CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

GRAND CHAMBER

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 71412/01
by Agim BEHRAMI and Bekir BEHRAMI
against France
and
Application no. 78166/01
by Ruzhdi SARAMATI
against France, Germany and Norway

The European Court of Human Rights, sitting on 2 May 2007 as a Grand Chamber composed of:

Mr C.L. ROZAKIS, *President,*
Mr J.-P. COSTA,
Sir Nicolas BRATZA,
Mr B.M. ZUPANČIČ,
Mr P. LORENZEN,
Mr I. CABRAL BARRETO,
Mr M. PELLONPÄÄ,
Mr A.B. BAKA,
Mr K. TRAJA,
Mrs S. BOTOUCHAROVA,
Mr M. UGREKHELIDZE,
Mrs A. MULARONI,
Mrs E. FURA-SANDSTRÖM,
Mrs A. GYULUMYAN,
Mr E. MYJER,
Ms D. JOČIENĖ,
Mr D. POPOVIĆ, *judges,*

and Mr M. O'BOYLE, *Deputy Registrar*,

Having regard to the above applications lodged on 28 September 2000 and 28 September 2001, respectively

Having regard to the decision of 13 June 2006 by which the Chamber of the Second Section to which the cases had originally been assigned relinquished its jurisdiction in favour of the Grand Chamber, none of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72 of the Rules of Court),

Having regard to the agreement of the parties to the *Saramati* case to the appointment of a common interest judge (Judge Costa) pursuant to Rule 30 of the Rules of Court,

Having regard to the parties' written and oral submissions and noting the agreement of Germany not to make oral submissions following the applicant's request to withdraw his case against that State (paragraphs 64-65 of the decision below),

Having regard to the written submissions of the United Nations requested by the Court, the comments submitted by the Governments of the Denmark, Estonia, Greece, Poland, Portugal and of the United Kingdom as well as those of the German Government accepted as third party submissions, all under Rule 44(2) of the Rules of Court,

Having regard to the oral submissions in both applications at a hearing on 15 November 2006,

Having decided to join its examination of both applications pursuant to Rule 42 § 1 of the Rules of Court,

Having deliberated on 15 November 2006 and on 2 May 2007, decides as follows:

THE FACTS[1]

1. Mr Agim Behrami, was born in 1962 and his son, Mr Bekir Behrami, was born in 1990. Both are of Albanian origin. Mr Agim Behrami complained on his own behalf, and on behalf of his deceased son, Gadaf Behrami born in 1988. These applicants live in the municipality of Mitrovica in Kosovo, Republic of Serbia. They were represented by Mr Gazmend Nushi, a lawyer with the Council for the Defence of Human Rights and Freedoms, an organisation based in Pristina, Kosovo. Mr Saramati was born in 1950. He is also of Albanian origin living in Kosovo. He was represented by Mr Hazer Susuri of the Criminal Defence Resource Centre, Kosovo. At the oral hearing in the cases, the applicants were further represented by Mr Keir Starmer, QC and Mr Paul Troop as Counsel, assisted by Ms Nuala Mole, Mr David Norris and Mr Ahmet Hasolli, as Advisers.

The French Government were represented by their Agents, Mr R. Abraham, Mr J.-L. Florent and, subsequently, Ms Edwige Belliard, assisted

[1] The abbreviations used are explained in the text but also listed in alphabetical order in the Appendix to this decision.

by Ms Anne-Françoise Tissier and by Mr Mostafa Mihraje, advisers, all of the legal directorate of the Ministry of Foreign Affairs.

The German Government were represented by Dr Hans-Jörg Behrens, Deputy Agent and Professor Dr. Christian Tomuschat, Counsel. The Norwegian Government were represented by their Agents, Mr Rolf Einar Fife and Ms Therese Steen, assisted by Mr Torfinn Rislaa Arnsten, Adviser.

I. RELEVANT BACKGROUND TO THE CASES

2. The conflict between Serbian and Kosovar Albanian forces during 1998 and 1999 is well documented. On 30 January 1999, and following a decision of the North Atlantic Council ("NAC") of the North Atlantic Treaty Organisation ("NATO"), NATO announced air strikes on the territory of the then Federal Republic of Yugoslavia ("FRY") should the FRY not comply with the demands of the international community. Negotiations took place between the parties to the conflict in February and March 1999. The resulting proposed peace agreement was signed by the Kosovar Albanian delegation but not by the Serbian delegation. The NAC decided on, and on 23 March 1999 the Secretary General of NATO announced, the beginning of air strikes against the FRY. The air strikes began on 24 March 1999 and ended on 8 June 1999 when the FRY troops agreed to withdraw from Kosovo. On 9 June 1999 "KFOR", the FRY and the Republic of Serbia signed a "Military Technical Agreement" ("MTA") by which they agreed on FRY withdrawal and the presence of an international security force following an appropriate UN Security Council Resolution ("UNSC Resolution").

3. UNSC Resolution 1244 of 10 June 1999 provided for the establishment of a security presence (KFOR) by "Member States and relevant international institutions", "under UN auspices", with "substantial NATO participation" but under "unified command and control". NATO pre-deployment to The Former Yugoslav Republic of Macedonia allowed deployment of significant forces to Kosovo by 12 June 1999 (in accordance with OPLAN 10413, NATO's operational plan for the UNSC Resolution 1244 mission called "Operation Joint Guardian"). By 20 June FRY withdrawal was complete. KFOR contingents were grouped into four multinational brigades ("MNBs") each of which was responsible for a specific sector of operations with a lead country. They included MNB Northeast (Mitrovica) and MNB Southeast (Prizren), led by France and Germany, respectively. Given the deployment of Russian forces after the arrival of KFOR, a further agreement on 18 June 1999 (between Russia and the United States) allocated various areas and roles to the Russian forces.

4. UNSC Resolution 1244 also decided on the deployment, under UN auspices, of an interim administration for Kosovo (UNMIK) and requested the Secretary General ("SG"), with the assistance of relevant international

organisations, to establish it and to appoint a Special Representative to the SG ("SRSG") to control its implementation. UNMIK was to coordinate closely with KFOR. UNMIK comprised four pillars corresponding to the tasks assigned to it. Each pillar was placed under the authority of the SRSG and was headed by a Deputy SRSG. Pillar I (as it was at the relevant time) concerned humanitarian assistance and was led by UNHCR before it was phased out in June 2000. A new Pillar I (police and justice administration) was established in May 2001 and was led directly by the UN, as was Pillar II (civil administration). Pillar III, concerning democratisation and institution building, was led by the Organisation for Security and Co-operation in Europe ("OSCE") and Pillar IV (reconstruction and economic development) was led by the European Union.

II THE CIRCUMSTANCES OF THE BEHRAMI CASE

5. On 11 March 2000 eight boys were playing in the hills in the municipality of Mitrovica. The group included two of Agim Behrami's sons, Gadaf and Bekim Behrami. At around midday, the group came upon a number of undetonated cluster bomb units ("CBUs") which had been dropped during the bombardment by NATO in 1999 and the children began playing with the CBUs. Believing it was safe, one of the children threw a CBU in the air: it detonated and killed Gadaf Behrami. Bekim Behrami was also seriously injured and taken to hospital in Pristina (where he later had eye surgery and was released on 4 April 2000). Medical reports submitted indicate that he underwent two further eye operations (on 7 April and 22 May 2000) in a hospital in Bern, Switzerland. It is not disputed that Bekim Behrami was disfigured and is now blind.

6. UNMIK police investigated. They took witness statements from, *inter alia*, the boys involved in the incident and completed an initial report. Further investigation reports dated 11, 12 and 13 March 2000 indicated, *inter alia*, that UNMIK police could not access the site without KFOR agreement; reported that a French KFOR officer had accepted that KFOR had been aware of the unexploded CBUs for months but that they were not a high priority; and pointed out that the detonation site had been marked out by KFOR the day after the detonation. The autopsy report confirmed Gadaf Behrami's death from multiple injuries resulting from the CBU explosion. The UNMIK Police report of 18 March 2000 concluded that the incident amounted to "unintentional homicide committed by imprudence".

7. By letter dated 22 May 2000 the District Public Prosecutor wrote to Agim Behrami to the effect that the evidence was that the CBU detonation was an accident, that criminal charges would not be pursued but that Mr Behrami had the right to pursue a criminal prosecution within eight days of the date of that letter. On 25 October 2001 Agim Behrami complained to the Kosovo Claims Office ("KCO") that France had not respected UNSC Resolution 1244. The KCO forwarded the complaint to the French Troop

Contributing Nation Claims Office (TCNCO"). By letter of 5 February 2003 that TCNCO rejected the complaint stating, *inter alia*, that the UNSC Resolution 1244 had required KFOR to supervise mine clearing operations until UNMIK could take over and that such operations had been the responsibility of the UN since 5 July 1999.

III. THE CIRCUMSTANCES OF THE SARAMATI CASE

8. On 24 April 2001 Mr Saramati was arrested by UNMIK police and brought before an investigating judge on suspicion of attempted murder and illegal possession of a weapon. On 25 April 2001 that judge ordered his pre-trial detention and an investigation into those and additional charges. On 23 May 2001 a prosecutor filed an indictment and on 24 May 2001 the District Court ordered his detention to be extended. On 4 June 2001 the Supreme Court allowed Mr Saramati's appeal and he was released.

9. In early July 2001 UNMIK police informed him by telephone that he had to report to the police station to collect his money and belongings. The station was located in Prizren in the sector assigned to MNB Southeast, of which the lead nation was Germany. On 13 July 2001 he so reported and was arrested by UNMIK police officers by order of the Commander of KFOR ("COMKFOR"), who was a Norwegian officer at the time.

10. On 14 July 2001 detention was extended by COMKFOR for 30 days.

11. On 26 July 2001, and in response to a letter from Mr Saramati's representatives taking issue with the legality of his detention, KFOR Legal Adviser advised that KFOR had the authority to detain under the UNSC Resolution 1244 as it was necessary "to maintain a safe and secure environment" and to protect KFOR troops. KFOR had information concerning Mr Saramati's alleged involvement with armed groups operating in the border region between Kosovo and the Former Yugoslav Republic of Macedonia and was satisfied that Mr Saramati represented a threat to the security of KFOR and to those residing in Kosovo.

12. On 26 July 2001 the Russian representative in the UNSC referred to "the arrest of Major Saramati, the Commander of a Kosovo Protection Corps Brigade, accused of undertaking activities threatening the international presence in Kosovo".

13. On 11 August 2001 Mr Saramati's detention was again extended by order of COMKFOR. On 6 September 2001 his case was transferred to the District Court for trial, the indictment retaining charges of, *inter alia*, attempted murder and the illegal possession of weapons and explosives. By letter dated 20 September 2001, the decision of COMKFOR to prolong his detention was communicated to his representatives.

14. During each trial hearing from 17 September 2001 to 23 January 2002 Mr Saramati's representatives requested his release and the trial court

responded that, although the Supreme Court had so ruled in June 2001, his detention was entirely the responsibility of KFOR.

15. On 3 October 2001 a French General was appointed to the position of COMKFOR.

16. On 23 January 2002 Mr Saramati was convicted of attempted murder under Article 30 § 2(6) of the Criminal Code of Kosovo in conjunction with Article 19 of the Criminal Code of the FRY. He was acquitted on certain charges and certain charges were either rejected or dropped. Mr Saramati was transferred by KFOR to the UNMIK detention facilities in Prishtina.

17. On 9 October 2002 the Supreme Court of Kosovo quashed Mr Saramati's conviction and his case was sent for re-trial. His release from detention was ordered. A re-trial has yet to be fixed.

IV. RELEVANT LAW AND PRACTICE

A. The prohibition on the unilateral use of force and its collective security counterpart

18. The prohibition on the unilateral use of force by States, together with its counterpart principle of collective security, mark the dividing line between the classic concept of international law, characterised by the right to have recourse to war (*ius ad bellum*) as an indivisible part of State sovereignty, and modern international law which recognises the prohibition on the use of force as a fundamental legal norm (*ius contra bellum*).

