

Chapter XI

Consideration of the provisions of Chapter VII of the Charter

Contents

	<i>pages</i>
Introductory note.....	4
Part I. Determination of threat to the peace, breach of the peace, or act of aggression in accordance with Article 39 of the Charter	5
A. Decisions relating to Article 39	6
B. Discussion relating to Article 39	14
Part II. Provisional measures to prevent the aggravation of a situation in accordance with Article 40 of the Charter	40
A. Decisions relating to Article 40	41
B. Discussion relating to Article 40	49
Part III. Measures not involving the use of armed force in accordance with Article 41 of the Charter	50
A. Decisions relating to Article 41	50
B. Discussion relating to Article 41	68
Part IV. Other measures to maintain or restore international peace and security in accordance with Article 42 of the Charter	103
A. Decisions relating to Article 42	103
B. Discussion relating to Article 42	107
Part V. Decisions and deliberations having relevance to Articles 43 to 47 of the Charter	129
A. Decisions relating to Article 43	132
B. Discussions relating to Article 43	139
C. Decisions relating to Article 44	145
D. Discussions relating to Article 44	147
E. Decisions relating to Articles 46-47	149
F. Discussions relating to Articles 46-47	150
Part VI. Obligations of Member States under Article 48 of the Charter	153
A. Obligations arising pursuant to the Council's decisions adopted in accordance with Article 41	154
B. Obligations arising pursuant to the Council's decisions	157

	adopted in accordance with Article 42	
Part VII.	Obligations of Member States under Article 49 of the Charter	161
	A. Calls for mutual assistance in the implementation of decisions adopted under Article 41	161
	B. Calls for mutual assistance in the implementation of decisions adopted under Article 42	163
Part VIII.	Special economic problems of the nature described in Article 50 of the Charter	166
	A. Decisions relating to Article 50	167
	B. Discussions relating to Article 50	169
	C. Instances arising in the Council's subsidiary bodies	175
Part IX.	Right of self-defence in accordance with Article 51 of the Charter	177
	A. Decisions relating to Article 51	178
	B. Discussions relating to Article 51	179
	C. The invocation of the right of self-defence in other instances	197

Introductory note

This chapter deals with action taken by the Security Council with respect to threat to the peace, breach of the peace or act 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 Afghanistan, Iraq and Kuwait, as well as acts of international terrorism, the Council also adopted measures under Chapter VII of the Charter in connection with the situations in the former Yugoslavia, the Democratic Republic of the Congo, Côte d'Ivoire, Somalia, Eritrea and Ethiopia, Angola, Liberia, Sierra Leone and East Timor.

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. Parts VI and VII address, respectively, the obligations of Member States under Articles 48 and 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, as well as a section that highlights relevant excerpts of the Council's deliberations, illustrating the Council's practice with respect to the Article(s) considered. 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

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 determining, or expressing concern, at the “existence of threats to regional and/or international peace and security” in connection with the situations in Afghanistan, Iraq and Kuwait, Eritrea and Ethiopia and Somalia as well as acts of international terrorism. The “continuance of a threat to international peace and security” was determined in connection with the situation in Bosnia and Herzegovina. In all of the above-mentioned cases, the Council adopted measures under Chapter VII of the Charter. In several other instances, in connection with the situation in Angola, the Democratic Republic of the Congo, Côte d’Ivoire, Liberia, Sierra Leone and the former Yugoslav Republic of Macedonia, the Council determined “new or continuing threats to international peace and security in the region”.

In connection with its consideration of thematic issues, the Council also identified generic threats to peace and security. In a number of decisions, the Council recognized and expressed concern at a wide range of non-traditional threats that “may constitute a threat to international peace and security”, such as: the deliberate targeting of civilian populations, including children, in armed conflicts; the widespread violations of international humanitarian and human rights law in situations of armed conflict; and the HIV/AIDS pandemic. The Council also expressed its concern over the threat posed by the proliferation of small arms, light weapons and mercenary activities in areas of conflict.

Several issues regarding the interpretation of Article 39 and the determination of threats to the peace arose during the Council's debates, mainly focusing on the threats constituted by the situations in Afghanistan and Iraq. Substantial discussion also emerged over non-traditional concepts of threats to the peace.

Section A outlines the decisions of the Council in which determinations were made regarding the existence or continuance 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.

A. Decisions relating to Article 39

1. The situation in Afghanistan

By a statement of the President dated 7 April 2000,¹ the Council members reiterated their grave concern at the continuing Afghan conflict as “a serious and growing threat to regional and international peace and security”.² They condemned the use of the Afghan territory for the sheltering and training of terrorists and planning of terrorist acts, and reaffirmed their conviction that the suppression of international terrorism was essential for the maintenance of international peace and security.³ They further condemned attacks and planned attacks by terrorists affiliated with Osama bin Laden, which constituted “a continuing threat to the international community”.⁴

By resolution 1333 (2000) of 19 December 2000, the Council reaffirmed its conviction that the suppression of international terrorism was essential for the maintenance of international peace and security.⁵ It determined that the failure of the Taliban authorities in Afghanistan to respond to the demands of the Council constituted “a threat to international peace and security”.⁶

¹ S/PRST/2000/12.

² *Ibid.*, para. 2.

³ *Ibid.*, para. 13.

⁴ *Ibid.*, para. 14.

⁵ Resolution 1333 (2000), eighth preambular para.

⁶ *Ibid.*, fifteenth preambular para. By a number of subsequent resolutions, the Council reaffirmed its determination that the situation in Afghanistan continued to constitute “a threat to international peace and security”. See resolutions 1363 (2001), 1386 (2001), 1413 (2002), 1444 (2002), and 1510 (2003).

2. The situation in Bosnia and Herzegovina

By resolution 1305 (2000) of 21 June 2000, while reaffirming its commitment to the political settlement of the conflicts in the former Yugoslavia and the Peace Agreement, the Council determined that the situation in the region continued to constitute “a threat to international peace and security”.⁷

3. The situation between Iraq and Kuwait

By resolution 1441 (2002) of 8 November 2002, the Council recognized the threat that Iraq’s non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles posed to “international peace and security”.⁸ It deplored the fact that Iraq had not provided “an accurate, full, final and complete disclosure [...] of all aspects of its weapons programmes”.⁹ It further deplored Iraq’s repeated obstruction of access by the United Nations Special Commission (UNSCOM) and the International Atomic Energy Agency (IAEA), as well as the absence of international monitoring, inspection and verification of weapons of mass destruction and ballistic missiles. It also deplored the Government of Iraq’s failure to comply with its “commitments [...] with regards to terrorism” and to “end repression of its civilian population”.¹⁰ By resolution 1483 (2003) of 22 May 2003, the Council determined that the situation in Iraq, although improved, continued to constitute “a threat to international peace and security”.¹¹ This determination was reiterated by the Council in two subsequent resolutions adopted on 16 October 2003 and 24 November 2003, respectively.¹²

4. Threats to international peace and security caused by terrorist acts

⁷ Resolution 1305 (2000), eleventh preambular para. By a number of subsequent resolutions, the Council reiterated its determination that the situation in the region continued to constitute “a threat to international peace and security”. See resolutions 1357 (2001), 1423 (2002), and 1491 (2003).

⁸ Resolution 1441 (2002), third preambular para.

⁹ *Ibid.*, sixth preambular para.

¹⁰ *Ibid.*, ninth preambular para.

¹¹ Resolution 1483 (2003), penultimate preambular para.

¹² Resolutions 1511 (2003) and 1518 (2003).

By resolution 1368 (2001) of 12 September 2001, the Council condemned the terrorist attacks of 11 September 2001 in New York, Washington, D.C. and Pennsylvania, and regarded such attacks, like any act of international terrorism, as “a threat to international peace and security”.¹³ By its subsequent resolution 1373 (2001) of 28 September 2001, the Council reaffirmed that such acts constituted a “threat to international peace and security”.¹⁴

By resolution 1377 (2001) of 12 November 2001, the Council declared that acts of international terrorism constituted “one of the most serious threats to international peace and security in the twenty-first century” and “a challenge to all States and to all of humanity”.¹⁵ It stressed that acts of and the financing, planning, preparation and support for international terrorism were contrary to the purposes and principles of the Charter of the United Nations.¹⁶ It also underlined that acts of terrorism “threaten[ed] the social and economic development of all States and undermine[d] global stability and prosperity”.¹⁷

In a number of subsequent resolutions, the Council condemned the bomb attacks in Bali (Indonesia) on 12 October 2002, the taking of hostages in Moscow (Russian Federation) on 23 October 2002, the terrorist bomb attack at the Paradise Hotel in Kikambala (Kenya) on 28 November 2002, the bomb attack in Bogota (Colombia) on 7 February 2003, the terrorist acts in Iraq during August-October 2003, the bomb attacks in Istanbul (Turkey) on 15 and 20 November 2003, as well as other terrorist attacks in various countries, and regarded such acts, “like any act of international terrorism,” as “a threat to international peace and security”.¹⁸

5. The situation in Angola

¹³ Resolution 1368 (2001), para. 1.

¹⁴ Resolution 1373 (2001), third preambular para.

¹⁵ Resolution 1377 (2001), third and fourth preambular paras.

¹⁶ *Ibid.*, sixth preambular para.

¹⁷ *Ibid.*, seventh preambular para. By resolutions 1390 (2002), 1455 (2003), and 1456 (2003), the Council reaffirmed that acts of international terrorism constituted “a threat to international peace and security”.

¹⁸ See, for example, resolutions 1438 (2002), 1440 (2002), 1450 (2002), 1465 (2003), 1511 (2003) and 1516 (2003).

By resolution 1295 (2000) of 18 April 2000, the Council determined that the continuing conflict in Angola constituted “a threat to international peace and security in the region”.¹⁹

6. The situation in the Democratic Republic of the Congo

By resolution 1291 (2000) of 24 February 2000, the Council noted with concern the illegal exploitation of natural resources in the Democratic Republic of the Congo (DRC) and the potential consequences of these actions on the conflict, and reiterated its call for the withdrawal of foreign forces. It therefore determined that the situation in the DRC constituted “a threat to international peace and security in the region”.²⁰ By resolution 1304 (2000) of 15 June 2000, the Council expressed its deep concern and outrage at renewed fighting between Ugandan and Rwandan forces in the DRC.²¹ By this resolution and a number of subsequent ones, it determined that the situation in the DRC continued to constitute “a threat to international peace and security in the region”.²²

By resolution 1484 (2003) of 30 May 2003, the Council determined that the situation in the Ituri region and in Bunia in particular constituted a threat to the peace process in the DRC and “to the peace and security in the Great Lakes region”.²³

7. The situation in Côte d’Ivoire

By resolution 1464 (2003) of 4 February 2003, the Council noted the existence of a challenge to the stability of Côte d’Ivoire and determined that threats to stability in Côte d’Ivoire constituted “a threat to international peace and security in the region”.²⁴

¹⁹ Resolution 1295 (2000), penultimate preambular para. The Council reaffirmed that the situation in Angola constituted a threat to international peace and security in the region by resolutions 1336 (2001), 1348 (2001), 1374 (2001), and 1404 (2002).

²⁰ Resolution 1291 (2000), nineteenth preambular para.

²¹ Resolution 1304 (2000), seventeenth preambular para.

²² Resolutions 1332 (2000), 1341 (2001), 1355 (2001), 1376 (2001), 1399 (2002), 1417 (2002), 1457 (2003), and 1468 (2003).

²³ Resolution 1484 (2003), eighth preambular para. By its subsequent resolutions 1493 (2003) and 1501 (2003), the Council reiterated that the situation in the DRC continued to constitute “a threat to international peace and security in the region”.

²⁴ Resolution 1464 (2003), seventh preambular para. By subsequent resolutions, the Council reiterated that the situation in Côte d’Ivoire constituted a threat to international peace and security in the region. See resolutions 1479 (2003), ninth preambular para., and 1514 (2003), eleventh preambular para.

8. The situation in Liberia

In a statement by the President dated 13 December 2002, the Council expressed its concern at the situation in Liberia and the threat it constituted to “international peace and security in the region,” as a result of the activities of the Government of Liberia and the continuing internal conflict in the country. The Council noted that the failure of the Government of Liberia, other States and other non-State actors to respect the Council’s measures threatened the peace process in Sierra Leone and the stability of the entire West African region.²⁵

By resolution 1478 (2003) of 6 May 2003, the Council expressed its serious concern at the evidence that the Government of Liberia continued to breach the measures imposed by the Council, particularly through the acquisition of arms. The Council determined that the active support provided by the Government of Liberia to armed rebel groups in the region, including to rebels in Côte d’Ivoire and former combatants of the Revolutionary United Front (RUF) who continued to destabilize the region, constituted “a threat to international peace and security in the region”.²⁶

By resolutions 1497 (2003) of 1 August 2003 and 1509 (2003) of 19 September 2003, the Council determined that the situation in Liberia constituted “a threat to international peace and security,” to “stability in West Africa” and “to the peace process for Liberia”.²⁷

By resolution 1521 (2003) of 22 December 2003, the Council determined that the proliferation of arms and armed non-State actors, including mercenaries, in the subregion continued to constitute “a threat to international peace and security in West Africa, in particular to the peace process in Liberia”.²⁸

9. The situation in Sierra Leone

By resolution 1289 (2000) of 7 February 2000, although noting the progress being made towards settling the conflict in Sierra Leone, the Council determined that the

²⁵ S/PRST/2002/36, para. 2.

²⁶ Resolution 1478 (2003), thirteenth preambular para.

²⁷ Resolutions 1497 (2003), eighth preambular para., and 1509 (2003), twenty-first preambular para.

²⁸ Resolution 1521 (2003), eighth preambular para.

situation in the country continued to constitute “a threat to international peace and security in the region”.²⁹

By resolution 1343 (2001) of 7 March 2001, the Council determined that the active support provided by the Government of Liberia to armed rebel groups in neighbouring countries, in particular its support for RUF in Sierra Leone, constituted “a threat to international peace and security in the region”.³⁰

By resolution 1446 (2002) of 4 December 2002, the Council noted with concern that the situation in Liberia remained “a threat to security in Sierra Leone, especially the diamond-mining areas, and to other countries in the region” and reaffirmed that “the situation in the region continued to constitute a threat to international peace and security in the region”.³¹

10. The situation between Eritrea and Ethiopia

By resolution 1297 (2000) of 12 May 2000, following the outbreak of renewed fighting between Eritrea and Ethiopia, the Council noted that the situation between the two countries constituted “a threat to peace and security” and stressed that renewed hostilities constituted “an even greater threat to the stability, security and economic development of the subregion”.³²

By resolution 1298 (2000) of 17 May 2000, following the continuation of fighting between Eritrea and Ethiopia, the Council deplored the loss of human lives and regretted the diversion of resources to the conflict and its effects on the regional food crisis and general humanitarian situation of the civilian populations of the two States. It stressed

²⁹ Resolution 1289 (2000), seventh preambular para. By a number of subsequent resolutions, the Council reaffirmed its determination that the situation in Sierra Leone continued to constitute “a threat to international peace and security in the region”. See resolutions 1306 (2000), 1315 (2000), 1385 (2001), 1389 (2002), and 1400 (2002). In a statement by the President dated 3 November 2000, Council members expressed their concern at the fragile situation in Sierra Leone and the related instability in the wider subregion. They condemned the continued cross-border attacks along the border area of Guinea, Liberia and Sierra Leone, and stressed that only through a comprehensive regional approach could security and stability be restored. See S/PRST/2000/31.

³⁰ Resolution 1343 (2001), ninth preambular para. The Council reaffirmed this determination in its subsequent resolution 1408 (2002), eleventh preambular para.

³¹ Resolution 1446 (2002), ninth preambular para. In a statement by the President dated 13 December 2002, in connection with the situation in Liberia, the Council reiterated that the failure of the Government of Liberia, other States and other non-State actors to respect the Council’s measures threatened the peace process in Sierra Leone and the stability of the entire West African region. See S/PRST/2002/836, para. 2.

³² Resolution 1297 (2000), ninth and tenth preambular paras.

that the hostilities constituted “an increasing threat to the stability, security and economic development of the subregion,” and determined that the situation constituted “a threat to regional peace and security”.³³

11. The situation in Somalia

By resolution 1474 (2003) of 8 April 2003, noting with serious concern that the continued flow of weapons and ammunition supplies to Somalia from other countries was “undermining peace and security and the political efforts for national reconciliation in Somalia,” the Council determined that the situation in the country constituted “a threat to international peace and security in the region”.³⁴

12. Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council

By two consecutive statements by the President dated 7 and 16 March 2001 respectively, the Council members condemned the continuing extremist violence in the former Yugoslav Republic of Macedonia and stated that these acts constituted “a threat to the stability and security of the entire region”.³⁵ By resolution 1345 (2001) of 21 March 2001, the Council condemned extremist violence, including terrorist activities, in certain parts of the former Yugoslav Republic of Macedonia and certain municipalities in southern Serbia, Federal Republic of Yugoslavia. It noted that such violence had support from ethnic Albanian extremists outside those areas and constituted “a threat to the stability and security of the wider region”.³⁶

13. The situation in East Timor

³³ Resolution 1298 (2000), twelfth and thirteenth preambular paras. In a subsequent statement by the President dated 15 May 2001, Council members expressed their intent to take appropriate measures if the situation again threatened regional peace and security, and urged the parties to work to achieve stability in the Horn of Africa. See S/PRST/2001/14.

³⁴ Resolution 1474 (2003), fifth and seventh preambular paras. This determination was reiterated by resolution 1519 (2003).

³⁵ S/PRST/2001/7, para. 3, and S/PRST/2001/8, para. 8.

³⁶ Resolution 1345 (2001), para. 1.

By resolution 1410 (2002) of 17 May 2002, the Council reaffirmed “its previous resolutions on the situation in East Timor, in particular resolution 1272 (1999) of 25 October 1999”, by which it determined that the continuing situation in East Timor constituted a threat to peace and security.³⁷ The Council also noted the “existence of challenges to the short- and long-term security and stability of an independent East Timor” and determined that ensuring the security of the boundaries of East Timor and preserving its internal and external stability were necessary “for the maintenance of peace and security in the region”.³⁸

14. Protection of civilians in armed conflict

By resolution 1296 (2000) of 19 April 2000, the Council noted that the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict “may constitute a threat to international peace and security,” and reaffirmed its readiness to consider such situations and, where necessary, to adopt appropriate steps.³⁹

15. The responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations

By resolution 1308 (2000) of 17 July 2000, the Council expressed its concern at the extent of the HIV/AIDS pandemic worldwide and, in particular, at the severity of the crisis in Africa. It recognized that the spread of HIV/AIDS could have a uniquely devastating impact on all sectors and levels of society and stressed that, if unchecked, “may pose a risk to stability and security”.⁴⁰

16. Role of the Security Council in the prevention of armed conflicts

By resolution 1366 (2001) of 30 August 2001, the Council expressed serious concern over the “threat to peace and security caused by the illicit trade in and the

³⁷ Resolution 1410 (2002), first preambular para.

³⁸ *Ibid.*, fifteenth preambular para.

³⁹ Resolution 1296 (2000), para. 5.

⁴⁰ Resolution 1308 (2000), eleventh preambular para.

excessive and destabilizing accumulation of small arms and light weapons in areas of conflict and their potential to exacerbate and prolong armed conflict”.⁴¹

17. Children and armed conflict

By resolution 1314 (2000) of 11 August 2000, the Council noted that the deliberate targeting of civilian populations or other protected persons, including children, and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law, including that relating to children, in situations of armed conflict might “constitute a threat to international peace and security”, and in this regard reaffirmed its readiness to consider such situations and, where necessary to adopt appropriate steps.⁴²

B. Discussions relating to Article 39

1. The situation in Afghanistan

At its 4251st meeting, on 19 December 2000, the Council adopted resolution 1333 (2000) by which it reaffirmed that the suppression of international terrorism was essential for the maintenance of international peace and security and determined that the failure of the Taliban authorities to respond to the demands of the Council constituted “a threat to international peace and security”.⁴³ During the debate, several speakers expressed their condemnation of the Taliban’s refusal to abide by Council decisions and their continuing harboring of terrorists and support for terrorist activities.⁴⁴ The representative of the United States stated that the continuing support for terrorists by the Taliban, and in particular for Osama bin Laden, remained “a threat to international peace and security”.⁴⁵ The representative of Afghanistan argued that the resolution did not adequately deal with the threat of terrorism emanating from Afghanistan and that the Council needed to

⁴¹ Resolution 1366 (2001), fourteenth preambular para.

⁴² Resolution 1314, para. 9.

⁴³ Resolution 1333 (2000), fourteenth preambular para.

⁴⁴ S/PV.4251, p. 5 (the Netherlands); p. 6 (United Kingdom); p.6 (France); pp. 6-7 (Ukraine); pp. 7-8 (United States); p. 9 (Canada); and p. 9 (Russian Federation).

⁴⁵ *Ibid.*, p. 7.

address the problem of Afghanistan in its entirety. He claimed that even though the draft clearly showed that outside elements were responsible for terrorist activities, it did not deal with “Pakistan’s well-known aggression in Afghanistan” which posed a “threat to regional security” and hampered “development and cooperation in the region”. He concluded that such acts constituted flagrant violations of the Charter and should be considered by the Council “under Chapter VII, Articles 39-42”.⁴⁶

At the resumption of the 4414th meeting, on 13 November 2001, the representative of the Islamic Republic of Iran noted that in the past the international community had taken “lightly” the threat to international peace and security posed by Afghanistan, situation which had changed with the attacks of 11 September 2001.⁴⁷ Similarly, the representative of India invited the Council to consider whether it had responded adequately to the challenge posed to international peace and security by international terrorism emanating from Taliban-held Afghanistan and those who supported it.⁴⁸

At the 4774th meeting, on 17 June 2003, the representative of France invited the Council to “do its share” in tackling the drug production and trafficking from Afghanistan, which posed “a serious threat to international peace and security”, among the ranks of terrorism, arms proliferation and organized crime.⁴⁹ The representative of Angola concurred that the illicit traffic in drugs posed “a security threat to the whole region”.⁵⁰

2. The situation between Iraq and Kuwait

Discussions in connection with the situation between Iraq and Kuwait mainly focused on two issues with regards to the determination of threats to the peace: whether

⁴⁶ Ibid., pp. 2-3. At the 4325th meeting, on 5 June 2001, the representative of Afghanistan reiterated his conviction that “Pakistan’s direct involvement in Afghanistan and its aggressive policies in the region” posed a threat to international peace and security, which the Council had failed to address “properly”. See S/PV.4325, p. 16. By identical letters dated 14 September 2001 addressed to the Secretary-General and to the President of the Security Council, the representative of Afghanistan proposed “the convening of a special meeting of the Security Council to address the presence of foreign military and armed personnel in Afghanistan” and its “threat to regional and international peace and security”. See S/2001/870.

⁴⁷ S/PV.4414 (Resumption 1), pp. 8-9.

⁴⁸ Ibid., p. 16.

⁴⁹ S/PV.4774, p. 9.

⁵⁰ Ibid., p. 23.

the non-compliance by Iraq with Council decisions posed a threat to the peace, and whether the United States-led military action against Iraq constituted a threat to the peace.

(a) Non-compliance by Iraq with Council decisions

By a letter dated 9 August 2000 addressed to the Secretary-General,⁵¹ the representative of Kuwait requested the Council to urge the Government of Iraq to desist from its maintenance of an aggressive attitude that posed a “threat to security and stability in Kuwait and the region”.⁵²

By a letter dated 24 September 2002 addressed to the President of the Security Council,⁵³ the representative of the United Kingdom highlighted the “violent and aggressive” nature of Iraq’s regime and conveyed his Government’s concern over Iraq’s possession of weapons of mass destruction. He asserted that the existing Iraqi regime posed a “unique danger” and that there was an urgent need for a further concentrated international effort under United Nations auspices to ensure that Iraq’s weapons of mass destruction could no longer pose an “international threat”.⁵⁴

At its 4625th meeting, on 16 October 2002, the Council discussed the situation between Iraq and Kuwait in light of Iraq’s non-compliance with the Council’s resolutions. During the debate, while discussing the possibility of adopting a new resolution that would clearly set out the functions and powers of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) for a new round of inspections of Iraq, several speakers expressed their concern at the potential or existing threat to international peace and security posed by Iraq’s non-compliance with its disarmament obligations.⁵⁵

⁵¹ S/2000/791.

⁵² The representative of Kuwait reiterated his demand by subsequent letters dated 17 January 2001 (S/2001/53) and 1 October 2001 (S/2001/925), respectively, addressed to the President of the Security Council and the Secretary-General.

⁵³ S/2002/1067.

⁵⁴ *Ibid.*, p. 1.

⁵⁵ S/PV.4625 (Resumption 1), pp. 9-11 (Australia); pp. 11-13 (Chile); and pp. 20-21 (Nigeria); S/PV.4625 (Resumption 2), pp. 19-20 (Albania); S/PV.4625 (Resumption 3), pp. 4-5 (Mexico); pp. 7-9 (United Kingdom); pp. 10-12 (United States); pp. 12-14 (France); and pp. 25-28 (Mauritius).

At its 4644th meeting, on 8 November 2002, the Council unanimously adopted resolution 1441 (2002) by which it recognized the threat to international peace and security posed by Iraq's non-compliance with Council resolutions and proliferation of weapons of mass destruction and long-range missiles.⁵⁶ In the ensuing debate, the representative of Mexico stated that the resolution reflected the concerns of Member States in the Council about the need for Iraq to comply with its disarmament obligations and to renounce to weapons of mass destruction. He added that, should Iraq fail to comply, the Council's response should be defined on the basis of its own determination as to the existence of a threat to international peace and security. He proposed that the Security Council's response be based on two clearly differentiated stages. The first stage would entail a credible process to evaluate Iraq's true military capability and its intention to use its weapons or the ability of terrorist groups to have access to them. The second stage would entail the agreement of the Security Council and other States involved on the measures to be adopted, if the evaluation process detected a threat to international peace and security.⁵⁷

By a letter dated 25 November 2002 addressed to the Secretary-General,⁵⁸ the Minister for Foreign Affairs of Iraq referred to resolution 1441 (2002) and defined it as an attempt to "impose a forced interpretation of the concept of a threat to international peace and security, as referred to in Article 39 of the Charter of the United Nations, in order to justify United States aggression against Iraq". He went on to argue that the non-compliance was "unsupported by any evidence" and that the Council was attempting to construct a "broad new interpretation of international peace and security" by considering any interference by Iraq with inspection activities as a threat. He declared that this interpretation ran counter to the principles set out in Article 39 of the Charter.⁵⁹

At its 4701st meeting, on 5 February 2003, the Council reviewed Iraq's progress in fulfilling its disarmament obligations under Security Council resolution 1441 (2002). The Council also discussed the information presented by the United States regarding Iraq's possession of weapons of mass destruction, as well as Iraq's involvement in

⁵⁶ Resolution 1441 (2002), third preambular para.

⁵⁷ S/PV.4644, p. 6.

⁵⁸ S/2002/1294.

⁵⁹ *Ibid.*, pp. 2-11.

terrorism.⁶⁰ During the following debate, several speakers expressed the view that the situation in Iraq and the country's non-compliance with the Council resolutions regarding disarmament posed "a threat to international peace and security".⁶¹ Others noted that, while Iraq might be in violation of Council resolutions, more evidence and inspections were required before further judgments and decisions could be made.⁶² By contrast, the representative of Iraq maintained that his country posed no threat to regional or international peace and security since it had disarmed.⁶³

At its 4707th meeting, on 14 February 2003, the Council heard reports from the Executive Chairman of UNMOVIC and the Director-General of IAEA. Several representatives asserted that the situation in Iraq continued to pose a threat to international peace and security and that Iraq was in "material breach" of its Council obligations to disarm.⁶⁴ A number of speakers reaffirmed that, given the progress made by inspections and an increased degree of cooperation by Iraq, the inspections should be further pursued.⁶⁵ The representatives of France and the Russian Federation observed that since the 4701st meeting, held on 5 February 2003, the situation had ameliorated as a result of the greater effectiveness of inspections.⁶⁶ Given the absence of evidence of any forbidden activity, the representative of Iraq declared that some members of the Council were merely alleging, without any proof, the threat posed by Iraq to international peace and security.⁶⁷

At the 4709th meeting, on 18 February 2003, several speakers reiterated the view that Iraq's possession of weapons of mass destruction and non-compliance with its

⁶⁰ By a letter dated 19 February 2003 addressed to the Secretary-General, the representative of Iraq deemed that the United States' assessment given at the Council's 4701st meeting was an attempt to mislead the Security Council and the United Nations by producing "false allegations and proof to serve as a cover for the American aggression" that was planned against Iraq. See S/2003/203.

⁶¹ S/PV.4701, pp. 2-17 (United States); pp. 18-20 (United Kingdom); pp. 28-29 (Spain); and pp. 31-32 (Angola).

⁶² Ibid., pp. 17-18 (China); pp. 20-22 (Russian Federation); pp. 23-25 (France); pp. 30-31 (Chile); pp. 34-36 (Guinea); and pp. 36-37 (Germany).

⁶³ Ibid., pp. 37-39.

⁶⁴ S/PV.4707, pp. 16-17 (Spain); pp. 17-18 (United Kingdom); pp. 18-21 (United States); and pp. 28-29 (Bulgaria).

⁶⁵ Ibid., pp. 9-11 (Syrian Arab Republic); pp. 13-15 (Chile); pp. 22-23 (Mexico); pp. 24-25 (Pakistan); pp. 25-27 (Cameroon); and pp. 27-28 (Angola);

⁶⁶ Ibid., pp. 11-13 (France); and pp. 21-22 (Russian Federation).

⁶⁷ Ibid., pp. 30-32.

obligations posed a threat to international peace and security.⁶⁸ A number of representatives opined that the links between States who possessed weapons of mass destruction and terrorists constituted a threat to international peace and security.⁶⁹ The representative of Jordan insisted that the Security Council should find a peaceful solution to the crisis, and that the sanctions regime had proven to be of “unprecedented effectiveness”. He called for the sanctions regime to continue and, “if necessary, be enhanced, as its failure would constitute a threat to international peace and security”.⁷⁰ By contrast, other speakers stated that there was no evidence that the situation in Iraq constituted such a threat.⁷¹

By a letter dated 24 February 2003 addressed to the President of the Security Council,⁷² the representatives of France, Germany and the Russian Federation stated that while suspicions remained, no evidence had been given that Iraq still possessed weapons of mass destruction or capabilities in that field.⁷³

At its 4714th meeting, on 7 March 2003, the Council debated the latest reports presented by the Executive Chairman of UNMOVIC and the Director-General of the IAEA. Following the presentation, several speakers maintained that Iraq was not fully and unconditionally cooperating with the inspections regime and therefore remained in breach of its obligations.⁷⁴ Several representatives expressed the belief that, as a result of the progress made in the inspections regime, the inspections process needed to be continued and strengthened.⁷⁵ The representatives of the Syrian Arab Republic and Iraq noted that the latter had extensively cooperated with the inspectors and that there was no

⁶⁸ S/PV.4709, p. 24 (Japan); S/PV.4709 (Resumption 1), p. 7 (Republic of Korea); pp. 18-19 (Singapore); p. 20 (Nicaragua); p. 21 (Albania); pp. 27-28 (Iceland); pp. 28-29 (Canada); pp. 29-30 (Georgia); pp. 31-32 (Serbia and Montenegro); and p. 32 (Latvia).

⁶⁹ S/PV.4709, pp. 31-32 (Argentina); S/PV.4709 (Resumption 1), pp. 17-18 (former Yugoslav Republic of Macedonia); and p. 21 (Albania).

⁷⁰ *Ibid.*, p. 16.

⁷¹ *Ibid.*, pp. 5-7 (Iraq); and pp. 25-26 (League of Arab States).

⁷² S/2003/214.

⁷³ *Ibid.*, pp. 2-3.

⁷⁴ S/PV.4714, pp. 14-17 (United States); pp. 23-25 (Spain); pp. 25-27 (United Kingdom); and pp. 30-31 (Bulgaria).

⁷⁵ *Ibid.*, pp. 9-10 (Germany); pp. 17-18 (Russian Federation); pp. 18-21 (France); pp. 21-22 (China); pp. 22-23 (Chile); and pp. 27-28 (Angola).

evidence of its non-compliance.⁷⁶ Similarly, the representative of Pakistan contended that the situation posed “no imminent threat to international peace and security”.⁷⁷

At its 4717th meeting, on 11 March 2003, the Council continued its debate on Iraq’s compliance and implementation of relevant Security Council resolutions. A number of speakers reiterated that Iraq was in material breach of its obligations and that the inspections could not continue indefinitely.⁷⁸ The representative of Australia noted that the Security Council should recognize that threats to international security had changed and had to deal with the threat caused by the borderless scourge of international terrorism and the risk of illicit trade in prohibited and dual use items. He therefore added that it was urgent that the Council confronted this risk by disarming nations that built those weapons and defied international non-proliferation norms. He concluded that failure to do so would “both increase the immediate threat and set a precedent that we will all come to regret”.⁷⁹ Other speakers reaffirmed that, given the progress achieved, the inspection regime needed to be maintained and provided with more time and resources to fulfill its mandate.⁸⁰ The representative of South Africa stressed that the Council’s reaction in the Iraqi case would define “a new international order” that would determine how the international community addressed conflict situations in the future.⁸¹

By a letter dated 18 March 2003 addressed to the President of the Security Council,⁸² the representatives of Portugal, Spain, the United Kingdom, and the United States underlined that Saddam Hussein’s “brutal regime” still posed “a grave threat to the security of its region and the world”. They noted that Saddam Hussein had defied the resolutions of the Security Council and demanded the disarmament of his weapons of mass destruction.⁸³

⁷⁶ Ibid., pp. 10-12 (Syrian Arab Republic); and pp. 34-36 (Iraq).

⁷⁷ Ibid., pp. 32-33.

⁷⁸ S/PV.4717, pp. 27-28 (Singapore); pp. 28-29 (Republic of Korea); and pp. 30-31 and (Albania); S/PV.4717 (Resumption 1), p. 2 (Japan); p. 4 (Philippines); pp. 9-10 (El Salvador); pp. 10-11 (Georgia); pp. 11-12 (Bolivia); pp. 16-17 (former Yugoslav Republic of Macedonia); p. 22 (Peru); and pp. 22-23 (Colombia).

⁷⁹ S/PV.4717, p. 18.

