Case Study

HOST-STATE CONSENT AND UNITED NATIONS PEACEKEEPING IN YUGOSLAVIA

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I. INTRODUCTION

The conflict in the former Yugoslavia highlights some problems that arise when the ostensibly simple principle that host-state consent is necessary for U.N. peacekeeping is put into practice.¹ The difficulty of applying this principle, especially when no generally recognized government has effective control of the entirety of a state's territory, is discussed elsewhere in this Symposium.² Such a division of effective control existed in the former Yugoslavia and was compounded by the lack of clarity and consensus in the Security Council mandates which authorize military intervention.³

The following account of events in the former Yugoslavia is partly a description of the difficulties that arose there and partly a demonstration that the notion of consent in this context is a complex one. This examination of efforts to reach agreement on foreign military presence reveals that the issue of consent arose at several different times and in different forms. In Part II below, the various forms of consent are discussed—not only is initial consent to the establishment of a force required, but consent to the scope of its mandate and to the composition of its forces is also sought. Obtaining this formal consent to deployment of an armed force is only the starting point of

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1. On host-state consent in general, see Davis Brown, *The Role of the United Nations in Peacekeeping and Trust Monitoring: What are the Applicable Norms?*, 27 REV. BELGE. D.I. 559 (1994); 1-4 ROSALYN HIGGINS, *UNITED NATIONS PEACEKEEPING* (1972); N.D. WHITE, *KEEPING THE PEACE* 202-4 (1993); David Wippman, *Treaty-Based Intervention: Who Can Say No?*, 62 U. CHI. L. REV. 607 (1995); David Wippman, *Military Intervention, Regional Organization and Host-State Consent*, 7 DUKE J. COMP. & INT'L L. 209 (1996) [hereinafter Wippman, *Military Intervention*].

2. See generally Wippman, *Military Intervention*, *supra* note 1.

3. See generally Mats R. Berdal, *The Security Council, Peacekeeping and Internal Conflict After the Cold War*, 7 DUKE J. COMP. & INT'L L. 71 (1996) (discussing the latter problem in detail).

a peacekeeping operation. Thereafter, consent to detailed rules on the rights of the peacekeeping force by means of a Status of Forces Agreement (SOFA) allows the force to assert its rights against a recalcitrant host state. Difficulties in securing SOFAs in the former Yugoslavia are discussed in Part III.

In complex peacekeeping operations, the perception of what mandate is necessary to bring about resolution of the conflict often changes. Changes to the initial mandate for the peacekeeping force in the former Yugoslavia are discussed in detail in Part IV. Regardless of what formal agreements are concluded, it is cooperation on the ground that is crucial to the success of a peacekeeping mission. Where this is not forthcoming the Security Council may turn to Chapter VII of the U.N. Charter to make stronger the obligation to comply with its resolutions and to cooperate with the peacekeeping force; this practice is discussed in Part V.

Such references to Chapter VII, of course, do not alter the fact that the presence of the peacekeeping force still depends on host-state consent. Moreover, efforts to obtain consent, and even references to Chapter VII, were not enough to ensure cooperation by the parties in the former Yugoslavia with the United Nations Protection Force (UNPROFOR), since the parties saw UNPROFOR as an obstacle in the way of a favorable military solution rather than as an impartial force. This failure to ensure cooperation and reach agreement with respect to the mandate and status of U.N. forces led to the activation of a Rapid Reaction Force, discussed in Part VI, and ultimately to the withdrawal of UNPROFOR from Croatia and to the establishment of the United Nations Confidence Restoration Operation (UNCRO), discussed in Part VII.

As the world community witnessed in the case of the former Yugoslavia, sometimes the inherent limitations on a peacekeeping force, including the legal requirement of host-state consent and the practical requirement of cooperation from all significant parties involved, are at odds with expectations for what the U.N. force might achieve. U.N. Secretary-General Boutros Boutros-Ghali, well aware of the resulting political difficulties, reaffirmed the appropriate role of a peacekeeping force when he welcomed Croatian President Tudjman's announcement that he would accept the establishment of UNCRO in Croatia:

As the Council is considering the question of maintaining a U.N. peacekeeping presence in Croatia, it is timely for me to restate the basic principles of such a presence. A U.N. peacekeeping force can

operate effectively only with the consent and full cooperation of the parties. It is an interim measure whose purpose is to help the parties to find a durable peace based on agreement between the parties themselves. It is not intended nor equipped to impose a solution on the parties.⁴

II. INITIAL CONSENT TO THE ESTABLISHMENT AND DEPLOYMENT OF UNPROFOR

A. Consent to Establishment and Deployment

The statement that host-state consent is necessary for U.N. peacekeeping is usually made in the context of the establishment and deployment of the peacekeeping force. In the past it has generally, and not surprisingly, been assumed that the necessary consent is that of the host-state government. Recently certain writers have tried to challenge the orthodoxy, at least with regard to what the law *should* be.⁵ However, events in Yugoslavia tend to confirm the traditional position.

Certain points emerge from an examination of the initial consent to the deployment of UNPROFOR in the former Yugoslavia. First, the Security Council resolutions and the Secretary-General's reports on Croatia and Bosnia-Herzegovina refer to the consent of all concerned parties, not simply of the host state. This was consistent with the Secretary-General's *Agenda for Peace* where he said that the consent of "all the parties concerned" in a conflict is necessary to establish a peacekeeping force.⁶ Further, the practice of referring to the consent of all the parties in the Yugoslav conflict follows, to some extent, earlier practices in Angola,⁷ Namibia,⁸ Cambodia⁹ and Mozam-

4. *Report of the Secretary-General Submitted Pursuant to Security Council Resolution 994*, U.N. SCOR, 50th Sess., at 5, U.N. Doc. S/1995/467 (1995) [hereinafter S/1995/467].

5. See, e.g., Wippman, *Military Intervention*, *supra* note 1, at 224-34. For the opposing view, see Georg Nolte, *Restoring Peace by Regional Action: International Legal Aspects of the Liberian Conflict*, 53 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 603 (1993).

6. *Further Report of the Secretary-General Pursuant to Security Council Resolution 721*, U.N. SCOR, 47th Sess., at 2, U.N. Doc. S/23513 (1992) [hereinafter S/23513]; See also *Further Report of the Secretary-General Pursuant to Security Council Resolution 721*, U.N. SCOR, 47th Sess., at 6, U.N. Doc. S/23363 (1992) [hereinafter S/23363]; *Report of the Secretary-General Pursuant to Security Council Resolution 721*, U.N. SCOR, 46th Sess., at 7, U.N. Doc. S/23280 (1991) [hereinafter S/23280].

7. In Angola, a trilateral agreement among Angola, Cuba and South Africa led to the establishment of a United Nations force. See UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, *THE BLUE HELMETS: A REVIEW OF UNITED NATIONS PEACEKEEPING* 325-38, U.N. Doc. DPI/1065, U.N. Sales No. E.90.L18 (1990) [hereinafter *THE BLUE HELMETS*]. Resolution 626, establishing UNAVEM, noted Ango-

bique¹⁰ where U.N. peacekeeping operations were created in order to help secure a political settlement for civil conflicts. Of these operations, however, it was only with reference to Mozambique that a Security Council resolution expressly referred to consent by a non-government party to the conflict to establishing a peacekeeping force.¹¹ In Somalia it was the consent of the government, even though it was no longer in effective control of the whole territory, that was relied on in the Security Council resolutions establishing and deploying the United Nations Operation in Somalia (UNOSOM I) peacekeeping force.¹²

It seems clear that the requirement that all the parties should consent to the establishment and deployment of the force was not a *legal* requirement. Rather, it was only the host state's consent, as expressed by its government, that formed the legal basis for the peacekeeping force first in Yugoslavia and subsequently in its former republics.¹³ This can be seen from the fact that later in the Yugoslav conflict it was the withdrawal of consent by the government of the host state Croatia that meant the peacekeeping force had to be with-

lan and Cuban requests for a U.N. force. See *Letter Dated 17 December 1988 from the Permanent Representative of Cuba to the United Nations Addressed to the Secretary General*, U.N. SCOR, 43rd Sess., U.N. Doc. S/20337 (1988); *Letter Dated 17 December 1988 from the Permanent Representative of Angola to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 43rd Sess., U.N. Doc. S/20336 (1988).

8. The situation in Namibia was unique because of the U.N.'s legal responsibility for Namibia, which was effectively but illegally occupied by South Africa. See *THE BLUE HELMETS*, *supra* note 7, at 341. The U.N. Transition Assistance Group (UNTAG), whose mandate was to ensure the early independence of Namibia through U.N.-supervised elections, was established following a trilateral agreement among Angola, Cuba and South Africa (referred to in Resolution 628). The South West African People's Organization (SWAPO), a major political party in Namibia, was not a party to these Geneva Protocols of August 1988, which provided for a ceasefire. However SWAPO did inform the Secretary-General that it would abide by the ceasefire. See *id.*

9. After the four Cambodian parties in the civil war had made a draft agreement for a comprehensive political settlement and had created a Supreme National Council, the President of the Council invited the United Nations to send peacekeeping forces to Cambodia. See *UNITED NATIONS AND CAMBODIA* at 63-64, U.N. Doc. DPI/1450, U.N. Sales No. E.95.I.9 (1995). Security Council Resolution 717, establishing an advance U.N. mission (UNAMIC), expressly referred to this invitation. *Id.*

10. After the government and the opposing side, RENAMO, concluded a general peace agreement, the government formally requested the establishment of a U.N. force. Security Council Resolution 782 also expressly referred to a joint declaration by the government and RENAMO accepting the creation and deployment of a U.N. force. S.C. Res. 782, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/782 (1992). Resolution 797 subsequently established the United Nations Operation in Mozambique (UNOMOZ). S.C. Res. 797, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/797 (1992).

