A Turning Point in International Efforts to Apprehend War Criminals

The UN Mandates Taylor's Arrest in Liberia

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Abstract

With Resolution 1638 (2005), the UN Security Council requested the peacekeeping mission in Liberia (UNMIL) to apprehend and detain former President Charles Taylor in the event of his return to Liberia, and to transfer him to the Special Court for Sierra Leone (SCSL). This new task assigned to a UN peacekeeping mission is a significant departure from previous practice. Although there are a few precedents of military troops acting within the framework of UN missions which have been authorized to arrest war criminals, the conferral of an explicit and clear mandate constitutes a welcome novelty. This resolution is indicative of the trend emerging in the UN Security Council's practice to combat impunity by enhancing the rule of law and promoting international criminal justice; in particular, it is notable because it evinces the Security Council's willingness to strengthen cooperation with international criminal tribunals. The examination of the precedents (UNOSOM II: Second United Nations Operation in Somalia and IFOR/SFOR, the NATO-led multinational force deployed in Bosnia-Herzegovina) is useful for the discussion of legal issues raised by Resolution 1638. The task of arresting a war criminal can easily be reconciled with the non-coercive nature of UN peacekeeping operations, provided that the consent of all parties involved is secured. Interestingly, UNMIL troops are not only authorized but also obliged to implement Resolution 1638.

After completion of this article, on 29 March 2006, Taylor was arrested while trying to flee Nigeria. He was put on a jet bound for Liberia, where at the airport he was taken into custody by UNMIL peacekeepers and flown by UN helicopter to the SCSL detention facilities at Freetown, Sierra Leone.

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1. A Novel and Groundbreaking Step Undertaken by the UN Security Council

On 11 November 2005, the UN Security Council adopted Resolution 1638, expanding the mandate of the UN peacekeeping mission in Liberia (UNMIL) to include the apprehension and detention of former President Charles Taylor, in the event of his return to Liberia. The resolution also provides for Taylor's transfer to Sierra Leone for prosecution before the Special Court for Sierra Leone (SCSL), where he faces an indictment for war crimes and crimes against humanity.[1]

According to the crucial paragraph of the resolution, the Security Council, acting under Chapter VII of the UN Charter:

> *Decides* that the mandate of the United Nations Mission in Liberia (UNMIL) shall include the following additional element: to apprehend and detain former President Charles Taylor in the event of a return to Liberia and to transfer him or facilitate his transfer to Sierra Leone for prosecution before the Special Court for Sierra Leone and to keep the Liberian Government, the Sierra Leonean Government and the Council fully informed.

This new duty assigned to a peacekeeping mission enables a significant and most welcome departure from UN practice. Apart from UN transitional administrations,[2] there are but few precedents in which military troops acting within the framework of a UN mission have been authorized to arrest war criminals. An *explicit mandate* granted to a UN peacekeeping force to apprehend and detain a *former Head of State* formally *indicted* by an international criminal tribunal, and to transfer him to such tribunal, therefore, represents a significant novelty.

2. The Precedents: UNOSOM II in Somalia and the NATO-led Multinational Force (IFOR/SFOR) in Bosnia–Herzegovina

The first example of a UN operation invested with the task of arresting and detaining war criminals is UNOSOM II.[3] In June 1993, the Security Council,

1 Indictment, *Taylor* (SCSL-03-01-I), 7 March 2003. The Special Court has already delivered a decision denying immunity from jurisdiction to Taylor: Decision on Immunity from Jurisdiction, *Taylor* (SCSL-03-01-I), 31 May 2004. These documents are available on the website of the SCSL, at www.sc-sl.org (visited January 2006). On this decision, see M. Frulli, 'The Question of Charles Taylor's Immunity: Still in Search of a Balanced Application of Personal Immunities?' 2 *Journal of International Criminal Justice (JICJ)* (2004), 1118–1129; S. Nouwen, 'The Special Court for Sierra Leone and the Immunity of Taylor: the Arrest Warrant Case Continued', 18 *Leiden Journal of International Law* (2005), 645–669.