⁸⁰ S/PV.4717, pp. 6-8 (Malaysia); pp. 9-10 (League of Arab States); pp. 11-13 (Algeria); pp. 13-14 (Egypt); pp. 14-15 (India); pp. 16-17 (Islamic Republic of Iran); pp. 19-21 (Canada); pp. 21-22 (Switzerland); pp. 24-25 (New Zealand); and pp. 29-30 (Indonesia).

⁸¹ Ibid, pp. 8-9.

⁸² S/2003/335.

⁸³ Ibid., pp. 2-3.

At its 4721st meeting, on 19 March 2003, the Council heard briefings from the Executive Chairman of UNMOVIC and the Director-General of the IAEA. During the discussion, the representative of Spain recalled that resolution 1441 (2002) recognized that Iraq's non-compliance with the Council's resolutions constituted a threat to international peace and security and decided that Iraq had failed to comply with the demands imposed by the international community. He further noted that, despite the Council having met several times to examine successive reports of the inspectors, Iraq had still not complied with the will of the international community, and, therefore, "peace and international security continue[d] unassured".⁸⁴ By contrast, the representative of the Russian Federation argued that there was no evidence that Iraq posed such a threat. He stated that the Council, as the body bearing primary responsibility for the maintenance of international peace and security, fully shouldered its obligations by ensuring the deployment of international inspectors to Iraq and by establishing the conditions necessary for their activities. He added that if there were indisputable facts demonstrating that there was a direct threat from the territory of Iraq to the security of the United States, his country would be prepared to use "the entire arsenal of measures provided under the United Nations Charter to eliminate such a threat". However, he concluded, the Security Council was not currently in possession of such evidence.⁸⁵

At its 4726th meeting, on 26 and 27 March 2003, the Council discussed the humanitarian situation in Iraq following the United States-led military action against Iraq. Several speakers maintained that Iraq had been in material breach of Council resolutions,⁸⁶ while others explicitly referred to this non-compliance as a threat to international peace and security.⁸⁷ On the contrary, a number of representatives deemed

⁸⁴ S/PV.4721, p. 16.

⁸⁵ *Ibid.*, pp. 7-8.

⁸⁶ S/PV.4726, pp. 14-16 (Kuwait); pp. 24-25 (Poland); pp. 25-26 (Singapore); pp. 36-37 (Argentina); pp. 38-39 (Japan); pp. 39-40 (former Yugoslav Republic of Macedonia); p. 41 (Uzbekistan); p. 46 (Iceland); and pp. 47-48 (Mongolia); S/PV.4726 (Resumption 1), pp. 6-7 (El Salvador); pp. 8-9 (Micronesia); pp. 11-12 (East Timor); p. 15 (Ethiopia); pp. 25-26 (United States); pp. 29-30 (Spain); and pp. 31-32 (Bulgaria).

⁸⁷ S/PV.4726, pp. 26-27 (Australia); and pp. 42-43 (Nicaragua); S/PV.4726 (Resumption 1), pp. 13-14 (Uganda); and pp. 22-24 (United Kingdom).

that Iraq did not pose a threat to international peace and security.⁸⁸ Several speakers pointed out that “pre-emptive” strikes had no foundation in international law.⁸⁹

(b) United States-led military action against Iraq

By identical letters dated 10 July 2000 addressed to the Secretary-General and to the President of the Security Council,⁹⁰ the representative of Iraq informed the Council that the United States supported and financed “terrorist activities aimed at overthrowing the national regime and fomenting civil war in Iraq”, which constituted “a threat to the security and stability of a sovereign State and could also undermine security and stability in the region”.

By a series of letters addressed to the Secretary-General and the President of the Security Council between November 2000 and October 2001,⁹¹ the representative of Iraq declared that the acts of “piracy” by the United States naval forces stationed in the Arabian Gulf region represented “a serious threat to regional and international peace and security”. By another series of letters from November 2000 to October 2001 addressed to the Secretary-General and to the President of the Security Council,⁹² the representative of Iraq renewed his call to the countries participating in the “aggression” against Iraq to desist forthwith from internationally prohibited acts that violated Iraq’s sovereignty, placed its security and integrity in grave danger and posed a direct and serious threat to international peace and security.

At its 4625th meeting, on 16 October 2002, the Council convened in response to the request by South Africa to hold an emergency meeting to voice concern regarding “the possibility that the United Nations is now being asked to consider proposals that

⁸⁸ S/PV.4726, pp. 21-23 (Cuba); and pp. 33-34 (Islamic Republic of Iran); S/PV.4726 (Resumption 1), pp. 26-28 (Russian Federation).

⁸⁹ S/PV.4726, pp. 6-8 (Malaysia); pp. 13-14 (Yemen); pp. 31-32 (Viet Nam); and pp. 33-34 (Islamic Republic of Iran).

⁹⁰ S/2000/687.

⁹¹ S/2000/1110, S/2001/32, S/2001/776, and S/2001/929.

⁹² S/2000/1128, S/2000/1155, S/2000/1165, S/2000/1208, S/2000/1229, S/2000/1248, S/2001/18, S/2001/37, S/2001/79, S/2001/116, S/2001/122, S/2001/141, S/2001/161, S/2001/168, S/2001/227, S/2001/248, S/2001/297, S/2001/316, S/2001/369, S/2001/536, S/2001/554, S/2001/620, S/2001/638, S/2001/650, S/2001/692, S/2001/726, S/2001/756, S/2001/773, S/2001/807, S/2001/816, S/2001/846, S/2001/850, S/2001/878, S/2001/927, S/2001/954, and S/2001/995.

open up the possibility of a war against a Member State”.⁹³ The representative of the Republic of Yemen expressed his Government’s “grave concern” over the approach to “invade Iraq” and insisted that it constituted a “direct threat to the security and stability of the region”.⁹⁴ The representative of Lebanon declared that the Arab leaders expressed their total rejection of an attack on Iraq and noted that a threat to the peace and security of “any Arab State” constituted “a threat to the national security of all Arab States”.⁹⁵

By identical letters dated 2 December 2002 addressed to the Secretary-General and to the President of the Security Council,⁹⁶ the representative of Iraq stated that the “imposition and enforcement of the two illegal no-flight zones” was a “tyrannical act and a flagrant breach of the Charter of the United Nations and the established principles of international law” and constituted “a serious threat to regional and international peace and security”. He also expressed the hope that the Secretary-General would “draw the attention of the Security Council” to the nature of the aggression and to the danger it posed “to peace and security in the region and throughout the world”.⁹⁷

At its 4709th meeting, on 18 February 2003, the Council debated Iraq’s compliance with the inspections regime regulated by resolution 1441 (2001). During the discussion, the representative of Iraq declared that the United States and the United Kingdom were continuing “their feverish efforts to launch an aggressive war” against Iraq. He held the belief that this would constitute “a dangerous precedent in international relations”, threatening the credibility of the United Nations and exposing international and regional peace and security to “grave dangers”.⁹⁸ The representative of the League of Arab States indicated that the Arab Summit “categorically rejected any attack against Iraq or any threat against the peace and security of any Arab State” and that such “an attack was considered a threat to collective Arab national security”.⁹⁹ The representative of Yemen concurred that the inspection and monitoring regime should continue and that a military “invasion” would lead to “the further destruction of Iraq and the further

⁹³ See S/2002/1132 and S/PV.4625, p. 4.

⁹⁴ *Ibid.*, pp. 13-15.

⁹⁵ S/PV.4625 (Resumption 2), p. 9.

⁹⁶ S/2002/1327.

⁹⁷ *Ibid.*, p. 2. See also S/2002/1439, S/2003/14, and S/2003/107.

⁹⁸ S/PV.4709, p. 5.

⁹⁹ *Ibid.*, p. 26.

destabilization of the region”, which in turn would “constitute a threat to peace and security throughout the world”.¹⁰⁰

At the 4717th meeting, on 12 March 2003, the representative of Nigeria expressed his Government’s “deep concern over the consequences that the escalating situation regarding Iraq could have on international peace and security, in particular the adverse effects its mishandling could have on Africa”. He appealed to the international community not to take any “precipitate action” against Iraq which would be “detrimental to international peace and security”.¹⁰¹

By two letters dated 9 and 14 March 2003 respectively, addressed to the Secretary-General,¹⁰² the representative of Iraq noted that the military-action by joint American-British forces against Iraq posed a “threat to international peace and security”. By a subsequent letter dated 21 March 2003 addressed to the Secretary-General,¹⁰³ the representative of Iraq qualified as “regrettable and reprehensible” that the Secretary-General had not condemned or denounced the aggression against Iraq and had not addressed any letter to the Council, under Article 99 of the Charter, to bring to its attention that such an aggression constituted “the gravest threat to international peace and security” and threatened “the fate and future of the United Nations in its very core”.¹⁰⁴

By a letter dated 24 March 2003 addressed to the President of the Security Council,¹⁰⁵ the Permanent Observer of the League of Arab States, following the commencement of the United States-led military action against Iraq, transmitted a resolution of the League of Arab States which described the “aggression” against Iraq to be “a violation of the Charter of the United Nations and the principles of international law, a departure from international legitimacy, a threat to international peace and security and an act of defiance against the international community and world public opinion”.¹⁰⁶

At its 4726th meeting, on 26 March 2003, the Council debated the situation in Iraq following the United States-led military action. During the debate, several representatives deplored the negative impact the joint American-British military intervention in Iraq

¹⁰⁰ Ibid., p. 30.

¹⁰¹ S/PV.4717 (Resumption 1), p. 6.

¹⁰² S/2003/296 and S/2003/319.

¹⁰³ S/2003/358.

¹⁰⁴ Ibid., p. 3. See also S/2003/389.

¹⁰⁵ S/2003/365.

¹⁰⁶ Ibid., p. 3.

would have on various aspects of regional and international peace, security and stability.¹⁰⁷ The representative of the United Republic of Tanzania underlined that, according to Article 39 of the Charter, only the Council could determine the existence of a breach of the peace or aggression and decide on an action. He warned that the “decision to go to war without the authority of the Council” would not only weaken the United Nations, but also had “the potential to endanger international peace and security”.¹⁰⁸

3. The situation in Bosnia and Herzegovina

At its 4568th meeting, on 10 July 2002, the Council discussed the legal responsibility of peacekeepers to be prosecuted for crimes committed during peacekeeping operations. During the debate, the representative of the United States expressed his Government’s concern over the legal exposure of its peacekeepers under the Rome Statute of the International Criminal Court (ICC), which had come into force on 1 July 2002. He urged the Council, based on Article 16 of the Rome Statute, to address the concerns of some Member States about the implications of the Rome Statute for countries that were not parties to it, but which wanted to continue to contribute peacekeepers to United Nations missions. He further emphasized that Article 16 of the Rome Statute enabled the Security Council to “make a renewable request to the ICC not to commence or proceed with investigations or prosecutions for a 12-month period on the basis of a Chapter VII resolution”.¹⁰⁹ Several speakers objected to this proposition by arguing that this was not a viable course of action since the ICC’s activities did not constitute a threat to international peace and security, and hence there was no basis for a resolution under Chapter VII, such an invocation of Chapter VII being *ultra vires*.¹¹⁰

4. The situation in the Middle East, including the Palestinian question

¹⁰⁷ S/PV.4726, pp. 4-6 (Iraq); pp. 6-8 (Malaysia); pp. 8-9 (League of Arab States); pp. 10-11 (Algeria); pp. 12-13 (Egypt); pp. 13-14 (Yemen); pp. 16-18 (Libyan Arab Jamahiriya); pp. 19-20 (Indonesia); pp. 31-32 (Viet Nam); pp. 33-34 (Islamic Republic of Iran); pp. 35-36 (Lebanon); p.36 (Tunisia); and pp. 46-47 (Lao People’s Democratic Republic); S/PV.4726 (Resumption 1), pp. 7-8 (Saudi Arabia); pp. 14-15 (Sri Lanka); pp. 26-28 (Russian Federation); p. 28 (China); and pp. 32-33 (Syrian Arab Republic).

¹⁰⁸ S/PV.4726 (Resumption 1), pp. 9-10.

¹⁰⁹ S/PV.4568, p. 10.

¹¹⁰ S/PV.4568, p. 3 (Canada); p. 5 (New Zealand); p. 16 (Jordan); and p. 20 (Liechtenstein); S/PV.4568 (Resumption 1), p. 2 (Fiji); p. 7 (Samoa); and p. 9 (Germany).

Between 2001 and 2003, at various meetings of the Council, Member States characterized unfolding developments in the Middle East as threats to peace and security.

At its 4438th meeting, on 14 December 2001, the Council discussed the situation in the Middle East in light of the Israeli Government's announcement that it would sever all contact with the Palestinian Authority and its elected leader, President Yasser Arafat. In their statements, a number of representatives characterized the situation in the Middle East as "a threat to international peace and security".¹¹¹ The representative of Israel, however, objected to a draft resolution sponsored by Egypt and Tunisia,¹¹² on grounds that it failed to recognize "terror as the primary obstacle to peace and security in the region".¹¹³

At its 4506th meeting, on 3 April 2002, the Council discussed the situation in the Middle East after a military action taken by Israeli forces in the Palestinian territory. During the debate, the representative of Tunisia declared that Israel's "excessive recourse to military force" did not guarantee its security and could lead to "further deterioration and to a flare-up in the region as a whole, thereby creating a clear threat to international peace and security".¹¹⁴ The representative of Chile condemned "both the horrific suicide attacks against the civilian population of Israel" and the military actions taken against Palestinian cities, labeling these events as "an affront to the civilized conscience of mankind and a threat to international peace and security".¹¹⁵ The representative of Malaysia, speaking on behalf of the Organization of the Islamic Conference (OIC), pointed out that the "Israeli terrorist actions and aggressive practices" posed "a threat to international peace and security" and urged the Council to take action under Chapter VII of the Charter.¹¹⁶ The representative of Morocco indicated that Israel had carried out the "collective murder of Palestinians" and that the situation had reached a level of danger that was "threatening international peace and security".¹¹⁷ Similarly, the representative of Oman appealed to the Security Council "to fully shoulder its responsibilities" and "face

¹¹¹ S/PV.4438, p. 11 (Jamaica); p. 12 (Singapore); p. 14 (Colombia); and p. 21 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People).

¹¹² S/2001/1199.

¹¹³ S/PV.4438, p. 20.

¹¹⁴ S/PV.4506, pp. 6-7.

¹¹⁵ *Ibid.*, p. 15.

¹¹⁶ *Ibid.*, p. 23.

¹¹⁷ S/PV.4506 (Resumption 1), p. 9.

up to the situation as a threat to international peace and security”.¹¹⁸ The representative of Bahrain warned that if “the Israeli occupation of the Palestinian and other occupied territories” did not end, international peace and security would be “constantly threatened”.¹¹⁹ The representative of the Sudan concurred indicating that Israel’s “real intensions” were to “push the region towards a total conflagration whose consequences, though as yet unknown, would definitely threaten international peace and security”.¹²⁰ Along the same lines, the representative of Mauritius expressed his fear that an “Arab world in turmoil would have dire consequences for international peace and security, with eventual disastrous effects on the global economy”.¹²¹

At its 4510th meeting, on 8 April 2002, the Council convened to discuss the situation in the Middle East after the Israeli occupation of Ramallah. The representative of Mauritius pointed out that Israel’s refusal to withdraw from the city constituted “a clear threat to international peace and security” and should not be tolerated by the Council.¹²² Similarly, the representative of Tunisia declared that the “appalling Israeli conduct” amounted to a clear threat to international peace and security.¹²³

At its 4515th meeting, on 18 April 2002, the Council discussed the situation in the Middle East in connection with a number of Israeli military actions in the Palestinian territory. The representative of Brazil urged the Council to assert its legitimate authority in dealing with the “grave threat to international peace and security”.¹²⁴ The representative of the Sudan called for “the dispatch of a multinational force to Palestine”, in the hope that it would “receive support and be implemented rapidly by the Council in its quest to maintain international peace and security”.¹²⁵

At its 4552nd meeting, on 13 June 2002, the Council discussed the situation in the Palestinian territories after Israel reoccupied Ramallah on 10 June 2002. During the debate, the representative of Ireland noted that “injustice, instability, insecurity”, and “a frozen political landscape” posed an “unacceptable and continuous threat to the region

¹¹⁸ Ibid., p. 14.

¹¹⁹ Ibid., pp. 15-16.

¹²⁰ Ibid., pp. 16-17.

¹²¹ Ibid., p. 36.

¹²² S/PV.4510, p. 10.

¹²³ Ibid., p. 19.

¹²⁴ S/PV.4515, p. 21.

¹²⁵ Ibid., p. 29.

and to international peace and security” and stressed the international community’s “clear responsibility and duty to move beyond rhetoric and language”.¹²⁶

At its 4588th meeting, on 24 July 2002, the Council debated the situation in the Middle East in light of the latest Israeli attacks in the northern part of Gaza City. During the discussion, the representative of Saudi Arabia called upon the international community “to shoulder its responsibility” with regard to that grave situation, which “threatened international peace and security”, and “to move immediately and resolutely to confront Israel with its responsibilities in conformity with relevant Security Council resolutions and international conventions”.¹²⁷ The representatives of the League of Arab States and Iraq concurred that the Israeli military actions represented “a threat to international peace and security”.¹²⁸

At its 4614th meeting, on 23 September 2003, the Council was briefed by the Secretary-General on the developments of the road map to achieve a permanent settlement of the Israeli-Palestinian conflict. During the debate, the representative of Saudi Arabia emphasized that the Security Council had a responsibility to face the “injustice, denial of rights and threats to international peace and security stemming from Israeli practices”.¹²⁹

5. The situation in Africa: the impact of AIDS on peace and security in Africa

At its 4087th meeting, on 10 January 2000, the Council discussed the impact of HIV/AIDS on peace and security in Africa. The President of the Security Council (United States) highlighted that this was the first time the Council was discussing a health issue as a “security threat” which constituted a step away from the Council’s classic security agenda. He added that when a single disease threatened “everything, from economic strength to peacekeeping”, a security threat of the greatest magnitude was clearly to be faced.¹³⁰ Taking the floor in his national capacity, the representative of the United States asserted that HIV/AIDS was “a global aggressor”, “one of the most devastating threats

¹²⁶ S/PV.4552 (Resumption 1), p. 2.

¹²⁷ S/PV.4588, p. 8.

¹²⁸ *Ibid.*, p. 27 (League of Arab States); and p. 27 (Iraq).

¹²⁹ S/PV.4614 (Resumption 1), p. 17.

¹³⁰ S/PV.4087, pp. 2-4.

ever to confront the world community”.¹³¹ Following these opening remarks, in the ensuing debate, the majority of speakers acknowledged that HIV/AIDS posed a threat to security, economic, social, and political development in Africa and elsewhere. They highlighted that human security encompassed not only traditional threats to security but also humanitarian concerns.¹³²

6. The responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations

At its 4172nd meeting, on 17 July 2000, the Council heard a statement by the Executive Director of the Joint United Nations Programme on HIV/AIDS and adopted resolution 1308 (2000) by which it expressed its concern at the extent of the HIV/AIDS pandemic worldwide, and in Africa in particular. By the same resolution, the Council also recognized that the HIV/AIDS pandemic was exacerbated by conditions of violence and instability and, if unchecked, could pose a risk to stability and security.¹³³ During the debate, the majority of speakers acknowledged that the HIV/AIDS pandemic was a global threat which had a security dimension and saluted the fact that the Council was addressing peacekeeping in the context of the HIV/AIDS issue, under the mantle of maintaining international peace and security.¹³⁴

At its 4259th meeting, on 19 January 2001, the Council continued its discussion of the threat posed by HIV/AIDS to international peace and security. During the debate, several representatives commended the Council for acknowledging the importance of the

¹³¹ Ibid., pp. 5-8.

¹³² Ibid., pp. 13-15 (Namibia); pp. 15-17 (Bangladesh); and pp. 19-21 (Uganda); S/PV.4087 (Resumption 1), p. 2 (the Netherlands); pp. 2-4 (Argentina); pp. 4-5 (Canada); pp. 5-6 (Malaysia); pp. 7-8 (United Kingdom); pp. 8-9 (Tunisia); pp. 9-10 (Ukraine); pp. 10-12 (Mali); pp. 12-13 (Jamaica); pp. 14-15 (Algeria); pp. 15-16 (Portugal); pp. 17-18 (Cape Verde); pp. 18-19 (Norway); pp. 19-20 (South Africa); pp. 20-21 (Japan); pp. 23-24 (Brazil); pp. 24-25 (Republic of Korea); pp. 26-27 (Djibouti); pp. 27-28 (Mongolia); pp. 28-29 (Indonesia); p. 32 (Italy); pp. 32-33 (New Zealand); pp. 33-34 (Zambia); pp. 34-35 (Cyprus); pp. 35-36 (Nigeria); pp. 36-38 (Australia), pp. 38-39 (Ethiopia); pp. 39-40 (Democratic Republic of the Congo); and pp. 40-41 (Senegal).

¹³³ Resolution 1308 (2000), tenth and eleventh preambular paras.

¹³⁴ S/PV.4172, pp. 4-7 (United States); pp. 7-8 (Namibia); p. 8 (Argentina); pp. 8-9 (Tunisia); pp. 9-10 (United Kingdom); pp. 10-11 (Canada); pp. 11-13 (Malaysia); pp. 13-14 (Ukraine); pp. 14-15 (Mali); pp. 15-16 (Netherlands); pp. 16-17 (Bangladesh); pp. 17-18 (Jamaica); pp. 18-19 (France); pp. 19-21 (Zimbabwe); pp. 21-22 (Indonesia); pp. 22-24 (Malawi); and pp. 24-25 (Uganda).

HIV/AIDS epidemic for peace and security, particularly in Africa.¹³⁵ The representative of Sweden emphasized that the spread of HIV/AIDS was not just a health issue, but also “a human development issue, an equity and equality issue and a significant threat to international peace and security” and therefore required the coordinated response of United Nations bodies, including the Security Council.¹³⁶ The representative of India pointed out that if the Council believed HIV/AIDS was a threat to international peace and security, it had “not only the right but also the duty, bearing in mind its primary responsibility for the maintenance of international peace and security, to rule that Article 73 of the TRIPS Agreement must be invoked to urgently provide affordable medicines that help in the treatment of the epidemic”.¹³⁷

At its 4859th meeting, on 17 November 2003, the Council reviewed the implementation of resolution 1308 (2000). During the debate, several speakers reiterated the threat posed by the HIV/AIDS pandemic to international peace and security.¹³⁸

7. Maintaining peace and security: humanitarian aspects of issues before the Security Council

At its 4109th meeting, on 9 March 2000, the Council discussed the humanitarian consequences of conflict and the threat posed by humanitarian crises for peace and security. During the debate, several speakers emphasized that violations of international humanitarian law and human rights could pose a threat to international peace and security.¹³⁹ Other representatives acknowledged the connection between the humanitarian aspects of the issues before the Council and the maintenance of international peace and security.¹⁴⁰ The representative of the Russian Federation warned that, while the prevention and settlement of humanitarian crises had a direct bearing on the maintenance

¹³⁵ S/PV.4259, pp. 15-16 (Norway); and pp. 20-22 (Jamaica); S/PV.4259 (Resumption 1), pp. 3-4 (Ireland); and pp. 12-14 (India).

¹³⁶ S/PV.4259, p. 20.

¹³⁷ S/PV.4259 (Resumption 1), p. 14.

¹³⁸ S/PV.4859, pp. 10-12 (United States); pp. 16-17 (Bulgaria); and pp. 17-18 (France).

¹³⁹ S/PV.4109, pp. 6-7 (France); and pp. 8-10 (Jamaica); S/PV.4109 (Resumption 1), pp. 2-5 (Portugal); pp. 6-7 (Norway); and pp. 16-18 (Brazil).

¹⁴⁰ S/PV.4109, pp. 4-6 (Canada); pp. 7-8 (United States); pp. 10-11 (Malaysia); pp. 11-12 (Mali); pp. 12-13 (Tunisia); pp. 17-18 (Ukraine); pp. 18-19 (United Kingdom); and pp. 19-20 (Argentina); S/PV.4109 (Resumption 1), pp. 5-6 (South Africa); pp. 10-11 (Austria); pp. 15-16 (Bulgaria); and pp. 18-19 (Islamic Republic of Iran).

of regional and international stability, such violations could not be ended by taking actions that violated the Charter.¹⁴¹ The representative of Belarus acknowledged the “human factor” as a central link in all activities to establish international peace and security, but stated that the concept of “humanitarian intervention”, which entailed ending war with war or stopping human rights violations with anti-humanitarian actions, was “illogical”.¹⁴² The representative of Norway endorsed the view that international law violations could threaten international peace and security and necessitated “the attention and action of the Security Council”, but insisted that the threat or use of force in international relations should have a legal basis in the Charter. He pointed out that, while a difficult humanitarian situation could be part of the Council’s assessment of whether a situation was a threat to international peace and security, it was not “in itself a sufficient legal basis for the threat or use of force”.¹⁴³ The representative of Pakistan cautioned that such instances had to be assessed on a case-by-case basis and that the Council had to “be clear and certain about the purpose, scope and legitimacy” of international preventive actions in all humanitarian emergencies. He elaborated that for the humanitarian action to have general acceptance, it had to have legitimacy under international law and had to be taken in conformity with the Charter, after a breach or threat to international peace and security had been established. He also noted that a clear distinction had to be made between humanitarian crises as a result of wars, conflicts or disputes which, “by their very nature”, constituted threats to international peace and security, and other human rights issues.¹⁴⁴ The representatives of Brazil and the Islamic Republic of Iran urged the Council to take action only in the cases that posed real threats to international peace and security.¹⁴⁵

8. Protection of civilians in armed conflict

At its 4130th meeting, on 19 April 2000, the Council unanimously adopted resolution 1296 (2000) by which it noted that the deliberate targeting of civilian populations or other protected persons as well as the systematic, flagrant, and widespread

¹⁴¹ S/PV.4109, p. 15.

¹⁴² *Ibid.*, pp. 22-23.

¹⁴³ S/PV.4109 (Resumption 1), p. 6.

¹⁴⁴ *Ibid.*, p. 9.

¹⁴⁵ *Ibid.*, p. 17 (Brazil); and pp. 18-19 (Islamic Republic of Iran).

violations of international humanitarian and human rights law in situations of armed conflict “may constitute a threat to international peace and security” and reaffirmed its readiness to consider such situations and, where necessary, “to adopt appropriate steps”.¹⁴⁶ During the debate preceding the adoption of the resolution, several representatives were in agreement that violence against civilians could pose a threat to international peace and security and that in such cases the Council would have to act.¹⁴⁷ The representative of China warned that attempts to “politicize humanitarian concerns” and interfere in other countries’ internal affairs would run counter to the principles of the Charter, and that the Council should treat the issue of civilians in armed conflict on a “case-by-case basis”.¹⁴⁸

At its 4312th meeting, on 23 April 2001, the Council heard a briefing by the Deputy Secretary-General who introduced the Secretary-General’s latest report on the protection of civilians in armed conflict.¹⁴⁹ During the ensuing debate, the representative of the Russian Federation urged States to report “more quickly” to the Council any information on situations that could create a threat to international peace and security, including cases of deliberate refusal to provide safe and unhindered access for humanitarian personnel to civilians in need and gross violations of human rights, “where they may constitute a threat to international peace and security”.¹⁵⁰ The representative of Colombia urged the Council to consider the protection of civilians as one of the matters for which it was responsible when dealing with a situation that threatened international peace and security.¹⁵¹ The representative of Yemen pointed out that the humanitarian dimension of conflicts had acquired special significance because of its potential “human tragedy and danger” at the national, regional and international levels, and its impact on international peace and security.¹⁵²

At its 4492nd meeting, on 15 March 2002, the Council continued its discussion on the protection of civilians in situations of armed conflict. In his statement, the

¹⁴⁶ Resolution 1296 (2000), para. 5.

¹⁴⁷ S/PV.4130, pp. 10-11 (France); and pp. 15-16 (United Kingdom); S/PV.4130 (Resumption 1), p. 5 (Republic of Korea).

¹⁴⁸ S/PV.4130, p. 14.

¹⁴⁹ S/2001/331.

¹⁵⁰ S/PV.4312, p. 22.

¹⁵¹ *Ibid.*, p. 25.

¹⁵² S/PV.4312 (Resumption 1), p. 10.

representative of China noted that apart “from the Palestinian-Israeli conflict, many armed conflicts around the world” continued “to endanger the safety and security of innocent civilians and thus threaten regional and international peace and security”.¹⁵³

At its 4660th meeting, on 10 December 2002, the Council discussed the most recent report of the Secretary-General on the protection of civilians.¹⁵⁴ During the discussion, the representative of the Russian Federation reiterated his call to Member States to “act more promptly in conveying appropriate information to the Council” about situations that might pose a threat to the maintenance of international peace and security, including gross violations of the rights of civilians, if these posed a threat to international peace and security.¹⁵⁵ The representative of Chile stressed that the “adverse humanitarian consequences” generated by armed conflicts constituted a threat to international peace and security.¹⁵⁶

9. Role of the Security Council in the prevention of armed conflicts

At its 4174th meeting, on 20 July 2000, the Council discussed its role in the prevention of armed conflicts. The representative of the United States reiterated his Government’s “concerns about the illicit trafficking of small arms and light weapons and the threat their uncontrolled proliferation and destabilizing accumulations” continued to pose to international peace and security.¹⁵⁷ The representative of the Netherlands pointed out that, while “the overwhelming majority of present-day conflicts” on the Council’s agenda were of an internal and domestic nature, at the same time, they threatened international peace and security.¹⁵⁸ The representative of Pakistan noted that an effective early-warning system should be developed with a view to identifying prospective conflict areas “without any discrimination” and that the international community must exercise “great care, caution and circumspection” in labeling situations as being threats to international peace and security.¹⁵⁹

¹⁵³ S/PV.4492, pp. 11-12.

¹⁵⁴ S/2002/1300.

¹⁵⁵ S/PV.4660, p. 28.

¹⁵⁶ S/PV.4660 (Resumption 1), p. 11.

¹⁵⁷ S/PV.4174, p. 5.

¹⁵⁸ *Ibid.*, p. 11.

¹⁵⁹ S/PV.4174 (Resumption 1), pp. 4-5.

At its 4334th meeting, on 21 June 2001, the Council considered the latest report of the Secretary-General on the prevention of armed conflict.¹⁶⁰ During the debate, the representative of Jamaica noted that the world was being constantly challenged by an increasing number of “deadly conflicts”, which threatened international peace and security as well as the social, political and economic well-being of the global community.¹⁶¹

10. Children and armed conflict

At its 4176th meeting, on 26 July 2000, the Council considered the latest report of the Secretary-General on children and armed conflict.¹⁶² During the debate, several speakers expressed the view that the threat posed by armed conflict to children was a serious one that had consequences for the maintenance of international peace and security and its humanitarian aspects.¹⁶³ By contrast, the representative of India stated that, while this was a serious matter, there was no evidence that the plight of children in armed conflict represented a threat to international peace and security, and that the violation of the Convention on the Rights of the Child could not automatically be construed as a threat to international peace and security.¹⁶⁴

At its 4422nd meeting, on 20 November 2001, the Council discussed another report by the Secretary-General on ways to alleviate the plight of children in war situations.¹⁶⁵ In his statement, the representative of France emphasized that finding a way to improve the situation of children in armed conflicts posed a moral responsibility for the Council to take up a challenge that, under the Charter, constituted “a threat to peace and security”.¹⁶⁶

11. Women and peace and security

¹⁶⁰ S/2001/574.

¹⁶¹ S/PV.4334, p. 8.

¹⁶² S/2000/712.

¹⁶³ S/PV.4176, pp. 9-10 (Argentina); pp. 15-16 (Malaysia); pp. 20-22 (Ukraine); pp. 22-23 (Tunisia); and pp. 26-27 (Jamaica); S/PV.4176 (Resumption 1), pp. 9-11 (Mozambique); pp. 16-18 (United Republic of Tanzania); pp. 34-35 (Sierra Leone).

¹⁶⁴ S/PV.4176 (Resumption 1), pp. 18-20.

¹⁶⁵ S/2001/852.

¹⁶⁶ S/PV.4422 (Resumption 1), p. 7.

At its 4208th meeting, on 24 October 2000, the Council discussed the importance of integrating a gender perspective into the context of maintaining peace and security, as well as of considering the role of women in promoting peace and security. In his statement, the Executive Director of the United Nations Development Fund for Women (UNIFEM) stated that the topic of women and peace and security was a salient one especially considering that the “intertwining forces of conflict and gender inequality” threatened international peace and security.¹⁶⁷ The representative of Egypt noted that discussing “the conditions of women under occupation” would “prove the Council’s seriousness” when tackling humanitarian matters that might threaten international peace and security.¹⁶⁸ The representative of Australia felt that such a thematic debate contributed to “new ways of thinking about what constituted threats to international peace and security” and how to deal with them.¹⁶⁹

12. Small arms

By a letter dated 25 July 2001 addressed to the President of the Security Council,¹⁷⁰ the representative of Colombia noted that it had been generally recognized in the international community that the excessive accumulation and circulation of, and the illicit trade in, small arms and light weapons posed “a global threat to peace and security”, contributed to the intensification of conflict and violence, and constituted an obstacle to peace efforts.¹⁷¹

At its 4355th meeting, on 2 August 2001, the Council discussed the impact of the proliferation of small arms on international peace and security. During the debate, several speakers emphasized that the issue of small arms and light weapons could not be viewed in isolation from its peace and security perspective.¹⁷² The representative of the Russian Federation expressed his concern with regard to the fact that the uncontrolled spread of

¹⁶⁷ S/PV.4208, p. 7.

¹⁶⁸ S/PV.4208 (Resumption 1), p. 5.

¹⁶⁹ *Ibid.*, p. 26.

¹⁷⁰ S/2001/732.

¹⁷¹ *Ibid.*, p. 2.

