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## Reconciliation: Applying Historical Lessons to Modern Conflicts

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# Reconciliation: Applying Historical Lessons to Modern Conflicts

Lord David Owen

## **Abstract**

Some argue that the need for reconciliation to override justice particularly applies in civil wars. Within the ICJ, all draft peace settlements and countless bilateral and trilateral statements signed by the parties have included a condemnation of ethnic cleansing and a declaration that any documentation signed under duress is null and void. This author believes that demonstrating to the world again that there are international laws governing individual conduct during war will contribute to the process of reconciliation in the former Yugoslavia and send a wider message to the world as a whole. This is the reconciliation process.

# THE USE OF FORCE IN A UNITED NATIONS PEACE-KEEPING OPERATION: LESSONS LEARNT FROM THE SAFE AREAS MANDATE

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The United Nations Protection Force for the former Yugoslavia ("UNPROFOR" or "Force") was established by Security Council Resolution 743<sup>1</sup> of February 21, 1992. UNPROFOR's deployment was initially confined to the Republic of Croatia and only later extended to the Republic of Bosnia and Herzegovina and the former Yugoslav Republic of Macedonia ("FYROM"). UNPROFOR also maintained a small presence in the Federal Republic of Yugoslavia (Serbia and Montenegro) for liaison purposes. At the height of its deployment, UNPROFOR<sup>2</sup> was the largest, most complex, and most expensive peace-keeping operation in the United Nations' history. Its personnel, both military and civilian, numbered some 45,000, and its annual budget was close to US\$2 billion, equivalent to one and a half times the amount of the U.N. regular budget.

Since its inception, UNPROFOR has faced an extraordinary amount of international criticism over its role in Bosnia. Much of the criticism has arisen from unrealistic expectations over what a U.N. peace-keeping mission can and cannot achieve in the context of ongoing hostilities or from an insufficient knowledge of UNPROFOR's mandate and hence what it was legally constituted to achieve. A U.N. peace-keeping mission, through its deployment, can generally provide relative tranquility and stability in a country torn apart by war. Through an impartial presence and inter-positioning, it can also serve as an essential chan-

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1. S.C. Res. 743, U.N. SCOR, 3055th mtg., U.N. Doc. S/RES/743 (1992).

2. In March 1995, UNPROFOR was divided into three separate peace-keeping operations: the United Nations Confidence Restoration Operation in Croatia ("UNCRO"); UNPROFOR in Bosnia and Herzegovina; and the United Nations Preventive Deployment Force ("UNPREDEP"), in FYROM. A joint theater headquarters, the United Nations Peace Forces Headquarters, is retained in Zagreb, Croatia.

nel of communication between conflicting sides, facilitating dialogue and cooperation in certain limited areas of mutual interest. For peace-keeping operations to be successful, they must be based on the consent and cooperation of the parties in conflict. Consent and cooperation will be forthcoming only if the United Nations remains impartial in its dealings with all parties. A U.N. peace-keeping operation cannot, it should be clear, impose solutions onto unwilling parties, whatever the pressures to take sides on legal, moral, or political grounds. Furthermore, A U.N. peace-keeping operation will face serious constraints on what it is able to achieve if it takes place in an area where the interests of Security Council members, more particularly its permanent members, are engaged and when there is not a consensus among those members on which policy the United Nations should pursue. Such was the case with UNPROFOR mission in the former Yugoslavia.

These basic truths are often underestimated in analyses of the United Nations' peace-keeping role in the former Yugoslavia. The Bosnian Government, recognized as the legitimate government of Bosnia and Herzegovina by the United Nations, has expected to be treated as more than equal to their adversaries, namely the Bosnian Serbs.<sup>3</sup> The Bosnian Government has sought, on political and moral grounds, to obtain a larger involvement of the international community in achieving its aims. The general public, for its part, horrified by gruesome media images of the suffering in Bosnia, expected UNPROFOR to prosecute a war against the Bosnian Serbs on behalf of the Bosnian people.

