Operations in Crisis Management, Doc. No. 10381/07, 17 June 2007.

⁴⁸⁷ As from Article 1 of the Guidelines, a 'single and identifiable chain of command is imperative for the safe and efficient conduct of any ESDP crisis management operation.'

⁴⁸⁸ Created in August 2007 it has been responsible for CSDP civilian missions in the areas of police, border assistance management, rule of law and security sector reform: EUPM (BiH); EULEX Kosovo; EUPOL COPPS and EUBAM Rafah (Palestinian Territories); EUJUST LEX (for the Iraqi justice system); EUPOL Afghanistan; EUPOL RD Congo and EU SSR Guinea-Bissau. See European Security and Defence Assembly, Assembly of the WEU, Planning and Conduct of EU Operations – reply to annual report of the Council, Fifty-Ninth Session, Doc. A/2086, 30 November 2010, para. 32.

⁴⁸⁹ See Council Joint Action 2007/749/CFSP, *op.cit.* note 437, Article 5. See Jari Mustonen, *op.cit.* note 239, 8.

⁴⁹⁰ *Ibid.*, Articles 5.2, 6.3 and 9.5. Furthermore, the revised chain of command established that the Civilian Operation Commander to be, under the political control and strategic direction of the PSC and the overall authority of the SG/HR, the Commander of the EUPM at strategic level and, as such, issue instructions to the Head of Mission and provide him with advice and technical support (Article 9 of the Joint Action).

⁴⁹¹ *Ibid.*, Article 6.7.

More on the co-operation with the Community, the Council Joint Action 2007/749/CFSP established for the Council and the Commission to ensure consistency between the implementation of the Joint Action and the external activities of the Community.⁴⁹² Finally, the guidelines for command and control were to apply in case of an EU-led operation including some components provided by international organisations. In such a case, the EU would have received the other components under its Operational Control (OPCON), without prejudging the political decision on coordination with the other organisation.⁴⁹³

Being the first ever crisis-management operation within the framework of the ESDP, the planning of this mission was “an important learning experience for the EU and the first test of its crisis management concepts, procedures and instruments”.⁴⁹⁴ Yet problems of coherence, affecting the initial EUPM experience stemmed from factors such as the EU’s fragmented presence in the country, the lack of an overall strategy and the resistance at the inter-pillar coordination level.⁴⁹⁵ On the internal structure of the mission, the programmatic management approach and the benchmarking system introduced in 2004 did not solve the situation. On this aspect, the 2005 evaluation policy adopted for measuring the achievements of the mission *vis-à-vis* its initial objectives (the rate was very high reaching 70-75% of the accomplishment) was criticized for devoting undue attention to the mere progress’ measurement and hence omitting the quality assessment of changes introduced or achieved.⁴⁹⁶ To properly consider the contradiction coming from the evaluation conducted on the performance of the mission, it worth recalling that in the 2003-2005 period Bosnia and Herzegovina was still an ethnically divided country with a fragile political and economic situation.⁴⁹⁷ Furthermore, the EUPM advising and mentoring activities essentially depended on the compliance and willingness to co-operate of the local partners. This

⁴⁹² *Ibid.*, Article 14, Activities of the Community were to be undertaken in accordance with the second paragraph of Article 3 of the Treaty on European Union. In the Joint Action the Council noted that coordination arrangements already existed in the EUPM area as well as in Brussels.

⁴⁹³ See Council of the European Union, Guidelines for Command and Control Structure for EU Civilian Operations in Crisis Management, *op.cit.* note 486, Article 25. Consultations would be required between the EU and the international organisation in question.

⁴⁹⁴ See Council of the European Union and European Commission (2003), Lessons from the planning of the EU Police Mission in Bosnia and Herzegovina (EUPM), Autumn 2001-December 2002, Joint Paper, Brussels, 29 April 2003, 1.

⁴⁹⁵ Ana E. Juncos, *op.cit.* note 387, 61.

⁴⁹⁶ *Ibid.*, 71.

⁴⁹⁷ The economy in BiH was at its worst level during the period 2003-2005. The Ministerial Report on Security in Bosnia and Herzegovina in 2004 explicitly linked the decline in the economy with the worsening of the security situation in the country.

situation was further worsened by the non executive nature of mission; EUPM's mandate was built upon the assumption that the need for reforms would be automatically recognized and implemented by Bosnian.⁴⁹⁸ Besides, the mission's police reform was to be guided by "*Best European and International Standards*"; such reference, however, was not clarified in the mandate nor was complemented by the provision of valuable guidelines to be used in the implementation process.⁴⁹⁹ However, being the EUPM the first police mission launched by the EU, it is somehow understandable for a "*learning by doing*" attitude to disclose weaknesses and induce some reflections.⁵⁰⁰

Another problem experienced by the EUPM concerned its personnel. An assessment of the first 100 days of the mission revealed difficulties in dealing with the secondment and the high turnover of staff.⁵⁰¹ Recruitment and training of officials were conducted at national level with no provision of a common harmonised procedure to guarantee interoperability in the field.⁵⁰² The mission was then marked, in its beginning, by unclear operating procedures and non-functional communication and reporting structures.⁵⁰³ This in spite of the conclusions of the 2001 Goteborg European Council meeting which envisaged, *inter alia*, the need to develop "*agreed standards for selection, training and equipment of officials.*"⁵⁰⁴ On the contrary, with the EUPM II lessons were learned: the improved decision-making structure and the creation of the Civilian Response Teams proved to be instrumental in enhancing the implementation and planning capacity of the mission.⁵⁰⁵ Such a modification of the mandate, however,

⁴⁹⁸ *Ibid.*, 68-69.

⁴⁹⁹ This created confusion among EUPM personnel, who were unsure of what benchmarks were to be met. See Elena B. Stavrevska, *op.cit.* note 221, 8. In turn, the definition of common standards for the activities envisaged by the mandate, namely to "*monitor, mentor and inspect*", has not been easily identified.

⁵⁰⁰ The problem was resolved by assigning particular programmes to different countries. Ana E. Juncos, *op.cit.* note 387, 71.

⁵⁰¹ At the beginning of the operation, some member states did not provide the committed personnel and therefore various positions remained empty for some time. See Council of the European Union, A Review of the first 100 days of the EU Police Mission in Bosnia and Herzegovina (EUPM), *op.cit.* note 456.

⁵⁰² Ana E. Juncos, *op.cit.* note 387, 72.

⁵⁰³ Jari Mustonen, *op.cit.* note 239, 15.

⁵⁰⁴ See Council of the European Union, "Presidency Report to the Goteborg European Council on European Security and Defence Policy", June 2001.

⁵⁰⁵ The revision operated on the mandate further resulted in enhancing the EUPM II inspection powers. See Council of the European Union, Civilian Headline Goal 2008, in Multifunctional Civilian Crisis Management Resources in an Integrated Format – Civilian Response Teams, 10462/05, Brussels 26 March 2005.

did not solve the problems of recruitment and the doubts concerning the definition of European standards of policing.⁵⁰⁶

5.2 *The European Union Military Force (EUFOR ALTHEA)*

In 2004, after having expressed their willingness and readiness to lead a military operation to follow SFOR,⁵⁰⁷ the EU member states endorsed a “General Concept” for the deployment of an EU-led mission, foreseen with a military component of about 7,000 troops, in Bosnia. The 2004 general concept further established the broad strategy for the EU’s engagement in the country.⁵⁰⁸ Shortly after, in the occasion of the June 2004 NATO Istanbul Summit, the Atlantic Alliance confirmed its decision to conclude SFOR by the end of the year and welcomed the “EU’s readiness to deploy a new and distinct mission”.⁵⁰⁹ By then, it was agreed for a residual NATO military to remain in Bosnia and advise Bosnian authorities on defence reforms.⁵¹⁰ A residual presence of the Atlantic Alliance was then expected to closely co-operate with EUFOR and “[...] ensure a clear delineation of roles and responsibilities between the two organisations.”⁵¹¹ EUFOR was also requested to establish clear channels of communication with other EU operations in Bosnia, in particular the EUPM, and to avoid overlap with the role of the NATO in-country Headquarters.⁵¹² In this context, it worth recalling that such a division of labour in fact came as result of the July 2003

⁵⁰⁶ *Ibid.*, 143.

⁵⁰⁷ See Presidency Conclusions, Copenhagen European Council, 12-13 December 2002. European Council Press Release No. 15917/02, 29 January 2003.

⁵⁰⁸ It called for the EU military operation to fulfil the military tasks of the Dayton peace agreement, have a mandate authorized by the U.N. Security Council under Chapter VII of the U.N. Charter, and come under the political authority of the EU Council’s Political and Security Committee (PSC). See Julie Kim, *Bosnia and the European Union Military Force (EUFOR): Post-NATO Peacekeeping*, (Congressional Research Service (CRS) Report for Congress, U.S. Library of Congress 5 December 2006), 4.

⁵⁰⁹ After the June 2004 NATO meeting in Istanbul, Javier Solana’s explicitly stated goals for the EUFOR was that it be “new and distinct” and “make a difference” while at the same time continuing the SFOR’s key military tasks. See NATO/SFOR Press Statement, 29 June 2004. See also Eva Gross, *op.cit.* note 432, 144.

⁵¹⁰ In welcoming the concept of a European follow-on force, government officials emphasized the need for a continued NATO presence in the country as a way to further reinforce the transatlantic dimension and Bosnia’s aspirations to join the Atlantic Alliance. See Julie Kim, *op.cit.* note 508, 2-3. Furthermore, the European Parliament in its Resolution on Operation Althea advocated for “[...] the closest cooperation between the EU Stabilisation Force in BiH and the residual NATO presence in the country to ensure a clear delineation of roles and responsibilities between the two organisations.” See European Parliament Resolution on the “European Union Military operation ‘Althea’ in Bosnia and Herzegovina” of 17 November 2004, para. 7.

⁵¹¹ *Ibid.* In para. 8, the European Parliament even insisted for NATO to handover, in addition to peacekeeping mission, responsibility for counterterrorism operations and the apprehension of was criminals to the European Union.

⁵¹² See “EUFOR: Changing Bosnia’s Security”, in *Europe Briefing* No. 3129, Brussels-Sarajevo 29 June 2004.

“EU-NATO Concerted Approach for Western Balkans”.⁵¹³ Few months later, the principles of “Civil Military Co-ordination (CMCO)” were formalized by the Council of the European Union as part of the EU’s comprehensive approach to crisis management.⁵¹⁴ Adopted in order to stimulate a culture of co-ordination CMCO was recognised as an essential element, to be “built into” at the earliest possible stage and for the whole duration of the operation, in encouraging and ensuring the co-ordination in the actions of relevant EU actors in all phases of the operation.⁵¹⁵ Apart from detailing the “fundamentals” of co-ordination modalities from the strategic to operation level of EU crisis management operations, CMCO was recognised as a pre-requisite to “ensure co-operation and establish co-ordination modalities as appropriate with other actors external to the EU involved in the theatre”.⁵¹⁶ Guidelines provided by CMCO went further so as to regulate the coordination between the Council and the Commission, including its Delegation, through the creation of the Crisis Response Co-ordination Team (CRCT) responsible to ensure the necessary degree of coherence and comprehensiveness in the operational planning process. The CRCT was also tasked to ensure full coherence between the civilian and military aspects of the EU action in the implementation phase. Guidelines provided in the CMCO, particularly the coordination modalities outlined in sections IV of CMCO, have been followed in shaping the structure of the EU family in BiH from 2004 onwards.⁵¹⁷ With the EU Special Representative the European Parliament recommended to “[...] not only closely coordinate with the EU Force Commander but also invite NATO representation on the EUSR coordination group in order to ensure coordination and coherence across the range of EU activities in BiH.”⁵¹⁸ The same Parliament further insisted on the opportunity to include “gendarmerie-type” element to perform “those tasks for which the military have not generally been trained and which normal police forces cannot perform, especially since the EU Police Mission has a non-executive mandate under which it can only give advice and monitor developments.”⁵¹⁹ In

⁵¹³ See “EU and NATO Concerted Approach for Western Balkans” in *Council of the European Union Press Release* No. 11605/03, Brussels 29 July 2003, para. 1. In the document, it was conceived for the EU to concentrate on “police reform and governance issues” while NATO’s activities, through the Partnership for Peace and Membership Action Plan, were to focus on defence reform.

⁵¹⁴ See Council of the European Union, “Civil Military Co-ordination (CMCO)”, *op.cit.* note 416. See also the analysis in Section II.

⁵¹⁵ *Ibid.*, para. 5.

⁵¹⁶ *Ibid.*, para. 17.

⁵¹⁷ *Ibid.*, Section IV on Fundamentals of EU CMCO in Crisis Management Operations.

⁵¹⁸ *Ibid.*, para. 10.

⁵¹⁹ *Ibid.*, para. 14.

considering the necessity of urgent military action, the European Parliament further raised certain expectations in saying that “[...] lessons will have been learned from the mistakes made during previous action in the Balkans, particularly in Kosovo in March 2004, and that there will be clear organisations and coordination planning for such action.”⁵²⁰ The same EU body concluded by recommending for a “specific mechanism” to be implemented for “[...]coordinating information flows between the EU, NATO, the United States and other actors engaged in the region on the probability of ethnic tensions.”⁵²¹

On 9 July, the UNSC then adopted Resolution 1551 and welcomed the intention of the EU to “launch an EU mission to Bosnia and Herzegovina, including a military component, from December 2004.”⁵²² In December 2004, the UNSC with Resolution 1575 (adopted under Chapter VII of the UN Charter) welcomed the deployment of EUFOR ALTHEA, in taking over from the NATO-*led* SFOR in the military implementation of the DPA. Presented as the legal successor of the SFOR and under unified command and control, operation ALTHEA was carried out with recourse to NATO assets and capabilities on the basis of the "Berlin Plus" agreement and is to be regarded as an Operation of civil-military nature.⁵²³ By then, and in line with the July decision of the EU Council, EUFOR took over NATO’s military responsibilities in BiH.⁵²⁴

In December 2004, EUFOR was finally deployed with a strong multi-national component of 7,000 troops, from 33 contributing countries. According to its mandate, the mission was mandated to: a) contribute to a safe and secure environment and deny conditions for a resumption of violence; b) manage any residual military aspect of the GFAP and c) allow EU and international actors to carry out their responsibilities in the

⁵²⁰ *Ibid.*, para 17. Resolution of the European parliament further underlined the importance of clear responsibilities over the chain of command between HQs and field mission.

⁵²¹ *Ibid.*, para 22.

⁵²² Julie Kim, *op.cit.* note 508, 5. See also UNSC Resolution 1551, S/RES/1551(2004), 9 July 2004. Furthermore, the UNSC further decided that the status of forces agreement contained in Appendix B to Annex 1.A of the Peace Agreement should apply provisionally in respect to the proposed EU mission and its forces, including from the point of their build-up in BiH, in anticipation of the concurrence of the parties to those agreements to that effect.

⁵²³ See Council Joint Action 2004/570/CFSP of 12 July 2004, Article 1.3. The Berlin Plus agreement is a short title for a comprehensive package of arrangements between NATO and the EU, based on conclusions of the NATO Washington Summit. Following the “NATO-EU Declaration on ESDP” of 16 December 2002, the Berlin Plus arrangements adopted on 17 March 2003, provide the basis for NATO-EU cooperation in crisis management by allowing the EU to have access to NATO’s collective assets and capabilities for EU-led operations, including command arrangements and assistance in operational planning. Such a decision was welcomed also by the European Parliament.

⁵²⁴ Annemarie Peen Rodt, “EU Performance in Military Conflict Management”, paper presented at the EUSA Twelfth Biennial International Conference, Boston, Massachusetts, 3-5 March 2011, 23.

country. Part of the EU's comprehensive approach towards BiH, the EUFOR mission was further requested to act in close coordination with the other "members" of the EU family in BiH.⁵²⁵ The EU Operational HQ was then co-located at the Supreme HQs of SHAPE.⁵²⁶ Political control and strategic direction was delegated to the Political and Security Committee (PSC).⁵²⁷ The operation was conceived as part of a closely coordinated EU presence in BiH to be ensured by the Council, without prejudice of the Community competence, and promoted by the EUSR.⁵²⁸ As to the military direction, the EU Military Committee (EUMC) was in charge of monitoring the proper execution of the operations conducted under the responsibility of the EU Operation Commander.⁵²⁹ Co-ordination and liaison with other EU actors in the field, especially the EUSR, was also formalized in the mandate: "...without prejudice to the chain of command, the EU Commander was further demanded to coordinate closely with the EUSR and liaise with other international actors in the field."⁵³⁰

Relations with NATO were to be maintained in accordance with the relevant provisions laid down in the March 2003 exchange of letters between the EU SG/HR and the NATO SG.⁵³¹ The PSC and EUMC were mandated to provide NATO with regular information exchange and situation update.⁵³² In spite of a formal commitment, however, cooperation at the political level was frozen; in trying to solve the situation the two organisations resorted to double-hatting positions.⁵³³ In addition,

⁵²⁵ David Leakey, "ESDP and Civil/Military Cooperation: Bosnia and Herzegovina, 2005", in Anne Deighton and Victor Mauer (eds.), *Securing Europe? Implementing the European Security Strategy*, (Swiss Federal Institute of Technology (ETH), Zürcher Beiträge zur Sicherheitspolitik Nr. 77, Zurich 2006), 61.

⁵²⁶ See Council Joint Action 2004/570/CFSP, *op.cit.* note 523, Article 3.

⁵²⁷ *Ibid.*, Article 6. This authorization also included the Operational Plan, the Chain of Command and the Rules of Engagement.

⁵²⁸ *Ibid.*, Article 7, "The EUSR shall chair a coordination group composed of all EU actors present in the field, including the EU Force Commander, with a view of coordinating the implementation aspects of the EU's action."

⁵²⁹ *Ibid.*, Article 8. The EUMC receives reports from and act as the primary point of contact with the EU operation Commander.

⁵³⁰ *Ibid.*, Article 10. Such coordination was aimed at ensuring consistency of the EU activities in BiH.

⁵³¹ *Ibid.* In a subsequent Exchange of Letters on 30 June and 8 July 2004 respectively, the North Atlantic Council has agreed to make available DSACEUR as EU Operation Commander and has agreed that the EU Operation Headquarters should be located at SHAPE.

⁵³² *Ibid.*, Article 13 on "Relations with NATO." The reporting system from the EU Operation Commander was maintained internally, with reference to EU Bodies only. It also interesting to note that the SG/HR was authorised to released to NATO and third parties, associated to the Joint Action, EU classified information and core documents generated for the purposes of the EU military operation.

⁵³³ NATO's Deputy Supreme Allied Commander Europe (DSACEUR), General John Reith, was appointed as Operation Commander of EUFOR. The Chain of Command then started from the EU Operational HQ in SHAPE and moved to the EU Command Element (EUCE) established in Naples at NATO HQ. For further information see Ana E. Juncos and Gemma Collantes Celador, *op.cit.* note 465, 7-8.

cooperation in the field resorted to informal mechanisms of cooperation.⁵³⁴ As it was for the SFOR, EUFOR was primarily requested to focus on the short-term objectives, namely to preserve a secure environment for the implementation of the GFAP and indirectly, and contribute to the medium-⁵³⁵ and long-term⁵³⁶ accomplishments of the EU strategy for BiH.⁵³⁷ In this frame, replicating the approach taken in Macedonia, the EU combined and made conditional its enlargement process to successful conflict management in BiH.⁵³⁸ Furthermore, the Mission adopted the same structure of SFOR with three regional Multinational Task Forces⁵³⁹ covering the entire country as well as headquarters (HQ) and Integrated Police Unit (IPU)⁵⁴⁰ located in Sarajevo.⁵⁴¹ Besides, EUFOR could also resort to NATO Kosovo Force (KFOR) troops and additional “Over the Horizon Forces” (OTHF).⁵⁴² As to the chain of command, the EU PSC exercises the political control and strategic direction of the operation, under the responsibility of the Council. Decision-making powers, with respect to objectives and termination of the military operation, remained vested in the Council.

In November 2005, UNSC Resolution 1639 extended EUFOR’s mandate, with basically the same force levels, for another twelve months.⁵⁴³ The mission was then requested to support the High Representative’s Mission Implementation Plan (MIP) and not to replace local authorities.⁵⁴⁴ Regrettably, despite the UN backing the revised mandate was not very well received at the field level: EUFOR Commander David

⁵³⁴ *Ibid.*, 8. For instance, co-location at the Camp Butmir as well as at the operational level increased linkages and mutual support between the organisations.

⁵³⁵ Focused on to, *inter alia*, assist BiH in reaching the Stabilisation and Association Agreement (SAA) with the EU and move closer toward eventual EU membership.

⁵³⁶ Aimed at facilitating the creation of a stable and viable multi-ethnic BiH.

⁵³⁷ Annemarie Peen Rodt, *op.cit.* note 524, 24.

⁵³⁸ *Ibid.*, 28.

⁵³⁹ Located in Tuzla, Banja Luka and Mostar respectively.

⁵⁴⁰ As part of EUFOR, the Unit was mandated to: a) contribute to the safe and secure environment in Bosnia and Herzegovina by assisting in the maintenance of public order and security; b) support the implementation of civilian aspects of the GFAP, in accordance with EUFOR tasks.

⁵⁴¹ The structure included a Multinational Manoeuvre Battalion in Sarajevo and a revised situational awareness matrix of 45 Liaison and Observation Teams (LOTs - small teams spread throughout the country and living amongst local peoples), under five Regional Coordination Centres (RCC), covering the entire country. See Jari Mustonen, *op.cit.* note 239, 18.

⁵⁴² EUFOR could be reinforced by KFOR troops and by EU Operational and Strategic Reserve forces to rapidly increase in-theatre forces.

⁵⁴³ See UNSC Resolution 1639, S/RES/1639(2005), 21 November 2005.

⁵⁴⁴ EUFOR was to perform supportive tasks only, for three reasons: political (the common objective of all the EU actors in BiH was to develop local capacities), legal (EUFOR does not operate under local law) and practical (soldiers cannot generally be transformed into law enforcement agents).

Leaky in fact expressed perplexities over the capability of EUFOR, primarily a military mission, to undertake essentially civil responsibilities.⁵⁴⁵

Contextually the EU Council decided to open negotiations with Bosnia on the Stabilization and Association Agreement and continued the EU police mission in Bosnia.⁵⁴⁶ By then, the 2006 Operational Programme of the Council convened on the need for the EU's military mission to take account of "both the wider EU presence in Bosnia and Herzegovina and the expected evolution of the international community's involvement".⁵⁴⁷ In 2007, the mission was restructured and its role moved from 'deterrence' to 'reassurance' with a consequent reduction of force.⁵⁴⁸ Moreover, in the fight against organised crime, again a supportive task for EUROFOR, the mission co-operated with EUPM on the basis of the 2006 Common Operational Guidelines.⁵⁴⁹ In November 2007, with the UNSC Resolution 1785, EUFOR was extended for a further twelve-month period.⁵⁵⁰ In June 2008, the EU Council reviewed operation ALTHEA and approved the Secretary General/High Representative's recommendations on the operation.⁵⁵¹ Two years later, the Mission was prolonged until November 2011.⁵⁵² By then it seemed clear that the PIC did not perceive the situation in the country to be

⁵⁴⁵ David Leakey, *op.cit.* note 525, 61-62.

⁵⁴⁶ Julie Kim, *op.cit.* note 508, 5.

⁵⁴⁷ The Programme also devoted due attention to improving the coherent and complementary functioning of military and civilian means.

⁵⁴⁸ The aim of this transition was to reduce the number of manoeuvre troops within the operational theatre whilst at the same time increase EUFOR's overall situational awareness within BiH. EUFOR withdrawn and closed three Multi-National Task Forces. A single manoeuvre battalion remains located within Camp Butmir in Sarajevo alongside the IPU. The LOTs remained integrated within the BiH and supplemented by four Regional Coordination Centres (RCCs) located in Sarajevo, Tuzla, Banja Luka and Zenica.

⁵⁴⁹ See EU Council Conclusions on Operation ALTHEA, 2839th General Affairs Council meeting of 10 December 2007. In welcoming such a development, the Council noted that "[...]co-operation with NATO continued to work well on respect of Operation ALTHEA".

⁵⁵⁰ *Ibid.* See also UNSC Resolution 1785, S/RES/1785(2007), 21 November 2007.

⁵⁵¹ See EU General Affairs and External Relations Council Conclusions on Operation ALTHEA, 2878th General Affairs Council meeting, 16 June 2008. In the Conclusions the Council stated that the EUFOR focus "[...] remains the maintenance of a safe and secure environment and the transfer of Joint Military Affairs (JMA) tasks to relevant national authorities."

⁵⁵² The Office of the High Representative (OHR) would remain open and active until the political deadlock will be resolved. The shift from a settled timeframe to a benchmark policy built upon the achievement of five objectives and two conditions, known as the 5+2 criteria, to be met prior the transition and closure of the OHR. The five objectives are: (1) acceptable and sustainable resolution of the issue of apportionment of property between State and other levels of government, (2) acceptable and sustainable resolution of defence property, (3) completion of the Brcko Final Award, (4) fiscal sustainability, (5) entrenchment of the rule of law. The two conditions outlined are: (1) signing of the Stabilization and Association Agreement with the European Union, and (2) a positive assessment of the situation in the country by the Steering Board based on full compliance with the Dayton Peace Agreement. For more information, see "Foreign Policy Initiative BH" in *Policy analysis, the Myth about the Closure of OHR*, Analysis 4/11, April 2011, Sarajevo, 1.

stable enough for the international community to disengage and EUFOR to leave.⁵⁵³ By taking such a posture, however, the discrepancy between the EU strategy—greater demand from the EU to overcome challenges of the Dayton Agreement—and the actual situation on the ground—decreased leverage of EU presence—became evident.⁵⁵⁴

As said, Operation ALTHEA was carried out with recourse to NATO assets and capabilities ("Berlin Plus" agreements). Initial EUFOR-NATO co-operation led to the following division of tasks: the two organizations agreed that EUFOR would take over the primary military stabilization role while the NATO's residual headquarters presence would primarily focus on defence reform.⁵⁵⁵ Co-operation, or better continuity, with the SFOR was guaranteed through the adoption of the same operative structure and the appointment of former NATO SFOR's officials to key EUFOR leadership positions.⁵⁵⁶ In these circumstances, the handover was facilitated by the Berlin Plus arrangements and the previous EU-NATO joint experience in Macedonia⁵⁵⁷, but problems remained as to the implementation of EUFOR mandate. Despite the initial relevance given to NATO, EUFOR ALTHEA was in fact requested to be a 'new' and 'distinct' mission in respect to SFOR. Differently from SFOR, EUFOR in fact combined military posture—maintain the safe and secure environment and deter the possibility of resumption of violence—together with EU supporting tasks.⁵⁵⁸ Such a posture, however, proved to be unexpectedly troublesome. As explained by David Leaky (former EUFOR Commander in 2004), in addition to the stabilization initiated by NATO⁵⁵⁹ the mission was:

⁵⁵³ See Peace Implementation Council, Communiqué of the Steering Board of the Peace Implementation Council of 26 March and 30 June 2009.

⁵⁵⁴ The EU's military mission has declined significantly, from 6,300 troops in EUFOR at the start of its mission when it took over from NATO in December 2004 to 2,000 as of September 2009. See Bart M. J. Szewczyk, *op.cit.* note 219, 34.

⁵⁵⁵ Nevertheless, determined operational tasks remained matter of shared concern. See Julie Kim, *op.cit.* note 508, 6.

⁵⁵⁶ See Maria Luisa Maniscalco, Giulia Aubry and Valeria Rosato, "Working together", in Nina Leonhard, Giulia Aubry, Manuel Casas Santero, Barbara Jankowski (eds.), *Military Co-operation in Multinational Missions: The Case of EUFOR in Bosnia and Herzegovina*, Forum International 28, Sozialwissenschaftliches Institut der Bundeswehr April 2008, 223-224.

⁵⁵⁷ See International Crisis Group, *EU Crisis Response Capability Revisited*, (Europe Report 160, 17 January 2005), 49-51.

⁵⁵⁸ The mission was called to support the High Representative's Mission Implementation Plan in close cooperation with other International Community actors and especially the EU family of instruments under the coordination of the EUSR. See David Leakey, *op.cit.* note 525, 63.

⁵⁵⁹ EUFOR continued many of SFOR's military operations such as confidence patrolling in remote or unsettled areas; 'harvesting' weapons from the community; supervising the BiH Armed Forces' and the Defence Industry's compliance with the Dayton Agreement; and assisting the BiH police security operations in the community.

“[...] broken down by the authorities in Brussels into ‘key military tasks’ and ‘key supporting tasks’. Key military tasks are those to which the commander has to give priority. Eager to satisfy this key military task, I looked in the High Representative’s Mission Implementation Plan (MIP) for areas in which EUFOR’s military capability could give ‘support’, as ordered. The MIP was in four sections, dealing respectively with: the economy, the rule of law, the police, and defence reform. The first two seemed unlikely areas for military engagement. The police section seemed to be more properly a concern of the EU Police Mission. Finally, assisting the defence reform process was the main role reserved for the small residual NATO presence in BiH. So how could EUFOR appropriately give its military ‘support’ to the MIP? In other words, how could EUFOR be ‘new and distinct’ and ‘make a difference’?”⁵⁶⁰

Contextually, the mission’s multinational approach and composition did not produce the expected results. Internal communication preferred to follow national channels of communication thus fostering the perception that national decision-making processes were more efficient than multinational interaction.⁵⁶¹ In this frame, the EUFOR's mandate was perceived by many of its officials as inadequate.⁵⁶² In addition, the Berlin Plus agreement influenced not only the definition of the operation itself but also the approach of the contributing countries: instead of the EU framework, a commonality of approach was in fact researched in NATO’s standards.⁵⁶³

Finally in 2007, the Council of the European Union recognized “[...] the continued need for cooperation between EU and NATO at different levels, including on issues of military capability development.”⁵⁶⁴ In its conclusions the Council agreed on the opportunity for the “EU-NATO Capability Group” to provide a forum for exchanging information on the development of military capabilities in both EU and NATO where requirements overlap.⁵⁶⁵ Co-operation and coherence with the rest of the EU institutions and activities in BiH was among the highlights of the EUFOR mandate. For instance, the EU Force Commander was to receive local political advice from the EUSR/HR, liaise with the EUPM, and closely coordinate with the EUSR to ensure consistency of military operations.⁵⁶⁶ Besides, the mission’s communication and reporting system with the PSC was established through the EUMC and the Operation

⁵⁶⁰ David Leakey, *op.cit.* note 525, 61.

⁵⁶¹ Maria Luisa Maniscalco, Giulia Aubry and Valeria Rosato, “Working together”, *op.cit.* note 556.

⁵⁶² *Ibid.*, 228.

⁵⁶³ *Ibid.*, 223. Part of the military personnel further perceived EUFOR as largely dependent on NATO assets and logistics under the "Berlin Plus" arrangement and thus not entirely a EU-led mission.

⁵⁶⁴ See Council of the European Union, “Council Conclusion on ESDP”, 2831st External Relations Council Meeting, Brussels 19-20 November 2007, para. 28.

⁵⁶⁵ For further information see Section II of the manuscript.

⁵⁶⁶ See Council Joint Action 2004/570/CFSP, *op.cit.* note 523.

Commander.⁵⁶⁷ Co-operation with the EUPM, particularly in the fight against organized crime was, since the very beginning, problematic. For instance, EUPM liaison officers previously posted to each of SFOR Task Forces had been withdrawn immediately prior EUFOR deployment; liaison responsibility was then left up to the regional headquarters.⁵⁶⁸ In view of this, it seems appropriate to conclude that, at least for the first year, relationships between EUPM and SFOR were far better than that between EUPM and EUFOR; the absence of organic liaison between the EUPM and EUFOR was detrimental to the creation of relationships between the two missions in the field.⁵⁶⁹ In this case, it might be argued that organic liaison was, at least in theory, to be identified within the same EU overall family. More on the issue, though initially mandated to simply support local enforcement authorities, EUFOR ALTHEA ended up filling the vacuum left by EUPM because of its non-executive mandate. EUFOR ALTHEA was then given a role that, according to its commander, was neither its job nor its core mission.⁵⁷⁰ Furthermore, in line with the November 2005 extension of the mandate, EUFOR mission was requested to align its operations even more closely with EUPM and simultaneously decrease its efforts in the fight against organized crime.⁵⁷¹ EUFOR support to local law enforcement agencies in operations directed against organized crime and participation in the Crime Strategy Group was nevertheless maintained.⁵⁷²

After all, EUPM-EUFOR co-operation was finally enhanced thanks to the agreement on the “*Seven Principles and Guidelines on Enhance Co-operation between the EUSR, EUFOR and EUPM*”.⁵⁷³ Finally, with the EU Monitoring Mission, the routinely information exchange and report sharing significantly contributed to EUFOR’s political and local situational awareness.⁵⁷⁴ In contrast, co-operation with the then EC Delegation, besides several CARDS projects, did not result in mutual synergy and engagement.

⁵⁶⁷ Annika S. Hansen, *op.cit.* note 404, 40 and 54.

⁵⁶⁸ Jari Mustonen, *op.cit.* note 239, 23.

⁵⁶⁹ *Ibid.*, 23-24.

⁵⁷⁰ Eva Gross, *op.cit.* note 432, 145.

⁵⁷¹ Jari Mustonen, *op.cit.* note 239, 18.

⁵⁷² The Crime Strategy Group is a body chaired by the EUSR to maximise the ESDP efforts in support of the Bosnian authorities’ fight against organised crime and corruption. The Group consists of the Head of EUPM, EUFOR Commander and the EUSR. See Council of the European Union, Common Guidelines for EUPM-EUFOR support to the fight against organised crime, Doc No. 10769/06, 21 June 2006, para. 8.

⁵⁷³ For a detailed overview of the mentioned cooperation modalities please refer to the section devoted to the analysis of the EUPM.

⁵⁷⁴ David Leakey, *op.cit.* note 525, 66.

Broadly considered, despite the difficulties encountered in its first years of deployment, the mission continued to be at least as militarily effective as its predecessor NATO forces and the civil-military cooperation and coordination within the EU family was also positively assessed.⁵⁷⁵ However, EUFOR Althea was not perceived as a real test for the EU capacities.⁵⁷⁶ The strong support manifested by the EU Special Representative and the EU Presidency was also not enough to overcome the scepticism manifested by some of the EU Member States on the use of soldiers in areas like the fight against organized crime.⁵⁷⁷ In addition, frequent personal turnover affected the efficiency of the mission and was depicted, by both military and civilian personnel, among the issues to be addressed in view of future crisis management operations.⁵⁷⁸

IV. EVALUATION OF THE CO-OPERATION

A. Co-operation UN-NATO

An evaluation on the co-operation between UN and NATO would be misleading without acknowledging that this was the first time the organisations cooperated. There were not previous operations or lessons to rely upon and hence the Former Yugoslavia was in itself a groundbreaking experience for both UN and NATO.⁵⁷⁹ In the case of the naval blockade, for instance, the division of tasks between NATO and the UN was quite clear-cut: the latter provided the mandate, while the former performed the operational role. The mission was autonomously executed by NATO with no interference in its chain of command by the UN. Due to these arrangements the operation was considered, by many, a valuable example of cooperation between the two organisations. On the contrary, the problematic UN-WEU cooperation in the realization of the naval embargo was solved only in Operation SHARP GUARD and

⁵⁷⁵ *Ibid.*, 67-68.

⁵⁷⁶ According to officials interviewed, being BiH already pacified when the mission was deployed the mission was qualified as a partial success only. Maria Luisa Maniscalco, Giulia Aubry and Valeria Rosato, "Working together", *op.cit.* note 556, 228.

⁵⁷⁷ David Leakey, *op.cit.* note 525, 66-67.

⁵⁷⁸ Several soldiers regretted that demining was not a priority for the mission. Maria Luisa Maniscalco, Giulia Aubry and Valeria Rosato, "Working together", *op.cit.* note 556, 230.

⁵⁷⁹ Ettore Greco, *op.cit.* note 227, para. 3.1.

thanks to the adoption a single chain of command with adequate C2 arrangements.⁵⁸⁰ In 1993 the ‘safe areas’ policy marked the phase of closest interaction between UN and NATO. In spite of close proximity, the peacekeeping approach maintained by the UN heavily conditioned NATO’s ability to act. An analysis of the approach taken by the UN in facing events happening in the field would then reveal an organisation that struggled to match its ambitions with an adequate allocation of structural resources. Furthermore, amendments occurred on the UN mandates were not a result of the pre-planned policy but came as a reaction to developments on the ground.⁵⁸¹ In so doing the UN sustained extensive efforts in trying to stubbornly adhere to concepts such neutrality and consensual deployment, proper of a traditional peacekeeping approach later to be abandoned by the same organisation in favour of a more robust deployment. In view of this, any attempt to look for a preconceived strategy out of the UN decisions in the field would be unproductive and make clear its ‘reactive’ capabilities solely. An example of this attitude could be identified from the consideration of the time spent in moving from ‘monitoring’ to ‘enforcement.’⁵⁸² This inconsistent movement between goals and resources also affected the co-operation with NATO. Until mid-1995, when a common policy on the use of force was finally agreed, the two organisations were actually following different conceptual approaches in dealing with the ethnic conflicts in Bosnia and Herzegovina. The strong adherence to principles of traditional peacekeeping (neutrality and usage of force only in self-defence) pursued by the UN was confronted by a strong support for the use of force, considered by the Atlantic Alliance a key component for a strategy of credible international intervention.⁵⁸³ In addition, the combined UN-NATO military action was weakened by the UN's evident inability to ensure effective control of the heavy weapons left by the Serbs around Sarajevo. The eventual result was the fall of Srebrenica and Zepa in July 1995. In such a context, the political and operational constraints facilitated Serb military actions in

⁵⁸⁰ *Ibid.*, para. 3.2.3.

⁵⁸¹ *Ibid.*, para. 2. Through its Resolutions, the Security Council in fact tried to “square the circle” by enhancing the coercive components of UNPROFOR while maintaining the original "traditional peace-keeping" goals.

⁵⁸² Four months - from July 1992 to November 1992 – to move from the monitoring mission “Operation MARITIME MONITOR” to the enforcement mission “Operation MARITIME GUARD”. Similarly, it took from October 1992 to March 1993 for the monitoring of the no-fly zone – “Operation SKY MONITOR” – to be complemented by an enforcement action – “Operation DENY FLIGHT”.

⁵⁸³ Ettore Greco, *op.cit.* note 227, para. 3.1.

the field.⁵⁸⁴ To worsen the situation, the chain of command agreed by the UN and NATO was long and incapable of responding quickly to events happening in the field. However, with the deployment of the mobile and heavily armed Rapid Reaction Force, the overall military capabilities of the ground force increased. The second crucial action was to amend the 'UN key' structure by giving the power to authorize the use of air power directly to the Force Commander. Finally, parallel offensives launched by the Croatian and Bosnian governments in 1995 weakened Serbs forces in the field. The overall performance of the close air support system also improved over time thanks to some technical achievements; for example, NATO contributed to train and equip the UN Forward Air Controllers (FAC) who worked with the UN ground troops.⁵⁸⁵

The experience of the international response to the Yugoslav conflict indicates that the simple hierarchical relationship envisioned in the UN Charter can hardly work in practice. In pursuing for an efficient-oriented optimum, a case-specific approach should then be preferred. Besides, the case of UN-NATO interaction in the former Yugoslavia also revealed the limitations of the so-called 'sub-contracting' model. From the pre- to the post-Dayton phase, NATO has changed considerably its position: the growing freedom of action pursued by the Atlantic Alliance, a key condition for the implementation of the missions it accepted to take over, led to a far more assertive role in the post-Dayton phase. Far from acting as a mere 'sub-contractor', the Alliance has reserved the right to define by itself the scope and the boundaries of its commitments. The Bosnian experience has also confirmed the key importance of the unity of command; the existence of two parallel chains of command, as happened with the 'dual key' arrangements, cannot but erode the credibility of international efforts.⁵⁸⁶ The 'dual key', has also revealed the unsuitability of the Secretary-General in managing the use of force because of the potential consequences on the impartiality of his role.⁵⁸⁷ In addition, the negative perception of UN's decision-making process led to the UN being marginalized in the post-Dayton period. Despite being authorized by the UN Security

⁵⁸⁴ Serb countermeasures on the ground undermined NATO air strike escalation strategy. From February to April 1994 the threat of the use of air power by itself did function in the case of Sarajevo, Goradze and Bihac. However, when the Serb offensive was renewed the use of power proved to be ineffective.

⁵⁸⁵ Their task was to provide NATO aircraft with guidance needed to hit targets situated in the immediate vicinity of the blue helmets. See Ettore Greco, *op.cit.* note 227, para. 3.2.3.

⁵⁸⁶ *Ibid.*, para. 4.

⁵⁸⁷ William H. Lewis and Edward Marks, *Searching for Partners: Regional Organizations and Peace Operations*, INSS McNair Paper 58, Institute for National Strategic Studies, Washington, June 1998.

Council, NATO's IFOR and SFOR in fact operated under the NAC's authority and direction solely.⁵⁸⁸

B. EU inter-agency co-operation

The analysis of the EU operations has revealed problems of internal coherence and effectiveness. In spite of the ESDP quick institutional development, design and implementation of EU missions in BiH and Macedonia have been repeatedly criticized for not being 'crisis management' missions in the traditional sense.⁵⁸⁹ Police missions in BiH and Macedonia, for instance, have been carrying out long-term institution-building rather than short-term crisis management tasks. In addition, the delivery of police aid has not taken place in the expected logical sequence, in which ESDP crisis management tools are to be used first, followed by long-term Commission instruments.⁵⁹⁰ On police and military missions it should be underlined that the mandate of EUPM I did not match realities on the ground; the mission was in fact not able to perform its mandated functions. In this context, EUFOR ALTHEA was called to fill the gap created by EUPM's operational weaknesses in fighting organised crime.⁵⁹¹ Moreover, the experience with the EUPM further illustrates that a more robust role of oversight—even if falling short of an executive mandate—would have increased the effectiveness of the first mission and pre-empted the changes on the mandate made in 2005. Overall, experience to date has shown that the EU's political judgment has not always been sufficiently attuned to the local political context in the country in question.

In moving ahead towards the achievement of a co-ordinated operative methodology of work, the enhancement of inter-ESDP cooperation has followed a '*learning by doing approach*'. In this context, differences and misunderstandings with regard to the interpretation of the each other mandate, especially in the area of fight against organised crime, marked the interaction between EUPM and EUFOR. To avoid such kind of situations working on a more precise mandate with clear division of tasks,

⁵⁸⁸ Dan Sarooshi, *op.cit.* note 142, 243.

⁵⁸⁹ BiH and Macedonia had been largely pacified by a sustained international presence, and in this sense were no more than a training ground for ESDP instruments. See Eva Gross, *op.cit.* note 432, 143.

⁵⁹⁰ *Ibid.*, 131.

⁵⁹¹ *Ibid.* Even if the military is not the best instrument for doing so, as recognised by members of the EUFOR themselves.

especially in cases when the same organisation is actually performing diverse functions though different missions, should provide for a possible solution. Such kind of tasks' assignment, however, should be processed with due regard for the kind of operational flexibility proper of a field mission and outlined in a planning process characterized by an adequate level of inter-institutional and inter-agency co-operation. At this stage, the ideal situation would be to count on a specific structure for co-operation conceptualized at the strategic level, and already in place and operative before the deployment of the mission in the field.⁵⁹² On the contrary, relying on just initiatives undertaken at the field level could lead to a co-operation that would be 'demand-driven' or 'ad hoc' in its nature, largely dependent on personal and informal contacts and perhaps even detrimental to the organisation's long-term strategy. The creation of the Seven Principles and Common Operational Guidelines is a clear case in which it was the practice that guided the mandates, and not the other way round.⁵⁹³ In addition, the double-hatting procedure, indeed valuable, should always be complemented by a correspondent allocation of resources and staff.⁵⁹⁴ Finally, leadership should go together with an inclusive knowledge management strategy/policy to tackle poor inter-agency knowledge and communication. Such a weakness can also be addressed by systematizing inter-agency pre-deployment training.⁵⁹⁵

C. General considerations

1. Political and military objectives

Evident from the wording of the GFAP is that policy and operations failed to agree on the timeframe envisioned to reach their objectives. Even though the success of military operations was a prerequisite for the utilization of further political means, the required long-term engagement for the defined political objectives conflicted with the shorter term need for military objectives to be accomplished. The gap between political and military objectives therefore led to a lack of coordination in the command structure between the political authorities of the UN and NATO; for instance, the fact that the

⁵⁹² *Ibid.*, 30.

⁵⁹³ *Ibid.*, 26.

⁵⁹⁴ A clear example can be retrieved from the EUSR initial incapacity to execute its quite extensive mandate: lacking resources and staff the EUSR ended up performing mostly OHR functions. See Jari Mustonen, *op.cit.* note 239, 20.

⁵⁹⁵ *Ibid.*, 31.

civilian implementation was not subordinated to NATO political authorities contributed in hampering the coordination of civilian and military tasks.⁵⁹⁶ Besides, the High Representative was not a UN Special Representative with UN authority and his political guidance came from the Steering Board of the Peace Implementation Council, which was not a standing internationally recognized political organization. Given the UN reluctance to play a lead role, there was no internationally recognized political organization providing overall political direction.⁵⁹⁷ Experiences in Bosnia and Herzegovina have then demonstrated that this split between military and civilian authority leads to a confusion of aims and to a duplication of efforts.⁵⁹⁸

2. Lack of proper training

The lack of knowledge on the part of the personnel of the different organisations' mandates was another obstacle. At the beginning it was a problem of training but afterwards, once on the ground, it affected the impact of the whole international presence. In this case, improvements in the selection and training of internationals working on the ground could be a solution in avoiding misunderstandings and rivalry, and improving information exchanges. For instance, Ms. Heike Alefsen, Representative of the CoE Secretariat in Bosnia and Herzegovina, explained that problems encountered at the beginning of activities in BiH in inter-institutional co-operation had often resulted from a lack of institutional memory and knowledge by staff of the mandates of their own and other organizations.⁵⁹⁹ Thus, a joint planning activity supported by a detailed procedure for co-operation to avoid disunity and lack of common purposes among international organizations could indeed be considered as a valuable solution. Joint planning should be anyway combined with pragmatism, allowing for possible adjustments, rapid reaction and case-by-case consultations. Moreover, the CoE clearly explained how international organisations involved in the reconstruction process did not always provide sufficient information on the projects and plans, as well as source of funding.⁶⁰⁰

⁵⁹⁶ Attila Süle, *op.cit.* note 196, 60.

⁵⁹⁷ Richard L. Layton, "Command and Control Structure", in Larry K. Wentz, *op.cit.* note 324, 35.

⁵⁹⁸ See OSCE Seminar on "Co-operation among international Organisations: Experience and Prospects in South-Eastern Europe," Consolidated Summary, Declaration of the Deputy High Representative Jacques Paul Klein, 1999, para. 9.

⁵⁹⁹ *Ibid.*, para. 19.

⁶⁰⁰ See Parliamentary Assembly of the Council of Europe (PACE), Doc. 7973, Bosnia and Herzegovina: return of refugees and displaced persons, 23 December 1997.

In addition, the ICG even called for the absence of overall vision and effective structure concerning the implementation of the GFAP. The ICG was in fact of the opinion that the international community has neither had a sufficiently strategic view of its purpose in Bosnia, nor adequate mechanisms for making strategy.⁶⁰¹ The same organisation continued by stressing how the presence of large numbers of organisations with different reporting lines, funding structures and agendas highlighted the unmet need for an effective strategy-making mechanism. Problems of duplication and non-cooperation were in fact coming from the unclear mandates of the IOs deployed in the field, and from a loose coordinating mechanism which has been ineffective. On this point, the ICG clarified that the level of communication between some agencies has been so poor that occasionally there has been no awareness that overlaps even exist. In contrast, where duplication was recognised, time consuming, frustrating and often fruitless coordination meetings were the order of the day. Real cooperation remained vaguely pursued.⁶⁰²

⁶⁰¹ See International Crisis Group, *Bosnia: Reshaping the International Machinery*, (Balkans Report No. 121, 29 November 2001), 4.

⁶⁰² *Ibid.*, 5-6.

ANALYSIS OF THE CO-OPERATION IN THE FEDERAL REPUBLIC OF YUGOSLAVIA

I. INTRODUCTION

This chapter wants to provide an overview of what was the relationship between the international community and the Federal Republic of Yugoslavia from 1992 to 2001. The events concerning Kosovo are evaluated separately and are therefore not included in the present chapter. The exclusion is justified both by the historical events of the Kosovo war and the relevance that the international community's response has in the context of this report. The 1999 NATO bombing of Serbia is included in the country analysis regarding Kosovo. The present chapter is not divided, in contrast to the others included in the research, according to the phase of the conflict and respective interventions by members of the international community. Furthermore, the chapter is not concluded by an evaluation of the co-operation; logically of difficult achievement without the analysis of events occurred in Kosovo.

II. HISTORICAL BACKGROUND

In April 1992, the Badinter Commission noted that Serbia and Montenegro proclaimed a new entity called the "Federal Republic of Yugoslavia" and adopted a new constitution. The Commission held that this new entity met the criteria of statehood

and clarified in its conclusion that the FRY was not a simple entity on the basis of the SFRY. The Commission concluded that the FRY was a new state which could not be considered the sole successor to the former SFRY. On 14 March 2002, the FRY was replaced by a new “state community”: a “union of states” to be called “Serbia and Montenegro”.⁶⁰³ This agreement was the direct outcome of the EU’s determination to block Montenegrin separatism and keep the two republics together. The 14 March agreement, however, did not secure a federal state nor close the debate on Montenegro’s status. In fact, federal institutions were still fragile, given the retention of sovereign rule by each republic over its own territory. Moreover, neither the Serbian nor the Montenegrin public wanted to have a state union. It came about after heavy pressure by the EU, which strongly opposed independence for Montenegro on the grounds that it could encourage other independence movements in the region (e.g. Kosovo), triggering further violence and forcing the international community to deal with Kosovo’s status prematurely. Pressure from the EU thus created an essentially artificial arrangement between two unequal republics that lacked popular legitimacy.⁶⁰⁴ The State Union [of] Serbia and Montenegro lasted for the period of 2003 to 2006; on 21 May 2006 Montenegro held a referendum on the status of the union. Final official results on 31 May indicated that 55.5% of voters had elected to become independent. The state union effectively came to an end after Montenegro’s formal declaration of independence on 3 June 2006 and Serbia’s formal declaration of independence on 5 June.

⁶⁰³ The agreement transformed the state into a union of two semi-independent entities, with common foreign and defence policies and a federal presidency, but separate economic systems, currencies and customs services. See “Serbia and Montenegro in deal to reshape Yugoslavia”, in *Financial Times*, 14 March 2002.

⁶⁰⁴ Marina Caparini, “Security Sector Reform and Post-Conflict Stabilisation: The Case of the Western Balkans”, in Briden A. and Hänggi H. (Eds.), *Reform and Reconstruction of the Security Sector*, (Geneva Centre for the Democratic Control of Armed Forces (DCAF), July 2004), 21-22.

ANALYSIS OF THE CO-OPERATION

A. The C/OSCE Missions

In September 1992 the CSCE initiated its activities in the field with the deployment of its Missions in Kosovo, Sandjak and Vojvodina.⁶⁰⁵ The mandate, as contained in the CSO decision of 14 August 1992 consisted of four parts: 1) promote dialogue between concerned authorities and representatives of the populations and communities in the three regions (Kosovo, Sandjak and Vojvodina); 2) collect information on all aspects relevant to violations of human rights and fundamental freedoms and promote solutions to such problems; 3) establish contact points for solving problems that might be identified; 4) assist in providing information on relevant legislation on human rights, protection of minorities, free media and democratic elections.⁶⁰⁶ The Mission, however, immediately recognised that certain political conflicts encountered in the field could only be resolved solely by authorities in Belgrade. “It became clear...that the mission’s limited focus...[did] not meet the larger issue of democratic development and respect for human rights throughout the country...”, due to the limited jurisdiction provided by the Mission’s mandate.⁶⁰⁷ The mission withdrawn by the end of July 1993 due to the FRY’s refusal to extend the MoU; the decision came after the FRY’s participation in the CSCE was suspended in 1992. In fact, the FRY Government made the Mission’s readmission conditional upon its full participation in the OSCE. This situation lasted until 1999.⁶⁰⁸

In 2001, with the decision No. 401 of 11 January 2001 the CSCE Permanent Council, taking into account UNSC Resolution 1244 and welcoming the invitation of the Government of the Federal Republic of Yugoslavia for an OSCE Mission, decided to establish an OSCE Mission to the Federal Republic of Yugoslavia.⁶⁰⁹ The OSCE Missions of Long Duration in Kosovo, Sandjak and Vojvodina were then formally closed.

⁶⁰⁵ Deployed upon signature of a Memorandum of Understanding (MoU) with national authorities in Belgrade on 28 October 1992 the Mission to Kosovo was based in Prishtinë/Priština (with a permanent presence in Pec and Prizren), the Mission to Sandjak in Novi Pazar (with a permanent presence in Priepolje), and the Mission to Vojvodina in Subotica. The Missions had a common office in Belgrade.

⁶⁰⁶ See 15th CSO Meeting, 14 August 1992, Journal No. 2, Annex 1.

⁶⁰⁷ CSCE 15th Committee of Senior Officials, 14 August 1992, Journal No. 2, Annex 1, and, CSCE 17th Committee of Senior Officials, 6 November 1992, Journal No. 3, Annex. 3.

⁶⁰⁸ Even if not present in the territory, the Missions formally remained active till 1999.

⁶⁰⁹ The Mission was structured into four core programme departments dealing with the rule of law and human rights, democratization, law enforcement and the media.

Although the mandate of the OSCE Mission to the Federal Republic of Yugoslavia applied, in principle, to the territory of both of the Federation's constituent republics, the authorities in Montenegro no longer recognized the jurisdiction of the FRY on their territory, and were not a party to the agreements setting up the OSCE Mission. In this case the presence of the OSCE in Montenegro was assured by the ODIHR Podgorica Office, which was established there on an *ad hoc* basis in 1999. Later in 2001, the Permanent Council with the decision No. 444 of 15 November 2001 established an Office in Podgorica to be operative as from January 2002 in the frame of establishment of the OSCE Mission to the Federal Republic of Yugoslavia.⁶¹⁰ Deployed with a broad mandate⁶¹¹ the latter was requested to co-operate with UNCHR in facilitating the return of refugees as well as internally displaced persons. In fulfilling the terms of its mandate, the OSCE Mission to the Federal Republic of Yugoslavia co-operated primarily with the CoE, the United Nations Interim Administration Mission in Kosovo (UNMIK), OHCHR and UNDP.

In Southern Serbia, the Mission worked in support of inter-ethnic co-operation. This following the negotiations held before its creation, under the auspices of NATO and the EU to bring to an end to the conflict in the southern Serbian municipalities of Presevo, Bujanovac and Medvedja between ethnic Albanian fighters and FRY/Serbian security forces. Furthermore, initiative on law enforcement and policing benefited from the close interaction with NATO (KFOR) and the EUMM.⁶¹² In addition, the Mission co-operated with the European Presidency and the EC in frame of the Stabilization and Association Process. On media issues, the OSCE Mission worked together with the European Agency for Reconstruction (EAR) in setting up the international independent audit of Radio-Television Serbia.⁶¹³

⁶¹⁰ The office effectively assumed the responsibilities of ODIHR office in Montenegro.

⁶¹¹ The mission was requested to provide assistance and expertise to the Yugoslav authorities at all levels, as well as to interested individuals, groups and organizations, in the fields of democratization and the protection of human rights, including the rights of persons belonging to national minorities. In particular, the Mission assisted in the restructuring and training of law enforcement agencies and the judiciary.

⁶¹² EUMM assisted OSCE's police training by providing personnel to monitor the safe transportation of Albanian students to and from training sites in southern Serbia. The OSCE Mission also conducted an information exchange with the EUMM regarding the situation of human rights and minority rights in southern Serbia. NATO-led KFOR provided security and organized transportation of Albanian representatives to meetings and negotiations with the OSCE Mission. Furthermore, connected with this initiative, the Mission co-operated with representatives of KFOR in southern Serbia on security- and confidence-building measures. See OSCE Annual Report 2001 on Interaction Between Organisations and Institutions in the OSCE Area, *op.cit.* note 382, 39.

⁶¹³ *Ibid.*, RTS was a fundamental component of the OSCE plan to restructure the system and transform it into a professional public service broadcaster.