¹⁷² S/PV.4355, pp. 8-10 (Bangladesh); pp. 12-14 (Russian Federation); pp. 16-18 (Mauritius); and pp. 19-20 (Mali); S/PV.4355 (Resumption 1), pp. 2-3 (Mexico); pp. 10-12 (South Africa); pp. 16-18 (the Sudan); pp. 22-24 (Pakistan); pp. 27-29 (Costa Rica); pp. 29-30 (Belarus); and pp. 32-34 (Bulgaria).

small arms and light weapons could “pose a threat to regional peace and security”.¹⁷³ The representative of Mauritius reminded the Council that, in Africa, the “heavily armed negative forces” had been undermining peace and security for decades.¹⁷⁴ This point was reinforced by the representative of the Sudan who declared that Africa was the continent most affected by the threat of the proliferation of small arms and light weapons in the hands of rebel groups, thereby “threatening peace and security in the continent”.¹⁷⁵ The representative of Costa Rica drew attention to the fact that, in the hands of national armies, small arms were “a threat to international peace and security” and, in the hands of extremist groups or despotic regimes, light weapons became “a threat to internal peace and security”.¹⁷⁶ The representative of Thailand emphasized that what made the problem of small arms an even greater threat to “international and national peace and stability” was its linkage with other problems of national and international concern, such as drug-trafficking, money-laundering and cross-border terrorism. He further pointed out that when small arms were in the hands of these groups of people the threat to international and regional peace and stability increased manifold.¹⁷⁷

At its 4623rd meeting, on 11 October 2002, the Council was briefed by the Under-Secretary-General for Disarmament Affairs on the illicit proliferation and trade of arms and light weapons and their effects on international peace and security. During the debate, a number of representatives commented on the fact that the proliferation and illicit trade of small arms posed a threat to international peace and security.¹⁷⁸ Other speakers emphasized that, while the issue affected every region in the world, small arms were particularly prevalent in Africa.¹⁷⁹

13. Proliferation of small arms and light weapons and mercenary activities: threats to peace and security in West Africa

¹⁷³ S/PV.4355, p. 12.

¹⁷⁴ Ibid., p. 18.

¹⁷⁵ S/PV.4355 (Resumption 1), p. 16.

¹⁷⁶ Ibid., pp. 27.

¹⁷⁷ Ibid., pp. 36.

¹⁷⁸ S/PV.4623 (Resumption 1), p. 2 (Cameroon); and p. 9 (Philippines).

¹⁷⁹ S/PV.4623, pp. 5-7 (Mauritius); pp. 9-11 (Mexico); pp. 11-12 (Guinea); pp. 12-13 (United States); and pp. 18-19 (France); S/PV.4623 (Resumption 1), pp. 2-3 (Cameroon); pp. 4-5 (Egypt); and pp. 29-30 (Namibia).

At its 4720th meeting, on 18 March 2003, the Council unanimously adopted resolution 1467 (2003) by which it expressed its concern at the impact of the proliferation of small arms and light weapons on peace and security in West Africa. During the debate, several speakers remarked that the proliferation of small arms, light weapons and mercenaries was a contributing factor to the conflicts and instability in West Africa.¹⁸⁰ Other representatives stated that the proliferation of light weapons and the use of mercenaries in West Africa posed either a threat to international peace and security,¹⁸¹ or a threat to peace and security in the sub-region as a whole.¹⁸² The representative of Cameroon asserted that the proliferation of such weapons in numerous regions of the world, particularly in West Africa, constituted “a grave threat to peace, security, stability, reconciliation and sustainable development at the individual, local, national, regional and international levels”.¹⁸³ The representative of the Syrian Arab Republic added that this issue posed a threat to peace and security not only in West Africa, but also in other parts of the world.¹⁸⁴

14. Wrap-up discussion on the work of the Security Council for the current month. Conflicts in Africa: Security Council missions and United Nations mechanisms to promote peace and security

At its 4766th meeting, on 30 May 2003, the Council held a wrap-up meeting to discuss Security Council missions and United Nations mechanisms to promote peace and security in Africa. During the debate, the representative of the Russian Federation pointed out that armed groups were frequently manipulated from abroad and became “an extension of the interests of neighbouring countries”. He declared that this phenomenon had become “regional in nature”, and posed a threat to international peace and security.¹⁸⁵

¹⁸⁰ S/PV.4720, pp. 12-15 (Gambia); pp. 15-16 (Angola); pp. 18-19 (Liberia); pp. 19-20 (Spain); pp. 20-21 (United Kingdom); pp. 22-24 (Senegal); pp. 24-26 (United States); and pp. 26-27 (Germany); S/PV.4720 (Resumption 1), pp. 5-6 (Russian Federation); pp. 6-7 (Mexico); pp. 11-13 (France); pp. 14-15 (Chile); pp. 16-17 (Mali); pp. 18-19 (Bulgaria); pp. 20-21 (China); pp. 23-24 (Pakistan); pp. 24-25 (Nigeria); and pp. 27-29 (Guinea).

¹⁸¹ S/PV.4720 (Resumption 1), p. 4 (Togo); and p. 10 (Burkina Faso).

¹⁸² Ibid., p. 22 (Sierra Leone).

¹⁸³ S/PV.4720, p. 17.

¹⁸⁴ S/PV.4720 (Resumption 1), p. 16.

¹⁸⁵ S/PV.4766 (Resumption 1), p. 18.

15. United Nations peacekeeping

At its 4772nd meeting, on 12 June 2003, the Council discussed the jurisdiction of the ICC to investigate or prosecute cases involving current or former peacekeeping personnel over acts or omissions relating to a United Nations operation. During the debate, several speakers voiced their concern with respect to resolution 1422 (2002), by which the Council had asked the ICC not to commence any investigation or prosecution against peacekeeping personnel from a State not a party to the Rome Statute, unless the Council decided otherwise. They pointed out that a new resolution under Chapter VII was to be passed, in the absence of any apparent threat to international peace and security, the fundamental precondition for action under Chapter VII of the Charter.¹⁸⁶

16. Justice and the rule of law: the United Nations role

At its 4833rd and 4835th meetings, on 24 and 30 September 2003 respectively, the Council discussed its responsibility to promote justice and the rule of law in its effort to maintain international peace and security. During the debate, a number of speakers recognized the relationship between the maintenance of peace and security and the promotion of the rule of law at both national and international levels.¹⁸⁷

17. Africa's food crisis as a threat to peace and security

At its 4652nd meeting, on 3 December 2002, the Council was briefed by the Executive Director of the World Food Programme (WFP) on the food crisis in Africa. During the ensuing debate, the representative of Ireland pointed out that the humanitarian situation in Southern Africa and in the Horn of Africa was “intolerable from a moral and humanitarian perspective” but also posed “a threat to international peace and security of the most fundamental nature”.¹⁸⁸

At its 4736th meeting, on 7 April 2003, the Council heard another report by Executive Director of the WFP. During the following debate, the representative of

¹⁸⁶ S/PV.4772, pp. 3-5 (Canada); pp. 7-8 (Liechtenstein); pp. 14-15 (Trinidad and Tobago); and p. 20 (the Netherlands).

¹⁸⁷ S/PV.4833, pp. 4-5 (Pakistan); pp. 9-10 (Mexico); pp. 11-12 (Bulgaria); pp. 12-13 (Guinea); pp. 14-15 (Spain); pp. 18-19 (Cameroon); pp. 20-21 (United States); and pp. 21-23 (Chile); S/PV.4835, pp. 22-23 (Philippines); pp. 23-24 (Australia); pp. 24-25 (Sierra Leone); and pp. 29-31 (Trinidad and Tobago).

¹⁸⁸ S/PV.4652, p. 9.

Cameroon declared that the food crisis in Africa was a difficult and relevant issue which posed “a threat to international peace and security”.¹⁸⁹

¹⁸⁹ S/PV.4736, p. 6.

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 recommendations 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 consideration, the Security Council did not adopt any resolution explicitly invoking Article 40. In a number of resolutions adopted under Chapter VII, the Security Council, without expressly referring to Article 40, called upon the parties to comply with certain provisional measures in order to prevent an aggravation of the situation concerned. During the period 2000-2003, types of measures that could be assumed as falling under Article 40 included the following: (a) the withdrawal of armed forces; (b) the cessation of hostilities; (c) the conclusion or observance of a ceasefire; (d) the negotiation of differences and disputes; (e) compliance with obligations under international humanitarian law; (f) the creation of the conditions necessary for unimpeded delivery of humanitarian assistance; (g) cooperation with peacekeeping efforts and humanitarian assistance. Some of the specific measures that the Council called upon the parties concerned to take are outlined in Section A. A number of Council resolutions contained warning that, in the event of failure to comply with the terms of those resolutions, the Council would meet again and consider further steps. These warnings, which might be considered as falling under Article 40, were expressed in various ways. In a number of instances, the Council warned that it would consider taking further measures if its calls were not heeded.¹⁹⁰

¹⁹⁰ See, for example, resolution 1355 (2001), para. 28.

During the Council's deliberations in the period under review there was no significant constitutional discussion regarding Article 40, but only occasional references by Member States in their statements.

A. Decisions relating to Article 40

1. The situation in the Democratic Republic of the Congo

By resolution 1291 (2000) of 24 February 2000, the Council called upon all parties in the Democratic Republic of the Congo (DRC) to ensure the safe and unhindered access of relief personnel to all those in need, and recalled that the parties should also provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel.¹⁹¹ The Council also called upon all parties to cooperate with the International Committee of the Red Cross to enable it to carry out its mandates as well as the tasks entrusted to it under the Ceasefire Agreement.¹⁹² Additionally, the Council called upon all parties to the conflict in the DRC to protect human rights and respect international humanitarian law.¹⁹³

By resolution 1304 (2000) of 16 June 2000, expressing its serious concern at the humanitarian situation and the continuation of hostilities in the country, the Council made a number of demands to the parties and others concerned. In particular, the Council demanded that: (i) the Ugandan and Rwandan forces, as well as forces of the Congolese armed opposition and other armed groups, immediately and completely withdraw from Kisangani, and called upon all parties to the Ceasefire Agreement to respect the demilitarization of the city and its environs; (ii) Uganda and Rwanda, which had violated the sovereignty and territorial integrity of the DRC, withdraw all their forces from the territory of the DRC without further delay, in conformity with the timetable of the Ceasefire Agreement and the Kampala Disengagement Plan; (iii) each phase of withdrawal completed by Ugandan and Rwandan forces be reciprocated by the other

¹⁹¹ Resolution 1291 (2000), para. 12.

¹⁹² *Ibid.*, para. 13.

¹⁹³ *Ibid.*, para. 15.

parties in conformity with the same timetable; (iv) all other foreign military presence and activity, direct and indirect, in the territory of the DRC be brought to an end in conformity with the provisions of the Ceasefire Agreement; (v) all parties abstain from any offensive action during the process of disengagement and withdrawal of foreign forces.¹⁹⁴ By the same resolution, the Council also demanded the parties to the Ceasefire Agreement to cooperate with the deployment of the United Nations Mission in the DRC (MONUC) to the areas of operation deemed necessary by the Special Representative of the Secretary-General, including by lifting restrictions on the freedom of movement of MONUC personnel and by ensuring their security.¹⁹⁵ It further demanded that all parties comply in particular with the provisions of the Ceasefire Agreement relating to the normalization of the security situation along the borders of the DRC with its neighbours.¹⁹⁶

By resolution 1341 (2001) of 22 February 2001, the Council demanded that the Ugandan and Rwandan forces, as well as all other foreign forces, withdraw from the territory of the DRC in compliance with resolution 1304 (2000) and the Ceasefire Agreement, and urged those forces to take urgent steps to accelerate this withdrawal.¹⁹⁷ The Council further demanded that all parties refrain from any offensive military action during the process of disengagement and withdrawal of foreign forces and that all armed forces and groups concerned bring an effective end to the recruitment, training and use of children in their armed forces. The Council also called upon the parties to extend full cooperation to MONUC, the United Nations Children's Fund and humanitarian organizations for speedy demobilization, return and rehabilitation of such children.¹⁹⁸

By resolution 1355 (2001) of 15 June 2001, the Council reiterated its demand to the Ugandan and Rwandan forces and all other foreign forces to withdraw from the territory of the DRC in compliance with previous Council's resolutions and the Ceasefire Agreement.¹⁹⁹ Expressing concern at recent reports of military operations in North Kivu and South Kivu, the Council called upon all parties to refrain from any offensive action

¹⁹⁴ Resolution 1304 (2000), paras. 3, 4 and 5.

¹⁹⁵ *Ibid.*, para. 8.

¹⁹⁶ *Ibid.*, para. 12.

¹⁹⁷ Resolution 1341 (2001), para. 2.

¹⁹⁸ *Ibid.*, paras. 7 and 10.

¹⁹⁹ Resolution 1355 (2001), para. 2.

during the process of disengagement and withdrawal of foreign forces.²⁰⁰ The Council also demanded that the Rassemblement Congolais pour la Démocratie (RCD) demilitarize Kisangani in accordance with resolution 1304 (2000), and that all parties respect the demilitarization of the city and its environs.²⁰¹ Finally, it demanded that all parties, including the Government of the DRC, cease immediately all forms of assistance and cooperation with all armed groups as referred to in the Ceasefire Agreement.²⁰² The Council also expressed its readiness to consider possible measures which could be imposed, in accordance with its responsibilities and obligations under the Charter, in case of failure by parties to comply fully with the present resolution and other relevant resolutions.²⁰³

By resolution 1399 (2002) of 19 March 2002, while condemning the resumption of fighting in the Moliro area and stressing that this constituted a major violation of the ceasefire, the Council demanded the immediate withdrawal of the RCD-Goma troops from the areas of Moliro and Pweto, and further demanded that all parties withdraw to the defensive positions called for in the Harare disengagement sub-plans.²⁰⁴

Welcoming the signature by the DRC and Rwanda of the Pretoria Peace Agreement on 30 July 2002, as well as the signature by the DRC and Uganda of the Luanda Agreement, by resolution 1445 (2002) of 4 December 2002, the Council called for a full cessation of hostilities involving regular forces and armed groups throughout the territory of the DRC, in particular in South Kivu and in Ituri, and also called for the cessation of all support to the armed groups as referred to in the Ceasefire Agreement. The Council also called upon all parties to provide full access to MONUC and the Third Party Verification Mission throughout the territory of the DRC, including inside all ports, airports, airfields, military bases and border crossings. By the same resolution, the Council reiterated its demand for Kisangani to be demilitarized without further delay and

²⁰⁰ Ibid., para. 4.

²⁰¹ Ibid., para. 5. By resolution 1376 (2001) of 9 November 2001, the Council reiterated its demand that Kisangani be demilitarized rapidly and unconditionally in accordance with resolution 1304 (2000). See resolution 1376 (2001), para. 3.

²⁰² Ibid., para. 6.

²⁰³ Ibid., para. 28.

²⁰⁴ Resolution 1399 (2002), paras. 3 and 4.

demanded that all parties work to the immediate full restoration of freedom of movement on the Congo river.²⁰⁵

By resolution 1468 (2003) of 20 March 2003, the Council demanded that all parties to the conflict in the DRC, and in particular in Ituri, ensure the security of civilian population and grant to MONUC and to humanitarian organizations full and unimpeded access to the populations in need.²⁰⁶

By resolution 1484 (2003) of 30 May 2003, while deploying an Interim Emergency Multinational Force in Bunia, the Council demanded that all parties to the conflict in Ituri, in particular in Bunia, cease hostilities immediately, and reiterated that international humanitarian law must be respected.²⁰⁷ It also demanded that all Congolese parties and all States in the Great Lakes region respect human rights, cooperate with the Multinational Force and with MONUC in the stabilization of the situation in Bunia. The Council further demanded that the parties provide full freedom of movement to the Force and refrain from any military activity or from any activity that could further destabilize the situation in Ituri. In this regard, the Council demanded also the cessation of all support, in particular weapons and any other military materiel, to the armed groups and militias, and further demanded that all Congolese parties and all States in the region actively prevent the supply of such support.²⁰⁸

By resolution 1493 (2003) of 28 July 2003, the Council demanded that all the parties desist from any interference with freedom of movement of United Nations personnel, and recalled that all the parties had the obligation to provide full and unhindered access to MONUC to allow it to carry out its mandate.²⁰⁹ The Council further demanded that all parties provide full access to military observers from MONUC, including in ports, airports, airfields, military bases and border crossings.²¹⁰

2. The situation in Afghanistan

²⁰⁵ Resolution 1445 (2002), para. 13.

²⁰⁶ Resolution 1468 (2003), para. 14.

²⁰⁷ Resolution 1484 (2003), para. 5.

²⁰⁸ *Ibid.*, para. 7.

²⁰⁹ Resolution 1493 (2003), para. 15.

²¹⁰ *Ibid.*, para. 19.

By a statement of the President dated 7 April 2000,²¹¹ while reiterating that the continued Afghan conflict was a serious and growing threat to regional and international peace and security, the members of the Council called upon all Afghan parties to comply with their obligations under international humanitarian law and to ensure full and unhindered access of international humanitarian assistance and personnel to all those in need.

By resolution 1333 (2000) of 19 December 2000, the Council demanded that the Taliban comply with resolution 1267 (1999) and, in particular, cease the provision of sanctuary and training for international terrorists and their organizations.²¹² The Council also demanded that the Taliban comply without further delay with the demand of the Security Council in paragraph 2 of resolution 1267 (1999) that required the Taliban to turn over Osama bin Laden to appropriate authorities.²¹³ Further, it demanded that the Taliban act swiftly to close all camps training terrorists within the territory under its control.²¹⁴ In addition, the Council called upon the Taliban to ensure the safe and unhindered access of relief personnel and aid to all those in need in the territory under their control, and underlined that the Taliban must provide guarantees for the safety, security and freedom of movement for United Nations and associated humanitarian relief personnel.²¹⁵

3. The situation in Bosnia and Herzegovina

By resolution 1305 (2000) of 21 June 2000, determining that the situation in the region continued to constitute a threat to international peace and security, the Council demanded that the parties respect the security and freedom of movement of the Stabilization Force and of other international personnel.²¹⁶

4. The situation between Iraq and Kuwait

²¹¹ S/PRST/2000/12.

²¹² Resolution 1333(2000), para. 1

²¹³ Ibid., para. 2.

²¹⁴ Ibid., para. 3.

²¹⁵ Ibid., para 13.

²¹⁶ Resolution 1305 (2000), para.15. The Council reiterated its demand that the parties respect the security and freedom of movement of the Force and other international personnel by its subsequent resolutions 1357 (2001), para.15, 1423 (2002), para.15, and 1491 (2003), para.15.

By resolution 1472 (2003) of 28 March 2003, the Council urged all parties concerned to allow full, unimpeded access by international humanitarian organizations to all people of Iraq in need of assistance, to make available all necessary facilities for their operations and to promote the safety, security and freedom of movement of United Nations and associated personnel and their assets, as well as personnel of humanitarian organizations in Iraq.²¹⁷

5. The situation in Côte d'Ivoire

By resolution 1479 (2003) of 13 May 2003, noting the existence of challenges to the stability of Côte d'Ivoire and determining that the situation in the country constituted a threat to international peace and security in the region, the Council appealed to all Ivorian political forces to implement fully and without delay the Linas-Marcoussis Agreement.²¹⁸ The Council also requested all Ivorian parties to cooperate with the Mission in the execution of its mandate as well as to ensure the freedom of movement of its personnel throughout the country and the unimpeded and safe movement of the personnel of humanitarian agencies.²¹⁹

By a statement of the President dated 13 November 2003, Council members urged all Ivorian political forces to implement fully, without delay or precondition all the provisions of the Linas-Marcoussis Agreement, as well as those of the agreement reached in Accra on 8 March 2003 (the so-called "Accra II") with a view to open, free and transparent elections being held in Côte d'Ivoire in 2005.²²⁰ In a subsequent statement by the President dated 5 December 2003, the Council members strongly underscored to all the Ivorian parties their fundamental responsibility to respect the ceasefire in accordance with the Linas-Marcoussis Agreement, and called on all the parties to refrain from any act, as well as any incitement to such acts, that could compromise the respect of the ceasefire. The Council members also reiterated their call upon all parties in Côte d'Ivoire

²¹⁷ Resolution 1472 (2003), para. 8.

²¹⁸ Resolution 1479 (2003), para. 6.

²¹⁹ *Ibid.*, para. 10.

²²⁰ S/PRST/2003/20.

and countries of the region to guarantee the safety and full access of humanitarian agencies personnel working in the field during the consolidation of the peace process.²²¹

6. The situation in Liberia

By resolution 1497 (2003) of 1 August 2003, while authorizing the establishment of a Multinational Force in Liberia, the Council called upon all Liberian parties and Member States to cooperate fully with the Multinational Force in the execution of its mandate and to respect the security and freedom of movement of the Multinational Force, as well as to ensure the safe and unimpeded access of international humanitarian personnel to populations in need in Liberia.²²²

By a statement of the President dated 27 August 2003, the Council expressed its concern at the humanitarian situation in Liberia and called upon all parties to allow full, secure and unimpeded access for humanitarian agencies and personnel. It further urged all parties to respect fully the ceasefire and to implement fully all their commitments under the Comprehensive Peace Agreement signed in Accra on 18 August 2003.²²³

By resolution 1509 (2003) of 19 September 2003, the Council demanded that the Liberian parties cease hostilities throughout Liberia and fulfill their obligations under the Comprehensive Peace Agreement and the ceasefire agreement, including cooperation in the formation of the Joint Monitoring Committee.²²⁴ The Council also called upon all parties to cooperate fully in the deployment and operations of the United Nations Mission in Liberia (UNMIL), including by ensuring the safety, security and freedom of movement of United Nations personnel, together with associated personnel, throughout Liberia.²²⁵

By the same resolution, the Council further called upon all parties to ensure, in accordance with relevant provisions of international law, the full, safe and unhindered access of relief personnel to all those in need and the delivery of humanitarian assistance, in particular to internally displaced persons and refugees.²²⁶

²²¹ S/PRST/2003/25.

²²² Resolution 1497 (2003), para. 11.

²²³ S/PRST/2003/14.

²²⁴ Resolution 1509 (2003), para. 4.

²²⁵ *Ibid.* para. 5.

²²⁶ *Ibid.*, para. 8.

By resolution 1521 (2003) of 22 December 2003, the Council urged all parties to the Comprehensive Peace Agreement to implement fully their commitments and fulfill their responsibilities in the National Transitional Government of Liberia, and not to hinder the restoration of the Government's authority throughout the country, particularly over natural resources.²²⁷

7. The situation in Sierra Leone

By resolution 1289 (2000) of 7 February 2000, determining that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region, the Council reiterated its call upon the parties to fulfill all their commitments under the Peace Agreement to facilitate the restoration of peace, stability, national reconciliation and development in Sierra Leone.²²⁸

By a statement of the President dated 13 March 2000, the members of the Council demanded that the Revolutionary United Front (RUF) end its hostile actions, release immediately and unharmed all detained United Nations and other international personnel, cooperate in establishing the whereabouts of those unaccounted for, and comply fully with the terms of the Peace Agreement signed in Lomé on 7 July 1999.²²⁹

8. The situation between Eritrea and Ethiopia

By resolution 1297 (2000) of 12 May 2000, while stressing that the situation between Eritrea and Ethiopia constituted a threat to peace and security, the Council demanded that both parties cease immediately all military action and refrain from the further use of force and further demanded the earliest possible reconvening, without preconditions, of substantive peace talks.²³⁰ The Council also called upon both parties to ensure the safety of civilian populations and to fully respect human rights and international humanitarian law.²³¹

By resolution 1298 (2000) of 17 May 2000, the Security Council demanded both parties to cease immediately all military action and refrain from the further use of force

²²⁷ Resolution 1521 (2003), para. 14.

²²⁸ Resolution 1289 (2000), para. 3.

²²⁹ S/PRST/2000/14.

²³⁰ Resolution 1297 (2000), paras. 2 and 3.

²³¹ *Ibid.*, para. 8.

as well as to withdraw their forces from military engagement and take no action that would aggravate tensions.²³² The Council also reiterated its demand to reconvene as soon as possible, without preconditions, substantive peace talks, which would conclude a peaceful definitive settlement of the conflict.²³³

B. Discussions relating to Article 40

During the Council's deliberations in the period under review, there was no significant constitutional discussion regarding Article 40. However, there were occasional references made to it or its language in order to support a specific demand relating to the question under consideration. For instance, at the 4515th meeting, held on 18 April 2002 in connection with the situation in the Middle East, including the Palestinian question, the representative of Morocco referred to Article 40 as a basis for the Council to adopt "provisional measures" to prevent the aggravation of the situation in the occupied Arab territories.²³⁴

²³² Resolution 1298 (2000), paras. 2 and 3.

²³³ *Ibid.*, para. 4.

²³⁴ S/PV.4515, p. 16.

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 imposed or modified measures under Chapter VII, of the type provided for in Article 41, against Somalia, Sierra Leone, Liberia, the Democratic Republic of the Congo (DRC), Eritrea and Ethiopia, Iraq, and Afghanistan, after having determined, in each case, the existence of a breach of the peace or a threat to the peace. During the period under consideration, the Council terminated measures imposed under Article 41 against the Sudan, Angola, the Libyan Arab Jamahiriya and the former Yugoslavia.

Section A outlines the decisions of the Security Council imposing, modifying or terminating measures under Article 41 of the Charter.²³⁵ Section B reflects the constitutional discussion in the meetings of the Council arising in connection with the adoption of some of these resolutions. It also includes salient discussions raised in the Council's deliberations with reference to general issues relating to sanctions.

A. Decisions relating to Article 41

1. Security Council resolution 1054 (1996) of 26 April 1996

(a) Termination of measures

²³⁵ See chapter V, part I, section B.

By resolution 1372 (2001) of 28 September 2001, the Council noted the steps taken by the Government of the Sudan to comply with the provisions of resolutions 1054 (1996) and 1070 (1996). It welcomed the accession of the Republic of the Sudan to the relevant international conventions for the elimination of terrorism, its ratification of the 1997 International Convention for the Suppression of Terrorist Bombing and its signing of the 1999 International Convention for the Suppression of Financing of Terrorism.²³⁶ It therefore decided to lift with immediate effect the diplomatic, travel and aviations measures imposed against the Sudan by resolutions 1054 (1996) and 1070 (1996).²³⁷

2. Letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America

(a) Termination of measures

By resolution 1506 (2003) of 12 September 2003, the Council welcomed the letter dated 15 August 2003 from the delegation of the Libyan Arab Jamahiriya, recounting steps taken by the Government to comply with resolutions 731 (1992), 748 (1992), 883 (1993) and 1192 (1998).²³⁸ The Council therefore decided to lift with immediate effect the aviation, travel, arms, diplomatic, representation, financial and petroleum-related measures imposed by resolution 748 (1992) and resolution 883 (1993).²³⁹ It also dissolved the Security Council Committee established pursuant to resolution 748 (1992).²⁴⁰

3. Security Council resolution 1160 (1998) of 31 March 1998

(a) Termination of measures

²³⁶ Resolution 1372 (2001), sixth preambular para.

²³⁷ *Ibid.*, para. 1.

²³⁸ S/2003/818. These steps related to the destruction of Pan Am flight 103 over Lockerbie, Scotland and Union de transports aeriens flight 772 over Niger, and involved accepting responsibility for the actions of Libyan officials, payment of appropriate compensation, renunciation of terrorism, and a commitment to cooperating with any further requests for information in connection with the investigation.

²³⁹ Resolution 1506 (2003), para. 2.

²⁴⁰ *Ibid.*, para. 3.

By resolution 1367 (2001) of 10 September 2001, emphasizing the continuing authority of the Secretary-General's Special Representative to restrict and strictly control the flow of arms into, within, and out of Kosovo pursuant to resolution 1244 (1999), the Council decided to terminate the arms embargo and dissolve the Security Council Committee established by resolution 1160 (1998).²⁴¹

4. The situation concerning the Democratic Republic of the Congo

(a) Embargo on arms deliveries to the Democratic Republic of the Congo

By resolution 1493 (2003) of 28 July 2003, the Council decided that all States, for an initial period of 12 months, were to take the necessary measures to prevent the supply, sale or transfer of arms and any related materiel, and the provision of any assistance, advice or training related to military activities, to all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and of Ituri, and to groups not party to the Global and All-inclusive Agreement.²⁴² The Council also decided that exceptions to these measures were to be considered, including supplies to the United Nations Mission in the Democratic Republic of the Congo (MONUC), the Interim Emergency Multinational Force deployed in Bunia and the integrated Congolese national army and police forces, as well as supplies of non-lethal military equipment intended solely for humanitarian or protective use and related technical assistance and training.²⁴³

5. The situation between Eritrea and Ethiopia

(a) Embargo on arms deliveries to Eritrea and Ethiopia

By resolution 1298 (2000) of 17 May 2000, the Council, "deeply disturbed by the continuation of fighting between Eritrea and Ethiopia," decided that all States were to prevent the sale or supply to Eritrea and Ethiopia of arms and related materiel, and the provision of any related technical assistance or training.²⁴⁴ The Council further decided that the above measures should not apply to supplies of non-lethal military equipment

²⁴¹ Resolution 1367 (2001), paras. 1 and 2.

²⁴² Resolution 1493 (2003), para. 20.

²⁴³ *Ibid.*, para. 21.

²⁴⁴ Resolution 1298 (2000), para. 6.

intended solely for humanitarian use.²⁴⁵ By the same resolution, the Council established a committee to monitor the implementation and violations of these measures and decided that the measures imposed were established for twelve months, at the end of which the Council would decide whether the Governments of Eritrea and Ethiopia had complied with demands to cease all military action, withdraw from military engagement and convene peace talks, and, accordingly, whether to extend these measures.²⁴⁶ By resolutions 1312 (2000) of 31 July 2000 and 1320 (2000) of 15 September 2000, the Council decided that the measures imposed by resolution 1298 (2000) would not apply to the sale or supply of equipment for the use of the United Nations Mine Action Service and the United Nations in general.²⁴⁷

(b) Termination of the embargo on arms deliveries to Eritrea and Ethiopia

By a statement of the President dated 15 May 2001, Council members noted that the arms embargo imposed on the parties by resolution 1298 (2000) would expire on 16 May 2001.²⁴⁸ The Council recognized that the Algiers Agreements were consistent with the demands of the Council in that resolution, and therefore decided that the measures imposed were not to be extended beyond 16 May 2001.²⁴⁹ The Council also expressed its intention to take appropriate measures if the situation between Eritrea and Ethiopia again threatened regional peace and security.²⁵⁰

6. The situation in Sierra Leone

(a) Exemptions to the embargo on arms deliveries to Sierra Leone

By resolution 1299 (2000) of 19 May 2000, the Council decided that the arms embargo imposed by resolution 1171 (1998) did not apply to the sale or supply of arms and related materiel for the sole use in Sierra Leone of those Member States cooperating

²⁴⁵ Ibid., para. 7.

²⁴⁶ Ibid., paras. 8 and 16.

²⁴⁷ Resolutions 1312 (2000), para. 5, and 1320 (2000), para. 10.

²⁴⁸ S/PRST/2001/14.

²⁴⁹ Ibid., para 8.

²⁵⁰ Ibid., paras. 9 and 10.

with the United Nations Mission in Sierra Leone (UNAMSIL) and the Government of Sierra Leone.²⁵¹

(b) Embargo on diamond imports from Sierra Leone

By resolution 1306 (2000) of 5 July 2000, the Council expressed its concern at the role played by the illicit trade in diamonds in fuelling the conflict in Sierra Leone and at reports that such diamonds transited through neighbouring countries.²⁵² The Council therefore decided that all States were to take the necessary measures to prohibit the import of all rough diamonds from Sierra Leone.²⁵³ It further decided that rough diamonds controlled by the Government of Sierra Leone through the Certificate of Origin regime would be exempt from these measures once the Security Council Committee established pursuant to resolution 1132 (1997) concerning Sierra Leone had reported that an effective regime was in operation.²⁵⁴ The Council decided that these measures were established for a period of 18 months, at the end of which the Council would review the situation in Sierra Leone, including the extent of the Government's authority over the diamond-producing areas, in order to decide whether to extend or modify these measures for a further period.²⁵⁵ It also requested the Secretary-General to establish a Panel of Experts to collect information on possible violations of the measures and the link between the trade in diamonds and the trade in arms and related materiel.²⁵⁶ The Council renewed the above measures by resolutions 1385 (2001) and 1446 (2002), stressing that they should be terminated immediately whenever the Council deemed it appropriate.²⁵⁷

7. The situation in Somalia

(a) Exemptions to the embargo on arms deliveries to Somalia

By resolution 1356 (2001) of 19 June 2001, the Council decided on exemptions to the arms embargo imposed by resolution 733 (1992). In particular, it decided that these

²⁵¹ Resolution 1299 (2000), para. 3.

²⁵² Resolution 1306 (2000), sixth preambular para.

²⁵³ *Ibid.*, para. 1.

²⁵⁴ *Ibid.*, para. 5.

²⁵⁵ *Ibid.*, para. 6.

²⁵⁶ *Ibid.*, para. 19.

²⁵⁷ Resolutions 1385 (2001), para. 4, and 1446 (2002), para. 3.

measures would not apply to protective clothing, including flak jackets and military helmets, temporarily exported to Somalia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel for their personal use only, or to supplies of non-lethal military equipment intended solely for humanitarian or protective use.²⁵⁸

(b) Strengthening of measures imposed against Somalia

By resolution 1407 (2002) of 3 May 2002, the Council requested the Secretary-General to establish, in preparation for a Panel of Experts, a team of experts to provide the Security Council Committee established pursuant to resolution 751 (1992) with an action plan detailing the resources and expertise that the Panel of Experts could require in order to generate independent information on violations of the arms embargo and for improving its enforcement.²⁵⁹

By resolution 1425 (2002) of 22 July 2002, the Council decided that the arms embargo imposed by resolution 733 (1992) should also prohibit the direct or indirect supply to Somalia of technical advice, financial and other assistance, and training related to military activities.²⁶⁰ It requested the Secretary-General to establish a Panel of Experts in order to generate independent information on violations of the arms embargo and as a step towards implementing and strengthening the embargo.²⁶¹ The Panel was subsequently re-established by resolution 1474 (2003) of 8 April 2003.²⁶²

By resolution 1519 (2003) of 16 December 2003, the Council requested the Secretary-General to establish a Monitoring Group to be based in Nairobi to, inter alia, investigate ongoing violations of the arms embargo.²⁶³

8. The situation in Angola

²⁵⁸ Resolution 1356 (2001), paras. 2 and 3.

²⁵⁹ Resolution 1407 (2002), para. 1.

²⁶⁰ Resolution 1425 (2002), para. 2.

²⁶¹ *Ibid.*, para. 3.

²⁶² Resolution 1474 (2003), para. 3.

²⁶³ Resolution 1519 (2003), para. 2.

