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(p. 95) Chapter 5 Enforcement and Peace Enforcement Operations

5.1 Legal Characterization and Basis for Enforcement Operations and Peace Enforcement Operations under the Charter

5.01 Enforcement Action taken or authorized by the Security Council of a military nature can be conceptually subdivided into two broad categories: *enforcement operations*, which can be characterized as sustained full-scale combat operations directed against a State authorized by the Security Council to maintain or restore international peace and security, and *peace enforcement operations*, which, while potentially involving combat, will not amount to full-scale warfare on a sustained basis against a State, and which fall conceptually and in terms of their objectives and the intensity of the use of force between enforcement operations and traditional peacekeeping (see Section 5.21 below).

1. The Charter itself provides no clear definition of what constitutes military enforcement action and still less any subdivision of such action into (sub)categories with specific characteristics and objectives. Nonetheless, it is clear from UN practice that there are in fact important, if not always clear, distinctions between various types of enforcement action involving the threat or use of force outside the context of self-defence.¹ These distinctions relate to both the objectives and purposes underlying the particular action and to the factual and military situations and means of implementation.
2. The differences in both a conceptual and in a practical sense between collectively authorized action which has as its purpose the defeat of the opposing party and the imposition of the will of the international community on the one hand, and on the

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(p. 96) other hand, action under Chapter VII of an enforcement nature, which, while including the use of proactive (non-defensive) force when strictly necessary, is primarily designed to create a stable environment and promote the conditions necessary to facilitate a peaceful solution, are important enough to justify a subdivision of enforcement action involving the use or threat of force into two distinct categories which will be respectively referred to as enforcement operations and peace enforcement operations in this Handbook. These designations are often used elsewhere and will be used here to distinguish between collectively authorized traditional war fighting directed against a State constituting an international armed conflict under international humanitarian law and which are conducted with the purpose of defeating the opposing party and imposing a collectively sanctioned solution to a particular situation and operations conducted under a Chapter VII mandate of the Council, which while not dependent upon the consent of the parties or restricted to defensive force, do not involve protracted full-scale combat against a State and for purposes of application of international humanitarian law may or may not constitute participation as a party to a non-international armed conflict and do not have the intention of militarily defeating an opposing force.² To date, there have been only two unambiguous examples of enforcement operations of the first category referred to here: Korea (1950–3)³ and the UN-authorized military operation to drive Iraqi forces out of Kuwait (Operation Desert Storm 1991).⁴ A third example, which is more controversial, was the NATO led intervention in the Libyan Civil War in 2011 against the government of then President Gaddafi under a Security Council mandate which authorized the use of ‘all necessary measures’ to enforce a no-fly zone and provide protection to the civilian population.⁵ Peace enforcement operations, on the other hand, have been more numerous and have included in addition to the UN Operation in the Congo (ONUC)⁶ between 1961 and 1963, such operations as the stabilization and implementation forces in post-conflict Bosnia (SFOR and IFOR) and Kosovo (KFOR)⁷

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(p. 97) and more recent operations such as the stabilization forces in Iraq (MNFI)⁸ and Afghanistan (ISAF).⁹ Two even more recent examples are the extension of the mandate of the African Union stabilization force in Somalia (AMISOM) from February 2012 to include peace enforcement tasks in support of the Federal Somali Government, along with the deployment of an intervention brigade to Eastern Congo in the context of the UN’s MONUSCO mission to conduct peace enforcement in support of the DRC Government.¹⁰ The latter was the first time a UN Force had been given a peace enforcement mandate since the ONUC operation in the Congo in the 1960s.

5.02 Both enforcement and peace enforcement operations have the overriding purpose of the maintenance or restoration of international peace and security through the employment of the degree of force which is necessary and required under the circumstances to suppress breaches of the peace and acts of aggression and/or to respond to threats to the peace. Consequently, enforcement and peace enforcement

operations are by their nature proactive, coercive, and directed against a particular State or entity which has been deemed by the Security Council as a threat to or in breach of international peace and security.

