

British Institute of International and Comparative Law

How Effective Is the European Security Architecture? Lessons from Bosnia and Kosovo

Author(s): Jan Wouters and Frederik Naert

Source: *The International and Comparative Law Quarterly*, Vol. 50, No. 3 (Jul., 2001), pp. 540-576

Published by: Cambridge University Press on behalf of the British Institute of International and Comparative Law

Stable URL: <http://www.jstor.org/stable/761705>

Accessed: 22/03/2010 17:09

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=cup>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



Cambridge University Press and British Institute of International and Comparative Law are collaborating with JSTOR to digitize, preserve and extend access to *The International and Comparative Law Quarterly*.

HOW EFFECTIVE IS THE EUROPEAN SECURITY ARCHITECTURE? LESSONS FROM BOSNIA AND KOSOVO

JAN WOUTERS* AND FREDERIK NAERT**

I. INTRODUCTION

SECURITY (in a broad sense, see *infra*, II.B) in Europe is the realm of several regional international organisations, mainly the European Union (“EU”), Western European Union (“WEU”), North Atlantic Treaty Organization (“NATO”), the Organization for Security and Co-operation in Europe (“OSCE”) and, to a lesser extent, the Council of Europe, creating a patchwork of regional security institutions that is unique in the world. These organisations interact in many ways and claim to be mutually reinforcing. Is that the case? Is there room for improvement?

The present contribution does not attempt to provide an exhaustive analysis of the European security architecture; rather, it tries to shed some light on the question of the latter’s effectiveness through a case-study of two of Europe’s gravest crises in the 1990s, namely Bosnia and Kosovo.¹ These conflicts did not only involve all of the aforementioned institutions, but also had, and continue to have, a major impact on the development of these institutions and the European security framework as a whole. We will first clarify some notions that are essential to a proper understanding of security organisations and their activities and briefly introduce the five actors identified above (II). This is followed by the two case-studies, in which we distinguish three stages, namely pre-conflict, conflict and post-conflict (III). From this we draw lessons regarding the strengths and weaknesses of each organisation and we make proposals in order to improve the functioning of the present system (IV). In doing so, we concentrate on improvements to the existing institutional framework, rather than suggesting a major restructuring of the whole system, since the latter is rather unlikely in the foreseeable future. In the conclusion we summarise our findings (V).

*. Professor of International Law and the Law of International Organisations, Catholic University of Leuven.

** Assistant in International Law, Catholic University of Leuven.

1. This article is up to date as at 4 Sept. 2000. For a chronology (from 1989 to May 1994), see Bethlehem and Weller (eds.), *The “Yugoslav” Crisis in International Law: General Issues* (Cambridge University Press, 1997), xix-lvi, hereafter “*The Yugoslav Crisis*” and UN, *The Blue Helmets. A Review of United Nations Peace-keeping* (UN, 1996), 487–509, hereafter “*The Blue Helmets*”. For Kosovo, see BASIC, “Kosovo: The long road to war. A Chronology. 1988–1999”, http://www.basicint.org/eur_kos_chron.htm.

II. THE INSTITUTIONAL AND CONCEPTUAL FRAMEWORK

A. Terminology

For the purpose of this contribution, the term “conflict” will be used to cover the period of armed conflict (as understood in international law) and/or large scale violent human rights violations. The period before that will be labelled “pre-conflict”, the period after that “post-conflict”. For Bosnia, we regard the conflict as having started in March 1992 and having ended in November 1995: fighting in Bosnia broke out in March 1992, after the declaration of independence by Alija Izetbegovich on 3 March 1992;² and the Dayton Agreement³ was concluded on 21 November 1995.⁴ For Kosovo, we consider the conflict to have started in March 1998 and to have lasted until 10 June 1999. Of course, tensions date from before this period, but it was not until March 1998 that serious hostilities broke out.⁵ The ending date of 10 June 1999 is chosen because formal hostilities ceased on this day: the Serbs started withdrawing from Kosovo and NATO stopped its bombardments. That very day the UN Security Council adopted Resolution 1244 (see *infra*, II.B.3.i) and the EU approved the Stability Pact for South Eastern Europe.⁶

It seems also useful to briefly clarify the meaning of a few important notions regarding security and to explain which terms will be used hereafter for what concept. “Collective defence” means the planning or taking of common action against (potential) outside aggression. The collective defence guarantees in NATO and WEU are classical examples: in both organisations Member States are obliged to assist any Member State of the organisation who is attacked by a third State (the degree of assistance may vary and there may be some additional conditions).⁷ In a “collective security” system States entrust their security to a central organ, which is to guarantee the security of Member States in the relations

2. *The Yugoslav Crisis*, xxxiv.

3. General Framework Agreement for Peace in Bosnia and Herzegovina with Annexes (hereafter “Dayton Agreement”), Paris, 14 Dec. 1995, (1996) 35 I.L.M. 75 or <http://www.ohr.int/gfa/gfa-home.htm>. For a commentary, see Sorel, “L’accord de paix sur la Bosnie-Herzégovine du 14 décembre 1995: Un traité sous bénéfice d’inventaire” (1995) A.F.D.I. 65–99.

4. Even though there was a cease-fire from 12 Oct. 1995 (*The Blue Helmets*, 560) and the formal signing of the Dayton Agreement took place on 14 Dec. 1995.

5. Leurdijk, “Kosovo: A case of “coercive diplomacy” (1999/2) Helsinki Monitor 8. The first Contact group (*infra*, n.75) meeting on Kosovo took place on 9 March 1998. The UN Security Council first discussed Kosovo on 31 March 1998.

6. Cologne, 10 June 1999 (hereafter “Stability Pact”), text in (2000) 39 I.L.M. 962. A political agreement was reached on 3 June and a military agreement (Yugoslavia-NATO) on 9 June, texts at UN Docs. S/1999/649 and S/1999/682.

7. See article V North Atlantic Treaty (Washington, 4 April 1949) and article V Brussels Treaty (Treaty of Economic, Social and Cultural Collaboration and Collective Self-Defence, Brussels, 17 March 1948, as amended in Paris on 23 Oct. 1954). The latter contains a stronger legal obligation than the former.

between Member States. The UN for example was meant to be a collective security organisation, with the Security Council carrying “primary responsibility” for international peace and security, be it that individual Member States retain a right to self-defence.⁸

The meaning of “peace enforcement” seems quite plain: it means “the use of force against one of the parties to enforce an end to hostilities”.⁹ It thus covers interventions to enforce the peace without the consent of the parties to the conflict. Operation Desert Storm against Iraq is a clear example. However, there may be instances where the distinction between peacekeeping and peace enforcement is not entirely clear (see “peacekeeping”, *infra*).

“Post-conflict peace-building” was defined in *An Agenda for Peace* as “action to identify and support structures which will tend to strengthen and solidify peace in order to avoid a relapse into conflict”.¹⁰ Hereafter the term “post-conflict measures” will be used as a shorter synonym (rather than peace-building since that can also constitute preventive action).¹¹

“Preventive action” includes any action taken to prevent disputes from arising and/or existing disputes from escalating or spreading.¹² In fact, it can be argued that it also covers action taken to prevent renewed fighting, which is usually qualified as a post-conflict measure (see *supra*).¹³ It is submitted that such action constitutes both a post-conflict measure and preventive action at the same time. In fact, any effective post-conflict measures should at the same time be preventive measures. The two concepts are by no means mutually exclusive.

“Peacemaking” has two entirely different meanings. In UN parlance this notion covers “bringing hostile parties to agreement by *peaceful means*” (emphasis added), thus excluding peace enforcement.¹⁴ However, in the WEU Petersberg Declaration and in the Treaty on European Union (hereafter “TEU”) it is used in the context of what has become known as the “Petersberg” tasks: “humanitarian and rescue tasks,

8. Articles 24–25 and Chapter VII UN Charter.

9. A definition from the UN Department of Political Affairs (“UNDPA”), <http://www.un.org/Depts/dpa/docs/peacemak.htm>. See also *Supplement to An Agenda for Peace* (UN Doc. A/50/60-S/1995/1, 3 Jan. 1995, hereafter “*Supplement AfP*”), paras 77–80.

10. *An Agenda for Peace* (UN Doc. A/47/277-S/24111, 17 June 1992, hereafter “*An Agenda for Peace*”), para. 21.

11. See *Supplement AfP*, paras 47–49 and 55–56.

12. See the definition of preventive diplomacy in *An Agenda for Peace*, para. 20. Since prevention consists of more than diplomacy, “preventive action” is more appropriate, as has been recognised by the UN, see <http://www.un.org/Depts/dpa/docs/peacemak.htm>.

13. *An Agenda for Peace*, paras 21 and 57. Kooijmans, “De Verenigde Naties: van impasse naar preventie en dynamiek”, (1995) 49 *Internationale Spectator* 366, states that one should “advance peace-building in time, so as to make it an element of preventive action, . . .” (our translation).

14. *An Agenda for Peace*, paras 20 and 34.

peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking”, and means peace enforcement.¹⁵ If we use peacemaking below, it will have the meaning it has in *An Agenda for Peace*. Peacemaking in this sense may constitute preventive action.

“Peacekeeping” traditionally covered field operations involving military, police personnel and/or civilians to which the parties to a conflict had consented.¹⁶ In *An Agenda for Peace* it is rightly described as a technique which expands the possibilities of other action: peacekeeping may constitute preventive action (e.g. UNPREDEP, see *infra*, III.A.2), a post-conflict measure (as is mostly the case), or even take place during an ongoing conflict, though the latter is rather problematic in practice (as with UNPROFOR, see *infra*, III.A.2). Further, in the 1990s a number of peacekeeping operations were partly also given a peace enforcement mandate and/or were assigned additional tasks without real consent of one or more of the parties to the conflict (e.g. UNPROFOR, see *infra*, III.A.2).¹⁷ We will continue to use the term peacekeeping in the traditional sense, but will also use it in case only a small element of enforcement is present (as with UNPROFOR, see *infra*, III.A.2). Admittedly, the precise line between peacekeeping and peace enforcement is sometimes hard to draw.

“Crisis management”, finally, is a rather vague notion. It can be described as any action responding to a (potential) crisis, with the exception of (individual or collective) self-defence. We exclude self-defence since within NATO, WEU and EU crisis management is contrasted to collective defence (see *infra*, II.B). Crisis management thus includes preventive action, peacekeeping, peacemaking, peace enforcement and post-conflict measures.

15. Declaration of the WEU Ministerial Council, Petersberg, 19 June 1992, para. 4 and TEU, Article 17, para. 2. The French and German (authentic) texts of the TEU use the words “rétablissement de la paix” and “friedensschaffender Massnahmen”.

16. Based on the definition in *An Agenda for Peace*, para. 20.

17. *An Agenda for Peace*, para. 20 states “hitherto with the consent of all parties” (emphasis added), possibly anticipating change. The consent and the rule only allowing the use of force in self-defence had been essential for peacekeeping operations, see e.g. Brown, “The role of the United Nations in peacekeeping and truce-monitoring: what are the applicable norms”, (1994) *Revue belge de droit international* 559–602. Bad experiences with “peacekeeping plus” operations seemed to have prompted a return to the traditional consent and use of force requirements (see e.g. *Supplement AfP*, paras 33–36). However, the Report of the Panel on United Nations Peace Operations (17 Aug. 2000, A/55/305-S/2000/809, http://www.un.org/peace/reports/peace_operations) blames a lack of means and/or an unclear mandate for these failures: it recommends maintaining the traditional requirements for the initiation of a mission, but after a mission has been deployed it recommends that missions be given sufficient means, a clear mandate and robust rules of engagement to deal with “spoilers”, to defend the missions and its mandate and at times also to defend the local civilian population, see paras 48–64 of the report.

B. The organisations

The main actors on the European security stage, i.e. the OSCE, NATO, WEU, the EU and the Council of Europe, can be briefly introduced as follows.

On 1 August 1975 the participating States to the Conference for Security and Co-operation in Europe ("CSCE") adopted the Final Act of Helsinki. This Act, a political document which was not meant to be legally binding, contained the basic principles for East-West dialogue and co-existence. It was also one of the first official documents that recognised a broad security concept: the "human dimension" was an integral part of the Final Act.¹⁸ Further, it was the start of a process which increasingly led from co-existence to co-operation and to a gradual institutionalisation. The latter process led to the transformation of the CSCE into the OSCE.¹⁹ The OSCE is characterised by its broad security concept, its large membership (55 States) and its political character (OSCE decisions and documents are of a political rather than a legal nature, for example the 1990 Charter of Paris for a New Europe, with some notable exceptions, such as the CFE Treaty²⁰) and consensual nature (decisions require unanimity, though exceptionally unanimity "minus one"—a State grossly violating its OSCE commitments—or "minus two"—the parties to a conflict—is possible).²¹ At present the OSCE has a number of permanent institutions, of which the Secretariat, the Conflict Prevention Centre ("CPC"), the High Commissioner for National Minorities ("HCNM") and the Office for Democratic Institutions and Human Rights ("ODIHR") are the most important ones for our study. Further, the Chairman-in-Office plays a great role in day-to-day management.

