
ARTICLES

Security Council Resolution 1101 (1997) and the Multinational Protection Force of Operation Alba in Albania

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Keywords: Chapter VII of the United Nations Charter; enforcement powers; Security Council authorisation; humanitarian assistance; security and freedom of movement of personnel; host-state consent.

Abstract: In March 1997, the Security Council adopted Resolution 1101 (1997) which authorised a multinational protection force – known as Operation Alba – to enter Albania “to facilitate the safe and prompt delivery of humanitarian assistance, and to help create a secure environment for the missions of international organisations in Albania, including those providing humanitarian assistance.” Created with the consent of the government of Albania, the intervention occurred as a direct but also as a near-immediate response to the political, financial and humanitarian crisis that had been precipitated by the collapse of so-called pyramid schemes in Albania. The purpose of this article is to examine the background of the adoption of Resolution 1101 (1997) and then to investigate the impact and importance of the consent for the operation given by the beleaguered government of President Sali Berisha. The article will then analyse the legal significance, meaning and interpretation of Security Council in Resolution 1101 (1997), as amended in Resolution 1114 of June 1997, in its endeavour to provide an account of the organisation, achievements, shortcomings and lessons of Operation Alba.

1. AN HISTORICAL INTRODUCTION

Twentieth century history is replete with reminders that Italian forces are no strangers on Albanian soil. In October 1914, Italy seized the fortified island of Sazan as part of her territorial campaign during World War I and then proceeded to occupy the portal centre of Vlorë in December of the same year.¹ In April

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1. At the turn of the last century, Italy's interest in Albania (which was, at that point in time, a fragment of the Ottoman Empire) was stirred by possible Austro-Hungarian expansionist (territorial) designs but is more particularly explained by Albania's strategic and commercial importance in the

1915, Italy formally traded her neutrality when she pledged her wartime loyalty to Great Britain, France and Russia in the secret Treaty of London in return for a share of Albanian territory “by the future treaty of peace.”² News of this arrangement was made public by the Bolsheviks in 1917, after Russia’s withdrawal from armed hostilities and a special congress was convened at Lushnjë in February 1920 to oppose its terms. After the conclusion of World War I, however, 20,000 Italian forces remained – and indeed were consolidated – in Albania, especially around Vlorë and in the southern half of the country. These forces had to be forcibly repelled in a battle that began in June and ended in September 1920 and “constitute[d] without doubt one of the finest pages in the history of independent Albania.”³

Albania once again found herself subjected to military occupation less than a generation later when she was invaded by Italy in April 1939. Mussolini followed this use of force with the proclamation that Albania was to become an Italian protectorate (although, when his armed forces actually seized Albanian territory, they included the district of Kosovo in the taking).⁴ In more recent

Adriatic Sea given the location of the port of Vlorë. See S. Skendi, *The Albanian National Awakening 1878-1912*, at 249 (1967). Since Austria-Hungary was equally suspicious of the intentions of Italy in the region, but also because of her interest in Albania as a non-Slavic country, the two European powers agreed in the Goluchowski-Venosta Correspondence of 1900-1901 to support the geopolitical *status quo* of Albania, and, in the event of the collapse of Turkey, to respect the autonomy of an “Albanian province or state”. *Id.*, at 247 and 255-256. Although this agreement expressed the official policy of both governments, Italy and Austria-Hungary both practised a “policy of peaceful penetration in the country [which] took various forms.” *Id.*, at 257. The London Ambassadors’ Conference of December 1912 proposed that Albania be made an autonomous state under the suzerainty of Turkey, see S. Pollo & A. Puto, *The History of Albania From Its Origins to the Present Day* 150 (1981). Albanian sovereignty was finally recognised in the 1913 Treaty of London, although this agreement denied the realisation of a ‘Greater Albania’, which would have united all Albanian populations in neighbouring territories. Albania was admitted as a member state of the League of Nations on 18 December 1920. For the full text of the Organic Statute of Albania Agreed Between Austria-Hungary, France, Germany, Great Britain, Italy and Russia on 29 July 1913, see 218 CTS 280 (1913) and C.A. Dako, *Albania: The Master Key to the Near East* 143 (1919).

2. Article 4 of the 1915 London Agreement between France, Great Britain, Russia and Italy Providing for Italian Naval and Military Co-operation with the Allied Powers, 221 CTS 57 (1915-16) and 13 AJIL (Supp.) 436, at 437 (1919). Italy undertook “to conduct the war with all means at her disposal” (Article 2) and was also, famously, promised Trentino, southern Tyrol and Trieste (Article 4). Article 6 awarded Italy “full ownership” of Vlorë and the island of Sazan as well as “territory of sufficient extent to assure her against dangers of a military kind approximately between the River Vojussa to the north and east and the district of Shimar to the south.” Furthermore, in Article 7, Italy agreed “in the event of a small, autonomous and neutralised state being formed in Albania, not to oppose the possible desire of France, Great Britain and Russia to partition the northern and southern districts of Albania between Montenegro, Serbia and Greece.” The same provision “conceded [to Italy] the right of conducting the foreign relations of Albania.”
3. Pollo & Puto, *supra* note 1, at 179. See also, A. Logoreci, *The Albanians: Europe’s Forgotten Survivors* 52-53 (1977), noting the “unexpected boost from domestic convulsions of post-war Italy” which fired the cause of the Albanians because of the violent demonstrations in Italian cities, organised by Italian socialists in the main, against occupation and troop reinforcements in Albania.
4. N. Davies, *Europe: A History* 645 (1996).

times, and under entirely different circumstances, unarmed Italian forces were dispatched to Albania during the last quarter of 1991 as part of Operation Pelican, a humanitarian relief effort intended to dispense some US\$ 90 million worth of emergency food and supplies throughout the country. At a time of increasing violence and generalised lawlessness in the country, this operation occurred at the behest of Albania's first democratically-elected government and was designed to bring the erupting public disorder under control.⁵ By way of sequel, in 1992, the Albanian government sanctioned the joint patrolling of the Otranto Strait by Italian and Albanian naval vessels in order to forestall the dramatic haemorrhaging of Albania's worker population to neighbouring countries.

This is the brief historical background against which the multinational protection force known as Operation Alba – proposed and spearheaded by Italy – entered Albania in April 1997. This occurred after the country had been plunged into a severe political, financial and humanitarian crisis as the result of the collapse of so-called pyramid investment schemes. This article charts the course of the immediate factual circumstances which led to the creation of this force, but it also explores the manner of its composition, the nature of its mandate and the conduct of its eventual operation in Albania. Set within the broad parameters of international concern for the deteriorating situation in Albania – shared in the main by a medley of multilateral as well as non-governmental organisations – it was the Security Council which authorised the creation of and action by the multinational protection force in Resolution 1101 (1997) on 28 March 1997. The legal, political and substantive significance of this resolution are examined and a brief synopsis is given of an accompanying resolution that was adopted on 19 June 1997 to amend the original mandate for and duration of Operation Alba. In the conclusion of this article, an effort is made to quantify the overall worth of the operation in practical terms, and to locate its relevance for the developing practice of the Security Council in the exercise of its enforcement powers under Chapter VII of the 1945 United Nations Charter since the end of the Cold War.

2. A POLITICAL, FINANCIAL AND HUMANITARIAN CRISIS IN ALBANIA

The precipitating factor of the crisis in Albania in 1997 was the outright collapse of pyramid investment schemes that had taken root in post-communist Albania. The enterprise of the free market had not only introduced the country to “kiosk

5. M. Glenny, *Albania: Heart of Darkness*, XLIV (No. 13) *The New York Review of Books* 32, at 36 (1997), which provides an excellent account of recent Albanian history with an emphasis on the period of democratic and economic transition. See further, B. Nascimbene, *The Case of Albanians in Italy: Is the Right of Asylum Under Attack?*, 3 *International Journal of Refugee Law* 714, at 715 (1991), noting that 24,000 Albanians entered Italy in February and March 1991 alone. For a comparative evaluation of Operation Pelican with Operation Alba, see F. Mema, *Did Albania Really Need Operation “Alba”?*, 29 *Security Dialogue* 59, at 60 (1998).

capitalism",⁶ but it had also created, ironically as it came to pass, favourable conditions for the operation of competitive investment schemes. The two largest schemes in the country, managed by the private sector companies of VEFA and Gjallica, were joined by rival schemes, principally by Popullit and Xhaferi in 1995, whose presence on the market caused an exponential increase in the promised rate of return to as high as 150% interest. With significant public support for and participation in these schemes – estimated to be a staggering three-quarters of the national electorate – it was to be anticipated that the country would face chronic political and economic problems were this burgeoning investment industry to founder, especially given the initial governmental enthusiasm for these schemes. In addition, a significant economic crisis was already underway, given that 60% of the money supply – valued at some US\$ 1 billion – in Europe's poorest country was reported to have left the national banking system's circuit and control.⁷ By the end of January 1997, the national currency of the lek had already fallen 12% against the American dollar.⁸

As these investment schemes began to collapse under their own weight in January 1997, public protest, unrest and violence mounted in southern Albania at a time when there was a widespread distribution of arms and munitions. By way of belated response, on 23 January 1997, the People's Assembly – the national legislature of Albania – outlawed pyramid schemes and at once created severe penalties for those who operated them.⁹ For its part, President Sali Berisha's government froze the assets – reported to be in the region of US\$ 230 million – of the Popullit and Xhaferi schemes in the state-owned National Commercial Bank.¹⁰ These political measures, however, came far too late to offset the rising tensions and growing social unrest in the country. These were most pronounced in Vlorë, although the government did manage to retain control of the capital, Tirana.¹¹ The reason for the concentration of unrest in Vlorë was that it was the official home of the Gjallica scheme, whose funds of US\$ 145 million had not been deposited in any financial institution but had instead been directed to various productive investment opportunities.¹²

6. This common phrase is used by Glenn, *id.*, at 33, to describe the "[d]ozens of little stores and shops [that] have sprung up all over the centre – tiny spaces colonised by small traders, mainly selling cigarettes, coffee, fast food, candy and all the consumer items that were denied Albanian consumers under Enver Hoxha."

7. 43 Keesing's Record of World Events 41454 (1997) and Glenn, *supra* note 5, at 36.

8. K. Done & K. Hope, *Albanian Crisis Sees Currency Fall Sharply*, Financial Times (London), 1 February 1997, at 2, noting the lek's reputation as one of the most stable currencies in the emerging markets of eastern Europe and that its decline had been driven by fears about rising inflation and the lack of confidence in the Albanian government to cope with the financial crisis and social unrest that had been brought about as a result of the collapse of the pyramid schemes.

9. 43 Keesing's Record of World Events 41454 (1997).

10. *Id.*

11. *Id.*, at 41504.

12. *Id.*, at 41505.

By March 1997, the political situation had worsened, with a third of the country now under rebel control.¹³ Public violence continued to swell, and became even more pronounced in the south of the country. Gun battles occurred on the streets of Tirana. Random gunfire was also reported as was the mobilisation in mid-March of “hundreds of armed vigilantes” by government forces in the capital.¹⁴ In a worrying turn of events, this violence gradually began to emphasise the traditional ethnic division of the country – between the Ghegs in the north and the Tosks in the south – a position made all the worse when police and army personnel began to side with rebel factions and their cause.¹⁵ The People’s Assembly acted decisively on 1 March 1997 when it declared a state of emergency, but when efforts were made to enforce this measure by taking control of southern towns, government forces were effectively rebuffed, most notably at Tepelene.¹⁶ This episode served as ample demonstration of the extent to which the government had lost effective control of territory in certain parts of southern Albania. With no immediate signs of an end to the violence, and given the growing international repercussions of the crisis, international organisations showed increasing interest in forging an effective response to the challenge before them – but, as will be discovered, it was not immediately apparent what form this response would take and it was only at the end of March 1997 that a coherent plan emerged when the Security Council decided to adopt Resolution 1101 (1997).

3. FASHIONING A COHERENT INTERNATIONAL RESPONSE

By the beginning of March 1997, the political and economic situation in Albania had spiralled out of the government’s control and it was on 12 March when it emerged that external military help had been sought by the Albanian government to quell the crisis.¹⁷ After an emergency meeting in Brussels on the same day, the member states of the North Atlantic Treaty Organisation (NATO) ad-

13. The so-called “rebels” were said to consist of “a heavily armed assortment of civilians, ex-soldiers and criminals” and that, by the end of March 1997, “[a]s many as 150 Albanians were killed and some 700 injured in the chaos.” *Id.*, at 41556.

