CHAPTER V
COERCIVE ROLE OF NSEs

By coercive role we mean such type of roles which do not require the consent of the party concerned. The coercive role of NSEs, therefore, does not require the agreement between NSEs and the party concerned for performing any activity under the collective security system of the United Nations. NSEs perform such roles against the consent of or without any consent of the party concerned against whom any collective security action is to be taken.

An analysis of the coercive role of NSEs reveals that it includes two types of roles: the role of NSEs not directly coercive in nature but related directly to coercive role of NSEs, e.g., organizational role; the role of NSEs directly coercive in nature, e.g., sanctions.

This chapter discusses and analyses these two roles of NSEs.

I. ORGANIZATIONAL ROLE

In case of the coercive role also, organizational role is the first and foremost one. NSEs perform this role in the same manner as in the case of their peaceful role as described earlier in Chapter IV of the present study. The only difference in the case of coercive role is to organize for coercive activities not for peaceful ones. In both the cases, this role presupposes the existence of an international organization, a form of NSEs. International organization is ultimately established by States. After the establishment, it is the international organization which provides structural apparatus to the collective security system through its organs and agencies which are also
NSEs. The Security Council, the General Assembly, the Secretariat, the ECOSOC, and the ICJ are principal organs and some of them have certain agencies to operate effectively.

Many other NSEs have also performed coercive activities under the collective security system. In this respect Chapters VII and VIII and Articles 71 and 99 are important provisions of the UN Charter. These provisions have already been discussed in the previous pages. About the cooperation of NSEs in respect of collective security, we have already discussed in Chapter IV, namely, peaceful role of NSEs. The only difference in case of coercive role is such that cooperation has taken place for coercive and not for peaceful activities.

II. NORMATIVE ROLE

The UN Charter, as aforesaid, contains a set of principles relating to the collective security system. These include norms for coercive action under the collective security system. When such norms or principles are to be applied, sometimes it needs explanations or supplementary norms. Many NSEs are involved in explaining and developing the norms relating to collective security. And, thus, they help in normative role regarding coercive measures under the auspices of the collective security system. Many IGOs, INGOs and even individuals are involved in performing this role. Sometimes, the ICJ also explains or supplements norms relating to coercive measures. NSEs perform their role in this regard in the same manner as in the case of peaceful role. The only difference in this case is norms to be explained or developed are related to coercive measures and not peaceful ones.
III. RULE-RELATED ROLE

NSEs can play two types of role in this regard also as in the case of peaceful role. These are rule-creating and rule-supervisory. NSEs, especially IGOs, perform this role in the same way as in the case of peaceful role. The only difference here is such role is related to coercive activities, not to peaceful ones. This role has also been dealt with in Chapter IV of the present study. Hence, in this chapter there is no need to reiterate the same things from the outset. The Security Council has had quasi-legislative authority or, depending on one's definition, true legislative authority, when there is a “threat to the peace, breach of the peace or act of aggression”.

IV. INFORMATIONAL ROLE

The informational role of NSEs helps in determining the existence of a “threat to the peace, breach of the peace or act of aggression”, which is an essential condition for the operation of the collective security system of the United Nations. It also helps, as already mentioned in the previous chapter, in determining as to what means should be deployed to eradicate the existence of such dangers and knowing the result of such deployment.

The informational role of IGOs, INGOs, journalists, individuals and other NSEs may be the same as in the case of peaceful roles. The only difference is to give informations as to coercive activities. The role of NSEs in this regard starts from the very determination of the “threat to the peace, breach of the peace or act of aggression” and ends at the establishment and maintenance of peace. Thereafter this role of NSEs in the collective
security system of the United Nations finishes and it takes the form outside the collective security system.

V. DECLARATIONS-RELATED ROLE

The most common global community function of the Security Council is the issuance of declarations regarding State behaviour. Such behaviour may not only be informed but explained and highlighted also by NSEs. Under Article 39 of the UN Charter, the Security Council may determine that particular behaviour constitutes a "threat to the peace, breach of the peace, or act of aggression". In doing so, the Security Council provides an authoritative statement one behalf of the international community regarding the seriousness of an event, thereby focusing international attention on the event and encouraging the relevant parties to seek an expeditious resolution. At the same time, the Security Council triggers its ability to pursue enforcement powers under Chapter VII of the UN Charter.¹ In this process, NSEs may be helpful for explaining and highlighting the situation before or after the resolution. Some instances, are²--

(1) The Security Council determined that Iraq's August 1990 invasion of Kuwait was a breach of international peace and security;

(2) that in the aftermath of Iraq's expulsion from Kuwait, the repression of Iraqi nationals causing flows of refugees and cross-border incursions was a threat to the peace;

² Ibid.
(3) that the continuation of fighting in Yugoslavia was a threat to international peace and security; and
(4) that the deteriorating situation in Somalia, involving the heavy loss of human life and widespread material damage, constituted a threat to international peace and security.

In the above instances, the Security Council actively encouraged and supported the role of the Secretary-General as well as that of regional and other organizations, such as the League of Arab States, the Organization of African Unity, the Conference of Security and Cooperation in Europe (CSCE), the European Community, and non-governmental humanitarian relief organizations.

VI. OPERATIONAL ROLE

The operational role of NSEs, relating to coercive measures, is covered by Chapters VII and VIII of the UN Charter. These chapters include both the coercive means and instruments-related activities. Hence, for the sake of convenience, we can discuss and analyse here the coercive operational role of NSEs under two heads, namely, Chapter VII – related role and Chapter VIII – related role.