In 2003, following the adoption and promulgation of the Constitutional Charter of the State Union of Serbia and Montenegro by the FRY Assembly, the Permanent Council decided to rename the mission the “OSCE Mission to Serbia and Montenegro”.⁶¹⁴ The Mission established its headquarters in Belgrade.⁶¹⁵

Finally, following the Declaration of Independence adopted by the National Assembly of Montenegro on 3 June 2006, the OSCE Permanent Council (PC) with its Decision No. 733 decided to rename the “OSCE Mission to Serbia and Montenegro” in the “OSCE Mission to Serbia”.⁶¹⁶ The mandate of the Mission, as set out in Permanent Council Decision No. 401 of 11 January 2001, continued to apply.⁶¹⁷ Following a referendum on its statehood held on 21 May 2006 and a Declaration of Independence adopted by its Parliament on 3 June 2006, the Republic of Montenegro became independent and, on 22 June 2006, was formally admitted to the OSCE as its 56th participating State. The “OSCE Mission to Montenegro” was then opened on 29 June 2006 in accordance with OSCE Permanent Council Decision No. 732 of 29 June 2006.⁶¹⁸

B. The Position of the Council of Europe Local Democracy Agencies (LDAs)

In 1993, the CoE initiated to operate in the field through its first Local Democracy Embassy (LDE) in Subotica, in the Vojvodina region. The most important activities concerned local/regional democracy development and capacity building through education and training. Besides the whole spectrum of activities detailed in its mandate, the LDE also benefited from the support of the EU/CARDS Programme for the Standing Conference of Cities and Municipalities of Serbia as well as other initiative on issues like multiculturalism and education. In 2001 the LDAs in Central and Southern Serbia (Nis, Kragujevac and Kralievo) were created; the main activities of these Agencies concerned capacity building for civil society and local authorities, trans-border cooperation. In the same year, the LDA in Nikšić, Montenegro, was set up. Mandated to work on capacity building for local authorities and NGOs and trans-

⁶¹⁴ See OSCE Permanent Council Decision, PC.DEC/533 of 13 February 2003.

⁶¹⁵ For further information please see Survey of OSCE Long-Term Missions and other OSCE Field Activities, 26 August 2005, 28-30.

⁶¹⁶ See OSCE Permanent Council Decision PC.DEC/733, 29 June 2006. See also Updated Survey of OSCE Long-Term Missions and other OSCE Field Activities, 12 September 2006, 29-30.

⁶¹⁷ See OSCE Permanent Council Decision, PC.DEC/401, 11 January 2001.

⁶¹⁸ See OSCE Permanent Council Decision, PC.DEC/732, 29 June 2006. See also the Updated Survey of OSCE Long-Term Missions and other OSCE Field Activities, *supra* note 616, 31.

border cooperation the LDAs became very active on issues like minority rights and confidence building measures and participation of citizens in decision-making.⁶¹⁹ Besides the activities undertaken by the LDAs, the CoE closely co-operated with the OSCE Mission to FRY. Both Missions initially shared the same premises, being the CoE hosted within the OSCE Mission from March to July 2001, until the CoE moved into its own premises in Belgrade.⁶²⁰ In February 2001, the respective Secretary-Generals exchanged official letters endorsing mutual co-operation between the two organizations with regard to FRY.⁶²¹ The pattern of close engagement between the two Missions was then maintained through regular staff exchanges and info sharing.⁶²² The two missions further conducted joint assessment visits and co-operated on the reform of police forces.⁶²³

C. *The European Union's relations with the FRY*

On 29 April 1997, the EU Council of Ministers adopted a strategy for relations with countries in South-Eastern Europe not involved in the Association Agreements (by then Albania, Bosnia and Herzegovina, Croatia, FRY and the Former Yugoslav Republic of Macedonia), setting general conditions (democracy, rule of law, human rights and rights of minorities, market economy) for concluding bilateral agreements in the field of trade, financial assistance and economic co-operation as well as of contractual relations with these countries. It also applied specific conditions to Croatia, BiH, and the FRY—mainly related to the implementation of the Dayton Agreement.⁶²⁴ Few months later, the EU Council of Ministers decided that the examination of relations between the European Union and the FRY would focus, *inter alia*, on: a) the situation in Kosovo and definition of specific procedures governing a European Union

⁶¹⁹ The overview provided on the CoE LDAs is based on a study conducted by Jessica Biondani, *op.cit.* note 105.

⁶²⁰ In Belgrade, the Council of Europe established the Office of Special Representative of the Secretary General (SRSG). A CoE Secretariat Office was also established in Podgorica.

⁶²¹ See “OSCE and Council of Europe exchange of letters of co-operation in FRY”, in *OSCE Press Release* 16 February 2001. Available at <<http://www.osce.org/ec/53302>>.

⁶²² The Mission regularly shared information with the CoE on issues related to civil society in the FRY, and exchanged views on the legislation affecting minorities in the FRY. In addition, there was periodic consultation and exchange of documents on the media legislation in the FRY.

⁶²³ See Parliamentary Assembly of the Council of Europe (PACE) Doc. 9533, Report on “Federal Republic of Yugoslavia’s application for membership of the Council of Europe”, 5 September 2002, para. 37.

⁶²⁴ See Parliamentary Assembly of the Council of Europe (PACE) Doc. 7986, Report on “Recent developments in the Federal Republic of Yugoslavia and their implications for the Balkan region”, 19 January 1998, para. 101-102.

presence in Prishtinë/Priština; b) the existence of real dialogue with the Albanians of Kosovo on the status of Kosovo within the borders of the FRY; c) the question of the return of the long-term OSCE mission to FRY minority regions.

1. The European Union Monitoring Mission⁶²⁵

In December 2000, the Council of the EU adopted the Joint Action 2000/811/CFSP on the EUMM; the then ECMM, established in 1991 and mandated to report on political, economic and humanitarian developments in the former Yugoslavia and Albania, became the EUMM. The primary objective of the mission was to contribute through its activities (information gathering and analysis) to the effective formulation of the EU policy towards the Western Balkans.⁶²⁶ The mission was mandated to monitor political and security developments as well as border monitoring, inter-ethnic issues and refugee returns. EUMM further contributed to early warning and confidence building measures.⁶²⁷ In March 2001, the High Representative ordered the strengthening of the EUMM in South-Eastern Serbia (in the Presevo Valley) and in April, the EU agreed with the FRY on the opening of mission in Belgrade and the deployment elsewhere of its monitors.⁶²⁸ With regard to its reporting structure, the Head of Mission was to report directly to the Council through the Secretary-General. From 2002 to 2007 EUMM mandate was routinely extended and prolonged⁶²⁹, and in 2006 the Mission was amended in respect to its territorial focus.⁶³⁰ In the meantime, while maintaining its regional focus on activities in the Western Balkans the mission was requested to “monitor political and security developments in the area of its responsibility, with particular focus on Kosovo and Serbia, and neighbouring regions that might be affected by any adverse developments in Kosovo.”⁶³¹ Function and geographical area covered by the EUMM were also to be regularly re-examined by the SG/HR in order

⁶²⁵ For further information see International Crisis Group, *EU Crises Response Capabilities. Institutions and Processes for Conflict Prevention and Management*, (Balkans Report No. 2, 26 June 2001), 28.

⁶²⁶ See Council Joint Action 2000/811/CFSP, *op.cit.* note 111. Besides, EUMM also provided analytical reports and contributed to confidence building in the context of the EU policy of stabilisation in the region.

⁶²⁷ *Ibid.*

⁶²⁸ See Agreement between the European Union and the Federal Republic of Yugoslavia on the Activities of the European Union Monitoring Mission (EUMM), 25 April 2001, *Official Journal*, L 125/2, 5 May 2001. The Agreement replaced a Memorandum of Understanding signed on 13 July 1991.

⁶²⁹ See Council Joint Action 2002/921/CFSP, 2003/852/CFSP, 2004/794/CFSP, 2005/808/CFSP and 2006/866/CFSP.

⁶³⁰ The Mission was in fact requested to end its presence in Albania. In Montenegro the presence was reduced to 2 monitors at the end of 2006 and was to be ended by mid 2007.

⁶³¹ See Council Joint Action 2006/867/CFSP of 30 November 2006, “Extending and amending the mandate of the European Union Monitoring Mission (EUMM)”, Art. 2.

to continue adapting “the internal organisation of the EUMM to the priorities of the Union in the Western Balkans.”⁶³² The mission was closed down on 31 December 2007.⁶³³

D. Sanctions Assistance Missions (SAMs)

As analysed in the chapter on the co-operation in Croatia, the SAMs were a very positive example of close CSCE/EC cooperation in the field.⁶³⁴ SAMs were launched to advise the authorities of the host countries on the implementation of sanctions carried out in accordance with the UNSC Resolutions 713, 757, 787 and 820.⁶³⁵ On 4 February 1993, the CSCE CSO appointed a Sanctions Co-ordinator whose tasks were to: ensure the oversight of sanctions; assess the implementation and advice on measures to implement sanctions more effectively; and, provide countries in the region with advice and assistance as requested. The following year, as clarified by the OSCE:

“[...] more than 240 customs officers and other experts are currently working for the seven SAMs and for the central structure in Brussels, the Sanctions Co-ordinator’s Office and SAMCOMM. The latter is financed and partly staffed by the EU and has the functions of facilitating the communications and co-ordination between the SAMs and the authorities of host countries, ensuring the follow-up of cases of suspected breaches of sanctions and bringing evaluation reports to the attention of the European Union, the CSCE Liaison Group and the UN Sanctions Committee. The SAMs [...] are a particularly visible form of close co-operation between the CSCE, the EU and the UN.”⁶³⁶

In 1995, the adoption of Resolutions 1021 and 1022 by the UNSC considerably reduced the operational responsibilities and dimension of the SAMs.⁶³⁷ On 1 October 1996, the UNSC adopted Resolution 1074 which terminated, with immediate effect, the sanctions against the FRY and Republika Srpska. As a result, the EU/OSCE SAMs

⁶³² *Ibid.*

⁶³³ Council of the European Union, EU Monitoring Mission in Former Yugoslavia (EUMM) in *Consilium Press Release*.

⁶³⁴ CSCE the Secretary General Annual report 1993 on CSCE Activities, 3 November 1993, para. 2.7.

⁶³⁵ At the time of the conflict there were seven SAMs, operating in Albania (established on 5 April 1993), Bulgaria (established on 10 October 1992), Croatia (established on 27 January 1993), Hungary (established on 4 October 1992) FYROM (established on 8 November 1992), Romania (established on 29 October 1992) and Ukraine (established on 17 February 1993).

⁶³⁶ See CSCE Annual Report 1994 on CSCE Activities, *op.cit.* note 212, 11.

⁶³⁷ See UNSC Resolution 1021, S/RES/1921 (1995) on termination of the embargo on deliveries of weapons and military equipment imposed by resolution 713 (1991) and UNSC Resolution 1022, S/RES/1022 (1995), on suspension of measures imposed by or reaffirmed in Security Council resolutions related to the situation in the former Yugoslavia. Both Resolutions were adopted on 22 November 1995.

started concluding their activities. The Sanctions Assistance Mission Committee (SAMCOMM) continued to operate co-ordinating investigations of suspected violations of sanctions and managing the Customs and Fiscal Assistance Office and the International Customs Observer Mission in BiH.⁶³⁸

⁶³⁸ OSCE Annual Report 1996 on OSCE Activities, *op.cit.* note 115, para. 2.3.4, 12.

ANALYSIS OF THE CO-OPERATION IN KOSOVO

I. HISTORICAL BACKGROUND⁶³⁹

Few crises have been more consistently predicted than the one that erupted in Kosovo during the winter of 1997-98.

A. *The Democratic League of Kosovo*

From 1989 resistance to Serb domination was led by Ibrahim Rugova and his Democratic League of Kosovo (LDK). On 2 July 1990, the Kosovo Assembly formally declared the province to be “an independent and equal entity within the framework of the Yugoslav Federation,” and was immediately dissolved and condemned as illegal by the Federal Presidency. Several days later, on July 5, the group reconvened underground as the “Assembly of Kosovo.” In September 1991, a self-organized referendum on independence received the favour of vast majority of the voters. In May 1992 Kosovo-wide elections were held and Rugova was chosen president and his LDK, with 74.4 % of the vote, won a clear majority in a self-proclaimed national parliament. The LDK, under the leadership of Rugova, set about developing a

⁶³⁹ The historical background comes from an analysis of the following sources: Craig R. Nation, *op.cit.* note 3, the Independent International Commission on Kosovo, *The Kosovo report. Conflict-International Response-Lessons Learned*, (Oxford University Press, 2000) and Jože Pirjevec, *op.cit.* note 6.

historically unique parallel state apparatus. A government was established on 19 October 1991; initially it was based in Ljubljana, but it moved to Bonn in 1992.⁶⁴⁰

B. The International Community and the Kosovo war

In late 1992, against the background of war in Croatia, President George Bush stated that “in the event of conflict in Kosovo caused by Serbian actions, the United States will be prepared to employ military force against Serbians in Kosovo and in Serbia proper”.⁶⁴¹ During the early stages of the fighting Washington sought to distance itself from both belligerents, to encourage dialogue between the Yugoslav government and Rugova’s LDK, and to contain the fighting within the territory of the Federal Republic of Yugoslavia. U.S. policy in the first phase of the crisis was built upon the assumptions that the Kosovo Liberation Army (KLA) agenda for national independence was unacceptable and Serbian repression disproportionate. Later on, the United States weighed in diplomatically through its ambassador to Macedonia Christopher Hill, who took the lead in coordinating diplomatic communication inside Kosovo with representatives of the KLA and LDK. Special envoy Holbrooke was also brought back into the limelight as a channel to the leadership in Belgrade. At a May 15 meeting between Milosevic and Rugova organized under Holbrooke’s auspices, Belgrade formally committed itself to discussions with representatives of the Kosovar Albanian community.

On 24 April 1998, in the referendum held on Kosovo almost the totality of voters expressed support to the increasingly chauvinistic policies adopted by Milosevic. On 16 June 1998, following talks with Russian President Boris Yeltsin, and on the basis of a commitment “on the necessity of preservation of the territorial integrity and respect of sovereignty of the Federal Republic of Yugoslavia,” Milosevic agreed to grant access to the province to 150 international observers organized as the Kosovo Diplomatic Observer Mission (KDOM).⁶⁴²

⁶⁴⁰ In 1993, the parallel education system employed 20,000 teachers, lecturers, professors and administrative staff; it included 5291 pre-school pupils, 312,000 elementary school pupils, 65 secondary schools with 56,920 pupils, two special schools for disabled children, 20 faculties and colleges with about 12,000 students, and several other educational establishments such as the Institute for Publishing Textbooks.

⁶⁴¹ David Binder, “Bush warns Serbs not to widen war”, in *The New York Times*, 28 December 1992. Available at <<http://www.nytimes.com/1992/12/28/world/bush-warns-serbs-not-to-widen-war.html>>.

⁶⁴² For further information about the KDOM see page 145.

C. The position of Russia

From the onset of the Kosovo crisis, Moscow had used its limited leverage in an attempt to keep Western responses within a diplomatic framework. On 31 March 1998, it approved UNSC Resolution 1160, but conditioned support by insisting upon the elimination of any reference to a “threat to international peace and stability” that could justify international military action under Chapter VII of the UN Charter. In June, after considerable debate, Moscow agreed to the ten-point program drawn up by the Contact Group calling for a ceasefire, international monitoring, and a negotiated settlement, as a means to encourage moderation. Pressures exercised by Moscow were nevertheless useful in convincing Serbia to grant access to the KDOM. The support given to UNSC Resolution 1199 on 23 September 1998, however, was conditioned by the assertion that the resolution did not condone a resort to force. In early October, the same Russians further clarified that they would use the veto to block any resolution authorizing use of force by the UN in Kosovo. Russia rejected the military option point blank, refused to sanction air strikes against Yugoslavia in UN or OSCE forums, and warned of “serious international consequences” in case NATO’s acting without a formal international mandate. In this context, NATO asserted a right to intervene regardless, on the basis of existing UN resolutions and in a case of urgent humanitarian necessity.

D. Coercive Diplomacy

The orchestrated campaign of coercive diplomacy reached its culmination in the autumn. In September 1998 the UN Security Council (with China abstaining) passed Resolution 1199 describing the situation in the province as a “threat to peace and security in the region” that demanded “immediate action” on behalf of peace, and calling for a ceasefire, withdrawal of Yugoslav forces from Kosovo, free access for the international community, and the return of refugees and internally displaced persons. On the following day, NATO defence ministers meeting in Villamoura, Portugal, issued Activation Warnings for two different kinds of military responses, described as *Limited Air Response* (short term, punishing retaliation aimed at fixed targets such as headquarters, communication relays, and ammunition drops) and *Phased Air*

Campaign (a five-phase air operation moving from the suppression of Yugoslav air defences through attacks against major force components). In this context, NATO began the process of decision on the issuance of Activation Orders (ACTORDs). Several days later a long-awaited report from UN Secretary General Kofi Annan was sharply critical of the “wanton killing and destruction” in Kosovo and in its wake, Holbrooke presented Milosevic with an ultimatum demanding an immediate pullback.⁶⁴³

On 13 October 1998, confronting what appeared to be an imminent threat of attack, Serbian President Milan Milutinović announced acceptance in principle of a compromise, including a pullback of heavy weapons and major force contingents, return to normal peacetime police monitoring, and a pledge of proportionate response to provocation. The NAC, pushed forward by Secretary-General Solana went ahead with its ACTORD decision, accompanied by a 96-hour “pause” to allow Belgrade to demonstrate good intentions. Later on the agreement signed between Yugoslav Foreign Minister Vladislav Jovanović and OSCE Representative Bronislav Geremek on 16 October permitted the creation of the OSCE Kosovo Verification Mission (KVM), to be endorsed by the UNSC one week later. On 24 October 1998, the SC adopted Resolution 1203, which affirmed the agreement between Contact Group negotiators and the Yugoslav government, endorsing the deployment of the OSCE-*led* KVM.⁶⁴⁴ On the very same day, the Security Council passed Resolution 1207, which called upon Yugoslav authorities to comply with the requests of the ICTY, including the arrest of certain individuals.⁶⁴⁵ On 27 October the NAC finally suspended its programmed air strikes. The relevant ACTORDs were not cancelled, however, with NATO reserving the right to execute them at a later date if necessary. Several weeks later a Kosovo Verification Coordination Centre (KVCC) was established in order to

⁶⁴³ In addition, in an address to the Cleveland Council on World Affairs on 9 October, Deputy Secretary of State Strobe Talbott provided a rationale for the use of force by defining the situation in Kosovo as “a clear and present danger to our vital national interests.” See Deputy Secretary Strobe Talbott, Kenyon C. Bolton Memorial Lecture to the Cleveland Council on World Affairs, Cleveland, Ohio 9 October 1998.

⁶⁴⁴ See UNSC Resolution 1203, S/RES/1203 (1998), 24 October 1998.

⁶⁴⁵ See UNSC Resolution 1207, S/RES/1207 (1998), 17 November 1998. At the beginning of October, the Yugoslav Foreign Ministry had refused to acknowledge the ICTY’s jurisdiction in Kosovo, claiming it to be an infringement of national sovereignty. Pursuant to this position, Yugoslav authorities had denied visas to ICTY investigators and threatened to cease cooperation with the ICTY Liaison Office in Belgrade. With Resolution 1207, the Security Council rejected the Yugoslav sovereignty argument and firmly established ICTY’s investigative authority.

reinforce “liaison, planning, coordination and information exchange” with NATO.⁶⁴⁶ Yugoslav authorities agreed to pull their special military units out of the province. Compliance was then to be monitored by almost 2,000 unarmed members of the OSCE KVM, assisted by a NATO-*led* air verification mission designated as operation EAGLE EYE and extraction force, dubbed operation DETERMINED GUARANTOR, based in Macedonia.

However, the first problem regarding this agreement was the fact that the KLA was itself in no way a party to the October accord. Predictably, as Serbian forces pulled back as agreed, KLA fighters moved forward to occupy the vacated terrain. Soon sporadic fighting had resumed.

In December, Serbian “training exercises” near Podujevo, undertaken without prior notification to the OSCE, developed into larger scale offensive operations against KLA units in clear violation of the October understanding. The new escalation of violence culminated in the events which occurred on 15 January 1999, in the village of Račak in the Drenica region. Contextually, with the fighting at Račak underway, the U.S. National Security Council defined its goals in the crisis as to “promote regional stability and protect our investment in Bosnia; prevent the resumption of hostilities in Kosovo and renewed humanitarian crisis; [and] preserve U.S. and NATO credibility.”⁶⁴⁷

The day after, U.S. President Clinton would then “[c]ondemn in the strongest possible terms massacre of civilians by Serb security forces [...]”⁶⁴⁸ while NATO Secretary General Solana spoke of “a flagrant violation of international humanitarian law.”⁶⁴⁹ The deteriorating situation on the ground also determined the withdrawal of the OSCE KVM on 19-20 March. The very next day, Serbian forces launched a major offensive in Kosovo and began driving thousands of ethnic Albanians out of their homes and villages.⁶⁵⁰

⁶⁴⁶ Located in Kumanovo, the KVCC was formally inaugurated on 26 November 1998 and represented for Javier Solana, former NATO Secretary General, “another step forward in NATO-OSCE relations and in creating a workable system of mutually reinforcing institutions strengthening security in our continent. See Javier Solana, *Remarks at the inauguration of the Kosovo Verification Coordination Centre (KVCC)*, 26 November 1998.

⁶⁴⁷ Barton Gellman, “The Path to Crisis: How the United States and its Allies Went to War,” in *The Washington Post*, 18 April 1999.

⁶⁴⁸ See U.S. Government Printing Office, Statement on the Situation in Kosovo, in *Administration of William J. Clinton*, 16 January 1999.

⁶⁴⁹ For the full text of NATO Statement see *BBC News Europe*, 17 January 1999.

⁶⁵⁰ Western sources, citing classified intelligence reports, have argued that the massive ethnic cleansing was carefully planned and had already been set in motion, under the designation Operation HORSESHOE,

E. Rambouillet

Meeting in London on 29 January 1998, ministers representing the Contact Group demanded that representatives of Yugoslavia and the Kosovar Albanians come together under international auspices for proximity talks at the French châteaux of Rambouillet.

The following day, the NAC issued a statement lending its support to the Contact Group initiative and threatening a forceful response in the event of non-compliance. It also granted NATO Secretary-General Solana full authority to approve air strikes against targets within the Federal Republic of Yugoslavia if needed. The plan itself, drawn up by the Contact Group and closely modelled on the Dayton Agreement. In its final form the Rambouillet accord called for an immediate cessation of hostilities; the partial withdrawal and demilitarization of all armed forces inside Kosovo; guarantees of civil rights; and a peace settlement that would grant Kosovo expanded autonomy within Yugoslavia in the short term, and allow a binding referendum on the province's final status after 5 years. The security annex B granted NATO-led international force access to the entire territory of the Federal Republic of Yugoslavia.

These terms, however, were not accepted by either of the parties to the negotiations. Faced with a potential failure that would compromise the entire mediation effort, the original 23 February deadline was extended and a new round of talks scheduled for 15 March in the Kleber Centre in Paris. At the second round of talks from 15-19 March, while the Kosovar Albanian delegation delivered its promised signature, the Serbs protested and called for continued dialogue. Later on, upon departure from Paris after the conclusion of the sessions of March, the Serbian delegation denounced the terms of the accord as a Western ultimatum in violation of international law. Simultaneously, Serbian forces began to mass in and around Kosovo in what appeared to be preparations for a confrontation.

The Rambouillet proximity talks failed to produce a negotiated accord but were successful in creating a pretext for military action. On 19 March the KVM was withdrawn from Kosovo and few days later Solana directed the Alliance' Supreme

in the days prior to March 24. Some commentators have questioned whether an operational plan dubbed "HORSESHOE" ever existed except as a product of Western disinformation. For further information see, Anthony H. Cordesman, *The Lessons and non-Lessons of the Air and Missile Campaign in Kosovo*, (Praeger, Westport 2001), 16.

Allied Commander Europe (SACEUR), U.S. General Wesley Clark, to initiate air operations against Yugoslavia. One day later, operation ALLIED FORCE was launched.

F. NATO bombing: Operation ALLIED FORCE

The NATO air campaign against Yugoslavia was conducted between 24 March and 10 June 1999. In April 1999, however, the Alliance decided to further intensify the air campaign by expanding the target set to include military-industrial infrastructure, media, and other targets in Serbia itself.⁶⁵¹ NATO pilots were ordered to fly at altitudes above 15,000 feet to avoid the threat of Yugoslav air defence systems.⁶⁵² In this case, the operational gap between political and military objectives was somewhat narrowed but still existed. Political objectives were direct and clear. By contrast, military strategy was indirect and uncertain both in scale and result. The set of targets and the phases of the campaign did not directly support either of the stated political goals. NATO officials and White House spokesmen were about the only ones who seemed to believe that air power alone could achieve the desired objectives.⁶⁵³ According to Admiral James Ellis, Commander of Allied Forces Southern Europe and Commander in Chief of U.S. Naval Forces Europe, “NATO lacked not only a coherent campaign plan and target set but also the staff to generate a detailed plan when it was clear that one was needed.”⁶⁵⁴ While Milosevic was prepared for war, the NATO’s military machine was not intended to reach war capacity at all. As General Clark stated, it was undoubted before the beginning of operations that NATO could not actually do much to save civilians in Kosovo: “Despite our best efforts the civilians are going to be targeted by the Serbs. It will just be a race, our air strikes and the damage we cause

⁶⁵¹ Bridges (seven on the Danube), nine major highways (including Belgrade–Nis or Belgrade–Zagreb), and seven airports were destroyed. Most of the main telecommunications transmitters were damaged and two thirds of the main industrial plants were nearly destroyed. According to NATO, 70% of the electricity production capacity and 80% of the oil refinery capacity was knocked out.

⁶⁵² This decision has been criticized by opponents of the NATO campaign as limiting pilots’ ability to positively establish the military nature of targets. These precautions made it possible to limit losses, and during the campaign only two NATO aircraft were downed by hostile fire, but the price was decreased operational efficiency and at least one well publicized incident where the difficulties of visual discrimination from high altitude led to a tragic targeting error, namely the “Korisa Incident” of May 1999. For more information see NATO Press Release (99) 079, Statement by the NATO Spokesman on the Korisa Incident, 15 May 1999. See also Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, HRW Report, 7 February 2000.

⁶⁵³ Young T., Oakes M. and Bowers P., *Kosovo: Operation Allied Force*, (House of Commons Library, London 1999).

⁶⁵⁴ Admiral James O. Ellis, “A View from the Top” briefing slides, summer 1999, in Ivo H. Daalder and Michael E. O’Hanlon, *Winning Ugly NATO’s War to Save Kosovo*, (Brooking Institution Press, Washington D.C. 2000), 104.

them against what they can do on the ground. But in the short term, they can win the race.”⁶⁵⁵

G. Working for peace

On May 6 the foreign ministers of the G-8 outlined a direction for these initiatives in a political declaration calling for a negotiated solution balancing “a substantial autonomy for Kosovo in respect of the Rambouillet accord and the principle of the sovereignty and territorial integrity of the Federal Republic of Yugoslavia.” Between mid-May and early June, a series of meetings between Ahtisaari, Talbott, and Chernomyrdin⁶⁵⁶ became the forum within which a coordinated Western peace initiative was forged. With Milosevic’s accord, on June 9 a Military Technical Agreement defining the terms of a ceasefire was initiated, and on June 10 the agreement was incorporated into UNSC Resolution No. 1244, which brought a formal end to the war.⁶⁵⁷ Simultaneously, NATO air strikes were suspended.

The Chernomyrdin-Ahtisaari agenda was significantly different from the one that inspired the original Rambouillet agreement, and provided the Serbian party with some prerogative to defend its interests even in the wake of military defeat. First, the entire process of conflict management had been brought back under the aegis of the UN. The plan eliminated Rambouillet’s call for a binding referendum on independence after five years. Any determination of Kosovo’s final status would now have to be approved by the UNSC, where Russia exercised the right of veto. Annex B of the Rambouillet accord granted NATO forces the right to operate throughout the entire territory of the Federal Republic of Yugoslavia. That right was reduced by the Chernomyrdin-Ahtisaari project to Kosovo alone. The KFOR sanctioned by the project was now to be placed under joint NATO auspices, while the OSCE was granted significant authority as the civil component of the international presence in the province. Supervision of refugee return would also be conducted under the auspices of the UN, rather than NATO. In the interim, the text reiterated that Kosovo was considered to be an integral part of the Federal Republic of Yugoslavia.

⁶⁵⁵ General Wesley Clark, *Waging Modern War*, PublicAffairs, New York 2001, 171.

⁶⁵⁶ Viktor Chernomyrdin was nominated special Russian peace envoy on 14 April. By then, he immediately abandoned Primakov’s anti-Western rhetoric, made clear to Belgrade that it could not count upon open-ended Russian support.

⁶⁵⁷ See UNSC Resolution 1244, S/RES/1244 (1999), 10 June 1999.

The international community was reluctant to recognise a new state in the region because of the fear that this would encourage secessionist claims in Macedonia, Montenegro and Bosnia and Herzegovina. There were also concerns that a commitment to Kosovo independence could destabilise the new Serbian government. For these reasons, the international community was unlikely to take steps towards the recognition of Kosovo in the short term.⁶⁵⁸ In March 2001, KFOR agreed to let Serbian militia re-occupy part of the buffer zone between Kosovo and southern Serbia. By May this agreement was extended to cover the rest of the Ground Safety Zone. KFOR readiness to allow FRY redeployment reflected its recognition of Serb concerns about the activities of the Liberation Army of Preševo, Medveja and Bujanovac.

II. CO-OPERATION AT HEADQUARTERS LEVEL

The internalisation of Kosovo, originally strongly opposed by President Milosevic, led to the close involvement of a series of international organisations, such as the UN, OSCE, CoE, EU and NATO, cooperating in an unprecedented close policy-coordination. This happened through an *ad-hoc* division of labour, with the Contact Group providing, generally speaking, the political guidance, the OSCE providing the observers on the ground to verify compliance with international demands within the limits of the mission's peace-keeping mandate, the UNSC providing the framework for compliance with the international demands and the legitimacy for eventual enforcement actions, and NATO performing different military tasks.⁶⁵⁹

A. Co-operation before the conflict⁶⁶⁰

1. The role of the International Community

Kosovo was not included in the Dayton negotiations because Tudjman and Izetbegovic were not interested in Kosovo and Milosevic would have refused to consider it. The result of this caution, however, was indirectly to legitimate Milosevic's role in Kosovo

⁶⁵⁸ See Centre for OSCE Research (CORE), *Kosovo Mission Information Package*, Institute for Peace Research and Security Studies at the University of Hamburg, May 2002, 10.

⁶⁵⁹ Dick A. Leuridijk, "Kosovo: A case of "coercive diplomacy", in *Helsinki Monitor* No. 2 1999, 17.

⁶⁶⁰ The present part comes from an analysis of the: The Independent International Commission on Kosovo, *op.cit.* note 639.

and place Kosovo definitely *off* the international agenda. This message had three serious conflict-escalating effects: it gave the FRY a free hand in Kosovo; it demoralized and weakened the non-violent movement in Kosovo, which felt betrayed by the international community and began to doubt the effectiveness of its own tactics; and, it led directly to a decisive surge of support among Kosovars for the path of violent resistance as the only politically realistic path to independence.

In December 1991 Rugova appealed to the EU for recognition of independence of Kosovo, this when the EU was discussing the issue of recognition of Slovenia and Croatia. However, the Badinter Commission did not offer the same solution for the autonomous provinces like Kosovo. Furthermore, after Dayton, the EU formally recognized the Federal Republic of Yugoslavia as including Kosovo.

Before the conflict erupted, the little attention that was directed towards Kosovo by the international community seemed to have been concentrated in the 1992–3 period when governments feared that the war in Bosnia-Herzegovina would have spilled over into Kosovo. The EC Peace Conference on Yugoslavia went so far as to define Kosovo as an “internal” problem for Yugoslavia, thus discouraging international interest and involvement.⁶⁶¹

In the same period, under the auspices of International Conference on the Former Yugoslavia, a Working Group on Ethnic and National Communities and Minorities was established. The Working Group in turn established a Special Group on Kosovo, and this concluded that it was important to normalize the situation in Kosovo. The Working Group tried to mediate, and a Common Statement by the Kosovar Albanians and the federal government was agreed in October 1992. The dialogue, however, collapsed after the rector of the parallel university, Ejup Statovici, was arrested in late 1992. In November 1993 the EU endorsed a proposal for the re-establishment of autonomy for Kosovo in its European Action Program on Yugoslavia. But leading politicians, including David Owen continued to insist on the integrity of Yugoslavia. In July 1992, fearing a never-ending process of political fragmentation, the CSCE Helsinki Summit adopted a Declaration on the Yugoslav Crisis, calling for “immediate preventative action” and urging “the authorities in Belgrade to refrain from further repression and to engage in serious dialogue with representatives from Kosovo in the

⁶⁶¹ In the second meeting of the Conference held in London in August 1992 and with the presence of Rugova, the question of Kosovo was again discussed again. The Kosovar Albanians, however, were invited as simple observers and not as participants. See Tim Judah, *Kosovo: War and Revenge*, (Yale University Press, 2000), 92-3.

presence of a third party.”⁶⁶² Simultaneously, the Contact Group began calling for dialogue between the Kosovo resistance and Belgrade as early as September 1997, stressing in each communication that support was given for “neither independence nor the status quo.”⁶⁶³

In December 1997, while dealing with the implementation of the Dayton Agreement the PIC in its Bonn Conclusion called “[...] upon those concerned to refrain from activities that might exacerbate existing difficulties and strive for mutually acceptable solutions through responsible dialogue”.⁶⁶⁴ In March 1998 the NAC supported the statements of the Contact Group, calling for the beginning of a serious dialogue without preconditions between the Belgrade authorities and the leaders of the Kosovar Albanian community in order to develop a mutually acceptable political solution for Kosovo within the FRY on the basis of the principles outlined by the international community.⁶⁶⁵ In 1995-1997 the situation in Kosovo kept a relatively low profile on the agenda of competent institutions such as the OSCE, the UN, the EU and the Contact Group. In this case, the possibility to make greater pressure on the Belgrade government to address seriously the Kosovo problem was inhibited by considerations like ‘constructive involvement of the FRY in Bosnia’ and ‘the internal character of the question’. Still, the international community was able to agree on the broad principles to be followed in a negotiated solution for Kosovo: a) dialogue between Belgrade and the Albanian representatives in Kosovo; b) respect for the territorial integrity of the FRY and inviolability of its borders; c) substantial degree of autonomy for Kosovo within the FRY; and, d) conditionality of development of political and economic ties with Belgrade on the progress of settlement in Kosovo.⁶⁶⁶

In February 1998, the Contact Group confirmed that “[Our] commitment to human rights values means that we cannot ignore such disproportionate methods of control. Government authorities have a special responsibility to protect the human and civil rights of all citizens and to ensure that public security forces act judiciously and with

⁶⁶² Declaration on the Yugoslav Crisis, Adopted by the CSCE Summit, Helsinki, 10 July 1992, in Snezana Trifunovska, *Yugoslavia Through Documents. From Its Creation to Its Dissolution*, Martinus Nijhoff Publishers, Dordrecht/Boston/London 1994, doc. no. 225, 648. See also Howard Clark, *Civil Resistance in Kosovo*, Pluto Press, London 2000, 91.

⁶⁶³ See Statement on Kosovo of the Contact Group Foreign Ministers, New York, 24 September 1997.

⁶⁶⁴ See Bonn Peace Implementation Council Conference, “Bosnia and Herzegovina 1998: Self-Sustaining Structures”, 10 December 1997, § X, No. 3(c).

⁶⁶⁵ Emil S. Yalnazov, *The Role of NATO and the EAPC in Support of Lasting Peace and Regional Security Co operation in South-Eastern Europe (1997-2000)*, NATO/EAPC Fellowship 1998-2000, 19.

⁶⁶⁶ *Ibid.*, 17.

restraint.”⁶⁶⁷ In March 1998, the Contact Group met again to review developments in the field and unanimously decided to impose an arms embargo and a ban on transfers of equipment that could be used for repression. This was followed by a further decision, taken in April and again without Russian support, to freeze FRY’s funds held abroad, and eventually block all new investments in Serbia.⁶⁶⁸ In the light of the escalation of violence in the 1998–1999 the inactivity of the international community—influenced by then by developments in Bosnia and Herzegovina—had enormous impact over the province and the region in general and was in itself a major failure.

B. Co-operation during the conflict

During the conflict, France and Britain and to a lesser extent Germany and Italy played a central role in negotiations before the bombing, as members of the Contact Group (along with the US and Russia) and of NATO. Not surprisingly, however, there were a number of divergences between EU member states on the NATO campaign, with Germany and Greece not supporting the last phases of the operation when raids were extended to civilian targets. There was also some tension when an Italian proposal to halt the bombing during negotiations in mid-May was rejected by NATO.

The West’s response to the Kosovo question was seen by many as reflecting a growing willingness on the part of the U.S. and the EU to intervene in other states on human rights or humanitarian grounds. There were also clear indications that the same were reluctant to support a secession that could have repercussions for Bosnia-Herzegovina and Montenegro. Diplomatic alternatives were pursued through both bilateral and multilateral channels. At the first signs of trouble, the Contact Group was brought back to coordinating the diplomatic initiatives. In a statement of 9 March 1998, the Contact Group condemned “the use of excessive force by Serbian police against civilians” as well as “terrorist actions by the KLA” and outlined a series of measures intended to encourage dialogue. Similar language appeared in the UNSC Resolution 1160.⁶⁶⁹

⁶⁶⁷ See Statement on Kosovo of the Contact Group Foreign Ministers, Moscow, 25 February 1998.

⁶⁶⁸ See Statement on Kosovo, London Contact Group meeting, 9 March 1998.

⁶⁶⁹ See UNSC Resolution 1160, S/RES/1160 (1998), 31 March 1998. The resolution condemned the excessive use of force against civilians, imposed an arms embargo against the Federal Republic of Yugoslavia, and concluded with the vague threat of ‘additional measures’ in the absence of progress

In March 1998, the NAC expressed “profound concern” and confirmed the engagement to prevent escalation and promote security and stability.⁶⁷⁰ At the end of May, while reiterating over a *status quo* defined as unsustainable the Alliance committed to help achieving a peaceful resolution of the crisis by contributing to the response of the international community.⁶⁷¹ The same month, NATO Secretary-General Solana stressed that “NATO and the international community were not prepared to stand by and watch another part of the former Yugoslavia burn”.⁶⁷² Once again diplomacy, in order to succeed, would have to be supported by a credible threat or use of force. In May and June 1998, through the Luxembourg and Brussels Ministerial Meetings, NATO supported further diplomatic efforts of the Contact Group by demonstrating its willingness to act promptly. In addition, it decided to enhance activities undertaken in the frame of the Partnership for Peace (PfP) in Albania and Macedonia.⁶⁷³

In June 1998, Ministers of Foreign Affairs of countries of South Eastern Europe expressed concern over the rapid deterioration of the situation and referred to “a timely action on the part of the international community” as “crucial in cases of such escalating crises”.⁶⁷⁴ Contextually, an escalation in military activity and violence against civilians led to the NATO first public consideration by NATO of military intervention.⁶⁷⁵ Later on, at the December 1998 EPC Ministerial Meeting, NATO member states and partner countries underlined the importance of consultations to be undertaken on the status of NATO’s contingency planning.⁶⁷⁶ In the same month, the joint Anglo-French declaration on European Defence signed in Saint Malo, France, on 4 December 1998, revealed the dissatisfaction with Washington’s forcing inside the Alliance by urging the EU to create “the capacity for autonomous action backed up by credible military forces, the means to use them and readiness to do so in order to

toward a settlement. See also Goshko J.M, “Arms Embargo on Yugoslavia: U.N. Security Council Seeks to Prevent More Violence in Kosovo,” in *The Washington Post*, 1 April 1998, 24.

⁶⁷⁰ See NATO NAC, Council Statement on the situation in Kosovo, in *NATO Press Release* (98)29, 5 March 1998.

⁶⁷¹ See NAC Ministerial Meeting, Luxembourg 28-29 May 1998, Statement on Kosovo, in *NATO Press Release* M-NAC-1(98)61, para. 4.

⁶⁷² Solana Javier, *NATO and European Security into the 21st Century*, speech to the Oxford University Union Society, 13 May 1998. Available at <<http://www.nato.int/docu/speech/1998/index.html>>.

⁶⁷³ Emil S. Yalnazov, *op.cit.* note 665, 21.

⁶⁷⁴ See Declaration on the situation in Kosovo by the Ministers of Foreign Affairs of SEE countries, Istanbul, 9 June 1998.

⁶⁷⁵ Elizabeth Neuffer, “NATO Weighs Raids to Slow Serbs in Kosovo; Aides Gather in Brussels Today to Consider Options” in *Boston Globe*, 11 June 1998, A2.

⁶⁷⁶ See Chairman’s summary of the meeting of the EAPC - Brussels, 8 December 1998.

respond to international crises.”⁶⁷⁷ This was a first step in the direction of an autonomous European Security and Defence Policy. In February 1999, NATO-led started consultations with partner countries in preparation for an immediate deployment, after the signature of a peace agreement, of a NATO-*led* ground force in Kosovo (operation JOINT GUARDIAN).

In the meanwhile, the EU started to strengthen its own crisis management. The Cologne European Council meeting in June 1999 placed, through the Petersberg tasks, humanitarian and rescue tasks as well as peacekeeping and crisis management (including peacemaking) at the core of the process of strengthening the European Security and Defence Policy (ESDP).⁶⁷⁸

C. Co-operation after the end of the conflict

Already in 1999, the OSCE HCNM, Max van der Stoel, traced the roots of the Kosovo conflict back to 1989. According to the HCNM the international community made three errors: (a) it tried for too long to find a partial solution of the problem; (b) various international organizations, including the OSCE, did not develop an alternative approach to face the crisis before it led to violence, and (c) priority attention was given only when the conflict broke out.⁶⁷⁹ On 25 February 2000, the tripartite high-level meeting in Geneva, between UN, OSCE and CoE facilitated an exchange of information on South-Eastern Europe, including Kosovo. Few months later, in Vienna, the “2+2” high-level meeting, between OSCE and CoE, focused on policy co-ordination of policies and explored potential areas of co-operation; the meeting was the occasion for further discussion on developments in South-Eastern Europe.⁶⁸⁰ In this context, a human rights needs assessment mission to Kosovo, consisting of representatives from the OSCE, the CoE, the UNHCHR and the EU, was deployed from 29 May to 2 June.⁶⁸¹ This was followed by the grant agreement signed between the EC and OSCE on the support to the November 2001 election of the Kosovo

⁶⁷⁷ Maartje Rutten (ed.), *From St. Malo to Nice--European Defence: Core Documents*, EU Institute for Security Studies, Paris 2001, 8-9.

⁶⁷⁸ From the 1992 WEU Petersberg Declaration and later enshrined in the TEU through the 1997 Amsterdam Treaty.

⁶⁷⁹ See OSCE Seminar on Co-operation among International Organisations and Institutions: Experience and Prospects in South-Eastern Europe, Working Session 3 “Crisis Management through the OSCE – The Case of Kosovo”, 12.

⁶⁸⁰ See OSCE Annual Report 2000 on Interaction between Organisations and Institutions in the OSCE Area, *op.cit.* note 234, 14.

⁶⁸¹ *Ibid.*, 16

Assembly. Activities included civic awareness and media capacity-building initiatives. The grant agreement also included support for the local municipal elections scheduled for October 2002.⁶⁸² In 2001, the EU through its Annual Report clearly explained its intention in the post-conflict phase:

The EU continues to attach the highest importance to the implementation of UN Security Council Resolution 1244 on Kosovo and reiterates its full support for the actions taken by UNMIK and KFOR. The EU calls upon all parties to fully cooperate with them in this objective. We welcome the peaceful and democratic local elections held in October last year. The entire population of Kosovo has been severely affected by the conflict and its aftermath. The EU is concerned by the pursuit of acts of violence against ethnic minorities in Kosovo, in particular Kosovo Serbs. The EU reaffirms its commitment to a democratic and multi-ethnic Kosovo. The EU therefore urges the people of Kosovo and their leaders to comply fully with the efforts to end all acts of ethnic and political violence in order to develop the groundwork for a democratic society where the whole population can benefit from their full and equal rights, without discrimination. The European Union will continue to encourage dialogue between the FRY and the Kosovo-Albanian leaders in Kosovo to furnish information concerning the fate of missing Serbs in Kosovo.⁶⁸³

III. CO-OPERATION IN THE FIELD

A. Co-operation during the conflict

1. The Kosovo Diplomatic Observer Mission

In another important monitoring development, the Yeltsin-Milosevic meeting in June opened the way for the installation in July 1998 of the Kosovo Diplomatic Observer Mission (KDOM), under the Contact Group, the OSCE and the EU. The mission comprised several people representing EU states, the U.S., the Russian Federation and Canada; the respective embassies began a series of regular monitoring meetings in Belgrade. Once operational, the OSCE force absorbed the fifty-strong Kosovo Diplomatic Observer Mission; however, KDOM members returned to Kosovo in mid-October to monitor the situation as the first OSCE verifiers began to arrive.

⁶⁸² See Council of the European Union, EU Annual Report on Human Rights 2002, 21 October 2002, 100.

⁶⁸³ See Council of the European Union, EU Annual Report on Human Rights 2001, adopted in November 2001, 112.

2. OSCE-NATO co-operation during the conflict

In the preparatory stage of the respective missions, there had been a much larger degree of harmonisation of the political action, resulting in cohesion of effort. In November 1998 several meetings were held in Brussels and Vienna between the OSCE Kosovo Verification Mission (KVM) Support Group and representatives of NATO HQ and SHAPE to discuss KVM security, the extraction plan, the verification levels, the logistics and the communications. Letters between the Secretaries-General of NATO and the OSCE were exchanged on the future areas of co-ordination, which formalised and marked unprecedented parameters of the co-operation between the two organisations.⁶⁸⁴ As underlined by the NAC, “the establishment of the KVM has opened a new stage in the co-operation between NATO and OSCE”.⁶⁸⁵ On 23 September 1998, after more than six months of fighting between Yugoslav and Serbian forces and the Kosovo Liberation Army, the UNSC passed Resolution 1199, demanding an immediate cease-fire and calling on the parties to “enter immediately into a meaningful dialogue without preconditions and with international involvement”.⁶⁸⁶ On the basis of this resolution, US negotiator Richard Holbrooke brokered an agreement with Milosevic on 13 October 1998. The agreement foresaw the deployment of the KVM, composed of up to 2,000 unarmed verifiers, and the creation of an air surveillance system to be operated by NATO, stationed in Macedonia.⁶⁸⁷ On 15 October 1998, in Decision No. 259, the Permanent Council declared “the preparedness of the OSCE to embark upon verification activities related to compliance of all parties in Kosovo with the requirements set forth by the international community with regard to the solution of the crisis in Kosovo” and expressed support for the Chairman-in-Office’s efforts “to arrange with the FRY authorities for the OSCE to make such contribution” to the peaceful solution of that crisis. On 16 October, in Belgrade, an agreement was signed between the OSCE and the FRY on the creation of the KVM. Meanwhile, the Permanent Council of the OSCE authorised the establishment of border monitoring stations along the Kosovo–Albania border.⁶⁸⁸ These stations became fully operational at the end of June 1998. Immediately upon their establishment, OSCE’s monitors began reporting a substantial

⁶⁸⁴ Guergana Velitchkova, *op.cit.* note 373, 30.

⁶⁸⁵ See Final Communiqué of the meeting of the NAC in Defence Ministers Session, 17 December 1998, in *Atlantic News* No. 3068, Annex, 19 December 1998.

⁶⁸⁶ See UN Security Council Resolution 1199, S/RES/1199 (1998), 23 September 1998, para. 3.

⁶⁸⁷ See OSCE Annual Report 1998 on OSCE Activities, 2 December 1998, para. 2.2.4.

⁶⁸⁸ See OSCE Permanent Council Decision, PC. DEC/228, 4 January 1998.

level of military activity and fighting along the border. On 24 October, in its Resolution 1203, the UNSC demanded the FRY to comply with agreement and commitment concerning the KVM and reminded it of its “primary responsibility for the safety and security of all diplomatic personnel accredited to the Federal Republic of Yugoslavia”.⁶⁸⁹ It said that all parties should comply “fully and swiftly” with Security Council Resolutions 1160 and 1199 and “co-operate fully” with the KVM.⁶⁹⁰ The October 1998 Agreement on the OSCE KVM outlined a challenging mandate for the organisation to begin preparations for future elections and send civilian monitors to verify a cease-fire in a war-zone. Curiously, human rights were not even mentioned in the Agreement despite an ongoing pattern of gross violations of international humanitarian law in the province. As a result, both human rights training for monitors and the mission’s investigation capabilities remained limited.⁶⁹¹

On 25 October 1998 the OSCE PC formally established the KVM, to be led by Ambassador William Walker of the United States. Under the agreement between the OSCE and FRY, the main tasks of the verifiers were to report cease-fire violations, conduct border monitoring, and facilitate the return of refugees along with ICRC and UNHCR.⁶⁹² The Mission established its headquarters and training centre in Prishtinë/Priština in October 1998, with five regional centres (in Pejë/Peć, Prizren, Mitrovicë/Kosovska Mitrovica, Prishtinë/Pristina and Gjilan/Gnjilane) and ten field offices.⁶⁹³

Following the break-down of the Rambouillet peace process, the KVM was withdrawn from Kosovo on 20 March 1999 on grounds of security. After its withdrawal from Kosovo, about 250 officials were retained in Skopje. This group was later subdivided into two task forces, established in Albania and in Skopje, to assist UNHCR with the refugee crisis.⁶⁹⁴ However, the slowness in the deployment of the mission had a negative impact on the effectiveness of the mission. On this point the Head of the Mission himself recognised that both the establishment and the development of the mission was, to a large extent, the result not of a clear design, but of improvisation.⁶⁹⁵

⁶⁸⁹ See UNSC Resolution 1203, *op.cit.* note 644, para. 8. See also OSCE Annual Report 1998 on OSCE Activities, *op.cit.* note 687, 25.

⁶⁹⁰ *Ibid.*, para. 3.

⁶⁹¹ Alexander Lupis, *op.cit.* note 34, 23.

⁶⁹² See OSCE Permanent Council Decision, PC.DEC/263, 25 October 1998.

⁶⁹³ See OSCE Press Release of 30 January 1999. It was originally envisaged for the OSCE to deploy an international presence of around 2,000. This target, however, was never reached.

⁶⁹⁴ See OSCE Annual Report 1999 on OSCE Activities, *op.cit.* note 119, para. 1.1.5.1.

⁶⁹⁵ William Walker, “Improvisational Peace”, in *Newsweek* 1 February 1999.

In addition, the establishment of the mission was also criticised since it appeared that not all requirements for the OSCE peacekeeping set out in the 1992 Helsinki Document were fulfilled.⁶⁹⁶

As said, preventive deployments in Albania and Macedonia were also considered. NATO aircraft began verification flights over Kosovo immediately after the agreement of 15 October. In line with the general understanding for NATO support for KVM, in December 1998 the NATO Extraction Force was deployed in Macedonia (operation JOINT GUARANTOR) to ensure immediate retreat of the KVM verifiers in case of emergency. Cooperation between KVM and the NATO Air Verification Mission took various forms: data exchange; verification of FRY compliance with the UNSC Resolutions 1199, including mutual advice between KVM and NATO on the priorities for the ground and air verification; building safe communication lines between KVM and NATO in Kosovo and in Skopje.⁶⁹⁷ Furthermore, on the same day the OSCE KWM was further reinforced through the agreement signed between NATO and FRY on the establishment of an air surveillance system, under the code-name of operation EAGLE EYE. Through this co-ordinated action and exchange of information a good example was set of partnership between the two organisations. However, when the force became operational, on 12 December 1998, president Milosevic denied that the deployment of the “Extraction Force” was part of his 13 October agreement with Holbrooke, and warned that action by force on the territory of Kosovo would have been considered an ‘act of aggression’, hence triggering reaction by his forces.⁶⁹⁸ In this situation, the KVM exchanged information with the EUMM already present in the territory and cooperated with the CoE via secondment of staff.⁶⁹⁹ CoE’s staff seconded to the OSCE Missions—firstly to the KVM and then to OSCE Mission in Kosovo—provide expertise on media affairs, police training, democratization, human rights and the rule of law.⁷⁰⁰

⁶⁹⁶ For a detailed description of the critic please see Ettore Greco, “The OSCE Kosovo Verification Mission: A Preliminary Assessment”, in *International Peacekeeping*, Vol. 4 No. 5 May-August 1998, 115-118.

⁶⁹⁷ Guergana Velitchkova, *op.cit.* note 373, 31.

⁶⁹⁸ See *International Herald Tribune*, 11 December 1998.

⁶⁹⁹ See the analysis of the EUMM provided in chapter on the co-operation in the FRY.

⁷⁰⁰ See OSCE Annual Report 1999 on OSCE Activities, *op.cit.* note 119, 69.

3. NATO-UN Cooperation (operation ALLIED FORCE)

It should be immediately clarified that NATO's extensive military strikes, under operation ALLIED FORCE, was initiated without explicit authorization by the UNSC of its Chapter VII powers. Resolutions 1160, 1199 and 1203 did not authorize military action by states either acting nationally or through a regional arrangement or agency.⁷⁰¹ NATO, however, made clear in its new strategic concept the possibility to act, even without a Security Council's authorization, to protect the Alliance's security interests.⁷⁰²

B. Co-operation after the end of the conflict

1. The United Nations Interim Administration Mission in Kosovo⁷⁰³

Since June 1999, Kosovo has been governed by an interim administration led by the United Nations Interim Administration Mission in Kosovo (UNMIK) established by the UNSC Resolution 1244 (1999). Headed by a Special Representative of the Secretary-General (SRSG), the operational framework of UNMIK has been divided into four pillars: 1) Police and Justice, under the direct leadership of the UN; 2) Civil Administration (UN); 3) Democratization and Institution Building (OSCE); 4) Reconstruction and Economic Development (EU).⁷⁰⁴ UNMIK was given authority over the territory and people of Kosovo, including legislative and executive powers and administration of the judiciary.⁷⁰⁵ The mission was mandated, *inter alia*, to: a) establish substantial autonomy and self-government in Kosovo; b) perform basic civilian administrative functions; c) facilitate a political process to determine Kosovo's future status; d) support the reconstruction of key infrastructure, and humanitarian and disaster relief; e) maintain civil law and order, promote human rights, and assure the safe and unimpeded return of all refugees and displaced persons.⁷⁰⁶ In this framework, the work of UNMIK was initially planned through five integrated phases:

⁷⁰¹ Dan Sarooshi, *op.cit.* note 142, 242.

⁷⁰² *Ibid.*, 245.

⁷⁰³ A further analysis on the developments of the UN administration in Kosovo is provided in the section on the independence of Kosovo.

⁷⁰⁴ The UNHCR left the pillar structure in 2000, while keeping a mission in Kosovo, and was replaced by a second UNMIK pillar responsible for policing and justice.

⁷⁰⁵ By then, UNMIK's Headquarters have been established in Prishtinë/Priština, with five District Centres in Prishtinë/Priština (Centre), Mitrovicë/Kosovska Mitrovica (North), Pejë/Peæ (West), Gjilan/Gnjilane (East) and Prizren (South).

⁷⁰⁶ See UNSC Resolution 1244, *op.cit.* note 657.

- Phase I: Establishment of administrative structures; deployment of international civilian police; emergency assistance for returning refugees and displaced persons; restoring of public services; training local police and judiciary; enhancing economic recovery with the goal of developing a self-sustaining economy.
- Phase II: Administration of social services and utilities; consolidation of the rule of law; transfer of health and education to local authorities; preparation for elections.
- Phase III: Elections for a Kosovo Transitional Authority.
- Phase IV: Assistance to Kosovo's elected representatives in organising and establishing provisional institutions for democratic and autonomous self-government; transferral of the remaining administrative responsibilities.
- Phase V: After a final settlement on the status of Kosovo, oversight of the transfer of authority from Kosovo's provisional institutions to institutions established under the political settlement.

The Executive Committee's Joint Planning Group established specific working groups and task forces such as: the Joint Working Groups respectively on Returns and Legal Framework and the Joint Interim Administration Task Force. Co-operation with KFOR and other international agencies on security issues was maintained by the Military Liaison Office.

On 15 December 1999 UNMIK established the Joint Interim Administrative Structures (JIAS) to function as a formal structure for the administration of Kosovo. The JIAS provided a framework for sharing the responsibility for provisional administration with representatives of Kosovar society. JIAS was established as a provisional set of institutions, and was replaced in November 2001 by more permanent structures following assembly elections in the province and the adoption of the Constitutional Framework for Provision Self-Government in Kosovo. Issued by the SRSG created a system known as the 'Provisional Institutions of Self-Government' (PISG).⁷⁰⁷

A departmental structure was also established with 20 departments covering the full range of internal governmental functions. Initially, the UN was responsible for 15 of the departments, the EU for four departments and the OSCE for one department. In

⁷⁰⁷ See UNMIK Regulation 2001/9 of 15 May 2001.

2001, the departments were restructured into nine departments, which in 2002 became ministries after the formation of government. The Constitutional Framework for Provisional Self-Government contains a number of additional provisions and safeguards on minority rights. The Framework established the office of Ombudsperson to investigate complaints on human rights violations and discrimination against minority groups, and to monitor and make recommendations on these matters.

With reference to the other actors in the field, UNMIK has established a close information-sharing relationship with the OSCE Mission to Albania. The OSCE Presence's Field Station in Kukës regularly participates in the monthly meetings of the Joint Border Commission, which brings together Albanian police and customs officials with UNMIK (CIVPOL) and KFOR personnel.⁷⁰⁸ Furthermore, UNMIK cooperates with the OSCE in developing the local Kosovo Police Service (KPS), with OSCE running the Kosovo Police Service School (KPSS) near Prishtinë/Priština.⁷⁰⁹ Learning from the previous experience in Bosnia and Herzegovina, where the difficulties of being unarmed and having no executive authority with regard to law enforcement constituted an obstacle for the mission, the UNMIK CIVPOL was given law enforcement authority and authorisation to legislate, reform and control appointment and removal of officials under UNSCR 1244.