14. *Id.*, at 41557.

15. *Id.*, at 41556.

16. *Id.*

17. Letter dated 13 March 1997 from the Permanent Representative of Albania to the United Nations Addressed to the President of the Security Council, UN Doc. S/1997/215 (1997). *See also, id.*, at 41557. The Security Council expressed its “deep concern about the deteriorating situation in Albania” in a Presidential Statement dated 13 March 1997 – an opportunity it used to pledge its full support for the “diplomatic efforts of the international community, in particular those of the Organisation for Security in Europe and the European Union”, *see* UN Doc. S/PRST/1997/14 and UN Doc. S/PV.3751 (1997).

mitted that they had “very little enthusiasm for any military intervention.”¹⁸ The foreign ministers of the member states of the European Union, meeting in the Netherlands on 15 and 16 March, considered the request of the Albanian government in a much more favourable light. However, while there was consensus on the need for some form of international action, there were significant differences of opinion as to the form this should take: Italy, France and Denmark supported the deployment of a “stabilisation force” whereas Germany, Sweden and the United Kingdom expressed preference for a military and police “advisory force” to help the Albanian government in its task of restoring law and order.¹⁹

At a further meeting in Brussels on 24 March 1997, the European Union considered the report of an advance team that had visited the country between 17 and 19 March, and used the opportunity to restate its determination “to play the major role which was its responsibility in helping Albania to return to political stability and restore internal security, as well as in providing humanitarian assistance and in working with the international financial institutions on support for wider economic reforms.”²⁰ It was envisaged that any action would help “create a secure environment for the safe provision of international assistance,” and Dutch Foreign Minister Hans van Mierlo, who chaired the meeting, welcomed the emergence of “a coalition of the willing which is now ready to provide forces to protect the aid-givers.”²¹ This option of a “coalition of the willing” – as opposed to European Union action through the Western European Union (WEU) – had begun to attract support and was an approach that had been advocated by the Organisation for Security and Co-operation in Europe (OSCE).²² The European Union, in turn, noted the membership of Albania in the OSCE

18. 43 Keesing's Record of World Events 41557 (1997).

19. *Id.*, at 41558. British Foreign Minister Malcolm Rifkind estimated that an advisory force would “not require thousands of troops” to have any meaningful impact, see J. Robertson & S. Bates, *Death Toll Mounts As Berisha Totters: World Stands Back As Anarchy Reigns in Albania Amid Rumours of President's Resignation*, *The Observer* (London), 16 March 1997, at 1. The Presidential Statement that followed the meeting noted that there was “readiness” among member states to send an advisory mission in the civilian as well as police and military fields, although it also articulated “the need for a [United Nations] Security Council resolution.” See 3 Bulletin of the European Union, at 1.4.4 (1997).

20. Albania: Conclusions of the Council of the European Union at its Meeting in Brussels on 24 March 1997, Annex to the Letter dated 24 March 1997 from the Chargé d'Affaires a.i. of the Permanent Mission of the Netherlands to the United Nations Addressed to the Secretary-General, UN Doc. S/1997/251 (1997), para. 2. The European Parliament adopted a resolution on 10 April 1997, in which it called upon the European Council and Commission to implement a long-term plan for Albania in the context of its regional approach to south-east Europe in addition to these developments, see 4 Bulletin of the European Union, at 1.4.64 (1997).

21. J. Palmer, *EU Plans Security Mission in Albania*, *The Guardian* (London), 25 March 1997, at 12.

22. E. Greco, *New Trends In Peace-keeping: The Experience of Operation Alba*, 29 *Security Dialogue* 201, at 206 (1998), noting that the contribution of the WEU to the crisis was confined to the reorganisation of the Albanian police force through an *ad hoc* mission. For an outline of the nature of this contribution, see the statement of the representative of Germany in the Security Council at the time it held the presidency of the WEU, UN Doc. S/PV.3811 (1997), at 22-23.

and expressed very clear support for the participation of the OSCE in Albania,²³ particularly in its promotion of democracy and in election-monitoring. Furthermore, it “looked to the Council of Europe and other international organisations to play their part [...] within this framework in their respective areas of competence.”²⁴

The OSCE welcomed this call for international co-operation when it met to discuss the situation in Albania on 26 and 27 March 1997.²⁵ The Permanent Council of the OSCE concluded the deliberations of its 108th meeting with the adoption of Decision No. 160, in which it decided to establish an institutional presence in Albania, but did so “in support of a coherent international strategy, and in facilitating improvements in the protection of human rights and basic elements of civil society.”²⁶ In accordance with its own terms of reference and constitution, the OSCE offered support to Albania in the form of “advice and assistance” for “democratisation, the media and human rights” as well as “election preparation and monitoring.”²⁷ This inventory of assistance, however, was regarded as a non-exhaustive list as the OSCE suggested a possible involvement in the monitoring and collection of weapons should the need arise. Finally, in the second operative paragraph of the same decision, the Permanent Council of the OSCE expressed its appreciation “that certain participating states” were willing to meet the “official request” that had been made by Albania – a request for “resolving the security situation” in that country.

In a letter addressed to the President of the Security Council of 28 March 1997, Ambassador Pellumb Kulla, the Permanent Representative of Albania to the United Nations, explained that his government supported the emerging initiative for an intervention force. The letter does go beyond the mere expression of governmental support and refers to the public popularity of the proposed force. The main relevance of the letter, however, is its apparent design of the “possible mandate for the deployment of this force” as well as its proposed *modus operandi*:

The objective of the force will be to provide security for the delivery of humanitarian aid throughout Albania and to help create a durable safe environment for the safe pro-

23. The Conference for Security and Co-operation in Europe (CSCE) became the OSCE on 1 January 1995, pursuant to the CSCE Budapest Summit Declaration of 6 December 1994, reprinted in 34 ILM 764 (1995).

24. *Supra* note 20, at para. 3.

25. 43 Keesing’s Record of World Events 41558 (1997). This position was adopted after a consideration of the reports made to the OSCE by Dr Franz Vranitzky, the Personal Representative of the OSCE Chairman-in-Office and former Austrian Chancellor, following his visits to Albania on 8 and 14 March 1997.

26. Decision No. 160 of the Permanent Council of the Organisation for Security and Co-operation in Europe, adopted at the 108th Plenary Meeting on 27 March 1997, Annex II to the Letter dated 28 March 1997 from the Permanent Representative of Albania to the United Nations Addressed to the President of the Security Council, UN Doc. S/1997/259 (1997).

27. First operative paragraph of Decision No. 160, *id.*

vision of international assistance. In order to accomplish such an objective, the force will work in close co-operation with the relevant Albanian authorities. The force would perform such duties as accompanying humanitarian convoys, protecting international humanitarian personnel, protecting some key ports or airports where humanitarian goods are expected to enter Albania, guarding depots and other places where humanitarian goods are kept, and securing safe corridors for humanitarian convoys on parts of national roads.²⁸

The letter envisaged that the force would remain in Albania until such time as condition “on the ground [would] make it possible for the Albanian government to ensure safe delivery of humanitarian goods, until the coming general election” – a prophetic reference to its eventual set of responsibilities – although the letter proclaimed that its duration would be determined by the People’s Assembly. This stipulation not only affirmed the temporary nature of the multinational protection force, but it also reflected a possible divergence in opinion over the legal basis for the force: whether it was invested with legal authority by virtue of the consent (in the form of an official invitation) of the Albanian government or whether the legal basis for its presence derived from the authorisation given by the Security Council in March 1997. The letter alluded to a further possible point of contention, and this related to the precise responsibilities of the force: was its overall mandate to be directed by humanitarian considerations, or were its operations to be contingent upon the political direction and consent of the “relevant Albanian authorities”?

4. SECURITY COUNCIL RESOLUTION 1101 (1997) AND OPERATION ALBA

4.1. Background

The draft resolution that was brought before the Security Council on 28 March 1997 had no shortage of sponsors: twenty-one states in all.²⁹ The Security Council acknowledged, with full support, the political and diplomatic efforts of states and international organisations – especially the European Union and the OSCE – to bring the crisis in Albania to a swift, peaceful and secure conclusion. It was not surprising, therefore, that the Security Council also used this opportunity to

28. Letter dated 28 March 1997 from the Permanent Representative of Albania to the United Nations Addressed to the President of the Security Council, UN Doc. S/1997/259 (1997).

29. The draft resolution appeared as UN Doc. S/1997/260 (1997) and was sponsored by Albania, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Poland, Portugal, Republic of Korea, Romania, Spain, Sweden, the Former Yugoslav Republic of Macedonia, Turkey, the United Kingdom and the United States of America, *see* Security Council Press Release UN Doc. SC/6347 (1997).

reiterate its earlier call to warring parties to pursue “political dialogue” instead of “hostilities and acts of violence.”³⁰

The second operative paragraph of the draft resolution referred to the proposed “temporary and limited multinational” nature of the force, and then went on to specify the objectives of its actual mission, namely “to facilitate the safe and prompt delivery of humanitarian assistance, and to help create a secure environment for the missions of international organisations in Albania, including those providing humanitarian assistance.” In so acting, member states participating in the multinational protection force were encouraged by the eighth operative paragraph of the draft resolution to “co-operate closely with the Government of Albania, the United Nations, the OSCE, the European Union and all international organisations involved in rendering humanitarian assistance in Albania” – an indication that the force was expected to work together with international actors in the achievement of its objectives *in addition to* the government of Albania.

A day before the draft resolution was tabled before the Security Council, Italy had actually notified United Nations Secretary-General, Kofi A. Annan, of its “initiative” to promote the creation of a multinational protection force “which will operate with full respect for the principles of the Charter of the United Nations and of the OSCE and which, to ensure security and freedom of movement of its personnel, will act under Chapter VII of the Charter.”³¹ Italy also offered a basic synopsis of the envisaged responsibilities of the multinational protection force, and had placed emphasis on the deteriorating “humanitarian situation” in Albania when it announced its initiative. Indeed, Ambassador F. Paolo Fulci, the Permanent Representative of Italy to the United Nations, informed Secretary-General Annan that a “humanitarian action” had been conceived for Albania, which could, if delayed, “have very grave consequences for the people of Albania.”³² Although “adequate security provisions” were needed to underpin the success of the operation, Ambassador Fulci defined the objective of the force as the creation of “a safe and secure environment for the [humanitarian] action of international organisations to provide support in areas of international assis-

30. *Id.* The earlier call had been made by way of Presidential Statement in UN Doc. S/PRST/1997/14 (1997).

31. Letter dated 27 March 1997 from the Permanent Representative of Italy to the United Nations Addressed to the Secretary-General, UN Doc. S/1997/258 (1997), which noted that the Italian government had consulted with other governments, including (and in particular) that of Albania. On 28 March, an Albanian refugee boat (*Kater-i-Rades*) sunk in the Otranto Strait when it collided with an Italian corvette (*Sibilla*) which was seeking to stop “illegal immigration” to Italy. The incident provoked calls within Italy for delaying the deployment of the multinational protection force, but Prime Minister Romano Prodi expressed hope that the force would be dispatched according to plan. See S. Aloise, *L'Italie ouvre deux enquêtes après le naufrage du bateau albanais heurté par l'une de ses vedettes*, *Le Monde* (Paris), 1 April 1997, at 3.

32. *Id.*

tance.”³³ He was of the view that, in addition to this objective, the force would *also* “ensure the protection and safety of international personnel operating in Albania” but he reiterated – in unambiguous terms – the particular need of the force to “ensure early protection of ports, the Tirana airport and the main lines of communication, as well as stocks of humanitarian aid.”³⁴ It is this consideration which was emphasised by Ambassador Fulci in his letter, over and above any perceived need of shoring up the ailing Albanian government and returning it to its position of power and general stability.

In the third operative paragraph of the draft resolution, the Security Council welcomed this “offer” by Italy “to take the lead in organising and commanding this temporary protection force” in a direct reference to the proposal of Ambassador Fulci. Although the Council announced that it had taken note “of all the objectives contained in [this] letter” of 27 March 1997, it had quite appropriately given its own formulation of the “objectives” of the proposed operation, and these are mapped out in clear terms in the resolution’s second operative paragraph. It is to these “objectives” – and the requisite authorisation for intervention provided by the Security Council and contained in the fourth operative paragraph of the draft resolution – that we must now turn.

