Before and after Dayton: the UN and NATO in the former Yugoslavia

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There is no doubt that the development of the relationships between the United Nations (UN) and the North Atlantic Treaty Organization (NATO) has been much affected by the Yugoslav crisis, both before and after the signing of the Dayton Peace Agreement.[1] The experience of cooperation is relevant for a better understanding of the complex relationships within the UN's system of collective security as well as between the UN and regional organisations. There was no blueprint nor any 'arrangement' which regulated such mutual relationships. Furthermore, the cooperation before and after Dayton took place under fundamentally different conditions of subcontracting. This reflects the fact that the international community's involvement in the falling apart of the former Yugoslavia made the Balkan region a testing ground for international politics that required new definitions of crises, analyses and responses. The evolving UN and NATO forms of cooperation had an experimental character. These contacts would have been unthinkable during the preceding years of the Cold War. The Atlantic Alliance chose not to identify itself as a regional organisation under Chapter VIII of the UN Charter, thereby excluding any Soviet infringement in NATO's security matters. The central question is whether subcontracting, as applied in the former Yugoslavia, set precedents for future relationships between the UN and regional organisations, particularly in terms of division of labour and accountability.

UN and NATO: the institutional framework

An analysis of the role of NATO in the former Yugoslavia conflict should be made in the broader context of the relationship between the UN and regional organisations, including Chapter VIII. From the NATO perspective, it is necessary both to look at the NATO Treaty and the policy decisions on its future 'new missions' taken in the aftermath of the Cold War.

One of the main issues in current international relations debates concerns the role that regional organisations can play in maintaining international peace and security. The increasing demands on the UN have led to an overload of commitments. Given its lack of resources, the UN has been obliged to acknowledge its inability to do the job alone and it has appealed to regional organisations for assistance. In consecutive annual reports, the secretary-general paid special

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attention to the possible functions regional organisations could perform. In his 1992 annual report, then Secretary-General Boutros Boutros-Ghali acknowledged the role of those organisations in many of the cases in which the UN had been active:

> My aim is to see that in any new division of labour, the United Nations retains its primacy in the maintenance of international peace and security, while its burden is lightened and its mission reinforced and underlined by the active involvement of appropriate regional agencies. The exact modalities of this division of labour remain to be worked out, as regional organizations, no less than the United Nations itself, redefine their missions in the post-cold-war period.[2]

In his thought-provoking *An Agenda for Peace*, Boutros-Ghali emphasised that regional organisations clearly possess a potential that should be utilised; in this context, he even spoke of 'a new complementarity'.[3] On a later occasion, he pointed out that, in establishing the United Nations in 1945, the founding fathers chose an 'uneasy compromise' between regionalism and internationalism. Thus, while Article 51 of the UN Charter recognised 'the inherent right' of individual and collective self defence, 'until the Security Council has taken the necessary measures for maintaining international peace and security', Article 52 recognised the existence of regional accords or organs for dealing with situations which might threaten international peace and security at the regional level, assuming their activities are consistent with the principles of the UN Charter. Article 53 even introduced the possibility of close working relationships between the UN and regional organisations for the specific purpose of 'enforcement action', stating: 'The Security Council shall, where appropriate, utilise such regional arrangements or agencies for enforcement action under its authority'. Only after the end of the Cold War, at the initiative of the UN, was this 'hidden potential' invigorated, mainly as a consequence of the situation in the former Yugoslavia in the first half of the 1990s.

During the Cold War, NATO had been primarily a collective defence organisation, aimed at preserving the territorial integrity of its member states against external threats. Article 5 of the North Atlantic Treaty identified the commitments that the Allies accepted, that is, exercising the right of individual or collective self-defence recognised by Article 51 of the UN Charter: 'The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all…'

The end of the Cold War resulted in a new political and strategic environment in Europe and the world. As the importance of NATO's classical collective defence task diminished, the Western Alliance had to adapt from deterring a clearly defined threat to coping with what emerged to be an unpredictable and unstable security environment that required 'new thinking' in terms of analyses, responses and missions. 'Peacekeeping' became a key concern in the course of 1992 as a consequence of two factors: the general policy debates on NATO's future tasks; and the implications of the war in the former Yugoslavia for the Western Alliance. At both levels a number of basic questions was raised: is NATO a regional organisation under Chapter VIII of the UN Charter? Has NATO legal competence to act 'out-of-area'? Has NATO the competence to engage in what

could be termed 'non-Article 5 activities' ('new missions'), if there is no armed attack as mentioned in article 5? And if so, should the North Atlantic Treaty be adapted?