1. The maintenance of international peace and security is one of the primary purposes of the UN and the Charter provides for a comprehensive legal basis and system designed to achieve that objective.¹¹ The source of authority for the achievement of this primary objective and the means for carrying it out are set out throughout the Charter, specifically in Articles 1(1), 2, 24, 27, and in Chapters VII and VIII, as well as being proclaimed in declaratory and aspirational form in the Preamble to the Charter. Article 1(1) identifies the maintenance of international peace and security through the implementation of effective collective measures as the first and most important of the UN Organization's primary purposes and identifies three situations in which this is relevant and applicable; namely, the prevention and removal of threats to the peace, and the suppression of breaches of the peace and acts of aggression.¹²

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(p. 98) 2. The notion of collective security which the Charter envisages to achieve this overriding purpose has two complementary sides to it.¹³ On the one hand, the prohibition of force, except in the context of collective measures aimed at maintaining and restoring international peace and in self-defence. This is collective security *stricto sensu* and the use of collectively authorized force for this purpose is what is referred to in Article 1(1) of the Charter. On the other hand, collective security in a broader sense includes the encouragement of the peaceful settlement of disputes in accordance with international law and justice and the promotion of international cooperation, self-determination, and respect for human rights, which are set out in the remaining paragraphs of Article 1 of the Charter.¹⁴ Article 2 of the Charter reinforces this objective by setting out the core principles by which both the UN Organization and its Member States are expected to abide and are legally bound,¹⁵ including the well-known prohibition of the use or threat of force by States in their international relations.¹⁶

3. Article 24 provides the Security Council with primary responsibility in the realm of the maintenance and restoration of international peace and security and further stipulates that in carrying out this responsibility it acts on behalf of the UN Organization and all Member States. It also lays down the 'constitutional limits' to the acts of the Council by stipulating that they must be in conformity with the Purposes and Principles of the UN Organization.¹⁷ It is generally agreed that the Council possesses a wide mandate, including not only the specific powers enumerated in Article 24(2), but those general powers necessary to carry out its responsibilities, including, in particular, those related to its primary function of the maintenance and restoration of international peace and security. However, this is not to say that the power of the Security Council is limitless or that the Council

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(p. 99) can act arbitrarily or without due regard for fundamental principles of international law and it would seem to be axiomatic that the Council is bound by fundamental principles of a peremptory or *jus cogens* character, in carrying out its functions and responsibilities, although there is no universal agreement as to which principles this would include.¹⁸

4. Within the context of the maintenance of international peace and security, including the authorization or use of collective force, the Council possesses, as stated, a very broad mandate and wide discretionary powers to determine that a particular situation constitutes a threat to the peace, or that a breach of the peace or act of aggression has occurred which requires the taking of measures of either a non-forceful nature, or, in the event these measures have proven to be insufficient, or the Council deems they would be inadequate under the particular circumstances to restore and prevent a further aggravation of the situation, the authorization or taking of measures involving the threat or use of force with the object of maintaining or restoring international peace and security. Such measures are generally referred to in the relevant literature and in UN practice as 'enforcement action' or 'enforcement measures'.¹⁹ They have their basis in Chapter VII of the Charter; specifically in Articles 39, 40, 41, and 42, although the Council rarely refers to specific provisions of the Charter in carrying out its function.

5. Enforcement action does not require the consent or cooperation of the State or entity against which it is directed and will by its nature impact upon, restrict, or suspend the rights which States and other subjects of international law normally enjoy under specific treaties and under general international law within the limitations of Article 24 of the Charter. Clearly, sanctions of an economic or diplomatic nature will inevitably limit the rights of States to engage in normal economic and diplomatic relations, while military measures authorized or carried out by the Council will necessarily have an even greater impact upon a State's sovereignty and citizens; this is inherent to the nature of such measures and to the system of collective security as has been built into the Charter.²⁰ In so far as enforcement action is not of a military character, it is also binding upon all Member States within the United Nations.²¹ However, in the absence of any agreements between Member States and the Organization for the provision of armed forces to the UN, the Council is

dependent upon the voluntary cooperation of Member States and regional organizations and arrangements in the form of contributing armed

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(p. 100) forces and other military assets and support for the carrying out of any type of military action, including military enforcement action of any nature.²²