11. See *id.*

12. S.C. Res. 775, U.N. SCOR, 47th Sess., at 2, U.N. Doc. S/RES/775 (1992); S.C. Res. 767, U.N. SCOR, 47th Sess., at 1, U.N. Doc. S/RES/767 (1992); S.C. Res. 751, U.N. SCOR, 47th Sess., at 1, U.N. Doc. S/RES/751 (1992); S.C. Res. 733, U.N. SCOR, 47th Sess., at 1, U.N. Doc. S/RES/733 (1992).

13. See *supra* note 5.

drawn from its territory.¹⁴ The consent of other parties involved in the conflict is important as a matter of *practical* necessity. The peacekeeping force would not be able to function without the cooperation of the parties on the ground.

It would, however, be going too far to assert that existing international law *already* looks beyond the government to groups within the state for consent to U.N. intervention, even if the government no longer has control over the whole territory.¹⁵ Requiring consent by all the parties may be a practical policy at the stage of initial consent, and one that increases the chances of success of the peacekeeping operation. However, as recounted below, subsequent developments in Yugoslavia with regard to changes in the mandate, questions of composition, and the withdrawal of consent show the Security Council and Secretary-General consistently giving decisive weight to the wishes of the governments of Croatia and of Bosnia-Herzegovina rather than to other parties involved in the conflict.

The Security Council made the controversial decision to send a peacekeeping force to Yugoslavia after much hesitation and extensive consultation. It asked the Secretary-General to investigate the prospects for successful deployment of a peacekeeping force. In his reports to the Security Council, the Secretary-General repeatedly insisted that he needed the full and explicit acceptance by the parties directly involved of the concept for a U.N. peacekeeping operation, and a commitment on their part to ensure full cooperation with such a peacekeeping force.¹⁶ He emphasized the need for all the Yugoslav parties concerned to consent to the establishment and deployment of the force.¹⁷

At first the prospects for consent looked promising. The Secretary-General reported to the Security Council in November 1991 that each of the Yugoslav participants had stated that they wanted to see the deployment of a peacekeeping operation as soon as possible, and that they welcomed the concept of the operation, its mandate, its organization and the areas where it would be deployed, put forward in preliminary form by the Secretary-General's Special Envoy.¹⁸ These

14. See *infra* Part VII.

15. Some, however, have asserted that this ought to be the case. See, e.g., Wippman, *Military Intervention*, *supra* note 1, at 224-34.

16. See S/23513, *supra* note 6, at 2; S/23363, *supra* note 6, at 6; S/23280, *supra* note 6, at 7.

17. S/23513, *supra* note 6, at 2.

18. *Letter Dated 24 November 1991 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 46th Sess., at 2, U.N. Doc. S/23239 (1991).

'participants' at a series of meetings to discuss the deployment of peacekeeping forces were President Milosevic of Serbia, President Tudjman of Croatia, and General Kadijevic, Secretary of State for National Defence of the Socialist Federal Republic of Yugoslavia. The statement by the Secretary-General that the participants had consented was followed by a letter from the Federal Republic of Yugoslavia to the Security Council formally requesting the establishment of a peacekeeping operation in Yugoslavia. It read, "I have been instructed by my Government to request the establishment of a peacekeeping operation in Yugoslavia which reflects at the same time the expressed desire of the principal parties to the present conflict."¹⁹ The Security Council in Resolution 721 explicitly took account of these expressions of consent in urging the Secretary-General to continue to pursue the possible establishment of a peacekeeping force.²⁰ It said,

Considering the request by the Government of Yugoslavia for the establishment of a peacekeeping operation in Yugoslavia,

Considering further the fact that each one of the Yugoslav participants in the meeting with the Personal Envoy of the Secretary-General stated that they wanted to see the deployment of a U.N. peacekeeping operation as soon as possible²¹

Following these statements, problems over consent began to emerge. The Secretary-General's reports to the Security Council under Resolution 721, from December 1991 to February 1992, refer to difficulties in obtaining and keeping the consent to the U.N. peacekeeping operation in Yugoslavia of Milan Babic, a leader of the Serbian community in Croatia, and of President Tudjman of Croatia.²² All concerned Yugoslav parties had indicated full acceptance of the U.N. peacekeeping concept, but there had been recent public statements by some of the leaders suggesting that further clarification was needed. Babic was unhappy with any reference to the U.N. peacekeeping forces operating in protected areas "in Croatia" as he sought independence for the Serb-populated areas. President Tudjman was not willing to accept arrangements that seemed to take con-

19. *Letter Dated 26 of November 1991 from the Permanent Representative of Yugoslavia to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 46th Sess., at 1, U.N. Doc. S/23240 (1991).

20. S.C. Res. 721, U.N. SCOR, 46th Sess., at 1, U.N. Doc. S/RES/721 (1991) (passed unanimously).

21. *Id.*

22. See S/23513, *supra* note 6, at 5; S/23363, *supra* note 6, at 5; S/23280, *supra* note 6, at 5.

trol of local government and public order in the proposed U.N.-protected areas in Croatia out of Croatia's authority.²³

After the Secretary-General had reported these problems over consent, President Tudjman wrote to the Security Council on February 6, 1992. His letter read, "In order to avoid any misunderstanding I inform you that I accept, fully and unconditionally, the United Nations Secretary-General's concept and plan which defines the conditions and areas where the United Nations force would be deployed."²⁴ Security Council Resolution 740 noted this:

[T]aking note that the letter of President Franjo Tudjman of 6 February 1992, in which he accepts fully the Secretary-General's concept and plan which defines the conditions and areas where the U.N. force would be deployed, removes a further obstacle in that respect . . . expresses its concern that the U.N. peacekeeping plan has not yet been fully and unconditionally accepted by all in Yugoslavia on whose cooperation its success depends.²⁵

However, President Tudjman subsequently equivocated about his consent in such a way as to cast doubt on the validity of his commitment. The Secretary-General's Special Envoy, Cyrus Vance, wrote expressing dismay and seeking reassurance.²⁶ President Tudjman reconfirmed his acceptance, but in distinctly ominous terms. President Tudjman stated that the U.N. peace plan envisaged status of forces agreements and that these would have to resolve what he referred to as "technical questions" such as matters to do with traffic, trade, banking, currency, the maintenance of law and order, and the return of refugees.²⁷ However, as the Secretary-General pointed out, these were not in fact technical issues. Rather they were substantive matters relating to the extension of Croatia's sovereignty over U.N.-protected areas. Nonetheless, the Secretary-General said he would accept in good faith President Tudjman's positive assurances, and similarly would discount Babic's resistance.²⁸ He therefore recommended the establishment of UNPROFOR. Its initial mandate was

23. See S/23513, *supra* note 6, at 5.

24. *Further Report of the Secretary-General Pursuant to Security Council Resolution 721*, U.N. SCOR, 47th Sess., Annex I, U.N. Doc. S/23592 (1992) [hereinafter S/23592].

25. S.C. Res. 740, U.N. SCOR, 47th Sess., at 1, 2, U.N. Doc. S/RES/740 (1992) (passed unanimously).

26. See S/23592, *supra* note 24, at Annex II.

27. See *id.* at Annex III.

28. See *id.* at 3.

to "create the conditions of peace and security required for the negotiation of an overall settlement of the Yugoslav crisis."²⁹

The Secretary-General did note the potential danger to the implementation of the peacekeeping plan³⁰ and these fears turned out to be justified. When the conflict in Yugoslavia threatened to spread to Bosnia-Herzegovina, the government of Bosnia repeatedly requested the establishment of a U.N. force.³¹ The Secretary-General again investigated the feasibility of deploying such a force and, as with Croatia, repeatedly stressed the need for the agreement of all the hostile parties.³² This was eventually given in a limited form when the parties came to a ceasefire agreement in June 1992. The agreement included a provision that UNPROFOR would be deployed in Bosnia-Herzegovina in order to secure the operation of Sarajevo airport.³³ The Security Council noted in Resolution 758, which enlarged the strength and mandate of UNPROFOR to allow it to deploy in Bosnia-Herzegovina, "the agreement of all the parties in Bosnia-Herzegovina to the reopening of Sarajevo airport for humanitarian purposes, under the exclusive authority of the United Nations, and with the assistance of UNPROFOR."³⁴ With regard to Macedonia, the process of establishing consent to the deployment of UNPROFOR as a preventive force proved more straightforward. In November 1992, the government of Macedonia made a request to the Security Council for the deployment of UNPROFOR on its territory.³⁵ This request was acknowledged in Security Council Resolution 795³⁶ and a small force was deployed inside its borders with Albania and Yugoslavia (Serbia and Montenegro) with the preventive mandate of monitoring any developments which could undermine stability.³⁷

29. S.C. Res. 743, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/743 (1992) (passed unanimously).

30. See S/23592, *supra* note 24, at 3.

31. See *Further Report of the Secretary-General Pursuant to Security Council Resolution 749*, U.N. SCOR, 47th Sess., at 4, U.N. Doc. S/23900 (1992) [hereinafter S/23900]; *Report of the Secretary-General Pursuant to Security Council Resolution 749*, U.N. SCOR, 47th Sess., at 3, U.N. Doc. S/23836 (1992) [hereinafter S/23836]; S/23363, *supra* note 6, at 4.

