

Fordham International Law Journal

Volume 19, Issue 2

1995

Article 7

Lost Sovereignty? The Implications of the Uruguay Round Agreements

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William J. Aceves

Abstract

This Article reviews the Uruguay Round Agreements and examines the implications of this new multilateral trading system on U.S. sovereignty. Specifically, this Article reviews the new dispute settlement process and the relevant U.S. legislation. Part I provides an overview of the Uruguay Round Agreements. It reviews the Agreement Establishing the WTO and the Understanding on Rules and Procedures Governing the Settlement of Disputes. Part II provides an overview of the U.S. implementing legislation. Part III reviews the proposed Dispute Settlement Review Commission. Part IV examines the implications of the Uruguay Round Agreements on U.S. sovereignty. Specifically, it analyzes the impact of the dispute settlement process on both federal and state law.

THE CHANGING FACE OF PEACE-KEEPING AND PEACE-ENFORCEMENT*

*Shashi Tharoor***

In the second half of 1995, our newspaper headlines and television screens have borne eloquent testimony to the changing face of peace-keeping and peace-enforcement. Earlier this summer, United Nations peace-keepers¹ were pushed aside as Bosnian Serbs took the “safe areas” of Srebrenica and Zepa, and again as Croatian forces overran the former “United Nations Protected Area” of the Krajina. Peace-keepers were taken hostage or forced to stand by in frustrated impotence as atrocities and human rights abuses were committed barely out of earshot. Then, and almost in another dimension, the North Atlantic Treaty Organization² (“NATO”), with the endorsement of the Secretary General of the United Nations (“U.N.”), conducted wide-ranging and disproportionate air strikes against Bosnian Serb military forces threatening Sarajevo and the remaining safe areas.³ Two sets of powerful images — one reflective of the limitations of international peace-keeping in situations where there is no peace to keep, the other seemingly demonstrating the po-

* This essay is based on a presentation on the same topic made by the author to the Annual Conference of the International Institute of Strategic Studies in Vienna on September 9, 1995. A revised text, under the title “Should Peacekeeping Go ‘Back to Basics?’” appears in *SURVIVAL*, Vol. 37, No. 4, Winter 1995-96. Parts of this essay, in somewhat different form, also appear in chapters contributed by the author to the books, *AFTER RWANDA: THE COORDINATION OF UN HUMANITARIAN ASSISTANCE* (Jim Whitman, ed., Macmillan, London 1995) and *FROM PEACEKEEPING TO PEACE-MAKING* (Bo Hultdt, ed., Swedish War College, Stockholm 1995).

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1. Throughout this essay, “peace-keepers” will refer to peace-keeping forces operating under the auspices of the United Nations.

2. See NATO INFORMATION SERVICE, *THE NORTH ATLANTIC TREATY ORGANISATION, FACTS AND FIGURES 13-14* (1989). The North Atlantic Treaty Organization (“NATO”) was formed on April 4, 1949 by ten European countries, the United States, and Canada, in accordance with Article 51 of the United Nations Charter. *Id.* at 3; see U.N. CHARTER art. 51 (“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations . . .”).

3. Other safe areas include Bihac, Goradze, and Tuzla.

tential of the use of force to promote peace in the same situation — frame the context of this discussion.

This paradox describes the heart of the dilemma facing those of us who work in peace-keeping. Early in 1995, the *New York Times* turned its magisterial gaze upon the future of U.N. peace-keeping, an activity that had earlier received considerable criticism in its editorial columns, particularly with respect to Bosnia and Somalia. “Rethinking and retrenchment are in order. . . . There should be a shift back toward more limited objectives like policing cease-fires,” it declared.⁴ “UN peace-keeping does what it can do very well. It makes no sense to continue eroding its credibility by asking it to do what it cannot.”⁵

This somewhat startling advocacy of a return to traditional verities gave pause to many of us who had been engaged in the practice of peace-keeping during its recent tumultuous history. Was the *New York Times* right, and if so, were we to contemplate a future of retreating headlong into the past?

At one level, there is something oddly comforting about the thought of seeking safety in well-worn practices; resting on old laurels is a good deal easier than wresting new ones. “Traditional peace-keeping” is indeed something the United Nations has done well and continues to know how to do. Our least problematic operations are always those where the parties agree to end their conflicts and only need our help to keep their word; where the consent and co-operation of the parties can be assumed and the impartiality of the peace-keepers is unchallenged; where the risks are low, the use of force largely unnecessary, and the tasks assigned to the peace-keepers are those that are basic bread-and-butter skills for any army in the world; and where the limited resources available to the United Nations are adequate for the job at hand.⁶

In these situations, the United Nations can bring a wealth of experience and precedent to bear in the successful conduct of such peace-keeping operations. Many of us in this business would like nothing more than to say: “give us the buffer zones in

4. *The Future of U.N. Peacekeeping*, N.Y. TIMES, Jan. 8, 1995, at A24 [hereinafter *Future of UN Peacekeeping*].