Some of these issues reflected discussions preceding the establishment of the Alliance in 1949.[4] In the debate about the preamble to the treaty in the 1940s, France took the view that the pact was both a regional arrangement within the meaning of Chapter VIII as well as a collective defence system under Article 51. The British objected strongly to any reference to the UN Charter's chapter VIII in the Preamble to NATO's constitution, fearing that all action taken should be subject to the veto of the Security Council.[5] All the representatives, including the French, agreed in the end to omit any specific reference in the preamble, or in any of the Articles of the Pact, to Chapter VIII of the Charter. After difficult discussions, it was finally agreed that the Parties to the Pact, in their public statements, should emphasise the relationship of the Pact to Article 51 but should avoid saying that it was connected with Chapter VIII or other Articles of the UN Charter.[6]

In 1992, the question of peacekeeping among the Allies was controversial, not so much because of legal issues but because of France's politically motivated objections against giving NATO a new role or strengthening the alliance in general.[7] In June NATO endorsed the principle of participation in peacekeeping, in particular by making available its assets to the Conference on Security and Cooperation in Europe (CSCE). The modalities of this endorsement had to be worked out, guaranteeing a continuation of the debate on 'out-of-area syndrome'; available infrastructure and military means, including troops; the geographic proximity of the Yugoslav crisis; and the national interests of NATO's individual members, including their national agendas. Six months later, on 17 December, the member states of NATO responded to a letter from the UN's Secretary-General to his NATO counterpart:

> We confirm today the preparedness of our Alliance to support, on a case-by-case basis and in accordance with our own procedures, peacekeeping operations under the authority of the UN Security Council, which has the primary responsibility for international peace and security. We are ready to respond positively to initiatives that the UN Secretary-General might take to seek Alliance assistance in the implementation of UN Security Council Resolutions.[8]

While rejecting any form of automaticity and emphasising its autonomous position, NATO expressed its willingness, in principle, to provide assistance on an *ad hoc* basis as it recognised the Council's political primacy. In fact, this statement reflected the 'full consensus' among the Allies, and only formally confirmed what, in the meantime, was already taking place in the field.[9]

One of the characteristics of NATO's involvement in the former Yugoslavia has been pragmatism. Taking into account its potential as a military organisation, NATO's capabilities (expertise, logistics, infrastructure, means of communication, AWACs and forces) could be used for non-Article 5 operations. Accordingly, within a relatively short period of time, beginning in May 1992, NATO gradually expanded its involvement in support of the United Nations. In December 1992 the Western Allies noted that, 'For the first time in its history, the Alliance is

taking part in UN peacekeeping and sanctions enforcement operations'. In May 1993, only five months later, NATO was already active at different levels: the enforcement of a maritime embargo; the enforcement of the no-fly zone over Bosnia; the contribution in terms of personnel and equipment to establish a command and control element for the UN Protection Force (UNPROFOR) head-quarters in Bosnia–Herzegovina; and the development of contingency planning concerning prevention of spill-over of the conflict. Such plans included the protection of personnel on the ground, the monitoring of heavy weapons, the establishment of 'secure areas' and contingency planning for the implementation of a possible UN 'peace plan' for Bosnia.

These activities laid the foundation for further cooperation between the world organisation and NATO, both before and after Dayton, though under different formats. In April 1996 NATO's Secretary-General Solana finally gave an additional argument for out-of-area actions, arguing that, with the end of the Cold War, NATO could 'return to its original, broader ambition of becoming an instrument for our well-being and stability: it can move from safeguarding security to promoting it'. He added, 'Nowhere has this new role of NATO become more visible than in Bosnia'. In this way, NATO's involvement in implementing the Dayton Peace Agreement was agreed.

NATO in the former Yugoslavia before Dayton: cases of UN subcontracting

In the case of the former Yugoslavia, the UN legitimised NATO's carrying out of tasks in the Adriatic to enforce compliance with sanctions. However, UNPROFOR had neither the mandate nor the means to execute these tasks. Similarly, the Council subcontracted the enforcement of the no-fly zone over Bosnia–Herzegovina to NATO.

NATO's involvement in the Yugoslav crisis began on 16 July 1992 with operation 'Maritime Monitor'. For the first time in its history, NATO ships entered the Adriatic Sea and began monitoring compliance with resolutions on 'a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia' (Security Council Resolution 713) and with economic sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) (Security Council Resolution 757). Though the resolutions were adopted under Chapter VII of the UN Charter, the NATO mission started as a simple monitoring operation. In November 1992 the Security Council enlarged the sanctions regime and, in April 1993, it decreed a total embargo on land, at sea, in the air and on the Danube, authorising member states 'to use the necessary means commensurate with the circumstances'. Although NATO recognised that allied ships involved in the Adriatic blockade could find themselves in a combat situation, no major incidents occurred. Following the initialling of the Dayton Accord on 21 November 1995, operation 'Sharp Guard' was adapted in accordance with suspending economic sanctions and phasing out the arms embargo. In June 1996 the Security Council decided to lift the arms embargo completely. On 1 October 1996, following the certification of the elections in Bosnia and Herzegovina, the Council lifted all economic sanctions, a decision which terminated operation 'Sharp Guard'.