32. See S/23900, *supra* note 31, at 8; S/23836, *supra* note 31, at 6.

33. See *Report of the Secretary-General Pursuant to Security Council Resolution 757*, U.N. SCOR, 47th Sess., at 1, U.N. Doc. S/24075 (1992).

34. S.C. Res. 758, U.N. SCOR, 47th Sess., at 1, U.N. Doc. S/RES/758 (1992) (passed unanimously).

35. *Letter Dated 23 November 1992 from the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24851 (1992).

36. S.C. Res. 795, U.N. SCOR, 47th Sess., at 1, U.N. Doc. S/RES/795 (1992).

37. See *Report of the Secretary-General on the Former Yugoslav Republic of Macedonia*, U.N. SCOR, 47th Sess., at 1, U.N. Doc. S/24923 (1992).

B. Consent to Mandate

It is also clear from the negotiations between the parties and the Secretary-General leading up to the creation of UNPROFOR and its deployment in Croatia, Bosnia-Herzegovina and Macedonia that consent is sought by the United Nations not just for establishment of the force, but also for the details of its mandate. Thus, in Croatia detailed discussions were held on the U.N. peace plan and on the exact regime in the U.N.-protected Areas.³⁸ Again, with regard to Bosnia-Herzegovina the conflicting parties were involved in working out the precise mandate of UNPROFOR.³⁹

C. Consent to Composition

The question of consent to the composition of the peacekeeping force has given rise to debate as to who has the final say in determining the nationality of the troops of the force. The issue whether the host state, the Security Council or the Secretary-General has the final say arose with regard to the United Nations Emergency Force (UNEF) in the Middle East and the United Nations Operation in the Congo (ONUC).⁴⁰ In both these instances, the host state tried to assert control but was resisted by the United Nations. It seems, as a matter of principle, that the United Nations itself, through whatever organ has established the peacekeeping force, should determine the composition of the force. Any other solution would be incompatible with the impartial status of the force. However, it is clear that, in reality, behind-the-scenes discussions take place between members of the Security Council, the host state and troop contributing states. This pattern was followed again in the former Yugoslavia.

In Yugoslavia, the issue of composition did not give rise to much public discussion. The more serious problem was getting hold of any troops at all, rather than the question of the troops' nationality.⁴¹ Although in the *Concept for a United Nations Peacekeeping Operation in Yugoslavia* the Secretary-General recommended that "[t]he contributing states would be approved on the recommendation of the

38. See S/23592, *supra* note 24; S/23513, *supra* note 6; S/23363, *supra* note 6; S/23280, *supra* note 6.

39. See S/23900, *supra* note 31; see also 1992 U.N.Y.B. 349, U.N. Sales No. E.93.I.1.

40. See 1 HIGGINS, *supra* note 1, at 367-68; 3 HIGGINS, *supra* note 1, at 135.

41. See, e.g., *Report of the Secretary-General Pursuant to Resolution 844 (1993)*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/555 (1994); *Former Yugoslavia: Increased Sanctions Weighed*, U.N. CHRON., Dec. 1994, at, 26, 27; *Yugoslavia: Situation Far From Stable*, U.N. CHRON., June 1994, at 22, 26.

Secretary-General after consultation with the Yugoslav parties,"⁴² such approval, if it was sought and given, seems to have taken place mainly in private. The early U.N. practice of not accepting troops from the permanent members of the Security Council or from states with interests in the host state⁴³ was not followed in Yugoslavia. Troops were supplied by the United Kingdom, Russia, France, Germany and Turkey among others. The question of the nationality of peacekeeping troops was not raised publicly by any host state (except in passing and informally in the notorious episode when a Croatian official responsible for relations with the U.N. called for "all-'European' forces").⁴⁴ Other concerned parties did, however, express some reservations about the composition of the force. For example, the participation by troops from Turkey, a state with historic interests in the region and sympathies with the government of Bosnia-Herzegovina, was challenged when Turkish troops were sent to UNPROFOR in Bosnia-Herzegovina in March 1994. The Secretary-General had recommended that Turkey's offer to contribute be accepted⁴⁵ and the Security Council concurred.⁴⁶ The Bosnian Serbs expressed concern,⁴⁷ Greece and Bulgaria wrote to the Security Council in opposition,⁴⁸ and Yugoslavia (Serbia and Montenegro) also complained, stating that

[t]he complex nature of the civil, inter-ethnic and religious conflict in Bosnia-Herzegovina and its deep historical roots and underlying causes make it necessary that no former occupying power of the territories of the former Yugoslavia or any neighbouring state should be involved with their forces in peacekeeping efforts Though it is commendable that the United Nations has so far respected the historical sensitivities on the ground, it is indeed dis-

42. S/23280, *supra* note 6, at 15.

43. See generally Sally Morphet, *U.N. Peacekeeping and Election-Monitoring*, in UNITED NATIONS, DIVIDED WORLDS 183, 187-88 (Adam Roberts & Benedict Kingsbury eds., 2d ed., 1993); BROWN, *supra* note 1, at 599. For comparison, see 1 HIGGINS, *supra* note 1, at 300; 3 HIGGINS, *supra* note 1, at 84; 4 HIGGINS, *supra* note 1, at 159 (noting that this practice of avoiding participation by the permanent members of the Security Council in peacekeeping forces had already been abandoned in Cyprus and Lebanon).

44. *Croatian Call For All-'European' Force*, *News Digest for April 1995*, 41 KEESING'S RECORD OF WORLD EVENTS 40512 (1995).

45. "See Letter Dated 22 March 1994, from the Secretary-General Addressed to the President of the Security Council, U.N. SCOR, 49th Sess., at 1, U.N. Doc. S/1994/330 (1994).

46. See *Letter Dated 23 March 1994 from the President of the Security Council Addressed to the Secretary-General*, U.N. SCOR, 49th Sess., at 1, U.N. Doc. S/1994/331 (1994).

47. See *UN Call For Troop Reinforcements—UK Response—Planned Despatch of Turkish Contingent*, *News Digest for March 1994*, 40 KEESING'S RECORD OF WORLD EVENTS 39, 926 (1994).

48. See *id.*

turbing that these basic principles of peacekeeping have now been disregarded and that the United Nations has succumbed to pressure to engage a Turkish force within UNPROFOR.⁴⁹

Later, when Germany contributed troops to UNPROFOR in Bosnia-Herzegovina in June 1995, Yugoslavia (Serbia and Montenegro) again protested partly because of German involvement in the region during World War II and because Germany was seen as favoring the Croats.⁵⁰ Yugoslavia said that the participation by Germany provoked understandable disquiet and serious concern.⁵¹ This marked yet another breach of the United Nations' principle that neighbouring states which had occupied territory of the former Yugoslavia in the past should not contribute to troops there.⁵²

III. CONSENT AND COOPERATION: THE PROBLEMS IN SECURING STATUS OF FORCES AGREEMENTS

The Secretary-General made it clear from the outset that it was not enough merely to secure formal consent of the parties to the establishment and deployment of UNPROFOR; promises of cooperation with the U.N. force were also needed.⁵³ This cooperation requirement can be seen as a necessary extension of the principle of consent. Based on the principles of effectiveness and good faith, consent should not be interpreted as a purely formal requirement. Given that host-state consent means that the host state has agreed to the presence and mandate of U.N. forces, consent by the host state also necessarily implies that it has undertaken to cooperate with those forces.

In the former Yugoslavia lack of cooperation was the main factor that made it impossible for UNPROFOR to fulfil its mandate. One aspect of the parties' reluctance to give real cooperation was the delay or outright refusal of host states to conclude SOFAs with UNPROFOR. Such agreements govern the rights, duties, and privileges and immunities of U.N. forces and are commonly concluded

49. U.N. SCOR, 49th Sess., 3370th mtg., at 33, U.N. Doc. S/PV.3370 (1994); *see also* U.N. SCOR, 49th Sess., at 2, U.N. Doc. S/1994/350 (1994).

50. This information was obtained from a confidential British government document which refers to a Public Statement of Foreign Ministry of Yugoslavia on June 30, 1995. Further details can be obtained by contacting the author.

51. *See id.*

52. *See Provision of Artillery to UNPROFOR—Vote to Deploy German Forces, News Digest for June 1995*, 41 KEESING'S RECORD OF WORLD EVENTS 40607 (1995).

53. *See Wippman, Military Intervention, supra* note 1.

with host states.⁵⁴ In 1990, at the request of the General Assembly, the Secretary-General produced a Model SOFA. The Model SOFA provided for freedom of movement and freedom of communication for U.N. forces, prohibited the imposition of tolls for roads, bridges, canals, ports and airfields, allowed the import of materiel for the U.N. force free of duty and provided for the freedom to recruit local personnel without government interference.⁵⁵ In an ideal world, it would be compulsory for a SOFA to be approved by a host state before a U.N. peacekeeping force could be deployed. However, owing to the realities of international politics, such approval is not compulsory. For example, in Yugoslavia, the United Nations was only able to receive equivocal consent from the host state; it would not have been possible for the United Nations to receive approval for a SOFA from the host state as well.