1. CHAPTER VII-RELATED ROLE

Under Chapter VII of the UN Charter, after the determination of "threat to the peace, breach of the peace or act of aggression", NSEs may be involved in activities like complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communications, and the severance of diplomatic relations. If these actions
prove inadequate, NSEs may even be involved in such action by air, sea or land forces as may be necessary to maintain or restore international peace and security. Therefore, these coercive measures, also termed as enforcement action of the Security Council, are of two kinds -

(1) Measures not involving the use of armed forces as described above in detail; and

(2) Measures involving the use of armed forces as described above in detail.³

NSEs can also take part in self-defence activities authorized by the Security Council under Article 51 of the Charter.⁴

(A) MEASURES NOT INVOLVING THE USE OF ARMED FORCES

Under Article 41 of the Charter, the Security Council may call upon Member States to apply measures not involving the use of armed forces in order to maintain or restore international peace and security. Such measures are commonly referred to as sanctions. This legal basis is recalled in order to underline that the purpose of sanctions is to modify the behaviour of a party that is threatening international peace and security and not to punish or otherwise exact retribution.⁵

The Security Council’s greatly increased use of this instrument that has brought to light a number of difficulties relating especially to the objectives of sanctions, the monitoring of their application and impact, and

³ For more details, see Bruno Simma, The Charter of the United Nations: A Commentary (Oxford, 2002), Chapter VII.
⁴ Ibid.
their unintended effects. In this regard, NSEs help to remove the difficulties, to some extent.

In the category of sanctions, the UN Charter provides three kinds.

(1) ECONOMIC SANCTIONS

The most aggressive global community function of the Security Council that may be taken is the imposition of compulsory economic sanctions. NSEs may get involved not only in the imposition of such sanctions but also in their enforcement.

All States and concerned NSEs are obligated to abide by the sanctions, which either can be directed towards a particular class of goods, such as weapons and military equipment or can cover goods generally. When an embargo of weapons occurs, it is usually designated to minimise the likelihood of continued or increased armed conflict while a more general embargo appears designed to punish the conduct of a State and to encourage alternative behaviour.

As for the enforcement of economic sanctions, only once during the Cold War era were military forces authorized by the Security Council specifically to undertake measures to enforce the Council's economic sanctions. But, in that instance of South Rhodesia, in 1966, the military forces were not under UN command, not even under a multinational task force; the United Kingdom alone was called upon to engage in the naval interdiction and given authority to "arrest and detain" vessels.

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6 Ibid., para 67.
7 Cf. Murphy, n. 1, p.214.
8 Ibid.
9 Ibid., p.223.
In mid-August 1990, multinational forces were deployed in the Gulf region to begin enforcing the economic sanctions imposed by the Security Council against Iraq and occupied Kuwait. In Resolution 665, the Security Council called upon the multinational forces to "use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation" of the sanctions. Based on this, a multinational coalition of naval vessels, led primarily by the United States, coordinated patrols of seas adjacent to the Strait of Horm and the Gulf of Aquaba, challenging, inspecting, and in some cases, turning away vessels suspected of carrying commodities to or from Iraq and Kuwait. Iraq's lack of seaports and reliance on oil pipelines through Turkey and Saudi Arabia enhanced the ability to enforce the sanctions. Yet smuggling did occur and it was ultimately unclear whether the sanctions would force Iraqi compliance with the Security Council's demands.\(^\text{10}\)

For the arms-specific and general sanctions imposed with respect to the territory of the former Yugoslavia, the Security Council called upon all States, acting nationally or through regional agencies or arrangements, to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations in implementation of the sanctions. Based on this, NATO and Western European Union Forces moved to stop trafficking with Serbia.

\(^{10}\) Ibid., pp. 223-24.
and Montenegro through Adriatic ports, but the prevention of smuggling along the Danube River (which connects many European countries, including Serbia and Montenegro, to the Black Sea) proved difficult because of Serbia and Montenegro’s ability to retaliate against the transport of other countries’ commerce. 11

(2) COMMUNICATIONS RELATED SANCTIONS

Under Chapter VII of the UN Charter, the Security Council may impose such sanctions and call upon NSEs concerned to interrupt rail, sea, air, postal, telegraphic, radio and other means of communications to a State against whom coercive measures, not involving armed forces, are to be taken. In this process, NSEs may get involved in their respective fields. For example, if an NSE active in the field of telegraph and radio, it may interrupt or ban the telegraphic/radio communications to the target State.

(3) DIPLOMATIC SANCTIONS

The Security Council may also take steps to impair the diplomatic relations of a State that is responsible for threatening or breaching the peace. In this process also, NSEs are helpful. Once “preventive” or enforcement action is taken against a State, its rights and privileges as an UN member may be suspended by the General Assembly upon the recommendation of the Security Council. If the State is a persistent violator of the principles of the Charter, the State may even be expelled from the

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11 Ibid., p.224.
United Nations by the General Assembly upon the recommendation of the Security Council.\textsuperscript{12}

Neither step was taken in the cases of Iraq, Somalia or Yugoslavia. The Security Council, however, did assert that Serbia and Montenegro could not claim UN membership based on the prior UN membership of the Socialist Federal Republic of Yugoslavia. Based on the Security Council's recommendation, the General Assembly decided that Serbia and Montenegro could not continue automatically the UN membership of the former Socialist Federal Republic of Yugoslavia, and would have to apply for membership before it could participate in the work of the General Assembly.\textsuperscript{13}

Further, the Security Council ordered States to reduce the level of their staff at diplomatic missions and consular posts in Serbia and Montenegro, to prevent persons of those States from participating in international sporting events, and to suspend scientific and technical cooperation and cultural exchanges and visits with those States.\textsuperscript{14}

In the above process of disqualifying for membership and other form of diplomatic sanctions, many NSEs are involved at different levels from the very beginning.