Exactly three months after the initiation of the first action at sea, NATO started a similar monitoring action in the air, after the Security Council had established 'a ban on military flights in the airspace of Bosnia–Herzegovina'. The concept of operations provided for combining the deployment of military observers, drawn from UNPROFOR, at airfields with information obtained from 'technical sources', (that is, NATO's AWACS aircraft). In March 1993, Security Council Resolution 816 strengthened the ban on military flights. Acting under Chapter VII, member states were authorised, 'acting nationally or through regional organisations or arrangements, to take all necessary measures in the airspace of Bosnia and Herzegovina, in the event of further violations, proportionate to the specific circumstances and the nature of the flights'. As in the case of the embargoes, the monitoring was followed by enforcement. The ban could be implemented by the use of force, but under certain conditions. Operation 'Deny Flight' began on Monday, 12 April 1993.

The operation differed in one key respect from its maritime counterpart. At sea, NATO alone was responsible for the operational tasks. In executing operation 'Deny Flight', NATO was for the first time in the Yugoslav crisis obliged to cooperate closely with UNPROFOR. For this reason, liaison officers were exchanged, with NATO officers stationed in UNPROFOR headquarters. This arrangement was later replicated for 'close air support' and 'air strikes'.

As anticipated in Resolution 816, the rules of engagement for the operation turned out to be highly circumscribed; they disappointed many who had hoped for tougher measures. In the meantime, the question was raised as to whether the Allies were slowly moving towards stronger military commitments in the former Yugoslavia and what consequences that could have for the safety of UN personnel. The UK and France, in particular, were reluctant to back up the no-fly zone, taking into account the possibility of reprisals against their UN troops on the ground. This debate explained why a new military option ('close air support') was introduced on 4 June 1993, and provided the use of airpower for the safety of UN personnel.

On the morning of 28 February 1994, almost one year after 'Deny Flight' had become operational, NATO aircraft shot down four Serbian aircraft that violated the no-fly zone. In carrying out the Western Alliance's first military action since its establishment 45 years earlier, this was the first time that NATO planes had opened fire over Bosnia. Operation 'Deny Flight' ended on 20 December 1995, with the transfer of authority from UNPROFOR to the Implementation Force (IFOR).

In a second innovation, NATO provided air power for purposes authorised by the Security Council and in support of UNPROFOR in implementing its mandate, both in terms of 'close air support' and 'air strikes'. As Boutros-Ghali noted, this 'unprecedented issues of command and control', such as the 'dual key' arrangement which led to much controversy between the UN and NATO. In the absence of a precise agreement as to the circumstances justifying the use of force, each organisation responded to its own priorities, which were frequently at loggerheads. Under this arrangement, the UN and NATO operated with little success until the fall of Srebrenica in mid-1995. Only after a fundamental review of the arrangement did the cooperation between the two institutions under Operation 'Deliberate Force' become successful. This illustrated that both

organisations can cooperate effectively, depending upon agreed conditions and priorities.

The process of subcontracting in the former Yugoslavia before Dayton was preceded and accompanied by the presence of UN peacekeepers. The establishment of UNPROFOR on 21 February 1991 was originally intended to contribute to the implementation of a peace plan for Croatia. But UNPROFOR gradually expanded its mandate in terms of its area of operation (from Croatia to Bosnia–Herzegovina and Macedonia), strength (from an initial 10 000 troops to a force of some 52 000) and tasks. This development in the first half of 1992 led Boutros-Ghali to challenge the Security Council's preoccupation at the time with the conflict in the former Yugoslavia as a 'rich man's war', at the expense of other conflicts in Africa such as Somalia.

UNPROFOR's primary task in Bosnia was to support the provision of humanitarian assistance, with the UN High Commissioner for Refugees (UNHCR) acting as the 'lead agency' in what would become 'one of the worst humanitarian emergencies of our time'.[10] Gradually, the Security Council's involvement led to an unprecedented series of resolutions, covering such issues as humanitarian assistance, an arms embargo, economic sanctions, a no-fly zone, safe areas, international humanitarian law and the mandate of UNPROFOR. In this almost permanent process of adaptation, the UNPROFOR peacekeeping personnel became involved in such elements of peace-enforcement as ground monitoring at airfields as part of the no-fly zone; in 'deterring attacks' on safe areas and in the implementation of exclusion zones, including control of the heavy weapons placed by the parties in designated weapons collection points. This mixture caused much conceptual and operational confusion, with serious consequences both for the UN and NATO and for their cooperation.