- 6.** Enforcement action, including military enforcement action undertaken or authorized by the Council, differs fundamentally in concept and its objectives from other forms of action undertaken by the Council or any other organ of the UN in that it does not require the consent of the target State or entity, and need not be impartial, reactive, or restricted to self-defence measures.²³ Enforcement operations involving the use of force will, in particular, be directed against a particular State or entity and can include measures of a proactive and offensive nature, including full-scale combat in the air, on land, or at sea, aimed at suppressing a breach of the peace or act of aggression or removing an ongoing threat to peace and security if the situation calls for this according to the Council's determination. Proactive and offensive in this context means that operations can be carried out with the object of destroying or reducing the target State's or entity's political, economic, and military capability to continue to pose a threat to or to otherwise violate international peace and security and impose the will of the Council upon the target State or entity with the object of restoring the situation. Such action by its nature will not be impartial or neutral and can include far-reaching impingements upon the target State's sovereignty, including, in principle, the removal of its government and imposition of a transitional authority if the Council deems this necessary for the restoration of maintenance of international peace and security.²⁴
- 7.** Enforcement action, including authorizations to take military action as a response to a particular situation which the Council has deemed as constituting a threat to the peace or as a breach of the peace or act of aggression, can be directed against a State or States or against any other entity the Council has determined to be responsible for the situation. This can include a government or armed group in control of a territory, which may or may not constitute a State, a rebel or insurgent movement, or even a criminal group or organization. A few examples should suffice to illustrate this point: the Council recommended and authorized the use of force against North Korea as its first use of collective measures in the 1950s, imposed sanctions, and authorized their enforcement at sea against the white minority government of Southern Rhodesia in the 1960s. It was far from clear in both these instances whether either North Korea or Southern Rhodesia were 'States' at the time those measures were taken. More recently, the Council has implemented enforcement measures, including, in some cases, the authorization of military action, *inter alia*, against the rebel UNITA movement in Angola, against Bosnian Serb militias in the former Yugoslavia, against the Taliban government of (p. 101) Afghanistan, and against warlords and pirates in Somalia. In short, enforcement action, including military enforcement measures, can be directed against any entity or organized (armed) group in control of territory or even against criminal organizations in addition to being directed at a recognized State whenever the Council deems this necessary in the context of international peace and security.²⁵

5.03 While both enforcement operations and peace enforcement operations share certain common characteristics of not requiring the consent of the Host State and not requiring impartiality or restricting the use of force to self-defence, they can differ significantly in their objectives and in the degree, intensity, and duration of the force they are required to employ in order to carry out their respective mandates.

- 1.** As such, peace enforcement, as referred to here and elsewhere, falls conceptually between enforcement and peacekeeping and other peace operations of an essentially consensual nature which are restricted to the defensive use of force, even if self-defence is sometimes given a broader definition, in principle, if not always in practice, than is usually meant in relation to the term 'defensive force'.²⁶ (For descriptive analysis of peace operations of a non-enforcement character, see Sections 6.01–6.03.) Enforcement and peace enforcement operations differ from peacekeeping and other peace support operations (referred to in this Handbook as peace operations) in that they share the characteristics of not requiring consent of the parties and the capability, both legally and militarily, of using force proactively and offensively as referred to in the commentary to the previous Section (see para. 6 of the commentary to the previous section). However, peace enforcement differs from enforcement in that it is not designed to impose a 'classic' military solution by engaging a State in hostilities but rather will use or threaten force, sometimes rising to the level of participation in a non-international armed conflict in support of a government when this is necessary to achieve a particular objective or objectives such as disarmament or withdrawal of parties to a conflict, support governmental agencies in the imposition of a stable and peaceful environment, the suppression of unlawful activities and threats to the civilian population by armed groups, or the forceful apprehension of persons and groups suspected of engaging in such (p. 102) activities. This list is meant to be illustrative not exhaustive, but it should assist in distinguishing peace enforcement from enforcement on the one hand, and peacekeeping and other forms of peace support (peacemaking and peacebuilding operations) on the other side of the conceptual scale.²⁷

2. Peace enforcement also differs from both enforcement operations and from peace operations in relation to the element of consent. While enforcement operations and peace enforcement operations are both based on Chapter VII of the Charter and consequently do not require consent as a legal condition for their deployment, there are marked differences between them in this respect. Enforcement operations will anticipate and encounter resistance to their entry from the outset of their deployment and will seek to overcome such resistance by offensive force and, as such, consent is militarily as well as legally irrelevant to their presence.²⁸ Peace enforcement operations, however, while not requiring consent from a strictly legal perspective, will normally have the consent of the government in so far as one exists and will whenever feasible seek and attempt to achieve and maintain consent, or at least acquiescence, from the relevant parties whenever possible and will not normally have to 'fight their way into' their area of deployment and operation as would be the case in relation to a military enforcement operation.²⁹ Since most peace enforcement operations act in support of a (transitional) government in order to establish a stable environment, the consent of the government can in such situations be presumed and is often referred to in the mandates issued by the Security Council. When that government is engaged in a non-international armed conflict against one or more organized armed groups, the peace enforcement mission will normally not have the consent of the opposing party or parties and may itself become party to that conflict if the material conditions for participation as a party are met and the mandate so authorizes.³⁰

3. Other probable differences between enforcement operations and peace enforcement operations would normally include such questions as the nature and objectives of their respective mandates, the relation to a possible host government, the applicability of the humanitarian law of armed conflict (in enforcement operations it will be *ipso facto* fully applicable, while in peace enforcement it will only apply to the extent there is an armed conflict to which the peace enforcement force is party), the composition and size of the forces concerned, and questions related to the command