NATO was established in 1949 as a collective defence organisation.²² While maintaining collective defence as its primary task, it now—i.e., after the Cold War—attaches great importance to co-operation with other States and organisations and to crisis management, as is stated in NATO's 1999 Strategic Concept.²³ The former mainly takes place through the North-Atlantic Co-operation Council ("NACC"), which has been transformed into the Euro-Atlantic Partnership Council ("EAPC")

18. See Principle VII and the "basket" titled "Co-operation in Humanitarian and Other Fields". See also the European Security Charter (Istanbul, 19 Nov. 1999, (2000) 39 I.L.M. 255, hereafter "European Security Charter"), para. 9.

19. CSCE, "Towards a Genuine Partnership in a New Era", Budapest, 6 Dec. 1994. We will hereafter always use "OSCE", even when reference is made to the CSCE.

20. Treaty on Conventional Armed Forces in Europe, Paris, 19 Nov. 1990 (thoroughly amended at Istanbul on 19 Nov. 1999, but the amendment has not yet entered into force).

21. OSCE, *OSCE Handbook* (1999), 28–29.

22. By the North-Atlantic Treaty, *supra*, n.7.

23. The Alliance's Strategic Concept, Washington, 23–24 April 1999 (para. 10).

and the Partnership for Peace (“PfP”).²⁴ NATO’s crisis management is very visible through cases such as Bosnia and Kosovo. NATO has also responded to WEU/EU developments (see *infra*) through the development of a European Security and Defence Identity (“ESDI”) within NATO and close co-operation with the WEU (and recently also with the EU).²⁵

The WEU was established successively in 1948 and 1954. Like NATO, its original security task was collective defence.²⁶ Since its other tasks were increasingly carried out in other organisations, it became a dormant organisation. A reactivation of this institution has taken place since 1984. But only after the EU’s Common Foreign and Security Policy (“CFSP”) was introduced by the TEU, this reactivation became really significant. Since then, WEU has been functioning as a bridge between the EU (of which it is the defence component) and NATO (within which it was to be the European pillar) and has developed closer co-operation with both organisations.²⁷ It was also given the competence for the “Petersberg” tasks (see *supra*, II.A). Given the current developments in the EU (see *infra*, next paragraph), WEU is likely to disappear, or at least to have its tasks seriously reduced.

The EU, established by the Maastricht Treaty in 1993 and founded on the European Communities, has as its so-called “second pillar” a CFSP that includes all areas of foreign policy, including defence, though for decisions with military implications the EU had to act through WEU.²⁸ The inclusion of defence was a major breakthrough, largely abolishing the taboo on defence that existed since the failure of the European Defence Community in the 1950s.²⁹ The Treaty of Amsterdam strengthened the CFSP institutions and decision-making procedures, and incorporated the Petersberg tasks into the TEU but brought about no fundamental

24. See the Basic Document of the Euro-Atlantic Partnership Council (Sintra, 30 May 1997); the Partnership for Peace Framework Document (Brussels, 10–11 Jan. 1994) *juncto* Towards a Partnership for the 21st Century. The Enhanced and more Operational Partnership (25 April 1999—it includes the Political-Military Framework Document for NATO-led PfP Operations) and Woodliffe, “The Evolution of a New NATO for a New Europe” (1998) 93 I.C.L.Q. 176–180.

25. NATO’s main decisions on ESDI were taken at the North Atlantic Council meetings in Brussels (17–18 Dec. 1990 and 10–11 Jan. 1994) and Berlin (3 June 1996). On NATO-EU co-operation, see *infra*, n.35.

26. See article V Brussels Treaty, *supra*, n.7.

27. See the Declaration [of the members of the WEU and of the EU] on The Role of the [WEU] and its Relations with the [EU] and with [NATO] (Maastricht, 10 Dec. 1991); Declaration of the WEU on the Role of [WEU] and its Relations with the [EU] and with [NATO] (Brussels, 22 July 1997) and Protocol (No 1) on Article 17 [TEU] (Amsterdam, 2 Oct. 1997).

28. See Title V TEU, especially art. 11 *juncto* art. 17, para. 1 (ex articles J.1 and J.7).

29. Earlier, Article 30(6) Single European Act had granted the European Political Co-operation the competence for political and economic aspects of security.

changes.³⁰ Since the end of 1998, however, things have been going very fast and major progress has been achieved at the Cologne, Helsinki and Feira European Council meetings.³¹ The Cologne declaration states that the EU should have the capacity to act autonomously, backed up by credible military forces, in order to be able to take the full range of decisions regarding the "Petersberg-tasks".³² This will require enhanced military capacities, co-operation in the defence industry and the transfer of several functions from WEU to the EU. The necessary decisions should be taken by the end of the year 2000. In Helsinki a concrete target was set as far as military capabilities are concerned and considerable attention was paid to civilian crisis management capabilities (meanwhile, a Committee for civilian aspects of crisis management has been established³³). Secondly, it was agreed that a number of new military and political bodies would be created within the Council. Thirdly, a number of decisions were taken with regard to the relationship with WEU, NATO and the involvement of non-EU Member States.³⁴ At Santa Maria da Feira, more detailed provisions were adopted with regard to military capabilities (a capability commitment conference is to be held), participation by Third States to EU crisis management operations, principles for EU-NATO co-operation and consultation and civilian crisis management, with special attention for police forces (by 2003 the EU Member States must be capable of deploying 5000 police officers for international missions, including 1000 within 30 days).³⁵

The Council of Europe, established in 1949, is regarded as a security organisation for the purposes of this article in the light of the broad notion of security, which has become generally accepted in Europe today;³⁶ with

30. The Secretary-General of the Council is now also "High Representative for the CFSP", the Council can conclude international agreements, "constructive abstention" is possible, common strategies and qualified majority voting have been introduced (though in the end a Member State retains a veto right), and a Policy Planning and Early Warning Unit was created.

31. Respectively held on 3–4 June 1999; 10–11 Dec. 1999 and 19–20 June 2000.

32. European Council Conclusions and presidency report on strengthening the common European policy on security and defence.

33. Council Dec. 2000/354/CFSP setting up Committee for civilian aspects of crisis management (2000) O.J. L127/1.

34. European Council Conclusions and annexed Presidency reports on "strengthening the common European policy on security and defence" and "non-military crisis management of the European Union". Meanwhile, interim military and political bodies have been set up (Council Decisions 2000/143/CFSP setting up the Interim Political and Security Committee (2000) O.J. L49/1; 2000/144/CFSP setting up the Interim Military Body (2000) O.J. L49/2 and 2000/145/CFSP on the secondment of national experts in the military field to the General Secretariat of the Council during an interim period (2000) O.J. L49/3).

35. European Council Conclusions and Presidency Report on Strengthening the Common European Security and Defence Policy.

36. See NATO, *The Alliance's Strategic Concept* (*supra*, n.23), para. 25 and WEU, *European Security: a common concept of the 27 WEU countries*, Madrid, 14 Nov. 1995. For the OSCE, see *supra*, n.18.

its broad membership (41 members), the organisation is particularly active in the field of human rights, democracy and the establishment and consolidation of the rule of law.

III. TWO CRISES IN THE FORMER YUGOSLAVIA

A. Bosnia

1. Pre-conflict

Preventive diplomacy was clearly unsuccessful, though various initiatives have been taken. The EC, for example, sent the European Community Monitoring Mission ("ECMM"). This observer mission initially supervised the observance of the Brioni Declaration.³⁷ At first it was only deployed in Slovenia, but later also in Croatia, Bosnia (from the end of 1991), Yugoslavia (Serbia and Montenegro), Albania, Hungary, Bulgaria and Macedonia.³⁸ However, since the observers were unarmed, this mission could only report.³⁹ No matter how alarming these reports sounded, the EC could not do much more than impose economic sanctions, which it did.⁴⁰ This apparently had little deterrent effect. The ECMM itself succeeded only partially: it probably helped to prevent a spillover effect of the conflict in the former Yugoslavia to neighbouring countries, but was not able to prevent the outbreak of war in Bosnia.⁴¹ Diplomatic initiatives failed.⁴² The OSCE initiatives, usually limited to supporting the EC,⁴³ also remained without success.

The UN Security Council's first action concerning the former Yugoslavia was the adoption of Resolution 713 on 25 September 1991. This resolution supported the EC initiatives and instituted an arms embargo

37. Joint declaration of the six Yugoslav republics and the EC, 7 July 1991, text at http://www.dalmatia.net/croatia/politics/brioni_declaration.htm.

38. For more information, see <http://ue.eu.int/pesc/ecmm/index.htm>.

39. The model Memorandum of Understanding in its Art. 1 describes the ECMM's tasks as "monitor[ing] . . . developments . . . for the purpose of reporting to the Council", whereas Art. 6 stipulates: "Monitors will not carry arms", see http://ue.eu.int/pesc/ecmm/html/memoranda_of_understanding.htm.

40. See e.g. the suspension of trade concessions by the EC by Art. 1 of Council Dec. 91/586/ECCS, EEC (1991) O.J. L315/47.

41. Holbrooke writes that the EC wanted to but was unable whereas the opposite was true for the U.S. (*To End a War* (The Modern Library, 1998), 27–31). On the U.S. position, see Zimmermann, *Origins of a Catastrophe* (Random House, 1996), 214–217.

42. After the Brioni declaration (*supra*, n.37), the EC-sponsored Conference on Peace in Yugoslavia started on 7 Sept. 1991: see *The Yugoslav Crisis*, xxix.

43. See Sica, "The role of the OSCE in the former Yugoslavia after the Dayton Peace Agreement", in Bothe, Ronzitti and Rosas (eds.), *The OSCE in the Maintenance of Peace and Security* (Kluwer Law International, 1997), 479. On the EC/EU-OSCE relationship, see Ghebali, "Préface", in Kalpyris, Vork and Napolitano, *Les sanctions des Nations Unies dans le conflit de l'ex-Yugoslavie* (Bruylant, 1995), vi.

against Yugoslavia.⁴⁴ On 23 November 1991 Croatia and Yugoslavia signed an agreement in Geneva and requested a UN peacekeeping force.⁴⁵ The UN Secretary-General and the Security Council decided, however, that the conditions for the deployment of such a force were not met.⁴⁶ Subsequently, on 2 January 1992, an Implementing Accord was signed and a small UN mission, composed of 50 liaison officers, was sent to supervise the cease-fire.⁴⁷ The mission was soon expanded somewhat and preparations were made for a peacekeeping force, though the circumstances were still not suitable for its deployment.⁴⁸ In the end, the Security Council did establish a peacekeeping force called the United Nations Protection Force ("UNPROFOR").⁴⁹ Initially, this peacekeeping force only operated in Croatia; it was only meant to start working in Bosnia after the primary task of disarmament in parts of Croatia had been completed.⁵⁰ Due to the outbreak of hostilities in Bosnia this was pushed forward: on 30 April 1992 the Secretary-General sent observers to Bosnia.⁵¹ However, at that time the conflict had already erupted.

2. Conflict

UNPROFOR differed considerably from the "traditional" peacekeeping missions,⁵² but nonetheless lacked both the mandate and the means to end an ongoing conflict.⁵³ Sadly, there are illustrations in abundance. For example, after a (limited) air strike in May 1995 the Bosnian Serbs kidnapped more than 350 UNPROFOR personnel. They were later

44. On additional sanctions, see UNSC Resolutions 724, 757, 787 and 820, the latter two authorising enforcement under the Security Council's authority. UNSC Res. 942 ordered an embargo against the Bosnian Serbs. The sanctions were suspended and terminated by UNSC Resolutions 943, 1021, 1022 and 1074 (1 Oct. 1996). For a legal analysis, see Kalpyris, Vork and Napolitano, *Les sanctions des Nations Unies dans le conflit de l'ex-Yougoslavie*, 3–73.

45. The agreement is reprinted in *The Yugoslav Crisis*, 472–473.

46. UNSC Resolutions 721 and 724, both para. 2.

47. See UNSC Res 727, paras 2–3. The agreement is reprinted in *The Yugoslav Crisis*, 486.

48. UNSC Res. 740, paras 1–5.

49. UNSC Res. 743 (21 Feb. 1992), para. 2. UNSC Res. 749 authorised full deployment. The mandate changed (see UNSC Resolutions 769; 770, para. 2 *juncto* 776, para. 2; 815, paras 3–4 and 836, para. 5), was extended and then terminated by the Dayton Agreement, Annex 1-A, Art. VII and UNSC Res. 1031 (15 Dec. 1995), para. 19. See also *The Blue Helmets*, 488–491, 513–538 and 556–563.