In a number of cases, developments on the battlefield isolated so-called Muslim enclaves from the outside world. The deliberate attacks on the civilian population, including the 'strangulation' of cities like Sarajevo, and the sheer number of casualties led to deep feelings of dismay and frustration in the international community. The position of these enclaves in terms of their status as 'safe areas' would become the key issue for the involvement of both the UN and NATO in the years before Dayton.

The Security Council's safe area policy was based on Resolution 836, as adopted on 4 June 1993. Acting under Chapter VII and concerned by continuing armed hostilities in Bosnia, it decided 'to ensure full respect for the safe areas'. These areas were established by the Council when it declared in an earlier resolution that 'Sarajevo and other such threatened areas, in particular the towns of Tuzla, Zepa, Gorazde, Bihac, as well as Srebenica, and their surroundings' should be treated as safe areas and should be free from armed attacks. Under Resolution 836, the mandate of UNPROFOR was extended to enable it to 'deter attacks' against the safe areas. The resolution, furthermore, authorised UNPROFOR, 'acting in self-defence, to take the necessary measures, including the use of force, in reply to (a) bombardments against the safe areas, or (b) to armed incursions into them, or (c) in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys'. And it decided, in a separate paragraph, that member

states, acting nationally or through regional organisations, may take 'all necessary measures, through the use of air power, in and around the safe areas to support UNPROFOR' in the performance of its tasks. Thus formulated, Resolution 836 became one of the most controversial decisions of the Security Council, with repercussions far outside UN headquarters.

It was against this background, that the safe areas had to be kept 'safe'. Questions were raised about both the interpretation of the relevant resolutions and the political, legal and military implications of the concept of 'safe areas', including the consequences for both UNPROFOR and NATO, and their mutual relationships. There was conceptual confusion about the linkage between peacekeeping and peace-enforcement; the definition of the safe area 'regime' in terms of its legal status, its political aims, its size, its disarmament and demilitarisation; the gap between goals and the necessary military means (including a 'credible air strike capability' to be provided by NATO). As a result, NATO and the UN developed the concepts of 'close air support' and 'air strikes', closely related to the 'dual-key' arrangement. This reflected and contributed to serious disagreements on the conditionality of the use of force, both in protecting the safe areas and the safety of UNPROFOR's blue helmets.

The dual-key provided both organisations with the right to veto the use of air power. While NATO never questioned the political primacy of the Security Council, it simultaneously underlined its autonomy. There was no automaticity in implementing UN resolutions. Under the circumstances prevailing in Bosnia before Dayton, the dual-key formula, however, implied two separate but not separable command chains. This arrangement led to many misgivings about mutual relations, which basically reflected the different intentions of the organisations. The UN position on the use of air power could mainly be explained by concern for the safety of UN personnel and possible negative effects on the peace talks and the provision of humanitarian assistance. NATO's main concern was to maintain its credibility as an effective military organisation. Because of their vulnerability, UN blue helmets were used on several occasions as human shields or taken hostage, by way of reprisals, in an effort to prevent the use of more air power. In May 1995, Boutros-Ghali finally considered UNPROFOR's position 'untenable'. NATO already seriously considered the option of a withdrawal of the UN force, implying the fall of the safe areas. The Security Council, however, decided to strengthen UNPROFOR within its mandate, by establishing the so-called Rapid Reaction Force (RRF) after close consultations with NATO and the countries providing the troops.

A third variant of subcontracting, closely related to the safe area policy, concerned the accomplishment of tasks that were not authorised specifically by the Security Council. The primary examples were NATO's enforcement of 'exclusion zones' around the safe areas that required the presence of UN 'forward air controllers' on the ground. The concept of the exclusion zones in February 1994 was formulated not in New York, but in Brussels, at NATO headquarters. The massacre at a market place in Sarajevo in February 1994 forced the UN Secretary-General to call for NATO to authorise air strikes. In implementing this call, the NATO Council formulated an 'ultimatum', aimed at the withdrawal, or regrouping and placing under UNPROFOR control of the heavy

weapons of Bosnians and Serbs located in an exclusion zone. A similar ultimatum was used in Gorazde in April 1994 to prevent its fall. The success of the 'Sarajevo model' underlined the need to redefine the 'safe area' concept, including the exclusion zones, and even raised the question of the feasibility of extending the concept to other parts of Bosnia.