5. *Id.*

6. While this is not a formal definition of “traditional peace-keeping,” it summarizes all the elements that have gone into the making, and successful working, of that concept.

Cyprus or Kuwait, the elections in Cambodia or Mozambique, the package-deals in Namibia or El Salvador, and we'll deliver you an effective, efficient success-story, on time and under budget." All professionals — and U.N. peace-keepers are no exception — are always happy to be asked to do what they can do best.

Sadly, however, this attractive formula has one thing wrong with it: it's a good answer, but only to part of the question. Traditional peace-keeping is all very well if the only crises confronting the United Nations are those that are ripe for the peace-keeping treatment. But classical, consensual peace-keeping does not respond fully to the nature of the world we live in and the challenges the new world disorder poses to the international community.⁷ If the nature of U.N. peace-keeping has acquired a certain elasticity in recent years, it is precisely because circumstances have led the international community to make demands on the military capacity of the United Nations that vastly exceed anything it was called upon to do as recently as three or four years ago. We will not be able to face the twenty-first century by remaining firmly rooted in the twentieth.

At the same time, there is no question that the heady days of peace-keeping overreach are over. Secretary-General Boutros Boutros-Ghali recently declared that, "the number of U.N. operations, the scale of the operations, the money spent on operations cannot keep growing indefinitely. The limits are being reached."⁸ At the end of the Cold War, an unprecedented degree of agreement within the Security Council in response to international crises plunged the United Nations into a dizzying series of peace-keeping operations that bore little or no resemblance in size, complexity, or function to those that had borne the peace-keeping label in the past. For years during the Cold War, peace-keeping had worked well, within the limitations imposed upon it by superpower contention — well enough, at any

7. For analyses of these contemporary challenges, see JAMES N. ROSENAU, *TURBULENCE IN WORLD POLITICS: A THEORY OF CHANGE AND CONTINUITY* (1990); Lawrence Freedman, *Order and Disorder in the New World*, *FOR. AFF.: AMERICA AND THE WORLD*, 71, No. 1 (1991-92), at 20-37; Thomas G. Weiss, *UN Responses in the Former Yugoslavia: Moral and Operational Choices*, 8 *ETHICS AND INT'L AFF.* 13-14 (1994); *Ethnic Conflict and International Security*, *SURVIVAL* (Special Issue), Spring 1993, at 35.

8. United Nations Secretary-General Boutros Boutros-Ghali, *Managing the Peace-Keeping Challenge*, Address at Yale University (Mar. 21, 1995) (transcript available from U.N. Department of Public Information, Press Release SG/SM/5589).

rate, to win the 1988 Nobel Peace Prize. Then, when these limitations evaporated, everything seemed possible. At the same time, the new transcendence of the global media added a sense of urgency to these crises: it is a striking coincidence that the reach and impact of Cable News Network ("CNN") and its imitators peaked precisely at this time of post-Cold War concordance. Television showed that action was needed, and the end of the Cold War meant that action was possible. So "peace-keeping" became a catch-all term covering not merely the monitoring and implementation of cease-fire agreements, but an entire range of tasks including supervising and running elections, upholding human rights, overseeing land reform, delivering humanitarian aid under fire, rebuilding failed states, and, as the *New York Times* put it in the same editorial, "ambitious attempts to impose peace on hostile forces determined to keep fighting."⁹ The widespread criticism, not all of it well-founded or fair, of U.N. efforts in situations where there was little peace to keep — particularly in Somalia, the former Yugoslavia, and Rwanda — lie directly behind the calls for retreat to a simpler era. Amidst so many voices urging the United Nations to go "back to basics," it is clear that it will be a long time before the Security Council again authorizes another of the hybrid operations whose ever-mounting scope spiralled seemingly out of control in a flurry of Council resolutions in 1992 and 1993.

But this should not mean a return to the brave old world of buffer zones and policing cease-fires, the non-threatening application of military skills to defuse conflicts. The irony of the "back to basics" appeal is that the United Nations had already moved successfully beyond the basics before getting embroiled in the controversies of recent years. The operations that brought Namibia to independence, transformed the societies and politics of Cambodia and El Salvador, and restored hope in Mozambique were all multi-dimensional efforts that demonstrated the effectiveness of a broader concept of peace-keeping — one that combined military functions with a variety of largely civilian undertakings to bring about change and fulfill the objectives of the operation. The techniques involved have proved their effectiveness and, therefore, should not be jettisoned. In admitting, understandably, that the United Nations cannot af-

9. See *Future of UN Peacekeeping*, *supra* note 4, at A24.

ford to become part of the problem as it did by taking sides in Somalia; in acknowledging that the United Nations cannot easily find troop-contributing countries willing to commit forces to halt genocide, as it had hoped it might in Rwanda; in accepting that the United Nations can protect humanitarian aid deliveries, but that it cannot force them through, as we have discovered in Bosnia; in conceding all this, the United Nations need not abandon the functions of policing the local police, of sheltering vulnerable groups, of upholding human rights standards, of running free and fair elections, of supervising mistrusted local administrations, and of creating conditions conducive to political accommodation and national reconciliation, all of which it has done in recent years with success — and all of which take us beyond the *New York Times* prescription with which I began this essay.