4.2. Security Council Resolution 1101 (1997)

Security Council Resolution 1101 (1997) was adopted on 28 March 1997 by fourteen votes with one abstention,³⁵ and reiterated the Security Council’s “deep concern over the deteriorating situation in Albania” in its preamble. Of such a magnitude was the crisis in Albania that the Security Council went on, in the final paragraph of the resolution’s preamble, to determine that “the present situation of crisis in Albania constitute[d] a threat to peace and security in the region.” This phrase, as is well known, sets the threshold for the activation of the enforcement powers of the Security Council, as specified in Chapter VII of the United Nations Charter. There it is said that the Security Council, once it has determined the existence of any threat to the peace, breach of the peace, or act of aggression, “shall make recommendations, or decide what measures shall be taken in accordance with Article 41 (non-forcible) and 42 (forcible) to maintain or restore international peace and security.”³⁶

33. *Id.*

34. *Id.*

35. *Le Conseil de sécurité de l’ONU autorise l’envoi d’une force multinationale en Albanie*, *Le Monde* (Paris), 30-31 March 1997, at 4; J.M. Goshko, *UN Approves Italy-Led Force For Albania: Europeans Commit To Guard Aid Efforts*, *Washington Post*, 29 March 1997, at A14. Since Security Council Resolution 1101 (1997) is analysed in detail in this article, it is appropriate to reproduce its text in full in Annex A.

36. 1945 United Nations Charter, Art. 39.

Having determined that the Albanian crisis had, in its opinion, constituted a “threat to peace and security in the region,” the Council welcomed the “offer made by certain Member States to establish a temporary and limited multinational protection force” in the second operative paragraph, before it specified in the same paragraph that the multinational protection force had been established to “facilitate the safe and prompt delivery of humanitarian assistance, and to help create a secure environment for those missions of international organisations in Albania, including those providing humanitarian assistance.”

The Security Council then went on to elect measures which it considered appropriate in the circumstances: the means by which these objectives would be achieved. Making specific reference to Chapter VII in the fourth operative paragraph of the resolution, the Security Council authorised:

[t]he Member States participating in the multinational protection force to conduct the operation in a neutral and impartial way to achieve the objectives set out in [the second paragraph of the resolution] and, *acting under Chapter VII of the Charter of the United Nations, further authorises these Member States to ensure the security and freedom of movement of the personnel of the said multinational protection force* (emphasis added).

Resolution 1101 (1997), adopted in identical form to its draft version, therefore identified the *responsibilities* of the multinational protection force in its second operative paragraph, before it specified in its fourth operative paragraph, the *nature* of the Security Council authorisation for forcible measures relating thereto.

“All those concerned in Albania” were then called upon by the Security Council “to co-operate with the multinational protection force and international humanitarian agencies for the safe and prompt delivery of humanitarian assistance” – a further signal of the humanitarian dimension of the operation and its intended activities. As with the draft resolution, there was a firm sense (in the eighth operative paragraph of the resolution) of the presence of international organisations “involved in rendering humanitarian assistance in Albania,” and the Security Council requested that states participating in the multinational protection force provided periodic reports (at least every two weeks) which would *inter alia* specify “the parameters and modalities of the operation on the basis of consultations between those Member States and the Government of Albania.”

4.3. The Creation and Conduct of Operation Alba

With this mandate, fixed for a three-month period in the sixth operative paragraph of the resolution, the multinational protection force was soon organised so as to include in its initial phase some 6,000 personnel from eight countries: Austria, Denmark, France, Greece, Italy, Romania, Spain and Turkey. Monitored by a Steering Committee (an innovation drawn from the WEU), comprised

of government members from troop-contributing countries, the Chief of the Italian Defence Staff, Admiral Guide Venturoni, was appointed as the Commander of the Operation and General Luciano Forlani as Commander of the Force.³⁷

Operational planning began in earnest on 3 April 1997, and the “parameters and modalities for the mission to Albania” were defined as follows:

(a) to secure the main entry points into the country in order to guarantee security conditions for the flow and distribution of humanitarian aid; (b) to help create a secure environment for the missions of international organisations in Albania, in particular with reference to those providing humanitarian assistance. The force is to carry out its mission in an impartial way, in close co-operation with the Albanian authorities and the relevant international organisations. The force will be provided with rules of engagement in accordance with [its] mandate, enabling it to accomplish its mission and protect itself while complying with the international principles of proportionality, the minimum use of force and the requirement to minimise the potential for collateral damage.³⁸

In accordance with the original plan for its deployment,³⁹ the first forces of Operation Alba, comprising 370 French, 400 Italian and 350 Spanish forces, landed in Albania at the port of Durres on 15 April 1997.⁴⁰ Italian forces also landed at Tirana Airport on the same afternoon; one of the locations – alongside Durres and Vlorë – that had been identified as a prospective base for the force. Less than a week later, on 21 April 1997, Italian forces landed in Vlorë which had witnessed the high point of political unrest and they were followed by 100 members of the Greek armed forces who took control of the military airport nearby.⁴¹

The presence of the multinational protection force in Vlorë appeared to stabilise the situation to some extent, although there was some concern expressed

37. The Steering Committee was established to provide political guidance for Operation Alba, as well as to co-ordinate its co-operation with Albanian authorities and its relation with those international organisations present in Albania. It was composed of representatives of the foreign and defence ministries of troop-contributing states and the Commander of Operation Alba. In addition, observer status was accorded to the United Nations, the European Union, the OSCE, the WEU, the ICRC and Belgium (and a representative of Albania was invited to attend all meetings). In accordance with operative paragraph 9 of Resolution 1101 (1997), the Committee provided periodic reports of Operation Alba to the Security Council. The first of these appeared on 10 April 1997 (UN Doc. S/1997/296 (1997)) and the eleventh and final report (UN Doc. S/1997/632 (1997)) was submitted to the Security Council on 11 August 1997.

38. Report to the United Nations Security Council on the Operation of the Multinational Protection Force for Albania, UN Doc. S/1997/296 (1997), at 4 (para. 11).

39. *Id.*, at 4 (para. 12).

40. J. Borger, *Quiet Gratitude Greets Albanian Force*, *The Guardian* (London), 16 April 1997, at 7 and J.C. Randal, *With Mission Left Vague, First European Peacekeepers Arrive in Albania*, *Washington Post*, 16 April 1997, at A20.

41. G. Dinmore, *Vlorë Gives Italian Force An Enthusiastic Welcome*, *Financial Times* (London), 22 April 1997, at 2.

by Italian Commander General Girolano Giglio in Vlorë that there were expectations that the force would transgress its official mandate. President Sali Berisha had made the surprise suggestion that Italian troops should conduct joint patrols with Albanian police – one that was not favourably received by his forces because of the rigorous compliance with the letter and spirit of the Security Council resolution.⁴² In addition, special account was taken of the tarnished reputation of the Vlorë police in the years after the demise of communism and the warning of the self-styled rebel organisation (known as the Committee for Public Salvation) in mid-April that the multinational protection force was welcome only insofar as it confined itself to “its mission to distribute humanitarian aid, and perhaps help guarantee free and democratic elections.”⁴³

Although the “escort of humanitarian aid to the hungry” was identified by Italian Colonel Paolo Bianchi as the chief concern of his mission,⁴⁴ the extent of the humanitarian need in Albania was questioned by the World Food Program and the International Committee of the Red Cross who claimed that the presence of external forces was better explained on political rather than humanitarian grounds.⁴⁵ The basis of this contention was that humanitarian agencies did not find starvation to be an immediate or pressing problem at that time, coupled with the fact that commercial traffic had already begun to flow again, to and from the port city of Durres.⁴⁶ Nevertheless, on any objective assessment of its activities, Operation Alba can be said to have made notable progress right from the start of its mission. It ensured the distribution of some 470 tons of food supplies to social institutions, including orphanages and old-age homes, within weeks of its deployment.⁴⁷ Perhaps one explanation for this success was the possible deterrent effect which the multinational protection force had against attacks upon humanitarian organisations,⁴⁸ although the idea of the multinational protection force carried its own appeal to rebel forces and had actually earned their confidence and respect but only insofar as its operations accorded with its governing humanitarian objectives.⁴⁹

42. J. Perlez, *Italian Troops in Albania Face Fragile Calm and Uncertain Mandate*, International Herald Tribune (The Hague), 26-27 April 1997, at 7.

43. J. Borger, *Tempers Rise As Albania Plays Reluctant Host*, The Guardian (London), 19 April 1997, at 6.

44. M. O'Connor, *Aid Workers in Albania Wonder Why They Needed UN Troops*, International Herald Tribune (The Hague), 22 April 1997, at 6.

45. At the conclusion of Operation Alba, the ICRC representative to the Security Council declared that “there was no major humanitarian disaster in Albania”, see UN Doc. S/PV.3811 (1997), at 25. See also, G. Dinmore, *Troops Open Wider Albanian Front: The International Force Will Not Simply Be Fulfilling A Humanitarian Function*, Financial Times (London), 21 April 1997, at 2.

46. *Id.*, reporting the position of aid agencies that “an overwhelming military presence is not necessary to alleviate limited food shortages.”

47. C. Bohlen, *Europe's Contingent Marches Into Albania: Initial Deployment Goes Smoothly*, International Herald Tribune (The Hague), 16 April 1997, at 5.

48. J. Borger, *Confused Soldiers Sail Into Albania*, The Guardian (London), 15 April 1997, at 6.

49. *Supra* note 40.

4.4. Security Council Resolution 1114 (1997)

The Security Council, fully aware of this successful track record of Operation Alba, met in June 1997 to consider the possibility of an extension of the force's presence in Albania, but it also met to reconsider the nature of its mandate in view of the national elections called for June and July of that year. The Steering Committee had actually recommended a move in this direction on 13 June 1997, noting that a withdrawal of the force on 28 June in accordance with the terms of the original mandate "would not allow the force to provide the [...] secure environment and would therefore undermine one of the main efforts of international assistance to Albania, with an added negative impact on the improvements so far achieved through the efforts of the international community in close cooperation with the Albanian authorities and in addition to their own action in that field."⁵⁰ In view of these considerations, as well as the "several requests" made to it by "the Albanian authorities that the force remain in Albania during the electoral process,"⁵¹ the Committee recommended that the mandate given to the force be extended by the Security Council "for the period necessary for the completion of the electoral process in Albania and in any event not longer than 45 days after the termination of the present mandate."⁵²

In addition to these developments, the President of the Security Council received a letter dated 16 June 1997 from the Permanent Representative of Albania to the United Nations in which he requested an extension of the mandate of the multinational protection force.⁵³ In view of these exchanges, it is understandable that the Security Council concluded that there was a "need for a short period of time" for "a limited increase in the contingent originally planned, for the purpose of protecting the OSCE mission" in Albania, and decided to adopt Resolution 1114 on 19 June 1997. The resolution is significant because it accepted and confirmed the "framework of the mandate" provided by its predecessor resolution – an indication that the Security Council considered that more work had to be done on this front, reinforced by the fact that the Security Council welcomed "the intention of the countries contributing to the multinational protection force to *continue* [...] to facilitate the safe and prompt delivery of humanitarian assistance and to help create a secure environment for the missions of international organisations in Albania, including those providing humanitarian assistance."⁵⁴

50. Sixth Report to the Security Council on the Operation of the Multinational Protection Force in Albania, Appendix to UN Doc. S/1997/469 (1997), para. 9.

51. *Id.*, at para. 4.

52. *Id.*, at para. 12.

53. UN Doc. S/1997/464 (1997). Seventh Report to the Security Council on the Operation of the Multinational Protection Force in Albania, Appendix to UN Doc. S/1997/501 (1997), para. 4.

54. Operative paragraph 3 of Security Council Resolution 1114 (1997) (emphasis added). The full text of the resolution is reproduced in Annex B.