On returnee issue, a Joint Committee on Returns (JCR) was set up, chaired by UNHCR and consisting of UNMIK, the OSCE, KFOR and Serb leaders. Though it was designed as a political coordinating body, only focusing on one ethnic group, it did develop a general set of principles and, in 2001, changing its focus to the return of all the displaced, it became the Task Force on Return and Reintegration, focusing on all communities. In addition, a Regional and Municipal Working Groups on Return were set up, to involve local authorities. In 2002, UNMIK, in the form of its Office on Returns and Communities, took over responsibility for this work.

Co-operation with the KFOR, was guaranteed through the deployment of UNMIK liaison officers to the KFOR's headquarters and multinational brigades.⁷¹⁰ In addition, in 2004 UNMIK issued the Kosovo Standards Implementation Plan detailing how to achieve a democratic society, based on the rule of law and effective equality.

⁷⁰⁸ See OSCE Annual Report 2001 on Interaction between Organisations and Institutions in the OSCE Area, *op.cit.* note 382, 28.

⁷⁰⁹ See OSCE Permanent Council Decision, PC.DEC/305, 1 July 1999.

⁷¹⁰ See Committee of Ministers of the Council of Europe, Doc CN/Inf(99)48, "Kosovo. Council of Europe's contribution to the United Nations Interim Administration Mission in Kosovo", Information Documents, 23 July 1999, para. 25.

2. The OSCE in Kosovo

Due to the capitulation of Milosevic and KFOR's entry into Kosovo on 12 June 1999, the KVM was dissolved on 8 June 1999. On the same date, the OSCE established the transitional Task Force for Kosovo to prepare for the deployment of a future OSCE Mission as part of an international presence in Kosovo and carry out preparatory visits and activities in Kosovo to facilitate the entry of a future OSCE Mission to Kosovo.⁷¹¹

In compliance with its mandate, the Task Force was then replaced by the OSCE Mission in Kosovo (OMIK) on 1 July 1999.⁷¹² The Missions were tasked to monitoring human rights violations and advising on human rights' legislation. Moreover, the Mission was called to work on the protection of minorities, free media and democratic elections.

In the context of the UNSC Resolution 1244, the OSCE Permanent Council decided that the Mission in Kosovo should constitute a specific component of the UN Mission responsible for institution-building and human rights. The division of labour between the UN and the OSCE within UNMIK was further clarified in an exchange of letters, dated 19 July 1999, between Ambassador Kim Traavik, Head of the Chairmanship's OSCE Co-ordination Unit and Bernard Miyet, the UN Under-Secretary-General for Peace-Keeping Operations. In the area of institution building and rule of law, the PC Decision 305 called upon the OSCE Mission in Kosovo to concentrate its work, *inter alia*, on: a) the training of judicial personnel and civil administrators in co-operation with the CoE; b) monitoring, protection and promotion of human rights, including the establishment of an Ombudsman Institution, in co-operation with the UNHCHR.⁷¹³

Co-operation with other international actors was guaranteed through the creation and participation in key task forces and working groups. For instance, together with UNHCR, the mission produced regular "*Assessments of the Situation of Minorities*"

⁷¹¹ The Task Force was further mandated to co-operate, as required, with the United Nations and other international organizations in on-going activities relevant to possible future OSCE tasks in Kosovo, in particular registration and documentation of refugees.

⁷¹² See OSCE Permanent Council Decision, PC.DEC/305, 1 July 1999. OMIK was by then the third OSCE mission in the province. The previous two missions were geared towards monitoring minority rights in Kosovo and promoting a political solution to the conflict. The first mission was deployed in August 1992, when the OSCE (by then still the CSCE) decided to station Missions of Long Duration in Kosovo, Sandjak and Vojvodina, the largest minority areas of FRY. A description of these Missions is included in the chapter dedicated to the analysis co-operation in the Federal Republic of Yugoslavia (FRY). The Mission in Kosovo was based in Prishtinë/Priština with five Regional Centres in Gjilan/Gnjilane, Mitrovicë/Kosovska Mitrovica, Pejë/Pec, Prishtinë/Priština and Prizren.

⁷¹³ *Ibid.* In order to prioritise areas of activity, in 1999 OMIK carried out a survey of the province to establish civil administration needs, in conjunction with the Council of Europe.

and set up a Minorities Task Force.⁷¹⁴ Since its inception, the Task Force involved UNMIK and KFOR staff in trying to identify the key problems facing minorities in Kosovo and also. However, the Task Force disappeared in 2001, arguing that what was needed was an UNMIK-led body that would be able to develop and implement UNMIK policies.⁷¹⁵

As part of the UNMIK structure, OMIK has participated in the inter-Pillar Joint Planning Committee which co-ordinates Pillar activities. OMIK co-operates closely with the CoE on legislative matters in Kosovo, especially with its Venice Commission and the Congress of Local and Regional Authorities of Europe (CLRAE). The CoE also assisted the OMIK Judicial Training Section in the development of the Kosovo Law Centre⁷¹⁶ and Ombudsperson's Institution for Kosovo.⁷¹⁷ As recognised by the UN, the creation of the Ombudsperson was a truly joint OSCE-CoE initiative.⁷¹⁸ Finally, the OSCE in co-ordination with KFOR and UNCIVPOL, created a committee wherein UNMIK Department of Judicial Affairs (DJA) was responsible in assisting investigating judges, prosecutors and police forces on matters regarding evidence/statements admissible before the investigating judge in the course of preliminary examinations procedure and at trials.⁷¹⁹

3. The North Atlantic Treaty Organisation in Kosovo

The NATO-led Kosovo Force (KFOR) was created on the basis of UNSC Resolution 1244 but to function as a separate body from UNMIK. KFOR operates in an autonomous way, not controlled by the civilian authority in Kosovo (unlike the

⁷¹⁴ See UNHCR/OSCE, Preliminary Assessment of the Situation of Ethnic Minorities (First Assessment), Pristina, UNHCR/OSCE, 26 July 1999.

⁷¹⁵ See UNHCR/OSCE, Ninth Assessment of the Situation of Ethnic Minorities, Pristina, UNHCR/OSCE, 22 May 2002.

⁷¹⁶ Furthermore, since 1999 the CoE has started seconding experts to the OSCE. See OSCE Annual Report 2000 on Interaction between Organisations and Institution in the OSCE Area, *op.cit.* note 231, 43-44.

⁷¹⁷ According to the UNMIK Department of Judicial Affairs (DJA), the concept paper on the Ombudsman institution in Kosovo was prepared by the CoE Venice Commission and discussed with the Senior Adviser of Human Rights to the SRSG, EU, KFOR and OSCE. See DJA Report of the Conference on the Judiciary in Kosovo of 11 November 1999, para. 10.

⁷¹⁸ See for instance: Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/1999/1250, 23 December 1999, para. 83; Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2000/177, 3 March 2000, para. 115.

⁷¹⁹ See Department of Judicial Affairs (DJA), Report for the Conference on the Judiciary in Kosovo of 11 November 1999, para. 3.

situation under the UN administration in East Timor, for instance).⁷²⁰ On June 10, 1999, following the adoption of Resolution 1244, the NAC authorized the deployment of KFOR troops, designating the action operation JOINT GUARDIAN. Actual deployment of troops initiated on 12 June. The international security presence, in accordance with Annex 2 of the Resolution, had to rely on a substantial NATO participation and had to be deployed under unified command and control. International military presence provided the security environment for carrying out the civilian aspects of the operation. KFOR's main tasks were then described in the UNSC Resolution 1244 (1999).⁷²¹

KFOR entered Kosovo on 12 June 1999 under UN mandate, two days after the adoption of resolution 1244. KFOR contingents were grouped into five multinational brigades (MNB) under one chain of command under the authority of the KFOR Commander. In this scenario, the Euro-Atlantic Disaster Response Co-ordination Centre (EADRCC) in Brussels was also activated by Allies and Partners to assist in the co-ordination of humanitarian efforts.⁷²² By 20 June the Yugoslav withdrawal was completed in accordance with the agreed timetable, and KFOR had already taken control of the province. Kosovo was divided into 5 KFOR sectors, led respectively by Germany, France, Italy, UK and the United States. By the end of June 1999 Russian troops were also integrated within the KFOR's structure.⁷²³

In terms of co-operation, support has been given to UNMIK at all levels of the civil administration. KFOR personnel served as liaison officer for UNMIK. With the OSCE,

⁷²⁰ Clive Baldwin, *Minority Rights in Kosovo under International Rule*, Minority Rights Group International, London 2006.

⁷²¹ These included in broad terms the following: a) deterring renewed hostilities, maintaining and where necessary enforcing a cease-fire, and ensuring the withdrawal and preventing new threats against Kosovo by Yugoslav/Serb forces; b) demilitarising the KLA and other armed Kosovo Albanian groups; c) establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established and humanitarian aid can be delivered; d) ensuring public safety and order; e) supervising de-mining, border monitoring, protection for freedom of movement; f) support to and co-ordination with the international civil presence (the UNMIK) and with other international organisations. The modalities of the phased withdrawal of the Yugoslav troops from Kosovo and the synchronised deployment of the NATO-led international force (KFOR) were drawn up in a Military Technical Agreement (MTA) between Yugoslav and Serb military commanders and the NATO-designated commander of KFOR Gen. Mike Jackson, signed on 9 June 1999.

⁷²² For further information about the EADRCC please visit:
http://www.nato.int/cps/en/natolive/topics_52057.htm

⁷²³ Russian forces stationing in Bosnia moved in quickly to take possession of the Prishtina/Pristina airport before KFOR's arrival. This potential confrontation was resolved, however, with an accord signed in Helsinki on June 18, which set out agreed principles for Russian participation in KFOR operations. The accord limited the Russian contingent to 2850 troops plus an additional 750 troops for airfield and logistic base operation; these units were assigned to the German, American, and French sectors.

civil-military co-operation become the common denominator of OMIK-KFOR interaction. The two missions participated in the inter-pillar Joint Planning Committee in Kosovo, which planned and coordinated the four pillar activities.⁷²⁴ Furthermore, KFOR established a Liaison Office at OMIK Headquarters to ensure exchanges of information and recommendations for action. The two organisations further co-operated in the JCR.⁷²⁵ Meetings of the JCR also benefited from participation of the CoE.⁷²⁶

The KFOR Commander and the Head of OMIK also met on a regular basis through the inter-pillar Executive Committee, the Interim Administrative Council (IAC) and the Kosovo Transitional Council (KTC).⁷²⁷

However, in spite of the subsequent development for the first two months there was not much civilian support from either the UN or the OSCE. Thus, the task of maintaining law and order, repairing local infrastructure and administering the region fell to the KFOR soldiers. At the same time, they began the task of demilitarizing the KLA and disbanding its military structures. Elsewhere, KFOR found itself providing escorts and physical protection for the Serb, Roma, and other minorities. On this issue, Reinhardt K., former Commander KFO, regarded co-operation with other organisations as follow:

[...] I learned, from the very beginning of my tour of duty, that almost all the 39 nations had established different restrictions and limitations for their soldiers during the mission. [...] Second, there was the much more difficult, although also solvable, task for which I had received neither special training nor preparation: cooperation with the various political organisations and personalities in Kosovo, most of whom were from very different backgrounds and often pursued contrary objectives.

[...]

In other words, prior training of the HQ personnel is indispensable. Once deployed, soldiers have no time to gradually adapt to the new situation. This requirement is even more essential for troops in the field, who must understand the type of task they will be facing beyond the war-fighting they have been equipped and trained for.⁷²⁸

⁷²⁴ Guergana Velitchkova, *op.cit.* note 373, 37.

⁷²⁵ See OSCE Annual Report 2001 on Interaction between Organisations and Institutions in the OSCE Area, *op.cit.* note 382, 39.

⁷²⁶ See Secretary General of the Council of Europe, Doc.SG/Inf (2000)35, "Pristina Office Report. September 2000", 20 October 2000, para. 21.

⁷²⁷ See OSCE Annual Report on Interaction between Organisations and Institutions, years 2000 and 2001.

⁷²⁸ Reinhardt K., Former Commander KFOR, "Lessons Learned ad commander KFOR in Kosovo", in Spillman K., Bernauer T., Gabriel J.M. and Wenger A. (eds.), *Peace Support operations: Lessons*

4. The European Union after the conflict⁷²⁹

Dayton constituted a turning point in international involvement in the former Yugoslavia. The EU in particular began adopting a more structured regional approach in South Eastern Europe, initiating with the December 1995 the Process of Stability and Good-Neighbourliness in South Eastern Europe (Royaumont Process), later followed by the EU aid programmes for the region in July 1996 (Obnova). Despite these efforts, real progresses were hampered by the international community's failure to tackle the Kosovo question. As in the case of Croatia and Bosnia, the EU was hesitant and not able to handle the crisis.⁷³⁰

The responsibility for the reconstruction, under EU direction saw the interaction of different EU agencies. For instance, the European Community Humanitarian Office (ECHO) provided emergency assistance and worked closely with the European Agency for Reconstruction and UNMIK to try to ensure a smooth transition from humanitarian aid to reconstruction and recovery assistance. In turn, the European Agency for Reconstruction (EAfR) took over from the EC's Task Force for the Reconstruction of Kosovo in February 2000. The agency was responsible for the reconstruction and institution building in co-operation with UNMIK, KFOR and other international agencies.

Besides the numerous activities undertaken and in light of the role to play in the reconstruction of Kosovo, the EU was strongly criticized for its financing process. As from the Independent International Commission:

[...] the lengthy approval processes of the EU apparatus have severely inhibited the speedy allocation of urgently needed sums. Millions of Euros were committed but not disbursed. Delays were caused partly by the fact that EU finance ministers objected to making budgetary contributions to an entity that could not in the ordinary sense be understood as a country. This refusal directly contributed to UNMIK's inability to meet its financial obligations at the end of 1999. EU procedures have now been streamlined and the approval process made more efficient, but obstacles remain. For one thing, the EU Commission has assessed the Kosovo alimentation requirement until 2006 at 6 billion Euros; this figure is at odds with that put forward by EU finance ministers. For another, the European Agency for Reconstruction is controlled by two

Learned and Future Perspectives, Peter Lang Switzerland and Centre for Security Studies (CSS) ETH Zurich, Bern 2001, 147 to 155.

⁷²⁹ This part of the report comes from an analysis of the publication Centre for OSCE Research (CORE), *Kosovo. Mission Information Package*, Institute for Peace Research and Security Studies at the University of Hamburg, May 2002.

⁷³⁰ For instance, the threat or implementation of sanctions was ineffectual and the arms found their way to the combatants despite the embargo carried out by the Union.

administrative committees, one in Prishtina/ Pristine and the other one in Brussels. This creates unnecessary duplication in every single decision. They have to base their deliberations on 80 different EU regulations. The various committees do not meet more than once a month, which causes additional delay. New guidelines which limit the administrative committees to strategic orientation rather than to micro management are desperately needed. The European Agency for Reconstruction in Prishtina/Pristine is controlled by an Administrative Committee that consists of representatives from all of the 15 member states. Thus, Brussels red tape impedes not only the reconstruction of Kosovo, but the recovery of the wider Balkan region. The Stability Pact has made some progress, but is far from meeting the expectations of the Balkan peoples.⁷³¹

To fully understand the situation is worth reporting that the European Agency for Reconstruction (EAR) insisted for all its projects to be controlled by municipal authorities, despite overwhelming evidence that many of these municipalities were biased against Serbs and other minorities. The result was that in 2000 an estimated 2 % of EAR assistance went to minorities and in 2001 only 3.7 %.⁷³²

5. The Council of Europe

Although not officially part of the UNMIK structure, the CoE has set up an office in Prishtinë/Priština since July 1999. Since its deployment the CoE has worked closely with UNMIK, OMIK and EU in contributing to the reconstruction of the judiciary and local administration, as well as the protection and promotion of human and minority rights and institution building. Activities undertaken by the CoE included the observation of the October 2000 municipal and the November 2001 assembly elections as well as the co-operation with OMIK in human rights awareness raising campaigns. Furthermore, the CoE was also closely involved in the work of the Joint Advisory Council on Legislative Matters and in the training of judges, prosecutors and lawyers. Besides, the CoE also co-operated with the Kosovo Judicial Institute (KJI), the Human Rights Centre of the University of Prishtinë/Priština, the Kosovo Law Centre (KLC) and the Ombudsperson Institution. In 2003 the Local democracy Agencies (LDAs) in Gijlan/Gnjilane was created to deal with activities concerning capacity building for local authorities.⁷³³

⁷³¹ The Independent International Commission on Kosovo, *op.cit.* note 639, 124.

⁷³² Clive Baldwin, *Minority Rights in Kosovo under International Rule*, *op.cit.* note 720, 19.

⁷³³ For further information about the LDAs please see the section dedicated to the co-operation in Croatia. The LDA in Gijlan/Gnjilane also worked, *inter alia*, on inter-ethnic dialogue initiatives in Mitrovicë/Kosovska Mitrovica.

With regard to the co-operation with other international organisations, it worth mentioning that the CoE and the OSCE Mission in Kosovo has closely co-operated in the fields of rule of law, democratization, human rights, media affairs and elections. The OSCE has also provided office space to the CoE in the OSCE headquarters building in Prishtinë/Priština. In addition, the CoE together with the OSCE provided for an assessment mission on the situation of the Roma in the whole of the FRY, including Kosovo.⁷³⁴ In the year 2000, the Council of Europe has also seconded experts to OMIK. In addition, the CoE, through its Venice Commission and the CLRAE network, co-operated with the OSCE on legislative matters in Kosovo.⁷³⁵ In 2004, UNMIK and the CoE signed a specific agreement on technical arrangements related to the monitoring of the CoE Framework Convention for the Protection of National Minorities (FCNM) to UNMIK.⁷³⁶ Furthermore, UNMIK relied on the expertise provided by the CoE for an analysis of the FRY Penal and Criminal Procedure Code, the Republic of Serbia Penal Code, and the Serbian Law on Internal Affairs and the Law on Public Peace and Order.⁷³⁷

IV. THE KOSOVO DECLARATION OF INDEPENDENCE AND THE INTERNATIONAL COMMUNITY

A. The International Community and the Ahtisaari plan

In November 2005, former Finnish President Martti Ahtisaari was appointed special envoy of the UN Secretary-General to prepare a proposal for the future status of Kosovo. The UN-led process followed a set of "guiding principles" agreed upon by the

⁷³⁴ See Committee of Ministers of the Council of Europe, Doc CN/Inf(99)48, "Kosovo. Council of Europe's contribution to the United Nations Interim Administration Mission in Kosovo", Information Documents, 23 July 1999, para. 12.

⁷³⁵ The CoE was also instrumental in providing norms on data protection with regard to registration, and provided valuable expert opinion on further draft legislation, such as the ombudsman regulation, the municipal law and the draft criminal code. The Municipal Law was also reviewed by the CLRAE. The draft broadcast code was prepared with input and recommendations by the Council of Europe.

⁷³⁶ See Agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the Framework Convention for the Protection of National Minorities, 23 August 2004.

⁷³⁷ See Committee of Ministers of the Council of Europe, Doc. CN/Inf (99)60, "Kosovo. Council of Europe contribution to UNMIK State of Implementation at 20 September 1999," Information Documents, 24 September 1999, para. III.2.i.

Contact Group countries.⁷³⁸ No return to the pre-1999 situation, no partition of Kosovo and no redrawing of international borders in the region were among the top priorities to take into account in preparing the comprehensive proposal.⁷³⁹ After 15 rounds of talks and a final high-level meeting between Belgrade and Pristina in Vienna on 10 March 2007, Mr Ahtisaari delivered his plan, comprising a four-page Report and the 63-page Comprehensive Proposal for the Kosovo Status Settlement,⁷⁴⁰ to the UN Secretary-General on 15 March 2007.⁷⁴¹

Already on 12 March 2007, however, Mr. Ahtisaari declared talks on the future status of the province deadlocked.⁷⁴² The negotiation was also disturbed by the Montenegro's declaration of independence from Serbia, occurred in June 2006. To the partition of the FRY Belgrade reacted with a new Constitution. The document was adopted by referendum on 28-29 October 2006 following a campaign that was dominated by the Kosovo issue; the latter was considered in the new document as an integral part of Serbia.

On 26 March, the UNSC forwarded Mr Ahtisaari's proposal to the United Nations Security Council, fully supporting Mr Ahtisaari's recommendation for a supervised independence.⁷⁴³ The Ahtisaari plan provided the foundations for the creation of an independent state of Kosovo with its own constitution, state symbols, security forces, and the right to become a member of international organisations. Settlement implementation was to be supervised through international bodies. Transition period was planned for a term of 120-days at the end of which, UNMIK's mandate should expire and all legislative and executive powers transferred to Kosovo's governing authorities. International presence in the field will rest in place. In this context, the Plan foresaw the establishment of an International Civilian Office (ICO) to be headed by an International Civilian Representative (ICR)—a position held by the EU Special

⁷³⁸ Namely: France, Germany, Italy, the United Kingdom, the United States, and Russia. See NATO Parliamentary Assembly, *Kosovo and the Future of Balkan Security*, Special Report 163 CDS 07 E rev 2, 6 October 2007, 8.

⁷³⁹ See NATO Parliamentary Assembly, Committee Report No. 163 CDS 07 E rev 2, "Kosovo and the Future of Balkan Security", prepared by Vitalino Canas, Annual Session, Reykjavik 2007, para. 46.

⁷⁴⁰ See United Nation Security Council, "Comprehensive Proposal for the Kosovo Status Settlement, UN Doc. S/2007/168/Add.1, 26 March 2007.

⁷⁴¹ See Commission of the European Communities, Commission Staff Working Document, "Kosovo under UN Security Council Resolution 1244, 2007 Progress Report, SEC(2007) 1433 in COM(2007)663, Brussels 6 November 2007, 5.

⁷⁴² See "Ban Ki-Moon receives Contact Group report on Kosovo" in *UN News Service* 7 December 2007. Available at <<http://www.unmikonline.org/news.htm#0712>>.

⁷⁴³ See Commission of the European Communities, Progress Report, SEC(2007)1433, 6 November 2007, 5. Available at <<http://www.unhcr.org/refworld/docid/47382c2f2.html>>.

Representative.⁷⁴⁴ The Proposal further provided for the creation of protection zones and privileges for the Serbian Orthodox Church. In addition, six new or significantly expanded Kosovo Serb majority municipalities would be set up.⁷⁴⁵ The word “independence,” however, was never mentioned in the Ahtisaari proposal.⁷⁴⁶

The presentation of Ahtisaari's report triggered serious debate in the international arena. Although the official endorsement received by Kosovo Albanians,⁷⁴⁷ by the European Union and their member states individually and by NATO, Kosovo Serbs rejected the plan. Belgrade backed their stand recalling that the only acceptable agreement would be the one reached at the UNSC.⁷⁴⁸ From Moscow, Russia made clear that until superseded by a new decision, Security Council Resolution 1244 (1999) would have remained in force.⁷⁴⁹ Meanwhile, finding a consensus in the Security Council, where each one of the permanent members has a veto right, proved to be impossible.⁷⁵⁰ The impossibility to reach an agreement moved the UNSC, following a Russian proposal, to send a fact-finding mission to the region to report on the situation on the ground. The visit took place on 25-28 April, and the report of the mission was presented to the Security Council in May 2007.⁷⁵¹

Contextually, the International Community continued to insist that a UNSC Resolution based on the Ahtisaari proposal would be the best possible solution for the Kosovo status.⁷⁵² In August 2007, the stand-still on a new UNSC resolution led the UN Secretary-General to invest a Troika of negotiators, namely Frank Wisner representing the United States, Wolfgang Ischinger representing the EU, and Alexander Botsan-

⁷⁴⁴ See NATO Parliamentary Assembly, Committee Report No. 163 CDS 07 E rev 2, *op.cit.* note 739, para. 50.

⁷⁴⁵ See “Ban Ki-moon receives Contact Group report on Kosovo” in *UN News*, 7 December 2007.

⁷⁴⁶ Reference is in fact given to the “multi-ethnicity” of the Kosovo society; the proposal in fact envisages in its Article 1 Kosovo “multiethnic society, which shall govern itself democratically, and with full respect for the rule of law, through its legislative, executive and judicial institutions.” See “Comprehensive Proposal for the Kosovo Status Settlement”, UN Doc. S/2007/168 Add.1, *op.cit.* note 740.

⁷⁴⁷ The Kosovo Assembly confirmed this in a vote on 14 March 2007.

⁷⁴⁸ See Commission of the European Communities, Progress Report, SEC(2007)1433, *op.cit.* note 743, 5.

⁷⁴⁹ See International Crisis Group, *Kosovo Status: Difficult Months Ahead*, (Europe Briefing No. 45, 20 December 2006), 4. ICG further clarified that “Moscow also insisted that Ahtisaari’s proposal should not be seen as a ready-made package to impose but as a starting point for a new round of bilateral negotiations. Since October 2006, Moscow has made increasingly clear that it will not support a settlement imposed upon Belgrade, in either the Contact Group or the Security Council”.

⁷⁵⁰ See NATO Parliamentary Assembly, Committee Report No. 163 CDS 07 E rev 2, *op.cit.* note 739, para. 52.

⁷⁵¹ *Ibid.*, para. 53.

⁷⁵² See NATO Parliamentary Assembly and the Centre for the Democratic Control of Armed Forces (DCAF), “Whither Serbia? NATO, the EU and the Future of the Western Balkans?”, Seminar Report Doc. 151 JOINT 07 E, Annual Meeting 2007, 21 June 2007, 6.

Kharchenko representing the Russian Federation, with the task of facilitating a further period of negotiations of 120 days.⁷⁵³ Thus, a second cycle of negotiations started in August 2007, led by a troika of negotiators who was asked to report back to the UN on 10 December 2007. The solution satisfied Belgrade, which argued that previous negotiations had failed in part because of the pre-conceived outcome, was this time rejected by Pristina. The latter warned that further postponement would have only increased tension and impatience among Kosovo's population.⁷⁵⁴

Apart from those directly involved in the negotiations, namely Russia, the U.S and the EU, support to the Troika came by NATO and the UN. On 15 October 2007 members of the NATO-Russia Council reiterated their support to the negotiating efforts of the EU-US-Russia Troika and expressed the hope that the new period of engagement between Belgrade and Pristina would lead to an agreement on Kosovo's future status.⁷⁵⁵ The Council was followed by the NATO Secretary-General.⁷⁵⁶ Support came also by Resolution 359 of the NATO Parliamentary Assembly and the final communiqué of the NAC dated 7 December 2007.⁷⁵⁷ The final communiqué further explained KFOR's commitment to remain operative on the basis of UNSC Resolution 1244, unless the UNSC would decide otherwise.⁷⁵⁸

For the UN, on 15 November 2007, the Secretary-General's Special Representative for Kosovo, Joachim Rucker, remarked his conviction in a positive outcome to the Troika-led negotiation process.⁷⁵⁹ The decision, however, moved the process beyond the UN's framework and away from earlier ideas of reaching an agreement on a new UNSC

⁷⁵³ In a statement on 1 August 2007, the UN Secretary General welcomed this initiative, as well as the new arrangements agreed to by the Contact Group for pursuing negotiations between the parties.

⁷⁵⁴ See NATO Parliamentary Assembly, Committee Report No. 163 CDS 07 E rev 2, *op.cit.* note 739, para. 54.

⁷⁵⁵ See NATO-Russia Council, "NATO-Russia Council meets with Kosovo Troika", in *NATO Press Release*, 15 October 2007.

⁷⁵⁶ See speech by the NATO Secretary General Jaap de Hoop Scheffer at the conference "Kosovo – Security for All", 30 December 2007. Available at <http://www.nato.int/docu/speech/2007/s071130a.html>.

⁷⁵⁷ See NATO Parliament Assembly, Resolution No. 359(2007) on "Encouraging Stability in the Western Balkans", 9 October 2007, para. 13 (f). Available at <http://www.nato-pa.int/Default.asp?CAT2=144&CAT1=141&CAT0=576&COM=576>.

⁷⁵⁸ See NATO Final communiqué Ministerial meeting of the North Atlantic Council held at NATO headquarters, in *NATO Press Release* Doc. PR (2007)130, Brussels, 7 December 2007, para. 2.

⁷⁵⁹ See UN Daily Press Briefing by the Offices of the Spokesperson for the Secretary-General and the Spokesperson for the General Assembly President, 15 November 2007 – available at <http://www.un.org/News/briefings/docs/2007/db071115.doc.htm>.

Resolution that would settle Kosovo's status. Although formally not in breach of legal norms, this decision moved the negotiation far from formal UN channels.⁷⁶⁰

B. After Ahtisaari and before the Troika process

The NATO 66th Rose Seminar of June 2007 was the occasion for Joachim Rucker, the UN SRSG in Kosovo to declare that UNMIK has achieved all that is possible under the current mandate. The same Rucker promptly defined the Ahtisaari plan a proposal with all the right elements for a fair and sustainable solution.⁷⁶¹ The same June, in the occasion was the 62nd Session of the UN General Assembly, Russia called for a continuation of the negotiating process to find an acceptable solution for both parties. The solution, according to Moscow, should be in full observance and compliance with the Security Council Resolution 1244. Hasty decisions able to boost separatist feelings were among Russian concerns.⁷⁶² In this scenario, the PACE in its Recommendation 1780 (2007) of July 2007 punctually reiterated its availability to play a role in the future Kosovo institutional framework:

“At the request of interested partners and international organisations, the Council of Europe's offer of help, in its sphere of competence, will be reiterated, while in due course taking account of the prospects which would be afforded by the adoption of a new legal and institutional framework. The main lines of the assistance on offer correspond on the whole to those mapped out by the Assembly. However, it will not be possible to fill in the details until a final settlement has been approved and in-depth consultations with all parties concerned have taken place, allowing to define the exact nature of the Organisation's contribution. This applies in particular with regard to its involvement in any future international civilian presence.”⁷⁶³

The same month, the EU in its Multi-Annual Indicative Planning Document for years 2007-2009 for Kosovo made clear its intention to contribute to the realisation of requirements in relation to any future status settlement and to support Kosovo to develop into a stable, modern, democratic and multi-ethnic society. “*The authorities of*

⁷⁶⁰ Natalie Tocci, *The European Union as a Normative Foreign Policy Actor*, (Centre for European Policy Studies (CEPS) Working Document No.281/January 2008), para. 6.2.

⁷⁶¹ See NATO Parliamentary Assembly, 66th Rose-Roth Seminar, “South East Europe: Unfinished Business”, Dubrovnik, 24-26 June 2007, para. 26.

⁷⁶² See Permanent Mission of the Russian Federation to the UN, “Position of the Russian Federation at the 62nd Session of the UN General Assembly”. Available at <http://www.un.int/russia/new/MainRoot/index_plain.html>.

⁷⁶³ See Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1780(2008), “Current situation in Kosovo”, Doc. CM/AS(2007)Rec1780, 16 July 2007.

Kosovo will be accompanied by a future international civilian presence that will have corrective, monitoring and mentoring functions,” were the words used by the EU.⁷⁶⁴ In addition, support given to the implementation of the UN Standards for Kosovo was clearly indicated in the planning document.⁷⁶⁵

In this context, a further attempt to strengthen the value of the Ahtisaari plan can be found in the “Pocantico Declaration.” Held at the Pocantico Conference Centre from 12-14 April 2007, the conference on “Developing a Strategy for Kosovo’s First 120 Days” was designed to assist the Kosovo government in pursuing for a sound strategy for governance during the critical first 120 days, as envisaged by the Ahtisaari plan. The conference was chaired by Ambassador Frank Wisner and Ambassador Wolfgang Petritsch. One of the accomplishments of the meeting was the signing of the Pocantico Declaration, in which the Kosovo Unity Team⁷⁶⁶ pledged to collaborate and work together in the planning and implementation of significant aspects of the Ahtisaari plan.⁷⁶⁷

C. Kosovo Standards implementation and the status process

The time in between the presentation of the Ahtisaari proposal, March 2007, and the end of the Troika reporting period, December 2008, was useful for evaluating the implementation of the UN “Standard before Status” policy. The importance of such an analysis is confirmed by the Recommendation 1822(2008) of PACE:

“1. [...] Parliamentary Assembly strongly affirms that in no way should the status process shift the attention of the Provisional Institutions of Self-Government (PISG) and the international community from the implementation of the Standards for Kosovo. In fact, putting a renewed and resolute focus on standards is even more necessary to foster trust and facilitate

⁷⁶⁴ The document also explains how the EC’s assistance gradually evolved to reflect and support Kosovo's participation in the Stabilisation and Association Process, to fulfil European Partnership priorities.

⁷⁶⁵ See EC Commission Decision C(2007)2271 of 01 June 2007 on a Multi-annual Indicative Planning Document (MIPD) 2007-2009 for Kosovo under UN Security Council Resolution 1244, 9.

⁷⁶⁶ Composed by: President Fatmir Sejdiu, Prime Minister Agim Çeku, President of the Assembly Kolë Berisha, and the leaders of the two main opposition parties, Hashim Thaçi, President of PDK and Veton Surroi, President of ORA.

⁷⁶⁷ For further information see, “Developing a Strategy for Kosovo’s First 120 Days,” Conference Summit Report, Pocantico Conference Centre of the Rockefeller Brothers Fund, Tarrytown, NY, 12-14 April 2007.

reconciliation in the current climate of political tension, determined by the failure to reach a compromise.”⁷⁶⁸

Created as a series of benchmarks to measure the progress achieved by Kosovo's institutions, the “Standard before Status” policy, although applied since 2001, was formally endorsed in December 2003 with the publication of the “Standards for Kosovo”, followed by the “Kosovo Standards Implementation Plan” of March 2004.⁷⁶⁹ However, due to the violence of March 2004 the policy was reviewed and priority was given to those standards reinforcing multi-ethnicity and decentralisation. It became clear that requesting the full implementation of all standards as a prerequisite for talks on the final status of Kosovo would be unrealistic. The events of March 2004 were also widely interpreted as a failure by the international community to prevent and respond to inter-ethnic violence. Hesitations regarding the issue of standards and how to assess progress towards standards implementation were marks of certain deficiencies in the planning phase and revealed problems in the continuity of the international effort.⁷⁷⁰

In May 2005, UN Special Envoy Kai Eide was assigned to reconsider the implementation of the standards. In his report, dated October 2005, Eide concluded that the implementation of standards “...has been uneven.” He characterised organised crime and corruption as “widespread phenomena” and described the Kosovo society as “deeply-divided...which is still recovering from post-conflict trauma.”⁷⁷¹ Few months later, the European Partnership adopted in January 2006⁷⁷² integrated the content of all eight chapters of the “UN Standards for Kosovo” into its general structure. This resulted in one single legal framework for implementation and monitoring.⁷⁷³

In October 2007, Mr. Eide expressed concern for the insufficient attention given to the standards’ implementation during the status process and the inadequate incentives

⁷⁶⁸ See Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1822 (2008), “Developments as regards the future status of Kosovo”, 22 January 2008, para. 1.

⁷⁶⁹ Jürgen Friedrich, “UNMIK in Kosovo: Struggling with Uncertainty”, in *Max Planck Yearbook of United Nations Law*, Vol. 9 (2005), 260-261.

⁷⁷⁰ See NATO Parliamentary Assembly, Committee Report No. 163 CDS 07 E rev 2, *op.cit.* note 739, para. 43.

⁷⁷¹ See UN Security Council, Doc. S/2005/635, 7 October 2005, 3.

⁷⁷² See EU Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2004/520/EC (2006/56/EC).

⁷⁷³ See EC Commission Decision C(2007)2271 of 01 June 2007 on a Multi-annual Indicative Planning Document (MIPD) 2007-2009 for Kosovo under UN Security Council Resolution 1244, 5.

provided for Kosovo Albanians in the implementation process.⁷⁷⁴ In this scenario, what is clear of the UN “Standards before Status” is that it has never been accepted by Kosovo leaders as they have never considered the standards their own goals.⁷⁷⁵ Furthermore, it is widely recognised that the uncertainty connected with Kosovo's final status has undermined progress on the ground.⁷⁷⁶ UNMIK introduced the “standards before status” policy, albeit rather late. The international negotiations on the status of Kosovo were mistakenly undertaken before the country had been stabilised.”⁷⁷⁷

D. Kosovo unilateral declaration of Independence: the reaction of the key-players

The Kosovo unilateral declaration of independence arrived on Sunday 17 February 2008. Read by its Prime Minister Mr. Hashim Thaçi in an Assembly of Kosovo convened in an extraordinary meeting, the declaration began presenting Kosovo as an independent and sovereign state in “*full accordance with the recommendations of UN Special Envoy Martti Ahtisaari and his comprehensive Proposal.*”⁷⁷⁸ In the declaration of independence, authorities in Pristina committed themselves to implementing the Ahtisaari plan, although this document was not approved by the UNSC and has therefore no binding value.⁷⁷⁹ This is of utmost importance because according to the Ahtisaari plan, at the end of the transition period of 120 days, all responsibilities were to be transferred to Kosovo's institutions and the mandate of UNMIK terminate. This is bound to create difficulties, as there was by then no plan to terminate UNMIK's deployment in Kosovo.⁷⁸⁰ International reaction to Pristina's declaration of independence arrived immediately.⁷⁸¹ While Thaçi was reading the declaration, ten ministers from the Serbian government went, with television crews, to Kosovo, both the north and the enclaves. Meanwhile Kostunica stated:

“As of today, we must show greater concern and solidarity with our people in Kosovo-Metohija. Ministries have been directed to work and provide considerably better living

⁷⁷⁴ See NATO Parliamentary Assembly 67th Rose-Roth Seminar, “Serbia and Europe: Challenges of Integration,” Seminar Report Doc. 243 SEM 07 E, October 2007, para. 7-9.

⁷⁷⁵ Jürgen Friedrich, *op.cit.* note 769, 260-261.

⁷⁷⁶ *Ibid.*

⁷⁷⁷ “Katarina Mallok on Kosovo’s uncertain future,” in *Courrier International*, 23 November 2007.

⁷⁷⁸ See Article 1 of the Kosovo Declaration of Independence, 17 February 2008.

⁷⁷⁹ See NATO Parliamentary Assembly, Committee Report No. 155 CDS 08 E bis, “Kosovo and the Future of Balkan Security”, prepared by Vitalino Canas, Annual Session, Valencia 2008, para. 34.

⁷⁸⁰ *Ibid.*, para. 41.

⁷⁸¹ As of 3 April 2008, 36 states, mostly in Europe and North America, have recognized the newly independent state of Kosovo.

conditions, help create new jobs and launch investments in the province. The state of Serbia will take greatest possible care about its each and every citizen in Kosovo-Metohija.”⁷⁸²

Soon after the Kosovo declaration of independence, Serbian Foreign Minister Vuk Jeremic, in his intervention to the Permanent Council of the OSCE called the UN SRSB to proclaim the illegitimacy of Kosovo’s unilateral declaration of independence. Serbian Foreign Minister also clarified that KFOR’s capacity to operate in the field would have been conditioned to the neutrality of its status.⁷⁸³ The EU did not manage to reach agreement on a joint recognition because of the reservations expressed by some of its member states (notably Romania, Slovakia, Spain, and Cyprus). However, the Council welcomed the continued presence of the international community based on UNSC Resolution 1244 and took notes that “*its Members States would decide, in accordance with national practice and international law, on their relations with Kosovo.*” In conclusion, the Council reaffirmed its conviction of Kosovo as a *sui generis* case.⁷⁸⁴

In this context, the President of the European Parliament Mr. Hans-Gert Pöttering opened the February plenary session by saying that Kosovo’s declaration of independence reflected the “will of the people.” Furthermore, Mr Pöttering told MEPs that the case of Kosovo is not to be considered as a precedent: “The situation in Kosovo is unique; it is a special case which cannot be compared with others.” In addition, the President welcomed the Council’s decision to send a police and administrative mission to Kosovo to help achieving a smooth transition in the region.⁷⁸⁵

On the military presence after the declaration, NATO reaffirmed that KFOR would have remained in Kosovo on the basis of UNSCR 1244. On this point, Lieutenant General Xavier de Marnhac, KFOR Commander, declared:

“In this time of uncertainty following Kosovo's Declaration of Independence, one thing is certain. KFOR's mission remains unchanged. We will continue to provide a safe and secure

⁷⁸² See Prime Minister Kostunica’s proclamation, “Phoney stated declared on Serbian’s territory due to US policy of force”, 17 February 2008. Available at <www.srbija.sr.gov.yu/vesti/vest.php?id=83166>.

⁷⁸³ See Address to the Permanent Council of the Organization for Security and Co-operation in Europe by H.E. Mr. Vuk Jeremić Minister of Foreign Affairs of the Republic of Serbia Vienna, 19 February 2008. Available at <<http://www.osce.org/item/29723.html>>.

⁷⁸⁴ See Council Conclusions on Kosovo, 2851st External relations Council meeting, Brussels, 18 February 2008.

⁷⁸⁵ See EU Parliament “Monday in Plenary: Kosovo, supermarket dominance,” 19 February 2008. Available at <http://www.europarl.europa.eu/news/public/story_page/008-21496-168-06-25-901-20080215STO21487-2008-16-06-2008/default_en.htm>.

environment for all the people of Kosovo regardless of ethnicity or location. KFOR will execute this mission with impartiality and in a determined manner. As always, KFOR will not tolerate any acts of provocation or violence. It is of utmost importance that KFOR remain impartial and not interfere with the very delicate political process that is ongoing. We must all take care not to be seen as participating in social events either supporting or renouncing Kosovo's Independence.”⁷⁸⁶

NATO Secretary General remarked the importance of KFOR neutral status in the field by saying:

“All parties should recognize that KFOR will continue to fulfil its responsibility for a safe and secure environment throughout the territory of Kosovo, in accordance with UNSCR 1244, unless the Security Council decides otherwise. KFOR will continue to provide security for all citizens of Kosovo, majority and minority alike, in an impartial manner, just as before.”⁷⁸⁷

On 18 February 2008, the NAC further reaffirmed the validity of UNSCR 1244 for the KFOR deployment. “...as agreed by Foreign Ministers in December 2007, unless the UN Security Council decides otherwise NATO’s responsibility and capability to ensure a safe and secure environment in Kosovo remain unchanged. KFOR will continue to execute this mandate in an impartial manner in accordance with its Operational Plan.”⁷⁸⁸ For the UN, Secretary General Ban Ki-Moon in bringing the declaration to the attention of the Security Council, ensured that pending the guidance of the Council UNMIK would have continued to consider the UNSC Resolution 1244(1999) the legal framework for its mandate.⁷⁸⁹ Meanwhile, the OSCE guaranteed that although the situation in Kosovo was to be discussed, each of the Participating States would have addressed Kosovo’s declaration of independence in their national capacity.”⁷⁹⁰

⁷⁸⁶ See “COMKFOR letter regarding Kosovo's Independence” in NATO *KFOR Chronicle* (ed.3/2008), 29 February 2008, 3.

⁷⁸⁷ See “Statement by the Secretary General in reaction to the Kosovo declaration of independence” in *NATO Press Release* (2008)21, 17 February 2008. Available at <<http://www.nato.int/docu/pr/2008/p08-021e.html>>.

⁷⁸⁸ See “Statement by the North Council after Kosovo’s declaration of independence” in *NATO Press Release* (2008)025, 18 February 2008. Available at <<http://www.nato.int/docu/pr/2008/p08-025e.html>>.

⁷⁸⁹ See UN Media Division, “Secretary-General says, Pending Security Council guidance, Resolution 1244 (1999) will remain legal framework for mandate of UN Kosovo Mission”, Secretary-General SG/SM/11424, 17 February 2008.

⁷⁹⁰ See “OSCE Chairman issues statement on Kosovo’s independence declaration” in *OSCE Press Release*, 18 February 2008. Available at <<http://www.osce.org/item/29742.html>>.

*E. After the Independence*⁷⁹¹

To confirm the constant danger of instability, after the declaration of independence a number of serious incidents took place. On 17 and 21 February 2008, demonstrators in Belgrade attacked several foreign embassies, drawing harsh international criticism of Belgrade's incapacity or unwillingness to prevent these incidents. Contextually, grenade and Molotov cocktail attacks were directed at UN and EU facilities and vehicles in Northern Kosovo. On 19 February, two customs and border posts at Brnjak and Jarinje were attacked and burned down.⁷⁹² Other attacks followed on 21 and 25 February against border police at the Merdare and Mutivode posts.⁷⁹³ On 3 March, Serbian Railways staff attempted to take control of a section of Kosovo's railway network in the municipality of Zeeman in northern Kosovo. Finally, on 17 March, UNMIK police and KFOR had to intervene to break the occupation of the district court in north Mitrovica by former employees. This intervention provoked a reaction from local groups of Serbs, who mobilized to free some of the detainees. Streets were then blocked and police forces and troops attacked with small arms, grenades, and Molotov cocktails. These events, which KFOR officials denounced as acts of "urban guerrilla", marked the first time that international forces had come under direct fire from local groups. Reports indicate that some 100 foreigners and 80 Serbs were injured in this violence. One Ukrainian UNMIK policeman lost his life.⁷⁹⁴

In February, several EU member states and the U.S. joined forces to establish an International Steering Group to supervise Kosovo independence. The reaction in Serbia was marked with street violence and government disunity.⁷⁹⁵ The International Steering Group, formed by fifteen countries, and not including Russia, was a shadow of the structure called for under the Ahtisaari plan.⁷⁹⁶ Then it seems that Belgrade instructed Kosovo Serbs to refuse contact with the new EU missions by insisting that the only international presences with which they would have been ready to cooperate

⁷⁹¹ This part is based on the research conducted by the International Crisis Group in the report *Kosovo's First Month*, (Europe Briefing No. 47, 18 March 2008).

⁷⁹² That evening Minister Samardzic declared the attacks "not pretty", but in line with Serbian government policy. See, "Samardzic: legitimate actions", interviewed on *B92 TV's Poligraf programme*, 19 February 2008.

⁷⁹³ See NATO Parliamentary Assembly, Committee Report No. 155 CDS 08 E bis, *op.cit.* note 779, para. 22.

⁷⁹⁴ *Ibid.*

⁷⁹⁵ See International Crisis Group, *Kosovo's First Month*, *supra* note 791.

⁷⁹⁶ *Ibid.*, 17.

with were those mandated under Security Council Resolution 1244 of 1999, namely UNMIK and NATO.⁷⁹⁷

Kosovo's independence has split the international community. The Ahtisaari plan, the ICO and the EULEX mission lacked initial UN Security Council backing due mainly to Russian opposition. Therefore, Secretary-General Ban Ki-moon stated on 18 February that: *"It is my intention to act in an effective, realistic and concrete manner. In doing so, pending Security Council guidance, I might have to adjust to developments and changes on the ground"*.⁷⁹⁸

But in the face of strong opposition from Russia, which also held the presidency of the Security Council in March, to any Ahtisaari-like transition, he decided not to extend a public invitation to the EU missions. These difficulties were further confirmed by Brendan Varma, UN Secretary-General's spokesperson, who reportedly to the BBC that: *"At this point the UN mission has not entered the transition period. We are still on the ground, as we have been since 1999. UNMIK will perform the duties entrusted to it with Resolution 1244, until [the] UN Security Council [has] decided otherwise....We would, of course, welcome agreement on this problem, but the Council is at the moment deeply divided. The Secretary-General's position is that our mission will continue in Kosovo until the Council tells them to stop"*.⁷⁹⁹ On 11 March, UN and EU officials met in New York to search for a cooperation formula; some concrete ideas were discussed, but no final plan was agreed.⁸⁰⁰ As for the OSCE, the future of the Kosovo mission, which was supposed to provide much of the ICO's field presence, was put into doubt by Serbia and Russia, which were keeping it on a renewable monthly mandate while pressuring it to be "status neutral."⁸⁰¹

F. The position of the EU

Following the recommendations made in the Ahtisaari proposal, the EU had started preparations for the deployment of two separate missions: an International Civilian Office, which, according to the Ahtisaari's proposal, was meant to supervision of the implementation of the proposal's provisions; and an ESDP rule of law mission, namely

⁷⁹⁷ *Ibid.*, 8.

⁷⁹⁸ *Ibid.*, 15.

⁷⁹⁹ See "UN confirms: No transfer of jurisdiction to EU" in *B92 News Service*, 28 February 2008.

⁸⁰⁰ International Crisis Group, *Kosovo's First Month*, *op.cit.* note 791, 15.

⁸⁰¹ *Ibid.*, 17.

the EU Rule of Law Mission in Kosovo (EULEX KOSOVO) to support the Kosovo authorities by monitoring, mentoring and advising on all areas related to the rule of law.⁸⁰² The Council approved the deployment of these two missions on 4 February 2008, and the Council statement of 18 February placed the missions under the aegis of Resolution 1244.⁸⁰³ Simultaneously, Mr. Pieter Feith was appointed as European Union Special Representative (EUSR) in Kosovo and mandated, *inter alia*, to provide local political guidance to the Head of the European Union Rule of Law Mission in Kosovo, and function as the future International Civilian Representative.⁸⁰⁴ Despite the EU's growing commitment, the UN Secretary-General expressed his belief that a negotiated solution for Kosovo with support from the Security Council, would have represented the best way forward.⁸⁰⁵ In his view, any failure to resolve Kosovo's future status within the framework of the UN would have produced serious repercussion within the UN system.⁸⁰⁶

To this end, the EU contended for Resolution 1244 not to be conceived as a predetermined outcome of the final status talks.⁸⁰⁷ Confirming the interpretation of UNSC Resolution 1244, the EU was of the opinion that "*acting to implement the final status outcome in such a situation is more compatible with the intentions of 1244 than continuing to work to block any outcome in a situation where everyone agrees that the status quo is unsustainable.*"⁸⁰⁸ On this aspect, Solana, in an interview to the Belgrade weekly *NIN*, declared that the EU's decision to send its mission to Kosovo could not be qualified as a violation of international law, although UNSC Resolution 1244 did not mention such a possibility.⁸⁰⁹

⁸⁰² For further information please EU Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.

⁸⁰³ Supporters of this approach cite paragraph 10 of the resolution 1244, which "authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo". NATO Parliamentary Assembly, Committee Report No. 155 CDS 08 E bis, *op.cit.* note 779, para. 31.

⁸⁰⁴ See EU Council Joint Action 2008/123/CFSP of 4 February 2008 appointing the EU Special Representative in Kosovo.

⁸⁰⁵ Contributing to the urgency of getting a clear message from the UN Security Council there was also the fact that in January 2008 the five new members of the Security Council would be bound to require time to familiarize themselves with the issues.

⁸⁰⁶ See United Nation Daily Press, Briefing by the Office of the Spokesperson for the Secretary General, 3 January 2008.

⁸⁰⁷ Christopher J. Borgen, "Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition" in *The American Society of International Law (ASIL)*, Vol. 12-Issue 2, 29 February 2008.

⁸⁰⁸ Paul Reynolds, "Legal furore over Kosovo recognition" in *BBC News*, 16 February 2008.

⁸⁰⁹ See "Samardzic sharply criticizes Solana over EU mission" in *B-92 News Service*, 28 December 2007.

V. EVALUATION OF THE CO-OPERATION

A. Ethnic cleansing and international response⁸¹⁰

The analysis conducted has shown the difficulties encountered by the international organisations have in simultaneously undertaking operations which have been planned, designed and authorized separately. An unfortunate example can be retrieved from the study of UNMIK-KFOR interaction in first entering the country. In this case, upon arrival UNMIK and KFOR in fact witnessed a further mass exodus and displacement of Kosovo's minorities, in particular Serbs, Roma and, in certain areas, Albanians. To have an idea of the figures, by October 1999 the Yugoslav Red Cross stated that there were 234,000 Serb and Roma from Kosovo who were internally displaced in Serbia and Montenegro.⁸¹¹ In this situation, minorities that remained in Kosovo lived in a situation of extreme fear and violence and felt unable and unsecure to move freely. While willing to get involved in the protection of minorities in Kosovo, KFOR was not mandated to perform such task. In addition, the late deployment of the UN mission and the then historical aspect of the conflict revealed serious mistakes, at worst an underestimation, in planning the operation. A sort of "lesson unlearned" from the experience in Bosnia and Herzegovina. In addition, an overall consideration of the years will lead to recognise that the UN administration has been characterized by recurrent waves of violence, latent frictions, which came out finding inappropriate response from neither the UN nor KFOR.⁸¹² In addition the situation was worsened by military measures which ended up in reinforcing segregation.

Further on segregation and discrimination, UNMIK and KFOR have done little to take measures directed at facilitating the integration. On this aspect, it worth looking at the

⁸¹⁰ This part of the evaluation is based on an analysis of the following books: Clive Baldwin, *Minority Rights in Kosovo under International Rule*, *op.cit.* note 720; the Independent International Commission on Kosovo, *op.cit.* note 639 and Kurt Spillman and Joachim Krause, *Kosovo: Lessons Learned for International Cooperative Security*, (Peter Lang, Bern 2000).

⁸¹¹ See OSCE Report, "Kosovo/Kosova. As Seen, As Told" 5 November 1999. An analysis of the human right findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999, Part 2, xvi. Available at: <http://www.osce.org/odihr/17772>.

⁸¹² For instance, after the first wave of attacks in 1999, the authorities hailed a decrease of violence towards the end of 1999. This was followed by a new outbreak of violence in February 2000, following an attack on a UNHCR-run bus for minorities. Once more this was followed by a new wave of attacks on minorities, notably the bombing of the 'Nis Express' bus carrying Serbs in February 2001, in which 10 were killed. A further decrease of violence in 2003 ended with the attacks in March 2004 outlined above.

declaration made by the then UN SRSG after the March 2004 ethnic cleansing: “The concept of a multiethnic Kosovo that the international community has been persistently attempting to implement in recent years is no longer tenable.” The International Crisis Group (ICG) then added to the criticism by expressing concerns over the planning of the operation, in particular on side of KFOR:

“Some of the reasons why the international mission in Kosovo was poorly equipped to handle the violence against the Serbs go back to the negotiations that ended the war. In fact the high level negotiations left little time for advanced planning on handling the challenges of post-war Kosovo. A senior humanitarian official, who entered Kosovo together with KFOR forces, says he never attended any planning sessions with UN or KFOR officials. “There was no grand strategy”, this official concluded”⁸¹³

To facilitate a full understanding on the situation, it is worth noting that in August 1999 Serbs and Roma remaining in Kosovo were facing harassment, intimidation, beatings and even some instances of abduction and murder.⁸¹⁴ In this situation, NATO forces could not properly fill the void left in civil policing. Indeed, some NATO forces began guarding some of the remaining Serbs, but practices varied enormously depending upon which national military force was responsible in a given area, until the situation stabilized.⁸¹⁵ Finally, international officials were caught by surprise by the pace of Albanian refugees returning to Kosovo. By 24 June 1999, less than ten days after NATO deployment in the field, 50,000 people per day were crossing the border back into Kosovo. Within three weeks, half a million had returned to Kosovo.⁸¹⁶ This massive return, together with the destruction of war, the vacuum left by the collapse of Serb institutions, and the slow establishment of international institutions, created a climate of chaos, confusion and disorder which made violence against Serbs all the harder to control.⁸¹⁷

⁸¹³ See International Crisis Group, *Kosovo Report Card*, (Balkans Report No. 100, 28 August 2000), 14.

⁸¹⁴ See Human Rights Watch, *Abuses Against Serbs and Roma in the new Kosovo*, (HRW Report No. 10 (D), Vol. 11, August 1999).

⁸¹⁵ In this particular case, frequent cases of human rights abuses were documented. See The Independent International Commission on Kosovo, *op.cit.* note 639, 206.

⁸¹⁶ According to the Independent International Commission for Kosovo, “NATO was not itself fully prepared for a humanitarian effort”. See also NATO/EAPC Ad Hoc Group, Report from a Seminar on Kosovo Experience With Regard to Compendium on Humanitarian Aspects of Peacekeeping, *Civil-Military Cooperation in Humanitarian Efforts during the Kosovo Crisis: NATO Lessons Learned*, Brussels, 21 October 1999.

⁸¹⁷ See International Crisis Group, *Kosovo Report Card*, *supra* note 813, 15. The military commands, despite a lack of extensive experience in this activity, did not cooperate with UNHCR and those who tried to offer advice about how to set up refugee camps. Ultimately, national governments wanted to turn over the camps built by Italian, German, British, and French NATO contingents to their own

To aggravate the situation, problems of co-operation were identified with the internal structure of the some of the organisations working in the field. Military activities in KFOR, for instance, though formally envisaged to be performed along a unified command structure under the direction of a Commander (COMKFOR) largely varied according to the priorities of the difference national units within KFOR. In particular, the initial five different brigades in Kosovo (later to become four), each running a region and led by a different country (France, Germany, Italy, the UK and the USA), had very different policies towards, for instance, security and minorities.⁸¹⁸ Differences in approaching to key thematic issues of the international mission later ended up in affecting co-operation among the very same brigades. Before the creation of the JCR in mid 2000 there was no coordination, and policies were implemented haphazardly. The JCR began confronting this lack of co-operation, but for quite some time focused its attention on just small-scale return to particular villages rather than addressing the major Kosovo-wide problems of security, property and discrimination.⁸¹⁹ Another example of this lack of co-operation concerns the military intervention in Mitrovicë/Kosovska Mitrovica. On the military action in Kosovo the International Crisis Group (ICG) expressed the following concerns:

“Mitrovica is probably the most glaring example of the failure of KFOR and the international community generally to deal with harsh ethnic realities of Kosovo and the consequences of this failure for the future of Kosovo and of the entire region beyond it. Within days of their arrival, KFOR troops in Mitrovica, primarily French, established barriers on the bridges over the Ibar River that divides the northern and southern parts of Mitrovica. The reason for this action remains obscure since some observers have asserted that by the time NATO arrived in Mitrovica the level of violence was relatively low and that, in any case, it was more or less equally concentrated on both sides of the river.