2 This brief note will not address the powers conferred upon military forces acting in the framework of a UN Transitional Administration or Authority such as those established, for instance, in East Timor (UNTAET) and in Kosovo (UNMIK/KFOR). It is obvious that in these cases the military components are endowed with broad enforcement powers, including the power to arrest and detain war criminals, since they temporarily replace local authorities.

3 UNOSOM II (Second United Nations Operation in Somalia) was established by SC Resolution 814, 26 March 1993.

after a series of brutal attacks carried out by Somali militiamen against UN personnel,[4] decided to extend the mandate of the peacekeeping operation deployed at that time in Somalia. It reaffirmed that the Secretary-General was authorized under Resolution 814 to take all necessary measures against those responsible for the armed attacks and for publicly inciting their commission, 'including [to secure] the investigation of their actions, their arrest and detention for prosecution, trial and punishment'.[5]

Such authorization was enabled by the fact that UNOSOM II was initially endowed with the mandate to take appropriate action, including enforcement measures, to establish a secure environment for humanitarian assistance throughout Somalia.[6] In other words, it was not conceived *ab initio* as a classical peacekeeping operation, with a non-coercive nature. In Somalia, at that time, the collapse of state authorities made it unreasonable to deploy a traditional peacekeeping force, that is to say a neutral mission, based on consent of the host state and authorized to use force only in self-defence. The Security Council recommended that the Secretary-General establish a peace-enforcement operation, vested with Chapter VII powers.[7]

The additional policing task of securing investigations, arresting and detaining those responsible for serious armed attacks against peacekeepers, with a view to prosecution, trial and punishment was thus assigned to a mission already empowered to use force beyond self-defence. Resolution 837 did not expressly mention the names of wanted criminals. However, on the basis of the

4 In a series of armed attacks against UNOSOM II troops throughout south Mogadishu by Somali militias apparently belonging to General Aidid's faction, 25 Pakistani soldiers were killed, 10 were reported missing and 54 wounded, in total disregard of any rule of international humanitarian law.

5 SC Res. 837, 6 June 1993, § 5.

6 There is an extensive literature on UNOSOM II and on the other military operations conducted in Somalia between 1992 and 1996, see J. Sorel, 'La Somalie et les Nations Unies', in 38 *Annuaire Français de droit international* (1993), 61–88; R. Ramlogan, 'Towards a New Vision of World Security: the United Nations Security Council and the Lessons of Somalia', in 16 *Houston Journal of International Law* (1993), 213–260; A. Eckert, 'United Nations Peacekeeping in Collapsed States', in 5 *Journal of International Law and Practice* (1996), 273 ff. Several authors tackled, more generally, the attempt of the UN Security Council to establish peace-enforcement operations, see E. Clemons, 'No Peace to Keep: Six and Three-Quarters Peacekeepers', in 26 *New York University Journal of International Law and Politics* (1993), 107–141; C. Hägglund, 'Military Action by the United Nations', in 6 *Finnish Yearbook of International Law* (1995), 316–478; S. Tharoor, 'The Changing Face of Peacekeeping and Peace-enforcement', in 19 *Fordham International Law Journal* (1995), 408–427 and M. Kelly, *Restoring and Maintaining Order in Complex Peace Operations* (The Hague/Boston/London: Kluwer, 1999).

7 In the words of the Secretary-General: '(. . .) the threat to international peace and security which the Security Council ascertained in the third paragraph of resolution 794 is still in existence. Consequently, UNOSOM will not be able to implement the above mandate unless it is endowed with enforcement powers under Chapter VII of the Charter', *Report of the Secretary-General*, UN doc. S/25354, § 58.

relevant Secretary-General reports,[8] it may easily be inferred that the most sought-after individual was General Aidid, leader of one of the most powerful Somali factions, who was deemed responsible for ordering the attacks against UNOSOM II.

The UNOSOM II mission notoriously ended in failure. A few days after the adoption of Resolution 837, a military offensive was engaged by UN peacekeepers against Aidid's militia positions. UN troops opened fire, notwithstanding the fact that General Aidid and his supporters used civilians, including women and children, as human shields; there were several civilian victims. It soon became very clear that the situation was out of control and the deployed operation could not adequately fulfil its ambitious mandate. On 4 February 1994, the Security Council revised UNOSOM II's mandate to exclude the use of coercive methods.[9] Aidid was never arrested, let alone brought to trial.