However, the overriding importance of Resolution 1114 within the overall context of Operation Alba, was its amendment – as intended – of the mandate of the multinational protection force. In addition to underscoring the humanitarian objectives of the mission in the third operative paragraph of the resolution, the Security Council took note of “all the elements” of the operation, but made specific mention of the election-monitoring missions of the OSCE, through its surrogate agency of the Office for Democratic Institutions and Human Rights. These, according to the next operative paragraph, were the “objectives” of the multinational protection force – as they had been realigned by Resolution 1114 (1997). Then, in an identical framing of the authorisation clause contained in Resolution 1101 (1997), the Security Council went on to authorise the member states participating in the multinational protection force “to conduct the operation in a neutral and impartial way to achieve the objectives set out [in Resolution 1114]” and, acting under Chapter VII of the Charter, “further authorise[d] these Member States to ensure the security and freedom of movement of the personnel of the multinational force.”⁵⁵

For Operation Alba, the adoption of this resolution was a significant moment because it restated the importance of the humanitarian dimension of its activities. Yet, in so doing, the Security Council had also reset the objectives of the mission along more political lines, providing for the limited involvement of Operation Alba in, *inter alia*, the monitoring of the forthcoming national elections. Though, perhaps, a more ambitious task had been set for Operation Alba, it should be mentioned that the Security Council had framed its accompanying authorisation in Resolution 1114 in as equally cautious and limited terms as it had in Resolution 1101 (1997).

5. LEGAL CONSIDERATIONS AND ASSESSMENT

5.1. Synopsis

The purpose of this section of the article is to provide an examination of the legal justification given for Operation Alba by those states which participated in the Italian-led intervention in Albania between April and August 1997. In chief, that justification emanated from the authorisation for intervention laid down in Resolution 1101 (1997), adopted by the Security Council on 28 March 1997, and which accompanied the mandate of Operation Alba (later modified in Resolution 1114 of 19 June 1997). The significance and meaning of these resolutions shall now be considered within the context of the consent provided by

55. As far as the extended duration of the force was concerned, operative paragraph 6 of Resolution 1114 makes it clear that the operation would be limited to a period of 45 days from 28 June 1997 – at which point the Security Council would decide on how to proceed.

the Albanian government (on behalf of the host-state) for the intervention and the difficulties relating to the issue, impact and legal relevance of this consent.

5.2. Host-State Consent

From a legal perspective, it is necessary to consider why the ‘official appeal’ by the Albanian government (as depicted by the OSCE) for qualified armed intervention did not appear to be regarded as a sufficient basis for the launch of Operation Alba. From the facts as presented, and as represented in the verbatim records of the Security Council, the Albanian government had formally issued its consent for the intervention of an external force in the crisis that had taken root in Albania in the first half of 1997. Indeed, Albania had been one of the main sponsors of the draft resolution which had welcomed the creation of the multinational protection force in March 1997.⁵⁶ Since consent had been officially given by the government of Albania, why (if at all), was Security Council authorisation – of the nature sought and obtained in the resolutions examined above – deemed necessary?

In her seminal study on intervention by invitation in the *British Yearbook of International Law* in 1985, Louise Doswald-Beck concluded that “there is, at least, a very serious doubt whether a state may validly aid another government to suppress a rebellion, particularly if the rebellion is widespread and seriously aimed at the overthrow of the incumbent regime.”⁵⁷ Recalling General Assembly Resolutions 2131 (XX) and 2625 (XXV),⁵⁸ as well as the reasons for their adoption,⁵⁹ she argued that there is “substantial evidence” which validates the proposition that “intervention to prop up a beleaguered government is illegal.”⁶⁰ This

56. *Supra* note 29.

57. L. Doswald-Beck, *The Legal Validity of Military Intervention By Invitation of the Government*, 56 BYIL 189, at 251 (1985). See further, A.D. McNair, *The Law Relation to the Civil War in Spain*, 53 LQR 471, at 474 (1937), arguing that there was “some authority” in the law at that time which required governments to “abstain” from providing assistance to a government to suppress an insurrection, although the law on this point was “not well settled.” For consideration of the principles underpinning this approach, see I. Brownlie, *International Law and the Use of Force By States* 323 (1963).

58. 1965 General Assembly Resolution 2131 (XX) on the Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, UN GAOR, 20th Sess., Supp. No. 14, at 11, UN Doc. A/6014 (1965), adopted by 109 votes to 0 with an abstention cast by the United Kingdom and 1970 General Assembly Resolution 2625 (XXV) on the Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, UN GAOR, 25th Sess., Supp. No. 28, at 121, UN Doc. A/8028 (1970), adopted by consensus.

59. The study includes a consideration of the *travaux préparatoires* of both resolutions, which reveal the emphasis placed by states on the “true independence, self-determination and non-intervention, in the internal affairs” in endorsing the prohibition of intervention in international law, see, Doswald-Beck, *supra* note 57, at 251.

60. *Id.* Reinforcement of this position is forthcoming in the claim made by David Wippman in the context of a government that has become a warring faction in a civil war. See D. Wippman, *Military*

thesis is substantiated by considerable support in practice,⁶¹ where states have maintained that the issue of a request or invitation for military intervention can only occur where the incumbent government is in effective control of its territory.⁶² Hence, international law stipulates a condition precedent for interventions that are solicited by governments, but it also specifies “limits to the lawfulness of doing so in circumstances of civil war.”⁶³

Applying these criteria to the actual facts of the crisis in Albania in 1997, and within the context of the invitation made within and to the United Nations, it emerges that the Albanian government was *not* in full charge or control of the political situation in the country when the official request was first made for foreign intervention on 12 March. By the beginning of that month, sporadic fighting had matured into effective anarchy in southern Albania. Law and order continued to deteriorate to the point where, on 28 March 1997, the Permanent Representative of Albania to the United Nations himself made the candid admission that, “[t]he control of the Government, law and order *have yet to be achieved in a significant part of the country*” – a statement which appeared in the same document as the reissue of the earlier call for intervention.⁶⁴ It is therefore undisputed that there had been a breakdown of government in the country, and that breakdown was of such a magnitude that rebel forces had captured at least six towns from governmental control in early March, including that of Vlorë.⁶⁵ Vlorë had actually fallen out of the hands of public control and into the hands of the Vlorë Salvation Committee, whose Chairman had confidently proclaimed that “[t]he state just disappeared here in Vlorë” because “[t]here is no police, no political control.”⁶⁶ Pockets of rebellious activity had spread throughout Albania

Intervention, Regional Organisations and Host-State Consent, 7 *Duke Journal of Comparative and International Law* 209, at 226 (1996), to the effect that it is “difficult to conclude” that a government “reduced to the status of one among several warring parties, can unilaterally consent to an external intervention, even when the intervention is carried out under the auspices of a regional or sub-regional organisation.”

61. E. Lauterpacht, *The Contemporary Practice of the United Kingdom in the Field of International Law – Survey and Comment*, V, 7 *ICLQ* 92, at 104 (1958); R. Higgins, *The Legal Limits to the Use of Force By Sovereign States: United Nations Practice*, 37 *BYIL* 269, at 309-310 (1967). For an appraisal of the ‘virtually uniform practice’ on this point, see T.J. Farer, *Panama: Beyond the Charter Paradigm*, 84 *AJIL* 503, at 510 (1990).
62. R.Y. Jennings & A. Watts, *Oppenheim’s International Law: Peace*, Vol. I, at 435-437 (1992), noting that “[r]equests for assistance, often in the form of detachments of armed forces or the supply of military equipment, are often made and acceded to.”
63. *Id.*
64. *Supra* note 28 (emphasis added). See also, *supra* note 17.
65. A. Malone, *Albanian Rebels Ready For War: Partition Fears As Crisis Spins Out of Control*, *The Sunday Times* (London), 9 March 1997, at I.15. For an appreciation of the legal understanding of civil war, see R. Bernhardt (ed.), *Encyclopaedia of International Law*, Vol. I, at 597-601 (1992).
66. Glenny, *supra* note 5, at 36. In a candid statement in Madrid on 9 July 1997, the Albanian Prime Minister Bashkim Fino informed the Summit Meeting of NATO and partner countries that “[t]he grave economical, political and institutional crisis plunged the country into a total chaos” and that it

in March 1997, although it should be observed that these were concentrated in the southern half of the country. Given this state of affairs, it is a matter of some doubt whether a government operating in such circumstances can validly issue a request for intervention: as long as it “is in overall control of the state and internal disturbances are essentially limited to matters of local law and order or isolated guerrilla or terrorist activities, it may seek assistance from other states which are entitled to provide it.”⁶⁷

Even if one were to consider whether the threshold of civil war had actually been reached in Albania in 1997, the interesting question should be posed as to whether any intervention in that war would be unlawful insofar as it occurs pursuant to a humanitarian (rather than political) objective. Such a proposition in legal terms would appear to be treated in a different manner to situations where the intervention is intended to aid or abet an afflicted or troubled government.⁶⁸ The International Court of Justice had, after all, stated in the *Nicaragua* case (1986), that “the provision of strictly humanitarian aid to persons or forces in another country, whatever their political affiliations or objectives, cannot be regarded as unlawful intervention, or as in any other way contrary to international law.”⁶⁹ As we have seen, Operation Alba was driven in the main by humanitarian considerations, which would appear to augur well for the consent given under such conditions. However, one cannot discount the political ramifications of the presence of the force. These included, but were not limited to, the extension of the life of the beleaguered Berisha government (which turned out to be short-lived given the outcome of the national election of June and July 1997, held with the assistance of Operation Alba).

Be this as it may, the request for intervention issued by the Albanian government did in fact carry crucial *political significance* in securing the appropriate authorisation for military action from the Security Council.⁷⁰ While fourteen votes were cast in favour of the adoption of Resolution 1101 (1997), China decided to abstain because her delegation viewed the Albanian crisis as an “internal affair” which meant that any Security Council involvement was “inconsistent with the provisions of the United Nations Charter.”⁷¹ As such, China pleaded for “extreme caution” in formulating the Security Council response to the Albanian crisis – noting that it was rarely in favour of resorting to the en-

was the Albanian army which “was most seriously hit, reaching the point of total disintegration.” See <http://www.nato.int/docu/speech/1997/S970709m.htm>.

67. *Supra* note 62, at 437-438.

68. *Id.*, noting that “when there exists a civil war and control of a state is divided between warring factions, any form of interference or assistance (*except probably of a humanitarian character*) to any party amounts to intervention contrary to international law”. (Emphasis added).

69. *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment 27 June 1986, 1986 ICJ Rep. 14, at 124, para. 242.

70. N.D. White & Ö. Ülgen, *The Security Council and the Decentralised Military Option: Constitutionality and Its Function*, XLIV *Netherlands International Law Review* 378, at 409 (1997).

71. UN Doc. S/PV.3758 (1997), at 3.

forcement powers contained in Chapter VII of the Charter “in authorising such actions.” Yet, when it came to the vote for the draft resolution, China chose to cast an abstention rather than exercise its power of veto. Qin Huasun, the Chinese Representative on the Council, explained that China’s position was “with due regard for the relevant requests of the Albanian government and for its urgent desire for the return of stability to Albania as soon as possible.”⁷² The formal request for intervention by Albania meant that China would not “stand in the way” of any Security Council action.⁷³

An identical stance was adopted by the Chinese delegation in June 1997, on the occasion of the amendment of the mandate and duration of Operation Alba, when China cast an abstention on the grounds that it was:

not in favour of authorising the deployment in Albania of the multinational force. We are even less in favour of expanding the force’s mandate. Moreover, we feel that, as the situation in Albania improves, the multinational protection force should terminate its mandate at an appropriate time. The understanding of the Chinese delegation is that the deployment of the multinational protection force in Albania is a special measure taken under special circumstances. *Taking into account the relevant request of the Albanian Government for the extension of the force’s mandate, the Chinese delegation will not stand in the way of the adoption of the [...] Resolution.*⁷⁴

This emphasis on state consent in cases of Chapter VII authorisations by the Security Council is consistent with past Chinese voting practice in the Security Council,⁷⁵ although it should be noted that there have been occasions where China has voted *in favour of* – and did not abstain or veto – resolutions where the consent of the target state (of the intervention) was not forthcoming. This occurred, for instance, when the Security Council adopted Resolution 794 on 3

72. *Id.*

73. *Id.* See further, XXXIV (1) United Nations Chronicle, at 25 (1997).