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(p. 103) and control of the forces.³¹ For example, should forces engaged in a peace enforcement operation become involved in hostilities rising to the level of armed conflict against organized armed opposition by an armed group of insurgents, international humanitarian law of both a conventional and customary nature relating to non-international armed conflict would apply to the conduct of such hostilities and treatment of persons for the duration of the conflict. However, this will depend upon whether the factual conditions for being considered as a party to such a non-international armed conflict are fulfilled and continue to be met. Likewise, if hostilities were confined to a specific region or zone of operations within the State where the operation was being conducted, there would be no need, in principle, to conduct hostilities outside that region, notwithstanding the applicability of humanitarian law throughout the territory of the State where the conflict was in progress.

4. By the same token, notwithstanding certain similarities and overlaps between peace enforcement and certain types of more robust peacekeeping and other peace operations, they will differ both conceptually and practically from each other as much as peace enforcement differs from enforcement in relation to most, if not all, of the aspects referred to in the immediately preceding paragraph. For example, a mandate for a peace operation would not necessarily be based upon Chapter VII of the Charter. It would then require the consent of the government of the State where it was deployed and would aim for the consent, or at least acquiescence, of all other parties. As the Force conducting a peace operation would not normally be willing or capable of engaging in sustained high intensity combat, even if forcibly opposed, it would not normally fall within the framework of international humanitarian law other than in the exceptional case it became party to a non-international armed conflict and would normally have a very different force composition and relationship to all relevant parties, unlike either an enforcement operation or peace enforcement operation.³²

5.04 In addition to enforcement and peace enforcement operations as described above in Sections 5.01, 5.02, and 5.03, the Security Council has the power to implement sanctions not involving the use of force, such as, but not limited to the interruption of land, sea and air communications, and/or the selective or comprehensive interruption of trade and commerce in designated goods or services and to authorize the effective implementation and enforcement of such non-military sanctions. To the extent such measures of implementation called for the threat or use of limited force to ensure compliance, they would qualify as military enforcement measures for that specific purpose. Such measures will not be designated as enforcement or peace enforcement operations as described above, in order to avoid possible confusion.

(p. 104) **1.** Under Article 41 of the Charter, the Security Council is empowered to take enforcement measures not involving the use of force in conjunction with Article 39 of the Charter whereby a particular situation is deemed by the Council to constitute a threat to or breach of the peace, or an act of aggression. Such non-forceful enforcement measures can include the partial or total interruption of land, air, or maritime communications, the imposition of trade or financial sanctions

and so forth. On occasion, the Council has authorized measures involving the use of limited force or coercive action which are specifically related to the enforcement of such embargoes and fall under Chapter VII of the Charter. Such measures which are aimed at the effective enforcement of non-military sanctions can fall within specific types of military operations. Notwithstanding the enforcement nature in a legal sense, they are not designated in this Handbook as enforcement or peace enforcement operations, in order to avoid possible confusion. While falling conceptually broadly within the scope of peace enforcement, they differ from it in that they are restricted to the specific purpose of enforcement of the embargo or interception of communications that the Council has imposed and do not purport to carry out other objectives or tasks normally associated with peace enforcement operations of the type referred to in the previous section.³³

2. The type of force authorized in the enforcement of trade embargoes is usually related to the interruption of maritime communications and would involve such measures as the use of warning or disabling shots and the carrying out of non-consensual boarding and inspection operations against vessels attempting to violate or suspected of violating the embargo restrictions imposed by the Council. An example of such a specific authorization to ensure compliance with an embargo imposed by the Council under Chapter VII of the Charter was SC Resolution 665 of August 1990 whereby the forces of States with naval units operating in the Persian Gulf/Arabian Sea area were authorized to take measures strictly aimed at ensuring compliance with the maritime embargo against Iraq which had been imposed earlier by the Council. These measures will be dealt with separately in the context of this Handbook (see Sections 18.07 and 20.03). They will not be referred to as enforcement or peace enforcement operations in order to avoid possible confusion.

3. A graphic description and glossary of terms for the different military operations discussed in this Handbook is provided in the Annex.

5.05 Enforcement operations and peace enforcement operations are taken pursuant to a Security Council determination under Chapter VII of the Charter that there is a threat to international peace and security, or that a breach of international peace or act of aggression has occurred.