\textbf{(B) COERCIVE MEASURES INVOLVING ARMED FORCES}

One of the achievements of the drafters of the Charter of the United Nations was to empower the organization to take enforcement action against those responsible for threats to the peace, breaches of the peace

\textsuperscript{12} Ibid., p. 213.
\textsuperscript{13} Ibid.
\textsuperscript{14} Ibid., p. 214.
or acts of aggression. However, neither the Security Council nor the Secretary-General at present has the capacity to deploy, direct, command and control operations for this purpose, except perhaps on a very limited scale. This shortcoming, to a great extent, has been overcome by NSEs.\(^\text{15}\)

(1) FIGHTING AN AGGRESSOR

During the Cold War era, the Security Council failed to conclude Article 43 agreements with Member States that would have placed military forces at the disposal of the Security Council on an “as-needed” basis. In only one situation did the Security Council succeed in authorizing the deployment of forces to address military aggressions. In 1950 the Security Council authorized a group of willing Member States to undertake enforcement action in the Korean peninsula. It did so because it determined that North Korea’s attack on South Korea constituted a breach of the peace and recommended that States furnish “such assistance” to South Korea as may be necessary to repel the attack and “restore international peace and security in the area”. These resolutions were the result of the Soviet Union’s temporary absence from the Security Council in protest over the Council’s refusal to seat the representatives from the Peoples Republic of China. Here too, the Security Council did not deploy forces under its own command and control, but instead requested the United States to designate the commander of the forces and authorized the

unified force "at its discretion" to use the United Nations flag in the course of its operations.\textsuperscript{16}

The post-Cold War era is seeing the same approach for major deployments of military forces. In Resolution 678, the Security Council authorized Member States cooperating with Kuwait to "use all necessary means to uphold and implement" the Security Council's resolutions (which included the order that Iraq withdraw from Kuwait) and to "restore international peace and security in the area". That authorization led to a massive multinational coalition, led primarily by the United States, with significant contributions by France, United Kingdom, and certain Arab States, that used air, ground, and naval vessels to repel Iraq from Kuwait and for a period of time to occupy southern Iraq. A similar approach, albeit on a much smaller level, was taken with respect to Bosnia-Herzegovina. The Security Council authorized Member States, acting nationally or through regional organizations, to take "all necessary measures, through the use of air power", in and around the six safe havens established to protect Bosnian Muslims and in support of UNPRO-FOR.\textsuperscript{17} In many ways, the Iraq-Kuwait situation was unique and unlikely to recur with any frequency, certainly the spirited use of the United Nations reflected the combination of a particularly offensive act of overt aggression, a poorly conceived and executed effort by Iraq to win international support, an inward looking (and disappearing) Soviet Union in need of Western favour,

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\textsuperscript{16} Murphy, n. 1, pp. 224-25.
\textsuperscript{17} Ibid., p.225.
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and a clear threat to vital energy supplies upon which Western powers were dependent.\textsuperscript{18}

Yet, conditions in the post-Cold War era are favourable for addressing serious threats to the peace when they do occur should any one of the major powers see it as in their interests to do so. For economic reasons, Russia and China are increasingly interested in maintaining close ties to the United States, France and Great Britain. So long as the vital interests of none of these powers is threatened by U.N. authorization of force, such force will likely occur if any one major powers is willing to bear the political and economic costs of leading the way. The key factor will be whether particular conflicts are of sufficient gravity and are capable of being resolved by the deployment of military forces with acceptable levels of risk - only then is a major power likely to seek Security Council authorization to act.\textsuperscript{19}

As these incidents arise, the UN response to the Iraq-Kuwait crisis will serve as a primary precedent. The precise legal basis for the authorization in Resolution 678 to use military force of coalition is thus of some relevance. The resolution explicitly emanated from Chapter VII, but as is the case many resolutions passed by the Security Council under Chapter VII, its origin within Chapter VII is not clear.\textsuperscript{20}

Resolution 678 might be viewed as a Security Council “authorization” under Article 51 for States to exercise an existing right of collective self-defence. The wording of the resolution (addressing action of

\textsuperscript{18} Ibid., pp. 225-26
\textsuperscript{19} Ibid., p. 226.
\textsuperscript{20} Ibid.
States cooperating with Kuwait) and the fact that the Security Council did not place the coalition forces under UN command or flag may support this view. Yet, the nature of the power being exercised by the Security Council is not entirely clear. If the power is a grant of authority to States to apply armed force in self-defence, the existence of that power is not evident in the language of Article 51. Indeed, such an interpretation would seem surprising given the origins of Article 51 as essentially a means of preserving the capabilities of regional security organization (as opposed to enhancing the authority of the Security Council). If the power is simply an authoritative declaratory statement supporting those States pursuing self-defence in a particular situation, then several issues arise.21

First, characterizing the Security Council decision as an “authorization” seems inappropriate. Secondly, whether a declaratory statement by the Security Council constitutes a “preventive” or “enforcement” measure. If not, then there may be unintended but significant legal effects, in such areas as the rights and obligations of third States under Articles 2(5), 2(7), and 50. Thirdly, if Resolution 678 was simply a declaratory statement, then the condition within the Resolution that Iraq had until 15 January 1991 to comply with the Security Council’s resolutions did not in fact impede the ability of Kuwait and its allies to use military force against Iraq prior to that date. Yet, the universal understanding of Resolution 678 seems to be that the Security Council prevented the use of force against Iraq until after January 15 to provide “one last chance for peace” (the coalition air campaign commenced on 16-17 January).