74. Statement of Wang Xuexian, UN Doc. S/PV.3791 (1997), at 4. (Emphasis added).

75. Security Council Resolution 713, which was adopted unanimously under Chapter VII of the Charter on 25 September 1991, imposed a “general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia” and occurred at the behest of the government of the Socialist Federal Republic of Yugoslavia, see UN Doc. S/PV.3009 (1991), at 17. China regarded the “discussion” in the Security Council as “being carried out in the special circumstances of the explicit agreement given by the Yugoslav government,” see UN Doc. S/PV.3009 (1991), at 59. India’s position was that “a formal request by the state concerned is an essential requirement in such cases before the Council can take up the matter. At the same time, we must not forget [Article 2(7)] of the time-tested Charter of the United Nations [...]. Let us therefore note here today in unmistakable terms that the Council’s consideration of the matter relates not to Yugoslavia’s internal situation as such, but specifically to its implication of peace and security in the region.” *Id.*, at 32. The Soviet Union and Zaire adopted the same position on the role of consent, see UN Doc. S/PV.3009 (1991), at 52 and at 64 respectively. For Argentina, Spain, the Russian Federation and the Czech Republic, the consent of exiled President Bertrand Aristide was pivotal to their support of Security Council Resolution 940, which authorised member states under Chapter VII of the Charter “to use all necessary means to facilitate” the restoration of the Aristide government to power, see UN Doc. S/PV.3413 (1994).

December 1992. The Council invoked its powers under Chapter VII of the Charter to authorise “all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.” The political situation in Somalia at that time was such that no government was in existence to issue any valid request for or consent to any intervention force,⁷⁶ and yet China found sufficient cause to support the resolution. In voting for Resolution 794 (1992), Li Daoyu, the Chinese Representative on the Security Council, adverted to the “huge losses of material, property and life” of the Somali people and of how the humanitarian relief effort in that country had come under “repeated violent attacks.”⁷⁷ He explained how “[s]hips carrying relief supplies [could] not reach ports in safety, and [how] the goods that ha[d] arrived at ports [could] not be delivered safely.”⁷⁸ Moreover, “[t]he number of casualties [was] increasing at an astonishing rate.”⁷⁹ It was these (humanitarian) concerns – rather than consent of the Somali government (whose absence in this case was explicitly acknowledged by the Chinese Representative) – which led China to call for “prompt, strong and exceptional measures” by the United Nations and to ultimately vote in the way she did in favour of Resolution 794 (1992).

5.3. The Significance and Meaning of Security Council Resolution 1101 (1997)

5.3.1. *The Question of Consent*

At this juncture, it is appropriate to consider the precise nature, significance and meaning of the authorisation contained for Operation Alba in Resolution 1101 (1997). It is an integral element in our assessment of the legal basis of the intervention that occurred in Albania between April and August 1997. It has already been admitted that there are recognised and legitimate circumstances in which a government can provide its consent for external intervention. Where this proves to be the case, the necessity (in legal terms) of procuring authorisation from the Security Council for the action would appear to be precluded.⁸⁰

If the Security Council were, nevertheless, to authorise an intervention where host-state consent had been lawfully provided, it would be appropriate to regard such an authorisation as a political blessing of the ensuing operation – an operation whose *prima facie* legal basis is properly located in that *consent* of the host-state rather than in any authorisation of the Security Council. Any resolution by

76. W. Clarke, *Failed Visions and Uncertain Mandates in Somalia*, in W. Clarke & J. Herbst (Eds.), *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* 3, at 10 (1997).

77. UN Doc. S/PV.3145 (1992), at 16.

78. *Id.*

79. *Id.*

80. See Wippman, *supra* note 60, describing legitimate host-state consent as “a clear alternative to Security Council authorisation as a [legal] basis for justifying external intervention.”

the Security Council would, presumably in such circumstances, also define the precise mandate of an operation and provide the basic structure for its deployment (especially where a multinational force is involved). This, at least, is set to become the predominant interpretation of Resolution 1264, adopted by the Security Council on 15 September 1999, which created a multinational force under a unified command structure for East Timor. States participating in the force were authorised by the Security Council under Chapter VII of the Charter, “to take all necessary measures to fulfil [the] mandate”⁸¹ – but the resolution materialised only after consent had been given for the operation by President B.J. Habibie of Indonesia.⁸² From a different perspective, however, it may also be ventured that the legal importance of Security Council authorisation for such actions increases where uncertainty surrounds the issue of consent for military intervention or, indeed, the nature of the political authority of the government that purports to provide that consent.

5.3.2. Chapter VII of the Charter and Security Council Resolutions

As presented, the factual circumstances of the 1997 Albanian crisis – and the consent offered by the government of Albania for Operation Alba – are difficult to reconcile with the stated normative position. It cannot be said with any confidence that the conditions of international law regulating consent-based interventions were met in the instant case, notwithstanding the clear humanitarian objective of its mission. That conclusion would appear to suggest that the legal basis for Operation Alba would have to be located elsewhere, namely in Resolution 1101 (1997) itself. However, a close reading of this resolution reveals that, although the Security Council chose to act under Chapter VII of the Charter, its enforcement powers were given a narrow field of application. The Security Council did not, for example, invoke its Chapter VII powers for the resolution in its entirety – what I wish to call a ‘generic Chapter VII resolution’, whereby all operative paragraphs of the resolution fall under a general invocation of the powers under Chapter VII of the Charter. Such an invocation of the Security Council’s powers, covering all of its terms, is usually announced at the end of

81. As listed in the third operative paragraph of the resolution, the tasks of the force are: “to restore peace and security in East Timor, to protect and support [the United Nations Mission in East Timor] in carrying out its tasks and, within force capabilities, to facilitate humanitarian assistance operations.” See Security Council Resolution 1264 of 15 September 1999, UN Doc. S/RES/1264 (1999).

82. It is in this manner that the United Nations Secretary-General characterised the intervention in East Timor: K. Annan, *Two Concepts of Sovereignty*, *The Economist*, 18–24 September 1999, at 81. The preamble of Resolution 1264 (1999) “welcome[d] the statement by the President of Indonesia on 12 September 1999 in which he expressed the readiness of Indonesia to accept an international peacekeeping force through the United Nations in East Timor.” See further, K.B. Richburg, *Jakarta Asks UN Force to End East Timor Turmoil*, *Washington Post*, 13 September 1999, at A1 and D. Watts, *Indonesia Agrees to Foreign Troops*, *The Times* (London), 13 September 1999, at 1.

the preamble to the resolution, as the Security Council did when adopting Resolution 1080 for Zaire in November 1996.

Of course, it is not uncommon for the Security Council to invoke its enforcement powers – to act under Chapter VII of the Charter of the United Nations – in a particular operative paragraph of a resolution, rather than in its heading, as it did in Resolution 794 (1992) of December 1992 (Somalia) and Resolution 929 (1994) of July 1994 (Rwanda). Such an approach gives rise to the adoption of a ‘qualified Chapter VII resolution’, in the sense that the Security Council is presumably purporting to activate its enforcement powers in a focused, defined and limited way. In other words, the Security Council qualifies the application of its enforcement powers so that they pertain to particular aspects of an operation (rather than to all aspects of an operation treated as a whole). Naturally, the nature of the qualification, as determined by the Security Council in the way it words its authorisation, may mean that there is no (or minimal) material difference between the Security Council’s adoption of a qualified (as opposed to a generic) Chapter VII resolution. Conceivably, though, the Security Council’s chosen path – whether it adopts one form of resolution or another – could be regarded as indicative of a certain intention of Security Council members. This might itself impact upon the *interpretation* of an ambiguous resolution in a given situation.⁸³

In the Albanian crisis of 1997, the Security Council adopted a *qualified Chapter VII resolution* when it passed Resolution 1101 (1997) – but it is important to observe that, on this occasion, the Security Council worded its qualification in a very particular and conspicuous manner. In the fourth operative paragraph of Resolution 1101 (1997), the Security Council

[a]uthorise[d] the Member States participating in the multinational protection force to conduct the operation in a neutral and impartial way to achieve the objectives set out in [the second operative paragraph of this resolution] and, *acting under Chapter VII of the Charter of the United Nations, further authorises these Member States to ensure the security and freedom of movement of personnel of the said multinational protection force.* (emphasis added).

83. Although, note the observation made by Michael Wood, that resolutions of the Security Council are “frequently not clear, simple, concise or unambiguous. They are often drafted by non-lawyers, in haste, under considerable political pressure, and with a view to securing unanimity within the Council. This latter point is significant since it often leads to deliberate ambiguity and the addition of superfluous material.” See M.C. Wood, *The Interpretation of Security Council Resolutions*, 2 Max Planck Yearbook of United Nations Law 73, at 82 (1998). The notion and practice of “deliberate ambiguity” in the drafting of Security Council resolutions poses a great obstacle in the way of the interpretation of these resolutions, as well as in any attempt to discern any consistency or coherence in the intentions and intended policies of Council members. Such considerations do, however, need to be “balanced against the need for flexibility if general agreement is to be reached” (*id.*) in addition to the specific facts of “a particular situation or dispute” (*id.*, at 79).

Rather than invoke its enforcement powers under Chapter VII at the beginning of this paragraph, the Security Council chose to qualify the application of these powers so that they extend to (and only to) the latter clause of the paragraph, relating to the “security and freedom of movement of the personnel of the said multinational protection force.” Although member states participating in the multinational protection force were *authorised* to conduct their operation “in a neutral and impartial way,” a literal interpretation of the text of the resolution would suggest that enforcement powers of the Security Council did not extend to the operation(s) covered by the first clause of this paragraph. That clause referred to the objectives of the operation which were set out in the second operative paragraph of Resolution 1101 (1997), i.e., “to facilitate the safe and prompt delivery of humanitarian assistance, and to help create a secure environment for the missions of international organisations in Albania, including those providing humanitarian assistance.” Was there any material importance to be drawn from this particularisation of the enforcement powers by the Security Council?

5.3.3. *The Forcible Provision of Humanitarian Assistance*

The phrasing of the fourth operative paragraph of Resolution 1101 (1997) lies in marked contrast to Resolution 794 (1992), in which the Security Council acted under Chapter VII of the Charter when it authorised states to “use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia.” Resolution 794 (1992) proved to be a critical development, because the Security Council had chosen to authorise the application of force to support the provision of humanitarian supplies – a resolution which was adopted amidst a series of kindred resolutions, such as Resolution 770 (1992) (Bosnia-Herzegovina)⁸⁴ and Resolution 929 (1994) (Rwanda).⁸⁵ Given

84. The second operative paragraph of Security Council Resolution 770 (1992) called upon states “to take nationally or through regional agencies or arrangements all measures necessary to facilitate in co-ordination with the United Nations the delivery by relevant United Nations humanitarian organisations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina.” Zimbabwe was of the opinion that the wording of this paragraph would “empower any state which feels able and so inclined to use military force in any part of Bosnia and Herzegovina in the name of the United Nations, but without any control from or accountability to the United Nations,” see UN Doc. S/3106 (1992), at 16. For the view that such “fears” were unfounded because Resolution 776 (1992) “remove[d] the possibility of operations run more or less independently from UNPROFOR” and that “the authority to use ‘all necessary measures’ contained in Resolution 770 (1992) was reduced to ‘normal peace-keeping rules of engagement,’” see M. Weller, *Peace-Keeping and Peace-Enforcement in the Republic of Bosnia-Herzegovina*, 56 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 70, at 99 (1996) (citing the Report of the Secretary-General, see UN Doc. S/24540 (1992), at para. 9).

85. In the third operative paragraph of Security Council Resolution 929 (1994), the Security Council “authorise[d] the member states co-operating with the Secretary-General to conduct the operation [...] [by] using all necessary means to achieve the humanitarian objectives set out in subparagraphs 4 (a) and (b) of resolution 925 (1994)” namely to: “(a) contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, including through the establishment and

the immense difficulties associated with this experimental form of intervention, most visibly demonstrated in Bosnia-Herzegovina after 1992,⁸⁶ it could be ventured that the Security Council was drawing back from this problem-laden practice when it adopted Resolution 1101 (1997). According to a strict reading of the fourth operative paragraph of that resolution, the Security Council would appear to have dissociated the application of its enforcement powers from the provision of humanitarian assistance, and confine the application of these powers to “the security and freedom of movement of the personnel” of the protection force. On this account, the Security Council was not prepared to repeat the experiences which intervening forces had encountered in previous years regarding the forcible provision of humanitarian assistance.

