

## **Chapter XI**

### **Consideration of the provisions of Chapter VII of the Charter**

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## **Introductory note**

This Chapter deals with action taken by the Security Council with respect to threats to the peace, breaches of the peace and acts of aggression, within the framework of Chapter VII of the Charter.

During the period under review Chapter VII of the Charter was invoked by the Security Council in an increased number of its decisions. While most of these decisions related to the situations in the Central African Republic, Sierra Leone, Angola, East Timor, Afghanistan, and the former Yugoslavia, the Council also adopted measures under Chapter VII of the Charter in connection with the situations in the Democratic Republic of the Congo, Liberia, the Great Lakes region, Albania, East Timor, Iraq and Kuwait, and Libya in order to ensure the government's full cooperation in surrendering the suspects in the terrorist attacks against Pan Am flight 103 and Union de Transports Aeriens flight 772, and for the extradition of the suspects wanted in the assassination attempt of the President of Egypt.

This Chapter will focus in parts I to IX on selected material that may best serve to highlight how the provisions of Chapter VII of the Charter were interpreted by the Council in its deliberations and applied in its decisions. Given the increase in the Council's practice under Chapter VII during the period under review, and in order to give due focus to the key relevant elements that arose in its decisions or deliberations, individual Articles of the Charter have been dealt with in separate parts of the Chapter. Thus parts I to IV of this Chapter focus on the practice of the Council in accordance with Articles 39-42, while part V focuses on Articles 43 to 47, part VI deals with Article 48, part VII addresses the obligations of Member States under Article 49, and parts VIII and IX deal, respectively, with the practice of the Council with respect to Articles 50 and 51. Further, each part contains a section that focuses on the decisions of the Council which illustrate its practice with respect to the Article(s) considered, as well as a section that highlights relevant excerpts of the Council's deliberations in respect to those Articles. Each section treats the different aspects of the Council's consideration of the Article in focus under different sub-headings. The use of this structure is intended to organise better the material relevant to each Article.

**Part I**  
**Determination of a threat to the peace, breach of the peace,  
or act of aggression under Article 39 of the Charter**

*Article 39*

*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.*

**Note**

During the period under review, the Council did not explicitly invoke Article 39 in any of its decisions. The Council, however, did adopt several resolutions that determined or expressed concern at the “existence of a threat to the peace”, such as in connection with the situations in: Albania, Afghanistan, East Timor, the Great Lakes region, Sierra Leone and the Central African Republic. The Council also determined a continued threat to the peace in the following situations: in the former Yugoslavia; between Iraq and Kuwait; and in Angola. In some instances, the Security Council regarded the widespread violations of international humanitarian law and human rights, terrorist activities by external State actors and the staging of a military *coup d'état* as a threat to international peace and security.

During the period under consideration, the Council members also identified certain generic threats to peace and security. For instance, in the deliberations<sup>1</sup> held in connection with the agenda item entitled “The responsibility of the Security Council in the maintenance of international peace and security”, members of the Council expressed the view that the proliferation of weapons of mass destruction constituted a threat to international peace and security.

Section A outlines the decisions of the Council in which determinations were made regarding the existence of a threat to the peace. Section B reflects the constitutional discussion in the meetings of the Council arising in connection with the adoption of some of these resolutions.

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<sup>1</sup> S/PV.3890.

## **A. Decisions relating to Article 39**

### *The situation in Sierra Leone*

By a statement of the President dated 11 July 1997,<sup>2</sup> the Council members expressed concern about the grave crisis in Sierra Leone, which endangered the peace, security and stability of the whole region, and in particular, about its negative impact on the peace process in neighbouring Liberia.

By resolution 1132 (1997) of 8 October 1997, the Council expressed concern at the continuing violence, loss of life and the deteriorating humanitarian conditions in Sierra Leone following the military coup of 25 May 1997. The Council determined that the situation in Sierra Leone constituted a threat to international peace and security in the region.

By resolution 1270 (1999) of 22 October 1999, the Council recalled its resolutions 1171 (1998) of 5 June 1998, 1181 (1998) of 13 July 1998, 1231 (1999) of 11 March 1999, 1260 (1999) of 20 August 1999 and other relevant resolutions, and the statement by its President of 15 May 1999,<sup>3</sup> thereby determining that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region.

### *The situation in the Great Lakes region*

By a statement of the President dated 1 November 1996,<sup>4</sup> the Council members agreed with the Secretary-General that the situation in Eastern Zaire constituted a serious threat to the stability of the Great Lakes region.<sup>5</sup> By resolution 1078 (1996) of 9 November 1996, the Council particularly expressed concern at the humanitarian situation and the large-scale movements of refugees and internally displaced persons, and determined that that the magnitude of the humanitarian crisis in eastern Zaire constituted a threat to peace and security in the region.

By resolution 1080 (1996) of 15 November 1996, the Council expressed grave concern at the continued deteriorating situation in the Great Lakes region, in particular Eastern Zaire, and determined that the situation in Eastern Zaire constituted a threat to international peace and security in the region.

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<sup>2</sup> S/PRST/1997/36.

<sup>3</sup> S/PRST/1999/13.

<sup>4</sup> S/PRST/1996/44.

<sup>5</sup> By a letter dated 14 October 1996 addressed to the President, the Secretary-General concluded that the deteriorating situation in Eastern Zaire presented a threat to peace and security in the region (S/1996/875).

*Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995.*

By resolutions 1054 (1996) of 26 April 1996 and 1070 (1996) of 16 August 1996, the Council expressed alarm at the terrorist assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995, convinced that those responsible for that act should be brought to justice. By the same resolution, the Council determined that the non-compliance of the Government of Sudan with the requests set out in paragraph 4 of resolution 1044 (1996) constituted a threat to international peace and security.

#### *The situation in East Timor*

By resolution 1264 (1999) of 15 September 1999 and resolution 1272 (1999) of 25 October 1999, the Council expressed deep concern at the deterioration in the security situation in East Timor, and, in particular by the violence against and large scale displacement and relocation of East Timorese civilians, thereby, determining that the situation in East Timor constituted a threat to peace and security.

#### *The situation in Albania*

By resolutions 1101 (1997) of 28 March 1997 and 1114 (1997) of 19 June 1997, the Council determined that the situation in Albania constituted a threat to peace and security in the region. By the same resolutions, the Council underlined the need for all concerned to refrain from hostilities and acts of violence, and reiterated its call to the parties involved to continue the political dialogue.

#### *The situation in Afghanistan*

By resolution 1267 (1999) of 15 October 1999, the Council reiterated its deep concern over violations of international humanitarian law and of human rights, and determined that the

failure of the Taliban authorities to respond to the demands in resolution 1214 (1998) constituted a threat to international peace and security.<sup>6</sup>

*Items relating to the situation in the former Yugoslavia*

*(a) The situation in Croatia*

By resolutions 1037 (1996) and 1038 (1996) of 15 January 1996, the Council recalled all of its relevant resolutions, in particular resolutions 1023 (1995) of 22 November 1995 and 1025 (1995) of 30 November 1995, and determined that the situation in Croatia continued to constitute a threat to international peace and security.

By resolution 1066 (1996) of 15 July 1996, the Council determined that the situation in Croatia continued to constitute a threat to international peace and security, and authorized the United Nations military observers to continue monitoring the demilitarization of the Prevalaka peninsula.

By resolution 1079 (1996) of 15 November 1996, the Council determined that the situation in Croatia continued to constitute a threat to international peace and security and welcomed the report of the Secretary-General.<sup>7</sup> The Council noted in particular the recommendations of the Secretary-General that the mandate of the United Nations Transitional Administration for Eastern Slavonia, Baranja and Western Sirmium should be extended by six months.

By resolution 1093 (1997) of 14 January 1997, the Council noted with concern the violations in the United Nations-designated zones in the region and other activities, including restrictions on the freedom of movement of United Nations military observers, and determined that the situation in Croatia continued to constitute a threat to international peace and security.

By resolution 1119 (1997) of 14 July 1997, the Council noted with concern that the parties had failed to make any progress in adopting the practical options proposed by the United Nations military observers in May 1996, and determined that the situation in Croatia continued to constitute a threat to international peace and security.

By resolution 1120 (1997) of 14 July 1997, the Council expressed its grave concern over the lack of improvement in respect to human rights and strongly deplored incidents of ethnically

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<sup>6</sup> By resolution 1214 (1998), the Council expressed its grave concern at the Afghan conflict, which had escalated as a result of the offensive by the Taliban forces.

<sup>7</sup> S/1996/883.



motivated violence in Hrvatska Kostajnica. By the same resolution, the Council determined that the situation in Croatia continued to constitute a threat to international peace and security.

*(b) The situation in Bosnia and Herzegovina*

By resolutions 1088 (1996) of 12 December 1996 and 1174 (1998) of 15 June 1998, having considered the report of the Secretary-General,<sup>8</sup> the Council determined that the situation in the region continued to constitute a threat to international peace and security.

By resolution 1247 (1999) of 18 June 1999, the Council emphasized that a comprehensive and coordinated return of refugees and displaced persons throughout the region continued to be crucial to lasting peace, and determined that the situation in the region continued to constitute a threat to international peace and security.

*(c) Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (S/1998/223)*

*Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/1998/272)*

By resolution 1199 (1998) of 23 September 1998, the Council was deeply concerned by the flow of refugees into northern Albania, Bosnia and Herzegovina and other European countries as a result of the use of force in Kosovo. Moreover, the Council was concerned by the deterioration in the humanitarian situation throughout Kosovo and by reports of increasing violations of human rights and of international humanitarian law. It thereby affirmed that the deterioration of the situation in Kosovo, Federal Republic of Yugoslavia, constituted a threat to peace and security in the region.

By resolution 1203 (1998) of 24 October 1998, the Council was deeply alarmed and concerned at the grave humanitarian situation throughout Kosovo, and affirmed that the unresolved situation there constituted a threat to peace and security in the region.

By resolution 1244 (1999) of 10 June 1999, the Council condemned all acts of violence against the Kosovo population as well as all terrorists acts by any party, and determined that the situation in the region continued to constitute a threat to international peace and security.

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<sup>8</sup> S/1996/1017.

### *The situation in the Central African Republic*

By resolution 1125 (1997) of 6 August 1997, the Council expressed concern at the fact that, in the Central African Republic, former mutineers, members of militias and other persons continued to bear arms in contravention of the Bangui Agreements, and determined that the situation in the Central African Republic continued to constitute a threat to international peace and security in the region.

By resolutions 1136 (1997) of 6 November 1997, 1152 (1998) of 5 February 1998, 1155 (1998) of 16 March 1998, and 1159 (1998) of 27 March 1998, the Council reaffirmed its resolution 1125 (1997), and determined that the situation in the Central African Republic continued to constitute a threat to international peace and security in the region.

### *The situation between Iraq and Kuwait*

By resolution 1137 (1997) of 12 November 1997, the Council condemned the continuous violations by Iraq of its obligations under the relevant resolutions to cooperate fully and unconditionally with the Special Commission in the fulfilment of its mandate, and determined that the situation continued to constitute a threat to international peace and security.

### *The situation in Angola*

By resolution 1127 (1997) of 28 August 1997, the Council expressed its grave concern at the serious difficulties in the peace process, which were mainly the result of delays by the União Nacional para a Independência Total de Angola (UNITA) in the implementation of its obligations under the Lusaka Protocol, and determined that the situation in Angola constituted a threat to international peace and security in the region.

By resolution 1135 (1997) of 29 October 1997, the Council strongly deplored the failure by UNITA to comply fully with its obligations under the "Acordos de Paz", the Lusaka Protocol and with relevant Security Council resolutions, in particular resolution 1127 (1997) of 28 August 1997. As a result of this, the Council determined that the situation constituted a threat to international peace and security in the region.

By resolution 1173 (1998) of 12 June 1998, the Council expressed its grave concern at the critical situation in the peace process, which had been the result of the failure by UNITA to implement its obligations under the "Acordos de Paz", the Lusaka Protocol, and relevant

Security Council resolutions. The Council, thereby, determined that the situation in Angola constituted a threat to international peace and security in the region.

By resolutions 1176 (1998) of 24 June 1998 and 1237 (1999) of 7 May 1999, the Council reaffirmed its resolution 696 (1991) of 30 May 1991 and all subsequent relevant resolutions, in particular resolution 1173 (1998) of 12 June 1998, and determined that the situation in Angola constituted a threat to international peace and security in the region.

## **B. Discussion relating to Article 39**

During the period under review, a number of salient issues were discussed in the deliberations of the Council, which led to the Council determining the existence of a threat to the peace. An overview of these cases below will shed light on the interpretation and application of Article 39. In some instances, during the deliberations of the Council,<sup>9</sup> no substantive issues relating to the provision of Article 39 were raised.

### **Case 1**

#### *The situation in the Central African Republic*

At its 3808<sup>th</sup> meeting, on 6 August 1997, the Council considered a letter dated 22 July 1997 addressed to the President of the Council from the representative of the Central African Republic (CAR),<sup>10</sup> transmitting a letter from President Patasse, who had requested that the Council authorize the Member States of the Inter-African Mission to monitor the Implementation of the Bangui Agreements (MISAB) to carry out the necessary operations to attain the objectives defined by its mandate. At the same meeting, the Council adopted resolution 1125 (1997), and authorized the Member States participating in MISAB and those States providing logistical support to ensure the security and freedom of movement of their personnel.

The Council members unanimously supported resolution 1125 (1997), and similarly viewed the situation of the armed conflict in the CAR as posing a threat to regional stability. The representative of Kenya stated that the conflict in the CAR had plunged the country into a

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<sup>9</sup> In connection with the situation in East Timor, see resolutions 1264 (1999) and 1272 (1999); In connection with the situation in Albania see, resolutions 1101 (1997) and 1114 (1997).

<sup>10</sup> S/1997/561.

political crisis and “economic catastrophe”, which had affected every aspect of civil life in that country and could destabilize the whole region. He expressed concern that the situation in the CAR posed a threat to international peace and security.<sup>11</sup> The representative of Guinea-Bissau noted that the Central African Government had been unable to bring about respect for public order, and the lack of security had been worsening and threatened to spread throughout the country. Those serious tensions were likely to affect regional stability and thus posed a threat to international peace and security.<sup>12</sup> The representative of the Republic of Korea expressed concern about the crisis in the CAR and its implications for the whole Central African region. He also shared the view of the regional countries that the crisis in the Central African region posed a serious threat to regional peace and stability.<sup>13</sup> The representative of Poland noted that his delegation had voted in favour of resolution 1125 (1997), because in his view, despite regional efforts, the situation in the CAR constituted a threat to international peace and security.

## Case 2

### *The situation in Sierra Leone*

Following the military *coup d'état* in Sierra Leone, which had taken place on 25 May 1997,<sup>14</sup> the Security Council held its 3822<sup>nd</sup> meeting on 8 October 1997, during the course of which it adopted resolution 1132 (1997) expressing full support for the mediation efforts of ECOWAS. By the same resolution, the Council determined that the situation in Sierra Leone constituted a threat to international peace and security in the region and imposed mandatory measures against the military junta and their families.

During the debate, the Council unanimously condemned the *coup d'état* and welcomed the regional initiatives undertaken by ECOWAS to restore constitutional order in Sierra Leone. The representative of Nigeria emphasized that in view of its potential to destabilize the sub-region, the situation in Sierra Leone was a clear threat to international peace and security.<sup>15</sup> The representative of the United Kingdom recalled a previous meeting between Council members and the Chairman and the Secretary-General of the Organization of the African Union (OAU),

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<sup>11</sup> S/PV.3808, p.2.

<sup>12</sup> Ibid., p.3.

<sup>13</sup> Ibid., p.4.

<sup>14</sup> See resolution 1132 (1997) of 8 October 1997, para. 9.

<sup>15</sup> S/PV.3822, p.4.

which focused on regional initiatives that dealt with the threats to peace and security in the region.<sup>16</sup> The representative of the Russian Federation stated that a new threat had emerged affecting the stability in the region. He noted that the coup had interrupted Sierra Leone's progress on the path to democratic development and had derailed the peace process, which had been established.<sup>17</sup> The representative of Japan similarly condemned the coup and expressed grave concern about the threat to international peace and security in the region.<sup>18</sup>

### Case 3

#### *The situation in the Great Lakes region*

At its 3713<sup>th</sup> meeting, on 15 November 1996, the Council considered a letter dated 15 November 1996 addressed to the President of the Security Council from the representative of Zaire.<sup>19</sup> The text of the letter stated that since the Security Council planned to deploy a multinational force in Eastern Zaire in order to deal with the vast humanitarian crisis, which constituted a threat to peace and security in the region, his Government should be formally consulted on the composition and mandate of that force and on the measures needed to implement the decision of the Security Council.<sup>20</sup>

During the debate, the Council members expressed concern about the displacement of millions of refugees in Eastern Zaire, which had a humanitarian impact in the Great Lakes region. The representative of France stated that the countries of the Great Lakes region were threatened by a humanitarian catastrophe, resulting from the disturbances which had taken place in Eastern Zaire and the exodus of 1.2 million refugees and displaced persons.<sup>21</sup> The representative of Botswana emphasized that the refugee camps had become recruitment grounds for those determined to train and equip an army to fight against the Government of Rwanda. Therefore, the prolonged stay of the refugees in camps in Zaire had been a source of insecurity and instability to the country of asylum, which was a serious threat to the sovereignty and

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<sup>16</sup> Ibid., p.7.

<sup>17</sup> Ibid., p.9.

<sup>18</sup> Ibid., p.11.

<sup>19</sup> S/1996/942.

<sup>20</sup> Ibid., pp.2-3.

<sup>21</sup> S/PV.3713, p.10.

territorial integrity of Zaire.<sup>22</sup> The representative of Korea stated that the humanitarian catastrophe, unless tackled properly by the international community, was bound to have serious consequences, which would threaten peace and security in the entire Great Lakes region.<sup>23</sup> The representative of Honduras expressed his delegation's deep concern at the events unfolding in Eastern Zaire, which had caused more than a million refugees to abandon their camps, thereby threatening peace and security in the Great Lakes region.<sup>24</sup> The representative of the Russian Federation also expressed deep concern about the loss of human life and displacement of over 1 million Rwandese and Burundian refugees and thousands of Zairians who had found themselves cut off from external aid. He believed that the situation threatened to grow into a regional military conflict that would doom all hopes for the restoration of peace and stability in the Great Lakes region.<sup>25</sup>

At the same meeting, the Council unanimously adopted resolution 1080 (1996), which authorized the establishment of a temporary multinational force to facilitate the delivery of humanitarian aid to alleviate the suffering of the displaced persons and refugees.

#### Case 4

*Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995*

In response to a request in a letter addressed to the President of the Security Council from the representative of Ethiopia,<sup>26</sup> the Council, at its 3660<sup>th</sup> meeting on 26 April 1996,<sup>27</sup> considered the situation concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt. At the same meeting, the Council adopted

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<sup>22</sup> Ibid., p.14.

<sup>23</sup> Ibid., p.16.

<sup>24</sup> Ibid., p.20.

<sup>25</sup> Ibid., p.24.

<sup>26</sup> S/1996/10.

<sup>27</sup> At its 3660<sup>th</sup> meeting, the Council adopted resolution 1054 (1996).

resolution 1054 (1996) by which it stated that should the Sudan fail to comply with the demands set out in resolution 1044 (1996), it would impose measures against the country.

During the debate, in response to resolution 1044 (1996) calling upon the Government of Sudan to extradite the suspects,<sup>28</sup> the representative of Sudan denied that his Government had any connection with any terrorist act. He stated that his Government had no knowledge about the suspects, including information that would help them to determine their location.<sup>29</sup> The representative of Uganda stated that in spite of his Government's efforts to maintain a "policy of good neighborliness" with all its neighbors, the Government of Sudan had continued its activities of assisting, supporting, facilitating and giving shelter to rebel movements based on its soil. He recalled that on 13 April 1995, his Government had severed diplomatic relations with the Government of Sudan, over incidents aimed at destabilizing Uganda and compromising its security and stability.<sup>30</sup>

The Council members unanimously viewed the assassination attempt on the life of President Mubarak as an act of international terrorism. The representative of Korea stated that his Government viewed international terrorism as a major threat to international peace and security. His delegation deeply regretted that the Security Council had come to where it stood in the implementation of its resolution 1044 (1996). In the case at hand, however, it saw no alternative but to resort to Chapter VII as the ultimate means of ensuring the implementation of resolution 1044 (1996).<sup>31</sup> The representative of the United States noted that Sudan's complicity in, and efforts to cover up, the attack on President Mubarak were only part of a broader pattern of Sudanese support for terrorism, which demanded action by the international community. He also noted that under the policy of the National Islamic Front, the Sudan welcomed a long list of terrorist organizations, providing a meeting point and training centre for their violent activities outside of Sudan. Those terrorist organizations threatened governments in Egypt, Algeria, Israel and elsewhere. Furthermore, he emphasized that Sudan's actions in fostering terrorism around the globe were indeed a threat to international peace and security.<sup>32</sup>

The representative of Egypt recalled that the Organization of the African Union considered the assassination attempt against the life of President Mubarak to be an attack on the

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<sup>28</sup> Resolution 1044 (1996) of 31 January 1996 was adopted at its 3627<sup>th</sup> meeting.

<sup>29</sup> S/PV.3660, p. 2-10.

<sup>30</sup> Ibid., p.12.

<sup>31</sup> Ibid., p.18.

<sup>32</sup> Ibid., p.21.

whole of Africa, threatening regional stability and international peace and security. He stated that by the adoption of resolution 1054 (1996), the Council reaffirmed that the dangers of international terrorism represented a grave threat to international peace and security and that concerted efforts by countries to eliminate that threat and to deter those who assist in its perpetration were a basic requirement for the maintenance of international peace and security.<sup>33</sup>

While condemning the assassination attempt, the representatives of the Russian Federation and China opposed imposing sanctions on Sudan. The representative of the Russian Federation, who abstained from the vote on resolution 1054 (1996), condemned the attempted assassination of the President of Egypt and reiterated his Government's stance on the imposition of sanctions. The representative of China, who also abstained from the vote, stated that his Government opposed and condemned all forms of terrorism. His Government believed that terrorist activities, not only wreaked havoc on life, property and social stability, but also threatened international peace and security.<sup>34</sup>

## Case 5

### *The situation in Afghanistan*

At its 4051<sup>st</sup> meeting, on 15 October 1999, the Council adopted resolution 1267 (1999), which determined that the failure of the Taliban authorities to respond to the demands in resolution 1214 (1998) constituted a threat to international peace and security.

During the deliberations, the representative of Afghanistan expressed support for the set of measures imposed against the Taliban. He stated that his Government viewed the set of measures contained in the resolution as an adequate signal to the Taliban and to their Pakistani mentors: that the international community was extremely concerned about the "adventurist policy" of Pakistan and the Taliban, which had become a major threat to international peace and security.<sup>35</sup> The representative of the United States expressed concern over the violations of international humanitarian law and of human rights carried out by the Taliban. She also expressed her Government's concern about the significant rise in illicit opium production under areas of Taliban control and the "deplorable" treatment of Iranian diplomatic personnel and

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<sup>33</sup> Ibid., pp.22-24.

<sup>34</sup> Ibid., p.19.

<sup>35</sup> Ibid., p.2.



journalists. She emphasized that the actions of the Taliban posed a threat to their neighbors and to the international community at large. Furthermore, she underlined that the Security Council had sent a strong message to the Taliban stating that their continued harboring of Osama bin Laden posed a threat to international peace and security.<sup>36</sup> Other Council members expressed their opposition to terrorism,<sup>37</sup> and opposition to States harboring individual terrorists, therefore voting in favor of the adopted resolution.

### Case 6

*Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (S/1998/223); Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/1998/272)*

At its 3868<sup>th</sup> meeting, on 31 March 1998, the Council considered a letter addressed to the President of the Security Council, from the representative of Yugoslavia expressing his Government's concern about the inclusion of Kosovo and Metohija on the agenda of the Security Council.<sup>38</sup> He stated that the situation in Kosovo and Metohija was being deliberately dramatized and the contention about an alleged threat to international peace and security was "aggressively propounded" so as to obtain a pretext for invoking Chapter VII of the Charter of the United Nations.<sup>39</sup>

During the debate of the Council, the representative of Japan expressed deep concern about the deterioration of the situation in Kosovo and condemned the use of excessive force by the Serbian police against civilians in Kosovo. His delegation recognized that the current situation in Kosovo posed a threat to international peace and security in the region, and that the further spread of violence there could lead to the destabilization of the entire Balkans.<sup>40</sup> The representative of Costa Rica emphasized that the use of force by the Serbian police forces against peaceful demonstrators and other acts of violence, in the context of the political and security

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<sup>36</sup> Ibid., pp.2-3.

<sup>37</sup> Ibid., pp.3-4 (Malaysia); pp.4-5 (Bahrain); p.5 (China); p.5 (Canada).

<sup>38</sup> S/1998/285.

<sup>39</sup> S/PV.3868, p.2.

<sup>40</sup> Ibid., p.3.

situation, balance in the Balkans, constituted a clear threat to international peace and security, which obligated the Council to take firm and decisive action. In the same vein, he expressed concern about human rights violations in Kosovo and believed that the violation of fundamental rights had been so serious that it constituted a threat to international peace and security, and therefore fully justified the Security Council's invoking the powers granted to it under Chapter VII of the Charter.<sup>41</sup>

The representative of Sweden emphasized that peace and stability in the Balkans were necessary prerequisites for European security and, therefore, welcomed the imposition of an arms embargo on the Federal Republic of Yugoslavia (FRY) including Kosovo. He stated that the situation in Kosovo remained serious and clearly constituted a threat to international peace and security.<sup>42</sup> The representative of Slovenia stated that the situation in Kosovo in the FRY had the potential for serious destabilization in the region. On the other hand, if managed towards a genuine political solution it could represent an important building block in the structure of security and political stability in the Balkans. He recalled that in the past, the unilateral dismantling of Kosovo's autonomy and the use of force against the Albanians by Kosovo represented one of the major sources of political deterioration and instability in the region. Consequently, efforts had to be directed towards the elimination of that threat.<sup>43</sup> The representative of the United Kingdom stated that by adopting the resolution, which imposed an arms embargo on the FRY, the Security Council sent an unmistakable message: that by acting under Chapter VII of the Charter, the Council considered that the situation in Kosovo constituted a threat to international peace and security in the Balkans region.<sup>44</sup> He emphasized that the international community had to send a clear message to the FRY and the Serbian authorities that the excessive violence by military police units, involving deaths and injury among the civilian population, was unacceptable.<sup>45</sup> The representative of Poland reported that the Head of the Organization for Security and Cooperation in Europe (OSCE), together with other members of that Organization's Troika, visited Albania, the former Yugoslav Republic of Macedonia and FRY. The main conclusion drawn from the extensive talks with leaders of those countries bordering the Federal Republic of Yugoslavia was that they perceived the situation in Kosovo as

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<sup>41</sup> Ibid., p.4.

<sup>42</sup> Ibid., p.5.

<sup>43</sup> Ibid., p.7.

<sup>44</sup> Ibid., p.12.

<sup>45</sup> Ibid., p.14.

a real threat to the stability of the whole area and, consequently, that they expected the international community to play a role in resolving the crisis.<sup>46</sup>

On the other hand, the representative of the Russian Federation stated that his Government viewed the events in Kosovo as an internal affair of the Federal Republic of Yugoslavia. He stated that the situation in Kosovo, despite its complexity, did not constitute a threat to regional, much less international peace and security.<sup>47</sup> The representative of China similarly viewed the situation as an internal matter of the FRY and noted that it should be resolved properly through negotiations between both parties concerned on the basis of the principle of respect for the sovereignty and territorial integrity of the FRY. He further noted that the Government of FRY had taken a series of positive measures in that regard and that the situation on the ground was moving towards stability. Therefore, he did not think that the situation in Kosovo endangered regional and international peace and security.<sup>48</sup> In the subsequent vote in connection with the adoption of resolution 1160 (1998), China abstained.