(a) Modification of measures imposed against the National Union for the Total Independence of Angola

By resolution 1295 (2000) of 18 April 2000, the Council expressed its concern at violations of the arms, petroleum, diamond, finance, travel and aviation measures imposed against the National Union for the Total Independence of Angola (UNITA) by resolutions 864 (1993), 1127 (1997) and 1173 (1998), at the reports of supply to UNITA of military assistance and at the presence of foreign mercenaries.²⁶⁴ The Council therefore requested the Secretary-General to establish a monitoring mechanism.²⁶⁵ By a number of subsequent resolutions the mandate of the monitoring mechanism was extended until 19 October 2002.²⁶⁶

By resolution 1412 (2002) of 17 May 2002, welcoming the signing of a peace agreement by the Government of Angola and UNITA, the Council decided to suspend for ninety days the travel sanctions imposed against UNITA by resolution 1127 (1997).²⁶⁷ This suspension was renewed by resolution 1432 (2002) of 15 August 2002 for an additional period of ninety days, with a view to encouraging further the peace process and national reconciliation in Angola.²⁶⁸

(b) Termination of measures imposed against the National Union for the Total Independence of Angola

By resolution 1439 (2002) of 18 October 2002, the Council decided to lift the travel sanctions imposed against UNITA from 14 November 2002 onwards and to extend the mandate of the Monitoring Mechanism until 19 December 2002.²⁶⁹

By resolution 1448 (2002) of 9 December 2002, the Council decided to terminate with immediate effect the arms and petroleum embargo imposed by resolution 864 (1993), the travel and aviation-related measures imposed by resolution 1127 (1997), and the financial, diplomatic and commodity measures imposed by resolution 1173 (1998).²⁷⁰

²⁶⁴ Resolution 1295 (2000), sixth preambular para.

²⁶⁵ *Ibid.*, para. 3.

²⁶⁶ Resolutions 1336 (2001), 1348 (2001), 1374 (2001), and 1404 (2002).

²⁶⁷ Resolution 1412 (2002), para. 1.

²⁶⁸ Resolution 1432 (2002), para. 1.

²⁶⁹ Resolution 1439 (2002), paras. 2, 8, and 9.

²⁷⁰ Resolution 1448 (2002), para. 2.

It also decided to dissolve the Security Council Committee established pursuant to resolution 864 (1993) concerning the situation in Angola.²⁷¹

9. The situation in Liberia

(a) Termination of measures imposed against Liberia

By resolution 1343 (2001) of 7 March 2001, noting that the conflict in Liberia had been resolved, the Council decided to terminate the arms embargo imposed by resolution 788 (1992) and to dissolve the committee established under resolution 985 (1995).²⁷²

(b) Imposition of arms, diamond and travel sanctions against Liberia

By resolution 1343 (2001) of 7 March 2001, after demanding that the Government of Liberia “cease its support for the Revolutionary United Front (RUF) in Sierra Leone and for other armed rebel groups in the region,”²⁷³ the Council decided to establish a new set of sanctions measures. It decided that all States, for a period of 14 months, with a few exemptions, were to take the necessary measures to prevent the sale or supply to Liberia of arms and related materials, technical training or assistance.²⁷⁴ The Council also decided that all States were to take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia and that this measure would come into force after two months for a period of 12 months unless the Council determined before that date that Liberia had complied with its demands.²⁷⁵ By the same resolution, the Council further decided that, unless otherwise decided by the Committee on a case-by-case basis, all States were to take the necessary measures to prevent the entry into or transit through their territories of senior members of the Government of

²⁷¹ Ibid. para. 3.

²⁷² Resolution 1343 (2001), para. 1.

²⁷³ S/PRST/2000/41.

²⁷⁴ Resolution 1343 (2001), para. 5. By the same resolution, the Council decided that these measures would not apply to supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training, or to protective clothing, including flak jackets and military helmets, temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only. By resolution 1509 (2003), the Council decided that the arms embargo imposed by resolution 1343 (2001) would not apply to supplies of arms and related materiel and technical training and assistance intended solely for support of or use by UNMIL.

²⁷⁵ Resolution 1343 (2001), paras. 6 and 8.

Liberia and its armed forces and their spouses and any other individuals providing financial and military support to armed rebel groups in countries neighbouring Liberia, in particular RUF in Sierra Leone.²⁷⁶ Finally, the Council requested the Secretary-General to establish a Committee of the Security Council to monitor the implementation of the above measures as well as a Panel of Experts to investigate any violations of the measures imposed.²⁷⁷

By resolution 1408 (2002) of May 2002, the Council decided that the measures imposed by resolution 1343 (2001) would remain in force for a further period of 12 months.²⁷⁸ By the same resolution, the Council requested the Secretary-General to re-establish the Panel of Experts for a further period of three months to conduct a follow up assessment mission to Liberia and neighbouring States, in order to investigate and compile a report on (i) the Government of Liberia's compliance with the Council's demand in resolution 1343 (2001) concerning cessation of the Government's support for RUF in Sierra Leone and other armed rebel groups in the region; (ii) the potential economic, humanitarian and social impact on the Liberian population of the measures imposed by resolution 1343 (2001); and (iii) any violations thereof.²⁷⁹

(c) Imposition of timber sanctions against Liberia

By resolution 1478 (2003) of 6 May 2003, the Council decided that the Government of Liberia had not complied fully with the demands in resolution 1343 (2001).²⁸⁰ The Council therefore decided that the measures imposed by resolution 1343 (2001) - the arms embargo, the ban on import of rough diamonds and the travel restrictions - would remain in force for an additional period of twelve months. In addition, it decided that all States were to take the necessary measures to prevent the import into their territories of all round logs and timber products originating in Liberia, to

²⁷⁶ Ibid., para. 7. By the same resolution, the Council decided that the Committee could determine that such travel was justified on the grounds of humanitarian need, including religious obligation, or where the exemption would promote Liberian compliance or assist in the peaceful resolution of the conflict in the subregion.

²⁷⁷ Resolution 1343 (2001), paras. 14 and 19. The Panel of Experts was subsequently re-established by resolution 1395 (2002).

²⁷⁸ Resolution 1408 (2002), para. 5.

²⁷⁹ Ibid., para. 16.

²⁸⁰ Resolution 1478 (2003), para. 1.

come into force on 7 July 2003 for a period of ten months.²⁸¹ By the same resolution, the Council requested the Secretary-General to re-establish the Panel of Experts, for a period of five months, to conduct a follow-up assessment mission to Liberia and neighbouring States.²⁸²

(d) Modification of measures imposed against Liberia

By resolution 1521 (2003) of 22 December 2003, noting the changed circumstances in Liberia, in particular, the departure of former President Charles Taylor, the formation of the National Transitional Government of Liberia and progress with the peace process in Sierra Leone, the Council dissolved the Committee and terminated the measures imposed by resolutions 1343 (2001) and 1478 (2003).²⁸³ By the same resolution, the Council decided to establish a new set of measures for a period of 12 months, and a new Committee to oversee the implementation of the newly imposed measures.²⁸⁴ The Council decided that, with a few exemptions, all States should take the necessary measures to prevent the sale or supply to Liberia of arms and related materiel of all types and related technical training or assistance.²⁸⁵ The Council further decided that all States were also to take the necessary measures to prevent the entry into or transit through their territories of individuals who constituted a threat to the peace process in Liberia or were undermining peace and stability in Liberia and the subregion.²⁸⁶ In

²⁸¹ Ibid., para. 17.

²⁸² Ibid., para. 25.

²⁸³ Resolution 1521 (2003), para. 1.

²⁸⁴ Ibid., para. 21.

²⁸⁵ Ibid., para. 2. By the same resolution, the Council also decided that these measures would not apply to the following: (i) supplies of arms and related materiel and technical training and assistance intended solely for support of or use by UNMIL; (ii) supplies of arms and related materiel and technical training and assistance intended solely for support of or use in an international training and reform programme for the Liberian armed forces and police; (iii) supplies of non-lethal military equipment intended solely for humanitarian or protective use, and related technical assistance or training; (iv) protective clothing, including flak jackets and military helmets, temporarily exported to Liberia by United Nations personnel, representatives of the media and humanitarian and development workers and associated personnel, for their personal use only.

²⁸⁶ Resolution 1521 (2003), para. 4. By the same resolution, the Council further specified that these measures would be applicable to: (i) those senior members of former President Charles Taylor's Government and their spouses and members of Liberia's former armed forces who retained links to former President Charles Taylor; (ii) those individuals determined to be in violation of the arms embargo; and (iii) any other individuals, or individuals associated with entities, providing financial or military support to armed rebel groups in Liberia or in countries in the region. The Council decided that these measures would not apply where the Committee determined that such travel was justified on the grounds of humanitarian

addition, the Council decided that all States should take the necessary measures to prevent the direct or indirect import of all rough diamonds, round logs and timber products from Liberia to their territory.²⁸⁷ By the same resolution, the Council requested the Secretary-General to establish a five-member Panel of Experts, for a period of five months, to: (i) conduct a follow-up assessment mission to Liberia and neighbouring States; (ii) report on the implementation of the sanctions measures, and to assess progress made towards the goals set out by the Council for the lifting of sanctions; and (iii) report to the Council through the Committee no later than 30 May 2004 with observations and recommendations, including, inter alia, how to minimize any humanitarian and socio-economic impact of the measures imposed by the same resolution.²⁸⁸

10. The situation between Iraq and Kuwait

(a) Modification of measures imposed against Iraq

By resolution 1293 (2000) of 31 March 2000, the Council decided that up to a total of \$600 million from the escrow account established pursuant to resolutions 1242 (1999) and 1281 (1999) could be used to meet any reasonable expenses, other than expenses payable in Iraq, pursuant to the provisions of paragraphs 28 and 29 of resolution 1284 (1999).²⁸⁹

By resolution 1302 (2000) of 8 June 2000, the Council, convinced of the need as a temporary measure to continue to provide for the humanitarian needs of the Iraqi people, decided that the “oil-for-food” provisions of resolution 986 (1995) would be extended for a further period of six months.²⁹⁰ This provision was renewed by several subsequent resolutions.²⁹¹

By resolution 1352 (2001) of 1 June 2001, the Council expressed its intention to consider new arrangements for the sale or supply of commodities and products to Iraq

need or where the Committee concluded that an exemption would otherwise further the objectives of peace, stability and democracy in Liberia and lasting peace in the subregion.

²⁸⁷ Resolution 1521 (2003), paras. 6 and 10.

²⁸⁸ *Ibid.*, para. 22.

²⁸⁹ Resolution 1293 (2000), para. 1.

²⁹⁰ Resolution 1302 (2000), para. 1.

²⁹¹ Resolutions 1330 (2000), 1352 (2001), 1360 (2001), 1382 (2001), 1409 (2002), 1443 (2002), and 1447 (2002).

and for the facilitation of civilian trade and economic cooperation with Iraq in civilian sectors, so that such new arrangements would improve significantly the flow of commodities and products to Iraq and improve the controls to prevent the sale or supply of prohibited or unauthorized items.²⁹²

By resolution 1382 (2001) of 29 November 2001, the Council noted an attached proposed Goods Review List and the procedures for its application, and decided to adopt them, subject to further modification, for implementation beginning on 30 May 2002.²⁹³

By resolution 1409 (2002) of 14 May 2002, the Council significantly changed the modalities of the “oil-for-food” programme, easing the supply of humanitarian goods to Iraq, while strengthening control over dual-use items. It decided to adopt the proposed Goods Review List and procedures for its application annexed to resolution 1382 (2001) beginning on 30 May 2002 as a basis for the humanitarian programme in Iraq.²⁹⁴ The Council, therefore, authorized States to permit the sale or supply of any commodities or products, other than those related to military products and subject to the procedures of the Goods Review List, and authorized that the funds in the escrow account could also be used to finance the sale or supply to Iraq of such goods.²⁹⁵

By resolution 1472 (2003) of 28 March 2003, the Council, following the commencement of military action in Iraq, recognized that in view of the exceptional circumstances prevailing in Iraq, technical and temporary adjustments should be made to the “oil-for-food” programme so as to ensure the implementation of the approved funded and non-funded contracts concluded by the Government of Iraq for the humanitarian relief of the people of Iraq.²⁹⁶ The Council therefore authorized the Secretary-General to undertake various steps to establish these measures and expressed its readiness to consider making additional funds available to meet the humanitarian needs of the people of Iraq.²⁹⁷ It further decided that all applications outside the “oil-for-food” programme for

²⁹² Resolution 1352 (2001), para. 2.

²⁹³ Resolution 1382 (2001), para. 2.

²⁹⁴ Resolution 1409 (2002), para. 2.

²⁹⁵ *Ibid.*, paras. 3 and 4. By resolution 1443 (2002), the Council decided to renew these provisions until 4 December 2002. By its subsequent resolution 1447 (2002), the Council decided to consider necessary adjustments to the Goods Review List for adoption within 30 days. Finally, by resolution 1454 (2002), the Council approved the implementation of the adjustments to the Goods Review List specified in the attached Annex.

²⁹⁶ Resolution 1472 (2003), para. 3.

²⁹⁷ *Ibid.*, paras. 4 and 6.

distribution or use in Iraq of emergency humanitarian supplies and equipment, other than medicines, health supplies and foodstuffs, would be reviewed by the Committee.²⁹⁸ Those measures were extended by resolutions 1476 (2003) of 24 April 2003 and 1483 (2003) of 22 May 2003.

(b) Termination and replacement of measures imposed against Iraq

By resolution 1483 (2003) of 22 May 2003, the Council decided to: (i) with the exception of the arms embargo, lift the civilian sanctions imposed on Iraq following its invasion of Kuwait in 1990; and (ii) request the Secretary-General to terminate the “oil-for-food” programme within six months of the adoption of the resolution. By the same resolution, the Council further reduced the level of proceeds of all export sales of Iraqi petroleum, petroleum products, and natural gas to be deposited into the Compensation Fund to 5 percent.²⁹⁹ The Council also decided that all Member States in which there were financial assets or funds of the previous Government of Iraq, Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled indirectly or directly by them, should freeze those financial assets or funds or economic resources and immediately transfer them to the Development Fund for Iraq.³⁰⁰ Finally, the Council also decided that the Security Council Committee established pursuant to resolution 661 (1990) should be terminated within six months of the adoption of the resolution.

By resolution 1518 (2003) of 24 November 2003, the Security Council established a Committee to continue to identify, in accordance with paragraphs 19 and 23 of resolution 1483 (2003), individuals and entities referred to in paragraph 19 of that resolution, including by updating the list of individuals and entities identified by the Committee established by resolution 661 (1990), and to report on its work to the Council.³⁰¹

11. The situation in Afghanistan

²⁹⁸ Ibid., para. 9.

²⁹⁹ Resolution 1483 (2003), para. 21.

³⁰⁰ Ibid., para. 23.

³⁰¹ Resolution 1518 (2003), para. 1.

(a) Strengthening of measures imposed against the Taliban and Al-Qaida

By resolution 1333 (2000) of 19 December 2000, the Council reaffirmed its previous resolution 1267 (1999) which had imposed limited air embargo and financial sanctions on the Taliban, and imposed a wider range of measures that would come into force after one month for a period of twelve months. More specifically, the Council decided that States should freeze the funds of Osama bin Laden and individuals and entities associated with him. The Council also imposed an arms embargo over the territory of Afghanistan under control by the Taliban.³⁰² By the same resolution, the Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities was requested to fulfill its mandate, in addition to those set out in resolution 1267 (1999), by undertaking the following tasks: (i) to establish and maintain updated lists based on information provided by States, regional, and international organizations of all points of entry and landing areas for aircraft within the territory of Afghanistan under control by the Taliban and to notify Member States of the contents of such lists; (ii) to establish and maintain updated lists, based on information provided by States and regional organizations, of individuals and entities designated as being associated with Osama bin Laden; (iii) to give consideration to, and decide upon, requests for the exceptions set out in the resolution; (iv) to establish and maintain an updated list of approved organizations and governmental relief agencies, which were providing humanitarian assistance to Afghanistan; (v) to make relevant information regarding implementation of those measures publicly available through appropriate media; (vi) to consider, where and when appropriate, a visit to countries in the region by the Chairman of the Committee and such other members as might be required to enhance the full and effective implementation of the measures imposed by resolutions 1267 (1999) and 1333 (2000) with a view to urging States to comply with relevant Council resolutions; and (vii) to make periodic reports to the Council on information submitted to it regarding resolutions 1267 (1999) and 1333 (2000), including possible violations of the measures reported to the Committee and recommendations for strengthening the effectiveness of those measures.³⁰³ Finally, the Council requested the

³⁰² Resolution 1333 (2000), paras. 5, 8 and 11.

³⁰³ *Ibid.*, paras. 6, 8, 11, 12 and 16.

Secretary-General to appoint a committee of experts to make recommendations on how the arms embargo and the closure of terrorist camps could be monitored and to review the humanitarian implications of the measures imposed by resolutions 1267 (1999) and by resolution 1333 (2000).³⁰⁴

By resolution 1363 (2001) of 30 July 2001, the Council requested the Secretary-General to establish, in consultations with the Committee, a mechanism, comprised of a Monitoring Group, for a period of twelve months to: (i) monitor the implementation of the measures imposed by resolutions 1267 (1999) and 1333 (2000); (ii) offer assistance to States bordering the territory of Afghanistan under Taliban control and other States in order to increase their capacity regarding the implementation of the measures imposed by resolutions 1267 (1999) and 1333 (2000); and (iii) collate, assess, verify wherever possible, report and make recommendations on information regarding violations of the measures imposed by resolutions 1267 (1999) and 1333 (2000).³⁰⁵

(b) Termination of aviation sanctions

By resolution 1388 (2002) of 15 January 2002, the Council noted that Ariana Afghan Airlines was no longer owned, leased or operated by or on behalf of the Taliban, nor were its funds and other financial resources owned or controlled by the Taliban.³⁰⁶ It thus decided that the aviation-related and financial measures of resolution 1267 (1999) did not apply to Ariana Afghan Airlines aircraft or its funds and other financial resources.³⁰⁷ It also decided to terminate the measures calling for the closure of the airline's foreign offices in resolution 1333 (2000).³⁰⁸

By resolution 1390 (2002) of 16 January 2002, the Council decided to terminate the aviation sanctions imposed by resolution 1267 (1999).³⁰⁹

(c) Modification of financial, travel, and arms sanctions imposed against the Taliban and Al-Qaida

³⁰⁴ Ibid., para. 15.

³⁰⁵ Resolution 1363 (2001), para. 3.

³⁰⁶ Resolution 1388 (2002), second preambular para.

³⁰⁷ Ibid., para. 1.

³⁰⁸ Ibid., para. 2.

³⁰⁹ Resolution 1390 (2002), para. 1.

By resolution 1390 (2002) of 16 January 2002, the Council determined that the Taliban had failed to respond to the demands contained in resolutions 1214 (1998), 1267 (1999) and 1333 (2000).³¹⁰ By the same resolution, the Council modified the sanctions regime originally imposed by resolutions 1267 (1999) and 1333 (2000) by further expanding the financial measures to include individuals and entities associated with Osama bin Laden, Al-Qaida and the Taliban as designated by the Committee. It also banned their entry into or transit through their territories and decided to review the travel ban in twelve months. The Council also requested the Secretary-General to assign the Monitoring Group to monitor, for a period of twelve months, the implementation of the measures - assets freeze, travel ban, and arms embargo - imposed and strengthened by the same resolution.³¹¹

By resolution 1452 (2002) of 20 December 2002, the Council decided that the financial measures imposed by resolutions 1267 (1999) and 1390 (2002) against the Taliban, Osama bin Laden, Al-Qaida and entities associated with them, did not apply to funds and other financial assets or economic resources that were determined by the relevant State(s) to be necessary for basic and extraordinary expenses.³¹²

By resolution 1455 (2003) of 17 January 2003, the Council decided to improve the implementation of the assets freeze, travel ban and arms embargo targeting Osama bin Laden, the Al-Qaida organization and the Taliban, as well as individuals and entities associated with them, as contained in the list maintained by the Committee pursuant to resolutions 1267 (1999), 1333 (2000) and 1390 (2002).³¹³ In addition, the Council called for an updated report from Member States on the implementation of the measures referred to above and reappointed the Monitoring Group to monitor for a further period of twelve months the implementation of the measures and to follow up on relevant leads relating to any incomplete implementation of those measures.³¹⁴

12. Threats to international peace and security caused by terrorist acts

³¹⁰ Resolution 1390 (2002), sixth preambular para.

³¹¹ Resolution 1390 (2002), para. 9.

³¹² Resolution 1452 (2002), paras. 1 and 2.

³¹³ Resolution 1455 (2003), para. 1.

³¹⁴ *Ibid.*, paras. 6 and 8.

By resolution 1373 (2001) of 28 September 2001, the Council reaffirmed its unequivocal condemnation of the terrorist attacks of 11 September 2001 in New York, Washington, D.C. and Pennsylvania, and, acting under Chapter VII, decided that all States should cooperate in a wide range of areas, from suppressing the financing of terrorism to providing early warning, as well as cooperating in criminal investigations, exchanging information on possible terrorist acts, and reporting on the steps they had taken to implement that resolution. In particular, the Council decided that all States were to take the following actions: (i) to prevent and suppress the financing of terrorist acts; (ii) to criminalize the willful provision or collection of funds with the intention or knowledge that the funds would be used in order to carry out terrorist acts; (iii) to freeze funds and other financial assets or economic resources of persons who committed or attempted to commit terrorist acts or participate in or facilitate the commission of terrorist acts; and (iv) to prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available for the benefit of such persons.³¹⁵

The Council further decided that States were to: (i) refrain from providing any form of support to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists; (ii) take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States through exchange of information; (iii) deny safe haven to those who financed, planned, supported or committed terrorist acts, or provided safe havens; (iv) prevent those who financed, planned, facilitated or committed terrorist acts from using their respective territories for those purposes against other States or their citizens; (v) bring to justice any person who participated in the financing, planning, preparation or perpetration of terrorist acts, and establish such terrorist acts as serious criminal offences in domestic laws and regulations and that the punishment duly reflected the seriousness of such acts; (vi) afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings; and (vii) prevent the

³¹⁵ Resolution 1373 (2001), para. 1.

movement of terrorist or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents.³¹⁶ By the same resolution, the Council further decided to establish a Committee of the Security Council to monitor implementation of the resolution, with the assistance of appropriate expertise.³¹⁷ The Council called upon all States to report to the Committee, no later than 90 days from the date of adoption of the resolution and, thereafter, according to a timetable to be proposed by the Committee, on the steps they had taken to implement the resolution itself. Furthermore, the Council directed the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of the resolution, and to consider the support it required, in consultation with the Secretary-General.³¹⁸ Finally, the Council expressed its determination to “take all necessary steps” in order to ensure the full implementation of the resolution, in accordance with its responsibilities under the Charter.³¹⁹

13. Consideration of the impact of sanctions on specific groups

By resolution 1314 (2000) of 11 August 2000, in connection with the protection of children in situation of armed conflict, the Council indicated its willingness, when imposing measures under Article 41, “to consider assessing the potential unintended consequences of sanctions on children and to take appropriate steps to minimize such consequences”.³²⁰

By resolution 1325 (2000) of 31 October 2000, in connection with women and peace and security, the Council reaffirmed its readiness, whenever measures were adopted under Article 41, “to give consideration to their potential impact on the civilian population, bearing in mind the special needs of women and girls, in order to consider humanitarian exemptions”.³²¹

By resolution 1379 (2001) of 20 November 2001, in connection with children and armed conflict, the Council undertook to consider, “as appropriate when imposing measures under Article 41, the economic and social impact of sanctions on children, with

³¹⁶ Ibid., para. 2.

³¹⁷ Ibid., para. 6.

³¹⁸ Ibid., para. 7.

³¹⁹ Ibid., para. 8.

³²⁰ Resolution 1314 (2000), para. 15.

³²¹ Resolution 1325 (2000), para. 14.

a view to providing appropriate humanitarian exemptions that take account of their specific needs and their vulnerability and to minimizing such impact”.³²²

B. Discussions relating to Article 41

1. The situation between Eritrea and Ethiopia

By a letter dated 15 May 2000 addressed to the President of the Security Council,³²³ the representative of Ethiopia transmitted his Government’s opinion that the Council had made a “mockery of justice” by contemplating punitive measures, such as an arms embargo against Ethiopia, since Ethiopia was the victim of aggression by Eritrea. He also urged the Council to be conscious of the “enormous implications” of its decision.³²⁴ By a subsequent letter dated 18 May 2000 addressed to the President of the Security Council,³²⁵ the representative of Ethiopia complained that resolution 1298 (2000) was directed at his country, in spite of being “ostensibly aimed also at the aggressor country, Eritrea” and that the Council had committed a “grave mistake” by adopting the resolution.³²⁶

By a letter dated 19 May 2000 addressed to the President of the Security Council,³²⁷ the representative of Eritrea expressed his Government’s “utter surprise and disappointment” with the “clear imbalance” of the arms embargo imposed by resolution 1298 (2000). It argued that the resolution unjustly applied an arms embargo on both Ethiopia, “the aggressor”, and Eritrea, “the victim”.³²⁸

By a letter dated 9 January 2001 addressed to the President of the Security Council,³²⁹ the representative of Ethiopia reiterated his Government’s condemnation of the arms embargo imposed by resolution 1298 (2000). He further asserted that the arms embargo denied his country the “inherent right to defend itself”. He noted that by the

³²² Resolution 1379 (2001), para. 7.

³²³ S/2000/430.

³²⁴ *Ibid.*, pp. 2-3.

³²⁵ S/2000/448.

³²⁶ *Ibid.*, p. 2.

³²⁷ S/2000/464.

³²⁸ *Ibid.*, p. 2.

³²⁹ S/2001/23.

Algiers agreement of 12 December 2000, Eritrea and Ethiopia had in fact “gone beyond what was asked of them” by resolution 1298 (2000). He called on Security Council members to “shoulder their responsibilities by giving a boost to confidence in the region as a whole” and stressed that lifting the sanctions would be “an important symbolic gesture” to restore hope.³³⁰

At its 4310th meeting, on 19 April 2001, the Council discussed the situation between Eritrea and Ethiopia in light of the creation of the Temporary Security Zone (TSZ), which marked the formal separation of the Ethiopian and Eritrean forces. During the debate, the representative of the Russian Federation remarked that the establishment of a TSZ was a “qualitatively new stage in the consolidation of the process of settling the conflict”. He therefore advocated an “early lifting of sanctions against both States” considering that the process of stabilization was “forward-moving”.³³¹

2. The situation in Sierra Leone

At its 4168th meeting, on 5 July 2000, taking into consideration the role played by the illicit trade in diamonds in fuelling the conflict in Sierra Leone and the reports that such diamonds transited through neighbouring countries, the Council imposed an embargo against the import of all rough diamonds from Sierra Leone.³³² During the debate preceding the adoption of the resolution, several speakers agreed that diamonds played an important role in fueling the conflict in Sierra Leone.³³³ The representative of the United Kingdom asserted that the measures imposed were a “robust and imaginative response” by the Security Council to the tragedy in Sierra Leone and would “shine a powerful light on an illicit trade which prefers to operate in the shadows”. He further noted that the draft resolution was “unusual in its direct appeal to the diamond trade” to address the problem.³³⁴ The representative of the United States indicated that the illicit trade in diamonds was closely linked to the illicit trade in small arms, and reminded all States of existing sanctions on arms shipments to RUF. She indicated that the resolution

³³⁰ Ibid., p. 2.

³³¹ S/PV.4310, pp. 9-10.

³³² Resolution 1306 (2000).

³³³ S/PV.4168, pp. 2-3 (Sierra Leone); pp. 3-4 (United Kingdom); pp. 4-5 (United States); p. 6 (Russian Federation); pp. 6-7 (Argentina); p. 7 (China); pp. 7-8 (Canada); and pp. 9-10 (France).

³³⁴ Ibid., pp. 3-4.

was a necessary and critical step to assisting the Government of Sierra Leone in “re-establishing authority over its diamond-producing regions”.³³⁵ The representative of the Russian Federation observed that the measures were not “detrimental to the interests of legitimate participants in the international diamond market”.³³⁶ The representative of Canada expressed his Government’s hope that light would be shed on the link between the trade in diamonds and the supply of arms to rebel groups in Sierra Leone. He further stated that the Council would have to examine whether States, such as Liberia, had ceased their involvement in the illicit diamond trade and whether additional measures were required to enforce the arms embargo imposed against RUF.³³⁷ The representative of France argued that the measures would strengthen the existing arms embargo and agreed on the necessity of examining the links between diamond and arms trades.³³⁸

As regards the issue of the time-bound nature of sanctions, the representative of the United States expressed her concern “about the negative implications of putting in place time-limited sanctions”, stressing that Member States would have difficulties applying the sanctions if the measures were “turned off and on”.³³⁹ The representative of the Netherlands concurred, suggesting periodic reviews of sanctions to relieve the unease of many members about the “phenomenon of sanctions that last much longer than originally intended”.³⁴⁰ By contrast, several speakers conveyed their support for the use of time limits, as they would allow the Council to review the situation on the ground and thereby extend, modify or otherwise adjust the measures.³⁴¹ The representative of Argentina, however, noted that, in light of the Government of Sierra Leone’s support for the measures and the targeting of a rebel movement “notorious for its unusual cruelty against the civilian population”, a longer initial period for the sanctions would make the regime “more functional and effective”.³⁴²

At its 4264th meeting, on 25 January 2001, the Council considered the report of the Panel of Experts on Sierra Leone established pursuant to resolution 1306 (2000) to

³³⁵ *Ibid.*, p. 4.

³³⁶ *Ibid.*, p. 6.

³³⁷ *Ibid.*, pp. 7-8.

³³⁸ *Ibid.*, pp. 9-10.

³³⁹ *Ibid.*, pp. 4-5.

³⁴⁰ *Ibid.*, pp. 8-9.

³⁴¹ *Ibid.*, p. 6 (Russian Federation); pp. 6-7 (Argentina); p. 7 (China); and pp. 9-10 (France).

³⁴² *Ibid.*, pp. 6-7.

investigate the violations of the measures imposed against Sierra Leone and the link between the trade in diamonds and arms. The representative of the United Kingdom stressed that his Government would “look very seriously at any hint that United Kingdom citizens and companies might be involved in violating sanctions” and would investigate fully where necessary. He urged other States to do the same and to ensure that the violation of United Nations sanctions was a criminal offence in their domestic legislation.³⁴³ Several speakers expressed their support for a monitoring mechanism that would review the implementation of sanctions and assess their unintended consequences.³⁴⁴ A number of representatives asserted that a new “diamond certification system” was required for a better monitoring of exports.³⁴⁵ By contrast, the representative of the Russian Federation emphasized that the process of resolving the problem of conflict diamonds in Sierra Leone and other conflict areas in Africa had to be focused primarily on “specific measures to break the linkage between the illicit traffic in rough diamonds and the financing of rebel movements” and should not involve “the interest of legal participants in the international diamond business”.³⁴⁶

As for the humanitarian impact of the sanctions regime, several speakers expressed the need to precisely target sanctions to prevent humanitarian consequences on the civilian population.³⁴⁷ In this connection, the representative of Sierra Leone emphasized that weapons bought from the sale of diamonds were being used to “maim and kill” thousands of people in Sierra Leone.³⁴⁸

With reference to the involvement of Liberia in the conflict, several speakers noted that the country was prolonging the conflict in Sierra Leone through its support for RUF, and called for the imposition of measures on Liberia designed to put pressure to modify such behavior.³⁴⁹ The representative of the United Kingdom added that such measures would cease as soon as Liberian financial and military support to RUF

³⁴³ S/PV.4264, p. 5.

³⁴⁴ Ibid., p. 6 (Jamaica); pp. 10-11 (Colombia); and p. 20 (Norway).

³⁴⁵ Ibid., pp. 4-6 (United Kingdom); p. 6 (Jamaica); p. 8 (France); p. 10 (Colombia); p. 11 (Tunisia); p. 14 (Ireland); p. 18 (Mauritius); p. 18 (Ukraine); and p. 21 (Norway).

³⁴⁶ Ibid., pp. 12-13.

³⁴⁷ Ibid. pp. 6-7 (Jamaica); pp. 11-12 (Tunisia); p. 12 (China); and pp. 20-21 (Norway).

³⁴⁸ Ibid., pp. 22-24.

³⁴⁹ Ibid., pp. 4-6 (United Kingdom); pp. 7-8 (France); pp. 13-15 (Ireland); pp. 15-17 (United States); and pp. 22-24 (Sierra Leone).

stopped.³⁵⁰ The representative of the United States indicated that the measures were intended to bring an end to President Taylor’s ongoing support to RUF and his “continued engagement in illicit arms-for-diamonds trafficking” and “to undermine the Government of Liberia’s ability to conduct war against its neighbours”, without causing hardship for the people of Liberia.³⁵¹ The representative of France recommended that the sanctions against Liberia be limited in time, subject to periodical review, “motivational”, and linked to precise criteria for their lifting. He emphasized that his country advocated an “incremental approach” to the implementation of sanctions so as to allow the “democratically elected Government of Liberia to shoulder its responsibilities”.³⁵² In response, the representative of Liberia maintained that his Government was the target of “grossly unsubstantiated allegations of diamond smuggling and gun running” with RUF, and that it was “neither connected nor a party to the illicit trade of Sierra Leonean diamonds”. He further noted that the possible imposition of a travel ban on Liberian officials and diplomats had “no basis in the Charter” and would deny Liberia the opportunity to “conduct its external relations as a sovereign Member of the United Nations”.³⁵³

3. The situation in Afghanistan

At its 4251st meeting, on 19 December 2000, the Council adopted resolution 1333 (2000) by which it took a series of mandatory measures against the Taliban. During the debate, several speakers cautioned that the Taliban continued to flout Council demands, pursuant to resolution 1267 (1999), to hand over Osama bin Laden, and consequently asked for additional measures to be imposed against the Taliban.³⁵⁴ By contrast, the representative of China emphasized that his country was not in favor of “easily resorting to sanctions or of their repeated use”. He further stated that sanctions had to be adopted with great caution and prudence, and were a “double-edged sword” adversely impacting

³⁵⁰ Ibid., pp. 4-6.

³⁵¹ Ibid., pp. 15-17.

³⁵² Ibid., pp. 7-8.

³⁵³ Ibid., pp. 24-29.