China had indeed chided this practice as far back as August 1992 in the debate that preceded the adoption of Resolution 770 (1992), when the Security Council had called upon states to take “all measures necessary” to facilitate the delivery of humanitarian assistance to Sarajevo and to other parts of Bosnia-Herzegovina:

We cannot agree to the resolution’s authorisation of the use of force by member states, as it is precisely the continuous armed conflicts that are currently hindering the delivery of humanitarian assistance. Once member states resort to force, armed conflicts will surely be expanded and prolonged as a result, thus further hampering the relief work. Secondly, [...] we are concerned that a Security Council resolution authorising the use of force would create difficulties for all [...] efforts aimed at a political solution to the problem. Thirdly, the broad authorisation given to all states by the resolution [...] may lead to the loss of control of the situation, with serious consequences for which the United Nations and the Security Council will be held responsible, and the reputation of the United Nations may suffer as a result. Fourthly, [...] the resolution fails to make arrangement for [the United Nations Protection Force (UNPROFOR)] UNPROFOR’s mandate and its future in light of the new situation which may arise. Once military activities are in operation, the nature of the United Nations involvement will change, making it difficult for UNPROFOR to carry out its original mandate and seriously compromising the safety and security of UNPROFOR and other United Nations personnel.⁸⁷

A comparative survey of previous, related resolutions reveals that the Security Council had changed the formula of its wording in Resolution 1101 (1997), with

maintenance, where feasible, of secure humanitarian areas; and (b) provide security and support for the distribution of relief supplies and humanitarian relief operations.”

86. D. Pallister, *When Food Relief Comes Out of the Barrel of A Gun*, *The Guardian* (London), 7 May 1994, at 16.

87. UN Doc. S/PV. 3106 (1992), at 50-51. *See further*, the nature of the objections raised by China in the context of Security Council Resolution 776, which authorised “the enlargement of the mandate and strength in Bosnia and Herzegovina of the United Nations Protection Force,” (operative paragraph 2), UN Doc. S/PV. 3114 (1992), at 11-12.

special respect to the activation of its enforcement powers and the provision of humanitarian assistance in Albania.

Such a development would be fully understandable and explainable in the specific context of the chequered history of forcible humanitarian assistance – most notably in the Balkans between 1992-1995. However, it is not a distinction that the Security Council was purposefully trying to make when it met to discuss the draft resolution in March 1997. At least, this is the impression gained from reading the published verbatim records of the Security Council, which remain silent on the matter. Of course, it is well-known that the verbatim records are often an unhelpful resource in revealing the intention(s) of Security Council members,⁸⁸ but it is doubtful whether the Security Council had intended to experiment in such an innovative, meaningful and interesting way in Resolution 1101 (1997). After all, the Security Council had – barely four months earlier – added a further precedent to the genre of resolutions on forcible humanitarian assistance when it acted under Chapter VII of the Charter to establish a multinational force “for humanitarian purposes.” According to the third operative paragraph of Resolution 1080 (1996), the multinational force was set up “to facilitate the immediate return of the humanitarian organisations and the effective delivery by civilian relief organisations of humanitarian aid to alleviate the immediate suffering of displaced persons, refugees and civilians at risk.” This resolution – authorising military action for the provision of humanitarian assistance in eastern Zaire – was never put into effect,⁸⁹ so it cannot be said that the Security Council had received a further ‘lesson’ warning against such practices in the intervening period before it adopted Resolution 1101 (1997) for Albania.

In addition, failing supporting evidence, it is not reasonable to suggest that the Security Council intended a distinction – between the forcible provision of humanitarian assistance and the authorisation to use force to ensure the security and freedom of movement of the multinational protection force – that would be unworkable in practice. The “freedom of movement” of the force would be difficult (if not impossible) to divorce from the provision of humanitarian assistance in Albania. Indeed, the latter of these considerations dictated the need and exercise of freedom of movement of the force, so that the practical (or actual) effect of the fourth operative paragraph of Resolution 1101 (1997) is to have provided the cover of Chapter VII authorisation for the provision of humanitarian assistance in Albania. Yet, it remains the case that the Security Council had particularised the reference to Chapter VII in Resolution 1101 (1997) and had

88. See the most useful account of the drafting stages of Security Council resolutions offered by Wood, *supra* note 83, at 81: “most of the negotiating history of a resolution is not on the public record, and indeed may be known in full only to Council members or even a limited number of them.”

89. N.D. White, *Keeping the Peace: The United Nations and the Maintenance of International Peace and Security* 128 (1997). See also, J. Fitchett, *Canada Agrees to Lead Military Force in Zaire*, *International Herald Tribune* (London), 1 November 1996, at 1.

thus given the impression that it was adopting a qualified Chapter VII resolution – one that was qualified in more respects than usual.

5.3.4. Political Compromise and Resolution 1101 (1997)

An alternative explanation would need to be developed as to why the Security Council limited the remit of its ‘action’ under Chapter VII in this unusual way. The Security Council had authorised states participating in the multinational protection force to “ensure the[ir] security and freedom of movement.” It is appropriate to query the extent to which this protection overlaps with the right to use force in self-defence, a right usually afforded to military personnel involved in such operations and an integral aspect of their rules of engagement. This right of self-defence would, for example, allow members of the multinational protection force to return fire where they become the target of attack. Importantly, it would not stretch to cover cases where the lives of members of the force were not placed in such jeopardy – even if the freedom of movement of the force was curtailed by obstacles placed in its way.⁹⁰ The reference to Chapter VII, then, could have (and, on my understanding of events, did) come as a critical reassurance (prompted by the concerns expressed by participating militaries) that there was secure legal cover for armed force to be used to “ensure the security and freedom of movement” of the personnel of Operation Alba. That reassurance would be of particular value in situations where the “freedom of movement” of the force (and, thus, the supply of humanitarian assistance) was threatened. A risk of this nature necessitated a residual power for the force to discharge its mandate as specified in Resolution 1101 (1997) – akin to what had been provided for the Stabilisation Protection Force (S-FOR) in Resolution 1088 of 12 December 1996.

From what followed, it would seem that the final formulation endorsed in Resolution 1101 (1997) is owed more to political compromise than to an attempt to respond to the lessons of previous experiences or put into practice any new policies of the Security Council. Reference to Chapter VII was made in order to overcome any concerns that the multinational protection force would not be secure or free to move about its business, but the reference was worded in such a manner that it gave rise to a qualified Chapter VII resolution. That qualification had also been prompted by the view held in some quarters of the Security Council, that the crisis in Albania began and remained an ‘internal matter’ – such that it was necessary to invoke what certain missions within the United Nations have called the ‘Chinese formula’. This formula – it should at once be stated and emphasised – is neither the product of China nor of the Chinese delegation to the

90. Colin Warbrick, in correspondence with the author, offers the helpful example of a road-block (or other physical or human obstruction), which would impact upon the freedom of movement of the multinational protection force, but which would not trigger its right to use force in self-defence.

United Nations and, as such, should be regarded as something of a misnomer. The ‘Chinese formula’ is, instead, the invention of those permanent missions in New York who wanted to meet the concerns and cautions expressed by China (and like-minded countries) in relation to the activation of the Security Council’s enforcement powers in circumstances such as those of the 1997 Albanian crisis. The ‘Chinese formula’ does not embrace a specific ‘formula’ or form of words. It simply captures the notion of a guarded and focused application of measures taken under Chapter VII. As such, it would be described more appropriately in terms of the resolutions it produces: that is ‘qualified Chapter VII resolutions’.

5.3.5. *Principles and Elements of Peace-Keeping Operations*

So, did the Security Council Resolution 1101 (1997) provide the legal foundation for the entry of Operation Alba into Albania in April 1997? The fact that the Security Council *authorised* the member states participating in the multinational protection force “to conduct the operation in a neutral and impartial way” – but did not appear to do so under Chapter VII, given its qualification – suggests that the consent of the Albanian government cannot be discounted in our analysis, even if we make allowances for the conditions and circumstances in which that consent was given.

As the focus shifts back to the issue of host-state consent, it becomes apparent that there are shades of traditional peace-keeping operations in Operation Alba. In the absence of any peace-keeping agreement – and it needs to be said that there was no peace to keep at the time the Security Council adopted Resolution 1101 (1997) – consent was still forthcoming from the government of admittedly diminished authority and clear support for the intervention was given by the factions in southern Albania. In addition, the Security Council authorised the force to act “in a neutral and impartial way” – language which is indicative of arrangements for traditional peace-keeping operations, as is the decision to limit the duration of the operation (to a period of three months in the first instance). Furthermore, in the *Certain Expenses of the United Nations* case (1962), the International Court of Justice placed a premium on the formal issue of a government’s consent – rather than the effectiveness of the government which provides that consent – and concluded that the United Nations operation in the Congo was not an enforcement action as understood under Chapter VII.⁹¹

The characterisation of Operation Alba as a peace-keeping force or mission at various stages of its deployment is neither a novel nor uncommon proposition. At the conclusion of the Operation’s activities, for example, the Italian representative on the Security Council attributed its success to the “strict compliance with the three golden rules of the up-dated peace-keeping doctrine: request and

91. *Certain Expenses of the United Nations*, Advisory Opinion of 20 July 1962, 1962 ICJ Rep. 151.

consent of the legitimate government; absolute impartiality of the peace-keepers; and no recourse to weapons by peace-keepers except in self-defence.⁹² This would seem to place Operation Alba in the same category as UNPROFOR in the Balkans, which also operated under conditions of consent,⁹³ but where the Security Council adopted a generic Chapter VII resolution in the form of Resolution 770 (1992). In this regard, it is perhaps useful to make reference to the “new kind of United Nations operation” which former United Nations Secretary-General Boutros Boutros-Ghali described in view of the experiences that have taken place since the end of the Cold War:

Even though the use of force is authorised under Chapter VII of the Charter, the United Nations remains neutral and impartial between the warring parties, *without a mandate to stop the aggressor (if one can be identified) or impose a cessation of hostilities*. Nor is this peace-keeping as practised hitherto, because the hostilities continue and there is often no agreement between the warring parties on which a peace-keeping mandate can be based.⁹⁴

This new concept of peace-keeping, which involves a mutation between traditional peace-keeping and peace-enforcement operations,⁹⁵ compares with what the present Secretary-General of the United Nations, Kofi A. Annan, referred to as “muscular peace-keeping” and “peace-keeping with teeth” in his former role as the Under Secretary-General for Peacekeeping Operations within the organi-

92. UN Doc. S/PV. 3811 (1997), at 16. The representative of the Former Yugoslav Republic of Macedonia also described Operation Alba as a “peace-keeping force”, *id.*, at 23. *See, however*, the statement of the representative of Turkey at the same meeting, that Operation Alba “acquired an *ad hoc* character of its own [and] was not a United Nations peacekeeping effort in its classic meaning”, *id.*, at 16.

93. Security Council Resolution 743 of 21 February 1992, UN Doc. S/RES/743 (1992). *See also*, C. Gray, *Host-State Consent and United Nations Peacekeeping in Yugoslavia*, 7 *Duke Journal of Comparative and International Law* 241, at 244 (1996), arguing, in the context of the United Nations Protection Force in former Yugoslavia that “it was only the host-state’s consent, as expressed by its government, that formed the legal basis for the peace-keeping force first in Yugoslavia and subsequently in its former republics.”