Speaking in the same vein, Mr. Vladislav Jovanovic<sup>49</sup> emphasized that the situation in Kosovo and Metohija was stable and in full control. Hence, there had not been any danger of a spill-over into neighbouring countries, there had been no threat to peace and security, and there had been no basis for invoking Chapter VII of the Charter.<sup>50</sup>

The representative of Egypt pointed out that the Security Council candidly referred to the fact that the resolution had been “adopted under the provisions of Chapter VII of the Charter without a prior reference to a determination by the Security Council that there exist[ed] a threat to international peace and security as required by the provisions of Article 39 of the Charter”. He noted that the Council was the master of its own procedures. However, in principle, the constitutional requirements in the Charter should be scrupulously followed and respected.<sup>51</sup>

Following a rapid deterioration in the humanitarian situation throughout Kosovo,<sup>52</sup> the Security Council held its 3930<sup>th</sup> meeting on 23 September 1998, to consider the situation. At the same meeting, the Council adopted resolution 1199 (1998), with one abstention (China). During the debate, the representative of China was of the view that the situation in Kosovo had

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<sup>46</sup> Ibid., p.24.

<sup>47</sup> Ibid., p.10.

<sup>48</sup> Ibid., p.11.

<sup>49</sup> For a full discussion of Mr. Jovanovic’s title and status, see Chapter III.

<sup>50</sup> S/1998/285.

<sup>51</sup> S/PV.3868, p.29.

<sup>52</sup> Resolution 1199 (1998), see para.11.

stabilized and there was no large-scale armed conflict. He believed that the international community should evaluate the positive efforts by the Government of the Federal Republic of Yugoslavia in an objective and just manner. Therefore, he did not see the situation in Kosovo being a threat to international peace and security.<sup>53</sup>

On the other hand, the representative of the United Kingdom emphasized that by acting under Chapter VII of the United Nations Charter and by explicitly characterizing the deterioration of the situation in Kosovo as a threat to peace and security in the region, the Security Council was putting President Milosevic on notice that he would be held accountable for his actions.<sup>54</sup> The representative of the United States stated that his Government supported resolution 1199 (1998), because it increased pressure on Belgrade to negotiate with the Kosovo Albanians to achieve a political settlement that provided for a democratic self-government for the people of Kosovo and avoided the consequences of continued conflict. He also affirmed that the situation constituted a serious threat to peace and security in the region.<sup>55</sup>

### Case 7

*Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998) and 1239 (1999)*

At its 4011<sup>th</sup> meeting, on 10 June 1999, the Council adopted resolution 1244 (1999). During the debate, Mr. Jovanovic stated that in order to achieve lasting and stable peace in the region and to reaffirm the roles of the United Nations and the Security Council as the highest bodies for the maintenance of international peace and security, it was necessary to deploy a United Nations peacekeeping mission in Kosovo and Metohija. He further argued that the deployment should be based on decisions of the Security Council and Chapter VI of the Charter of the United Nations and with the prior and full agreement of the Government of the Federal Republic of Yugoslavia. He noted that resolution 1244 (1999) should contain a condemnation of the NATO aggression against the Federal Republic of Yugoslavia as an act in violation of the Charter of the United Nations and a threat to international peace and security.<sup>56</sup>

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<sup>53</sup> S/PV.3930, p.3.

<sup>54</sup> Ibid., p.4.

<sup>55</sup> Ibid., pp.4-5.

<sup>56</sup> S/PV.4011, pp.3-6.

The representative of the Russian Federation stated that his Government supported and took an active part in efforts to find a comprehensive approach to the social and economic reconstruction, stabilization and development of the Balkan region. He was convinced that the effectiveness of those efforts depended directly on full, constructive involvement by all States of the region, including the Federal Republic of Yugoslavia.<sup>57</sup> The representative of Slovenia believed that resolution 1244 (1999) was a timely and necessary resolution that contained all the necessary elements with which the Security Council had to address the situation in Kosovo. He emphasized that with resolution 1244 (1999), the Security Council realistically recognized the existence of the threat to international peace and security and, acting under Chapter VII, provided the legitimacy for the necessary measures of implementation of the resolution. The representative of Slovenia further emphasized that it was equally clear that State sovereignty was not absolute and that it could not be used as a tool of denial of humanity resulting in threats to peace. While the situation in Kosovo in the prior year had escalated to a serious threat to peace, there was a genuine opportunity to reverse the situation and to create the balance necessary for political stability and durable peace for the future.<sup>58</sup> Other Council members also expressed support for the adoption of the resolution and believed that it was geared towards ending the humanitarian tragedy in Kosovo.<sup>59</sup> The representative of France similarly considered that the adoption of the resolution was a decisive step towards settling the crisis in Kosovo.<sup>60</sup> The representative of Canada noted that from Rwanda to Kosovo, there was mounting historical evidence which showed how internal conflicts had threatened human security, spilled over borders and destabilized entire regions.<sup>61</sup>

The representative of China, who abstained from the vote, stated that NATO had waged an unprecedented and indiscriminate bombing campaign against the Federal Republic of Yugoslavia, killing over 1,000 civilians, injuring thousands and leaving nearly one million displaced persons and refugees. He further stated that the war had produced the greatest humanitarian catastrophe in post-Second-World-War Europe and had seriously undermined peace and stability in the Balkans.<sup>62</sup>

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<sup>57</sup> Ibid., pp.7-9

<sup>58</sup> Ibid., pp.9-11.

<sup>59</sup> Ibid., pp.11-12 (France); pp.14-15 (United States); p.17 (Brazil) p.19 (United Kingdom).

<sup>60</sup> Ibid., pp.11-12.

<sup>61</sup> Ibid., p.14.

<sup>62</sup> Ibid., pp.8-9.

## Case 8

### *The situation between Iraq and Kuwait*

Following Iraq's refusal to fully cooperate with the United Nations Special Commission (UNSCOM) and its weapon inspectors,<sup>63</sup> the Council held its 3831<sup>st</sup> meeting on 12 November 1997, and considered a letter addressed to the President of the Security Council by the Deputy Prime Minister of Iraq,<sup>64</sup> Mr. Tariq Aziz, in which the latter announced, inter alia, that Iraq would not "deal with Americans working with the Special Commission". The Council also considered a letter from the Minister for Foreign Affairs of Iraq addressed to the Secretary-General,<sup>65</sup> concerning the violation of Iraq's airspace by a United States U-2 spy plane and several formations of United States warplanes. In the letter, the Minister of Foreign Affairs of Iraq stated that the United States had violated, by military threat, the sovereignty of an independent State and a founding Member of the United Nations.

During the debate, the representative of the United States noted that Iraq had to understand that only through full compliance with the relevant Security Council resolutions could its objectives be reached. He recalled that on 29 October 1997 Iraq had sought to bar UNSCOM inspectors with American citizenship, out of the more than 20 nations represented in the Special Commission. Then it blocked UNSCOM inspections, interfered with monitoring operations, and menaced UNSCOM reconnaissance aircraft. He stated that, therefore, all of those actions were gross violations of Iraq's obligations under Security Council resolutions, and as the resolution stated, threatened international peace and security. He further stated that Iraq had failed in other areas mandated by the Council and it had given no sign that it would cease activities and policies intended to threaten its neighbours.<sup>66</sup>

The representative of the United Kingdom stated that the successful completion of the work of the Special Commission was essential for maintaining regional and international peace and security. He further stated that the report of the Special Commission made clear that there still remained much work to be done, especially in the chemical and biological weapons areas, before it

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<sup>63</sup> Resolution 1137 (1997) of 12 November 1997, operative para.1.

<sup>64</sup> S/1997/829.

<sup>65</sup> S/1997/867.

<sup>66</sup> Ibid., p.12.

could report that it had accomplished its task and the world was free from the threat posed by Iraqi weapons of mass destruction.<sup>67</sup> The representative of Sweden recalled the initiative taken by the Secretary-General in which he had sent a high-level mission a month prior to Baghdad, to avert a potentially serious threat to international peace and security. The Council members unanimously expressed support for resolution 1137 (1997) and called on Iraq to cooperate fully with the relevant Security Council resolutions and the United Nations Special Commission.

## Case 9

### *The situation in Angola*

The Council held its 3814<sup>th</sup> meeting on 28 August 1997, during the course of which it adopted resolution 1127 (1997) expressing concern at the difficulties in the peace process.

The meeting was welcomed by the representative of Angola, who supported the measures set forth in paragraph 4 of resolution 1127 (1997).<sup>68</sup> He expressed the hope that the resolution would contribute to the acceleration of the peacemaking process in Angola.<sup>69</sup> Similar views were expressed by the other representatives of the Southern African Development Community: the representative of Malawi expressed grave concern over the developments in Angola and condemned the act of União Nacional para a Independência Total de Angola (UNITA), which threatened the peace process;<sup>70</sup> the representative of Lesotho was particularly concerned that tensions in northern Angola were rapidly spreading to the central and southern provinces, thus posing a threat to the peace process;<sup>71</sup> the representative of Zimbabwe also expressed concern about the developments in Angola. In his view, UNITA's actions had threatened the peace process;<sup>72</sup> and the representative of South Africa stated that for the States members of the Southern African Development Community, the normalization of State administration and peace in Angola was a priority concern, because it would serve as a vital contribution to the extension of the frontiers of stability to the whole sub-region.<sup>73</sup>

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<sup>67</sup> Ibid., p.13.

<sup>68</sup> By paragraph 4 of resolution 1127 (1997), the Council imposed additional measures against UNITA.

<sup>69</sup> Ibid., pp.2-5.

<sup>70</sup> S/PV.3814, p.6.

<sup>71</sup> Ibid., p.9.

<sup>72</sup> Ibid., pp.11-12.

<sup>73</sup> Ibid., p.13.

On the same note, the representative of Luxembourg, speaking on behalf of the European Union, expressed concern at the tension throughout the country, which threatened to jeopardize the peace process. He stated that the future of the peace process depended on the Angolan Government and UNITA, both of which had to refrain from any action liable to lead to a resumption of the fighting.<sup>74</sup> The representative of Korea emphasized that despite numerous warnings by the Council, UNITA had yet to fulfil its obligations under the Lusaka Protocol and those repeatedly called for in the relevant Council resolutions. The delay in the peace process in its final stage was not only inflicting unbearable suffering on the Angolan people themselves, it was also posing a greater threat to the region.<sup>75</sup> The representative of China stated that by implementing in real earnest the measures set forth in the Lusaka Protocol and the agreements reached by the Government of Angola and UNITA peace and stability could be truly achieved in Angola.<sup>76</sup> The representative of the United States expressed grave concern that, since UNITA had failed to fulfil some key commitments, the peace process was not moving forward and the possibility of renewed fighting threatened the people of Angola. He stated that the international community could not sit idly by hoping that the parties would somehow put the peace process back on track. He emphasized that there was too much at stake for Angola and for peace in the southern African region.<sup>77</sup>

## Case 10

### *The situation concerning the Democratic Republic of Congo*

In response to a request contained in a letter dated 4 March 1999 addressed to the President of the Security Council, from the representative of the Democratic Republic of the Congo,<sup>78</sup> the Council considered the situation in the DRC at its 3987<sup>th</sup> meeting on 19 March 1999.

The representative of the Democratic Republic of Congo stated that his Government had requested the meeting, with the legitimate goal of drawing the Council's attention to the danger posed by the conflict in his country. He stated that in view of the Security Council's powers in

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<sup>74</sup> Ibid., pp.8-9.

<sup>75</sup> Ibid., p.18.

<sup>76</sup> Ibid., p.21.

<sup>77</sup> Ibid., p.25.

<sup>78</sup> S/1999/278.



the area of international peace and security, and until the international community took additional steps to bring peace to the Great Lakes region, his Government expected the Council, inter alia, to make use of the provisions of Articles 39 to 42 of the Charter of the United Nations.<sup>79</sup>

Similar views were expressed by other countries sharing borders with the DRC, notably Gabon and Namibia. The representative of Gabon stated that the ongoing crisis in the Democratic Republic of the Congo was of grave concern. It had inflicted untold suffering on the Congolese people, was thwarting the efforts of the Government to reconstruct the country and threatened peace and stability in the region.<sup>80</sup> The representative of Namibia noted that the events that were unfolding in the DRC could destabilize the region.<sup>81</sup>

The representative of Canada called the forces involved in the conflict to participate in a ceasefire, which had to be accompanied by a timetable for the withdrawal of all foreign forces involved in the conflict. In his view, this was an essential condition for the restoration of peace and stability in central Africa.<sup>82</sup> The representative of France noted that his delegation was aware of the effects of the crisis, particularly the risks of political destabilization in the States of the region and the humanitarian consequences.<sup>83</sup> The representative of the United States stated that the ongoing conflict in the Democratic Republic of the Congo represented one of the gravest threats to peace, stability and development in sub-Saharan Africa in decades. He emphasized that conflict in the DRC had led to a deepening humanitarian crisis, exacerbated the plight of refugees and internally displaced persons, impeded the delivery of critical food and medical assistance, and in general hampered international and domestic efforts towards development and democracy. He stated that if the crisis widened the implications for the region and the subcontinent could be catastrophic.<sup>84</sup> The representative of Bahrain expressed concern that, due to the great number of parties involved, the continuing conflict posed a threat not only to the peace, security and stability of the Great Lakes region, but also to the entire African continent.<sup>85</sup> The representative of Germany, speaking on behalf of the European Union, expressed his deep concern about the crisis in the DRC, which had escalated into a large-scale regional war. He

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<sup>79</sup> S/PV.3987, pp.2-5.

<sup>80</sup> Ibid., pp.14-15.

<sup>81</sup> Ibid., pp.9-10.

<sup>82</sup> Ibid., p.6.

<sup>83</sup> Ibid., p.12.

<sup>84</sup> Ibid., p.13.

<sup>85</sup> Ibid., pp.18-19.

stated that the involvement of several countries of the region had not led to the intended stabilization, but had instead led to a dangerous escalation, which threatened the stability of the region as a whole.<sup>86</sup>

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<sup>86</sup> Ibid., p.25.

## **Part II**

### **Provisional measures to prevent the aggravation of a situation in accordance with Article 40 of the Charter**

#### *Article 40*

*In order to prevent an aggravation of the situation, the Security Council may, before making the recommendation or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.*

#### **Note**

During the period under review, various measures were taken by the Security Council, but without specific reference to Article 40, which might be considered to be of a provisional nature to prevent an aggravation of a situation. In this section, the focus is given to those decisions that were adopted under Chapter VII, also containing a prior determination of a threat to the peace in accordance with Article 39 of the Charter.

In a number of resolutions, the Council called upon the parties to comply with certain provisional measures in order to prevent an aggravation of the situation concerned. The type of measures called for included the following: (a) calls for the fulfilment of a peace agreement; (b) the creation of conditions necessary for the unimpeded delivery of humanitarian assistance; (c) the cessation of hostilities; (d) the demand to turn over an alleged terrorist; (e) the call for demilitarization; and (f) the call to end all offensive actions.

A number of the Council resolutions contained warnings that, in the event of failure to comply with the terms of those resolutions, the Council would meet again and consider further steps. Those warnings, which might be considered as having a bearing on the provisions contained in Article 40, were expressed in various ways. In several instances,<sup>87</sup> the Council

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<sup>87</sup> See, for example, the following resolutions and presidential statements: in connection with the items relating to the situation in the former Yugoslavia, resolution 1199 (1998), para. 16; in connection with the situation in Angola,

warned that it would consider further action and additional measures should the measures demanded in its decision not be implemented. During the Council's deliberations, an explicit reference to Article 40 was invoked in order to support a specific demand relating to the question under consideration.<sup>88</sup>

The decisions that might be interpreted as bearing implicit references to Article 40 are set out below.

## **A. Decisions relating to Article 40**

### *The situation in Sierra Leone*

By resolution 1132 (1997) of 8 October 1997, the Council determined that the situation in Sierra Leone constituted a threat to international peace and security in the region. It demanded that the military junta take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically elected Government and a return to constitutional order.<sup>89</sup> The Council reiterated its call upon the junta to end all acts of violence and to cease all interference with the delivery of humanitarian assistance to the people of Sierra Leone.<sup>90</sup>

Having determined that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region, the Council adopted resolution 1270 (1999) of 22 October 1999, by which it called upon the parties to fulfil all their commitments under the Peace Agreement to facilitate the restoration of peace, stability, national reconciliation and development in Sierra Leone.<sup>91</sup> The Council also called upon the Revolutionary United Front, the Civil Defence Forces, former Sierra Leone Armed Forces/Armed Forces Revolutionary

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resolutions 1127 (1997), para.9; 1135 (1997), para.6; 1173 (1998), para.16; in connection with the situation in Afghanistan, S/PRST/1999/29.

<sup>88</sup> In connection with the agenda item entitled the "Role of the Security Council in the prevention of armed conflicts", S/PV.4072, p.20 (Malaysia). The representative of Malaysia believed that in the context of the changing nature of conflicts, the Council had to re-examine past and present approaches and strategies and formulate new ones in keeping with the demands of the times. In this regard, he stated that the Charter provided the Council with options, including the invoking of certain provisional measures not involving the use of force, in order to defuse such situations. One such option came under Article 40, which provided an avenue for Council action, including the imposition of arms embargoes and targeted sanctions. However, in contemplating such actions, every effort should be made to ensure that they would not lead to any undesirable humanitarian impact on the general population.

<sup>89</sup> Resolution 1132 (1997), para.1.

<sup>90</sup> *Ibid.*, para.2.

<sup>91</sup> Resolution 1270 (1999), para.2.

Council and all other armed groups in Sierra Leone to begin immediately to disband and give up their arms in accordance with the provisions of the Peace Agreement, and to participate fully in the disarmament, demobilization and reintegration programme.<sup>92</sup> Moreover, the Council called upon all parties to ensure safe and unhindered access for humanitarian assistance to those in need in Sierra Leone, to guarantee the safety and security of humanitarian personnel and to respect strictly the relevant provisions of international humanitarian and human rights law.<sup>93</sup>

By a statement of the President dated 14 November 1997, the Council called upon the junta to fulfil its obligations under the peace plan, and in particular the ongoing maintenance of the ceasefire. It also called upon all parties concerned to work for the early and effective implementation of the peace plan. It further reiterated the need for the provision and distribution of humanitarian assistance in response to local needs, and called upon the junta to ensure its safe delivery to its intended recipients.<sup>94</sup>

#### *The situation in the Great Lakes region*

Having determined that the magnitude of the humanitarian crisis in eastern Zaire constituted a threat to peace and security in the region, by resolution 1078 (1996) of 9 November 1996, the Council called upon all States in the region to create the conditions necessary for the speedy and peaceful resolution of the crisis and to desist from any act that may further exacerbate the situation, and urged all parties to engage in a process of political dialogue and negotiation without delay.<sup>95</sup>

By resolution 1080 (1996) of 15 November 1996, the Council reiterated its condemnation of all acts of violence, and its call for an immediate ceasefire and a complete cessation of all hostilities in the region.<sup>96</sup>

#### *The situation in Albania*

By a statement of the President dated 13 March 1997, the Council members expressed its deep concern about the deteriorating situation in Albania. It urged all concerned to refrain from hostilities and acts of violence and to cooperate with diplomatic efforts to reach a peaceful

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<sup>92</sup> Ibid., para.4.

<sup>93</sup> Ibid., para .22.

<sup>94</sup> S/PRST/1997/52.

<sup>95</sup> Resolution 1078 (1996), para.2.

<sup>96</sup> Resolution 1080 (1996), para.1.

solution to the crisis. It called upon the parties involved to continue the political dialogue and to live up to the commitments undertaken on 9 March 1997 in Tirana. It urged all political forces to work together to lower tension and facilitate the stabilization of the country. Further, the Security Council called upon the parties not to impede the provision of humanitarian assistance to the civilian population and, in that context, recalled the importance of keeping open all means of communication in the country.<sup>97</sup>

By resolution 1101 (1997) of 28 March 1997, determining that the situation in Albania constituted a threat to peace and security in the region, the Council called upon all those concerned in Albania to cooperate with the multinational protection force and international humanitarian agencies for the safe and prompt delivery of humanitarian assistance.<sup>98</sup>

By resolution 1114 (1997) of 19 June 1997, the Council underlined the need for all concerned to refrain from hostilities and acts of violence, and called on the parties involved to continue the political dialogue and facilitate the electoral process.

#### *The situation in Afghanistan*

By resolution 1267 (1999) of 15 October 1999, the Council determined that the failure of the Taliban authorities to respond to the demands in paragraph 13 of resolution 1214 (1998) constituted a threat to international peace and security. It insisted that the Afghan faction known as the Taliban comply promptly with its previous resolutions and in particular cease the provision of sanctuary and training for international terrorists and their organizations, take appropriate effective measures to ensure that the territory under its control is not used for terrorist installations and camps, or for the preparation or organization of terrorist acts against other States or their citizens, and cooperate with efforts to bring indicted terrorists to justice.<sup>99</sup> It demanded that the Taliban turn over Osama bin Laden without further delay to appropriate authorities in a country where he had been indicted, or to appropriate authorities in a country where he would be returned to such a country, or to appropriate authorities in a country where he would be arrested and effectively brought to justice.<sup>100</sup>

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<sup>97</sup> S/PRST/1997/14.

<sup>98</sup> Resolution 1101 (1997), para.5.

<sup>99</sup> Resolution 1267 (1999), para.1.

<sup>100</sup> *Ibid.*, para.2.

By a statement of the President dated 22 October 1999, the Council members expressed its grave concern at the seriously deteriorating humanitarian situation in Afghanistan, and called upon all Afghan parties, and in particular the Taliban, to take the necessary steps to secure the uninterrupted supply of humanitarian aid to all in need of it and, in this connection, not to create impediments to the activities of the United Nations humanitarian agencies and international humanitarian organizations. The Council urged all Afghan factions to cooperate fully with the United Nations Special Mission in Afghanistan and international humanitarian organizations, and called upon them, in particular the Taliban, to take the necessary steps to ensure the safety and freedom of movement of such personnel. Further, the Council demanded once again that the Taliban turn over indicted terrorist Osama bin Laden to appropriate authorities as set out in its resolution 1267 (1999) of 15 October 1999. In addition, the Council reaffirmed its decision to implement on 14 November 1999 the measures contained in that resolution, unless the Secretary-General reported that the Taliban had fully complied with the obligation set out in paragraph 2 of that resolution.<sup>101</sup>

*Items relating to the situation in the former Yugoslavia*

*(a) The situation in Croatia*

By resolution 1037 (1996) of 15 January 1996, the Council strongly urged the parties to refrain from any unilateral actions which could hinder the handover from the United Nations Confidence Restoration Operation (UNCRO) to the Transitional Administration or the implementation of the Basic Agreement, and encouraged them to continue to adopt confidence-building measures to promote an environment of mutual trust.<sup>102</sup> It called upon the parties to comply strictly with their obligations under the Basic Agreement and to cooperate fully with the Transitional Administration.<sup>103</sup> It also called upon the parties to the Basic Agreement to cooperate with all agencies and organizations assisting in the activities related to the implementation of the Basic Agreement, consistent with the mandate of the Transitional Administration.<sup>104</sup>

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<sup>101</sup> S/PRST/1999/29.

<sup>102</sup> Resolution 1037 (1996), para.5.

<sup>103</sup> Ibid., para.7.

<sup>104</sup> Ibid., para.16.

Reminding the Croatian Government that the promotion of respect for the rights of persons belonging to the Serb minority was relevant to the successful implementation of the Basic Agreement, the Security Council, in a presidential statement issued on 23 February 1996, expressed deep concern at the situation of those refugees from the Republic of Croatia who wished to return. It condemned the fact that effective measures had so far not been taken in that respect. It called upon the Croatian Government to ensure the expeditious processing of all requests from refugees. It underlined the fact that the exercise by members of the local Serb population of their rights, including their right to remain, leave or return to their homes in safety and dignity, and reclaim possession of their property, could not be made conditional upon an agreement on the normalization of relations between the Republic of Croatia and the Federal Republic of Yugoslavia. The Council demanded that the Croatian Government take measures forthwith to ensure that those concerned may fully exercise those rights. The Council also called upon the Croatian Government to rescind its earlier decision to suspend articles of the constitutional law affecting the rights of national minorities and to proceed with the establishment of a provisional human rights court.<sup>105</sup>

Following the steps taken by the Government of Croatia to reintegrate refugees and displaced persons into Croatia,<sup>106</sup> by resolution 1079 (1996) of 15 November 1996, the Council called upon the Government of the Republic of Croatia and the local Serb community to cooperate with the Transitional Administration in creating the conditions and taking the other steps necessary for holding local elections in the region, in accordance with the Basic Agreement.<sup>107</sup> The Council reaffirmed the importance of full compliance by the parties with their commitments, as specified in the Basic Agreement, to respect the highest standards of human rights and fundamental freedoms and to promote an atmosphere of confidence among all local residents irrespective of their ethnic origin, and in this context, urged the Government of the Republic of Croatia to ensure respect for the rights of all national ethnic groups.<sup>108</sup>

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<sup>105</sup> S/PRST/1996/8.

<sup>106</sup> S/PRST/1996/39.

<sup>107</sup> Resolution 1079 (1996), para.2.

<sup>108</sup> *Ibid.*, para.3.



*(b)The situation in the former Yugoslavia*

By resolution 1074 (1996) of 1 October 1996,<sup>109</sup> the Council called upon all parties to comply strictly with all their commitments under the Peace Agreement and stated its intention to consider the imposition of measures if any party failed significantly to meet its obligations under the Peace Agreement.<sup>110</sup>

*(c)Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (S/1998/22). Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/1998/272)*

By resolution 1199 (1998) of 23 September 1998, the Council demanded that all parties, groups and individuals immediately cease hostilities and maintain a ceasefire in Kosovo, Federal Republic of Yugoslavia, which would enhance the prospects for a meaningful dialogue between the authorities of the Federal Republic of Yugoslavia and the Kosovo Albanian leadership and reduce the risks of a humanitarian catastrophe.<sup>111</sup> It further demanded that the authorities of the Federal Republic of Yugoslavia and the Kosovo Albanian leadership take immediate steps to improve the humanitarian situation and to avert the impending humanitarian catastrophe.<sup>112</sup> Furthermore, the Council decided, should the concrete measures demanded in this resolution and resolution 1160 (1998) not be taken, to consider further action and additional measures to maintain or restore peace and stability in the region.<sup>113</sup>

By resolution 1244 (1999) of 10 June 1999, the Council demanded in particular that the Federal Republic of Yugoslavia put an immediate and verifiable end to violence and repression in Kosovo, and begin and complete a verifiable phased withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable, with which the deployment of the international security presence in Kosovo will be synchronized.<sup>114</sup> It also demanded that that the Kosovo Liberation Army and other armed Kosovo Albanian groups end immediately all

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<sup>109</sup> Resolution 1074 (1996), para.2.

<sup>110</sup> Ibid., para.5.

<sup>111</sup> Resolution 1199 (1998), para.1.

<sup>112</sup> Ibid., para.2.

<sup>113</sup> Ibid., para.16.

<sup>114</sup> Resolution 1244 (1996), para.3.

offensive actions and comply with the requirements for demilitarization as laid down by the head of the international security presence in consultation with the Special Representative of the Secretary-General.<sup>115</sup>

### *The situation in Angola*

By resolution 1127 (1997) of 28 August 1997, the Council expressed its grave concern at the serious difficulties in the peace process, which were mainly the result of delays by União Nacional para a Independência Total de Angola (UNITA) in the implementation of its obligations under the Lusaka Protocol. It demanded that the Government of Angola and in particular UNITA complete fully and without further delay the remaining aspects of the peace process and refrain from any action, which might lead to renewed hostilities.<sup>116</sup> It also demanded that UNITA implement immediately its obligations under the Lusaka Protocol, including demilitarization of all its forces, transformation of its radio station *Vorgan* into a non-partisan broadcasting facility and full cooperation in the process of the normalization of State administration throughout Angola.<sup>117</sup> The Council further demanded that UNITA provide immediately to the Joint Commission, as established under the Lusaka Protocol, accurate and complete information with regard to the strength of all armed personnel under its control, including the security detachment of the leader of UNITA, the so-called "mining police", armed UNITA personnel returning from outside the national boundaries, and any of its other armed UNITA personnel not previously reported to the United Nations, in order for them to be verified, disarmed and demobilized in accordance with the Lusaka Protocol and agreements between the parties in the context of the Joint Commission, and condemned any attempts by UNITA to restore its military capabilities.<sup>118</sup>

By the same resolution, the Council expressed its readiness to consider the imposition of additional measures, such as trade and financial restrictions, if UNITA did not fully comply with its obligations under the Lusaka Protocol and all relevant Security Council resolutions.<sup>119</sup>

By resolution 1135 (1997) of 29 October 1997, the Council deplored the failure by UNITA to comply fully with its obligations under the "Acordos de Paz" and the Lusaka Protocol

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<sup>115</sup> Ibid., para.15.