[...]

Developments in Mitrovica have also highlighted the command and co-operation problems caused by the different doctrines and styles of operating among the various national components of KFOR, which in fact is more of a loose coalition of national components than a tightly organised military structure and whose members sometimes refer to themselves ironically as “the confederation of KFOR”.⁸²⁰

national non-governmental groups. In such a scenario, neither UNHCR nor any other international organization could play a coordinating role or even screen NGOs to ensure sufficient capacity and experience.

⁸¹⁸ See Clive Baldwin, *Minority Rights in Kosovo under International Rule*, *op.cit.* note 720, 11.

⁸¹⁹ *Ibid.*, 15.

⁸²⁰ See International Crisis Group, *Kosovo Report Card*, *op.cit.* note 813, 18.

Another example of this lack of “internal” co-operation within the same organisation could be depicted also from the analysis of UNMIK activities on minority rights issues. Apparently, policies on minorities were formulated in Prishtinë/Priština with limited reference to UN institutional knowledge. This point has been underlined by the July 2006 report of Minority Rights Group:

“To understand this one must understand the structure of the UN. UNMIK was set up by and is accountable to the Security Council; it is actually run by the Department of Peacekeeping Operations, which, like the Security Council, is based in New York. Human rights work in the UN is largely governed by its OHCHR, based in Geneva. As stated above, human rights generally have been minimized within UNMIK - it appears that the OHCHR was not consulted on the creation of UNMIK. Even within the OHCHR itself minority issues are minimized; until the creation of the Independent Expert on Minority Issues in 2005 there was only one minority expert in the Office (there are now three). Understanding of minority rights in the UN in New York is virtually non-existent – MRG has never met any minority rights expert working there. This lack of minority rights knowledge is difficult to understand given the importance of minority issues in conflict prevention. The lack of institutional expertise in the UN has been painfully shown by the repeated mistakes in Kosovo.

[...]

What has happened, then, is that those working on minority issues in Kosovo have not been able to benefit from the decades of experience that the organizations themselves have on understanding and implementing minority rights. It is not surprising then, that the most obvious model – that of segregation – has been used, rather than that of minority rights.”⁸²¹

B. Problems of impartiality

Relations between humanitarian organizations and military powers are always complex, even more when the military troops became engaged in a peace enforcement operation, as it was the case of Croatia and Bosnia-Herzegovina. In Kosovo, because NATO was a direct party to the military conflict in Kosovo, these relations became charged and difficult. UNHCR in particular risked to be seen undermined its impartiality and neutrality status, key in performing humanitarian-related task, by working closely with NATO. Some observers even concluded that the humanitarian principle of impartiality was compromised during the crisis.⁸²²

⁸²¹ *Ibid.*, 27.

⁸²² Thierry Germond, *NATO and the ICRC: A Partnership Serving the Victims of Armed Conflicts*, (NATO Review, May/June, 1997), 30–32.

When military contingents were simultaneously fulfilling both humanitarian and war-making roles, the impartiality and universality of humanitarian aid is jeopardized. It is then important to clarify the lines of communication and responsibility between military and humanitarian organizations in order to guarantee more effective assistance and protection for civilians when crises do emerge. Coordination can and should be promoted when it is essential to civilian protection but the distinction and independence between military and humanitarian missions must be sustained. The impartiality of humanitarian efforts, due to the involvement of NATO, was in fact compromised.⁸²³

*C. Co-operation among International Organisations in the frame of Kosovo
Declaration of Independence*

1. UNMIK-EU Co-operation

In the context of the Kosovo Declaration of Independence the building of EU's mandate in Kosovo was not paralleled by a firm decision on its co-existence with UNMIK.⁸²⁴ Moreover, the concern expressed toward the validity of UNSC Resolution 1244 remained and continued to animate the debate over the validity of Kosovo declaration of independence.⁸²⁵ On 28 March 2008, the UN Secretary-General recognized that "the evolving reality in Kosovo is likely to have significant operational implications for UNMIK. Pending Security Council guidance, there might be a need for UNMIK to adjust its operational deployment to developments and changes on the ground in a manner consistent with the operational framework established under Resolution 1244 (1999)."⁸²⁶ By then, was clear that supporters of Kosovo did not want to force the pace of transition; the 120-day period ended as empty of content with no specific benchmarks or agreed-upon timelines. UNMIK did not disappeared as assumed under the Ahtisaari plan. In this scenario, the poor co-operation between the European Union Planning Team (EUPT) and UNMIK in the planning of the EULEX

⁸²³ The Independent International Commission on Kosovo, *op.cit.* note 639, 211.

⁸²⁴ See NATO Parliamentary Assembly, Committee Report No. 155 CDS 08 E bis, *op.cit.* note 779, para. 70.

⁸²⁵ *Ibid.*, para. 5. However, co-operation has been hampered by the Russian influence in the Security Council. Moreover, holding the Security Council presidency in March, Russia is maintaining pressure on the Secretary-General to keep UNMIK well budgeted and staffed, and to resist UNMIK-EULEX transition.

⁸²⁶ *Ibid.*, para. 71.

mission to Kosovo did not come as a surprise.⁸²⁷ The EUPT was inwardly focused on its own mechanisms and structure, and chose not to co-locate staff and contacts. The exchange of information between the two missions was regrettably minimum in the weeks just before and after independence.⁸²⁸

With regard to EULEX, despite the indicated June-deadline for the mission's full deployment, the initial operational capability was achieved in December 2008 solely. Supposedly called to replace UNMIK, the mission was in fact deployed under the idea of a *reconfiguration* of international presence in the field, rather than being conceived as replacement of UNMIK. At the end of November 2008, the UNSC decided in favour of a deployment of EULEX throughout Kosovo operating under the general authority and within the "status-neutral" framework of the UN.⁸²⁹

2. EU-NATO Co-operation

Concerning the co-operation between the EU and NATO, already in 2006, the two organisations were working together on four different areas: border management, military support to police operations, response to civil disturbances, and information/intelligence exchange.⁸³⁰ On the respective deployment in Kosovo, however, NATO made clear that the continued military presence in Kosovo would have been independent of the EU/ICO and with no UNTAES-like unification of civil and military structures.⁸³¹ Two years later, in 2008, communication between NATO and the EU was good in the field but dysfunctional at the political level. A top diplomat at NATO declared that there was "enormous frustration" on both sides that NATO and EU policymakers were not talking to one another even though they shared the same security goals in Kosovo. Finally, while interaction on the ground was better, strategic policy co-ordination between the two organisations was hostage of political issues.⁸³²

⁸²⁷ The European Union Planning Team for Kosovo (EUPT) was established in April 2006 to "prepare for a possible future EU crisis management operation in the field of rule of law and other areas such as the fight against corruption and organized crime, strengthening of multi-ethnic institutions in Kosovo."

⁸²⁸ See International Crisis Group, *Kosovo's First Month*, *op.cit.* note 791, 17.

⁸²⁹ The EU pledged to be "in a position to assume rapidly its responsibilities Kosovo-wide in cooperation with the relevant authorities and the other international organizations present on the ground." See Declaration by the Presidency on Behalf of the European Union on the Deployment of EULEX, 2 December 2008.

⁸³⁰ See NATO Parliamentary Assembly, Doc. No. 153 SEM 07, 66th Rose-Roth Seminar, *South East Europe: Unfinished Business*, June 2007, para. 11.

⁸³¹ See International Crisis Group, *Kosovo Status: Difficult Months Ahead*, *op.cit.* note 749, 8.

⁸³² See NATO Parliamentary Assembly, Committee Report 158 DSC 08 E bis, *NATO Operations: Current Priorities and Lessons Learned*, prepared by Frank Cook, Valencia 2008, para. 97.

VI. LESSONS UN-LEARNED FROM BOSNIA

The operations in Bosnia first, and in Kosovo later, are the results of a multifunctional approach taken by the international community. However, even if some years elapsed between the two crises, the international community repeated some of the same mistakes made in handling the crisis in Bosnia. Of course this does not mean that there have been no positive experiences gained from Bosnia, but the analysis of the negative aspects, being a repetition of the same mistake, deserves more attention:

- No consideration of the possible Serbian action in the ground in launching NATO bombing; as in BiH troops acted in the ground while NATO was carrying out its attacks.
- Poor co-operation in planning the multifunctional peace operation. As it was in Bosnia problems regarding hierarchy and chain of command affected the mission in the field.
- Polarisation of the society along ethnic lines was used again as a strategy in dealing with minorities.
- Creation of parallel societies: Internationals and local people.
- Lack of a comprehensive exit strategy.
- Haphazard deployment of the missions, more notably in the case of UNMIK and KFOR operations.
- Lack of training regarding co-operation between civilian and military officers. The lack of knowledge of respective mandates by officers can be considered as a consequence and proof of this mistake.
- Poor co-operation at headquarters level between Member States and International Organisations.
- Difficult compliance with the humanitarian principle of impartiality.

ANALYSIS OF THE CO-OPERATION IN THE FYR OF MACEDONIA

H. HISTORICAL BACKGROUND

A. Before the conflict

For nearly a decade, the Former Yugoslav Republic of Macedonia (FYROM)⁸³³ managed to escape the kind of brutal ethnic conflict in Croatia, Bosnia, and Kosovo that come with the break-up of the former Yugoslavia in the 1990s. The international community gave high priority to preventing the spread of ethnic conflict to Macedonia, since it was feared that a war in Macedonia could quickly lead to a broader Balkan war. Already in 1991 when the state was formed, the stance of many Albanians was to reject a Slav-dominated state. They found their minority status as discriminatory and were claiming for the official recognition of the group together with the Albanian language, in this case as a second state language. Ethnically motivated outbreaks erupted long before the intensification of the crisis in 2001.

On the political situation, the 1998 parliamentary elections saw the victory of the coalition headed by the nationalist Internal Macedonian Revolutionary Organization-Democratic Party for Macedonian National Unity (VMRO-DPMNE), led by Ljubco Georgievski. The coalition included the newly formed Democratic Alternative (DA)

⁸³³ Prior to this century, Macedonia had comprised a much larger geographic area. After the Balkan wars of 1912-1913, Macedonia was partitioned among Bulgaria, Greece, and Serbia. The Serbian part became the Yugoslav Republic of Macedonia.

party led by Vasil Tupurkovski, and the Democratic Party of Albanians (DPA) led by Arben Xhaferi. However, coalition tensions, especially between the DA and VMRO-DPMNE, persisted. An all-party coalition later replaced the government in May 2001. In April 2001, Macedonia concluded the Stabilization and Association Agreement with the European Union. However, a donor's conference for Macedonia planned for October 2001 was postponed because of Macedonia's lack of progress in implementing political reforms.

B. Macedonian-Albanian Ethnic Tensions

Relations between the Slav Macedonian majority and ethnic Albanian minority in Macedonia have remained tense since the country's independence with Albanians demanding greater cultural and educational rights⁸³⁴ and greater representation in the government, armed forces and police.⁸³⁵ During the 1990s, open clashes were recurrent especially in the western cities of Tetovo and Gostivar. The conflict in neighbouring Kosovo in 1999 further exacerbated inter-ethnic tensions in Macedonia with about 250,000 Kosovar Albanian refugees flooding into Macedonia during the crisis. In addition to the reluctance expressed by Macedonian authorities the situation was worsened by the constant presence of Kosovo Liberation Army (KLA) in the country.

C. The Conflict in 2001

In the period late 2000-early 2001, attacks led by ethnic Albanian guerrilla forces on Macedonian police and security forces took the Macedonian government and international community by surprise.⁸³⁶ In March 2001, clashes spread to the city of Tetovo and reached a new level in early June, as rebel forces captured towns just outside of Skopje and to the north around Kumanovo. In January, the National Liberation Army (NLA) claimed responsibility for the attacks on police forces.⁸³⁷ On 19 March, Western news agencies reported the following demands from the NLA: the

⁸³⁴ Such as the official recognition of Albanian language and relative state support for Albanian-language university in Tetovo.

⁸³⁵ They objected to the limited position recognized to Albanians in the constitution; the reference to the Macedonian nation was relegating, in their view, Albanians to the status of second-class citizens.

⁸³⁶ Clem S. Watkins (ed.), *The Balkans*, Nova Science Publishers, 2003.

⁸³⁷ Macedonian President Trajkovski and Prime Minister Georgievski claimed that the rebels were primarily Kosovo Liberation Army members who had infiltrated the country from Kosovo.

international mediation to resolve their differences with the Slavic majority and determine the exact size of the ethnic Albanian community; and, the amendment of the Macedonian Constitution. In August, a splinter ethnic Albanian rebel group calling itself the Albanian National Army (AKSh) attacked a Macedonian army convoy killing ten soldiers. The AKSh rejected the agreement signed by Macedonia's political leaders on 13 August and pledged to continue to fight for a "greater Albania."

In response to the attacks, president Trajkovski said that the government had first to "neutralize the terrorist threat," but offered the prospect of entering into political dialogue with legitimate political parties on inter-ethnic relations. In late March, the Macedonian armed forces began a series of offensives to regain control of the villages held by the rebels, mainly around Tetovo. At first, the army encountered little organised resistance and managed to regain control over some territories. After several weeks, violence resumed in some areas and began a new stage of the conflict. Contextually, the UNSC, in its March emergency session, led to the adoption of Resolution 1345 condemning the violence and terrorist activities in Macedonia and in Southern Serbia.⁸³⁸ The resolution noted that the violence was supported externally by ethnic Albanian extremists, but did not name Kosovo as the source of the violence. It also called on KFOR to further strengthen its efforts to prevent the transfer of arms and personnel across borders and confiscate weapons within Kosovo. Shortly after, the Security Council then welcomed the signing of the peace agreement on 13 August and called for its "full and immediate implementation."⁸³⁹

On 28 April, ethnic Albanian guerrillas attacked a Macedonian army and police convoy in the village of Vejce near Tetovo. The attack sparked riots by Slav Macedonians against ethnic Albanian in the southern city of Bitola, near Greece. On 3 May, Albanian rebels launched another attack on security forces in Vaksince, near Skopje. In response, the government began counter-attacks against rebel forces in several villages in the Kumanovo region. At the end of May, in the midst of a political crisis within the all-party coalition, government forces launched another offensive in the north of the country. On 11 June, a cease-fire, later to be extended until 27 June, was finally announced. Government forces, however, ended the truce on 22 June by attacking rebel territory near Aracinovo. International leaders decried the resumption

⁸³⁸ See UNSC Resolution 1345, S/RES/1345(2001), 21 March 2001.

⁸³⁹ See UNSC, Press Release SC/7118, "Security Council call for full and immediate implementation of agreement in Former Yugoslav Republic of Macedonia", Security Council 4356th Meeting, 14 August 2001. Available at <<http://www.un.org/News/Press/docs/2001/SC7118.doc.htm>>.

of hostilities. On 1 July, rebel forces advanced into four more villages outside of Tetovo, prompting fierce counter-attacks by government forces. NATO and EU envoys brokered separate open-ended cease-fire agreements on 5 July, granting another chance for the political dialogue to produce results.⁸⁴⁰ A severe break-down, however, took place in late July when Albanian rebels advanced into territory around Tetovo.

On 7 August, Macedonian police launched a raid on rebel forces in Skopje. The next day, several Macedonian soldiers were killed in a rebel ambush between Skopje and Tetovo.⁸⁴¹ Three days later, 8 more security forces were killed after their vehicle struck two land mines outside of Skopje. On 19 August, NLA leader Ali Ahmeti announced that the rebel group would have honoured the peace agreement and consented to surrender weapons to NATO.⁸⁴²

D. Coalition and Peace

Since the beginning, Western leaders emphasised that the conflict in Macedonia required a political solution over a military one. Through political dialogue among all political parties, their strategy aimed at reaching concrete results on minority issues and preventing longer-term conflict.⁸⁴³ On 2 April 2001, President Trajkovski convened the first meeting of representatives of all of Macedonia's political parties to address inter-ethnic issues. Meanwhile, Western leaders strongly pressed for building a broad coalition as a first step toward a peaceful resolution to the conflict. Under strong international pressure, the group of parties agreed to form a national unity government on 11 May, even while a brief cease-fire was unravelling. By then, the Parliament overwhelmingly approved the new government on 13 May 2001.

On 8 June 2001, President Trajkovski presented to parliament a security strategy that included the offer of a partial amnesty for the NLA. The strategy called for a consolidated governmental effort to quell the rebel forces, facilitate the disarmament and the reconstruction of homes. The government adopted the plan on 12 June.

⁸⁴⁰ Both sides reportedly used the cease-fire to supply and regroup their forces.

⁸⁴¹ Clem S. Watkins (ed.), *op.cit. supra* note 836, 110.

⁸⁴² The agreement was secured by NATO on 25 July to reinstate the cease-fire, have the rebel forces pull back from their advanced positions, and allow displaced persons to return to their homes.

⁸⁴³ Clem S. Watkins (ed.), *op.cit. supra* note 836, 111.

On 14 June 2001, President Trajkovski requested NATO's assistance in disarming the rebel forces if a political agreement was reached. On 15 June, Trajkovski opened the political discussions on the amendment of the Macedonian constitution that would elevate the status of the Albanian community. Despite a first impasse talks briefly resumed on 25 June 2001, after another cease-fire was reached, but broke up the next day in the midst of the angry public demonstrations outside of the parliament building in Skopje. In July, the discussions were revived with the arrival of EU envoy Francois Léotard and U.S. envoy Ambassador James Pardew. President Trajkovski announced on July 5 that the political dialogue on reforms was resumed, corresponding to the latest announced cease-fire. In this context, Léotard and Pardew acted as a joint EU-US mediation team; the latter was later reinforced by the arrival of Max Van der Stoep, the former HCNM, who replaced Ambassador Robert Frowick as OSCE special envoy. Here, the EU-US mediation team was supported by legal experts, most notably by Robert Badinter who, in the early 1990s, chaired the EU commission of experts on the former Yugoslavia.⁸⁴⁴ Finally, on 7 July peace envoys Léotard and Pardew presented to the negotiating parties a single framework document that was to be the basis for further negotiation. The parties agreed to work from the comprehensive framework document, reportedly based on an earlier proposal by Robert Badinter. Talks resumed on 9 July 2001, but quickly stalled as clashes intensified near Tetovo. Political talks, relocated to the lakeside retreat of Ohrid, resumed on 28 July. Shortly after, negotiators announced the first major breakthrough in the talks—a provisional agreement on use of the Albanian language.

The police reform was also a contentious issue for discussion. On 5 August, however, the parties come to an agreement on increasing Albanian representation in the police, while keeping the force under central government control. On 13 August 2011, the parties then signed, in a private ceremony, the Ohrid Framework Agreement (OFA). The following day, the NLA surrendered its weapons under NATO supervision.⁸⁴⁵ In exchange, the President pledged to grant amnesty to the NLA, excluding those suspected of war crimes.⁸⁴⁶ Two days later, the Macedonian government formally approved the deployment of a NATO force to collect weapons (operation ESSENTIAL HARVEST). This agreement fulfilled the main demand of the Albanians, i.e. the

⁸⁴⁴ Ulrich Schneckener, "Theory and Practice of European Crisis Management: Test Case Macedonia", in *European Yearbook of Minority Issues*, Vol. 1, 2001/2002, Martinus Nijhoff Publishers, 131 to 159.

⁸⁴⁵ Clem S. Watkins (ed.), *op.cit. supra* note 836, 113.

⁸⁴⁶ *Ibid.*

rewriting the constitutional formulation according to which the Slavs were the sole nation of the state. The Christian-orthodox, Catholic and Muslim beliefs were also recognised as being equal. Albanian became the second official language in regions where Albanians constitute at least 20% of the population and the police was reformed so as to increase the proportion of Albanian police to over 20%. Additionally, it was agreed that elections would be held in January 2002. A 45-day period was set for the implementation of the constitutional reforms.⁸⁴⁷ In Ohrid was further decided that Macedonia would stay under international scrutiny held by NATO, the EU and the OSCE. This political agreement came with the conclusion of an informal agreement between NATO and the NLA on voluntary disarmament, the territorial integrity and unitary status of Macedonia.⁸⁴⁸ The EU and OSCE monitors were to follow the reform process, including the return of refugees.

In early September, the Macedonian parliament passed the peace plan with a great majority. Although not directly involved in the peace talks, on 14 August the NLA formally agreed to NATO disarmament and demobilisation plan.⁸⁴⁹

The Macedonian parliament opened debate on the OFA on 31 August 2001 and finally endorsed it the week after. On 26 September 2001 the same day that NATO approved plans to deploy operation AMBER FOX, the UNSC adopted Resolution 1371 on Macedonia.⁸⁵⁰ The resolution expressed support for the full and timely implementation of the framework agreement and endorsed the establishment of a multi-national security presence in Macedonia.⁸⁵¹

The implementation of the peace plan came to a halt due to the re-escalation of armed conflict in November 2001. After the arrests of seven former UÇK fighters, armed Albanians shot three police, and dozens of Slavic Macedonians were taken hostage. The Albanian National Army (AKSh) claimed responsibility. Talks between representatives of the EU and U.S. with the Macedonian government followed, with strong pressure being exercised by international actors. An international donor conference that was initially planned for October was postponed indefinitely due to

⁸⁴⁷ See Centre for OSCE Research (CORE), *Kosovo. Mission Information Package*, *op.cit.* note 729, 17-19.

⁸⁴⁸ Rianne M. Letschert, *op.cit.* note 75, 254.

⁸⁴⁹ See Centre for OSCE Research (CORE), *Kosovo. Mission Information Package*, *op.cit.* note 729.

⁸⁵⁰ See UNSC Resolution 1371, S/RES/1371(2001), 26 September 2001.

⁸⁵¹ *Ibid.*

delays on the Macedonian side. Finally, the Macedonian parliament agreed on the constitutional amendment.⁸⁵²

II. CO-OPERATION AT THE HEADQUARTERS LEVEL

*A. Co-operation before the conflict*⁸⁵³

The phase before the conflict began under the auspices of the January 1992 conclusions of the Badinter Commission on Macedonia. A conclusion, however, strongly opposed by Greece due to the territorial claims associated with usage of the term “Macedonia.” The recognition of Macedonia by the EC was then postponed due to disagreements between member countries. In 1996, however, Macedonia started receiving EU support under the PHARE programme; and in 1998 the EU and Macedonia concluded a Cooperation Agreement through which Macedonia received asymmetric trade preferences within the EU. In addition, the EU and Macedonia started negotiating the terms for a Stabilization and Association Agreement (SAA), which was then signed in 2001. Anyway, the time before the conflict was marked by the common wish to integrate Macedonia into different international organizations (e.g. UN in April 1993, NATO's Partnership for Peace, the OSCE and the CoE in 1995), which indeed came as recognition of the results achieved at the internal level as well as an additional motivation in moving further in the process. The difficulties that the European partners had in adopting a common position in the CFSP framework (on their attitude to the Greek policy and the recognition of the FYR of Macedonia) and the absence of adequate decision-making mechanisms, initially restricted their ability to use CFSP mechanisms and left the field open to American diplomacy. It was once again American mediation that, in September 1995, permitted the signature of an interim agreement and the normalization of the FYR of Macedonia bilateral and multilateral relations. These divergences further prevented the return to WEU's conflict prevention capability, under the Petersburg tasks, hence leaving the UN and the OSCE acting alone.

⁸⁵² See Centre for OSCE Research (CORE), *Kosovo. Mission Information Package*, *op.cit.* note 729.

⁸⁵³ For further information see EU Institute of Security Studies, “Conflict Prevention in the Balkans: Case Studies of Kosovo and of FYR of Macedonia” in *EUISS Chaillot Paper 30*, December 1997.

*A. Co-operation during the conflict*⁸⁵⁴

Since the beginning of the conflict, Western leaders emphasised that the conflict in Macedonia required a political solution over a military one. Then, in response to the crisis, staff-level meetings with the EU, NATO, OSCE and the CoE immediately intensified with the intention to better co-ordinate the implementation of the Framework Agreement. In addition, at the invitation of the Council of Europe, a “2+2” meeting took place at the level of senior officials in Strasbourg on 20 July 2001: developments in the FYR of Macedonia as well as the OSCE Rapid Expert Assistance and Co-operation Teams (REACT) were among the items discussed. Finally, on 10 July 2001 the EU’s Special Representative in the Former Yugoslav Republic of Macedonia (FYROM), François Léotard, asked for the assistance of the CoE Venice Commission on the Constitutional reform in Macedonia.⁸⁵⁵

B. Co-operation after the end of the conflict

In 2001, the EC adopted, under the Rapid Reaction Mechanism, a programme to address reconstruction in conflict-related scenarios, and further supported several educational programmes such as the TEMPUS programme and the South East European University. In August 2002, senior officials from EU and OSCE met in Helsingborg at the Regional EU Conference on Conflict Prevention to discuss common values, common action, and common commitment in the region.⁸⁵⁶ In the same year, consultations on police reform between the OSCE Senior Police Adviser and the European Community resulted in a Memorandum of Understanding between the two organisations on police-related issues in Macedonia.⁸⁵⁷ In May 2003, the “European Partnerships” was adopted in the framework of the Stabilisation and Association Process to “provide a framework covering the priorities resulting from the

⁸⁵⁴ See OSCE Annual Report 2001 on Interaction between Organisations and Institutions in the OSCE Area, *op.cit.* note 382, 7-19.

⁸⁵⁵ See CoE Press Agency Communication, Strasbourg 10 July 2001. François Léotard was appointed EU Special Representative in the Former Yugoslav Republic of Macedonia (FYROM) on 29 June 2001 (Joint Action 2001/492/CFSP, OJ L 180, 3 July 2001).

⁸⁵⁶ The panel on common action addressed lessons learned from practical cooperation in the field, policy development and division of labour in cases such as FYROM, Kosovo and Central Asia.

⁸⁵⁷ Edwin Bakker, “A Culture of Conflict Prevention: OSCE experiences and co-operation with the EU” in Vincent Kronenberger and Jan Wouters (eds.), *The European Union and Conflict Prevention. Policy and Legal Aspect*, (T.M.C. Asser Press, The Hague 2004), 409-410.

analysis of Partners' different situations, on which preparations for further integration into the European Union must concentrate in the light of the criteria defined by the European Council, and the progress made in implementing the stabilisation and association process including stabilisation and association agreements, where appropriate, and in particular regional cooperation.”⁸⁵⁸

III.CO-OPERATION IN THE FIELD

A. *Co-operation before the conflict*

At the beginning of the 1990s, the OSCE started its presence in Macedonia through the deployment of its Spill-over Mission to Skopje in September 1992. The Mission comprised eight CSCE monitors with two ECMM members under the operational command of the Head of Mission. Co-ordination with the UNPROFOR-Macedonia Command and the UNPREDEP⁸⁵⁹ was indeed established. Moreover, during the first quarter of 2001 the Mission monitored the crisis area in close co-ordination and co-operation with the EUMM, UNHCR, as well as members of diplomatic missions in Skopje. When the crisis spread, the Mission was asked to monitor the situation from its field offices in the Tetovo and Kumanovo areas and supervised for the second quarter of 2001, compliance with the cease-fire agreement of 5 July in co-operation with the EUMM. The mission further provided extensive input in the preparatory phase prior to the deployment of the NATO TASK FORCE HARVEST MISSION.⁸⁶⁰ With regard to the process of redeployment of police, the OSCE Confidence-Building Monitors and Police Advisers, supported by the EUMM and NATO’s TASK FORCE FOX, worked with local communities and police to build confidence in the region.⁸⁶¹

⁸⁵⁸ See European Council Regulation No. 533/2004, 22 March 2004, Article 1. The European partnerships was established to cover Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and Serbia and Montenegro including Kosovo as defined by the UNSC Resolution 1244.

⁸⁵⁹ The UN Preventive Deployment Force (UNPREDEP) in the Former Yugoslav Republic of Macedonia was the first UN mission to have a preventive mandate. The mission’s aim was to prevent disputes in its mandate area from turning into serious conflicts.

⁸⁶⁰ See OSCE Annual report 2000 on Interaction between Organisations and Institutions in the OSCE Area, *op.cit.* note 234, para. 5.

⁸⁶¹ See OSCE Annual Report 2002 on OSCE Activities, 24 March 2003, 22-23.

In 1998, the deployment of the ECMM was later strengthened by an agreement with the FRY of Macedonia reached in August 2001; by then the missions was replaced by the EUMM Mission Office in Skopje.⁸⁶² As from the Ohrid Framework Agreement, the EU was also identified as the co-ordinator of Annex C initiatives. In this frame, co-operation with the OSCE Mission was ensured through regular weekly exchange of information and the creation of a joint operations centre where the EUMM, together with NATO and UNHCR, tried to ensure maximum co-ordination and efficiency in the overall monitoring system.⁸⁶³ Besides, NATO's presence in Macedonia started with its KFOR, authorized under UNSC Resolution 1244 (1999). About 4,000 additional forces served in the KFOR Headquarters Rear in Skopje which was responsible for KFOR communications and logistics in the area surrounding Kosovo. Furthermore, several KFOR participating countries also had National Support Elements in Macedonia. Finally, the international presence in the years before the conflict was complemented by the CoE's LDA in Ohrid.⁸⁶⁴ Founded in 1996, the Agency worked particularly on peace, democracy, local self-government, respect for human rights and trans-border co-operation. In 1997, the CoE presence was reinforced by the creation of a CoE Information Office in Skopje.

B. Co-operation during the conflict

On 14 June, President Trajkovski formally requested NATO's assistance in implementing plans to demilitarize the rebel forces. In a letter to the president, NATO Secretary-General Robertson reportedly said that the proposed operation would be limited to the collection of weapons and deployed for a limited duration of time. On 29 June, the operation ESSENTIAL HARVEST was finally approved; the deployment was, however, conditioned upon the following: a political agreement signed by the main political parties, a status of forces agreement, a voluntary disarmament by the rebels, and a stable cease-fire. In July, the discussions were revived with the arrival of EU and US. envoy, respectively Francois Léotard and Ambassador James Pardew. By then president Trajkovski announced on 5 July that the political dialogue on reforms was

⁸⁶² See "Agreement between the European Union and the Former Yugoslav Republic of Macedonia on the activities of the European Union Monitoring Mission (EUMM) in the Former Yugoslav Republic of Macedonia" in *Official Journal* L 241, 11 September 2001, 2-4.

⁸⁶³ See OSCE Annual Report 2001 on Interaction between Organisations and Institutions in the OSCE Area, *op.cit.* note 382, 49.

⁸⁶⁴ Jessica Biondani, *op.cit.* note 105, 74.

resumed, corresponding to the latest announced cease-fire. As said, the EU-US mediation team benefited from the support of Max Van der Stoel, this time the capacity of OSCE special envoy.

The Ohrid agreement was then signed in Skopje on 13 August 2001. The following day, the NLA agreed to surrender its weapons under NATO supervision; in exchange, the President pledged to grant amnesty to the NLA, excluding those suspected of war crimes.⁸⁶⁵ On 15 August 2001, the Macedonian government formally approved the deployment of a NATO force, in its code-named operation ESSENTIAL HARVEST, to collect weapons. In early September, the Macedonian parliament approved the peace plan with a great majority; although the UÇK was not directly involved in the peace talks, already on 14 August it agreed to hand over its arms to NATO in disarmament and demobilisation plan signed by the UÇK and NATO. On 22 August the NAC endorsed the full deployment of operation ESSENTIAL HARVEST. In this context, the OSCE-NATO co-operation was mutually supportive with information freely exchanged. Operation ESSENTIAL HARVEST lasted approximately one and a half months and was then followed by operation AMBER FOX with its military component NATO TASK FORCE FOX. This mission, approximately 700 soldiers strong, lasted from October 2001 to December 2002 and was mandated to contribute to the protection of international monitors from the EU and the OSCE who were overseeing the implementation of the peace plan in the country. In the same 2001, by Council Regulation No. 381/2001, the EU created its Rapid Reaction Mechanism (RRM)⁸⁶⁶ which according to Article 1 of the Regulation is designed to “allow the Community to respond in a rapid, efficient and flexible manner, to situations of urgency or crisis or to the emergence of crisis.”⁸⁶⁷ Finally, in January 2002 a law was passed that increased the self-governing powers and autonomy of the provinces.⁸⁶⁸

C. Co-operation after the end of the conflict

The phase of post-conflict was marked by the EU-NATO cooperation on the ground. After the end of the conflict, exactly on 15 December 2002, NATO’s operation Allied

⁸⁶⁵ Rianne M. Letschert, *op.cit.* note 75, 254.

⁸⁶⁶ See Regulation No. 38/2001, *OJEC* [2001] L 57/5.

⁸⁶⁷ From Bernd Martenczuk, “Community Cooperation Policy and Conflict Prevention” in Vincent Kronenberger and Jan Wouters (eds.), *op.cit.* note 857, 204.

⁸⁶⁸ See Centre for OSCE Research (CORE), *Kosovo. Mission Information Package*, *op.cit.* note 729, 19.

Harmony was deployed upon invitation of the Government of the FYR of Macedonia. The Mission was tasked to provide support for international monitors overseeing the 2001 ceasefire agreement and to assist the government in taking responsibility for its own security. Operation ALLIED HARMONY ended on 31 March 2003, when the tactical-operational part was handed over to EUFOR while NATO kept its advisory role in the country. The handover was made possible under the NATO-EU Berlin Plus agreement. Therefore, aimed at contributing to a stable, secure environment to allow the FYROM government to implement the Ohrid Framework Agreement, the EU operation CONCORDIA was launched on 31 March 2003.⁸⁶⁹ Even if the operation run smoothly, some EU officials expressed concern at the insertion of an additional and unexpected level of NATO command, NATO's Regional Headquarters AFSOUTH which they considered diluted EU control of the operation. AFSOUTH served as the operational command under the SACEUR acting as EU strategic commander from the SHAPE.⁸⁷⁰ On 15 December 2003, through its Council Joint Action 2003/681/CFSP and in close co-operation with the OSCE, the EU launched its police mission EUPOL PROXIMA.⁸⁷¹ PROXIMA was part of the EU's overall commitment to assist the Macedonian Government in moving closer towards EU integration. The operation was completed on 14 December 2005.

IV. EVALUATION OF THE CO-OPERATION

In the case of FYROM, the inter-organizational cooperation became better organized after the end of the conflict in 2001. By then, representatives of the main organisations operating in Macedonia (EU, NATO and OSCE) agreed to have, twice a week, meetings aimed at developing a common operational strategy.⁸⁷² However, in terms of conflict prevention *stricto sensu*, the IC failed to identify some of the early warnings on the possibility that a crisis might emerge in Macedonia, long before it actually did in March 2001. Even so, international actors involved in the crisis had a coherent

⁸⁶⁹ See Council Joint Action 2003/92/CFSP, Official Journal of the European Communities, L 34, February 2003.

⁸⁷⁰ John Kriendler, "NATO Crisis Management and Conflict Prevention" in Vincent Kronenberger and Jan Wouters, *op.cit.* note 857, 435.

⁸⁷¹ See Council Joint Action 2003/681/CFSP of 29 September 2003 on the European Union Police Mission in the Former Yugoslav Republic of Macedonia.

⁸⁷² Rianne M. Letschert, *op.cit.* note 75, 327.

concept, coordinated their efforts and used their respective strengths in the division of labour. Joint crisis management by the EU, OSCE and NATO was certainly an asset and a lesson learned from BiH and Kosovo. Furthermore, co-operation and joint appearances of Solana and NATO Secretary-General Robertson facilitated the interaction of conflicting parties, especially on military matters. Besides, it was the first time the EU assumed, both in Brussels and in the field, decisive coordination and mediation tasks. Supported by a special envoy and equipped with a flexible mandate from the Member States, Solana was indeed able to assert EU's authority towards conflicting parties in cooperation with other actors, especially NATO and the USA. In addition, the vital coordination between the short-term diplomatic missions of the Council and the long-term economic-financial measures of the Commission led to the development of a joint policy able to maintain a clear division of labour, where Solana acted as crisis manager and Patten provided for the structural and diplomatic support.⁸⁷³ In this context, EU membership was used as a tool for crisis management whilst the influence of the organization was strengthened through the signature of the SAA. The latter functioned as an incentive at Solana's disposal to drive conflicting parties towards the conclusion of a peace agreement.⁸⁷⁴ Furthermore, overlapping membership in different organisations was of sure help in promoting co-operation in the conflict prevention area and offering important inducements to achieve the principles of good governance.⁸⁷⁵ Finally, the Macedonian crisis confirmed the conclusions drawn from experiences in Bosnia and Kosovo: international actors have to adopt a coherent platform, coordinate their efforts and combine their comparative advantages in order to enhance opportunities for success. Crisis management was (unfortunately) still reactive and not pro-active, but the co-operation at the IC level was higher and of course to be considered positively.

⁸⁷³ This part comes from the analysis of Reinhardt Rummel, "The EU's Involvement in Conflict Prevention – Strategy and Practice" in Vincent Kronenberger and Jan Wouters, *op.cit.* note 843, 85-87.

⁸⁷⁴ Steven Blockmans, "EU Conflict Prevention in the Western Balkans" in Vincent Kronenberger and Jan Wouters, *op.cit.* note 857, 299.

⁸⁷⁵ Manuel Szapiro, "International Organisations' Cooperation in the field of Conflict Prevention" in Vincent Kronenberger and Jan Wouters, *op.cit.* note 857, 355.

SECTION II

CO-OPERATIVE TRENDS,

LESSONS LEARNED

&

NORMATIVE DIMENSION

INTER-ORGANIZATIONAL CO-OPERATION, TRENDS OF AN EVOLVING ATTITUDE

Aim of this section is to reconstruct the approach international actors involved in the present study have followed on the issue of international cooperation. In so doing, the identified inter-organizational instances, and in particular cases the formalization of specific bilateral cooperative modalities, are functional to the identification of possible normative solutions to the problems raised by the country-by-country analysis and here advanced in the final section of the research. However, for heterogeneity and volume of inter-organizational cooperation the proposed analysis is not to be considered far from any eventual new elaborations and/or contributions.

I. The United Nations and the co-operation with Regional Arrangements or Agencies

Already in 1956, the UN system started contemplating a Charter legal basis for peacekeeping operations with support coming from regional organisations. By then the Secretary-General considered that an eventual emergency international UN forces could be developed, *inter alia*, through “an international force [...] set up in agreement among a group of nations, later to be brought into an appropriate relationship to the

United Nations.”¹ Reflections on side of the UN on the role of regional agencies and arrangements in the achievement of international peace and security continued in the 1990s, and was marked by increasing emphasis on cooperative interaction.² In this process, the structural relationship between the UN and the regional organizations was built around a normative reference to the UN Charter and the primacy of the Security Council, and developed towards the creation of a necessary institutional framework.³ Efforts undertaken in this direction were unfortunately counterbalanced by a very weak notion of regionalism, in its infancy at the time of drafting the UN Charter.⁴ Furthermore, the absence of pre-determined mechanism for inter-organizational cooperation led to a heterogeneous process in which different cooperative modalities developed depending on and according to the typology of regional organisations concerned.⁵ Moreover, the process of interaction matured in response to specific regional circumstances instead of being the result of a concerted and desired development.⁶ Given this background, the 1990 *Report on the Work of the Organisation* prepared by the then Secretary-General Pérez de Cuéllar clarified that:

“efforts of regional agencies should be in harmony with those of the United Nations and in accordance with the Charter. [...] Moreover, the requirement stipulated in Article 54 of the Charter needs to be viewed not merely as a matter of form and procedure but as relating to the substance of the peace effort. If regional responses to situations affecting the maintenance of international peace and security and regional initiatives in dealing with them are supportive of the lines of policy indicated by the United Nations and do not sidetrack the United Nations, howsoever unwittingly, not only the coherence but also the effectiveness of a peace strategy would be greatly enhanced.”⁷

¹ See Second and Final report of the Secretary-General on the plan for an emergency international United Nations force requested in the resolution adopted by the General Assembly on 4 November 1956 (A/3276), UN Doc. No. A/3302, 6 November 1956. See also Ademola Abass, “UN Cooperation with Regional Organizations in Peacekeeping Operations” in Philippe De Lombarde et al. (eds.), *The United Nations and the Regions: Third World Report on Regional Integration*, United Nations University Series on Regionalism, Springer 2012, 116.

² Nikki Slocum-Bradley and Tanía Felício, *The Role of Regional Integration in the Promotion of Peace and Security*, UNU-CRIS Occasional Papers 0-2006/2, United Nations University, Bruges 2006, 12.

³ *Ibid.*, 11.

⁴ *Ibid.*, 10.

⁵ Thierry Tardy, “The European Union and the United Nations: Global versus Regional Multilateralism”, in *Studia Diplomatica. The Brussels Journal of International Relations*, Vol. LX, 2007, n° 1, Royal Institute 191-210, 196-197.

⁶ David M. Law, “Cooperation among SSR-relevant IGOs”, in David M. Law (ed.) *Intergovernmental Organisations and Security Sector Reform*, LIT Verlag Zurich 2007, 49-51.

⁷ See Report of the Secretary-General on the Work of the Organisation, UN General Assembly 45th Session, Supplement No. 1 (A/45/1), 16 September 1990, § IV p. 8. Available at <http://www.un.org/en/ga/search/view_doc.asp?symbol=A/45/1>.

In 1992, the Secretary-General's *Agenda for Peace* further elaborated on the institutional relationship between UN and regional organizations.⁸ In section VII on the "Cooperation with Regional Arrangements and Organizations"⁹ the then SG clarified that the purpose of his report was not to "set forth any formal pattern of relationship between regional organizations and the United Nations, or to call for any specific division of labour" but to explore the potential regional arrangement and agencies possess in serving "the functions [of] ...preventive diplomacy, peacekeeping, peacemaking and post-conflict peace-building."¹⁰ Co-operation with regional arrangements or agencies was then to be based on the recognition that the UNSC "has and will continue to have primary responsibility for maintaining international peace and security".¹¹ Regional action, therefore, could "not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs."¹² Therefore, in setting the clear relevance of Chapter VIII of the UN Charter for the evolution of such cooperative interaction, the Secretary-General clarified that "[...] should the Security Council choose specifically to authorize a regional arrangement or organisation to take a lead in addressing a crisis within its region, it could serve to lend the weight of the United Nations to the validity of regional efforts."¹³ In this case, the notion of regional organization's operability seems to be restricted by the reference to internal crisis occurring "within its region". Such a narrow interpretation, however, is not justified by the Charter nor demonstrated by the practical development of the UN-regional organizations' interaction.¹⁴ To clarify this issue, in January 1993 the Security Council invited regional organizations to study ways for strengthening their functions in peace and security and improve coordination with the UN. In December of the same year, the General Assembly

⁸ See Boutros Boutros-Ghali, *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, UN Doc. No. A/47/277 – S/24111, 17 June 1992.

⁹ *Ibid.* In paragraph 60 of the report the SG clarifies that the Charter "deliberately provides no precise definition of regional arrangements and agencies, thus allowing useful flexibility for undertakings by a group of States to deal with a matter appropriate for regional action which also could contribute to the maintenance of international peace and security."

¹⁰ *Ibid.*, para. 64. See also Christoph Schreuer, "Regionalism vs. Universalism", in 6 EJIL (1995) 1-499, 494.

¹¹ *Ibid.*

¹² *Ibid.* Furthermore, the idea of "subcontracting peace operations" advanced by the Secretary-General was positively received by NATO. See Final Communiqué, Ministerial Meeting of the North Atlantic Council, Brussels 17 December 1992, para. 4.

¹³ *Ibid.*, para. 65.

¹⁴ The EU's intervention in the crisis in the Democratic Republic of Congo (DRC) in 2003 is a useful example for this discussion. See also Ademola Abass, *op.cit.* note 1, 109-128.

welcomed efforts undertaken by the Secretary-General in developing “[...] a set of guidelines governing cooperation between the United Nations and regional organizations”.¹⁵

Few years later, in 1995, the Secretary-General returned to the topic by issuing his *Supplement to the Agenda for Peace*.¹⁶ In his report Boutros Boutros-Ghali outlined five different modalities of UN-regional organisations co-operation: 1) consultations (considered in its formal and informal dimensions); 2) diplomatic support (the participation, expressed in terms of either support or technical input, of regional organizations in the broader peacemaking efforts undertaken by the UN; 3) operational support (similar, for instance, to the air support provided by NATO to the UNPROFOR); 4) co-deployment of missions in the field (UN field missions which have been deployed in conjunction with the regional peacekeeping forces); and, 5) joint operations (the last of the ways the UN and regional organizations could cooperate).¹⁷ It was also the first time that guidelines provided by the UN were going beyond enforcement action.¹⁸ In addition, it was opinion of the then Secretary-General that while the operationalization of the mentioned modalities could not count on a universal model of co-operation, certain principles could nevertheless guide the relationship between the UN and regional organisations. These included the establishment of formal/informal consultative mechanisms; the respect of the normative framework offered by the UN Charter; a clear definition of labour to avoid overlapping activities and institutional rivalry; and, consistency in the solution of common problems.¹⁹

¹⁵ See UN General Assembly Resolution A/RES/48/42, *Comprehensive review of the whole question of peace – keeping operations in all their aspects*, General Assembly 75th plenary meeting, 10 December 1993, para 63. In para. 65 of Resolution, the GA also requested “the Secretary-General, in accordance with Chapter VIII of the Charter, to consider ways to provide advice and assistance, in a variety of forms such as advisory services, seminars and conferences, to regional organizations and arrangements in their respective areas of competence, so as to enhance their capacity to cooperate with the United Nations in the field of peace-keeping operations”. For further information see also Nikki Slocum-Bradley and Tanía Felício, *op.cit.* note 2, 10.

¹⁶ See Boutros Boutros-Ghali, *Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the 50th Anniversary of the United Nations*, UN Doc. No. A/50/60 – S/1995/1, 25 January 1995.

¹⁷ *Ibid.*, para. 86. On the same cooperative solutions will revert the 1999 study of the UN DPKO Lessons Learned Unit “Cooperation between United Nations and Regional Organizations/Arrangements in Peacekeeping Environment. Suggested Principles and Mechanisms”, March 1999.

¹⁸ See Ademola Abass, *op.cit.* note 1, 117.

¹⁹ Birender S. Dhanoa, *The Increased Role fo Regional Organizations in Peacekeeping and Effects on the United Nations Preeminence in Future Peace Operations*, thesis presented to the Faculty of the U.S. Army Command and General Staff College, Master of Military Art and Science, Fort Leavenworth, Kansas, 2003, 14.

In 2000, the High-Level Panel on United Nations Peace Operations issued its report—the so called “Brahimi Report” from the name of its Chairman—on the shortcomings of the existing system and making specific recommendations for change.²⁰ The Brahimi report represented a rigorous conceptual analysis of key elements for successful UN peacekeeping—its sole focus—and called for stronger and clearer mandates, better training and equipment, and financing of missions.²¹ In the report, the High-Level Panel urged Member States to implement recommendation made in 1995 *Supplement to An Agenda for Peace* on the need of a more integrated approach to promote internal strategic coordination.²² To this end, the High-Level Panel proposed the creation of an Integrated Mission Task Force (IMTF) “with staff from throughout the United Nations system seconded to them, to plan new missions and help them reach full deployment, significantly enhancing the support that Headquarters provides to the field”.²³ The IMTFs, as proposed in the Brahimi report, was to become the standard vehicle for planning and supporting UN missions as well as a possible solution for a collaboration—across divisions, departments and agencies—relying “too heavily on personal networks and ad hoc support”.²⁴ The proposed cooperative modality was envisaged in the 1999 Generic Guidelines for Strategic Frameworks²⁵ By then, two distinct approaches emerged for international coordination:

- a) *The Strategic Framework Approach*: focused around the SRSG and the UN Resident Coordinator it was designed to bring together actors to develop and implement a common approach to peacebuilding. The idea behind this cooperative modality is for the SRSG and UN Resident Coordinator to chair a series of coordinating bodies that bring together UN agencies, local and

²⁰ See Report of the Panel on United Nations Operations, UN Doc. No. A/55/305 – S/2000/809, 21 August 2000.

²¹ Maj Ben Robert DS Gordon, *A Comparative Study on Doctrines and Principles for Multidimensional Peace Operations: A Case for Harmonization and Enhanced Interoperability*, paper commissioned for the International Forum for the Challenges of Peace Operations, Challenges Forum Seminar, New York 2007, para 16, 6.

²² See Boutros Boutros-Ghali, *Supplement to An Agenda for Peace*, *op.cit.* note 16, para. 91.

²³ See Report of the Panel on United Nations Operations, *op.cit.* note 20, paras. 198-245.

²⁴ *Ibid.*, paras. 198 to 217. See also Espen Barth Eide *et al.*, *Report on Integrated Missions: Practical Perspectives and Recommendations*, United Nations Development Group, Independent Study for the Expanded UN ECHA Core Group, May 2005, 11.

²⁵ The 1997 Secretary General’s report on *Renewing the United Nations – a Programme for Reform* also called for a more integrated and unified UN, both at headquarters and in the field, with the purpose to ensure “that humanitarian strategies as well as longer-term development aims are fully integrated into the overall peacekeeping effort”. See UN Doc. No. A/51/950, 14 July 1997.

international NGOs, donors, and national authorities.²⁶ Experiences from its problematic application in Afghanistan and Sierra Leone led to the conclusion that the Strategic Framework was unable to generate the flexibility and meaningful collaboration needed in the field and should not be attempted in peacekeeping contexts.²⁷

- b) *The Integrated Mission Approach*: used by the UN as it entered Kosovo in May 1999 and followed in other missions.²⁸ This approach was designed to subsume actors and approaches under a single political-strategic crisis management framework.²⁹ From its implementation it was evident the importance to ensure sustained communication and consultation at both headquarters and field level.³⁰ The 2005 of the evaluation of the UN Executive Committee on Humanitarian Affairs (ECHA) Core Group, in its Report on Integrated Missions, disclosed that IMTFs “succeeded in resolving technical issues of day-to-day coordination and policy differences” but, “there was still an overall incoherence in the international response mechanism”.³¹ In 2006 the adoption of the Integrated Missions Planning Process (IMPP)³² was seen as way to address the difficulties encountered in achieving a ‘context-driven’ approach to peace operations.³³ In addition, while the co-operation with regional organisations should be based on common defined objectives Thorsten Benner and Philipp Rotmann observed “a persistent lack of cohesiveness among the UN agencies, between the UN agencies and a number of regional

²⁶ Bruce D. Jones, *The Challenges of Strategic Coordination: Containing Opposition and Sustaining Implementation of Peace Agreements in Civil Wars*, International Peace Academy Policy Paper Series on Peace Implementation, New York, June 2001, 18-19.

²⁷ *Ibid.*

²⁸ For instance, UN missions in Timor-Leste, Sierra Leone, Afghanistan, Liberia, the Democratic Republic of the Congo, Burundi, Haiti, Iraq, Cote d’Ivoire and the Sudan. For further information see Vincenza Scherrer, “Challenges of Integration: Cooperation on SSR within the UN System and Beyond”, in David M. Law, *op.cit.* note 6, 186.

²⁹ Espen Barth Eide *et al.*, *op.cit.* note 24, 14. In the report integrated mission were defined as “an independent instrument with which the UN seeks to help countries in the transition from war to lasting peace, or address a similarly complex situation that requires a system-wide UN response, through subsuming various actors and approaches within an overall political-strategic crisis management framework”.

³⁰ Bruce D. Jones, *op.cit.* note 26, 21.

³¹ Espen Barth Eide *et al.*, *op.cit.* note 24, 12.

³² The IMPP was formally endorsed through a decision of the Secretary-General’s Policy Committee, on 13 June 2006.

³³ Richard Gowan, “The Strategic Context: Peacekeeping in Crisis, 2006–08”, in *International Peacekeeping* Vol. 15 Issue 4, 2008, 453-469, 453. In the same year the UN Secretary-General adopted a revised version of his 2000 Note of Guidance on *Integrated Missions* clarifying the role, responsibility and authority of the Special Representative of the Secretary-General and the Deputy Special Representative of the Secretary-General/ Resident Coordinator/Humanitarian Coordinator.

organizations, and between these entities and some of the major powers involved in the process”.³⁴

In trying to address the problematic implementation of the two approaches emphasis should then shift from ‘structure’ in favour of ‘function’ which the missions are called to perform. Since fixed templates cannot be proposed for integration, the international actors should then focus on a “form should follow function” approach.³⁵ To this end, the same ECHA reported that:

“Mission design must reflect the operational inputs of participating organisations, and not be reflections of the perspective of one UN department only. While integration is intended to facilitate rationalisation, the reality to date is that the implementation of integration has frequently resulted in the creation of parallel structures and in rare cases even system dysfunction.”³⁶

The institutional efforts undertaken by the UN continued with the recommendations of the 2004 High-Level Panel on Threats, Challenge and Change in November 2004. Specifically, with regard to NATO, the High-level Panel reported the following:

“In recent years, such alliance organizations as NATO (which have not usually been considered regional organizations within the meaning of Chapter VIII of the Charter but have similar characteristics) have undertaken peacekeeping operations beyond their mandated areas. We welcome this so long as these operations are authorized by and accountable to the Security Council. In the case of NATO, there may also be a constructive role for it to play in assisting in the training and equipping of less-well-resourced regional organizations and States.”³⁷

This paragraph raised several questions due to the identification of NATO as a regional organization “outside” Chapter VIII and the conceptual perplexities expressed between “peacekeeping” and “peace enforcement” mandate enjoyed by NATO in its out-of-area operations under Chapter VII of the UN Charter.³⁸ Recommendations of

³⁴ Thorsten Benner *et al.*, *Learning to Build Peace? United Nations Peacebuilding and Organizational Learning: Developing a Research Framework*, GPPi Research Paper Series No. 7 (2007), Berlin 2007, 29.

³⁵ Espen Barth Eide *et al.*, *op.cit.* note 24, 4.

³⁶ *Ibid.*

³⁷ See *A More Secured World: our Shared Responsibility*, Report of the High-Level Panel on Threats, Challenge and Change”, UN General Assembly, Doc No. A/59/565, 2 December 2004, para. 273. Available at: http://www.unrol.org/files/gaA.59.565_En.pdf. In para. 87 of the report the High-Level Panel noted that in Kosovo “paralysis in the Security Council led the North Atlantic Treaty Organization (NATO) to bypass the United Nations”.

³⁸ Dick A. Leurdijk, *UN Reform and NATO Transformation: The Missing Link*, Royal Institute for International Relations, Egmont Paper 10, Brussels November 2005, 10-11.

the Panel were then reiterated in the Secretary-General's Report "*In Larger Freedom*" of March 2005 and finally endorsed in the September 2005 UN World Summit.³⁹ In stating that "the Security Council has not made the most of the potential advantages of working with regional organisations", the enhancement of UN-Regional Organizations co-operation should start, in the opinion of the High-Level Panel, with a formalization of the inter-organizational consultation and cooperation, and also by making "fuller and more productive use of the Chapter VIII provisions of the Charter".⁴⁰ To this end, the Secretary-General declared his intention to conclude a series of memoranda of understanding with partner organizations; the proposal was supported by the General Assembly.⁴¹ The latter, in the World Summit Document, agreed to "expand consultation and cooperation between the UN and regional and sub-regional organisations through formalised agreements between the respective secretariats and, as appropriate, involvement of regional organisations in the work of the Security Council".⁴² By then, regional organisations, for instance the EU, were praised for developing "*capacities such as for rapid deployment, stand-by and bridging arrangements*".⁴³ Regional action was, nevertheless, to be organised "within the framework of the Charter and the purposes of the United Nations, and [...] in a more integrated fashion than has up to now occurred."⁴⁴ In the opinion of the High-Level Panel, this would have required, *inter alia*, that:

"Authorization from the Security Council should in all cases be sought for regional peace operations, recognizing that in some urgent situations that authorization may be sought after such operations have commenced;

[...]

³⁹ See Kofi Annan, *In Larger Freedom: towards development, security and human rights for all*, UN Doc. No. A/59/2005. See also Tânia Felício, *Managing Security as a Regional Public Good. A Regional-Global Mechanism for Security*, UNU-CRIS Occasional Papers 0-2005/19, United Nations University, Bruges 2005, § Regional Security in the UN Reform.

⁴⁰ See *A More Secured World: our Shared Responsibility*, *op.cit.* note 37, para. 270.

⁴¹ In the 2005 World Summit Outcome, Heads of the State and Government recognized the importance of "*forging predictable partnerships and arrangements between the United Nations and regional organizations*". See UN General Assembly Resolution 60/1, 2005 World Summit Outcome, UN Doc. No. A/RES/60/1, 24 October 2005, para 93.

⁴² *Ibid.*, para. 170 (a).

⁴³ *Ibid.*, para. 93.

⁴⁴ See *A More Secured World: our Shared Responsibility*, *op.cit.* note 37, para. 272. In para. 112, the Secretary-General also advocated "for a decisive move forward: the establishment of an interlocking system of peacekeeping capacities that will enable the United Nations to work with relevant regional organizations in predictable and reliable partnerships".