At the beginning of the conflict in the former Yugoslavia, the Secretary-General was optimistic about prospects for the conclusion of such SOFAs. In April 1992, he reported that the final text of an agreement had been agreed to by Bosnia-Herzegovina, a tentative agreement had been reached with Croatia, and protracted negotiations were being conducted with Yugoslavia (Serbia and Montenegro). He said that the primary difficulties related to the provision of goods and services to UNPROFOR by the various Yugoslav parties either free of charge or on the most favorable terms.⁵⁶ In fact, the agreement with Bosnia-Herzegovina was not concluded until May 1993.⁵⁷ No agreement was made with Croatia on UNPROFOR, although Croatia did conclude an agreement on the successor to UNPROFOR in Croatia, UNCRO.⁵⁸ Further, no agreement was concluded with Yugoslavia (Serbia and Montenegro).⁵⁹ A SOFA was

54. See 1 HIGGINS, *supra* note 1, at 372; Morphet, *supra* note 43, at 187-88.

55. See *Comprehensive Review of the Whole Question of Peacekeeping Operations in All Their Aspects*, U.N. GAOR, 45th Sess., at 5,7, Agenda Item 76, U.N. Doc. A/45/594 (1990).

56. See *Further Report of the Secretary-General Pursuant to Security Council Resolution 749* (1992), U.N. SCOR, 47th Sess., at 2-3, U.N. Doc. S/23844 (1992) [hereinafter S/23844].

57. See *Report of the Secretary-General Pursuant to Security Council Resolution 947* (1994), U.N. SCOR, 50th Sess., para. 56, U.N. Doc. S/1995/222 (1995) [hereinafter S/1995/222].

58. See S/1995/467, *supra* note 4, at 5.

59. See S/1995/222, *supra* note 57, para. 58. The Secretary-General reported in March 1995 that no progress had been made on the conclusion of the necessary arrangements with Yugoslavia (Serbia and Montenegro). However, he found that in practice the absence of a SOFA had not caused problems. There was a satisfactory level of cooperation with the authorities. But it was important that the government extend to the U.N. force, its personnel, property funds and assets, the necessary privileges and immunities deriving from Article 105(1) of the Charter, the Convention on the Privileges and Immunities of the United Nations, to which the Federal Republic of Yugoslavia (Serbia and Montenegro) is a party, and the custom-

made with Macedonia on March 13, 1995.⁶⁰

The Security Council repeatedly called on the states to conclude SOFAs.⁶¹ For example, in Resolution 947 it expressed concern that SOFAs had not been concluded with Croatia, Macedonia or Yugoslavia (Serbia and Montenegro) and called on them to make such agreements.⁶² The Secretary-General also regretted the difficulties in securing SOFAs.⁶³

The mere conclusion of a SOFA, however, cannot guarantee cooperation by the host state with the U.N. force. This is clearly illustrated by events in Bosnia-Herzegovina *after* the conclusion of the SOFA on May 15, 1993. UNPROFOR was not provided the various premises it required free of cost, as was called for by the agreement. Further, the government of Bosnia demanded that the United Nations surrender some facilities it already occupied, pay for other new facilities, and reopen negotiations on the terms of employment for local staff. The United Nations was concerned about the taxation of local employees, their forcible mobilization and detention by government authorities.⁶⁴ Thus, while the existence of a SOFA does not mean cooperation by the host state, the Security Council thought it worthwhile to press for its conclusion. A SOFA's existence is not only of symbolic importance as a sign of commitment by the host state; it also provides specific standards which the U.N. force can invoke in dealing with the host state. Further, it improves the bargaining position of the U.N. forces in demanding cooperation from the host state.

The prolonged absence of a SOFA contributed to the difficulties experienced by UNPROFOR in Croatia. The Secretary-General reported on the difficulties and expenses incurred by UNPROFOR in Croatia stating that "[w]hile the Croatian authorities were most cooperative and generous during the initial phase of the mission, there have been recent indications that UNPROFOR's continuing use of

ary principles and practices applicable to United Nations peacekeeping or similar operations.

60. *See id.*

61. *See* S.C. Res. 908, U.N. SCOR, 49th Sess., 3356th mtg., at 3, U.N. Doc. S/RES/908 (1994) [hereinafter S/RES/908]; S.C. Res. 947, U.N. SCOR, 49th Sess., 3434th mtg., at 2-3, U.N. Doc. S/RES/947 (1994) (passed unanimously) [hereinafter S/RES/947]; S.C. Res. 981, U.N. SCOR, 50th Sess., 3512th mtg., at 4, U.N. Doc. S/RES/981 (1995).

62. S/RES/947, *supra* note 61, at 2-3.

63. *See Report of the Secretary-General Pursuant to Paragraph 4 of the Security Council Resolution 947 (1994)*, U.N. SCOR, 50th Sess., at 7, U.N. Doc. S/1995/38 (1995); S/1995/222, *supra* note 57, at 16-17.

64. *See* S/1995/222, *supra* note 57, para. 55.

Croatian facilities is being approached on a commercial basis."⁶⁵ Thus, UNPROFOR was charged \$8.6 million in fuel tax for the period July to December 1994 and \$2.5 million airport tax in 1994.⁶⁶ Such charges are inconsistent not only with the U.N.'s Model SOFA, but also with the 1946 Convention on the Privileges and Immunities of the United Nations.⁶⁷ By mid-1995 the Secretary-General had become more openly critical of Croatia's failure to conclude a SOFA with regard to UNCRO, the force that had replaced UNPROFOR. He referred to "[d]ifficulties [that] have arisen as a result of demands by Croatian authorities which are incompatible with the model status-of-forces agreement."⁶⁸ When Croatia finally concluded an agreement, the Secretary-General welcomed the signing of the long-delayed SOFA on May 15, 1995 as a positive step that was expected to reduce obstructions to the functioning of the peacekeeping operation.⁶⁹ However, the Secretary-General later reported disappointment:

Although the conclusion of the agreement was welcomed as a positive step, I regret that, at the time of writing, the Government of Croatia has yet to implement fully various of its provisions such as making available the necessary premises free of rent and making arrangements to exempt the United Nations forces and operations from various taxes and tolls Despite repeated requests at various levels, the Government of Croatia has not so far honoured its commitments in this regard.⁷⁰

IV. SUBSEQUENT CHANGES TO THE INITIAL MANDATE OF UNPROFOR: IS FURTHER CONSENT NECESSARY?

It is well known that the initial mandate of UNPROFOR was expanded many times. Over thirty Security Council resolutions directly concerning UNPROFOR were passed out of a total of over eighty-five resolutions on the Yugoslav conflict. UNPROFOR's mandate was gradually altered through incremental additions to the

65. *Id.*

66. *See id.*

67. *Convention on the Privileges and Immunities of the United Nations*, Feb. 13, 1946, 21 U.S.T. 1418, 1 U.N.T.S. 15.

68. *Report of the Secretary-General Submitted Pursuant to Paragraph 4 of Security Council Resolution 981 (1995)*, U.N. SCOR, 50th Sess., at 9, U.N. Doc. S/1995/320 (1995).

69. *See S/1995/467, supra* note 4, at 5.

70. *Report of the Secretary-General Submitted Pursuant to Security Council Resolution 1009 (1995)*, U.N. SCOR, 50th Sess., at 10, U.N. Doc. S/1995/730 (1995).

original functions, reflecting in part a response to events and the need for the Security Council to be seen as acting, and in part the absence of any agreement between members of the Council as to long term strategy and short term tactics. The issues here are (1) whether the consent of the host states and of other parties to alterations in the mandate is legally necessary, and (2) whether this consent was in fact sought and given to the subsequent changes to UNPROFOR's initial mandate.

With regard to the issue of principle, no categorical answer is possible at this stage. Earlier U.N. practice, such as that in the Congo, does not provide any clear precedent that would cover the type of situation that arose in the former Yugoslavia. Nevertheless, given that the host state's consent to the initial mandate has invariably been sought in practice, it could be argued that its consent to subsequent changes is also necessary. Even if this is not already a legal requirement, the government of the host state retains ultimate control through its power to withdraw consent to the presence of the peacekeeping force on its territory.⁷¹ However, the situation with regard to the consent of the host state to changes in the initial mandate changes when the alterations are made under Chapter VII of the Charter.⁷²

With regard to the issue of whether consent to the subsequent changes in UNPROFOR's mandate was actually sought and given in the former Yugoslavia, the answer is complex. Some of the resolutions altering the mandate do expressly refer to consent by all the concerned parties. Resolution 762 contains an apparent reference to consent when it gives UNPROFOR a new role in monitoring Serb-occupied zones (the so-called pink zones) outside the U.N.-protected areas in Croatia—it states that UNPROFOR is to carry out its functions “with the agreement of the government of Croatia and others concerned.”⁷³ Again, in Resolution 781, establishing the no-fly zone over Bosnia-Herzegovina,⁷⁴ the Security Council recalls the Agreement arrived at between the interested parties at the London Conference to establish such a zone, noting as well the letter by Bosnia-Herzegovina to the Security Council calling for the enforcement of

71. See *infra* Part VII.

72. See *infra* Part V.

73. S.C. Res. 762, U.N. SCOR, 47th Sess., 3088th mtg., para. 7, U.N. Doc. S/RES/762 (1992) (passed unanimously).

74. S.C. Res. 781, U.N. SCOR, 47th Sess., 3122d mtg., U.N. Doc. S/RES/781 (1992).

the no-fly zone agreed to at the London Conference.⁷⁵ Other resolutions altering UNPROFOR's mandate refer specifically to government consent. Thus, Resolution 824 on the establishment of safe areas takes into consideration "the formal request submitted by Bosnia-Herzegovina" with regard to Zepa.⁷⁶ This request stated, "we suggest the Security Council declare . . . Zepa as a United Nations protected area and send a company of blue helmets to defend this area and the civilian population there."⁷⁷

Except for these resolutions, the many resolutions expanding UNPROFOR's mandate do so without any express reference to consent.⁷⁸ These expansions led to problems with consent of the parties. As the Secretary-General said in the *Supplement to the Agenda for Peace*:

Three aspects of recent mandates, in particular, have led peacekeeping operations to forfeit the consent of the parties, to behave in a way that was perceived to be partial or to use force other than in self-defence. These were the task of protecting humanitarian operations during fighting, the protection of civilian populations in safe areas, pressing parties to accept national reconciliation at a pace faster than they were ready to accept. In Bosnia, as in Somalia, the Security Council gave existing peacekeeping operations ad-

75. See *Letter Dated 2 November 1992 From the Permanent Representative of Bosnia and Herzegovina to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24750 (1992); *Letter Dated 23 October 1992 From the Permanent Representative of Bosnia and Herzegovina to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24709 (1992); *Letter Dated 5 October 1992 From the Permanent Representative of Bosnia and Herzegovina to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24616 (1992).