³⁵⁴ S/PV.4251, pp. 2-4 (Afghanistan); pp. 5-6 (the Netherlands); p. 6 (United Kingdom); pp. 6-7 (Ukraine); pp. 7-8 (United States); p. 9 (Canada); and pp. 9-11 (Russian Federation).

the humanitarian situation in Afghanistan.³⁵⁵ The representative of Pakistan, while emphasizing that his country was not in favour of sanctions “as a matter of principle”, called for the sanctions to be lifted and replaced with a “comprehensive strategy”. He added that a one-sided arms embargo was not the solution as it encouraged the side exempted from the embargo to continue to conflict. He therefore called upon the Council to impose a comprehensive arms embargo under Chapter VII on all parties in Afghanistan.³⁵⁶ The representative of Canada noted that the resolution would send a “strong anti-terrorism message”, but drew attention to the necessity of monitoring the humanitarian situation in Afghanistan to ensure that the civilian population did not suffer “needlessly as a result of these new sanctions”.³⁵⁷ Likewise, the representative of the Netherlands insisted that the Council should continue to weigh the possible humanitarian and political impact these measures would have against the Council’s wider political objectives. He deemed unacceptable that “the Taliban should use the adoption of the current draft resolution as a pretext for blocking the delivery of humanitarian aid”.³⁵⁸

As regards the humanitarian impact of measures imposed, the representative of Malaysia asserted that his country did not reject the use of sanctions, as long as they were “taken as a measure of last resort short of the use of force”, were targeted, had “minimal humanitarian impact on the population at large” and a “specific time-frame”. He held the belief that the sanctions imposed by resolution 1333 (2000) would “exacerbate the sense of isolation and despair of the people of Afghanistan” and lead to the deterioration of the humanitarian situation in the Taliban-controlled areas in Afghanistan. He also noted that no periodic assessments pursuant to resolution 1267 (1999), had been carried out regarding the humanitarian impact of the sanctions.³⁵⁹ The representative of Canada remarked that the resolution could have been better targeted and more sensitive to humanitarian considerations, but welcomed the establishment of a committee of experts to monitor and report on the implementation and the humanitarian impact of the sanctions.³⁶⁰ A number of representatives expressed confidence that the targeted nature of

³⁵⁵ Ibid., pp. 8-9.

³⁵⁶ Ibid., pp. 5-7.

³⁵⁷ Ibid., p. 9.

³⁵⁸ Ibid., pp. 5-6.

³⁵⁹ Ibid., pp. 4-5.

³⁶⁰ Ibid., p. 9.

the sanctions would avoid their having an adverse impact on the civilian population of Afghanistan.³⁶¹ The representative of the Russian Federation further noted that the Council should not acquiesce to “blackmail” by responding to threats by the Taliban to expel humanitarian workers if the Council imposed the sanctions.³⁶² The representative of the United States affirmed that the policies of the Taliban had “aggravated the already abysmal economic and social conditions of the people of Afghanistan”.³⁶³

In connection with the partisan nature of the sanctions regime imposed by the Council, the representative of Malaysia expressed concern at the negative impact of such measures on the peace process in Afghanistan. He warned that the imposition of one-sided measures against the Taliban, such as the arms embargo, would interfere with the civil war in the country and compromise the neutrality of the Council.³⁶⁴ The representative of China expressed the belief that a new round of sanctions would “naturally have a negative impact on the Afghan peace process,” and that a “unilateral arms embargo” could not achieve the objective of enhancing the peace process.³⁶⁵ In response, the representative of the Russian Federation insisted that the one-sided nature of the arms embargo was “fully justified” since the Taliban had “always banked on using military means to resolve the Afghan problem” and offered their territory for the use and protection of terrorists. He underlined that the Taliban had on many occasions reneged on their commitments to begin negotiations, and that this “consistent policy” of the Taliban was what negatively impacted the peace process, and not the decisions of the Council.³⁶⁶

As regards the time-bound nature of the measures imposed, the representative of France recalled that this was the third time during the year that the Council had mandated a time-bound sanctions regime and saluted the formation of a new Council doctrine that was conducive to “avoiding the perpetuation of sanctions for indefinite time periods”.³⁶⁷ The representative of Ukraine also noted that the resolution established time limits for the

³⁶¹ Ibid., pp. 2-4 (Afghanistan); pp. 5-6 (the Netherlands); p. 6 (United Kingdom); p. 6 (France); pp. 7-8 (United States); and pp. 9-11 (Russian Federation).

³⁶² Ibid., pp. 9-11.

³⁶³ Ibid., pp. 7-8.

³⁶⁴ Ibid., pp. 4-5.

³⁶⁵ Ibid., pp. 8-9.

³⁶⁶ Ibid., pp. 9-11.

³⁶⁷ Ibid., p. 6.

sanctions regime and deemed that, by adopting these measures, the Council was sending “a clear message to the Taliban regarding the termination of the sanctions regime”.³⁶⁸

At its 4325th meeting, on 5 June 2001, the Council discussed the report of the committee of experts established pursuant to resolution 1333 (2000) regarding the monitoring of the arms embargo against the Taliban and the closure of terrorist training camps in the Taliban-held areas of Afghanistan. During the debate, several speakers pledged their support for the monitoring mechanism recommended in the committee’s report.³⁶⁹ The representative of China pointed out that the establishment of a new sanctions monitoring mechanism would require the “close cooperation of States neighbouring Afghanistan” and the Council should, therefore, “carefully consider and respect the opinions of those neighbouring countries” before arriving at a decision.³⁷⁰ The representative of Tunisia concurred and added that some of Afghanistan’s neighbors might need “concrete support” in order to strengthen and develop their monitoring mechanisms.³⁷¹ The representative of Mali maintained that the “goal of sanctions should not be to punish, but to modify behaviour” and to attain this goal sanctions should be applied “rigorously”.³⁷² The representative of Mauritius advised that the sanctions monitoring mechanism should not become a “mere reporting panel for further action by others”, but a “solid structure, with all financial and human resources to effectively deal with sanctions-busting cases”.³⁷³ The representative of Singapore cautioned that in creating the sanctions monitoring mechanism, the Security Council should not “unwittingly” institute measures that would impede the ability of humanitarian agencies to bring aid to the Afghan population.³⁷⁴ The representative of Uzbekistan added that the effectiveness of the monitoring mechanism would depend on the direct involvement and commitment of “all countries”.³⁷⁵ The representative of Pakistan expressed his Government’s general opposition to sanctions, “as a matter of principle” and called

³⁶⁸ Ibid., pp. 6-7.

³⁶⁹ S/PV.4325, p. 4 (Ukraine); pp. 6-7 (Russian Federation); pp. 7-8 (United States); pp. 9-10 (United Kingdom); p. 10 (Ireland); pp. 10-11 (France); pp. 11-12 (Jamaica); p. 13 (Norway); p. 15 (Colombia); and pp. 15-18 (Afghanistan).

³⁷⁰ Ibid., p. 5.

³⁷¹ Ibid., p. 6.

³⁷² Ibid., p. 8.

³⁷³ Ibid., p. 12.

³⁷⁴ Ibid., p. 14.

³⁷⁵ S.PV.4325 (Resumption 1), p. 3.

attention to the humanitarian consequences of sanctions in Afghanistan. He asked for sanctions to be lifted and the “wrong to be corrected”.³⁷⁶

4. The situation in Angola

At its 4283rd meeting, on 22 February 2001, the Council discussed the final report of the Monitoring Mechanism presented to the Council pursuant to resolution 1295 (2000), which established sanctions against UNITA. During the debate, several speakers commended the positive effect of the sanctions regime in diminishing UNITA’s procurement of arms and capacity to wage war.³⁷⁷ The representative of France noted that, despite this success, sanctions violations had occurred in Angola and called for the Council to find the “proper means” to put an end to the violations.³⁷⁸ Similarly, the representative of Ukraine declared that the Council should encourage States to take “strong action” with respect to sanctions violations.³⁷⁹ Moreover, the representatives of Mali and Mauritius asked for secondary sanctions to be imposed on States that violated the measures adopted against UNITA.³⁸⁰ In response, the representative of Colombia asserted that “imposing sanctions on Governments that violate sanctions” would run the “risk of proliferating such measures, operating selectively and politicizing the sanctions regime”.³⁸¹ The representatives of Brazil and Mozambique remarked that the success of the sanctions against UNITA depended on the continued commitment of the international community in the implementation of sanctions.³⁸² Similarly, the representative of Togo asserted that the sanctions regime would be implemented effectively only “through substantive dialogue” and “ongoing cooperation with all States”,³⁸³ while the representative of Bulgaria noted that the full implementation of sanctions could be achieved only “through a synergy of actions at the national, regional and global levels”.³⁸⁴ Furthermore, several speakers emphasized the need to institutionalize the

³⁷⁶ Ibid., pp. 5-6.

³⁷⁷ S/PV.4283, p. 8 (Jamaica); p. 11 (Colombia); pp. 12-13 (China); and p. 13 (Mali).

³⁷⁸ Ibid., p. 6.

³⁷⁹ Ibid., p. 17.

³⁸⁰ Ibid., p. 14 (Mali); and p. 19 (Mauritius).

³⁸¹ Ibid., p. 11.

³⁸² Ibid., p. 37 (Brazil); and p. 38 (Mozambique).

³⁸³ Ibid., p. 32.

³⁸⁴ Ibid., p. 35.

monitoring of sanctions, so that the requisite expertise and methodology would be applied for the whole duration of the sanctions regimes.³⁸⁵ Several speakers concurred that the sanctions against UNITA should not represent an end in themselves, but create the necessary conditions for a final political solution to the Angolan question.³⁸⁶ The representative of Sweden, speaking on behalf of the European Union, expressed the European Union's commitment to maintaining strong international pressure on UNITA and its leadership through the full implementation of the United Nations sanctions.³⁸⁷ Several representatives asked the Council to augment its sanctions against UNITA so as to compel it to return to the peace process as soon as possible.³⁸⁸ By contrast, the representative of Bangladesh underlined that his Government encouraged "a process of peaceful resolution of disputes and of genuine national reconciliation", alongside sanctions.³⁸⁹

At its 4418th meeting, on 15 November 2001, the Council heard a briefing by the Under-Secretary-General and Special Adviser of the Secretary-General on the situation in Angola and its effects on Angolan civilians. During the debate, several speakers expressed their satisfaction with the positive impact of sanctions imposed on UNITA.³⁹⁰ The representative of Brazil observed that, while the situation in Angola had improved, thanks primarily to sanctions, stability was still a goal to be achieved and asked for strict compliance with the United Nations sanctions.³⁹¹ On the contrary, the representative of Malawi argued that the UNITA attacks against civilians demonstrated that the sanctions regime was ineffectual and insisted on an investigation of every possible loophole in the sanctions regime. He called upon the international community to support the Southern African Development Community (SADC) in implementing the sanctions regime against UNITA.³⁹² Similarly, several representatives called for the international community to

³⁸⁵ Ibid., p. 6 (France); p. 8 (Jamaica); p. 10 (United Kingdom); p. 14 (Mali); p. 15 (Norway); p. 21 (Tunisia); p. 23 (Burkina Faso); p. 25 (Canada); p. 31 (Argentina); p. 36 (Brazil); p. 38 (Mozambique); and pp. 39-40 (Namibia).

³⁸⁶ Ibid., p. 27 (Swaziland); p. 28 (Portugal); and p. 36 (Brazil).

³⁸⁷ Ibid., p. 30.

³⁸⁸ Ibid., p. 12 (China); p. 13 (Mali); and p. 22 (Angola).

³⁸⁹ Ibid., p. 18.

³⁹⁰ S/PV.4418, p. 5 (Angola); p. 6 (Ireland); p. 12 (Mauritius); p. 13 (Bangladesh); p. 15 (Mali); and p. 18 (Norway).

³⁹¹ Ibid., p. 25.

³⁹² Ibid., p. 21.

play its role in securing peace in Angola, by fully complying with the sanctions against UNITA.³⁹³ The representative of Belgium insisted that sanctions were not a solution in themselves and that they should form part of a more comprehensive political framework.³⁹⁴

With regard to the monitoring and strengthening of the measures imposed against UNITA, several speakers advocated the creation of a monitoring mechanism to increase the effectiveness of sanctions.³⁹⁵ The representative of Mauritius, echoed by the representatives of Ukraine and Namibia, noted that sanctions should be not only “closely monitored, but also tightened”.³⁹⁶ The representative of Cape Verde concluded that additional measures should be taken to put an end to criminal activities, and noted that such measures could be taken “only through effective monitoring mechanisms in the context of a review of the sanctions”.³⁹⁷ The representative of Canada asked the Council to take “more resolute action” towards Member States that continued such violations by, for example, “imposing secondary sanctions”.³⁹⁸ The representative of Tunisia insisted that there could be “no military solution to the conflict” and that sanctions should be maintained until the peace process became irreversible.³⁹⁹

At its 4517th meeting, on 23 April 2002, the Council was briefed on the situation in Angola by the Under-Secretary-General and Special Adviser of the Secretary-General for Special Assignments in Africa who remarked that, while the suspension of the travel ban on UNITA officials was in effect, it would be “premature” to talk about the lifting of other sanctions.⁴⁰⁰ The representative of Angola attested that sanctions remained an effective policy instrument to ensure the full implementation of the Lusaka Protocol and to prevent any departure from “the spirit of peace growing in Angola”. He acknowledged that sanctions would continue to act as a catalyst for enduring peace and expressed his

³⁹³ Ibid., p. 19 (Singapore); p. 20 (Jamaica); and p. 27 (Belgium).

³⁹⁴ Ibid., p. 27.

³⁹⁵ Ibid., p. 9 (France); p. 9 (Ukraine); p. 13 (Bangladesh); p. 16 (Colombia); and p. 17 (China).

³⁹⁶ Ibid., p. 9 (Ukraine); p. 12 (Mauritius); and p. 24 (Namibia).

³⁹⁷ Ibid., p. 22.

³⁹⁸ Ibid., p. 28.

³⁹⁹ Ibid., p. 17.

⁴⁰⁰ S/PV.4517, p. 4.

Government's willingness to cooperate with the Security Council on the consideration of appropriate exemptions so as to facilitate the process of national reconciliation.⁴⁰¹

5. The situation between Iraq and Kuwait

At its 4336th meeting, on 26 June 2001, the Council discussed the effects of the sanctions imposed on Iraq and considered ways of improving the humanitarian situation in the country. The Council also debated a draft resolution presented by the United Kingdom on a new set of arrangements ("smart" sanctions against Iraq). The representative of the United Kingdom noted that the aim of his country as the sponsor of the draft resolution was to set in place measures to liberalize the flow of goods to Iraq while ensuring that military-related items were not exported to Iraq. He therefore insisted that the only route to ending of sanctions lied through the confidence of the Council that Iraq had disarmed in accordance with the United Nations resolutions.⁴⁰² This view was reinforced by a number of representatives who called for the lifting of sanctions but only after Iraq had fully complied with the requirements of the international community.⁴⁰³ By contrast, the representative of Jordan asserted that the sanctions on Iraq did not achieve their purpose and had repercussions on the entire region. He requested the lifting of the sanctions imposed against Iraq which, in his view, would revive the "dialogue between Baghdad and the United Nations in order to settle all the outstanding issues" that emanated from Iraq's invasion of Kuwait.⁴⁰⁴ Likewise, the representative of Turkey asked for the sanctions to be lifted "altogether in the nearest possible future".⁴⁰⁵ Sharing this view, the representative of the Libyan Arab Jamahiriya observed that the sanctions had become a "crime of genocide against the Iraqi people" and asked for their immediate removal.⁴⁰⁶ The representative of the Syrian Arab Republic noticed that economic sanctions had proved "worthless" while having a harmful effect on the people and asked

⁴⁰¹ Ibid., pp. 6-7.

⁴⁰² S/PV.4336, p. 4.

⁴⁰³ S/PV.4336, p. 11 (China); p. 12 (Tunisia); p. 13 (Norway); p. 17 (Ukraine); p. 30 (Saudi Arabia); and p. 31 (Sweden); S/PV. 4336 (Resumption 1), p. 4 (India); p. 8 (Germany); p. 9 (the Netherlands); p. 10 (Italy); and p. 14 (Spain).

⁴⁰⁴ S/PV.4336, pp. 28-29.

⁴⁰⁵ S/PV.4336 (Resumption 1), p. 4.

⁴⁰⁶ Ibid., p. 2.

for their elimination.⁴⁰⁷ The Observer of the League of Arab States to the United Nations called for the lifting of sanctions against Iraq, but also insisted on the need to guarantee Kuwait's security and stability.⁴⁰⁸ The representative of the Russian Federation cautioned that the perpetuation of sanctions could worsen the situation in the Gulf region and that the proposed resolution would have negative humanitarian and economic consequences in Iraq.⁴⁰⁹ By contrast, the representatives of the United States and Mali opined that the proposed smart sanctions would ease the harmful effects of sanctions on civilians.⁴¹⁰ A number of representatives emphasized that sanctions should not be an end in themselves, but a tool for the maintenance of peace and security and, to achieve that goal, the cooperation of the Government of Iraq was essential.⁴¹¹ The representative of Singapore asked for an increase in the effectiveness of sanctions to compel Iraq to comply, while at the same time making the sanctions more focused so that they would not impose "unduly onerous burdens" on the Iraqi people.⁴¹² The representative of Jamaica also spoke in favor of a sanctions regime that would be "focused, effectively targeted and of limited duration".⁴¹³ Along the same lines, the representative of New Zealand called for sanctions "targeted for maximum effectiveness".⁴¹⁴ Similarly, the representative of France expressed his Government's disposition to ease the civilian sanctions as long as the Government of Iraq accepted the return of inspectors and the Council put in place a long-term monitoring mechanism.⁴¹⁵ Finally, several speakers drew attention to the worsening humanitarian situation in Iraq and urged the Council to find ways to ease the effect of sanctions on the Iraqi people.⁴¹⁶

At its 4625th meeting, on 16 October 2002, the Council continued its discussion on the sanctions regime imposed against Iraq. The representative of Iraq stressed that the measures imposed against his country constituted a "blatant violation of several

⁴⁰⁷ Ibid., p. 12.

⁴⁰⁸ Ibid., p. 15.

⁴⁰⁹ S/PV.4336, p. 3.

⁴¹⁰ Ibid., p. 9 (United States); and p. 19 (Mali).

⁴¹¹ S/PV.4336, p. 16 (Colombia); p. 17 (Ukraine); and p. 18 (Mauritius).

⁴¹² Ibid., p. 22.

⁴¹³ Ibid., p. 23.

⁴¹⁴ S/PV.4336 (Resumption 1), p. 6.

⁴¹⁵ S/PV.4336, p. 7.

⁴¹⁶ S/PV.4336, p. 18 (Mauritius); p. 19 (Mali); and p. 32 (Malaysia); S/PV.4336 (Resumption 1), p. 3 (Japan); p. 5 (Australia); and p. 7 (Bahrain).

provisions of the Charter”, but expressed his Government’s readiness to accept United Nations inspectors.⁴¹⁷ The representative of South Africa asked the Council to make the lifting of sanctions conditional upon Iraq’s compliance with the relevant Security Council resolutions.⁴¹⁸ The representative of Egypt also emphasized the need for Iraq “to implement scrupulously its obligations” and expressed his hope to see “progress on disarmament and the lifting of sanctions”.⁴¹⁹ Iraq’s decision to allow the return of United Nations inspectors was commended by several speakers, who insisted that Iraq should comply with all its obligations before all sanctions against Iraq were lifted.⁴²⁰ Similarly, a number of representatives called on Iraq to adhere to its commitments under Security Council resolutions.⁴²¹ The representative of Morocco insisted that military actions against Iraq should be avoided, and instead sanctions should be used to persuade Iraq to comply with international law.⁴²² The representative of Brazil underlined that the Council should “define positive incentives for full compliance” that would eventually lead to a gradual lifting of the sanctions regime.⁴²³ Several speakers shared the view that Iraq’s cooperation with the inspectors should lay the foundation for lifting the sanctions and thus improve the humanitarian situation in Iraq.⁴²⁴ The representatives of Belarus and Zimbabwe expressed support for an alteration of the sanctions regime against Iraq, to alleviate its humanitarian consequences.⁴²⁵ A number of speakers noted that the sanctions would have been lifted already had Iraq complied with its obligations.⁴²⁶ France insisted that the Council “must also demonstrate fairness by showing Iraq that war” was not inevitable if it “fully and scrupulously” fulfilled its obligations.⁴²⁷ The representative of Bulgaria also expressed his country’s commitment to a peaceful solution to the problem

⁴¹⁷ S/PV.4625, p. 7.

⁴¹⁸ *Ibid.*, p. 4.

⁴¹⁹ *Ibid.*, p. 17.

⁴²⁰ S/PV.4625 (Resumption 1), p. 2 (Iran); p. 7 (League of Arab States); p. 19 (Argentina); p. 21 (Nigeria); and p. 24 (the Sudan).

⁴²¹ *Ibid.*, p. 4 (Ukraine); and p. 13 (Indonesia)

⁴²² S/PV.4625 (Resumption 2), p. 3.

⁴²³ *Ibid.*, p. 4.

⁴²⁴ S/PV.4625 (Resumption 2), p. 7 (Malaysia); p. 10 (Lebanon); p. 11 (India); p. 18 (Saudi Arabia); p. 20 (Observer of the Organization of the Islamic Conference); and p. 22 (Cambodia).

⁴²⁵ *Ibid.*, p. 18 (Belarus); and p. 24 (Zimbabwe).

⁴²⁶ S/PV.4625 (Resumption 1), p. 25 (Senegal); S/PV.4625 (Resumption 3), p. 8 (United Kingdom); and p. 19 (Ireland).

⁴²⁷ S/PV.4625 (Resumption 3), p. 14.

of disarming Iraq and for the lifting of sanctions.⁴²⁸ Several speakers expressed concern for the “humanitarian tragedy” suffered by the Iraqi people as a consequence of the sanctions.⁴²⁹ Also referring to the humanitarian consequences of sanctions against Iraq, a number of representatives called for their “early” or “immediate” removal to alleviate the suffering of the Iraqi people.⁴³⁰

At its 4683rd meeting, on 30 December 2002, the Council adopted resolution 1454 (2002) by which it introduced a number of adjustments to the way in which humanitarian deliveries to Iraq were carried out. The representative of the Russian Federation expressed his hope that following the Iraqi Government’s cooperation in implementing the relevant Security Council resolutions prospect would open for the “suspension and then the lifting of sanctions”.⁴³¹ Likewise, the representative of the Syrian Arab Republic asserted that Iraq’s cooperation with the United Nations weapons inspectors “should inevitably lead to the lifting of the sanctions” and not to “the sanctions regime being complicated by the addition of further restrictions under the pretext that certain goods could be of dual use”.⁴³²

At its 4717th meeting, on 11 March 2003, the Council continued its debate on Iraq’s non-compliance with relevant Security Council resolutions. The representative of Iraq reiterated his Government’s readiness to cooperate in a fruitful and constructive manner in order to determine that weapons of mass destruction no longer existed in Iraq and sanctions could be lifted.⁴³³ The representative of Malaysia emphasized that the disarmament efforts in Iraq “should not be an end in themselves”, but they should constitute a step towards the lifting of sanctions.⁴³⁴ Similarly, several speakers expressed their hope for a peaceful solution to the Iraqi situation, so that sanctions against Iraq could be lifted.⁴³⁵

⁴²⁸ Ibid., p. 25.

⁴²⁹ Ibid., p. 14 (Yemen); and p. 15 (Algeria); S/PV.4625 (Resumption 2), p. 7 (Syrian Arab Republic); and p. 18 (Singapore).

⁴³⁰ S/PV.4625, p. 19 (Pakistan); p. 20 (United Arab Emirates); and p. 23 (Tunisia).

⁴³¹ S/PV.4683, p. 2.

⁴³² Ibid., p. 3.

⁴³³ S/PV.4717, p. 5.

⁴³⁴ Ibid., p. 7.

⁴³⁵ S/PV.4717, p. 16 (Libyan Arab Jamahiriya); and p. 34 (Lebanon); S/PV.4717 (Resumption 1), p. 3 (the Sudan); and p. 14 (Tunisia).

At its 4761st meeting, on 22 May 2003, the Council adopted resolution 1483 (2003) which lifted the economic sanctions on Iraq imposed by resolution 661 (1990). The representative of the United States saluted the removal of sanctions as a “momentous event for the people of Iraq”.⁴³⁶ Several speakers expressed the belief that the lifting of sanctions would give the Iraqi Government access to resources necessary to rebuild the economy and improve the humanitarian situation.⁴³⁷ The representatives of Guinea and Cameroon concurred that the situation in Iraq no longer justified the maintenance of economic sanctions against it.⁴³⁸

At its 4872nd meeting, on 24 November 2003, the Council adopted resolution 1518 (2003) which established a Committee to continue to identify individuals and entities dealing with Iraq’s funds or other financial assets. The representative of Germany declared that his Government’s preference was for the mandate of the new Committee to cover “all remaining sanctions, for example, including the arms embargo”.⁴³⁹ Similarly, the representative of France endorsed a broadening of the Committee’s mandate, to “monitor compliance of States with the arms embargo against Iraq”.⁴⁴⁰

6. The situation concerning the Democratic Republic of the Congo

At its 4437th meeting, on 14 December 2001, the Council considered a report of the Panel of Experts on the illegal exploitation of natural resources and other forms of wealth of the DRC. The Chairman of the Panel conveyed the Panel’s recommendation to establish “a moratorium on the purchase, transit and import of high-value commodities” from regions of the DRC where foreign troops were present. He opined that this would end the exploitation of natural resources that was “linked to the continuation of the conflict”.⁴⁴¹ During the ensuing debate, several speakers expressed support for such a moratorium. The representative of Ireland noted that such action might “have an impact on consumers and persuade them to pressurize the companies that purchase the

⁴³⁶ S/PV.4761, p. 2.

⁴³⁷ Ibid., p. 4 (France); p. 5 (United Kingdom); p. 5 (Germany); p. 6 (Mexico); p. 8 (Russian Federation); p. 10 (Chile); and p. 11 (Pakistan).

⁴³⁸ Ibid., p. 9 (Guinea); and p. 9 (Cameroon).

⁴³⁹ S/PV.4872, p. 3.

⁴⁴⁰ Ibid., p. 3.

⁴⁴¹ S/PV.4437, pp. 3-5.

commodities in question to seek alternative sources”.⁴⁴² The representative of Jamaica expressed the belief that a moratorium should be “targeted not only at the countries and groups in the region, but also at the end users” to ensure that the people of the DRC benefited from the exploitation of their resources.⁴⁴³ The representative of Bangladesh stated that the moratorium should ideally also extend to cover financial transactions, arms transfers and military cooperation. He further noted that all parties concerned, including transit countries and the countries of destination of the DRC’s illegally exploited resources, had a “moral obligation” to join the moratorium.⁴⁴⁴ The representative of Colombia stated that there was a need to “name and shame” those involved in the illegal exploitation of natural resources as well as the “international arms and munitions merchants” who were sustaining the fighting capacity of the armed groups committing atrocities against civilians of the DRC.⁴⁴⁵ The representative of Nigeria urged the Council to consider the imposition of sanctions on any country that violated the resolution on the exploitation of mineral resources in the DRC.⁴⁴⁶ Several speakers noted the need to study the moratorium measure more in-depth and to assess the possible impact it could have on the economic and humanitarian situation in the DRC.⁴⁴⁷ The representative of Uganda advocated more caution as the moratorium could have “the effect of sanctions against the small farmers and artisan miners” and pointed out that the moratorium would “cripple the capacity of missionary groups and other non-governmental organizations” who delivered humanitarian services.⁴⁴⁸ The representative of the United States expressed doubts about the proposed moratorium. He noted that such a targeted moratorium on resources from specific areas would likely be unenforceable because of the difficulty of tracking those kinds of commodities. He further asserted that such a move would risk having a negative impact on the Congolese population.⁴⁴⁹ The representative of Japan emphasized the need

⁴⁴² Ibid., p. 23.

⁴⁴³ Ibid., pp. 23-25.

⁴⁴⁴ Ibid., pp. 25-26.

⁴⁴⁵ Ibid., pp. 34-35.

⁴⁴⁶ S/PV.4437 (Resumption 1), pp. 8-9.

⁴⁴⁷ S/PV.4437, pp. 10-14 (Uganda); pp. 20-21 (France); pp. 22-23 (Ireland); pp. 25-26 (Bangladesh); pp. 26-28 (Mauritius); pp. 30-31 (United States); pp. 32-33 (Singapore); pp. 34-35 (Colombia); and p. 36 (Mali).

⁴⁴⁸ Ibid., pp. 10-14.

⁴⁴⁹ Ibid., pp. 30-31.

to protect the legitimate trade in primary commodities in order to support efforts towards peace in the DRC.⁴⁵⁰

At its 4642nd meeting, on 5 November 2002, the Council held a debate on the final report of the Panel of Experts on the illegal exploitation of natural resources and other forms of wealth of the DRC. The representative of Belgium declared that the “establishment of a sanctions regime” was possible, but insisted that “the actions decided upon be part of a framework of a peace process and that they not affect it negatively”.⁴⁵¹ The representative of the Russian Federation cautioned that the introduction of sanctions could give rise to “serious legal problems”, since it would be extremely difficult to prove that the plundering of the natural resources of the DRC, posed “a threat to international peace and security”.⁴⁵² The representative of Zimbabwe remarked that the Panel of Experts distinguished between the companies and individuals to be sanctioned based on where they were located and warned that this approach appeared “paternalistic”.⁴⁵³ The representative of Cameroon appealed to the countries of transit and destination of the natural wealth exploited illegally in the DRC to “finally take adequate measures to control and even, if necessary, to interdict such activities”.⁴⁵⁴ The representative of Colombia pointed out that the nationality of an individual or business should not “be used to evade responsibility” for acts that the international community wished to sanction.⁴⁵⁵ The representative of Bulgaria expressed support for the Panel’s appeal to the Governments that harbored the entities involved in illegal exploitation to “shoulder their responsibility” by “making detailed inquiries” into the cases referred to in the report and take the necessary steps to stop such illegal practices.⁴⁵⁶ The representative of the United States noted that the “naming of those involved and the description of how they worked, in and of itself” was a “valuable tool”. He emphasized that the responsibility of governments to respond to the Panel’s report did not lie solely with States in the region, but also with those outside of it.⁴⁵⁷ The representative of China stressed the need to

⁴⁵⁰ S/PV.4437 (Resumption 1), pp. 13-14.

⁴⁵¹ S/PV.4642, p. 14.

⁴⁵² Ibid., p. 28.

⁴⁵³ Ibid, pp. 19-23.

⁴⁵⁴ S/PV.4642 (Resumption 1), pp. 9-11.

⁴⁵⁵ Ibid., pp. 13-15.

⁴⁵⁶ Ibid., pp. 15-16.

⁴⁵⁷ Ibid., pp. 16-18.

differentiate between “illegal exploitation and day-to-day economic and trade exchanges” in order to avoid a negative impact on the economic development of the DRC and the livelihood of its people.⁴⁵⁸

At its 4790th meeting, on 18 July 2003, the Council discussed the situation in the DRC in the aftermath of the installation of the Transitional Government of National Unity and the military operation undertaken by the Interim Emergency Multinational Force against the Union des Patriotes Congolais (UPC) on 11 July 2003 in Bunia. During the debate, several speakers called for the imposition of an arms embargo on all armed factions in the DRC, accompanied by the establishment of a monitoring mechanism to ensure its implementation.⁴⁵⁹ The representative of Germany also drew attention to the need to create an “efficient monitoring regime” so that the Council could “manifest its political will to impose punitive measures” on those who violated the embargo.⁴⁶⁰ The representative of Pakistan cautioned that the Council had to make the embargo “credible, effective and implementable” in order not to undermine the credibility of the Council. He elaborated that, in making the arms embargo more effective, the Council had to consider ways and means to track the illegal exploitation of resources to the sources of the funds as well as to the points where those resources and funds were converted into arms.⁴⁶¹

7. The situation in Liberia

At its 4815th meeting, on 27 August 2003, the Council was briefed by the Executive Secretary of the Economic Community of West African States (ECOWAS) on the progress made in bringing to an end the civil war in Liberia and establishing the basis for a lasting peace. In his briefing, the Executive Secretary of ECOWAS stressed that in light of the interim Government’s denunciation of support for rebel groups in the region and moves towards national unity and peace, there was a need to review the sanctions regime imposed against Liberia. He noted that the sanctions would make it impossible for

⁴⁵⁸ Ibid., p. 19.

⁴⁵⁹ S/PV.4790, pp. 6-8 (Secretary General and High Representative for the Common Foreign and Security Policy of the European Union); pp. 8-9 (Germany); pp. 16-18 (United Kingdom); pp. 18-19 (Chile); pp. 23-25 (Pakistan); pp. 25-26 (Bulgaria); pp. 32-33 (Brazil); pp. 33-35 (Japan); and pp. 38-39 (Nepal).

⁴⁶⁰ Ibid., p. 9.

⁴⁶¹ Ibid., pp. 23-25.

the interim Government to function, and thereby urged the Council to consider lifting the sanctions imposed against Liberia, except for the arms embargo.⁴⁶²

8. The situation in the Middle East, including the Palestinian question

At its 4204th meeting, on 3 October 2000, the Council discussed the situation in the Middle East in light of the clashes between Palestinian citizens and Israeli security forces. During the debate, the representative of the Libyan Arab Jamahiriya called for the Council to stop the “Israeli aggression against the Palestinian people”. He noted that if “this matter concerned Iraq, Libya or the Sudan, even by way of mere allegations, the Council would not have taken all this time to adopt resolutions and to implement sanctions”. He called upon the Council to take the “necessary and effective measures” to provide full protection to the Palestinian civilians.⁴⁶³

At its 4506th meeting, on 3 April 2002, the Council debated the situation in the Middle East following a new military action taken by Israel in the Palestinian territories. The representative of Malaysia, conveying the position of the Organization of the Islamic Conference (OIC), called on the international community to take immediate action to stop the Israeli “aggression and illegitimate practices”. It also requested the Council to take the necessary measures to provide international protection for the Palestinian people and to apply “deterrent sanctions against Israel”.⁴⁶⁴

At its 4510th meeting, on 8 April 2002, the Council discussed the situation in the Middle East in the aftermath of an escalation of the Israeli military campaign to reoccupy the city of Ramallah. During the debate, the representative of Mauritius noted that had any other country “challenged Security Council resolutions in such a manner”, it would have been subjected to “all kinds of sanctions”.⁴⁶⁵ The representative of Malaysia asserted that the situation in the occupied Palestinian territories had deteriorated and echoed that the Council would have acted if a different country had defied it.⁴⁶⁶

9. Security Council resolution 1054 (1996) of 26 April 1996

⁴⁶² S/PV.4815, pp. 5-7.