Regional organizations that have a capacity for conflict prevention or peacekeeping should place such capacities in the framework of the United Nations Standby Arrangements System (UNSAS).⁴⁵

In the weeks after the publication of the SG's report, NATO's Secretary-General, Jaap de Hoop Scheffer, expressed support for the UN's reform effort: "*We need structured relationships at the institutional level as well—to coordinate strategically, not just cooperate tactically. We need to establish such relationships with the UN*".⁴⁶

Shortly afterwards, the Secretary-General presented his report "*A Regional-Global Security Partnership: Challenges and Opportunities*" to the General Assembly.⁴⁷ In the opinion of the Secretary-General a more effective partnership was to be achieved through a clear division of roles and in light of the comparative advantages of organizations involved. To this end, the Secretary-General explained that:

"72. There are many instances in past crises when a number of organizations, all with well-meaning intent, have acted at cross purposes in conflict prevention, peacemaking, peacekeeping and peacebuilding. This has at times resulted in a lack of coordination to the point of confusion on the part of the international community. The Security Council itself has, on occasion, been concerned to call for effective coordination to ensure a clearer collective effort.

73. Clarification is needed in specific situations when the distribution of labour should be accurately defined but the reality speaks otherwise. However, this clarification also pertains to our regular policy-oriented meetings at the level of heads of organizations, whether convened by the Security Council or myself."⁴⁸

⁴⁵ *Ibid.*, para. 272 (d). The framework provided by UNSAS enabled fourteen countries to establish by 1996 the Standby High-Readiness Brigade (SHIRBRIG) as a co-ordinated arrangement to equip the UN with a rapidly deployable peacekeeping and crisis management tool. Developed in cooperation with the UN Secretariat and Department of Peacekeeping Operations (DPKO), the relationship between SHIRBRIG and such UN bodies suffered from in-built institutional deficiencies. Furthermore, the then "SHIRBRIG Contact Group", created as an inter-organizational channel for permanent communication and cooperation, was unable to function as an effective liaison and inter-linkage mechanism. The SHIRBRIG was further perceived by the same DPKO as a competitor instead of a partner. In 2009, the experience of the SHIRBRIG was abandoned in the absence of political support. For further information see Joachim Koops, "Effective Inter-Organizationalism? Lessons Learned from the Standby High Readiness Brigade for United Nations Operations (SHIRBRIG)", in *Studia Diplomatica* Vol. LXII, 2009, No. 3, 81-90; and Joachim Koops & Johannes Varwick, *Ten Years of SHIRBRIG. Lessons Learned, Development Prospects and Strategic Opportunities for Germany*, GPPi Research Paper Series No. 11 (2008), Global Public Policy Institute, Berlin 2008.

⁴⁶ See "Reinventing NATO – Does the Alliance reflect the changing nature of Transatlantic Security?", Keynote address by NATO Secretary General, Jaap de Hoop Scheffer, at the "New Defence Agenda" conference, Brussels 24 May 2005.

⁴⁷ See UN Doc. No. A/61/204 – S/2006/590, 28 July 2006.

⁴⁸ *Ibid.*

However, the desired division of labour and relative identification of comparative advantages was hindered by the absence of any definition of the concept of ‘region’ in Chapter VIII of the Charter.⁴⁹ Few years later, a further attempt in this direction was the 2008 “United Nations Peacekeeping Operations—Principles and Guidelines”—widely known as the UN Capstone Doctrine. Apart from being the first real UN doctrine for peacekeeping, the document refers, besides the principles which inspired UN peacekeeping until then—namely, Consent of the Parties, Impartiality and Non-use of force except in self-defence and defence of the mandate⁵⁰—to success factors, relevant for multidimensional missions, like: Legitimacy, Credibility and Promotion of National and Local Ownership.⁵¹

The following Secretary-General’s report, issued in the same year, focused on the “Relationship between the United Nations and regional organisations, in particular the African Union, in the maintenance of international peace and security”.⁵² In the report, the Secretary-General declared that “the real challenges is to find ways to replace the improvised, at times selective resource-skewed approach with more planned, consistent and reliable arrangements...”.⁵³ In addition, the Secretary-General returned on the 2006 recommendations for a clear classification of roles between organisations willing to operate within the boundaries of Chapter VIII and those that have the intention to avoid the corresponding legal obligations.⁵⁴ The proposed clarification of roles would have immediate effect on the controversial position held by NATO *vis-à-vis* Chapter VIII of the UN Charter. The co-operation with NATO was further elaborated in the September 2008 *Joint Declaration on UN-NATO Cooperation*. Aimed at providing a framework for expanded consultation and cooperation “between the organization’ Secretariats”⁵⁵, the agreement reaffirmed the attention devoted to UN-NATO institutional co-operation and the joint commitment to maintaining

⁴⁹ *Ibid.*, para. 77.

⁵⁰ With inclusion of the “Non-use of force except in...defence of the mandate” the Capstone Doctrine acknowledged the notion of “robust peacekeeping”.

⁵¹ See United Nations Department of Peacekeeping Operations, *United Nations Peacekeeping Operations—Principles and Guidelines*, United Nations 2008, para. 3.2. Available at: http://pbpu.unlb.org/pbps/library/capstone_doctrine_eNg.pdf

⁵² See S/2008/186, 7 April 2008.

⁵³ *Ibid.*, 2.

⁵⁴ *Ibid.*, para. 71(d). Focus of the report is “[...] how to make a distinction between regional organizations for Chapter VIII activities and all other regional organizations’ activities, and developing a structure for identifying regional security mechanism either by membership, focal area and/or mandate”. In this case several authors have expressed concern over the criteria proposed for the identification of regional organizations. See, for instance, Ademola Abass, *op.cit.* note 1, 125.

⁵⁵ See NATO Doc. No. Annex to DSG(2008)0714 (INV).

international peace and security. In the Joint Declaration, the Alliance and the UN agreed on the flexibility and evolving nature of the cooperative framework and committed to “further develop the cooperation [...] on issues of common interest, in, but not limited, to, communication and information sharing, including on issues pertaining to the protection of civilian populations; capacity-building, training and exercises; lesson learned, planning and support for contingencies; and operational coordination and support”.⁵⁶

Finally, in 2009 the UN report *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping* referred to the critical aspects of partnership, considered in both conceptual and operational implications.⁵⁷

A. Initiatives undertaken by the Secretary-General and the Security Council

Since 1994 both the UN Secretary-General and the Security Council have convened specific meetings with regional organisations.⁵⁸ With regard to the efforts undertaken by the Secretary-General, several High-Level meetings have been convened on the subject matter.⁵⁹ Among the meetings held, particularly relevant was the 2005 Sixth High-Level meeting that led to the creation of a Standing Committee⁶⁰ with mandate to support the overall process of interaction.⁶¹ In October 2005, the Security Council by supporting the conclusion of the Sixth High-Level Meeting adopted Resolution 1631 expressing its “determination to take appropriate steps to the further development of cooperation between the United Nations and regional and sub-regional organizations”.⁶² In Resolution 1631, the Security Council invited the Secretary-General to:

⁵⁶ *Ibid.*, para. 4. For further information see also Kent J. Kille, “NATO and the United Nations: Debates and Trends in Institutional Coordination”, in *Journal of International Organizations Studies (JIOS)*, Vol. 2 Issue 1, 2010, 28-49, 36.

⁵⁷ UN Department of Peacekeeping Operations and Department of Field Support, *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping*, United Nations, New York July 2009, 3-7.

⁵⁸ David M. Law, *op.cit.* note 6, page 49-52.

⁵⁹ Kennedy Graham, *Regionalisation and Responses to Armed Conflict, with Special Focus on Conflict Prevention and Peacekeeping*, UNU-CRIS Occasional Papers 0-2005/21, United Nations University, Bruges 2005, 21.

⁶⁰ To meet between high-level meetings, the Committee oversees the continuation of the working groups and streamline the process of strengthening the operational partnership.

⁶¹ See A/60/341 – S/2005/567, para. 7. In this occasion, participants to the meeting agreed on the lack of institutional knowledge on effective potentials of UN-regional organisations cooperation. See Luk Van Lagenhove *et al.*, in Philippe De Lombaerde *et al.* (eds.), *op.cit.* note 1, at 97.

⁶² See UNSC Resolution, S/RES/1631 (2005), 17 October 2005.

“[...] submit a report on the opportunities and challenges facing the cooperation between the United Nations and regional and sub-regional organizations in maintaining international peace and security” and encouraged the Secretary-General to explore with regional organizations the possibility of agreements establishing a framework for regional organizations’ cooperation with and contributions to United Nations-led peacekeeping operations, taking into due consideration the cooperation guidelines already identified between the UN and certain regional organizations”.⁶³

The joint statement issued at the end of the meeting concluded that a more structured relationship between the UN and “other intergovernmental organisations” was to be developed in order to create “*a truly interlocking system that guarantees greater coordination in both policy and action. This partnership should build on the comparative strengths of each organization*”.⁶⁴

Besides the initiatives undertaken by the Secretary-General, the partnership with regional organisations was strengthened thanks to the regular dialogue maintained by the Security Council.⁶⁵ Meetings convened by the Security Council led to the identification of specific inter-organizational approaches to conflict resolution and stabilization processes⁶⁶, and represented a significant added value in pursuing complementarity and comparative advantages for regional agencies or arrangements involved.

II. The evolution of NATO and its approach to international co-operation

Since the end of the Cold War, NATO has undertaken intense institutional efforts in changing its traditional focus and consequently renovating its *raison d’être*. In this process, the Alliance has moved towards the development of a co-operative security approach and adopted the notion of ‘crisis management’ among its operational tools

⁶³ *Ibid.*, para. 10.

⁶⁴ Joint Statement of the Participants in the Sixth High-Level Meeting between the United Nations and Regional and other Intergovernmental Organisations, held at United Nations Headquarters in New York on 25-26 July 2005. See also Luk Van Langenhove and Ana-Cristina Costea, *The EU as a Global Actor and the Emergence of ‘Third Generation’ Regionalism*, UNU-CRIS Working Paper 0-2005/14, United Nations University, Bruges 2005, 8.

⁶⁵ See the first meeting under the Mexican Presidency. See UNSC, S/PV.4739, 11 April 2003.

⁶⁶ See the second meeting held under the Romanian Presidency. See UNSC, S/PV.5007 and Resumption 1, 20 July 2004. This meeting was attended by seven international organizations (AU, CIS, EU, LAS, NATO, OSCE and ECOWAS).

for the promotion and maintenance of stability in its periphery. The notion of ‘crisis management’ was further adopted as a ‘fundamental security task’ in the 1999 NATO Strategic Concept.⁶⁷ In these circumstances, the process of internal reform was coupled by a groundbreaking expansion of geographical and functional security dimensions.⁶⁸ For instance, the support expressed to the UN in the Balkans was a revolutionary break with the Alliance’s previous policies as well as a controversial shift, if considered in its ‘out-of-area’ engagement and relationship with the UNSC.

A. *The 1991 Strategic Concept*⁶⁹

The new security agenda that emerged from the Strategic Concept of 1991 emphasized dialogue and cooperation with former adversaries.⁷⁰ Considered in terms of inter-organizational cooperation, the introduction of the notion of ‘interlocking institutions’⁷¹ was a clear sign of the approach the Alliance decided to pursue to tackle security challenges in the post-Cold War:

“The challenges we will face in this new Europe cannot be comprehensively addressed by one institution alone, but only in a framework of interlocking institutions tying together the countries of Europe and North America. Consequently, we are working towards a new European security architecture in which NATO, the CSCE, the European Community, the WEU and the Council of Europe complement each other. Regional frameworks of co-operation will also be important. This interaction will be of the greatest significance in preventing instability and divisions that could result from various causes, such as economic disparities and violent nationalism.”⁷²

⁶⁷ According to NATO, Crisis Management Conflict Prevention (active diplomacy and preventive deployments) and Crisis Response operations, like Bosnia and Kosovo. For further information see Richard Cohen and Michael Mihalka, *Co-operative Security: New Horizons for International Order*, The Marshall Center Papers No. 3, George C. Marshall European Center for Security Studies, Garmisch-Partenkirchen, April 2001.

⁶⁸ Victor Mauer, *Cracks in the Foundations: NATO After the Bucharest Summit*, CSS Analyses in Security Policy, Vol. 3, No. 33, ETH Zurich 2008, 1.

⁶⁹ See the *Alliance’s New Strategic Concept*, agreed by the Heads of State and Government participating in the meeting of the North Atlantic Council, Rome 7-8 November 1991.

⁷⁰ Nikoloz Vashakidze, *The Role of the Washington Summit Decisions in Strengthening Cooperation between NATO and its Partners for a Better Europe*, NATO-EAPC Fellowship 2000-2002, Brussels 2002, 3.

⁷¹ The new strategic concept set out risks that its member states faced in the post-Cold War Europe, asserting: “The Alliance is purely defensive in purpose: none of its weapons will ever be used except in self-defence.” See Alfredo Chamorro Chapinal, *The Security and Defence of Europe in the Twenty-First Century (NATO, WEU, OSCE)*, NATO Fellowship Programme, 2000, 48.

⁷² See NATO Rome Declaration on Peace and Cooperation, Press Communiqué S-1(91)86, para. 3, issued by the Heads of State and Government participating to the meeting of the North Atlantic Council in Rome, 8 November 1991. Available at: <http://www.nato.int/docu/comm/49-95/c911108a.htm>. For further information, see also Dena W. Gurgul and Grzegorz Siczak (eds.), *Complementarity of*

As said, the new strategic framework was shaped around the different nature of the post Cold-War security challenges.⁷³ The latter were defined by the Alliance as “multi-faceted in nature and multi-directional”⁷⁴ and less likely to result from “calculated aggression against the territory of the Allies” but rather from other sources.⁷⁵ These tensions could then lead, in the opinion of the organisation, to “crises inimical to European stability and even to armed conflicts which could involve outside powers or spill over into NATO countries, having a direct effect on the security of the Alliance”.⁷⁶ In this frame, the proposed interlocking structure should then form the basis for “*a comprehensive architecture in which the Alliance, the process of European integration and the CSCE are key elements.*”⁷⁷ Apart from being considered the “*basis of the Alliance’s security policy*”⁷⁸, the proposed co-operative approach to security should further imply a “*coherent approach determined by the Alliance’s political authorities choosing and coordinating appropriate crisis management measures as required from a range of political and other measures, including those in the military field*”.⁷⁹ Consequences of this posture in terms of inter-organizational linkages were then acknowledged by the organisation that in paragraph 27 of the Strategic Concept stated:

“The Alliance will continue to respect the legitimate security interests of others, and seek the peaceful resolution of disputes as set forth in the Charter of the United Nations. The Alliance will promote peaceful and friendly international relations and support democratic institutions. In this respect, it recognizes the valuable contribution being made by other organizations such

European Security Institutions: A Few Thoughts, Diplomatic Academy of the Ministry of Foreign Affairs, Warsaw 2005, 40.

⁷³ *Ibid.*, para. 14. The changed security environment offers represented an opportunity for the Alliance to “frame its strategy within a broad approach to security”.

⁷⁴ See 1991 NATO Strategic Concept, para. 8. Available at: http://www.nato.int/cps/en/SID-B687437B-A238DC5E/natolive/official_texts_23847.htm.

⁷⁵ In the Strategic Concept the Alliance refers to “adverse consequences of instabilities that may arise from the serious economic, social and political difficulties, including ethnic rivalries and territorial disputes, which are faced by many countries in Central and Eastern Europe”.

⁷⁶ *Ibid.*, para. 9.

⁷⁷ See Partnership with the Countries of Central and Eastern Europe, Statement issued by North Atlantic Council Meeting in Ministerial Session, 6-7 June 1991, para. 3. See also Ingo Peters, “The OSCE, NATO and the EU within the “Network of Interlocking European Security Institutions”: Hierarchization, Flexibilization, Marginalization”, in *OSCE Yearbook 2003*, Nomos, Baden-Baden 2004, 381-402, 381.

⁷⁸ *Ibid.*, para. 23.

⁷⁹ *Ibid.*, para. 32.

as the European Community and the CSCE, and that the roles of these institutions and of the Alliance are complementary”.⁸⁰

The recognised complementarity was deemed to be expression of an “inseparable link between the Allies' security to that of all other states in Europe”. To this end, the Allies expressed their official support to the CSCE (process and institutional development). Other bodies including the “European Community, Western European Union and United Nations may also have an important role to play”.⁸¹ Such kind of official linkages were to be met by appropriate institutional development, namely the possibility to conduct out-of-area action. Through the adoption of the new Strategic Concept the Alliance has therefore reserved for itself the possibility to act beyond that area set out in articles 5 and 6 of the Washington Treaty.⁸² In this process, continuity with the Washington treaty was maintained due to the reference to Article 4 of the NATO Treaty and its functions as detailed in paragraph 21⁸³ of the Strategic Concept.⁸⁴

In June 1992, with decision taken by NAC a further step was taken in the direction of the NATO's engagement outside the treaty area.⁸⁵ By then the NAC expressed readiness to *“support, on a case by case basis in accordance with our own procedures, peacekeeping activities under the responsibility of the CSCE, including making available Alliance resources and expertise”*.⁸⁶ This approach was later confirmed, in December, with regard to peacekeeping operations under the authority of the UNSC.

⁸⁰ See 1991 NATO Strategic Concept, para. 27. Available at: http://www.nato.int/cps/en/SID-B687437B-A238DC5E/natolive/official_texts_23847.htm.

⁸¹ *Ibid.*, para. 33.

⁸² Earlier in 1991, during the Gulf crisis, the approach to out-of-area conflicts was framed around the concept of “passive solidarity”, according to which Allies operating out-of-area could make use of NATO facilities such as infrastructure, collective equipment and coordinating procedures. See Mamuka Metreveli, *Legal Aspects of NATO's Involvement in the Out-of-Area Peace Support Operations*, NATO-EAPC Research Fellowship 2001-2003, Final Report, Tbilisi 2003, 17.

⁸³ NATO's core functions were: *a) to provide one of the indispensable foundations for a stable security environment in Europe, based on the growth of democratic institutions and the commitment to the peaceful resolution of disputes, in which no country would be able to intimidate or coerce any European nation or to impose hegemony through the threat or use of force; b) to serve, as provided for in Article 4 of the North Atlantic Treaty as a transatlantic forum for Allied consultations on any issues that affect their vital allied interests, including possible developments posing risks for members security and for appropriate co-ordination of efforts in fields of common concern; c) to deter and defend against any threat of aggression against the territory of any NATO member state; and, d) to preserve the strategic balance in Europe.*

⁸⁴ Mamuka Metreveli, *op.cit.* note 82, 16.

⁸⁵ See Final Communiqué, Ministerial Meeting of the North Atlantic Council held in Oslo, 4 June 1992.

⁸⁶ *Ibid.*, para. 11.

The initiative was promptly followed by the WEU's Petersberg Declaration⁸⁷, and could be considered as a concerted 'out-of-area' development of Euro-Atlantic defence organizations.⁸⁸ In 1994, with the adoption of the Brussels Summit Declaration, the Alliance reaffirmed the "offer to support, on a case by case basis in accordance with our own procedures, peacekeeping and other operations under the authority of the UN Security Council or the responsibility of the CSCE, including by making available Alliance resources and expertise. Participation in any such operation or mission will remain subject to decisions of member states in accordance with national constitutions."⁸⁹ Co-operation with the OSCE was further emphasized at the 1997 Madrid Ministerial Meeting held in Madrid, where Allies stated:

"[...] We reaffirm our commitment to further strengthening the OSCE as a primary instrument for early warning, conflict prevention, crisis management and post-conflict rehabilitation as well as for enhancing cooperative security and advancing democracy and human rights. All these elements contribute to establishing the foundation of a Euro-Atlantic area characterized by cooperative security and reliable stability, and are supplemented by the work of the OSCE (Organization for Security and Co-operation in Europe), in particular on a 'Common and Comprehensive Security Model for the 21st Century' in accordance with the decision of the OSCE Lisbon Summit in 1996."⁹⁰

B. The 1999 NATO Strategic Concept⁹¹

On the way to the revised Strategic Concept, the 1997 Summit in Madrid was the occasion for the Alliance to reflect on its strategic concept and agreed for the same to be "re-examined and updated to reflect the changes that had taken in Europe since its adoption, while confirming the Allies commitment to collective defence and the

⁸⁷ As from the Declaration, the WEU confirmed its willingness to "support, on a case by case basis and in accordance with our own procedures, the effective implementation of conflict-management measures, including peacekeeping activities of the CSCE or the United Nations Security Council". See the Petersberg Declaration issued by the Western European Union, Council of Ministers, Bonn 19 June 1992, para. 2.

⁸⁸ Mamuka Metreveli, *op.cit.* note 82, 22.

⁸⁹ See Declaration of Heads of State and Government participating in the meeting of the North Atlantic Council held in Brussels, 11 January 1994. Press Release M-1(94) 003. Available at: http://www.nato.int/cps/en/SID-06477347-77BF9AB4/natolive/official_texts_24470.htm?mode=pressrelease.

⁹⁰ See Madrid Declaration on Euro-Atlantic Security and Cooperation, issued by the Heads of State and Government, NATO Doc. No. M.1(97)81, Madrid 8-9 July 1997, para. 21. See the analysis on the OSCE in this Section.

⁹¹ The Alliance's Strategic Concept approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C., 24 April 1999, para. 10. Available at: http://www.nato.int/cps/en/SID-97C11598-644F099E/natolive/official_texts_27433.htm.

transatlantic link and ensuring that NATO strategy is fully adapted to the challenges of the 21st century”.⁹² In the mind of the drafters—being the Alliance “subject to a wide variety of military and non-military risks”⁹³—the reviewed concept was to reflect a European Security architecture based on a cooperative commitment in the fields of crisis management and partnership.⁹⁴ A commitment that was translated, at least in the field of crisis management, by the Alliance’s readiness on “*case-by-case and by consensus, in conformity with Article 7 of the Washington Treaty, to contribute to effective conflict prevention and to engage actively in crisis management, including crisis response operations*”.⁹⁵ NATO’s contribution was then to be performed in a frame of “mutually reinforcing organisations”, here identified by the organisations as a “central feature of the security environment.”⁹⁶ Inter-organizational interaction was then formulated in terms of “*wide-ranging partnership, cooperation, and dialogue with other countries in the Euro-Atlantic area, with the aim of increasing transparency, mutual confidence and the capacity for joint action with the Alliance*”.⁹⁷ In this scenario, the Alliance’s military forces were to be called upon to conduct “*crisis response operations*” and to contribute to the “*preservation of international peace and security by conducting operations in support of other international organisations, complementing and reinforcing political actions within a broad approach to security*”.⁹⁸ The support to international organisations, to be given on a case-by-case

⁹² The meeting in Madrid was also the occasion for the Atlantic leaders to reaffirm their commitment to “*further strengthening the OSCE as a regional organisation according to Chapter VIII of the Charter of the United Nations and as a primary instrument for preventing conflict, enhancing cooperative security and advancing democracy and human rights*”. See Madrid Declaration, on Euro-Atlantic Security and Cooperation issued by the Heads of State and Government at the Meeting of the North Atlantic Council, NATO Doc. No. M.1(97)81, Madrid 8-9 July 1991.

⁹³ *Ibid.*, para. 20. These include “uncertainty and instability in and around the Euro-Atlantic area and the possibility of regional crises at the periphery of the Alliance ... [which could take the form of] ethnic and religious rivalries, territorial disputes, inadequate or failed efforts at reform, the abuse of human rights and the dissolution of states ... [which] could lead to crises affecting Euro- Atlantic stability”

⁹⁴ Nikoloz Vashakidze, *op.cit.* note 70, 5. It is also relevant to note that, although with no clear definition of its boundaries, the new Strategic Concept makes reference, for the first time, to the “Euro-Atlantic area”.

⁹⁵ The Alliance’s preparedness to carry out such operations was to support the broader objective of reinforcing and extending stability. See the 1999 Alliance’s Strategic Concept, *op.cit.* note 25, para. 10.

⁹⁶ *Ibid.*, para 14.

⁹⁷ *Ibid.*, para. 10. In respect to the previous statement on the European Defence Identity, the NATO Communiqué refers this time explicitly to EU-led operations, not WEU operations, as it was the case before.

⁹⁸ *Ibid.*, para. 48. See also Daniela Spinant, *NATO Enlargements? Towards a Pan-European Security System?* NATO-EPC Research Fellowship 1998-2000, Brussels 30 June 2000, 21.

basis and for peacekeeping and other operations, was then conditioned to “*the authority of the UN Council or the responsibility of the CSCE.*”⁹⁹

With respect to the 1991 Strategic Concept, the emergence of complex new risks to Euro-Atlantic peace and stability justified, in the revised 1999 document, the continued emphasis on the need to go beyond the boundaries envisaged by Article 5 and 6 of its founding treaty.¹⁰⁰ In this sense, explicit reference to the “non -article 5 missions” was justified by the Alliance as follow:

“In pursuit of its policy of preserving peace, preventing war, and enhancing security and stability and as set out in the fundamental security tasks, NATO will seek, in cooperation with other organisations, to prevent conflict, or, should a crisis arise, to contribute to its effective management, consistent with international law, including through the possibility of conducting non-Article 5 crisis response operations [...].”¹⁰¹

The 1999 Strategic Concept further envisaged the preservation of peace and reinforcement of ‘Euro-Atlantic security and stability’ to be pursued, *inter alia*, by the development of the European Security and Defence Identity within the alliance. This process would require, as clarified by the Strategic Concept, “close cooperation between NATO, the WEU and, if and when appropriate, the European Union”.¹⁰²

Particularly for the EU, in the NATO Washington Communiqué NATO leaders acknowledged “*the resolve of the European Union to have the capacity for autonomous action where the Alliance as a whole is not engaged*”¹⁰³. Anticipating the development of the future Berlin Plus arrangement the Alliance expressed readiness “*to define and adopt the necessary arrangements for ready access by the European Union to the collective assets and capabilities of the Alliance, for operations in which the Alliance as a whole is not engaged military as an alliance. The council in permanent session will approve these arrangements, which will respect the requirements of NATO operations and the coherence of its command structure*”.¹⁰⁴

⁹⁹ *Ibid.*, para. 31.

¹⁰⁰ *Ibid.*, para. 3 and 24.

¹⁰¹ *Ibid.*, para 31.

¹⁰² *Ibid.*, para 26.

¹⁰³ See *An Alliance for the 21st Century*, Washington Summit Communiqué, issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington, D.C. on 24 April 1999, NATO Press Release NAC-S(99)64, para. 9 (a). Available at: <http://www.nato.int/docu/pr/1999/p99-064e.htm>.

¹⁰⁴ *Ibid.*, para. 10.

From its part, the EU, in its Cologne¹⁰⁵ and the Helsinki¹⁰⁶ summits, reiterated the primacy of NATO and its intention not to substitute the Alliance while reserving for itself the possibility to “*determine, according to the requirements of the case, whether it will conduct: EU led operations using NATO assets and capabilities or EU led operations without recourse to NATO assets and capabilities*”.¹⁰⁷

Broadly considered, and with respect to the previous version, the 1999 Strategic Concept added further emphasis on NATO’s partnership with the UN and the OSCE.¹⁰⁸ The primary responsibility for the maintenance of international peace and security recognized to the UNSC, however, should not be understood as an *exclusive* responsibility of the organisation in the subject area. In addition, the formula “under the authority of the UN or responsibility of CSCE”¹⁰⁹ seems to differentiate in between the cooperative interaction the Alliance could initiate with the two actors. In so doing, the formula adopted for the operations undertaken “under the responsibility of CSCE” seems to entail a different cooperative modality in which the CSCE, and not the Alliance, would function as primary interlocutor with the UN under Chapter VIII of the Charter.¹¹⁰ In addition, the decision to cooperate on a “case-by-case” seems to distance the Alliance from the new Strategic Concept from its 1991 predecessor where the ultimate goal of the Alliance was to be pursued coherently with principles

¹⁰⁵ See Presidency Report on Strengthening the Common European Policy on Security and Defence, Annex III to the Presidency Conclusions of the Cologne European Council, 3-4 June 1999, para. 5: “*The Atlantic Alliance remains the foundation of the collective defence of its members. The commitments under Article V of the Washington Treaty and Article V of the Brussels Treaty will in any event be preserved for the Member States party to these Treaties*”.

¹⁰⁶ See Presidency Conclusions of the Helsinki European Council, 10-11 December 1999. The European Council underlined “its determination to develop an autonomous capacity to take decisions and, where NATO as a whole is not engaged, to launch and conduct EU-led military operations in response to international crises. This process will avoid unnecessary duplication and does not imply the creation of a European army”.

¹⁰⁷ See Presidency Report on Strengthening the Common European Policy on Security and Defence, Annex III to the Presidency Conclusions of the Cologne European Council, 3-4 June 1999, para. 4.

¹⁰⁸ The 1999 Strategic Concept, defined the OSCE's role as essential “in promoting peace and stability, enhancing cooperative security, and advancing democracy and human rights in Europe. [...] NATO and the OSCE have developed close practical cooperation, especially with regard to the international effort to bring peace to the former Yugoslavia.” See the 1999 NATO Strategic Concept, *op.cit.* note 103 para. 16. See also Adam Daniel Rotfeld, “For a New Partnership in the New Century: The Relationship between the OSCE, NATO and the EU”, in *OSCE Yearbook 2000*, Nomos, Baden-Baden 2001, 377-390, 381-382.

¹⁰⁹ See the Declaration of the Heads of State and Government, Ministerial Meeting of the North Atlantic Council/North Atlantic Cooperation Council, Brussels, 10-11 January 1994, Press Communiqué M-1(94)3, para. 7.

¹¹⁰ See Emanuela Pistoia, “Le Operazioni Militari c.d. Non-Article 5 previste nella Nuova Dottrina Strategica della NATO e i rapporti tra NATO e ONU alla luce del Capitolo VIII della Carta”, in Elena Sciso (ed.), *L'intervento in Kosovo. Aspetti Internazionalistici e Interni*, Giuffrè Editore 2001, 139-186, 167-168.

enshrined in the UN Charter. This would entail that NATO's essential security interest coincide—on a case-by-case decision—but could also diverge.¹¹¹

C. The Alliance's notion of Co-operative Security

In pursuing its attempt for a “*broad approach to security, which recognizes the importance of political, economic, social and environmental factors in addition to the indispensable defence dimension*”¹¹² the Alliance has continued its process of renovation and adaption that marked its post Cold-War posture.¹¹³ Coherently, the outcomes of the 2002 Prague Summit confirmed the intention of the Alliance to look beyond its original ‘European-Atlantic focus’. By committing to tackle “the grave new threats and profound security challenges of the 21st century”¹¹⁴ the Alliance went beyond the debate around the “out-of-area” workability of the organization and pledged to “carry out the full range of its missions [...] wherever they are needed”.¹¹⁵ In this process, the identification of new security challenges motivated the adoption in 2006 of the “Comprehensive Political Guidance” to function as a “framework and political direction for NATO's continuing transformation, setting out, for the next 10 to 15 years, the priorities for all Alliance capability issues, planning disciplines and intelligence”.¹¹⁶ By recognizing the importance of the UN and the EU, the Comprehensive Political Guidance further confirmed the availability of the Alliance

“on a case-by-case basis and by consensus, to contribute to effective conflict prevention and to engage actively in crisis management, including through non-Article 5 crisis response operations, as set out in the Strategic Concept... The role of the UN and EU, and other organisations, including as appropriate non-governmental organisations, in ongoing operations and future crises will put a premium on practical close cooperation and coordination among all elements of the international response”.¹¹⁷

¹¹¹ *Ibid.*, 169.

¹¹² See the 1999 NATO Strategic Concept, *op.cit.* note 103, para. 25.

¹¹³ Pablo S. Blesa Aledo, “Siamese Twins: NATO, The EU And Collective Defence”, *CFSP Forum* Volume 5, Issue 1 January 2007.

¹¹⁴ Prague Summit Declaration, Issues by the Heads of State and Government participating in the meeting of the North Atlantic Council in Prague, 21 November 2002, para. 1.

¹¹⁵ *Ibid.*, para. 4.

¹¹⁶ See Comprehensive Political Guidance Endorsed by NATO Heads of State and Government on 29 November 2006.

¹¹⁷ *Ibid.*, para. 6.

Developments in Riga had a clear implication for UN-NATO relations, whose close cooperation was labelled as being “an important element in the development of an international comprehensive approach to crisis management and operations”. Outcomes of the summit in Riga were then reinforced by decision taken in Bucharest in 2008:

“Many of today’s security challenges cannot be successfully met by NATO acting alone. Meeting them can best be achieved through a broad partnership with the wider international community, as part of a truly comprehensive approach, based on a shared sense of openness and cooperation as well as determination on all sides. We are resolved to promote peace and stability, and to meet the global challenges that increasingly affect the security of all of us, by working together.”¹¹⁸

In issuing the Summit Declaration, the Alliance acknowledged the fact that military capabilities alone were insufficient to achieve a sustainable degree of stability and a holistic approach to security is to be pursued through a structural cooperation with other international organizations. The commitment undertaken by the Alliance in the implementation of a comprehensive approach largely reflected experiences in Afghanistan and the Balkans and demonstrates, in the opinion of the Alliance that the “international community needs to work more closely together and take a comprehensive approach ...and to apply a wide spectrum of civil and military instruments in a concerted effort that takes into account their respective strengths and mandates”.¹¹⁹ Contextually, the Organisation introduced in 2006 the notion of Effects-Based Approach to Operations (EBAO) to strengthen the effectiveness of NATO’s planning and conduct of crisis management by adopting a “*coherent and comprehensive application of various instruments of the Alliance combined with the practical cooperation along with involved non-NATO actors, to create effects necessary to achieve planned objectives and ultimately the NATO end-state*”.¹²⁰

¹¹⁸ See Bucharest Summit Declaration, issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008, para. 4. NATO’s ambitions were then reaffirmed in the 2009 Strasbourg/Kehl Summit Declaration, issued by the Head of State and Government participating in the meeting of the North Atlantic Council in Strasbourg/Behl, 04 April 2009.

¹¹⁹ See Bucharest Summit Declaration, *op.cit.* note 51, para. 11.

¹²⁰ See “Military Committee Position on an Effects Based Approach to Operations”, MCM 0052-2006, 6 June 2006. Later confirmed in the “Pre-Doctrinal Handbook (Effects Based Approach to Operations)”, J5PLANS/7740-065/07-203478 (ACO) and 3000 TI-388/TT-2156/Ser: NU0689 (ACT), 4 December 2007. See also the “Six EBAO Principles” detailed in the NATO’s *Bi-Strategic Command Pre-Doctrinal Handbook (EBAO)*, 4 December 2007. For further information see Brooke Smith-Windsor,

D. The Co-operation with the European Union

In December 2002, in signing the Declaration on the ESDP both EU and NATO recognised “the need for arrangements to ensure the coherent, transparent and mutually reinforcing development of the capability requirements common to the two organisations, with a spirit of openness”.¹²¹ As from the Declaration, the relationship between the two organisations should be founded on the respect for the principles of the Charter of the United Nations (the Charter).¹²² Moreover, conceived within the principles of partnership, crisis management activities of the two organisations should be mutually reinforcing.¹²³ To this end, the cooperation between EU and NATO registered a remarkable expansion with the development of the March 2003 Framework Agreement for cooperation. Designed to foster the strategic partnership the framework agreement is a remarkable development in the direction of mutually reinforcing crisis management activities and the consequent, hopefully, reduction of unnecessary duplication. Through the conclusion of this agreement, in itself composed of different elements, the organisations agreed to secure the involvement of non-EU European members in ESDP, enable the EU to access NATO’s planning capabilities and promote complementarity en route to the development of common capability requirements. In this direction, the EU-NATO Berlin Plus Agreement was concluded to enable EU access to NATO planning capabilities and command options, as well as assets and capabilities.¹²⁴ As seen in the country-by-country analysis operations CONCORDIA and ALTHEA were in fact launched under the auspices of the Berlin Plus Agreement.¹²⁵

Hasten Slowly: NATO’s Effects Based and Comprehensive Approach to Operations, NDC Research Paper N° 38, NATO Defence College 2008, 2.

¹²¹ See EU-NATO Declaration on the ESDP, NATO Press Release (2002)142, 16 December 2002, Available at: <http://www.nato.int/docu/pr/2002/p02-142e.htm>. See also Paul Cornish, *EU and NATO: Co-operation or Competition?* Briefing paper, European Parliament Directorate-General for External Policies of the Union, EP-ExPol-B-2006-14, PE 348.586 EN, Brussels October 2006, 18.

¹²² *Ibid.*

¹²³ *Ibid.* The Declaration also referred to “effective mutual consultation, dialogue, cooperation and transparency”.

¹²⁴ David M. Law, *op.cit.* note 6, 47. In 1996 at the Berlin Ministerial Meeting NATO members agreed that in principles NATO assets and capabilities could be made available for crisis management operations led by the WEU. At the 1999 Washington summit, NATO leaders initiated discussions on the main feature of the arrangement, namely the access to NATO planning capabilities as well as the availability of capabilities and common assets. Official negotiations for the Berlin Plus arrangement started in January 2001; by then the role of the WEU was subsumed by the European Union.

¹²⁵ Paul Cornish, *op.cit.* note 121, 10.

Signed in December 2002 the Agreement entered into force in March 2003.¹²⁶ Under the Agreement the EU has been given access to NATO assets, including planning capabilities, for EU-led military missions.¹²⁷ The ‘Berlin-plus’ arrangement actually considers four different possibilities: 1) assured EU access to NATO planning capabilities; 2) the presumption of availability to the EU of pre-identified NATO capabilities and common assets; 3) identification of a range of European command options; and, 4) the further adaptation of NATO’s defence planning system to incorporate more comprehensively the availability of forces for EU-led operations.¹²⁸ A dedicated EU-NATO Capability Group was also created to review the status capabilities¹²⁹ and the coherent exchange of information on the implementation of the Agreement.¹³⁰ In addition, to ensure transparency in the strategic partnership it was decided to respectively establish a small EU cell at SHAPE and a NATO liaison team at the EUMS.¹³¹ Permanent military liaison arrangements were then established to facilitate cooperation at the operational level. Despite the organizational set-up, however, the Berlin Plus arrangement applies to a limited type of operations, namely those in which the EU is willing to access NATO’s assets and capabilities.¹³² In this sense, while theoretically retaining a certain degree of autonomy in decision-making¹³³, the EU would nevertheless remain dependant on NATO assets for medium to large scale operations.¹³⁴

¹²⁶ Contingent upon the conclusion in March 2003 of the EU-NATO Agreement on Security of Information (on exchange and release of classified information). See Paul Cornish, *op.cit.* note 121, 10. See also Gerrard Quille *et. al.*, *Developing EU Civil Military Co-ordination: The Role of the new Civilian Military Cell*, Joint Report by ISI Europe and CeMISS, Brussels June 2006, 12.

¹²⁷ Frances G. Burwell *et al.*, *Transatlantic Transformation: Building a NATO-EU Security Architecture*, [Atlantic Council Transatlantic Relations Papers](#) Atlantic Council of the United States, March 2006, 13.

¹²⁸ Paul Cornish, *op.cit.* note 121, 10. Later that year, at their meeting in Naples in November, EU foreign ministers acknowledged that four types of European crisis operation could now take place: NATO only; EU-led using the Berlin Plus arrangement and NATO’s planning capacity; EU operation mounted under the ‘framework nation’ concept; and smaller scale crisis management operation planned and run by the EU’s own military staff.

¹²⁹ Particularly with regard to deployability, sustainability and command and control.

¹³⁰ Council of the European Union, Council Conclusions on ESDP, 2831st EXTERNAL RELATIONS Council meeting Brussels, 19-20 November 2007. See also Daniele Riggio, “EU-NATO Cooperation and Complementarity between the Rapid Reaction Forces”, in *International Spectator* Vol. 38 Issue 3, 2003, 47-60.

¹³¹ Council of the European Union, *Presidency Report on the ESDP*, 15891/05, Brussels, 19 December 2005. Available at: <http://register.consilium.europa.eu/pdf/en/05/st15/st15891.en05.pdf>.

¹³² Berlin Plus does not provide EU access to troops and equipment belonging to NATO members.

¹³³ As from the Annex VII of the Presidency Report: [...] the entire chain of command must remain under the political control and strategic direction of the EU throughout the operation, after consultation between the two organisations. In that framework the operation commander will report on the conduct of the operation to EU bodies only. NATO will be informed of developments in the situation by the appropriate bodies, in particular the PSC and the Chairman of the Military Committee. See also Mark

Later in July 2003 with the “NATO-EU Concerted Approach on Security and Stability in the Western Balkans”¹³⁵ the two organizations have identified core areas of joint implementation¹³⁶ and committed to “continue to meet regularly at all levels, including making optimal use of existing consultation mechanisms and, where appropriate, exchange documents. [...] Meetings could also involve other organisations (e.g. the UN, the OSCE and the Stability Pact) when appropriate.”¹³⁷

III. The Organisation for Security and Co-operation in Europe

The considerable attention devoted by the OSCE to the issue of international cooperation was built around the formal recognition of the organization as a regional arrangement under Chapter VIII of the UN Charter¹³⁸ and was marked by the recognition of the mutual benefit and comparative advantage international actors should pursue in enhancing quality and modalities of their interaction. To this end, in the June 1991 Berlin Council’s meeting, the CSCE Participating States encouraged “the exchange of information and relevant documents among CSCE and the main European and transatlantic institutions, such as the European Community, Council of Europe, ECE, NATO and WEU.”¹³⁹ The formalization of C/OSCE’s role in peacekeeping operating came with the intention to benefit from financial resources and expertise of existing organizations such as the EC, NATO and the WEU; the

Oakes, *European Security and Defence Policy: Nice and Beyond*, International Affairs and Defence Section, House of Commons Library, Research Paper, London May 2001, 32.

¹³⁴ *Ibid.*, 47.

¹³⁵ See NATO-EU Concerted Approach on Security and Stability in the Western Balkans, C/03/218, NATO Press Release (2003)089, 29 July 2003. Available at: <http://www.nato.int/docu/pr/2003/p03-089e.htm>

¹³⁶ Namely, conflict prevention and crisis management; defence and security sector reform; strengthening rule of law, the threat of terrorism; border security and management; arms control and removal of small arms.

¹³⁷ *Ibid.*

¹³⁸ See also para. 26 of the 1994 Budapest Summit in which Participating States as “participants in a regional arrangement under Chapter VIII of the Charter of the United Nations” committed to “make every effort to achieve pacific settlement of local disputes before referring them to the United Nations Security Council.” The UN General Assembly reacted positively, see UN General Assembly, Doc. No. A/RES/47/10, 28 October 1992.

¹³⁹ Berlin Meeting of the CSCE Council, 19-20 June 1991, para. 13. Available at: <http://www.osce.org/mc/40234>. With regard to the Council of Europe, the 1990 Paris Charter for a New Europe already “recognize the important contribution of the Council of Europe to the promotion of human rights and the principles of democracy and the rule of law as well as to the development of cultural co-operation”. See 1990 CSCE Paris Charter for a New Europe, 8. Available at: <http://www.osce.org/mc/39516>.

organisation was in fact looking for support in carrying out its peacekeeping activities.¹⁴⁰ This posture was positively received by the international community; the Atlantic Alliance, for instance, immediately confirmed its support to the organisation in the area of peacekeeping¹⁴¹—thereby leading to a common posture on the subject area.¹⁴²

To this end, practical cooperation between the UN and the OSCE were formalized through the adoption of the 1993 “Framework Agreement for the co-operation and co-ordination between the United Nations secretariat and the CSCE”.¹⁴³ Within this ‘Framework’, the organisations agreed to specific modalities for consultations—on the preparation, initiation and implementation of fact finding and other missions—and exchange of information—in the area of their responsibility and other relevant information including movements and other activities of missions—in all field of “mutual interest, in particular those relating to international peace and security [...]”.¹⁴⁴ In addition, co-operation could be extended to: a) exchange of information in the preparation of missions’ reports; b) possible joint reports; c) eventual mutual assistance in this field; and, d) possible of joint missions.¹⁴⁵ In 1994, with the adoption of the Budapest Summit Declaration *Towards a Genuine Partnership in a New Era* the OSCE declared its intention to “enhance co-operation with the United Nations and European and other regional and transatlantic organizations, while avoiding

¹⁴⁰ See CSCE, *The Challenges of Change*, 1992, paras. 52-53. In para. 18, of the document the CSCE defines peacekeeping as “operation, according to its mandate, will involve civilian and/or military personnel, may range from small-scale to large-scale, and may assume a variety of forms including observer and monitor missions and larger deployments of forces”. This approach was to be pursued on a “case-by-case basis”, and with “prior consultations with the Participating States which belong to the organization concerned”.

¹⁴¹ The Alliance confirmed its support “on a case-by-case basis and in accordance with our own procedures, peacekeeping activities under the responsibility of the CSCE”. See Final Communiqué, Ministerial Meeting of the North Atlantic Council in Oslo, 4 June 1992, para. 11. It should be noted that in the NAC meeting of May 1992, the Alliance expressed its willingness to “consider ways in which resources and expertise within the Alliance might, if so decides, be made available for CSCE peacekeeping activities”. See Ministerial Communiqué, Defence Planning Committee and Nuclear Planning Group, Brussels 27 May 1992, para. 7.

¹⁴² Ambassador Lamberto Zannier, *Enhancing Co-operation between the OSCE and other International Organisations*, OSCE Conflict Prevention Centre, Euro-Atlantic Council, Ljubljana, Slovenia, 10 September 2004, available at: <http://www.osce.org/cpc/39731>.

¹⁴³ UN Doc. A/48/185, appendix, 26 May 1993. See also Ambassador Lorenzo Amberg, “OSCE Mission as Instrument for Preventive Diplomacy”, in Daniel H. Warner (ed.), *Preventive Diplomacy: The United Nations and the OSCE*, PSIO Occasional Paper n° 1/1996, Graduate Institute of International Studies, Geneva 1996.

¹⁴⁴ *Ibid.*, para. 5.

¹⁴⁵ *Ibid.*, para 6. In addition, the CSCE in planning and carrying out peacekeeping activities could rely upon the technical assistance and advice of the UN (see para. 8).

duplication of effort”.¹⁴⁶ Participating States then decided to “develop complementary and mutually reinforcing institutions that include European and transatlantic organizations, multilateral and bilateral undertakings and various forms of regional and sub-regional co-operation.”¹⁴⁷

Years later, new impetus arrived from the adoption of the *Lisbon Declaration on a Common and Comprehensive Security Model for Europe for the Twenty-First Century* in December 1996.¹⁴⁸ In adopting the Declaration, OSCE Participating States reaffirmed that “European security requires the widest co-operation and co-ordination among participating States and European and transatlantic organizations”.¹⁴⁹ In the context of the Declaration, the OSCE was seen an “inclusive and comprehensive organization for consultation, decision-making and co-operation in its region and a regional arrangement under Chapter VIII of the United Nations Charter”. As such, the organisation was considered “particularly well suited as a forum to enhance co-operation and complementarity among such organizations and institutions”.¹⁵⁰ Principles and modalities listed in the 1996 Lisbon Declaration were substantially reiterated in the 1997 Common Concept for the Development of Co-operation between Mutually Reinforcing Institutions and facilitated the extensive network of contact which contributed to the realization of the 1999 Platform for Co-operative Security.¹⁵¹

E. OSCE's Developments in 1999

The year 1999 was crucial in the enhancement of inter-organizational cooperation. Besides the innovations related to NATO and the EU, the OSCE registered a remarkable advancement with the adoption of the Charter for European Security and the Platform for Co-operative Security contained therein; such novelties laid out a new course of inter-institutional relations.¹⁵²

¹⁴⁶ See CSCE Budapest Summit Declaration, Towards a Genuine Partnership in a New Era, 5-6 December 1994, para. 26.

¹⁴⁷ *Ibid.*, para. 4.

¹⁴⁸ See OSCE Lisbon Summit Document, DOC.S/1/96, 3 December 1996.

¹⁴⁹ *Ibid.*, see para. 10.

¹⁵⁰ *Ibid.*

¹⁵¹ See OSCE Sixth Meeting of the Ministerial Council, 18-19 December 1997, MC.DOC/1/97, 16 March 1998.

¹⁵² David M. Law, *op.cit.* note 6, 51-52.

1. The Charter for European Security

The Charter, with the intention not to create a hierarchy of organisations or a permanent division of labour, refers to the OSCE as “*as a flexible co-ordinating framework to foster co-operation, through which various organisations can reinforce each other drawing on their particular strengths*”.¹⁵³ Aiming for making full use of international community’s resources, Participating States acknowledged the importance of committing to “even closer co-operation among international organizations...on the basis of equality and in a spirit of partnership”.¹⁵⁴ Besides, the Charter offered the first comprehensive list of tasks assigned to field operation and reaffirmed the possibility for the OSCE to play a leading role in peacekeeping or “provide the mandate covering peacekeeping by others”.¹⁵⁵ In addition, the Charter announced the creation of a Rapid Expert Assistance and Cooperation Teams (REACT) to enable the OSCE to respond quickly to request of assistance for large civilian field operations.¹⁵⁶

2. The Platform for Co-operative Security

The goal of the Platform for Co-operative Security is to “strengthen the mutually reinforcing nature of the relationship between those organizations and institutions concerned with the promotion of comprehensive security within the OSCE area”.¹⁵⁷ Through the Platform, OSCE Participating States tried to “develop and maintain political and operational coherence, on the basis of shared values, among all the various bodies dealing with security, both in responding to specific crises and in formulating responses to new risks and challenges.”¹⁵⁸ As clarified by Victor-Yves Ghebali, the ultimate *raison d’être* of the Platform is the “development in the OSCE area of a “culture” of co-operation between international organizations pursuing analogous or complementary goals”.¹⁵⁹

¹⁵³ See OSCE Istanbul Summit, Charter for European Security, 18-19 November 1999, para. 12.

¹⁵⁴ *Ibid.*, para 12. See also Adam Daniel Rotfeld, *op.cit.* note 108, 377-390.

¹⁵⁵ *Ibid.*, para 46. In accordance with the Platform for Co-operative Security, it could also provide a co-ordinating framework for such efforts.

¹⁵⁶ *Ibid.*, para 46. See also OSCE Conflict Prevention Centre, *Comparative Analysis of Crisis Response Capabilities - The OSCE Position*, Background paper for distribution/discussion, Vienna, June 2004, available at: <http://www.osce.org/cpc/39621>

¹⁵⁷ See OSCE Istanbul Summit, Operational Document- The Platform for Cooperative Security, para. 1. Available at: <http://www.osce.org/mc/17562>

¹⁵⁸ See OSCE Istanbul Summit, Charter for European Security, *op.cit.* note 161, para 12.

¹⁵⁹ Victor-Yves Ghebali, “The Contribution of the Istanbul Document 1999 to European Security and Co-operation”, in *OSCE Yearbook 2000*, Nomos, Baden-Baden 2001, 289-305, 304.

Conceived for both headquarters and field level, inter-institutional co-operation could, according to the Platform, be further enhanced through the use of instruments and mechanisms, such as: regular contacts (including meetings); increased transparency and practical co-operation (including the identification of liaison officers or points of contact); cross-representation at appropriate meetings; and other contacts intended to increase understanding of each organization's conflict prevention tools.¹⁶⁰ In the field, modalities for co-operation could include: regular information exchanges and meetings; joint needs assessment missions; secondment of experts by other organizations to the OSCE; appointment of liaison officers; development of common projects and field operations; and, joint training efforts.¹⁶¹ Broadly considered, the Platform represented a first codification of the inter-institutional interaction already occurred by then; for instance between the OSCE and NATO.¹⁶²

In 2001 at the Bucharest Summit, the OSCE further confirmed its intention to strengthen co-operation with other international, regional and sub-regional organisations and institutions.¹⁶³ This attitude was then confirmed at the Tenth Ministerial Meeting in Porto where Participating States committed to cooperate closely, with other international organisations and institutions on the basis of the Platform for Co-operative Security. Later on, in the 2003 Maastricht Meeting of the Ministerial Council the OSCE adopted its *Strategy to Address Threats to Security and Stability in the Twenty-First Century*. As from the Strategy, the OSCE, with its broad membership and “its multidimensional concept of common, comprehensive, co-operative and indivisible security” is particularly suited to address the new security challenges.¹⁶⁴ As from paragraph 53 and 54 of the Strategy:

¹⁶⁰ See OSCE Istanbul Summit, Charter for European Security, *op.cit.* note 161, para. 4.

¹⁶¹ See OSCE Istanbul Summit, Charter for European Security, *op.cit.* note 168, para. 6.

¹⁶² This approach was later confirmed in the June Ministerial Meeting in Athens when Alliance declared: “The Alliance has demonstrated its readiness to support UN or CSCE peacekeeping operations, which place new demands on it. The forces, internal structure and procedures of the Alliance are being adapted to the new security environment. [...] We welcome the arrangements, which will allow NATO to participate in the work of the CSCE and to cooperate with it. We will strive to develop further the interaction and cooperation between NATO and the CSCE”. See Final Communiqué, issued at the Ministerial Meeting of the North Atlantic Council held in Athens, 10-11 June 1993, paras. 6 and 9.

¹⁶³ See OSCE Ninth Meeting of the Ministerial Council, Bucharest 3-4 December 2001, p. 56. The Chairman-in-Office met with the heads of other international organizations such as the United Nations, the European Union, NATO and the Council of Europe to discuss concrete measures for enhancing co-operation, i.e., setting up compatible structures, developing common recruitment and training standards, enhancing co-operation between headquarters and the field, and identifying new areas of co-operation and establishing mechanisms for efficient interaction.

¹⁶⁴ See OSCE Eleventh Meeting of the Ministerial Council, Maastricht 1-2 December 2003.

“Our co-operation with other organizations and institutions currently encompasses political dialogue, co-ordination, and structured co-operation on thematic or regional issues across the OSCE region, based on common values and objectives. It is important to intensify interaction at both the political and the working levels. Co-operation and co-ordination on practical matters and projects should be strengthened, both at headquarters and in the field. Contacts between envoys and special representatives should be encouraged, as should the development of shared strategies and joint fact-finding.

[...]

The OSCE seeks to expand its relations with all organizations and institutions that are concerned with the promotion of comprehensive security within the OSCE area, and has established regular patterns of consultation at both the technical and the political levels with a number of them, inter alia, the UN, EU, NATO and the Council of Europe. The OSCE needs to remain flexible in order to be able to co-operate with different organizations as their capabilities and focus may change over time, with developments in perceptions of threat and organizational capacities”.¹⁶⁵

In the same year relations with the EU were further strengthened with the idea of “avoiding duplication and identifying comparative advantages and added value, leading to effective complementarity.”¹⁶⁶ By then, the EU’s *Draft Council Conclusions on EU-OSCE Cooperation in Conflict Prevention, Crisis Management and Post-conflict Rehabilitation*, confirmed EU’s determination to “continue enhancing its relationship with the OSCE”, and include “exchange of information and analyses, co-operation on fact-finding missions, co-ordination of diplomatic activity and statements, including consultations between special representatives, training and in-field co-ordination.”¹⁶⁷ Finally, in the 2009 Astana Commemorative Declaration “*Towards a Security Community*,” OSCE Heads of State and Government re-affirmed their determination to fortify “co-operation among our States, and among relevant organizations and institutions of which they are members.”¹⁶⁸

¹⁶⁵ *Ibid.*

¹⁶⁶ See Council of the European Union, *Draft Council Conclusions on EU - OSCE Cooperation in Conflict Prevention, Crisis Management and Post-conflict Rehabilitation*, Doc. No. 14527/1/03, Brussels 10 November 2003, para. 4.

¹⁶⁷ *Ibid.* Modalities for EU-OSCE co-operation encompassed the political and field level, and included mutually reinforcing initiatives such as: possible contribution by the EU to the OSCE’s operational effort in crisis management; joint and/or co-ordinated programmes on post-conflict rehabilitation; EU crisis management operations following a request from the OSCE.

¹⁶⁸ See OSCE Astana Commemorative Declaration, *Towards a Security Community*, Doc. No. SUMN.DOC/1/10/Corr. 1, 3 December 2010.

IV. The European Union – cooperative modalities in the frame of civil and military capacity building

In the case of the EU, the process of inter-organizational cooperation received clear institutional support and character with the formalization of the 1999 European Security and Defence Policy. The implementation course that followed, despite being characterized by a remarkable effort on crisis management tools (here considered in its civil and military dimensions) could not develop consistently and far from the ‘Council-Commission’ dualism typical of the pre-Lisbon context.¹⁶⁹ In spite of this, the Union was capable of significant accomplishments. With regard to its partnership with the UN, for instance, it is indeed remarkable the articulation of a partnership that stands for its multifaceted—because of the different types of interaction—and multilayered—given the number of actors involved—character among the most institutionalised.¹⁷⁰ This is not without relevance counting that the EU should not be regarded as a regional agency/arrangement in the sense of Chapter VIII of the Charter.¹⁷¹ Nevertheless, the possibility for the EU to combine military and civil crisis management tools was seen as an added value for the UN in exchange of the political legitimacy the latter could provide.¹⁷²

F. Developments in the late 1990s-beginning of the 2000s

Developed in the frame of the Common Foreign and Security Policy” and in line with the conclusions of the 1998 Saint Malo bilateral summit¹⁷³, the Cologne European Council meeting in 1999 formally committed EU member states to the realisation of a Common European Security and Defence Policy (ESDP). The ESDP advanced through the subsequent meetings of the European Council but it was immediately in Helsinki, at the European Council meeting of December 1999 that the Union formally

¹⁶⁹ Thierry Tardy, *Cooperating to Build Peace. The UN-EU Inter-Institutional Complex*, GCSP Geneva Paper, Research Series n° 2, Geneva Centre for Security policy, Geneva May 2011, 17.