76. S.C. Res. 824, U.N. SCOR, 48th Sess., 3208th mtg., at 1, U.N. Doc. S/RES/824 (1993) (passed unanimously).

77. *Letter Dated 4 May 1993 From the Permanent Representative of Bosnia and Herzegovina to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 48th Sess., Annex, at 2, U.N. Doc. S/25718 (1993); see also *Letter Dated 31 October 1992 From the Permanent Representative of Bosnia and Herzegovina to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 47th Sess., U.N. Doc. S/24749 (1992).

78. See S.C. Res. 815, U.N. SCOR, 48th Sess., 3189th mtg., U.N. Doc. S/RES/815 (1993) [hereinafter S/RES/815]; S.C. Res. 807, U.N. SCOR, 48th Sess., 3174th mtg., U.N. Doc. S/RES/807 (1993) [hereinafter S/RES/807]; S.C. Res. 802, U.N. SCOR, 48th Sess., 3163d mtg., U.N. S/RES/802 (1993); S.C. Res. 779, U.N. SCOR, 47th Sess., 3118th mtg., U.N. Doc. S/RES/779 (1992); S.C. Res. 776, U.N. SCOR, 47th Sess., 3114th mtg., U.N. Doc. S/RES/776 (1992) [hereinafter S/RES/776]; S.C. Res. 769, U.N. SCOR, 47th Sess., 3104th mtg., U.N. Doc. S/RES/769 (1992). In fact, some of these resolutions were passed with the consent of the host-state government. For example, Resolution 769 allowing UNPROFOR to operate immigration controls in the U.N.-protected areas was passed after Croatia had expressed support for it. *Letter Dated 7 August 1992 from the Chargé d'Affaires A.I. of the Permanent Mission of Croatia to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 47th Sess., U.N. Doc. S/24390 (1992).

ditional mandates requiring the use of force and therefore they could not be combined with existing mandates requiring the consent of the parties, impartiality and the non-use of force.⁷⁹

Because the peacekeeping forces were authorized to go beyond limited monitoring of a ceasefire, and because they were authorized to use force to carry out their mandate, there was an obvious possibility that they would become involved in conflict with the various parties, including the host state government. Although the force was originally established on the basis of host-state consent, the extension of its mandate meant that it could no longer rely on that consent to its operations. This leads to a discussion of the use by the Security Council of Chapter VII of the U.N. Charter.

V. BLURRING THE DISTINCTION BETWEEN PEACEKEEPING AND ENFORCEMENT ACTION: THE USE OF CHAPTER VII OF THE U.N. CHARTER AND THE IMPLICATIONS FOR HOST-STATE CONSENT

UNPROFOR was beset by operational difficulties from the start of its operations. At the least, UNPROFOR met with non-cooperation and interference with its freedom of movement. This escalated to offensives across UNPROFOR positions in violation of the U.N. peacekeeping plan in Croatia and of local ceasefires in Bosnia, and to attacks on U.N. forces and hostage taking. All the parties were responsible for this non-cooperation.⁸⁰ Partly in response to these difficulties, the Security Council not only authorized member states to use force under Chapter VII to secure the implementation of its resolutions,⁸¹ but also turned to Chapter VII in its resolutions

79. *Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations*, U.N. SCOR, 50th Sess., paras. 34-35, U.N. Doc. S/1995/1 (1995).

80. See S/1995/222, *supra* note 57; *Report of the Secretary-General Pursuant to Paragraph 4 of Security Council Resolution 947 (1994)*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/38 (1995); *Report of the Secretary-General Pursuant to Security Council Resolution 908 (1994)*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/1067 (1994); *Letter Dated 26 July 1994 From the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/888 (1994); *Report of the Secretary-General Pursuant to Resolution 871 (1993)*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/300 (1994); *Report of the Secretary-General Pursuant to Security Council Resolution 815 (1993)*, U.N. SCOR, 48th Sess., U.N. Doc. S/25777 (1993); *Report of the Secretary-General Pursuant to Security Council Resolution 762 (1992)*, U.N. SCOR, 47th Sess., U.N. Doc. S/24353 (1992); S/23900, *supra* note 31; S/23844, *supra* note 56; See Brown, *supra* note 1 (providing a rather one-sided account); see generally Charles G. Boyd, *Making Peace with the Guilty: The Truth about Bosnia*, 74 FOREIGN AFF. 22 (1995).

81. See S.C. Res. 958, U.N. SCOR, 49th Sess., 3461st mtg., U.N. Doc. S/RES/958 (1994); S/RES/908, *supra* note 61; S.C. Res. 836, U.N. SCOR, 48th Sess., 3228th mtg., U.N. Doc. S/RES/836

on UNPROFOR. Chapter VII empowers the Security Council to make decisions authorizing enforcement action by member states or by U.N. forces, and these decisions are binding on all member states. Thus, although UNPROFOR was originally established as a peacekeeping force whose deployment depended on the consent of the host state, the Security Council subsequently turned to Chapter VII in order to impose binding obligations on member states, including the host state, to comply with its resolutions and to cooperate with the peacekeeping force.

The first sixteen resolutions on UNPROFOR made no reference to Chapter VII; such reference was rare in the context of peacekeeping operations.⁸² The institution of peacekeeping developed outside the context of Chapter VII and indeed outside the formal framework of the U.N. Charter through the practice of the U.N. and its member states. Peacekeeping traditionally operated by host-state consent and with the cooperation of all concerned parties; it typically involved lightly armed forces which were impartial and which used force only in self-defense.⁸³

In the early days of the Yugoslav conflict, the Security Council made express reference to Chapter VII only in its resolutions on sanctions⁸⁴ and then in Resolution 770 authorizing member states to use force to secure the delivery of humanitarian aid by the United Nations.⁸⁵ China abstained in the vote on this resolution and in the vote on Resolution 776 which authorized UNPROFOR to use force to secure the delivery of humanitarian aid.⁸⁶ It did this precisely be-

(1993) [hereinafter S/RES/836]; S.C. Res. 816, U.N. SCOR, 48th Sess., 3191st mtg., U.N. Doc. S/RES/816 (1993); S.C. Res. 787, U.N. SCOR, 47th Sess., 3137th mtg., U.N. Doc. S/RES/787 (1992); S.C. Res. 770, U.N. SCOR, 47th Sess., 3106th mtg., U.N. Doc. S/RES/770 (1992) [hereinafter S/RES/770].

82. At the end of the Iran-Iraq war, the U.N. observer team created to monitor the ceasefire was established under Resolution 598, which passed under Chapter VII. S.C. Res. 598, U.N. SCOR, 42d Sess., 2750th mtg., U.N. Doc. S/RES/598 (1987). Similarly, the United Nations Iraq-Kuwait Observation Mission (UNKOM), the observer mission established at the end of the Iraq-Kuwait conflict, was created by Resolution 689, which passed under Chapter VII. S.C. Res. 689, U.N. SCOR, 46th Sess., 2983d mtg., U.N. Doc. S/RES/689 (1991).

83. See generally HIGGINS, *supra* note 1; WHITE, *supra* note 1.

84. These early resolutions on sanctions were: S.C. Res. 760, U.N. SCOR, 47th Sess., 3086th mtg., U.N. Doc. S/RES/760 (1992); S.C. Res. 757, U.N. SCOR, 47th Sess., 3082d mtg., U.N. Doc. S/RES/757 (1992); S.C. Res. 724, U.N. SCOR, 46th Sess., 3023d mtg., U.N. Doc. S/RES/724 (1991); S.C. Res. 713, U.N. SCOR, 46th Sess., 3009th mtg., U.N. Doc. S/RES/713 (1991).

85. S/RES/770, *supra* note 81 (twelve members voting in favor; China, India and Zimbabwe abstaining).

86. S/RES/776, *supra* note 78 (twelve members voting in favor; China, India and Zimbabwe abstaining).

cause of the invocation of Chapter VII. China said that it opposed the use of Chapter VII in Resolution 770 and it sought a diplomatic solution to the conflict. Although Resolution 776 did not itself refer to Chapter VII, it did refer to Resolution 770, thereby linking UNPROFOR to Chapter VII. According to China, this changed the nature of the peacekeeping force:

The resolution just adopted by the Security Council aims at enlarging the mandate of UNPROFOR in an effort to provide military support for the delivery of humanitarian assistance to Bosnia-Herzegovina. In principle, the Chinese delegation does not object to the strengthening of humanitarian-assistance activities, but the resolution at issue established a link between the enlargement of the mandate of UNPROFOR and the implementation of Security Council resolution 770 (1992). This is something we cannot accept. It is a well-known fact that the Chinese delegation abstained in the vote on resolution 770 (1992), which authorizes countries to use force in Bosnia-Herzegovina. Therefore, we cannot endorse any actions related to the implementation of this resolution. At the same time, we believe that UNPROFOR should, as a United Nations peacekeeping operation, follow the generally recognized guidelines established in past United Nations peacekeeping operations in implementing its mandate.