As a result of the misconceptions and sometimes deliberate misrepresentations of UNPROFOR's peace-keeping role, heated debate has arisen about the moral responsibility of UNPROFOR to end the war in Bosnia. This debate has focused on the use of force, over and above that required for the self-defense of a peace-keeping operation. The arguments for and against the use of force, in pursuit or as a part of a mandate, were in a large part fuelled by the creation, and subsequent failure, of the U.N.

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3. In the context of this Essay, the term "Bosnian Serb" is used to describe Bosnian Serb authorities and people, living in areas under the control of the Bosnian Serb army, who support an independent Bosnian Serb state. The term does not include those Bosnian Serbs living under the authority of the Bosnian Government who support an integral and unified Republic of Bosnia and Herzegovina.

“safe areas” concept.<sup>4</sup>

The policy decision to declare certain places as “safe areas” was taken in April 1993, when the Bosnian Serb forces, in a swift and brutal campaign, took large tracts of territory in eastern Bosnia. The dire humanitarian crisis that arose from this campaign, shown graphically in Srebrenica, appalled the international community. In response, on April 16, 1993, the Security Council, acting under Chapter VII of the U.N. Charter,<sup>5</sup> adopted Resolution 819,<sup>6</sup> which demanded that all parties treat Srebrenica and its surroundings as a safe area, free from any armed attack or any other hostile act. In May 1993, the Security Council adopted Resolution 824,<sup>7</sup> extending the concept of safe areas to include Sarajevo, Tuzla, Zepa, Gorazde, Bihac, and their surroundings. In its controversial Resolution 836,<sup>8</sup> the Security Council, on June 4, 1993, again acting under Chapter VII of the U.N. Charter, further expanded the mandate of UNPROFOR in order to enable it to, *inter alia*, deter attacks against the safe areas, monitor the cease-fire within the safe areas, and promote the withdrawal of military or paramilitary units other than those of the Bosnian Government.

The adoption of Resolution 836 was a reaction to a crisis and designed, in theory, to prevent further outbreaks of ethnic cleansing and bombardments of civilians in these selected areas. The mandate, however, assigned to UNPROFOR by Resolution 836 brought the Force into an uncomfortable “no-man’s land” between peace-keeping and peace-enforcement. Prior to the adoption of Resolution 836, UNPROFOR’s senior political and military leadership warned that the failure to impose even minimal controls on the military or paramilitary units of the Bosnian Government within safe areas would inevitably lead to these areas being used as havens where forces could refit, re-arm, train, and prepare for future military operations. The areas would, in short, consist of armed communities, inside an UNPROFOR-defended perimeter, under the protection of U.N. forces. This would clearly undermine the integrity of a peaceful and secure

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4. See S.C. Res. 836, U.N. SCOR, 3228th mtg., U.N. Doc. S/RES/836 (1993) (creating “safe areas”).

5. U.N. CHARTER arts. 39-51.

6. S.C. Res. 819, U.N. SCOR, 3199th mtg., U.N. Doc. S/RES/819 (1993).

7. S.C. Res. 824, U.N. SCOR, 3208th mtg., U.N. Doc. S/RES/824 (1993).

8. S.C. Res. 836, U.N. SCOR, 3228th mtg., U.N. Doc. S/RES/836 (1993).

safe area, designed to provide a safe haven for civilians. The unintended UNPROFOR-Bosnian Government military alliance that would arise, and in which the two parties would have disparate aims, would also pose a continuous threat to UNPROFOR. It would emphasize the close links between the protectors and the protected, alienating UNPROFOR from other factions within Bosnia.