Yet, that too is only a partial answer to the questions that confront us today. For “multi-dimensional peace-keeping” still rests on the traditional pillars of agreement and consent. The new functions identified above are usually reflected in the terms of a comprehensive settlement that both, or all, parties to a conflict wish the United Nations to implement, and none of them involve a threat to the United Nations’ preference for the non-use of force. We can move beyond traditional peace-keeping and still find ourselves on familiar ground. The more difficult problems relate to situations in which agreements are non-existent or short-lived, where the United Nations does not enjoy the formal consent or the practical co-operation of the parties amidst whom it is deployed, and when the nature of the ongoing conflict obliges us to confront searching questions about the need to use force in order to be effective, with the concomitant risk that doing so will jeopardize the United Nations’ impartiality and thus the very effectiveness it is trying to attain.

The thawing of the Cold War has created an environment in which the world will be making choices about the management of international conflicts. The eclipse of the Communist bloc loosened the straitjacket within which many potential conflicts had been confined. Many conflicts erupted amid the disinclination of the big powers to intervene; during the Cold War, both superpowers sought to prevent conflicts arising which might engage their interests. Today, the stakes are lower; Somalia is not seen as threatening to lead to another Stalingrad and Sarajevo

1992, for all its emotional impact, does not carry the globe-threatening resonance of Sarajevo 1914. In this climate, warring factions, unfettered by bondage to one superpower or another, pursue their ambitions without regard to an outside world that clearly cannot summon the will or the resources to intercede decisively. A post-ideological world stokes its frenzies in the flames of nationalism, ethnicity, and tribal triumphalism. Old injustices and older enmities are revived and intensified; history becomes a whip with which to flail those who are inclined to compromise. Few rules are observed in these wars, fewer still in the tenuous moments of peace that punctuate them. The techniques of a calmer era, peace-keeping included, seem inadequate to the moment.

Yet abstention is not really an option. For most of the crises that thrust themselves on the United Nations' agenda, indifference is impossible. This is not just a moral matter, though the suffering caused by these conflicts — in many of which the infliction of agony on innocent civilians is a direct aim, rather than a by-product, of war — remains an affront to the world's conscience. In a world of instant satellite communications, with television images of suffering broadcast as they occur, few democratic governments are immune to the public clamor to "do something." For a couple of years, the international community, pressed to respond and unready with an alternative international security mechanism, found in U.N. peace-keeping the "something" it could "do." Peacekeepers took unprecedented risks, made foreseeable mistakes, and suffered an intolerable level of casualties. Governments, accountable politically for the safety of their soldiers, cut their losses and proved unwilling to risk additional ones. In the process, we have all learned what peace-keeping cannot do and, yet, we cannot afford to do nothing. The challenge of the future is to define that "something" in terms of what is doable — in other words, to identify how the United Nations can be enabled to respond to future Somalias and Rwandas while retaining the support of Member States.

It is in this context that we have again begun to hear about "peace-enforcement," which had fallen out of fashion after the disasters of Somalia. In 1995, with the overt threat of massive air force being used to control the conflict in Bosnia, peace-enforcement has again acquired cachet and credibility. Conceptually, this troubles me.

The ongoing work taking place in a number of defense ministries around the world, as well as at U.N. Headquarters, to define the terms under which peace-keeping operates represents one of the most vital developments for the future of peace-keeping. For the evolution of peace-keeping in the new world disorder has outstripped the conceptual underpinnings that girded it during the Cold War years. U.N. peace-keepers have intervened in crises before the world could find the time to elaborate, or agree upon, the doctrinal justifications or the overall strategy behind each new mandate (or modification of mandate).

Peace-keeping was an activity that the United Nations had always been politically reluctant to define. The intergovernmental Special Committee on Peacekeeping Operations, for instance, annually discussed a declaration on the principles of peace-keeping and annually rejected the idea on the grounds that to define peace-keeping was to impose a strait-jacket on a concept whose flexibility made it the most pragmatic instrument at the disposal of the world organization. Nonetheless, a consistent body of practice and doctrine evolved over the years: peace-keepers functioned under the command and control of the Secretary-General; they represented moral authority rather than the force of arms; they reflected the universality of the United Nations in their composition; they were deployed with the consent and co-operation of the parties; they were impartial and functioned without prejudice to the rights and aspirations of any side; they did not use force or the threat of force except in self-defence; they took few risks and suffered a minimal number of casualties; and they did not seek to impose their will on any of the parties. As the Security Council proclaimed "no-fly zones" and "safe areas," declared punitive actions against warlords, and acquiesced in NATO-declared "exclusion zones"; as Member States established command arrangements that did not in all cases terminate in New York; as peace-keepers mounted anti-sniping patrols and called in air strikes, all these principles became strained to the breaking-point.