However, in this resolution, which provides for the new mandate of UNPROFOR, there are disturbing elements which depart from these guidelines. It must be noted that Security Council Resolution 770 (1992) is a mandatory action taken under Chapter VII of the United Nations Charter. We are concerned that linking this resolution with resolution 770 (1992) will change the non-mandatory nature of UNPROFOR as the United Nations peacekeeping operation. On the one hand, this resolution recognizes that UNPROFOR should observe the normal rules of engagement of United Nations peacekeeping operation in implementing its new mandate, namely to use force only in self-defence. On the other hand, the resolution approves the use of force in self-defence when troops are blocked by armed force. We are concerned that UNPROFOR will run the risk of plunging into armed conflict.⁸⁷

China also was not happy that mandate enlargement of UNPROFOR had not received the express consent of the parties concerned in Bosnia-Herzegovina.⁸⁸

From February 1993 the Security Council began expressly using

87. *Provisional Verbatim Record of the Three Thousand One Hundred and Fourteenth Meeting*, U.N. SCOR, 47th Sess., 3114th mtg., at 11-12, U.N. Doc. S/PV.3114 (1992).

88. *See id.* at 12.

Chapter VII as the basis for its resolutions on UNPROFOR. It did this for the first time in Resolution 807.⁸⁹ In the debate leading to this resolution's adoption, only France and China expressly discussed the reference to Chapter VII.⁹⁰ France regretted that UNPROFOR's mandate was being extended for only six weeks:

But even for a brief interim period, it was unthinkable to us that we extend the present mandate in its current form. It was in that spirit that my delegation proposed a substantive and ambitious draft resolution that places UNPROFOR within the framework of Chapter VII of the Charter and suggested a series of concrete measures aimed at ensuring greater stability in the areas where UNPROFOR is deployed. As to the reference to Chapter VII, I reiterate once again that our idea is not to change the nature of the force, that is to move from peacekeeping to peacemaking. We are moved solely by considerations of preventive security. Indeed, this is reflected in the text of the draft resolution before us.⁹¹

The resolution made it clear that the invocation of Chapter VII was motivated by the need to secure the protection of UNPROFOR. The relevant parts provide:

Deeply concerned by the lack of cooperation of the parties and others concerned in implementing the United Nations peacekeeping plan in Croatia (S/23280, Annex III),

Deeply concerned also by the recent and repeated violations by the parties and others concerned of their cease-fire obligations,

Determining that the situation thus created constitutes a threat to peace and security in the region, . . .

Determined to ensure the security of UNPROFOR and to this end,⁹² acting under Chapter VII of the Charter of the United Nations

China supported the resolution, although it expressed some reservation about the invocation of Chapter VII. China shared the concern regarding the security of UNPROFOR and would vote in favor "considering that the sponsor country has repeatedly stated that the purpose of invoking Chapter VII of the United Nations Charter in this draft resolution is to take measures to increase appropriately

89. S/RES/807, *supra* note 78 (passed unanimously).

90. See *Provisional Verbatim Record of the Three Thousand One Hundred and Seventy-Fourth Meeting*, U.N. SCOR, 48th Sess., 3174th mtg., U.N. Doc. S/PV.3174 (1993) [hereinafter S/PV.3174].

91. *Id.* at 14-15 (comments of Mr. Mrime, France).

92. S/RES/807, *supra* note 78.

UNPROFOR's self defence capability."⁹³ However, China pointed out that UNPROFOR was a peacekeeping operation and that Chapter VII was not invoked in Resolution 743 establishing UNPROFOR or subsequent resolutions. Nor had the current report of the Secretary-General requested any reference to Chapter VII. "With regard to the safety of UNPROFOR personnel, the question could be settled through the expanded concept of self-defense and by taking other appropriate measures without invoking Chapter VII" "We should therefore like to put on record the understanding that the practice of invoking Chapter VII in this draft resolution is an exceptional case and therefore does not constitute a precedent for future U.N. peacekeeping operations."⁹⁴

Having invoked Chapter VII, Resolution 807 then

1. Demands that the parties and others concerned comply fully with the United Nations peacekeeping plan in Croatia and with the other commitments they have undertaken and in particular with their cease-fire obligations;
2. Demands further that the parties and others concerned refrain from positioning their forces in the proximity of UNPROFOR's units in the United Nations Protected Areas (UNPAs) and in the pink zones;
3. Demands also the full and strict observance of all relevant Security Council resolutions relating to the mandate and operations of UNPROFOR in the Republic of Bosnia-Herzegovina;
4. Demands also that the parties and others concerned respect fully UNPROFOR's unimpeded freedom of movement, enabling it *inter alia* to carry out all necessary concentrations and deployments, all movements of equipment and weapons and all humanitarian and logistical activities.⁹⁵

Thus, the resolution imposes binding duties on the parties to co-operate with UNPROFOR in its performance of its mandate. Even absent any reference to Chapter VII, there is such a duty on the host state based on its consent to the establishment and deployment of the peacekeeping force. Chapter VII simply strengthens this duty. The reference to Chapter VII does not by itself give UNPROFOR any extra powers, nor does it amount to a blanket authorization to use

93. S/PV.3174, *supra* note 90, at 21 (Mr. Chen Jian, China).

94. *Id.*

95. S/RES/807, *supra* note 78, at 1, 2.

force as some writers have mistakenly asserted.⁹⁶ UNPROFOR's powers to use force depend on express provision in Security Council resolutions such as Resolution 776 on humanitarian aid and Resolution 836 on safe areas, and on its inherent right to use force in self-defense.

Almost all the subsequent resolutions on UNPROFOR follow Resolution 807 in invoking Chapter VII.⁹⁷ In fact, the Security Council, having once invoked Chapter VII, found itself almost trapped into continuing to make such references. France acknowledged this in the Security Council debate on Security Council Resolution 900⁹⁸ on the restoration of normal life in Sarajevo:

I should like to stress, moreover, that we have adopted this resolution under Chapter VII of the Charter of the United Nations, as the other resolutions on Bosnia and Herzegovina have been since August 1992. In this context, not to have resorted to Chapter VII would for the parties have been the worst of signals, at the very time when the international community has just successfully demonstrated its determination to bring about a halt to the bombing of Sarajevo. Beyond that, application of Chapter VII, which does not imply an automatic resorting to force, will give UNPROFOR the authority it needs to surmount the obstacles that might be placed in the way of the execution of its mandate.⁹⁹

China again expressed reservations about the invocation of Chapter VII.¹⁰⁰

Although this series of resolutions imposed binding obligations not only on states but also on all the parties to the conflict, cooperation with UNPROFOR did not improve. UNPROFOR continued to be obstructed by all sides; its convoys were impeded, its forces were taken hostage, and the safe areas where U.N. troops were posted were subject to attack.¹⁰¹ In response to these difficulties facing

96. See Paul C. Szasz, *Peacekeeping in Operation: A Conflict Study of Bosnia*, 28 CORNELL INT'L L.J. 685, 696-697 (1995).

97. See, e.g., S.C. Res. 871, U.N. SCOR, 48th Sess., 3286th mtg., U.N. Doc. S/RES/871 (1993); S.C. Res. 870, U.N. SCOR, 48th Sess., 3285th mtg., U.N. Doc. S/RES/870 (1993); S.C. Res. 869, U.N. SCOR, 48th Sess., 3284th mtg., U.N. Doc. S/RES/869 (1993); S.C. Res. 859, U.N. SCOR, 48th Sess., 3269th mtg., U.N. Doc. S/RES/859 (1993); S.C. Res. 847, U.N. SCOR, 48th Sess., 3248th mtg., U.N. Doc. S/RES/847 (1993); S.C. Res. 844, U.N. SCOR, 48th Sess., 3241st mtg., U.N. Doc. S/RES/844 (1993); S/RES/836, *supra* note 81; S/RES/815, *supra* note 78.

98. S.C. Res. 900, U.N. SCOR, 50th Sess., 3527th mtg., U.N. Doc. S/RES/900 (1995).

99. U.N. SCOR, 49th Sess., 3344th mtg., at 14, U.N. Doc. S/PV.3344 (1994).

100. See *id.* at 11.

101. See, e.g., U.N. CHRON., Sept. 95, at 29-32; U.N. CHRON., Dec. 1994, at 27, 29, 30; U.N.

UNPROFOR, the Rapid Reaction Force was created.