19. More particularly, the *ius contra bellum* era of public international law is accepted to have begun (at the latest, having regard, *inter alia*, to the Kellog-Briand Pact signed in 1928) with the end of the First World War and with the constitution of the League of Nations. The aim of this organisation of universal vocation was maintaining peace through an obligation not to resort to war (First recital and Article 11 of the Covenant of the League of Nations) as well as through universal systems of peaceful settlement of disputes (Articles 12-15 of the Covenant) and of collective security (Article 16 of the Covenant). It is argued by commentators that, by that stage, customary international law prohibited unilateral recourse to the use of force unless in self-defence or as a collective security measure (for example, R. Kolb, "*Ius Contra Bellum – Le Droit international relatif au maintien de la paix*", Helbing and Lichtenhahn, Bruylant, 2003, pp. 60-68).

20. The UN succeeded the League of Nations in 1946. The primary objective of the UN was to maintain international peace and security (First recital and Article 1 § 1 of the Charter) and this was to be achieved through two complimentary actions. The first, often described as "positive peace" (the Preamble to the Charter as well as Article 2 § 3, Chapter VI, Chapter IX-X and certain measures under Article 41 of Chapter VII), aimed at the suppression of the causes of dispute and the building of sustainable peace.

The second type of action, "negative peace", was founded on the Preamble, Article 2 § 4 and most of the Chapter VII measures and amounted to the prohibition of the unilateral use of force (Article 2 § 4) in favour of collective security implemented by a central UN organ (the UNSC) with the monopoly on the right to use force in conflicts identified as threatening peace. Two matters were essential to this peace and security mechanism: its "collective" nature (States had to act together against an aggressor identified by the UNSC) as well as its "universality" (competing alliances were considered to undermine the mechanism so that coercive action by regional organisations was subjected to the universal system by Article 53 of the Charter).

B. The Charter of the UN, 1945

21. The Preamble as well as Articles 1 and 2, in so far as relevant, provide as follows:

> "WE THE PEOPLES OF THE UNITED NATIONS DETERMINED
>
> - to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
>
> - to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
>
> - to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
>
> - to promote social progress and better standards of life in larger freedom,
>
> AND FOR THESE ENDS
>
> - to practice tolerance and live together in peace with one another as good neighbours, and
>
> - to unite our strength to maintain international peace and security, and
>
> - to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
>
> - to employ international machinery for the promotion of the economic and social advancement of all peoples,
>
> HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS
>
> Accordingly, our respective Governments, ..., have agreed to the present Charter of the United Nations and do hereby establish an international organisation to be known as the United Nations.
>
> Article 1
>
> The Purposes of the United Nations are:
>
> 1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the

suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

...

Article 2

...

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

...

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII."

22. Chapter V deals with the UNSC and Article 24 outlines its "Functions and Powers" as follows:

"1. In order to ensure prompt and effective action by the [UN], its Members confer on the [UNSC] primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the [UNSC] acts on their behalf.

2. In discharging these duties the [UNSC] shall act in accordance with the Purposes and Principles of the [UN]. The specific powers granted to the [UNSC] for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII. ..."

Article 25 provides:

"The Members of the United Nations agree to accept and carry out the decisions of the [UNSC] in accordance with the present Charter."

23. Chapter VII is entitled "Action with respect to threats to the peace, breaches of the peace and acts of aggression". Article 39 provides:

"The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security."

The notion of a "threat to the peace" within the meaning of Article 39 has evolved to include internal conflicts which threaten to "spill over" or concern serious violations of fundamental international (often humanitarian) norms. Large scale cross border displacement of refugees can also render a threat international (Article 2(7) of the UN Charter; and, for example, R. Kolb, "*Ius Contra Bellum – Le Droit international relatif au maintien de la paix*", Helbing and Lichtenhahn, Bruylant, 2003, pp. 60-68; and "*Yugoslav Territory, United Nations Trusteeship or Sovereign State? Reflections on the current and Future Legal Status of Kosovo*", Zimmermann and Stahn, NJIL 70, 2001, p. 437).

Articles 41 and 42 read as follows:

> "41. The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."
>
> 42. Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations."

24. Articles 43-45 provide for the conclusion of agreements between member states and the UNSC for the former to contribute to the latter land and air forces necessary for the purpose of maintaining international peace and security. No such agreements have been concluded. There is, consequently, no basis in the Charter for the UN to oblige Member States to contribute resources to Chapter VII missions. Articles 46-47 provide for the UNSC to be advised by a Military Staff Committee (comprising military representatives of the permanent members of the UNSC) on, *inter alia*, military requirements for the maintenance of international peace and security and on the employment and command of forces placed at the UNSC's disposal. The MSC has had very limited activity due to the absence of Article 43 agreements.

25. Chapter VII continues:

> "Article 48
>
> The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.
>
> Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.
>
> Article 49
>
> The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council."

C. Article 103 of the Charter

26. This Article reads as follows:

> "In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

27. The ICJ considers Article 103 to mean that the Charter obligations of UN member states prevail over conflicting obligations from another

international treaty, regardless of whether the latter treaty was concluded before or after the UN Charter or was only a regional arrangement (*Nicaragua v. United States of America*, ICJ Reports, 1984, p. 392, at § 107. See also *Kadi v. Council and Commission*, § 183, judgment of the Court of First Instance of the European Communities ("CFI") of 21 September 2005 (under appeal) and two more recent judgments of the CFI in the same vein: *Yusuf and Al Barakaat v. Council and Commission*, 21 September 2005, §§ 231, 234, 242-243 and 254 as well as *Ayadi v. Council*, 12 July 2006, § 116). The ICJ has also found Article 25 to mean that UN member states' obligations under a UNSC Resolution prevail over obligations arising under any other international agreement (Orders of 14 April 1992 (provisional measures), Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (*Libyan Arab Jamahiriya v United States of America and Libyan Arab Jamahiriya v United Kingdom*), ICJ Reports, 1992, p. 16,§ 42 and p. 113, § 39, respectively).

D. The International Law Commission ("ILC")

28. Article 13 of the UN Charter provided that the UN General Assembly should initiate studies and make recommendations for the purpose of, *inter alia*, encouraging the progressive development of international law and its codification. On 21 November 1947, the General Assembly adopted Resolution 174(II) establishing the ILC and approving its Statute.

1. Draft Articles on the Responsibility of International Organisations

29. Article 3 of these draft Articles adopted in 2003 during the 55th session of the ILC is entitled "General principles" and it reads as follows (see the Report of the ILC, General Assembly Official Records, 55th session, Supplement No. 10 A/58/10 (2003):

> "1. Every internationally wrongful act of an international organization entails the international responsibility of the international organization.
>
> 2. There is an internationally wrongful act of an international organization when conduct consisting of an action or omission:
>
> (a) Is attributable to the international organization under international law; and
>
> (b) Constitutes a breach of an international obligation of that international organization.

30. Article 5 of the draft Articles adopted in 2004 during the 56th session of the ILC is entitled "Conduct of organs or agents placed at the disposal of an international organisation by a State or another international organisation" and reads as follows (see the Report of the ILC, General Assembly Official Records, 56th session, Supplement No. 10 A/59/10

(2004) and Report of the Special Rapporteur on the Responsibility of International Organisations, UN, Official Documents, A/CN.4/541, 2 April 2004):

> "The conduct of an organ of a State or an organ or agent of an international organisation that is placed at the disposal of another international organisation shall be considered under international law an act of the latter organisation if the organisation exercises effective control over that conduct."

31. The ILC Commentary on Article 5, in so far as relevant, provides:

> "When an organ of a State is placed at the disposal of an international organization, the organ may be fully seconded to that organization. In this case the organ's conduct would clearly be attributable only to the receiving organization. ... Article 5 deals with the different situation in which the lent organ or agent still acts to a certain extent as organ of the lending State or as organ or agent of the lending organization. This occurs for instance in the case of military contingents that a State placed at the disposal of the [UN] for a peacekeeping operation, since the State retains disciplinary powers and criminal jurisdiction over the members of the national contingent. In this situation the problem arises whether a specific conduct of the lent organ or agent has to be attributed to the receiving organization or to the lending State or organization. ...
>
> Practice relating to peacekeeping forces is particularly significant in the present context because of the control that the contributing State retains over disciplinary matters and criminal affairs. This may have consequences with regard to attribution of conduct. ...
>
> Attribution of conduct to the contributing State is clearly linked with the retention of some powers by that State over its national contingent and thus on the control that the State possesses in the relevant respect.
>
> As has been held by several scholars, when an organ or agent is placed at the disposal of an international organization, the decisive question in relation to attribution of a given conduct appears to be who has effective control over the conduct in question."

32. The report noted that it would be difficult to attribute to the UN action resulting from contingents operating under national rather than UN command and that in joint operations, international responsibility would be determined, absent an agreement, according to the degree of effective control exercised by either party in the conduct of the operation. It continued:

> "What has been held with regard to joint operations ... should also apply to peacekeeping operations, insofar as it is possible to distinguish in their regard areas of effective control respectively pertaining to the [UN] and the [TCN]. While it is understandable that, for the sake of efficiency of military operations, the [UN] insists on claiming exclusive command and control over peacekeeping forces, attribution of conduct should also in this regard be based on a factual criterion."

33. As regards UN peacekeeping forces (namely, those directly commanded by the UN and considered subsidiary organs of the UN), the Report quoted the UN's legal counsel as stating that the acts of such subsidiary organs were in principle attributable to the organisation and, if

committed in violation of an international obligation, entailed the international responsibility of the organisation and its liability in compensation. This, according to the Report, summed up the UN practice in respect of several UN peacekeeping missions referenced in the Report.

2. Draft Articles on State Responsibility

34. Article 6 if these draft Articles is entitled "Conduct of organs placed at the disposal of a State by another State" and it reads as follows (Report of the ILC, General Assembly Official Records, 56th session, Supplement No. 10 (A/56/10)):

> "The conduct of an organ placed at the disposal of a State by another State shall be considered an act of the former State under international law if the organ is acting in the exercise of elements of the governmental authority of the State at whose disposal it is placed."

Article 6 addresses the situation in which an organ of a State is put at the disposal of another, so that the organ may act temporarily for the latter's benefit and under its authority. In such a case, the organ, originally that of one State, acts exclusively for the purposes of and on behalf of another State and its conduct is attributed to the latter State alone.

E. The Vienna Convention on the Law of Treaties

35. Article 30 is entitled "Application of successive treaties relating to the same subject matter" and its first paragraph reads as follows:

> "1. Subject to Article 103 of the Charter of the United Nations, the rights and obligations of States Parties to successive treaties relating to the same subject matter shall be determined in accordance with the following paragraphs."

F. The MTA of 9 June 1999

36. Following the agreement by the FRY that its troops would withdraw from Kosovo and the consequent suspension of air operations against the FRY, the MTA was signed between "KFOR" and the Governments of the FRY and the Republic of Serbia on 9 June 1999 which provided for the phased withdrawal of FRY forces and the deployment of international presences. Article I (entitled "General Obligations") noted that it was an agreement for the deployment in Kosovo:

> "under United Nations auspices of effective international civil and security presences. The Parties note that the [UNSC] is prepared to adopt a resolution, which has been introduced, regarding these measures."

37. Paragraph 2 of Article I provided for the cessation of hostilities and the withdrawal of FRY forces and, further, that:

> "The State governmental authorities of the [FRY] and the Republic of Serbia understand and agree that the international security force ("KFOR") will deploy

following the adoption of the UNSC [Resolution] ... and operate without hindrance within Kosovo and with the authority to take all necessary action to establish and maintain a secure environment for all citizens of Kosovo and otherwise carry out its mission. They further agree to comply with all of the obligations of this Agreement and to facilitate the deployment and operation of this force."

38. Article V provided that COMKFOR would provide the authoritative interpretation of the MTA and the security aspects of the peace settlement it supported.

39. Appendix B set out in some detail the breadth and elements of the envisaged security role of KFOR in Kosovo. Paragraph 3 provided that neither the international security force nor its personnel would be "liable for any damages to public or private property that they may cause in the course of duties related to the implementation of this agreement".