50. UNPROFOR's mandate is contained in UN Doc. S/23280, 11 Dec. 1991, Annex 3 (*The Yugoslav Crisis*, 478–480).

51. UN Doc. S/23836, 24 April 1992, para. 20 (reprinted in *The Yugoslav Crisis*, 502–504).

52. UNPROFOR became a Chapter VII operation (UNSC Res. 807, preamble), which is not necessary for a peacekeeping operation (see *supra*, II.A). In comparison to previous peacekeeping operations the use of force was more liberally authorised: see e.g. UNSC Res. 836, paras 9–10 (on the use of air power). On the nature of UNPROFOR, see the Secretary-General's report of 30 May 1995 (S/1995/444), paras 56–79 and Weller, "Peace-keeping and peace-enforcement in the Republic of Bosnia and Herzegovina" (1996) 56 *Z.a.ö.R.V.* 70–177.

53. S/1995/444, para. 66.

released. Moreover, in July 1995 the Bosnian Serbs captured a number of so-called safe areas (including Srebrenica) and slaughtered a large number of civilians in the process. UNPROFOR troops were in fact rather hostages themselves and as such powerless.⁵⁴ In a 1999 report the UN Secretary-General has admitted that this was a clear UN failure.⁵⁵ UNPROFOR did, however, save numerous lives by its contribution to the supply of humanitarian aid, which mainly consisted of accompanying aid convoys.⁵⁶

The UN also took measures to prevent the conflict from spreading. In this respect, the UN mission in Macedonia was important. Originally part of UNPROFOR, it later became an independent mission, known as the United Nations Preventive Deployment Force ("UNPREDEP").⁵⁷ The mission's mandate was not extended after 28 February 1999.⁵⁸

The OSCE had a small mission in Sarajevo, whose goal was to support the three Ombudsmen for the Bosnian Federation.⁵⁹ In addition, it sent a number of Rapporteurs to the area.⁶⁰ Two other OSCE missions in the area had preventive diplomacy as their objective. On the one hand, there was the "Mission of long duration in Kosovo, Sandjak, and Vojvodina". Unfortunately, this mission's mandate was suspended on 28 June 1993 due to Yugoslavia's refusal to consent to an extension of the mandate.⁶¹ On the other hand, there was the "Spillover Monitoring Mission to Skopje".⁶² This mission is still active and probably exerted a stabilising influence on Macedonia. The ECMM put two monitors at the disposal of

54. See e.g. *The Blue Helmets*, 556–560.

55. *Report of the Secretary-General pursuant to General Assembly Resolution 53/35 (1998)*, 15 Nov. 1999.

56. Zimmermann, *Origins of a Catastrophe*, 219–220.

57. UNSC Resolutions 795 and 983.

58. Due to a Chinese veto, see <http://www.un.org/Depts/DPKO/Missions/unpredep.htm>.

59. On 18 March 1994 Bosnian Muslims and Croats agreed upon a constitution for their Federation, *The Yugoslav Crisis*, liv. For the constitution, para. II.B of which deals with the Ombudsmen, see (1994) 33 I.L.M. 740–784. The OSCE mission was set up by a Permanent Committee decision of 2 June 1994 and started in Oct. 1994.

60. See Ghebali, in *Les sanctions des Nations Unies dans le conflit de l'ex-Yougoslavie*, vii, n.3.

61. See <http://www.osce.org/publications/survey/survey01.htm>. Having been established by a decision of the Committee of Senior Officials (hereafter "CSO") of 14 Aug. 1992, this mission deployed on 8 Sept. 1992.

62. Established by a CSO decision of 18 Sept. 1992, see <http://www.osce.org/publications/survey/survey02.htm>.

this OSCE mission,⁶³ which was also to co-operate closely with UNPRE-DEP.⁶⁴ The OSCE's HCNM, whose main function is prevention,⁶⁵ operated in Albania and in Macedonia, in the latter case in consultation with the Spillover Monitoring Mission to Skopje.⁶⁶

Furthermore, the OSCE played an important role in the implementation of the (UN) sanctions, by organising Sanction Assistance Missions (SAMs), which offered technical assistance for the execution of the sanctions. Here the OSCE was supported by the EC/EU. To assure good co-operation, an EU/OSCE sanctions co-ordinator was appointed and a SAM Communications Centre was opened in Brussels.⁶⁷

In the Adriatic Sea, NATO controlled the observation of the UN embargo, in co-operation with the WEU.⁶⁸ NATO also enforced the flight ban over Bosnia⁶⁹ and it guaranteed support for UNPROFOR, especially by conducting air strikes, which were authorised by a number of UN Security Council Resolutions.⁷⁰ However, various factors seriously curbed the efficiency of air strikes. Firstly, the "double-key" mechanism required approval of both the competent NATO commander and the competent UN authority before a strike could be conducted. In practice this usually led to a green light by NATO blocked by the UN.⁷¹ Furthermore, many countries, especially those contributing troops to UNPROFOR, were reluctant to have recourse to air strikes. Thirdly, the continuous threats of air strikes were not or not effectively carried out for quite some time (in part due to the aforementioned reasons), thus making later threats hardly credible.⁷²

63. The OSCE mission has an authorised strength of eight persons.

64. Rosas and Lahelma, "OSCE Long-Term Missions", in *The OSCE in the Maintenance of Peace and Security*, 184.

65. For the HCNM's mandate, see CSCE, "The Challenges of Change", Helsinki, 10 July 1992, para. 23 *juncto* the section on the HCNM and Estebanez, "The High Commissioner on National Minorities: Development of the Mandate", in *The OSCE in the Maintenance of Peace and Security*, 123–166.

66. OSCE Annual reports 1993–1998, all at para. 3.

67. OSCE Annual reports 1993–1996, respectively at paras 2.7, 2.1.5, 2.3 and 2.3.4 and Kalpyris, Vork and Napolitano, *Les sanctions des Nations Unies dans le conflit de l'ex-Yougoslavie*, 75–112.

68. Both NATO and WEU began supervising compliance in July 1992 and began enforcing the embargo in Nov. 1992. From June 1993 until June 1996 this continued through a joint operation (Sharp Guard), see <http://www.nato.int/docu/handbook/1998/v080.htm> and <http://www.weu.int/eng/info/yugo.htm#adriatic>.

69. Established by UNSC Resolutions 781 and 816. NATO started enforcement (which was authorised by UNSC Res. 816, paras 4–5) in April 1993, see <http://www.nato.int/docu/handbook/1998/v080.htm>.

70. See *supra*, n.52.

71. On the mechanism, see UN Docs. S/1994/50 (18 Jan. 1994) and S/1994/159 (11 Feb. 1994), *The Yugoslav Crisis*, 669–670 and 673–674; on its utilisation, Holbrooke, *To End a War*, 72 and *The Yugoslav Crisis*, lvi.

72. Holbrooke, *To End a War*, 70, 72 and 103.

From June 1993 the WEU contributed to the implementation of the embargo on the Danube, through the "WEU police and customs operation on the Danube". This operation was carried out in co-operation with Hungary, Bulgaria, Romania and with the Sanctions Co-ordination Committee of the OSCE.⁷³

As of 23 July 1994, the EU administered the city of Mostar (*infra*, III.A.3), but this should rather be qualified as a post-conflict measure since it only started after an agreement had been reached between the Bosnian Muslims and Croats about their Federation. Further, the EC/EU supported the OSCE in controlling the observation of the sanctions (*supra*) and the ECMM was active in Bulgaria, Hungary and Albania, with the aim to prevent a spreading of the conflict.⁷⁴ The only other actions consisted of failed diplomatic efforts⁷⁵ and the participation of troops from various EC/EU Member States in UNPROFOR. The latter partly resulted in a reflection of UNPROFOR's impotence on the EC/EU and in a greater reticence of the UNPROFOR troop contributing countries *vis-à-vis* further NATO bombardments, which in turn did no good to NATO's credibility.

How then did the end of the conflict come about? Presumably, the Dayton Peace Agreement was concluded thanks to a combination of economic sanctions, NATO air strikes, the shift of the military balance on the battlefield and an enormous diplomatic effort by the U.S.⁷⁶

That NATO was the organisation which took the lead, comes as no surprise. As far as military aspects are concerned, the EU was at the time dependent on WEU (see *supra*, II.B), which was itself still fully immersed in developing its operational capabilities.⁷⁷ The OSCE did not have the necessary means to be militarily involved either.⁷⁸ UNPROFOR and with it the UN had lost all credibility. On 29 August 1995, Kofi Annan, the UN Under-Secretary-General for peacekeeping operations, decided, in Boutros-Ghali's absence, to temporarily renounce the UN's right of veto regarding the conduct of air strikes. NATO thus had the sole power to decide. It did not wait long: the next day it decided to strike. The decision

73. See <http://www.weu.int/eng/info/yugo.htm#danube>.

74. See <http://ue.eu.int/pesc/ecmm/html/background.htm>.

75. In July 1992, the International Conference on the Former Yugoslavia ("ICFY"), led by an EC and a UN envoy, "replaced" the EC sponsored Conference on Peace in Yugoslavia (*supra*, n.42). In May 1994 a Contact Group was established; it was to co-operate with the ICFY and consisted of the U.S., Russia, Germany, France and the U.K. (later also Italy). See Szasz, "Introductory Note", (1996) 35 I.L.M. 75-77.

76. Zimmermann, *Origins of a Catastrophe*, vii and Holbrooke, *To End a War*, 86 and 151-168.

77. A process not yet concluded, see WEU, *Audit of Assets and Capabilities for European Crisis Management Operations: Recommendations for Strengthening European Capabilities for Crisis Management Operations*, 23 Nov. 1999. NATO's Defence Capabilities Initiative (Washington, 25 April 1999) is also aimed at strengthening European capabilities.

78. Rotfield, (1995) 3 ODIHR Bulletin No 3.

was nevertheless taken jointly by the competent NATO commander and the commander of UNPROFOR.⁷⁹

In the political and diplomatic field a leading role of the U.S. turned out to be necessary. Although the Dayton negotiations were officially held under the auspices of the Contact Group, it was the U.S. who called the shots.⁸⁰

3. *Post-conflict*

The Dayton Agreement contains, especially in its annexes, an elaborate description of the various tasks to be performed by the different international organisations in post-conflict Bosnia and led to the establishment of two *ad hoc* bodies: a High Representative and a Peace Implementation Council ("PIC").

The High Representative (first Carl Bildt, then Carlos Westendorp and at present Wolfgang Petritsch) is in charge of the follow-up of the implementation of the Dayton Agreement and of the co-ordination and has the authority to take final and binding decisions regarding the interpretation of the civilian aspects of the Dayton Agreement.⁸¹ After an initially rather cautious approach, the High Representative as of 1998 has been playing a much more active role and interprets his competence quite extensively,⁸² encouraged by the PIC.⁸³ For example, Carlos Westendorp "dismissed" N. Poplasen, president of the Republica Srpska, on 5 March 1999 and Wolfgang Petritsch recently "dismissed" 22 local officials.⁸⁴

The PIC supervises the observation and implementation of the Dayton Agreement. This Council, founded at a Conference in London on 8–9 December 1995 (which also decided to discontinue the International Conference on the Former Yugoslavia by 31 January 1996), meets approximately once or twice a year at a ministerial level and as a rule monthly at the level of its Steering Board.⁸⁵ It apparently also issues political guidelines to the High Representative (see the previous paragraph).

79. NATO press release (95) 73, 30 Aug. 1995.

80. Szasz (1996) 35 I.L.M. 76 and Holbrooke, *To End a War*, 265. On the Contact Group, see *supra*, n.75.

81. Art. VIII *juncto* Annex 10 Dayton Agreement. The function of High Representative and his Office (the "OHR"), were established by Annex 10 Dayton Agreement and UNSC Res. 1031, paras 26–28.

82. According to the UN Secretary-General's Report of 11 June 1999 (S/1999/670), para. 63: "... difficulties ... have forced the High Representative *to use his authority creatively*" (emphasis added).

83. Conclusions of the Peace Implementation Conference, 10 Dec. 1997, Bonn, para. XI.2.

84. See Bird, "Bosnian Serb president is sacked by the West", *The Guardian*, 6 March 1999 and S/1999/1260, para. 18.

85. Conclusions of the London Conference, 8–9 Dec. 1995. See <http://www.ohr.int> for most OHR/PIC documents.

The OSCE was given responsibility for three important tasks: “regional stabilisation and arms control”, elections and human rights. It shares responsibility for this last task with, amongst others, the Office of the High Commissioner for Human Rights (“OHCHR”, the successor of the UN Centre for Human Rights) and the UN High Commissioner for Human Rights (“UNHCHR”).⁸⁶ The Council of Europe also plays a (limited) role in the field of human rights.⁸⁷ To co-ordinate the human rights activities, a Human Rights Task Force was founded, presided by the Office of the High Representative (“OHR”).⁸⁸ The Dayton Agreement also refers to the role of NGOs with regard to human rights, but fails to specify this role.⁸⁹ For regional stabilisation and arms control the OSCE co-operates with IFOR/SFOR (more on IFOR/SFOR *infra*).⁹⁰ To carry out its tasks under the Dayton Agreement, the OSCE established the “OSCE Mission in Bosnia and Herzegovina”.⁹¹

The International Committee of the Red Cross (“ICRC”) and the UN High Commissioner for Refugees (“UNHCR”) were selected for dealing with the refugees.⁹² The UNHCR’s tasks in the specific field of food aid were soon taken over by the UN World Food Programme.⁹³ Concerning refugees the EC Humanitarian Office (“ECHO”) is very active.⁹⁴ NGOs are also mentioned in this area in the Dayton Agreement, but again were not assigned any specific tasks.⁹⁵

The UN Mission is called the “United Nations Mission in Bosnia and Herzegovina” (“UNMIBH”) and consists of the UN Civilian Office and the UN International Police Task Force (“IPTF”). In addition, a UN Co-ordinator was appointed to co-ordinate all UN activities in Bosnia.⁹⁶ A “Commissioner” is in charge of the IPTF, which is not mandated to

86. Respectively Art. II *juncto* Annex 1-B, Art. IV *juncto* Annex 3 and Art. VI and VII *juncto* Annex 6 Dayton Agreement.