Until the NATO air strikes of September 1995, there was general recognition that peace-keeping is not peace-enforcement and that the two activities do not mix very well. In other words, enforcement action proceeds from different premises and is not merely one more stage in a "peace-keeping continuum." As the Secretary-General put it:

The logic of peace-keeping flows from political and military premises that are quite distinct from those of enforcement; and the dynamics of the latter are incompatible with the political process that peace-keeping is intended to facilitate. To blur the distinction between the two can undermine the viability of the peace-keeping operation and endanger its personnel.¹⁰

Both the new British doctrine of "Wider Peace-keeping" and the U.S. Army Field Manual on the subject identify consent as the crucial ingredient in peace-keeping. This is a welcome development. It is to be hoped that the continuing process of reflection and analysis on this question will result in a consensus amongst Member States on what peace-keeping is and what it is not. The dangers of conceptual confusion for soldiers in the field, and for the credibility of the United Nations itself, clearly outweigh the short-term advantages that doctrinal elasticity might provide governments. But doctrines and field manuals are one thing and decisions taken by governments under political compulsion are something else. The very same governments that have worked on these concepts have also led the NATO drive to conduct air action against one party in Bosnia while leaving the peace-keepers on the ground.

Conceptual clarity has, of course, been particularly elusive on the Bosnia question. The U.N. peace-keeping effort in Bosnia has been a curious amalgam of functions ranging from the purely humanitarian to the imposition of rules and restraints on the belligerents, what I have elsewhere called "conflict-mitigation."¹¹ The same soldiers on the ground have been expected, under eighty-seven Security Council resolutions and another eighty-seven Presidential Statements of the Council (as of mid-December 1995), to perform functions that have required the daily, ongoing co-operation of all parties, while limiting their recourse to certain military means (maintaining an interdiction on the use of aircraft for combat purposes) or to attacks upon certain towns (the so-called "safe areas"). The international community, in order to enforce a partial peace in an unresolved conflict, has now carried out air strikes against a party without whose

10. *Supplement to an Agenda for Peace: Report of the Secretary-General*, at 9, ¶ 35, U.N. Doc. S/1995/1/A/50/60 (1995).

11. See Shashi Tharoor, *United Nations Peacekeeping in Europe*, SURVIVAL, Summer 1995, at 122.

consent and co-operation U.N. soldiers could not function, move, or be resupplied.

Earlier this year, Secretary-General Boutros-Ghali declared, "if there is no political will among the protagonists to solve the problem, the United Nations cannot impose peace."¹² This firm statement of principle was necessary because, in the heady days after the end of the Cold War, its somewhat obvious truth had eluded too many. The United Nations' experiences in Somalia and the former Yugoslavia — despite the hopes raised by the recent NATO air strikes — have made it clear that those who are determined to fight cannot be prevented from doing so by U.N. peace-keepers. People who are convinced they have more to gain on the battlefield than at the negotiating table are also particularly unreliable partners for the U.N. peace efforts. In any case, as the Secretary-General went on to point out in the same speech, the imposition of peace requires military, financial, and political resources that Member States are simply not willing to provide for operations other than war, and these resources require a capacity to manage them which the United Nations Secretariat does not possess and is unlikely to be granted.¹³

Nor is it wise to extrapolate too generously from the special case of Bosnia, where major governments have so much at stake that they have been tempted to abandon the restraints that confine them elsewhere. The conditions imposed by the Security Council on the deployment of U.N. troops into Angola, earlier this year, are more typical of the attitude of the international community today. The Security Council instructed the Secretary-General not to deploy the troops it had authorized for the U.N. Angola Verification Mission¹⁴ ("UNAVEM I") peace-keeping operation until the Angolan parties had revealed a tangible commitment to peace and to honoring their undertakings to each other under their peace agreement — conditions which, if applied to the former Yugoslavia, would have ended any U.N. deployment there. The conclusion is inescapable: the world would rather have allowed war in Angola to continue than have

12. United Nations Secretary-General Boutros Boutros-Ghali, Speech to Twenty-Fifth Vienna Seminar 4 (Mar. 2, 1995) (Press Release SG/SM/5572; PKO/39) [hereinafter Vienna Seminar Speech].

13. *Id.*

14. United Nations Angola Verification Mission I, S.C. Res. 626, U.N. SCOR, 43rd Sess., 2834th mtg. U.N. Doc. S/RES/626 (1988).

borne the costs of imposing peace on the recalcitrants. NATO's actions in Bosnia are an exception, one unlikely to be repeated elsewhere.