40. The letter of 10 June 1999 from NATO submitting the MTA to the SG of the UN and the latter's letter onwards to the UNSC, described the MTA as having been signed by the "NATO military authorities".

G. The UNSC Resolution 1244 of 10 June 1999

41. The Resolution reads, in so far as relevant, as follows:

"Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Recalling its [previous relevant] resolutions ...,

Regretting that there has not been full compliance with the requirements of these resolutions,

Determined to resolve the grave humanitarian situation in Kosovo ... and to provide for the safe and free return of all refugees and displaced persons to their homes,

...

Welcoming the general principles on a political solution to the Kosovo crisis adopted on 6 May 1999 (S/1999/516, annex 1 to this resolution) and welcoming also the acceptance by the [FRY] of the principles set forth in points 1 to 9 of the paper presented in Belgrade on 2 June 1999 (S/1999/649, annex 2 to this resolution), and the [FRY's] agreement to that paper,

...

Determining that the situation in the region continues to constitute a threat to international peace and security,

Determined to ensure the safety and security of international personnel and the implementation by all concerned of their responsibilities under the present resolution, and acting for these purposes under Chapter VII of the Charter of the United Nations,

...

5. Decides on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomes the agreement of the [FRY] to such presences;

6. Requests the Secretary-General to appoint, in consultation with the Security Council, a Special Representative to control the implementation of the international civil presence, and further requests the Secretary-General to instruct his Special Representative to coordinate closely with the international security presence to ensure that both presences operate towards the same goals and in a mutually supportive manner;

7. Authorizes Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities under paragraph 9 below;

...

9. Decides that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

...

(e) Supervising de-mining until the international civil presence can, as appropriate, take over responsibility for this task;

(f) Supporting, as appropriate, and coordinating closely with the work of the international civil presence;

(g) Conducting border monitoring duties as required;

...

10. Authorizes the Secretary-General, with the assistance of relevant international organizations, to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo under which the people of Kosovo can enjoy substantial autonomy within the [FRY], and which will provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo;

11. Decides that the main responsibilities of the international civil presence will include: ...

(b) Performing basic civilian administrative functions where and as long as required;

(c) Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;

(d) Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;

...

(i) Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;

(j) Protecting and promoting human rights;

(k) Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo;

...

19. Decides that the international civil and security presences are established for an initial period of 12 months, to continue thereafter unless the Security Council decides otherwise;

20. Requests the Secretary-General to report to the Council at regular intervals on the implementation of this resolution, including reports from the leaderships of the international civil and security presences, the first reports to be submitted within 30 days of the adoption of this resolution;

21. Decides to remain actively seized of the matter."

42. Annex 1 listed the general principles on a political solution to the Kosovo crisis adopted by the G-8 Foreign Ministers on 6 May 1999. Annex 2 comprised nine principles (guiding the resolution of the crisis presented in Belgrade on 2 June 1999 to which the FRY had agreed) including:

"... 3. Deployment in Kosovo under [UN] auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.

4. The international security presence with substantial [NATO] participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.

5. Establishment of an interim administration for Kosovo as a part of the international civil presence ..., to be decided by the Security Council of the [UN]. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo. ..."

43. While this Resolution used the term "authorise", that term and the term "delegation" are used interchangeably. Use of the term "delegation" in the present decision refers to the empowering by the UNSC of another entity to exercise its function as opposed to "authorising" an entity to carry out functions which it could not itself perform.

H. Agreed Points on Russian Participation in KFOR (18 June 1999)

44. Following Russia's involvement in Kosovo after the deployment of KFOR troops, an Agreement was concluded as to the basis on which Russian troops would participate in KFOR. Russian troops would operate in certain sectors according to a command and control model annexed to the agreement: all command arrangements would preserve the principle of unity of command and, while the Russian contingent was to be under the political and military control of the Russian Government, COMKFOR had authority to order NATO forces to execute missions refused by Russian forces.

45. Its command and control annex described the link between the UNSC and the NAC as one of "Consultation/Interaction" and between the NAC and COMKFOR as one of "operational control".

I. Regulation No. 2000/47 on the Status, Privileges and Immunities of KFOR and UNMIK and their Personnel in Kosovo

46. This Regulation was adopted on 18 August 2000 by the SRSG to implement the Joint Declaration of 17 August 2000 on the status of KFOR and UNMIK and their personnel, and the privileges and immunities to which they are entitled. It was deemed to enter into force on 10 June 1999.

KFOR personnel were to be immune from jurisdiction before the courts in Kosovo in respect of any administrative, civil or criminal act committed by them in Kosovo and such personnel were to be "subject to the exclusive jurisdiction of their respective sending States" (section 2 of the Regulation). UNMIK personnel were also to be immune from legal process in respect of words spoken and all acts performed by them in their official capacity (section 3). The SG could waive the immunity of UNMIK personnel and requests to waive jurisdiction over KFOR personnel were to be referred to the relevant national commander (section 6).

J. NATO/KFOR (unclassified) HQ KFOR Main Standing Operating Procedures ("SOP"), March 2003

47. Referring to UNSC Resolution 1244 and UNMIK Regulation No. 2000/47, the SOP was intended as a guide. The KCO would adjudicate claims relating to the overall administration of military operations in Kosovo by KFOR in accordance with Annex A to the SOP. It would also determine whether the matter was against a TCN, in which case the claim would be forwarded to that TCN.

48. TCNs were responsible for adjudicating claims that arose from their own activities in accordance with their own rules and procedures. While there was at that time no approved policy for processing and paying claims that arose out of KFOR operations in Kosovo, TCNs were encouraged to process claims (through TCN Claims Offices – "TCNCOs") in accordance with Annex B which provided guidelines on the claims procedure. While the adjudication of claims against a TCN was purely a "national matter for the TCN concerned", the payment of claims in a fair manner was considered to further the rule of law, enhance the reputation of KFOR and to serve the interests of force protection for KFOR.

49. Annex C provided guidelines for the structure and procedures before the Kosovo Appeals Commission (from the KCO or from a TCNCO).

K. European Commission for Democracy through Law ("the Venice Commission"), Opinion on human rights in Kosovo: Possible establishment of review mechanisms (no. 280/2004, CDL-AD (2004) 033)

50. The relevant parts of paragraph 14 of the Opinion read:

> "KFOR contingents are grouped into four multinational brigades. KFOR troops come from 35 NATO and non-NATO countries. Although brigades are responsible for a specific area of operations, they all fall "under the unified command and control" (UN SC Resolution 1244, Annex 2, para. 4) of [COMKFOR] from NATO. "Unified command and control" is a military term of art which only encompasses a limited form of transfer of power over troops. [TCNs] have therefore not transferred "full command" over their troops. When [TCNs] contribute troops to a NATO-led operation they usually transfer only the limited powers of "operational control" and/or "operational command". These powers give the NATO commander the right to give orders of an operational nature to the commanders of the respective national units. The national commanders must implement such orders on the basis of their own national authority. NATO commanders may not give other kinds of orders (e.g. those affecting the personal status of a soldier, including taking disciplinary measures) and NATO commanders, in principle, do not have the right to give orders to individual soldiers ... . In addition, [TCNs] always retain the power to withdraw their soldiers at any moment. The underlying reason for such a rather complex arrangement is the desire of [TCNs] to preserve as much political responsibility and democratic control over their troops as is compatible with the requirements of military efficiency. This enables states to do the utmost for the safety of their soldiers, to preserve their discipline according to national custom and rules, to maintain constitutional accountability and, finally, to preserve the possibility to respond to demands from the national democratic process concerning the use of their soldiers."

L. Detention and De-mining in Kosovo

1. Detention

51. A letter from COMKFOR to the OSCE of 6 September 2001 described how COMKFOR authorised detention: each case was reviewed by KFOR staff, the MNB commander and by a review panel at KFOR HQ, before being authorised by COMKFOR based on KFOR/OPS/FRAGO997 (superseded by COMKFOR Detention Directive 42 in October 2001).

2. De-mining

52. Landmines and unexploded ordinance (from the NATO bombardment of early 1999) posed a significant problem in post-conflict Kosovo, a problem exacerbated by the relative absence of local knowledge given the large scale displacement of the population during the conflict. The UN Mine Action Service (UNMAS) was the primary UN body charged with monitoring de-mining developments in general.

53. On 12 June 1999 the SG delivered his operational plan for the civil mission in Kosovo to the UNSC (Doc. No. S/1999/672). In outlining the structure of UNMIK, he noted that mine action was dealt with under humanitarian affairs (the former Pillar I of UNMIK) and that UNMIK had been tasked to establish, as soon as possible, a mine action centre. The UN Mine Action Coordination Centre ("UNMACC": used interchangeably with "UNMIK MACC") opened its office in Kosovo on 17 June 1999 and it was placed under the direction of the Deputy SRSG of Pillar I. Pending the

transfer of responsibility for mine action to UNMACC, in accordance with the UNSC Resolution 1244, KFOR acted as the *de facto* coordination centre. The SG's detailed report on UNMIK of 12 July 1999 (Doc No. S/1999/779) confirmed that UNMACC would plan mine action activities and act as the point of coordination between the mine action partners including KFOR, UN agencies, NGOs and commercial companies".

54. On 24 August 1999 the Concept Plan for UNMIK Mine Action Programme ("MAP") was published in a document entitled "UNMIK MACC, Office of the Deputy SRSG (Humanitarian Affairs)". It confirmed that the UN, through UNMAS, the SRSG and the Deputy SRSG of Pillar I of UNMIK retained "overall responsibility" for the MAP in terms of providing policy guidance, identifying needs and priorities, coordinating with UN and non-UN partners as well as member states, and defining the overall operational plan and structure. The MAP was an "integral component of UNMIK". As to the role of UNMIK MACC, it was underlined that, since the UN did not intend to implement the mine action activities in Kosovo itself, it would rely on a variety of operators including UN agencies, KFOR contingents, NGOs and commercial companies. Those operators had to be accredited, supported and co-ordinated to ensure they worked in a coherent and integrated manner. Accordingly, a key factor in the execution of the MAP was the integration and coordination of all de-mining activities through an appropriately structured UNMIK MACC which would, *inter alia*, act as the "focal point and coordination mechanism for all mine activities in Kosovo". The Concept Plan went on to define the nature of the problem and the consequent phases and priorities for mine clearance.

55. Accordingly, on 24 August 1999 a memorandum was sent by the Deputy SRSG of Pillar I to the SRSG, requesting that, since the Concept Plan had been approved, it should also be forwarded to KFOR "along with an appropriate annotation that UNMIK have now assumed the responsibility for humanitarian mine action in Kosovo".

56. KFOR Directive on CBU Marking (KFOR/OPS/FRAGO 300) was adopted on 29 August 1999 and provided:

> "...KFOR will only clear mines/CBUs when deemed essential to the conduct of the mission and to maintain freedom of movement. KFOR does not wish to undertake de-mining, which is the responsibility of UNMACC and the NGOs. However, there is growing pressure for KFOR to dispose of NATO munitions. Therefore it has been decided that KFOR will do more to reduce the threat without amending its policy by marking the perimeter of each of the CBU footprints ... MNBs are to conduct these tasks against a priority list co-ordinated with UNMACC and UNMIK regional offices. The intent is to mark all known areas by 10 October 1999".

57. On 5 October 1999 that Deputy SRSG wrote to COMKFOR noting paragraph 9(e) of UNSC Resolution 1244, attaching the Concept Plan, confirming that "we are now in a position to officially assume responsibility for mine action in Kosovo" and underlining the critical need for UNMIK and KFOR to co-operate and to work closely together.

58. The report of KFOR for July 1999 (submitted to the UNSC by the SG's letter of 10 August 1999) explained that KFOR worked closely with UNMAS and had "jointly established" UNMACC. The report continued:

> "Upon entry into Kosovo and prior to establishment of UNMACC, KFOR organized a Mines Action Centre, which has since been augmented by [UN] personnel and has now become UNMACC. This is now ... charged by the [UN] with de-mining the region. It accomplishes this task using civilian contracted de-mining teams. KFOR is principally conducting mission-essential mine and unexploded ordnance clearance, including clearance of essential civilian infrastructure and public buildings."