The numerous dilemmas of this policy (especially the safety of UN personnel versus the lives of those living in the areas and the repercussions of the use of force for the UN soldiers) would strain the relationships between the UN and NATO in the months that followed in other safe areas such as Bihac and Sarajevo. The decision in the aftermath of the fall of Srebrenica in July 1995, that attacks against the remaining safe areas would lead to 'a firm and rapid response from NATO air forces', was also taken in Brussels, without any formal consultations with New York. At the same time, the adaptation of the dual-key arrangement consisted of excluding from the chain of command the UN's political representative, Yasushi Akashi who was generally seen as the 'bad genius' and was blamed for the holding back of the use of force by NATO aeroplanes. This proved to be another decisive element of the prelude to operation 'Deliberate Force', in which the UN and NATO together determined the terms of the ceasefire. Together with the US initiative at the diplomatic level, the combination of diplomacy and force effectively led to the Dayton Peace Agreement.

NATO in the former Yugoslavia after Dayton: another case of subcontracting

After Dayton, the Security Council authorised the member states 'acting through or in cooperation with' NATO to establish a multinational Implementation Force (IFOR) to assist in the implementation of the territorial and other militarily related provisions of the Peace Agreement. The IFOR role under NATO's command, as applied under the Dayton Peace Agreement, was another innovative model in calling upon NATO's potential. Among other things, IFOR required close cooperation between NATO and non-NATO members, and between military and civilian authorities in the field. IFOR experience will have a profound impact on the further development of political, conceptual and operational thinking—with a view to the future role of NATO in support of non-Article 5 operations, and in the perspective of what these days is described as the 'new NATO', preoccupied with 'new missions'.[11]

In the case of Bosnia, from the start of the negotiations on a political settlement, it had been clear that, to guarantee its implementation, a large military force would be required. This was a cornerstone of both the Vance–Owen and Owen–Stoltenberg plans. In this context, planning for such an endeavour became part of NATO's agenda and added a new dimension to the evolving relationship between the UN and NATO. In the Spring of 1993 the UN Secretary-General asked NATO to provide him with the results of its contingency planning (NATO had already developed a first plan for a force of about 75 000 troops to ensure respect for the Vance–Owen plan). In August 1993 NATO decided in principle to participate in the implementation of a settlement under the authority of the Security Council, if asked to do so. Politically sensitive issues soon became clear. For the US sending ground troops, would be

acceptable only in the context of a peace settlement. Moreover, Washington's participations would also require the consent of the parties, a NATO command, a clear timetable and enforcement powers.

In the aftermath of the fall of Srebrenica, the US took the initiative in new efforts to find a political settlement. Assistant Secretary of State Richard Holbrooke would become the final architect of the Dayton Peace Agreement, building upon earlier proposals, in particular the 'peace plan' of the Contact Group of July 1994. This included a unitary state with two entities, the 51:49 percent parameter and the confederal option. After three-and-a-half years of war, on 14 December 1995 the parties put their signature under 'The General Framework Agreement for Peace in Bosnia and Herzegovina', with 11 annexes divided into a military and civilian component. This reflected the built-in division of labour in the implementation of the Peace Agreement between the military authorities under NATO leadership and the civilian authorities led by High Representative Carl Bildt. Conceptually, the framework of the Dayton settlement was a mixture of peace-enforcement, peacekeeping and post-conflict peace-building.

In December 1995 the NATO Council endorsed the military planning for IFOR, stating that the operation would attest to its capacity to fulfil its new missions of crisis management and peacekeeping. IFOR was elaborated at NATO headquarters in Brussels, which was totally outside the UN framework. Richard Holbrooke negotiated the provisions of the peace settlement and NATO worked out the modalities for IFOR, including the command and control arrangements, participation of non-NATO countries and a mission definition. IFOR would function as an integral part of the Dayton Peace Agreement, the terms of which clearly reflected US involvement. For instance, sending IFOR 'for a period of approximately one year' was a prerequisite of the Clinton administration to win approval for US participation in IFOR from an unwilling Republican majority in Congress.

Under the Dayton agreement, the parties invited the Security Council to authorise member states, or regional organisations, and arrangements to establish a multinational military implementation force. The agreement laid down IFOR's tasks and enforcement powers, which thus received the parties' consent. Following the signing of the Bosnian Peace Agreement, the Security Council, acting under Chapter VII of the UN Charter, gave the authorisation to establish IFOR under unified command and control and composed of ground, air and maritime units from NATO and non-NATO nations to ensure compliance with the relevant provisions of the Peace Agreement. The following day, 16 December 1996, the North Atlantic Council (NAC) approved the overall plan for IFOR and directed that NATO commence Operation 'Joint Endeavour'. UN Secretary-General Boutros-Ghali, in a letter to the Council dated 20 December 1995, formally confirmed the end of UNPROFOR's existence after the transfer of authority from UNPROFOR to IFOR. He also announced the termination of all the enforcement measures previously adopted by the Security Council. This effectively ended the authorisation to take enforcement measures under the pre-Dayton UN-regime, including its safe areas policy.