¹⁷⁰ Thierry Tardy, *op.cit.* note 5, 201.

¹⁷¹ Luk Van Langenhove *et al.*, *The EU's Preferences for Multilateralism; A SWOT Analysis of EU/UN Relations*, UNU-CRIS Occasional Papers 0-2006/21, United Nations University, Bruges 2006, 11.

¹⁷² Sven Biscop and Valérie Arnould, “Global Public Goods: An Integrative Agenda for EU External Action”, in Espen Barth Eide (ed.), *‘Effective Multilateralism’: Europe, Regional Security and a Revitalised UN*, The Foreign Policy Centre and British Council, Brussels 2004, 6.

¹⁷³ See Joint Declaration issued at the Franco-British Summit, Saint Malo, 3-4 December 1998. The Declaration refers to the “responsibility of the European Council to decide on the progressive framing of a common defence policy in the framework of CFSP”.

committed to the development of “military and non-military crisis management capability as part of a strengthened common European policy on security and defence”.¹⁷⁴ The contribution coming from the Union to the international peace and security was then to be framed in “accordance with the principles of the United Nations Charter, whose Security Council was recognised as having primary responsibility for the maintenance of international peace and security.”¹⁷⁵ Building on the guidelines established in Cologne, the European Council, convened in Helsinki in 1999, further committed to reach a military capability target—in what later became known as the *Helsinki Headline Goal 2003*—to be able, by 2003, to deploy within 60 days and sustain for at least 1 year military forces of up to 50,000-60,000 persons capable of the full range of Petersberg tasks.¹⁷⁶ The achievement of the Headline Goals was then conditioned by the creation of a European Rapid Reaction Force, here considered as a first operationalisation of the ESDP to be activated “where NATO as a whole is not engaged”.¹⁷⁷ Capabilities developed could then be used in response to “a request of a lead agency like the UN or the OSCE, or, where appropriate, in autonomous EU actions.”¹⁷⁸ On side of the UN, the initiative was welcomed by the then UN High-Level Panel on Threats, Challenge and Change who actually invited “others with advanced military capabilities should be encouraged to develop similar capacities at up to brigade level and to place them at the disposal of the United Nations”.¹⁷⁹

The meeting in Helsinki was also the occasion for a further institutional expansion which led to the establishment, following the proposals made in Cologne, of three new bodies: 1) the Political and Security Committee (PSC); the Military Committee of the EU and the Military Staff of the EU (EUMS).¹⁸⁰ The following year, in the occasion of

¹⁷⁴ Helsinki European Council Meeting, Presidency Conclusions, 10-11 December 1999, para. 25. Available at: http://www.europarl.europa.eu/summits/hel1_en.htm

¹⁷⁵ *Ibid.*, para. 26.

¹⁷⁶ These forces should be militarily self-sustaining with the necessary command, control and intelligence capabilities, logistics, other combat support services and additionally, as appropriate, air and naval elements.

¹⁷⁷ See Presidency Report on the European Security and Defence Policy”, Presidency Conclusion, European Council, Nice, 7-9 December 2000. See also Hans-Christian Hagman, *European Crisis Management and Defence: The Search for Capabilities*, Adelphi Paper 353 (London: International Institute for Strategic Studies, 2002), 118.

¹⁷⁸ *Ibid.*

¹⁷⁹ See *A More Secured World: our Shared Responsibility*, *op.cit.* note 37, 219.

¹⁸⁰ See Antonio Missiroli, “ESDP – How it works”, in Nicole Gnesotto (ed.), *EU Security and Defence Policy. The First Five Years (1999-2004)*, EU Institute for Security Studies, Paris 2004, 63. The activities of the newly created bodies are also described by Missiroli. For further info see also Mark Oakes, *op.cit.* note 133, 19-24.

the European Council meeting in Santa Maria de Feira in June 2000, the EU expressed its determination to advance in both its effectiveness and capacity to respond to civil and military crises. A development to be used both in response to request of a lead agency like the UN or the OSCE, or, where appropriate, in autonomous EU actions.¹⁸¹

As from the conclusions of the meeting:

“Particular attention could be paid to those areas where the international community so far has demonstrated weaknesses. It would provide "added value" as it would improve the Union's capacity to react as well as the Union's capability to meet the requests of the other lead organisations: they would be able to count – on a more systematic basis – on a sizeable quantitative and qualitative contribution which could represent the nucleus of some of their missions. This would, in turn, increase the Union's visibility.”¹⁸²

In the second part of 2000, the Presidency report on the ESDP to the Nice European Council meeting underlined the “value of cooperation between the Union and the United Nations”, and further stated that “[t]he efforts made will enable Europeans in particular to respond more effectively and more coherently to requests from leading organisations such as the UN or the OSCE”.¹⁸³ Besides, the Presidency Report on the ESDP underlined progress in the development of the Headline Goal and of the military capability goals established in Helsinki.¹⁸⁴ In this case the then Military Capabilities Commitment Declaration is to be considered as a further expression of the Union’s “determination to develop an autonomous capacity to take decisions and, where NATO as a whole is not engaged, to launch and conduct EU-*led* military operations in response to international crises”.¹⁸⁵ NATO, therefore, maintained its primary and “important role in crisis management”.¹⁸⁶ As clarified by the Declaration, this progress is to be considered as “an integral part of strengthening the Common Foreign and Security Policy” and intended as a “greater contribution to international security in keeping with the principles of the United Nations Charter, the OSCE Charter and the

¹⁸¹ See Study on the concrete Targets on Civilian Aspects of Crisis Management, Appendix 3 to the Presidency Conclusions Santa Maria de Feira European Council, 19-20 June 2000, A.

¹⁸² *Ibid.*

¹⁸³ See Presidency Report on ESDP, Annex VI to the Presidency Conclusions to the Nice European Council, 7-9 December 2000.

¹⁸⁴ *Ibid.*

¹⁸⁵ See Military Capabilities Commitment Declaration, Annex I to V to the Presidency Conclusions to the Nice European Council, 7-9 December 2000.

¹⁸⁶ See Presidency Report on ESDP, Annex VI to the Presidency Conclusions to the Nice European Council, 7-9 December 2000.

Helsinki Final Act.”¹⁸⁷ The report also mentioned the strengthening of the EU’s civil crisis management capabilities¹⁸⁸ and the efforts made towards the establishment of permanent arrangement for EU-NATO consultation and cooperation.¹⁸⁹ Annex VII to the Presidency Report, entitled *Standing Arrangements for Consultation and Cooperation Between the EU and NATO*, reiterated the decisions made at Santa Maria de Feira regarding the guiding principles for future EU-NATO partnership. The goals of respecting “autonomy of EU decision-making” while at the same time achieving “full and effective consultation, cooperation and transparency” between the two organisations was maintained.¹⁹⁰

In June 2001 the EU General Affairs Council debating on the *EU-UN co-operation in conflict prevention and crisis management* endorsed three specific areas for an intensified EU-UN interaction, namely: conflict prevention, civilian and military aspects of crisis management; and, particular regional issues.¹⁹¹ Moreover, the report on the EU-UN co-operation established the following modalities for inter-institutional interaction:

- a. EU Ministerial meetings, where appropriate in Troika format, with the UN Secretary-General;
- b. Meetings and contacts between the Secretary-General/High Representative and External Relations Commissioner with the UN Secretary-General and UN Deputy Secretary-General;
- c. Political and Security Committee meetings, where appropriate in Troika format, with the UN Deputy Secretary-General and Under Secretaries-General; and other levels and formats as appropriate;
- d. Contacts of the Council Secretariat and the Commission services with the UN Secretariat at the appropriate levels.¹⁹²

Besides, as stated in the Presidency Conclusions of the Goteborg summit, “substantial progress has been made in building an effective partnership with the UN in the fields of conflict prevention and crisis management as well as development cooperation, humanitarian affairs, asylum policies and refugee assistance”.¹⁹³ Moreover, the

¹⁸⁷ In the Military Capabilities Commitment Declaration, the Union reiterated the primary responsibility of the United Nations Security Council for the maintenance of international peace and security.

¹⁸⁸ In the four priority areas established by the Feira European Council: police, strengthening of the rule of law, strengthening civilian administration and civil protection.

¹⁸⁹ See Mark Oakes, *op.cit.* note 133, 60-61.

¹⁹⁰ See Mark Oakes, *op.cit.* note 133, 32. Regular meeting between the two organizations were then scheduled.

¹⁹¹ See EU General Affairs Council Conclusions, 2356th Council meeting, Luxembourg, 11-12 June 2001. Available at: http://europa.eu/rapid/press-release_PRES-01-226_en.htm.

¹⁹² *Ibid.*

¹⁹³ See Presidency Conclusion to the Goteborg European Council, 15-16 June 2001, para 53.

Presidency Report on the ESDP, *EU cooperation with international organisation in civilian aspects of crisis management*, clarified the guiding principles the Union should follow in cooperating with international organisations.¹⁹⁴ Finally, the recognition of the importance of exchanging experience with international organisation¹⁹⁵ came with the acknowledgement for the value of regional organisations like the OSCE¹⁹⁶ and the CoE.¹⁹⁷

G. Beyond 2003 – Security Strategy and institutionalized cooperation

2003 was a remarkable year in the development of UN-EU co-operation. Both at the headquarters and in the field the two organisations advanced tremendously in their interaction and progressed in the institutionalization on their partnership. Already in January 2003, task forces were established to coordinate interaction at the Headquarters level, e.g. UNDPKO and the EU's DGE-IX.¹⁹⁸ Shortly afterwards, the EU General Affairs Council recalled the “importance of developing EU civilian and military crisis management capabilities in such a way that UN action may effectively benefit from EU contribution in the same field”.¹⁹⁹ Bearing in mind existing arrangements on the EU-UN cooperation modalities endorsed by the European Council at Goteborg, the Presidency—and “assisted by the Council Secretariat and in full association with the Commission”—was requested to “take forward the necessary

¹⁹⁴ See ‘EU cooperation with international organizations in civilian aspects of crisis management’ Presidency Report on ESDP, Annex V, Goteborg European Council, June 2001, para. 5. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/misc/09526-r1.en1.html. The four principles are ‘added value’, ‘interoperability’, ‘visibility’ and ‘decision-making autonomy’.

¹⁹⁵ Later in December 2001, at the European Summit of Laeken recognised that “the Union has begun to cooperate more fully with the United Nations in crisis management and conflict prevention concerning the themes and in the specific areas endorsed by the Gothenburg European Council. Regular contacts at different levels with the representatives of the United Nations have made it possible to keep up the necessary links on the main subjects of common interest. Those contacts have also led to examination, on the basis of the principles and procedures established, of how the development of European capabilities in the ESDP could contribute to United Nations efforts in peacekeeping operations”. See Presidency Report on European Security and Defence Policy, 22 December 2001, para. 22.

¹⁹⁶ *Ibid.*, para 12: “The OSCE with its comprehensive and co-operative approach to security and broad experience in crisis management and conflict prevention through numerous field missions is a key partner for the EU in civilian crisis management. The REACT system, training standards and OSCE procedures for rapid reaction are particularly important for the developing EU capacity in this field”.

¹⁹⁷ *Ibid.*, para 13: “To promote the protection of human rights, pluralist democracy and the rule of law the Council of Europe has set up legal and monitoring mechanisms as well as specific Convention control mechanisms. It can provide specialised knowledge and expertise in e.g. the legislative and institutional fields”.

¹⁹⁸ A Steering Committee was also established.

¹⁹⁹ See 2522nd Council Meeting, General Affairs and External Relations, 11439/1/03 REV 1 (Presse 209), 21 July 2003, 12-13.

preparatory work to develop modalities for practical co-operation [...] in close consultation with the UN and in view of a possible agreement between the EU and the UN on crisis management within the ESDP”.²⁰⁰

In September, the EC presented its Communication, *The European Union and the United Nations: The choice of multilateralism*, to the Council and the European Parliament.²⁰¹ The communication outlined the steps to be taken to strengthen EU-UN co-operation. As from the Communication the next challenge for the EU would be to “extend a reliable and systematic framework for co-operation to other areas which are essential to effective global governance—most notably those related to the EU’s widening role in contributing to international peace and security”.²⁰² Furthermore, in the Communication the EC proposed, *inter alia*, to improve mechanisms for coordination and establish working-level contacts together with exchange of information and practical co-operation in the field.²⁰³ Regular desk-to-desk dialogue was also initiated with the intention to enhance information sharing and exchange valuable lessons.

1. The European Security Strategy

Adopted in 2003, the European Security Strategy (ESS) viewed at the UN Charter as the “fundamental framework for international relations”.²⁰⁴ In this context the Security Council has the “primary responsibility for the maintenance of international peace and security”. Furthermore, strengthening the UN and supporting it to fulfil its responsibilities is described as a European priority for the ESS.²⁰⁵ The latter further refers to the transatlantic relationship as “one of the core elements of the international system”; a system in which NATO represents an “important expression of this relationship” together with the OSCE and the CoE.²⁰⁶ In this view, international

²⁰⁰ *Ibid.*

²⁰¹ Communication for the Commission to the Council and the European Parliament, *The European Union and the United Nations: The choice of multilateralism*, COM(2003) 526 final, Brussels, 10 September 2003.

²⁰² *Ibid.*, 13.

²⁰³ Luk Van Langenhove *et al.*, *op.cit.* note 171, 9. See also, Thierry Tardy, “EU-UN cooperation in peacekeeping: a promising relationship in a constrained environment”, in Sven Biscop *et al.*, *The European Union and the United Nations: Partners in Effective Multilateralism*, EU Institute for Security Studies, Chaillot Paper N° 78, June 2005, 49-68.

²⁰⁴ As from the ESS, the EU “must therefore be ready to act when their rules are broken.” See European Council, *A Secure Europe in a Better World*, European Security Strategy, Brussels, 12 December 2003, 9.

²⁰⁵ *Ibid.*

²⁰⁶ *Ibid.*

cooperation is a necessity, to be pursued through multilateral cooperation in international organisations and partnerships with key actors.²⁰⁷ Several authors, however, have questioned the value of the ‘effectiveness’ described in the ESS and the absence, despite the reference to the primary role of the Security Council, of a concrete formulation on an eventual authorization of the Security Council in case of use of force.²⁰⁸

2. The September Joint Declaration on EU-UN Co-operation in Crisis Management

In September 2003 the *Joint EU-UN Declaration on Co-operation in Crisis Management* was adopted. Covering both civil and military aspects of crisis management, the Declaration reaffirmed the primary responsibility of the Security Council, in accordance with the UN Charter, for the maintenance of international peace and security, as well as EU’s commitment to contribute to the “objectives of the United Nations in crisis management”.²⁰⁹ On the basis of the Declaration a joint mechanism—a Steering Committee—was established and mandated to examine and enhance mutual coordination in: planning, training, communication and best practices.²¹⁰

Shortly afterwards, the Declaration was considered in military dimension and developed in the 2004 report *EU-UN cooperation in Military Crisis Management operations: Elements of Implementation of the September 2003 EU-UN Joint Declaration*, adopted by European Council in June 2004.²¹¹ In the document innovative cooperative modalities were introduced to further enhance the effectiveness of EU-UN cooperation. Two different scenarios were considered: 1) the complementary role of the EU *vis-à-vis* the provision by member states of national capabilities; and, 2) the possibility of an EU operation in support of the UN. With regard to the former, the “clearing house process” was introduced with the intention to

²⁰⁷ *Ibid.*

²⁰⁸ Thierry Tardy, *op.cit.* note 5, 197-198.

²⁰⁹ See Joint Declaration on EU-UN Co-operation in Crisis Management, 24 September 2003. In the December 2003 meeting in Brussels the European Council returned on the issue by reconfirming its “the deeply rooted commitment of the European Union to making effective multilateralism a central element of its external action, with at its heart a strong UN”. See Brussels European Council Meeting, Presidency Conclusions, 12-13 December 2003, Doc. No. 5381/04, para. 91. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/78364.pdf.

²¹⁰ *Ibid.* For further information see Luk Van Langenhove *et al.*, *op.cit.* note 171, 13.

²¹¹ Available at:

<http://www.consilium.europa.eu/uedocs/cmsUpload/EU-UN%20co-operation%20in%20Military%20Crisis%20Management%20Operations.pdf>. See also Martin Ortega, “The EU and the UN: Strengthening Global Security”, in Espen Barth Eide (ed.), *op.cit.* note 172.

provide for a “framework by which Member States could, on a voluntary basis, exchange information on their contributions to a given UN operation and, if they so decide, co-ordinate these national contributions”.²¹² As to the EU operation in support of the UN, the document devoted special attention to the rapid response mechanism and introduced the “Bridging” and the “Stand By” models of cooperation. The “bridging model” aims at providing the UN with time to mount a new operation or to reorganise an existing one (e.g. operation ARTEMIS). Rapid deployment of appropriate military capabilities and agreed duration and end-state are key elements of this model.²¹³ In this case, EU undertakes a mission in order for the UN to organize an operation. The UN Secretariat has underlined that the transition between the two operations would be facilitated by the “re-hatting” of former EU officials.²¹⁴ In this case, and given the level of interaction both organizations have with NATO, it is worth recalling that in March 2004 the same UN Secretary-General extended the bridging model to NATO by saying: “*NATO might employed in a ‘peace enforcement’ role, much as the European Union deployed ‘Operation Artemis’ in the Democratic Republic of Congo (DRC) as a bridging force before the deployment of a UN operation*”.²¹⁵

With regard to the second modality, the “Stand By” model would consist of an ‘extraction force’ provided by the EU in support of a UN operation. This model would imply an immediate reaction and workability of the EU Battle Group.²¹⁶ EU member states, however, have considered this option of limited usage in light of the complicated coordination and associated risks that it would entail.²¹⁷

The described doctrinal evolution has been complemented by, and in some cases also benefited from, the experiences gained in the operationalisation of the ESDP for instance in Bosnia, Macedonia and Democratic Republic of Congo.²¹⁸ Despite being

²¹² *Ibid.*, para. 5-6.

²¹³ *Ibid.*, para. 9. In this case, early deployment of UN troops before the actual hand over would facilitate a smooth transition by getting the UN force used to the tactical situation on the ground, and familiar with the course of action of the EU forces.

²¹⁴ *Ibid.*, para. 12. In practical terms, the “re-hatting” would be a national decision to commit the forces to the UN after the end of the EU operation.

²¹⁵ See Bert Koenders, *NATO and the Use of Force*, General Report to the NATO Parliamentary Assembly, Doc. No. 165 PC 04 E rev. 2, 13 November 2004, para. 15

²¹⁶ Martin Ortega, *op.cit.* note 219, 19.

²¹⁷ See “EU-UN co-operation in Military Crisis Management Operations Elements of Implementation of the EU-UN Joint Declaration, Annex II, ESDP Presidency Report, European Council 15 June 2004, para. 13.

²¹⁸ Malgorzata O. Gorska, *The Development of the Legal Bases of EU-UN Cooperation*, CFSP Forum, Volume 5, Issue 6 November 2007.

relatively small and with limited duration, at least the military ones, those missions were useful for testing different modalities of inter-organisational interaction. However, by looking at the mandate—generally no longer than 12 months in their first deployment—one would be tempted to assume a certain reluctance on side of the EU to conceive ESDP missions as a long-term tool and part of more structured approach.²¹⁹

In 2004, the Brussels European Council meeting decided to set a Civilian Headline Goal for civilian crisis management to be met by 2008.²²⁰ The *Civilian Headline Goal 2008* set ambitions and tasks for EU member states taking in due consideration the qualitative improvement—coming from the coherent use of the Commission and ESDP civil instruments—of the EU’s capacity to act.²²¹ Furthermore, in reaching the 2008 horizon ESDP civil crisis management missions could “be deployed autonomously, jointly or in close cooperation with military operations.”²²² Having set the goal, and with the aim of ensuring coherent international action in the field, the commitment undertaken by the EU would also enable the organisation to “respond more effectively to requests from international organisations, in particular the UN”.²²³ The development of the civilian dimension of crisis management was then conceived as “part of the EU’s overall approach in using civilian and military means to respond coherently to the whole spectrum of crisis management tasks such as conflict prevention, peacekeeping and tasks of combat forces in crisis management including peacemaking and post-conflict stabilization.”²²⁴

To this end, new civilian targets were approved in 2008 under the name of *Civilian Headline Goal 2010*.²²⁵ The new Headline Goal were designed to “ensure that the EU can conduct crisis management, in line with the ESS, by deploying civilian crisis management capabilities of high quality, with the support functions and equipment

²¹⁹ Andrew Sherriff, “Security Sector Reform and EU Norm Implementation”, in David M. Law, *op.cit.* note 6, 88.

²²⁰ See the Council of the European Union, *Civilian Headline Goal 2008*, Doc. No. 15863/04, Brussels, 7 December 2004.

²²¹ *Ibid.*, para. 3.

²²² *Ibid.*, para. 5.

²²³ *Ibid.*, para. 8.

²²⁴ See *Civilian Headline Goal 2008*, approved by the Brussels European Council on 17 December 2004, Doc. No. 15863/04, para. 2.

²²⁵ See *Civilian Headline Goal 2010*, approved by the ministerial Civilian Capabilities Improvement Conference and noted by the General Affairs and External Relations Council on 19 November 2007, Doc. No. 14823/07.

required in a short-time-span and in sufficient quantity”.²²⁶ The work on new civil ESDP capabilities, initiated under the Civilian Headline Goal 2008, was then to be followed-up under the new Civilian Headline Goal 2010.²²⁷

En route for autonomous military capability to respond to crises the organisation set a new target for its military dimension. Designed to reflect the ESS and the evolution of the strategic environment, with the *Military Headline Goal 2010* the Union committed to be able by 2010:

“[...] to respond with rapid and decisive action applying a fully coherent approach to the whole spectrum of crisis management operations covered by the Treaty on European Union [i.e. the Petersberg-tasks] ...the EU must be able to act before a crisis occurs and preventive engagement can avoid that a situation deteriorates. The EU must retain the ability to conduct concurrent operations thus sustaining several operations simultaneously at different levels of engagement.”²²⁸

By achieving the goal in 2010, the EU manifested its intention to deploy force packages at high readiness as a response to a crisis “either as a stand-alone force or as part of a larger operation enabling follow-on phases”.²²⁹ In this frame, the concept of the *Battle Group*—high readiness force consisting of 1,500 personnel that can be deployed within 10 days after an EU decision to launch an operation and sustained for up to 30 days (extendible to 120 days with rotation)—represented the central part of the Headline Goal 2010.²³⁰ In this process, the co-operation with other international organisations was to be pursued in lieu of EU’s ‘interoperability’ of civil and military capabilities with partner organisations like the NATO and the UN, and with due consideration for the strength and effectiveness of the OSCE and the CoE.²³¹

H. Civil-Military Cooperation (CIMIC) and Civil-Military Co-ordination (CMCO)

En route to the finest interoperability of ESDP’s crisis management instruments, two key operative concepts were adopted by the EU to maximise civil-military interaction,

²²⁶ *Ibid.*, para. 3.

²²⁷ *Ibid.*

²²⁸ See Headline Goal 2010, approved by the General Affairs and External Relations Council on 17 May 2004 endorsed by the European Council of 17 and 18 June 2004, para. 2.

²²⁹ *Ibid.*, para. 4.

²³⁰ In January 2007 the EU Battle Group Concept reached full operational capacity.

²³¹ *Ibid.*, para.9.

namely the Civil-Military Cooperation (CIMIC) and Civil-Military Co-ordination (CMCO). With regard to CIMIC, in 2002 the EU adopted the *CIMIC Concept for EU-led Crisis Management Operations*, defining it as:

“[...] co-ordination and cooperation between military components of EU-led Crisis Management Operations and civil actors (external to the EU), including national populations and local authorities, as well as international, national and non-governmental organisations and agencies.”²³²

Compared to the definition provided by NATO²³³, the approach taken by the EU is to make CIMIC not just a tool for tactical coordination, without a truly strategic reference²³⁴, but to adopt it for whole spectrum of civil and military instruments of crisis management operations, from the strategic to the tactical level.²³⁵ In this attempt, the Union realised that adequate co-operation with external actors cannot be achieved without appropriate internal coordination of EU actors. CMCO was then adopted to ensure “effective co-ordination of the actions of all relevant EU actors involved in the planning and subsequent implementation of EU's response to the crisis”.²³⁶ Therefore, differently from CIMIC—conceived at a purely operational-tactical level for primarily military missions and covering cooperation with external actors—CMCO has been designed for internal coordination of civil-military instruments.²³⁷ CMCO operates to guarantee coherence at the political strategic level while CIMIC's main target is the harmonization at the tactical level. However, the two concepts are closely interconnected as CMCO serves as a prerequisite for cooperation with external

²³² See Council of the European Union, Civil-Military Co-operation (CIMIC) Concept for EU-Led Crisis Management Operations, Doc. No. 7106/02, Brussels 18 March 2002, para. 9.

²³³ “The co-ordination and co-operation, in support of the mission, between the NATO Commander and civil actors, including national population and local authorities, as well as international, national and non-governmental organisations and agencies”. See NATO Allied Joint Publication (AJD)9, NATO Civil-Military Co-operation (CIMIC) Doctrine, July 2003, para. 102 (1).

²³⁴ Jari Mustonen, *Coordination and Cooperation on Tactical and Operational Levels Studying EU-ESDP Crisis Management Instruments in Bosnia and Herzegovina*, CMC Finland Civilian Crisis Management Studies, Vol. 1 n° 1/2008, 4.

²³⁵ *Ibid.*, 5.

²³⁶ See Council of the European Union, Civil-Military Co-ordination (CMCO), Doc No. 14457/03, Brussels 7 November 2003, para. 1. As from the document, the EU would have to “take into account the fact that these instruments may be subject to different institutional and thus decision-making processes”.

²³⁷ Marjan Malešič, *Crisis Management in the EU: International Coordination and Civil-Military Cooperation*, paper presented to the conference “Whatever Happened to North-South”, IPSA-ECPR Joint Conference, Sao Paulo, 16-19 February 2011, 12.

actors.²³⁸ CMCO therefore works beyond the mere tactical level and operates at the strategic and operational level.²³⁹

A similar approach has been adopted in the UN. The organisation has in fact the abandoned the concept of CIMIC and with its Office for the Coordination of Humanitarian Affairs (OCHA) has adopted new guidelines under the term *Civil-Military Coordination (CMCoord)*.²⁴⁰ The latter is defined as follow:

“[...] The essential dialogue and interaction between civilian and military actors in humanitarian emergencies that is necessary to protect and promote humanitarian principles, avoid competition, minimize inconsistency, and when appropriate pursue common goals. Basic strategies range from coexistence to cooperation. Coordination is a shared responsibility facilitated by liaison and common training”.²⁴¹

In 2005, in a further attempt to boost civil-military coordination the EU adopted its *Concept for Comprehensive Planning*. Conceived to function as a “systematic approach designed to address the need for effective intra-pillar and inter-pillar coordination of activity by all relevant EU actors in crisis management planning”²⁴², the Concept was labelled as a necessary step in the development of an integrated EU response to crisis management. In this framework, consultation and contact with external actors (e.g. UN, NATO and OSCE) were “to be carried out in each phase in accordance with the Crisis Management Procedures”.²⁴³ Later on, the “EU CivMil Cell” was also established within the EUMS to assist in strategic planning and operational tasks for the conduct of autonomous EU operations.²⁴⁴

²³⁸ Jari Mustonen, *op.cit.* note 234, 8.

²³⁹ Ana E. Juncos, *Learning by doing: civil-military co-ordination in EU crisis management policies*, paper prepared for the Third Pan-European Conference of the ECPR Standing Group on EU Politics, Istanbul, 21-23 September 2006, 4.

²⁴⁰ The guidelines were designed for humanitarian purposes. See Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies, UN Office for the Coordination of Humanitarian Affairs (OCHA), Geneva March 2003. Available at: <http://www.refworld.org/docid/3f13f73b4.html>.

²⁴¹ *Ibid.*, para. 10. For a more detailed analysis see Jari Mustonen, *op.cit.* note 234, 5.

²⁴² Council of the European Union, *Presidency Report on the ESDP*, 15891/05, Brussels, 19 December 2005, para. 51. Available at: <http://register.consilium.europa.eu/pdf/en/05/st15/st15891.en05.pdf>.

²⁴³ *Ibid.*

²⁴⁴ Gerrard Quille *et. al.*, *op.cit.* note 126, 5. The CivMil Cell is also capable to rapidly set up an operations Centre for any particular operation.

LESSONS LEARNED AND CO-OPERATIVE TRENDS

Valuable lessons can be identified from the interaction among international and regional organizations intervening in the last Yugoslav wars.²⁴⁵ For almost all international actors, inter-organizational cooperation and coordination in dealing with complex ethnic conflicts, was in itself a new task. Here, different levels and typology of interaction can be identified between the UN and regional organizations, and among regional organizations themselves. In moving from the first exchange of information to the formalization of inter-organizational cooperation, a growing density of interaction developed around common cooperative principles such as: respect for UN principles, complementarity and mutual support.²⁴⁶ Results in the field, however, cannot be considered all positive and, on the contrary, tensions generated among the same international actors involved—with noticeable distance between strategic and tactical level of co-operation and cases of dysfunctional cooperative mechanisms (like, for instance, the UN-NATO ‘dual-key’ arrangement).²⁴⁷

²⁴⁵ Albrecht Schnabe, “Applied Conflict Prevention: Experiences and Recommendations for Future Action”, in *Macedonia and the Region towards EU and NATO*, Regional Conference, Skopje, November 5th, 2005, Friedrich Ebert Stiftung, 2006, 37.

²⁴⁶ David M. Law, *op.cit.* note 6, 47.

²⁴⁷ Michael Lipson, *Interorganizational Coordination in Complex Peacekeeping*, Paper prepared for presentation at the annual meeting of the International Studies Association, Honolulu, Hawaii, 1-5 March 2005, 28-29.

Task allocation

The analysis conducted reveals that it is particularly difficult to demarcate the responsibilities of all international actors (both civil and military) without their duplication or reciprocal interference. This also depends on the different approaches followed for the identification of priorities as well as the size of tasks the international actors have been called to perform.²⁴⁸ Especially in the field, tasks are essentially inter-related. In this case, while pointing at the adaptability of procedures and doctrines, an inclusive planning process would be essential.²⁴⁹ The proposed approach, however, should not be considered a fixed template but rather a flexible tool eventually able to tackle new developments in the field.

Formulation of a system of co-operation/co-ordination

Another important challenge is the formulation of a system of co-operation capable of achieving short-term goals while pursuing for long-term strategic policy objectives. Counting on an overall co-operative framework would help reducing the ‘distance’ between the strategic and tactical level and, in so doing, eventually include *ad hoc* cooperative instances.²⁵⁰ In this framework, eventual institutionalised co-operative agreements, bilateral or multilateral, would ensure a coherent development in cases of institutional evolutions. This is particularly true, for instance, for the case of NATO and EU²⁵¹, and with regard to the reaction triggered by the failures of the UN in the early 1990s.²⁵² In light of the impact generated on the then UN-regional organisations interaction, this process of transformation has unveiled the problematic existential debate that determinate organisation had to face in the Post-Cold War era.

UN-mandated vs. UN-led operations

Results from the study conducted has revealed an increasing distance of regional organisations from *UN-led* operations.²⁵³ Organisations involved by the analysis—and in many cases their

²⁴⁸ Jean Dufourq, “Political and Military Constraints Affecting Reconstruction Operations”, in Jean Dufourq and David S. Yost (eds.), *NATO-EU Cooperation in Post-Conflict Reconstruction*, NATO Defence College, NDC Occasional Papers Series 15, May 2006, 23-35.

²⁴⁹ Marjan Malešič, *op.cit.* note 237, 18.

²⁵⁰ See Mihai Carp, “NATO Policy and Perspectives on Reconstruction Operations and NATO-EU Cooperation”, in Jean Dufourq and David S. Yost (eds.), *supra* note 248.

²⁵¹ Ingo Peters, *op.cit.* note 77, 384. This process also included the institutionalisation of relationship between the two actors.

²⁵² Thierry Tardy, *op.cit.* note 169, 13.

²⁵³ Thierry Tardy, “EU-UN cooperation in peacekeeping: a promising relationship in a constrained environment”, in Sven Biscop *et al.*, *op.cit.* note 203, 52.

member states—have expressed preference for the flexibility proper of UN-mandated operations.²⁵⁴ In this situation, concerns have been expressed over the development of a two-speed peace operations, with UN-led operations relatively weak from one side, and others led by regional organisations, for instance EU and NATO, stronger in terms of political backing and military strength.²⁵⁵ Several questions have been advanced on the level of autonomy of organisations operating under UN mandate but with no formal operational and tactical linkages, being the reporting obligations under article 54 of Chapter VIII of the UN Charter, in itself weak and poorly implemented, the only possible tool to enhance UN coordinating role.²⁵⁶

The need for a common doctrinal framework

Almost the totality of efforts undertaken by the international community in the direction of a fortified international cooperation has moved in the direction of bilateral development. Albeit understandable, the few exceptions to this general trend, for instance the OSCE *Platform for Co-operative Security*, first, and the UN Secretary-General's report on *Regional-Global Security Partnership*²⁵⁷, have received very low consideration. In this context, the overall analysis of international endeavour in this direction has demonstrated the absence of an agreed doctrinal framework. To this end, the ambiguity generated by the impossibility to rely on a common conceptual framework has confined 'international co-operation' to a pragmatic and flexible approach—largely influenced by the military experience—that cannot—unfortunately and despite the commendable efforts undertaken—provide for the needed clarity.

Co-operative modalities

The analysis conducted has revealed the following patterns of inter-organizational co-operation:

- a. *Horizontal (between different organisations at Headquarters or field level) versus Vertical (between Headquarters and field within the same organisation) dimension of cooperation.* With the exception of Macedonia, the international cooperation has registered an incoherent development of the two dimensions.

²⁵⁴ *Ibid.*, 67-68.

²⁵⁵ *Ibid.*, 53.

²⁵⁶ Sven Biscop and Valérie Arnould, *op.cit.* note 172, 24.

²⁵⁷ See Report of the Secretary-General, *A regional-global security partnership: challenges and opportunities*, Doc. No. A/61/204-S/2006/590, 28 July 2006.

Co-operative instances have developed discordantly with quick field level interaction lacking support from the headquarters. While an increased level of cooperation is normal at the field level, this should be complemented by, or at least be part of, initiatives undertaken at the headquarters. In this situation, the overall capacity of decision-making is drawn in a process of fragmentation populated by short-term operational goals which cannot find adequate correspondence at the strategic level. This would lead the international community to function in a purely reactive modality and conditioned by the political support and commitment of member states.²⁵⁸

b. Event-based (ad-hoc and for a specific purpose) versus institutionalized (to pursue stated institutional goals) forms of co-operation. The analysis of the case-study has revealed a mixture of event-based and institutionalized forms of co-operation. With regard to the former, for instance, the international action has counted on a sequence of external and *ad hoc* coordinating bodies—for instance, the EC Peace Conference, the International Conference on the Former Yugoslavia, the Contact Group and the International Steering Group for Kosovo—which provided for the necessary international fora. The latter, on the contrary and when established, have guaranteed, *inter alia*, a stronger framework for information exchange and knowledge sharing (key elements in both the planning process and tactical deployment).

Formal vs. informal co-operation. The analysis conducted cannot leave out the role of informal cooperative relations. Frequently created and influenced by the personal capacity mandate-holders, this kind of cooperation is often the result of negotiations undertaken at the operational and tactical level.²⁵⁹ Often prompted by the lack of formalized inter-organizational cooperative agreements or by the need to overcome problematic formal structures, the informality of interaction actually is the result of *bottom-up* forms of organization. In pursuing for operational effectiveness this sort of

²⁵⁸ Susanna P. Campbell and Michael Hartnett, *A Framework for Improved Coordination: Lessons Learned from the International Development, Peacekeeping, Peacebuilding, Humanitarian and Conflict Resolution Communities*, The Institute for Human Security (IHS), The Fletcher School, Tufts University and the Inter-Organizational Cooperation Program, Federal Mediation and Conciliation Services (FMCS), 31 October 2005, 21-22.

²⁵⁹ Ho-Won Jeong, “Expanding peacekeeping functions for peace operations”, in *Security and Peace* 22. 1g. – 1/2004, 19-24.

“cooperation by default” stands as alternative, unfortunately weaker in terms of legitimacy and durability, to the classical forms of “cooperation by command”.²⁶⁰

²⁶⁰ For further information see Anna Herrhausen, *Coordination in United Nations Peacebuilding—A Theory-Guided Approach*, Discussion paper Social Science Research Centre Berlin SP IV 2007-301, Berlin 2007, 4.

THE NORMATIVE RELEVANCE OF ‘INTERNATIONAL CO-OPERATION’ – FIRST POSSIBLE CONCLUSIONS

The inter-organizational co-operation analysed in the previous chapters is here tested against provisions and guidelines enshrined in the UN Charter. This undertaking, by examining the practice of inter-organisational cooperation in the case study of former Yugoslavia through the lenses of the international cooperation—its normative dimensions, instances and jurisprudential evolutions—reveals variable dynamics in the relationship between the United Nations and regional organizations. Here the recognition of a certain disconnection between guidelines and planning at the global level and the context and contingency-driven forms of interactions at the country level provides an occasion to reflect on key lessons to be learned out of this case study and possible options for improvement.

I. The guidance provided by the UN Charter

The year 1991 marked a turning point in the UN Security Council (UNSC or ‘Security Council’) reference to regional organizations (ROs) with an increase involvement of ROs in the former Yugoslavia, Western Sahara, Rwanda, Mozambique, Angola,

Somalia and Haiti.²⁶¹ In this context, Chapter VIII of the UN Charter offered an institutional framework for pacific settlement of disputes as well as enforcement actions: two options respectively envisaged in Article 52 and 53 of the UN Charter.²⁶² The regional arrangements or agencies are encouraged by the UNSC to initiate pacific settlement of local disputes on the basis of Article 33(1)²⁶³ and 52(2) of the UN Charter.²⁶⁴ The regional organizations can also be utilized by the UN Security Council for undertaking enforcement actions on the basis of Article 53 of the UN Charter.²⁶⁵ In this case, the authorization by the Security Council should “ideally” be given *prior* to the beginning of the enforcement action to avoid “pretextual interventions” and ensure proper supervision by the UNSC.²⁶⁶ No other additional powers—apart from those envisaged in the UN Chapter VII of the Charter—are in fact given to the UNSC which can possibly be delegated to regional actors.²⁶⁷ To this end, the UN Charter enumerates the following typology of enforcement action: a) provisional measures (Article 40); non-military measures (for instance, economic and diplomatic sanctions under Article 41); and, military measures (under Article 42). The delegation of powers by the UNSC is therefore indispensable for the enforcement action to be lawful. Furthermore, the exercise of Chapter VII powers by regional organizations must be undertaken under the authority of the UNSC and with continuous information provided by the regional organization concerned. As per Article 54 of the UN Charter, the UNSC must be fully informed of any activities undertaken or contemplated by the regional organizations.

²⁶¹ See Renata Sonnenfeld, *Resolutions of the UN Security Council*, Springer (1988), 103.

²⁶² In this case, the regional arrangement or agency and its activities must be consistent with the purposes and principles of the UN. See Kennedy Graham, “Towards a Coherent Regional Institutional Landscape in the United Nations? Implications for Europe”, *Bruges Regional Integration & Global Governance Papers 1/2008*, United Nations University, Comparative Regional Integration Studies, Bruges 2008, 15.

²⁶³ Article 52 of the UN Charter indicates six main functions: negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement.

²⁶⁴ The designed functional relations do not affect priorities and powers of the UNSC on the basis of Article 52(4) of the Charter.

²⁶⁵ With respect to the conflict prevention mechanism, here regarded as a necessary feature for a regional organization under Chapter VIII, the enforcement capacity is to be considered as optional. Furthermore, as from article 53(1) the appropriateness of regional action is nevertheless conditioned by the evaluation of the UN Security Council. See Dan Sarooshi, *The United Nations and the Development of Collective Security. The Delegation by the UN Security Council of its Chapter VII Powers*, Clarendon Press, Oxford 1999, 250.

²⁶⁶ The notion of “enforcement action” refers to all coercive actions other than valid defensive actions; therefore, including non-military and military measures contemplated under Article 41 and 42 respectively. See Kiho Cha, “Humanitarian Intervention by Regional Organizations Under the Charter of the United Nations”, in *Seton Hall Journal of Diplomacy and International Relations Summer/Fall 2002*, 135.

²⁶⁷ Dan Sarooshi, *supra* note 265, 248.

The exercise of the primary responsibility recognized to the Security Council for the maintenance of international peace and security—here considered in the manifestation proper of Chapter VII powers and eventual delegation under Chapter VIII of the Charter—must be discharged in full compliance with the principles and values of the UN Charter.²⁶⁸ Measures undertaken in self-defense, whether taken individually or collectively, are also subject to the ‘immediate’ reporting obligation, under Article 51, to the Security Council.²⁶⁹

Now, given this framework and as previously noted, there are no additional powers, apart from those enshrined in Chapter VII of the Charter, and there are no additional obligations on member states or regional arrangements or agencies except from those proper of Chapter VIII of the UN Charter.²⁷⁰ Furthermore, the delegation of powers by the UNSC does not automatically create implementation and engagement of regional actors.²⁷¹ In these circumstances, the regional organisations would then be free to decide—coherently with its constituent treaty or founding document—whether to exercise the delegated Chapter VII powers or not.²⁷²

The case study of former Yugoslavia also saw military armed forces of States operating with UNSC authorization but not under direct UN command.²⁷³ Here, member states were called, under Article 48 of the UN Charter, to act “*nationally or through regional agencies or arrangements*”.²⁷⁴ In this case, the reporting obligations would be channeled through UNSC enabling resolutions and with reporting lines implemented by the UN Secretary-General (UNSG)²⁷⁵ or, for certain cases, linked to

²⁶⁸ This is evident from Article 24 of the Charter. See also Terry D. Gill, “Legal Aspects of the Transfer of Authority in UN Peace Operations”, in *Netherlands Yearbook of International Law 2011*, Vol. 42, 2012, 37-68, 60.

²⁶⁹ Christoph Schreuer, *op.cit.* note 10, 490.

²⁷⁰ The same is true for eventual powers or right to use force because of the membership in a regional arrangement.

²⁷¹ Dan Sarooshi, *op.cit.* note 265, 229.

²⁷² *Ibid.*, 253, the regional arrangements or agencies cannot exceed the powers given by the respective constituent treaties.

²⁷³ An approach defined, because of its different but parallel deployment *vis-à-vis* UN operations, as “*Double Track Approach*” by Michael Bothe. This is, for instance, the case of NATO’s military presence in BiH and security presence in Kosovo (besides UNMIK). See Michael Bothe, “Peacekeeping”, in Bruno Simma *et al.*, *The Charter of the United Nations. A Commentary*, Third Edition Vol. I, OUP 2012, 1179-1180.

²⁷⁴ See, for instance, UNSC Resolution 770, 787, 816, 836, 908, 1031, 1174, 1244, 1247. A model described by Niel Blokker as “delegated enforcement action”. See Niel Blokker, “Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by ‘Coalitions of the Able and Willing’”, in *EJIL* (2000), Vol.11 No. 3, 541-568, 543.

²⁷⁵ See, for instance, UNSC Resolution 770 (1992) para 3 in which States were called “to report to the Secretary-General on measures they are taking in coordination with the United Nations to carry out this resolution, and invites the Secretary-General to keep under continuous review any further measures that

the active role of international actors in the field.²⁷⁶ This approach facilitated involvement of organizations like NATO, for instance, not fitting into the classification proposed by Chapter VIII of the UN Charter, but involved because of political considerations on side of the UN.²⁷⁷

A. Identification of 'Chapter VIII regional arrangement or agency'

While the inter-organization interaction envisaged by Chapter VIII of the UN Charter could be outlined in functional scope and structure, there is no clarity nor any definitions of what actually is a “regional arrangement or agency”.²⁷⁸ The UN Charter does not define the term ‘region’ and the conceptual notions proposed are unable to embrace the totality of regional ‘configurations’ developed so far.²⁷⁹ Furthermore, due to the absence of any formal definition, the parameters of what would be appropriate for *regional* action has been interpreted to allow activities by groups of States whenever contributing to the maintenance of international peace and security.²⁸⁰ This approach was further reiterated by the then UNSG Boutros Boutros-Ghali in his 1995 report to the UN General Assembly (UNGA) on the cooperation with regional

may be necessary to ensure unimpeded delivery of humanitarian supplies. [...] The Secretary-General was then requested to report to the Council on a periodic basis on the implementation of this resolution”.

²⁷⁶ See, for instance, UNSC Resolution 1031 (1995) para 25 in which Member States were requested: “acting through or in cooperation with the organization referred to in Annex 1-A of the Peace Agreement to report to the Security Council, through the appropriate channels and at least at monthly intervals, the first such report be made not later than 10 days following the adoption of this resolution”

²⁷⁷ Ademola Abass, *Regional Organisations and the Development of Collective Security Beyond Chapter VIII of the UN Charter*, Hart Publishing, Oxford and Portland 2004, 20. See also Christine Gray, “Regional Arrangements and the United Nations”, in Hazel Fox (ed.), *The Changing Constitution of the United Nations*, British Institute for International and Comparative Law, 1997, 191.

²⁷⁸ Kennedy Graham and Tania Felicio, *Regional Security and Global Governance: A Proposal for a 'Regional-Global Security Mechanism' in Light of the UN High-Level Panel's Report*, Egmont Paper 4, Royal Institute for International Relations, Brussels 2005, 21.

²⁷⁹ According to the conceptual notion advanced in San Francisco, regional arrangements are “organisations of a permanent nature, a grouping in a given geographical area several countries which, by reason of their proximity, community of interests or cultural, linguistic, historical or spiritual affinities make themselves jointly responsible for the peaceful settlement of any disputes which may arise”. Bruno Simma elaborating on this issue proposed the following definition of regional arrangement or agency: “a union of states or an international organisation, based upon a collective treaty or a constitution and consistent with the purposes and principles of the United Nations, whose primary task is the maintenance of peace and security under the control and within the framework of the United Nations” in Nikki Slocum-Bradley and Tania Felicio, *The Role of Regional Integration in the Promotion of Peace and Security*, UNU-CRIS Occasional Papers 0-2006/2, United Nations University, Bruges 2006, 15.

²⁸⁰ See *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*, UN Doc. A/47/277 - S/24111, 17 June 1992, para 61. See also Gary Wilson, UN Authorized Enforcement: Regional Organization versus ‘Coalition of the Willing’, 10 *International Peacekeeping* 89 (2003) 96, in Marten Zwanenburg, *Accountability of Peace Support Operation*, Martinus Nijhoff Publishers (2005), 201.

organizations.²⁸¹ In his report, the UNSG substantially repeated what stated before in his *Agenda for Peace*:

61. The Charter deliberately provides no precise definition of regional arrangements and agencies, thus allowing useful flexibility for undertakings by a group of States to deal with a matter appropriate for regional action which also could contribute to the maintenance of international peace and security. Such associations or entities could include treaty-based organizations, whether created before or after the founding of the United Nations, regional organizations for mutual security and defence, organizations for general regional development or for cooperation on a particular economic topic or function, and groups created to deal with a specific political, economic or social issue of current concern.²⁸²

The content of the term “regional arrangements or agencies” is then to be determined pragmatically and with more emphasis on the type of function and the attitude of the UNSC rather than the nature of the regional organization per se.²⁸³ The perception of regional organizations themselves (whether they do consider themselves as operating under the UN collective security framework) is nevertheless of critical importance particularly with regard to the enforcement action under Article 53 of the UN Charter.²⁸⁴ Several organizations have formally declared themselves to be *regional agencies/organizations* for the purpose of Chapter VIII of the UN Charter.²⁸⁵ Others, like NATO and the EU, do not see themselves, for different reasons, as regional actors under Chapter VIII of the UN Charter.

²⁸¹ See 1995 UNYB 116. Particularly in the case of former Yugoslavia, the UNSC referred expressly to the EC and CSCE in resolutions recalling Chapter VIII of the UN Charter. NATO and WEU were also implicitly referred as regional organizations in UNSC’s resolutions. The UNSG also included them in his meeting with regional organizations in 1994. See 1994 UNYB 88 and Christine Gray, *International Law and the Use of Force*, OUP, 2008, 204.

²⁸² See *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peacekeeping*, UN Doc. A/47/277 - S/24111, 17 June 1992.

²⁸³ Christine Gray, *op.cit.* note 281, 206.

²⁸⁴ Here the subordination to the UNSC would appear problematic for those organizations not considering themselves to be regional arrangements under Chapter VIII of the UN Charter. In these cases, the reporting obligations are then set by the enabling resolution adopted by the UN Security Council.

²⁸⁵ For instance, the Council of Europe, OAS, OAU, CIS, OSCE, ECOWAS, OCSE. See Ademola Abass, *op.cit.* note 277, 34.

B. UN Security Council's authorization for enforcement action

The authorization foreseen for enforcement actions under Article 53 of the Charter constitutes an institutional and a procedural safeguard in case of abuse motivated by particular states' interests. Ideally, the authorization by the Security Council should be given *prior* to the beginning of the enforcement action in order to avoid possible cases of "pretextual interventions" and ensure proper supervision by the UNSC.²⁸⁶

The practice of the UNSC, however, has revealed cases of *ex post* or retroactive authorization for which the capacity of the Security Council to exercise *prior* control in relation to enforcement actions already initiated was in fact weakened. In this case, the only plausible situation—compatible with the effective supervision to be exercised by the UNSC—is for the *ex post* authorization to be given before the conclusion of the regional action.²⁸⁷ In fact, it would be impossible for the UNSC to exercise control with regard to enforcement actions already concluded.²⁸⁸ In this context, while the formulation of Article 53(1) does not intervene on the formalities for such authorization to be given, and provided that the express authorization is indeed the best possible solution, the very same practice (of the UNSC) has revealed a general admissibility of other different forms of authorization. For instance, *tacit* or *implicit*, provided that these are consequence of a clear and unequivocal manifestation of consent by the UNSC.²⁸⁹ In this direction, cases of authorization presumed from mere silence or inactivity of the Security Council cannot be regarded as admissible. Even the implicit consent, for instance, should then be identified, with absolute certainty, from the behaviour of the Security Council.

Furthermore, as observed by De Guttry: "the UN Security Council very often uses the concepts of 'authorization' and 'delegation' in an inexact manner from a legal point of view".²⁹⁰ On the 'authorization', for instance, De Guttry identifies different approaches

²⁸⁶ Kiho Cha, *op.cit.* note 266, 138.

²⁸⁷ Ugo Villani, "The Security Council's Authorization of Enforcement Action by Regional Organizations", in *Max Planck Yearbook of United Nations*, Vol. 6 (2002), 535-557, 551-552.

²⁸⁸ *Ibid.*, 552.

²⁸⁹ *Ibid.*

²⁹⁰ See Andrea de Guttry, "How Does the UN Security Council Control States or Organizations Authorized to Use Force? A Quest for Consistency in the Practice of the UN and of Its Member States", in *International Organization Law Review*, 11(2014) 251-293, 266. The study on UN Resolutions conducted by De Guttry has revealed inconsistencies in the practice of the UNSC. For instance the misuse of a variety of expressions employed in UN Resolutions in which the UNSC Security Council has 'requested', 'recommended', 'called upon', 'taken note', 'authorized' (by far the most commonly

depending on whether authorization from the UNSC is given with regard to activities States or international organizations would be anyway entitled. This would be the case of host State's consent and request to a peace operation or other activities carried out by a regional organization.²⁹¹ Here, being the activities under exam perfectly legal, the enabling resolution coming from the UNSC would be of political nature and hence not a formal 'authorization' per se.²⁹² Different situation for the authorization to be given under Article 53 of the UN Charter. As already analysed, while the reference to 'authorization' is justified by the UN Charter in consideration of the type of action (enforcement) to be undertaken, the practice of the UNSC seems to reveal an improper use of the terms 'authorization' and 'delegation of power'. In fact, by focusing on the substantial powers assigned to the UN Security Council under Chapter VI and VII of the UN Charter, it would be better to use the term 'delegation of powers' instead of 'authorization'²⁹³, with the former being devoted to a specific activity and the latter conferring wide discretionary power.²⁹⁴ As, for instance, noted by the Grand Chamber of the ECtHR on UNSC Resolution 1244 (1999):

While this Resolution used the term 'authorise', that term and the term 'delegation' are used interchangeably. Use of the term 'delegation' in the present decision refers to the empowering by the UNSC of another entity to exercise its function as opposed to 'authorising' an entity to carry out functions which it could not itself perform.²⁹⁵

C. Supervisory function and reporting procedure

The quality of inter-organizational cooperation is directly proportional with the level of knowledge international actors have about each other's mandate and actions, from the strategic to the tactical level. The necessity to know "*who is doing what*" responds

used) and 'delegated power or function' to mandate an institution to perform given functions involving the use of force.

²⁹¹ *Ibid.*, 260.

²⁹² *Ibid.*, 261.

²⁹³ *Ibid.*, 262. Through the delegation of power or of function an institution can delegate to another body the competences and tasks which the relevant instrument confers, expressly or implicitly, upon it, unless the instrument prohibits such delegation de Guttry, para. 263, footnote 32.

²⁹⁴ Differently from the delegation of power, the authorization can be granted even if the authorizing body has only been given the power to authorize but not to act directly.

²⁹⁵ See *Agim Behrami and Bekir Behrami v. France* and *Ruzhdi Saramati v. France, Germany and Norway*, 2 May 2007, European Court of Human Rights Grand Chamber, Decision as to Admissibility, App. Nos. 71412/01 and 78166/01, para. 43. As observed by the ECtHR, the 'delegation' would have been a more appropriate form.

to the basic and pragmatic question of how to enhance the practical cooperation among international actors intervening in a specific conflict scenario. This is even more important as the analysed case study has revealed common trends of modern peace operations in the direction of improved command and control systems and higher level of compression and interrelation between the strategic, operational and tactical framework.

In this context, the identification of roles in peace operations—for both, albeit differently, UN-mandated and UN-led missions—inevitably leads to an evaluation of the leadership capacity of the UN and the value of the reporting requirements established around the allocation of tasks for either member states or regional organizations.

Here, the delegation of Chapter VII powers envisaged by Chapter VIII of the UN Charter is directly dependent on the possibility and capacity of the Security Council to exercise valuable supervision over the action of regional organizations and member states. This, together with the specification of a clear objective for which the power is being delegated and the imposition of a reporting requirement, forms what Dan Sarooshi has identified as the three indispensable conditions to be respected for a lawful delegation of powers.²⁹⁶ The supervisory function, in this case, refers primarily to the UN authority over the implementing actors and should be further reflected in the operational arrangements established at the field level. In turn, the dialogic nature of this interaction should find in the establishment of an appropriate reporting structure the needed operational framework. In this sense, the procedural guarantee for this *UN* 'supervision and authority' therefore relies on a proper reporting system between the regional organisations and the UN. The same is also true for member states acting "*nationally or through regional agencies or arrangements*".

The reporting requirement, in particular, should ideally be crafted around clear objectives and tasks, anticipate the deployment of international actors and be updated as per on-going developments in the field. In this framework, the notion of operational *command*²⁹⁷ and *control*²⁹⁸, whether referring to regional organizations or member

²⁹⁶ Dan Sarooshi, *op.cit.* note 265, 250.

²⁹⁷ Operational command is 'the authority granted to a commander to assign missions or tasks to subordinate commanders to deploy units, reassign forces, and to retain or delegate operational and tactical control; it is the highest level of operational authority which can be given to an appointed commander who is acting outside of his own national chain of command, and is seldom authorized by Member States'. See *Glossary of UN Peacekeeping Terms* (1998), available at <http://www.un.org/en/peacekeeping/sites/glossary/>.

states, plays an important role as being the manifestation of division of roles and responsibilities among international actors intervening in a conflict. Each actor (UN, regional organization, member state) should then know what the others are responsible for and behave accordingly.

It is also important to note that the reporting system, and relative obligations, are open to further and more detailed articulations as happened, for instance in the case of Bosnia-Herzegovina, with UNSC Resolution 1031.²⁹⁹ In some cases, the UN Security Council also requested the Secretary-General to complement the reporting system.³⁰⁰ The reporting obligations envisaged by Article 54 of the UN Charter are of continuous character—here the interpretation of the expression “at all times” used in the article—covering both measures already adopted and those which are in “contemplation” (yet to be adopted).³⁰¹ The reporting system under Article 54 is foreseen for the benefit of the Security Council³⁰²—to collect detailed information to guide exercise of powers and control—and therefore applies equally to both peace settlement disputes (Article 52) and enforcement action (Article 53).³⁰³

This saying, and even though its importance, the implementation in the context of peace operations has revealed reporting practices conducted in a rather inconsistent manner *vis-à-vis* objectives of Article 54 of the UN Charter.³⁰⁴ The Post-War Cold was

²⁹⁸ Operational control is ‘the authority granted to a commander to direct forces assigned so that the commander may accomplish specific missions or tasks which are usually limited by function, time or location by troop-contributing countries in the Security Council Resolution/mandate, to deploy units and retain or assign tactical control of those units; it is a more restrictive level of authority than operational command: a commander cannot change the mission of those forces or deploy them outside the area of responsibility previously agreed to by the troop-contributing country without the prior consent of this country; further he cannot separate contingents by assigning tasks to components of the units concerned’. See *Glossary of UN Peacekeeping Terms* (1998), available at <http://www.un.org/en/peacekeeping/sites/glossary/>.