<sup>116</sup> Resolution 1127 (1997), para.1.

<sup>117</sup> Ibid., para.2.

<sup>118</sup> Ibid., p.3.

<sup>119</sup> Ibid., para.9.

and with the relevant Security Council resolutions, in particular resolution 1127 (1997).<sup>120</sup> The Council reiterated these calls and demanded that the Government of Angola and in particular UNITA cooperate fully with the United Nations Observer Mission in Angola,<sup>121</sup> including by providing full access for its verification activities, and reiterated its call on the Government of Angola to notify the Mission in a timely manner of its troop movements, in accordance with the provisions of the Lusaka Protocol and established procedures.<sup>122</sup> It further demanded that UNITA comply immediately and without any conditions with the obligations set out in resolution 1127 (1997), including full cooperation in the normalization of State administration throughout Angola, including in Andulo and Bailundo.<sup>123</sup> The Council noted that the measures specified in paragraph 4 of resolution 1127 (1997) would come into force on 30 October 1997 in accordance with paragraph 2 of resolution 1130 (1997), and reaffirmed its readiness to review those measures or to consider the imposition of additional measures in accordance with paragraphs 8 and 9 of resolution 1127 (1997).<sup>124</sup>

Recognizing the steps taken by the Government of Unity and National Reconciliation to fulfil its obligations in the Lusaka Protocol and condemning UNITA for its failure to implement fully its obligations contained in the Lusaka Protocol, by resolution 1173 (1998) of 12 June 1998, the Council demanded that UNITA fully cooperate without conditions in the immediate extension of State administration throughout the national territory, including in particular in Andulo, Bailundo, Mungo and Nharea, and stop any attempts to reverse this process.<sup>125</sup> The Council reiterated its demand that UNITA complete its demilitarization and stop any attempts to restore its military capabilities.<sup>126</sup> It further demanded that UNITA stop any attacks by its members on the personnel of the Observer Mission, international personnel, the authorities of the Government of Unity and National Reconciliation, including the police, and the civilian population.<sup>127</sup>

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<sup>120</sup> Resolution 1135 (1997, preambular para.6.

<sup>121</sup> Resolution 1127 (1997), para.1.

<sup>122</sup> Resolution 1135 (1997), para.4.

<sup>123</sup> *Ibid.*, para.5.

<sup>124</sup> *Ibid.*, para.6.

<sup>125</sup> Resolution 1173 (1998), para.2.

<sup>126</sup> *Ibid.*, para.3.

<sup>127</sup> *Ibid.*, para.5.

By the same resolution, the Council expressed its readiness to consider the imposition of further additional measures if UNITA did not fully comply with its obligations under the "Acordos de Paz", the Lusaka Protocol and relevant Security Council resolutions.<sup>128</sup>

Throughout the remainder of 1998 and 1999, the Council reiterated its demand that UNITA comply fully and unconditionally with the obligations referred to in resolution 1173 (1998).<sup>129</sup> By a statement by the President on 24 August 1999, the Council members reiterated that the primary cause of the crisis in Angola was the failure by the leadership of UNITA to comply with its obligations under the Lusaka Protocol, and again demanded that UNITA comply immediately and without conditions with its obligations to demilitarize and permit the extension of State administration to areas under its control.<sup>130</sup>

*Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995*

By resolution 1054 (1996) of 26 April 1996,<sup>131</sup> the Council demanded that the Government of Sudan take immediate action to ensure extradition to Ethiopia for prosecution of the three suspects sheltered in the Sudan and wanted in connection with the assassination attempt of 26 June 1995 on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia. In addition, the Council demanded that Sudan desist from engaging in activities of assisting, supporting and facilitating terrorist activities and from giving shelter and sanctuary to terrorist elements.

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<sup>128</sup> Ibid., para.16.

<sup>129</sup> Resolution 1176 (1998), para. 1.

<sup>130</sup> S/PRST/1999/26.

<sup>131</sup> Resolution 1054 (1996), para.1.

## Part III

### Measures not involving the use of armed force in accordance with Article 41 of the Charter

#### *Article 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.*

#### **Note**

During the period under review, the Security Council adopted two resolutions<sup>132</sup> in which Article 41 was explicitly invoked, in connection with the agenda item entitled “Children and armed conflict” and “the Protection of civilians in armed conflict”.<sup>133</sup>

In several instances, the Council imposed measures under Chapter VII of the type provided for in Article 41 against the Revolutionary United Front (RUF) in Sierra Leone, the Taliban in Afghanistan, the National Union for the Total Independence of Angola (UNITA) in Angola, Kosovo, Iraq, and the Sudan, after having determined that each situation constituted a threat to the peace. The Council also terminated the sanctions previously imposed under Article 41 against the Libyan Arab Jamahiriya and the former Yugoslavia.

During the period under consideration, by a statement of the President dated 29 June 1998,<sup>134</sup> in connection with the agenda item entitled "Children and armed conflict", the Council members recognized that, whenever measures were adopted under Article 41, consideration should be given to their impact on the civilian population, bearing in mind the needs of children, in order to consider appropriate humanitarian exemptions.

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<sup>132</sup> Resolutions 1261 (1999) and 1265 (1999).

<sup>133</sup> Although these references were made in the context of thematic debates (not a country specific situation) and were not adopted under Chapter VII of the Charter, they shed light on the Council’s application and interpretation of Article 41.

<sup>134</sup> S/PRST/1998/18.

The decisions of the Security Council, by which measures based on the principles of Article 41 were imposed, will be set out in part A, followed by part B, which reflects salient issues that were raised in the deliberations of the Council.

## **A. Decisions relating to Article 41**

### *Measures imposed against the Revolutionary United Front (RUF) in Sierra Leone*

By resolution 1132 (1997) of 8 October 1997, the Council decided that all States shall prevent the entry into or transit through their territories of members of the military junta and adult members of their families, as designated in accordance with paragraph 10 of the resolution, unless the entry into or transit through a particular State of any such person was authorized by the Sanctions Committee. Moreover, the Council also decided that all States should prevent the sale or supply to Sierra Leone, by their nationals or from their territories, or using their flag vessels or aircraft, of petroleum and petroleum products and arms and related *matériel* of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts. By the same resolution, the Council decided to establish a Committee of the Security Council consisting of all Council members to monitor its implementation and report on its work to the Council with its observations and recommendations.

By resolution 1156 (1998) of 16 March 1997, the Council decided to terminate, with immediate effect, the prohibitions on the sale or supply to Sierra Leone of petroleum and petroleum products referred to in paragraph 6 of resolution 1132 (1997).

By resolution 1171 (1998) of 5 June 1998, the Council decided that those restrictions mentioned in resolution 1132 (1997) shall not apply to the sale or supply of arms and related *matériel* for the sole use in Sierra Leone of the Military Observer Group of the Economic Community of West African States (ECOMOG) or the United Nations.

### *Measures imposed against the Taliban (Afghanistan)*

By resolution 1267 (1999) of 15 October 1999, the Council decided that on 14 November 1999 all States should deny permission for any aircraft to take off from or land in their territory if it is owned, leased or operated by or on behalf of the Taliban as designated by the Sanctions

Committee established by the same resolution to monitor its implementation. The Council also decided that all States shall freeze funds and other financial resources, including funds derived or generated from property owned or controlled directly or indirectly by the Taliban, as designated by the Sanctions Committee.

*Measures imposed against Iraq*

By resolution 1137 (1997) of 12 November 1997, the Council condemned the continued violations by Iraq of its obligations under the relevant resolutions to cooperate fully with the Special Commission (UNSCOM) in the fulfilment of its mandate, including its unacceptable decision to seek to impose conditions on cooperation with UNSCOM. By the same resolution, the Council imposed travel restrictions on all Iraqi officials and members of the Iraqi armed forces who were responsible for or participated in the instances of non-compliance.

*Measures imposed against the National Union for the Total Independence of Angola (UNITA)*

By resolution 1127 (1997) of 28 August 1997, the Council decided that all States should prevent the entry into or transit through their territories of all senior officials of the União Nacional para a Independência Total de Angola (UNITA) and of adult members of their immediate families. The Council also decided that all States should suspend or cancel all travel documents, visas or residence permits issued to senior UNITA officials and adult members of their immediate families, and required the immediate and complete closure of all offices of UNITA in their territories. By the same resolution, it also requested the Sanctions Committee established pursuant to resolution 864 (1993) to monitor the implementation of the measures.

By resolution 1173 (1998) of 12 June 1998, the Council decided that all States, except Angola, in which there are funds and financial resources, including any funds derived or generated from property of UNITA as an organization or of senior officials of UNITA or adult members of their immediate families designated pursuant to resolution 1127 (1997) shall require all persons and entities within their own territories holding such funds and financial resources to freeze them and ensure that they are not made available directly or indirectly to or for the benefit of UNITA.

By the same resolution, the Council decided that all States shall take the necessary measures to prevent all official contacts with the leadership of UNITA in areas of Angola to

which State administration has not been extended. The Council also prohibited the direct or indirect import from Angola to their territory of all diamonds not controlled through the Certificate of Origin issued by the Government of Angola. The imposition of a diamond embargo was the first of its kind.

*Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995*

By resolution 1054 (1996) of 26 April 1996, the Council decided that all States should significantly reduce the number and the level of the staff at Sudanese diplomatic missions and consular posts and restrict or control the movement within their territory of all such staff who remain. In addition, it called on all States to take steps to restrict the entry into or transit through their territory of members of the Government of Sudan, officials of that Government and members of the Sudanese armed forces.

By resolution 1070 (1996) of 16 August 1996, the Council decided that all States should deny aircraft permission to take off from, land in, or overfly their territories if the aircraft was registered in Sudan, or owned, leased or operated by or on behalf of Sudan Airways or by any undertaking, wherever located or organized, which was substantially owned or controlled by Sudan Airways, or owned, leased or operated by the Government or public authorities of the Sudan.

*Measures imposed against the Libyan Arab Jamahiriya*

By resolution 1192 (1998) of 27 August 1998, the Council reaffirmed that the measures set forth in its resolutions 748 (1992) and 883 (1993) remained in effect and binding on all Member States, and in that context reaffirmed the provisions of paragraph 16 of resolution 883 (1993), and decided that the aforementioned measures would be suspended if the Secretary-General reported to the Council that the two accused had arrived in the Netherlands for the purpose of trial before the court, and that the Libyan Government had satisfied the French judicial authorities with regard to the bombing of UTA 772.



Following a letter addressed to the President of the Council from the Secretary-General reporting that the conditions set forth in resolution 1192 (1998) had been met,<sup>135</sup> by a statement of the President,<sup>136</sup> the Council members noted that the conditions for suspending the wide range of aerial, arms related and diplomatic measures against Libya had been fulfilled as of 5 April 1999. In a subsequent statement,<sup>137</sup> the Council members recalled that the measures set forth in resolutions 748 (1992) and 883 (1993) had been suspended, and reaffirmed its intention to lift those measures, in conformity with the relevant resolutions.

*Measures imposed against the former Yugoslavia*

By resolution 1074 (1996) of 1 October 1996, the Council noted with satisfaction that the elections called for in the Peace Agreement took place on 14 September 1996 in Bosnia and Herzegovina, and stated that their holding constituted an essential step towards achieving the objectives of the Peace Agreement. By the same resolution, the Council decided in accordance with paragraph 4 of its resolution 1022 (1995), to terminate, with immediate effect, the measures referred to in paragraph 1 of that resolution.

*Measures imposed against the Federal Republic of Yugoslavia, including Kosovo*

By resolution 1160 (1998) of 31 March 1998, the Council decided that all States should, for the purposes of fostering peace and stability in Kosovo, prevent the sale or supply to the Federal Republic of Yugoslavia, including Kosovo, by their nationals or from their territories or using their flag vessels and aircraft, of arms and related *matériel* of all types, such as weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned, and should prevent arming and training for terrorist activities there.

By the same resolution, the Council decided to establish a committee of the Security Council to monitor its implementation.

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<sup>135</sup> S/1999/378.

<sup>136</sup> S/PRST/1999/10.

<sup>137</sup> S/PRST/1999/22.

### *Children and armed conflict*

By resolution 1261 (1999) of 25 August 1999, the Council reaffirmed that whenever adopting measures under Article 41 of the Charter, to give consideration to their impact on children, in order to consider appropriate humanitarian exemptions.

### *Protection of civilians in armed conflict*

By resolution 1265 (1999) of 17 September 1999, the Council reaffirmed its readiness, whenever measures under Article 41 of the Charter are adopted, consideration should be given to their impact on the civilian population, bearing in mind the needs of children, in order to consider appropriate humanitarian exemptions.

## **B. Discussion relating to Article 41**

The overview below will outline the practice of the Council, which may be viewed as illustrating its interpretation of the principles set out in Article 41. This section sets out in case studies the arguments raised relating to the following issues: Cases 11 to 17 relate to the Council's practice concerning the measures imposed against the RUF in Sierra Leone, the Taliban regime in Afghanistan, Iraq, UNITA in Angola, the Sudan, the Libyan Arab Jamahiriya and Kosovo. Case 18 addresses the impact of sanctions on children in armed conflict. Case 19 deals with the impact of sanctions on civilians in armed conflict.

### **Case 11**

#### *Measures imposed against RUF (Sierra Leone)*

Following the military coup d'état staged by the Revolutionary United Front (RUF) on 25 May 1997,<sup>138</sup> at its 3822<sup>nd</sup> meeting on 8 October 1997 the Council adopted resolution 1132 (1997). By resolution 1132 (1997) the Council imposed arms and petroleum embargoes and restrictions on the travel of members of the military junta and their families.

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<sup>138</sup> See resolution 1132 (1997) of 8 October 1997, para. 9.

During the debate, the Council members unanimously condemned the military coup and supported the measures contained in the resolution. The representative of Nigeria welcomed the provisions contained in the resolution, and stated that ECOWAS wanted additional and stronger measures to be included in the resolution. However, his Government regarded the resolution as a positive development and believed that what was important was that the message of the international resolve to restore constitutional order and peace in Sierra Leone be heard loud and clear by all concerned, especially the junta. In his Government's view, the draft resolution adequately conveyed that unambiguous message.<sup>139</sup> The representative of Kenya stated that by imposing sanctions on the military junta, the international community was reaffirming its commitment to democracy. The sanctions would be lifted as soon as the junta relinquished power and President Kabbah's Government was reinstated. He expressed concern about the added impact of those sanctions, but his delegation believed that that was a necessary and well "thought-out push by the international community to dislodge the illegal junta in Freetown".<sup>140</sup>

The representative of France stated that the resolution provided for the imposition of sanctions. Those measures had the same goal as the regional efforts, the speedy restoration of democratic government and constitutional order. The sanctions were defined so as to limit the humanitarian effects on the population. He further stated that they covered only the travel of members of the military junta and their families, as well as the supply of weapons and petroleum. There was provision for exemptions in particular for humanitarian purposes. It would be up to the Committee established by the resolution to ensure that those exemptions protected the people of the country from being seriously affected by the embargo.<sup>141</sup>

The representative of the United Kingdom noted that by establishing an international arms and oil embargo, and visa restrictions on members of the junta, the Security Council would be making clear to the illegal regime in Freetown that the entire international community was committed to reversing the military coup and restoring the democratically elected Government.<sup>142</sup>

While expressing support for the imposition of sanctions, the representative of Poland stated that his Government was aware of the potential risks related to the use of such measures,

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<sup>139</sup> S/PV.3822, p.4.

<sup>140</sup> Ibid., p.5.

<sup>141</sup> Ibid., p.6.

<sup>142</sup> Ibid., p.7.

especially with regard to their possible adverse effects on the humanitarian situation in Sierra Leone. He further stated that in this context, it was essential that the proposed sanctions regime be equipped, *inter alia*, with a mechanism for humanitarian exemptions with regard to petroleum and petroleum products, subject to effective monitoring of delivery. He stressed that the measures envisioned in the resolution, including the comprehensive arms embargo, to which his delegation attached the utmost importance, were strictly targeted on the military junta and its representatives.<sup>143</sup> The representative of the Republic of Korea believed that imposing sanctions as provided for in the resolution was an inevitable choice to help restore the constitutional Government.<sup>144</sup> The representative of the Russian Federation stated that the powerful means of pressure on the junta brought into play by the Council, which included the embargo on the delivery of arms, military equipment, petroleum and petroleum products and visa restrictions on the leaders of the coup, had been fine-tuned and were aimed at specific targets. He was pleased that the Security Council had taken additional precautionary measures to try to minimize any unintended side effects of the sanctions, in particular, any negative impact on the humanitarian situation. His delegation was convinced that the point of sanctions was not to punish the party that had threatened international peace and security, but to change the conduct of that party. The logic and practice of indefinite sanctions regimes could not, in principle, do that, and in his view they were counterproductive.<sup>145</sup> The representative of Portugal observed that the resolution sought the restoration of the democratically elected Government of Sierra Leone by peaceful means. His delegation understood that sanctions as a political tool were designed to make the junta realize that its unlawful actions had not been received with indifference by the international community. Those sanctions were tailored to penalize those who had consistently refused to abide by the rules of democracy, and were not addressed against the people of Sierra Leone.<sup>146</sup>

The representative of the United States noted that the sanctions had been carefully targeted: prohibitions against the supply of arms and petroleum products, and restrictions on the travel of members of the junta and their families. The resolution called upon all States to cooperate with those measures and authorized ECOWAS, as necessary and in conformity with applicable international standards, to inspect incoming ships to ensure compliance. The

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<sup>143</sup> *Ibid.*, p.8.

<sup>144</sup> *Ibid.*, p.9.

<sup>145</sup> *Ibid.*, p.10.

<sup>146</sup> *Ibid.*, p.13.

resolution did not limit shipments of food or medicines or other basic necessities. It contained provisions for regular review of the implementation and impact of the sanctions. The sanctions were designed to have maximum impact against the illegal junta of Sierra Leone, while imposing a minimum burden on the civilian population. He further stated that the resolution made clear how the junta could end the sanctions; by restoring the legitimate Government of Sierra Leone.<sup>147</sup> The representative of Chile emphasized that the Security Council was increasingly moving towards imposing sanctions on leaders, not on innocent populations. At the same time, the resolution contained the concept of periodic review of the humanitarian situation in Sierra Leone, including the impact of sanctions.<sup>148</sup>

## Case 12

### *Measures imposed against the Taliban (Afghanistan)*

Following the failure of the Taliban to respond to the demands in paragraph 13 of resolution 1214 (1998),<sup>149</sup> the Council held its 4051<sup>st</sup> meeting in connection with the adoption of resolution 1267 (1999). During the debate, the representative of Afghanistan expressed support for the resolution, and stated that it was his Government's view that the set of measures contained in the resolution provided an adequate signal to the Taliban and to their "Pakistani mentors" that the international community was extremely concerned about the adventurist policy of Pakistan and the Taliban, which was a major threat to international peace and security. He further stated that resolution 1267 (1999) affected the financial resources of the Taliban, which came mainly from the proceeds of drug trafficking and had no effect on the Afghan nation itself. He recalled the provisions contained in the resolution on humanitarian exceptions, which assured the delivery of humanitarian assistance to the Afghan people. His Government expected the Security Council to use every mechanism at its disposal for a meticulous and strict application of the sanctions by all Member States and international agencies.<sup>150</sup>

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<sup>147</sup> Ibid., pp.16-17.

<sup>148</sup> Ibid., p.17.

<sup>149</sup> By resolution 1214 (1998), para.13, the Council demanded that the Taliban stop providing sanctuary and training for international terrorists and their organizations, and that all Afghan factions cooperate with efforts to bring indicted terrorists to justice.

<sup>150</sup> S/PV.4051, p.2.

The representative of the United States stated that if the Taliban did not turn over Osama Bin Laden in 30 days, the sanctions would take effect. She recalled that measures in the resolution would restrict foreign landing rights on aircraft operated by the Taliban, freeze Taliban accounts around the world and prohibit investment in any undertaking owned or controlled by the Taliban. She emphasized that it was important to remember that those sanctions were limited and that they were targeted very specifically to limit the resources of the Taliban authorities. Those sanctions did not harm the people of Afghanistan, and her Government would work with the sanctions review Committee to implement them in a way that did not hinder the provision of humanitarian assistance to the Afghan people.<sup>151</sup>

On the other hand, the representative of Malaysia expressed concern about the effect and impact of the measures contained in the resolution on the people of Afghanistan. It was his Government's conviction that sanctions against a country and a people should be resorted to only when all other peaceful measures had been utilized and had failed. He stated that as an instrument of coercion they should be used with great caution because of their unintended grave consequences to the innocent population. He further stated that his delegations had reservations on the use of sanctions to effect the desired changes on a targeted regime. Experience had shown that they rarely worked on the intended target or targets. Instead, they had brought suffering to ordinary people of Afghanistan. He noted that sanctions directed at the Taliban would have a direct and indirect effect on the general population in virtually every aspect of their lives. His delegation would have preferred a phased approach in handling the situation. The Council should have adopted, as a first step, a strong resolution signaling the serious intention of the Council to institute measures to impose sanctions on the Taliban if certain stipulated actions in respect of its support for terrorism were not taken by the Taliban. He believed that the sanctions intended for the Taliban would affect the Afghan people in a punitive way since they were in effective control of most parts of the country and administered virtually every aspect of life in the parts of Afghanistan under their control. His delegation had nevertheless voted in favor of the resolution but with a request to the Taliban to comply with the requirements of the resolution so as to spare the people of Afghanistan from further suffering.<sup>152</sup> These views were shared by the representative of China, who believed that sanctions would only exacerbate the suffering and

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<sup>151</sup> Ibid., p.3.

<sup>152</sup> Ibid., pp.3-4.

hardships of the Afghan people, who had been the victims of perennial warfare. In his view, sanctions could be used only as a means of last resort and must be well targeted.<sup>153</sup>

### Case 13

#### *Measures imposed against Iraq*

At its 3831<sup>st</sup> meeting, on 12 November 1997, the Council adopted resolution 1137 (1997). During the deliberations of the Council, members unanimously expressed concern at Iraq's failure to fully cooperate with the United Nations Special Commission (UNSCOM) and supported the imposition of additional measures. Several speakers emphasized that the only way sanctions could be lifted was through Iraq's full compliance with its obligations in connection with UNSCOM.<sup>154</sup> Other Council members recalled previous resolutions by which the Council had expressed its readiness to impose additional measures against Iraq if it did not cooperate with UNSCOM.<sup>155</sup>

The representative of Costa Rica noted that the sole purpose of the sanctions was to impress upon the political and military authorities of Iraq that they had to comply with their international commitments, and it was not to affect the capacity for economic, social and political development of the Iraqi people. His country took the view that the sanctions must be carefully designed so as to fulfil a single objective, that of changing the unlawful policies of the Government of Iraq and securing its full reintegration into the international community's legal framework.<sup>156</sup> The representative of Sweden stated that the resolution underscored that full cooperation with the Special Commission and implementation of the relevant resolutions was the only way forward towards having the sanctions lifted.<sup>157</sup> The representative of Portugal recalled resolution 1115 (1997) and stated that the additional sanctions foreseen were sharply targeted in order not to impose further suffering on the Iraqi population.<sup>158</sup> They were designed to affect

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<sup>153</sup> Ibid., p.5.

<sup>154</sup> S/PV.3831, p.3 (Sweden); pp.3-4 (Portugal); pp.6-8 (Egypt); p.10 (France); pp.11-12 (United States); pp.12-13 (United Kingdom).

<sup>155</sup> Ibid., pp.6-8 (Egypt); p.5 (Poland); pp.8-9 (Guinea Bissau) pp.9-10( France); p.13 (Russian Federation).

<sup>156</sup> Ibid., pp.2-3.

<sup>157</sup> Ibid., p.3.

<sup>158</sup> By resolutions 1115 (1997) of 21 June 1997 and 1134 (1997) of 23 October, the Council condemned the repeated refusal of the Iraqi authorities to allow access to sites and demanded that they cooperate fully with UNSCOM. The Council also suspended the sanctions and arms embargo reviews (paragraphs 21 and 28 of res 687 (1991) until the

those Iraqi officials and members of the Iraqi armed forces who were responsible for Iraq's non-compliance with its obligations.<sup>159</sup>

The representative of Egypt stated that it found itself in a very sensitive position of voting on a resolution that imposed any kind of sanctions on an Arab State. He further stated that despite his country's difficult position, Iraq's lack of responsiveness left it with no choice but to vote in favor of the resolution in the hope that Iraq would alter its position and resume its cooperation with the Special Commission in a manner that would ensure the lifting of the sanctions and an end to the suffering of the Iraqi people. On the other hand, he stated that it was his understanding that the travel restrictions in resolution 1137 (1997) should not obstruct Egypt's discharge of its responsibilities as the host country of the headquarters of the League of Arab States. This involved facilitating the participation of the States members of the League in its meetings held in Cairo. He added that this was a responsibility, which Egypt had the honour to undertake in its capacity as the host country, under the Charter of the League of Arab States.<sup>160</sup>

The representative of France stated that travel restrictions would not worsen the situation of the Iraqi people, who were already sorely tried by seven years of economic embargo. The search for a peaceful solution to end the crisis would in no way be hampered by the travel bans covered in the resolution.<sup>161</sup> The representative of the United States emphasized that the lifting of sanctions had to be followed by compliance, and not precede it. He stated that because Iraq's obstructionist actions had been taken under orders of the highest authorities in Baghdad, the new sanctions targeted only Iraq's leaders, not its people. He further stated that resolution 1137 (1997) was a clear call for Iraqi compliance and a reaffirmation that the Council was willing to use the tools of the United Nations Charter to ensure compliance.<sup>162</sup>

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next UNSCOM report and threatened to impose additional measures on those categories of Iraqi officials responsible for the non-compliance.

<sup>159</sup> Ibid., p.4.

<sup>160</sup> Ibid., pp.6-8.

<sup>161</sup> Ibid., p.10.

<sup>162</sup> Ibid., pp.11-12.



## Case 14

### *Measures imposed against UNITA (Angola)*

At its 3814<sup>th</sup> meeting, on 28 August 1997, the Council adopted resolution 1127 (1997), which provided for additional measures to be imposed against UNITA in the event that it failed to implement its obligations under the Lusaka Protocol. During the debate, the representative of Angola noted that the time had come to apply the second package of sanctions, as provided in resolution 864 (1993). In this regard, his Government fully supported the measures set forth in resolution 1127 (1997) because it firmly believed that it was an effective instrument that would help prevent war and speed up the peace process. He stated that they would underscore in a fair manner the distinction that should be made between those who complied with the Lusaka Protocol and those who would rather treat it as a dead letter. His Government had complied with its obligations, acting in good faith and with a spirit of great flexibility.<sup>163</sup>

The representatives of the Southern African Development Community (SADC) supported the imposition of additional measures if UNITA did not comply with provisions in the Lusaka Protocol.<sup>164</sup> The representative of Lesotho urged all Member States to implement the measures envisaged in resolution 1127 (1997), to adopt measures necessary to restrict the movements of UNITA personnel, and to comply with earlier measures imposed by the Council.<sup>165</sup>

The representative of Brazil reiterated his Government's position on sanctions, stating that sanctions were a serious expedient, reserved for situations of extreme gravity. He stated that the imposition of sanctions could result in deleterious effects on innocent populations and neighbouring countries, and utmost restraint must be exercised when it came to contemplating any action under Chapter VII of the Charter. He further stated that sanctions had to be regarded as an instrument of last resort when the prospects for diplomatic efforts yielding results no longer seem viable. However, it had become apparent that in Angola, the Council was faced with such a situation.<sup>166</sup>

The representative of the Russian Federation, a member of the observer troika regarding a settlement in Angola, emphasized that the imposition of additional sanctions on UNITA was

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<sup>163</sup> S/PV.3814, p.4.