⁴⁶³ S/PV.4204 (Resumption 2), pp. 2-3.

⁴⁶⁴ S/PV.4506, p. 23.

⁴⁶⁵ S/PV.4510, p. 10.

⁴⁶⁶ S/PV.4510 (Resumption 1), pp. 17-18.

In a series of letters dated June 2000,⁴⁶⁷ the representatives of the Sudan, Algeria, South Africa, and Gabon expressed their Governments' support for the removal of the sanctions against the Sudan in light of the country's compliance with Council resolutions 1054 (1996) and 1070 (1996).

At its 4384th meeting, on 28 September 2001, the Council adopted resolution 1372 (2001) by which it lifted the sanctions against the Sudan imposed by paragraphs 3 and 4 of resolution 1054 (1996) and paragraph 3 of resolution 1070 (1996). During the debate following the vote, several representatives indicated that the Sudan had met its obligations under Security Council resolutions and welcomed the removal of sanctions.⁴⁶⁸ The representative of the United Kingdom further stated that the resolution sent out a clear signal that the Council stood ready to act once it had determined that a country had complied with the demands set out in a resolution.⁴⁶⁹ The representative of the United States welcomed the steps taken by the Sudan, but expressed concern for "the enormous suffering of the Sudanese people" and the civil war in the country. He stressed that in light of these considerations, the United States had abstained from the vote.⁴⁷⁰ The representative of Ireland welcomed the steps taken by the Sudan, but cautioned that the sanctions were lifted because only "very specific requirements" had been met. He indicated that Ireland remained "deeply concerned" at the wider political, humanitarian and human rights situation in the Sudan.⁴⁷¹

10. Letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America

By a letter dated 15 August 2003 addressed to the President of the Security Council,⁴⁷² the representative of the Libyan Arab Jamahiriya stated that his country had met its obligations pursuant to the relevant Council resolutions and requested the measures imposed by resolutions 748 (1992) and 883 (1993) to be lifted.

⁴⁶⁷ Letters addressed to the President of the Security Council by the representatives of the Sudan (S/2000/513); Algeria (S/2000/517); South Africa (S/2000/521); and Gabon (S/2000/533).

⁴⁶⁸ S/PV.4384, p. 2 (Russian Federation); p. 3 (United Kingdom); and p. 4 (the Sudan).

⁴⁶⁹ *Ibid.*, p. 3.

⁴⁷⁰ *Ibid.*, p. 3.

⁴⁷¹ *Ibid.*, p. 3.

⁴⁷² S/2003/818.

By a letter dated 15 August 2003 addressed to the President of the Security Council,⁴⁷³ the representatives of the United Kingdom and the United States noted that they were not opposed to the lifting of sanctions against the Libyan Arab Jamahiriya and that they expected the country to fully adhere to its commitments. A similar message was conveyed by a letter dated 12 September 2003 addressed to the Secretary-General from the representative of France.⁴⁷⁴

At its 4820th meeting, on 9 and 12 September 2003, the Council adopted resolution 1506 (2003), by which it lifted the sanctions against the Libyan Arab Jamahiriya imposed by resolutions 748 (1992) and 883 (1993) in the aftermath of the terrorist attacks against Pan Am flight 103 and Union de Transports Aeriens flight 772. During the subsequent debate, a number of speakers explained their vote in favour of the removal of sanctions based on the Libyan Arab Jamahiriya's fulfillment of the conditions previously imposed by the Council. They agreed it was a matter of justice for sanctions to be lifted once a country complied with the Security Council requirements.⁴⁷⁵ The representative of the United States concurred that the Libyan Arab Jamahiriya had met its obligations and stated that his Government was not opposed to the "formal lifting" of sanctions. He cautioned, however, that the United States' abstention should not be "misconstrued by Libya or by the world community as tacit United States acceptance" that the Government of the Libyan Arab Jamahiriya had rehabilitated itself. Hence, he explained, the United States would keep in place the bilateral sanctions against the country.⁴⁷⁶ The representative of France declared that the lifting of sanctions constituted an important step in the process of reintegrating the Libyan Arab Jamahiriya in the international community, but also encouraged the latter to make "the necessary gestures beyond the requirements for the lifting of sanctions".⁴⁷⁷ Similarly, the representative of Germany declared that his Government was "relieved" that the Libyan Arab Jamahiriya had fulfilled the demands of the Council, therefore enabling the definite lifting of sanctions. However, he emphasized that the Libyan Arab Jamahiriya had to take the

⁴⁷³ S/2003/819.

⁴⁷⁴ S/2003/885.

⁴⁷⁵ S/PV.4820, p. 4 (Bulgaria); p. 5 (Russian Federation); p. 5 (Spain); and pp. 5-6 (United Kingdom).

⁴⁷⁶ *Ibid.*, pp. 2-3.

⁴⁷⁷ *Ibid.*, pp. 3-4.

further step of addressing the bombing of a Berlin discotheque in 1986.⁴⁷⁸ The representative of Pakistan indicated that the people of the Libyan Arab Jamahiriya had “paid a high price with the sanctions imposed collectively on them”, noticing that sanctions always had “unintended consequences”.⁴⁷⁹ Likewise, the representative of the Syrian Arab Republic recognized that the people of the Libyan Arab Jamahiriya had suffered for a long time because of the “unjust sanctions imposed against them”, and expressed his country’s belief that the Council should not impose sanctions that would “adversely impact the civilian population” and that would “expose children, women and men to suffering under collective sanctions” considered unacceptable under international law and the Charter.⁴⁸⁰

11. General issues relating to sanctions

At its 4128th meeting, on 17 April 2000, the Council discussed a number of general issues relating to sanctions regimes, including: (i) the general purpose of sanctions; (ii) the criteria used for their imposition and termination; (iii) the concept of targeted sanctions; (iv) the humanitarian impact of sanctions; and (v) the monitoring of sanctions.

In connection with the general purpose of sanctions, many speakers emphasized that sanctions should be employed as an option for ensuring compliance only after all other peaceful options had been exhausted.⁴⁸¹ The representative of Jamaica pointed out that sanctions were an alternative to the use of force, while the representative of New Zealand characterized sanctions as a “middle course” between “diplomatic censure and the use of force”.⁴⁸² The representatives of France and the Netherlands noted that sanctions were often an intermediate measure between peaceful measures and the use of force.⁴⁸³ The representative of Canada stressed that sanctions were a “very potent means” of promoting peace and an “effective way to prevent or stop violence against civilians”

⁴⁷⁸ Ibid., p. 4.

⁴⁷⁹ Ibid., pp. 4-5.

⁴⁸⁰ Ibid., p. 5.

⁴⁸¹ S/PV.4128, p. 5 (Bangladesh); pp. 9-11 (Ukraine); pp. 13-15 (Malaysia); pp. 18-20 (Tunisia); pp. 20-21 (Mali); pp. 23-24 (Russian Federation); pp. 28-30 (Pakistan); and pp. 38-39 (Cuba).

⁴⁸² Ibid., pp. 21-23 (Jamaica); and pp. 36-37 (New Zealand).

⁴⁸³ Ibid., pp. 7-9 (France); and pp. 17-18 (the Netherlands).

and to “save human lives in the face of brutality and destruction”.⁴⁸⁴ By contrast, the representative of Pakistan stated that his country was opposed to sanctions as a “matter of principle”, preferring the adoption of means leading to a peaceful resolution of conflicts.⁴⁸⁵ The representative of Argentina understood sanctions to be “an important element of preventive action” that made it possible “to express the international community’s rejection of a given position or action” without the use of force.⁴⁸⁶ The representative of Australia acknowledged that while sanctions could be a “blunt instrument,” they remained a “necessary instrument and an integral part of the graduated set of responses” available to the Council.⁴⁸⁷ Several speakers noted that sanctions should not be an end in themselves but a means to an end,⁴⁸⁸ while others emphasized that sanctions should be combined with incentives in order to achieve compliance.⁴⁸⁹ The representative of Argentina warned that attention should be paid to the design of sanctions to make sure that their use was not viewed as a “half measure”, thus jeopardizing their effectiveness and the credibility of the United Nations.⁴⁹⁰

As regards the criteria for imposing and terminating sanctions, a number of speakers observed that sanctions should only be imposed when the Council had clearly established a threat to or a breach of the peace.⁴⁹¹ Other representatives concurred that national interests should not influence the imposition of economic sanctions.⁴⁹² In this respect, the representative of China cautioned that it was not appropriate to impose sanctions unilaterally in the absence of authorization by the Council.⁴⁹³ The representative of the Libyan Arab Jamahiriya stated that the Council “had ignored threats to the peace and acts of aggression”, while at the same time imposing the “severest sanctions when there was no threat to international peace and security” in order to

⁴⁸⁴ Ibid., pp. 24-26.

⁴⁸⁵ Ibid., pp. 28-30.

⁴⁸⁶ Ibid., pp. 15-17.

⁴⁸⁷ Ibid., pp. 33-35.

⁴⁸⁸ Ibid., pp. 6-7 (United States); pp. 18-20 (Tunisia); and pp. 21-23 (Jamaica).

⁴⁸⁹ Ibid., pp. 7-9 (France); pp. 13-15 (Malaysia); pp. 15-17 (Argentina); pp. 18-20 (Tunisia); pp. 23-24 (Russian Federation); pp. 24-26 (Canada); and pp. 40-43 (Iraq).

⁴⁹⁰ Ibid., pp. 15-17.

⁴⁹¹ Ibid., pp. 7-9 (France); pp. 13-15 (Malaysia); pp. 23-24 (Russian Federation); pp. 30-31 (Libyan Arab Jamahiriya); and pp. 38-39 (Cuba).

⁴⁹² Ibid., pp. 20-21 (Mali); pp. 21-23 (Jamaica); pp. 28-30 (Pakistan); and pp. 30-31 (Libyan Arab Jamahiriya).

⁴⁹³ Ibid., pp. 12-13.

achieve the “specific political objectives of particular States, utterly unrelated to international peace and security”.⁴⁹⁴ The representative of Cuba agreed that the implementation of sanctions could not represent “an exclusive right of a select club of countries” or a “coercive instrument in the hands of a few Security Council members”.⁴⁹⁵ The representative of Iraq argued that the United States was able to impose an “extremist use of sanctions” due to the “absence of any checks or balances in the Charter of the United Nations” to limit the excessive use of sanctions.⁴⁹⁶ The representative of the Russian Federation opined that sanctions should not be used to overthrow or change the “legitimate Government or existing political regime in the targeted country”,⁴⁹⁷ while the representative of the Libyan Arab Jamahiriya commented that the Council should not use sanctions to “force people to abandon their political choices or values, or to impose a particular pattern of behavior”.⁴⁹⁸ Moreover, several representatives insisted that sanctions should have a clearly defined purpose, and should comprise the objective criteria for their suspension or termination.⁴⁹⁹ The representative of the United States observed that once sanctions were imposed, the burden of proof for their suspension or termination resided in “the demonstrated behavior of the sanctioned entity”. He remarked that, just as sanctions “must never be lightly entered into, they should not be terminated due to a lack of resolve, a lack of will or a lack of patience”.⁵⁰⁰ The representative of the Russian Federation asserted that often “biased approaches” prevailed in the imposition, implementation, and removal of sanctions. He elaborated that “new criteria” were “artificially introduced by setting various additional trial periods and control periods, and complex mechanisms for monitoring and accountability”.⁵⁰¹

With regard to the concept of targeted sanctions, the majority of speakers shared the view that sanctions should be better targeted against those responsible for the

⁴⁹⁴ Ibid., pp. 30-31.

⁴⁹⁵ Ibid., pp. 38-39.

⁴⁹⁶ Ibid., pp. 40-43.

⁴⁹⁷ Ibid., pp. 23-24.

⁴⁹⁸ Ibid., pp. 30-31.

⁴⁹⁹ Ibid., pp. 5-6 (United Kingdom); pp. 6-7 (United States); pp. 11-12 (Namibia); pp. 13-15 (Malaysia); pp. 15-17 (Argentina); pp. 18-20 (Tunisia); pp. 20-21 (Mali); pp. 21-23 (Jamaica); pp. 23-24 (Russian Federation); pp. 28-30 (Pakistan); pp. 30-31 (Libyan Arab Jamahiriya); pp. 33-35 (Australia); pp. 35-36 (Bulgaria); pp. 36-37 (New Zealand); pp. 38-39 (Cuba); and pp. 40-43 (Iraq).

⁵⁰⁰ Ibid., pp. 6-7.

⁵⁰¹ Ibid., pp. 23-24.

sanctioned behavior to ensure a more effective compliance with the Council’s decisions and prevent harming civilians.⁵⁰² The representative of New Zealand observed that, “in the case of comprehensive trade sanctions imposed on authoritarian regimes in particular,” there was the unintended effect of “manipulation and profiteering by the elite” that would escape any adverse impact on themselves and exploit the situation to their own advantage. He further stated that, in light of such unintended consequences, “the trend away from general trade sanctions towards a more selective approach” needed to be accelerated by identifying a limited range of goods and services that would “target the interests of the regimes and elites identified as responsible for threats to peace and security”.⁵⁰³ The representative of Portugal advocated for a more unified and precise terminology to be used in sanctions resolutions to enhance harmonized national implementation.⁵⁰⁴ By contrast, the representative of Australia cautioned that targeted sanctions remained “untested” and might not be appropriate in all instances.⁵⁰⁵ The representative of the United Kingdom, while expressing his support for “smart” sanctions, commented that in the financial arena he suspected that the “fox” would be able “to stay ahead of the hounds”.⁵⁰⁶ The representative of Iraq held the belief that the “idea of replacing the current sanctions regime against Iraq with a smart one” was “ill-intentioned” and was aimed at “entrenching the sanctions and rendering them an objective in of themselves”.⁵⁰⁷

As for the humanitarian impact of sanctions, the majority of representatives concurred about the possible humanitarian implications of sanctions and urged the Council to take this into account when imposing measures under Article 41 of the Charter.⁵⁰⁸ Several speakers also expressed concern at the impact sanctions had on third-

⁵⁰² Ibid., p. 5 (Bangladesh); pp. 7-9 (France); pp. 18-20 (Tunisia); pp. 20-21 (Mali); pp. 21-23 (Jamaica); pp. 24-26 (Canada); pp. 26-28 (Portugal); p. 28 (Germany); pp. 31-32 (Italy); pp. 32-33 (Sweden); pp. 35-36 (Bulgaria); pp. 36-37 (New Zealand); and p. 40 (Switzerland).

⁵⁰³ Ibid., pp. 36-37.

⁵⁰⁴ Ibid., pp. 26-28.

⁵⁰⁵ Ibid., pp. 33-35.

⁵⁰⁶ Ibid., pp. 5-6 .

⁵⁰⁷ Ibid., pp. 40-43.

⁵⁰⁸ Ibid. p. 5 (Bangladesh); pp. 5-6 (United Kingdom); pp. 6-7 (United States); pp. 7-9 (France); pp. 9-11 (Ukraine); pp. 11-12 (Namibia); pp. 12-13 (China); pp. 13-15 (Malaysia); pp. 15-17 (Argentina); pp. 17-18 (the Netherlands); pp. 18-20 (Tunisia); pp. 20-21 (Mali); pp. 21-23 (Jamaica); pp. 23-24 (Russian Federation); pp. 24-26 (Canada); pp. 26-28 (Portugal); p. 28 (Germany); pp. 28-30 (Pakistan); pp. 31-32

parties such as States.⁵⁰⁹ The representative of Tunisia, echoed by the representative of Canada, commented that, as the implementation of sanctions was the “collective responsibility” of the international community, it was “entirely logical” that the costs of implementing sanctions had to be borne by the community as a whole and not just by a small number of States, such as the target State’s neighbors or economic partners.⁵¹⁰ Several speakers contended that any assessment of the humanitarian or third-party impact of sanctions had to occur prior, during, as well as after their imposition.⁵¹¹ In contrast, the representative of the Netherlands explicitly stated that pre-assessment was not a viable option if sanctions were to remain an effective tool, and instead pointed to the need to monitor humanitarian and economic impacts of sanctions once they were in place.⁵¹²

In connection with the monitoring of sanctions, the majority of speakers agreed on the need to enhance capacities to implement and monitor sanctions at the national, regional, and international levels.⁵¹³ The representative of France stated that the working methods of the sanctions committees had to be modified, as the rule of consensus had become a paralyzing force. Furthermore, he advocated greater transparency in the conduct of business of the sanctions committees.⁵¹⁴

At its 4394th meeting, on 22 October 2001, the Council discussed the results of the Interlaken and Bonn-Berlin processes on financial sanctions, arms embargoes and travel- and aviation-related sanctions. The Permanent Observer of Switzerland noted the important role played by sanctions in promoting international peace and security, but showed concern for the negative humanitarian impact of sanctions on civilians. He,

(Italy); pp. 32-33 (Sweden); pp. 33-35 (Australia); pp. 35-36 (Bulgaria); pp. 36-37 (New Zealand); pp. 38-39 (Cuba); p. 40 (Switzerland); and pp. 40-43 (Iraq).

⁵⁰⁹ *Ibid.*, pp. 7-9 (France); pp. 11-12 (Namibia); pp. 13-15 (Malaysia); pp. 21-23 (Jamaica); pp. 23-24 (Russian Federation); pp. 26-28 (Portugal); pp. 28-30 (Pakistan); pp. 30-31 (Libyan Arab Jamahiriya); pp. 32-33 (Sweden); pp. 33-35 (Australia); pp. 35-36 (Bulgaria); pp. 36-37 (New Zealand); pp. 43-45 (former Yugoslav Republic of Macedonia); and p. 45 (Turkey). For a more detailed discussion, see chapter XI, part VIII, sections B and C.

⁵¹⁰ *Ibid.*, pp. 18-20 (Tunisia); and pp. 24-26 (Canada).

⁵¹¹ *Ibid.*, pp. 11-12 (Namibia); pp. 12-13 (China); pp. 13-15 (Malaysia); pp. 18-20 (Tunisia); pp. 21-23 (Jamaica); pp. 24-26 (Canada); pp. 32-33 (Sweden); and pp. 38-39 (Cuba).

⁵¹² *Ibid.*, pp. 17-18.

⁵¹³ *Ibid.*, p. 5 (Bangladesh); pp. 6-7 (United States); pp. 9-11 (Ukraine); pp. 11-12 (Namibia); pp. 13-15 (Malaysia); pp. 18-20 (Tunisia); pp. 21-23 (Jamaica); pp. 24-26 (Canada); pp. 26-28 (Portugal); pp. 28-30 (Pakistan); pp. 32-33 (Sweden); pp. 33-35 (Australia); pp. 35-36 (Bulgaria); and pp. 43-45 (former Yugoslav Republic of Macedonia).

⁵¹⁴ *Ibid.*, pp. 7-9.

therefore, voiced support for targeted sanctions.⁵¹⁵ A similar position was held by the representative of Germany, who added that sanctions should not be a form of punishment, but “should lead to compliance with the United Nations Charter”.⁵¹⁶ Several representatives indicated that the Council should focus on the implementation and monitoring of sanctions in order to improve their effectiveness.⁵¹⁷ The Assistant Secretary-General for Political Affairs stressed that sanctions needed “continued refining to strengthen their effectiveness and to ease any possible negative impact” and advocated a “constructive dialogue on their implementation and monitoring”.⁵¹⁸ A number of speakers concurred that the focus should be on the national implementation and enforcement of sanctions.⁵¹⁹ The representative of Mali noted that sanctions had “rarely achieved their goals” and recommended a “continuous evaluation of their socio-economic impact”.⁵²⁰ The representatives of Tunisia and Chile declared that sanctions were not an end in themselves and should be part of an overall strategy for conflict settlement and prevention.⁵²¹ The representative of the Russian Federation emphasized that the introduction of sanctions was “an extreme measure to be applied only where all other methods of bringing political impact to bear” had been exhausted. He also insisted that sanctions should be “carefully targeted”, “subject to regular review”, and contain “conditions for lifting them”.⁵²²

At its 4713th meeting, on 25 February 2003, the Council discussed general issues relating to sanctions in connection with the final report of the Stockholm Process on the Implementation of Targeted Sanctions. The representative of Sweden declared that the Stockholm Process’ goals were to find ways to improve the efficiency of sanctions, while minimizing their unintended consequences and to suggest ways to strengthen the capacity to implement targeted sanctions.⁵²³ Several speakers drew attention to the importance of minimizing the unintended consequences sanctions had on the population of the targeted

⁵¹⁵ S/PV.4394, p. 2.

⁵¹⁶ *Ibid.*, p. 4.

⁵¹⁷ S/PV.4394, p. 6 (Sweden); p. 9 (France); and p. 10 (Ukraine); S/PV.4394 (Resumption 1), p. 2 (Jamaica); p. 6 (Mauritius); p. 7 (Colombia); p. 8 (United States); and p. 9 (Singapore).

⁵¹⁸ S/PV.4394, p. 6.

⁵¹⁹ S/PV.4394 (Resumption 1), p. 4 (United Kingdom); and p. 4 (Norway).

⁵²⁰ *Ibid.*, p. 8.

⁵²¹ *Ibid.*, p. 10 (Tunisia); and p. 11 (China).

⁵²² *Ibid.*, p. 9.

⁵²³ S/PV.4713, pp. 2-3.

States and/or on neighbouring States.⁵²⁴ Other speakers concurred that targeted sanctions were more efficient at hitting specific actors while reducing the risk of collateral impact on innocent civilian populations.⁵²⁵ The representative of the United States insisted that sanctions still remained a “viable and very useful policy option” for use by the Security Council to modify State behavior. He also stressed the importance of targeted measures as a way for the Council to avoid unnecessary negative impact on civilians and other States.⁵²⁶ The representative of the Syrian Arab Republic remarked that targeted sanctions were more difficult to implement than collective sanctions. He also emphasized the role played by the political will of Member States for the effective implementation of sanctions.⁵²⁷ Several representatives voiced support for the creation of a monitoring mechanism to counter sanctions evasions and to maintain an accurate assessment of sanctions.⁵²⁸ The representative of Mexico advocated improving the coordination among sanctions committees, as well as the “possibility of including in United Nations peacekeeping operation mandates the requirement of reporting violations of sanctions regimes”.⁵²⁹

12. Children and armed conflict

At its 4176th meeting, on 26 July 2000, the Council discussed the role of the Security Council in protecting children in war-torn areas. The Special Representative of the Secretary-General for Children and Armed Conflict called upon the Council to adopt a more active role in easing the impact of such sanctions on children, by using targeted sanctions against actors who flouted “international standards regarding the protection of children”.⁵³⁰ The representative of Bangladesh asserted that the Council had “a duty” to design sanctions regimes that did not affect the innocent.⁵³¹ The representative of Malaysia expressed his Government’s concern about the “debilitating effects of sanctions

⁵²⁴ Ibid., pp. 5-6 (Bulgaria); p. 7 (China); p. 8 (Guinea); p. 14 (Russian Federation); p. 15 (Pakistan); and p. 19 (Spain).

⁵²⁵ Ibid., p. 7 (Angola); p. 8 (France); and p. 11 (Chile).

⁵²⁶ Ibid., p. 10.

⁵²⁷ Ibid., p. 13.

⁵²⁸ Ibid., p. 7 (China); p. 12 (United Kingdom); and p. 20 (Germany).

⁵²⁹ Ibid., p. 18.

⁵³⁰ S/PV.4176, p. 4.

⁵³¹ Ibid., p. 17.

on children” and voiced support for the “dispatching of assessment missions to targeted States” to minimize the unintended consequences on civilian populations, especially children.⁵³² Similarly, the representative of Ukraine advocated the establishment of a permanent technical review mechanism that would monitor the impact of sanctions on civilians, in particular children.⁵³³ The representative of Tunisia supported the Secretary-General’s proposal for an assessment of the impact of sanctions on the civilian population before imposing the sanctions.⁵³⁴ Similarly, the representative of France asked for an assessment of the consequences of sanctions before their implementation.⁵³⁵ The representative of Iraq expressed concern with the “indiscriminate and excessive application of sanctions by the Council” and concurred on the necessity of dispatching evaluation missions to assess the potential negative impact of sanctions.⁵³⁶ The representative of Indonesia insisted that efforts should be made to relieve the suffering of children living under sanctions regimes by providing humanitarian exemptions so that children would not be denied access to basic necessities.⁵³⁷

At its 4422nd meeting, on 20 November 2001, the Council continued its discussion on possible measures to be taken to alleviate the plight of children affected by war. In his statement, the representative of the Republic of Korea remarked that, in the past years, there had been a surge in the number of armed conflicts and that innocent civilians had been increasingly targeted. He asked Member States to cooperate in imposing sanctions on individuals and groups involved in illegal trafficking of currency, arms, and natural resources, which exacerbated armed conflict.⁵³⁸ The representatives of Iraq and Malaysia drew attention to the number of civilian victims resulting from the sanctions imposed on Iraq, and asked for their removal.⁵³⁹

13. Ensuring an effective role of the Security Council in the maintenance of peace and security, particularly in Africa

⁵³² Ibid., p. 16.

⁵³³ Ibid., p. 22.

⁵³⁴ Ibid., p. 23.

⁵³⁵ Ibid., p. 25.

⁵³⁶ S/PV.4176 (Resumption 1), p. 14.

⁵³⁷ Ibid., p. 26.

⁵³⁸ S/PV.4422 (Resumption 1), pp. 17-18.

⁵³⁹ Ibid., pp. 24-25 (Iraq); and p. 29 (Malaysia).

At its 4288th meeting, on 7 March 2001, the Council discussed ways to increase the effectiveness of the Security Council in the maintenance of peace and security, especially in Africa. The representative of Sweden noticed that the systematic and deliberate violations of sanctions continued to fuel some of the conflicts in Africa. He urged the Council to make the objectives of sanctions and the criteria for lifting them “clear”, to assess the possible humanitarian impacts of sanctions, and to ensure that appropriate mechanisms for reviews were incorporated into sanctions regimes.⁵⁴⁰ The representative of Egypt shared the view that the Council should establish a specific timeframe for the duration of the sanctions and specific mechanisms for their lifting.⁵⁴¹ Along the same lines, the representative of Belarus advocated an improvement of the principles and mechanisms for the establishment of enforcement measures, in particular of economic sanctions.⁵⁴² The representative of Namibia agreed that the Council should take action against sanctions violators, but, at the same time, should also ease or lift sanctions when the humanitarian situation demanded it.⁵⁴³

14. Protection of civilians in armed conflict

At its 4312th meeting, on 23 April 2001, the Council debated ways to improve the protection of civilians in armed conflict and lessen the effect of sanctions on civilians. The representative of Jamaica stressed the importance of a permanent technical review mechanism that would assess the unintended consequences of sanctions before they were imposed.⁵⁴⁴ The representative of China cautioned that protracted sanctions caused “enormous harm to civilians” and emphasized the need for action to curtail civilian suffering.⁵⁴⁵ The representative of Canada acknowledged that, despite certain setbacks, the Council had improved its “sanctions instrument”.⁵⁴⁶ The representative of the Republic of Korea noted that targeted sanctions should be tailored to a specific regime and have clear goals. He also urged the Council to take into account the humanitarian

⁵⁴⁰ S/PV.4288, p. 6.

⁵⁴¹ Ibid., p. 14.

⁵⁴² Ibid., p. 24.

⁵⁴³ Ibid., p. 22.

⁵⁴⁴ S/PV.4312, p. 15.

⁵⁴⁵ Ibid., p. 18.

⁵⁴⁶ S/PV.4312 (Resumption 1), p. 4.

implications of sanctions.⁵⁴⁷ The representative of Switzerland shared the view that the Council should take better account of the humanitarian repercussions of sanctions regimes on civilian populations and promote targeted sanctions.⁵⁴⁸ On the contrary, the representative of Pakistan underlined that there were “no smart sanctions, nor targeted sanctions, only unjust sanctions”.⁵⁴⁹ The representative of Sierra Leone drew attention to the role played by external actors in fostering conflict. He urged the Council to take action against these actors by using “the threat of the use of sanctions”.⁵⁵⁰ The representative of Iraq drew attention to the effects of sanctions on his country, stressing the “devastating impact of sanctions on children and infants”.⁵⁵¹

At its 4877th meeting, on 9 December 2003, the Council continued its discussion on the means for better protecting civilians in armed conflicts. The representative of Chile maintained that “sanctions should be reserved for very specific areas, focused directly on those responsible and avoid negatively affecting the civilian population”.⁵⁵² The representative of Germany insisted that sanctions should be imposed “with the consequences for civilians in mind”.⁵⁵³ Similarly, the representative of Canada welcomed the Council’s efforts to develop more-targeted sanctions regimes to minimize the potential humanitarian impact of sanctions on civilian populations.⁵⁵⁴

15. Wrap-up discussion on the work of the Security Council for the current month

At its 4466th meeting, on 31 January 2002, the Council discussed its activity for the current month. The representative of Colombia referred to resolution 1390 (2002) by which, in connection with the situation in Afghanistan, the Council had established the only sanctions regime that was “not linked to a specific territory or country” and instead had “global application”. He noted that its implementation would require new mechanisms and discussion of substantive topics “never before tackled in the Council”.⁵⁵⁵

⁵⁴⁷ Ibid., p. 9.

⁵⁴⁸ Ibid., p. 12.

⁵⁴⁹ Ibid., p. 23.

⁵⁵⁰ Ibid., p. 30.

⁵⁵¹ Ibid., p. 32.

⁵⁵² S/PV.4877, p. 12.

⁵⁵³ Ibid., p. 25.

⁵⁵⁴ S/PV.4877 (Resumption 1), p. 13.

⁵⁵⁵ S/PV.4466, pp. 3-4.

The representative of Singapore agreed that the resolution had global application while providing some “continuity” by retaining mechanisms such as the Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and Associated Individuals and Entities, the consolidated list issued by that Committee, and the Monitoring Group established by resolution 1363 (2000).⁵⁵⁶

At its 4748th meeting, on 30 April 2003, the Council discussed the role of the United Nations in post-conflict situations, especially with regard to Iraq. The Secretary-General noted that the Council would have to make difficult decisions in the near future, notably on the issue of sanctions. He also emphasized that the Council should play an important role in determining the role of the United Nations in the reconstruction of Iraq.⁵⁵⁷ In this respect, the representative of the Russian Federation expressed his preference for the easing or suspension of “certain sanctions” in order to alleviate the humanitarian situation in the country.⁵⁵⁸ The representative of Georgia cautioned that the Security Council’s handling of Iraq’s postwar reconstruction could serve as a “litmus test” of its commitment to peace and international security. He declared as unacceptable the attempts to “manipulate the technicalities of previously adopted resolutions” to prevent the Council from lifting the sanctions against Iraq.⁵⁵⁹

16. The situation in Africa

At its 4577th meeting, on 18 July 2002, the Council discussed the effect of sanctions imposed on Sierra Leone and Liberia and sought ways for encouraging regional peace in the Mano River region. The representative of Guinea cautioned that the international community should remain vigilant in monitoring political normalization and reconciliation in Liberia and the stability of the subregion and asked for sanctions to be lifted only once the Liberian Government discharged “all of its commitments under the relevant resolutions of the Security Council”.⁵⁶⁰ The representative of Mexico stressed that, for sanctions to be effective, it was essential for the population to perceive them as mechanisms “contributing to peace and security and not as acts of reprisal or of political

⁵⁵⁶ Ibid., pp. 12-14.

⁵⁵⁷ S/PV.4748, p. 4.

⁵⁵⁸ Ibid., p. 14.

⁵⁵⁹ Ibid., p. 22.

⁵⁶⁰ S/PV.4577, p. 8.

reprimand”. He also observed that sanctions were not a guarantee that weapons would not enter Sierra Leone again and emphasized the importance of compliance with the sanctions by third parties.⁵⁶¹ The representative of Colombia drew attention to the difficulties of dealing with armed groups and maintained that sanctions against them should be applied if necessary.⁵⁶² The representative of Mauritius reckoned that the sanctions imposed on Liberia had been of “tremendous help” in bringing peace to Sierra Leone, but suggested that the Council should find ways of engaging constructively with Liberia rather than isolating it “any further”.⁵⁶³ Similarly, the representatives of China and Ireland reiterated the positive effect the sanctions against Liberia had on the peace process in Sierra Leone.⁵⁶⁴ The representative of Norway expressed concern for the conflict of Liberia spilling over into neighbouring countries. He insisted that the sanctions on Liberia should be as effective as possible in order to prevent President Taylor from continuing his destabilizing activities and to minimize their negative humanitarian impact.⁵⁶⁵

17. Small arms

At its 4355th meeting, on 2 August 2002, the Council discussed the impact of illicit trafficking of small arms and light weapons on conflict situations. In their statements, the representatives of Jamaica and Mauritius emphasized the role of targeted sanctions in limiting combatants’ access to resources and reducing the flow of arms to areas of conflict.⁵⁶⁶ A number of speakers called for the establishment of a standing monitoring mechanism for sanctions that would more efficiently supervise compliance.⁵⁶⁷ The representative of Ukraine insisted that the Council should focus on ensuring the full implementation of its arms embargoes and other sanctions targeting illicit trade.⁵⁶⁸ This approach was supported by the representative of Brazil who added that the Council

⁵⁶¹ Ibid., p. 18.

⁵⁶² Ibid., p. 23.

⁵⁶³ S/PV.4577, p. 8.

⁵⁶⁴ S/PV.4577 (Resumption 1), p. 16 (China); and pp. 18-19 (Ireland).

⁵⁶⁵ Ibid., p. 20.

⁵⁶⁶ S/PV.4355, p. 7 (Jamaica); and p. 18 (Mauritius).

⁵⁶⁷ S/PV.4355, p. 11 (France); p. 20 (Mali); and p. 23 (Singapore); S/PV.4355 (Resumption 1), p. 4 (Argentina); and p. 33 (Bulgaria).

⁵⁶⁸ S/PV.4355, p. 21.

should also provide “incentives” to all States to cooperate with the investigations of the sanctions committees.⁵⁶⁹ The representative of Costa Rica asked the Council to investigate and find illicit supply routes for small arms and light weapons to various areas in conflict and impose appropriate sanctions on “the nations, entities or individuals involved in such activities”.⁵⁷⁰

⁵⁶⁹ S/PV.4355 (Resumption 1), p. 7.