Can the United Nations expect to mix peace-keeping and coercion, as the Security Council has obliged it to do in Somalia and now in Bosnia and Herzegovina? The United Nations Operation in Somalia's¹⁵ ("UNOSOM") attempts to impose peace led to the loss of political support and its eventual withdrawal from Somalia; the United Nations Protection Force¹⁶ ("UNPROFOR") has been blamed for failing to do things it was never mandated, staffed, financed, equipped, or deployed to do. Public opinion and political rhetoric have tended to outstrip both the mandate and means given to the United Nations. Most of UNPROFOR's critics, for instance, seem to think that UNPROFOR ought to be resisting or repelling "aggression." But the answer to aggression is not a peace-keeping operation; it is Operation Desert Storm.¹⁷ In responding to the complex origins of the Yugoslav tragedy, the Security Council chose not to take military sides in the conflict, but rather to use a peace-keeping operation as a means to alleviate the consequences of the conflict — feeding and protecting civilians, delivering humanitarian relief, and helping create conditions conducive to promoting a peace settlement. As a result, a large number of people are alive, housed, and safe today who would have been killed, displaced, or in peril had UNPROFOR not been deployed.

Should UNPROFOR have jeopardized these achievements by a greater use of coercive force? Such a question points to a central dilemma in those situations where the United Nations deploys peace-keepers when there is no peace to keep. Impartiality is the oxygen of peace-keeping: the only way peace-keepers can work is by being trusted by both sides, being clear and transparent in their dealings, and by keeping lines of communication

15. United Nations Operation in Somalia ("UNOSOM"), S.C. Res. 751, 47th Sess., 3069th mtg., U.N. Doc. S/RES/751 (1992).

16. United Nations Protection Force ("UNPROFOR"), S.C. Res. 743, 47th Sess., 3055th mtg., U.N. Doc. S/RES/743 (1992).

17. See *War in the Gulf: The Overview — U.S. and Allies Open Air War on Iraq; Bomb Baghdad and Kuwaiti Targets; 'No Choice' But Force, Bush Declares*, N.Y. TIMES, Jan. 17, 1991, at A1. Operation Desert Storm was the code name given to the U.S. military operation in Iraq in the 1991 U.S.-Iraqi war. The U.S., in conjunction with its allies, launched the operation to enforce the mandates of U.N. Security Council Resolution 678, which authorized the use of force against Iraq after Jan. 15, 1991. *Id.*

open. The moment they lose this trust, the moment they are seen by one side as the "enemy," they become part of the problem they were sent to solve. This assumption is reflected in UNPROFOR's pattern of deployment in a variety of dispersed locations, loosely configured across all the battle lines, full of unarmed or lightly armed observers and relief workers, and travelling in highly-visible white-painted vehicles. For such a vulnerable force to take sides through the use of force might have been morally gratifying — at least briefly — but it would also have been militarily irresponsible. Ironically, the exercise of the bombing option was made possible by UNPROFOR's inability to hold on to Srebrenica and Zepa or to find troop contributors for Gorazde, which reduced the United Nations' dependence on Serb cooperation and vulnerability to Serb retaliation. Furthermore, no single Security Council resolution on Bosnia can be read in isolation from the others. Even in those resolutions that allowed for the use of force,¹⁸ the Security Council reaffirmed its previous resolutions on UNPROFOR; in other words, it did not want UNPROFOR to abandon its existing mandates in order to undertake new ones. UNPROFOR thus had the difficult challenge of reconciling its authority to use force with its obligation to perform all the other tasks mandated by the Security Council — tasks that require the co-operation of, and deployment amongst, all parties to the conflict. The purpose of any U.N. peace-keeping deployment is, in the last analysis, to help extinguish the flames of war, not to fan them.

Peace-keepers, by definition and practice, cannot impose their will on those who do not wish to keep the peace. Certainly none of us would want bullies or aggressors to enjoy a *de facto* veto over international efforts to help their victims; but, as the Secretary-General has also pointed out, there is also an ethical problem with the idea that peace should be imposed on the recalcitrant. Should the United Nations be devoting its efforts, expending political support and scarce finances, "in a country where the parties actually do not deserve the assistance of the United Nations because peace and political will do not exist?"¹⁹ The conditions imposed by the Security Council on the deploy-

18. See S.C. Res. 836, U.N. SCOR, 3228th mtg., U.N. Doc. S/RES/836 (1993); S.C. Res. 844, U.N. SCOR, 3241th mtg., U.N. Doc. S/RES/844 (1993).

19. Vienna Seminar Speech, *supra* note 12, at 5.

ment of U.N. peace-keeping troops in Angola under UNAVEM-III, and in particular the requirement that both parties show a tangible commitment to peace and take concrete steps toward honoring their undertakings before the U.N. operation is fully deployed, suggests that the international community has learned this lesson.