²⁹⁹ In this case, member states were requested “acting through or in cooperation with the organization referred to in Annex 1-A of the Peace Agreement to report to the Council, through the appropriate channels and at least at monthly intervals, the first such report be made not later than 10 days following the adoption of this resolution”. See UNSC Resolution 1031 on the implementation of the Peace Agreement for Bosnia and Herzegovina and transfer of authority from the UN Protection Force to the multinational Implementation Force (IFOR), S/RES/11031 (1995), 15 December 1995, para. 25. Appropriate reporting channels were in this case guaranteed by the intermediary function performed by the Secretary-General and its SRSG (see paras 19-32-33-38).

³⁰⁰ See UNSC Resolution 794 (Somalia), 929 (Rwanda) and 1216 (Guinea-Bissau).

³⁰¹ For regional measures “in contemplation”, the UNSC must be informed on the plans and reasons behind the measures considered by the regional arrangement or agency concerned.

³⁰² The UNSC’s assessment on the “appropriateness” of regional action under Article 52 and 53 cannot be made without the necessary information. See Bruno Simma *et al.*, *The Charter of the United Nations. A Commentary*, Third Edition Vol. II, OUP 2012, 1525.

³⁰³ *Ibid.*, 1526. While the reporting of measures adopted under Article 52 is considered to be matter of international courtesy, the reporting in case of regional enforcement action is mandatory.

³⁰⁴ For instance, the reporting practice refers to measures “in contemplation”. See Andrea de Guttery, *op.cit.* note 290, 272-273. As observed by Christian Walter in Bruno Simma *et al.*, *supra* note 13, 1531,

characterized by criticism expressed by numerous member states over UNSC's resolutions issued with minimal or insufficient control by the UN.³⁰⁵ Here the wide margin of discretion enjoyed by implementing actors, for instance regional organizations, conflicts with the *raison d'être* of the supervision exercised by the UNSC over the delegated powers.³⁰⁶ On this issue, the then UNSG Boutros-Ghali in his 1995 *Supplement to an Agenda for Peace* stated that:

The experience of the last few years has demonstrated both the value that can be gained and the difficulties that can arise when the Security Council entrusts enforcement tasks to groups of Member States. On the positive side, this arrangement provides the Organization with an enforcement capacity it would not otherwise have and is greatly preferable to the unilateral use of force by Member States without reference to the United Nations. On the other hand, the arrangement can have a negative impact on the Organization's stature and credibility. There is also the danger that the States concerned may claim international legitimacy and approval for forceful actions that were not in fact envisaged by the Security Council when it gave its authorization to them. Member States so authorized have in recent operations reported more fully and more regularly to the Security Council about their activities.³⁰⁷

D. Overall, ultimate or effective control?

The debate around the typology of “control standard” has influenced the process of attribution of responsibilities for international organisations' wrongful acts in peace operations. A careful analysis of the various positions taken on the responsibilities of international organisations all along the formulation of this debate could provide, albeit indirectly, the notion of ‘inter-organizational cooperation’ with a first normative support besides the guidelines of the UN Charter.

In this direction, several court decisions at the regional and national level dealt with the attribution of responsibilities of international organisations in the context of peace operations. Different conceptual standards of ‘control’ have then been unveiled

apparently the UNSC has never criticized a regional arrangement or agency for not complying with the reporting obligations under Article 54.

³⁰⁵ For a detailed analysis, see Niel Blokker, *op.cit.* note 274, 555-560.

³⁰⁶ *Ibid.*, 553. This is of crucial importance considering the responsibility of the UNSC within the UN collective security system.

³⁰⁷ See UN Doc. A/50/60-S/1995/1A of 3 January 1995, Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, para. 80.

through judicial evaluation to form part of, considering the different focuses they relate to, the structural design of inter-organizational cooperation. Here, the International Criminal Tribunal for the Former Yugoslavia (ICTY) referred to the standard of ‘overall control’ in its decision on the *Tadic* case.³⁰⁸ Later on, the standard of ‘ultimate authority and control’ was followed by the European Court of Human Rights (ECtHR) in the controversial decisions on the *Behrami*³⁰⁹ and *Saramati*³¹⁰ cases in 2007.³¹¹ In its decision on the admissibility of the cases, on the attribution of responsibilities between the UN and the NATO-led KFOR the ECtHR considered that:

“33. [...] the key question is whether the UNSC retained ultimate authority and control so that operational command only was delegated.

[...]

134. That the UNSC retained such ultimate authority and control, in delegating its security powers by UNSC Resolution 1244, is borne out by the following factors. In the first place, and as noted above, Chapter VII allowed the UNSC to delegate to “Member States and relevant international organisations”. Secondly, the relevant power was a delegable power. Thirdly, that delegation was neither presumed nor implicit, but rather prior and explicit in the Resolution itself. Fourthly, the Resolution put sufficiently defined limits on the delegation by fixing the mandate with adequate

³⁰⁸ *ICTY Prosecutor v Dusan ‘Duško’ Tadić*, IT-94-1-A, Appeals Chamber, 15 July 1999, [145]–[154]. According to the ICTY.

“131. In order to attribute the acts of a military or paramilitary group to a State, it must be proved that the State wields overall control over the group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military activity. Only then can the State be held internationally accountable for any misconduct of the group. However, it is not necessary that, in addition, the State should also issue, either to the head or to members of the group, instructions for the commission of specific acts contrary to international law.

[...]

145. In the light of the above discussion, the following conclusion may be safely reached. In the case at issue, given that the Bosnian Serb armed forces constituted a “military organization”, the control of the FRY authorities over these armed forces required by international law for considering the armed conflict to be international was overall control going beyond the mere financing and equipping of such forces and involving also participation in the planning and supervision of military operations. By contrast, international rules do not require that such control should extend to the issuance of specific orders or instructions relating to single military actions, whether or not such actions were contrary to international humanitarian law.”

³⁰⁹ *Agim Behrami and Bekir Behrami v. France* (Admissibility) (2007) 45 EHRR 85. The case concerned the death and injuries caused by the explosion of cluster bomb units dropped by NATO forces in the Kosovo territory.

³¹⁰ *Ruzhdi Saramati v. France, Germany and Norway* (Admissibility) (2007) 45 EHRR 85. The case concerned unlawful detention of Mr. Saramati by KFOR personnel.

³¹¹ Here the difference between “overall” and “ultimate” is only linguistics being the reasoning of the ECtHR similar to the one followed for the overall control criteria. See Nicholas Tsagourias, “The Responsibility of International Organisations for Military Missions”, in Marco Odello and Ryszard Piotrowicz (eds.), *International Military Missions and International Law*, Martinus Nijhoff Publishers (2011), 245-265, 250.

precision as it set out the objectives to be attained, the roles and responsibilities accorded as well as the means to be employed. The broad nature of certain provisions could not be eliminated altogether given the constituent nature of such an instrument whose role was to fix broad objectives and goals and not to describe or interfere with the detail of operational implementation and choices. Fifthly, the leadership of the military presence was required by the Resolution to report to the UNSC so as to allow the UNSC to exercise its overall authority and control (consistently, the UNSC was to remain actively seized of the matter, Article 21 of the Resolution). The requirement that the Secretary-General (SG) present the KFOR report to the UNSC was an added safeguard since the SG is considered to represent the general interests of the UN.

[...]

135. Accordingly, UNSC Resolution 1244 gave rise to the following chain of command in the present cases. The UNSC was to retain ultimate authority and control over the security mission and it delegated to NATO (in consultation with non-NATO member states) the power to establish, as well as the operational command of, the international presence, KFOR. [...]”³¹²

While the effective command of the relevant operational matters was retained by NATO the ECtHR considered the UNSC’s ‘*ultimate authority and control*’ more relevant for the attribution of the impugned acts. In the opinion of the Court, the operational command only was delegated.³¹³ In arguing for this solution, the Court distinguished between ‘ultimate authority and control’ retained by the UN Security Council, and the ‘effective command’ retained by NATO.

The ECtHR concluded that “the applicants’ complaints must be declared incompatible *ratione personae* with the provisions of the Convention”.³¹⁴ In its reasoning, the ECtHR referred to the work of the International Law Commission (ILC) and the criterion of effective control.³¹⁵ Here, from the perspective of the Article 7 of the Articles on the Responsibility of International Organizations (ARIO)³¹⁶, the Court was satisfied with

³¹² See decision of the Grand Chamber on the Admissibility of *Behrami and Behrami v. France and Saramati v. France, Germany and Norway*.

³¹³ See Ray Murphy and Siobhán Wills, *The Practice of Shared Responsibility of United Nations Peacekeeping Operations for Harmful Outcomes*, SHARES Research Paper 91 (2016), 13.

³¹⁴ See decision of the Grand Chamber on the Admissibility of *Behrami and Behrami v. France and Saramati v. France, Germany and Norway*, para. 152.

³¹⁵ *Ibid.*

³¹⁶ Article 7 ARIO states the following: “The conduct of an organ of a State or an organ or agent of an international organization that is placed at the disposal of another international organization shall be considered under international law an act of the latter organization if the organization exercises effective control over that conduct”. See UNSC Resolution 66/100, UN Doc. A/RES/66/100, 27 February 2012.

the general indication of an ultimate responsibility of the UN instead of moving in favour of the factual understanding of the circumstances leading to the violation. In the opinion of the Court, the *'ultimate authority and control'* was more relevant than the *'operational command'*, with UNSC able to mandate and oversee the operation through reports.³¹⁷

The risks coming from such a decision are of immediate relevance since relying on these standards solely would make the factual analysis and the link between author and violation virtually non-existent. Here, excluding the responsibility of Member States in favour of an ultimate responsibility of the UN would make the exercise of effective remedy for wrongful act occurred in the context of UN-mandated operations almost fictional.³¹⁸

Over time, however, the attention moved away from the *'ultimate authority and control'* in favour of the *'effective control'*³¹⁹ standard formalized in Article 7 ARIO.³²⁰ Here, the responsibility for eventual wrongful acts is to be credited to the actor(s) who effectively holds factual control over the commission of the wrongful act concerned.³²¹ The ILC in its Commentary further clarified that:

“The criterion for attribution of conduct either to the contributing State or organization or to the receiving organization is based according to Article 7

³¹⁷ See Kjetil Mujezinovic Larsen, ‘Attribution of Conduct in Peace Operations: the “Ultimate Authority and Control Test”’, in *European Journal of International Law*, Vol. 19 No. 3 (2008), 509-531, 520.

³¹⁸ According to Aurel Sari “in terms of accountability the complexities of the applicable command and control arrangements actually shifts the burden of proof on the individual who has suffered damage or injury because of the UN operation”. For Aurel Sari, an appropriate solution would be to provide claimants with a robust claims settlement procedure and not to rely on Article 7 ARIO. See Aurel Sari, “UN Peacekeeping Operations and Article 7 ARIO: The Missing Link”, in *International Organizations Law Review* 9 (2012), 77–85, 84.

³¹⁹ While the exact definition of the term ‘effective control’ is very much debated it is relevant for the present research because of the implicit difference it creates between international actors working at the tactical level, who have a much wider control of eventual conducts in conflict-related scenarios, and those operating at the strategic and operational level.

³²⁰ See for instance, *Srebrenica* (Dutch Court of Appeal in 2011), *Al Jedda and Al Skeini* (European Court of Human Rights in 2011) and *Mukeshimana* (Belgian First Instance Court in 2010). For a detailed analysis of the court decisions see Cedric Ryngaert, “Apportioning Responsibility between the UN and Member States in UN Peace-Support Operations: An Inquiry into the Application of the ‘Effective Control’ Standard after Behrami”, in *Israel Law Review* Vol. 45 Issue 1, March 2012, 151-178, 157.

³²¹ See Second Report on Responsibility of International Organizations, U.N. Doc. A/CN.4/541, April 2004, 19. See also Aurel Sari, *supra.* note 318, 78. ILC’s Commentary also clarifies that the ‘effective control’ test operates with regard to the specific unlawful act and not to the general overall conduct (ILC, Report of the International Law Commission Fifty-Sixth Session, UN Doc A/59/10 (2004) 99, 111). See also Christopher Leck, “International Responsibility in United Nations Peacekeeping Operations: Command and Control Arrangements and the Attribution of Conduct”, 10 *Melbourne Journal of International Law* (2009), 346-364, 348.

(ARIO) on the factual control that is exercised over the specific conduct taken by the organ or agent placed at the receiving organization's disposal".³²²

With regard to regional organizations, this would mean that certain control of the UN over the conduct of regional organizations is expected. Considered from this perspective, whenever the attribution of responsibility is unclear, the effective control test can lead to dual or multiple responsibility and the joint liability of the UN and the member state/regional organization in question.³²³ On side of the UN, and particularly for peacekeeping forces regarded as subsidiary organs of the organization,³²⁴ "international responsibility of the United Nations for combat-related activities of United Nations forces is premised on the assumption that the operation in question is under the exclusive command and control of the United Nations".³²⁵ In reality, it is very hard to achieve *full* authority over seconded organ by states/IOs, and the mentioned assumption may be confuted if member states/regional organizations act outside the "genuine and exclusive authority" of the UN.³²⁶ On this issue, the ARIO commentary clarifies that:

While it is understandable that, for the sake of efficiency of military operations, the United Nations insists on claiming exclusive command and control over peacekeeping forces, attribution of conduct should also in this regard be based on a factual criterion.³²⁷

³²² See Articles on the Responsibility of International Organizations with Commentaries, in Report of the International Law Commission, Sixty-third session, UN Doc. A/66/10, 2011, 87-88. As clarified by Messineo, differently from Art 6 ASR the words "effective control over the conduct" suggests a factual link, not an institutional one. See Francesco Messineo, *Multiple Attribution of Conduct*, SHARES Research Paper 11 (2012), 39.

³²³ Similarly, Ray Murphy and Siobhán Wills, *op.cit.* note 313, 11. See also Cedric Ryngaert, *op.cit.* note 320, 157. Situations of co-responsibility of UN and regional organisations/member states are not isolated phenomena.

³²⁴ See *Certain Expenses of the United Nations* (Article 17, paragraph 2, of the UN Charter), Advisory Opinion (1962) ICJ Rep. 151, p. 177. In this context, the UN Office of Legal Affairs made clear in its submissions to the ILC: "As a subsidiary organ of the United Nations, an act of a peacekeeping force is, in principle, imputable to the Organization". See Interoffice memorandum to the Director of the Codification Division, Office of Legal Affairs, and Secretary of the International Law Commission regarding the topic of Responsibility of International Organization (3 February 2004), UN Juridical Yearbook, p. 352.

³²⁵ See Report of the UN Secretary-General, UN Doc. A/51/389, 20 September 1996, para. 17.

³²⁶ See Aurel Sari, *op.cit.* 318, 83. See also Paolo Palchetti, "International Responsibility for Conduct of UN Peacekeeping Forces: the question of attribution" in (2015) *Seqüência (Florianópolis)* 70, 19-56, 34.

³²⁷ See ARIO Commentaries, *op.cit.* note 322, p. 88. See also the approach followed by the Hague Court of Appeal in the *Mustafić-Mujić (Mustafić-Nujić v. the Netherlands)*, Judgment, IJN: BR 5386 (5 July 20119) and *Nuhanović (Nuhanović v. The Netherlands)*, Judgment, LJN: BR 5388 cases. In both cases the Dutch Court of Appeal relied on the "effective control" standard in its reasoning on the attribution of

Difficulties in creating *fully institutionally linked* organs should then not prevent attribution of conduct and can actually lead to possible hypothesis of multiple attribution. This emphasis on *factually* linked organizations could also clarify and facilitate attribution of conduct, and possibly multiple attribution, in cases where an actor/entity is at the same time under direction or control of two or more IOs.³²⁸ On this issue, the Commentaries to ARIO clarifies that:

Although it may no frequently occur in practice, dual or even multiple attribution of conduct cannot be excluded. Thus, attribution of a certain conduct to an international organization does not imply that the same conduct cannot be attributed to a State, nor does vice versa attribution of conduct to a State rule out attribution of the same conduct to an international organization. One could also envisage conduct being simultaneously attributed to two or more international organizations, for instance when they establish a joint organ and act through that organ.³²⁹

A different, albeit correlated, situation concerns the case of a conduct jointly carried out by two or more entities acting, each of them, on behalf of two or more IOs. Here the attention is on the application of rules with regard to each actors concerned and the identification of the specific conduct or omission, conducted jointly, which constitutes a wrongful act. It is possible here that the “joint” conduct could lead to the identification to two or more conducts each independently attributable only to one of the actors/international organizations.³³⁰ Article 48(1) ARIO confirms that:

“Where an international organization and one or more States or other international organizations are responsible for the same internationally

responsibility of Dutchbat. In 2013, the Supreme Court upheld both judgements and dismissed the appeal: see *Netherlands v. Nuhanović* (Judgment) [2013] Case No 12/03324 and *Netherlands v. Mustafić-Mujić* (Judgment) [2013] Case No 12/03329. See also *Mothers of Srebrenica v. The State of The Netherlands* (16 July 2014) District Court of The Hague, case No 295247, para. 4.34

³²⁸ *Ibid.*, 9. Here, and rightly so, Messineo distinguishes between institutionally linked actors (for which on-duty act is always attributed) and factually linked actors (whose conducts going beyond the instructions received is not attributed). See Messineo, *op.cit.* 322, 39.

³²⁹ See UNSC Resolution 66/100, *op.cit.* note 322.

³³⁰ Each organization should be accountable for the conduct over which it exercised effective command and control. See Nicholas Tsagourias, *op.cit.* note 311, 7. See also Report of the Secretary-General on the Financing of the United Nations Protection Force and other Peacekeeping Operations (20 September 1996), UN Doc. A/51/389, para. 18, in Katarina Grenfell, “Partnerships in UN Peacekeeping”, in *International Organizations Law Review* 13 (2016) 55-73, 68.

wrongful act, the responsibility of each State or organization may be invoked in relation to that act.”³³¹

Hence, the situation of dual or multiple attribution of responsibility would, as described by the ILC, imply the factual control over specific conducts exercised by two or more actors simultaneously.³³² This approach is further reiterated by the International Law Association (ILA) in its *Final Report on the Accountability of International Organisations*.³³³ The possibility of dual or multiple attribution is recognized by ECtHR in the *Al Jedda* case³³⁴ and other national judgements. In 2013 the Supreme Court of the Netherlands in the *Nuhanovic* case stated:

In so far as these grounds of appeal are based on the submission that international law excludes the possibility that conduct can be attributed to both an international organisation and to a State ... they are based on an incorrect interpretation of the law ... Article 7 ARIO, in conjunction with article 48 (1) ARIO does not exclude the possibility of dual attribution of conduct.³³⁵

³³¹ ARIO Commentaries, *op.cit.* note 316.

³³² See André Nollkaemper, “Dual Attribution: Liability of the Netherlands for Conduct of Dutchbat in Srebrenica, in Shares project”, in (2011) *Journal of International Criminal Justice* Vol. 9, Issue 5, 1143-1157, 1155. According to the ILC’s Commentary “although it may not frequently occur in practice, dual or even multiple attribution of conduct cannot be excluded”, see Report of the International Law Commission, *op.cit.* note 322, 83. See also Giorgio Gaja, “Second report on the responsibility of international organizations”, in *Yearbook of the International Law Commission*, 2004, Vol. Two, Part I, p. 14.

³³³ See International Law Association (ILA), *Accountability of International Organisations*, Final Report Berlin Conference 2004. See page 28 of the report: “the responsibility of an IO does not preclude any separate or concurrent responsibility of a state or of another IO which participated in the performance of the wrongful act or which has failed to comply with its own obligations concerning the prevention of that wrongful act.”

³³⁴ See ECtHR (Grand Chamber), *Al Jedda v. United Kingdom*, 7 July 2011, at para. 80: “The Court does not consider that, as a result of the authorisation contained in Resolution 1511, the acts of soldiers within the Multi-National Force became attributable to the United Nations or ceased to be attributable to the troop-contributing nations”. In para. 84 of the Court further stated that: “the United Nations had neither effective control nor ultimate authority and control over the acts and omissions of troops within the Multinational Force and that the applicant’s detention was not, therefore, attributable to the United Nations”. According to the ECtHR, the reporting to the Security Council does not represent an effective form of control; see Matthew Saul, *The Practice of Shared Responsibility in relation to Internationally Administered Territories*, SHARES Research Paper 65 (2015), 14.

³³⁵ See Supreme Court of the Netherlands, Case No.: 12/03324, 6 September 2013, *The State of the Netherlands v. Hasan Nuhanović*, para. 3.11.2. See also, *Mothers of Srebrenica v. The State of The Netherlands* (16 July 2014) District Court of The Hague, case n 295247, para. 4.34

II. Final considerations

The debate around the issue of control has played a prominent role in the attribution of responsibilities between UN, Regional Organisations and Member States operating in conflict-related scenarios. In this context, it is true that the different standards, while not carrying the same legal relevance, usually coexist in the conduct of peace operations. In general terms, while the ‘ultimate authorization and control’ normally remain with the UN, the ‘effective control’ standard should follow the regional organization(s) (and/or member state) deployed in the field and is indicative of the structure and the nature of the operation concerned.³³⁶ This has clear relevance for the study of inter-organizational cooperation, being the relevance of the ‘ultimate authorization and control’ directly dependent on the quality of the effective supervision exercised by the UN and the overall reporting system established. It is true for UN-*mandated* operation as explained by different court decisions and equally correct for UN-*led* operations. On this issue, in his Seventh Report Rapporteur Giorgio Gaia clarifies that:

“It was noted in one comment that the criterion [if article 7 ARIIO] was tailored for military and was “less adequate for deciding attribution in the case of other types of cooperation between international organizations and States or other international organizations”. It may well be that outside military operations it may be more difficult to establish which entity has an effective control. However, this does not imply that the criterion set out in Article 7 is inadequate, but that in many cases its application will lead to the conclusion that conduct has to be attributed both to the lending State and to the receiving international organization.”³³⁷

In view of this, it would be particularly relevant, for the case study of former Yugoslavia, the analysis of responsibilities and correspondent standards of control for wrongful acts generated by the lack of cooperation between two international organisations—for instance, lack of resources and readiness, late deployment, unclear identification of tasks. In pointing at such cases, Tom Dannebaum has correctly

³³⁶ Also in view of the possible co-deployment with UN operation.

³³⁷ A/CN.4/610 (2009) 9. For a detailed analysis of the possible interactions between attribution rules, see Messineo, *op.cit.* note 322.

referred to the liability generated by cases of “forced omissions”.³³⁸ Building on what done already by the UN³³⁹, I would like to propose two possible options to improve inter-organizational cooperation:

E. Strengthening the reporting system

The former Yugoslavia has witnessed probably the highest number of international actors simultaneously involved in a conflict scenario. However, despite this impressive presence the analysis conducted in the previous chapters points towards the necessity to find a pragmatic balance between the often conflicting interests of the international actors involved in the ethnic conflict. Developments on side of the NATO³⁴⁰ and the EU³⁴¹ are somehow symptomatic of this problem.³⁴² The cooperation among organizations involved seemed to be motivated more by the necessity to cope with problems like limited resources and increased security agenda, rather than being the result of a long-term design or strategic logic.³⁴³ Here, the risks coming from the absence of an in-built control mechanisms could create serious concerns, particularly for those cases in which regional organizations are not authorized by the UNSC but

³³⁸ According to Tom Dannenbaum, the liability would generate even for case of ‘omissions’, resulting from UN’s failures to provide sufficient support due to the organisation’s unwillingness or inability. See Tom Dannenbaum, “Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers” in (2010) Vol. 51, No.1 *Harvard International Law Journal*, 180-181. See also Ray Murphy, “United Nations Military Operations and International Humanitarian Law: What rules Apply to Peacekeepers?”, in (2003) *Criminal Law Forum* 14 (2), 153-194, 178.

³³⁹ For instance, by limiting the duration and further detailing the mandate.

³⁴⁰ For instance, NATO’s enforcement of the ‘exclusion zone’ around the safe areas without the authorization of the UNSC.

³⁴¹ The adoption of the EU Treaty of Nice in December 2000 that culminated in the establishment of the RRF as a collective security mechanism mandated to undertake collective security actions ‘where NATO as a whole is not engaged to launch and then to conduct EU-led military operations in response to international crises’. By then, Art 19 of the Nice treaty raised some questions with respect to the relationship between an EU-led operation and the UN.

³⁴² See Michael Barnett, “Partners in peace? The UN, regional organizations, and peacekeeping”, in (1995) *Review of International Studies*, Vol. 21 No. 4, 411-433, 428 and 431. A general trend confirms a continuous process of enhancement of regional collective security systems. See for instance, the adoption by ECOWAS of a new Protocol in December 1999 empowering the organization to undertake any form of interventions – including those covered by Art 53 of the UN Charter – without prior authorization of the UN. For more information see Ademola Abass, *op.cit.* note 277, 24.

³⁴³ The organization was ready to adjust its approach to meet requirements or status of regional organisations concerned. Particularly so every time the indicated organizations would not respond to Chapter VIII criteria. For instance, in 1994 NATO and WEU were included in the UNSG meeting with regional organizations on account of the crisis in the former Yugoslavia (1994 *United Nations Yearbook* 88).

can undertake enforcement actions on the basis of their constituent treaties.³⁴⁴ Given this premise, the inter-organizational dynamics, here with evident emphasis on command- and control-related issues, will always require close scrutiny and adaptation depending on the organization concerned and typology of international intervention. Significant progresses, however, could be achieved through a more coherent and effective use of the reporting mechanism under the UN Charter. A strengthened reporting system—under Article 54 of the UN Charter and enabling resolutions adopted by the UNSC—and the establishment of a comprehensive liaison arrangement can represent a first viable solution in enhancing accountability and inter-organizational cooperation. Finally, the determination of particular forms of reporting—depending on the type of operations as well as number and mandate of regional organisations involved—would complement the division of roles between UN and regional organizations.

F. Enhancing the UN's monitoring mechanism: the example of UNOMIL

The analysis of past practices can be of sure help in designing possible solutions to strengthen inter-organizational cooperation and particularly UN supervision on delegated Chapter VII powers. Without entering on the merit of the UN's role and action in the civil war in Liberia, it is worth looking at the example of the 1993 UN Observer Mission in Liberia (UNOMIL).

After having expressed support to the Economic Community of West African States (ECOWAS) for its efforts to restore peace, security and stability in Liberia,³⁴⁵ the UNSC welcomed the decision of the Secretary-General to establish UNOMIL.³⁴⁶ In stressing the importance of full cooperation and close coordination between UNOMIL and the ECOWAS' Military Observer Group (ECOMOG)³⁴⁷, UNOMIL was mandated to (*inter alia*):

³⁴⁴ See Ademola Abass, *op.cit.* note 277, 60-61 and 105.

³⁴⁵ See UNSC Resolution 788 (1992).

³⁴⁶ See UNSC Resolution 856 (1993). In the Resolution, the UNSC emphasized the coordination between UNOMIL and ECOWAS.

³⁴⁷ As analysed by Georg Nolte, UNOMIL was the first peacekeeping mission undertaken in support of a peacekeeping mission already set up by a regional organization, the Economic Commission of West African States (ECOWAS). See Georg Nolte, "Combined Peace-keeping. ECOWAS and UNOMIL in Liberia", (1994) 1 *International Peacekeeping*, 42-45, 42. In the Resolution 866 of 22 September 1993, the UNSC emphasized the importance of "full cooperation and close coordination between UNOMIL and ECOMOG in the implementation of their respective mandates".

b) *[M]onitor compliance with other elements of the Peace Agreement, including at points on Liberia's borders with Sierra Leone and other neighbouring countries, and to verify its impartial application, and in particular to assist in the monitoring of compliance with the embargo on delivery of arms and military equipment to Liberia and the cantonment, disarmament and demobilization of combatants.*³⁴⁸

The reference to impartial application contains the monitoring done by UNOMIL and the control of the UNSC over the actions carried out by the ECOWAS.³⁴⁹ UNOMIL was therefore a field operation deployed to monitor the authorized regional actor in the field. The deployment of a similar monitoring mechanism represents a valuable way to improve capacity of the United Nations to collect direct information on regional action in the field and, by so doing, enhance consistency between UNSC Resolutions and the activities carried out by regional organizations.

³⁴⁸ *Emphasis added.* See UNSC Resolution 866 (1993), 22 September 1993, para. 3(b). It is also interesting to note that the extension of its initial mandate of 7 months was subject to a 'review by the Council based on a report from the Secretary-General on whether or not substantive progress has been made towards the implementation of the Peace Agreement'.

³⁴⁹ See Andrea de Guttry, *op.cit.* note 290, 269. See also Christian Walter, "Security Council Control over Regional Actions", (1997) 1 *Max Planck Yearbook of United Nations*, 188.

BIBLIOGRAPHY *(IN CHRONOLOGICAL ORDER)*

Renata Sonnenfeld, *Resolutions of the UN Security Council*, Springer (1988).

“Cease-Fire Agreement” and “Memorandum of Understanding on the Extension of Monitoring Activities of the Monitor Mission to Yugoslavia”, in *Review of International Affairs* vol. xlii, 5.X-5.XI 1991.

Jon Roper, “Yugoslavia and European Security”, *Review of International Affairs*, Belgrade, Yugoslavia, March 1992.

Mihailo Crnobrnja, *Le drame Yougoslave*, Apogée, Rennes 1992.

Misha Glenny, *The Fall of Yugoslavia: The Third Balkan War*, Penguin, Harmondsworth 1992.

Mark Weller, The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia, in *American Journal of International Law*, Vol. 86, 1992.

Benjamin Rivlin, Regional Arrangements and the UN System for Collective Security and Conflict Resolution: a New Road Ahead?, in *International Relations* August 1992.

Michael R. Lucas (ed.), *The CSCE in the 1990s: Constructing European Security and Cooperation*, Nomos Verlagsgesellschaft, Baden-Baden 1993.

Kari Möttölä, “Prospects for Cooperative Security in Europe: The Role of the CSCE”, in Michael R. Lucas (ed.), *The CSCE in the 1990s: Constructing European Security and Cooperation*, Nomos Verlagsgesellschaft, Baden-Baden 1993.

Raymond E. Johns. Jr., *Bosnia and Collective Security UN, EC, NATO, OSCE, WEU – Which task to whom*, Industrial College of Armed Force, Executive Research Project, Washington 1993.

George Politakis, “UN Mandated Naval Operations and the Notion of Pacific Blockade: Comments on Some recent Developments”, in *African Journal of International & Comparative Law* 6, 1994.

Georg Nolte, “Combined Peace-keeping. ECOWAS and UNOMIL in Liberia”, 1 *International Peacekeeping*, 1994.

Snezana Trifunovska, *Yugoslavia Through Documents. From Its Creation to Its Dissolution*, Martinus Nijhoff, Dordrecht/Boston/London 1994.

General Rose, “A Year in Bosnia: What has been achieved” in *Royal United Services Institute Journal*, June 1995.

Michael Barnett, “Partners in peace? The UN, regional organizations, and peacekeeping”, in *Review of International Studies*, Vol. 21 No. 4, 1995.

- Christoph Schreuer, "Regionalism vs. Universalism", in 6 *EJIL*, 1995.
- Ettore Greco, *L'Europa senza muri: le sfide della pace fredda. Un anno di Presidenza Italiana della CSCE*, Franco Angeli Edizioni, Milano 1995.
- David Owen, *Balkan Odyssey*, Harcourt Brace & Company, New York 1995.
- Daniel H. Warner (ed.), *Preventive Diplomacy: The United Nations and the OSCE*, PSIO Occasional Paper n° 1/1996, Graduate Institute of International Studies, Geneva 1996.
- Laura Silber and Alan Little, *Yugoslavia: Death of a Nation*, Penguin Books, London 1996.
- David A. Dyker and Ivan Vejvoda (eds.), *Yugoslavia and After: A Study in Fragmentation, Despair and Rebirth*, Longman, London 1996.
- Brana Markovic, *Yugoslav Crisis and the World: Chronology of Events January 1990-October 1995*, Institute of International Politics and Economics, Belgrade 1996.
- Giacomo Scotti, *Croazia, Operazione Tempesta: La "liberazione" della Krajina ed il genocidio del popolo serbo*, Gamberetti Editrice, Roma, 1996.
- Mark Weller, "Peace-Keeping and Peace-Enforcement in Bosnia and Herzegovina" in *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 56(1996).
- Robert C. Owen, "The Balkans Air Campaign Study: Part 1" in *Airpower Journal*, Summer 1997.
- Hazel Fox (ed.), *The Changing Constitution of the United Nations*, British Institute for International and Comparative Law, 1997.
- Christian Walter, "Security Council Control over Regional Actions", in 1 *Max Planck Yearbook of United Nations*, 1997.
- Larry K. Wentz, *Lessons From Bosnia: The IFOR Experience*, CCRP Publication, 1997.
- Thierry Germond, *NATO and the ICRC: A Partnership Serving the Victims of Armed Conflicts*, NATO Review, May/June, 1997.
- Joel Sokolsky, *Protecting Stability: NATO and Multilateral Naval Cooperation in the Post-Cold War Era*", NATO Fellowship Program 1995-1997.
- Holland Martin (ed.), *Common Foreign and Security Policy. The Records and Reforms*, Pinter Publishers, London 1997.
- Vincent Tigrat, "The United Nations Mission in Bosnia and Herzegovina", in *SFOR Informer*, 3 February 1997.

EU Institute of Security Studies, "Conflict Prevention in the Balkans: Case Studies of Kosovo and of FYR of Macedonia" in *EUISS Chaillot Paper 30*, December 1997.

Ettore Greco, *The Evolving Partnership Between the United Nations and NATO: Lessons from the Yugoslav Experience*, NATO Research Fellowship 1995-1997.

Ettore Greco, "The OSCE Kosovo Verification Mission: A Preliminary Assessment", in *International Peacekeeping*, Vol. 4 No. 5 May-August 1998.

Sophie Jeleff, *A Fractured Peace: The Former Yugoslavia*, Council of Europe Publishing (1998),

Gary Dempsey, "An Accomplish to War in Kosovo?", in *Cato Institute Commentary*, 5 August 1998.

William H. Lewis and Edward Marks, *Searching for Partners: Regional Organizations and Peace Operations*, INSS McNair Paper 58, Institute for National Strategic Studies, Washington, June 1998.

Mary M. Mckenzie and Peter H. (eds.), *The Promise and Reality of European Security Cooperation. States, interests and institutions*, Praeger, Westport 1998.

Elinor C. Sloan, *Bosnia and the New Collective Security*, Praeger, Westport 1998.

David L. Dittmer and Stephen P. Dawkins, *Deliberate Force: NATO's First Extended Air Operation*, The Centre for Naval Analysis (CNA), Washington D.C., June 1998.

Wolfgang Bierman and Martin Vadset, *UN Peacekeeping in Trouble: Lessons Learned from the Former Yugoslavia*, Ashgate Publishing, Aldershot 1998.

Alexander Lupis, "Assessing the mandate of the OSCE Kosovo Verification Mission proposed at Rambouillet: An insider's perspective from the OSCE Mission to Bosnia and Herzegovina", in *Helsinki Monitor* 1999.

Young T., Oakes M. and Bowers P., *Kosovo: Operation Allied Force*, House of Commons Library, London 1999.

Dan Sarooshi, *The United Nations and the Development of Collective Security. The Delegation by the UN Security Council of its Chapter VII Powers*, Claredon Press, Oxford 1999.

Alfredo Chamorro Chapinal, *The Security and Defence of Europe in the Twenty-First Century (NATO, WEU, OSCE)*, NATO Fellowship Programme, 2000.

Niel Blokker, "Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by 'Coalitions of the Able and Willing'", in *EJIL* Vol. 11 No. 3, 2000.

Melanie C. Greenburg, John H. Barton and Margaret E. Mc Guinness (eds.), *Words over War: Mediation and Arbitration to Prevent Deadly Conflicts*, Carnegie Commission on Preventing Deadly Conflict, New York 2000.

Daniela Spinant, *NATO Enlargements? Towards a Pan-European Security System?*, NATO-EPC Fellowship 1998-2000, Brussels 30 June 2000.

Kurt Spillman and Joachim Krause, *Kosovo: Lessons Learned for International Cooperative Security*, Peter Lang, Bern 2000.

Tim Judah, *Kosovo: War and Revenge*, Yale University Press, 2000.

Howard Clark, *Civil Resistance in Kosovo*, Pluto Press, London 2000.

Independent International Commission on Kosovo, *The Kosovo report. Conflict-International Response-Lessons Learned*, Oxford University Press, 2000.

Emil S. Yalnazov, *The Role of NATO and the EAPC in Support of Lasting Peace and Regional Security Co operation in South-Eastern Europe (1997-2000)*, NATO/EAPC Fellowship 1998-2000.

Joachim Krause, *The OSCE and Co-operative Security in Europe: Lessons for Asia*, OSCE ASEAN Regional Forum - ARF, 2000.

Ivo H. Daalder, *Getting to Dayton: The Making of America's Bosnia Policy*, Brookings Institution Press, Washington D.C. 2000.

Nicole Renvert, "Begegnungen mit Kroatien", in: Institute for Peace Research and Security Policy at the University of Hamburg (ed.), *OSCE Yearbook 1999*, Nomos Verlagsgesellschaft, Baden-Baden, 2000.

Brian Katulis, *US Diplomacy toward Kosovo, 1998-1999*, Woodrow Wilson School of Public and International Affairs, Case Study 2/00, Princeton University 2000.

Ivo H. Daalder and Michael E. O'Hanlon, *Winning Ugly NATO's War to Save Kosovo*, Brookings Institution Press, Washington D.C. 2000.

Helen Wallace and William Wallace, *Policy-Making in the European Union*, Oxford University Press, New York 2000.

Spillman K., Bernauer T., Gabriel J.M. and Wenger A. (eds.), *Peace Support operations: Lessons Learned and Future Perspectives*, Peter Lang Switzerland and Centre for Security Studies (CSS) ETH Zurich, Bern 2001.

Victor-Yves Ghebali, "The Contribution of the Istanbul Document 1999 to European Security and Co-operation", in *OSCE Yearbook 2000*, Nomos, Baden-Baden 2001.

Richard Cohen and Michael Mihalka, *Co-operative Security: New Horizons for International Order*, The Marshall Center Papers No. 3, George C. Marshall European Center for Security Studies, Garmisch-Partenkirchen, April 2001.

Manuel Frölich, “Keeping the track of UN Peacekeeping - Suez, Srebrenica, Rwanda and the Brahimi Report”, in *Max Planck Yearbook of United Nation Law*, Vol. 5, 2001.

Elena Sciso (ed.), *L'intervento in Kosovo. Aspetti Internazionalistici e Interni*, Giuffrè Editore 2001.

Adam Daniel Rotfeld, “For a New Partnership in the New Century: The Relationship between the OSCE, NATO and the EU”, in *OSCE Yearbook 2000*, Nomos, Baden-Baden 2001.

Bruce D. Jones, *The Challenges of Strategic Coordination: Containing Opposition and Sustaining Implementation of Peace Agreements in Civil Wars*, International Peace Academy Policy Paper Series on Peace Implementation, New York, June 2001.

Anthony H. Cordesman, *The Lessons and non-Lessons of the Air and Missile Campaign in Kosovo*, Praeger, Westport 2001.

General Wesley Clark, *Waging Modern War*, PublicAffairs, New York 2001.

Edward L. Killham, *NATO and OSCE, PARTNERS OR RIVALS?*, NATO Research Fellowship, Brussels 2001.

Robert C. Owen (ed.), *Operation Deliberate Force: A Case Study on Humanitarian Constraints in Aerospace Warfare*, The Carr Centre for Human Rights Policy, Harvard University, Vol. 1 Working Papers 2001.

Nicholas Gammer, *From Peacekeeping to Peacemaking. Canada's response to the Yugoslav crisis*, McGill-Queen's University Press 2001.

Mark Oakes, *European Security and Defence Policy: Nice and Beyond*, International Affairs and Defence Section, House of Commons Library, Research Paper, London May 2001.

Jan Wouters and Frederick Naert, *How Effective is the European Security Architecture? Lessons From Bosnia and Kosovo*, University of Leuven, Institute for International Law, Working Paper No 6 May 2001.

Victor-Yves Ghebali and Daniel Waner, *The Operational Role of the OSCE in South-Eastern Europe. Contributing to regional stability in the Balkans*, Ashgate, London 2001.

Opinion No. 5 of the Arbitration Commission, reproduced in 31 ILM (1992), 1505; in Gaetano Pentassuglia, “The EU and the Protection of Minorities: The Case of Eastern Europe”, in *European Journal of International Law*, Vol. 12 No. 1, 2001.

Maartje Rutten (ed.), *From St. Malo to Nice--European Defence: Core Documents*, Western European Union Institute for Security Studies, Paris 2001.

Guergana Velitchkova, *NATO-OSCE Interaction in Peacekeeping: Experience and Prospects in Southeast Europe*, NATO/EAPC Research Fellowship 2000-2002.

Bruce R. Nardulli *et al.*, *Disjointed War. Military Operations in Kosovo, 1999*, RAND Publishing House, Santa Monica 2002.

Ugo Villani, "The Security Council's Authorization of Enforcement Action by Regional Organizations", in *Max Planck Yearbook of United Nations*, Vol. 6, 2002.

Hans-Christian Hagman, *European Crisis Management and Defence: The Search for Capabilities*, Adelphi Paper 353, International Institute for Strategic Studies, London 2002.

Kiho Cha, "Humanitarian Intervention by Regional Organizations Under the Charter of the United Nations", in *Seton Hall Journal of Diplomacy and International Relations* Summer/Fall 2002.

Jane Boulden, *NATO and the United Nations During UNPROFOR*, NATO Fellowships 1999-2001, NATO Academic Forum, Brussels 2002.

Ulrich Schneckener, "Theory and Practice of European Crisis Management: Test Case Macedonia", in *European Yearbook of Minority Issues*, Vol. 1, 2001/2002, Martinus Nihoff Publishers 2002.

Jože Pirjevec, *Le Guerre Jugoslave 1991-1999*, Einaudi, Torino 2002.

Nikoloz Vashakidze, *The Role of the Washington Summit Decisions in Strengthening Cooperation between NATO and its Partners for a Better Europe*, NATO-EAPC Fellowship 2000-2002, Brussels 2002.

Kamran Baig, *Logistical Support to United Nations Peacekeeping Operations: An Introduction*, UNITAR Training Programme of Correspondence Instruction in Peacekeeping Operations, Geneva 2002.

Birender S. Dhanoa, *The Increased Role fo Regional Organizations in Peacekeeping and Effects on the United Nations Preeminence in Future Peace Operations*, thesis presented to the Faculty of the U.S. Army Command and General Staff College, Master of Military Art and Science, Fort Leavenworth, Kansas, 2003.

Ray Murphy, "United Nations Military Operations and International Humanitarian Law: What rules Apply to Peacekeepers?", in *Criminal Law Forum* 14 (2), 2003.

Clem S. Watkins (ed.), *The Balkans*, Nova Science Publishers, 2003.

Mamuka Metreveli, *Legal Aspects of NATO's Involvement in the Out-of-Area Peace Support Operations*, NATO-EAPC Research Fellowship 2001-2003, Final Report, Tbilisi, 2003.

Nadia Boyadjieva, *NATO on the Balkans: Pattern of Peace-Keeping in the Post-Cold War Era (The Cases of Bosnia and Herzegovina and Kosovo)*, NATO/EAPC Research Fellowship 2001-2003, June 2003.

Craig R. Nation, *War in the Balkans, 1991-2002*, Strategic Studies Institute, U.S. Army War College August 2003.

Thierry Tardy & Erik Windmar, *The EU and Peace operations. Proceedings of a Workshop held at the Geneva Centre for Security Policy*, GSCP Occasional Papers, Geneva 2003.

Attila Süle, *The European Union in Peace Operation: Limits of Policy-Making and Military Implementation*, thesis for the Master of Science in International Security and Civil-Military Relations, Naval Postgraduate School, Monterey, March 2003.

Daniele Riggio, "EU-NATO Cooperation and Complementarity between the Rapid Reaction Forces", in *International Spectator* Vol. 38 Issue 3, 2003.

International Peace Academy (IPA), *The Regionalization of Conflict and Intervention*, IPA Seminar Report, 5-9 May 2003.

Gerald Knaus and Martin Felix, Lessons from Bosnia and Herzegovina: Travails of the European Raj in *Journal of Democracy* 14(3) 2003.

Therry Tardy and Erik Windmar, *The EU and Peace Operation*, proceedings of the workshop held at the Geneva Centre for Security Policy (GCSP), 22-23 September 2003.

Michael Pugh and Waheguru Pal Singh Sidhu (eds.) *The United Nations & Regional Security. Europe and Beyond*, Lynne Rienner Publishers, London 2003.

Victor-Yves Ghebali, Daniel Warner and Barbara Gimelli (eds.), *The Future of the OSCE in the Perspective of the Enlargements of NATO and the EU*, PSIO Graduate Institute of International Studies, Geneva 2004.

Ademola Abass, *Regional Organisations and the Development of Collective Security Beyond Chapter VIII of the UN Charter*, Hart Publishing, Oxford and Portland 2004.

Ingo Peters, "The OSCE, NATO and the EU within the "Network of Interlocking European Security Institutions": Hierarchization, Flexibilization, Marginalization", in *OSCE Yearbook 2003*, Nomos, Baden-Baden 2004.

Darya Pushkina, "Towards Successful Peacekeeping. Remembering Croatia", in *Cooperation and Conflict* Vol. 39(4), 2004.

Matthias Dembinski, *The EU: A Reliable Partner for Peace of the UN?*, CFSP Forum Volume 2, Issue 1, January 2004.

Nicole Gnesotto (ed.), *EU Security and Defence Policy. The First Five Years (1999-2004)*, EU Institute for Security Studies, Paris 2004.

Siw Skjold Lexau, *Bosnia and Herzegovina: Adviser to the Political Department Office of the High Representative, 2003 – 2004*, NORDEM Report 16/2004, Norwegian Centre for Human Rights, Oslo 2004.

Briden A. and Hänggi H. (Eds.), *Reform and Reconstruction of the Security Sector*, Geneva Centre for the Democratic Control of Armed Forces (DCAF), July 2004.

Matthias Dembinski, *The EU: A Reliable Partner for Peace of the UN?*, CFSP Forum Volume 2, Issue 1, January 2004.

Bert Koenders, *NATO and the Use of Force*, General Report to the NATO Parliamentary Assembly, Doc. No. 165 PC 04 E rev. 2, 13 November 2004.

Espen Barth Eide (ed.), *'Effective Multilateralism': Europe, Regional Security and a Revitalised UN*, The Foreign Policy Centre and British Council Brussels, 2004.

Ho-Won Jeong, "Expanding peacekeeping functions for peace operations", in *Security and Peace* 22. 1g. – 1/2004.

Vincent Kronenberger and Jan Wouters (eds.), *The European Union and Conflict Prevention. Policy and Legal Aspect*, T.M.C. Asser Press, The Hague 2004.

Jessica Biondani, *Local Economic Development in the Balkans: the Associations of Local Democracy Agencies' Approach*, thesis degree Università degli Studi di Modena e Reggio Emilia, Academic year 2004-2005.

Marten Zwanenburg, *Accountability of Peace Support Operation*, Martinus Nijhoff Publishers, 2005.

Karin Oellers-Frahm, "Restructuring Bosnia-Herzegovina: A Model with Pit-Falls" in *Max Planck Yearbook of United Nation Law*, Vol. 9, 2005.

Sven Biscop *et al.*, *The European Union and the United Nations: Partners in Effective Multilateralism*, EU Institute for Security Studies, Chaillot Paper N° 78, June 2005.

Michael Lipson, *Interorganizational Coordination in Complex Peacekeeping*, Paper prepared for presentation at the annual meeting of the International Studies Association, Honolulu, Hawaii, March 1-5, 2005.

Dena W. Gurgul and Grzegorz Sieczak (eds.), *Complementarity of European Security Institutions: A Few Thoughts*, Diplomatic Academy of the Ministry of Foreign Affairs, Warsaw 2005.

Dick A. Leurdijk, *UN Reform and NATO Transformation: The Missing Link*, Royal Institute for International Relations, Egmont Paper 10, Brussels November 2005.

Kennedy Graham, *Regionalisation and Responses to Armed Conflict, with Special Focus on Conflict Prevention and Peacekeeping*, UNU-CRIS Occasional Papers 0-2005/21, United Nations University, Bruges 2005.

Sven Biscop and Edith Drieskens, *Effective Multilateralism and Collective Security: Empowering the UN*, IIEB Working Paper, 29 March 2005.

Kennedy Graham & Tania Felicio, *Regional Security and Global Governance: A Proposal for a 'Regional-Global Security Mechanism' in Light of the UN High-Level Panel's Report*, Egmont Paper 4, Royal Institute for International Relations, Brussels 2005.

Rianne M. Letschert, *The Impact of Minority Rights Mechanisms*, TMC Asser Press, The Hague, 2005.

Luk Van Langenhove and Ana-Cristina Costea, *The EU as a Global Actor and the Emergence of 'Third Generation' Regionalism*, UNU-CRIS Working Paper 0-2005/14, United Nations University, Bruges 2005.

Jürgen Friedrich, "UNMIK in Kosovo: Struggling with Uncertainty", in *Max Planck Yearbook of United Nations Law*, Vol. 9 (2005).

Susanna P. Campbell and Michael Hartnett, *A Framework for Improved Coordination: Lessons Learned from the International Development, Peacekeeping, Peacebuilding, Humanitarian and Conflict Resolution Communities*, The Institute for Human Security (IHS), The Fletcher School, Tufts University and the Inter-Organizational Cooperation Program, Federal Mediation and Conciliation Services (FMCS), 2005.

Darin Oellers-Frahm, "Restructuring Bosnia-Herzegovina: A Model of Pit-Falls" in *Max Planck Yearbook of United Nations Law*, Vol. 9, 2005.

Tânia Felício, *Managing Security as a Regional Public Good. A Regional-Global Mechanism for Security*, UNU-CRIS Occasional Papers 0-2005/19, United Nations University, Bruges 2005.

Clive Baldwin, *Minority Rights in Kosovo under International Rule*, Minority Rights Group International, London 2006.

Frances G. Burwell *et al.*, *Transatlantic Transformation: Building a NATO-EU Security Architecture*, Atlantic Council Transatlantic Relations Papers Atlantic Council of the United States, March 2006.

Nikki Slocum-Bradley and Tania Felicio, *The Role of Regional Integration in the Promotion of Peace and Security*, UNU-CRIS Occasional Papers 0-2006/2, United Nations University, Bruges 2006.

Paul Cornish, *EU and NATO: Co-operation or Competition?*, Briefing paper, European Parliament Directorate-General for External Policies of the Union, EP-ExPol-B-2006-14, PE 348.586 EN, Brussels October 2006.

Lindsey Cameron, *Accountability of International Organisations Engaged in the Administration of Territory*, University of Geneva, Centre for International Humanitarian Law, paper presented at the Price Henry Dunant 2006.

Annika S. Hansen, *Against all Odds – The Evolution of Planning for ESDP Operations Civilian Crisis Management from EUPM onwards*, Centre for International Peace Operations, Study 10/06, Berlin 2006.

Susan Penksa, *Policing Bosnia and Herzegovina 2003-05. Issues of Mandates and Management in ESDP Missions*, CEPS Working Document No. 225/December 2006.

Susan E. Penska, *Policing Bosnia and Herzegovina 2003-2005. Issues of Mandate and Management in ESDP Missions*, Centre for European Policy Studies (CEPS) Working Document No. 255/December 2006.

Albrecht Schnabe, “Applied Conflict Prevention: Experiences and Recommendations for Furture Action”, in *Macedonia and the Region towards EU and NATO*, Regional Conference, Skopje, November 5th, 2005, Friedrich Ebert Stiftung, 2006.

Jean Dufourcq and David S. Yost (eds.), *NATO-EU Cooperation in Post-Conflict Reconstruction*, NATO Defence College, NDC Occasional Papers Series 15, May 2006.

Nikki Slocum-Bradley and Tanã Felício, *The Role of Regional Integration in the Promotion of Peace and Security*, UNU-CRIS Occasional Papers 0-2006/2, United Nations University, Bruges 2006.

Alberto Cutillo, *International Assistance to Countries Emerging from Conflict: A Review of Fifteen Years of Interventions and the Future of Peacebuilding*, International Peace Academy, 2006.

Luk Van Langenhove *et al.*, *The EU’s Preferences for Multilateralism; A SWOT Analysis of EU/UN Relations*, UNU-CRIS Occasional Papers 0-2006/21, United Nations University, Bruges 2006.

Ana E. Juncos, *Learning by doing: civil-military co-ordination in EU crisis management policies*, paper prepared for the Third Pan-European Conference of the ECPR Standing Group on EU Politics, Istanbul, 21-23 September 2006.

Gerrard Quille *et. al.*, *Developing EU Civil Military Co-ordination: The Role of the new Civilian Military Cell*, Joint Report by ISIS Europe and CeMISS, Brussels, June 2006.

Anne Deighton and Victor Mauer (eds.), *Securing Europe? Implementing the European Security Strategy*, Swiss Federal Institute of Technology (ETH), Zürcher Beiträge zur Sicherheitspolitik Nr. 77, Zurich 2006.

Predrag Jureković, Frederic Labarre (eds.), *International Peace Plans for the Balkans - A Success?*, 12th Workshop of the Study Group "Regional Stability in South East Europe", Austrian Federal Ministry of Defence (BMLV), Vienna 2006.

Björn Hettne and Fredrik Söderbaum, “The UN and Regional Organizations in Global Security: Competing or Complementary Logics?”, in *Global Governance* 12 (2006).

Julie Kim, *Bosnia and the European Union Military Force (EUFOR): Post-NATO Peacekeeping*, Congressional Research Service (CRS) Report for Congress, U.S. Library of Congress 5 December 2006.

Pablo S. Blesa Aledo, *Siamese Twins: NATO, The EU And Collective Defence*, CFSP Forum Volume 5, Issue 1 January 2007.

Paddy Ashdown, *Swords and Ploughshares: Bringing Peace in the 21st Century*, Weidenfeld & Nicholson, London 2007.

Gemma Collantes Celador, *The European Union Police Mission: The Beginning of a New Future for Bosnia and Herzegovina?*, IBEI Working Papers 2007/9.

Maj. Ben Robert DS Gordon, *A comparative Study on Doctrines and Principles for Multidimensional Peace Operations: A Case for Harmonization and Enhanced Interoperability*, paper commissioned for the International Forum for the Challenges of Peace Operations, Challenges Forum Seminar 2007, New York 2007.

Thorsten Benner *et al.*, *Learning to Build Peace? United Nations Peacebuilding and Organizational Learning: Developing a Research Framework*, GPPi Research Paper Series No. 7 (2007), Berlin 2007.

Malgorzata O. Gorska, *The Development of the Legal Bases of EU-UN Cooperation*, CFSP Forum, Volume 5, Issue 6 November 2007.

Michael Emerson & Eva Gross (eds.), *Evaluating the EU's Crisis Missions in the Balkans*, Centre for European Policy Studies, Brussels 2007.

David M. Law (ed.) *Intergovernmental Organisations and Security Sector Reform*, LIT Verlag Zurich 2007.

Thierry Tardy, "The European Union and the United Nations: Global *versus* Regional Multilateralism", in *Studia Diplomatica. The Brussels Journal of International Relations*, Vol. LX, 2007, n° 1.

Ana E. Juncos and Gemma Collantes Celador, *Security Sector reform in the Western Balkans. The Challenge of Coordination and Long-Term Strategy*, paper presented at the conference "The EU and the Promotion and Stabilisation of Conflict Settlements" organized by the University of Nottingham on 22-23 November 2007.

Anna Herrhausen, *Coordination in United Nations Peacebuilding—A Theory-Guided Approach*, Discussion paper Social Science Research Centre Berlin SP IV 2007-301, Berlin 2007.

Kennedy Graham, "Towards a Coherent Regional Institutional Landscape in the United Nations? Implications for Europe", *Bruges Regional Integration & Global Governance Papers 1/2008*, United Nations University, Comparative Regional Integration Studies, Bruges 2008.

