CHAPTER 8
UNITED KINGDOM SOFAs AND RULES OF ENGAGEMENT IN FORMER YUGOSLAVIA: SOME FURTHER REFLECTIONS

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A. INTRODUCTION

In February 2000, the Western press reported,

Serbs threw stones and bricks yesterday at NATO-led troops starting an extensive house-to-house search for weapons in the divided town of Mitrovice in northern Kosovo. The sweep was conducted by about 2,500 soldiers from several countries. . . . Witnesses said . . . Americans forced entry into some flats in at least one building when people apparently refused to open their doors. . . . [A local Serb leader] said the French searched for weapons every day without a violent reaction. The ethnic Albanians say that the French forces are too easy-going.\(^1\)

This Chapter seeks to address a number of operational legal questions that confront international peace enforcers in situations where war or armed conflict in a foreign territory has not occurred or has ceased. Taking, in particular, the case of Kosovo, we seek to explore the somewhat ambiguous legal status, vis-à-vis that territory’s governing authority, of peacekeepers or peace enforcers who between 1999 and 2000 endeavored to maintain public order, prevent ethnic conflict, and reduce crime in theater. We also seek to examine in relation to service personnel, whether they are on patrol or on search operations, the scope of their legal powers to fulfill those aims. An examination of this nature therefore touches on such legal sources as the relevant United Nations mandate, rules of engagement for peace enforcers, police powers (such as in respect to arrest, detention, entry, search and seizure) exercised by military personnel, and the criminal justice process in theater.

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\(^1\) **GUARDIAN**, Feb. 21, 2000. An Albanian accusation was that the French forces permitted a *de facto* partition of the city. Unless otherwise indicated, this Chapter covers events up to Spring 2000.
The circumstances in Kosovo have been unique in recent European experience in terms of the absence of a pre-existing civilian government authority with whom nations or international organizations providing peace support forces would negotiate the legal framework within which such operations would be conducted. Thus, in operations other than Kosovo, one finds that an international mandate for intervention is normally supplemented by Status of Forces Agreements (SOFAs) between the sending and host nations. These determine such matters as whether international peacekeepers are to be subject to the criminal law of the host nation or to that of the sending nation (or other permutations) or whether, for example, peace support forces are to be subject to local taxes. Thus while the question of drafting a SOFA for the Kosovo theater was not pursued by the interested authorities (for the futility of such an endeavor must surely be apparent whenever one poses the question, “With whom would KFOR have signed such an agreement in the circumstances prevailing in the second half of 1999?”), it was an issue in respect to peace support deployments in Bosnia (from 1992) and Croatia (from 1995). Accordingly, this Chapter will also address, albeit to a limited extent, matters pertaining to SOFAs in theater and, indeed, will examine this matter first before proceeding to consider the particular issue of the upholding by peace support forces of public order among the civilian population of Kosovo.

B. SOFAs IN BOSNIA AND CROATIA

The focus in this section is on arrangements between the British government and the host nations, though concerns of other force-contributing nations, especially the United States, will be noted. It is assumed that the reader is acquainted with the criminal jurisdiction rationale for SOFAs when troops of a sending nation are deployed abroad for operational duties. The reservation of exclusive criminal law jurisdiction to the sending nation, which might be perceived as a diminution of the sovereignty of the receiving state, is widely accepted as a practical and pragmatic policy, particularly where the offenses committed by sending-nation troops are service-related rather than civil offenses. For without such arrangements there might be hesitation on the part of force-contributing nations to deploy their troops abroad if the sending nation were to harbor concerns regarding the quality of justice meted out by a host nation’s criminal courts.²

It is assumed, furthermore, that the reader is aware that SOFAs also typically include provisions regarding freedom of movement for sending-nation forces; the right to bear arms and wear uniforms; the use of airports, roads and harbors; provisions regarding customs and local taxes; and many other administrative matters.

² Who can tell whether, in the absence of an appropriate SOFA, British servicemen would not be treated in a similar, or indeed in a more severe, manner to that accorded nearly 50 years ago to three British soldiers in Kure, Japan? They were sentenced in 1954 to between three-and-a-half and five years penal servitude for assault and theft of 800 yen (about ten shillings). See THE TIMES, Mar. 10, 1954.