94. B. Boutros-Ghali, *Supplement to An Agenda for Peace*, UN Doc. A/50/60-S/1995/1 (1995), paragraph A19 (emphasis supplied). In the view of the Secretary-General, this new form of peace-keeping “gives the United Nations a humanitarian mandate under which the use of force is authorised, but for limited and local purposes and not to bring the war to an end.” (*Id.*)

95. The nature of the UNPROFOR mandate changed with the adoption of the policy of safe areas in Bosnia-Herzegovina by the Security Council in Resolutions 819 (16 April 1993) and 824 (6 May 1993) and the means adopted for their implementation. In Resolution 836 (4 June 1993), the Security Council decided to “extend” the mandate of UNPROFOR “in order to enable it, in the safe areas referred to in Resolution 824 (1993), to deter attacks against the safe areas, to monitor the cease-fire, to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia-Herzegovina and to occupy some key points on the ground, in addition to participating in the delivery of humanitarian relief to the population as provided for in Resolution 776 (1992) of 14 September 1992.” This amendment to the traditional-style operation conducted by UNPROFOR was seen to confuse “peace-keeping mandates” with the “enforcement function”: *see* R. Higgins, *Peace and Security: Achievements and Failures*, 6 *EJIL* 445, at 459 (1995).

sation.⁹⁶ This idea has in part been prompted by expectations that the United Nations, with its traditional peace-keepers on the ground, should be able to attend to additional responsibilities – such as the prevention of the escalation of conflict and the alleviation of its effects through the provision of humanitarian assistance. It is an approach that has received trenchant criticism for “treating situations requiring enforcement as requiring ‘muscular peace-keeping’”:

What the [...] experience [in Bosnia-Herzegovina] shows is that when states put peace-keepers in place – including those with the prime mandate to deliver aid – then all realistic prospect of ‘enforcing the peace’ has gone. The enforcement of the peace of the victims of violation of [the prohibition on the use of force in the Charter] had already effectively been put aside by this selection of method of [United Nations] operation.⁹⁷

Such “mixed mandates actions” are, experience teaches us, “doomed to failure.”⁹⁸ The experience of Operation Alba was of a different orientation to these episodes, because there was no pretence about *keeping* or even *enforcing* the peace in Albania. The central point of focus – the defining element of the mandate in Resolution 1101 (1997) – was humanitarian in nature and it fell to the fortune of the multinational protection force that both government and rebel forces were eager to welcome it and co-operate with its activities. These features are what distinguish it from previous United Nations actions where the intervention force associated with the provision of humanitarian assistance had shed its claim to neutrality and impartiality by participating in enforcement-type operations.⁹⁹

It is, however, also true that there were shades of past United Nations operations in Operation Alba, given the prioritisation granted to humanitarian assistance before any meaningful peace had been negotiated or secured:

Humanitarian assistance, electoral observation, human rights monitoring should be additional to the securing of peace, and not *in lieu* of it. Never again should the [United Nations] engage in a form of peace-keeping which endeavours to provide food while allowing the slaughter to continue.¹⁰⁰

96. K. Annan, 1993 (October) NATO Review, at 4.

97. Higgins, *supra* note 95, at 457.

98. *Id.*, at 458.

99. In his Supplement to An Agenda for Peace (1995), *supra* note 94, at paragraph A34, United Nations Secretary-General Boutros-Ghali wrote of a new form of peace-keeping operation which “forfeit[s] the consent of the parties, to behave in a way that was perceived to be partial and/or to use force other than in self-defence. These have been the tasks of protecting humanitarian operations during continuing warfare, protecting civilian populations in designated safe areas and pressing the parties to achieve national reconciliation at a pace faster than they were ready to accept.”

100. Higgins, *supra* note 95, at 460.

The *de facto* acceptance of Operation Alba by all interested parties and factions in Albania is what in the end underpinned its success. However, a clear identification of, and rigorous compliance with, its humanitarian objectives also allowed it to successfully complete its mission, despite the wording of the authorisation contained in the relevant resolution. To this extent, the authorisation for the use of force provided in Resolution 1101 (1997) acted as a vital legal safeguard for the multinational protection force, providing it with legal authority in and for the most precarious of circumstances. That safeguard could well have been triggered in the event of an outright collapse of the Albanian government (and, with it, the consent that had been given to the operation) or, quite plausibly, any hostile reception which the force encountered. In the former scenario, the expiry or evaporation of the host-state consent (either due to a change in policy or to the demise of the government) would have been decisive in the absence of Resolution 1101 (1997) – as was the case when Egypt withdrew its consent from the United Nations Emergency Force in 1967.¹⁰¹ In the latter case, interference with the freedom of the movement of the force or its personnel would have jeopardised the fulfilment of its mandate, and this, in turn, would have underscored the material importance of the authorisation contained in Resolution 1101 (1997).

5.3.6. *Security Council Authorisation and Resolution 1101 (1997)*

That the Security Council elected *not* to adopt a generic Chapter VII resolution in March 1997 is all too clear from the very text of Resolution 1101 (1997). However, the awkward nature of the qualified activation of its enforcement powers must mean that it is legitimate to question the interpretation of that resolution,¹⁰² particularly the nature of its contribution to the legal basis of Operation Alba and the regulation of its activities. Driven principally by political considerations, the wording of the resolution produces an unworkable distinction between the ‘objectives’ of the resolution (or its mandate) and its ‘authorisation’ of the use of armed force under Chapter VII. The creation of this distinction is especially questionable where the “humanitarian objectives” of the operation were an integral and indispensable aspect of its enterprise.¹⁰³ As the Steering

101. *See further*, G. Rosner, *The United Nations Emergency Force (1963)*.

102. The Security Council has been criticised on at least one previous occasion on the account that its authorisation was “hardly a model of clarity and [where] problems in its interpretation were inevitable,” *see supra* note 95 regarding the content of Security Council Resolution 836 (1993). Although, for further discussion, *see supra* note 83.

103. Third Report to the Security Council on the Operation of the Multinational Protection Force in Albania, Appendix to UN Doc. S/1997/362 (1997), para. 9, noting that the force had “already provided direct support to [...] international organisations [and] ensures security on the roads used by the United Nations Children’s Fund (UNICEF) for food deliveries in the north of Albania.” *See further*, statement of Sir John Weston, the representative of the United Kingdom and President of the Security Council, UN Doc. S/PV. 3811 (1997), at 3; statement of Ambassador Owada of Japan who re-

Committee had said in regard to the first phase of Operation Alba, its activities were “focuse[d] on acquiring control over a limited number of key points of entry into the country in order to permit the prompt transportation and stockpiling of aid.”¹⁰⁴ To this end, the provision of humanitarian assistance and the freedom of movement of the force were inseparable, and proved to be so on the ground. Troop deployments were made in northern, central and southern Albania, but also at the key location of Durres, where the first consignment of humanitarian assistance was delivered on 15 April 1997. Within the first month of its operations, control by air and sea of “key entry points” for the delivery of humanitarian aid had been achieved.¹⁰⁵ In view of the authorisation it gave to Operation Alba, the Security Council was therefore “simply shouldering its responsibilities in the humanitarian sphere.”¹⁰⁶

The emphasis on the “humanitarian objectives” of Operation Alba ultimately combined with the consent of the Albanian government for its mission,¹⁰⁷ making this precedent uniquely attached to the circumstances of the crisis. Chapter VII was invoked, but it was invoked in such an obscure manner that it seems almost worthless to dwell on the obscurity – the distinction made in the fourth operative paragraph of the Resolution 1101 (1997). The fundamental nature of the objectives of the operation – especially as applied in practice – would also

garded the episode as “an important precedent of military and politically co-ordinated multinational action under Chapter VII of the Charter,” *id.*, at 4; statement of Pellumb Kulla, Permanent Representative of Albania to the United Nations, who read the mandate in generic terms, to the effect that it was an “excellent example in the history of the operations authorised by the Security Council to protect international peace and security,” *id.*, at 14; and the statement of Mrs. Sandru of Romania who reported that the Romanian military had “carried out a variety of activities within the mandate assigned by the Security Council, ranging from providing security for humanitarian assistance of electoral-monitoring missions to ensuring a safe environment for the local population,” *id.*, at 24 (emphasis added). See also, in this regard, the second operative paragraph of Resolution 1101 (1997), which welcomed the Italian offer to lead and organise the multinational protection force – but also took note of “all the objectives” set out by Italy in its letter of 27 March 1997, see *supra* note 31 and accompanying text.

104. Second Report to the Security Council on the Operation of the Multinational Protection Force in Albania, Appendix to UN Doc. S/1997/335 (1997), para. 14. Although, *cf.* the position adopted in para. 12.
105. Third Report to the Security Council on the Operation of the Multinational Protection Force in Albania, Appendix to UN Doc. S/1997/362 (1997), para. 14. See also, Fourth Report to the Security Council on the Operation of the Multinational Protection Force in Albania, Appendix to UN Doc. S/1997/392 (1997), paras. 12 and 13, noting the force’s commitment to “ensur[ing] the security framework for civil and humanitarian missions as well as for humanitarian convoys” and that this “security framework” was being “progressively expanded.”
106. Statement of Sir John Weston, the representative of the United Kingdom and President of the Security Council, see UN Doc. S/PV. 3811 (1997), at 3; statement of Mr. Berrocal Soto of Costa Rica who stressed that the “intervention, which did no more than was necessary [and] was conducted with strict respect for the sovereignty and territorial integrity of Albania, with a purpose primarily humanitarian in nature,” *id.*, at 12 (emphasis added).
107. The representative of Slovenia directly correlated the Security Council action with the “appeal by the Albanian authorities for assistance,” *id.*, at 19.

tend to discount the significance of this distinction and advises against too literal a construction of the wording of the resolution. It is also doubtful whether the *consent* – given in the circumstances in which it was – of the government of Albania was able to provide an independent legal basis for Operation Alba, although its overall importance in securing the necessary authorisation from the Security Council cannot be over-emphasised.

Once the Security Council chose to act – and it acted with necessary haste – its resolution became a focal point for the identification of the humanitarian, rather than political, ambitions of Operation Alba (subsequently amended in Resolution 1114 (1997)) and of its duration. Indeed, this perception of the mandate was shared by all states participating in the intervention.¹⁰⁸ The specification of the humanitarian objectives of Operation Alba defused the crisis because it won the confidence and support of the rebels in southern Albania. It is still open to speculation whether the stabilising influence of the multinational protection force would have been achieved if the ‘objective’ was to help an ailing government to reassert its control and to restore its power-base – still less if this had been done without any involvement of or authorisation by the Security Council. The resolution sent a clear message to all concerned what the priorities of Operation Alba were and, in case the good-will that greeted the multinational protection force turned against it, provision had been made for the protection of the force in Resolution 1101 (1997).

6. CONCLUSION

Although the multinational orientation of Operation Alba – represented as it was by the armed forces of eleven states – cannot be denied,¹⁰⁹ its Italian dimension, origin or domination are no less in doubt. Italy, after all, had taken a lead in arguing for international intervention to stem the political crisis in Albania, and, with it, the tide of refugees that had begun to flow in her direction.¹¹⁰ This factor alone is what justified the Security Council’s conclusion that immediate action

108. D. Sarooshi, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII Powers* 221 (1999). Sarooshi remarks that “[e]ven though the member states participating in the mission may intend that it will be strictly humanitarian in nature, this does not mean, however, that there has not been a delegation to the [multinational protection force] of the competence to carry out military action, if necessary, to achieve its designated objective.”

109. Comprising forces from Austria, Belgium, Denmark, France, Greece, Italy, Portugal, Romania, Slovenia, Spain, Turkey, see XXXIV (3) *United Nations Chronicle*, at 56 (1997) and the Eighth Report to the Security Council on the Operation of the Multinational Protection Force in Albania, UN Doc. S/1997/513 (1997), para. 11.

110. In addition, 30,000 Albanians were reported to have fled across the border into neighbouring Greece in March 1997, see P. Harris, *Europe Steps Up Albanian Aid and Protection*, *Scotland on Sunday* (Edinburgh), 20 April 1997, at 19.

was necessary and that the matter was not simply one of domestic concern but also one that threatened international (albeit regional) peace and security. It is true that the determination of a threat to the peace constitutes one possible but necessary procedural ‘threshold’ which the Security Council must cross. It is this determination which “opens the route to large-scale intervention under Chapter VII” of the Charter of the United Nations.¹¹¹ Even though past Security Council understandings of the scope of this threshold have proved somewhat capricious and even controversial, its finding of a “threat to the peace” in the instant case coincides with a developing body of practice where situations of “extreme violence within a state can generally be qualified as a threat to the peace.”¹¹² Furthermore, but only to a qualified extent, Security Council authorisation of the intervention was perceived as an important legitimating factor for an operation engineered and led by Italy, especially given the historical experiences of her forces on Albanian soil.¹¹³ This trend, whereby the Security Council authorises an action not under the control of the United Nations – as in the cases of the coalition intervention in the 1990-1991 Gulf Conflict, the French ‘Operation Turquoise’ in Rwanda and the American intervention in Haiti in 1994 – looks set to continue for the time being.¹¹⁴

Once the Security Council decided to authorise military action in Albania in March 1997, it became very clear how much importance was attached to the need for an appropriate mandate for Operation Alba.¹¹⁵ Not only had there been a careful debate within the Security Council as to the substance and parameters of the mandate at the time of the adoption of Resolution 1101 (1997), but this

111. B. Simma (Ed.), *The Charter of the United Nations: A Commentary* 610 (1994).

112. *Id.*, at 611, citing as examples the situation in Yugoslavia (Security Council Resolution 713 (1992)), Somalia (Security Council Resolution 733 (1992)) and Liberia (Security Council Resolution 788 (1992)). For the possible development of a conceptual approach on this question, see further, White, *supra* note 88, at 42-47. This compares with the original intention and traditional understanding of the role and enforcement powers of the Security Council, see T.J. Farer & F. Gaer, *The UN and Human Rights: At the End of the Beginning*, in A. Roberts & B. Kingsbury (Eds.), *United Nations, Divided World: The UN's Roles in International Relations* 240, at 254-257 (1993).