21 Ibid., p.227.
Fourthly, one must question whether, as a policy matter, this would be a desirable development in UN practice. Casting the Security Council in the role of dispensing "imprimaturs" for the actions of States may provide inevitable, but it is likely at the expense of efforts to enhance the Security Council's military capabilities. Moreover, actions by States, in self-defence without a Security Council "imprimatur" might be viewed as somehow lacking "legitimacy".22

Alternatively, Resolution 678 could be viewed as the Security Council taking "action" based on Article 42, or perhaps on the basis of Chapter VII as a whole. By this view, Resolution 678 constitutes an authorization for States to take action necessary to maintain international peace and security on behalf of the Security Council: a threat to the peace had been identified in Resolution 660 and, as noted in the Preamble to Resolution 678, all of the peaceful efforts of the United Nations to obtain Iraqi compliance had failed. Support for this view over that favouring Article 51 may be found in the background to one of the Security Council's earlier resolutions - Resolution 665 - authorizing maritime enforcement of the UN economic sanctions. The reason for convening the Security Council to render that resolution was largely to respond to views of the Secretary-General and members of the Security Council (other than the United States) to the effect that the United States could not enforce UN sanctions as a right of collective self-defence under Article 51. The UN sanctions were imposed on 6 August 1990. US naval forces unilaterally began enforcing the sanctions on 16 August 1990. At a news conference on 16

22 Ibid.
August former UN Secretary-General Jaivier Perez de Cuellar stated that such action "would not be in accordance with either the letter or the spirit of the United Nations Charter" and its legality "would depend on whether the action taken by the American Government had been approved by the Security Council". It seems unlikely, therefore, that the Security Council was convened for the purpose of simply affirming that right. Indeed, the statements of most of the Security Council members during the passage of Resolution 665 reveal a belief that the Security Council was either delegating a power to States or authorizing enforcement measures. Consequently, Resolution 665 is probably best viewed not as an affirmation of an independent right to self-defence, but rather as itself generating a right to take forcible action. Applying the same reasoning to Resolution 678 suggests that the Security Council did not regard authorizing the use of "all necessary means" to implement its resolutions as an affirmation for a right of self-defence. Boutros Ghali regarded Resolution 678 as a choice by the Security Council to authorize States to take measures "on its behalf".²³

The Security Council also authorized groups of Member States to undertake enforcement action, if necessary, to create conditions for humanitarian relief operations in Somalia and Rwanda and to facilitate the restoration of democracy in Haiti. The experience of the last few years has demonstrated both the value that can be gained and the difficulties that can arise when the Security Council entrusts enforcement tasks to groups of Member States (a form of NSEs). On the positive side, this arrangement provides the organization with an enforcement capacity it would not

²³ Ibid., pp. 227-229.
otherwise have and is greatly preferable to the unilateral use of force by Member States without reference to the United Nations. On the other hand, the arrangement can have a negative impact on the organization's stature and credibility. There is also the danger that the States concerned may claim international legitimacy and approval for forceful actions that were not in fact envisaged by the Security Council when it gave its authorization to them. Member States so authorized have in recent operations reported more fully and more regularly to the Security Council about their activities.

One thing, in the above discussion and analysis of the enforcement action by a group of States, is clear that only due to the concept of NSE, the action taken by a group of States (an NSE) is not the action taken by States outside the collective security but by the States in the collective security system of the United Nations. The Office of Legal Affairs has also advised and assisted operational departments on the negotiation and drafting of appropriate legal arrangements for enforcement actions, mainly through the negotiation and conclusion of status-of-forces agreements, exchange of letters and memoranda of understanding. It has also provided advice in new areas such as the provision of military equipment and air transport services in the context of field operations.

(2) HUMANITARIAN INTERVENTION

"Humanitarian intervention" is traditionally defined as the forcible deployment of military forces into a country without the consent of the local government to prevent the commission of severe and widespread human rights atrocities against the civilian population. During the Cold War era, there were no instances in which the Security Council authorized
humanitarian intervention, and the handful of instances where individual States pursued what was arguably humanitarian intervention, without UN authorization typically met with condemnation by the global community as actions threatening world order. Most States and many legal scholars argued that the paramount interest of preventing the use of force under Article 2(4) of the Charter could not be sacrificed or derogated even in support of efforts to prevent widespread human rights atrocities. Some even doubted whether the Security Council could engage in humanitarian intervention, since under Chapter VII, the Security Council could only act when there was a threat to the peace, a situation not usually implicated in human rights abuses.24

During the 1990-93 post-Cold War period, a greater sensitivity to the importance of human rights abuses was seen in the Security Council’s Chapter VII functions. In the aftermath of the war against Iraq, the rebellion and subsequent suppression of the Kurds in Northern Iraq, and of the Shiites in Southern Iraq, resulted in Security Council Resolution 688, which characterized the flow of refugees and cross border incursions resulting from the repression as a threat to international peace and security in the region. Further, the Security Council insisted that Iraq permit access by international organizations to all parts of Iraq. Ultimately, the Security Council’s overall engagement with Iraq, including Resolution 688, led to interventions by the military forces of three major powers (a form of NSEs) - the United States, France, and the Great Britain - in Northern Iraq in April 1991 and in Southern Iraq in August 1992 to protect Iraqi civilians. The

intervention in the North consisted of the deployment of ground and air forces to create "safe heavens" for Kurds fleeing the Iraqi military, while intervention in the South consisted of air patrols to monitor Iraqi military action against the Shiites. Explicit support for these interventions, however, is not found in the Security Council's resolutions.25