Resolution 836 required UNPROFOR to deter attacks on the safe areas with the use of force, to promote the withdrawal of non-Government forces from the area, and to safeguard the delivery of humanitarian aid. The Security Council's decision to impose those requirements on UNPROFOR was made without sufficient consideration of the existing mandates or capabilities of UNPROFOR throughout its mission area and removed the semblance of impartiality from the Force. Resolution 836 unintentionally signaled a higher U.N. priority to protect Bosnian communities than to defend, for example, the Serb minorities in the U.N. Protected Areas in Croatia. Such a political signal could, UNPROFOR's leadership cautioned, encourage a Croatian offensive against the Krajina, with attendant risks for UNPROFOR troops in the area. It could also signal to the Bosnian Serbs that UNPROFOR had become an "enemy" in their war.

The ambiguity that has plagued UNPROFOR's mandate following the adoption of Resolution 836 is largely a result of Security Council members' difficulty in assessing the long-term operational considerations and consequences that the safe areas mandate will have on UNPROFOR operations, as a whole. Consequently, under pressure of a political imperative to be seen to "do something," the Security Council entrusted UNPROFOR with a mandate that it knew, or should have known, was not only unrealistic, but impossible to implement. That the creation of the safe areas was a "quick fix" response to an immediate problem was evident in the Security Council's hesitation to provide UNPROFOR with the necessary resources to implement its mandate. The Secretary-General, in his report to the Council on the implementation of the safe areas mandate, clearly indicated that 34,000 additional forces would be required in order to ensure full respect for the safe area concept.<sup>9</sup> Even under this

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9. *Report of the Secretary-General Pursuant to Security Council Resolution 836*, U.N. Secretary-General, at 3, U.N. Doc S/25939 (1993).

“strong” option, which could have addressed the intent of Resolution 836, UNPROFOR would only have possessed the muscle to forcefully deter attacks on, and not to defend, these areas. It was assumed, therefore, that some measure of cooperation from the parties would be required.

Under the “light” option alternative put forward by the Secretary-General, only 7600 additional forces were required. The objective of this option, however, was limited: to provide a basic level of deterrence based on the consent and the cooperation of the parties. This latter option, approved by the Security Council, was selected with the clear understanding that UNPROFOR would be incapable of defending the safe areas. It further assumed that, in order for UNPROFOR to implement its mandate in the safe areas, persuasion and cooperation, rather than force, would need to be employed. Notwithstanding these assumptions and limitations, UNPROFOR was not provided with the minimum troop resources to implement its mandate. Thus, the Force was faced with a peculiar situation: on the one hand, there was a strongly stated commitment by the Security Council to protect the civilian populations in the safe areas, while on the other hand, none of the Security Council members, including those most supportive of the creation of the safe areas mandate and some of whom already had troops within UNPROFOR, were willing or able to provide the resources necessary to carry out the mandate.

For failing to make a clear distinction in Resolution 836 between what UNPROFOR was authorized to do and what it was obliged to do, the Security Council may, in some respects, have contributed to the warring parties’ failure to understand, or fully respect, the safe area concept. The Security Council may also be held partly responsible for the subsequent misconceptions that have arisen over the extent of the use of force UNPROFOR was entitled to employ in implementing its mandates. The illusion that UNPROFOR could enforce the safe areas mandate through the use of force, particularly through the sole use of NATO air power as an additional tool for accomplishing its tasks, obscured the very real resource availability and deployment constraints that would restrict its use. It also undermined one of the important components of UNPROFOR’s moral strength: UNPROFOR posed no threat to any of the parties because it was a lightly armed peace-keeping force, equipped to use force only in self-

defense. On the other hand, the inability of the Force to use force was perceived as weakness and undermined UNPROFOR's credibility with the parties. Attempts to counter UNPROFOR's lack of credibility in the eyes of the parties by authorizing even more forceful measures only compounded the problem.

The Security Council resolutions' ambiguous and contradictory messages regarding the safe areas have allowed room for different interpretations of UNPROFOR's mandate. As a result of the mandate's uncertain nature, and by extension, the uncertain character of the Force, UNPROFOR has been left open to criticism for whatever course of action it employs. Consequently, the public perception of UNPROFOR has been that of a crisis-reactive mission lurching from one predicament to another. This perception has, in turn, resulted in a focus on UNPROFOR's "failure" to forcefully resolve the crisis rather than in a better understanding of the reasons as to why it has not been able to employ force.