87. Dayton Agreement, Annex 6, Art. VII.2 and Annex 4, Art. VI.1.A (appointment of the members of the Bosnian Constitutional Court and Human Rights Chamber); Conclusions of the London Conference, *supra*, n.85, para. 32 and the PIC, *Bosnia & Herzegovina 1997: Making Peace Work*, 4–5 Dec. 1996, London, title “Human Rights”, paras 4 and 7.

88. Conclusions of the London Conference, *supra*, n.85, para. 33.

89. Annex 6, Art. XIII.

90. See <http://www.nato.int/docu/handbook/1998/v090.htm>.

91. Established by a Ministerial Council decision of 8 Dec. 1995 and operational since 29 Dec. 1995, see <http://www.osce.org/publications/survey/survey08.htm>.

92. Art. VII *juncto* Art. I, Chapter I, Annex 7 Dayton Agreement.

93. S/1999/284, para. 50 and S/1999/670, para. 56.

94. In 1996 ECHO spent 187 million Euros in Bosnia, Croatia and Yugoslavia; in 1997 133 million (ECHO’s Annual Report 1997) and in 1998 123 million, of which 88 was for Bosnia (*ECHO Rapport annuel 1998* (1999), 28).

95. Annex 7, Art. III and VIII.

96. UNSC Res. 1035 (21 Dec. 1995), paras 2–3. The mandate was extended (most recently by UNSC Res. 1305) and currently runs until 21 June 2001, see http://www.un.org/Depts/DPKO/Missions/unmibh_p.htm.

maintain law and order: its tasks consist mainly of the supervision of the police and to the justice system and of advising the parties concerning police and justice.⁹⁷ Later the investigation of human rights violations was added to this.⁹⁸ The IPTF has an authorised strength of 2057 police officers.⁹⁹ The UN Civilian Office is responsible for all other UN activities, including those of the UNHCR and the UNHCHR.¹⁰⁰

The Implementation Force (“IFOR”) and later the Stabilisation Force (“SFOR”)¹⁰¹ were charged with ensuring the implementation of the military aspects of the Dayton Agreement.¹⁰² This especially means securing a lasting end to the hostilities. IFOR/SFOR is led by NATO but also contains troops from non-NATO Member States.¹⁰³ These troops operate under full NATO command, with the exception of the Russian troops, who have a special status.¹⁰⁴ IFOR/SFOR may take “such actions as required, including the use of necessary force”, to assure compliance with Annex 1-A, “has the *right* to fulfil its supporting tasks” (emphasis added), which include all sorts of assistance to other international organisations, and may also use military force if necessary for the latter missions.¹⁰⁵

Unlike UNPROFOR, IFOR/SFOR was established under Chapter VII of the UN Charter from the very start and clearly has the jurisdiction to enforce compliance with Annex 1-A of the Dayton Agreement. Moreover, IFOR/SFOR (in contrast to UNPROFOR) was heavily armed and therefore had the means to effectively enforce compliance *manu militari*. Furthermore, IFOR/SFOR operates under one central command, with the exception of the Russian troops. IFOR/SFOR and UNPROFOR thus differ fundamentally.

The civilian and military aspects of the Dayton Agreement are separated: co-operation is required (for example through a Joint Con-

97. Dayton Agreement, Annex 11, Art. I, II, III and V.

98. UNSC Res. 1088, para. 27; *Bosnia & Herzegovina 1997: Making Peace Work* (supra, n.87), “Police Assistance”, paras 3 and 4. The Dayton Agreement only requires the passing on of information about human rights violations (Annex 11, Art. VI).

99. UNSC Res. 1168 (21 May 1998), para. 1.

100. UNSC Res. 1035, para. 2 *juncto* S/1995/1031, paras 13–35.

101. IFOR was authorised by UNSC Res. 1031 (15 Dec. 1995) and transformed into SFOR by UNSC Res. 1088 (12 Dec. 1996). SFOR’s mandate was extended, most recently by UNSC Res. 1305 until 20 June 2001. See also Woodliffe, (1998) 93 I.C.L.Q. 184–187.

102. Dayton Agreement, Art. II *juncto* Annex 1-A.

103. Annex 1-A to the Dayton Agreement stipulates in Art. I, para. 1, (b)–(c): this force “will operate under the authority . . . of the North Atlantic Council . . . through the NATO chain of command”, the modalities of participation by other States being “the subject of agreement between such participating States and NATO”.

104. They are under the command of a Russian “Deputy” to NATO’s Supreme Allied Commander Europe and operate under tactical control of a U.S.-led division in theatre: see <http://www.nato.int/docu/handbook/1998/v083.htm> and [~/v089.htm](#).

105. Dayton Agreement, Annex 1-A, respectively Art. I, para. 2, (b) and Art. VI, paras 3 and 5.

sultative Commission), but the High Representative has no authority over IFOR/SFOR and IFOR/SFOR has none over the civilian aspects.¹⁰⁶

The EC/EU ran the administration of the city of Mostar from July 1994 until July 1996. Subsequently, a Special Envoy performed his (follow-up tasks) until December 1996.¹⁰⁷ The WEU contributed to this administration by supplying a Police Force.¹⁰⁸ Further, the EC/EU plays a leading role in economic reconstruction,¹⁰⁹ in close co-operation with the World Bank.¹¹⁰ In addition, the EC/EU and its Member States are one of the main financial contributors.¹¹¹

Initially, especially during the first year, several problems occurred concerning the execution of the Dayton Agreement, mainly as far as the co-operation between IFOR/SFOR and civilian organisations was concerned. IFOR/SFOR's refusal to get involved in the execution of the civilian aspects of the Dayton Agreement resulted in rendering the tasks of the OSCE even more difficult than they already were.¹¹² Nor initially did IFOR/SFOR arrest any persons indicted by the Yugoslavia Tribunal. This was especially troubling because the IPTF lacked this authority.¹¹³

106. See the Dayton Agreement, Annex 10, Art. II, paras 2–7 and 9.

107. The EU Administration of Mostar was established by Council Dec. 94/308/CFSP (1994) O.J. L134/1 and 94/790/CFSP (1994) O.J. L326/2, repeatedly extended and terminated by Dec. 96/442/CFSP (1996) O.J. L185/1, 96/476/CFSP (1996) O.J. L195/1, 96/508/CFSP (1996) O.J. L212/1 and 96/744/CFSP (1996) O.J. L340/1. See Pagani, "L'administration de Mostar par l'Union européenne", (1996) 42 A.F.D.I. 234–254 and Special Report No 2/96 concerning the accounts of the Administrator and the European Union Administration, Mostar (EUAM) accompanied by the replies of the Commission and the Administrator of Mostar, (1996) O.J. C287/1. Mostar's status is determined in the Agreement Implementing the Federation of Bosnia and Hercegovina, para. 1 *juncto* Annex on Mostar, Dayton, 10 Nov. 1995, (1996) 35 I.L.M. 170–183.

108. From July 1994 until Oct. 1996, see <http://www.weu.int/eng/info/yugo.htm#police>.

109. In late 1995 the Commission adopted a global strategy (see SEC(95) 1597 final; COM(95) 564 final; COM(95) 581 final and COM(95) 582 final), compatible with the Commission/World Bank reconstruction plan (*infra*, n.110). In Jan. 1996 the "Essential Aid Programme", financed under the PHARE programme, was adopted. Additional funding was made available through the OBNOVA programme, established by Council Reg. (EC) No 1628/96 (1996) O.J. L204/1, later modified, e.g. by Council Regulations (EC) No 851/98 (1998) O.J. L122/1 and No 2454 (1999) O.J. L299/1. See Special Report No 5/98 on reconstruction in former Yugoslavia (period 1996–1997) with the Commission's replies (1998) O.J. C241/1 (hereafter "*Special Report*") for details on the implementation and an assessment.

110. See e.g. their joint "Priority Reconstruction and Recovery Program (1996–1999)", approved in Dec. 1995 on a first donor conference.

111. Of the estimated cost of 3.388 billion Euro for the reconstruction plan (*supra*, n.110), the EU itself pays 1 billion Euro (*Special Report*, para. 1.1).

112. Sorel, (1995) A.F.D.I. 86 and Goldston, "The role of the OSCE in Bosnia: Lessons from the first year", (1997/3) Helsinki Monitor, 14–16.

113. The first arrest was made in the summer of 1997, Goldston, (1997/3) Helsinki Monitor, 7, n.7. Initially, IFOR hardly made an effort (Holbrooke, *To End a War*, 339). For a legal analysis of IFOR's / SFOR's authority to make such arrests, see Gaeta, "Is NATO Authorized or Obligated to Arrest Persons Indicted by the International Criminal Tribunal for the former Yugoslavia?", (1998) 9 E.J.I.L. 174–181. On IPTF's mandate, see *supra*, nn.97–98.

Another example was IFOR's passivity when large-scale arson was committed during the Serbian exodus from Sarajevo in March 1996.¹¹⁴ But the various civilian organisations did not always co-operate flawlessly either. For example, the co-operation between the EU/ECHO and the UNHCR proved to be far from ideal, there was also tension between the UN and the OSCE regarding the contribution of the IPTF to the OSCE Mission and co-ordination did not always run smoothly, for example between the OSCE and the Council of Europe.¹¹⁵

However, all organisations involved seem to have realised that they would succeed or fail together and that co-operation was therefore crucial. This resulted, for instance, in an agreement between the EC and the OSCE over ECMM assistance to the OSCE.¹¹⁶ The EU offers other support as well to the OSCE, especially regarding the organisation of elections.¹¹⁷ Also, IFOR/SFOR has become more willing to co-operate in respect of civilian matters and played a supporting role during the organisation of elections by the OSCE.¹¹⁸ Further, a Memorandum of Understanding was signed between SFOR and the ECMM regarding safety and evacuation.¹¹⁹ The IPTF now also looks into human rights violations (see *supra*), which facilitates the OSCE's task. After a period with problems and despite occasional tensions, the co-operation and co-ordination now generally seem to function quite well.¹²⁰

This does not mean that the implementation of Dayton is taking place as it should. It has been alleged that hundreds of millions of U.S. Dollars that were destined for aid ended up in the wrong hands.¹²¹ Moreover, 30 per cent of the Bosnian budget goes to defence-related areas,¹²² there are

114. Holbrooke, *To End a War*, 336–337.

115. *Special Report*, para. 2.6, and paras 2.6 and 5.7 of the Commission's replies; Sica, in *The OSCE in the Maintenance of Peace and Security*, 486 and Bloed, "OSCE Chronicle", (1996/1) Helsinki Monitor 75.

116. See Art. 1 Council Dec. 96/406/CFSP (1996) O.J. L168/1; a Memorandum of Understanding (EU-OSCE) dated 21 Dec. 1995 and an Exchange of Letters on 7 April 1997.

117. See e.g. Council decisions 96/406/CFSP (*supra*, n.116) and 98/302/CFSP (1998) O.J. L138/3.

118. According to the *NATO Handbook 1998*, SFOR's mandate includes providing "selective support to civilian organisations" and "support to other agencies", see <http://www.nato.int/ducu/handbook/1998/v087.htm>; [~ /v085.htm](http://www.nato.int/ducu/handbook/1998/v085.htm) and [~ /v090.htm](http://www.nato.int/ducu/handbook/1998/v090.htm). See also [~ /v259.htm](http://www.nato.int/ducu/handbook/1998/v259.htm) and Killham, *NATO and OSCE, partners or rivals*, NATO research fellowship final report, 12 March 1997, 48.

119. But not until 15 Jan. 1997, see http://ue.eu.int/pesc/ecmm/html/legal_framework.htm.

120. Killham, *NATO and OSCE, partners or rivals*, 48–49 and Goldston, (1997/3) Helsinki Monitor, 7, n.7.

121. Hedges, "Leaders in Bosnia are said to steal up to \$1 billion", *The New York Times*, 17 Aug. 1999. During a press conference on 17 Aug. 1999 a representative of the OHR stated that the overall picture given by this article was correct.