What lies behind this approach is, of course, the acceptance of the reality that peace-keepers have been sent precisely because the world is unable or unwilling to pursue the alternative course: going to war. It is sometimes argued that the peace-keeping deployment in Bosnia reflected not so much a policy as the absence of policy; that peace-keeping responds to the need to "do something" when policy-makers are not prepared to expend the political, military, and financial resources required to achieve the outcome that the press and opinion-leaders are clamoring for. Whatever the merits of this analysis, it is true that there has been a gap between the overall thrust of international intervention in the crisis and the actual mandates and means given to the peace-keepers in the field. If the objective of the international community is the firm and secure establishment of a viable sovereign state of Bosnia and Herzegovina, as many Security Council resolutions imply, then peace-keeping is not a direct means to that end; rather, it is a means of containing the situation while others — diplomats and negotiators — pursue that end. All too often, however, the end objectives of Security Council resolutions have been framed in terms that would require war to fulfill them, while the world has clearly committed neither the political will nor the resources to conduct warfare for those ends.

This was especially, but by no means solely, the case on the question of the "safe areas." The Security Council resolutions establishing the "safe areas" required the parties to treat them as "safe;"²⁰ imposed no obligations on their inhabitants and defenders; deployed U.N. troops in them but expected their mere presence to "deter attacks;" and carefully avoided asking the peace-keepers to "defend" or "protect" these areas, but authorized them to call in air power "in self-defence." This was a masterpiece of diplomatic drafting but largely unimplementable as

20. Resolutions establishing safe areas include 1993 Security Council Resolutions 824, 836, and 844.

an operational directive. As it became increasingly clear that only force could meaningfully protect territory in the midst of an ongoing war, the U.N. peace-keepers found themselves in the untenable position of having to call in air strikes on the very people amongst whom they were deployed and on whose co-operation they were dependent for their daily survival. The safe areas and the people inside them, including U.N. peace-keepers, could only be fed, supplied, and maintained through Serb territory and with Serb consent. Yet, while UNPROFOR was at its most vulnerable, the world clamored for the United Nations to attack the Serbs for every transgression, a course of action that could have ended the co-operation without which the safe areas could not be maintained. The peace-keepers on the ground knew well that it is extremely difficult to make war and peace with the same people on the same territory at the same time.

What, then, does "peace-enforcement" really mean? It strikes me more and more as a term used to cover the desire to go to war without making the hard political and military choices that war requires. The real alternatives are intervention and non-intervention; and that is a genuine choice, for many have argued persuasively that the world's intervention in the conflict in the former Yugoslavia has only served to prolong human suffering by postponing a swift military victory for any side — in Edward Luttwak's words, the peacekeeping operation has amounted to "torturing" the people "with useless therapies while denying them the decisive surgery of war."²¹

But if the world must intervene in a conflict, then the second choice lies between the logic of peace and the logic of war. If one chooses the former, one opts for peace-keeping, with all its limitations: the requirement for consent and co-operation, the indispensability of impartiality, and a sensible reluctance to use force. One advocating this position abjures victories, disclaims enemies, and treats all the parties as partners in a common endeavor to attain peace. If one opts for war, one commits the necessary political will and the military and financial re-

21. Edward N. Luttwak, *Meddling By Outside Powers Has Prolonged the Balkan War*, INT'L HERALD TRIB., Aug. 11, 1995, at 6. See John F. Hillen III, *Killing with Kindness: The US Peacekeeping Mission in Bosnia*, FOREIGN POL'Y BRIEFING 34 (Cato Inst., Washington D.C.), June 30, 1995 (arguing that peace-keeping in Bosnia has done people more harm than good).

sources required to obtain victory. One identifies an enemy and devotes the means required to destroy him.

Mixing peace-enforcement with peace-keeping is the military equivalent of having your cake and eating it too; of staying above the fray but entering it at moments and in areas of one's own choosing. Peace-keepers in conflict situations are like referees in a sporting clash. But a referee who intervenes in the match when it suits him rapidly loses the trust of the players he is refereeing and, in the process, becomes an adversary. At that point, does he say that he no longer wishes to be either referee or participant, as the United Nations did in Somalia, or does he enter the fray he sought for so long to stay out of? Peace-enforcers are obliged to remain referees while threatening to become combatants — no easy task when those on the ground do not have the capacity to go to war, should that become unavoidable.

The dangerous risk inherent in peace-enforcement is the gamble that one can drop bombs from the air and at the same time negotiate co-operation on the ground with the same party. The salience of air strikes in much of the current advocacy of peace-enforcement is no accident: air power, as Eliot Cohen memorably put it, "is an unusually seductive form of military strength because, like modern courtship, it appears to offer gratification without commitment."²² In war, air power is harnessed to the efforts of the ground troops pursuing the same military objective; in the inchoate world of peace-enforcement, air power administers lessons that ground troops are neither mandated nor equipped to teach, and if the lessons are not properly learned, the pilots fly away while the ground troops wake up to face the consequences the morning after. Peace-enforcement in these conditions is an extraordinarily high-risk strategy, though one that, as these words are written, the author hopes will work in Bosnia.²³