The Security Council's marked reluctance to clearly state whether or not UNPROFOR is a peace-keeping or peace-enforcement operation becomes evident when one examines the many tasks mandated to the Force. The Security Council has, on occasion, cited Chapter VII of the U.N. Charter when mandating UNPROFOR to carry out certain tasks without clearly distinguishing between a rhetorical or operational application of its provisions. In many cases, Chapter VII has been cited in Security Council Resolutions with the caveat "acting in self-defense," which is a right inherent to any peace-keeping operation regardless of Resolution wording. This routine combination of Chapter VII and the "authorization" of the use of force in self-defense has further compounded the degree of confusion, even among knowledgeable observers, over the conditions in which force can be used by UNPROFOR.

The Council resolutions' imprecision in defining the role of UNPROFOR reflects the lack of consensus among Security Council members on the complex underlying causes of the conflict and on a strategy to resolve it. In the absence of a coherent or sustained policy by the Security Council, and in particular its permanent members, there has been a tendency to interpret the causes of the Yugoslav conflict in purely military terms. The threat of the use of force has, therefore, been employed as a measure to contain the conflict or as a means to "even the



score." Due to the neglect or underestimation of the real concerns of the warring parties, the use of force has become a substitute for a common strategic vision of what the international community wants to achieve in the former Yugoslavia.

It can also be argued that the focus on whether UNPROFOR should use force in Bosnia has been the result of an attempt to deflect attention from the ineffectiveness of international efforts to resolve the conflict. This outrage threatens the prestige and credibility of all the institutions and governments involved in the search for a solution. Consequently, some have argued that in the calculations of national governments and international security organizations on whether to seek a military solution to the conflict in the former Yugoslavia, the issue has been seen more in terms of their own credibility than how best to end the bloodshed and resolve the conflict. The United Nations, in such circumstances, has been a convenient scapegoat for international inaction.

The policy vacuum that existed throughout the Yugoslav conflict affected the attitude of the parties on the ground. With no incentive to cooperate, the parties continued to pursue their maximalist goals and consistently failed to honor the commitments they made. At the same time, their relations with UNPROFOR were determined by their perception of its role. The Bosnian Government, bitterly disappointed at UNPROFOR's reluctance to liberally interpret even the very limited degree of force at its disposal, has resisted the Force's constraints on its behavior. The Bosnian Serbs, for their part, have perceived the use of any force by UNPROFOR as proof that the United Nations had joined sides with their enemy. Consequently, they have viewed UNPROFOR as a party to the war and, as such, have repeatedly obstructed and targeted its personnel.

In analyzing the role of UNPROFOR in Bosnia, it is important to recall that the Force was not intended to furnish a military obstacle to the aims of the belligerent parties. UNPROFOR's presence is intended to act as a restraining factor on all sides, to alleviate the consequences of the war on the civilian populations, and to provide a measure of stability and security to besieged populations while an overall political settlement is pursued. Although UNPROFOR remains fundamentally a peace-keeping mission, the elements of peace-enforcement in its mandate cannot be ignored. The failure of the safe areas concept

and the debate over the use of force demonstrate that these two elements do not mix well together. There is, as yet, no conclusive evidence that the use of force alone has had a direct or consistently deterrent effect on the warring parties. Serb response to the use of force has been influenced by various factors and by the specific circumstances prevailing at the time.