The second precedent is the NATO-led multinational force (IFOR/SFOR), stationed in the territory of Bosnia-Herzegovina on the basis of the Dayton peace agreements and Security Council Resolution 1031.[10] IFOR/SFOR was not a peacekeeping operation — it may be considered as a peacekeeping force in the wider (and not technical) sense often attributed to this expression. More precisely, IFOR/SFOR was a multinational enforcement mission led by a regional Organization acting under Chapter VII of the UN Charter by virtue of Resolution 1031.[11] It may be included amongst the Forces created under the political authority of the UN Security Council on account of the so-called 'authorization regime'.[12]

One of the major tasks assigned to the NATO Force was to ensure compliance with Annex 1-A of the Dayton peace agreements — IFOR/SFOR was authorized to use armed force in carrying out its mandate. Enforcement powers, in this case, were not exceptional as with UNOSOM II. These 'authorized' operations are generally endowed with enforcement powers and do not raise issues of legality.

8 The complete documentation concerning UNOSOM II can be found in *The United Nations and Somalia (1992–1996)*, edited by the United Nations, *Blue Book Series* (New York: Department of Public Information, 1997). It should be noted that a reward of 25,000 dollars was promised to those who could provide any help in arresting General Aidid.

9 SC Res. 897, 4 February 2004.

10 SC Res. 1031, 15 December 1995.

11 According to UN SC Res. 1575 (22 November 2004) and the Decision of the Council of the European Union (2004/803/CFSP, 25 November 2004), Operation EUFOR-Althea was designated as the legal successor of SFOR and mandated to fulfil its mission, including the implementation of Annex 1–5 of the Dayton peace agreements in cooperation with NATO troops still stationed in Bosnia-Herzegovina.

12 On the 'authorization regime' there is extensive literature, see for instance N. Blokker, 'Is the Authorization Authorized? Powers and Practice of the UN Security Council to Authorize the Use of Force by "Coalitions of the Able and Willing" ', 11 *European Journal of International Law* (*EJIL*)(2000), 541–568 and, more recently E. de Wet, *The Chapter VII Powers of the United Nations Security Council* (Oxford: Hart Publishing, 2004) and literature quoted therein.

On the other hand, unlike UNOSOM II, IFOR/SFOR was never granted an explicit authorization by the Security Council to apprehend and detain war criminals indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY). This task was given to IFOR by a resolution of the North Atlantic Council, according to the provisions of Annex 1-A. The authorization was formulated in a rather innocuous language — it did not recommend that NATO troops search for those indicted by the ICTY, but simply stated that they should arrest the indictees who came into contact with IFOR in the execution of its assigned tasks.[13] It was debated at great length whether or not IFOR/SFOR was *obliged* to execute ICTY's arrest warrants.[14]

It took some time before NATO troops implemented this task efficiently, but after a slow beginning, IFOR/SFOR arrested several individuals indicted by the ICTY and transferred them to the Tribunal. This case illustrates the problems that may arise in the area of cooperation with an international criminal tribunal.

In sum, in neither case did the Security Council assign a direct and explicit mandate to arrest and transfer a suspected war criminal to an international criminal court, similar to the one contained in Resolution 1638. However, each of these precedents aid in clarifying the main legal problems that arise in the case before us.

3. The Possible General Motivations Behind the Security Council's Action

Before addressing the legal issues raised by Resolution 1638, it is appropriate to speculate on the possible motivations that led the UN Security Council to take this step in the specific circumstances of the case.

The debate accompanying the adoption of the resolution was rather brief and does not provide any clue as to what inspired the Security Council. However, if one looks at the resolution within the broader context of recent Security Council practice, it becomes apparent that the step undertaken by the

13 The Resolution reads: 'having regard to the United Nations Security Council Resolution 827, the United Nations Security Council Resolution 1031, and Annex 1-A of the General Framework Agreement for Peace in Bosnia and Herzegovina, IFOR should detain any persons indicted by the International Criminal Tribunal who come into contact with IFOR in its execution of assigned tasks, in order to assure the transfer of these persons to the International Criminal Tribunal'. This paragraph is cited in P. Gaeta, 'Is NATO Authorized or Obliged to Arrest Persons Indicted by the International Criminal Tribunal for the Former Yugoslavia?' 9 *EJIL* (1998), 174–181.