113. Italy's colonial past in the Horn of Africa was used to argue for her delayed participation in Operation Restore Hope in Somalia in December 1992, see G. Prunier, *The Experience of European Armies in Operation Restore Hope*, in W. Clarke & J. Herbst (Eds.), *Learning from Somalia: The Lessons of Armed Humanitarian Intervention* 135, at 137 (1997). The contention was also made that Italy was in the “vanguard” of the intervention “for reasons of geography, history and perhaps even idealism”: *A Naughty New Bit of Nationalism*, *The Economist*, 19-25 April 1997, at 30.

114. Statement of Mr. Thiebaud of France that “this was not the first or the last time the Council will have acted thus, by placing initiatives taken by a group of states to help overcome and resolve a crisis in the framework of respect for the competence and principles of the United Nations,” see UN Doc. S/PV. 3811 (1997), at 6; Mr. Wlosowicz of Poland emphasised that “the importance and the capacity of a ‘coalition of the willing’: a coalition of those who well understand how important it is not to be indifferent to developments on our globe, especially when they threaten peace and security – needless to say, no matter where.” See, *id.*, at 8.

115. Sixth Report to the Security Council on the Operation of the Multinational Protection Force in Albania, Appendix to UN Doc. S/1997/460 (1997), para. 7. See further, White, *supra* note 89, at 127-128.

mandate was subsequently heeded by the commanders of Operation Alba in the field, particularly when they were confronted with an alternative – more expansive – interpretation of their responsibilities by the government of President Berisha. The importance given to the original mandate was further confirmed when the Security Council decided to adopt an additional resolution in June 1997 to detail the necessary and appropriate amendments made to the mandate for the operations of the multinational protection force stationed in Albania. This vigorous management by the Security Council of its own mandate, together with the clear sense of the role and expectations of the intervention force, doubtless contributed to the overall success of its deployment and the ultimate achievement of its objectives. Its presence in Albania certainly had a stabilising effect on the political unrest in that country,¹¹⁶ and it also lent an indispensable helping hand in the preparations for national elections, monitored by the OSCE,¹¹⁷ in June and July 1997. This was the overwhelming conclusion reached by members of the Security Council in their final deliberations of Operation Alba – held in an unmistakable mood of self-congratulation – on 14 August 1997.¹¹⁸ Those elections saw a resounding victory and return to power for Fatos Nano,¹¹⁹ whose election pledge it was to strengthen public institutions and to draw to a close the presence of foreign forces on Albanian territory.¹²⁰

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116. It was the view of the Steering Committee in its Final Report to the Security Council that the presence of the multinational protection force “effectively blocked the risk of Albania sliding towards anarchy or even internal political conflict,” see Appendix to UN Doc. S/1997/632 (1997), para. 13. See also, Section I of the Annual Report of 1997 of the OSCE Secretary-General on OSCE Activities, <http://www.osceprag.cz/inst/secret/anrep97.htm>.
117. Through the Office for Democratic Institutions and Human Rights, the OSCE supported the national elections with technical assistance and international monitoring. A visiting team of parliamentarians issued a statement for the OSCE on 30 June 1997, in which they described the election as “adequate and acceptable” and that the results of the elections formed “the foundations for a stable democratic state, which Albanians want and deserve,” see Section 2.2.3. of the Annual Report of 1997 of the OSCE Secretary-General on OSCE Activities, <http://www.osceprag.cz/inst/secret/anrep97.htm>; and see 4 (6) OSCE Newsletter (1997). See further, *Albanian President Admits Defeat But Won't Quit Yet*, New York Times, 1 July 1997, at A4.
118. Statements of the representatives of the United Kingdom and Japan, see UN Doc. S/PV. 3811 (1997), at 3-4; *id.*, at 5 (Egypt); *id.*, at 6 (France and the Russian Federation); *id.*, at 7 (Poland); *id.*, at 8 (the United States of America); *id.*, at 9 (Kenya); *id.*, at 10 (Guinea-Bissau and Korea); *id.*, at 11 (Sweden); *id.*, at 12 (Portugal and Costa Rica); *id.*, at 14 (Albania); *id.*, at 15 (Italy); *id.*, at 17 (Turkey); *id.*, at 18 (a statement made on behalf of the European Union and supported by Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and Cyprus as well as Iceland, Liechtenstein and Norway); *id.*, at 20 (Slovenia); *id.*, at 21 (Denmark) and *id.*, at 24 (Romania).
119. J. Steele, *Berisha Decides to Give Way Gracelessly*, The Guardian (London), 24 July 1997, at 13.
120. E. Cody, *Tirana Tries to Go It Alone: Leader Vows To End Chaos Without Foreigners*, International Herald Tribune (London), 30 July 1997, at 7. All contingents of the multinational protection force completed their operations and withdrew from Albania on 11 August 1997, see XXXIV (3) United Nations Chronicle, at 56 (1997). It should be noted that, upon the withdrawal of Operation Alba in August 1997, fighting broke out in Elbasan in which six people were reported to have been killed and eighteen wounded, see T. Butcher, *Six Die in Albania At End of UN Mission*, The Daily Telegraph (London), 16 August 1997, at 13.

ANNEX A: SECURITY COUNCIL RESOLUTION 1101 (1997)

Adopted by the Security Council at its 3578th meeting on 28 March 1997

The Security Council,

Taking note of the letter of 28 March 1997 from the Permanent Representative of Albania to the United Nations to the President of the Security Council (S/1997/259),

Taking note also of the letter of 27 March 1997 from the Permanent Representative of Italy to the United Nations to the Secretary-General (S/1997/258),

Taking note of Decision 160 of the Permanent Council of the Organisation for Security and Cooperation in Europe (OSCE) of 27 March 1997 (S/1997/259, Annex II), including to provide the coordinating framework within which other international organisations can play their part in their respective areas of competence,

Recalling the statement of the President of the Security Council on the situation in Albania of 13 March 1997 (S/PRST/1997/14),

Reiterating its deep concern over the deteriorating situation in Albania,

Underlining the need for all concerned to refrain from hostilities and acts of violence, and *reiterating* its call to the parties involved to continue the political dialogue,

Stressing the importance of regional stability, and in this context *fully supporting* the diplomatic efforts of the international community to find a peaceful solution to the crisis, in particular those of the OSCE and of the European Union,

Affirming the sovereignty, independence and territorial integrity of the Republic of Albania,

Determining that the present situation of crisis in Albania constitutes a threat to peace and security in the region,

1. *Condemns* all acts of violence and *calls* for their immediate end;
2. *Welcomes* the offer made by certain Member States to establish a temporary and limited multinational protection force to facilitate the safe and prompt delivery of humanitarian assistance, and to help create a secure environment for the missions of international organisations in Albania, including those providing humanitarian assistance;
3. *Welcomes further* the offer by a Member State contained in its letter (S/1997/258) to take the lead in organising and commanding this temporary multinational protection force and *takes note* of all the objectives contained in that letter;
4. *Authorises* the Member States participating in the multinational protection force to conduct the operation in a neutral and impartial way to achieve the objectives set out in paragraph 2 above and, acting under Chapter VII of the Charter of the United Nations, *further authorises* these Member States to ensure the security and freedom of movement of the personnel of the said multinational protection force;
5. *Calls upon* all those concerned in Albania to co-operate with the multinational protection force and international humanitarian agencies for the safe and prompt delivery of humanitarian assistance;
6. *Decides* that the operation will be limited to a period of three months from the adoption of the present resolution, at which time the Council will assess the situation on the basis of the reports referred to in paragraph 9 below;
7. *Decides* that the cost of implementing this temporary operation will be borne by the participating Member States;

8. *Encourages* the Member States participating in the multinational protection force to cooperate with the Government of Albania, the United Nations, the OSCE, the European Union and all international organisations involved in rendering humanitarian assistance in Albania;
9. *Requests* the Member States participating in the multinational protection force to provide periodic reports, at least every two weeks, through the Secretary-General, to the Council, the first such report to be made no later than 14 days after the adoption of this resolution, *inter alia* specifying the parameters and modalities of the operation on the basis of consultations between those Member States and the Government of Albania;
10. *Decides* to remain actively seized of the matter.

ANNEX B: SECURITY COUNCIL RESOLUTION 1114 (1997)

Adopted by the Security Council at its 3791st meeting on 19 June 1997

The Security Council,

Recalling its Resolution 1101 (1997) of 28 March 1997,

Recalling the statement of 13 March 1997 of its President on the situation in Albania (S/PRST/1997/14)

Taking note of the letter of 16 June 1997 from the Permanent Representative of Albania to the United Nations to the President of the Security Council (S/1997/464),

Taking note also of the sixth report to the Council on the operation of the multinational protection force in Albania (S/1997/460),

Taking note of Decision 160 of the Permanent Council of the Organisation for Security and Cooperation in Europe (OSCE) of 27 March 1997 (S/1997/259, Annex II), including to provide the coordinating framework within which other international organisations can play their part in their respective areas of competence,

Expressing appreciation for the neutral and impartial way in which the Council mandate has been carried out by the multinational protection force, in close co-operation with the Albanian authorities,

Reiterating its concern over the situation in Albania,

Underlining the need for all concerned to refrain from hostilities and acts of violence, and *calling* on the parties involved to continue the political dialogue and facilitate the electoral process,

Stressing the importance of regional stability, and in this context *fully supporting* the diplomatic efforts of the international community, particularly the OSCE and the European Union, to find a peaceful solution to the crisis and assist in the electoral process in Albania, in co-operation with the Albanian authorities,

Taking note of the need over a short period of time, as underlined in the sixth report on the operation of the multinational protection force in Albania, for a limited increase in the contingent originally planned, for the purpose of protecting the OSCE mission, especially in view of the planned elections,

Reaffirming the sovereignty, independence and territorial integrity of the Republic of Albania,

Determining that the present situation in Albania constitutes a threat to peace and security in the region,

1. *Condemns* all acts of violence and *calls* for their immediate end;
2. *Welcomes* the readiness of the countries contributing to the multinational protection force to maintain their military contingents in Albania for a limited time as part of the multinational protection force in the framework of the mandate provided by Resolution 1101 (1997);
3. *Further welcomes* the intention of the countries contributing to the multinational protection force to continue within the framework of the mandate provided by Resolution 1101 (1997), to facilitate the safe and prompt delivery of humanitarian assistance and to help create a secure environment for the missions of international organisations in Albania, including those providing humanitarian assistance, and *takes note* of all the elements contained in the sixth report to the Council on the operation of the multinational protection force in Albania, concerning, *inter alia*, the electoral monitoring mission of the OSCE-Office for Democratic Institutions and Human Rights;
4. *Authorises* the Member States participating in the multinational protection force to conduct the operation in a neutral and impartial way to achieve the objectives set out in paragraph 3 above and, *acting* under Chapter VII of the Charter of the United Nations, *further authorises* these Member States to ensure the security and freedom of movement of the personnel of the multinational protection force;
5. *Calls upon* all those concerned in Albania to co-operate with the multinational protection force and with the missions of the international organisations;
6. *Decides* that the operation will be limited to a period of forty-five days from 28 June 1997, at which time the Council will assess the situation on the basis of the reports referred to in paragraph 9 below;
7. *Decides* that the cost of implementing this temporary operation will be borne by the participating Member States;
8. *Encourages* the Member States participating in the multinational protection force to co-operate closely with the Government of Albania, the United Nations, the OSCE, the European Union and all international organisations involved in rendering humanitarian assistance in Albania;
9. *Requests* the Member States participating in the multinational protection force to provide periodic reports to the Council through the Secretary-General, at least every two weeks, the first such report to be made no later than 14 days after the adoption of this resolution, *inter alia* specifying the parameters and modalities of the operation on the basis of consultations between those Member States and the Government of Albania;
10. *Decides* to remain actively seized of the matter.