⁵⁷⁰ *Ibid.*, p. 28.

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 explicitly invoke Article 42 in any of its decisions. However, the Council did adopt several resolutions by which it called on Member States to use “all necessary measures” to enforce its demands relating to the restoration of international peace and security and which may be of relevance to the Council’s interpretation and application of the principle in Article 42.

Section A outlines eight case studies relating to the Council’s authorization of enforcement action under Chapter VII of the Charter, for the maintenance of peace and security: Sierra Leone, the Democratic Republic of the Congo (DRC), Bosnia and Herzegovina, Afghanistan, Côte d’Ivoire, Liberia, East Timor and Iraq. Section B highlights the salient issues that were raised in the Council’s deliberations in connection with the adoption of these resolutions. Particular attention is also devoted to the discussion which arose in the Council in connection with the situation between Iraq and Kuwait and, specifically, on whether the Council should authorize the use of force against Iraq for its failure to comply with relevant Security Council resolutions.

A. Decisions relating to Article 42

1. The situation in Sierra Leone

By resolution 1289 (2000) of 7 February 2000, the Council authorized the United Nations Mission in Sierra Leone (UNAMSIL) to “take the necessary action” to fulfill its mandate and ensure the security and freedom of movement of its personnel, as well as to afford protection to civilians under imminent threat of physical violence, within its capabilities and areas of deployment and taking into account the responsibilities of the Government of Sierra Leone.⁵⁷¹

2. The situation in the Democratic Republic of the Congo

By resolution 1291 (2000) of 24 February 2000, while deciding the expansion of the United Nations Mission in the Democratic Republic of the Congo (MONUC),⁵⁷² the Council authorized the Mission to “take the necessary action [...] to protect United Nations and co-located JMC personnel, facilities, installations and equipment, ensure the security and freedom of movement of its personnel, and protect civilians under imminent threat of physical violence”.⁵⁷³ By several subsequent resolutions, the Council extended the Mission’s mandate.⁵⁷⁴

By resolution 1484 (2003) of 30 May 2003, the Council authorized the deployment of an Interim Emergency Multinational Force in Bunia in close coordination with MONUC and authorized Member States participating in the Multinational Force in Bunia “to take all necessary measures to fulfill its mandate”.⁵⁷⁵

By resolution 1493 (2003) of 28 July 2003, which authorized the increase of MONUC’s military strength to 10,800 personnel, the Council authorized the Mission to “take the necessary measures in the areas of deployment of its armed units, and as it deems it within its capabilities” to: (i) protect United Nations personnel, facilities, installations and equipment; (ii) ensure the security and freedom of movement of its personnel, including in particular those engaged in missions of observation, verification or disarmament, demobilization, repatriation, reintegration or resettlement; (iii) protect civilians and humanitarian workers under imminent threat of physical violence; and (iv)

⁵⁷¹ Resolution 1289 (2000), para. 10.

⁵⁷² Resolution 1291 (2000), para. 4.

⁵⁷³ *Ibid.*, para. 8.

⁵⁷⁴ Resolutions 1323 (2000), para. 1; 1332 (2000), para. 1; 1355 (2001), para. 29; 1417 (2002), para. 1; and 1489 (2003), para. 1.

⁵⁷⁵ Resolution 1484 (2003), paras. 1 and 4.

contribute to the improvement of the security conditions in which humanitarian assistance is provided.⁵⁷⁶ By the same resolution, the Council also authorized the Mission to “use all necessary means to fulfil its mandate in the Ituri district and, as it deems it within its capabilities, in North and South Kivu”.⁵⁷⁷

3. The situation in Bosnia and Herzegovina

By resolution 1305 (2000) of 21 June 2000, the Security Council authorized Member States, acting through or in cooperation with the North Atlantic Treaty Organization (NATO), in accordance with resolution 1088 (1996), to fulfill the role determined in the Dayton Peace Agreement (1995) under Annex 1 – A by taking “all necessary measures” to fulfill its mandate.⁵⁷⁸ By the same resolution, the Council also authorized the relevant Member States to “take all necessary measures”, at the request of the Stabilization Force (SFOR), either in defence of the Force or to assist the force in carrying out its mission, and recognized the right of the Force to “take all necessary measures” to defend itself from attack or threat of attack.⁵⁷⁹ The Council also authorized the relevant Member States to “take all necessary measures” to ensure compliance with the rules and procedures established by the Commander of SFOR, governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic.⁵⁸⁰ The Mission’s mandate was extended several times by subsequent Council resolutions.⁵⁸¹

4. The situation in Afghanistan

By resolution 1386 (2001) of 20 December 2001, the Council authorized the establishment, for a period of 6 months, of the International Security Assistance Force (ISAF) to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas.⁵⁸² It also authorized the Member States participating in the

⁵⁷⁶ Resolution 1493 (2003), para. 25.

⁵⁷⁷ *Ibid.*, para. 26.

⁵⁷⁸ Resolution 1305 (2000), paras. 10 and 11.

⁵⁷⁹ *Ibid.*, para. 12.

⁵⁸⁰ *Ibid.*, para. 13.

⁵⁸¹ Resolutions 1357 (2001), paras. 10, 11, 12, 13 and 19; 1418 (2002), para. 1; 1420 (2002), para. 1; 1421 (2002), para 1; 1423 (2002), paras. 10, 11, 12, 13 and 19; and 1491 (2003), paras. 10, 11, 12 and 13.

⁵⁸² Resolution 1386 (2001), para. 1.

Force to “take all necessary measures to fulfill its mandate”.⁵⁸³ The Mission’s mandate was extended several times by subsequent Council resolutions.⁵⁸⁴

5. The situation in Côte d’Ivoire

By resolution 1464 (2003) of 4 February 2003, recalling the decision taken by the Economic Community of West African States (ECOWAS) to promote a peaceful settlement of the conflict and deploy a peacekeeping force in Côte d’Ivoire, the Council authorized Member States participating in ECOWAS, together with the French Forces supporting them, to “take the necessary steps to guarantee the security and freedom of movement of their personnel and to ensure [...] the protection of civilians immediately threatened with physical violence within their zones of operation, using the means available to them”.⁵⁸⁵ The Security Council subsequently renewed the Mission’s mandate by resolution 1498 (2003) of 4 August 2003.⁵⁸⁶

6. The situation in Liberia

By resolution 1497 (2003) of 1 August 2003, the Council authorized Member States to establish a Multinational Force in Liberia to: (i) support the implementation of the 17 June 2003 ceasefire agreement; (ii) help establish and maintain security in the period after the departure of the Liberian President and the installation of a successor authority; (iii) secure the environment for the delivery of humanitarian assistance; and (iv) prepare for the introduction of a longer-term United Nations stabilization force to relieve the Multinational Force.⁵⁸⁷ By the same resolution, the Council authorized Member States participating in the Force to “take all necessary measures to fulfill its mandate”.⁵⁸⁸

7. The situation in East Timor

⁵⁸³ Ibid., para. 3.

⁵⁸⁴ Resolutions 1413 (2002), paras. 1 and 2; 1444 (2002), paras. 1 and 2; and 1510 (2003), paras. 3 and 4.

⁵⁸⁵ Resolution 1464 (2003), para. 9.

⁵⁸⁶ Resolution 1498 (2003), para. 1.

⁵⁸⁷ Resolution 1497 (2003), para. 1.

⁵⁸⁸ Ibid., para. 5.

By resolution 1410 (2002) of 17 May 2002, the Council decided to establish, as of 20 May 2002 and for an initial period of twelve months, the United Nations Mission of Support in East Timor (UNMISSET) with the following mandate: (i) to provide assistance to core administrative structures critical to the viability and political stability of East Timor; (ii) to provide interim law enforcement and public security and to assist in the development of a new law enforcement agency in East Timor, the East Timor Police Service; and (iii) to contribute to the maintenance of the external and internal security of East Timor.⁵⁸⁹ By the same resolution, acting under Chapter VII of the Charter, the Council authorized the Support Mission “to take the necessary actions, for the duration of its mandate, to fulfill its mandate”.⁵⁹⁰ The Council further decided to review this issue and all other aspects of the mandate of the Mission after twelve months.

By resolution 1480 (2003) of 19 May 2003, the Council extended the “current mandate” of UNMISSET until 20 May 2004.⁵⁹¹

8. The situation between Iraq and Kuwait

By resolution 1511 (2003) of 16 October 2003, the Council authorized a multinational force under unified command “to take all necessary measures to contribute to the maintenance of security and stability in Iraq”, including for the purpose of: (i) ensuring the necessary conditions for the implementation of the timetable and programme for the drafting of a new constitution for Iraq and for the holding of democratic elections; and (ii) contributing to the security of the United Nations Assistance Mission for Iraq, the Governing Council and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure.⁵⁹²

B. Discussions relating to Article 42

1. The situation between Iraq and Kuwait

⁵⁸⁹ Resolution 1410 (2002), paras. 1 and 2.

⁵⁹⁰ *Ibid.*, para. 6.

⁵⁹¹ Resolution 1480 (2003), para. 1. The composition and the strength of the military and police components of the Mission were modified by resolution 1473 (2003) of 4 April 2003.

⁵⁹² Resolution 1511 (2003), para. 13.

At its 4625th meeting, on 16 October 2002, the Security Council held an open debate on the situation between Iraq and Kuwait, during which a number of speakers discussed the possibility of the use of force against Iraq. Several speakers welcomed Iraq's decision to accept the return of United Nations inspectors on its territory and expressed the view that the Council should seize upon such positive developments by authorizing the immediate return of inspectors to Iraq, which would in turn open the way for the full implementation of all Council resolutions on Iraq.

A conspicuous number of speakers stressed that the use of force should be considered as a last resort. Only if it turned out that the inspectors had been prevented from doing their job, and when that had been communicated to the Council should the Council decide on a position to adopt in the face of such a situation.⁵⁹³ The representative of Morocco reminded the Council that the “common defence system provided for in Chapter VII of the Charter” was designed in a way that made resorting to the use of force “the very last means available to the Security Council”, after all other means had been exhausted, and emphasized that avoiding the use of force was “central to both the role and the responsibilities of the United Nations, especially of the Security Council”.⁵⁹⁴ The representative of Pakistan recalled that most of the resolutions relating to Iraq were adopted under Chapter VII of the Charter with an “explicit implication that enforcement action could be taken by the United Nations, as envisaged in Article 42 of the Charter, to secure compliance with its resolutions”. He underlined that any action involving the use of force should be considered only as a “last resort”, and that Article 42 should not provide the authority to one or more Member States “to resort to force unilaterally and on their own judgment, independently of the Security Council or without its explicit approval”.⁵⁹⁵ The representative of Liechtenstein stressed that ensuring full compliance with the Security Council decisions was indispensable to the Council's credibility, and that the Council should do “everything possible, and be seen as doing everything

⁵⁹³ S/PV.4625, p. 11 (Kuwait); p. 18 (Pakistan); S/PV.4625 (Resumption 1), p. 12 (Chile); p. 13 (Indonesia); S/PV.4625 (Resumption 2), p. 2 (Morocco); p. 4 (Brazil); p. 13 (Djibouti); p. 14 (Liechtenstein); p. 16 (Angola); pp. 21-22 (Cambodia); and p. 27 (Nepal).

⁵⁹⁴ S/PV.4625 (Resumption 2), pp. 2-3.

⁵⁹⁵ *Ibid.*, p. 18.

possible, to ensure compliance with and implementation of its decisions without resorting to the use of force”.⁵⁹⁶

Similarly, other speakers made reference to the consequences that the use of force would cause. The representatives of Kuwait, Chile and Colombia commented on the humanitarian impact of any military action against Iraq.⁵⁹⁷ The representative of Switzerland cautioned that the possible use of force should not be considered without account being taken of all the potential short and long-term consequences at the political, security, humanitarian and economic levels.⁵⁹⁸

Other delegations commented on the legitimacy of the use of force against Iraq. A number of speakers underlined that only the United Nations, and specifically the Security Council, could confer international legitimacy to any action against Iraq. The representative of South Africa noted that it would be “inconsistent with the spirit and letter of the United Nations Charter” if the Security Council were to authorize the use of military force against Iraq at a time when Iraq had indicated its willingness to abide by Council resolutions.⁵⁹⁹ The representative of Iraq called on States to voice their objections to the “aggressive designs of the United States of America against Iraq” as silence “would be the beginning of the end of the collective security system” and would violate the principle of refraining from the use of force.⁶⁰⁰ The representative of Yemen pointed out that launching war solely on the basis of “reading ones intentions” would open the door to exploding “hotbeds of tension and wars whose roots had been lying dormant”. He stressed that, in many cases, resorting to force illustrated a “shortcoming” more than it provided “evidence of the sensibility and rationality of the decision to use force”.⁶⁰¹ The representative of Tunisia observed that advocating “an automatic recourse to force”, and “thus prejudging the outcome of inspections”, was unacceptable as it had not yet been established that Iraq possessed weapons of mass destruction. He underlined that an “ill-advised” act of force would undermine all the principles of the United Nations

⁵⁹⁶ Ibid., p. 14.

⁵⁹⁷ S/PV.4625, p. 11 (Kuwait); S/PV.4625 (Resumption 1), p. 12 (Chile); and S/PV.4625 (Resumption 2), p. 21 (Cambodia).

⁵⁹⁸ S/PV.4625 (Resumption 2), p. 5.

⁵⁹⁹ S/PV. 4625. p. 5.

⁶⁰⁰ Ibid., p. 9.

⁶⁰¹ Ibid., p. 14.

Charter, including the prohibition of the use of force.⁶⁰² The representative of India insisted that in contemplating the use of force, the question of legitimacy and the international rule of law were “important”, thus noting that, without an authorization of the Security Council “any support for a campaign would not be forthcoming”.⁶⁰³

Some speakers envisaged the possibility of the use or threat of use of force if Iraq did not fully comply with its obligations under Security Council resolutions. The representative of Mexico supported a two-stage action of the Security Council, the first of which would include the establishment of a revised system of inspections in Iraq. He further remarked that, if Iraq did not comply with the new resolution of the Council, the Council would have to determine, on the basis of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and International Atomic Energy Agency (IAEA) reports, whether the non-compliance constituted a threat to international peace and security and “to decide on the measures to be adopted, preferably unanimously, including the possible use of force”.⁶⁰⁴ The representative of the United States expressed his Government’s hope that the use of force would not become necessary and that the Iraqi regime would give up its weapons of mass destruction. Otherwise, he cautioned, his country would lead a global coalition to disarm the Iraqi regime.⁶⁰⁵ The representative of Argentina conveyed his confidence that the use of force, as the last resort for the Council, could be avoided, but acknowledged that force, exercised in accordance with the norms of international law, the Charter of the United Nations and the authorization of the Security Council, would become “the only option” once all negotiating mechanisms were exhausted.⁶⁰⁶ The representative of Cameroon asserted that Iraq had failed to comply with multiple Security Council resolutions and if this continued, the Council would have to take appropriate measures to ensure compliance with its decisions, in accordance with the provisions of Article 42.⁶⁰⁷ The representative of New Zealand asserted that if Iraq failed to comply with the inspection

⁶⁰² Ibid., pp. 23-24.

⁶⁰³ S/PV.4625 (Resumption 2), p. 10.

⁶⁰⁴ S/PV.4625 (Resumption 3), p. 5.

⁶⁰⁵ Ibid., p. 12.

⁶⁰⁶ Ibid., p. 19.

⁶⁰⁷ Ibid., p. 28.

regime, the Council would need to make a “clear decision on further action”, and noted that use of force was “clearly not beyond the Council’s contemplation”.⁶⁰⁸

At its 4644th meeting, on 8 November 2002, the Security Council unanimously adopted resolution 1441 (2002) by which, acting under Chapter VII, it decided that Iraq’s failure to comply with the implementation of the resolution would constitute a further material breach of its obligations. During the debate, the Secretary-General stated that the newly adopted resolution clearly defined Iraq’s obligations to cooperate with the United Nations’ demands, and warned that in the event that Iraq’s defiance continued, the Security Council would have to face its responsibilities.⁶⁰⁹ The representative of the United States warned that, in “one way or another”, Iraq would be disarmed and stressed that the resolution contained no ‘hidden triggers’ and no ‘automaticity’ with respect to the use of force.⁶¹⁰ Similarly, the representative of the United Kingdom noted that resolution 1441 (2001) contained no “automaticity”. Should Iraq commit a further breach of its disarmament obligations, the matter would return to the Council for discussion. In this regard he added that he would expect the Council to “then meet its responsibilities”. The disarmament of Iraq by peaceful means remained the preferred option of his delegation. But, if Iraq chose to reject the final opportunity it had been given, his delegation, he “trusted”, together with other members of the Council, would ensure that the task of disarmament required by the resolutions was completed.⁶¹¹ Several representatives, including France, China and the Russian Federation, reiterated that resolution 1441 (2002) did not provide an automatic right to the use of force against Iraq in case of non-compliance.⁶¹² The representative of Ireland noted carefully and welcomed the assurance given by the sponsors that their purpose was to achieve disarmament through inspections, and not to establish a basis for the use of military force. The use of force, he stressed, was, and should remain, a matter of last resort. In that context, several speakers drew attention to the clearly defined two-stage process outlined

⁶⁰⁸ S/PV.4625 (Resumption 1), p. 18.

⁶⁰⁹ S/PV. 4644, p. 2.

⁶¹⁰ *Ibid.*, p. 3.

⁶¹¹ *Ibid.*, p. 5.

⁶¹² *Ibid.*, p. 5 (France); p. 6 (Mexico); p. 7 (Ireland); p. 8 (Russian Federation); p. 9 (Bulgaria); p. 10 (Syrian Arab Republic); p. 11 (Colombia); and p. 13 (China).

in paragraphs 4, 11 and 12 of the resolution.⁶¹³ They welcomed that the resolution, by those provisions, reaffirmed the central role of the Council on the Iraqi issue.⁶¹⁴ The representative of the Syrian Arab Republic declared that his Government had voted in favor of the resolution because of the assurances received from the representatives of the United States, United Kingdom, France and the Russian Federation that the resolution “would not be used as pretext” or as “a basis for any automatic strikes against Iraq”.⁶¹⁵

At its 4707th meeting, on 14 February 2003, the Council heard a briefing by the Executive Chairman of UNMOVIC on the progress of inspections in Iraq. During the ensuing debate, several representatives, including France and the Russian Federation, urged the Council to reserve the “use of force” for the moment when it became clear that all peaceful means had failed.⁶¹⁶ The representative of France also added that the use of force was not justified “at this time” and that there was an alternative to war, namely “disarming Iraq through inspections”.⁶¹⁷ The representative of Angola opined that use of force at this stage would deprive the international community of valuable information that could be provided through inspections. He therefore appealed to allow sufficient time for the inspectors to gather the necessary information in order to “make informed decisions at the appropriate time”.⁶¹⁸ The representative of Germany warned that military actions against Iraq would, in addition to the terrible humanitarian consequences, above all endanger the stability of a “tense and troubled region”. Consequently, he stressed that there should be “no automatism” leading the Council to the use of military force and that “all possible alternatives” needed to be “exhaustively explored”.⁶¹⁹ By contrast, the representative of the United States expressed the view that the improvements of process, more inspectors and longer inspecting period, would not move the Council away from the central problem – that Iraq had failed to comply with resolution 1441 (2002) – and that the Council would have to consider in the very near future whether it had reached the point where it must face the issue “whether or not it is time to consider serious

⁶¹³ Ibid., p. 9 (Bulgaria); and p. 11 (Colombia).

⁶¹⁴ Ibid., p. 7.

⁶¹⁵ Ibid., p. 10.

⁶¹⁶ S/PV.4707, p. 11 (France); p. 15 (Chile); p. 22 (Russian Federation); and p. 25 (Pakistan).

⁶¹⁷ Ibid., p. 13.

⁶¹⁸ Ibid., p. 28.

⁶¹⁹ Ibid., p. 30.

consequences of the kind intended by resolution 1441 (2002)”.⁶²⁰ The representative of Spain stated that if there was no change in the political attitude in Iraq, the Council “will be obliged to assume its responsibilities in the interest of peace and security of the world”, while the representative of the United Kingdom stated that the Council had reached that stage “only by doing what the United Nations Charter required of us, which is to back a diplomatic process with a credible threat of force and also, if necessary, to be ready to use that threat of force”.⁶²¹

At its 4709th meeting, on 18 and 19 February 2003, the Council continued its discussion regarding Iraq’s compliance with resolution 1441 (2002). During the debate, a number of representatives reiterated their position that the use of force against Iraq should only be considered as a “last resort”, that the time to use military force had not arrived yet, given the progress of the inspections regime, and that therefore the use of force would not be justified at this stage.⁶²² The representative of Malaysia recalled that the Security Council had never authorized the use of force “on the basis of a potential threat of violence” and that all past authorizations had been in response to “actual invasions”.⁶²³ The representative of South Africa stated that, since the inspections process was working and Iraq was showing signs of cooperating more proactively with the inspectors, no information provided thus far would seem to justify the Council abandoning the inspections process and immediately resorting to the threatened “serious consequences”. Recalling that there were no time-limits stipulated for inspections in resolution 1441 (2002), he held the view that resorting to war without fully exhausting all other options represented an admission of failure by the Council in carrying out its mandate of maintaining international peace.⁶²⁴ Other delegations emphasized that the right to use force against Iraq could only be authorized by the Security Council and under the United Nations Charter.⁶²⁵ For instance, the representative of Nigeria characterized as

⁶²⁰ Ibid., pp. 19-21.

⁶²¹ Ibid., pp. 16-17 (Spain); and p. 18 (United Kingdom).

⁶²² S/PV.4709, p. 8 (Kuwait); p. 14 (Algeria); p. 16 (Bahrain); p. 25 (New Zealand); p. 30 (Greece, on behalf of the European Union); and p. 32 (the Sudan); S/PV.4709 (Resumption 1), p. 6 (Switzerland); and p. 14 (Libyan Arab Jamahiriya).

⁶²³ Ibid., p. 10.

⁶²⁴ S/PV.4709, pp. 4-5.

⁶²⁵ S/PV.4709 (Resumption 1), p. 2 (Qatar); p. 13 (Nigeria); p. 15 (Ecuador); p. 26 (Norway); pp. 26-27 (Paraguay); and p. 34 (Belarus).

“imperative” that every effort was made to avoid the use of force. He contended that if the use of force became “inescapable” for the enforcement of Council resolutions and for the Council’s credibility, such enforcement action should be the result of the collective will and decisions of the Security Council, under Article 42 of the Charter.⁶²⁶ While recognizing that force could only be used as a last resort, the representative of Iceland concluded his remarks by emphasizing that the Council had to face “its responsibility” in the eventuality that all other means proved inadequate.⁶²⁷

At its 4714th meeting, on 7 March 2003, the Council considered the quarterly report of UNMOVIC. A number of speakers, including France, China, the Russian Federation and Germany, shared the view that the inspectors’ reports demonstrated that progress had been achieved in implementing resolution 1441 (2002) and therefore saw no need for a new resolution, pointing instead to the importance of accelerated and strengthened inspections.⁶²⁸ While signaling that Iraq’s efforts to comply with resolution 1441 (2002) had been insufficient, others also called for inspections to continue, although “not indefinitely”.⁶²⁹ The representative of France further underlined that the military agenda must not dictate the calendar of inspections, noting that he could not accept an ultimatum as long as inspectors were reporting cooperation, and would not allow a resolution to pass that authorized the automatic use of force.⁶³⁰ Similarly, the representative of China opposed a new resolution, “particularly one authorizing the use of force”,⁶³¹ while the representative of the Syrian Arab Republic questioned the rationale behind the necessity for “adopting a new resolution allowing the use of military force, as if war were the best and not the worst option” and expressed his hope that peace would prevail over the use of force.⁶³² Iraq held that the United States and United Kingdom were unable to prove the existence of weapons of mass destruction in his country, and aimed at advancing their “private agenda” in the region.⁶³³ In response, the representative

⁶²⁶ Ibid., p. 13.

⁶²⁷ Ibid., p. 28.

⁶²⁸ S/PV.4714, p. 9 (Germany); p. 11 (Syrian Arab Republic); p. 17 (Russian Federation); p. 18 (France); and p. 21 (China).

⁶²⁹ Ibid., p. 29 (Cameroon); p. 28 (Angola); and p. 34 (Guinea).

⁶³⁰ Ibid., p. 19.

⁶³¹ Ibid., p. 21.

⁶³² S/PV.4714, pp. 10-12.

⁶³³ Ibid., p. 35.

of the United Kingdom observed that, since there had not been “active cooperation in the areas which matter” by Iraq, the only way disarmament could be achieved was by backing diplomacy with a credible threat of force. He recalled that “nothing” had ever been “automatic about the threat of force or the use of force”, indicating that the use of force was conditional rather than automatic.⁶³⁴ The representative of the United States stressed that the “limited progress” noticed in Iraq’s behavior was not the result of resolutions or inspectors, but of the “unified political will of the Council” and of the “willingness to use force”, if necessary, to ensure that the disarmament of Iraq was achieved.⁶³⁵

At its 4717th meeting, on 11 March 2003, the Council continued to discuss the feasibility of a new resolution authorizing the use of force against Iraq. During the debate, a number of speakers voiced opposition to the prospect of an imminent military action against Iraq and underscored the need for the peaceful disarmament of Iraq. In their statements, many delegations expressed the view that inspections were making concrete progress towards a genuine resolution of the question.⁶³⁶ The representative of Malaysia, speaking on behalf of the Non-Aligned Movement, expressed his commitment to the “fundamental principles of the non-use of force and of respect for the sovereignty, territorial integrity, political independence and security of all Member States of the United Nations”.⁶³⁷ Emphasizing that the fundamental issue at stake was the peaceful disarmament of Iraq, the representative of South Africa pointed out that resolution 1441 (2002) was about disarming Iraq through inspections and “not a declaration of war”. He therefore added that the use of military force was not “the best way to bring about democracy or to improve human rights in any country”.⁶³⁸ The representative of Algeria indicated that, since the inspections were beginning to bear fruit and Iraq was entering into a phase of “proactive” cooperation with the inspectors, everything should be done to avoid the use of force.⁶³⁹ Similarly, recalling that the latest reports of UNMOVIC and IAEA indicated progress in the cooperation of Iraq, the representative of India stated that

⁶³⁴ Ibid., pp. 25-27.

⁶³⁵ Ibid., pp. 14-17.

⁶³⁶ Ibid., pp. 6-8 (Malaysia); pp. 8-9 (South Africa); pp. 11-13 (Algeria); pp. 13-14 (Egypt); and pp. 14-16 (India).

⁶³⁷ Ibid., p. 7.

⁶³⁸ Ibid., p. 9.

⁶³⁹ Ibid., p. 12.

force should be resorted to only as “the very last, unavoidable option”, and as authorized by the Security Council.⁶⁴⁰

By contrast, the representative of Canada expressed the view that an open-ended inspections process would relieve the pressure on Iraq to disarm, adding that there was no doubt that Iraq had only begun to disarm when it faced heavy outside pressure. At the same time, he maintained that military action without a Council mandate would risk undermining respect for international law and raise questions about the Security Council and its authority and efficacy. He therefore stated that a message of absolute clarity should be sent by the Council to Baghdad on what was required and namely that: (i) Iraq’s leadership should publicly direct all levels of the Government to take all necessary disarmament decisions; (ii) the Council should ask the IAEA to bring forward the programme of work urgently, including the list of key remaining disarmament tasks; (iii) the Council should set a deadline of three weeks for Iraq to demonstrate conclusively that it was implementing those tasks; and (iv) the Council should consider authorizing Member States to eventually use all necessary means to force compliance, unless it concluded that Iraq was complying.⁶⁴¹

A number of speakers expressed the view that Iraqi cooperation with UNMOVIC and IAEA had not been immediate, unconditional and active, and that the United Nations inspectors had not received the information necessary to draw conclusions about Iraq’s possession of weapons of mass destruction.⁶⁴² At the same time, some delegations added that the inspections could not go on forever – their time-limit must be short and precise, but achievable.⁶⁴³ Several speakers maintained that Iraq had fallen short of what resolution 1441 (2002) required it to do, and had in fact only taken small and belated steps under pressure created by the threat of the use of force.⁶⁴⁴ The above speakers maintained that the best and perhaps last hope of achieving a peaceful solution was for the Council to send a clear message to Iraq through a new resolution, which set deadlines

⁶⁴⁰ Ibid., pp. 14-15.

⁶⁴¹ Ibid., pp. 19-21.

⁶⁴² S/PV.4717, pp. 22-23 (Turkey); pp. 23-24 (Norway); pp. 26-27 (Iceland); and pp. 27-28 (Singapore); S/PV.4717 (Resumption 1), p. 4 (the Philippines); pp. 7-8 (Argentina); p. 11 (Nicaragua).

⁶⁴³ S/PV.4717, p. 23 (Norway). S/PV.4717 Resumption 1, p. 5 (Greece, on behalf of the EU); and p. 11 (Nicaragua).

⁶⁴⁴ S/PV.4717, p. 6 (Kuwait). S/PV.4717 (Resumption 1), p. 8 (Argentina); p. 10 (El Salvador); p. 17 (the former Yugoslav Republic of Macedonia); and p. 23 (Colombia).

and included concrete demands that it must fully disarm. In appealing to Council members to support the draft, speakers stated clearly that it was time that the Council faced its responsibilities, adding that the unity of the Council, particularly if force was required, needed to be maintained. For instance, the representative of El Salvador called upon the Security Council to “assume its lofty responsibilities and give effect to its decisions” under Chapter VII of the Charter.⁶⁴⁵ In the same way, the representative of the former Yugoslav Republic of Macedonia opined that the Security Council had to act “in an even firmer manner” and that the inspection process in Iraq could not go on “indefinitely”. He remarked that political pressure and the real threat of the use of force had proven to be the “right mechanisms” and had yielded results.⁶⁴⁶ Similarly, the representative of Colombia affirmed that only the threat of the use of force and the unanimous adoption by the Security Council of resolution 1441 (2002) had made it possible for “certain headway to be made”, but stressed that the use of force should be used as “last resort”.⁶⁴⁷

At its 4721st meeting, on 19 March 2003, the Council met to discuss Iraq’s progress on complying with relevant Council resolutions. During the debate, several representatives, including those of Germany, France, the Russian Federation and China, believed that it was still possible to disarm Iraq peacefully, specifically by adhering to the deadlines outlined in the work programme of UNMOVIC, considering the progress made by the inspection regime lately.⁶⁴⁸ In particular, Germany, echoed by the Russian Federation, stated that, under the current circumstances, the policy of military intervention had “no credibility”, as there was “no basis in the United Nations Charter for regime change by military means”.⁶⁴⁹ The representative of the Russian Federation underlined that no decision of the Council authorized the use of force against Iraq outside the Charter of the United Nations, nor did it authorize “the violent overthrow of the leadership of a sovereign State”.⁶⁵⁰ The representative of the Syrian Arab Republic noted that the “attempts by some to blame the Security Council” for the failure to adopt a draft

⁶⁴⁵ S/PV.4717 (Resumption 1), p. 10.

⁶⁴⁶ *Ibid.*, p. 17.

⁶⁴⁷ *Ibid.*, pp. 22-23.

⁶⁴⁸ S/PV.4721, p. 5 (Germany); p. 5 (France); pp. 7-8 (Russian Federation); pp. 8-10 (Syrian Arab Republic); p. 10 (Pakistan); p. 17 (Angola); and p. 18 (China).

⁶⁴⁹ *Ibid.*, p. 4 (Germany); and p. 8 (Russian Federation).

⁶⁵⁰ *Ibid.*, p. 8.

resolution authorizing military force against Iraq ignored the fact that the majority of the members of the Council rejected such a draft resolution, “thus rendering the use of the veto unnecessary by any country”.⁶⁵¹ By contrast, while expressing regret that the Council had not been able to find an agreed way forward, the United Kingdom reiterated that it had been Iraq’s fundamental failure to disarm over a period of 12 years, despite pleas and pressure from the Council and the whole international community, which had led to the present situation.⁶⁵² He also stressed that any action undertaken with regard to this matter would be in accordance with international law and based on relevant resolutions of the Security Council.⁶⁵³ Similarly, the representative of Spain avowed that the legitimate recourse to the use of force to disarm Iraq of its weapons of mass destruction was based on “the logical linking of resolutions 660 (1990), 678 (1990), 687 (1991) and 1441 (2002), adopted pursuant to Chapter VII of the Charter”.⁶⁵⁴

At its 4726th meeting, on 26 March 2003, following the commencement of the United States-led military action against Iraq on 20 March 2003, the Council continued its discussion on the use of force against Iraq, with a particular focus on the legality of the military action undertaken. While a large number of Member States maintained that the inspections should have been allowed to continue and that Iraq had indeed been actively cooperating with the inspectors,⁶⁵⁵ several others held that it was precisely because Iraq had failed to comply with Security Council resolutions that the coalition had been compelled to use force.⁶⁵⁶ During the debate, several delegations strongly objected to the use of force by coalition members, as a “unilateral” action which had failed to receive the authorization of the Council.⁶⁵⁷ Recalling the recent resolution adopted in Cairo at the Ministerial level by the League of Arab States, several speakers called the “Anglo-American aggression against Iraq” a flagrant violation of the United Nations Charter and

⁶⁵¹ *Ibid.*, p. 9.

⁶⁵² *Ibid.*, pp. 19-20.

⁶⁵³ *Ibid.*, pp. 15-16 (Spain); and pp. 19-20 (United Kingdom).

⁶⁵⁴ *Ibid.*, p. 15.

⁶⁵⁵ S/PV.4726, pp. 6-8 (Malaysia, on behalf of the Non-Aligned Movement); pp. 10-11 (Algeria); pp. 20-21 (South Africa); pp. 21-23 (Cuba).

⁶⁵⁶ S/PV.4726, pp. 26-27 (Australia); pp. 25-27 (Singapore); p. 39 (Japan); pp. 39-40 (The former Yugoslav Republic of Macedonia); pp. 41-42 (Latvia); pp. 42-43 (Nicaragua); p. 45 (Albania). S/PV.4726 (Resumption 1), p. 15 (Ethiopia); p. 29 (Spain); p. 31 (Bulgaria).