<sup>164</sup> Ibid., pp.5-6 (Malawi); pp.9-10 (Lesotho); pp.10-11 (Mozambique); pp.11-12 (Zimbabwe); and pp.13-14 (South Africa).

<sup>165</sup> Ibid, pp.9-10.

<sup>166</sup> Ibid., p.7.

precisely targeted, and concrete, and would not affect those representatives of UNITA who were members of Parliament or the Government or who were cooperating with the Joint Commission. Provisions were made for deferring the imposition of the sanctions and for the possibility of their being lifted, as well as for the adoption of further sanctions against UNITA if it failed to fully and expeditiously fulfil its obligations under the Lusaka Protocol. It was his Government's belief that this sent a tough but necessary and clear signal that the patience of the international community was at an end, and that it would no longer accept either the obstacles placed in the way of the implementation of the peace process in Angola or the disregard of the international community's decisions.<sup>167</sup> The representative of Japan noted the importance of the implementation of those measures, for which cooperation from the neighbouring States was essential. He stated that UNITA should bear in mind the Security Council's readiness to consider still further measures in the event that UNITA persisted in its refusal to meet its obligations.<sup>168</sup>

The representative of Kenya stated that his Government had been associated with the peace process in Angola since 1975, and was disappointed at the situation. His delegation believed that the international community was running out of patience and that the time had come to take measures against UNITA for delaying the implementation of its obligations under the peace process.<sup>169</sup>

The representative of Egypt, while voting in favor of the resolution, held a different view with regard to all States denying the families of UNITA's leaders entry into or transit through their territories: he contended that those measures constituted a breach of a legal norm: no punishment without a crime. It was inadmissible to punish families whose only crime was their relationship to those leaders. In addition, those measures constituted a form of collective punishment, which Egypt strongly rejected in principle. This view was also shared by the representative of Costa Rica, who expressed reservations about the references made to the immediate families of UNITA officials, as such reference would imply the imposition of responsibility simply by virtue of being a family member. He stated that any sanctions regime must be solely a temporary means of exercising pressure on those Governments or entities that threaten international peace and security. "In this respect, sanctions are a means of legitimate, collective defence for international society in the framework of the legal system established

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<sup>167</sup> Ibid., p.15.

<sup>168</sup> Ibid., p.16.

<sup>169</sup> Ibid., p.19.

under the Charter of the United Nations. For this reason, sanctions should not become a more or less covert method of conducting war or intervening in matters that are essentially under the domestic jurisdiction of States. Sanctions should be carefully designed so that they can achieve the objective of altering the illegal policies of the Government or entity in question. For this reason, sanctions must not become a method of punishment for an innocent population, and they must always be interpreted restrictively". In this context, he pointed out the positive aspects of the resolution: the sanctions would enter into force only after a reasonable time, which would make it possible for UNITA to stop in its tracks and reverse its illegal policies before implementation; and the sanctions were designed to operate against the leadership of UNITA and its functioning as a political entity, so as to avoid suffering in the civilian population that would result from economic sanctions.<sup>170</sup>

The representative of Portugal, while condemning the tactics of UNITA, stated that UNITA had to understand that its behaviour had left the Security Council without other options besides the one of imposing additional sanctions, which was designed to stimulate UNITA to move in the right direction. The representative of the United States believed that the sanctions were strong, practical and enforceable, and was ready to examine further measures by the Council should UNITA fail to respond.<sup>171</sup> This view was shared by the representative of France, who reiterated his Government's position that the sanctions should be time-bound, with a set duration and the question of their extension decided by the Security Council.<sup>172</sup>

At its 3891<sup>st</sup> meeting, on 12 June 1998, the Council adopted resolution 1173 (1998). During the deliberations in connection with the adoption of the resolution, the majority of the Council members, regretting the continued lack of progress in the peace process, again called on UNITA to implement fully its obligation under the Lusaka Protocol.<sup>173</sup> The representative of Angola supported the contents of the resolution, with the hope that it would promote tangible action allowing for the preservation of progress already made in the course of the peace process.<sup>174</sup> The representative of the United Kingdom, speaking on behalf of the European Union, expressed support for further Security Council action against UNITA. He stated that the

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<sup>170</sup> Ibid., pp.22-23.

<sup>171</sup> Ibid., p.26.

<sup>172</sup> Ibid., p.26.

<sup>173</sup> S/PV.3891, p.3 (United Kingdom); pp.4-5 (Brazil); p. 5 (Russian Federation); p. 6 (China); p.6 (Sweden); pp.6-7 (Gambia); p.7 (Japan); p.8 (Bahrain); pp.9-10 (United States); pp.10-11 (Portugal).

<sup>174</sup> Ibid., p.2.

existing sanctions had a positive impact. Moreover, he stated that further sanctions were not intended to punish, but to encourage UNITA to finalize the implementation of the peace process.<sup>175</sup>

The representative of Brazil stated that if the Security Council was given no choice but to impose additional sanctions on UNITA, the responsibility for those measures lay exclusively with UNITA's own short-sighted leadership.<sup>176</sup> The representative of Costa Rica noted that the sanctions established by the resolution were precisely targeted. For the first time they focused on UNITA's real interests and sought only to ensure that that group fulfilled its commitments. Moreover, the Security Council had gone further by giving UNITA the benefit of an additional grace period, until 23 June 1998, to do what it must do. Thus, it had a temporary warning before the sanctions were enacted.<sup>177</sup> The representative of Sweden stated that the scope of the measures in the resolution, backed by a unanimous Council, would send a clear message to Mr. Savimbi that the international community would not accept UNITA's continued obstruction of the peace process. At the same time, he believed that the delayed entry into force of these measures would serve as a useful incentive for UNITA to fulfil its obligations.<sup>178</sup>

The representative of Japan emphasized that if UNITA's leaders contemplated the impact which the sanctions called for in the resolution would have on their very political survival, they would realize that they had no recourse but to cooperate, fully and without delay, in completing the tasks remaining under the Lusaka Protocol.<sup>179</sup> The representative of Slovenia drew on the experience from previous months, which had shown that targeted sanctions could have a positive effect. He stated that "targeted sanctions bite, they can modify the behavior of UNITA and the option of sanctions must be available to ensure the implementation by UNITA of the remaining tasks of the Lusaka Protocol".<sup>180</sup>

The representative of the United States stated that the sanctions contained in the resolution were targeted and strong, and that there were clear criteria for their imposition as well as for their lifting.<sup>181</sup> The representative of Kenya believed that the imposition of additional measures would force UNITA to proceed with the peace process and would further re-establish

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<sup>175</sup> Ibid., p.3.

<sup>176</sup> Ibid., p.4.

<sup>177</sup> Ibid., p.5.

<sup>178</sup> Ibid., p.6.

<sup>179</sup> Ibid., p.7.

<sup>180</sup> Ibid., p.8.

<sup>181</sup> Ibid., pp.9-10 .

the authority of the Security Council. There was therefore a need for the Security Council to take additional measures, and, in his opinion, the resolution contained such measures.<sup>182</sup>

The representative of Portugal noted that the Security Council was about to take a decision imposing a third package of mandatory measures on UNITA. He stated that it was regrettable but a necessary decision in view of the persistent pattern of non-compliance by UNITA with the provisions of the Angolan peace process, namely the Lusaka Protocol, the relevant Security Council resolutions and the plan approved by the Joint Commission on 19 May 1998. He further stated that those additional measures were not being imposed for their own sake; they had a clear goal: the successful completion of the peace process, which was in the interest, above all, of the Angolan people themselves, including UNITA.<sup>183</sup>

### Case 15

*Letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America (S/23306, S/23307, S/23308, S/23309 and S/23317)*

At its 3864<sup>th</sup> meeting, on 20 March 1998, the Council held an open debate to discuss the operation of sanctions imposed on Libya. On the issue of sanctions, the representative of Libya stated that the International Court of Justice (ICJ) had confirmed that the dispute was a legal one in which the ICJ had jurisdiction and that consequently, the Security Council, in order to give effect to the judgments, should promptly and urgently refrain from renewing the sanctions imposed on Libya pursuant to resolution 748 (1992) and 883 (1993). He further stated that for the sake of fruitful cooperation between the Court and the Security Council, the Council should promptly and urgently refrain from renewing the sanctions imposed on the Libyan Arab Jamahiriya pursuant to resolutions 748 (1992) and 883 (1993).<sup>184</sup>

On the other hand, the United States expressed the view that the ruling of the International Court of Justice in no way questioned the legality of the Security Council's actions affecting Libya or the merits of the criminal cases against the two accused suspects. He stated that contrary to the assertions of the Libyan Government, the Court was not calling for the

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<sup>182</sup> Ibid., p.10.

<sup>183</sup> Ibid., pp.10-11.

<sup>184</sup> S/PV.3864, p.11.

review or suspension of the Security Council resolutions.<sup>185</sup> The representatives of the United States and the United Kingdom contended that the sanctions were carefully targeted to minimize their impact on the Libyan population. Moreover, they asserted that if Libya wanted the sanctions lifted, it should surrender the two suspects so that they could receive a fair trial in the appropriate criminal court.<sup>186</sup>

Several Council members called on the Committee to continue to respond promptly to requests for humanitarian exemptions.<sup>187</sup> The representative of the Russian Federation emphasized that sanctions were not a weapon to punish “unpalatable regimes”, but a means to support political efforts towards the settlement of a given conflict. He stated that the process of imposing, implementing, easing and tightening sanctions should be closely and flexibly linked to the political process.<sup>188</sup>

Several speakers expressed the belief that the relevant decision of the ICJ provided a good basis for an agreement as to conduct of a fair trial and for the suspension and early lifting of the sanctions against Libya.<sup>189</sup> The representative of Bahrain added that the judgment of the ICJ, which confirmed its competence in this connection, logically required that the Security Council consider the suspension of sanctions, at least until the Court took a decision on the substance of the matter. He further stated that the harmful effects of those sanctions in the long term had begun to be felt by the Libyan people in spite of Libya’s oil riches.<sup>190</sup> The representative of the Organization of African Unity emphasized that it wanted to see a speedy resolution of the dispute and the immediate lifting of the harsh sanctions measures imposed against the people of Libya.<sup>191</sup>

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<sup>185</sup> Ibid., p.13.

<sup>186</sup> Ibid., p.13 (United States); p.30 (United Kingdom).

<sup>187</sup> Ibid., pp.14-15 (Costa Rica); pp.22-24 (Japan); pp.24-25 (Slovenia); pp.25-26 (Sweden); pp.26-28 (Brazil); pp.28-30 (France); pp.39-40 (the United Kingdom, speaking on behalf of the EU).

<sup>188</sup> Ibid., p.16.

<sup>189</sup> Ibid., p.17 (China); pp.20-22 (Bahrain); pp.34-36 (League of Arab States); pp.36-38 (Organization of African Unity); pp.38-40 (Organization of the Islamic Conference); pp.40-42 (Mali, on behalf of the African Union); pp.46-47 (Indonesia); pp.47-48 (Syrian Arab Republic); pp.47-48 (Syrian Arab Republic); pp.48-49 (United Arab Emirates); p.51 (Yemen); pp.51-53 (Jordan); pp.55-56 (Ghana); pp.56-57 (Republic of Korea); pp.57-59 (Iraq); pp.59-60 (Pakistan); p.61 (Zimbabwe); pp.61-62 (Namibia); pp.62-63 (Morocco); pp.64-65 (Guinea-Bissau); pp.66-67 (Nigeria); pp.67-69 (India); pp.69-70 (United Republic of Tanzania); pp.70-71 (Cuba); pp.71-72 (Oman); pp.72-73 (Iran); pp.73-74 (Malaysia).

<sup>190</sup> Ibid., p.21.

<sup>191</sup> Ibid., p.37.

In that connection, several speakers called for a thorough examination of the issue of sanctions,<sup>192</sup> the criteria for their application and lifting, their effect on third countries and their humanitarian impact on the population of the affected States. The representative of Malta stated that as a neighbouring country to a country hit by sanctions, an open debate should be launched to explore alternative measures for the application of sanctions and on measures that offered built-in incentives that encouraged changes in the behaviour of targeted countries. He noted that such sanctions must be a mechanism for the promotion of peace and not for the indiscriminate mass punishment of whole populations. He further noted that sanctions have profound consequences, not only for the target countries, but also for the neighbouring ones. In his view, the sanctions imposed against Libya were not achieving their desired objective.<sup>193</sup>

### Case 16

*Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995 (S/1996/10)*

At its 3660<sup>th</sup> meeting, on 26 April 1996, the Council considered the Secretary-General's report on the implementation of resolution 1044 (1996),<sup>194</sup> which called on the Government of the Sudan to extradite to Ethiopia the three suspects wanted in connection with the attempted assassination of the Egyptian President. At the same meeting, the Council adopted resolution 1054 (1996).

During the deliberations of the Council, the representative of the Sudan refuted the allegations leveled against it and stated that the imposition of any sanctions against the Sudan would undermine all regional initiatives and set back the progress towards cooperation and development.<sup>195</sup>

The representative of Ethiopia recalled the Secretary-General's report, which made clear that the Sudan had not complied with the Council's demands contained in resolution 1044

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<sup>192</sup> Ibid., pp.14-15 (Costa Rica ); pp.43-45 (Malta); p.45 (Algeria);

<sup>193</sup> Ibid., p.43.

<sup>194</sup> S/1996/179.

<sup>195</sup> S/PV.3660, pp2-10.

(1996). He stated that it was precisely for that reason an arms embargo would have been one of the most appropriate steps that the Council could have taken to secure the Sudan's compliance with its demands. He further stated that all arguments against such a step by the Council were "patently hollow, extremely unconvincing, and lacking in transparency". While insisting that the Sudan abide by the demands of resolution 1044 (1996), the representative of Egypt underlined the deep links between the peoples of the two countries, and stressed that the sanctions provided by the draft resolution were not intended to harm the people of the Sudan, but were a "message of warning".<sup>196</sup>

Expressing disappointment at the resolution, the representative of Uganda stated that it did not send the strong signal he had hoped for. He called on the Council to take any measures necessary, including an arms embargo against the Sudan, to ensure that it desisted from engaging in activities that were destabilizing Uganda and plunging the entire sub-region into chaos.<sup>197</sup> Similarly speaking, the representative of the United States said his Government supported the resolution, albeit with reservations. His Government did not believe that the sanctions outlined in the resolution were sufficient to convince the Government of the Sudan to cease its sponsorship of international terrorism and return to the fold of responsible, law-abiding nations. He welcomed the Council's concern to combat terrorism. However, in failing to impose more meaningful sanctions against the Sudan, it risked further insecurity and instability for the people of Eastern Africa, the Middle East and the Sudan.<sup>198</sup>

Some speakers also acknowledged that measures contained in the resolution did not have economic implications, which could adversely affect the civilian population of the Sudan.<sup>199</sup> Speaking in the same vein, the representative of Germany appreciated the effort to target the sanctions in such a way that they did not target the population but only those who were in a position to take the required measures. He appealed to the Government to use the 60 days period provided by the text to avoid further measures and to allow for an early lifting of the measures being imposed.<sup>200</sup> The representative of France underlined that the Council had chosen not to

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<sup>196</sup> Ibid., pp.22-24.

<sup>197</sup> Ibid., pp.12-14.

<sup>198</sup> Ibid., pp.20-22.

<sup>199</sup> Ibid., pp.17-18 (Guinea-Bissau), pp.18-19 (Republic of Korea).

<sup>200</sup> Ibid., p.19.



impose sanctions, which might have had an economic impact on the population of one of the poorest countries in Africa.<sup>201</sup>

On the other hand, the representatives of the Russian Federation and China, who abstained from voting on the resolution, believed that such measures would not help to settle the question. The representative of Russia emphasized the need for precise and objective criteria in the imposition of sanctions and for lifting them. He stated that his country was opposed to the use of sanctions to punish certain regimes or attain the political goals of one or more Member States. In an explanation, he noted that his delegation was not able to prevent the adoption of the resolution, only because implementation of the measures it specified depended on the actions of individual States.<sup>202</sup> The representative of China stated that his Government opposed in principle the frequent recourse to sanctions under Chapter VII. He further stated that no matter how complex the question might be, dialogue and mediation should be insisted upon, with the aim of reaching a peaceful solution. He noted that it was necessary that the resolution be based on facts.<sup>203</sup>

Along the same lines, the representative of Indonesia contended that the Government of the Sudan had not yet fully fulfilled all its obligations to the efforts undertaken by the OAU, However, the Sudan had taken some steps and continued its efforts to fulfil its obligations under Council resolution 1044 (1996). He stated that if, however, after all avenues had been explored and all efforts exhausted, the Council ultimately assessed that the Government of the Sudan had still not yet fully complied with its requests, only then should the Council consider adopting further measures to ensure implementation of resolution 1044 (1996).<sup>204</sup>

### Case 17

*Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (S/1998/223)*

*Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/1998/272)*

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<sup>201</sup> Ibid., p.20.

<sup>202</sup> Ibid., pp.14-15.

<sup>203</sup> Ibid., pp.19-20.

<sup>204</sup> Ibid., pp.16-17.

At its 3868<sup>th</sup> meeting, on 31 March 1998, the Council adopted resolution 1160 (1998), by which it decided to ban the sale or supply to the Federal Republic of Yugoslavia (FRY), including Kosovo, of arms and related matériel of all types, including weapons and munitions, military vehicles and equipment and spare parts for them.

During the debate, the majority of the Council members indicated their support for the measures contained in the resolution, with the exception of the representative of China who abstained from the vote. The representative of Japan stated that the situation in Kosovo posed a threat to international and regional peace and security, with the further spread of violence raising the spectre of destabilizing the entire Balkan region. He further stated that the resolution, which imposed an arms embargo against the Federal Republic of Yugoslavia, including Kosovo, would be an effective instrument in preventing such destabilization.<sup>205</sup> The representative of France noted that the measures stipulated in the resolution would be seen as a means to achieve a negotiated settlement of the crisis. The text provided that the Council would review the prohibitions that had been decided on and would be able to lift them as soon as the Government of the Federal Republic of Yugoslavia had met the conditions set out in the resolution.<sup>206</sup> The representative of Sweden welcomed the adoption of the resolution, and stated that the arms embargo imposed by the Council had to be strictly implemented by all States. He further stated that as a member of the European Union, his country had already decided to implement the arms embargo and the other sanctions recommended by the Contact Group, including the refusal to supply equipment, which could be used for internal repression or for terrorism, the denial of visas to officials responsible for the repression, and a moratorium on government-financed export credits.<sup>207</sup>

While supporting the imposition of an arms embargo, the representative of Brazil stressed that it would not yield the desired effect if it were not accompanied by parallel diplomatic efforts to promote a safer and more harmonious environment for those who had been most directly affected by the unrest.<sup>208</sup>

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<sup>205</sup> S/PV.3868, p.3.

<sup>206</sup> Ibid., p.4.

<sup>207</sup> Ibid., p.5.

<sup>208</sup> Ibid., p.6.

The representative of the Russian Federation emphasized that it was difficult for his country to agree to impose an arms embargo on the Federal Republic of Yugoslavia, including Kosovo. He noted that the resolution contained measures that would prevent mounting tensions and lead to a political settlement. His Government would continue to advocate the need to limit the arms embargo by calling for a clear time-frame. Furthermore, he noted that the resolution had been able to define strict criteria that would cause the Council to lift the embargo.<sup>209</sup>

The representative of the United States emphasized that by imposing an arms embargo on the FRY, the Council would send an unambiguous message that the international community would not tolerate violence and “ethnic cleansing” in the region of the former Yugoslavia.<sup>210</sup> Speaking in the same vein, the representative of Gambia added that the lack of access by the parties to military *matériel* would reduce their capability to fight, and hence, the incidence of violence. In that context, his delegation welcomed the establishment of a Committee to monitor the implementation of the measures contained in the resolution and urged all States to respect them.<sup>211</sup> Similarly speaking, the representative of Germany emphasized that the arms embargo represented an attempt to prevent an arms build up by the opposing sides. It was also a political measure, which illustrated that resort to violence and a refusal to enter into meaningful dialogue would bring those responsible farther away from the beneficial normalizing of their relations with the outside world.<sup>212</sup>

The representative of the United Kingdom, making a statement on behalf of the European Union (EU), stated that the EU already had a comprehensive arms embargo in place against the countries of the former Yugoslavia. He further stated that resolution 1160 (1998) sent a powerful signal to the authorities in Belgrade that the international community was united in its desire to see real progress in Kosovo and was monitoring events there closely.<sup>213</sup>

On the other hand, the representative of China, who abstained from the vote, expressed the view that the situation in Kosovo did not endanger regional and international peace and security. He believed that the resolution would not help move the parties to negotiations and that

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<sup>209</sup> Ibid., pp.10-11.

<sup>210</sup> Ibid., p.13.

<sup>211</sup> Ibid., p.14.

<sup>212</sup> Ibid., p.20.

<sup>213</sup> Ibid., p.15.

it was not appropriate to bring into the Council the differences between the Organization for Security and Cooperation in Europe and the FRY, as well as the human rights issue in Kosovo.<sup>214</sup>

Mr. Jovanovic stressed that the meeting of the Security Council and the proposal to adopt a resolution were not acceptable to the Government of the FRY since that internal question could not be a subject of deliberation of any international forum without the consent of the FRY authorities. He further asserted that there was not and had never been any armed conflict in Kosovo and Metohia; thus there was no danger of a spillover, no threat to peace and security and no basis for invocation of Chapter VII of the Charter.<sup>215</sup>

## Case 18

### *Children and armed conflict*

At its 4037<sup>th</sup> meeting, on 25 August 1999, the Council adopted resolution 1261 (1999). During the debate, the Special Representative of the Secretary-General for Children and Armed Conflict, Mr. Olara Otunnu, while highlighting the suffering of children during armed conflict, stated that there was the need to review the effects of sanctions on children. He stated that all efforts should be made to relieve the suffering of children living under sanctions regimes. Whenever the Security Council adopted measures under Article 41, it was critical to give consideration to their impact on children and to provide appropriate humanitarian exemptions.<sup>216</sup>

Several speakers emphasized that it was important for the Council to take into account the impact of sanctions on children in those post-conflict situations in which sanctions were imposed.<sup>217</sup> The representative of Argentina noted that the Council had to improve the design of sanctions so that they would not have an impact on innocent civilians and on children in particular.<sup>218</sup> The representative of Finland, on behalf of the European Union, recommended that whenever sanctions were adopted in the handling of crises, their impact on children be assessed and monitored, and that humanitarian exceptions be child-focused.<sup>219</sup>

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<sup>214</sup> Ibid., 11-12.

<sup>215</sup> Ibid., pp.15-19.

<sup>216</sup> Ibid., p.5.

<sup>217</sup> Ibid., p.8 (France); p.20 (Argentina); p.10 (Bangladesh).

<sup>218</sup> Ibid., p.20.

<sup>219</sup> S/PV.4037 (Resumption 1), p.14.

The representative of Costa Rica stated that in the context of the work of the Security Council, studies had to be conducted on possible impacts on the vulnerable population, especially on children, before any sanctions regime was adopted.<sup>220</sup>

The representative of India recalled the statement that was made by the Executive Director of UNICEF to the Security Council on 12 February 1999, in which he had stated that sanctions should not be imposed without obligatory, immediate and enforceable humanitarian exemptions. He stated that the extreme impact on child malnutrition and on child and maternal mortality and illiteracy in countries subjected to comprehensive sanctions had to be addressed. This was something within the competence of the Security Council and would go a long way towards alleviating the suffering of children, many of whom had spent their entire childhood in situations of conflict.<sup>221</sup>

The representative of Iraq stated that the enforcement of sanctions against his country had caused the deaths of 500,000 Iraqi children under five years, as indicated in UNICEF's report published on 12 August 1999. He stated that sanctions had also been the cause of death of more than a million Iraqi citizens from the other groups, particularly women and the elderly. In his view, that situation made sanctions effectively equal to threats emanating from armed conflict. He further stated that imposition of sanctions on Iraq in 1990 was a form of collective punishment imposed on the people of Iraq. It was his view that sanctions moved Iraq from a state of relative prosperity into full poverty.<sup>222</sup>

The representative of Slovakia emphasized that economic sanctions should prevent war criminals from "enjoying the fruits of their evil without harming innocent women and children". He stated that well-targeted sanctions could have a real impact without necessarily leading to unbearable humanitarian consequences for the most vulnerable group of the population, the children.<sup>223</sup>

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<sup>220</sup> Ibid., p.19.

<sup>221</sup> Ibid., p.23.

<sup>222</sup> Ibid., pp.26-27.

<sup>223</sup> Ibid., p.29.

## Case 19

### *Protection of civilians in armed conflict*

At its 4046<sup>th</sup> meeting, on 17 September 1999, the Council adopted resolution 1265 (1999). In the beginning of the debate, the Council considered the report of the Secretary-General on the protection of civilians in armed conflict,<sup>224</sup> in which he stated that experience had shown that sanctions could have a highly negative impact on civilian populations, especially on vulnerable groups. He also expressed concern about regional sanctions and embargoes that were hastily imposed by neighbouring countries and lacked clear guidelines regarding the minimization of their humanitarian impact. The Secretary-General recommended that the Security Council underscore in its resolutions, at the onset of a conflict, the imperative for civilian populations to have unimpeded access to humanitarian assistance and for concerned parties, including non-State actors, to cooperate fully with the United Nations humanitarian coordinator in providing such access, as well as to guarantee the security of humanitarian organizations, in accordance with the principles of humanity, neutrality and impartiality, and insist that failure to comply will result in the imposition of targeted sanctions.<sup>225</sup> He described the concept of targeted sanctions as constituting a potentially valuable means for pressuring targeted elites, while minimizing the negative humanitarian impact on vulnerable civilian populations that had been a characteristic of comprehensive economic sanctions. In this regard, he recommended that the Council make greater use of targeted sanctions; establish a permanent technical review mechanism of the United Nations and regional sanctions regimes; further develop standards and rules to minimize the humanitarian impact of sanctions on the basis of proposals made by the President of the Council to the sanctions committees; and request regional organizations or groups of countries to submit complete information regarding the establishment of proper humanitarian exemption mechanisms and clearance procedures prior to authorizing the imposition of regional sanctions.<sup>226</sup>

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<sup>224</sup> S/1999/957.

<sup>225</sup> Ibid., paragraphs 25 and 26.

<sup>226</sup> Ibid., paragraphs 53 and 54.

During the debate, several speakers supported the recommendations of the Secretary-General in making greater use of targeted sanctions,<sup>227</sup> so as to penalize the wrong-doers, rather than aggravating the suffering of the civilian populations. The representative of Brazil stated that, together with the assessment of the impact of sanctions regimes, the Security Council had to consider applying humanitarian exemptions, as appropriate, to measures adopted under Article 41. Secondly, priority should be given to the development of so-called targeted or smart sanctions, so as to penalize those directly responsible for wrongdoing rather than aggravating the hardship facing the population as a whole.<sup>228</sup> The representative of the United States highlighted that it was imperative for concerned parties to cooperate fully with the UN humanitarian coordinator in providing access to civilian populations, and failure to do so should result in the imposition of targeted sanctions. Secondly, his Government supported using sanctions as a possible method to deter and contain those who committed violations of international humanitarian and human rights law, as well as those parties to conflicts, which continually defied Security Council resolutions. He further stated that the sanctions committees should convene periodic meetings and the Council should monitor the humanitarian impact of sanctions on vulnerable groups and make required adjustments of the exemption mechanisms to facilitate the delivery of humanitarian assistance.<sup>229</sup>

The representative of France emphasized that the Security Council had all the tools of the Charter to pursue the guilty and to cause them to change their behavior, including through the use of sanctions, which however, had to be carefully targeted and proportionate, so that they would not harm civilian populations.<sup>230</sup> The representative of Malaysia noted that when the Security Council took decisions to resort to the use of sanctions and, ultimately, military force for the protection of civilian populations, there was a need to give careful thought to their effectiveness and their negative consequences on the civilian population. The imposition of Article 41 of the Charter and the use of coercive action under Chapter VII should be adopted as a mechanism of last resort.<sup>231</sup>

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<sup>227</sup> S/PV.4046, p.8 (Canada); pp.15-16 (Argentina); p.23 (Bahrain); S/PV.4046 (Res 1); p.4 (Japan); p.7(Switzerland); pp.9-11 (Finland).