KFOR's report for August 1999 (submitted to the UNSC by the SG's letter of 15 September 1999) confirmed that KFOR worked closely with UNMACC which had been "set up jointly" by KFOR and the UN. KFOR's subsequent monthly reports (submitted to the UNSC by the SG) noted that KFOR worked closely with UNMAS and UNMACC and emphasised that the eradication of the CBU threat was a priority for MNBs, the aim being to mark and clear as many areas as possible before the first snow (report Nos. S/1999/868, S/1999/982, S/1999/1062, S/1999/1185 and S/1999/1266).

59. By letter dated 6 April 2000 to COMKFOR, the Deputy SRSG drew the latter's attention to recent CBU explosions involving deaths and asked for the latter's personal support to ensure KFOR continued to support the mine clearance project by marking CBU sites as a matter of urgency and providing any further information they had.

60. In 2001 UNMAS commissioned an external evaluation of its mine action programme in Kosovo for the period mid-1999–2001. The report, entitled "*An evaluation of the United Nations Mine Action Programme in Kosovo 1999-2001*", commented as follows:

> "At the beginning of August 1999, the MACC had *de facto* taken full control of the mine action programme, although formally it still fell under KFOR's responsibility. ... This was followed, on 24 August, by UNMIK's approval of the [Concept Plan]. ... [which] coincided with a Memo being sent by ... DSRSG (24 August) to ... SRSG ... [T]hat request was followed up with a letter dated 5 October 1999 from [Deputy SRSG] to General Jackson, [COMKFOR], ... Through this letter the formal handing over from the military to the civilian sector of the mine action programme for Kosovo took place, as mandated in [UNSC Resolution] 1244; although, in reality, this had already taken place towards the end of August."

COMPLAINTS

61. Agim Behami complained under Article 2, on his own behalf and on behalf of his son Gadaf Behrami, about the latter's death and Bekir Behrami complained about his serious injury. They submitted that the incident took place because of the failure of French KFOR troops to mark and/or defuse the un-detonated CBUs which those troops knew to be present on that site.

62. Mr Saramati complained under Article 5 alone, and in conjunction with Article 13 of the Convention, about his extra-judicial detention by KFOR between 13 July 2001 and 26 January 2002. He also complained under Article 6 § 1 that he did not have access to court and about a breach of the respondent States' positive obligation to guarantee the Convention rights of those residing in Kosovo.

THE LAW

63. Messrs Behrami invoked Article 2 of the Convention as regards the impugned inaction of KFOR troops. Mr Saramati relied on Articles 5, 6 and 13 as regards his detention by, and on the orders of, KFOR. The President of the Court agreed that the parties' submissions to the Grand Chamber could be limited to the admissibility of the cases.

I. WITHDRAWAL OF THE SARAMATI CASE AGAINST GERMANY

64. In arguing that he fell within the jurisdiction of, *inter alia*, Germany, Mr Saramati initially maintained that a German KFOR officer had been involved in his arrest in July 2001 and he also referred to the fact that Germany was the lead nation in MNB Southeast. In their written submissions to the Grand Chamber, the German Government indicated that, despite detailed investigations, they had not been able to establish any involvement of a German KFOR officer in Mr Saramati's arrest.

Mr Saramati responded that, while German KFOR involvement was his recollection and while he had made that submission in good faith, he was unable to produce any objective evidence in support. He therefore accepted the contrary submission of Germany and, further, that German KFOR control of the relevant sector was of itself an insufficient factual nexus to bring him within the jurisdiction of Germany. By letter of 2 November 2006 he requested the Court to allow him to withdraw his case against Germany, which State did not therefore make oral submissions at the subsequent Grand Chamber hearing.

65. The Court considers reasonable the grounds for Mr Saramati's request. There being two remaining respondent States in this case also disputing, *inter alia*, that Mr Saramati fell within their jurisdiction as well as the compatibility of his complaints, the Court does not find that respect for human rights requires a continued examination of Mr Saramati's case against Germany (Article 37 § 1 *in fine* of the Convention) and it should therefore be struck out as against that State.

In such circumstances, the President of the Court has accepted the submissions of the German Government as third party observations under Rule 44 § 2 of the Rules of Court. References hereunder to the respondent

States do not therefore include Germany and it is referred to below as a third party.

II. THE CASES AGAINST FRANCE AND NORWAY

A. The issue to be examined by the Court

66. The applicants maintained that there was a sufficient jurisdictional link, within the meaning of Article 1 of the Convention, between them and the respondent States and that their complaints were compatible *ratione loci*, *personae* and *materiae* with its provisions.

67. The respondent and third party States disagreed.

The respondent Governments essentially contended that the applications were incompatible *ratione loci* and *personae* with the provisions of the Convention because the applicants did not fall within their jurisdiction within the meaning of Article 1 of the Convention. They further maintained that, in accordance with the *"Monetary Gold* principle" (*Monetary Gold Removed from Rome in 1943*, ICJ Reports 1954), this Court could not decide the merits of the case as it would be determining the rights and obligations of non-Contracting Parties to the Convention.

The French Government also submitted that the cases were inadmissible under Article 35 § 1 mainly because the applicants had not exhausted remedies available to them, although they accepted that issues of jurisdiction and compatibility had to be first examined. While the Norwegian Government responded to questions during the oral hearing as to the remedies available to Mr Saramati, they did not argue that his case was inadmissible under Article 35 § 1 of the Convention.

The third party States submitted in essence that the respondent States had no jurisdiction *loci* or *personae*. The UN, intervening as a third party in the *Behrami* case at the request of the Court, submitted that, while de-mining fell within the mandate of UNMACC created by UNMIK, the absence of the necessary CBU location information from KFOR meant that the impugned inaction could not be attributed to UNMIK.

68. Accordingly, much of these submissions concerned the question of whether the applicants fell within the extra-territorial "jurisdiction" of the respondent States within the meaning of Article 1 of the Convention, the compatibility *ratione loci* of the complaints and, consequently, the decision in *Banković and Others v. Belgium and 16 Other Contracting States* ((dec.) [GC], no. 52207/99, ECHR 2001 XII) as well as related jurisprudence of this Court (*Drozd and Janousek v. France and Spain*, judgment of 26 June 1992, Series A no. 240; *Loizidou v. Turkey*, judgment of 18 December 1996, Reports 1996 VI, § 56; *Cyprus v. Turkey* [GC], no. 25781/94, ECHR 2001-IV; *Issa and Others v. Turkey*, no. 31821/96, 16 November 2004; *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, ECHR 2004-VII;

Öcalan v. Turkey [GC], no. 46221/99, ECHR 2005-IV; and No. 23276/04, *Hussein v. Albania and Others*, (dec.) 14 March 2006).

In this respect, it was significant for the applicants in the *Behrami* case that, *inter alia*, France was the lead nation in MNB Northeast and Mr Saramati underlined that French and Norwegian COMKFOR issued the relevant detention orders. The respondent (as well as third party) States disputed their jurisdiction *ratione loci* arguing, *inter alia*, that the applicants were not on their national territory, that it was the UN which had overall effective control of Kosovo, that KFOR controlled Mr Saramati and not the individual COMKFORs and that the applicants were not resident in the "legal space" of the Convention.

69. The Court recalls that Article 1 requires Contracting Parties to guarantee Convention rights to individuals falling with their "jurisdiction". This jurisdictional competence is primarily territorial and, while the notion of compatibility *ratione personae* of complaints is distinct, the two concepts can be inter-dependent (*Banković and Others, cited above, at § 75 and Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi (Bosphorus Airways) v. Ireland* [GC], no. 45036/98, §§ 136 and 137, ECHR 2005-VI). In the present case, the Court considers, and indeed it was not disputed, that the FRY did not "control" Kosovo (within the meaning of the word in the above-cited jurisprudence of the Court concerning northern Cyprus) since prior to the relevant events it had agreed in the MTA, as it was entitled to do as the sovereign power (*Banković and Others*, cited above, at §§ 60 and 71 and further references therein; Shaw, *International Law*, 1997, 4th Edition, p. 462, Nguyen Quoc Dinh, *Droit International Public*, 1999, 6th Edition, pp. 475-478; and Dixon, *International Law*, 2000, 4th Edition, pp. 133-135), to withdraw its own forces in favour of the deployment of international civil (UNMIK) and security (KFOR) presences to be further elaborated in a UNSC Resolution, which Resolution had already been introduced under Chapter VII of the UN Charter (see Article 1 of the MTA, paragraph 36 above).

70. The following day, 10 June 1999, UNSC Resolution 1244 was adopted. KFOR was mandated to exercise complete military control in Kosovo. UNMIK was to provide an interim international administration and its first Regulation confirmed that the authority vested in it by the UNSC comprised all legislative and executive power as well as the authority to administer the judiciary (UNMIK Regulation 1999/1 and see also UNMIK Regulation 2001/9). While the UNSC foresaw a progressive transfer to the local authorities of UNMIK's responsibilities, there is no evidence that either the security or civil situation had relevantly changed by the dates of the present events. Kosovo was, therefore, on those dates under the effective control of the international presences which exercised the public powers normally exercised by the Government of the FRY (*Banković and Others*, cited above, at § 71).

71. The Court therefore considers that the question raised by the present cases is, less whether the respondent States exercised extra-territorial jurisdiction in Kosovo but far more centrally, whether this Court is competent to examine under the Convention those States' contribution to the civil and security presences which did exercise the relevant control of Kosovo.

72. Accordingly, the first issue to be examined by this Court is the compatibility *ratione personae* of the applicants' complaints with the provisions of the Convention. The Court has summarised and examined below the parties' submissions relevant to this question.

B. The applicants' submissions

73. The applicants maintained that KFOR (as opposed to the UN or UNMIK) was the relevant responsible organisation in both cases.

The MTA and UNSC Resolution 1244 provided that KFOR, on which UNMIK relied to exist, controlled and administered Kosovo in a manner equivalent to that of a State. In addition, KFOR was responsible for de-mining and the applicants referred in support to KFOR's duties outlined in the MTA, in UNSC Resolution 1244, in FRAGO300, in the UNSG reports to the UNSC (which indicated that UNMACC had been "set up jointly" by KFOR and the UN to co-ordinate de-mining (see the SG reports cited at paragraph 58 above) and in a report of the International Committee of the Red Cross ("*Explosive Remnants of War, Cluster Bombs and Landmines in Kosovo*", Geneva, August 2000, revised June 2001). Since KFOR had been aware of the unexploded ordinance and controlled the site, it should have excluded the public. Moreover, NATO had initially dropped the cluster bombs. Their oral submissions endorsed the UN submissions to the effect that, if UNMACC had responsibility for co-ordinating de-mining, KFOR retained direct responsibility for supporting de-mining which was "critical" to the success of the clearance operation. Mr Saramati's detention was clearly a security matter for KFOR (citing the KFOR documents referred to at paragraph 51 above).

74. The impugned acts involved the responsibility *ratione personae* of France, in the *Behrami* case, as well as Norway in the *Saramati* case.

75. In the first place, France had voted in the NAC in favour of deploying an international force to Kosovo.

76. Secondly, the French contingent's control of MNB Northeast was a relevant jurisdictional link in the *Behrami* case. While Germany was the lead nation in MNB Southeast, the applicants considered that that was, of itself, an insufficient jurisdictional link in the *Saramati* case.

77. Thirdly, neither the acts nor omissions of KFOR soldiers were attributable to the UN or NATO. KFOR was a NATO-led multinational force made up of NATO and non-NATO troops (from 10-14 States)

allegedly under "unified" command and control. KFOR was not established as a UN force or organ, in contrast to other peacekeeping forces and to UNMIK and UNMACC under direct UN command. If KFOR had been such a UN force (with the prefix "UN"), it would have had a UN Commander in Chief, troops would not have accepted instructions from TCNs and all personnel would have had UN immunities. On the contrary, NATO and other States were authorised to establish the security mission in Kosovo under "unified command and control". However, this was a "term of art" (the Venice Commission, cited at paragraph 50 above): since there was no operational command link between the UNSC and NATO and since the TCNs retained such significant power, there was no unified chain of command from the UNSC so that neither the acts nor the omissions of KFOR troops could be attributed to NATO or to the UN (relying, in addition, on detailed academic publications).