- Christine Gray, *International Law and the Use of Force*, OUP, 2008.
- Kjetil Mujezinovic Larsen, 'Attribution of Conduct in Peace Operations: the "Ultimate Authority and Control" Test', in *European Journal of International Law*, Vol. 19 No. 3, 2008.
- Cornelius Friesendorf, *Kosovo's Controversial Independence*, ISN Publishing House, Zurich 2008.
- Natalie Tocci, *The European Union as a Normative Foreign Policy Actor*, Centre for European Policy Studies (CEPS) Working Document No.281/January 2008.
- Jelena Obradovic, *How Serbian voters will make their choice on Sunday*, European Union Institute for Security Studies, Opinion, January 2008.
- Jovan Teokrarevic, *Tadic has won, but what was it really about?*, European Union Institute for Security Studies, Opinion, February 2008.
- Victor Mauer, *Cracks in the Foundations: NATO After the Bucharest Summit*, CSS Analyses in Security Policy Vol. 3 • No. 33, ETH Zurich 2008.
- Denisa Kostovicova, *Serbian elections: who has actually won and what does this mean for the EU?*, European Union Institute for Security Studies, Opinion, February 2008.
- Judy Batt, *Serbia's European Future: Too Close to Call*, European Union Institute for Security Studies, Analysis, 25 January 2008.
- Christopher J. Borgen, "Kosovo's Declaration of Independence: Self-Determination, Secession and Recognition" in *The American Society of International Law (ASIL)*, Vol. 12-Issue 2, 29 February 2008.
- Brooke Smith-Windsor, *Hasten Slowly: NATO's Effects Based and Comprehensive Approach to Operations*, NDC Research Paper N° 38, NATO Defence College 2008.
- Nina Leonhard, Giulia Aubry, Manuel Casas Santero, Barbara Jankowski (eds.), *Military Co-operation in Multinational Missions: The Case of EUFOR in Bosnia and Herzegovina*, Forum International 28, Sozialwissenschaftliches Institut der Bundeswehr April 2008.
- Jari Mustonen, *Coordination and Cooperation on Tactical and Operational Levels. Studying EU-ESDP Crisis Management Instruments in Bosnia and Herzegovina*, Crisis Management Centre (CMC) Finland Civilian Crisis Management Series Vol. 1, Nr. 1/2008.
- Richard Gowan, "The Strategic Context: Peacekeeping in Crisis, 2006–08", in *International Peacekeeping* Vol. 15 Issue 4, 2008.
- Joachim Koops & Johannes Varwick, *Ten Years of SHIRBRIG. Lessons Learned, Development Prospects and Strategic Opportunities for Germany*, GPPi Research Paper Series No. 11 (2008), Global Public Policy Institute, Berlin 2008.

Joachim Koops, “Effective Inter-Organizationalism? Lessons Learned from the Standby High Readiness Brigade for United Nations Operations (SHIRBRIG)”, in *Studia Diplomatica* Vol. LXII, 2009, No. 3.

Christopher Leck, “International Responsibility in United Nations Peacekeeping Operations: Command and Control Arrangements and the Attribution of Conduct”, 10 *Melbourne Journal of International Law*, 2009.

Oya Dursun-Ozkanca, *Rebuilding Kosovo: Cooperation or Competition between the EU and NATO?*, paper presented at 2009 EUSA Eleventh Biennial International Conference, Marriott Marina Del Rey, Los Angeles, 23-25 April 2009.

Geneva Centre for Security Policy (GCSP), *Cooperating for Peace: The Challenges and Promises of Partnerships in Peace Operations*, 14 Geneva Papers, 2010.

Elena B. Stavrevska, *What Happens after the Mandate Completion? Evaluating Outcome Sustainability of ESDP Police Missions in the Balkans*, SPES Policy Papers, Institut für Europäische Politik, Berlin 2010.

Vaughan Lowe *et. al.* (eds.), *The United Nations Security Council and War. The Evolution of Thought and Practice since 1945*, OUP New York 2010.

Bart M. J. Szewczyk, *The EU in Bosnia and Herzegovina: powers, decisions and legitimacy*, European Union Institute for Security Studies, Occasional Paper 83, March 2010.

Geneva Centre for Security Policy (GCSP), *Cooperating for Peace: The Challenges and Promises of Partnerships in Peace Operations*, 14 Geneva Papers, 2010.

Kent J. Kille, “NATO and the United Nations: Debates and Trends in Institutional Coordination”, in *Journal of International Organizations Studies (JIOS)*, Vol. 2 Issue 1, 2010.

Tom Dannenbaum, “Translating the Standard of Effective Control into a System of Effective Accountability: How Liability Should be Apportioned for Violations of Human Rights by Member State Troop Contingents Serving as United Nations Peacekeepers” in *Harvard International Law Journal*, Vol. 51, No.1, 2010.

Richard Gowan and Daniel Korski, “The Security Council and Peacekeeping in the Balkans, 1999-2010”, in International Peace Institute (IPI), *Maintaining International Peace and Security: A Summit Meeting of the UN Security Council*, IPI Policy Papers, June 2011.

Thierry Tardy, *Cooperating to Build Peace. The UN-EU Inter-Institutional Complex*, GCSP Geneva Paper, Research Series n° 2, Geneva Centre for Security policy, Geneva May 2011.

Annemarie Peen Rodt, “EU Performance in Military Conflict Management”, paper presented at the EUSA Twelfth Biennial International Conference, Boston, Massachusetts, 3-5 March 2011.

André Nollkaemper, “Dual Attribution: Liability of the Netherlands for Conduct of Dutchbat in Srebrenica, in *Journal of International Criminal Justice*, Vol. 9, Issue 5, 2011.

Marjan Malešič, *Crisis Management in the EU: International Coordination and Civil-Military Cooperation*, paper presented to the conference “Whatever Happened to North-South”, IPSA-ECPR Joint Conference, Sao Paulo, 16-19 February 2011.

Marco Odello and Ryszard Piotrowicz (eds), *International Military Missions and International Law*, Martinus Nijhoff Publishers, 2011.

Philippe De Lombaerde *et al.* (eds.), *The United Nations and the Regions: Third World Report on Regional Integration*, United Nations University Series on Regionalism, Springer Science+Business Media B.V. 2012.

Cedric Ryngaert, “Apportioning Responsibility between the UN and Member States in UN Peace-Support Operations: An Inquiry into the Application of the ‘Effective Control’ Standard after Behrami”, in *Israel Law Review* Vol. 45 Issue 1, March 2012.

Terry D. Gill, “Legal Aspects of the Transfer of Authority in UN Peace Operations”, in *Netherlands Yearbook of International Law 2011*, Vol. 42, 2012.

Francesco Messineo, *Multiple Attribution of Conduct*, SHARES Research Paper 11, 2012.

Aurel Sari, “UN Peacekeeping Operations and Article 7 ARIO: The Missing Link”, in *International Organizations Law Review* 9 (2012).

Andrea de Guttry, “How Does the UN Security Council Control States or Organizations Authorized to Use Force? A Quest for Consistency in the Practice of the UN and of Its Member States”, in *International Organization Law Review*, 11/2014.

Paolo Palchetti, “International Responsibility for Conduct of UN Peacekeeping Forces: the question of attribution” in *Seqüência (Florianópolis)*, 2015.

Matthew Saul, *The Practice of Shared Responsibility in relation to Internationally Administered Territories*, SHARES Research Paper 65 (2015).

Ray Murphy and Siobhán Wills, *The Practice of Shared Responsibility of United Nations Peacekeeping Operations for Harmful Outcomes*, SHARES Research Paper 91, 2016.

Katarina Grenfell, “Partnerships in UN Peacekeeping”, in *International Organizations Law Review* 13, 2016.

UNITED NATIONS

General Assembly on 4 November 1956 (A/3276), UN Doc. No. A/3302, 6 November 1956.

Report of the Secretary-General on the Work of the Organisation, UN General Assembly 45th Session, Supplement No. 1 (A/45/1), 16 September 1990.

UNSC Resolution 713, S/RES/713, 25 September 1991.

“Letter dated 10 December 1991 from the Secretary-General of the United Nations to the Ministry for Foreign Affairs of the Netherlands”, UN Doc. S/23289, Annex IV.

UN Security Council Resolution 724, S/RES/724 (1992), 15 December 1991.

UN Security Council Resolution 727, 8 January 1992.

UN Security Council Resolution 740, S/RES/740 (1992), 7 February 1992.

UN Security Council Resolution 743, S/RES/743 (1992), 21 February 1992.

UN Security Council Resolution 752, S/RES/752 (1992), 15 May 1992.

UN Security Council Resolution 757, S/RES/757 (1992), 30 May 1992.

UN Security Council Resolution 770 (1992), S/RES/770 (1992), 13 August 1992.

UN Security Council Resolution 758, S/RES/758(1992), 8 June 1992.

UN Security Council Resolution 761, S/RES/761(1992), 29 June 1992.

UN Security Council Resolution 764, S/RES/764 (1992), 13 July 1992.

UN Security Council Resolution 776, S/RES/766 (1992), 14 September 1992.

UN Security Council Resolution 781, S/RES/781 (1992), 9 October 1992.

UN Security Council Resolution 787, S/RES/787 (1992), 16 November 1992.

Report from the Secretary-General Pursuant to security Council Resolution 757 (1992), S/24075, 6 June 1992.

Boutros Boutros-Ghali, Report of the Secretary General on the Situation in Bosnia-Herzegovina, S/24333, 21 July 1992.

Report of the Secretary General, S724540, 10 September 1992.

Report of the Secretary General Pursuant to Security Council Resolution 743 (1992), S/24848, 9 November 1992.

United Nations, *UN Peacekeeping. 50 Years 1948-1998*, United Nations Publication, New York 1992.

Boutros Boutros-Ghali, *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, UN Doc. No. A/47/277 – S/24111, 17 June 1992.

UN Security Council Resolution 807, S/RES/807 (1993), 19 February 1993.

UN Security Council Resolution 816, S/RES/816(1993), 31 March 1993.

UN Security Council Resolution 820, S/RES/820 (1993), 17 April 1993.

UN Security Council Resolution 819, S/RES/819(1993), 16 April 1993.

UN Security Council Resolution 824, S/RES/824 (1993), 6 May 1993.

UN Security Council Resolution 836, S/RES/836(1993), 4 June 1993.

UN Security Council Resolution 844, S/RES/844 (1993), 18 June 1993.

Report of the Secretary-General pursuant to Security Council Resolution 836(1993), Doc. No. S/25939, 17 June 1993.

Letter from the Secretary-General to the President of the Security Council, S/25456, 22 March 1993.

Letter from the Secretary-General to the President of the Security Council S/25457 of 22 March 1993.

Report of the Secretary-General Pursuant to Security Council Resolution 819 (1993), S/25700, 30 April 1993.

Letter from the Secretary-General to the President of the Security Council, S/26335, 20 August 1993.

General Assembly Resolution, A/RES/48/42, *Comprehensive review of the whole question of peace – keeping operations in all their aspects*, General Assembly 75th plenary meeting, 10 December 1993.

UN Doc. A/48/185, appendix, 26 May 1993.

UN Security Council Resolution 913, S/RES/913 (1994), 21 April 1994.

UN Security Council Resolution 958, S/RES/958 (1994), 19 November 1994.

Letter from the Secretary-General to the Security Council, S/1994/94, 28 January 1994.

Letter from the Secretary-General to the Security Council, S/1994/131, 6 February 1994.

Letter from the Secretary-General to the President of the Security Council S/1994/159, 11 February 1994.

Letter from the Secretary-general to the President of the Security Council, S/1994/182, 15 February 1994.

Report of the Secretary-General Pursuant to Security Council Resolution 871(1993), Doc. No. S/1994/300, 16 March 1994.

Report of the Secretary General Pursuant to Resolution 844 (1993), Doc. No. S/1994/555, 9 May 1994.

Letter from the Representatives of France, the Russian Federation, the United Kingdom and the United States of America to the United Nations, addressed to the President of the Security Council, S/1994/916, 1 August 1994.

Report of the Secretary General pursuant to Security Council Resolution 959(1994), Doc. No. S/1994/1389, 1 December 1994.

UN Security Council Resolution 981, S/RES/981 (1995), 31 March 1995.

UN Security Council Resolution 982, S/RES/982 (1995), 31 March 1995.

UN Security Council Resolution 994, S/RES/994 (1995), 17 May 1995.

UN Security Council Resolution 998, S/RES/998(1995), 16 June 1995.

UN Security Council Resolution 1004, S/RES/1004 (1994), 12 July 1995.

UN Security Council Resolution 1021, S/RES/1021 (1995), 22 November 1995.

UN Security Council Resolution 1022, S/RES/1022 (1995), 22 November 1995.

UN Security Council Resolution 1023, S/RES/1023 (1995), 22 November 1995.

UN Security Council Resolution 1026 (1995), 30 November 1995.

UN Security Council Resolution 1031, S/RES/1031 (1995), 15 December 1995.

UN Doc. S/1995/222, 22 March 1995.

Report of the Secretary General Pursuant to Security Council Resolutions 982 (1995) and 987 (1995), S/1994/444, 30 May 1995.

Letter from the Secretary General Addressed to the President of the Security Council, S/1995/470, 9 June 1995.

Letter from the Secretary General to the President of the Security Council, S/1995/623, 26 July 1995.

UN Doc. No. S/1995/623, 27 July 1995.

See UN Doc. S/1995/623 of 1 August 1995.

Report of the Secretary-General Pursuant to Resolution 1026 (1995), S/1995/1031, 13 December 1995.

Boutros Boutros-Ghali, *Supplement to An Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the 50th Anniversary of the United Nations*, UN Doc. No. A/50/60 – S/1995/1, 25 January 1995.

‘Address by the Secretary-General of the United Nations upon Receiving a Doctorate Honoris Causa from the University of Vienna’, Vienna, 27 February 1995.

United Nations, *The Blue Helmets. A Review of United Nations Peace-keeping*, United Nations Publication, New York 1996.

UN Security Council Resolution 1037, S/RES/1037 (1996), 15 January 1996.

Report of the Secretary General, *Renewing the United Nations – a Programme for Reform*, UN Doc. No. A/51/950, 14 July 1997.

UN Security Council Resolution 1044, S/RES/1044 (1997), 19 December 1997.

UN Security Council Resolution 1174, S/Res/1174 (1998), 15 June 1998.

UN Security Council Resolution 1199, S/RES/1199 (1998), 23 September 1998.

UN Security Council Resolution 1203, S/RES/1203 (1998), 24 October 1998.

UN Security Council Resolution 1207, S/RES/1207 (1998), 17 November 1998.

UN Department of Peacekeeping Operations, *“The United Nations Transitional Administration in Eastern Slavonia, Baranja and Western Sirmium (UNTAES), January 1996-January 1998”*, UN-DPKO Lessons Learned Unit, July 1998.

UN Security Council Resolution 1244, S/RES/1244 (1999), 10 June 1999.

Department of Judicial Affairs (DJA), Report for the Conference on the Judiciary in Kosovo of 11 November 1999.

Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/1999/1250, 23 December 1999.

Report of the Panel on United Nations Operations, UN Doc. No. A/55/305 – S/2000/809, 21 August 2000.

Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, UN Doc. S/2000/177, 3 March 2000.

UN Security Council Resolution 1345, S/RES/1345(2001), 21 March 2001.

UN Security Council Resolution 1371, S/RES/1371(2001), 26 September 2001.

UN Security Council Resolution 1396, S/RES/1396 of 5 March 2002.

UNMIK Regulation 2001/9 of 15 May 2001.

Guidelines on the Use of Military and Civil Defence Assets to Support United Nations Humanitarian Activities in Complex Emergencies, UN Office for the Coordination of Humanitarian Affairs (OCHA), Geneva March 2003.

Michael Steiner, *Kosovo: seven principles for building peace: speech delivered by the United Nations Special Representative of the Secretary General in Kosovo, Michael Steiner, at the London School of Economics and Political Science, on 27 January 2003*, Discussion Papers, DP22, Centre for the Study of Global Governance, London School of Economics and Political Science, London 2003.

UN Security Council Resolution 1551, S/RES/1551(2004), 9 July 2004.

UNSC, S/PV.5007 and Resumption 1, 20 July 2004.

Agreement between the United Nations Interim Administration Mission in Kosovo (UNMIK) and the Council of Europe on technical arrangements related to the Framework Convention for the Protection of National Minorities, 23 August 2004.

A More Secured World: our Shared Responsibility, Report of the High-Level Panel on Threats, Challenge and Change”, UN General Assembly, Doc No. A/59/565, 2 December 2004.

Espen Barth Eide *et al.*, *Report on Integrated Missions: Practical Perspectives and Recommendations*, United Nations Development Group, Independent Study for the Expanded UN ECHA Core Group, May 2005.

UN Security Council Resolution 1639, S/RES/1639(2005), 21 November 2005.

S/RES/1631 (2005), 17 October 2005.

UN General Assembly Resolution 60/1, 2005 World Summit Outcome, UN Doc. No. A/RES/60/1, 24 October 2005.

Kofi Annan, *In Larger Freedom: towards development, security and human rights for all*, UN Doc. No. A/59/2005.

UN Doc. A/61/204 – A/2006/590, 28 July 2006.

Report of the Secretary-General on the work of the Organisation, General Assembly 61st session, Supplement No. 1, UN Doc. No. A/61/1, 16 August 2006.

UN Doc. No. A/61/204 – S/2006/590.

UN Security Council Resolution 1785, S/RES/1785(2007), 21 November 2007.

“Comprehensive Proposal for the Kosovo Status Settlement”, UN Doc. S/2007/168 Add.1.

UN Security Council, “Comprehensive Proposal for the Kosovo Status Settlement, UN Doc. S/2007/168/Add.1, 26 March 2007.

UN Daily Press Briefing by the Offices of the Spokesperson for the Secretary-General and the Spokesperson for the General Assembly President, 15 November 2007.

UN Daily Press Briefing by the Offices of the Spokesperson for the Secretary-General and the Spokesperson for the General Assembly President, 19 November 2007.

UN Daily Press Briefing by the Office of the Spokesperson for the Secretary-General, 5 December 2007.

“Ban Ki-moon receives Contact Group report on Kosovo” in *UN News*, 7 December 2007.

“Statement on Kosovo by Contact Group Ministers”, enclosed in the Letter from the Secretary-General to the President of the Security Council, Contact Group, S/2007/723, 10 December 2003.

United Nations Department of Peacekeeping Operations, *United Nations Peacekeeping Operations—Principles and Guidelines*, United Nations 2008.

UN Media Division, “Secretary-General says, Pending Security Council guidance, Resolution 1244 (1999) will remain legal framework for mandate of UN Kosovo Mission”, Secretary-General SG/SM/11424, 17 February 2008.

UN Department of Peacekeeping Operations and Department of Field Support, *A New Partnership Agenda: Charting a New Horizon for UN Peacekeeping*, United Nations, New York July 2009.

“A More Secured World: Report of the High-Level Panel on Threats, Challenge and Change”, UN General Assembly, Doc No. A/59/565, 2 December 2004.

UN Security Council, Press Release SC/7118, “Security Council call for full and immediate implementation of agreement in Former Yugoslav Republic of Macedonia”, Security Council 4356th Meeting, 14 August 2001.

NATO

Partnership with the Countries of Central and Eastern Europe, Statement issued by North Atlantic Council Meeting in Ministerial Session, 6-7 June 1991.

Madrid Declaration, on Euro-Atlantic Security and Cooperation issued by the Heads of State and Government at the Meeting of the North Atlantic Council, NATO Doc. No. M.1(97)81, Madrid 8 July 1991.

The *Alliance's New Strategic Concept*, agreed by Heads of State and Government participating in the meeting of the North Atlantic Council, Rome 7-8 November 1991.

NATO Rome Declaration on Peace and Cooperation, Press Communiqué S-1(91)86 issued by the Heads of State and Government participating to the meeting of the North Atlantic Council in Rome, 8 November 1991.

Press Communiqué, "The Situation in Yugoslavia", statement issued by the heads of state and government participating in the meeting of the North Atlantic Council in Rome, NATO Press Service, 8 November 1991.

Final Communiqué, issued by the Defence Planning Committee of the North Atlantic Treaty Organisation meeting in Ministerial Session in Brussels on 12-13 December 1991, NATO Press Service, 13 December 1991.

North Atlantic Cooperation Council Statement on Dialogue, Partnership and Cooperation, 20 December 1991.

Ministerial Communiqué, Defence Planning Committee and Nuclear Planning Group, Brussels 27 May 1992.

Final Communiqué of the Ministerial Meeting of the North Atlantic Council, Oslo, 4 June 1992.

Final Communiqué, Ministerial Meeting of the North Atlantic Council, Doc. No. M-NAC-2(92)106, Brussels 17 December 1992.

Final Communiqué, issued at the Ministerial Meeting of the North Atlantic Council held in Athens, 10-11 June 1993.

Ministerial Meeting of the North Atlantic Council, Final Communiqué, M-NAC-1(93)38, 10 June 1993.

NATO Press Statement by the Secretary General Following the Special Meeting of the North Atlantic Council in Brussels on 2 August 1993.

Meeting of the North Atlantic Council of 9 August 1993, Press Release (93) 52.

Declaration of Heads of State and Government participating in the meeting of the North Atlantic Council held in Brussels, 11 January 1994. Press Release M-1(94) 003.

Declaration of the Heads of State and Government Participating in the Meeting of NAC, Brussels, 11 January 1994.

North Atlantic Council, Decisions taken at the Meeting of the North Atlantic Council in Permanent Session, 9 February 1994.

Meeting of the North Atlantic Council on 9 February 1994, Press Release (94) 15, 9 February 1994.

NATO Press Note PL 218, 13 April 1994.

Meeting of the North Atlantic Council on 22 April 1994, Press Release (94) 31.

NATO Press Release 95-12, 25 May 1995.

Press Statement by the Secretary-General following North Atlantic Council Meeting on 25 July 1995.

NATO Press Release 95-79, Secretary General, Statement on 5 September 1995.

Statement by the Secretary General of NATO, NATO Press Release 95-73, 30 August 1995.

Ministerial Meetings of the North Atlantic Council (NAC)/North Atlantic Cooperation Council (NACC), Berlin, 3-4 July 1996.

NATO NAC, Council Statement on the situation in Kosovo, in *NATO Press Release* (98)29, 5 March 1998.

Madrid Declaration on Euro-Atlantic Security and Cooperation, issues by the Heads of State and Government, Madrid, 8-9 July 1997.

Solana Javier, *NATO and European Security into the 21st Century*, speech to the Oxford University Union Society, 13 May 1998.

NAC Ministerial Meeting, Luxembourg 28-29 May 1998, Statement on Kosovo, in *NATO Press Release* M-NAC-1(98)61.

Javier Solana, *Remarks at the inauguration of the Kosovo Verification Coordination Centre (KVCC)*, 26 November 1998.

Final Communiqué of the meeting of the NAC in Defence Ministers Session, 17 December 1998, in *Atlantic News* No. 3068, Annex, 19 December 1998.

The Alliance's Strategic Concept approved by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington D.C., 24 April 1999

An Alliance for the 21st Century, Washington Summit Communiqué, issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Washington, D.C. on 24 April 1999, NATO Press Release NAC-S(99)64.

NATO Press Release (99) 079, Statement by the NATO Spokesman on the Korisa Incident, 15 May 1999.

NATO/EAPC Ad Hoc Group, Report from a Seminar on Kosovo Experience With Regard to Compendium on Humanitarian Aspects of Peacekeeping, Brussels, 21 October 1999.

EU-NATO Declaration on the ESDP, NATO Press Release (2002)142, 16 December 2002.

Prague Summit Declaration, Issues by the Heads of State and Government participating in the meeting of the North Atlantic Council in Prague, 21 November 2002.

NATO Allied Joint Publication (AJD)9, NATO Civil-Military Co-operation (CIMIC) Doctrine, July 2003.

NATO-EU Concerted Approach on Security and Stability in the Western Balkans, NATO Press Release (2003)089, 29 July 2003.

NATO/SFOR Press Statement, 29 June 2004.

“Reinventing NATO – Does the Alliance reflect the changing nature of Transatlantic Security?”, Keynote address by NATO Secretary General, Jaap de Hoop Scheffer, at the “New Defence Agenda” conference, Brussels 24 May 2005.

Comprehensive Political Guidance Endorsed by NATO Heads of State and Government on 29 November 2006.

NATO Parliamentary Assembly, Committee Report No. 163 CDS 07 E rev 2, “Kosovo and the Future of Balkan Security”, prepared by Vitalino Canas, Annual Session, Reykjavik 2007.

NATO Parliamentary Assembly and the Centre for the Democratic Control of Armed Forces (DCAF), “Whither Serbia? NATO, the EU and the Future of the Western Balkans?”, Seminar Report Doc. 151 JOINT 07 E, Annual Meeting 2007, 21 June 2007.

NATO Parliamentary Assembly, 66th Rose-Roth Seminar, “South East Europe: Unfinished Business”, Dubrovnik, 24-26 June 2007.

NATO Parliamentary Assembly, Doc. No. 153 SEM 07, 66th Rose-Roth Seminar, “South East Europe: Unfinished Business,” Dubrovnik, Croatia, June 2007.

NATO Parliamentary Assembly, *Kosovo and the Future of Balkan Security*, Special Report 163 CDS 07 E rev 2, 6 October 2007.

NATO Parliament Assembly, Resolution No. 359(2007) on “Encouraging Stability in the Western Balkans”, 9 October 2007.

NATO Parliamentary Assembly 67th Rose-Roth Seminar, “Serbia and Europe: Challenges of Integration,” Seminar Report Doc. 243 SEM 07 E, October 2007.

NATO-Russia Council, “NATO-Russia Council meets with Kosovo Troika”, in *NATO Press Release*, 15 October 2007.

NATO-Russia Council, “NATO-Russia Council meets with Kosovo Troika”, in *NATO Press Release*, 15 October 2007.

“Unilateral Action on Kosovo Status would affect Serbia’s European path, Belgrade officials claim at NATO PA Seminar” in *NATO Press Release*, 29 October 2007.

“Statement by the NATO Secretary General on the elections in Kosovo” in *NATO Press Release* PR (2007)117, 19 November 2007.

NATO’s *Bi-Strategic Command Pre-Doctrinal Handbook (EBAO)*, 4 December 2007.

“Military Committee Position on an Effects Based Approach to Operations”, MCM 0052-2006, 6 June 2006. Later confirmed in the “Pre-Doctrinal Handbook (Effects Based Approach to Operations)”, J5PLANS/7740-065/07-203478 (ACO) and 3000 TI-388/TT-2156/Ser: NU0689 (ACT), 4 December 2007.

“Six EBAO Principles” detailed in the NATO’s *Bi-Strategic Command Pre-Doctrinal Handbook (EBAO)*, 4 December 2007.

NATO Final communiqué Ministerial meeting of the North Atlantic Council held at NATO headquarters, in *NATO Press Release* Doc. PR (2007)130, Brussels, 7 December 2007.

Speech by the NATO Secretary General Jaap de Hoop Scheffer at the conference “Kosovo –Security for All” 30 December 2007.

NATO Parliamentary Assembly, Committee Report No. 155 CDS 08 E bis, “Kosovo and the Future of Balkan Security”, prepared by Vitalino Canas, Annual Session, Valencia 2008.

NATO Parliamentary Assembly, Committee Report 158 DSC 08 E bis, “NATO Operations: Current Priorities and Lessons Learned” prepared by Frank Cook, Valencia 2008.

“Statement by the Secretary General in reaction to the Kosovo declaration of independence” in *NATO Press Release* (2008)21, 17 February 2008.

“Statement by the North Council after Kosovo’s declaration of independence” in *NATO Press Release* (2008)025, 18 February 2008.

“COMKFOR letter regarding Kosovo's Independence” in *NATO KFOR Chronicle* (ed.3/2008), 29 February 2008.

Bucharest Summit Declaration, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Bucharest on 3 April 2008

Strasbourg/Kehl Summit Declaration, issued by the Head of State and Government participating in the meeting of the North Atlantic Council in Strasbourg/Behl, 04 April 2009.

WESTERN EUROPEAN UNION

The Petersberg Declaration issued by the Western European Union, Council of Ministers, Bonn 19 June 1992.

European Security and Defence Assembly, Assembly of the WEU, Planning and conduct of EU operations – reply to annual report of the council, Fifty-Ninth Session, Doc A/2086, 30 November 2010.

EUROPEAN UNION

Declaration of the Heads of State and Government, Ministerial Meeting of the North Atlantic Council/North Atlantic Cooperation Council, Brussels, 10-11 January 1994, Press Communiqué M-1(94)3.

Presidency Report on Strengthening the Common European Policy on Security and Defence, Annex III to the Presidency Conclusions of the Cologne European Council, 3-4 June 1999.

Council of the European Union, EU Annual Report on Human Rights, 1998/1999, adopted in October 1999.

Presidency Conclusions of the Helsinki European Council, 10-11 December 1999.

Study on the concrete Targets on Civilian Aspects of Crisis Management, Appendix 3 to the Presidency Conclusions Santa Maria de Feira European Council, 19-20 June 2000.

Presidency Report on the European Security and Defence Policy”, Presidency Conclusion, European Council, Nice, 7-9 December 2000.

Presidency Report on ESDP, Annex VI to the Presidency Conclusions to the Nice European Council, 7-9 December 2000.

Military Capabilities Commitment Declaration, Annex I to V to the Presidency Conclusions to the Nice European Council, 7-9 December 2000.

Presidency Report on ESDP, Annex VI to the Presidency Conclusions to the Nice European Council, 7-9 December 2000.

Council of the European Union, Council Joint Action 2000/811/CFSP on the European Union Monitoring Mission, 22 December 2000.

Agreement between the European Union and the Federal Republic of Yugoslavia on the Activities of the European Union Monitoring Mission (EUMM), 25 April 2001, *Official Journal*, L 125/2, 5 May 2001.

EU General Affairs Council Conclusions, 2356th Council meeting, Luxembourg, 11-12 June 2001.

Council of the European Union, “Presidency Report to the Goteborg European Council on European Security and Defence Policy”, June 2001.

Presidency Conclusion to the Goteborg European Council, 15-16 June 2001.

“Agreement between the European Union and the Former Yugoslav Republic of Macedonia on the activities of the European Union Monitoring Mission (EUMM) in the Former Yugoslav Republic of Macedonia” in *Official Journal* L 241 , 11 September 2001.

Council of the European Union, EU Annual Report on Human Rights 2001, November 2001.

Presidency Report on European Security and Defence Policy, 22 December 2001.

Council Joint Action 2002/210/CFSP, 11 March 2002.

Council Joint Action 2002/211/CFSP, 11 March 2002.

Council of the European Union, Civil-Military Co-operation (CIMIC) Concept for EU-Led Crisis Management Operations, Doc. No. 7106/02, Brussels 18 March 2002.

Council of the European Union, EU Annual Report on Human Rights, 2002, 21 October 2002.

Presidency Conclusions, Copenhagen European Council, December 12-13, 2002. European Council Press Release No. 15917/02, 29 January 2003.

Council Joint Action (2003/92/CFSP), *Official Journal of the European Communities*, L 34, February 2003.

Council of the European Union and European Commission (2003), Lessons from the planning of the EU Police Mission in Bosnia and Herzegovina (EUPM), Autumn 2001-December 2002, Joint Paper, Brussels, 29 April 2003.

2522nd Council Meeting, General Affairs and External Relations, 11439/1/03 REV 1 (Presse 209), 21 July 2003.

Letter dated 14 July from the Secretary-General and High Representative for the CFSP of the European Union to the Secretary-General of the United Nations. Annex to the letter dated 17 July from the Secretary-General of the United Nations to the President of the Security Council, Doc No. S/2003/732, 21 July 2003.

Council of the European Union, A Review of the first 100 days of the EU Police Mission in Bosnia and Herzegovina (EUPM), Doc. No. 11760/03, Council Secretariat, Brussels, 23 July 2003.

“EU and NATO Concerted Approach for Western Balkans” in *Council of the European Union Press Release* No. 11605/03, Brussels 29 July 2003.

Communication for the Commission to the Council and the European Parliament, *The European Union and the United Nations: The choice of multilateralism*, COM(2003) 526 final, Brussels, 10 September 2003.

Joint Declaration on EU-UN Co-operation in Crisis Management, 24 September 2003.

Council Joint Action 2003/681/CFSP of 29 September 2003 on the European Union Police Mission in the Former Yugoslav Republic of Macedonia.

Council of the European Union, Civil-Military Co-ordination (CMCO), Doc No. 14457/03, Brussels 7 November 2003.

Council of the European Union, Draft Council Conclusions on EU - OSCE Cooperation in Conflict Prevention, Crisis Management and Post-conflict Rehabilitation, Doc. No. 14527/1/03, Brussels 10 November 2003.

See European Council, *A Secure Europe in a Better World*, European Security Strategy, Brussels, 12 December 2003.

Brussels European Council Meeting, Presidency Conclusions, 12-13 December 2003, Doc. No. 5381/04.

“A Secure Europe in A Better World, European Security Strategy”, Brussels 12 December 2003.

European Council Regulation No. 533/2004, 22 March 2004.

Council of the European Union, EU Security Strategy: Bosnia and Herzegovina/Comprehensive Policy, Brussels 14 June 2004, Doc. 10099/04.

“EU-UN co-operation in Military Crisis Management Operations Elements of Implementation of the EU-UN Joint Declaration”, Annex II, ESDP Presidency Report, European Council 15 June 2004.

Headline Goal 2010, approved by the General Affairs and External Relations Council on 17 May 2004 endorsed by the European Council of 17 and 18 June 2004.

European Council, “European Security Strategy – Bosnia and Herzegovina / Comprehensive Policy”, 17-18 June 2004.

“EUFOR: Changing Bosnia’s Security”, in *Europe Briefing* No. 3129, Brussels-Sarajevo 29 June 2004.

Council Joint Action 2004/569/CFSP of 12 July 2004 on the mandate of the European Union Special Representative in Bosnia and Herzegovina and repealing Council Joint Action 2002/211/CFSP.

Council Joint Action 2004/570/CFSP of 12 July 2004

European Parliament Resolution on the “European Union military operation ‘Althea’ in Bosnia and Herzegovina” of 17 November 2004.

The Council of the European Union, Civilian Headline Goal 2008, Doc. No. 15863/04, Brussels, 7 December 2004.

Civilian Headline Goal 2008, approved by the Brussels European Council on 17 December 2004, Doc. No. 15863/04.

Council of the European Union, Joint Action 2004/570/CFSP, DATE

Council Joint Action 2005/143/CFSP of 17 February 2005 amending Joint Action 2002/210/CFSP on the European Union Police Mission.

Council of the European Union, Civilian Headline Goal 2008, in Multifunctional Civilian Crisis Management Resources in an Integrated Format – Civilian Response Teams, 10462/05, Brussels 26 March 2005

Council of the European Union, *EU Concept for ESDP Support to Security Sector Reform (SSR)*, No. 12566/4/05, Brussels 13 October 2005.

Council Joint Action 2005/824/CFSP of 24 November 2005 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH).

Council of the European Union, *Presidency Report on the ESDP*, 15891/05, Brussels, 19 December 2005.

EU Police Mission (EUPM), EU Military Force in Bosnia and Herzegovina (EUFOR) and EU Special Representative (EUSR), “Guidelines for Increasing Cooperation between EUPM–EUFOR and EUSR”, Sarajevo 2005.

Council Joint Action 2005/825/CFSP of 24 November 2005.

EU Council Decision of 30 January 2006 on the principles, priorities and conditions contained in the European Partnership with Serbia and Montenegro including Kosovo as defined by the United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2004/520/EC (2006/56/EC).

Council of the European Union, “Common Operational Guidelines for EUPM-EUFOR support to the fight against organised crime”, Doc. No. ST 10769/06 Restraint UE, Brussels 21 June 2006.

Regulation n°1717/2006 of the European Parliament and of the Council establishing an Instrument for Stability, *Official Journal of the EU*, 24 November 2006.

Council Joint Action 2006/867/CFSP of 30 November 2006, “Extending and amending the mandate of the European Union Monitoring Mission (EUMM)”.

EC Commission Decision C(2007)2271 of 01 June 2007 on a Multi-annual Indicative Planning Document (MIPD) 2007-2009 for Kosovo under UN Security Council Resolution 1244.

Council of the European Union, Guidelines for Command and Control Structure for EU Civilian Operations in Crisis Management, Doc. No. 10381/07 RESTREINT UE, 17 June 2007.

European Parliament Recommendation to the Council of 15 March 2007.

EU at the United Nations, “Kosovo's Future Status: Troika Press Statement”, 5 November 2007.

Commission of the European Communities, Commission Staff Working Document, “Kosovo under UN Security Council Resolution 1244, 2007 Progress Report, SEC(2007) 1433 in COM(2007)663, Brussels 6 November 2007.

Council of the European Union, Council Conclusions on ESDP, 2831st EXTERNAL RELATIONS Council meeting Brussels, 19-20 November 2007.

Council Joint Action 2007/87/CFSP, 19 November 2007.

Council Joint Action 2007/748/CFSP, 19 November 2007.

Council Joint Action 2007/749/CFSP on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH), 19 November 2007.

Civilian Headline Goal 2010, approved by the ministerial Civilian Capabilities Improvement Conference and noted by the General Affairs and External Relations Council on 19 November 2007, Doc. No. 14823/07.

Council of the European Union, “Council Conclusion on ESDP”, 2831st External Relations Council Meeting, Brussels 19-20 November 2007.

EC Communication from the Commission to the Council and the European Parliament, Enlargement Strategy and Main Challenges, Doc. COM(2007) 663, Brussels, 6 November 2007.

EU at the United Nations, “Kosovo' Status: Troika Press Communiqué, Baden Conference”, 28 November 2007.

EU Council Conclusions on Operation ALTHEA, 2839th General Affairs Council meeting of 10 December 2007.

Council Joint Action 2008/123/CFSP of 4 February 2008 appointing the EU Special Representative in Kosovo.

Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO.

Council Joint Action 2008/130/CFSP of 18 February 2008.

Council Conclusions on Kosovo, 2851st External relations Council meeting, Brussels, 18 February 2008.

“Evaluation of Commission’s external cooperation with partner countries through the organisations of the UN family”, Final Report, ADE, Volume I, May 2008.

EU General Affairs and External Relations Council Conclusions on Operation ALTHEA, 2878th General Affairs Council meeting, 16 June 2008.

EU at the United Nations, “Kosovo: Statement by EU Commissioner Rehn on elections”, 19 November 2008.

Council Joint Action, 2009/906/CFSP of 8 December 2009 on the European Union Police Mission (EUPM) in Bosnia and Herzegovina (BiH).

European Council, “European Security Strategy: Bosnia and Herzegovina/Comprehensive Policy”, Doc. No. 10099/04, 15 June 2004.

OSCE

1990 CSCE Paris Charter for a New Europe.

CSCE Madrid Meeting, 2-3 April 1991.

Berlin Meeting of the CSCE Council, 19-20 June 1991.

Chairman’s Statement on the results of the Meeting of the Consultative Committee of the Conflict Prevention Centre, 1 July 1991.

CSCE, The Challenges of Change, 1992.

Prague Meeting of the CSCE Council, Prague Document on Further Development of CSCE Institutions and Structure, 30-31 January 1992.

Declaration of the CSCE Parliamentary Assembly, 5 July 1992.

CSCE Helsinki Document “The Challenge of Changes”, Helsinki Summit Declaration, 9-10 July 1992.

CSCE 15th Committee of Senior Officials, 14 August 1992, Journal No. 2, Annex 1, and, CSCE 17th Committee of Senior Officials, 6 November 1992, Journal No. 3, Annex. 3.

CSCE Annual Report 1993 on CSCE Activities, 3 November 1993.

CSCE Annual Report, Vienna 14 November 1994.

CSCE Budapest Summit Declaration, "Towards a Genuine Partnership in New Era", December 1994.

OSCE Annual Report 1995, 30 November 1995.

Budapest Ministerial Council Meeting, Decision on OSCE action for Peace, Democracy and Stability in Bosnia and Herzegovina, 7-8 December 1995, MC(5).DEC/1.

Permanent Council Decision PC.DEC/112, 18 April 1996.

CSCE Budapest document, "Towards a Genuine Partnership in a New Era", 5-6 December 1994.

OSCE Lisbon Summit Document, DOC.S/1/96, 3 December 1996.

OSCE Annual Report 1996 on OSCE Activities, 15 January 1997.

OSCE Annual Report 1996 on OSCE Activities, 15 December 1997.

OSCE Annual Report 1997 on OSCE Activities, 18 December 1997.

OSCE Sixth Meeting of the Ministerial Council, 18-19 December 1997, MC.DOC/1/97, 16 March 1998.

OSCE Permanent Council Decision PC. DEC/228, 4 January 1998.

OSCE Permanent Council Decision, PC.DEC/263, 25 October 1998.

OSCE Annual Report 1998 on OSCE Activities, 2 December 1998.

OSCE Permanent Council Decision PC.DEC/305, 1 July 1999.

UNHCR/OSCE, Preliminary Assessment of the Situation of Ethnic Minorities (First Assessment), Pristina, UNHCR/OSCE, 26 July 1999.

OSCE Report, "Kosovo/Kosova. As Seen, As Told" 5 November 1999. An analysis of the human right findings of the OSCE Kosovo Verification Mission, October 1998 to June 1999.

OSCE Annual Report 1999 on OSCE Activities, 17 November 1999.

OSCE Istanbul Summit, Charter for European Security, 18-19 November 1999.

OSCE Seminar on “Co-operation among international Organisations: Experience and Prospects in South-Eastern Europe,” Consolidated Summary, Declaration of the Deputy High Representative Jacques Paul Klein, 1999.

OSCE Secretary General, Annual report 1999 on OSCE Activities, 17 November 1999.

OSCE Annual Report 2000 on Interaction between Organisations and Institutions in the OSCE Area, 24 November 2000.

OSCE Permanent Council Decision, PC.DEC/401, 11 January 2001.

OSCE Secretary General, Annual Report 2001 on OSCE Activities, 26 November 2001.

OSCE Ninth Meeting of the Ministerial Council, Bucharest 3-4 December 2001.

Survey of OSCE Long-Term Missions and other OSCE Field Activities, 12 September 2006.

“OSCE and Council of Europe exchange of letters of co-operation in FRY”, in *OSCE Press Release* 16 February 2001.

OSCE Annual Report 2001 on Interaction between Organisations and Institutions in the OSCE Area, 26 November 2001.

Centre for OSCE Research (CORE), *Kosovo. Mission Information Package*, Institute for Peace Research and Security Studies at the University of Hamburg, May 2002.

UNHCR/OSCE, Ninth Assessment of the Situation of Ethnic Minorities, Pristina, UNHCR/OSCE, 22 May 2002.

Permanent Council, Decision PC.DEC/533, 13 February 2003.

OSCE Annual Report 2002 on OSCE Activities, 24 March 2003.

Ambassador Lamberto Zannier, “*Lessons of NATO involvement in the Balkans: Civilian Reconstruction and Political Institutions*”, Panel Discussion at NATO, OSCE Conflict Prevention Centre, 16 October 2003.

OSCE Eleventh Meeting of the Ministerial Council, Maastricht 1-2 December 2003.

OSCE Conflict Prevention Centre, *Comparative Analysis of Crisis Response Capabilities - The OSCE Position*, Background paper for distribution/discussion, Vienna, June 2004.

Ambassador Lamberto Zannier, *Enhancing Co-operation between the OSCE and other International Organisations*, OSCE Conflict Prevention Centre, Euro-Atlantic Council, Ljubljana, Slovenia, 10 September 2004.

OSCE Annual Report of the Secretary General on Police Related Activities in 2004, 29 June 2005.

Updated Survey of OSCE Long-Term Missions and other OSCE Field Activities, 26 August 2005.

OSCE Permanent Council Decision, PC.DEC/732, 29 June 2006.

OSCE Permanent Council Decision, PC.DEC/ 733, 29 June 2006.

“Chairman-in-Office meets Serbian President to discuss continued OSCE support, field operations” in *OSCE Press Release* 5 February 2008.

“OSCE’s continued engagement in Kosovo is needed, says Chairman-in-Office” in *OSCE Press Release* 6 February 2008.

“OSCE Chairman issues statement on Kosovo’s independence declaration” in *OSCE Press Release*, 18 February 2008.

OSCE Astana Commemorative Declaration, Towards a Security Community, Doc. No. SUMN.DOC/1/10/Corr. 1, 3 December 2010.

OSCE Conflict Prevention Centre, *Co-ordination and Co-operation among International Actors in Support of the Host Country, Food-for-Thought Paper*, SEC.GAL/77/1, 28 April 2011.

COUNCIL OF EUROPE

Parliamentary Assembly of the Council of Europe (PACE), Report on the work of CSCE on the eve of the 3rd summit (Helsinki, 9-11 July 1992), Report No. 6607 of 5 May 1992.

Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1184 (1992) on the work of the CSCE on the eve of the 3rd Summit (Helsinki July 9-11, 1992), adopted on 6 May 1992 (5th Sitting).

Council of Europe, Committee of Ministers, Recommendation 1175 (1992) on the situation in Yugoslavia.

Parliamentary Assembly of the Council of Europe (PACE) Recommendation 993 (1993) on the general policy of the Council of Europe, adopted on 3 February 1993 (25th Sitting).

Parliamentary Assembly of the Council of Europe (PACE), Doc. ADOC6863, 1403-9/6/93-3-E, Report on the United Nations embargo against Serbia and Montenegro, 11 June 1993.

Parliamentary Assembly of the Council of Europe (PACE), Doc. ADOC7440, Report on refugees, displaced persons and reconstruction in certain countries of former Yugoslavia, 19 December 1995.

Committee of Ministers, Council of Europe, doc. CM/Del/Dec/Act(96)557/3.1b, “Refugees, Displaced persons and Reconstruction in Certain Countries of the Former Yugoslavia”, Parliamentary Assembly Recommendation 1287 (1996), prepared by Enlarged Rapporteur Group (GREL), 10 May 1996.

Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1287 (1996).

Parliamentary Assembly of the Council of Europe (PACE), Doc. 7973, Bosnia and Herzegovina: return of refugees and displaced persons, 23 December 1997.

Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1337 (1997) on the functioning of the institutions for the protection of human rights in Bosnia and Herzegovina, 26 June 1997.

Parliamentary Assembly of the Council of Europe (PACE) Doc. 7986, Report on “Recent developments in the Federal Republic of Yugoslavia and their implications for the Balkan region”, 19 January 1998.

1999 Budapest Declaration for a Greater Europe without Dividing Lines, adopted by the Committee of Ministers on 7 May 1999.

Committee of Ministers of the Council of Europe, Doc CN/Inf(99)48, “Kosovo. Council of Europe’s contribution to the United Nations Interim Administration Mission in Kosovo”, Information Documents, 23 July 1999.

Committee of Ministers of the Council of Europe, Doc. CN/Inf (99)60, “Kosovo. Council of Europe contribution to UNMIK State of Implementation at 20 September 1999,”

Council of Europe, Statute of the Association of Local Democracy Agencies, signed on 14 December 1999.

Secretary General of the Council of Europe, Doc.SG/Inf (2000)35, “Pristina Office Report. September 2000”, 20 October 2000.

Council of Europe/ALDA Doc. CG/ASS/ADL (8) 82, ”The added value of the city co-operation to the democratisation and stabilisation process in SEE. The support of the Association of Local Democracy Agencies.” Paper from the Working Table I, Stability Pact, Istanbul, 12-13 June 2002.

Parliamentary Assembly of the Council of Europe (PACE) Doc. 9533, Report on “Federal Republic of Yugoslavia’s application for membership of the Council of Europe”, 5 September 2002.

Council of Europe European Commission for Democracy Through Law (Venice Commission), “Report on Non-Citizens and Minority Rights”, adopted by the Venice Commission at its 69th Meeting (Venice 15-16 December 2006), CoE Doc. CDL-AD (2007) 001.

Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1780(2008), “Current situation in Kosovo”, Doc. CM/AS(2007)Rec1780, 16 July 2007.

Council of Europe Press Division 657, “Monitoring over Kosovo Election November 2007”, Council of Europe Observation Mission in Kosovo (CEEOM V), 5 October 2007.

EU Commission Communication from the Commission to the Council and the European Parliament Enlargement Strategy and Main Challenges 2007-2008, COM(2007) 663, Brussels, 6 November 2007.

Council of Europe Press Division 762, “The final sprint before the elections”, Council of Europe Election Observation Mission V in Kosovo (CEEOM V), 7 November 2007.

“Council of Europe Election Observation Mission in Kosovo (CEEOM V) Elections in line with international standards but alarmingly low turn-out” in *CoE Press Release 801*, 18 November 2007.

“Potential for compromise on Kosovo exhausted, says PACE committee” in *CoE Press Release (903)2007*, Strasbourg, 12 December 2007.

Parliamentary Assembly of the Council of Europe (PACE), Recommendation 1822 (2008), “Developments as regards the future status of Kosovo”, 22 January 2008.

Parliamentary Assembly of the Council of Europe (PACE), Resolution 1595 of 22 January 2008.

Council of Europe Congress of Local and Regional Authorities (CLRAE), Kosovo Municipal and Assembly elections (Serbia) observed on 17 November and 8 December 2007, Spring Session CG(14)34REP 31 January 2008.

“Kosovo: PACE President urges all parties to preserve peace and dialogue” in *CoE Press Release 119(2008)*.

INTERNATIONAL CRISIS GROUP

International Crisis Group, *Kosovo Report Card*, Balkans Report No. 100, 28 August 2000.

International Crisis Group, *The Macedonian Question: Reform or Rebellion*, Balkan Report 109, April 2001.

International Crisis Group, *EU Crises Response Capabilities. Institutions and Processes for Conflict Prevention and Management*, Balkans Report No. 2, 26 June 2001.

International Crisis Group, *Bosnia: Reshaping the International Machinery*, Balkans Report No. 121, 29 November 2001.

International Crisis Group (ICG), *Policing the Police in Bosnia: a Further Reform Agenda*, Europe Report No. 130, Sarajevo & Brussels 2002.

International Crisis Group, *EU Crisis Response Capability Revisited*, Europe Report 160, 17 January 2005.

International Crisis Group (ICG), *Bosnia's Stalled Police Reform: No Progress*, Europe Report No. 164, Sarajevo & Brussels 2006.

International Crisis Group, *Kosovo Status: Difficult Months Ahead*, Europe Briefing No. 45, 20 December 2006.

International Crisis Group in the report *Kosovo's First Month*, Europe Briefing No. 47, 18 March 2008.

NEWSPAPERS

"Italia and Austria attivano la diplomazia della CSCE", *Corriere della Sera*, 28 June 1991, 6.

Michael R. Gordon, "Limits of U.S. role: White House is seeking to minimize any use of military in Balkan conflict" in *The New York Times*, 11 August 1992.

"CSCE to support Peacekeeping Activities in Bosnia" in *Reuters News Service* 15 August 1992.

David Binder, "Bush warns Serbs not to widen war", in *The New York Times*, 28 December 1992.

"They Call it Peace" in *The Economist*, 28 August 1993.

"UN commander wants more troops, fewer resolutions", in *The New York Times*, 31 December 1993, A3.

"NATO Gets Tough", *The Economist*, 2 September 1995.

Madeleine Albright, Interview on *PBS Newshour* with Jim Lehrer, Washington D.C., 24 March 1999.

Barton Gellman, "The Path to Crisis: How the United States and its Allies Went to War," in *The Washington Post*, 18 April 1999.

"Serbia and Montenegro in deal to reshape Yugoslavia", in *Financial Times*, 14 March 2002.

"Turn of the Tide?" in *The Economist*, 5 August 1995.

Xavier Bougarel, "Bosnie: Anatomie d'un conflit", in *La Découverte*, (Paris 1996).

William Walker, “Improvisational Peace”, in *Newsweek* 1 February 1999.

Goshko J.M, “Arms Embargo on Yugoslavia: U.N. Security Council Seeks to Prevent More Violence in Kosovo,” in *The Washington Post*, 1 April 1998.

Elizabeth Neuffer, “NATO Weighs Raids to Slow Serbs in Kosovo; Aides Gather in Brussels Today to Consider Options” in *Boston Globe*, 11 June 1998.

“Kosovo PM: Independence a Matter of Days” in *Balkaninsight*, 24 January 2007.

Simon Bradley, “Swiss heads tough OSCE Mission in Kosovo” in *Swissinfo*, 14 October 2007.

Katarina Mallok, “Katarina Mallok on Kosovo’s uncertain future,” in *Courrier International*, 23 November 2007.

“Russian envoy says Kosovo talks should continue past UN deadline” in *International Herald Tribune*, 26 November 2007.

“EU Mediator Pessimistic Ahead of Last-Gasp Talks” in *RFE/RL Newslines* 27 November 2007.

“Autonomy vs. Independence, Round 1244,” in *Kosovo Compromise*, 27 November 2007.

Elitsa Vucheva, “NGOs argue against further indecision on Kosovo,” in *EUObserver*, 3 December 2007.

“Kosovo president Firm on Status” in *Balkaninsight*, 4 December 2007.

Desmond Butler “UN to get Kosovo report on Friday,” in *Associated Press Writer*, 6 December 2007.

Timothy Garton Ash (2007), “The best answer for Kosovo is EU membership – and for Serbia too” in *The Guardian*, 6 December 2007.

“Ban Ki-Moon receives Contact Group report on Kosovo” in *UN News Service* 7 December 2007.

“Kosovo negotiations officially end today” in *B-92 News Service*, 10 December 2007.

Renata Goldirova, “Kosovo leadership rules out hurried steps towards independence” in *CET*, 10 December 2007.

“EU to debate Kosovo after UNSC” in *B-92 News Service*, 11 December 2007.

“Serbia rejects EU-Kosovo recognition exchange” in *B-92 news Service*, 15 December 2007.

“EU offering Serbia early membership, with strings attached” in *B-92 News Service*, 15 December 2007.

“Kosovo and Serbia to square off at UN” in *The Associated Press*, 19 December 2007.

Warren Hoge, “UN Security Council fails to come up with a Kosovo solution”, in *International Herald Tribune*, 19 December 2007.

“Lavrov: Russia will veto independence” in *B-92 News Service*, 21 December 2007.

“Interview Granted by Foreign Minister Sergey Lavrov on Kosovo Settlement” in *Vremya Novostei*, 21 December 2007.

Douglas Hamilton, “Serbs say No to EU if Kosovo independence recognised” in *Reuters*, 26 December 2007.

“Samardzic sharply criticizes Solana over EU mission” in *B-92 News Service*, 28 December 2007.

“Next UNSC Kosovo debate: January 16” in *B-92 News Service*, 4 January 2008.

“Council of Europe: Kosovo negotiations must continue”, in *SP International*, 24 January 2008.

“Thaçi: Declaration of Independence, matter of days” in *Dailies* 26 January 2008.

Paul Reynolds, “Legal furore over Kosovo recognition” in *BBC News*, 16 February 2008.

“Samardzic: legitimate actions”, interviewed on *B92 TV's Poligraf programme*, 19 February 2008.

“UN confirms: No transfer of jurisdiction to EU” in *B92 News Service*, 28 February 2008.

Communiqué of the Steering Board of the Peace Implementation Council, 19 November 2009

“In Balkans, a daunting money pit for the EU”, in *The International Herald Tribune*, 1 October 2009.

“Foreign Policy Initiative BH” in *Policy analysis, the Myth about the Closure of OHR*, Analysis 4/11, April 2011, Sarajevo.

MISCELLANEOUS

U.S. Department of State Dispatch 2, No. 22, 3 June 1991.

U.S. Department of State Special Representative Robert S. Gelbard, Press Conference, Belgrade 23 February 1998.

Human Rights Watch, *Abuses Against Serbs and Roma in the new Kosovo*, HRW Report No. 10 (D), Vol. 11, August 1999.

DJA Report of the Conference on the Judiciary in Kosovo of 11 November 1999.

Office of the High Representative, "OHR Report on a Police Follow-on Mission to UNMIBH and the UN International Police Task Force", OHR Sarajevo 2001.

Mission Russian Federation to the United Nations, "Statement by Russia's Ministry of Foreign Affairs on Kosovo Settlement," 17 December 2007.

"Developing a Strategy for Kosovo's First 120 Days," Conference Summit Report, Pocantico Conference Centre of the Rockefeller Brothers Fund, Tarrytown, NY, 12-14 April 2007.

Address to the Permanent Council of the Organization for Security and Co-operation in Europe by H.E. Mr. Vuk Jeremić Minister of Foreign Affairs of the Republic of Serbia Vienna, 19 February 2008.

EPC Declaration of 27 August 1991, EPC Press Release 82/91, Brussels.

Department of State Dispatch, No. SUP6-7 September 1992.

U.S. Department of State, Office of the Assistant Secretary, "Statement by U.S. Secretary of State Warren Christopher", 10 February 1993

General Framework Agree for Peace (GFAP) in Bosnia and Herzegovina, Annex 1A, Article IX-X.

The Peace Implementation Council replaced the International Conference on the Former Yugoslavia, see Conclusions of the Peace Implementation Conference held at Lancaster House, London, December 1995 in UN Doc. S/1995/1029 (Lancaster House Agreement).

Office of the High Representative report to the Peace Implementation Council (PIC), "Implementation of the Human Rights Provision of the Peace Agreement", PIC Main Meeting of 13 June 1996.

Peace Implementation Council Bonn Conclusions, 10 December 1997.

Office of the High Representative report to the Peace Implementation Council (PIC), "Implementation of the Human Rights Provision of the Peace Agreement", PIC Main Meeting of 13 June 1996.

Statement on Kosovo of the Contact Group Foreign Ministers, New York, 24 September 1997.

Bonn Peace Implementation Council Conference, "Bosnia and Herzegovina 1998: Self-Sustaining Structures", 10 December 1997.

Statement on Kosovo of the Contact Group Foreign Ministers, Moscow, 25 February 1998.

Statement on Kosovo, London Contact Group meeting, 9 March 1998.

Declaration on the situation in Kosovo by the Ministers of Foreign Affairs of SEE countries, Istanbul, 9 June 1998.

Deputy Secretary Strobe Talbott, Kenyon C. Bolton Memorial Lecture to the Cleveland Council on World Affairs, Cleveland, Ohio 9 October 1998.

U.S. Government Printing Office, Statement on the Situation in Kosovo, in *Administration of William J. Clinton*, 16 January 1999.

Human Rights Watch, *Civilian Deaths in the NATO Air Campaign*, HRW Report, 7 February 2000.

Communiqué of the PIC Steering Board, 23 June 2006.

Peace Implementation Council, Communiqué of the Steering Board of the Peace Implementation Council of 26 March and 30 June 2009.

See Communiqué of the Steering Board of the Peace Implementation Council, 19 November 2009.