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(p. 105) **1.** Enforcement operations of any type are dependent upon a decision of the Council in which force is authorized in relation to a situation which has been deemed to constitute a threat to or a breach of the peace or an act of aggression as referred to previously in Section 5.02.³⁴

5.06 In practice, the Council has taken a broad view of what constitutes a threat to the peace to include internal conflicts, large-scale violations of human rights and humanitarian law, the proliferation of weapons of mass destruction, and acts of international terrorism. The Council's authority and discretion within the context of making such determinations can be characterized as being extremely broad and in practice only limited by the Council's ability to reach such a determination and by the Purposes and Principles of the UN Charter.

1. As stated previously, the Council possesses a very broad mandate to determine that a particular situation poses a threat to international peace or constitutes an act of aggression. These can include large-scale internal conflicts, or breakdowns of authority or violations of human rights or humanitarian law with or without (potential) spill-over effects within a particular region. The Council is not limited in this respect to reacting to situations involving classic cross-border aggression, although such situations would normally rank among the most serious violations and would be most likely to trigger a robust response by the Council.³⁵

2. This broad mandate is legally and practically only limited by the Council's ability to reach the necessary majority to reach a decision (under Article 27 of the Charter this requires two-thirds of the Members of the Council voting affirmatively with no negative votes by one of the Permanent Members of the Council),³⁶ and by the Purposes and Principles of the Charter under Article 24 of the Charter. As stated previously, it would appear to be axiomatic that these would include fundamental rules and principles of international law of a peremptory nature (*jus cogens*), even though there is less than complete agreement as to which rules and principles of international law would be included in this category. Likely examples of such rules in this context would include in any case fundamental rules of human rights and humanitarian law such as the right to not deprive a person arbitrarily of life, freedom from torture or inhumane treatment, the prohibition of deliberately

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(p. 106) attacking civilians not directly participating in hostilities, as such, or the employment of prohibited means and methods of combat and fundamental guarantees of impartial and fair adjudication of persons suspected of violations of international law which form the core of international human rights and humanitarian law.³⁷ These fundamental rules forming part of the Purposes and Principles apply to decisions and measures taken by the Council, but do not affect its

discretionary competence to determine when a situation constitutes a threat or breach of the peace or aggression under Article 39.

5.07 While the Security Council is empowered under Article 42 of the Charter to take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security, in the absence of agreements with Member States under Article 43, which were originally intended to provide the Council with independent military capacity, the Council is in fact dependent upon the voluntary participation of Member States to carry out enforcement and peace enforcement operations. The practice of the Council is to authorize such States or international organizations as are willing to participate in a given enforcement or peace enforcement operation with the legal authority to do so by use of the phrase 'all necessary means', or similar terminology, on a case-by-case basis.

1. As stated previously, in the absence of the special agreement under Article 43 envisaged by the drafters of the Charter, the Council is dependent upon the voluntary cooperation of Member States in the form of the provision of forces necessary to carry out any type of enforcement operation involving the threat or use of force.³⁸ Nevertheless, while no State is obliged to participate in the carrying out of enforcement measures involving the use of force, all Member States are under an obligation to not engage in any action which would interfere with or obstruct the execution of such measures and are required to comply with any Council decision under Chapter VII of the Charter.³⁹

5.08 The mandate provided by the Council, including the specific authorization to use the necessary force to carry it out, is a legal requirement for the deployment of forces onto a State's territory in the absence of that State's consent and for any use of force going beyond self-defence. While a mandate from the Council authorizing deployment and the use of force will obviate the need for the consent of the State where the operation is conducted, wherever appropriate or feasible,

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(p. 107) such consent will be sought as providing a useful and desirable complement to the Council's authority to act under Chapter VII of the Charter.

1. Under the Charter and general international law, there are only three legal grounds whereby the forces of one or more States can be deployed onto or operate within the territory of another State. These are:

- (a) a mandate of the Council under Chapter VII to carry out enforcement measures;
- (b) an act of self-defence (individual or collective) in response to an armed attack or imminent threat of attack against another State's territory, vessels, or aircraft, or citizens in conformity with Article 51 of the Charter and customary international law; and
- (c) the consent of the other State's lawful government.

We are concerned with the first of these at present; the other two will be dealt with in subsequent chapters of this Handbook. (See Chapters 6, 8, and 14.) For the differing role of consent in relation to enforcement operations involving sustained full-scale hostilities and peace enforcement operations see para. 2 of the commentary to Section 5.03.

5.09 While the Security Council provides the legal authority for enforcement and peace enforcement operations through the provision of a mandate and retains overall political control, the actual conduct of these operations may be delegated to the participating State(s) or international organization.

5.10 Military operations requiring and reaching the level of full-scale hostilities against a State are normally entrusted to a lead nation or nations providing the bulk of the forces employed in the operation. Forces established and controlled by the UN for the conduct of enforcement action have remained an exception.