14 See Gaeta, *supra* note 13. Other authors have tackled the question of IFOR's power to arrest and detain war criminals, see J. Jones, 'The Implications of the Peace Agreements for the International Criminal Tribunal for the Former Yugoslavia', 7 *EJIL* (1996), 226–244; N. Figà-Talamanca, 'The Role of NATO in the Peace Agreement for Bosnia and Herzegovina', *ibid.*, 164–175.

Council is part and parcel of its growing concern with ensuring that the alleged authors of serious international crimes are prosecuted and punished. In other words, the resolution under discussion confirms the Security Council's tendency to increasingly resort to international criminal justice when faced with situations threatening international peace and security. It is worth noting that Resolution 1638 was adopted unanimously. Only Brazil and Argentina wished to make statements in explanation of their vote and they both underlined the importance of the Security Council's action in combating impunity.[15]

The first materialization of this tendency was of course the establishment of the international criminal tribunals for the former Yugoslavia and Rwanda, in 1993 and 1994, respectively. In the wake of serious threats to international peace deriving from the resort to armed violence in those two areas and the consequent perpetration of large-scale atrocities, the Security Council opted to set up international mechanisms for the prosecution of the presumed criminals. This decision was based on the reports provided by two international commissions of inquiry, which had previously been charged by the Security Council with the task of establishing whether grave breaches of international humanitarian law (in the former Yugoslavia) and possible acts of genocide (in Rwanda) had been committed on a large scale.[16]

The ad hoc tribunals also had a strong impact on the establishment of transitional justice mechanisms such as hybrid or internationalized tribunals, which were not directly created by the Security Council, but nevertheless were always supported by it and by other UN bodies. For instance, the SCSL was established by means of a bilateral agreement between the UN and the Government of Sierra Leone. That agreement was negotiated by the Secretary-General at the explicit request of the Security Council.[17] The 'Special Panels with jurisdiction over Serious Criminal Offences' within the District and the Appeal Courts in Dili were established by the UN Transitional

15 See, in particular, the statement of Garcìa Morìtan (Argentina): '(. . .) Impunity sends a bad sign for the future. It is an element that undermines a genuine process of national reconciliation. Peace can never really be achieved until those who have commited the gravest crimes against humanity are brought to justice. It is for this reason that we support the mandate that this resolution gives to the United Nations Mission in Liberia, within full respect for the sovereignty and legal order of theat country, to apprehend Mr. Charles Taylor and to facilitate his transfer to the Special Court for Sierra Leone for prosecution on the event that he returns to Liberia', UN doc. S/PV.5304, at 2.

16 The two international commissions of experts were respectively established on the basis of SC Resolution 780, 6 October 1992, and SC Resolution 935, 1 July 2004. It is also worth mentioning SC Resolution 1012, 28 August 2005 on the establishment of an international commission of inquiry with the mandate, *inter alia*: 'To establish the facts relating to the assassination of the President of Burundi on 21 October 1993, the massacres and other related serious acts of violence which followed'.

17 SC Res. 1315, 14 August 2000.

Administration in East Timor (UNTAET),[18] created by Resolution 1272 (1999) of the Security Council.

The Security Council took another step in the same direction[19] when it set up, in 2005, an International Commission of Inquiry on Darfur and tasked it, among other things, with determining whether genocide had taken place, as well as identifying the perpetrators of major international crimes committed in Darfur with a view to holding them accountable.[20] The Commission concluded that while no genocidal policy had been pursued in Darfur, crimes against humanity and war crimes had been committed on a large scale.[21] The Commission strongly recommended that the Security Council 'immediately refer the situation of Darfur to the International Criminal Court'.[22] The Security Council took up the proposal by deciding, for the first time subsequent to the entry into force of the International Criminal Court (ICC) Statute, to refer the situation to the Prosecutor of the ICC.[23]