The Security Council authorized the deployment of multinational forces, led primarily by the United States, to Somalia in December 1992 to establish a secure environment for humanitarian relief operations. The authorization to deploy was the direct result of an offer made to the United Nations by the United States in late November 1992 to provide the personnel and logistical support necessary to carry off the operation. Unlike in Iraq, this deployment was explicitly authorized by the Security Council; like Iraq, the situation in Somalia was characterized as threat to the peace, but was in fact dominated by a concern with the internal welfare of a State's citizens. The local Somali factions did not consent to the deployment, but initially put up no resistance given the strength and size of the US forces, which were joined by forces from some twenty other nations in a unified command (UNITAF). The Security Council directed the Secretary-General to attach a small UNOSOM liaison staff to the field headquarters of UNITAF, and ultimately authorized transfer of the UNITAF operation to UN-commanded forces (UNOSOM II). That transfer, which took place in May 1993, marked the first use of UN-commanded forces in a non-peacekeeping operation, although the situation in Somalia was unique in

25 Ibid., Murphy, p. 220.
the lack of any existing central government capable of consenting or not consenting to a peace-keeping operation.\(^{26}\)

Unfortunately, soon after the transfer occurred, it became readily apparent that the UN forces in Mogadishu would have difficulty in adequately protecting themselves. An attack on UN Pakistani forces on 5 June 1993, left 24 UN soldiers dead and 56 wounded. The attack reportedly was made by forces directly by one of Mogadishu’s “warlords”, Mohammed Farah Hassan Aidid. The Security Council responded by unanimously reaffirming the authority of the Secretary-General to investigate the responsible parties and to secure “their arrest and detention for prosecution, trial and punishment”. The United States re-deployed specialized forces for the purpose of capturing Aidid, but several attempts to do so during 1993 failed leaving further casualties to UN and US forces, and even the target of their soldiers hostage. The ease with which food relief operations could be restored contrasted dramatically with the difficulties disarming the local factions and creating a stable political system under Somali rule. By late 1993, the United States and all the large European nations announced by early 1994, forcing the United Nations to return its focus to maintaining relief operations.\(^{27}\)

In Bosnia-Herzegovina, the Security Council regarded the widespread violations of international humanitarian law as a threat to international peace and security. In August 1992, the Security Council authorized all necessary measures to facilitate the delivery of humanitarian assistance to Bosnia-Herzegovina and demanded immediate access for

\(^{26}\) Ibid., pp. 230-31.

\(^{27}\) Ibid., p. 231.
the International Committee of the Red Cross to detention centres. In light of the experience with Iraq, presumably these resolutions could have served as the basis for intervention by the ground forces of one or more States, but such intervention did not occur (foreign forces were present on the ground only as peace-keepers). US forces did begin air-dropping food and medicine to Muslim-held enclaves in Bosnia-Herzegovina in early March 1993. Further, the Security Council authorized Member States to take all necessary measures, through the use of air power to protect Bosnian Muslims in and around the six "safe havens", which resulted in limited air strikes in 1994. Those actions that were taken to protect Bosnian Muslims are not humanitarian "intervention" in the legal sense, because they were taken with the consent of the internationally recognized government of Bosnia-Herzegovina.28

A less traditional interpretation of humanitarian intervention might include decisions by the Security Council that a State should or must permit non-governmental entities, such as the Red Cross to come into the State's territory to assist in the repatriation of individuals and the provision of food, medicine and other items. The Security Council certainly made such decisions with respect to Iraq, Somalia and Yugoslavia. Further, it might include the deployment of UN personnel to a State at the consent of that State to assist in providing relief to the local population and this too was undertaken in Iraq, Somalia and Yugoslavia. These types of actions, however, are best characterized as "humanitarian assistance" and treated

28 Ibid., p. 232.
separately. They do not implicate the same concerns about the use of force by States as arise for humanitarian intervention as traditionally defined.

Since its inception, the United Nations has had a major role in the provision of humanitarian assistance around the globe. UNICEF, UNHCR, UNDP, WHO, FAO, WFP, UNESCO and DHA (Department of Humanitarian Affairs) are key players in this field. The United Nations is active in this area both through its operational agencies and as a catalyst for efforts by Governments, major inter-governmental humanitarian organizations, NGOs and other NSEs.\(^{29}\)

In situations of conflict, humanitarian assistance has become an integral part of establishing peace and security. Bringing relief to those affected can supply new avenues for negotiation, build a climate of confidence and create the environment for addressing the underlying political problems. These are some elements of what has been called humanitarian diplomacy.

(3) **NO-FLY ZONES**

The Security Council's imposition of constraints on the movement of the target State's military aircraft and sometimes even civilian aircraft is typically referred to as "no-fly zones". This type of low-level enforcement action was not used by the Security Council during the Cold War era, but it represents a highly likely function of the Security Council in the post-Cold War era. When a conflict arises that engages global attention, it is more likely that a major power will be willing to act by suppressing air activity,

which generally entails low costs and yet may result in benefits by reducing the level of armed conflict or widespread human rights atrocities.\textsuperscript{30}

As part of their interventions into Northern and Southern Iraq to protect Iraqi Kurds and Shiites in April 1991 and August 1992, coalition forces (a form of NSEs) established "no-fly zones" into which flights by Iraqi military and civilian aircraft were banned. As noted above, these interventions have no explicit basis in the resolutions of the Security Council. Ultimately, several Iraqi aircraft were shot down in these zones and Iraqi anti-aircraft missiles were attacked as a threat both to coalition planes patrolling the zones and UN flights into Iraq related to the weapons destruction programme.\textsuperscript{31}