VI. THE CREATION OF THE RAPID REACTION FORCE

Further problems with consent arose with the creation of the Rapid Reaction Force (RRF) in June 1995. States were divided as to the nature of the force; as to whether it was a peacekeeping force whose establishment was based on host-state consent or an enforcement force established without the need for host-state consent; and whether it was intended to be impartial or operate against one of the parties involved in the conflict.¹⁰² In fact, the RRF was not given any powers beyond those of UNPROFOR. Additionally, the establishment of the RRF led to further problems over the conclusion of SOFAs with the host states. The host states argued that the RRF was a new force separate from UNPROFOR and demanded the negotiation of a new SOFA.¹⁰³ The Security Council justifiably rejected this claim.¹⁰⁴

France, the Netherlands and the United Kingdom proposed the establishment of the RRF to provide military relief for UNPROFOR to reduce the vulnerability of its personnel and to enhance its capacity to carry out its existing mandate.¹⁰⁵ The RRF was to be a well-armed, mobile force and to operate under the existing mandate and rules of engagement of UNPROFOR. When the Security Council discussed the proposal for an RRF, divisions between member states were apparent.¹⁰⁶ China argued that the force would constitute a de facto change in the peacekeeping status of UNPROFOR. It said that the force was being established for enforcement action and thus UNPROFOR would become a party to the conflict.¹⁰⁷ Russia also said that the resolution did not avoid the impression that the RRF was intended to operate against one party to the conflict, the Bosnian Serbs.¹⁰⁸ But the United Kingdom and France insisted that no change

CHRON., Sept. 1994, at 29; U.N. CHRON., June 1994, at 26; U.N. CHRON., March 1994, at 64; U.N. CHRON., Dec. 1993, at 32; U.N. CHRON., Sept. 1993, at 17, 19; *see also* 1993 U.N.Y.B. 487, 489; 1994 U.N.Y.B. 488, 491, 513.

102. *See infra* note 107 and accompanying text.

103. *See infra* note 117 and accompanying text.

104. *See infra* note 119 and accompanying text.

105. *See Letter Dated 9 June 1995 From the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/470 (1995).

106. *See* U.N. SCOR, 50th Sess., 3543d mtg., U.N. Doc. S/PV.3543 (1995) [hereinafter S/PV.3543].

107. *See id.* at 13-14.

108. *See id.* at 10.

in the nature of UNPROFOR was intended.¹⁰⁹ The United States offered limited support, stating "[w]e vote in favour of this draft on the clear understanding that by doing so we are not incurring any direct financial obligation."¹¹⁰ Accordingly, the resolution establishing the force was passed by 13-0-2 (China and Russia voting against).¹¹¹ The resolution specifically noted a letter from Bosnia-Herzegovina welcoming the reinforcement of UNPROFOR.¹¹²

Serious problems arose regarding the attitude of the host states, Croatia and Bosnia-Herzegovina. Bosnia-Herzegovina had expressed its consent to the establishment and deployment of the force during the Security Council debate.¹¹³ Croatia had been rather less forthcoming at that stage, but did say that it would consent on the basis that the force would operate in Bosnia alone and that it would station only command and logistic facilities in Croatia. Any operational use of the RRF in Croatia could only proceed after consultation with the government of Croatia and with its approval and consent.¹¹⁴ Both states subsequently wrote to the Security Council promising to cooperate with the force.¹¹⁵

However, both states were determined that the RRF would operate in such a way as to support their own particular aims. They now demanded new SOFAs, claiming that existing agreements did not cover the RRF as it was not part of UNPROFOR. They wanted to impose new restrictions on the RRF limiting its freedom of movement. They also wanted to impose less favorable terms than the existing SOFAs with regard to use of premises and payment for services.¹¹⁶ The Secretary-General rejected these claims. He said that the

109. See *id.* at 18-19.

110. *Id.* at 16-17.

111. S.C. Res. 998, U.N. SCOR, 50th Sess., 3543d mtg., U.N. Doc. S/RES/998 (1995).

112. See *Letter Dated 14 June 1995 From the Chargé d'Affaires A.I. of the Permanent Mission of Bosnia and Herzegovina to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 50th Sess., Annex, U.N. Doc. S/1995/483 (1995).

113. See S/PV.3543, *supra* note 106, at 3.

114. See *id.* at 7.

115. See *Letter Dated 14 August 1995 From the Chargé d'Affaires A.I. of the Permanent Mission of Bosnia and Herzegovina to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/691 (1995); *Letter Dated 11 August 1995 From the Permanent Representative of Croatia to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/684 (1995).

116. See *Letter Dated 17 August 1995 From the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/707 (1995) [hereinafter S/1995/707]. Also, the Croats in Bosnia demanded a separate SOFA with the Federation established under the framework agreement creating a Federation in the Areas of the Republic of Bosnia and Herzegovina with a majority

RRF was part of UNPROFOR and therefore covered by the existing SOFAs; SOFAs naturally covered variations in size of peacekeeping forces.

On the ground, both states obstructed the RRF's deployment of troops. In July 1995, the Secretary-General reported on these problems to the Security Council.¹¹⁷ In response, the Council issued a statement:

The Security Council is deeply concerned at the implication of the continued impediments to the functioning of the RRF for the effectiveness of the United Nations mission in the Republic of Bosnia-Herzegovina. It calls upon the Government of the Republic of Croatia and the Republic of Bosnia-Herzegovina immediately to remove all impediments and to give clear undertakings concerning the freedom of movement and provision of facilities for the RRF, in order that it may perform its tasks without further delay. It further calls upon them to resolve forthwith within the framework of the existing SOFAs any outstanding difficulties with the relevant United Nations authorities.¹¹⁸

This episode illustrates Bosnia-Herzegovina and Croatia attempting to take advantage of the creation of the RRF to secure the negotiation of SOFAs more favorable to them, that is, SOFAs which would offer them greater control over the operations of UNPROFOR on their territories. Although both states formally consented to the deployment of the RRF, they did not fulfil their duties to cooperate with it on the ground.

VII. CROATIA'S WITHDRAWAL OF CONSENT FROM UNPROFOR AND THE ESTABLISHMENT OF UNCRO

The termination of Croatia's consent to the presence of UNPROFOR on its territory shows clearly that it was the consent of the host-state government that was essential for the continued deployment of the U.N. force. Croatia used this power to secure the removal of UNPROFOR and the creation of a new peacekeeping force with a mandate more acceptable to it. In so doing, Croatia jeopardized the hopes of peaceful settlement and the entire

Bosnian and Croatian population. See *Letter Dated 3 March 1994 From the Permanent Representatives of Bosnia and Herzegovina and Croatia to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/255 (1994).

117. S/1995/707, *supra* note 116.

118. *Statement by the President of the Security Council*, U.N. SCOR, 50th Sess., 3568th mtg., para. 4, U.N. Doc. S/PRST/1995/40 (1995).

peacekeeping operation.

Even at the time UNPROFOR was created, Croatia expressed reservations in giving its consent.¹¹⁹ Croatia was concerned with maintaining its sovereignty over the U.N.-protected areas, and keeping the U.N. peace plan from perpetuating the division of Croatia. From June 1993 Croatia expressed reservations about the renewal of UNPROFOR's mandate,¹²⁰ and the Security Council from this time regularly called on the Secretary-General to report on the reconsideration of the mandate "taking into account the position of the Government of Croatia."¹²¹ The Secretary-General regularly reported that UNPROFOR played an indispensable role in Croatia; even if it was not able fully to carry out its mandate, it helped to prevent the renewal of conflict.¹²² Croatia also indicated concern about the name of UNPROFOR. It called for a new name from which it would be *prima facie* evident that the peacekeeping force was located on the territory of Croatia.¹²³

Finally, in January 1995, Croatia formally gave notice of the withdrawal of its consent to the deployment of UNPROFOR on its territory.¹²⁴ The Security Council interpreted this to mean that

119. See S/1995/467, *supra* note 4, at 5.

120. See, e.g., *Letter Dated 26 September 1994 From the Permanent Representative of Croatia to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 49th Sess., U.N. Doc. S/1994/1095 (1994); *Letter Dated 16 March 1993 From the Charge d'Affaires A.I. of the Permanent Mission of Croatia to the United Nations Addressed to the Secretary-General* U.N. SCOR, 49th Sess., Annex, U.N. Doc. S/1994/305 (1994); *Letter Dated 24 September 1993 From the Permanent Representative of Croatia to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 48th Sess., Annex, U.N. Doc. S/26491 (1993); *Letter Dated 30 July 1993 From the Permanent Representative of Croatia to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 48th Sess., Annex, U.N. Doc. S/26220 (1993) [hereinafter S/26220]; *Letter Dated 25 June 1993 from the Permanent Representative of Croatia to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 48th Sess., Annex, U.N. Doc. S/26002 (1993).

121. See, e.g., S.C. Res. 847, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/847 (1993) (passed unanimously).

122. See, e.g., *Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 847 (1993)*, U.N. SCOR, 48th Sess., paras. 2-5, U.N. Doc. S/26310 (1993); *Further Report to the Secretary-General Pursuant to Security Council Resolution 815 (1993)*, U.N. SCOR, 48th Sess., paras. 3-4, U.N. Doc. S/25993 (1993); *Further Report to the Secretary-General Pursuant to Security Council Resolution 743 (1992)*, U.N. SCOR, 48th Sess., para. 15, U.N. Doc. S/26470 (1993).

123. See S/26220, *supra* note 120, at 1. A similar debate about the name of the peacekeeping force had arisen earlier regarding UNDOF.

124. See *Letter Dated 12 January 1995 From the Permanent Representative of Croatia to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 50th Sess., at 4, U.N. Doc. S/1995/28 (1995); *Letter Dated 18 January 1995 From the Permanent Representative of Croatia to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 50th Sess., Annex, U.N. Doc. S/1995/56 (1995).