Within this framework, Resolution 1638 may be interpreted as a further legal effort to hold perpetrators accountable for the most serious crimes under international law. Taking advantage of favourable political circumstances, the

18 See UNTAET Regulation 2000/15, 6 June 2000. There have also been a mixed tribunal for Cambodia, proposed under a national law specially promulgated in accordance with a treaty; a court within a court in the form of a Special Chamber in the State Court of Bosnia and Herzegovina; and the use of international judges and prosecutors in the courts of Kosovo, pursuant to regulations of the United Nations Interim Administration Mission in Kosovo (established by the Security Council).

19 In the past few years, a few other international commissions of inquiry were established to verify the occurrence of grave violations of human rights and international humanitarian law. The International Commission of Inquiry on East Timor was established by the UN Commission on Human Rights (resolution S-4/1 of 27 September 1999, for the Report see UN doc. S/2000/59, 31 January 2000), as well as the Commission of Inquiry into the Occupied Arab Territories, including Palestine (resolution S-5/1 of 19 October 2000, for the Report see UN doc. E/CN.4/2001/121, March 2001). The Commission of inquiry in relation to Ivory Coast (2004) was set up by the UN High Commissioner for Human Rights. The Report of the Commission of inquiry on the alleged human rights violations committed in connection with a march planned for the capital, Abidjan, on 25 March 2004 was transmitted to the Security Council on 13 May 2004 (UN doc. S/2004/384). The Report recommended that criminal investigations be carried out before an independent court with a view to prosecuting those responsible for the indiscriminate killings that took place on 25 and 26 March (§ 84).

20 By Resolution 1564, adopted on 18 September 2004, the SC requested the Secretary-General to establish an international, independent commission of inquiry 'to investigate violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable', § 12.

21 See *Report of the International Commission of Inquiry on Darfur to the Secretary General Pursuant to SC Res. 1564*, Annex to Letter dated 31 January 2005 from the Secretary-General addressed to the President of the Security Council, (UN doc. S/2005/60), 1 February 2005, §§ 489–522.

22 *Ibid.*, §§ 571–572.

23 SC Resolution 1593, 31 March 2005. For a series of critical comments on the creation of the Commission and on its Report, see the Symposium published on the report and its aftermath in 3 *JICJ* (2005), at 539 ff.

Security Council took a strong position against impunity for former Liberian President Charles Taylor and acted promptly with a view to bringing him to trial. What is also striking in this particular case is that the Council pushed for stronger cooperation with an international criminal tribunal by providing it with the means for exercising its judicial function. It is remarkable that in Resolution 1638, it stressed that former President Taylor remains under indictment by the SCSL and determined that 'his return to Liberia would constitute an impediment to stability and a threat to the peace of Liberia and to international peace and security in the region'. Hence, for the first time, the possible presence of a suspected (and already indicted) war criminal on the territory from which he had allegedly committed international crimes has been equated with a threat to peace and security.

4. Legal Issues Arising from SC Resolution 1638

A. Can the Power to Arrest an Indicted Person be Reconciled with the Typical Nature of UN Peacekeeping Operations?

One may wonder whether the task of arresting and detaining a suspected war criminal can be reconciled with the non-coercive nature of a peacekeeping operation. It is generally recognized that the UN peacekeeping missions rely on the consent of the host state, are bound to maintain impartiality among the parties involved and are authorized a limited use of force, under the notion of self-defence.[24]

The example of UNOSOM II seems to suggest that an authorization of this kind may only be given to a peacekeeping force that is endowed with enforcement powers from its inception. The view is widely shared that UNOSOM II could hardly be considered a traditional peacekeeping operation — it lacked all the three main characteristics distinguishing such operations.[25]

However, one may argue that the task of arresting war criminals can also be consistent with the updated multidimensional version of traditional peacekeeping operations, provided that the consent of the parties involved can be secured.