<sup>228</sup> Ibid., pp.11-12.

<sup>229</sup> Ibid., p.13.

<sup>230</sup> Ibid., p.18.

<sup>231</sup> Ibid., p.20.

The representative of Korea stated that the Security Council had made consistent efforts to refine the use of sanctions. While his Government recognized the difficulty of achieving “smart sanctions” in the real world, it also believed that there was a need to minimize collateral, unintended humanitarian suffering through the imposition of more specifically targeted sanctions and mechanisms for periodic substantive reviews. He stated that the Security Council should also devise a more reliable mechanism to better implement the arms embargoes, which had already been imposed by the Council in some conflict areas but which had been deemed ineffective.<sup>232</sup>

The representative of Ukraine stated that the Security Council should examine practical ways on how to avoid, or at least greatly minimize, a negative impact on the civilian population. His delegation felt that further thinking had to be done in the area of the impact of sanctions on third States. For this purpose, the Security Council should, in his opinion, give careful consideration to the potential social, economic and humanitarian impact of sanctions on the population of the target State and those of third countries prior to the imposition of sanctions. Following the imposition of sanctions, the possible options should be envisaged so that appropriate adjustments can be promptly introduced to sanctions regimes in order to mitigate their adverse collateral effects.<sup>233</sup> The representative of Botswana, while endorsing the recommendations of the Secretary-General, stated that there should be no hesitation over imposing an arms embargo or other targeted sanctions where evidence existed that a party or parties to an armed conflict were deliberately targeting civilians.<sup>234</sup>

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<sup>232</sup> S/PV.4046 (Resumption 1), pp.16-17.

<sup>233</sup> Ibid., p.18.

<sup>234</sup> S/PV.4046 (Resumption 2), p.2.



## **Part IV**

### **Other measures to maintain or restore international peace and security in accordance with Article 42 of the Charter**

#### *Article 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.*

#### **Note**

During the period under review, the Security Council did not invoke Article 42 explicitly in any of its decisions. The Council did, however, adopt several resolutions by which it called upon States to use all “necessary measures” or “necessary means” to enforce its demands related to the maintenance or restoration of peace and security, which are therefore relevant to the interpretation of Article 42. In all the resolutions, determination under Article 39 of a threat to the peace provided the basis for the application of measures contained in Article 42.

This section will briefly examine four case studies relating to the Council’s authorization of enforcement action under Chapter VII of the Charter, for the maintenance of peace and security. The first case study (case 20) relates to the decision of the Council authorizing a multinational force to use of “all necessary measures” to restore peace and security, and to facilitate the delivery of humanitarian assistance in East Timor. In the second case study (case 21), the Council authorized the United Nations Mission in Sierra Leone (UNAMSIL) to “take the necessary action” in the context of a specific aspect of its peacekeeping operations. In case 22, the Council authorized the deployment of the NATO-led Stabilization Force (SFOR) to achieve, by using “all necessary means”, the objectives set out in its decision. In case 23, the Council authorized a NATO-led multinational force (KFOR) to establish an international security presence in Kosovo, with “all necessary means” to fulfil its responsibilities. In the last case study (case 24), the Council

authorized a temporary multinational force in eastern Zaire, to conduct a humanitarian operation, by using “all necessary means.”

The decisions of the Security Council by which measures enshrined in Article 42 were authorised, will be set out in part A, followed by part B, which reflects constitutional discussion in the meetings of the Council arising in connection with the adoption of these resolutions.

## **A. Decisions relating to Article 42**

### *The situation in East Timor*

By resolution 1264 (1999) of 15 September 1999, the Security Council, acting under Chapter VII of the Charter, authorized the establishment of a multinational force, the International Force for East Timor (INTERFET), under a unified command structure, with the following tasks: to restore peace and security in East Timor; to protect and support the United Nations Mission in East Timor in carrying out its tasks; and to facilitate humanitarian assistance operations. It also authorized the States participating in the multinational force to take “all necessary measures” to fulfil this mandate.

### *The situation in Sierra Leone*

By resolution 1270 (1999) of 22 October 1999, the Security Council decided to establish the United Nations Mission in Sierra Leone (UNAMSIL), and acting under Chapter VII of the Charter, decided that in the discharge of its mandate UNAMSIL may “take the necessary action” to ensure the security and freedom of movement of its personnel and, within its capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence.

### *The situation in Bosnia and Herzegovina*

By resolution 1088 (1996) of 12 December 1996, acting under Chapter VII of the Charter, the Council authorized Member States to establish a multinational Stabilization Force as the legal successor to the Implementation Force, under unified command and control, in order to fulfil the role specified in Annexes 1-A and 2 of the Peace Agreement. Moreover, it also authorized Member

States to take “all necessary measures”, at the request of the Stabilization Force, either in defence of the Force to take all necessary measures to defend itself from attack or threat of attack.

By the same resolution, the Council authorized the Member States acting under paragraph 18,<sup>235</sup> in accordance with annex 1-A of the Peace Agreement, to take “all necessary measures” to ensure compliance with the rules and procedures, to be established by the Commander of the Stabilization Force, governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic.

#### *The situation in Kosovo, Federal Republic of Yugoslavia*

By resolution 1244 (1999) of 10 June 1999, acting under Chapter VII of the Charter, the Security Council decided on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomed the agreement of the Federal Republic of Yugoslavia to such presence. It authorized Member States and relevant organizations to establish the international security presence in Kosovo (KFOR) as set out in point 4 of annex 2 with all necessary means to fulfil its responsibilities.<sup>236</sup> Its assigned tasks such as deterring hostilities, demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups, establishing a secure environment in which refugees and displaced persons could return home in safety, the international civil presence could operate, a transitional administration could be established, and humanitarian aid could be delivered.

By paragraph 10 of the same resolution, the Council authorized the Secretary-General to establish an international civil presence in Kosovo in order to provide an interim administration for Kosovo.

#### *The situation in the Great Lakes region*

By resolution 1080 (1996) of 15 November 1996, acting under Chapter VII of the Charter, the Council welcomed the offers made by Member States, in consultation with the States

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<sup>235</sup> In para.18 of resolution 1088 (1996), the Council authorized the Member States acting through or in cooperation the North Atlantic Treaty Organization to establish for a planned period of eighteen months a multinational Stabilization Force.

<sup>236</sup> S/1999/649, see annex 2, point 4; the international security presence with substantial participation was to 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.

concerned in the region, concerning the establishment of a temporary multinational force to facilitate the immediate return of humanitarian organization and the effective delivery by civilian relief organizations of humanitarian aid to alleviate the immediate suffering of displaced persons, refugees and civilians at risk in eastern Zaire. By the same resolution, the Council authorized the Member States cooperating with the Secretary-General to conduct the operation, referred to in the above to achieve, by using “all necessary means”, the humanitarian objectives set out therein.

## **B. Discussion relating to Article 42**

### **Case 20**

#### *The situation in East Timor*

Following the deterioration in the security situation in East Timor, and in particular by the continued violence against and large-scale displacement and relocation of East Timorese civilians,<sup>237</sup> on 12 September 1999, the Government of Indonesia agreed to accept an international peacekeeping force through the United Nations in East Timor.<sup>238</sup>

At its 4045<sup>th</sup> meeting, the Council adopted resolution 1264 (1999), authorizing the establishment of a multinational force (International Force for East Timor, INTERFET) “to take all necessary measures” to fulfil its mandate. During the debate, the representative of Portugal stated that his delegation saw the deployment of the multinational force as the first step towards restoring a security environment which would allow the East Timorese to begin to rebuild their lives free from any fear and interference. He further stated that the sole precondition for the structure and composition of the multinational force was its capacity to respond to the shocking situation on the ground.<sup>239</sup>

The representative of Indonesia expressed concern about the situation and noted that his Government was ready to accept the United Nations peacekeeping forces, in order to restore peace and security in East Timor. He stated that his Government’s main objective throughout the whole

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<sup>237</sup> Resolution 1264 (1999) of 15 September 1999, fifth preambular paragraph.

<sup>238</sup> Ibid., eleventh preambular paragraph.

<sup>239</sup> S/PV.4045, p.3.

process remained, as stated by President Habibie, to enhance the effectiveness of common efforts and restore peace and security in East Timor.<sup>240</sup>

The representative of Australia stated that his Government welcomed the decision of the Indonesian Government to invite a multinational force to assist in restoring peace and security in East Timor, and, at the Secretary-General's request, Australia was willing to accept the leadership of the multinational force.<sup>241</sup>

Endorsing the objectives of resolution 1264 (1999), the representative of Finland, speaking on behalf of the European Union, welcomed President Habibie's announcement that Indonesia would be ready to accept an international force to help create peace in East Timor, protect the population of the territory and implement the outcome of the popular consultation.<sup>242</sup>

The representative of Japan stated that his delegation welcomed the decision taken by the Council in authorizing the establishment of a multinational force to restore peace and security in East Timor. He stated that it was clear that resolution 1272 (1999) was the first step in restoring peace and order in East Timor. He further stated that the international community had to cooperate in organizing and deploying the necessary forces.<sup>243</sup>

By resolution 1272 (1999) of 25 October 1999, acting under Chapter VII of the Charter, the Security Council established the UN Transitional Administration in East Timor (UNTAET), and endowed it with the overall responsibility for the administration of East Timor, including executive, legislative and judicial duties.

## **Case 21**

### *The situation in Sierra Leone*

At its 4054<sup>th</sup> meeting, on 22 October 1999, the Council adopted resolution 1270 (1999) establishing the United Nations Mission in Sierra Leone (UNAMSIL), and decided that in the discharge of its mandate UNAMSIL could "take the necessary action" to fulfil its mandate. During the debate, the Council members unanimously welcomed the establishment of UNAMSIL, and believed that it was an important step in the implementation of the provisions in the Lomé Peace Agreement. The representative of Sierra Leone, who expressed support for the provisions in the

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<sup>240</sup> Ibid., p.4.

<sup>241</sup> Ibid., p.5.

<sup>242</sup> S/PV.4054, p.6.

<sup>243</sup> Ibid., p.7.

resolution, stated that his Government approved of the establishment and deployment of a peacekeeping operation. He highlighted paragraph 14 of the resolution, which stated that acting under Chapter VII of the Charter, UNAMSIL could take the necessary measures to ensure the safety and freedom of movement of the United Nations personnel and, circumstances permitting, to afford protection to civilians under imminent threat of physical violence. In the view of his delegation, this was an insurance policy for both international peacekeepers and innocent civilians. He believed that it also sent a clear message to any potential violator of human rights on a gross scale: the international community would not turn a blind eye if and when innocent civilians were under threat of physical violence.<sup>244</sup> The representative of the United Kingdom stated that the establishment of UNAMSIL provided a clear opportunity for the Security Council and the United Nations membership generally to demonstrate that their commitment to conflict resolution applied as much to Africa as to other trouble spots around the world. The fact that the Security Council was ready to authorize a major operation in Africa, with an ambitious and wide-ranging mandate, showed clearly that the readiness to act in Africa was there.<sup>245</sup> The representative of the United States stated that by adopting resolution 1270 (1999), the Council would be doing much more than merely deploying another United Nations peacekeeping force. The Council would be acknowledging the end of one of the most brutal civil wars and the beginning of a well-deserved transition to peace.<sup>246</sup>

In an explanation of his vote, the representative of France stated that his delegation was in favour of the recommendations of the Secretary-General calling for the establishment of UNAMSIL, with significant levels of military personnel and robust rules of engagement so that it could defend itself and be able to guarantee the protection of threatened civilian populations.<sup>247</sup>

The representative of Argentina highlighted paragraph 14 of the resolution, authorizing UNAMSIL to act under Chapter VII, towards “ensuring the security and freedom of movement of its personnel and to afford protection to civilians under imminent threat of physical violence”. He noted that the protection of civilians under Chapter VII was a pertinent development in the context

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<sup>244</sup> Ibid., pp.5-7.

<sup>245</sup> Ibid., pp.8-9.

<sup>246</sup> Ibid., pp.9-10.

<sup>247</sup> Ibid., pp.11-12.

of the mandate of a peacekeeping operation. Resolution 1270 (1999) was significant in that it introduced a new, fundamental, political, legal and moral dimension.<sup>248</sup>

## Case 22

### *The situation in Bosnia and Herzegovina*

Following the expiry of the mandate for the multinational Implementation Force (IFOR), in a letter addressed to the Secretary-General,<sup>249</sup> the Secretary-General of NATO stated that NATO was proceeding with preparations for a follow-up force, which would be named the stabilisation force (SFOR) in Bosnia and Herzegovina. SFOR would be organized and led by NATO, and would become the legal successor to the IFOR, which had played an important role in the implementation of the military aspects of the Dayton Peace Agreement.

At its 3723<sup>rd</sup> meeting, on 12 December 1996, the Council adopted resolution 1088 (1996), authorizing Member States to establish a multinational stabilization force in order to fulfil the role specified in Annexes # 1-A and 2 of the Peace Agreement. During its deliberations, the Council members unanimously supported the provisions in the resolution, and agreed that the presence of a multinational force was required in Bosnia and Herzegovina to assist in the implementation of the Peace Agreement. The representative of Bosnia and Herzegovina expressed support for the resolution and welcomed the provisions contained in the implementation of the Dayton Peace Agreement.<sup>250</sup> The representative of Ireland, speaking on behalf of the European Union, stated that the resolution marked a reaffirmation by the international community that it was willing to support the consolidation of peace and democracy in Bosnia and Herzegovina, by continuing to provide the necessary stable and secure environment within which the important objectives of the Peace Agreement could be achieved. He also stated that many members of the European Union would participate in the follow-on multinational stabilization force, and welcomed the decision to authorize the establishment of the force.<sup>251</sup> The representative of Canada noted that an ongoing military presence was an important and necessary part of this international engagement. He stated that the stabilization force would help to ensure a stable security environment for the

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<sup>248</sup> Ibid., pp.15-16.

<sup>249</sup> S/1996/1025.

<sup>250</sup> S/PV.3723, pp.2-5.

<sup>251</sup> Ibid., pp.5-7.

consolidation period, provide support for municipal elections next year, contribute to the achievement of arms-control objectives, support civilian implementation of the Peace Agreement and deter outbreaks of fighting.<sup>252</sup> The representative of Germany agreed that peace was still fragile and that there was a compelling need to safeguard the progress achieved so far and to stabilize peace in the region by a further and substantial commitment on the part of Member States. He stated that the commitment authorized by the Council included a continued military presence in the field, which was tasked to secure the environment for consolidation, stabilization and, in the end, for political reconciliation and economic reconstruction.<sup>253</sup> The representative of Indonesia emphasized that the continued deployment of international military forces would be necessary, not only to reflect the commitment of the global community to facilitate the transition to a lasting peace, but also to prevent the resumption of conflict, with its attendant consequences. In this regard, his delegation was of the view that the creation of the SFOR to replace IFOR was imperative to keeping the momentum of the peace process going.<sup>254</sup>

On the other hand, while welcoming the positive developments that had occurred in Bosnia and Herzegovina and voting in favour of the resolution, the representative of China stated that with regard to the invocation of Chapter VII of the Charter in the resolution, authorizing the use of force, his Government continued to have reservations. It was his Government's view that SFOR had to maintain strict neutrality and fairness and not misuse force in its operations and that it should steadfastly promote peace and stability in Bosnia and Herzegovina.<sup>255</sup>

### **Case 23**

#### *The situation in Kosovo, Federal Republic of Yugoslavia*

At its 4011<sup>th</sup> meeting, on 10 June 1999, the Council adopted resolution 1244 (1999) by which it decided on the deployment in Kosovo, under United Nations auspices, of an international civil and security presences. During the debate, Mr. Jovanovic, stating the position of the Government of FRY, emphasized that NATO was responsible for the unauthorized and brutal bombing of the Federal Republic of Yugoslavia, which had resulted in a massive humanitarian

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<sup>252</sup> Ibid., p.7.

<sup>253</sup> Ibid., p.19.

<sup>254</sup> Ibid., p.23.

<sup>255</sup> Ibid., p.15.



catastrophe, and the destruction of the civilian infrastructure and the economy of the country.<sup>256</sup> On the same note, the representative of the Russian Federation condemned NATO's aggression against Kosovo. He pointed out that the humanitarian crisis in the former Yugoslavia was transformed by the NATO bombing into a most serious humanitarian catastrophe. He further stated that the reference to Chapter VII of the United Nations Charter in resolution 1244 (1999) related exclusively to ensuring the safety and security of international personnel and compliance with the provisions of the draft resolution. It did not hint at the possibility of any use of force beyond the limits of the tasks clearly set out by the Security Council.<sup>257</sup> Similarly, the representative of China, who abstained from the vote, stated that the military campaign against the former Yugoslavia by NATO violated the Charter of the United Nations. He further stated that his Government opposed NATO's military action against Yugoslavia. He also made reference to the resolution, which failed to fully reflect China's principled stand and justified concerns. In particular, it made no mention of the disaster caused by NATO bombing in the Federal Republic of Yugoslavia and it had failed to impose necessary restrictions on the invoking of Chapter VII of the United Nations Charter.<sup>258</sup>

On the contrary, the representative of Slovenia who voted in favour of the resolution emphasized that the Security Council recognized the existence of the threat to international peace and security and, acting under Chapter VII, provided the legitimacy for the necessary measures of implementation of the resolution. He further noted that the resolution provided for a credible military force and authorized it to use all necessary means to fulfil its mandate. This was a prerequisite for the force to establish a safe and secure environment for the return of refugees and internally displaced person.<sup>259</sup> The representative of France stated that the continued and worsening repression of the civilian population compelled the members of the Atlantic alliance to resort to military means in order to put an end to a senseless and unacceptable policy of destruction and deportation.<sup>260</sup>

The representative of the United States emphasized that the resolution established an international security force in Kosovo, which would create a safe and secure environment in which the people of Kosovo could return to their homes and rebuild their lives. He stated that NATO had

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<sup>256</sup> S/PV.4011, pp.3-6.

<sup>257</sup> Ibid., pp.7-8.

<sup>258</sup> Ibid., pp.8-9.

<sup>259</sup> Ibid., pp.9-11.

<sup>260</sup> Ibid., pp.11-12.

signed a military-technical agreement with the Federal Republic of Yugoslavia authorities that specified the details for the rapid withdrawal of all forces of the Federal Republic of Yugoslavia from Kosovo and the details of the role and authorities of the international security force (KFOR). He further stated that the Federal Republic of Yugoslavia authorities had accepted that KFOR would operate with a unified NATO chain of command, under the political direction of the North Atlantic Council, in consultation with non-NATO force contributors.<sup>261</sup>

## Case 24

### *The situation in the Great Lakes region*

Following the deterioration of the humanitarian situation in the Great Lakes region caused by the military activities within and across borders, in a letter dated 7 November 1996 addressed to the President of the Security Council, the Secretary-General informed the Council that more than 1.2 million Burundian and Rwandan refugees and tens of thousands of Zairians had been displaced by the fighting, in particular in eastern Zaire. He stated that he had been considering various options for the establishment and deployment of a multinational force and believed that the best response to the crisis would be for Member States with the necessary capacity to take the lead in putting together a multinational force, in consultation with the Secretary-General of the Organization of the African Union and the regional States concerned, and the authorization of the Security Council to deploy it.

By a letter dated 14 November 1996 addressed to the Secretary-General, the representative of Canada stated that his Government was prepared to work without delay with other Governments to enable the deployment of a temporary humanitarian operation for eastern Zaire, had secured the agreement of a number of Member States to participate in such an operation, and were in contact with the Organization of African Unity. He further stated that his Government would be ready to take the lead in organizing and commanding such an operation. The objectives assigned to that operation would be consistent with the ones outlined in resolution 1078 (1996).

By resolution 1080 (1996), the Security Council, acting under Chapter VII of the Charter welcomed the offers made by Member States, in consultation with the States concerned in the

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<sup>261</sup> Ibid., p.14.

region, concerning the establishment of a temporary multinational force to facilitate the immediate return of humanitarian organizations and the effective delivery by civilian relief organizations of humanitarian aid to alleviate the immediate suffering of displaced persons, refugees and civilians at risk in eastern Zaire. By the same resolution, the Council authorized Member States cooperating with the Secretary-General to use “all necessary means”, to achieve the humanitarian objectives set out therein.

At its 3713th meeting, on 15 November 1996, the Council adopted resolution 1080 (1996). During the debate, the representative of Zaire expressed support for the measures envisaged in the resolution and believed that it would serve its humanitarian purposes. The representative of Burundi highlighted the causes of the overall problem that existed in the region of the Great Lakes, and emphasized that the primary task of the multinational force should be to disarm the former Rwandan troops and quarter them in the areas remote from the Burundi-Rwanda-Zaire borders. The representative of Canada noted that his Government had decided to take the lead role in mounting a multinational humanitarian intervention force, which would make possible the safe delivery of humanitarian aid and facilitate the voluntary repatriation of refugees. He stated that the multinational force would facilitate the immediate return of humanitarian organizations and the effective delivery of humanitarian aid to alleviate the suffering of displaced persons, refugees and civilians at risk in eastern Zaire. His Government, however, did not envisage disarmament as part of the force’s mandate. He explained that if soldiers engaged in disarmament, they could not undertake their primary mission, which was to make possible the delivery of humanitarian assistance.

The representative of France recalled the principal objective of the force, which was solely humanitarian. He stated that the multinational force would be in place for a maximum period of four months, which could be reduced if the Council so decided. He further stated that the force would be followed by another operation, most likely a United Nations operation, whose mandate would be specifically to pursue the humanitarian work. He hoped that all of those efforts would provide such help as was necessary to stabilize the region.

The representative of the United Kingdom stated that the deployment of a multinational force was the only feasible option and that it was an immediate response to an immediate crisis. In a similar vein, other Council members expressed concern about the fighting and the displacement of millions of refugees in the Great Lakes region. They supported the decision of

the Council to authorize the deployment of a multinational force. The representative of Botswana believed that the deployment of the force would certainly avert what was likely to become a human tragedy of immense proportions.

On the contrary, the representative of Rwanda opposed the deployment of the proposed multinational force. He emphasized that conditions were in place for the return of refugees, and that majority of them had already crossed the border from Zaire into Rwanda. He stated that the local and Government machinery had been mobilized throughout the country in order to prepare the welcome centres for refugees, where they would be received before returning to their respective homes. In light of those new developments, it was the view of the Rwandan Government that the proposed multinational force was no longer relevant, at least as far as rescuing the Rwandan refugees in eastern Zaire was concerned. According to him, as the situation in eastern Zaire had changed, the plans for the proposed multinational force should also be changed to adapt to the changing situation on the ground. In this regard, he stated that the multinational force should be smaller, the location of its troops should be reconsidered, and a new mandate should be sought. For those reasons, he stated that the mandate of the multinational force should be for a limited period of two to three months at the most.

Following the return of the majority of the refugees to Rwanda, and the increasing access of international humanitarian agencies to the refugees, the representative of Canada in a letter addressed to the Secretary-General, emphasized that after consulting with its partners in the Steering Group, Canada had concluded that the multinational force had very little utility. Therefore, Canada would withdraw its command and Canadian elements of the multinational force by 31 December 1996. Furthermore, he stated that his Government recommended that the Security Council terminate the mandate of the multinational force, effective 31 December 1996.

## **Part V**

### **Decisions and deliberations having relevance to**

#### **Articles 43 to 47 of the Charter**

##### *Article 43*

1. *All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.*

2. *Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.*

3. *The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.*

##### *Article 44*

*When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.*

##### *Article 45*

*In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.*

##### *Article 46*

*Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.*

#### *Article 47*

*1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.*

*2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.*

*3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.*

*4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.*

#### **Note**

Articles 43-47 of the Charter sets out arrangements intended to govern the relationship between the Security Council and Member States contributing troops for the purpose of the maintenance of international peace and security. The relevance of the provisions contained in Articles 43 and 44, in particular as they relate to the command and control of the military forces acting pursuant to an authorization by the Security Council, was discussed in the Council's deliberations, including in the adoption of decisions related to the Central African Republic, the Great Lakes region, East Timor, Kosovo, Liberia, Albania, and the agenda item entitled "an Agenda for peace: peacekeeping".

During the period under review, the Council did not explicitly refer to Articles 43-47 in any of its decisions. The Council, however, adopted decisions by which it called upon States to enforce demands related to the maintenance of peace and security, and which are therefore believed to be of relevance to the interpretation of Articles 43 and 44.

The below overview which follows will have three sections; section A contains decisions of the Council by which measures based on the principles of Article 43 were imposed, and section B attempts to draw out the salient issues raised in the Council's deliberations relevant to Article 43. Part C provides an overview of the Council's decisions that may be interpreted as having reference to the principles contained in Article 44, including an explicit reference to the Article during the deliberation of the Council.

During the period under review, the Council did not adopt any resolutions referring to Articles 45, 46 and 47 of the Charter, nor were there any constitutional discussions regarding the application and interpretation of these articles.

### **A. Decisions relating to Article 43**

#### *The situation in the Central African Republic*

By resolutions 1125 (1997) of 6 August 1997 and 1136 (1997) of 6 November 1997, the Council, acting under Chapter VII, authorized the Member States participating in the Inter-African Mission to monitor the implementation of the Bangui Agreements (MISAB), and those States providing logistical support to ensure the security and freedom of movement of their personnel. The Council stressed that the expenses and logistical support for the force would be borne on a voluntary basis in accordance with Article 11 of the mandate of the Inter-African Mission. The Council also requested the Member States participating in the Inter-African Mission to provide periodic reports at least every two weeks through the Secretary-General, the first report to be made within fourteen days after the adoption of the resolution.

#### *The situation in the Great Lakes region*

By resolution 1080 (1996) of 15 November 1996, the Council welcomed the offers made by Member States, in consultation with the States concerned in the region, concerning the establishment for humanitarian purposes of a temporary multinational force to facilitate the immediate return of humanitarian organizations and the effective delivery by civilian relief organizations of humanitarian aid to alleviate the immediate suffering of displaced persons, refugees and civilians at risk in eastern Zaire. The Council also welcomed the offer by a Member

State to take the lead in organizing and commanding this temporary multinational force. The Council called upon all concerned in the region to cooperate fully with the multinational force and humanitarian agencies and to ensure the security and freedom of movement of their personnel. The Council further requested the Member States participating in the multinational force to provide periodic reports at least twice monthly to the Council, through the Secretary-General.

#### *The situation in East Timor*

By resolution 1264 (1999) of 15 September 1999, acting under Chapter VII, the Council authorized the establishment of a multinational force under a unified command structure, pursuant to the request of the Government of Indonesia conveyed to the Secretary-General on 12 September 1999, with the following tasks: to restore peace and security in East Timor; to protect and support UNAMET in carrying out its tasks and ; within force capabilities, to facilitate humanitarian assistance operations ; and authorized the States participating in the multinational force to take all necessary measures to fulfil this mandate. The Council welcomed the offers made by Member States to organize, lead and contribute to the multinational force in East Timor, called upon Member States to make further contributions of personnel, equipment and other resources and invited Member States in a position to contribute to inform the leadership of the multinational force and the Secretary-General. The Council further requested the leadership of the multinational International Force for East Timor (INTERFET) to provide periodic reports on progress towards the implementation of its mandate through the Secretary-General to the Council.

#### *The situation in Kosovo, Federal Republic of Yugoslavia*

By resolution 1244 (1999) of 10 June 1999, acting under Chapter VII, the Council decided on the deployment in Kosovo, under United Nations auspices, of international civil and security presences, with appropriate equipment and personnel as required, and welcomed the agreement of the Federal Republic of Yugoslavia to such presences. The Council also authorized Member States and relevant international organizations to establish the international security presence in Kosovo as set out in point 4 of annex I2 with all necessary means to fulfil its responsibilities. The Council further affirmed the need for the rapid early deployment of



effective international civil and security presences to Kosovo, and demanded that the parties cooperate fully in their deployment. Moreover, the Council decided that the international civil and security presences would be established for an initial period of twelve months, to continue thereafter unless the Security Council decided otherwise.