NATO's Acting Secretary-General spoke of the 'most challenging operation in

its history', adding: 'This is indeed a historic moment for the alliance—our first-ever ground force operation, our first-ever deployment 'out-of-area', our first-ever operation with our PfP [Partnership for Peace] partners and other non-NATO countries'. The force would have a unified command and be NATO-led under the political direction and control of the North Atlantic Council and operate under NATO rules of engagement. Thus IFOR's authority to use force legally was based both on the Dayton Peace Agreement and Security Council Resolution 1031, and reflected a deliberate policy choice of deploying IFOR with enforcement powers as a necessary condition for a credible performance. In this respect IFOR differed fundamentally from UNPROFOR's peacekeeping character.

NATO's principal tasks were related to military aspects (cessation of hostilities, withdrawal of foreign forces, redeployment of forces and prisoner exchanges), regional stabilisation and the inter-entity boundary line. Operation 'Joint Endeavour', which would become 'the largest and most complex operation NATO has ever undertaken', consisted of five phases. IFOR's first priority was to establish a secure environment, for both the military and civilian organisations, including a rapid build-up of combat power. Once the execution of the purely military tasks was accomplished, the beginning of the 'transition to peace' made it possible for IFOR to pay more attention to civilian tasks, which were to be executed in close cooperation with a number of other international bodies, such as the High Representative, the International Police Task Force (IPTF), UNHCR, the Organisation for Security and Cooperation in Europe (OSCE) and the International Criminal Tribunal for the former Yugoslavia (ICTY). In addition to its primarily military tasks, IFOR had a number of so-called 'supporting tasks'. The crucial question was how far NATO would go in these tasks, most notably with regard to war criminals. The formal position soon became that 'IFOR will assist, to the extent possible within its mandate and available resources, the civilian part of the implementation process'. This reflected both a fear of 'mission creep' and the related issue of possible casualties among the military.

The transfer of authority to IFOR ended UNPROFOR, but the UN's involvement was not over. The Peace Agreement assigned the UN two principal responsibilities: continued coordination of humanitarian assistance and the lead role in dealing with issues relating to refugees and displaced persons, tasks to be performed by the UNHCR; and help for the parties to carry out their law enforcement responsibilities, a task assigned to the IPTF—as part of the UN Mission in Bosnia and Herzegovina (UNMIBH). Apart from the authorisation to establish IFOR, the Security Council under the Dayton agreement, and by a separate resolution, established a UN International Police Task Force as an unarmed, monitoring and advisory force—in a traditional peacekeeping capacity. On this basis, the IPTF could not be seen as an operational police force with the powers to apprehend indicted war criminals for it had no authorisation and little means.

One of the most contentious provisions of Dayton was the ban on holding public office by persons under indictment by the Criminal Tribunal for the former Yugoslavia. The North Atlantic Council determined that neither the Dayton Peace Agreement nor Resolution 1031 provided a clear mandate for IFOR to arrest indicted war criminals. After several months of discussion, NATO and

the ICTY signed a 'memorandum of understanding' codifying the procedures for the detention and transfer of persons indicted for war crimes to the ICTF and for IFOR support to ICTY investigation teams in Bosnia. This confirmed the NAC's policy of 'arrest on sight', refusing an active 'man-hunt'.

National elections, which took place on 14 September 1995, were a cornerstone of the Dayton implementation process. The most critical phase of this process, according to Carl Bildt, would be the period following the elections when a number of crucial developments would take place: the certification of the election results ('imperfect and debatable, but overall acceptable'); 'institution-building' in terms of setting up common institutions, such as the presidency; the further implementation of the civilian components of Dayton; the termination of IFOR's mandate; and the debate on IFOR's follow-up force. The modalities of such a force were extensively discussed at NATO's headquarters, but the Security Council would again be invited to authorise its deployment and mandate. In Resolution 1088 of 12 December 1996, the Security Council authorised the establishment, for a planned period of 18 months, of a multinational Stabilization Force (SFOR) as the legal successor to IFOR under NATO command to fulfil similar tasks to its predecessor, but with more emphasis on the civilian component and with half the number of soldiers (30 000).

Conclusion

Relations between the UN and NATO in the former Yugoslavia, both before and after Dayton, have provided numerous cases of subcontracting. Before Dayton, the international community aimed to establish a peace settlement; after Dayton, the goal was to help implement the Peace Agreement. In both time-frames, several types of 'burden-sharing' have applied to the execution of particular tasks. The use of the term 'subcontracting' in those cases is appropriate because regional organisations are requested or invited by the Security Council to execute tasks within terms set by the Council. In terms of subcontracting, the extremely complicated model—conceptually, politically and militarily—that applied before Dayton was exceptional and will not easily be repeated.