24 It suffices here to quote some of the most important contributions on UN peacekeeping: N.D. White, *Keeping the Peace. The United Nations and the Maintenance of International Peace and Security* (Manchester: Manchester University Press, 1993); M. Bothe, 'Peacekeeping', in B. Simma (ed.), *The Charter of the United Nations. A Commentary* (Oxford: Oxford University Press, 1994), 565–603; G. Abi-Saab, 'United Nations Peacekeeping Old and New: an Overview of the Issues', in D. Warner (ed.), *New Dimensions of Peacekeeping* (Dordrecht: Martinus Nijhoff, 1995), 1–9; D. Daniel and B. Hayes, *Beyond Traditional Peacekeeping* (New York, St Martin's Press, 1995); H. McCoubrey and N.D. White, *The Blue Helmets: Legal Regulations on United Nations Military Operations* (Aldershot/Brookfield/Syngapore/Sidney: Darmouth, 1997).

25 That is to say, as mentioned above: (1) consent of the host state, (2) impartiality and (3) use of force in self-defence.

A close look at the history of UN peacekeeping indicates that several missions — a majority of those created since the 1990s — were assigned very complex mandates requiring the troops involved to use a limited amount of armed force beyond self-defence *stricto sensu*. Peacekeeping forces have increasingly been established on the basis, and within the framework, of comprehensive peace agreements following long civil wars. These multifunctional operations[26] are usually established with the consent of all the parties involved, indeed they are often created upon the express request of the parties who signed the relevant peace agreement. In this respect, these missions clearly retain a non-coercive nature. At the same time, they are explicitly established under Chapter VII of the UN Charter and entrusted with a variety of functions that may well require them to use a limited amount of armed force.

It is not by chance that the principle of 'use of force in self-defence' has gradually been abandoned. The UN Security Council constantly referred to this principle up to a few years ago. It was most probably maintained as a politically correct formula, accepted both by the host states and by the states contributing the troops. However, if one carefully reviews peacekeeping practice, it is easy to note that the principle establishing the use of force in self-defence was never construed in a restrictive manner. Since the establishment of the first operations in the 1960s, self-defence was not intended in a personal sense (i.e. aimed at averting an imminent danger to life and limb of the peacekeepers), but always included the defence of the mandate (at times, very broad) assigned to the Force.[27] Recently, the reference to self-defence seems to have definitively disappeared, with the open acknowledgement that a limited amount of armed force beyond self-defence is necessary to carry out wide and complex mandates. On the other hand, the key pillar of peacekeeping operations remains consent of the host state or, as the case may be, consent of all parties involved.

UNMIL may well be viewed against this background — the Security Council, acting under Chapter VII, established this operation within the framework of a comprehensive peace agreement and assigned to it a variety of tasks that may require resort to a limited amount of armed force.[28] It seems that the additional task of apprehending and detaining Taylor is perfectly consistent with the functions of such a multidimensional peacekeeping force, provided it is adequately sized and equipped. What is even more important is that UNMIL's mandate, including this new task, is supported by the newly elected Liberian Government. Once the consent of the host government is ensured,

26 The expression multifunctional or multidimensional is widely used to indicate peacekeeping operations with both a military component and a large civilian component (usually divided in sub-sections: Human Rights, Elections, Civilian Police and so on.)

27 On the evolution of the concept of self-defence in UN peacekeeping, see M. Frulli, 'Le operazioni di *peacekeeping* delle Nazioni Unite e l'uso della forza', *Rivista di diritto internazionale* (2001), 347–392.

28 SC Resolution 1509, 19 September 2003.

the non-coercive nature of the Force is preserved and it is more likely to successfully implement its mandate.

From a legal perspective, the basis of such an enlarged mandate is sound, and Resolution 1638 does not necessarily entail a shift of UNMIL towards a peace-enforcement operation. From a practical point of view, in the event of Taylor's return to Liberia, cooperation between Liberian authorities and UN peacekeepers will probably be the crucial element leading to his arrest.

B. Do Peacekeepers have an Obligation to Cooperate with an International Criminal Tribunal?

By adopting Resolution 1638, the Security Council arguably entrusted UN peacekeepers with a duty to execute the arrest warrant for Taylor issued by the SCSL.[29] In the event of Taylor's return to Sierra Leone, UNMIL troops are bound to apprehend and transfer him to the Special Court. The language of the resolution leaves no room for doubt — the Security Council 'decides' that the mandate 'shall include'.