In October 1992, the Security Council explicitly established a ban on all military flights, fixed or rotary-wing aircraft, in the airspace over Bosnia-Herzegovina to ensure the safety of humanitarian flights and to assist in the cessation of hostilities. In establishing the no-fly zones, the Security Council did not assert that it was exercising its authority under Chapter VII, perhaps because the various parties to the conflict (including the Bosnian Serbs) agreed to a ban on military flights. Initially, the ban was implemented simply through a monitoring system associated with the UN peace-keeping operation, UNPROFOR. A Monitoring Coordination and Control Centre (MCCC) established at UNPROFOR headquarters in Zagreb received technical monitoring information from NATO; unless the flights had received prior approval from MCCC, they were reported to the Security Council. When it became apparent that Serbian aircraft violated

\textsuperscript{30} Ibid., p. 233.

\textsuperscript{31} Ibid., pp. 233-34.
the ban hundreds of times, the Security Council invoked Chapter VII to authorize Member States, acting nationally or through regional organizations, to take "all necessary measures" to ensure compliance with the flight ban, "proportionate to the specific circumstances and the nature of the flights." NATO agreed to undertake this task beginning in mid-April 1993. NATO designated the action "Operation Deny Flight". The rules of engagement for the flights called for identified aircraft violating the ban, escorting them out of the zone, and only as a last resort shooting them down. By the end of 1993, no aircraft had been fired upon, violations persisted, but were virtually all by low-flying helicopters transporting persons or supplies rather than combat fighter aircraft.32

(4) DISARMAMENT IN THE CONTEXT OF COERCIVE ACTION

This is also a kind of micro-disarmament. Disarmament on an agreed basis may be, sometimes, a kind of micro-disarmament, when dealing with specific conflicts. By micro-disarmament, we mean practical disarmament in the context of the conflicts the United Nations is actually dealing with and of the weapons, most of them light weapons, that are actually killing people in the hundreds of thousands.33

The contemporary significance of micro-disarmament is demonstrated by the enormous proliferation of automatic assault weapons, anti-personnel mines and the like. Competent authorities have estimated that billions of dollars are being spent yearly on light weapons, representing nearly one third of the world's total arms trade. Many of those weapons are

32 Ibid., pp. 234-35.
33 Supplement to an Agenda for Peace, n. 5, para 60.
being bought, from developed countries, by developing countries that can least afford to dissipate their precious and finite assets for such purposes, and the volume of the trade in light weapons is far more alarming than the monetary cost might lead one to suspect.\textsuperscript{34}

Disarmament can also follow enforcement action, as has been demonstrated in Iraq, where the United Nations Special Commission has played a pioneering role in practical disarmament, in this case involving weapons of mass destruction. All the sanctions regimes include an arms embargo and experience has confirmed the difficulty of monitoring cross-border arms flows into countries at war with their neighbours or within their own borders.\textsuperscript{35}

In both Iraq and Somalia, a key element for restoring peace and security in the region was the destruction of light weapons and other military equipment. In Iraq, an ambitious plan for destroying, removing or rendering harmless Iraq's biological, chemical missile and nuclear capabilities was launched at Iraq's expense. Under the programme, multinational teams of a Special Commission (a form of NSEs), working both with and without Iraqi cooperation, travelled to Iraqi sites in search of biological, chemical and missile facilities and weapons, and developed the means for their destruction. At the same time, the International Atomic Energy Agency was tasked to carry out on-site inspections of Iraq's nuclear capabilities, and to develop a plan for rendering harmless any such capabilities and for ongoing monitoring of Iraq's compliance with the 1968 Treaty on Non-Proliferation of Nuclear Weapons. Iraq was also required not

\textsuperscript{34} Ibid., para 61.
\textsuperscript{35} Ibid., para 62.
to use, develop, construct, or acquire such weapons in the future. These programmes reflect a more proactive function than those of the other technical commissions; it may be more likely in the future that commissions of this type will simply assess evidence of weapons development and decide whether a State has violated its commitments under nuclear or other non-proliferation regimes.  

The success of the weapons-destruction programme in Iraq has been mixed. Despite erroneous declarations by Iraq of its capabilities, much damning information was uncovered by the inspection teams. Thousands of chemical weapons were destroyed, dozens of ballistic missiles along with launchers, related equipment, and production capability were destroyed; and evidence of a nuclear weapons programme, including the production of Lithium 6 (used in the manufacture of enhanced nuclear weapons), was uncovered. Efforts by Iraq to conceal weapons and weapons facilities, however, led the inspection teams and the United Nations to conclude that they had not uncovered all of Iraq's weapons of mass destruction, and ultimately to a determination that Iraq's actions were a "material breach" of Resolution 687, which had established the conditions for the ceasefire. When the Security Council sought to impose a long-term monitoring programme in which inspection teams could fly anywhere in Iraq, Iraq resisted the programme for several months before agreeing, in the hope of ending the economic sanctions.  