## **B. Discussion relating to Article 43**

### **Case 25**

#### *The situation in the Central African Republic*

At its 3808<sup>th</sup> meeting held in connection with the adoption of resolution 1125 (1997), the Council reiterated its support for the Member States that had participated in the Inter-African Mission to Monitor the Implementation of the Bangui Agreement (MISAB), and for the States supporting them in their efforts to ensure the return to peace and security in the Central African Republic. The representatives of Japan and the Republic of Korea noted that, acting under Chapter VII of the Charter of the United Nations, the Council would authorize the Member States participating in MISAB, and those States providing logistical support, to ensure the security and the freedom of movement of their personnel. The representative of the United States took note of the financial and other contributions of France, Kenya and other States that had contributed towards assisting MISAB in carrying out its mandate. In this regard, he stated that the resolution showed that the expenses and logistical support for the force would continue to be borne on a voluntary basis. The representative of the United Kingdom welcomed the contribution of those countries that had provided troops to MISAB, and the French commitment to support the operation.

### **Case 26**

#### *The situation in the Great Lakes region*

At its 3713<sup>th</sup> meeting, on 15 November 1996, held in connection with the adoption of resolution 1080 (1996), the Council authorized the establishment of a “temporary” multinational

force to protect a "safe corridor," allowing international organizations to deliver humanitarian assistance to the refugees in eastern Zaire. During the debate, speakers paid tribute to the Government of Canada for having offered to organize and command the proposed multinational force, as well as to the States, which had offered troops for the operation.

The representative of Canada noted that countries were responding generously to the Secretary-General's call to action in eastern Zaire. In this regard, he reported that over 20 countries had already committed over 10,000 troops to the proposed multinational force, while African participation, which was vital to the force's legitimacy and effectiveness, was represented by the firm offer of battalions from Senegal, Ethiopia and Malawi. He stated that his Government had firm offers from Europe, North America, Africa and Latin America, as well as expressions of interest from Asia. However, he stressed the need for additional elements if the force was to have the proper balance and the maximum desired impact on the ground. He welcomed the role that regional leaders and the Organization of African Unity had played in responding to the crises in Central Africa, and their advice and support in launching this effort. He emphasized that such participation was expensive, and urged other countries to assist African countries to bear those costs and, in addition, to provide the strategic transport and equipment that would be required by African partners in this venture. He added that a few countries were truly capable in the field of strategic transport, and the multinational force would be relying heavily on their generosity and commitment.<sup>262</sup>

The representative of the United Kingdom, whose Government was involved in the contingency planning, noted that a British military reconnaissance team had gone to the region to assess the conditions on the ground.<sup>263</sup> The representative of the United States noted that some outstanding questions concerning the organization and operation of the mission remained to be worked out. She further noted that planning for an appropriate operation to follow the temporary multinational force must also begin right away, due to its complexity.<sup>264</sup>

Some speakers informed the Council that their respective Government's would participate in the multinational operation. The representative of Korea stated that his Government stood ready to contribute to the cause of the multinational force.<sup>265</sup> The

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<sup>262</sup> S/PV.3713, pp.8-10.

<sup>263</sup> Ibid., p.11.

<sup>264</sup> Ibid., p.25.

<sup>265</sup> Ibid., p.16.

representative of Guinea Bissau also expressed his Government's readiness to participate in the multinational force under the conditions and terms set out in the resolution.<sup>266</sup> The representative of Italy informed the Council that Italian airplanes were ready to fly to the airports in the region to transport the relief supplies as urgently needed. On the composition of the force, he emphasized that the multinational force should be balanced in composition in order to represent the international community as a whole. No country should be predominant. He stated that the force should reflect the commitment of the international community as a whole, and in particular of a wide range of European and African countries and of the United States. He concluded by stating that Italy would participate in the force as a troop contributor.<sup>267</sup>

The representative of Chile thanked all the countries that had shown interest in contributing to the mission, some of which had operational capabilities not possessed by all Member States. He highlighted the countries from Latin America and the Caribbean, such as Argentina and Brazil that had indicated their desire to participate in the mission. He recalled the provisions in resolution 1078 (1996), which called upon the Secretary-General, in consultation with his Special Envoy, to draw up a conceptual framework of the operations and structure of a humanitarian task force with the objective, among others, of assisting the Office of the United Nations High Commissioner for Refugees (UNHCR) in the voluntary repatriation of refugees to their countries of origin, including through the establishment of humanitarian corridors.<sup>268</sup>

## **Case 27**

### *The situation in East Timor*

At its 4045<sup>th</sup> meeting held in connection with the adoption of resolution 1264 (1999), the Council considered a letter from the Foreign Minister of Australia to the Secretary-General,<sup>269</sup> in which he informed the Secretary-General that Australia would be willing to accept the leadership of a proposed multinational force in East Timor and was prepared to make a substantial contribution to the force itself.

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<sup>266</sup> Ibid., p.19.

<sup>267</sup> Ibid., 21-22.

<sup>268</sup> Ibid., p.22-23.

<sup>269</sup> S/1999/975.

During the debate, several speakers expressed their readiness to participate in the multinational force, and welcomed the decision of the Council in authorizing a multinational force. The representative of Portugal stated that his country stood ready to participate in the multinational force, and was prepared to deploy a significant aid operation, in coordination with the United Nations.<sup>270</sup> The representative of Indonesia noted that several details had been worked out between his Government and the United Nations, which included concern's regarding the deployment of the multinational force, including its composition and its command structure, as well as the modalities of cooperation defining the respective duties and responsibilities of the Indonesian defence forces and the multinational force. He assured the Council that adequate measures would be taken for the safety and security of those rendering humanitarian aid.<sup>271</sup>

The representative of Australia stated that his country was working with other contributors to ensure the earliest possible arrival of the force.<sup>272</sup> The representative of Japan stressed that the international community had to cooperate in organizing and deploying the necessary forces as quickly as possible. He called upon the Indonesian authorities concerned to cooperate fully with the multinational force to facilitate the process of its deployment and the implementation of its mandate. The representative of Japan reaffirmed that his country would continue to provide support and assistance to the political and humanitarian process of restoring peace.<sup>273</sup>

The representative of New Zealand noted that his country would be among the earliest participants, with others from the region, in the deployment of a multinational force to East Timor. Speed was of the essence in view of the gravity of the humanitarian situation there.<sup>274</sup>

## Case 28

### *The situation in Kosovo, Federal Republic of Yugoslavia*

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<sup>270</sup> S/PV.4045, pp.2-3.

<sup>271</sup> Ibid., p.4.

<sup>272</sup> Ibid., p.5.

<sup>273</sup> Ibid., p.7.

<sup>274</sup> Ibid., p.8.

At its 4011<sup>th</sup> meeting, held in connection with the adoption of resolution 1244 (1999), the Council met to discuss the establishment of international civil and security presences in Kosovo under the auspices of the United Nations. During the debate, a number of speakers stressed the importance of the Security Council resuming its role in the pursuit of a lasting solution to Kosovo crisis.

Stating the position of the Government of the Federal Republic of Yugoslavia, Mr. Jovanovic noted that the United Nations mission in Kosovo, which would include military and civil components, should have the mandate of and be under the command of the Security Council, which would supervise implementation of the resolution and protection to all who needed it. He emphasized that the mission should reflect equal, regional and political representation, which included participation by countries such as Russia, China, India and non-aligned and developing countries from various regions of the world. He stated that Yugoslavia requested that the Commander of the military part be appointed by the Secretary-General on the basis of consultation with the Security Council and the Federal Republic of Yugoslavia.<sup>275</sup>

A similar view was expressed by the representative of the Russian Federation who noted that the presence of the international civil and military contingents in Kosovo should be carried out under the political control of the Security Council, to which the Secretary-General would regularly submit reports on the course of the entire operation.<sup>276</sup> The representative of France emphasized that it was the Security Council authorizing Member States and international organizations concerned to establish the international security presence in Kosovo. He also noted that it was the Security Council that would remain in control of the implementation of the peace plan for Kosovo because it requested the Secretary-General to report to it regularly on the implementation of the resolution.<sup>277</sup>

With regards to the contribution of troops, several speakers expressed their readiness in this matter. The representative of Canada stated that his Government was committed to the effort, and would contribute actively. It was currently deploying a substantial number of Canadian Forces personnel to participate in the international security force for Kosovo.<sup>278</sup> The representative of Norway stated that his country stood ready to contribute troops for the

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<sup>275</sup> S/PV.4011, pp.3-6.

<sup>276</sup> Ibid., pp.7-8.

<sup>277</sup> Ibid., pp.11-12.

<sup>278</sup> Ibid., p.13.

deployment of the international security force and resources for humanitarian needs, demining operations and the rehabilitation of war-torn infrastructure. Also, as Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE), the Norwegian Foreign Minister welcomed the decision to place the overall responsibility for the civilian presence with the United Nations.<sup>279</sup> The representative of Ukraine reaffirmed his country's readiness to contribute military units to the international force in Kosovo mandated by the Security Council, as well as its civilian police officers to the United Nations Civilian Police operation.<sup>280</sup> The representative of Croatia stated that his country stood ready to share its extensive experience and contribute to the success of the efforts of the international community in the implementation of the resolution.<sup>281</sup>

While embracing the role of the United Nations in the operation, the representatives of the United States and the United Kingdom believed that the operation should be under the control of NATO. The representative of the United States stated that the authorities of the Federal Republic of Yugoslavia had accepted that the international security force would operate with a unified NATO chain of command, under the political direction of the North Atlantic Council, in consultation with non-NATO force contributors.<sup>282</sup> Similarly speaking, the representative of the United Kingdom stated that the resolution provided for the deployment of an international civil presence, led by the United Nations, and for an effective international security presence to re-establish a safe environment in Kosovo. He further stated that the force should command the confidence of the refugees, if they were to return home. That was why NATO had made clear that it would be essential to have a unified NATO chain of command under the political direction of the North Atlantic Council, in consultation with non-NATO force contributors. With NATO at its core, the force would be commanded by a British General and the United Kingdom would provide the leading contribution, at least 13,000 troops.<sup>283</sup>

### **C. Discussion relating to Article 44**

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<sup>279</sup> S/PV.4100 (Resumption 1), pp.3-4.

<sup>280</sup> Ibid., pp.10-11.

<sup>281</sup> Ibid., p.11-12.

<sup>282</sup> Ibid., p.14.

<sup>283</sup> Ibid., p.18.

### *An agenda for peace: peacekeeping*

By a statement of the President, dated 28 March 1996,<sup>284</sup> the Council acknowledged the views expressed at its 3611<sup>th</sup> meeting held in consideration of the agenda item entitled “An agenda for peace: peacekeeping”.<sup>285</sup> In the text, the Council outlined a series of procedures that it would follow aimed at improving its consultations with troop-contributing countries, including the holding of regular meetings with them. It decided not only to hold regular meetings with the representatives of troop-contributing countries and the Secretariat, but also to convene ad hoc meetings with them in the event of unforeseen developments in a particular peacekeeping operation, which could require Council action. The statement further noted that regular meetings should be held as soon as practicable and in good time before the Council took decisions on the extension or termination of, or significant changes in, the mandate of a particular peacekeeping operation. The statement underlined that if possible, the Council would hold meetings with prospective troop-contributors when it considered establishing a new peacekeeping operation. Furthermore, the President of the Council would chair all meetings with troop contributors and report their views to the Council during its informal consultations. Moreover, the statement noted that the meetings envisaged would be in addition to those convened by the Secretariat for troop contributors to meet with special representatives of the Secretary-General or force commanders, or to discuss operational matters. In light of the above, the Council would consider further measures and mechanisms to enhance further the arrangements.

### *The situation in Liberia*

At its 3621<sup>st</sup> meeting, on 25 January 1996, in connection with the situation in Liberia, the Council had before it the report of the Secretary-General,<sup>286</sup> recommending the extension of the mandate of the United Nations Observer Mission in Liberia (UNOMIL). During the debate, the representative of the Czech Republic stated that the interests of the Czech Republic were “specially affected” by the situation in Liberia and referred to Article 44 of the Charter, which provided his country with grounds to participate, inasmuch as the employment of contingents of

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<sup>284</sup> S/PRST/1996/13.

<sup>285</sup> At its 3611th meeting, on 20 December 1995, the Security Council held an open debate on the subject of consultations between troop contributors, members of the Council and the Secretariat. The agenda item was entitled “An agenda for peace: peacekeeping”.

<sup>286</sup> S/1996/47.

the Czech armed forces was involved. He stressed that the Czech Republic was the only European country that was participating in UNOMIL. He further stated that his remarks would have been addressed to the troop-contributors meeting, but he was grateful for the opportunity to put them on record.<sup>287</sup>

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<sup>287</sup> S/PV.3621, pp.29-30.



## **Part VI**

### **Obligations of Member States under Article 48 of the Charter**

#### *Article 48*

- 1. 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.*
- 2. 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.*

#### **Note**

During the period under review, the Council did not adopt any decisions referring expressly to Article 48. The Council, however, did adopt several decisions,<sup>288</sup> which underlined the mandatory nature of these measures imposed under Chapter VII, and contained provisions that might be construed as implicit references to the principles enshrined in Article 48.

The Council's decisions calling upon States to take measures necessary to ensure the strict implementation of measures not involving the use of force, in accordance with the provisions of Article 41 of the Charter will be set out in part A. Part B will focus on Council's decisions imposing measures involving the use of force, in accordance with Article 42 of the Charter.

#### **A. Decisions imposing measures not involving the use of force**

In its decisions imposing measures not involving the use of force, in accordance with the provisions of Article 41 of the Charter, the Security Council consistently called upon "all States" to comply with relevant provisions in the resolution.

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<sup>288</sup> In connection with the situations in Sierra Leone, Afghanistan, Angola, the Sudan, East Timor, Bosnia and Herzegovina, Croatia, Kosovo, ICTY and ICTR.

When imposing measures against the Revolutionary United Front (RUF) in Sierra Leone, Afghanistan, the Sudan, Kosovo and the National Union for the Total Independence of Angola (UNITA) in Angola, the Security Council in each case expressly stated in its decision that States were to act strictly in conformity with the resolution “notwithstanding the existence of any rights granted or obligations conferred or imposed by any international agreement or of any contract entered into or any license or permit granted prior” to the entry into force of the provisions set out in the resolution.<sup>289</sup> By these resolutions, the Council required “all States” to report to the Committee specifically mandated to monitor the implementation of sanctions on their compliance with relevant measures imposed against the parties to the conflict.<sup>290</sup> In other decisions, the Council requested States to report to the Secretary-General on the steps they had taken to give effect to the provisions set out in the resolution.<sup>291</sup>

In connection with the measures imposed against Afghanistan, the Council decided that “all States” should impose the measures set out in its resolution, unless the party to the conflict fully complied with the obligations set out in its decisions.<sup>292</sup> In addition, the Security Council urged “all States” to cooperate with efforts to fulfil the demand that the Taliban turn over Osama bin Laden, and to consider further measures against him and his associates.<sup>293</sup> The same

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<sup>289</sup> In connection with the measures imposed against the RUF in Sierra Leone, see resolution 1132 (1997), para.11. In connection with the measures imposed against Afghanistan, see resolution 1267 (1999), para.7. In connection with the situation in Angola, see resolution 1127 (1997), para.10; see resolution 1173 (1998), para.17. In connection with sanctions against the Sudan, see resolution 1054 (1996), para.5. In connection with the situation in Kosovo, see resolution 1160 (1998), para.10.

<sup>290</sup> In connection with the measures imposed against Sierra Leone, by resolution 1132 (1997), para.10a, the Council sought from “all States” further information regarding the action taken by them with a view to implementing effectively the measures in the resolution. In connection with the measures imposed against Afghanistan, by resolution 1267 (1999), para.10, the Council requested “all States” to report to the Committee within 30 days of the coming into force of the measures imposed, on the steps they had taken with a view to effectively implementing. In connection with the measures imposed against the National Union for the Total Independence of Angola (UNITA), by resolution 1127 (1997), para.13, the Council requested Member States to provide to the Committee established pursuant to resolution 864 (1993) information on the measures they had adopted to implement the provision of para.4 no later than 1 November 1997. By resolution 1173 (1998), para.21, the Council requested Member States to provide to the Committee no later than 15 July 1998, information on the measures they had adopted to implement the provisions of paragraphs 11 and 12. By resolution 1176 (1998), the Council requested Member States to provide information to the Committee on the measures they had adopted to implement the provision of the resolution. In connection with the measures imposed against Kosovo, by resolution 1160 (1998), para.12, the Council requested States to report to the committee within 30 days of adoption of the resolution on the steps they had taken to give effect to the prohibitions imposed by the resolution.

<sup>291</sup> In connection with the measures imposed against the RUF in Sierra Leone, by resolution 1132 (1997), the Security Council requested “all States” to report to the Secretary-General within thirty days of the date of adoption of the resolution on the steps they had taken to give effect to the provisions set out in the resolution. In connection with sanctions against the Sudan, see resolution 1054 (1996), para.6.

<sup>292</sup> Resolution 1267 (1999), para.3.

<sup>293</sup> *Ibid.*, para.5.

resolution contained a reference calling upon States to bring proceedings against persons and entities within their jurisdiction that violated the measures imposed by the relevant provisions of the Council and to impose appropriate penalties.<sup>294</sup>

In connection with the discussion of sanctions against Libya, by resolution 1192 (1998) of 27 August 1998,<sup>295</sup> the Council called upon “the Government of the Netherlands and the Government of the United Kingdom” to take such steps as are necessary to implement the initiative, including the conclusion of arrangements with a view to enabling the court to exercise jurisdiction in the terms of the intended Agreement between the two Governments.<sup>296</sup> By the same resolution, the Council decided that “all States” should cooperate to that end, and “in particular that the Libyan Government” should ensure the appearance in the Netherlands of the two accused for the purpose of trial.<sup>297</sup>

In order to ensure full compliance with relevant measures, the Security Council called on “all States” to take “the necessary measures” to enforce the sanctions regime imposed against UNITA.<sup>298</sup> By the same decision, the Council also called upon “all States” to implement strictly the measures imposed in the resolution.<sup>299</sup>

In its resolutions and decisions establishing the International Criminal Tribunals for the former Yugoslavia (ICTY) and the International Criminal Tribunals for Rwanda (ICTR), the Council decided that “all States” should cooperate fully with the respective International Tribunal and its organs in accordance with the relevant resolution,<sup>300</sup> and the statutes of the Tribunal, and that consequently “all States” should take any measures necessary under their domestic law to implement the provisions of the resolution and the statute.<sup>301</sup> In addition, the Council called upon “all States” and “others concerned” to comply fully with their obligations with respect to cooperation with the Tribunal, and in particular their obligation to execute arrest warrants transmitted to them by the Tribunal.<sup>302</sup>

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<sup>294</sup> Ibid., para.8.

<sup>295</sup> Letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America (S/23306, S/23307, S/23308, S/23309 and S/23317).

<sup>296</sup> Resolution 1192 (1998), para.3.

<sup>297</sup> Ibid., para.4.

<sup>298</sup> See resolution 1173 (1998), para.12, relating to the enforcement of measures imposed on UNITA.

<sup>299</sup> Ibid., para.18.

<sup>300</sup> In connection with the ICTY, see S/PRST//1996/23, para.2; resolution 1145(1997), para.11; resolution 1166 (1998), para.3; and resolution 1207(1998), para.1. In connection with the ICTR, see resolution 1165 (1998), para.4.

<sup>301</sup> S/PRST/1996/23, para.2 and resolution 1166 (1998), para.3 and resolution 1207 (1998), para.1.

<sup>302</sup> Ibid., para.4.

In accordance with Article 48 (2), action required to carry out the Council's decisions shall be taken by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members. In connection with the measures imposed on the RUF in Sierra Leone, UNITA in Angola, and the Sudan, the Council expressly included "international organizations" among the addressees of its decisions,<sup>303</sup> and urged States to provide support to assist the international organizations in the implementation of the resolution.<sup>304</sup>

In connection with situation in Angola, the Council urged "all States" and "international and regional organizations" to stop travel by their officials and official delegations to the central headquarters of UNITA, except for the purposes of travel to promote the peace process and humanitarian assistance.<sup>305</sup>

In connection with the situation in Sierra Leone, the Council urged "all States", "international organizations" and "financial institutions" to assist States in the region in addressing the economic and social consequences of the influx of refugees from Sierra Leone.<sup>306</sup> It also urged "all States" to provide technical and logistical support to assist the Economic Community of West African States (ECOWAS) in carrying out its responsibilities in the implementation of the resolution.<sup>307</sup>

In another instance, the Council explicitly authorized the ECOWAS, cooperating with the democratically elected Government of Sierra Leone, to ensure strict implementation of the provisions of the resolution. In this regard, the Council called upon "all States" to cooperate with

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<sup>303</sup> In connection with the measures imposed on the RUF in Sierra Leone, by resolution 1132 (1997), para.14 the Council requested all those concerned, including the "Economic Community of West African States", the United Nations and other "international humanitarian agencies", to establish appropriate arrangements for the provision of humanitarian assistance and to endeavor to ensure that such assistance responds to the local needs and is safely delivered to, and used by, its intended recipients. In connection with the measures imposed on UNITA, by resolution 1127 (1997), para.6, the Council urged "all States" and "international and regional organizations" to stop travel by their officials and official delegations to the central headquarters of UNITA, except for the purposes of travel to promote the peace process and humanitarian assistance. In connection with sanctions against the Sudan, by resolution 1054 (1996), para.4, the Council called upon all "international and regional organizations" not to convene any conference in the Sudan.

<sup>304</sup> In connection with the measures imposed on the RUF in Sierra Leone, see resolution 1132 (1997), para.18.

<sup>305</sup> Resolution 1127 (1997), para.6.

<sup>306</sup> Resolution 1132 (1997), para.15.

<sup>307</sup> *Ibid.*, para.18.

ECOWAS”,<sup>308</sup> and requested that ECOWAS report every thirty days to the Committee on all activities.<sup>309</sup>

## **B. Measures involving the use of force**

In general, while the decisions referred to above were formulated so as to achieve universal compliance and to create binding obligations for all States, decisions providing for the use of “all necessary measures” to enforce previous resolutions of the Council sometimes took the form of authorizations or calls on States willing and in a position to take such action. In this regard, four decisions authorizing the use of “all necessary measures” expressly envisaged possible action through regional agencies or arrangements.<sup>310</sup> In its decisions adopted in connection with the situation in East Timor, Bosnia and Herzegovina and Croatia, the Council authorized Member States participating in the respective multinational force to take “all necessary measures” to fulfil their mandate.<sup>311</sup> In connection with the situation in Bosnia and Herzegovina, the Council requested the Members States acting through or in cooperation with the “North Atlantic Treaty Organization” to report to the Council, through the appropriate channels and at least at monthly intervals.<sup>312</sup>

In connection with the situation in East Timor,<sup>313</sup> the Council encouraged Member States and “international agencies” and organizations to provide personnel, equipment and other

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<sup>308</sup> Ibid., para.8.

<sup>309</sup> Ibid., para.9.

<sup>310</sup> In connection with the situation in Bosnia and Herzegovina, by resolution 1088 (1996), para.19, the Council authorized the Member States acting through or in cooperation with NATO “to take all necessary measures” to effect the implementation of and to ensure compliance with Annex 1-A of the Peace Agreement. By resolution 1174 (1998), para.10, the Council authorized the Member States acting through or in cooperation with the organization referred to in Annex 1A of the Peace Agreement to continue for a further planned period of 12 months the multinational stabilization force (SFOR). By resolution 1247 (1999), para.11, the Council authorized the Member States acting through or in cooperation with the organization referred to in Annex 1-A of the Peace Agreement to take all necessary measures to effect the implementation of and to ensure compliance with Annex 1-A of the Peace Agreement. In connection with the situation with the situation in Kosovo, by resolution 1244 (1999), para.7, reference was made to “such means”. The Council authorized Member States and relevant international organizations to establish the international security presence in Kosovo with “all necessary means” to fulfil its responsibilities.

<sup>311</sup> In connection with the situation in East Timor, see resolution 1264 (1999), paragraph 3. In connection with the situation in Bosnia and Herzegovina, see resolutions 1088 (1996), para.19; 1174 (1998), paras.11,12 and 13; and 1247 (1999), para.12.

<sup>312</sup> In connection with the situation in Bosnia and Herzegovina, see resolutions 1088 (1996), para.26 and 1247 (1999), para.18.

<sup>313</sup> In connection with the situation in East Timor, see resolution 1272 (1999), para.14.

resources to the United Nations Transitional Administration in East Timor (UNTAET), as requested by the Secretary-General, including for the building of basic institutions and capacity, and stressed the need for the closest possible coordination of these efforts.

In connection with the situation in Croatia,<sup>314</sup> the Council decided that Member States, acting nationally or through regional organizations or arrangements, could, at the request of the “Transitional Administration” and on the basis of procedures communicated to the United Nations, take “all necessary measures”, including close air support, in defence of the “Transitional Administration” and, as appropriate, to assist in the withdrawal of the “Transitional Administration.” The Council also called upon States and international financial institutions to support and cooperate with efforts to promote the development and economic reconstruction of the region.<sup>315</sup>

The discussions leading to the adoption of the resolutions mentioned above did not give rise to constitutional arguments regarding the interpretation or application of Article 48.

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<sup>314</sup> In connection with the situation in Croatia, see resolution 1037 (1997), para.14.

<sup>315</sup> *Ibid.*, para.18.

## **Part VII**

### **Obligations of Member States under Article 49 of the Charter**

#### *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.*

#### **Note**

During the period under review, the obligation of States to join in affording mutual assistance assumed specific relevance in connection with decisions under Chapter VII of the Charter by which the Security Council authorized or called on Member States to take all necessary measures to enforce its decisions, even though they contained no explicit references to Article 49. It should be noted, however, that in connection with the situations in East Timor, Sierra Leone, Bosnia and Herzegovina, the Federal Republic of Yugoslavia including Kosovo, the Great Lakes region and Albania, the Security Council adopted a number of resolutions, certain provisions of which might be considered as falling implicitly within the scope of Article 49.

While such authorizations or calls under Article 49 were primarily addressed to States willing and in a position to take relevant enforcement action, the Security Council regularly requested “all States” to provide appropriate support and assistance to those States. Such requests were made in context of measures adopted in accordance with Articles 40, 41 and 42.

The decisions of the Council calling for mutual assistance in connection with measures adopted under Article 40 will be set out in part A. This overview will be followed by part B, which focuses on measures adopted under Article 41, and part C dealing with measures adopted under Article 42.

#### **A. Calls for mutual assistance in connection with measures adopted under Article 40**

*The situation in Sierra Leone*

By a statement of the President dated 6 August 1997,<sup>316</sup> the Council members expressed its concern at the effects of the continuing influx of refugees into neighbouring countries, in particular Guinea, due to the crisis in Sierra Leone. The Council called upon all States and relevant international organizations to provide help to those countries in dealing with this problem.

By resolution 1132 (1997) of 8 October 1997,<sup>317</sup> the Council requested all those concerned, including ECOWAS, the United Nations and other international humanitarian agencies, to establish appropriate arrangements for the provision of humanitarian assistance and to endeavor to ensure that such assistance responded to local needs and was safely delivered to, and used by, its intended recipients.

## **B. Calls for mutual assistance in connection with measures adopted under Article 41**

*Letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America (S/23306, S/23307, S/23308, S/23309 and S/23317)*

By resolution 1192 (1998) of 27 August 1998,<sup>318</sup> the Council called upon the Government of the Netherlands and the Government of the United Kingdom to take such steps as were necessary to implement the initiative, including the conclusion of arrangements with a view to enabling the court to exercise jurisdiction in the terms of the intended Agreement between the two Governments.<sup>319</sup> By the same resolution, the Council decided that “all States” should cooperate to this end, and in particular that the Libyan Government should ensure the appearance in the Netherlands of the two accused for the purpose of trial.

## **C. Calls for mutual assistance in connection with measures adopted under Article 42**

*The situation in East Timor*

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<sup>316</sup> S/PRST/1997/42.

<sup>317</sup> Resolution 1132 (1997), para.14.

<sup>318</sup> Ibid., para.4.

<sup>319</sup> Resolution 1192 (1998), para.3.