As to the link between KFOR and the UNSC, the applicants referred to the Attachment to the Agreement on Russian Participation (paragraph 45 above) which described that link as one of "consultation/interaction".

As to the input of TCNs, the applicants noted that KFOR troops (including COMKFOR) were directly answerable to their national commanders and fell exclusively within the jurisdiction of their TCN: the rules of engagement were national; troops were disciplined by national command; deployment decisions were national; the troops were financed by the States; individual TCNCOs had been set up; TCNs retained disciplinary, civil and criminal jurisdiction over troops for their actions in Kosovo (UNMIK Regulation 2000/47 and HQ KFOR Main SOP, paragraphs 47-49 above) and, since a British court considered itself competent to examine a case about the actions of British KFOR in Kosovo, individual State accountability was feasible (*Bici & Anor v Ministry of Defence* [2004] EWHC 786); and it was national commanders who decided on the waiver of the immunity of KFOR troops whereas the SG so decided for UNMIK personnel. It was disingenuous to accept that KFOR troops were subject to the exclusive control of their TCN and yet deny that they fell within their jurisdiction. There was no TCN/UN agreement or a Status of Forces Agreement ("SOFA") between the UN and the FRY.

78. Fourthly, as regards Mr Saramati's case, final decisions on detention lay with COMKFOR who decided without reference to NATO high command or other TCN's and he was not accountable to, nor reliant on, NATO for those decisions. Since the ordering of detention was a separate exercise of jurisdiction by each COMKFOR, this case was distinguishable from the case of *Hess v. the United Kingdom* (28 May 1975, Decisions and Reports no. 2, p. 72).

79. Fifthly, and alternatively, KFOR did not have a separate legal personality and could not be a subject of international law or bear international responsibility for the acts or omissions of its personnel.

80. Even if this Court were to consider that the relevant States were executing an international (UN/NATO) mandate, this would not absolve them from their Convention responsibility for two alternative reasons. In the first place, Article 103 of the UN Charter would have applied to relieve States of their Convention responsibilities only if UNSC Resolution 1244 required them to act in a manner which breached the Convention which was not the case: there was no conflict between the demands of that Resolution and the Convention. Secondly, the Convention permitted States to transfer sovereign power to an international organisation to pursue common goals if it was necessary to comply with international legal obligations and if the organisation imposing the obligation provided substantive and procedural protection "equivalent" to that of the Convention (*Bosphorus*, cited above, § 155): neither NATO nor KFOR provided such protection.

81. Finally, and as to the respondent States' arguments, their submissions on the *Monetary Gold* principle were fundamentally misconceived. In addition, it would be inconsistent with the object and purpose of the Convention to accept that States should be deterred from participating in peacekeeping missions by the recognition of this Court's jurisdiction in the present cases.

C. The submissions of the respondent States

1. The French Government

82. The Government argued that the term "jurisdiction" in Article 1 was closely linked to the notion of a State's competence *ratione personae*. In addition, and according to the ILC, the criterion by which the responsibility of an international organisation was engaged in respect of acts of agents at its disposal was the overall effective, as opposed to exclusive, control of the agent by the organisation (paragraphs 30-33 above).

83. The French contingent was placed at the disposal of KFOR which, from a security point of view, exercised effective control in Kosovo. KFOR was an international force under unified command, as could be seen from numerous constituent and applying instruments, over which the French State did not exercise any authority. The MNBs were commanded by an officer from a lead nation, the latter was commanded by COMKFOR who was in turn commanded, through the NATO chain of command, by the UNSC. Operational control of the forces was that of COMKFOR, strategic control was exercised by Supreme Allied Commander Europe of NATO ("SACEUR") and political control was exercised by the NAC of NATO and, finally, by the UNSC. Decisions and acts were therefore taken in the name of KFOR and the French contingent acted at all times according to the OPLAN devised and controlled by NATO. KFOR was therefore an application of the peace-keeping operations authorised by the UNSC whose resolutions formed the legal basis for NATO to form and command KFOR.

In such circumstances, the acts of the national contingents could not be imputed to a State but rather to the UN which exercised overall effective control of the territory.

84. The lack of jurisdiction *ratione personae* of France was confirmed by the following. In the first place, reference was made to the immunities of KFOR and UNMIK and to the special remedies put in place for obtaining damages which were adapted to the particular context of the international mission of KFOR (paragraphs 46-49 above). Secondly, if the Parliamentary Assembly of the Council of Europe ("PACE") recommended (Resolution 1417 (2005) of 25 January 2005) the creation of a human rights' court in Kosovo, it could not have considered that Convention Contracting Parties already exercised Article 1 jurisdiction there. Thirdly, the Committee for the Prevention of Torture, Inhuman and Degrading Treatment ("the CPT") concluded agreements with KFOR and UNMIK in May 2006 as it considered that Kosovo did not fall under the several jurisdiction of Contracting States. Fourthly, the Venice Commission, in its above-cited Opinion, did not consider that the jurisdiction of Convention States, or therefore of this Court, extended to Kosovo. Fifthly, any recognition of this Court's jurisdiction would involve judging the actions of non-Contracting States contrary to the *Monetary Gold* principle (judgment cited above). Sixthly, the ILC draft Articles on State Responsibility (paragraph 34 above) meant that the French contingent's acts and omissions (carried out under the authority of NATO and on behalf of KFOR) were not imputable to France.

2. The Norwegian Government

85. The case was incompatible *ratione personae* as Mr Saramati was not within the jurisdiction of the respondent States.

86. The legal framework for KFOR detention was the MTA, UNSC Resolution 1244, OPLAN 10413, KFOR Rules of Engagement, FRAGO997 replaced (in October 2001) by COMKFOR Detention Directive 42.

87. The command structure was hierarchical under unified command and control: each TCN transferred authority over their contingents to the NATO chain of command to ensure the attainment of the common KFOR objective. That chain of command ran from COMKFOR (appointed every 6 months with NATO approval), through a NATO chain of command to the NAC of NATO and onward to the UNSC which had overall authority and control. In all operational matters, no national military chain of command existed between Norway and COMKFOR so that the former could not instruct COMKFOR nor could COMKFOR deviate from NATO orders. All MNBs and their lead countries were fully within the KFOR chain of command. The present case was distinguishable from the above-cited *Bosphorus* case since no TCN had any sovereign rights over or in Kosovo.

88. KFOR was therefore a cohesive military force under the authority of the UNSC which monitored the discharge of the mandate through the SG reports. This constituted, with the civilian presence (UNMIK), a

comprehensive UN administration of which national contributions were building blocks and not autonomous units.

89. The monitoring systems in place confirmed this: as noted above, the UNSC received feedback *via* the SG from KFOR and UNMIK; it was UNMIK which submitted a report to the UN Human Rights Committee on the human rights situation in Kosovo (Concluding Observations of the Human Rights Committee: Serbia and Montenegro, 12 August 2004, CCPR/CO/81/SEMO) and this Government also referred to the PACE, CPT and the Venice Commission positions relied on by the French Government (paragraph 84 above).

90. Finally, this Government underlined the serious repercussions of extending Article 1 to cover peacekeeping missions and, notably, the possibility of deterring States from participating in such missions and of making already complex peacekeeping missions unworkable due to overlapping and perhaps conflicting national or regional standards.

3. Joint (oral) submissions of France and Norway

91. In these submissions, the States also explained the necessarily evolved nature of modern peacekeeping missions, developed in response to growing demand. That the UN was the controlling umbrella was consistent with UNMIK and KFOR having independent command and control structures and applied regardless of whether KFOR was a traditionally established UN security presence under direct UN operational command or whether, as in the present cases, the UNSC had authorised an organisation or States to implement its security functions. The structure adopted in the present cases maintained the necessary integrity, effectiveness and centrality of the mandate (Report of the Panel on United Nations Peace Operations (the "Brahami report", A/55/305-S/2000/809). The security presence acted under UN auspices and action was taken by, and on behalf of, the international structures established by the UNSC and not by, or on behalf of, any TCN. Neither the status of "lead nation" of a MNB and its consequent control of a sector of Kosovo nor the nationality of the French and Norwegian COMKFOR could detach those States from their international mandate.

92. As to the de-mining and detention mandates, UNSC Resolution 1244 authorised KFOR to use all necessary means to secure, *inter alia*, the environment, public safety and, until UNMIK could take over responsibility, de-mining. That Resolution also authorized KFOR to carry out security assessments related to arms smuggling (to the Former Yugoslav Republic of Macedonia) and to detain persons according to detention directives and orders adopted under unified command.

93. Referring to the above-cited *Bosphorus* judgment, they noted that neither of the respondent States exercised sovereignty in Kosovo and none

had handed over sovereign powers over Kosovo to an international organisation.

94. There were important sub-issues in the case including liability for involvement in a UN peacekeeping mission and the link between a regional instrument and international peacekeeping mission authorised by an organisation of universal vocation. In this context, they underlined the serious repercussions which the recognition of TCN jurisdiction would have including deterring TCN participation in, and undermining the coherence and therefore effectiveness of, such peacekeeping missions.

95. Finally, the applicants' suggestion, that the impugned action and inaction constituted a sufficient jurisdictional link between the States and the applicants, was misconceived. The applicants had also confused the legal personality of international structures (such as NATO and the UN) and that of their member states. Even if KFOR did not have separate legal personality, it was under the control of the UN, which did. Neither the retention of disciplinary control by TCN's nor the Venice Commission Opinion relied upon by the applicants was inconsistent with the international operational control of such an operation by NATO through KFOR.

D. The submissions of the third parties

1. The Government of Denmark

96. The applicants did not fall within the jurisdiction of the respondent States and the applications were therefore inadmissible as incompatible *ratione personae*.

97. The cases raised fundamental issues as to the scope of the Convention as a regional instrument and its application to acts of the international peace-keeping forces authorised under Chapter VII of the UN Charter. 192 States had vested the UNSC (including all Convention Contracting States) with primary responsibility for the maintenance of international peace and security (Article 24 of the UN Charter) and, in fulfilling that function, it had the authority to make binding decisions (Article 25) which prevailed over other international obligations (Article 103). The UNSC could lay down the necessary framework for civil and military assistance and, in the case of Kosovo, this was UNSC Resolution 1244. The central question was, therefore, whether personnel contributed by TCNs were also exercising jurisdiction on behalf of the TCN.

98. In the first place, even if the most relevant recognised instance of extra-territorial jurisdiction was the notion (developed in the above-cited jurisprudence concerning Northern Cyprus and the subsequent *Issa* case) of "effective overall control", the TCNs could not have exercised such control since the relevant TCN personnel acted in fulfilment of UNMIK and KFOR functions. UNMIK exercised virtually all governmental powers in Kosovo

and was answerable, *via* the SRSG and SG, to the UNSC. Its staff were employed by the UN. The "unified command and control" structure of KFOR, a coherent multinational force established under UNSC Resolution 1244 and falling under a single line of command under the authority of COMKFOR, rendered untenable the proposition of individual TCN liability for the acts or inaction of their troops carried out in the exercise of international authority.

99. Secondly, States put personnel at the disposal of the UN in Kosovo to pursue the purposes and principles of the UN Charter. A finding of "no jurisdiction" would not leave the applicants in a human rights' vacuum, as they suggested, given the steps being taken by those international presences to promote human rights' protection.

100. Thirdly, the Convention had to be interpreted and applied in the light of international law, in particular, on the responsibility of international organisations for organs placed at their disposal. Referring to the ongoing work of the ILC in this respect (paragraphs 30-33 above), they noted that that work so far had demonstrated no basis for holding a State responsible for peacekeeping forces placed at the disposal of the UNSC acting under Chapter VII, under unified command and control, within the mandate outlined and in execution of orders from that command structure.

101. Finally, if there were specific inadequacies in human rights' protection in Kosovo, these should be dealt with within the UN context. Seeking to address those deficiencies through this Court risked deterring States from participating in UN peacekeeping missions and undermining the coherence and effectiveness of such missions.