Similarly, the post-Dayton model, with the deployment of several thousands of well armed troops having peace-enforcement powers and operating under a single command structure, is also highly unusual, although for different reasons. With a peace agreement in force, peacekeeping was possible. But under the influence of the United States, the choice was peace-enforcement under NATO command. At the same time, the model as applied under Dayton may have set a precedent for future cases of subcontracting. It would be in line with ideas, as proposed by former UN Secretary-General Boutros-Ghali.[12] Essentially, he accepted the idea that the Secretary-General should restrict himself to managing peacekeeping operations. But peace-enforcement should be authorised by the Security Council, presumably by contracting more ambitious, complex or comprehensive operations to multinational forces, either led by major powers with special interest in the dispute in question or under the command of a regional organisation. This approach has already been used in cases of humanitarian intervention during the past few years, such as in Somalia, Rwanda and Haiti.

In the years before Dayton, the terms of the cooperation between the UN and NATO were determined only gradually. There was no blueprint; under the influence of the course of the conflict, both organisations were forced to develop working relationships in the field, taking into account the presence of UN peacekeepers on the ground. The experimental character of subcontracting as applied at this stage was underlined by its different formats in a dynamic decision-making process: the enforcement of economic sanctions at sea and the enforcement of a no-fly zone in the air executed by NATO without any UN-involvement; the use of different forms of NATO air power ('close air support' and 'air strikes') on the basis of the 'dual-key' arrangement; and the enforcement of 'exclusion zones' by NATO, without explicit authorisation by the Security Council, while requiring the cooperation of UN blue helmets. After Dayton, the lead role of the Security Council was replaced by the North Atlantic Council, which became the key policy-making instrument under the Dayton Peace Agreement. In both cases it was possible for the Security Council to delegate functions relating to the maintenance of international peace and security to regional organisations or arrangements without transferring its own political primacy, as provided in Article 24 of the UN Charter. Before Dayton, NATO responded to invitations of the Security Council; after Dayton, the Council merely legitimised IFOR and SFOR under the terms set out in the Dayton Peace Agreement.

The involvement of the international community in the former Yugoslavia has made that part of the Balkans a testing-ground for international diplomacy. NATO's presence in the former Yugoslavia provided pragmatic answers to many of the theoretical questions posed in the first article in this issue on a framework to analyse the relationship between the UN and regional institutions. NATO's main strategy in the former Yugoslavia has been the willingness to use force, if necessary, for tasks determined by the Security Council. Given UNPROFOR's presence in the area before Dayton, most of these tasks were executed in close cooperation with the world organisation. After Dayton, NATO was supposed to work closely together with other international organisations in the civilian sphere. In terms of its effectiveness, NATO illustrated the contribution of a specific task-orientated regional organisation with respect to peace and security. At the same time, its performance in the former Yugoslavia raised questions about the legal justification of both NATO's 'new missions' and its actions 'out-of-area'. NATO possessed the institutional capacity for taking and implementing decisions, including the North Atlantic Council, whose decisions are taken after close consultations with NATO's military authorities. NATO had the requisite financial, manpower and military-operational capabilities.[13] Finally, NATO commanded the respect and authority of the parties to the dispute, but with different success under different conditions before and after Dayton.

As for the division of labour between the UN and regional organisations, political and military analyses are essential. In line with the UN Charter and the provisions of the Washington Treaty, NATO always recognised the Security Council's political primacy and its primary responsibility for maintaining international peace and security. At the same time, NATO emphasised its own autonomous role, sometimes even denying that it acted as a 'subcontractor'.

Before Dayton, two military components were involved: UNPROFOR and NATO. This structure reflected on the one hand that the UN was overstretched by some 20 000 to 30 000 blue helmets; and, on the other hand that NATO possessed an under-utilised capacity to enforce decisions. The dual-key arrangement, while respecting organisational autonomy, undermined effectiveness because of the different intentions and interests of both organisations, the vulnerability of UNPROFOR's functioning in a hostile environment, different interpretations of mandates and the prevailing conceptual confusion. The conditionality of the use of force thus became a key issue. An adaptation of the arrangement finally resulted under operation 'Deliberate Force'.