In the case of the safe areas, the threat and use of force has been effective in some instances and less effective or even counter-productive in others. For example, in early February 1994, in Sarajevo, the "air strike ultimatum" threat was effective in ensuring Serb compliance with UNPROFOR's demands. In the Gorazde crisis in April of the same year, however, close air support missions by NATO, carried out in defense of UNPROFOR personnel, did not halt the Bosnia Serb advance on the safe area. It was intense shuttle diplomacy by the Special Representative of the Secretary-General between the Bosnian Serbs in Pale and President Milosevic in Belgrade, in combination with NATO's threat of the use of force, that brought about a resolution to the crisis. In September 1995, the use of massive air strikes succeeded in gaining Bosnian Serb compliance with U.N. ultimatums concerning the status of Sarajevo. At the same time, in all these situations, it is not clear whether it was the threat or use of force, associated diplomatic efforts, or other factors that ensured Serb compliance. For example, in NATO's most recent air strike campaign,<sup>10</sup> Serb defiance was evident up to the point when the Federation forces'<sup>11</sup> offensive in western Bosnia began to advance and Bosnian Serb military commanders appeared unable to coordinate a response due to the destruction of their communications.

The "carrot and stick" approach has been utilized in most cases when force has been employed. For example, it could be argued that the Sarajevo ultimatum of February 1994 was effective because the Serbs were simultaneously offered a diplomatic carrot — the deployment of Russian peace-keepers in Sarajevo, who the Serb's perceived as being pro-Serb. Additionally, UN-

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10. See Elaine Sciolino, *NATO Raids Against Serbs Are Increased*, N.Y. TIMES, Sept. 8, 1995, at A14 (describing NATO air strikes against Bosnian Serbs).

11. See Roger Cohen, *Conflict in the Balkans: The Croats: Croatia Expands Its Power in Bosnia*, N.Y. TIMES, Sept. 16, 1995, at A4 (describing strength of Muslim-Croat Federation).

PROFOR, in negotiations with the parties, succeeded in achieving a compromise solution acceptable to all sides.

What is clear in all these cases is that the use of force by a U.N. peace-keeping operation alone cannot end a war, nor can it provide the basis for resolving the underlying causes of a conflict. For the use of force by the United Nations, acting alone or in concert with a regional organization or with member states, to be effective, should be determined by and be part of a clear political policy. That policy should be directed towards peace. For peace to be sustainable, much more is required than mere forceful subjugation or military intervention.

UNPROFOR's experience in Bosnia, particularly in the safe areas, provides a cautionary lesson on the limits of the use of force when sustained political will to back such force, and a willingness to accept the responsibilities and consequences arising from such action, do not exist. It also proves that without clear objectives, a coherent overall policy, and adequate and appropriate resources, a policy of enforcement will be neither effective nor credible. Finally, it raises the question of whether the United Nations is the right organization to carry out enforcement action and whether such action can be carried out within a peace-keeping mandate. Recent experience has shown that the international community and the United Nations have yet to formulate a feasible concept for the use of force other than in self-defense under Chapter VI<sup>12</sup> peace-keeping operations. The question that then must be posed is: should a Chapter VI operation be allowed to develop into a Chapter VII operation or have elements of enforcement in its mandate?

While the question of whether or not Chapter VI peace-keeping missions should be allowed to stray into Chapter VII peace-enforcement operations is extremely important, it is equally necessary to focus on whether a peace-keeping mission should be deployed to an area where a war is continuing and there is, as of yet, no peace to keep. In the absence of the will of the parties in conflict to reach an agreement, and in the absence of a unified approach to resolve a crisis by key external players, the morally difficult but practical decision to shy away from any assistance other than purely humanitarian may have to be made. If, nonetheless, a decision to intervene is made, then it is impera-

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12. U.N. CHARTER arts. 33-38.

tive that the parameters of that intervention be clearly defined and understood by all parties before a peace-keeping or peace-enforcement operation is deployed. In this regard, it would be useful if, when formulating mandates for peace-keeping or peace-enforcement operations, senior U.N. civilian and military officials are more actively involved in order to ensure clearer and more realistic objectives for a force.

There is also a need to carefully formulate criteria for determining the character of an operation. In today's highly charged and subjective ethnic and nationalist conflicts, the use of consent of the parties as the sole yardstick for the nature of a force may be too restrictive. As evidenced by UNPROFOR's experience, the dynamics of ethno-nationalist conflicts widely differ from those for which the traditional concepts of peace-keeping were crafted. Thus, an impartial role in such conflicts can unintentionally freeze an existing balance of power, or encourage the stronger side to take advantage of its privileged position.