At the same time, it is essential to find alternatives to war when traditional peace-keeping is not appropriate. Diplomacy is the first alternative. The United Nations is redoubling its efforts to forestall conflicts before they erupt. Early warning and pre-

22. Eliot Cohen, *The Mystique of U.S. Air Power*, FOREIGN AFF., Jan.-Feb. 1994, at 109.

23. As this essay goes to press, the successful conclusion of the peace conference in Dayton, Ohio — made possible in no small measure by the air strikes of September 1995 — appears to bear out this hope.

ventive diplomacy are activities with a mixed track record. It is fair to say that no one hears of the wars that did not occur because the United Nations was able to head them off, but it is also true that early warning is of little use in and of itself, unless it is accompanied by the political will to act on the warnings received.²⁴ Any international intervention to prevent a conflict would have to be credible; in other words, the governments declaring their determination not to permit another genocidal civil war would have to be prepared to back up their statements of resolve with action if the parties on the ground decided to ignore them. This implies that effective preventive action requires the same degree of political commitment and agreement as post-conflict peace-keeping. Sadly, governments reluctant to send in troops after a conflict has broken out are usually also reluctant to do the same before the conflict begins. There is no doubt, however, that preventive deployment would be cheaper in lives and resources than anything that might follow.

The one current functioning example of preventive deployment, the United Nations Preventive Deployment Force²⁵ ("UNPREDEP") (formerly UNPROFOR) in the Former Yugoslav Republic of Macedonia ("FYROM"), has contributed immensely to the stability of the Government and the State of FYROM. But the catch with any preventive deployment is that it is impossible to prove a negative: any such force is a success only until it fails. Preventive deployment may not always, or indefinitely, deter conflict, but there is no doubt that at the very least it raises the political price of any aggression and increases the international community's stake in a peaceful outcome for any conflict that may occur in its area of operations.

If conflict does occur, despite the best efforts of the diplomats and peace-makers, it is vital that it be immediately addressed. The future of U.N. peace-keeping demands a rapid response capacity; the Secretariat is largely agnostic as to how it should acquire this. At the moment, the only tool available to it in this domain, the Stand-By Forces Arrangement²⁶ ("Arrange-

24. There has been no shortage of early warnings on Burundi and indefatigable efforts by the U.N. Secretary-General, Boutros Boutros-Ghali, but the limits on the extent of preventive action that governments are prepared to undertake are clear.

25. United Nations Preventive Deployment Force ("UNPREDEP"), S.C. Res. 983, 50th Sess., 3512th mtg., U.N. Doc. S/RES/983 (1995).

26. Under the Arrangement, Member States earmark the forces and equipment

ment”), has yet to prove itself. In the dreadful summer of 1994, when the United Nations needed 5500 soldiers for Rwanda, it turned to the nineteen governments that, at that time, had pledged a total of 31,000 troops for future U.N. peace-keeping operations; all declined to participate. The Arrangement thus turned out to be no more than an opportunity to obtain negative answers more rapidly than in the past, rather than generating forces more rapidly than in the past. Currently, the number of countries enrolled in the scheme has gone up to forty. It is not yet clear whether this implies a parallel increase in the viability of the Arrangement.

Secretary-General Boutros-Ghali has, in his *Agenda for Peace*²⁷ and in subsequent declarations, suggested the establishment of a rapid deployment force to serve as the Security Council’s strategic reserve whenever emergency situations require peace-keepers to be deployed at short notice. In his *Supplement to An Agenda for Peace*,²⁸ the Secretary-General proposed that battalion-sized units be earmarked by a number of countries for this purpose, be trained to the same standards, use identical operating procedures, share common communications and other essential equipment, and train together in regular joint exercises. They would remain within their national armies and be stationed in their home countries, but be maintained at a high state of readiness to be deployed as soon as the need arose. The idea has, so far, not found favor with Member States and it suffers from the same disadvantage as the current, looser Stand-By Forces Arrangement, i.e., that of requiring a specific decision each time by the offering Member State as to whether the unit it has pledged will in fact participate in the proposed operation. An efficiently-integrated rapid deployment force would be more vulnerable to disruption by the withdrawal of one of its crucial elements than would be an ad hoc force drawn, as at present, by

they would in principle be prepared to provide for a U.N. peace-keeping operation. There is, however, no binding obligation to honor pledges made and Governments retain the right to confirm or refuse an actual contribution each time a specific operation is established.

27. *Agenda for Peace: Report of the Secretary-General*, U.N. Docs. A/47/277 and S/24111 (1992).

28. *Supplement to an Agenda for Peace: Report of the Secretary-General*, at 11, ¶ 44, U.N. Doc. S/1995/1/A/50/60 (1995).

the United Nations from a motley collection of volunteering governments.