By resolution 1264 (1999) of 15 September 1999,<sup>320</sup> the Council welcomed the offers by Member States to organize, lead and contribute to the multinational force in East Timor; called upon Member States to make further contributions of personnel, equipment and other resources; and invited Member States in a position to contribute to inform the leadership of the multinational force and the Secretary-General.

*The situation in Bosnia and Herzegovina*

By resolution 1088 (1996) of 12 December 1999,<sup>321</sup> the Council welcomed the willingness of Member States to assist the parties to the Peace Agreement by continuing to deploy a multinational implementation force. In addition, the Council authorized Member States acting through or in cooperation with NATO to establish a multinational Stabilization Force as the legal successor to the Implementation Force, and to continue to provide appropriate support and facilities, including transit facilities.<sup>322</sup>

By resolution 1174 (1998) of 15 June 1998,<sup>323</sup> the Council invited all States, in particular those in the region, to continue to provide appropriate support and facilities, including transit facilities, for the Member States participating in the Stabilization force.

*The situation in Kosovo, Federal Republic of Yugoslavia*

By resolution 1244 (1999) of 10 June 1999,<sup>324</sup> the Council authorized Member States and relevant international organizations to establish the international security presence in Kosovo with all necessary means to fulfil its responsibilities.

None of these implicit references in the decisions of the Council leading to the adoption of the resolutions referred to above gave rise to constitutional arguments regarding the interpretation or application of Article 49.

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<sup>320</sup> Resolution 1264 (1999), para.6.

<sup>321</sup> Resolution 1088 (1996) para.16.

<sup>322</sup> Ibid., para.24.

<sup>323</sup> Resolution 1174 (1998), para.16.

<sup>324</sup> Resolution 1244 (1999), para.7.

**Part VIII**  
**Special economic problems of the nature described in**  
**Article 50 of the Charter**

*Article 50*

*If preventive or enforcement measures against any State are taken by the Security Council, any other State, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.*

**Note**

During the period under review, the Security Council did not adopt any decisions containing explicit or implicit references to Article 50. However, the Article was explicitly invoked in relation to the implementation of measures against the Libyan Arab Jamahiriya and the Federal Republic of Yugoslavia (Serbia and Montenegro).<sup>325</sup> In the case of the Libyan Arab Jamahiriya, India expressed its concern over the special economic problems in accordance with Article 50.<sup>326</sup> In connection with the implementation of measures imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro), Ukraine,<sup>327</sup> Bulgaria,<sup>328</sup> and Croatia,<sup>329</sup> invoked the provisions of Article 50.

In its report dated 26 August 1996,<sup>330</sup> the Security Council Committee established pursuant to resolution 661 (1990) concerning the situation between Iraq and Kuwait described its work in addressing the requests of the States faced with special economic problems.<sup>331</sup>

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<sup>325</sup> For details, see case studies.

<sup>326</sup> S/PV.3864.

<sup>327</sup> See S/1996/595 and S/PV.4011, pp.9-11.

<sup>328</sup> See S/1996/721.

<sup>329</sup> S/PV.4011 (resumption 1), pp.11-12.

<sup>330</sup> S/1996/700.

<sup>331</sup> *Ibid.*, pp. 28-29. Since the work of the Committee in relation with Article 50 concerned the period prior to 1996, see Chapter 11 of the Twelfth Supplement.

Furthermore, the principle enshrined in Article 50 was also invoked in a letter dated 19 December 1996 addressed to the Secretary-General,<sup>332</sup> from the representative of the Russian Federation, transmitting a decision taken on 15 November 1996 by the State Duma of the Federal Assembly of the Russian Federation concerning its position on the Council's resort to sanctions. In its decision, the State Duma emphasized the necessity to develop a set of measures to minimize the economic damage caused to third States that comply with sanctions, and advised the Security Council to be cautious in considering imposition of sanctions against individual States.<sup>333</sup> In the same decision, the State Duma recommended that the President of the Russian Federation should instruct the Ministry of Foreign Affairs of the Russian Federation to take measures "precluding the possibility of the use by the Security Council of sanctions causing serious damage to the economic interests of the Russian Federation, unless at the same time an effective international mechanism was set up to compensate for economic losses incurred by the Russian side as a result of participation in the sanctions".<sup>334</sup>

Questions relating to the application and consideration of Article 50 were also considered in the report of the International Commission of Inquiry established to investigate reports relating to the sale or supply of arms and related matériel to former Rwandan government forces in the Great Lakes region in violation of Council resolutions 918 (1994), 997 (1995) and 1011 (1995).<sup>335</sup> The recommendation contained in the report addressed, not only the case of Rwanda and the Great Lakes region, but also the imposition of arms embargoes in general. The Commission recommended, *inter alia*, that when the Security Council imposed an arms embargo under Charter VII of the Charter, it should consider urging neighbouring States to establish within their respective Governments an office with the necessary legal, political, military, police, customs and border guard personnel. It further stated that "where the States concerned cannot staff and equip such offices wholly from within their existing resources, consideration could be given to establishing an appropriate trust fund within the context of Article 50 of the Charter".<sup>336</sup>

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<sup>332</sup> S/1996/1060. At the time when this document was being adopted by the State Duma, the Security Council was considering the question of the imposition of sanctions against the Sudan.

<sup>333</sup> S/1996/1060, preambular paragraph 3-4.

<sup>334</sup> *Ibid.*, para. 1.

<sup>335</sup> S/1996/195.

<sup>336</sup> *Ibid.*, p.18.

The following case studies set out an overview of the Council's proceedings relevant to Article 50 of the Charter in connection with the measures imposed against Iraq, the former Yugoslavia, Libya, and the role of the Security Council in the prevention of armed conflicts.

## Case 29

### *Items relating to the situation in the former Yugoslavia*

By a letter dated 23 July 1996 addressed to the Secretary General,<sup>337</sup> the Government of Ukraine transmitted a aide-memoire on its position on the problems of implementation of the economic sanctions imposed by the Security Council. The Government recalled that it had complied with the sanctions imposed by the Security Council against the Federal Republic of Yugoslavia (Serbia and Montenegro) in resolution 757 (1992). However, it stated that sanctions had negative consequences on the socio-economic life of the country. According to the Government, during the period of implementation of the sanctions, "Ukraine has suffered around US\$ 4.5 billion in direct losses" and paid a "high price for strict and consistent implementation of the sanctions". It suggested that in order for Security Council sanctions to be implemented effectively, particular attention should be paid to defining ways and means of compensation for the losses of the neighbouring countries.<sup>338</sup> In its aide-memoire, the Government put forward a number of ideas and proposals for alleviating the negative impact of sanctions on third States.

At the 3723<sup>rd</sup> meeting, on 12 December 1996, held in connection with the situation in Bosnia-Herzegovina, the representative of Ukraine expressed his hope to be involved by means of its industrial potential in the process of the economic restoration and reconstruction of Bosnia's destroyed economy. Such participation would compensate for the losses that Ukraine's economy had suffered as a result of compliance with the sanctions imposed by the Security Council against the Federal Republic of Yugoslavia (Serbia and Montenegro).<sup>339</sup>

Article 50 was also explicitly referred to in a note verbale dated 30 August 1996 addressed to the Secretary-General from Bulgaria.<sup>340</sup> The note emphasized that Bulgaria had been extremely vulnerable to the negative side-effects of the sanctions imposed on the Federal

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<sup>337</sup> S/1996/595.

<sup>338</sup> Ibid., pp. 2-3.

<sup>339</sup> Ibid., p. 12.

<sup>340</sup> S/1996/721 and Corr.1.

Republic of Yugoslavia (Serbia and Montenegro) by resolution 757 (1992). The note underlined that the support to the affected States largely depended on political will and the capacity to provide assistance, rather than on an established mechanism. Therefore, Bulgaria stressed the necessity to create a mechanism for the effective application of Article 50 of the Charter. In this note Bulgaria made other suggestions concerning Article 50, such as arrangement of prior consultations, establishment of trust fund, etc.<sup>341</sup>

Furthermore, by a letter dated 24 September 1996, addressed to the President of the Security Council,<sup>342</sup> the Chairman of the Security Council Committee established pursuant to resolution 724 (1991) concerning Yugoslavia, transmitted a report of the Copenhagen Round Table on the United Nations Sanctions in the Case of the former Yugoslavia, held at Copenhagen on 24 and 25 June 1996 under the auspices of the Organization for Security and Cooperation in Europe (OSCE). In taking note of Article 50, the Round Table affirmed the right of States to consult with the Security Council if they encounter “special economic problems” as a result of sanctions. It recommended swift implementation and strict enforcement of sanctions in order to limit the special economic side effects for third countries, in particular the neighbouring countries.<sup>343</sup>

By a letter dated 15 November 1996 addressed to the President of the Council,<sup>344</sup> the Chairman of the Security Council Committee transmitted the final report of the Committee concerning Yugoslavia.<sup>345</sup> The report presented a concise account of the Committee’s work from 1993 until termination of sanctions in 1996. In the report, the Council’s attention was drawn to the serious economic impact on neighbouring States and other third States as a result of the comprehensive sanctions regime. Eight States, i.e., Albania, Bulgaria, Hungary, Romania, Slovakia, the former Yugoslav Republic of Macedonia, Uganda and Ukraine, exercised their right under Article 50 of the Charter to consult the Security Council on possible assistance in connection with special economic problems with which they were confronted as a result of the implementation of the mandatory measures. In each of those cases, the Council recognized the urgent need to assist the affected country in coping with its special economic problems resulting from the severance of its economic relations with the Federal Republic of Yugoslavia.

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<sup>341</sup> Ibid., pp. 2-8.

<sup>342</sup> S/1996/776.

<sup>343</sup> Ibid., p. 15.

<sup>344</sup> S/1996/946.

<sup>345</sup> Ibid., p. 3.

With regards to applications under Article 50, the Committee recalled that by the end of 1994, the Committee's Working Group on Article 50 had considered and taken note of replies from 19 States and 24 international organizations in response to its appeals for assistance on behalf of the affected countries. The Committee also received summarized information on damages and losses accrued by Hungary in 1995 as a result of its implementation of the mandatory measures. It should be noted that the Committee sought to take into account the special economic problems of the affected countries, when considering their specific request authorizing limited exemptions from the sanctions regime or designated transactions or services of crucial importance to those States.<sup>346</sup> One example was the approval of a request from the Government of Albania for the transit of electric energy through the Federal Republic of Yugoslavia.<sup>347</sup>

### **Case 30**

#### *The situation in Kosovo, Federal Republic of Yugoslavia*

At its 4011<sup>th</sup> meeting, on 10 June 1999, the Security Council considered the agenda item entitled “Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998) and 1239 (1999)”. During the debate, the representative of Ukraine stated that there were a number of countries, in particular, those of the Danube region, which were experiencing huge economic losses caused by the interruption of transport communications, reorientation of commodity flows, loss of traditional markets and other factors. The right to free and unimpeded use of that important international watercourse had been disrupted. He expected the Council to address the problem of the economic losses third countries had suffered in a positive and action-oriented way from military activities in Kosovo. He added that his country intended to get involved in the process of the economic reconstruction of Yugoslavia and the stabilization of the countries in the region.<sup>348</sup>

The representative of Croatia emphasized that the challenges ahead should not be underestimated with regard to lessening and eventually overcoming economic hardship, not only in Kosovo and the Federal Republic of Yugoslavia, but throughout the region. He stated that as a neighbouring State, Croatia had so far suffered \$2.5 billion in direct economic losses and an

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<sup>346</sup> A/51/356, para.9.

<sup>347</sup> Ibid., p.20.

<sup>348</sup> S/PV.4011(Resumption 1), pp.9-11.

estimated \$5 billion in overall economic losses “due to the conflict in the Federal Republic of Yugoslavia”.<sup>349</sup>

### Case 31

#### *Items relating to the Libyan Arab Jamahiriya (in connection with the implementation of measures imposed by resolution 748 (1992))*

At its 3864<sup>th</sup> meeting, on 20 March 1998, held in connection with the Libyan Arab Jamahiriya, a number of speakers touched upon the Council’s responsibility to address the potential consequences for third States of its decision to apply sanctions against the Libyan Arab Jamahiriya. The representative of Malta joined other delegations that had highlighted the urgency of assessing and analyzing the impact, which the current and prolonged sanctions against Libya had had. He noted that as a neighbouring country to a country hit by sanctions, Malta had to ensure that any preventive or enforcement measures undertaken by the Security Council in accordance with Chapter VII of the Charter did not in any way contribute to increased tension and instability in the Mediterranean region. In this regard, he stated that sanctions had, and continued to have, a negative impact on his country’s bilateral business and investment opportunities, on travel arrangements between the two countries, as well as on other economic and social exchanges.<sup>350</sup>

The representative of Indonesia referred to the report of the Secretary-General’s fact-finding mission to Libya,<sup>351</sup> which painted “a somber picture of the detrimental consequences of sanctions not only for the people of Libya but also for its neighbouring countries.”<sup>352</sup>

Two speakers emphasized that the imposition of sanctions under Security Council resolutions had had serious negative impacts on neighbouring third countries.<sup>353</sup> The representative of Lebanon noted that sanctions should be considered only when all peaceful means for settling a dispute had been exhausted. He further noted that sanctions harmed an entire

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<sup>349</sup> Ibid., 11-12.

<sup>350</sup> S/PV. 3864, p. 43.

<sup>351</sup> S/1998/201.

<sup>352</sup> S/PV.3864, p.46.

<sup>353</sup> Ibid., p.56 (Democratic People’s Republic of Korea); p.72 (Oman).

people, and they had repercussions on many different peoples because of their adverse consequences on third parties.<sup>354</sup>

The representative of Guinea-Bissau noted that sanctions imposed on Libya as an African country brought sufferings on the people of neighbouring countries, which further “impedes the socio-economic progress of their people”. He expressed the view that sanctions imposed on Libya should be reconsidered.<sup>355</sup>

The representative of India reaffirmed his condemnation of terrorism and recalled that it had abstained on resolution 748 (1992) that called for imposition of sanctions against Libya. Among the reasons why India had abstained, was the fact that the resolution “did not incorporate a clear acknowledgment of the duties of the Security Council towards third countries affected by sanctions, as spelt out in Article 50 of the Charter”.<sup>356</sup>

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<sup>354</sup> Ibid., p.76.

<sup>355</sup> Ibid., p. 65.

<sup>356</sup> Ibid., p. 68.



## **Part IX**

### **The right of self-defence in accordance**

#### **with Article 51 of the Charter**

##### *Article 51*

*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*

##### **Note**

During the period under review, the Security Council adopted two decisions in relation to the situation concerning the Democratic Republic of the Congo and the agenda item entitled “Small Arms” containing an explicit reference to, and reaffirming the principle set out in Article 51.<sup>357</sup>

The Security Council debated the application and interpretation of Article 51 in connection with the following questions: the question of armed interference in the internal affairs of Lebanon; the use of armed forces by the North Atlantic Treaty Organization (NATO) in Kosovo; the inherent right of a sovereign State to resort to self-defence in Afghanistan; the intervention of allied forces in the Democratic Republic of the Congo in accordance with the provisions contained in Article 51; the question of small arms; and the right of United Nations peacekeeping forces to have the ability and right to defend themselves under the agenda item entitled the “Protection for humanitarian assistance to refugees and others in conflict situations”.

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<sup>357</sup> In connection with the situation concerning the Democratic Republic of Congo, see resolution 1234 (1999) of 9 April 1999, preambular paragraph 8. In connection with the agenda item entitled “Small Arms”, see S/PRST/1999/28.

In all of these instances, Article 51 was explicitly invoked, by which Member States emphasized the right of self-defence. The discussion of the Security Council focused not only on the question whether the actions of States had been justified in resorting to self-defence, but also whether the measures used for self-defence had corresponded to the provisions set out in Article 51.

In some instances, during the course of the deliberations in the Security Council, various issues occasioned remarks pertinent to the interpretation of the principle of self-defence, which however did not culminate in a constitutional discussion. Thus, in connection with the situation in the Federal Republic of Yugoslavia, including Kosovo,<sup>358</sup> the agenda item entitled “Promoting peace and security: Humanitarian activities relevant to the Security Council”,<sup>359</sup> the situation in Africa,<sup>360</sup> and the situation between Eritrea and Ethiopia,<sup>361</sup> Article 51 was explicitly invoked to remind the members of the Security Council that the right to individual and collective self-defence was recognized in that Article and was therefore fully consistent with principles of the United Nations.

In two communications, Article 51 was explicitly invoked in letters by which States declared an alliance of cooperation. By a letter dated 13 July 1998, addressed to the Secretary-General from the representatives of the Russian Federation and Kazakhstan,<sup>362</sup> the Declaration between the Russian Federation and the Republic of Kazakhstan on Eternal Friendship and Alliance Leading into the Twenty-First Century was transmitted. In the text, they agreed to jointly take all measures available to them to eliminate any threat of aggression or to counter acts of aggression directed against them by any State or group of States, and, in case of necessity,

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<sup>358</sup> S/PV.3937, pp. 10-11, the representative of Brazil pointed out that according to the UN Charter, non-universal organizations may resort to force only on the basis either of the right to legitimate self-defence, as stipulated in Article 51, or through the procedures of Chapter VIII, according to which they were to seek prior Security Council authorization and abide by the Council’s decisions.

<sup>359</sup> S/PV.3968, p.23, the representative of Gabon emphasized that there may be cases in which force may be truly indispensable as a last resort, but it was clear that in any case the approval of the Security Council was essential. He underscored that Article 51 of the Charter of the United Nations sets forth a single exception for the use of force without prior authorization of the Council: legitimate self-defence.

<sup>360</sup> S/PV.4081 (resumption 1), p.10, the representative of the Democratic Republic of Congo while noting that the Security Council was the United Nations organ responsible for collective security and the maintenance of international peace and security, he stated that Article 51 of the Charter recognized the inherent right of States to individual or collective self-defence.

<sup>361</sup> S/PV.3975, pp.2-3, the representative of Ethiopia informed the Council that his country was a victim of Eritrean military attacks and that its territory had been illegally occupied through the use of force, as a result of which it was now engaged in an exercise of legitimate self-defence under Article 51 of the Charter.

<sup>362</sup> S/1998/639.

afford each other appropriate assistance, including military assistance, in exercise of the right of collective self-defence under Article 51 of the Charter of the United Nations. Similarly, by a letter dated 15 October 1998 addressed to the Secretary-General,<sup>363</sup> the representatives of the Russian Federation, Tajikistan and Uzbekistan transmitted a Declaration on cooperation amongst themselves. In the text, the States agreed that if an act of aggression was committed against one of the parties, the other parties would provide the necessary assistance, including military assistance, and render support with the means available to them on the basis of the right to collective self-defence in accordance with Article 51.<sup>364</sup>

In the course of the deliberations in the Council,<sup>365</sup> various issues occasioned pertinent arguments relating to the interpretation of the principle of self-defence. They are set out in the case studies below (part A).

These case studies will be followed by a brief overview in Part B of instances in which the right of self-defence was invoked in official correspondence, but which did not give rise to any constitutional discussion relevant to Article 51. The question of the scope of the right of self-defence under Article 51 is grouped under the following agenda items: The question of Cyprus; The responsibility of the Security Council in the maintenance of international peace and security; The situation between Iran and Iraq; The situation between Iraq and Kuwait; The situation in the Republic of Congo; The situation concerning the Democratic Republic of the Congo; The situation between Eritrea and Ethiopia; and The situation in Burundi. In some instances, Article 51 was invoked in correspondences that did not belong to an agenda item of the Council.<sup>366</sup>

## **A. Discussion relating to Article 51**

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<sup>363</sup> S/1998/958.

<sup>364</sup> *Ibid.*, p.4.

<sup>365</sup> The situation in Afghanistan; The question of small arms ; The situation concerning the Democratic Republic of the Congo; The situation in Kosovo; The situation in the Middle East (Israeli-Lebanese conflict); The Protection for humanitarian assistance to refugees and others in conflict situations; and Communications concerning relations between the Republic of Cameroon and the Federal Republic of Nigeria.

<sup>366</sup> In connection with the terrorist attacks against the US embassies, see S/1998/780. In connection with the complaint by Libya, see S/1998/70.

In the following instances, the invocation of the right of self-defence by Member States gave rise to discussions or decisions relevant to the application and interpretation of Article 51.

### Case 32

*Letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council (S/1999/320)*

The right of self-defence was invoked as forces of the North Atlantic Treaty Organization (NATO) began military air strikes against Serbian forces in Kosovo. In two consecutive meetings,<sup>367</sup> the Council considered a letter dated 24 March 1999 addressed to the President from the representative of the Russian Federation,<sup>368</sup> calling for a meeting to consider “an extremely dangerous situation caused by the unilateral military action of NATO members against the Federal Republic of Yugoslavia.”

At its 3988<sup>th</sup> meeting, on 24 March 1999, Mr. Jovanovic requested the Security Council to take immediate action to condemn and stop the aggression against the Federal Republic of Yugoslavia, maintaining that his country reserved its right to act in self-defence in accordance with Article 51.<sup>369</sup> This request was supported by a number of members of the Security Council,<sup>370</sup> including the representative of the Russian Federation who expressed his country’s “profound outrage” at NATO’s use of military force against the Federal Republic of Yugoslavia, since it had been carried out in violation of the UN Charter and without the authorization of the Security Council.<sup>371</sup>

On the other hand, several speakers defended the use of force by NATO,<sup>372</sup> justifying the relevant actions and arguing for the continuation of NATO operations. They maintained that such operations were necessary to respond to Belgrade’s actions with regard to Kosovar

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<sup>367</sup> S/PV.3988 and S/PV.3989.

<sup>368</sup> S/1999/320.

<sup>369</sup> S/PV.3988, pp. 13-14.

<sup>370</sup> S/PV.3988, pp. 2-3 (Russian Federation); pp. 7 (Bahrain), p. 8 (Brazil), pp. 9-10 (Malaysia); p. 10 (Namibia); p. 10 (Gabon); pp. 10-11 (Argentina); pp. 12-13 (China); p. 15 (Belarus); pp. 15-16 (India); pp.19-20 (Slovenia).

<sup>371</sup> Ibid., pp.2-3.

<sup>372</sup> S/PV.3988, pp. 4-5 (United States); pp. 5-6 (Canada); p. 8 (Netherlands); pp. 8-9 (France); pp. 11-12 (United Kingdom); pp. 16-18 (Germany); p. 18 (Albania); pp. 18-19 (Bosnia and Herzegovina).

Albanians, its violations of international law, excessive and indiscriminate use of force, refusal to negotiate to resolve the issue peacefully and the recent military build-up in Kosovo.<sup>373</sup>

At its 3989th meeting, on 26 March 1999, the Security Council continued its deliberations regarding the situation in Kosovo, and considered a draft resolution co-sponsored by Belarus, India, and the Russian Federation, which was not adopted. The text of the draft resolution sought an explicit condemnation of NATO's use of force, an immediate cessation of the use of force against the Federal Republic of Yugoslavia, and an urgent resumption of negotiations.<sup>374</sup>

During the deliberations of the Council, the co-sponsors of the resolution argued that the actions taken by NATO violated the sovereignty of a member State of the United Nations and thus in themselves frustrated the fundamental interests of the overwhelming majority of States.<sup>375</sup> Mr. Jovanovic reiterated his request to the Security Council to take immediate action to stop the aggression in Yugoslavia, maintaining that until the aggression went on, his country would continue to protect its sovereignty and territorial integrity on the basis of Article 51.<sup>376</sup>

The request was opposed by several speakers on the grounds that there was a continuous need to resolve the crisis in Kosovo and to fulfil the legal norms of human rights in the region.<sup>377</sup> A majority of speakers spoke against the adoption of the resolution,<sup>378</sup> arguing for the protection of civilians in affected areas and the cessation of violence perpetrated by the Government of the Federal Republic of Yugoslavia against its own people.

By a letter dated 30 March 1999 addressed to the Secretary-General,<sup>379</sup> the representative of the Russian Federation transmitted the text of a statement by the State Duma of the Federal Assembly of the Russian Federation in connection with "the aggression by the North Atlantic Treaty Organization against the Federal Republic of Yugoslavia". In the text, the State Duma of the Russian Federation Assembly condemned the aggression by NATO and expressed its solidarity with the peoples of Yugoslavia. It pointed out that in accordance with Article 51 of the

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<sup>373</sup> S/PV.3988, pp. 4 (United States).

<sup>374</sup> S/1999/328.

<sup>375</sup> S/PV.3989, pp. 5-6 (Russian Federation); p. 9 (China); pp. 9-10 (Ukraine); p. 12 (Belarus); pp. 12-14 (Cuba); pp. 15-16 (India).

<sup>376</sup> S/PV.3989, pp. 10-12 (Mr. Jovanovic).

<sup>377</sup> S/PV.3989, pp. 6-7 (United Kingdom); pp. 7-8 (Argentina); pp. 8-9 (Malaysia); p. 9 (Bahrain); pp. 14-15 (Bosnia and Herzegovina).

<sup>378</sup> S/PV.3989, pp. 2-3 (Canada); pp. 3-4 (Slovenia); p. 4 (Netherlands); pp. 4-5 (United States).

<sup>379</sup> S/1999/358.

Charter of the United Nations, the Federal Republic of Yugoslavia had the right of individual or collective self-defence. Accordingly, it was entitled to defend itself against aggression by all available means.<sup>380</sup>

### Case 33

#### *The situation in Afghanistan*

In connection with the situation in Afghanistan and the strengthening of its national defense system, a discussion arose relating to the application and interpretation of Article 51. By a letter dated 22 August 1996 addressed to the President of the Security Council,<sup>381</sup> the representative of Afghanistan transmitted the text of the statement of its Ministry of Foreign Affairs, in relation to the peace process in Afghanistan. The text underlined that Afghanistan was an independent, indivisible, unitary State that enjoyed national sovereignty. It further noted that no article of the Charter provided for an arms embargo to be carried out against the Government of a Member State which itself was a victim of foreign interventions and conspiracies and which was defending its sovereignty, independence and territorial integrity. The Afghan Government had the duty to take necessary measures to defend its territorial integrity and national unity. In accordance with Article 51 of the United Nations Charter, the Islamic State of Afghanistan had the inherent right of self-defence. Any attempt to prevent Afghanistan from strengthening its national defence as a sovereign State would therefore be against the United Nations Charter and practically against the interests of peace, stability and security in the region.<sup>382</sup>

At the 3705th meeting, the Council considered a letter dated 8 October 1996 addressed to the Secretary-General from the representatives of Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan, and Uzbekistan<sup>383</sup> transmitting the text of a joint statement made by the

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<sup>380</sup> Ibid., p.2.

<sup>381</sup> S/1996/685.

<sup>382</sup> Ibid., p.3.

<sup>383</sup> S/1996/838. In the annex entitled “Joint declaration made on 4 October 1996 by the leaders of Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan and Uzbekistan concerning developments in Afghanistan”, it expressed a strong desire for a comprehensive political settlement of the Afghan conflict, especially as the conflict was not only destabilizing the situation in the region and in the world, but also posing a direct threat to the national security and interests of the bordering countries, including the Commonwealth of the Independent States (CIS).

leaders of their countries concerning developments in Afghanistan. The leaders proposed that a special meeting of the Council be held without delay to adopt urgent measures to halt the fighting and achieve a comprehensive settlement of the Afghan conflict, and to arrange for international humanitarian assistance to the civilian population and refugees. In their joint declaration, the leaders expressed concern at the expansion of the armed confrontation and stated that any actions that undermined the stability on the borders between Afghanistan and the Commonwealth of Independent States (CIS) would be deemed a threat to the common interest of those States.

During the debate, the representative of Afghanistan reiterated that his country was an independent, indivisible, unitary State, which enjoyed national sovereignty, and thus had the duty to take necessary measures to defend its territorial integrity and national unity. He emphasized that in accordance with Article 51 of the Charter, Afghanistan had the inherent right to self-defence. He further noted that any attempt to prevent Afghanistan from strengthening its national defences as a sovereign State would therefore be against the Charter and particularly against the interests of peace, stability and security in the region.<sup>384</sup> Moreover, he stated that such defences were particularly necessary in order to defend the State from Pakistan, which had been acting as “an obstacle to the return of peace and normalcy” in Afghanistan.