122. OSCE, "Seminar on co-operation among international organisations and institutions, Sofia, 17–19 May 1999, Consolidated Summary, 11 June 1999, SEC.GAL/64/99 (hereafter *OSCE Seminar*), 6.

still numerous refugees and “internally displaced persons”¹²³ and the most wanted alleged war criminals have yet to be arrested.¹²⁴ Bosnia at this moment is still strongly dependent on foreign aid—the necessary structural reforms to achieve and maintain a self-sustaining economy have not been carried out yet—and nor do the local political institutions function as they should, so that progress all too often only results from the making and enforcing of decisions by the High Representative.¹²⁵

B. Kosovo

1. Pre-conflict

As in Bosnia, the international community was unable to prevent the outbreak of the conflict in Kosovo. To a large extent this was due to the fact that the Kosovo issue was not resolved in the Dayton Agreement.¹²⁶ The OSCE did make an effort through conversations led by the HCNM, as a personal representative of the Chairman-in-Office,¹²⁷ but this was of no avail.

2. Conflict

A first and most obvious observation is the failure and powerlessness of the UN in Kosovo. The UN Security Council passed four resolutions on Kosovo during the phase of conflict.¹²⁸ The first was simply ignored. The second was also disregarded, until NATO threats (en)forced partial compliance.¹²⁹ This lack of compliance can easily be explained: Mr. Milosevic knew that non-compliance would hardly entail additional UN

123. At the end of 1998, 371,000 refugees and 860,000 internally displaced persons (“IDPs”) remained, Conclusions of the PIC, Madrid, 16 Dec. 1998, Annex, I.2. During the first 10 months of 1999 about 44,000 refugees and 33,000 IDPs returned, S/1999/1260, para. 15. The PIC Declaration of 23/24 May 2000 (Brussels), states that, though significant progress had recently been made in rural areas, return to urban areas remained slow due to political obstruction.

124. Though “bigger fish” have now been arrested, including four (former) generals and the former president of the Bosnian Serb Assembly. According to NATO, “the net is closing”: see NATO press release (2000)036, 3 April 2000.

125. PIC, Madrid, 10 Dec. 1998, Conclusions, paras 4, 12.2–3 and 15 and *OSCE Seminar*, 6.

126. Zandee, “Column: Lessons learned from Kosovo”, (1999/4) Helsinki Monitor 5 and Caplan, “International diplomacy and the crisis in Kosovo”, (1998) 74 *International Affairs* 746–754.

127. See the OSCE Annual Report 1997, para. 3.7.

128. UNSC Resolutions 1160 (31 March 1998), 1199 (23 Sept. 1998), 1203 (24 Oct. 1998) and 1239 (14 May 1999).

129. Milosevic and Holbrooke concluded an agreement on 12 Oct. 1998, Yugoslavia and NATO on 15 Oct. 1998 (text in UN Doc. S/1998/991) and Yugoslavia and the OSCE on 16 Oct. 1998 (text in UN Doc. S/1998/978). Yugoslavia promised to respect the UNSC resolutions and accepted verification by NATO (in the air) and by the OSCE (on the ground).

sanctions and, especially considering the Russian and Chinese attitudes, certainly would not lead to (the authorisation of) the use of force. Sadly, this once again shows the defects of the present UN system of collective security. Because the Security Council only occasionally and rather selectively authorises armed interventions, States involved in conflicts may assume that the UN will probably not authorise the use of force, thus reducing the chances of compliance with UN resolutions. The UN was finally called upon, but only for a *post facto* blessing of an agreement concluded in other fora.

Nor was the OSCE able to stop the violence and atrocities¹³⁰ in Kosovo. Two factors probably contributed to this. Firstly, on the level of decision-making, the Russian point of view undoubtedly made a stronger mandate problematic.¹³¹ Moreover, the OSCE had to discontinue its mission in Kosovo as of the middle of 1993 due to Yugoslavia's refusal to extend that mission's mandate.¹³² Secondly, the OSCE does not have military capabilities (except when WEU, NATO or Commonwealth of Independent States would put troops at its disposal). Therefore it is incapable of undertaking or credibly threatening to undertake military action.¹³³

Nevertheless, the OSCE was given a considerable role in managing the Kosovo crisis through the Kosovo Verification Mission ("KVM"),¹³⁴ which would operate from 25 October 1998 to 19 March 1999. The KVM was to supervise the observation by Yugoslavia of the relevant UN Security Council Resolutions, but had neither the mandate nor the means to stop the violence.¹³⁵ NATO verified from the air (*supra*); the EU contributed through the ECMM to the timely setting up of the KVM,¹³⁶ WEU contributed to the KVM and the NATO Air Verification Mission through the use of the WEU Satellite Centre.¹³⁷ In the light of the UNPROFOR experience one can question the point of sending a mission of KVM's nature to Kosovo. One of the consequences was for instance

130. See OSCE, *Kosova, As Seen, As Told, Part I* (Oct. 1998—June 1999), <http://www.osce.org/kosovo/reports/hr/part1/index.htm>.

131. In 1998 the Russians even pleaded for a termination of Yugoslavia's suspension from the OSCE (Bloed, "OSCE Chronicle" (1999/1) Helsinki Monitor 49). Given the OSCE's consensual decision-making (*supra*, II.B), Russia has a veto right. It had made it clear it would not approve a tougher UN Security Council resolution, see Leurdijk, (1999/2) Helsinki Monitor 11.

132. See *supra*, n.61.

133. The OSCE has no enforcement powers and although it can mandate peacekeeping missions, it has not yet done so.

134. Established by Permanent Council Decision 263, 25 Oct. 1998. See also the OSCE's *Annual Report 1998*, para. 2.2.4.

135. Leurdijk, (1999/2) Helsinki Monitor 14.

136. See <http://ue.eu.int/pesc/ecmm/html/role.htm>.

137. A WEU proposal (WEU Ministerial Council, Rhodes, 12 May 1998, para. 12) led to a formal EU request (Council Dec. 98/646/CFSP (1998) O.J. L308/1) and then to WEU action (WEU Ministerial Council, Rome, 17 Nov. 1998, para. 5).

that during its presence in Kosovo, no air strikes could take place, which undermined the credibility of the threats to conduct air strikes.¹³⁸ At least some guarantee was provided for the security of KVM personnel: NATO's "extraction force" was ready to intervene in case of an emergency.¹³⁹ Despite its merits, the KVM was withdrawn on 20 March 1999—a few days before the NATO military campaign took off. It was subsequently reduced in size and reassigned to Albania and Macedonia, where it performed humanitarian tasks, before its termination in June 1999.¹⁴⁰

Yet a certain threat was actually present. Though it emanated from NATO, it cannot be considered as unrelated to the OSCE given the largely identical demands both organisations made and, in a later phase, their shared verification of compliance with the Holbrooke-Milosevic agreement (*supra*). Moreover, precisely during the threat with NATO air strikes, UN Resolutions were temporarily observed. The lack of credibility is probably in part due to NATO's failure to carry out its (repeated) threat with armed intervention. The fact that the previous intervention, in Bosnia, had come about reluctantly and rather tardily did not help either.¹⁴¹ Furthermore, Mr. Milosevic may have hoped for a lack of agreement within NATO. After all there was a serious debate going on within NATO about the question whether a mandate from the UN was necessary for military action, both in this specific case and in general (as part of the discussion about NATO's Strategic Concept, which was to be adopted at its Washington summit).¹⁴²

The OSCE did in any event contribute to preventing the spreading of the conflict to neighbouring countries. With this aim the OSCE missions in Albania¹⁴³ and in Macedonia (*supra*, III.A.2) were assigned additional tasks, including the observation of the border with Kosovo.¹⁴⁴ The UN too was engaged in prevention in Macedonia, through UNPREDEP (*supra*, III.A.2). In Albania WEU also operated in the field of prevention, in close co-operation with the EU and the Council of Europe,¹⁴⁵ by

138. See the discussion about NATO air strikes in Bosnia during UNPROFOR's deployment there (*supra*, III.A.2).

139. Leurdijk, (1999/2) Helsinki Monitor 14–15.

140. OSCE Annual Report 1999, 1.1.5.1. Permanent Council Decision 296, 8 June 1999 terminated the KVM and established an OSCE Task Force for Kosovo to prepare for a possible new OSCE mission to Kosovo.

141. In that sense Caplan, (1998) 74 International Affairs 753.

142. Leurdijk, (1999/2) Helsinki Monitor, 9–11. In NATO's new Strategic Concept (*supra*, n.23), this issue was not resolved.

143. This "OSCE Presence in Albania" was established by Permanent Council Decision 160 of 27 March 1997 and started its activities on 3 April 1997, see <http://www.osce.org/publications/survey/survey13.htm>.

144. Permanent Council Decision 218 of 11 March 1998.

145. See e.g. the joint EU/Council of Europe "Albania programmes" mentioned in EU press release 98/93, 1 April 1998.

deploying the Multinational Advisory Police Element ("MAPE"). MAPE helps with the training and organisation of the Albanian police.¹⁴⁶ The EU contributed, through ECHO, to the supply of humanitarian aid to Macedonia, Albania and Montenegro.¹⁴⁷ NATO undertook preventive action in Macedonia and Albania¹⁴⁸ and (after some hesitation) also acted in the humanitarian field, in particular with operation "Allied Harbour".¹⁴⁹ In order to avoid a spillover, the ECMM too was assigned tasks in Albania and Macedonia.¹⁵⁰

It is striking how international organisations acted to a considerable extent in a co-ordinated manner in dealing with the Kosovo crisis.¹⁵¹ This was first of all the case on the diplomatic front, where the Rambouillet negotiations¹⁵² occupied a central place. These negotiations, a Contact Group initiative, were chaired by the French and British ministers of foreign affairs.¹⁵³ The Rambouillet talks did have some rather special characteristics: the parties were brought to the negotiating table by the threat of the use of force and they were expected to agree with certain principles from the outset.¹⁵⁴ Be that as it may, it seems that in fact real negotiations did take place.¹⁵⁵ As is well-known, these talks were not

146. MAPE's establishment was approved by the WEU Ministerial Council Declaration, Paris, 13 May 1997, para. 47. On MAPE, see <http://www.weu.int/eng/mape/info.htm>. At the EU's request (Council dec. 98/547/CFSP (1998) O.J. L263/1; 99/189/CFSP and 99/190/CFSP (1999) O.J. L63/1) WEU completed a study and adopted and started to implement a contingency plan (WEU Ministerial Council Declaration, Rome, 17 Nov. 1998, para. 4 and WEU Permanent Council decision, 2 Feb. 1999). EU Council dec. 2000/388/CFSP (2000) O.J. L145/1 provides additional funding.

147. In 1999 ECHO spent 378 million Euro on humanitarian aid for the Kosovo crisis ("Kosovo—One Year On—The European Contribution", http://europa.eu.int/comm/external-relations/see/kosovo/1_year_on.htm); in 1998 it was 21.6 million Euro (*ECHO Rapport annuel 1998*, 13 and 28).

148. "Historique des initiatives françaises", <http://www.diplomatie.fr/actual/dossiers/kosovo/kosovo14.html>.

149. See Clark, "When force is necessary: NATO's military response to the Kosovo crisis", (1999/2) *NATO Review* 17–18; Balanzino, "NATO's humanitarian support to the victims of the Kosovo crisis", *ibid.*, 9–13.

150. See <http://ue.eu.int/pesc/ecmm/html/background.htm>, last para.

151. Leurdijk, (1999/2) *Helsinki Monitor* 17 and Caplan, (1998) 74 *International Affairs* 746 and 754 (with reservations on Russia).

152. Rambouillet, 6–23 Feb. 1999 and Paris, 15–19 March 1999.

153. For details, see Weller, "The Rambouillet conference on Kosovo", (1999) 75 *International Affairs* 211–251 and "Les accords de Rambouillet", <http://www.diplomatie.fr/actual/dossiers/Kosovo/rambouill.html>.

154. Weller, (1999) 75 *International Affairs* 221–227, but see *ibid.*, 228–233 and 251.

155. *Ibid.*, 228–233. But see de la Gorce, "Histoire secrète des négociations de Rambouillet", (1999) *Le Monde Diplomatique*, May, 4–5.

successful. As far as economic sanctions were concerned, the international community also acted in a more or less coherent way.¹⁵⁶

What brought the parties to an agreement? Undoubtedly, NATO air strikes and a whole array of diplomatic initiatives were of capital importance. Possibly, the increased likelihood of a NATO ground offensive also played a role.¹⁵⁷

NATO showed that, amongst the international organisations in the European sphere, it is the only one capable of conducting serious military operations. NATO's mistakes in planning and strategy (such as *a priori* publicly ruling out the option of sending ground troops and not having foreseen the exodus of refugees) do not affect this conclusion. However, NATO's air campaign in itself did not suffice to reach a solution: a diplomatic breakthrough was also required. For this, Russian involvement was essential. Once Russia was on board, through the G7/8,¹⁵⁸ it was a matter of obtaining Mr. Milosevic's consent to the demands of the international community. Here the EU played a prominent role.¹⁵⁹ The valuable input of Finnish President Martti Ahtisaari in this exploit demonstrates that neutral EU Member States can play an important role in the EU's common foreign and security policy.

