## 

The Delegation by the UN Security Council of its Chapter VII Powers

DANESH SAROOSHI

## Contents

## Summary

Table of Casas	, ·	Page
Table of Cases		xxi
INTRODUCT	ION	1
CHAPTER 1:	THE GENERAL LEGAL FRAMEWORK GOVERNING THE PROCESS OF A	
	DELEGATION BY THE UN SECURITY	
	COUNCIL OF ITS CHAPTER VII POWERS	3
CHAPTER 2:	THE DELEGATION OF POWERS TO THE UN	
	SECRETARY-GENERAL	50
CHAPTER 3:	THE DELEGATION OF POWERS TO UN SUBSIDIARY ORGANS	86
		00
CHAPTER 4:	THE LEGAL FRAMEWORK GOVERNING THE	
	DELEGATION OF POWERS TO UN MEMBER STATES	142
CHAPTER 5:	THE DELEGATION OF POWERS TO UN	
	MEMBER STATES	167
CHAPTER 6:	THE DELEGATION OF POWERS TO	
	REGIONAL ARRANGEMENTS	247
CONCLUDIN	G REMARKS	285
Bibliography		287
Index		307

xvi Contents

CHAPTER 2. THE DELEGATION OF POWERS TO THE UN SECRETARY-GENERAL	50
I. THE COMPETENCE OF THE COUNCIL TO DELEGATE CHAPTER VII POWERS TO THE SECRETARY-GENERAL	51
II. THE LEGAL FRAMEWORK GOVERNING THE EXERCIZE OF DELEGATED CHAPTER VII POWERS BY THE SECRETARY-GENERAL	53
<ol> <li>The competence of the Secretary-General to exercise delegated Chapter VII powers</li> <li>The limitations that restrict the exercise by the Secretary-</li> </ol>	53
General of delegated Chapter VII powers  3. The interpretation by the Secretary-General of delegated Chapter VII powers	55 57
III. THE PRACTICE OF THE SECRETARY-GENERAL IN EXERCIZING DELEGATED CHAPTER VII POWERS	59
<ol> <li>The delegation of Chapter VII power to the Secretary-General to conduct the internal governance of a State</li> <li>The delegation to the Secretary-General of certain powers</li> </ol>	59
in respect of UN peacekeeping operations (a) The establishment of UN peacekeeping forces by the	63
Secretary-General  (b) The exercise of command and control powers over  UN peacekeeping forces	64 67
(c) The competence to order the use of force in defence of UN peacekeepers  3. The delegation to the Secretary-General of certain powers	71
in respect of a military enforcement force	76
<ul><li>(a) The case of a UN peacekeeping force</li><li>(b) The case of a regional arrangement: air strikes in the former Yugoslavia</li></ul>	77 83
CHAPTER 3. THE DELEGATION OF POWERS TO UN SUBSIDIARY ORGANS	86
I. UN SUBSIDIARY ORGANS: ISSUES OF DEFINITION	87
II. THE AUTHORITY OF UN PRINCIPAL ORGANS TO ESTABLISH SUBSIDIARY ORGANS: THE COMPETENCE OF THE COUNCIL TO DELEGATE	
CHAPTER VII POWERS TO SUBSIDIARY ORGANS	92