1. The question of the provision of a mandate forming the legal basis for any enforcement operation and the question of command and control over the forces engaged in carrying out the mandate are distinct.⁴⁰ While only the Council is legally empowered to undertake enforcement action and determine the overall objectives of any military operation undertaken under Chapter VII of the Charter,

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(p. 108) the actual command and control of the operation can be delegated to one or more States, or to a (regional) organization or arrangement operating under the Council's authority and within the terms of the given mandate.

2. Generally speaking, the larger the forces employed and the more ambitious the objectives of

the mandated operation are, the more likely it is that actual military command and control will be delegated to one or more of the participating States, or to a (regional) organization or arrangement. While specific command arrangements have differed from operation to operation, this is the general pattern due primarily to the fact that the UN (both the Council and the Secretariat) does not possess the capacity to direct and conduct large-scale sustained combat operations. An additional reason is the reluctance of most Member States to relinquish command over their forces in such situations. However, there is no legal obstacle to prevent the UN carrying out an operation which involved participation in an armed conflict and the UN has in fact elected to do so on at least one recent occasion, to wit, in the Eastern Congo. Moreover, if Member States are willing to provide the necessary troops and equipment, the UN is capable of mounting a peace enforcement operation if the political will to do so and the conditions for doing so are present, although it would still not be capable of conducting an enforcement operation against a State involving full-scale hostilities. The deployment of an intervention brigade to engage various non-state organized armed groups in Eastern Congo is an indication that the UN's position and capacity may be changing with regard to peace enforcement. It remains to be seen whether this operation portends a more proactive role of the UN in peace enforcement than hitherto has been the case.

3. In both of the earlier enforcement operations which involved full-scale hostilities (Korea and Operation Desert Storm), the Council delegated command to a lead nation (the US in both cases) while retaining overall political authority over those operations. In the Libya operation of 2011 it delegated command to NATO. In most peace enforcement operations, with the exception of the Congo operation of the early 1960s, and most notably in the ongoing stabilization operation in Eastern Congo the Council has exercised political control of either a more general or a more specific nature while entrusting the military command to one or more 'lead' nations, or to a (regional) organization or arrangement. For example, in Bosnia following the Dayton Agreement of 1995, and in Kosovo following the NATO aerial campaign of 1999 and subsequent (imposed) consent by the Yugoslav Government to the deployment of UN mandated peace enforcement forces onto those respective territories, political authority was exercised by the UN, while military command was delegated to NATO, which provided the bulk of forces comprising IFOR and KFOR, respectively.⁴¹ In short, the Council can, legally speaking, employ any type of command arrangement it feels is expedient in carrying

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(p. 109) out its decisions and objectives. In Afghanistan, the Council has provided ISAF with the necessary mandate to carry out operations in cooperation with the Afghan Government, while military command has been exercised first by individual NATO Member States and subsequently by NATO itself.⁴²

5.11 In situations where the Security Council has mandated a particular State, group of States, or regional or other organization to carry out an enforcement or peace enforcement operation, it will retain overall authority over and responsibility for the operation, notwithstanding any delegation of command and control which may be decided upon.

1. Notwithstanding any command arrangement or delegation the Council chooses to employ in consultation and cooperation with the States participating in a specific enforcement operation of any type, it is the Security Council which retains and exercises overall political control over the operation and its objectives. Consequently, Member States or other organizations exercise their command functions on behalf of the Council and under its overall direction.

Footnotes:

¹ See e.g. the contrast in the mandates issued to halt the invasion of Korea and end the occupation of Kuwait on the one hand (SC Res. 83 (1950) and 678 (1990) and other resolutions of the Council under Chapter VII authorizing force for more limited purposes. For a clear treatment of the distinction between enforcement (referred to here as military enforcement operations) and peace enforcement see T. Findlay, *The Use of Force in UN Peace Operations* (Oxford: Oxford University Press, 2002), 6–7 .

² Ibid. 7.

³ See SC Res. 82 of 25 June 1950; SC Res. 83 of 27 June 1950; GA Res. 377 (V) of 3 November 1950; GA Res. 498 (V) of 1 February 1950 and GA Res. 500 (V) of 18 May 1951.

⁴ See *The United Nations and the Iraq-Kuwait Conflict 1990–1996*, The United Nations Blue Book Series, Vol. IX (New York: Department of Public Information, United Nations, 1996).