3. *Post-conflict*

i) UN Security Council Resolution 1244

Resolution 1244 of the UN Security Council provides for some sort of a post-conflict division of labour and thereby assigns a role to the different international organisations. It decides on the deployment in Kosovo, under UN auspices, of international civil and military presences.¹⁶⁰

As to the latter, the resolution authorises UN Member States and "relevant international organisations" to establish the international security presence, "with all necessary means to fulfil its responsibilities". Though the security presence remains under auspices of the UN, it contains a "substantial" NATO participation and has to function under a unified command.¹⁶¹ Even though this is not—and was not meant to

156. The Contact Group imposed sanctions on 9 March 1998, followed by the EU and the UN (the latter with an arms embargo, UNSC Res. 1160, 31 March 1998). The EU and the Contact Group adopted additional sanctions, see "Historique des initiatives françaises", *supra* n.148. The initial EU sanctions were adopted by Council Dec. 98/240/CFSP (1998) O.J. L95/1, 98/326/CFSP (1998) O.J. L143/1, 98/374/CFSP (1998) O.J. L165/1 and 1999/273/CFSP (1999) O.J. L108/1.

157. Zandee, (1999/4) Helsinki Monitor 5.

158. On 6 May 1999 an agreement was reached within the G7/8 (text in Annex 1 to UNSC Res. 1244, 10 June 1999).

159. Norman, "EU heartened by Ahtisaari's success", *The Financial Times*, 7 June 1999.

160. UNSC Res. 1244, para. 5 *juncto* Annex 2, para. 3.

161. UNSC Res. 1244, para. 7; para. 5 *juncto* Annex 2, para. 3 and para. 7 *juncto* Annex 2, para. 4.

be—exactly clear, it in fact amounts to a NATO force under NATO command with participation of non-NATO Member States. The sole exception are the participating Russian troops, who have a special status.¹⁶² KFOR's most important tasks consist of deterring renewed hostilities, maintaining and enforcing the cease-fire, ensuring the withdrawal of the Yugoslav troops, demilitarising the Kosovo Liberation Army ("UCK") and ensuring a safe environment in which the civilian presence can operate.¹⁶³ There is also a novelty: the international community has established a kind of civil emergency protection force (named the Kosovo (Protection) Corps or "KPC"), which is to help with the reconstruction and in case of emergencies. The intention was to make constructive use of former UCK members.¹⁶⁴

The civil presence for its part operates under UN command and has been named UN Interim Administration Mission in Kosovo (UNMIK). It is headed by a Special Representative of the UN Secretary-General, Bernard Kouchner. In his report of 12 July 1999 the UN Secretary-General has divided UNMIK's tasks into four pillars, each led by a Deputy Special Representative, who in each case also represents a different "lead organisation".¹⁶⁵ Of course, this in no way excludes other organisations (on the contrary: some are explicitly mentioned in the Secretary-General's report).

The first pillar is the "interim civil administration", led by the UN's Tom Königs. This pillar includes the provision and the supply of public services, including police and judiciary.¹⁶⁶ Regarding the police, the present UN Police Force will eventually be replaced by a local Kosovo Police Service ("KPS"), whose members will be trained under the

162. Determined by an agreement concluded on 18 June 1999 in Helsinki: see <http://www.nato.int/kosovo/docu/a990618a.htm>. The Russian troops are under command of their representatives at NATO and, in theatre, under tactical control of the sector commanders. It is roughly the same construction as in IFOR/SFOR (*supra*, n.104). For details on KFOR's structure and the Russian participation, see <http://www.nato.int/kosovo/docu/a990618c.htm>.

163. UNSC Res. 1244, para. 9. NATO and the UCK concluded a separate agreement on the UCK's disarmament (text at <http://www.nato.int/kosovo/docu/a990620a.htm>). The disarmament and demilitarisation have been completed: see the UN Secretary-General's report of 23 Dec. 1999 (S/1999/1250).

164. UNMIK Regulation 8 (1999), <http://www.un.org/peace/kosovo/pages/regulations/reg.html> (where all UNMIK regulations are listed). See also <http://www.un.org/peace/kosovo/pages/twelvemonths/kpc.html>.

165. Report of the Secretary-General on the United Nations Interim Administration Mission in Kosovo, 12 July 1999, paras 43–44 (hereafter S/1999/779). The most recent report at the time of writing is S/2000/538, 6 June 2000. For an overview of UNMIK's first year, see <http://www.un.org/peace/kosovo/pages/unmik12.html>. See also Garcia, "La Mission d'Administration Intérimaire des Nations Unies au Kosovo (MINUK)", (2000) R.G.D.I.P., 61–71.

166. S/1999/779, paras 54–78.

“institution-building” pillar.¹⁶⁷ A Joint Interim Administrative Structure (“JIAS”) has been set up. In this structure UNMIK retains its powers but the local population has a considerable input through the Interim Administrative Council and the Kosovo Transitional Council.¹⁶⁸

Daan Everts of the OSCE is in charge of the second pillar, named “institution-building”. This pillar contains three components: democratisation and institution-building (*sensu stricto*), elections and human rights.¹⁶⁹ Here, too, co-operation takes place with other organisations. The decision establishing the OSCE’s Kosovo mission,¹⁷⁰ for instance, explicitly mentions the UNHCHR (regarding human rights¹⁷¹) and the Council of Europe (regarding the training of personnel for police, judiciary and administration¹⁷²).

“Humanitarian affairs”, the third pillar, is headed by Dennis McNamara of the UNHCR.¹⁷³ ECHO is very active in this field too.¹⁷⁴ Together these two organisations soon drew up a “Kosovo Return Plan”.¹⁷⁵ In addition, a first donor conference for Kosovo was soon held under auspices of the EU and the World Bank, with special attention for humanitarian aid and urgent financial support.¹⁷⁶ The “UN Consolidated Inter-Agency Appeal 1999 for South Eastern Europe Humanitarian Operation” is also very important: it aims at giving an overview of the activities and financial needs of the UN organisations dealing with refugees in the area.¹⁷⁷

167. *Ibid.*, paras 60–65. On 1 March 2000, 2361 regular UN police personnel were deployed in Kosovo, well short of the requested 3618 (S/2000/177, para. 37). Several classes of KPS cadets have graduated so far, among them a significant number of women and cadets from minorities, see http://www.osce.org/kosovo/publications/police_school/police_english.pdf.

168. UNMIK Regulation 1 (2000). See also <http://www.un.org/peace/kosovo/pages/twelvemonths/jias.html>. In April 2000 the Serbs decided to participate as observers. They then withdrew due to the security situation, but rejoined in July 2000 after UNMIK agreed to additional security measures (UN press releases of 2 April, 25 and 29 July 2000).

169. S/1999/779, paras 79–90.

170. Permanent Council Decision 305, 1 July 1999, which also terminates the Task Force for Kosovo (*supra*, n.140).

171. UNHCHR was already mentioned in S/1999/779, paras 87–88.

172. Tasks also included in Recommendation 1414(1999) of the Council of Europe’s Parliamentary Assembly, 23 June 1999, para. 16.b.i. Further, the Council of Europe reviews legislation and works on an ombudsman (S/1999/1250, paras 80–83).

173. S/1999/779, paras 91–100.

174. An EU press release of 20 July 1999 shows that ECHO makes substantial financial contributions to UNHCR.

175. The text of which is at <http://www.unhcr.ch/news/media/kosret2.htm>.

176. World bank press release, 28 July 1999.

177. See <http://www.unhcr.ch/fdrs/kosapp/main.htm>.

Joly Dixon of the EU runs the fourth pillar, "Reconstruction".¹⁷⁸ The EU deployed a Task Force in Kosovo on 1 July 1999,¹⁷⁹ which has been succeeded by the European Agency for Reconstruction.¹⁸⁰ In addition, the European Commission and the World Bank have drawn up an extensive reconstruction and development strategy which has been submitted at a second donor conference.¹⁸¹ It looks as if the EU (including its Member States) will pay the greatest part of the bill.¹⁸² Furthermore, UNMIK has set up a Central Fiscal Authority and a Banking and Payments Authority to approximately fulfil the role of ministry of finance and central bank and the 1999 and 2000 Kosovo budgets have been adopted.¹⁸³

The Special Representative is assisted by the Principal Deputy Special Representative, the American James Covey. Moreover, the Special Representative and the five Deputies form the "Executive Committee", which plays a central role, *inter alia* regarding co-ordination. The Executive Committee is assisted by the "Joint Planning Group".¹⁸⁴ It should be noted that UNMIK and KFOR are to co-ordinate their actions closely; as indicated already, both are under UN auspices. There is, however, no hierarchical relationship between the High Representative and the KFOR commander and it is doubtful whether the KFOR commander would, in case of a dispute, accept an order from the UN Secretary-General. A good co-operation between the two is therefore essential.

This seems to be working out well. There is a daily meeting between the KFOR commander and the High Representative and there is a close co-operation, *inter alia*, in clearing mines.¹⁸⁵ The UN Police Force also advises KFOR on police tasks that are initially carried out by KFOR and

178. S/1999/779, para. 101–109. See Joint Action of 29 July 1999 concerning the installation of the structures of the United Nations Mission in Kosovo (Unmik): Council Dec. 1999/522/CFSP (1999) O.J. L201/1 and Council regulation (EC) No 1080/2000 (2000) O.J. L122/27.

179. See <http://europa.eu.int/comm/dg1a/see/intro/index.htm>.

180. Established by Council Reg. (EC) No 2454/1999 (1999) O.J. L299/1. New changes to this regulation have been proposed by COM(2000) 281 final (10 May 2000).

181. World Bank & European Commission, "Toward Stability and Prosperity: A Program For Reconstruction and Recovery in Kosovo", 3 Nov. 1999 (costing 2.3 billion USD over 4–5 years). One billion USD has been pledged on a second donor conference (Commission/World Bank joint press release, 17 Nov. 1999). On the reconstruction in Kosovo see also <http://www.seerecon.org>.

182. On the first and second donor conference for Kosovo about half the pledges were made by the EU and its Member States, see <http://www.seerecon.org/Calendar/Cal-28-7-99-Pledges.htm> and the UN press release of 18 Nov. 1999.

183. UNMIK Regulations Nos 16, 17, 20 and 27 of 1999.

184. S/1999/779, paras 47–48.

185. *Ibid.*, especially paras 24–30.

there are joint patrols.¹⁸⁶ In addition, KFOR has co-operated with the Yugoslavia Tribunal from the start, especially by guarding suspected mass graves and other crime sites and by arresting suspected war criminals.¹⁸⁷

Unfortunately, all of this has not been sufficient to stop the violence in Kosovo, of which mostly Serbs and Roma suffer nowadays.¹⁸⁸ Moreover a number of things are going far too slowly, in part due to a lack of financial resources and the bureaucracy in some of the organisations involved. For example, due to discussions between the EU Council of Ministers and the European Parliament, the formal decision to establish the European Agency for Reconstruction, agreed in principle by the Council on 19 July 1999, was not taken until 15 November 1999 and only started working in February 2000.¹⁸⁹ The deficit in UNMIK's budget illustrates the financial troubles.¹⁹⁰ The European States are also very slow in deploying the promised police forces, desperately needed to enforce law and order, which has obliged KFOR to continue, for the time being, to carry out this task to a considerable extent.¹⁹¹ Given WEU's recently gained experience in the field of police operations (in Mostar and Albania, see *supra*, II.A.3)—even if they differed somewhat in nature—one might have expected this organisation to fill the void, possibly in reply to an EU request. That would also have been consistent with the EU's ambitions for non-military crisis management (*supra*, II.B). Unfortunately, this has not been the case.

The foregoing allocation of tasks seems to follow the specialisation and relative strengths of the different international organisations: NATO, the strongest military actor, is there to keep the peace and to create a safe environment in which the other organisations can do their job; each civilian organisation works in the field(s) in which it has the most expertise. Of course there is some overlap since some aspects fall under

186. UN press releases of 29 July 1999 and 11 Aug. 1999 and S/1999/1250, paras 63–64. The daily KFOR press releases indicate that KFOR is still doing much of the patrolling and UNMIK is concentrating on investigating.

187. "Unearthing the facts", *TIME* (International), 28 June 1999, 30 and Cohen, "K-FOR troops arrest war crimes suspects", *The Guardian*, 21 Aug. 1999. UNSC Res. 1244, para. 14 demands that the security presence co-operate with the Tribunal.

188. OSCE, *Kosova, As Seen, As Told, Part II*, <http://www.osce.org/kosovo/reports/hr/part2/index.htm> (14 June 1999–31 Oct. 1999). See http://www.osce.org/kosovo/publications/ethnic_minorities/index.htm for more recent reports.