2. The Government of Estonia

102. The impugned action and inaction were regulated by UNSC Resolution 1244 adopted under Chapter VII of the UN Charter and the States were thereby fulfilling an obligation which fell within the scope of, and complied with, that Resolution in a manner which complied with international human rights standards as prescribed in the UN Charter. Even if there was a conflict between a State's UN and other treaty obligations, the former took precedent (Articles 25 and 103 of the UN Charter).

3. The German Government's written submissions

103. There was no jurisdictional link between Mr Saramati and the respondents because, *inter alia*, the agents of the respondents acted on behalf of UNMIK and KFOR.

104. Ultimate responsibility for Kosovo lay with the UN since effective control of Kosovo was exercised by UNMIK and KFOR pursuant to UNSC Resolution 1244. The UNSC retained overall responsibility and delegated the implementation of the Resolution's objectives to certain international actors all the while monitoring the discharge of mandates. KFOR retained,

and operated under the principle of, "unified command and control": neither the national contingents nor COMKFOR had roles other than their international mandate under UNSC Resolution 1244 and none exercised sovereign powers, a fact not changed by the retention by TCNs of criminal and disciplinary competence over soldiers. The UNSC, *via* the SG and the SRSG, continued to be the guiding and legal authority for UNMIK. In short, both presences were international, coherent and comprehensive structures admitting of no national instruction.

105. These submissions as to the unity of the UN operation were confirmed by secondary legislation in Kosovo: if UNMIK took care to ensure in its regulations human rights' protection and monitoring, that implied that the Convention control mechanisms did not apply. In addition, the Human Rights Committee of the UN regarded the inhabitants of Kosovo as falling under the jurisdiction of UNMIK (see paragraph 89 above).

106. This Court could not review acts of the UN, not least since Article 103 of the UN Charter established the primacy of the UN legal order. The above-cited *Bosphorus* case could be distinguished since the impugned actions of the Irish authorities took place on Irish territory over which they were deemed to have had full and effective control (relying on the above-cited judgment of *Ilaşcu and Others*, §§ 312-33 and *Assanidze v. Georgia* [GC], no. 71503/01, §§ 19-142, ECHR 2004-II) whereas none of the present respondent States enjoyed any sovereign rights or authority over the territory of Kosovo (the above cited Opinion of the Venice Commission and Resolution of PACE). Any determination by this Court of a complaint against UNMIK/KFOR would also breach the *Monetary Gold* principle (cited at paragraph 67 above).

107. Even if the respondent States were found to have "jurisdiction", the impugned act could not be imputed to those States and, in this respect, the actual command structure was clearly determinative. Having regard to Article 6 of the ILC draft Articles on Responsibility of States for international wrongful acts, Article 5 of the ILC draft Articles on the Responsibility of International Organisations and the report of the Special Rapporteur to the ILC as regards the latter (see paragraphs 30-33 above), any damage caused by UN peacekeeping forces acting within their mandate would be attributable to the UN.

108. Finally, the difficulties to which post-conflict situations gave rise had to be recalled, notably the fact that full human rights' protection was not possible in such a reconstructive context. If TCNs feared their several liability if standards fell below those of the Convention, they might restrain from participating in such missions which would run counter to the spirit of the Convention and its jurisprudence which supported international co-operation and the proper functioning of international organisations (the above-cited cases of *Banković and Others*, at § 62, *Ilaşcu and Others*, at § 332 and *Bosphorus*, at § 150).

4. The Greek Government

109. The legal basis for the civil and military presence in Kosovo was UNSC Resolution 1244. KFOR formed part, and acted in Kosovo under the direction, of a multinational framework formed by the UN and NATO. Even assuming that KFOR (along with UNMIK) exercised effective control in Kosovo, that presence was under the control of the UN and/or NATO and once the TCNs stayed within the relevant mandate they did not exercise any individual control or jurisdiction in Kosovo. Referring to the Opinion of the Venice Commission (cited at paragraph 50 above), the Government concluded that any action/inaction of KFOR was attributable to the UN and/or NATO and not to the respondent States.

5. The Polish Government

110. A State could not be held responsible for the activities of KFOR or UNMIK, those entities acted under the authority of the UN pursuant to UNSC Resolution 1244 and the UN could not be held accountable under the Convention. In providing resources and personnel to the UN (with a legal personality distinct from its member states), TCNs were not exercising governmental authority in Kosovo. The complaints were therefore incompatible *ratione personae*.

111. A finding that States were severally liable for participating in peacekeeping and democracy-building missions would have a devastating effect on such missions notably as regards the States' willingness to participate in such missions which result would run counter to the values of the UN Charter, the Statute of the Council of Europe and the Convention.

6. The Government of the United Kingdom

112. The applicants did not fall within the jurisdiction of the respondent States so the question of the attribution of actions to those States did not arise (*Banković and Others* decision, at § 75).

113. UNSC Resolution 1244 was adopted under Chapter VII of the UN Charter and, according to Article 103 of that Charter, the obligations of members states of the UN under that Resolution took priority over other international treaty obligations.

The administration of Kosovo was in the hands of the UN, *via* UNMIK and the SRSG, and that administration was not subject to the Convention. UNMIK was an international civil presence created by the UN in Kosovo answerable, *via* the SRSG, to the UNSC on its tasks set out in UNSC Resolution 1244. UNMIK was responsible for the civil administration of Kosovo and was therefore responsible for human rights matters. As to de-mining in particular, responsibility was that of UNMACC: regard was had to the terms of UNSC Resolution 1244, to the establishment of UNMACC and its taking *de facto* and then formal control of de-mining in August and

October 1999, respectively. UNMACC being an agency of the UN, any allegation about de-mining could not engage the responsibility of France.

KFOR was a multinational and international security presence so that at no time did any respondent State exercise effective overall control over a part of Kosovo. The MNBs comprised contingents from many TCNs (including substantial contingents from States not parties to the Convention and from outside Europe) and were answerable to an overall commander ("unified command and control"). Even if a State was a "lead nation" of a MNB which controlled a particular sector, that gave that State no degree of control or authority over the inhabitants or territory of Kosovo. Neither KFOR as a whole nor the TCNs exercised control over any part of Kosovo: UNMIK was tasked with civil administration and with human rights matters and KFOR did not control that administration in a manner comparable to the Turkish forces identified by the Court as regards Northern Cyprus (see cases cited at paragraph 68 above).

114. Accordingly, the effect of UNSC Resolution 1244 was that, at the relevant time, the UNSC exercised the powers of government in Kosovo through an international administration supported by an international security presence to which the respondent States and other non-Contracting States had provided troops.

None of the respondent States were therefore in a position to secure the rights and freedoms defined in Article 1 of the Convention to any of the inhabitants of Kosovo. None were asserting sovereign authority but rather international authority through an international security presence mandated by the UNSC and acting pursuant to powers conferred by a binding Chapter VII decision. This conclusion was reinforced by the above-cited *Hess* case. The present case could be distinguished from the situation in *R (Al-Skeini) v. Secretary of State for Defence* ([2005] EWCA Ci 1609) where a contingent in an international operation had exclusive control of a place of detention.

In addition, while the duty under Article 1 was indivisible (*Banković and Others*, at § 75), the respondent States had neither the power nor the responsibility to secure the rights and freedoms defined in Article 1 since that responsibility was specifically vested in UNMIK.

115. The application raised fundamental questions about the relationship between the Convention (a regional treaty and "constitutional instrument of European public order") and the universal system for the maintenance of international peace in which the Council of Europe played an important part. To superimpose that regional human rights' structure upon a peace keeping force established by the universal organisation would be inappropriate as a matter of principle and run counter to the *ordre public* to which the Court frequently referred and, further, risked causing serious difficulties to Contracting States in participating in UN and other multinational peacekeeping operations outside the territories of the Convention States.

116. To avoid this result, Article 1 should be interpreted to mean that, where officials from States act together within the scope of an international operation authorised by the UN, they are not exercising sovereign jurisdiction but that of the international authority, so that their acts did not bring those affected within the jurisdiction of the States or engage the Convention responsibility of those States.

7. The Government of Portugal.

117. They adopted the observations of the UK Government.

8. The UN

118. The UN outlined the respective mandates and responsibilities of UNMIK and KFOR as set out in UNSC Resolution 1244. The mandate adopted by the UNSC was an expression of the will of the member states to grant a UN organ authority, as opposed to a duty, to act: it was not an obligation of result. In executing the mandate, the UN operation retained, unless otherwise specified, discretion to determine implementation including timing and priorities. The UN recalled the relevant provisions of UNSC Resolution 1244 which outlined the main responsibilities of the civil and security presences, noting that the general and at time "imprecise" mandate was, for the most part, left to be concretised and agreed upon in the realities of their daily operations.

In addition, it was important to understand the legal status of UNMIK and its relationship to KFOR. UNMIK was a subsidiary organ of the UN endowed with all-inclusive legislative and administrative powers in Kosovo including the administration of justice (UNMIK Regulation 1999/1, at paragraph 70 above), it was headed by a SRSG and reported directing to the UNSC *via* the SG. KFOR was established as an equal presence but with a separate mandate and control structure: it was a NATO led operation authorised by the UNSC under unified command and control. There was no formal or hierarchical relationship between the two presences nor was the military in any way accountable to the civil presence. However, both were required to co-ordinate and operate in a mutually supportive manner towards the same goals.

119. As to de-mining in particular, paragraph 9(e) of UNSC Resolution 1244 (according responsibility for de-mining to KFOR but expressly leaving for determination by the two presences how that task would be transferred to UNMIK) and paragraph 11(k) (entrusting UNMIK with ensuring the safe and unimpeded return of persons to their homes) constituted the mandate for the UNMIK MAP. On 17 June 1999 UNMACC was established as the focal point and co-ordination mechanism for all mine action activities in Kosovo (the Concept Plan, paragraph 54 above). To fulfil these functions it depended largely on close co-operation with all de-mining partners and, notably, KFOR. Responsibility for de-mining was *de*

facto assumed by UNMACC in August 1999 although it was not until October 1999 that UNMIK officially informed KFOR (letter from the Deputy SRSG at paragraph 57 above). However, this did not relieve KFOR of its residual and continuous responsibility to support de-mining activities and, in particular, to identify, mark and report on the location of CBU sites. KFOR's continuing responsibilities for de-mining activities were set out in the Concept Plan and, more particularly, in the NATO OPLAN 10413 (paragraph 3 above). One of KFOR's most important tasks was information sharing and marking strike sites. Indeed, according to FRAGO300 (paragraph 56 above), KFOR had decided to increase its commitment to CBU site marking. Accordingly, UNMIK's responsibility for de-mining was dependant on accurate information being available on locations and, since UNMACC was unaware of the location of the unmarked CBUs relevant to the present case, it took no action to de-mine.

120. In sum, while the de-mining operation would have fallen within UNMACCs mandate, in the absence of the necessary location information from KFOR, the impugned inaction could not be attributed to UNMIK.

E. The Court's assessment

121. The Court has adopted the following structure in its decision set out below. It has, in the first instance, established which entity, KFOR or UNMIK, had a mandate to detain and de-mine, the parties having disputed the latter point. Secondly, it has ascertained whether the impugned action of KFOR (detention in *Saramati*) and inaction of UNMIK (failure to de-mine in *Behrami*) could be attributed to the UN: in so doing, it has examined whether there was a Chapter VII framework for KFOR and UNMIK and, if so, whether their impugned action and omission could be attributed, in principle, to the UN. The Court has used the term “attribution” in the same way as the ILC in Article 3 of its draft Articles on the Responsibility of International Organisations (see paragraph 29 above). Thirdly, the Court has then examined whether it is competent *ratione personae* to review any such action or omission found to be attributable to the UN.

122. In so doing, the Court has borne in mind that it is not its role to seek to define authoritatively the meaning of provisions of the UN Charter and other international instruments: it must nevertheless examine whether there was a plausible basis in such instruments for the matters impugned before it (*mutatis mutandis*, *Brannigan and McBride v. the United Kingdom*, judgment of 26 May 1993, Series A no. 258-B, § 72).