UNPROFOR would have to be withdrawn, that is, despite the many resolutions referring to Chapter VII, the presence of UNPROFOR in Croatia still depended on the consent of the host state. The Secretary-General expressed regret at the withdrawal of consent and said that there was a serious risk of renewed hostilities if UNPROFOR withdrew. He hoped that the Croatian government would reconsider its position before the expiry of UNPROFOR's current mandate.¹²⁵ In a later report of March 1995 the Secretary-General said that there had indeed been a significant escalation of military activity and tension. There was an increased lack of cooperation with UNPROFOR and both sides had made tactical deployment of their forces in preparation for wide-scale conflict after the withdrawal of UNPROFOR.¹²⁶ The Security Council also expressed grave concern about the risk of renewed hostilities and called for negotiations to secure the continued presence of a peacekeeping force.¹²⁷

President Tudjman then relented and agreed to the continued presence of a smaller peacekeeping force with a new mandate and a new name. UNPROFOR was to be divided into three forces, with forces in Bosnia-Herzegovina and Macedonia continuing as before.¹²⁸ In Croatia, substantial alterations were made to the mandate. There were detailed discussions between the United Nations and both the Government of Croatia and the Croatian Serbs over the nature, size and functions of the force.¹²⁹ As to the name, President Tudjman said in letters to the Security Council that if the resolution did not allow the official name of the operation to be the United Nations Confidence Restoration Operation in Croatia (UNCRO), Croatia would not give its consent for the establishment of the new force.¹³⁰ During

125. See *Report of the Secretary-General Pursuant to Paragraph 4 of Security Council Resolution 947 (1994)*, U.N. SCOR, 50th Sess., para. 31, U.N. Doc. S/1995/38 (1995) [hereinafter S/1995/38].

126. See U.N. Doc. S/1995/222, *supra* note 57, paras. 3-5.

127. See *Statement by the President of the Security Council*, U.N. SCOR, 50th Sess., 3491st mtg., U.N. Doc. S/PRST/1995/2 (1995).

128. See *Letter Dated 17 March 1995 From the Permanent Representative of Croatia to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 50th Sess., Annex, U.N. Doc. S/1995/206 (1995). Resolution 982 noted Bosnia's consent expressed in the *Letter Dated 29 March 1995 From the Permanent Representative of Bosnia-Herzegovina to the United Nations Addressed to the Secretary-General*, U.N. SCOR, 49th Sess., U.N. Doc. S/245 (1995). Resolution 983, on the force in Macedonia, does not contain any express reference to consent. S. C. Res. 983, U.N. SCOR, 50th Sess., U.N. Doc. S/RES/983 (1995).

129. See S/1995/222, *supra* note 57; *Yugoslav Crisis, A Climate of Uncertainty*, U.N. CHRON., June 1995, at 24-26.

130. See S/26220, *supra* note 120; *Letter Dated 30 March 1995 From the Permanent Representative of Croatia to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 49th

the Security Council debate leading to the resolution, Croatia claimed that this name implied that the operation was not merely a static peacekeeping force but an active, task-specific operation.¹³¹ The Krajina Serb Assembly subsequently criticised the name UNCRO, saying that it prejudged a political solution and ignored the sovereign rights of the Serbs in Krajina.¹³²

The new force was to support and facilitate the implementation of the March 1994 cease-fire and the December 1994 economic agreement between the parties in Croatia, to assist in controlling military crossing of the borders of Croatia, to help the delivery of humanitarian aid in Bosnia-Herzegovina, and to monitor the demilitarization of the Prevlaka Peninsula.¹³³ But the Secretary-General reported that the plan for the deployment of UNCRO did not have the full acceptance of the Croatian Government or of the Serb local authorities:

As was to some degree the case in February 1992 when UNPROFOR was originally established, the plan set out above does not have the full acceptance and full support of either the Government of Croatia or the local Serb authorities. The risk therefore remains that either or both sides will fail to cooperate with the U.N. in its implementation. In these circumstances it is not without misgivings that I present these proposals to the Council. On the other hand, the plan provides for the pragmatic implementation of Security Council Resolution 981 and the alternative to its adoption would be withdrawal of the U.N. forces and the resumption of war.¹³⁴

The Secretary-General recommended that the Security Council authorize the deployment of UNCRO. He set out the proposed composition of the force (and of the forces in Bosnia-Herzegovina and Macedonia) in his report to the Security Council.¹³⁵

Again Croatia proved reluctant to conclude a SOFA. It had

Sess., Annex, U.N. Doc. S/1995/246 (1995).

131. See *Report of the Secretary-General Pursuant to Paragraph 4 of Security Council Resolution 947 (1994)*, U.N. SCOR, 49th Sess., 3512th mtg., at 6, U.N. Doc. S/PV.3512 (1995).

132. See S/1995/467, *supra* note 4, para. 18.

133. See *Report of the Secretary-General Submitted Pursuant to Paragraph 4 of Security Council Resolution 981 (1995)*, U.N. SCOR, 49th Sess., paras. 11-28, U.N. Doc. S/1995/320 (1995) [hereinafter S/1995/320].

134. *Id.* Subsequently, Croatia expressly accepted the principles in the mandate of UNCRO. See *Letter Dated 28 April 1995 From the Permanent Representative of Croatia to the United Nations Addressed to the President of the Security Council*, U.N. SCOR, 49th Sess., U.N. Doc. S/1995/339 (1995).

135. S/1995/222, *supra* note 57, paras. 3-5; *Letter Dated 5 May 1995 From the Secretary General Addressed to the President of the Security Council*, U.N. SCOR, 49th Sess., U.N. Doc. S/1995/386 (1995).

never finalized a SOFA for UNPROFOR despite a pledge given by President Tudjman in September 1994.¹³⁶ Negotiations on a SOFA for UNCRO progressed very slowly.¹³⁷ The Security Council, in the resolution establishing UNCRO, had stressed the need for a SOFA,¹³⁸ and Resolution 990 also expressed concern that a SOFA had not been signed and called on Croatia to conclude an agreement.¹³⁹ The Secretary-General also reported on the difficulties that had arisen as a result of demands by Croatian authorities incompatible with the U.N. model SOFA.¹⁴⁰ It was only after an offensive by Croatian government forces in May 1995 that Croatia finally concluded a SOFA on 15 May 1995.¹⁴¹

On the political level the Krajina Serbs accepted the deployment of UNCRO, but the Secretary-General reported a lack of cooperation on the ground and the occurrence of hijackings and robbery of UNCRO forces.¹⁴² The Croatian government overran UNCRO positions in offensives of May and August 1995.¹⁴³ After the first May offensive, both sides asked UNCRO to stay and complete its deployment, but the Secretary-General said that "more than words are required to justify the continuation of this expensive and dangerous mission."¹⁴⁴ Nevertheless UNCRO was deployed in a modified form. Later, in the fourth August offensive the Croatian government drove UNCRO out of all the U.N.-protected areas except Sector East and UNCRO subsequently remained only in Eastern Slavonia in a much reduced form.¹⁴⁵

136. See S/1995/38, *supra* note 125.

137. See S/1995/320, *supra* note 133.

138. S.C. Res. 981, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/981 (1995) (passed unanimously).

139. S.C. Res. 990, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/990 (1995) (passed unanimously).

140. See S/1995/320, *supra* note 133.

141. See S/1995/467, *supra* note 4.

142. See *id.*

143. See *Yugoslav Crisis, U.N. Role in Question*, U.N. CHRON., Sept. 1995, at 32-33.

144. U.N. Doc. S/1995/467, *supra* note 4, at 13.

145. See *Report of the Secretary-General Pursuant to Security Council Resolutions 981 (1995), 982 (1995), and 983 (1995)*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/987 (1995); *Letter Dated 10 October 1995 From the President of the Security Council Addressed to the Secretary-General*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/859 (1995); *Further Report of the Secretary-General Pursuant to Security Council Resolution 1009 (1995)*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/835 (1995); *Letter Dated 29 August 1995 From the President of the Security Council Addressed to the Secretary-General*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/748 (1995); *Report of the Secretary-General Submitted Pursuant to Security Council Resolution 1009 (1995)*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/730 (1995); *Letter Dated 7 August 1995 From the Secretary-General Addressed to the President of the Security Council*, U.N. SCOR, 50th Sess., U.N. Doc. S/1995/666 (1995).

CONCLUSION

The early problems in securing the consent of "the concerned parties" to the deployment of UNPROFOR in Yugoslavia were ominous, and the Secretary-General's fears that the force would not be able to operate effectively without the cooperation of all those involved proved prophetic. The initial consent to the establishment of UNPROFOR was grudgingly given by some of the parties, and the formal consent of the host-state governments, even though accompanied by consent to the details of the initial mandate of UNPROFOR, was not sufficient to guarantee cooperation. The lack of active support for UNPROFOR on the ground was made manifest when host-state governments were reluctant to conclude SOFAs to protect the forces' rights and freedom of movement.

The subsequent expansion of UNPROFOR's mandate demonstrated uncertainties as to the law on consent, and led to conflict between the warring parties and UNPROFOR when the parties came to see UNPROFOR as an obstacle to the achievement of their military goals. Even though the Security Council eventually resorted to Chapter VII of the U.N. Charter in order to stress the binding nature of the duty to cooperate with UNPROFOR and to secure the protection of UNPROFOR troops, this did not lead to increased cooperation on the ground. When the Security Council tried to increase the UNPROFOR's effectiveness by creating a Rapid Reaction Force, the host-state governments sought to take advantage of this and to negotiate SOFAs which would give them greater control over the operations of UNPROFOR. Croatia finally withdrew its consent to the deployment of UNPROFOR in its territory and consented to its replacement by UNCRO only on its own restrictive terms.

This sequence of events not only shows the practical problems encountered by the U.N. peacekeeping forces in Yugoslavia with regard to consent, it also vividly illustrates the complexity and multifaceted nature of the concept of consent in the context of peacekeeping.