189. Fortunately, the Task Force (*supra*, n.179) bridged the gap. The Council and Parliament still disagree on funding for Kosovo: see Taylor, "MEPs set for new battle with governments over Kosovo aid", *The European Voice*, 10 Jan. 2000.

190. UN press release, 29 June 2000.

191. See *supra*, n.167.

more than one denominator, but that can be solved with good co-operation.¹⁹²

ii) The Stability Pact for South Eastern Europe

Based on an initiative by the EU and in co-operation with other international organisations and numerous individual countries, a Stability Pact for South Eastern Europe was concluded on 10 June 1999.¹⁹³ This initiative, which builds on the EU's existing regional approach,¹⁹⁴ is aimed at advancing the economic and democratic development of the region in order to create lasting peace, prosperity and stability.¹⁹⁵ In order to accomplish this, three Working Tables have been established, one on "democratisation and human rights", one on "economic reconstruction, development and co-operation", and one on "security issues". A "South Eastern Europe Regional Table" is to co-ordinate everything, give impulses and follow progress. It is chaired by the "Special Co-ordinator" for the Stability Pact (Bodo Hombach), appointed by the EU (after deliberation with those concerned and approval by the OSCE Chairman-in-Office).¹⁹⁶ A "Work Plan" adopted by the Regional Table contains more details and promotes the resort to lead countries/organisations for specific areas of activities.¹⁹⁷ The Pact has been brought under the auspices of the OSCE.¹⁹⁸

The Stability Pact's implementation mechanism is quite complex. While the Pact itself divides the tasks into several large areas, the division of the work between participating States and organisations is less clear than it is within UNMIK and is much more fragmented. Within each Working Table numerous initiatives are dealt with, each promoted by one or more State(s) and/or organisation(s). To list all these initiatives and lead countries/organisations would lead us too far. Therefore only a brief overview of the main areas of activities and the main international organisations involved is given.

192. See e.g. Königs in the UN press release of 8 Nov. 1999, mentioning weekly meetings between all organisations.

193. *Supra*, n.6. On 27 May 1999 a Conference on South-Eastern Europe took place in Bonn to prepare the ground.

194. Set out in the EU Council Conclusions of 26–27 Feb. 1996 and Annex III thereto. At the heart was the "Process of stability and good-neighbourly relations in South-Eastern Europe" (the "Royaumont Process"), which has been terminated because its objectives are now part of the Stability Pact (Council Dec. 2000/387/CFSP (2000) O.J. L 144/35).

195. Stability Pact, paras 1–11. For a brief commentary, see Hombach, "The Stability Pact: Breaking new ground in the Balkans", (1999/4) NATO Review 20–23.

196. Stability Pact, paras 12–14 and EU Council Dec. 1999/523/CFSP (1999) O.J. L201/2.

197. Brussels, 19 Sept. 1999, hereafter "Work Plan". See <http://www.stabilitypact.org> for the text and for more details.

198. OSCE Permanent Council Decision 306, 1 July 1999 (conform para. 22 Stability Pact).

The Working Table on democratisation and human rights addresses two main issues: (i) democratisation and human rights (*sensu stricto*), which is mainly to be dealt with by the OSCE¹⁹⁹ in co-operation with the Council of Europe,²⁰⁰ and (ii) refugees, for which UNHCR is taking the lead, again in co-operation with the Council of Europe.²⁰¹ The ICRC, the UN Development Program and the EU are also involved, the latter mainly through the “Stabilisation and Association Process”, a process in which “Stabilisation and Association Agreements” (a new kind of contractual relationship between the EU and five countries from the region) play a central role.²⁰²

The EU and the World Bank are in charge of the Working Table on economic reconstruction, development and co-operation.²⁰³ To facilitate this, an agreement has been signed between the European Commission (on behalf of the EU) and the World Bank for the co-ordination of the economic reconstruction of the Balkans.²⁰⁴ Also, the World Bank has recently developed a regional strategy.²⁰⁵ Other important actors in this Working Table are the European Bank on Reconstruction and Development, the Organisation for Economic Co-operation and Development and the European Investment Bank.

The Working Table on security has to focus on three topics:²⁰⁶ (i) “justice and home affairs”, a rather broadly defined field where a major task is reserved for the Council of Europe,²⁰⁷ though the EU also plays a role (mostly in the framework of its third pillar), as well as the OECD and the OSCE; (ii) “transparency and confidence-building measures”, a field

199. Stability Pact, para. 23 *juncto* Annex, para. C.i and OSCE press release 62/99. For more details on this Working Table, see the Work Plan (*supra*, n.197).

200. Council of Europe, Committee of Ministers, “Stability Programme for Southeast Europe. A Council of Europe contribution” (CM(99)79), 6–7 May 1999, para. III.1.b-III.4 (complementing the Stability Pact) and Recommendation 1414 (1999) of the Council of Europe’s Parliamentary Assembly, paras 11 and 16.b.iv (*supra*, n.172). The Council of Europe and the OSCE consult on their co-operation, e.g. regarding the Stability Pact: OSCE press release, 4 Oct. 1999.

201. Stability Pact, para. 25 *juncto* Annex, para. C.ii and Council of Europe, CM(99)79 (*supra*, n.200), para. III.1.a.

202. The Stabilisation and Association Process will, in time, lead to EU membership for these countries if all conditions are met: see COM (99)235 and http://europa.eu.int/comm/external_relations/sec/sap/index.htm. The conditions are based upon the conditions set out in the Annex to Annex III to the EU Council Conclusions of 29–30 April 1997, which were part of the EU’s existing regional approach (*supra*, n.194).

203. Stability Pact, para. 41. For more details on this Working Table, see the Work Plan (*supra*, n.197).

204. Consisting of a Joint Declaration, dated 12 May 1999.

205. The Road to Stability and Prosperity in South Eastern Europe. A Regional Strategy Paper, 13 March 2000.

206. Stability Pact, Annex, para. C, i-iii. For more details on this Working Table, see the Work Plan (*supra*, n.197).

207. See Recommendation 1414 (1999) of the Parliamentary Assembly of the Council of Europe (*supra*, n.172), para. 16.b.iv.

in which the OSCE has considerable expertise and is taking the lead;²⁰⁸ and (iii) “co-operation on defence and military issues”, where NATO plays an important role, especially with the Partnership for Peace (PfP) and the Euro-Atlantic Partnership Council (EAPC).²⁰⁹ This Working Table has established two Sub-Tables, the first on Justice and Home Affairs and the second on Defence and Security Issues (including confidence building measures).

The Stability Pact certainly has the potential to make a major contribution to peace and security in the region if the States and international organisations involved will live up to their promises. In this respect the results of the (first) Regional Funding Conference for South East Europe are promising.²¹⁰

When comparing UNMIK and the Stability Pact, one immediately notices a potential overlap, namely Kosovo. For the time being there is in fact no overlap since Yugoslavia is excluded from the Stability Pact because of its undemocratic regime (a solution which would enable Montenegro to participate early on is being considered).²¹¹ When Yugoslavia’s exclusion ends, a good co-ordination between UNMIK and the Stability Pact will have to be guaranteed. This would, for instance, be necessary for the Economic Working Table of the Stability Pact and UNMIK’s reconstruction pillar. However, this should not cause major problems given the functional specialisation in both UNMIK and the Stability Pact, which assures that to a considerable extent the same organisations are responsible for the same tasks under both initiatives, but it could be complicated by the fragmentation under the Stability Pact.

IV. LESSONS AND RECOMMENDATIONS

A. *Preventive action*

Preventive diplomacy rarely suffices on its own and more often, broader measures (preventive action, *supra*, II.A) are required, ideally as part of an elaborate and coherent strategy by the international community.²¹²

208. See the reference in OSCE press release no. 62/99 to the Working Table on security issues.

209. Stability Pact, para. 26. In April 1999 NATO launched its South East Europe Initiative to complement and support the Stability Pact. It promotes regional co-operation through PfP tools, an open ended working group in the EAPC, security co-operation programmes and a Consultative Forum on Security Issues on Southeast Europe (consisting of the 19 allies and seven countries from the region), NATO press release M-NAC-D(99) 156, 2 Dec. 1999 and the speech of NATO’s Secretary-General on 10 March 2000 in Antalya.

210. Brussels, 29–30 March 2000. 2.4 billion Euros were pledged, UN Press release, 30 March 2000.

211. Stability Pact, para. 11.

212. The statement of the President of the UN Security Council on behalf of the Security Council on the Role of the Security Council in the prevention of armed conflicts (30 Nov. 1999, hereafter “S/PRST/1999/34”) speaks of a “co-ordinated international response”, “effective long-term strategies” and a “comprehensive conflict prevention strategy”.

The reconstruction of Western Europe with U.S. aid under the Marshall Plan serves as a good but relatively rare example. Beside diplomatic initiatives, economic and financial support is crucial. The same goes for expertise concerning good governance, human rights and the rights of minorities. After all, especially this kind of support will address the causes of conflicts, rather than merely treat the symptoms.²¹³ This corresponds to the so-called “comprehensive approach to security” (*supra*, II). In addition, sometimes a credible threat with the use of force is necessary,²¹⁴ or another form of deterrence, such as the preventive deployment of troops.²¹⁵ Former UN Secretary-General Boutros-Ghali correctly stated in this respect that “Preventive Diplomacy requires the constructive engagement of the international community. Rhetoric must be matched with deeds, theory must be closely linked with practice . . . The challenge is to summon the political will to act.”²¹⁶

Good co-ordination is vital in all this.²¹⁷ NATO, for example, is the most credible when it comes to (threatening with) the use of force. But the Alliance does little in the field of preventive diplomacy; this is much more the realm of the OSCE²¹⁸ and, to a certain extent, of the EU. If NATO threats are not a part of a broader strategy, much of their efficacy is lost.²¹⁹ On the other hand, as especially the Bosnia crisis has shown, preventive diplomacy without serious military back-up may often be equally insufficient. It must be clear to the State concerned that failure of (OSCE/EU) preventive diplomacy will entail the risk of a military (NATO) operation. Ideally, this should occur with a UN Security Council mandate. In some circumstances, however, this seems unrealistic, which begs the question of a reform of the UN security system and/or an alternative legal basis for such an operation. Within the context of the

213. Kooijmans, (1995) 49 *Internationale Spectator* 367, equates preventive peace-building with structural help. Priorities in the Feira European Council Conclusions (*supra*, n.35) include strengthening the rule of law and civil administration.

214. Kooijmans, (1995) 49 *Internationale Spectator* 366–367, writes the following on the UN: “preventive action failed because the possibility of enforcement was not credible” (our translation).

215. *An Agenda for Peace*, paras 28–32 and S/PRST/1999/34 (*supra*, n.212).

216. “An Agenda for Preventive Diplomacy: Theory and Practice”, speech held in Skopje on 16–19 Oct. 1996.

217. S/PRST/1999/34 (*supra*, n.212) and *OSCE Seminar*, 9, 15 and 18.

218. The European Security Charter clearly illustrates this, see paras 1, 36–43 and 46. See also Cohen, *Conflict prevention in the OSCE. An assessment of capacities* (Clingendael Institute, 1999).

219. Zandee, (1999/4) *Helsinki Monitor* 6.

present contribution, this issue cannot be discussed, though it is obviously of major importance.²²⁰

It is submitted that international organisations in both the Bosnian and Kosovo crises did succeed to a large extent in preventing a spreading of the conflict to neighbouring countries. Which organisation deserves credit for this is hard to say, because so many organisations were involved (for example the different missions in Albania and Macedonia, *supra*). Maybe the success was precisely achieved because of the combination of different initiatives. This would in fact be consistent with the comprehensive approach to security. The failure to prevent the deterioration of the crisis in Kosovo does not contradict this conclusion. It is to a large extent due to the fact that Kosovo is a part of Yugoslavia, which made prevention very difficult without the permission of Yugoslavia or a Chapter VII mandate to intervene by the UN Security Council, neither of which were at hand.

The threat with the use of force—if necessary—will only have effect if that threat is credible.²²¹ This presupposes the means to effectively execute the threat and a very judicious and determined use of threats. It is vital only to threaten when one is prepared to act. After repeated threats that have not been acted upon, more threats will not be taken seriously.

Furthermore, the EU and NATO have an important trump card: most Central and Eastern European Countries are very eager to join both organisations. The prospect of membership or of another form of close co-operation is an important means of pressure. For this purpose these institutions need to unequivocally clarify to the candidate Member States what they have to offer and what conditions candidates have to fulfil.²²²

Finally, the relatively low cost of good prevention should be kept in mind. Full-scale prevention is of course not cheap. Supplying expertise, humanitarian and economic support, accompanied by monitoring or similar missions and at times even by the preventive stationing of troops in a certain area, entails considerable costs. But these costs are certainly less by far than the costs of military enforcement actions after an escalation of the conflict, together with those of humanitarian disasters and reconstruction. Effective prevention is moreover focused on the long term and thus takes away the causes of the conflict. Unfortunately, politicians, media and public opinion usually only pay attention to a

220. For a few opinions on this issue, see Simma, "NATO, the UN and the use of force: legal aspects", (1999) 10 E.J.I.L. 1–22; Cassese, "Ex iniuria ius oritur: are we moving towards international legitimation of forcible humanitarian countermeasures in the world community?" (1999) 10 E.J.I.L. 23–30 and the editorial comments by Henkin *e.a.* in (1999) 93 A.J.I.L. 824–862.