It also recalls that the principles underlying the Convention cannot be interpreted and applied in a vacuum. It must also take into account relevant rules of international law when examining questions concerning its jurisdiction and, consequently, determine State responsibility in conformity and harmony with the governing principles of international law of which it forms part, although it must remain mindful of the Convention's special

character as a human rights treaty (Article 31 § 3 (c) of the Vienna Convention on the Law of Treaties of 23 May 1969; *Al-Adsani v. the United Kingdom* [GC], no. 35763/97, § 55, ECHR 2001-XI; and the above-cited decision of *Banković and Others*, at § 57).

1. The entity with the mandate to detain and to de-mine

123. The respondent and third party States argued that it made no difference whether it was KFOR or UNMIK which had the mandate to detain (the *Saramati* case) and to de-mine (the *Behrami* case) since both were international structures established by, and answerable to, the UNSC. The applicants maintained that KFOR had the mandate to both detain and de-mine and that the nature and structure of KFOR was sufficiently different to UNMIK as to engage the respondent States individually.

124. Having regard to the MTA (notably paragraph 2 of Article 1), UNSC Resolution 1244 (paragraph 9 as well as paragraph 4 of Annex 2 to the Resolution) as confirmed by FRAGO997 and later COMKFOR Detention Directive 42 (see paragraph 51 above), the Court considers it evident that KFOR's security mandate included issuing detention orders.

125. As regards de-mining, the Court notes that Article 9(e) of UNSC Resolution 1244 provided that KFOR retained responsibility for supervising de-mining until UNMIK could take over, a provision supplemented by, as pointed out by the UN to the Court, Article 11(k) of the Resolution. The report of the SG to the UNSC of 12 June 1999 (paragraph 53 above) confirmed that this activity was a humanitarian one (former Pillar I of UNMIK) so UNMIK was to establish UNMACC pending which KFOR continued to act as the *de facto* coordination centre. When UNMACC began operations, it was therefore placed under the direction of the Deputy SRSG of Pillar I. The UN submissions to this Court, the above-cited Evaluation Report, the Concept Plan, FRAGO 300 and the letters of the Deputy SRSG of August and October 1999 to KFOR (paragraphs 55 and 57 above) confirm, in the first place, that the mandate for supervising de-mining was *de facto* and *de jure* taken over by UNMACC, created by UNMIK, at the very latest, by October 1999 and therefore prior to the detonation date in the *Behrami* case and, secondly, that KFOR remained involved in de-mining as a service provider whose personnel therefore acted on UNMIK's behalf.

126. The Court does not find persuasive the parties' arguments to the contrary. Whether, as noted by the applicants and the UN respectively, NATO had dropped the CBUs or KFOR had failed to secure the site and provide information thereon to UNMIK, this would not alter the mandate of UNMIK. The reports of the SG to the UNSC (53 above) cited by the applicants may have referred to UNMACC as having been set up jointly by KFOR and the UN, but this described the provision of assistance to UNMIK by the previous *de facto* co-ordination centre (KFOR): it was therefore transitional assistance which accorded with KFOR's general obligation to

support UNMIK (paragraphs 6 and 9(f) of UNSC Resolution 1244) and such assistance in the field did not change UNMIK's mandate. The report of the International Committee of the Red Cross relied upon by the applicants, indicated (at p. 23) that mine clearance in Kosovo was coordinated by UNMACC which in turn fell under the aegis of UNMIK. Finally, even if KFOR support was, as a matter of fact, essential to the continued presence of UNMIK (the applicants' submission), this did not alter the fact that the Resolution created separate and distinct presences, with different mandates and responsibilities and, importantly, without any hierarchical relationship or accountability between them (UN submissions, paragraph 118 above). 127. Accordingly, the Court considers that issuing detention orders fell within the security mandate of KFOR and that the supervision of de-mining fell within UNMIK's mandate.

2. Can the impugned action and inaction be attributed to the UN?

(a) The Chapter VII foundation for KFOR and UNMIK

128. As the first step in the application of Chapter VII, the UNSC Resolution 1244 referred expressly to Chapter VII and made the necessary identification of a "threat to international peace and security" within the meaning of Article 39 of the Charter (paragraph 23 above). The UNSC Resolution 1244, *inter alia*, recalled the UNSC's "primary responsibility" for the "maintenance of international peace and security". Being "determined to resolve the grave humanitarian situation in Kosovo" and to "provide for the safe and free return of all refugees and displaced persons to their homes", it determined that the "situation in the region continues to constitute a threat to international peace and security" and, having expressly noted that it was acting under Chapter VII, it went on to set out the solutions found to the identified threat to peace and security.

129. The solution adopted by UNSC Resolution 1244 to this identified threat was, as noted above, the deployment of an international security force (KFOR) and the establishment of a civil administration (UNMIK).

In particular, that Resolution authorised "Member States and relevant international organisations" to establish the international security presence in Kosovo as set out in point 4 of Annex 2 to the Resolution with all necessary means to fulfil its responsibilities listed in Article 9. Point 4 of Annex 2 added that the security presence would have "substantial [NATO] participation" and had to be deployed under "unified command and control". The UNSC was thereby delegating to willing organisations and members states (see paragraph 43 as regards the meaning of the term "delegation" and paragraph 24 as regards the voluntary nature of this State contribution) the power to establish an international security presence as well as its operational command. Troops in that force would operate therefore on the basis of UN delegated, and not direct, command. In addition, the SG was authorised (Article 10) to establish UNMIK with the

assistance of "relevant international organisations" and to appoint, in consultation with the UNSC, a SRSG to control its implementation (Articles 6 and 10 of the UNSC Resolution). The UNSC was thereby delegating civil administration powers to a UN subsidiary organ (UNMIK) established by the SG. Its broad mandate (an interim administration while establishing and overseeing the development of provisional self-government) was outlined in Article 11 of the Resolution.

130. While the Resolution referred to Chapter VII of the Charter, it did not identify the precise Articles of that Chapter under which the UNSC was acting and the Court notes that there are a number of possible bases in Chapter VII for this delegation by the UNSC: the non-exhaustive Article 42 (read in conjunction with the widely formulated Article 48), the non-exhaustive nature of Article 41 under which territorial administrations could be authorised as a necessary instrument for sustainable peace; or implied powers under the Charter for the UNSC to so act in both respects based on an effective interpretation of the Charter. In any event, the Court considers that Chapter VII provided a framework for the above-described delegation of the UNSC's security powers to KFOR and of its civil administration powers to UNMIK (see generally and *inter alia*, White and Ulgen, "*The Security Council and the Decentralised Military Option: Constitutionality and Function*", Netherlands Law Review 44, 1997, 386; Sarooshi, "*The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of its Chapter VII powers*", Oxford University (1999); Chesterman, "*Just War or Just Peace: Humanitarian Intervention and International Law*", (2002) Oxford University Press, pp. 167-169 and 172); *Zimmermann and Stahn*, cited above; De Wet, "*The Chapter VII Powers of the United Nations Security Council*", 2004, pp. 260-265; Wolfrum "*International Administration in Post-Conflict Situations by the United Nations and other International Actors*", Max Planck UNYB Vol. 9 (2005), pp. 667-672; Friedrich, "*UNMIK in Kosovo: struggling with Uncertainty*", Max Planck UNYB 9 (2005) and the references cited therein; and *Prosecutor v. Duško Tadić*, Decision of 2.10.95, Appeals Chamber of ICTY, §§ 35-36).

131. Whether or not the FRY was a UN member state at the relevant time (following the dissolution of the former Socialist Federal Republic of Yugoslavia), the FRY had agreed in the MTA to these presences. It is true that the MTA was signed by "KFOR" the day before the UNSC Resolution creating that force was adopted. However, the MTA was completed on the express basis of a security presence "under UN auspices" and with UN approval and the Resolution had already been introduced before the UNSC. The Resolution was adopted the following day, annexing the MTA and no international forces were deployed until the Resolution was adopted.

(b) Can the impugned action be attributed to KFOR?

132. While Chapter VII constituted the foundation for the above-described delegation of UNSC security powers, that delegation must be sufficiently limited so as to remain compatible with the degree of centralisation of UNSC collective security constitutionally necessary under the Charter and, more specifically, for the acts of the delegate entity to be attributable to the UN (as well as Chesterman, de Wet, Friedrich, Kolb and Sarooshi all cited above, see Gowlland-Debbas "*The Limits of Unilateral Enforcement of Community Objectives in the Framework of UN Peace Maintenance*" EIL (2000) Vol 11, No. 2 369-370; Niels Blokker, "*Is the authorisation Authorised? Powers and Practice of the UN Security Council to Authorise the Use of Force by "Coalition of the Able and Willing"*, EJIL (2000), Vol. 11 No. 3; pp. 95-104 and *Meroni v. High Authority* Case 9/56, [1958] ECR 133).

Those limits strike a balance between the central security role of the UNSC and two realities of its implementation. In the first place, the absence of Article 43 agreements which means that the UNSC relies on States (notably its permanent members) and groups of States to provide the necessary military means to fulfil its collective security role. Secondly, the multilateral and complex nature of such security missions renders necessary some delegation of command.

133. The Court considers that the key question is whether the UNSC retained ultimate authority and control so that operational command only was delegated. This delegation model is now an established substitute for the Article 43 agreements never concluded.

134. That the UNSC retained such ultimate authority and control, in delegating its security powers by UNSC Resolution 1244, is borne out by the following factors.

In the first place, and as noted above, Chapter VII allowed the UNSC to delegate to "Member States and relevant international organisations". Secondly, the relevant power was a delegable power. Thirdly, that delegation was neither presumed nor implicit, but rather prior and explicit in the Resolution itself. Fourthly, the Resolution put sufficiently defined limits on the delegation by fixing the mandate with adequate precision as it set out the objectives to be attained, the roles and responsibilities accorded as well as the means to be employed. The broad nature of certain provisions (see the UN submissions, paragraph 118 above) could not be eliminated altogether given the constituent nature of such an instrument whose role was to fix broad objectives and goals and not to describe or interfere with the detail of operational implementation and choices. Fifthly, the leadership of the military presence was required by the Resolution to report to the UNSC so as to allow the UNSC to exercise its overall authority and control (consistently, the UNSC was to remain actively seized of the matter, Article 21 of the Resolution). The requirement that the SG present the KFOR report

to the UNSC was an added safeguard since the SG is considered to represent the general interests of the UN.

While the text of Article 19 of UNSC Resolution 1244 meant that a veto by one permanent member of the UNSC could prevent termination of the relevant delegation, the Court does not consider this factor alone sufficient to conclude that the UNSC did not retain ultimate authority and control.

135. Accordingly, UNSC Resolution 1244 gave rise to the following chain of command in the present cases. The UNSC was to retain ultimate authority and control over the security mission and it delegated to NATO (in consultation with non-NATO member states) the power to establish, as well as the operational command of, the international presence, KFOR. NATO fulfilled its command mission *via* a chain of command (from the NAC, to SHAPE, to SACEUR, to CIC South) to COMKFOR, the commander of KFOR. While the MNBs were commanded by an officer from a lead TCN, the latter was under the direct command of COMKFOR. MNB action was to be taken according to an operational plan devised by NATO and operated by COMKFOR in the name of KFOR.

136. This delegation model demonstrates that, contrary to the applicants' argument at paragraph 77 above, direct operational command from the UNSC is not a requirement of Chapter VII collective security missions.

137. However, the applicants made detailed submissions to the effect that the level of TCN control in the present cases was such that it detached troops from the international mandate and undermined the unity of operational command. They relied on various aspects of TCN involvement including that highlighted by the Venice Commission (paragraph 50 above) and noted KFOR's legal personality separate to that of the TCNs.

138. The Court considers it essential to recall at this point that the necessary (see paragraph 24 above) donation of troops by willing TCNs means that, in practice, those TCNs retain some authority over those troops (for reasons, *inter alia*, of safety, discipline and accountability) and certain obligations in their regard (material provision including uniforms and equipment). NATO's command of operational matters was not therefore intended to be exclusive, but the essential question was whether, despite such TCN involvement, it was "effective" (ILC Report cited at paragraph 32 above).