The imposition of an obligation on UN peacekeepers apparently outlines a different situation with from the one envisaged with respect to IFOR/SFOR. Some authors argued that the NATO Force also had the duty to execute the ICTY's arrest warrants.[30] The rather more convincing argument put forth by these commentators is that since SC Resolution 1031 reiterated all states' duty to cooperate with the ICTY, the obligation to execute ICTY's arrest warrants also bound IFOR contributing states, *qua* states, whenever they exercised the necessary degree of control over the territory of Bosnia and Herzegovina.[31]

The opposite view was also taken — it was argued that IFOR/SFOR was authorized, but not legally obligated, to arrest those indicted by the ICTY. With respect to the former argument, it was argued that in fact control over the territory was exercised by the multinational force as such and not by individual troop-contributing states. One of the reasons that led one of the commentators to reach this conclusion was precisely the absence of a Security Council resolution establishing an express obligation incumbent on NATO forces.[32] In any case, the situation was ambiguous at the very least, thus leaving room for the NATO states to claim that they were not legally bound to cooperate with the ICTY in the execution of arrest warrants.

29 There is a lively debate on the nature of the Special Court, see for instance M. Frulli, 'The Special Court for Sierra Leone: Some Preliminary Comments, 11 *EJIL* (2000), 857–869; S. Beresford and A.S. Muller, 'The Special Court for Sierra Leone: an Initial Comment', in 14 *Leiden Journal of International Law* (2001), 635–651; A. Kanu, G. Tortora, 'The Legal basis of the Special Court for Sierra Leone', in 3 *Chinese Journal of International Law* (2004), 515–552.

30 On account of SC resolution 827 and of Rule 55(B) of the Tribunal's Rules of Procedure and Evidence, see Jones, *supra* note 14, at 238–240.

31 See Jones, *ibid.*, and Figà-Talamanca, *supra* note 14, at 171–175.

32 See Gaeta, *supra* note 13, at § 3.

On this score, Resolution 1638 is a welcome novelty — it clearly sets out an obligation, incumbent on a UN peacekeeping Force, to cooperate with an international criminal tribunal as far as the execution of a specific arrest warrant is involved.

It also seems eminently suitable for the situation it is meant to address. The arrest warrant issued by the SCSL — unlike those emanating from the ICTY[33] — is not binding on all states, including Liberia and Nigeria (where Taylor found asylum), because the Special Court is a bilateral treaty-based court. By imposing an obligation on UN peacekeepers, the Security Council has succeeded in skillfully solving both a diplomatic and a legal problem. The Nigerian President reportedly announced that he was ready to leave Taylor to the request of a regularly elected Liberian government, and it is worth noting that the Security Council seems to acknowledge this possibility in the preamble of the resolution. While commending Nigeria for its efforts to bring peace and stability in the region, the Security Council referred to the *temporary stay* of Taylor in that country.[34] Thus, neither Nigeria nor Liberia should find themselves in the potentially difficult position of having to arrest Taylor. At the same time, the Security Council avoided imposing the obligation to execute SCLS's arrest warrants (or the arrest warrant against Taylor) on all UN member states.

Overall, the Security Council opted for a balanced solution — it took steps anticipating the event of Taylor's return to Liberia, but neither did it compel the Liberian government to arrest its former Head of State nor oblige Nigeria (a third state with respect to the SCSL) to do so. If Taylor is surrendered to Liberia, then UNMIL, thanks to Resolution 1638 and to the cooperation of Liberian authorities, is most likely to be able to accomplish its task.

33 Even though IFOR/SFOR was not under the obligation to execute ICTY's arrest warrants, all UN Member States (and the parties to the Dayton peace agreements) have the duty to cooperate with the Tribunal. This of course increases the chances of apprehending those indicted by the Tribunal.

34 The preamble reads: '*Expressing* its appreciation to Nigeria and its President, Olusegun Obasanjo, for their contributions to restoring stability in Liberia and the West African subregion, and acknowledging that Nigeria acted with broad international support when it decided to provide for the temporary stay of former President Charles Taylor in Nigeria'.