⁵ Under SC Res. 1973 of 17 March 2011, the use of force was authorized to enforce the no-fly zone and protect civilians. Some Member States interpreted the Resolution broadly and in the context of protecting civilians provided air support to rebel forces under the National Transitional Council (NTC) and attacked the command and control structure of the Libyan armed forces to help bring about a conclusion of the conflict. While opinions differ as to whether the mandate was stretched or exceeded, there is little doubt that the division within the Security Council, especially among its permanent members, has done much to greatly complicate any repetition of such action within the foreseeable future, as is evidenced by the inability of the Council to effectively address the even more serious situation in Syria. See e.g. N.D. White, 'Libya and the Lessons from Iraq: International Law and the Use of Force by the United Kingdom' in *NYIL* (2011), 215 *et seq.*

⁶ ONUC, while *de jure* a peacekeeping operation, 'crossed the line' into *de facto* peace enforcement in suppressing the rebellion in Katanga, see Findlay, *The Use of Force*, 71 *et seq.*

⁷ For a comprehensive treatment of more recent peace enforcement operations see Findlay, *The Use of Force*, 374–81.

⁸ MNFI was established under SC Res. 1511 (2003).

⁹ ISAF was established under SC Res. 1386 (2001).

¹⁰ AMISOM was first established as a UN-authorized peacekeeping mission conducted by the AU under SC Res. 1744 (2007). Its mandate was periodically renewed and gradually expanded and became a peace enforcement mandate under SC Res. 2036 (2012). The MONUSCO intervention

brigade was established under SC Res. 2098 (2013).

¹¹ R. Wolfrum, 'Preamble', in B. Simma (ed.), *The Charter of the United Nations: A Commentary*, 3rd. edn (Oxford: Oxford University Press, 2012), Vol. 1, 101–6; L.M. Goodrich, E. Hambro, and A.P. Simons, *Charter of the United Nations*, 3rd rev. edn (New York: Columbia University Press, 1969), 25–9.

¹² See also Art. 39.

¹³ Simma et al., *The Charter of the United Nations*, 109–11.

¹⁴ *Ibid.*

¹⁵ *Ibid.* 121 *et seq.*; Goodrich et al., *Charter of the United Nations*, 36 *et seq.*

¹⁶ Art. 2(4) of the Charter reads as follows: 'All Members shall refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.' For authoritative interpretation of this core provision see, *inter alia*, Simma et al., *The Charter of the United Nations*, 200 *et seq.*; Goodrich et al., *Charter of the United Nations*, 48 *et seq.*; Y. Dinstein, *War Aggression and Self-Defence*, 4th edn (Cambridge: Cambridge University Press, 2005), 85–97. I. Brownlie, *International Law and the Use of Force between States* (Oxford: Oxford University Press, 1963 repr. 2002), 112–22; C.H.M. Waldock, 'The Regulation of the Use of Force by Individual States in International Law' 81 *RdC* (1952) 455, 487–9; C. Gray, *International Law and the Use of Force* (Oxford: Oxford University Press, 2004), 29–31; and D.W. Bowett, *Self Defence in International Law* (Manchester: Manchester University Press, 1958), 3–25, to name but some of the most well known. While there are widely contending views concerning the scope of the prohibition and the legality of certain specific grounds for using force, there is general agreement relating to the central importance and peremptory *jus cogens* nature of this provision as a rule of both Charter and customary international law.

¹⁷ For commentary relating to the interpretation of Article 24 see Simma et al., *The Charter of the United Nations*, 764 *et seq.* and Goodrich et al. *Charter of the United Nations*, 202–7. On the constitutional limitations to the Council's power under this provision, see in addition to these sources, *inter alia*, T.D. Gill, 'Legal and Some Political Limitations to the Power of the UN Security Council to Exercise its Enforcement Powers under Chapter VII of the Charter', 26 *Netherlands Yearbook of International Law* (1995), 33, at 68 *et seq.*

¹⁸ Gill, 'Legal and Some Political Limitations', 72–90. See also Goodrich et al., *Charter of the United Nations*, 205–7.

¹⁹ See, *inter alia*, Simma et al., *The Charter of the United Nations*, Vol. 2, 1294–6; Goodrich et al., *Charter of the United Nations*, 301–17.

²⁰ Goodrich et al., *Charter of the United Nations*, 290 *et seq.*; Simma et al., *The Charter of the United Nations*, 1310–11 and 1344.

²¹ Goodrich et al., *Charter of the United Nations*, 311–12; Simma et al., *The Charter of the United Nations*, 1310–11.

²² T. Franck, *Recourse to Force* (Cambridge: Cambridge University Press, 2002), 20 *et seq.*; Simma et al., *The Charter of the United Nations*, 1335–7; Dinstein, *War Aggression*, 310–15.