The Central Asian members of the Commonwealth of Independent States (CIS) stated that events in Afghanistan threatened the political stability of the sub-region. They appealed to all the parties to the conflict, first of all the Taliban, to call an immediate halt to hostilities and to begin to seek ways of achieving national accord. They emphasized that there was one major political objective to this process, which was the non-interference by foreign elements in the internal affairs of sovereign Afghanistan and therewith the preservation of the country’s territorial integrity. They stated that the involvement of the international community was considered particularly necessary and crucial in prohibiting any external intervention in Afghanistan and in helping the Afghan people find an acceptable formula for agreement.<sup>385</sup> The representative of Pakistan joined the statement of the CIS countries, agreeing with the non-interference policy for Afghanistan, urging the United Nations to promote durable peace in the

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<sup>384</sup> S/PV.3705, p. 2.

<sup>385</sup> *Ibid.*, p. 8 (Kazakhstan); pp. 9-10 (Uzbekistan); pp. 10-11 (Kyrgyzstan); pp. 11-12 (Tajikistan); pp. 12-13 (Russian Federation).

region, and calling for the international community to help provide humanitarian relief to the victims of the conflict.<sup>386</sup>

### **Case 34**

#### *Small arms*

At its 4048<sup>th</sup> meeting, on 24 September 1999, the Council held a ministerial meeting on the question of small arms in the context of the challenges facing the international community in that regard.

During the debate, several Council members were of the view that the legitimate defence and security needs of States under Article 51 of the Charter must be borne in mind when proposing measures to deal with the highly complex issue of small arms.<sup>387</sup> The representative of the Russian Federation noted that he agreed with the approach taken by many members of the United Nations, whose positions were based on the provisions of Article 51 of the Charter and the legitimate right of States to self-defence, which entailed the legal acquisition of the necessary weapons. The representative of Argentina noted that the negative impact of the proliferation of small arms on human security, without affecting the right to self-defence recognized in the Charter, should be curbed. The representative of Brazil stated that the legitimate defence and security needs of States, as foreseen in Article 51 of the Charter, must be borne in mind when proposing measures to deal with the highly complex issue of small arms. Due to its multiple dimensions- humanitarian, criminal, disarmament and security-the matter called for an overarching and integrated approach. Endorsing the efforts of the international community to solve the problems caused by small arms, the representative of China noted that while efforts were being intensified to eliminate the adverse impact of small arms, due consideration should be given to the legitimate self-defence and security needs of countries and to guaranteeing their right legally to possess, manufacture and transfer small arms.

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<sup>386</sup> Ibid., pp. 33-36 (Pakistan).

<sup>387</sup> S/PV.4048, pp.10-11 (the Russian Federation); pp.12-13 (Argentina); p.13 (Brazil).



The representative of Gabon stated that Governments in most African regions had taken measures to combat illicit transfers of weapons of all sorts. Following the United Nations example, they had created a sub-regional register to ensure transparency in terms of the weapons they had available for legitimate defence purposes in accordance with Article 51 of the Charter.<sup>388</sup>

Following the meeting, by a statement of the President dated 24 September 1999,<sup>389</sup> the Council members noted with grave concern that the destabilizing accumulation of small arms had contributed to the intensity and duration of armed conflicts. Moreover, the Council emphasized that the “right of individual and collective self-defence recognized in Article 51 of the Charter of the United Nations” and the legitimate security demands of all countries should be fully taken into account.

### **Case 35**

#### *The situation concerning the Democratic Republic of the Congo*

In connection with the situation concerning the Democratic Republic of the Congo, the right of self-defence by a regional organization in the exercise of the provisions contained in Article 51 was discussed.

By a letter dated 4 March 1999 addressed to the President of the Security Council,<sup>390</sup> the representative of the Democratic Republic of the Congo requested an open debate on the question: "Peaceful settlement of the conflict in the Democratic Republic of the Congo". The Council considered this matter at its 3987<sup>th</sup> meeting on 19 March 1999 under the relevant item on its agenda.

During the debate, the representative of Uganda stated that the conflict in the Democratic Republic of the Congo had an internal and external dimension. He further stated that the external dimension in the cases of Uganda and Rwanda had been prompted by activities hostile to those

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<sup>388</sup> Ibid., p.17.

<sup>389</sup> S/PRST/1999/28.

<sup>390</sup> S/1999/278.

two countries emanating from the Congo. He explained that, originally, Uganda had a small number of forces in the Democratic Republic of Congo, invited by President Laurent Kabila, to flush out opposition forces. Then, when hostilities erupted, as a result of internal political problems, military assistance was provided by the Governments of Zimbabwe, Angola and Namibia, which intervened under the pretext that the Democratic Republic had been invaded by Uganda and Rwanda. Uganda had subsequently acted in self-defence and deployed additional forces.<sup>391</sup>

On the contrary, the representative of Zimbabwe responded by stating that the "security thesis" was an excuse for Uganda and Rwanda to dismember the polity of the Democratic Republic of the Congo in an endeavor to establish a "greater Rwanda". He noted that Zimbabwe, Angola, Namibia and Chad had responded to a distress call by the Government of the Democratic Republic of the Congo, and were now assisting that country to uphold its territorial integrity and national sovereignty. He emphasized that the intervention of the allied forces of the Southern African Development Community (SADC) was upheld by the inherent right to individual or collective self-defense, in accordance with Article 51 of the United Nations Charter.<sup>392</sup>

Similarly speaking, the representative of the Democratic Republic of the Congo stated that contrary to the excuses offered by the aggressors, their aggression pre-dated the intervention of the allied forces, implemented at the formal request of a legitimate Government in the context of the legitimate right to self-defence recognized in the Charter of the United Nations.<sup>393</sup>

At its 3993<sup>rd</sup> meeting on 9 April 1999, the Council adopted resolution 1234 (1999) by which it reaffirmed that States possessed the inherent right of individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations and reaffirmed the obligation of all States to respect the territorial integrity,<sup>394</sup> political independence and national sovereignty of the Democratic Republic of the Congo and other States in the region, including the obligation to refrain from the threat or use of force against the territorial integrity or political

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<sup>391</sup> S/PV.3987 (Resumption 1), pp.9-10.

<sup>392</sup> Ibid., pp.16-17.

<sup>393</sup> Ibid., p.22.

<sup>394</sup> S/Res/1234 (1999), pp. 1-2.

independence of any State or in any other manner inconsistent with the purposes of the United Nations.<sup>395</sup> There was no discussion arising from the adoption of resolution 1234 (1999).

### Case 36

#### *The situation in the Middle East*

In connection with the complaint by Lebanon, attention was focused on the question of whether the use of force by Israel was legitimate in accordance with the provisions enshrined in Article 51 of the Charter.

At its 3653<sup>rd</sup> meeting on 15 April 1996, the Council met to consider a request contained in a letter addressed to the President of the Security Council from the representative of Lebanon.<sup>396</sup> The letter requested an urgent meeting of the Council to consider "the grave situation in Lebanon resulting from the large-scale Israeli bombardment of many towns....including the southern suburbs of Beirut".<sup>397</sup>

During the debate, the representative of Lebanon requested the Council to order Israel to stop its aggression against Lebanon, to withdraw all of its reinforcements, and condemn the Israeli aggression against Lebanon.<sup>398</sup> The representative of Israel stated that after a long period of restraint and the exhaustion of all political and diplomatic means, the Israeli Defence Forces were exercising the right of self-defence by hitting back at Hezbollah strongholds. He further stated that if Lebanon did not have the ability or the will to control Hezbollah activities, Israel had to defend its security by all necessary measures.<sup>399</sup>

While calling on all parties to exercise restraint and to cease military activities, some speakers, particularly the representatives of Germany and the Russian Federation, felt that the Israeli actions had not been proportionate to those committed against Israel.<sup>400</sup> The representative of Germany emphasized that while self-defence was clearly legitimate, measures of self-defence could become illegal if they did not abide by the basic rule of law prescribing

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<sup>395</sup> Ibid, pp. 1-2.

<sup>396</sup> S/1996/280.

<sup>397</sup> Ibid., p.1.

<sup>398</sup> S/PV.3653, pp.2-6.

<sup>399</sup> Ibid., p.6.

<sup>400</sup> Ibid., p.9 (Germany) and p.10 (Russian Federation).

proportionality. He stated that measures of self-defence should not be directed against innocent civilians, and that any measure of self-defence had to be proportionate not only in size but also in direction.<sup>401</sup>

The representative of the United States pointed out that the Hezbollah attacks into northern Israel had compelled the Israeli Government to take steps it deemed necessary to protect its people from direct threats emanating from Lebanese territory. She noted that those who allowed Hezbollah's militia to act with impunity in Lebanon must bear responsibility for the consequences. Those consequences included not only abuses to the State of Lebanon from within, but actions of self-defence by Israel in response to Hezbollah violence.<sup>402</sup>

On the other hand, a number of speakers condemned the Israeli attacks as an act of aggression against Lebanon's sovereignty and territorial integrity.<sup>403</sup> They insisted that Israel could not justify its actions by claiming that it had acted in self-defence and they called on Israel to immediately cease its military operations and withdraw its troops from Lebanon. In this regard, the representative of Egypt stated that any armed aggression against a neighbouring State, whatever the motive, constituted prohibited aggression. He stated that under Article 51 of the Charter, self-defence must only be employed in response to a direct military attack. He further stated that self-defence by States was not a "blank cheque to be used to wage aggression on others." He referred back to more than 150 years ago to specific terms for the use of self-defence in which Daniel Webster, a former Secretary of State of the United States of America, declared that the right of self-defence implied the instant and overwhelming necessity for self-defence, leaving no choice of means and no time for deliberation. Lacking these conditions, the use of military force was considered an act of reprisal prohibited by international law.<sup>404</sup> The representative of Afghanistan stated that Israel had spoken to the Council of self-defence, but its military actions had been extremely violent.<sup>405</sup>

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<sup>401</sup> Ibid., p.9.

<sup>402</sup> Ibid., pp.12-13.

<sup>403</sup> Ibid., pp.8-9 (Indonesia); pp.14-15 (Egypt); pp.16-17 (United Arab Emirates, on behalf of the Arab Group); pp.17-18 (Saudi Arabia); pp.18-19 (Syrian Arab Republic); pp.20-21 (Kuwait); pp.21-22 (Libyan Arab Jamahiriya); p.22 (Algeria); pp.22-23 (Afghanistan); pp.23-24 (Morocco); pp.24-25 (Iran); pp.25-26 (Tunisia); pp.26-27 (Malaysia); pp.27-28 (Jordan); p.28 (Turkey); p.28-29 (Pakistan).

<sup>404</sup> Ibid., pp.14-15.

<sup>405</sup> Ibid., pp.22-23.

At its 3654<sup>th</sup> meeting, on 18 April 1996, the Council adopted resolution 1052 (1996) by which it called for an immediate cessation of hostilities by all parties and declared its support for ongoing diplomatic efforts to that end. The Council, however, failed to adopt a draft resolution sponsored by 19 Arab States that strongly condemned the Israeli attack and called upon Israel to withdraw its forces from all Lebanese territory.<sup>406</sup> During the meeting, the representative of Botswana emphasized that the Israeli military actions had definitely gone beyond the limits of Israel's legitimate right to self-defence.<sup>407</sup> The representative of Israel countered that the "tragedy" that had occurred in southern Lebanon had been caused by Hezbollah, which had launched Katyusha rockets at Israel. He hoped that the mission of US Secretary of State Christopher to the region would "bear fruit immediately" and that a ceasefire would be achieved without delay, as it would put an end to the situation, which had "forced Israel to retaliate and to use its right of self-defence" against those who had attacked innocent civilians in northern Israel.<sup>408</sup>

By a letter dated 17 April 1996 addressed to the Secretary-General,<sup>409</sup> the representative of the United Arab Emirates transmitted the text of resolution 5573, which was adopted by the Council of the League of Arab States (LAS) on 17 April following a special meeting devoted to the consideration of the question of the Israeli aggression against Lebanon. In the text, the LAS Council reaffirmed the right of the Lebanese people to resist Israeli occupation in Lebanese territory in accordance with the principles of the Charter of the United Nations, particularly their right to self-defence against the "occupier", and supported the right of the Lebanese people to demand that Israel provide compensation for the loss of human life and material damage caused by Israeli occupation and aggression.

By several subsequent letters addressed to the Secretary-General,<sup>410</sup> the representative of Israel asserted its rights of self-defence by engaging in operations against Hezbollah operating from Lebanon.

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<sup>406</sup> S/1996/292.

<sup>407</sup> S/PV.3654., p.8.

<sup>408</sup> Ibid., p.14.

<sup>409</sup> S/1996/295.

<sup>410</sup> S/1997/7, S/1997/603, S/1998/75, and S/1999/300.

In response, the representative of Lebanon, by a letter dated 23 January 1997 addressed to the Secretary-General,<sup>411</sup> stated that the actions, which the representative of Israel referred to as acts of terrorism were acts of resistance to occupation that took place inside Lebanese territory and were directed against military elements of the occupation forces. He claimed those acts were a legitimate expression of the right to self-defence enshrined in the Charter of the United Nations, and they had the goal of liberating national territory from foreign occupation.

In two subsequent letters addressed to the Secretary-General,<sup>412</sup> the representative of Lebanon repeated that the actions, which the representative of Israel referred to as acts of terrorism, were acts of resistance to occupation and were directed against military elements of the occupation forces. They were actions that had the purpose of liberating national territory from foreign occupation, and they arose as a reaction to the occupation and in self-defence, it being an intrinsic right of peoples to defend themselves pursuant to the relevant international covenants and in accordance with international law and the Charter of the United Nations.

By a letter dated 24 March 1999 addressed to the Secretary-General,<sup>413</sup> the representative of the Syrian Arab Republic referred to a letter from Israel regarding measures to eliminate international terrorism.<sup>414</sup> In that regard, he stated that Israel sought to portray the Israeli State's acts of piracy, aggression, expansionism and terrorism as acts of legitimate self-defence and this at a time when the peoples of the world had come to regard occupation and settlement as the most horrendous forms of terrorism.<sup>415</sup>

In four communications addressed to the Secretary-General,<sup>416</sup> the representative of Israel reported that Lebanon refused to negotiate with Israel on implementing resolution 425 (1978) despite Israel's invitations. Therefore, Israel was left with no choice but to exercise its right to self-defence in accordance with international law.

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<sup>411</sup> S/1997/70.

<sup>412</sup> S/1997/187 and S/1997/630.

<sup>413</sup> S/1999/326.

<sup>414</sup> S/1999/150

<sup>415</sup> S/1999/326, p.2.

<sup>416</sup> S/1999/185, S/1999/463, S/1999/704, S/1999/979, S/1999/1178.

## Case 37

### *Protection for humanitarian assistance to refugees and others in conflict situations*

At its 3778<sup>th</sup> meeting on 21 May 1997, the Council held a discussion on the protection for humanitarian assistance to refugees and others in conflict situation. The representative of Egypt raised a point regarding self-defence, suggesting looking at a report, which Secretary-General Dag Hammarskjöld had presented in August 1958, two years after the establishment of the United Nations Emergency Force (UNEF). He indicated that the report defined the limits of actions of self-defence by United Nations forces in the following manner: “A reasonable definition seems to have been established in the case of UNEF, where the rule is applied that men engaged in the operation may never take the initiative in the use of armed force, but are entitled to respond with force to an attack with arms, including attempts to use force to make them withdraw from positions, which they occupy under orders from the Commander, acting under the authority of the Assembly and within the scope of its resolutions”.<sup>417</sup> Referring to the quote, he pointed out that the United Nations needed to avoid situations like the one that had occurred in Bosnia where the Security Council had been unable to take any action to assert the peacekeepers' right of self-defence or their right to protect their mission and mandate. Several representatives joined the statement stressing the need for the United Nations peacekeeping forces to have that right, ability and competence,<sup>418</sup> including the representative of China who stated that the invocation of Chapter VII of the Charter or authorization of the use of force, would more often complicate problems in peacekeeping operations and humanitarian relief activities. In this regard, he stated that the use of force should be strictly confined to self-defense. It should not be used indiscriminately, still less for retaliation, or in any way hurt innocent civilians.<sup>419</sup>

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<sup>417</sup> S/PV.3778, pp. 10-11.

<sup>418</sup> S./PV.3778, pp. 12-14 (France); pp. 17-18 (Poland); pp. 23-24 (China).

<sup>419</sup> Ibid., pp.23-24.

## **B. The invocation of the right of self-defence in other instances**

In the following instances, Member States invoked the right of self-defence in official correspondence, which did not give rise to any significant constitutional discussion with direct relevance to Article 51.

### *The question of Cyprus*

By a letter dated 19 September 1997 addressed to the Secretary General,<sup>420</sup> the representative of Turkey noted that the purchase of the S-300 missile system by the “Greek Cypriot administration” constituted a direct threat to the security of Turkey itself. In response, the representative of Cyprus, by a letter dated 1 October 1997,<sup>421</sup> claimed that such a decision by his Government was made in the exercise of its inalienable rights as a sovereign State, to self-defence and to decide on its armaments.

In a letter dated 28 January 1998 addressed to the Secretary-General,<sup>422</sup> the representative of Turkey expressed his concern over the construction of the military airbase in Paphos by the Government of Cyprus. In two consecutive responses, the representative of Cyprus, by letters dated 4 February and 23 June 1998,<sup>423</sup> emphasized that the enhancement of the defensive capabilities of the National Guard was an expression of the exercise of the right to self-defence recognized in the Charter of the United Nations.

### *The responsibility of the Security Council in the maintenance of international peace and security*

By a letter dated 22 May 1998 addressed to the Secretary-General,<sup>424</sup> the representative of Pakistan reported that his Government had exercised restraint in its response to India’s nuclear tests conducted on 11 and 13 May 1998. However, his Government could not ignore the threat to

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<sup>420</sup> S/1997/732.

<sup>421</sup> S/1997/762.

<sup>422</sup> S/1998/81.

<sup>423</sup> S/1998/101 and S/1998/559.

<sup>424</sup> S/1998/421.



its national security and the requirements of self-defence. In response, the representative of India, by a letter dated 4 June 1998,<sup>425</sup> claimed that tests were carried out by India as a defensive measure to protect India, and the right to take measures in self-defence was an inherent right of Member States under the Charter.<sup>426</sup>

### *The situation between Iran and Iraq*

By a letter dated 29 July 1996 addressed to the Secretary-General,<sup>427</sup> the representative of Iran reported that terrorist groups from the territory of Iraq were operating along the Iranian border. He noted that, in response to those activities, and in accordance with its inherent right of self-defence enshrined in Article 51 of the Charter, his country took immediate and proportional measures, which were necessary for curbing and suppressing such aggressive activities. He further reported that the Iranian defence forces pursued the retreating armed groups that had attacked civilian targets in the border towns of Piranshahr, Mahabad and Oroumiyeh, and targeted their training camps in Iraq. He emphasized that while reserving its inherent right to self-defence in accordance with Article 51 of the Charter, Iran respected the territorial integrity of Iraq.<sup>428</sup>

By a letter dated 2 October 1997 addressed to the Secretary-General,<sup>429</sup> the representative of Iran again reported that two heavily-armed groups belonging to an Iranian terrorist organization based in Iraq had crossed international borders and infiltrated the territory of Iran from Iraq. He reiterated that in exercise of the inherent right of self-defence recognized in Article 51 of the Charter of the United Nations, his Government responded to these attacks by taking “a limited and proportionate measure against the invading terrorists”.<sup>430</sup>

By a letter dated 10 May 1999 addressed to the Secretary-General,<sup>431</sup> the representative of Iran reiterated his Government’s willingness to cooperate with the international community to

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<sup>425</sup> S/1998/464.

<sup>426</sup> Ibid., p.3.

<sup>427</sup> S/1996/602.

<sup>428</sup> Ibid., p.1.

<sup>429</sup> S/1997/768.

<sup>430</sup> Ibid., p.1.

<sup>431</sup> S/1999/536.

combat terrorism wholeheartedly. In this context, he reaffirmed that Iran reserved its right to self-defence, in accordance with international law and the United Nations Charter, with a view to safeguarding its security and territorial integrity against terrorist acts.<sup>432</sup>

By a letter dated 12 July 1999 addressed to the Secretary-General,<sup>433</sup> the representative of Iran asserted that in the exercise of its right of self-defence under Article 51 of the Charter, “a well known active terrorist camp, located in the territory of Iraq”.<sup>434</sup>

#### *The situation between Iraq and Kuwait*

Throughout 1999, in several subsequent letters addressed to the President of the Security Council,<sup>435</sup> the representative of Iraq reported that the United States and British aircraft based in Saudi Arabia, Kuwait and Turkey continued to violate Iraq’s airspace. In response to the above-mentioned, he declared that his country had exercised its inherent right of self-defence by engaging its air defence units.

#### *The situation in the Republic of Congo*

By a letter dated 16 October 1997 addressed to the President of the Security Council,<sup>436</sup> the representative of Angola reported that on 13 October 1997, in exercising its right of self-defence, one unit of the Angolan Armed Forces persecuted armed groups of the “FLEC” and União Nacional para a Independência Total de Angola (UNITA), following attacks against bordering localities in Cabinda province, from the Republic of the Congo.<sup>437</sup>

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<sup>432</sup> Ibid., p.2.

<sup>433</sup> S/1999/781.

<sup>434</sup> Ibid., p.2.

<sup>435</sup> S/1999/59; S/1999/29; S/1999/30; S/1999/72; S/1999/141; S/1999/198; S/1999/264; S/1999/316; S/1999/386; S/1999/408; S/1999/456; S/1999/539; S/1999/584; S/1999/608; S/1999/641; S/1999/669; S/1999/699; S/1999/730; S/1999/772; S/1999/776; S/1999/845; S/1999/870; S/1999/894; S/1999/915; S/1999/947; S/1999/967; S/1999/990; S/1999/998; S/1999/1022; S/1999/1047; S/1999/1070; S/1999/1096; S/1999/1131; S/1999/1161; S/1999/1182; S/1999/1195; S/1999/1221; S/1999/1238; S/1999/1267; S/1999/1293.

<sup>436</sup> S/1997/802.

<sup>437</sup> Ibid., para.4.

*The situation concerning the Democratic Republic of the Congo*

By a letter dated 31 August 1998 addressed to the President of the Security Council,<sup>438</sup> the representative of the Democratic Republic of the Congo noted that his Government did not practice a policy of warmongering, nor did it wish to make war on any State. It was merely exercising its natural right of individual or collective self-defence, in accordance with Article 51 of the Charter, in order to regain its sovereignty and territorial integrity. The sole purpose of the military operations being carried out was to repel the Ugandan-Rwandan aggression.<sup>439</sup>

By a letter dated 28 June 1999 addressed to the President of the Security Council,<sup>440</sup> the representative of the Democratic Republic of the Congo transmitted a copy of the document entitled "White paper on massive violations of human rights, the basic rules of international humanitarian law and environmental protection standards by the aggressor countries (Uganda, Rwanda and Burundi) and their Congolese accomplices in the eastern part of the Democratic Republic of the Congo: Volume II", covering the period from 6 November 1998 to 15 April 1999. The text noted that the Democratic Republic of the Congo and the allied States of Angola, Zimbabwe and Namibia were exercising collective self-defence, basing their actions on Chapter VIII of the Charter of the United Nations, which authorized the States of a region or sub-region to enter into regional arrangements or to establish sub-regional bodies for the maintenance of international peace and security.<sup>441</sup>

*The situation between Eritrea and Ethiopia*

By a letter dated 3 June 1998 addressed to the President of the Security Council,<sup>442</sup> the representative of Eritrea asserted its right of self-defence, in response to a military attack in Asmara by Ethiopian troops.

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<sup>438</sup> S/1998/827.

<sup>439</sup> Ibid., p.13, para.81.

<sup>440</sup> S/1999/733.

<sup>441</sup> Ibid., para.119.

<sup>442</sup> S/1998/459.

In response, the representative of Ethiopia, by a letter dated 4 June 1998 addressed to the President,<sup>443</sup> noted that in response to Eritrea's aggression, Ethiopia had in self-defence taken limited measures against Asmara.

From 1998 to 1999, in several communications to the President of the Security Council,<sup>444</sup> the representative of Ethiopia continued to assert his country's right of self-defence, as stipulated in Article 51 of the Charter, by carrying out military activities against Eritrea. In response, the representative of Eritrea also sent out several communications addressed to the President of the Security Council stating that Eritrea's actions against military targets in Ethiopia were simply in retaliation and exercise of its legitimate right of self-defence in the face of aggression.<sup>445</sup>

#### *The situation in Burundi*

By a letter dated 3 November 1997 addressed to the Secretary-General,<sup>446</sup> the representative of Tanzania denied claims that its forces had attacked Burundi, causing extensive damage to property and human lives. He reported that the Burundian army had attacked the Kiteule detachment of the Tanzanian People's Defence Forces situated at Kagunga on 27 October 1997. Being provoked, the Tanzanian forces had to exercise their right of self-defence in accordance with Article 51 of the Charter of the United Nations.<sup>447</sup>

#### *Communications concerning relations between the Republic of Cameroon and the Federal Republic of Nigeria*

By a letter dated 27 February 1996 addressed to the President of the Security Council,<sup>448</sup> the representative of Nigeria responded to claims made by the representative of Cameroon

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<sup>443</sup> S/1998/474.

<sup>444</sup> S/1998/493, S/1998/521, S/1998/552, S/1998/565, S/1999/70, S/1998/603, S/1999/134, S/1999/154, S/1999/162, S/1999/192, S/1999/226, S/1999/246, S/1999/250, S/1999/731, S/1999/949, S/1999/325.

<sup>445</sup> S/1998/508, S/1998/541, S/1998/1205, S/1999/32, S/1999/97, S/1999/143, S/1999/304, S/1999/948.

<sup>446</sup> S/1997/850.

<sup>447</sup> *Ibid.*, p.2.

<sup>448</sup> S/1996/140.

concerning the Bakassi Peninsula.<sup>449</sup> In that letter, the Cameroonian Foreign Minister alleged, inter alia, that Nigerian troops had been launching artillery attacks on Cameroonian positions and advancing further into Cameroonian territory since 3 February 1996. The representative of Nigeria informed the Council that the allegations of the Cameroonian authorities were unfounded. He claimed that the Cameroonians had instigated attacks on the Nigerian population in the Bakassi region, which led to Nigerian soldiers responding in self-defence.<sup>450</sup>

In response, the representative of Cameroon, by a letter dated 2 May 1996 addressed to the President of the Security Council,<sup>451</sup> stated that if Nigeria persisted in its aggression and continued to seize Cameroonian territory, Cameroon reserved the right to exercise, at any time and using any means it deemed necessary, its right of self-defence in order to safeguard its sovereignty and territorial integrity.<sup>452</sup>

*Letter dated 20 August 1998 from the Permanent Representative of the United States of America to the President of the Security Council*

By a letter dated 20 August 1998 addressed to the President of the Security Council,<sup>453</sup> the representative of the United States of America stated that in accordance with Article 51 of the Charter of the United Nations, he wished to report that his Government had exercised its right of self-defence in responding to a series of armed attacks against United States embassies and United States nationals. Furthermore, he stated that in response to those terrorist attacks, the United States had acted pursuant to the right of self-defence confirmed by Article 51 of the Charter of the United Nations.<sup>454</sup>

*Letter dated 26 January 1998 from the Permanent Representative of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council*

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<sup>449</sup> S/1996/125, Letter dated 22 February 1996 addressed to the President, from the Minister of Foreign Affairs.

<sup>450</sup> Ibid., p.2.

<sup>451</sup> S/1996/330.

<sup>452</sup> Ibid., p.3.

<sup>453</sup> S/1998/780

<sup>454</sup> Ibid., p.1.

By a letter dated 26 January 1998 addressed to the President of the Security Council,<sup>455</sup> the representative of the Libyan Arab Jamahiriya claimed that Israel had received from the United States the first two of the 25 F-15 fighters. He stated that the aforementioned delivery of combat aircraft was part of the unlimited military support that the United States provided to Israel in order to enable it to maintain its military superiority in the region. In this regard, he noted that the delivery of the F-15 fighters confirmed Libya's right of self-defence under Article 51 of the Charter of the United Nation.<sup>456</sup>

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<sup>455</sup> S/1998/70.

<sup>456</sup> Ibid., p.2.