Contents	xvii
<ol> <li>The nature of the authority to establish subsidiary organs</li> <li>The delegation of a power of discretion to</li> </ol>	92
subsidiary organs	98
(a) The delegation of a power of binding decision	101
(b) The case of the Unified Command in Korea	110
<ul><li>(i) The delegation of command and control powers</li><li>(ii) The purported delegation of the power to decide when to terminate military enforcement</li></ul>	111
action	115
III. PRECONDITIONS FOR THE LAWFUL ESTABLISHMENT OF UN SUBSIDIARY ORGANS	119
<ol> <li>Establishment must be by a principal organ</li> <li>A principal organ must exercise authority and control</li> </ol>	119
over its subsidiary organ	128
3. The establishment of a subsidiary organ must not violate the delimitation of powers between principal organs	
specified by the Charter	133
(a) International peace and security	134
(b) United Nations finances	137
CHAPTER 4. THE LEGAL FRAMEWORK GOVERNING THE DELEGATION OF POWERS TO UN MEMBER STATES	142
I. THE COMPETENCE OF THE COUNCIL TO DELEGATE CHAPTER VII POWERS TO	
UN MEMBER STATES	143
II. LIMITATIONS ON THE COMPETENCE OF THE COUNCIL TO DELEGATE CHAPTER VII POWERS	1.70
TO MEMBER STATES	153
III. RESPONSIBILITY FOR THE ACTS OF A FORCE CARRYING OUT UN AUTHORIZED MILITARY	
ENFORCEMENT ACTION	163
CHAPTER 5. THE DELEGATION OF POWERS TO UN MEMBER STATES	167
I. A DELEGATION OF POWERS TO COUNTER A USE	1
OF FORCE BY A STATE OR ENTITIES WITHIN A STATE	168
1. The case of Korea  2. The case of Iraq	169 174

xviii Contents

	(a) The nature of the Security Council's authorization in resolution 678	175
	(b) The powers delegated to Member States by	175
	resolution 678	177
	(i) The delegation to Member States of the power to use force	178
	(ii) The command and control of forces in the Gulf War	185
	3. The case of Somalia	187
	4. The case of Bosnia: the Rapid Reaction Force	191
II.	A DELEGATION OF POWERS TO CARRY OUT	
	A NAVAL INTERDICTION	194
	1. The case of Southern Rhodesia	195
	2. The case of Iraq	200
	3. The case of Haiti	207
III.	A DELEGATION OF POWERS TO ACHIEVE	
	HUMANITARIAN OBJECTIVES	210
	1. The delivery of humanitarian assistance in Somalia	211
10	2. The delivery of humanitarian assistance in Bosnia	217
	3. The delivery of humanitarian assistance and the creation	
	of a secure environment in Albania	220
	4. The establishment of a safe haven in Rwanda	223
	5. The establishment of a safe area in Iraq	226
IV.	A DELEGATION OF POWERS TO ENFORCE A	
	COUNCIL DECLARED NO-FLY ZONE: THE CASE	
	OF IRAQ	229
V.	A DELEGATION OF POWERS TO ENSURE	
	IMPLEMENTATION BY PARTIES OF AN	
	AGREEMENT WHICH THE COUNCIL HAS DEEMED	
	IS NECESSARY FOR THE MAINTENANCE OR	
	RESTORATION OF PEACE	232
	1. The Governors Island Agreement: the restoration of	
	democracy in Haiti	233
	2. The Bangui Agreements in the Central African Republic	244
СН	APTER 6. THE DELEGATION OF POWERS TO	
	REGIONAL ARRANGEMENTS	247
I.	THE COMPETENCE OF THE COUNCIL TO	
	DELEGATE CHAPTER VII POWERS TO REGIONAL	
	ARRANGEMENTS	248

Contents	xix
II. THE DELEGATION OF POWERS TO NATO	253
<ol> <li>The attempt to protect UN declared 'safe areas' in         Bosnia</li> <li>A delegation of powers to carry out a naval interdiction:         the case of the former Yugoslavia</li> </ol>	254 263
<ul> <li>3. A delegation of powers to enforce a Council declared no-fly zone: the case of Bosnia</li> <li>4. A delegation of powers to ensure implementation by parties of an agreement which the Council has deemed necessary for the maintenance or restoration of peace: the case of the Dayton Peace Agreement for Bosnia</li> </ul>	268 272
III. THE POLICY OF DELEGATING CHAPTER VII POWERS TO REGIONAL ARRANGEMENTS	281
CONCLUDING REMARKS	285
Bibliography	
Index	307