A clear distinction must, in any case, be made between operations conducted under Chapter VI and operations conducted under Chapter VII of the U.N. Charter. Ideally, peace-keeping operations should be mandated only under Chapter VI of the U.N. Charter and force should only be authorized in the context of self-defense. If a liberal interpretation of the use of force for self-defense is to be made, then it should be the exception rather than the rule and be limited to broad defensive measures. The operations should in no circumstances be of an offensive nature or be disproportionate to the situation at hand. A willingness to use force in such situations must be clear from the outset and be equally applied to all parties. It must be sustained and uniformly exercised by all the diverse U.N. forces in the area. The repeated use of force by a peace-keeping operation, however, runs the risk of becoming a substitute to a search for a viable solution and, also, to becoming hostage to an uncontrollable escalation of force. Under such circumstances, the usefulness of the continuation of a peace-keeping mission will be called into question and a creeping enforcement role, for which the force is ill-equipped and ill-prepared, could develop. I believe that, faced with such circumstances, the United Nations should withdraw its peace-keeping forces in order to allow a better equipped, better trained, and better suited force to conduct a peace-enforcement action.

By the same token, peace-enforcement operations should only be mandated under Chapter VII of the U.N. Charter. The deployment of an operation under Chapter VII should not, however, exclude the possibility of utilizing, or indeed, encouraging the use of some elements of peace-keeping operations. In this way, the errors of attempting to "upgrade" UNPROFOR from a peace-keeping to a semi-peace-enforcement operation could be avoided from the outset for future U.N. missions. Troops employed in peace-enforcement operations should have clear and precise directives on when and how to use force and be provided with the proper resources to do so in a proportionate and, if necessary, escalatory manner. An indiscriminate use of force, even in a peace-enforcement operation, could result in a force crossing the line between peace-enforcement and all-out war. This would undermine any efforts to de-escalate tensions and could result in a scenario where the operation becomes a part of the problem rather than a part of the solution.

One of the problems that the international community will face in pursuing peace-enforcement operations under the aegis of the United Nations is that the types of forces that will be required in order to conduct a peace-enforcement operation can only be provided by those limited number of Member States that are able. If such nations, for domestic political reasons, demand the right to decide where and when their units can be used in peace-enforcement operations U.N. involvement in such actions will be severely constrained. The United Nations will eventually lose credibility and legitimacy in this role.

The presence of UNPROFOR troops in Bosnia and the delivery of humanitarian assistance escorted by UNPROFOR troops has, with the notable but relatively recent exceptions of Srebrenica and Zepa, sustained the lives of over two million people. UNPROFOR, as an arm of the United Nations, cannot and has not remained morally neutral in the face of ethnic cleansing and atrocities perpetrated against helpless civilians. The Force has contributed immensely to the alleviation of human suffering, to brunting the sharpness of military conflict, and to improving the safety and welfare of innocent citizens living both in and out of the safe areas. However, UNPROFOR is a peace-keeping force. In order to perform its tasks effectively, UNPROFOR has had to maintain its impartiality, which is based on the consent of the parties in the conflict. It also has been given an ambitious man-

date and an ambiguous authorization to use force, about the extent to which even the Security Council's permanent members disagree. It is a lightly armed, widely dispersed force, equipped for peace-keeping, but not for war fighting. Consequently, the simplistic slogan of a "more robust use of force by UNPROFOR," urged by some outside observers as a means to resolve the problems of Bosnia, was never a viable option for the force that was sent to Bosnia. Only a force like the one now being assembled by NATO, 60,000 war fighting soldiers, is militarily capable of asserting its will in Bosnia — and that will be on the basis of a peace agreement signed by all parties, not in the context of active hostilities such as the one in which UNPROFOR has had to operate.