A somewhat more ambitious idea that has gained currency in recent years is that of a permanent U.N. force — a “standing army” or “U.N. legion” — consisting of individuals recruited, paid, and managed by the United Nations as a sort of military counterpart to the international civil service. The principal advantage of this idea is that such a force could immediately be deployed upon the Security Council’s authorization and it would not require further governmental decisions, since the soldiers would belong to the United Nations, not to the soldiers’ national armies. The principal disadvantages, however, relate to cost, size limitations (how many “legionnaires” would one need to maintain effective rotations? What would happen if a new crisis found the available forces already deployed in an earlier one?), and the political unreadiness of certain Member States to contemplate the existence of what could be seen as a supranational military entity under the command of the Secretary-General.

Whichever solution governments eventually agree upon, it is clear that if the world wants the United Nations to serve, even occasionally, as a fire brigade, it will have to establish a better system. Under the present one, the fire breaks out, the aldermen on the Security Council agree it needs to be put out, and the fire chief is then sent out to hire firemen, rent fire trucks, find hoses of the right length, and look for sources of water to put into them — while hoping that, when he has what he needs, the house has not already burned down and there are still survivors to rescue.

But in all that it is asked to do, the United Nations can only be as good as it is allowed to be. We are developing the capacity to plan, mount, support, and manage peace-keeping operations better than ever before and to combine the “gifted amateurism” and inventive idealism of the traditional days of peace-keeping with the technological sophistication, modern communications and logistics, and planning skills and response capacity of the military professionals. But we cannot do this without surmounting the endemic problem of the enormous gap between mandates and means. As we learned in Rwanda, in 1994, and in the Bosnian “safe areas,” in 1993, the Security Council can routinely pass resolutions without being obliged to provide the troops to implement them. When the troops are found, they too often

must be equipped, usually with unfamiliar equipment, and trained, tasks for which the United Nations has no infrastructure and which it conducts by improvisation. Furthermore, when troops are finally found, equipped, and deployed, their governments have to be paid, an obligation in which the United Nations is increasingly falling behind. Currently, the Secretary-General has been obliged by a severe shortage of cash to suspend all repayments to troop- and equipment-contributing countries.

The General Assembly routinely exhorts Member States to pay their assessed contributions for peace-keeping operations "on time and in full," but in practice only a handful of Members send in their contributions within the stipulated thirty days after the issuance of a letter of assessment. This letter itself comes at the end of a lengthy process of budget preparation and review by two different governmental bodies, followed by a vote by the General Assembly. Recent experience has been that, three months after assessments are levied, barely fifty percent of the required funds have been received. This shortfall ties the operational hands of the United Nations — which frequently has to deal with commercial contractors (and in some cases government providers) who want cash "up front" before providing goods and services to peace-keeping operations. Equally troubling, this problem limits the ability of the Secretariat to reimburse troop-contributing countries. In the case of developing countries, this can cause serious hardship, particularly since governments with hard-currency problems tend to await U.N. reimbursement before paying their troops. The resulting problems of morale in missions like UNPROFOR, where soldiers subsisting on the U.N. daily allowance of US\$1.25 a day serve side-by-side with Western troops earning hardship bonuses in addition to their much higher regular salaries, have contributed to serious operational difficulties on the ground. Even more discouraging are the recent developments in the U.S. Congress, which has already mandated a unilateral reduction of the U.S. peace-keeping contribution from 31.4% to 25% and is now considering legislation that would "offset" the costs of national military efforts against U.N. dues. If this proposal becomes law, it would eliminate, for all practical purposes, U.S. financial support for U.N. peace-keeping.

The problem is all the more ironic when seen against the

comparative costs of other military activities — two days of “Operation Desert Storm,” for instance, would have paid for all of the U.N. peace-keeping operations that calendar year (1991) — and even against the kinds of military expenditures national governments are usually willing to contemplate out of their defence budgets. An instructive indication of this came in 1993, when NATO planners, asked to prepare for a possible operation to implement a peace settlement in Bosnia, estimated its annual cost at US\$8.3 billion — by ironic coincidence the exact figure, at that point, of the United Nations’ cumulative expenditure on all peace-keeping operations since 1948. If peace-keeping is to have a future, governments will have to overcome the syndrome under which legislators are always willing to pay for war, but not for peace.

CONCLUSION

Peace-keeping today is, therefore, in flux, if not in crisis. If it is to serve as a useful instrument in the maintenance of international peace and security, it needs conceptual clarity, political support, and financial resources. Peace-keeping has served the world well; peace-keepers can point to a Nobel Peace Prize to prove it. For peace-keeping to remain effective in a changing world, its credibility must not be jeopardized by the application of peace-keeping to inappropriate situations, by the issuance of mandates unsupported by doctrinal consistency or military means, or by the undermining of its authority by attempts to reconcile peace-keeping with war-making under the rubric of peace-enforcement. Perhaps, as the whirling currents of the confused present subside, the day will come when we can stop talking about the “changing face of peace-keeping” and survey instead, with satisfaction, an instrument whose capacity and limitations are understood by all — and are clearly seen in a face that has stopped changing.