221. Leurdijk, (1999/2) Helsinki Monitor 18 ("like preventive diplomacy, coercive diplomacy should be executed in a credible way") and Holbrooke, *To End a War*, 152 ("they respected only force or an unambiguous and credible threat to use it.").

222. *OSCE Seminar*, 6 and 13.

conflict when it has seriously escalated²²³ and prevention is no longer an option. Admittedly, early preventive action requires intelligence gathering capabilities and early warning tools, which are not always sufficiently present—for example NATO has no such proper capabilities and the EU has only been developing its capabilities in this area since 1997 (*supra*, II.B). However, the political will to act upon available information is an equally, if not more important condition. Sometimes it looks as if international organisations too think they have more prestige to gain by an intervention in an ongoing conflict (with great media coverage) than by (far less visible) prevention. Despite the lip service paid to the comprehensive security concept, often disproportionately more money is spent on military means than on prevention.²²⁴

B. Crisis management during the period of conflict

Once a conflict has erupted, it is usually very hard to end it. It can be ended when the parties themselves, because of the situation on the battlefield or for other reasons, really want peace. When this is not the case, recourse to economic sanctions may bring the parties to reason. However, at times a military intervention may be the only solution.²²⁵ Avoiding the spreading of a conflict is usually much easier, but this rather amounts to a preventive measure (see *supra*, II.A).

Bosnia and Kosovo show that peacekeeping or similar operations only make sense when all parties really agree to the mandate of such a mission. However, this is not likely to be the case in a real conflict situation.²²⁶ Moreover, the presence of such a mission will almost certainly preclude the simultaneous taking of serious military enforcement measures (see *supra*, III.A.2 and III.B.2, concerning UNPROFOR and KVM, respectively). In addition, the credibility of international organisations seriously suffers when representatives of those organisations do not intervene while they are witnessing the commission of crimes (for example UNPROFOR in Srebrenica and IFOR during the Serbian exodus from Sarajevo, *supra*, III.A.3), even though this is mostly due to their limited mandate and/or lack of means.²²⁷ Sending missions in such circumstances

223. See Zandee, (1999/4) Helsinki Monitor 6 and Caplan, (1998) 74 International Affairs 751.

224. E.g., In the U.S. the Pentagon receives about 15 times more than the State Department in 2000.

225. Holbrooke (*To End a War*, 146 and 88) regarded the threat with air strikes and the sanctions as his key bargaining chips.

226. According to Rosas and Lahelma, in *The OSCE in the Maintenance of Peace and Security*, 188, this is equally valid for OSCE Long Term Missions, which are also based on the parties' consent.

227. We do not wish to blame the (mostly dedicated) staff for a limited mandate and/or insufficient means.

is rather an indication that States feel obliged to do something, but are unwilling to do what really should be done.

Another lesson is that amongst international organisations, as of yet only NATO can handle serious military operations.²²⁸ The OSCE lacks the capacity,²²⁹ and so does the EU for the time being, though that is changing (*supra*, II.B). WEU is still developing its operational capabilities (*supra*, III.A.2).

If the EU wants to maximise its leverage on the international level, it will not only need military muscle, but also an improved common foreign and security policy enabling the Union to more often speak and act as one. Contact groups and the like, in which only the big Member States have a seat, and the effectiveness of which is open to question, are clearly not the most appropriate answer.

C. *Post-conflict measures*

Good and structural post-conflict peace-building measures simultaneously serve as a means of prevention (*supra*, II.A). For example, the Stability Pact can be considered as a post-conflict peace-building measure which envisages the maintenance and strengthening of the peace but simultaneously the prevention of new conflicts. This is without any doubt a great improvement compared to the Dayton Agreement.

But for these measures too, a coherent and comprehensive approach is required.²³⁰ A military presence will often be necessary, especially during the initial phase. Disarmament, border controls and the prevention of renewed hostilities are essential in this phase.²³¹ The military may also need to execute other tasks in this phase, such as pressing infrastructure repairs. Furthermore, it is crucial that the international community starts planning post-conflict measures before the termination of the conflict, enabling a quick start when the conflict ends.²³²

The "civilian" organisations slowly but surely seem to adopt a specialisation and an assignment of tasks of some sorts.²³³ We see this as a

228. See e.g. E. Derycke (then Belgian Minister of foreign affairs) during the parliamentary debate on NATO's expansion in the Chamber of Representatives, see summary report of the plenary meeting of 16 July 1998.

229. *Ibid.*; Burci, "Division of Labour between the UN and the OSCE", in *The OSCE in the Maintenance of Peace and Security*, 303 and 307. Van Mierlo, "The significance of the OSCE in the European security architecture", (1995/4) Helsinki Monitor 8, also identifies the OSCE's focus on the phases before and after an actual conflict.

230. See the scope of the measures mentioned in the statement of the President of the Security Council on behalf of the Security Council, on *An Agenda for Peace*, 30 April 1993 (S/25696).

231. See the Statement of the President of the Security Council on behalf of the Security Council on the maintenance of peace and security and post-conflict peace-building, 8 July 1999, which also attaches importance to reintegration of former combatants.

232. *OSCE Seminar*, 6 and 15. See also the European Security Charter, para. 43.

233. Sorel, (1995) A.F.D.I. 94.

positive development. Obviously, this requires excellent co-ordination which for the time being seems to work on an *ad hoc* basis. That may not be a bad thing: the system can then be designed each time in function of the specific circumstances. The co-operation can be improved by a number of concrete measures, such as daily contacts between people from different organisations which are active in the same areas, the hiring of people with a positive attitude to co-operation and the simultaneous publication of reports.²³⁴ Joint press briefings may also help.

It is, however, preferable that apart from these *ad hoc* mechanisms there be a general systematic co-operation between the different organisations. That is already to a large extent the case. Merely a few examples are cited here. There are tripartite meetings with representatives from the UN (agencies), the OSCE and the Council of Europe; the OSCE and the Council of Europe hold a yearly bilateral meeting at a high level, they occasionally organise joint seminars and both Secretary-Generals attend meetings of the other organisation on a regular basis.²³⁵ In the relationship NATO-OSCE the Euro-Atlantic Partnership Council and the Partnership for Peace are important: they provide a framework for *inter alia* practical military co-operation, which facilitates the conduct of military operations (especially peacekeeping) by NATO with the participation of the countries concerned. OSCE representatives regularly attend certain NATO meetings and *vice versa* and there is an OSCE participation in the Political-Military Steering Committee/Ad Hoc Group on Co-operation in Peacekeeping.²³⁶ A number of relevant aspects figure in the OSCE's Platform for Co-operative Security, though the latter remains rather vague.²³⁷ The OSCE could among others take on a co-ordinating role in complex regional missions (like the UN does at the global level).²³⁸

Neither in the Bosnian nor in the Kosovo crisis was any organisation capable of quickly deploying civilian units consisting of well-qualified personnel. The Kosovo Verification Mission illustrates this very well: though it had an authorised strength of 2000 verifiers, it never reached this number, mainly due to recruitment problems. UNMIK would probably also have worked faster and better if such civilian units (for example the desperately needed police forces²³⁹) would have been available. This deficiency has been noticed and improvement should be under way. At its

234. *OSCE Seminar*, 10, 18 and 20.

235. *OSCE Handbook*, 1999, 152–153.

236. *OSCE Handbook*, 1999, 154 and E. L. Killham, *NATO and OSCE, partners or rivals*, 49–51.

237. It is part of the European Security Charter and builds on the (OSCE) Common Concept for the Development of Co-operation between Mutually Reinforcing Institutions (Copenhagen, 18/19 Dec. 1997).

238. European Security Charter, para. 46 and Platform for Co-operative Security, para. 7.

239. See *supra*, nn.167 and 191.

recent Istanbul summit the OSCE decided to set up Rapid Expert Assistance and Co-operation Teams ("REACT") and the Panel on United Nations Peace Operations recommends that the UN develop a rapid reaction capability through some kind of stand-by arrangements.²⁴⁰ In addition, the EU and its Member States will develop a rapid reaction capability (*supra*, II.B).

V. CONCLUDING REMARKS

At present, no single European organisation seems capable of preventing or solving a conflict of the type of Bosnia or Kosovo by itself. This can only be achieved by co-operation between functionally specialised organisations. For the moment, such co-operation takes place and there is mutual reinforcement. However, the present security architecture can still be considerably improved. Here follows a sketch of a possible allocation of responsibilities which would fill some of the existing gaps.

As far as *preventive action* is concerned, the OSCE is good in deploying missions with preventive diplomacy and political institution-building as tasks. Its broad security concept, the role of consensus in its decision-making and its internal focus (the OSCE mainly deals with the relations between its Member States *inter se*, not with those towards third States) grant the organisation a comparative advantage in this field. The Council of Europe too engages in "institution-building", though more in the legal field. Concerning human rights, the UN High Commissioner for Human Rights and her Office (OHCHR), the OSCE and the Council of Europe can all play a part. The EU offers economic support. When countries in Europe are involved, the EU can exercise substantial diplomatic pressure, amongst others by the prospect of concluding (or by suspending existing) association agreements or even offering (or threatening to refuse) membership. NATO can, if necessary, preventively station troops in the area of conflict (the UN could do that, too) and threaten with the use of force in case of escalation. Obviously, all of this should take place in a co-ordinated manner. While *ad hoc* co-ordination mechanisms may be best suited to the peculiarities of each case, permanent co-operation mechanisms are clearly indispensable.

If the EU succeeds in establishing a real and credible common foreign and security policy and a common defence policy, it could take over tasks which NATO is now (capable of) performing, especially in cases where the U.S. is not prepared to act. This applies not just for preventive action, but for crisis management in general. In fact, this would enable the EU to develop a comprehensive strategy towards (potential) conflicts, which

240. See respectively the Istanbul Summit Declaration, 19 Nov. 1999, para. 35 *juncto* the European Security Charter, paras 1 and 42 and The Panel's Report (*supra*, n.17), paras 86-101 and 118-145.

could involve political, diplomatic, economic, financial and military aspects. The EU would then be the only European organisation able to adopt such a comprehensive strategy by itself. For now the WEU has only executed limited operations, for example by deploying police forces. The recent developments illustrate the change on the way. Eurocorps has been heading KFOR from April 2000, albeit under NATO command (Eurocorps can be “used” by NATO or WEU). If it can perform this role for NATO, it should be able to do so for the WEU as well, and in the future for the EU.²⁴¹

With regard to *crisis management during the period of conflict*, economic sanctions can be imposed by the UN and by the EU. The supervision of their respect can be entrusted to NATO, but the WEU, the OSCE and the EU can also play a role therein. In the diplomatic field, the EU, the OSCE and the UN are probably the most suitable organisations. When military force is needed, NATO presently is the only respected player. If the EU lives up to its headline goal, set at Helsinki (see *supra*), it could take over NATO’s tasks here too, if necessary. A broad coalition with a UN mandate is also conceivable, but may be politically more difficult to obtain and requires more time to assemble and organise. The OSCE can—especially in the light of the recently adopted European Security Charter²⁴²—also play a legitimising role, for instance when there is no UN mandate for the use of force. As indicated earlier, we consider the prevention of spillover rather a form of preventive action.

Post-conflict measures, finally, first and foremost require a military presence. This may be supplied or at least headed by NATO. If the parties themselves really want peace a UN mission is also feasible, though NATO at this moment commands more respect. If the EU meets its goals for military capabilities (*supra*, II.B), it will become an alternative for NATO here too. Concerning disarmament and so-called “confidence building measures” the OSCE may play a major part. The civilian tasks can be divided amongst the different organisations. The OSCE can for example deal with the media, elections and (political aspects of) institution-building; the Council of Europe with (legal aspects of) institution-building; the EU with economic reconstruction (together with, *inter alia*, the World Bank); and the UN and/or EU with civil administration (provided the EU lives up to its ambitions with regard to civilian capabilities, *supra*, II.B). As regards human rights, the OHCHR, UNHCHR, OSCE and the Council of Europe can all contribute. Again, much will depend on how well matters are co-ordinated.

241. Eurocorps may become one of the headquarters of the future EU rapid reaction force, WEU press release of 9 Dec. 1999.

242. Para. 7: compliance with all OSCE commitments is of “immediate and legitimate concern to all participating states”.

ECHO and the UNHCR can certainly be active in any or all of these phases, except perhaps during the conflict phase in the immediate area of conflict itself. The same applies for NGOs. For NATO-actions during each of the phases, troops of non-Member States can participate if desirable, for example through the Partnership for Peace.