The individuals assigned to the teams sent in by the Special Commission were experts in various munitions fields. Unlike the other

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36 Murphy, n. 16, pp. 244-45.
37 Ibid., p. 245.
commissions described in the present chapter, these teams for the most part were composed of experts affiliated with governments, including governments that were actively involved in the war effort against Iraq. In light of the Special Commission's reliance on Iraq's cooperation (which for the most part was poor), it is understandable that the teams were manned with individuals closely associated with major power governments and therefore capable of delivering credible challenges to Iraqi intransigence. On the other hand, the presence of these individuals undoubtedly was a source of aggravation to Iraq and provided a means for Iraq to assert that the teams were not a collective effort by the United Nations, but rather a tool of one or more States. Ultimately, Iraq successfully protected the presence on the teams of individuals, associated with certain governments (such as the United States). 38

In Somalia, the Reports of the Secretary-General to the Security Council (prior to the authorization for US and other forces to enter Somalia) proposed the disarming of the Somali factions as a necessary factor in restoring an environment for humanitarian relief. Resolution 794 itself, however, did not establish an expert commission to undertake such action. Within a short period of time, the US forces that were deployed to Somalia recognized that at least a minimal level of disarming or neutralizing of local factions was a necessary feature of intervention. Therefore, US forces proceeded to destroy or restrict certain weapons, as did UN forces after the commencement of UNOSOM II. The destruction of weaponry was a source of contention between the Secretary-General and the United States, with

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38 Ibid.
the Secretary-General believing that extensive disarmament was essential for rectifying Somalia's underlying problems, and the United States believing that the risks involved did not outweigh the benefits.\(^{39}\)

As described above, after the transfer of authority from UNITAF to UNOSOM II, UNOSOM soldiers and re-deployed US soldiers became exposed to extensive attacks in Somalia. In retrospect, although it would have been a high risk vocation, complete disarmament of the Somalia factions perhaps should have been accomplished during the UNITAF phase to provide a secure environment within which UN forces could operate. If the UNITAF forces did not wish to engage in this action, it might have been accomplished through use of a multinational commission established by the United Nations and expert in locating and destroying light and heavy weapons. Ultimately, the presence of those weapons made the environment in Somalia so hostile that political support eroded in many of the sending States for the presence of their military forces.\(^{40}\)

2. **CHAPTER VIII-RELATED ROLE**

The least utilized and yet most promising avenue for enhancing the capabilities of the Security Council is the development of relationship between the Security Council and regional security organizations. Chapter VIII of the Charter acknowledges the usefulness of such organizations in the maintenance of international peace and security and calls upon the


\(^{40}\) *Ibid.*
Security Council to utilize them in appropriate circumstances for enforcement action under its authority.\textsuperscript{41}

In the aftermath of the Second World War, some international organizations, such as the North Atlantic Treaty Organization (NATO) and the Warsaw Pact, developed as alliance systems oriented toward defence from an external threat. The two Super Powers served as the linchpins for the direction and stability of these organizations. The Member States of these organizations never considered themselves "regional organizations" for the purpose of Chapter VIII of the UN Charter. In principle, there is no reason why an agency primarily designed to assist in collective self-defence cannot in some instances engage in such measures.\textsuperscript{42}

Other international organizations, such as the Organization of American States, developed as continent-wide entities oriented toward peace and security of the continent and peaceful settlement of disputes that may arise among its members. The Charter of the OAS expressly states that "[w]ithin the United Nations, the Organization of American States is a regional agency". By including all States in a region and focusing on conflict avoidance and resolution from within, regional organizations can be excellent fora for confidence building measures.\textsuperscript{43}

Regional Organizations have much to contribute. The Security Council should encourage these organizations to pursue military exchanges among their Members to create risk reduction centres, and to

\textsuperscript{41} \textit{Ibid.}, p. 282.
\textsuperscript{42} \textit{Ibid.}
\textsuperscript{43} \textit{Ibid.}
exchange information regularly in areas that have the potential for generating conflicts.\textsuperscript{44}

The Security Council should establish links with regional organizations so as to foster cooperation between the Security Council and those organizations. The enforcement of the no-fly zone over Bosnia-Herzegovina by NATO forces is an example of how such cooperation can work. Linkage of this type could provide benefits in deterring aggression or widespread human rights atrocities. Regional organizations are best equipped to sound an early-warning system regarding the potential outbreak of external or internal conflict, and to provide information on its causes and possible solution. Regional organizations are best equipped to make use of the superior power of a State in the region, but on terms and conditions acceptable to less powerful States. Yet regional organizations are often weak in the diplomatic, economic and military pressure they can bring to bear on a potential aggressor, either because of a lack of their own resources or because of the political difficulty in acting against a State that within the region is relatively powerful. A more symbolic relationship with the Security Council could enhance the ability of a regional organization to bring pressure on the potential aggressor while at the same time keeping on the front line the organization best equipped to resolve the problem.\textsuperscript{45}

The capacity of regional organizations for maintaining and restoring peace and security varies considerably. None of them has yet developed a capacity which matches that of the United Nations, though some have accumulated important experience in the field and others are developing

\textsuperscript{44} Ibid.  
\textsuperscript{45} Ibid., pp. 283-84.
rapidly. The United Nations is ready to help them in this respect when requested to do so and when resources permit. Given their varied capacity, the differences in their structures, mandates and decision-making processes and the variety of forms that cooperation with the United Nations is already taking, it would not be appropriate to try to establish a universal model for their relationship with the United Nations. Nevertheless, it is possible to identify certain principles on which it should be based. Such principles include—

(1) Agreed mechanisms for consultation should be established, but need not be formal;

(2) The primacy of the United Nations, as set out in the Charter, must be respected. In particular, regional organizations should not enter into arrangements that assume a level of United Nations support not yet submitted to or approved by its Member States. This is an area where close and early consultation is of great importance.

(3) The division of labour must be clearly defined and agreed in order to avoid overlap and institutional rivalry where the United Nations and a regional organization are both working on the same conflict. In such cases it is also particularly important to avoid a multiplicity of mediators.