After Dayton, the Security Council authorised, at the request of the signatories of the Dayton Peace Agreement, the deployment of IFOR and SFOR under the conditions set out in the document to ensure the implementation of the military aspects under Chapter VII. These conditions included NATO-led forces from both NATO and non-NATO countries under a unitary command and control structure, as well as pursuing 'supporting tasks' with civilian organisations, including the High Representative, UNHCR, OSCE, ICTY and the IPTF, and a number of non-governmental organisations. The IFOR Commander had the authority to do what he judged necessary, including using military force, to protect IFOR and to carry out its responsibilities; but the operation was under the political guidance of the North Atlantic Council, and not the Security Council.

A last principle concerning the relationship between the UN and regional organisations concerns accountability. Normally, this term connotes that a regional organisation should be accountable for its performance to the Security Council because of the latter's responsibility and political primacy. This leaves the Security Council itself non-accountable. The Council, for its part, does not discuss extensively the modalities of failed operations, such as in Somalia, Rwanda or the former Yugoslavia. In this perspective, the fall of Srebrenica, followed by the most serious case of genocide in Europe since World War II, raises the question of the political responsibility that never became part of the agenda of the Security Council.

Before Dayton, given the close cooperation between UNPROFOR and NATO, the issue of accountability was irrelevant. Apart from the evolving contacts between the secretaries-general and irregular contacts among the officials of both organisations, there were no formal mechanisms for consultation. Both organisations were pragmatically supposed to work closely together, including over operationalisation of the dual-key arrangement and the establishment of the Rapid Reaction Force.

After Dayton, NATO, in accordance with Resolution 1031, regularly reported to the UN about the progress made in implementing the peace agreement. In December 1996 NATO's secretary-general, in a letter addressed to his UN counterpart, sent the 13th and final report (two pages only) on IFOR operations to the members of the Security Council.[14] This reporting entails only a formal requirement and can hardly be taken seriously in terms of accountability.

Notwithstanding the variety of attempts at cooperation between the UN and NATO in the former Yugoslavia, the experiment can be seen as a cautious beginning in the development of principles and criteria to govern collaboration

between the universal United Nations and regional institutions. In adopting Resolution 1031, the Security Council recognised 'the unique, extraordinary and complex character of the situation in Bosnia and Herzegovina, requiring an exceptional response'. This was an accurate summary of the models of subcontracting between the UN and NATO in the former Yugoslavia, both before and after Dayton.

Notes

[1] For a more comprehensive treatment of the subject, see Dick A Leurdijk, *The United Nations and NATO in Former Yugoslavia, 1991–1996: Limits to Diplomacy and Force*, The Hague: Netherlands Atlantic Commission/Netherlands Institute of International Relations 'Clingendael', 1996.

[2] Boutros Boutros-Ghali, *Report on the Work of the Organization*, New York: United Nations, September 1992, p 44.

[3] Boutros Boutros-Ghali, *An Agenda for Peace*, A/47/277-S/24111, New York, June 1992, para 64.

[4] See Sir Nicholas Henderson, *The Birth of NATO*, London: Weidenfeld and Nicolson, 1982, pp 101–105.

[5] Article 53 of the UN Charter states that all enforcement action under regional arrangements is subject to the authorisation of the Security Council; and Article 54 requires that all activities taken under regional arrangements must be reported to the Security Council.

[6] This understanding was embodied in the agreed minutes of interpretation. Under paragraph 7, it was said: 'It is the common understanding that the primary purpose of this Treaty is to provide for the collective self-defense of the Parties…It is further understood that the Parties will, in their public statements, stress this primary purpose, recognized and preserved by Article 51, rather than any specific connection with Chapter 8 or other Articles of the United Nations Charter.' Thus the use of the term 'primary purpose' leaves room for other purposes.

[7] *Atlantic News*, No 2428, 3 June 1992, p 2, and No 2433, 17 June 1992, p 1.

[8] 'Final Communique, Ministerial Meeting of the North Atlantic Council, NATO Headquarters, Brussels—17th December 1992', *Atlantic News*, No 2484, Annex, 19 December 1992.

[9] The term 'full consensus' was used by Secretary-General Manfred Wörner during his final press conference. *Atlantic News*, No 2484, 19 December 1992.

[10] 'Report of the Secretary-General pursuant to Security Council Resolutions 757, 758 and 761, 1992, 10 July 1992', Document S/24263.

[11] General George A Joulwan, 'SHAPE and IFOR: adapting to the needs of tomorrow', *NATO Review*, Vol 2, March 1996, pp 6–9.

[12] Boutros Boutros-Ghali, *Supplement to An Agenda for Peace: Position Paper of the Secretary-General On The Occasion Of The Fiftieth Anniversary of The United Nations*, A/50/60-S/1995/1, 3 January 1995, paras 84–89.

[13] David Lightburn, 'NATO and the challenge of multifunctional peacekeeping', *NATO Review*, 2 March 1996, pp 10–14.

[14] Document S/1996/1066, 24 December 1996.