²³ Simma et al., *The Charter of the United Nations*, 1344, Dinstein, *War Aggression*, 279–89, and D.W. Bowett, *United Nations Forces* (New York: Frederick A. Praeger, 1964), 266–7.

²⁴ Bowett, *United Nations Forces*, 412–13 and 485. See also Dinstein, *War Aggression*, 283–9, and Gill, 'Legal and Some Political Limitations', 52.

²⁵ The following Security Council resolutions are pertinent in this respect: SC Res. 80 and 83 (1950), Korea; SC Res. 217 (1965), SC Res. 221 (1966) Rhodesia; SC Res. 1127 (1997) UNITA/Angola; 88, SC Res. 836 (1994), SC Res. 998 (1995) Bosnian Serbs; SC Res. 1267 (1999) Taliban; SC Res. 794 (1992) Somalia, a SC Res. 1851 (2008) piracy off Somali coast and SC Res. 2098 (2013) armed groups in Eastern DRC. These are illustrative and not intended to comprise an exhaustive list of measures aimed at or affecting non-State entities or individuals.

²⁶ Self-defence in the context of UN peacekeeping operations (referred to in this Handbook as 'peace operations') has evolved over the years from a fairly restrictive notion of self-defence related more to personal or individual self-defence of persons who were reacting to prior illegal use of force to a much broader notion—at least in theory—of movement, protection of UN personnel and installations, and even of civilians in so far as the situation allows. This goes considerably beyond what is normally understood as self-defence within the context of domestic criminal law. See, *inter alia*, Findlay, *The Use of Force*, 87 *et seq.* and Sections 6.08, 24.05, and 24.06.

²⁷ For a typology of various types of UN (authorized) peace operations ranging from enforcement to classical peacekeeping see in addition to Findlay, *The Use of Force*, 3–7, N.D. White, *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security* (Manchester: Manchester University Press, 1993), 199 *et seq.* The official UN typology can be found in the Secretary General Reports 'An Agenda for Peace' (A/5/277-S/24111) 31 January 1992 and 'Supplement to an Agenda for Peace' (A/50/60-S/1995/1) of 3 January 1995.

²⁸ See Section 5.01 and accompanying commentary.

- ²⁹ Findlay, *The Use of Force*, 376.
- ³⁰ The applicability of international humanitarian law to enforcement and peace enforcement operations is dealt with in more detail in sub-Chapter 5.5.
- ³¹ See Section 5.10 in relation to command and control issues arising from enforcement operations.
- ³² See Chapter 6 in relation to peace operations.
- ³³ See para. 1 of the commentary to Section 5.03. See also Findlay, *The Use of Force*, 275–381.
- ³⁴ See paras 4 and 5 of the commentary to Section 5.02. See also Simma et al., *The Charter of the United Nations*, 1294–5.
- ³⁵ See paras 3 and 4 of the commentary to Section 5.02. See also Simma et al., *The Charter of the United Nations*, 1277–8.
- ³⁶ Specifically Art. 27(3) of the Charter requires the affirmative vote of nine members including the concurring votes of the Permanent Members. For authoritative commentary see Simma et al., *The Charter of the United Nations*, 911 *et seq.* In practice, this has come to mean that an abstention by a Permanent Member on a non-procedural question will not stand in the way of the Council reaching a decision, provided the necessary two-thirds majority votes in favour of the question. A negative vote by a Permanent Member is the 'veto' which precludes a decision being reached.
- ³⁷ See para. 3 of the commentary to Section 5.02.
- ³⁸ See para. 5 of the commentary to Section 5.02. See also Simma et al., *The Charter of the United Nations*, 1354–6; Franck, *Recourse to Force*, 22–6, and N. Blokker and N. Schrijver (eds), *The Security Council and the Use of Force* (Leiden: Nijhoff, 2005), 13–14 and 28–9.
- ³⁹ See Simma et al., *The Charter of the United Nations*, 1341–4.
- ⁴⁰ The original intent laid down in the Charter was that in cases of military enforcement action mandated by the Council under Art. 42, command and control would be exercised by the Military Staff Committee under Arts 46 and 47 of the Charter. However, the Military Staff Committee has never exercised any command function due to lack of agreement between the Permanent Members, unwillingness on the part of other Member States to put forces at its disposal, and the failure of Art. 43 to be carried out. See Simma et al., *The Charter of the United Nations*, 1366 *et seq.*
- ⁴¹ See Dinstein, *War Aggression*, 313–214; Findlay, *The Use of Force*, 381.
- ⁴² See the provision of ISAF's mandate in SC Res. 1386 (2001) which has been extended and modified in subsequent resolutions.