139. The Court is not persuaded that TCN involvement, either actual or structural, was incompatible with the effectiveness (including the unity) of NATO's operational command. The Court does not find any suggestion or evidence of any actual TCN orders concerning, or interference in, the present operational (detention) matter. Equally there is no reason to consider that the TCN structural involvement highlighted by the applicants undermined the effectiveness of NATO's operational control. Since TCN troop contributions are in law voluntary, the continued level of national deployment is equally so. That TCNs provided materially for their troops

would have no relevant impact on NATO's operational control. It was not argued that any NATO rules of engagement imposed would not be respected. National command (over own troops or a sector in Kosovo) was under the direct operational authority of COMKFOR. While individual claims might potentially be treated differently depending on which TCN was the source of the alleged problem (national commanders decided on whether immunity was to be waived, TCNs had exclusive jurisdiction in (at least) disciplinary and criminal matters, certain TCNs had put in place their own TCNCOs and at least one TCN accepted civil jurisdiction (the above-cited *Bici* case)), it has not been explained how this, of itself, could undermine the effectiveness or unity of NATO command in *operational* matters. The Court does not see how the failure to conclude a SOFA between the UN and the host FRY could affect, as the applicants suggested, NATO's operational command. That COMKFOR was charged (the applicants at paragraph 78 above) exclusively with issuing detention orders amounts to a division of labour and not a break in a unified command structure since COMKFOR acted at all times as a KFOR officer answerable to NATO through the above-described chain of command.

140. Accordingly, even if the UN itself would accept that there is room for progress in co-operation and command structures between the UNSC, TCNs and contributing international organisations (see, for example, Supplement to an Agenda for Peace: Position paper of the SG on the Occasion of the 50th Anniversary of the UN, A/50/60 - S/1995/1; the *Brahami* report, cited above; UNSC Resolutions 1327 (2000) and 1353 (2001); and Reports of the SG of 1 June and 21 December 2001 on the Implementation of the Recommendations of the Special Committee on Peacekeeping Operations and the Panel on UN Peace Operations (A/55/977, A/56/732)), the Court finds that the UNSC retained ultimate authority and control and that effective command of the relevant operational matters was retained by NATO.

141. In such circumstances, the Court observes that KFOR was exercising lawfully delegated Chapter VII powers of the UNSC so that the impugned action was, in principle, "attributable" to the UN within the meaning of the word outlined at paragraphs 29 and 121 above.

(c) Can the impugned inaction be attributed to UNMIK?

142. In contrast to KFOR, UNMIK was a subsidiary organ of the UN. Whether it was a subsidiary organ of the SG or of the UNSC, whether it had a legal personality separate to the UN, whether the delegation of power by the UNSC to the SG and/or UNMIK also respected the role of the UNSC for which Article 24 of the Charter provided, UNMIK was a subsidiary organ of the UN institutionally directly and fully answerable to the UNSC (see ILC report at paragraph 33 above). While UNMIK comprised four pillars (three of which were at the time led by UNHCR, the OSCE and the EU), each pillar was under the authority of a Deputy SRSG, who reported to

the SRSG who in turn reported to the UNSC (Article 20 of UNSC Resolution 1244).

143. Accordingly, the Court notes that UNMIK was a subsidiary organ of the UN created under Chapter VII of the Charter so that the impugned inaction was, in principle, "attributable" to the UN in the same sense.

3. Is the Court competent ratione personae?

144. It is therefore the case that the impugned action and inaction are, in principle, attributable to the UN. It is, moreover, clear that the UN has a legal personality separate from that of its member states (*The Reparations case*, ICJ Reports 1949) and that that organisation is not a Contracting Party to the Convention.

145. In its *Bosphorus* judgment (cited above, §§152-153), the Court held that, while a State was not prohibited by the Convention from transferring sovereign power to an international organisation in order to pursue cooperation in certain fields of activity, the State remained responsible under Article 1 of the Convention for all acts and omissions of its organs, regardless of whether they were a consequence of the necessity to comply with international legal obligations, Article 1 making no distinction as to the rule or measure concerned and not excluding any part of a State's "jurisdiction" from scrutiny under the Convention. The Court went on, however, to hold that where such State action was taken in compliance with international legal obligations flowing from its membership of an international organisation and where the relevant organisation protected fundamental rights in a manner which could be considered at least equivalent to that which the Convention provides, a presumption arose that the State had not departed from the requirements of the Convention. Such presumption could be rebutted, if in the circumstances of a particular case, it was considered that the protection of Convention rights was manifestly deficient: in such a case, the interest of international cooperation would be outweighed by the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*ibid*., §§ 155-156).

146. The question arises in the present case whether the Court is competent *ratione personae* to review the acts of the respondent States carried out on behalf of the UN and, more generally, as to the relationship between the Convention and the UN acting under Chapter VII of its Charter.

147. The Court first observes that nine of the twelve original signatory parties to the Convention in 1950 had been members of the UN since 1945 (including the two Respondent States), that the great majority of the current Contracting Parties joined the UN before they signed the Convention and that currently all Contracting Parties are members of the UN. Indeed, one of the aims of this Convention (see its preamble) is the collective enforcement of rights in the Universal Declaration of Human Rights of the General Assembly of the UN. More generally, it is further recalled, as noted at

paragraph 122 above, that the Convention has to be interpreted in the light of any relevant rules and principles of international law applicable in relations between its Contracting Parties. The Court has therefore had regard to two complementary provisions of the Charter, Articles 25 and 103, as interpreted by the International Court of Justice (see paragraph 27 above).

148. Of even greater significance is the imperative nature of the principle aim of the UN and, consequently, of the powers accorded to the UNSC under Chapter VII to fulfil that aim. In particular, it is evident from the Preamble, Articles 1, 2 and 24 as well as Chapter VII of the Charter that the primary objective of the UN is the maintenance of international peace and security. While it is equally clear that ensuring respect for human rights represents an important contribution to achieving international peace (see the Preamble to the Convention), the fact remains that the UNSC has primary responsibility, as well as extensive means under Chapter VII, to fulfil this objective, notably through the use of coercive measures. The responsibility of the UNSC in this respect is unique and has evolved as a counterpart to the prohibition, now customary international law, on the unilateral use of force (see paragraphs 18-20 above).

149. In the present case, Chapter VII allowed the UNSC to adopt coercive measures in reaction to an identified conflict considered to threaten peace, namely UNSC Resolution 1244 establishing UNMIK and KFOR.

Since operations established by UNSC Resolutions under Chapter VII of the UN Charter are fundamental to the mission of the UN to secure international peace and security and since they rely for their effectiveness on support from member states, the Convention cannot be interpreted in a manner which would subject the acts and omissions of Contracting Parties which are covered by UNSC Resolutions and occur prior to or in the course of such missions, to the scrutiny of the Court. To do so would be to interfere with the fulfilment of the UN's key mission in this field including, as argued by certain parties, with the effective conduct of its operations. It would also be tantamount to imposing conditions on the implementation of a UNSC Resolution which were not provided for in the text of the Resolution itself. This reasoning equally applies to voluntary acts of the respondent States such as the vote of a permanent member of the UNSC in favour of the relevant Chapter VII Resolution and the contribution of troops to the security mission: such acts may not have amounted to obligations flowing from membership of the UN but they remained crucial to the effective fulfilment by the UNSC of its Chapter VII mandate and, consequently, by the UN of its imperative peace and security aim.

150. The applicants argued that the substantive and procedural protection of fundamental rights provided by KFOR was in any event not "equivalent" to that under the Convention within the meaning of the Court's *Bosphorus* judgment, with the consequence that the presumption of Convention compliance on the part of the respondent States was rebutted.

151. The Court, however, considers that the circumstances of the present cases are essentially different from those with which the Court was concerned in the *Bosphorus* case. In its judgment in that case, the Court noted that the impugned act (seizure of the applicant's leased aircraft) had been carried out by the respondent State authorities, on its territory and following a decision by one of its Ministers (§ 137 of that judgment). The Court did not therefore consider that any question arose as to its competence, notably *ratione personae*, vis-à-vis the respondent State despite the fact that the source of the impugned seizure was an EC Council Regulation which, in turn, applied a UNSC Resolution. In the present cases, the impugned acts and omissions of KFOR and UNMIK cannot be attributed to the respondent States and, moreover, did not take place on the territory of those States or by virtue of a decision of their authorities. The present cases are therefore clearly distinguishable from the *Bosphorus* case in terms both of the responsibility of the respondent States under Article 1 and of the Court's competence *ratione personae*.

There exists, in any event, a fundamental distinction between the nature of the international organisation and of the international cooperation with which the Court was there concerned and those in the present cases. As the Court has found above, UNMIK was a subsidiary organ of the UN created under Chapter VII and KFOR was exercising powers lawfully delegated under Chapter VII of the Charter by the UNSC. As such, their actions were directly attributable to the UN, an organisation of universal jurisdiction fulfilling its imperative collective security objective.

152. In these circumstances, the Court concludes that the applicants' complaints must be declared incompatible *ratione personae* with the provisions of the Convention.

4. Remaining admissibility issues

153. In light of the above conclusion, the Court considers that it is not necessary to examine the remaining submissions of the parties on the admissibility of the application including on the competence *ratione loci* of the Court to examine complaints against the respondent States about extra-territorial acts or omissions, on whether the applicants had exhausted any effective remedies available to them within the meaning of Article 35 § 1 of the Convention and on whether the Court was competent to consider the case given the principles established by the above-cited *Monetary Gold* judgment (the above-cited cited *Banković and Others* decision, at § 83).

For these reasons, the Court

Decides, unanimously, to strike the *Saramati* application against Germany out of its list of cases.

Declares, by a majority, inadmissible the application of *Behrami* and *Behrami* and the remainder of the *Saramati* application against France and Norway.

Christos ROZAKIS
President

Michael O'BOYLE
Deputy Registrar

APPENDIX
List of Abbreviations

- CBU: Cluster Bomb Unit
- CFI: Court of First Instance of the European Communities
- CIC SOUTH: Commander in Chief of Allied Forces Southern Europe
- COMKFOR: Commander of KFOR
- CPT: Committee for the Prevention of Torture and Inhuman and Degrading Treatment, Council of Europe
- DSRSG – Deputy Special Representative to the Secretary General, UN
- EU: European Union
- FRAGO: Fragmentary Order
- FRY: Federal Republic of Yugoslavia
- ICJ: International Court of Justice
- ICTY: International Criminal Tribunal for the former Yugoslavia
- ILC: International Law Commission
- KCO: Kosovo Claims Office
- KFOR: Kosovo Force
- MAP : Mine Action Programme
- MNB : Multinational Brigade
- MTA: Military Technical Agreement
- NAC: North Atlantic Council, NATO
- NATO: North Atlantic Treaty Organisation
- OPLAN: Operational Plan
- OSCE: Organisation for Security and Co-operation in Europe
- PACE: Parliamentary Assembly, Council of Europe
- SACEUR: Supreme Allied Commander Europe, NATO
- SG: Secretary General, UN
- SHAPE – Supreme Headquarters Allied Powers Europe, NATO
- SOFA: Status of Forces Agreement
- SOP: Standing Operating Procedures
- SRSG: Special Representative to the Secretary General, UN
- TCN: Troop Contributing Nation
- TCNCO: Troop Contributing Nation Claims' Office
- UN: United Nations
- UNHCR: United Nations High Commissioner for Refugees
- UNMACC: United Nations Mine Action Co-ordination Centre
- UNMAS: United Nations Mine Action Service
- UNMIK: United Nations Interim Administration Mission in Kosovo
- UNICEF: United Nations Children's Fund
- UNPROFOR: United Nations Protection Force
- UNSC: United Nations Security Council
- UNTAC: United Nations Transitional Administration for Cambodia
- UNTAES: United Nations Transitional Administration for Eastern Slavonia
- UNTAET: United Nations Transitional Administration for East Timor
- Venice Commission – European Commission for Democracy through Law, Council of Europe