(4) Consistency by members of regional organizations who are also member States of the United Nations is needed in dealing with a common problem of interest to both organizations, for example, standards of peace-keeping operations.\(^{46}\)

\(^{46}\) Supplement to an Agenda for Peace, n. 5, para 87.
Boutros-Ghali has identified, at least, five forms of cooperation between the United Nations and regional organizations.47

(A) CONSULTATION

This has been well-established for some time. In some cases it is governed by formal agreements and reports are made to the General Assembly; in other cases, it is less formal. The purpose is to exchange views on conflicts that both the United Nations and regional organizations may be trying to solve.

(B) DIPLOMATIC SUPPORT

The regional organization participates in the peace-making activities of the United Nations and supports them by diplomatic initiatives (in a manner analogous to groups of “friends” as described above) and/or by providing technical input, as the Organization for Security and Cooperation in Europe (OSCE) does, for instance, on constitutional issues relating to Abkhazia. In the same way, the United Nations can support the regional organization in its efforts (as it does for OSCE over Nagorny Karabakh).

(C) OPERATIONAL SUPPORT

The most developed example is the provision by NATO of air power to support the United Nations Protection Force (UNPROFOR) in the former Yugoslavia. For its part, the United Nations can provide technical advice to regional organizations that undertake peace-keeping operations of their own.

47 Ibid., para 86.
(D) CO-DEPLOYMENT

United Nations field missions have been deployed in conjunction with the Economic Community of West African States (ECOWAS) in Liberia and with the Commonwealth of Independent States (CIS) in Georgia. If those experiments succeed, they may herald a new division of labour between the United Nations and regional organizations, under which the regional organization carries the main burden but a small United Nations operation supports it and verifies that it is functioning in a manner consistent with positions adopted by the Security Council. The political, operational and financial aspects of the arrangement give rise to questions of some delicacy. Member States may wish at some stage to make an assessment, in the light of experience in Liberia and Georgia, of how this model might be followed in the future.

(E) JOINT OPERATIONS

The example of joint operations is the United Nations Mission in Haiti, the staffing, direction and financing of which are shared between the United Nations and the Organization of American States. This arrangement has worked for the future that will need careful assessment.

The above five forms may be peaceful as well as coercive in nature. Or, they may be related to the peaceful as well as coercive measures directly/indirectly.

VII. OTHER COERCIVE ROLES

NSEs may play some other coercive roles also. Important ones among them are the following:
1. COORDINATION

NSEs can coordinate with the activities, coercive in nature, of the United Nations relating to the collective security in the same way as in the case of peaceful role of NSEs discussed above in Chapter IV of the present study. It will depend upon a particular instance as to when, what and how it should cooperate.

2. FINANCIAL SUPPORT

NSEs may participate directly or indirectly in the financial assistance to the coercive activities of the United Nations relating to the collective security. Such support may be dealt with in the same way as in the case of peaceful role of NSEs.

Compensation to Member States affected by sanctions on their neighbours or economic partners will also be possible only if the richer Member States recognize both the moral argument that such countries should not be expected to bear alone costs resulting from action collectively decided upon by the international community and the practical argument that such compensation is necessary to encourage those States to cooperate in applying decisions taken by the Security Council. Boutros Ghali recognizes that the sums involved will be large but he says that he is convinced that they must be made available if the Council is to continue to rely on sanctions.48

48 Ibid., para 101.
3. **SAFETY OF PERSONNEL**

When United Nations personnel are deployed in conditions of strife, whether for preventive diplomacy, peacemaking, peace-keeping, peace-building or humanitarian purposes, the need arises to ensure their safety. There has been an unconscionable increase in the number of fatalities.

Following the conclusion of a cease fire and in order to prevent further outbreaks of violence, United Nations guards were called upon to assist in volatile conditions in Iraq. Their presence afforded a measure of security to United Nations personnel and supplies and, in addition, introduced an element of reassurance and stability that helped to prevent renewed conflict. Depending upon the nature of situation, different configurations and compositions of security deployments will need to be considered. As the variety and scale of threat widens, innovative measures will be required to deal with the dangers facing United Nations personnel.\(^{49}\)

Experience has demonstrated that the presence of a United Nations operation has not always been sufficient to deter hostile action. Duty in areas of danger can never be risk-free; United Nations personnel must expect to go in harm's way at times. The courage, commitment and idealism shown by United Nations personnel should be respected by the entire international community. These men and women deserve to be properly recognized and rewarded for the perilous tasks they undertake. Their interests and those of their families must be given due regard and

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protected.\textsuperscript{50} The UN convention on Safety of UN Personnel codifies all these concerns of the international community.

Given the pressing need to afford adequate protection to United Nations personnel engaged in life-endangering circumstances, Boutros Ghali recommended that the Security Council, unless it elects immediately to withdraw the United Nations presence in order to preserve the credibility of the organization, gravely consider what action should be taken towards those who put United Nations personnel in danger. Before deployment takes place, the Council should keep open the option of considering in advance collective measures, possibly including those under Chapter VII when a threat to international peace and security is also involved, to come into effect should the purpose of the United Nations operation systematically be frustrated and hostilities occur. In such a process, NSEs can participate in accordance with the provisions of the UN Charter relating to peace and security.\textsuperscript{51}

4. To pressurize the people to observe the principles of collective security.
5. Lobbying people against dangers of "threat to the peace, breach of the peace and act of aggressions".

\textsuperscript{50} Ibid., para 67.
\textsuperscript{51} Ibid., para 68.