⁶⁵⁷ S/PV.4726, pp. 8-7 (Malaysia, on behalf of the Non-Aligned Movement); pp. 8-9 (League of Arab States); 20 (South Africa); p. 22 (Cuba); pp. 31-32 (Viet Nam); p. 33-34 (Islamic Republic of Iran); p. 35 (Lebanon). S/PV.4726 (Resumption 1), pp. 26-28 (Russian Federation); p. 28 (China); pp. 28-29 (France).

of the principles of international law. Among others, the representative of Malaysia, speaking on behalf of the Non-Aligned Movement, expressed his opposition to unilateral military actions or use of force, including those made without proper authorization from the Security Council. Pointing out that there was no authorization by the Council for the military action, he further underlined that the pre-emptive use of force threatened the foundation of international law.⁶⁵⁸ Similarly, a number of other speakers concurred that the military action was a violation of the Charter, calling it “unilateral action,” “act of aggression” and “unilateral attack”.⁶⁵⁹ The representative of the Russian Federation, echoed by the representative of Yemen, said that it was clear that the use of force against Iraq in an effort to change the political regime of a sovereign State ran counter to the fundamental principles contained in the Charter of the United Nations.⁶⁶⁰ Other delegations underlined that the “pre-emptive” use of force threatened the foundation of international law.⁶⁶¹

On the other hand, other Member States argued that failure to have taken action against the Iraqi regime would have been tantamount to tolerating breaches of the law and persistent disregard of the obligations to the United Nations.⁶⁶² The actions of the coalition were rather in accordance with international law, they noted, pointing out that resolutions 678 (1990), 687 (1991) and 1441 (2002) provided authority for the use of force to disarm Iraq of weapons of mass destruction and to restore international peace and security to the region. They stressed that failure to take action to effectively disarm the Iraqi regime would be a serious political and military mistake and would lead to the further undermining of the authority of the United Nations. The representative of the United States, joined by the representative of the United Kingdom, underscored that the coalition, comprising more than 48 countries, was acting to compel Iraq’s compliance with Council resolutions “because the risk of inaction was too great to tolerate”.⁶⁶³

⁶⁵⁸ S/PV.4726, p. 8.

⁶⁵⁹ Ibid., p. 19 (Indonesia); pp. 21-22 (Cuba); p. 28 (Brazil); p. 32 (Viet Nam); and p. 9 (United Republic of Tanzania).

⁶⁶⁰ S/PV.4726 (Resumption 1), pp. 26-28.

⁶⁶¹ S/PV.4726, p. 8 (Malaysia, on behalf of the Non-Aligned Movement); p. 13 (Yemen); and p. 32 (Viet Nam).

⁶⁶² S/PV.4726, pp. 14-16 (Kuwait); pp. 24-25 (Poland); p. 27 (Australia); pp. 38-39 (Japan); pp. 39-40 (The former Yugoslav Republic of Macedonia); pp. 42-43 (Nicaragua); pp. 47-48 (Mongolia). S/PV. 4726 (Resumption 1), pp. 22-24 (United Kingdom); and pp. 25-26 (United States).

⁶⁶³ S/PV.4726 (Resumption 1), pp. 22-24 (United Kingdom) and pp. 25-26 (United States).

2. The situation in Sierra Leone

At its 4099th meeting, on 7 February 2000, the Council adopted resolution 1289 (2000) by which it decided to extend the presence on the ground of the military component of UNAMSIL and to revise its mandate. During the debate preceding the adoption of the resolution, the representative of Sierra Leone welcomed “wholeheartedly” the fact that the revised mandate and the additional responsibilities of UNAMSIL were “fully backed by Chapter VII of the Charter of the United Nations”.⁶⁶⁴ The representative of the United States acknowledged the need to expand UNAMSIL’s mandate and welcomed the draft resolution that would grant United Nations troops “Chapter VII authority in the discharge of their mandate to take the necessary action to ensure the security and freedom of their personnel”.⁶⁶⁵ By contrast, the representative of the United Kingdom stressed that, while UNAMSIL was not a Chapter VII peace enforcement operation, his Government recognized in formulating the mandate for the force, that the task would require “a robust and serious stance against possible threats”.⁶⁶⁶

At its 4139th meeting, on 11 May 2000, the Council discussed the situation in Sierra Leone in the context of the abduction of several hundred United Nations peacekeepers in various parts of Sierra Leone. During the debate, many representatives called for a review of the mandate of UNAMSIL, with some of them expressing a preference for a Chapter VII operation.⁶⁶⁷ The representative of Algeria pointed out that the crisis at hand showed “very clearly” that the mandate and resources available to UNAMSIL were not adequate and appealed to the Council to review urgently the Mission’s mandate and then adopt a new resolution placing UNAMSIL action “within the context of Chapter VII of the United Nations Charter, making it a peace-enforcement mission”.⁶⁶⁸ The representative of Canada called for the Council to recommit itself to establishing a strong and credible force in the face of “appalling provocation” on the part of the Revolutionary Unified Party (RUF). He pointed out that the Council should be

⁶⁶⁴ S/PV.4099, p. 3.

⁶⁶⁵ *Ibid.*, p. 5.

⁶⁶⁶ *Ibid.*, p. 4.

⁶⁶⁷ S/PV.4139, pp. 4-5 (Algeria, on behalf of the Organization of African Unity); pp. 5-6 (Mali); pp. 8-9 (Canada); pp. 9-10 (Malaysia); pp. 12-13 (Bangladesh); pp. 13-14 (Namibia); pp. 16-17 (Jamaica); pp. 17-18 (Ukraine); and pp. 19-20 (Tunisia).

⁶⁶⁸ S/PV.4139, p. 5.

prepared to revisit UNAMSIL's mandate “in the light of the fundamental changes in the situation on the ground” and to re-examine, on a regular basis, UNAMSIL's requirements in personnel and capabilities.⁶⁶⁹ The representative of Malaysia opined that the question of the adequacy of the limited Chapter VII mandate given to UNAMSIL should be “promptly examined in the light of the hard realities on the ground and in the context of the changed environment from that originally envisaged”. He reminded the Council that his country had supported a limited Chapter VII mandate because there was “an agreement on the table and because the cooperation of the parties was assured to be forthcoming”. He stated that the reality was different and the response should be recalibrated appropriately.⁶⁷⁰ The representative of Bangladesh highlighted the need for a “much more robust mandate for a long-term solution of the problem in Sierra Leone” and, to make it effective, advocated a “full Chapter VII mandate for UNAMSIL”. Similarly, the representative of China spoke in favour of the Council adopting “appropriate measures” with respect to the situation in Sierra Leone, including a review of the mandate of UNAMSIL and the adoption of measures to ensure that its mandate was fully implemented. He asked the Secretariat to formulate recommendations in that regard, as soon as possible, for consideration by the Council.

By contrast, other delegations were of the view that the current mandate was sufficient to deal with the situation, as it contained elements of Chapter VII and that UNAMSIL should only be reinforced in terms of strength and resources.⁶⁷¹ The representative of the United Kingdom opined that UNAMSIL’s mandate was “sufficient” for it to carry out its tasks, as it contained elements that allowed for the “use of force in self-defence and, where possible, in defence of the civilian population”. The immediate objective, therefore, was to reinforce UNAMSIL and “get it up to strength”. He asserted that, as the situation evolved, the decision on how to mandate the Mission would depend on the tasks expected from UNAMSIL. He further agreed with the Secretary-General’s point that changing UNAMSIL’s mandate would not “of itself change it into an effective peace enforcement mission” and stressed that “moving to peace enforcement would be a

⁶⁶⁹ Ibid., p. 8 .

⁶⁷⁰ Ibid., p. 10.

⁶⁷¹ Ibid., pp. 6-8 (United Kingdom); pp. 16-17 (Russian Federation); p. 22 (Portugal on behalf of the European Union); pp. 23-25 (India); p. 27 (Pakistan); and p. 28 (Jordan).

radical change of approach” which required careful thought.⁶⁷² The representative of the Russian Federation observed that UNAMSIL’s mandate under resolution 1289 (2000) allowed it to take sufficiently strong measures to ensure the safety of international personnel and of the Government of Sierra Leone. He underlined that of “key importance” was “the effective exercise by the military contingent of its mandate”. If fully deployed, he added, UNAMSIL would be able to stabilize the situation.⁶⁷³ Conveying the position of the European Union, the representative of Portugal noted that UNAMSIL had authority, under Chapter VII of the Charter, to use force to ensure the security and freedom of movement of its personnel and to protect civilians, where possible. He therefore called on all States to provide UNAMSIL with the “means deemed necessary for the accomplishment of its mandate”.⁶⁷⁴ The representative of India affirmed that UNAMSIL needed to be “consolidated” as it was unable to implement many of the tasks given to it. He emphasized that, with the new “professional and well-equipped reinforcements,” UNAMSIL should concentrate on measures that would make it impossible for power “to be seized by force”. He further indicated that UNAMSIL already had a Chapter VII mandate to provide security at key locations and Government buildings and to use force in self-defence, and noted that, if all units in UNAMSIL acted “with discipline and courage” in accordance with their current mandate, they would be able to serve the United Nations and the people of Sierra Leone well.⁶⁷⁵ The representative of Jordan held the belief that a reconsideration of the UNAMSIL mandate might lead to “an absence of agreement between the troop contributors”, which would weaken the United Nations position in Sierra Leone. He endorsed the Indian stance that the mandate should remain unchanged, under Chapter VII of the Charter, until the situation in Sierra Leone stabilized.⁶⁷⁶ Similarly, the representative of Pakistan observed that while an adequate mandate had been given to the Mission, the Force was “not adequately equipped to act as per the mandate”. There had to be a balance and linkage between the mandate, composition of forces and operational posture adopted in the field. He stressed that the Council could not allow the peace process in Sierra Leone to fail,

⁶⁷² Ibid., p. 7.

⁶⁷³ Ibid., p. 16.

⁶⁷⁴ Ibid., p. 22.

⁶⁷⁵ Ibid., p. 24.

⁶⁷⁶ Ibid., p. 28.

“despite invoking Chapter VII elements in the mandate of the Security Council”. He contended that there could not be “different types of Chapter VII missions in different regions” and that, if “Chapter VII missions in other regions” had successfully helped to establish peace, it had to be the case in Sierra Leone as well.⁶⁷⁷

Other speakers expressed their willingness to consider a revision of UNAMSIL’s mandate, without however explicitly supporting it.⁶⁷⁸ The representative of Argentina indicated that it might be helpful to review the question of the mandate, and that his country would not oppose “any change in the mandate if it were necessary”. He nevertheless expressed the view that UNAMSIL’s mandate was “sufficiently strong” to serve in the extant circumstances, being able to take all necessary measures to guarantee the security and freedom of movement of its personnel and to protect civilians under imminent threat of physical violence.⁶⁷⁹ While indicating his Government’s willingness to think about reviewing the mandate of UNAMSIL, the representative of France indicated that there should be “true cohesiveness” between the mandate of a force and the size, training and equipment of the contingents responsible for implementation, and opined that this was not “sufficiently” the case for UNAMSIL. He thus supported the “substantial strengthening” and reinforcement of UNAMSIL.⁶⁸⁰ The representative of Japan remarked that the Council was to decide between expanding the mandate of the Mission to include the task of peace enforcement by incorporating the ECOWAS Monitoring Group (ECOMOG) into the United Nations mission, and entrusting peace enforcement to ECOMOG itself. He suggested that what was “most important” was for the Security Council to respond promptly, before the situation deteriorated further.⁶⁸¹

3. The situation concerning the Democratic Republic of the Congo

At its 4092nd meeting, on 24 January 2000, the Council discussed ways to end to the conflict in the DRC based on the principles laid out in the Lusaka Agreement. During the debate, the representative of Mozambique stated that the situation in the DRC could no longer afford further delays in the establishment of a full-fledged United Nations

⁶⁷⁷ Ibid., p. 27.

⁶⁷⁸ Ibid., pp. 14-16 (Argentina); pp. 18-19 (France); and p. 25 (Japan).

⁶⁷⁹ Ibid., pp. 15-16.

⁶⁸⁰ Ibid., p. 19.

⁶⁸¹ Ibid., p. 25.

peacekeeping mission with an appropriate mandate under Chapter VII and with adequate numbers, taking into account the size of the country and the magnitude and complexity of the conflict.⁶⁸² The representative of Zimbabwe indicated that the people of the DRC did not require “more talk of sending observers to their country, but the invoking of Chapter VII of the Charter and the urgent dispatch of peacekeepers to keep the peace”.⁶⁸³ The representative of Uganda echoed this position, demanding that a neutral international peacekeeping force be deployed as an “interpositional force in the Congo under the auspices of the United Nations”. He proposed for the mission to be established under Chapter VII of the Charter in order to enable it to effectively deal with questions of disarmament, demobilization and the protection of civilians.⁶⁸⁴ The representative of Namibia called for the speedy deployment of a United Nations peacekeeping force in the DRC, military observers and peacekeepers alike, under Chapter VII of the United Nations Charter.⁶⁸⁵ The representative of Canada expressed his Government’s support for the “immediate creation of a robust United Nations mission” to assist in the implementation of the Lusaka Agreement, and whose mandate should include clear and unequivocal task of protecting civilians under Chapter VII of the Charter.⁶⁸⁶ The representative of Bangladesh concurred that a more robust mission with a Chapter VII mandate needed to be considered in due course for the implementation of the remaining provisions of the Lusaka Agreement.⁶⁸⁷

At its 4790th meeting, on 18 July 2003, the Council discussed the security situation in Bunia, following the installation of the Transitional Government of National Unity and a military operation undertaken by the Interim Emergency Multinational Force against the Union des Patriotes Congolais (UPC) on 11 July 2003. During the debate, the High Representative for the Common Foreign and Security Policy of the European Union expressed support for a “a strengthened presence” of MONUC to be deployed in Bunia, with a “mandate under Chapter VII”.⁶⁸⁸ The representatives of Mexico and France noted that the Council had been preparing a draft to strengthen the mandate of MONUC, giving

⁶⁸² S/PV.4092, p. 11.

⁶⁸³ Ibid., p. 18.

⁶⁸⁴ Ibid., p. 20.

⁶⁸⁵ Ibid., p. 30.

⁶⁸⁶ S/PV.4092 (Resumption 1), p. 11.

⁶⁸⁷ Ibid., p. 17.

⁶⁸⁸ S/PV.4790, p. 7.

the mission a “robust mandate”.⁶⁸⁹ Similarly, several other speakers called for the Council to strengthen MONUC and grant it a “robust mandate” so that it could act effectively in emergency situations on the ground.⁶⁹⁰ The representative of the Russian Federation shared the view of the Secretary-General on the need to adapt MONUC’s mandate to the realities in the country and conveyed his support for the adoption of a new resolution with “new tasks” for the United Nations peacekeeping operation in the DRC.⁶⁹¹ The representative of the United Kingdom stressed that a Chapter VII authorization for MONUC was “important” as it would help deter violence, but only if it was “credibly embodied on the ground”.⁶⁹² Similarly, the representative of Chile advocated a “robust mandate under Chapter VII” for MONUC, which would be “essential to protect civilian populations and military personnel” subjected to “danger and threat”.⁶⁹³ The representative of China concurred, indicating that, as a result of the latest development, both the “mandate and size” of MONUC had to be adjusted. He therefore asserted his support for the draft resolution that would change MONUC’s mandate.⁶⁹⁴ The representative of Pakistan voiced support for an expansion of MONUC “to a ceiling of 10,800 troops, Chapter VII cover for Ituri and, if required, for the Kivu, and the presence of a brigade-size force in Ituri, with a clear, realistic and robust mandate”. He added that the expanded presence of MONUC should be accompanied by a “strong message” to the warring factions and those who backed them that further hostilities, which undermined the peace process, would “no longer be tolerated”. He concluded that, in that regard, his delegation supported the imposition of an arms embargo on all the warring parties.⁶⁹⁵ The representative of South Africa insisted that, in addition to strengthening the numbers and capabilities of MONUC’s forces, “the operation should be equipped with a Chapter VII mandate” so that it could effectively carry out the tasks

⁶⁸⁹ Ibid., p. 10 (Mexico); and p. 11 (France),

⁶⁹⁰ Ibid., p. 12 (Guinea); pp. 20-21 (Cameroon); pp. 29-30 (South Africa); p. 31 (Bangladesh); and p. 33 (Brazil).

⁶⁹¹ Ibid., p. 16.

⁶⁹² Ibid., p. 17.

⁶⁹³ Ibid., p. 19. Along the same lines, at the 4784th meeting, on 7 July 2003, the representative of Chile endorsed strengthening MONUC’s presence with a mandate that enabled it to provide the necessary protection to the civilian population. See S/PV.4784, p. 15.

⁶⁹⁴ S/PV.4790, p. 22.

⁶⁹⁵ Ibid., p. 24.

assigned to it.⁶⁹⁶ The representative of Japan acknowledged that, given the seriousness of the situation in the area of Bunia and in order to advance the Ituri pacification process, the MONUC contingent deployed in the region required a “sufficiently robust enforcement mandate”, and expressed his support for granting such a mandate to MONUC. Nevertheless, he asked States to exercise caution, as a strong enforcement mandate for activities, such as providing security under Chapter VII, under circumstances in which certain parties were not participating in the ceasefire agreement or peace accord, would risk changing the extant practices of peacekeeping operations and “plunging the troops into very complicated situations”, in which they might be required to “engage in combat as if they were parties to the conflict”. He concluded that the Council should not “easily” confer such “robust powers” to other peacekeeping operations and that such a mandate “should be given to peacekeepers only in exceptional cases” in which the urgency of the situation made it “absolutely necessary” and in which there were countries willing to contribute troops, as well as the clear prospect that the troops dispatched with such a mandate would contribute to the improvement of the situation.⁶⁹⁷ The representative of the Philippines pointed out that the formation of a Transitional Government in the DRC was only a first step and that the security situation in the Ituri region remained “fragile”. Hence, he endorsed the Secretary-General’s proposal to strengthen MONUC and announced his delegation’s support for an early adoption of the draft resolution, under Chapter VII of the Charter.⁶⁹⁸ The representative of Nepal endorsed a quick, “fresh decision” by the Council to “increase MONUC’s troop strength considerably and to adjust its mandate”. He contended that only a “credible MONUC presence” could create confidence in the DRC, which was critical “to stop hostilities in the Ituri region and elsewhere, to secure the Transitional Government on a firm footing in Kinshasa, and to implement an effective disarmament, demobilization and reintegration programme”.⁶⁹⁹

4. The situation in Afghanistan

⁶⁹⁶ Ibid., pp. 29-30.

⁶⁹⁷ Ibid., p. 34.

⁶⁹⁸ Ibid., pp. 36-37.

⁶⁹⁹ Ibid., pp. 38-39.

At its 4414th meeting, on 13 November 2001, the Council discussed its role in setting Afghanistan on the path to a stable and lasting peace and in addressing the humanitarian needs of the Afghan people. The Special Representative of the Secretary-General for Afghanistan emphasized that the establishment of a new Government could not be achieved in the absence of “genuine and lasting security”. He noted that the pervasive presence of non-Afghan armed and terrorist groups with no interest in a lasting peace would necessitate the introduction of a “robust security force, able to deter and, if possible, defeat challenges” to the Afghan Government’s authority. He presented three options to the Council: “an all-Afghan security force”, “a multinational force”, and “a United Nations peacekeeping force”, stressing that the preferred option was an all-Afghan force, provided it could be fielded in a “speedy, robust and credible manner”.⁷⁰⁰ The representative of Norway noted that the refusal by the Taliban regime to comply with Security Council resolutions “left no alternative but to use military force”, in accordance with the right of self-defence. He advised that the efforts to assist Afghanistan would only be effective if they were “well coordinated and part of a comprehensive political and economic strategy” supported by a “necessary security presence”.⁷⁰¹ The representative of China called on the United Nations to play a “leading role” and provide, together with the international community, the necessary political, technical and financial assistance to Afghanistan “on an urgent basis”. He announced his Government’s willingness to take into “serious consideration” any proposals or recommendations conducive to restoring the peace, stability and neutrality of Afghanistan.⁷⁰² The representative of the United States argued that the international presence should be reestablished “as soon as possible”.⁷⁰³ The representative of the Netherlands noted that a Security Council resolution had to enable “swift action to ensure as soon as possible some international, preferably United Nations, presence” in the towns that had just changed hands. He pointed out that “transitional military arrangements” would be essential to create a secure environment.⁷⁰⁴ The representative of Pakistan pointed out the significance of the interim administration’s move to Kabul and called for the creation of a multinational force “with

⁷⁰⁰ S/PV.4414, p. 6.

⁷⁰¹ Ibid., p. 13.

⁷⁰² Ibid., p. 19.

⁷⁰³ Ibid., p. 22.

⁷⁰⁴ S/PV.4414 (Resumption 1), p. 4.

the coalition providing back-up support” to secure the peace and security of Kabul.⁷⁰⁵ The representative of Italy asserted that a “proper security framework” was an indispensable element for stability and also for the distribution of humanitarian assistance.⁷⁰⁶ The representative of the Islamic Republic of Iran observed that the United Nations political and monitoring presence was one of the prerequisites for a successful transition, and that the presence of a United Nations military force was needed to ensure peace, order and security until the national army and police were in place.⁷⁰⁷ The representative of Germany argued that without military means it would not be possible to destroy the “hotbed of terror” in Afghanistan. He underlined the importance of clear political, economic and humanitarian objectives and urged the Council to provide the “mandate necessary to this end” through a Security Council resolution.⁷⁰⁸ The representative of Kazakhstan opined that the Security Council should adopt comprehensive measures in the “political, military, humanitarian and human rights arena” along the lines of Mr. Brahimi’s recommendations.⁷⁰⁹ The representative of Argentina maintained that the new Afghan Government had to be helped to attain stability and security and that, in this respect, the “support of a security mechanism with an international component” might be necessary.⁷¹⁰ The representative of Chile reaffirmed that the United Nations had a central role in “creating effective cooperation mechanisms between countries in order to tackle international terrorism”, a role that should be “intensified” when it became necessary to adopt measures aimed at “creating conditions for national stability in Afghanistan and, as a result, in the region”.⁷¹¹

⁷⁰⁵ Ibid., pp. 5-7.

⁷⁰⁶ Ibid., p. 8.

⁷⁰⁷ Ibid., p. 10.

⁷⁰⁸ Ibid., pp. 12-13.

⁷⁰⁹ Ibid., p. 26.

⁷¹⁰ Ibid., p. 27.

⁷¹¹ Ibid., p. 28.

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 fulfilment 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

During the period under review, the Security Council and the United Nations as a whole paid considerable attention to enhancing their peacekeeping efforts and to improving consultations with troop-contributing countries. One major impetus was the report of the Panel on United Nations Peace Operations (the so-called “Brahimi Report”), which was released by the Secretary-General on 21 August 2000.⁷¹² This report took a critical look at past peacekeeping efforts and strove to clarify what United Nations peacekeeping was trying to accomplish and how it might be doing so. Its focus included preventive action, peacebuilding, peacekeeping strategy and concrete operational issues. Among other things, it aimed to improve the rapid deployment of forces and strengthen the surge capacity for planning, preparing and deploying missions. The report also stressed the importance of improved consultations with troop-contributing countries.

On 3 October 2000, the Council established a Working Group on the Brahimi Report to undertake a full examination of those recommendations in the report which fell within the purview of the Council, in particular peacekeeping operations. Based on a draft recommendation by the Working Group, the Council adopted resolution 1327

⁷¹² S/2000/809. On 7 March 2000, the Secretary-General convened a high-level Panel to undertake a thorough review of the United Nations peace and security activities, and to present a clear set of specific, concrete and practical recommendations to assist the United Nations in conducting such activities better in the future. The Chairman of the Panel was Mr. Lakhdar Brahimi.

(2000) of 13 November 2000 which, *inter alia*, underlined the importance of an improved system of consultations among the troop-contributing countries, the Secretary-General and the Security Council, and agreed to strengthen significantly the existing system of consultations. By a statement of the President dated 31 January 2001,⁷¹³ the Council members gave further consideration to the issue and, by resolution 1353 (2001) of 13 June 2001, the Council specified the format, procedures and documentation of meetings with the troop-contributing countries. During the period under review, the Council held three meetings on the agenda item entitled “Strengthening cooperation with troop-contributing countries”,⁷¹⁴ and held 54 private meetings with troop-contributing countries pursuant to resolution 1353 (2001).

During the period under review, the Council did not explicitly refer to Articles 43 and 44 of the Charter 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 of relevance to the interpretation of Articles 43 and 44.⁷¹⁵ During the same period, the Council did not adopt any resolutions referring to Article 45 of the Charter, nor was there any constitutional discussion regarding the application and interpretation of this Article. By two resolutions, in accordance with the principles enshrined in Articles 46 and 47, the Council undertook to consider, *inter alia*, the possibility of using the Military Staff Committee as one of the means of enhancing the United Nations peacekeeping capacity.⁷¹⁶

The overview provided below has six sections. Section A contains decisions of the Council by which it imposed measure based on the principles of Article 43, and section B attempts to draw out the salient issues raised in the Council’s deliberations relevant to Article 43. Section C provides an overview of the Council’s decisions that may be interpreted as having reference to the principles contained in Article 44, while part D outlines the relevant discussion in this connection which has taken place in the Council’s deliberations. Section E outlines the Council’s resolutions referring to the Military Staff Committee (Articles 46-47 of the Charter), and is followed by section F

⁷¹³ S/PRST/2001/3.

⁷¹⁴ S/PV.4257 and Resumption 1, S/PV.4270, and S/PV.4326.

⁷¹⁵ See chapter 5 for additional details on arrangements concerning peacekeeping missions and other measures used by subsidiary organs of the Council to give effect to its decisions.

⁷¹⁶ Resolution 1327 (2000), Annex, IV; and resolution 1353 (2001), Annex I, C.

which attempts to draw out the salient issues raised in the Council's deliberations relevant to Articles 46-47.

A. Decisions relating to Article 43

1. Ensuring an effective role for the Security Council in the maintenance of international peace and security, particularly in Africa

By resolution 1318 (2000) of 7 September 2000, the Council underlined the importance of enhancing the United Nations capacity for rapid deployment of peacekeeping operations and urged Member States to provide sufficient and timely resources. The Council also welcomed the report of the Panel on United Nations Peace Operations and decided to consider the recommendations which fell within its area of responsibility expeditiously.⁷¹⁷

2. Ensuring an effective role of the Security Council in the maintenance of international peace and security

By resolution 1327 (2000), the Security Council resolved, inter alia, to give peacekeeping operations clear, credible and achievable mandates. It also recognized that the problem of the commitment gap with regard to personnel and equipment for peacekeeping operations required the assumption by all Member States of the shared responsibility to support United Nations peacekeeping.⁷¹⁸

3. The situation in Sierra Leone

By resolution 1289 (2000) of 7 February 2000, the Council decided that the military component of the United Nations Mission in Sierra Leone (UNAMSIL) would be expanded to a maximum of 11,100 military personnel, subject to periodic review in the light of conditions on the ground and the progress made in the peace process. It stressed the importance of a smooth transition between the Economic Community of

⁷¹⁷ Resolution 1318 (2000), Annex, III and IV.

⁷¹⁸ Resolution 1327 (2000), Annex, I.

West African States Monitoring Group (ECOMOG) and UNAMSIL and urged all those concerned to consult over the timing of troop movements and withdrawals.⁷¹⁹

By resolution 1299 (2000) of 19 May 2000, the Council decided that the military component of UNAMSIL would be expanded to a maximum of 13,000 military personnel. It also expressed its appreciation to all States who, in order to expedite the rapid reinforcement of UNAMSIL, had accelerated the deployment of their troops to UNAMSIL, made available additional personnel, offered logistical, technical and other forms of military assistance, and called upon all those in a position to do so to provide further support.⁷²⁰

By resolution 1313 (2000) of 4 August 2000, the mandate of UNAMSIL was extended with the stated intention of strengthening its structure, capability and resources. Towards this end, the Council considered that the military component of UNAMSIL should be reinforced through accelerated troop rotations, as appropriate, and with further aviation and maritime assets, a strengthened force reserve, upgraded communications and specialist combat and logistic support assets. The Council stressed that the successful achievement of the objectives of the Mission would depend on the provision of fully equipped, complete units to UNAMSIL, with the required capabilities, effective command and control structure and capacity, a single chain of command, adequate resources and the commitment to implement the mandate of the Mission in full as authorized by the Council.⁷²¹

By resolution 1334 (2000) of 22 December 2000, the Council strongly urged all States in a position to do so seriously to consider contributing peacekeeping forces for Sierra Leone, and expressed its appreciation to those States who had already made such offers. It also expressed its intention, following consultations with troop-contributing countries, to respond promptly to any additional specific recommendations made by the Secretary-General in the next period on the force, strength and tasks of UNAMSIL.⁷²²

By resolution 1346 (2001) of 30 March 2001, the Council further extended the mandate of UNAMSIL and decided to increase its military component as recommended

⁷¹⁹ Resolution 1289 (2000), paras. 9 and 14.

⁷²⁰ Resolution 1299 (2000), paras. 1 and 2.

⁷²¹ Resolution 1313 (2000), paras. 1, 3, 4, and 6.

⁷²² Resolution 1334 (2000), paras. 4, 5, and 6.

by the Secretary-General in his report.⁷²³ It also expressed its appreciation to those Member States who had provided additional troops and support elements to UNAMSIL, and those who had made commitments to do so. The Council encouraged the Secretary-General to continue his efforts to seek, if necessary, further properly trained and equipped forces to strengthen the military components of UNAMSIL in order to enable the Mission to implement fully its revised concept of operations, and requested the Secretary-General to inform the Council upon receipt of firm commitments to that end.⁷²⁴

By four subsequent resolutions, the Council further extended the mandate of UNAMSIL and expressed its appreciation to those Member States who had provided troops and support elements to UNAMSIL and those who had made commitments to do so.⁷²⁵ In one of these resolutions it also urged Member States able to do so to provide qualified civilian police trainers and advisers, and resources, to help the Sierra Leone Police fulfill its size and capacity targets.⁷²⁶

4. The situation concerning the Democratic Republic of the Congo

By resolution 1291 (2000) of 24 February 2000, the Council decided that the United Nations Mission in the Democratic Republic of the Congo (MONUC) would establish, under the overall authority of the Special Representative of the Secretary-General, a joint structure with the Joint Military Commission that would ensure close coordination during the period of deployment of MONUC.⁷²⁷

By resolution 1332 (2000) of 14 December 2000, the Council endorsed the proposal made by the Secretary-General to deploy, as soon as he considered that conditions would allow it and in accordance with the relevant provisions of resolution 1291 (2000), additional military observers, in order to monitor and verify the parties' implementation of the ceasefire and disengagement plans adopted in Maputo and Lusaka. It also expressed its readiness to support the Secretary-General, as soon as he considered

⁷²³ S/2001/228.

⁷²⁴ Resolution 1346 (2001), paras. 1, 2, and 4.

⁷²⁵ Resolutions 1370 (2001), paras. 1 and 2; 1400 (2002), paras. 1 and 2; 1436 (2002), paras. 1 and 2; and 1470 (2003), paras. 1 and 2.

⁷²⁶ Resolution 1470 (2003), para. 10.

⁷²⁷ Resolution 1291 (2000), para. 6.

that conditions would allow it, in the deployment of infantry units in support of the military observers in Kisangani and Mbandaka.⁷²⁸

By resolution 1355 (2001) of 15 June 2001, the Council updated the concept of operations put forward by the Secretary-General in his report of 8 June 2001, requested the Secretary-General to deploy military observers in locations where early withdrawal was implemented, with a view to monitoring the process, and reiterated the authorization contained in resolution 1291 (2000) for up to 5,537 military personnel for MONUC, including observers as deemed necessary by the Secretary-General. It also stressed the need for the co-location of the Joint Military Commission with MONUC in Kinshasa and reaffirmed that it was ready to support the Secretary-General, if and when he deemed it necessary and when conditions allowed it, to further deploy military personnel in the border areas in the east of the Democratic Republic of the Congo (DRC).⁷²⁹

By resolution 1417 (2002) of 14 June 2002, the Council extended the mandate of MONUC until 30 June 2003 and called upon Member States to contribute personnel to enable the Mission to reach its authorized strength of 5,537, including observers, within the time frame outlined in its concept of operation. It also took note of the recommendation by the Secretary-General for a troop ceiling increase and expressed its intention to consider authorizing it as soon as further progress had been achieved.⁷³⁰

By resolution 1493 (2003) of 28 July 2003, the Council extended and expanded the mandate of MONUC until 30 July 2004.⁷³¹ It authorized an increase in the military strength of the Mission to 10,800 personnel.⁷³² By the same resolution, the Council also encouraged MONUC, in coordination with other United Nations agencies, donors and non-governmental organizations, to provide assistance for the reform of the security forces, the re-establishment of a State based on the rule of law and the preparation and holding of elections, and welcomed the efforts of the Member States to support the transition and national reconciliation.⁷³³

⁷²⁸ Resolution 1332 (2000), paras. 4 and 8.

⁷²⁹ Resolution 1355 (2001), paras. 31, 33, 38, and 39.

⁷³⁰ Resolution 1417 (2002), paras. 1, 2, and 3.

⁷³¹ Resolution 1493 (2003), paras. 2, 6, 7, 17, 19, 25, 26, and 27.

⁷³² *Ibid.*, para. 3

⁷³³ *Ibid.*, para. 5

5. The situation in Bosnia and Herzegovina

By resolution 1305 (2000) of 21 June 2000, the Council authorized the Member States, acting through or in cooperation with the North Atlantic Treaty Organization (NATO), to continue the multinational Stabilization Force (SFOR) established in accordance with its resolution 1088 (1996) for a further planned period of 12 months under unified command and control.⁷³⁴ The resolution 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 SFOR. It also requested the Member States, acting through or in cooperation with NATO, to continue to report to the Council, through the appropriate channels and at least at monthly intervals.⁷³⁵

6. The situation in Afghanistan

By resolution 1386 (2001) of 20 December 2001, the Council established the International Security Assistance Force (ISAF) for six months and called upon Member States to contribute personnel, equipment and other resources to it. It also encouraged neighbouring States and other Member States to provide to ISAF such necessary assistance as might be requested, including the provision of overflight clearances and transit.⁷³⁶ Subsequent resolutions extending the Mission's mandate made similar requests for contributions.⁷³⁷

7. The situation in Côte d'Ivoire

By resolution 1464 (2003) of 4 February 2003, the Council authorized Member States participating in the Economic Community of West African States (ECOWAS) forces in accordance with Chapter VIII, together with the French forces supporting them, to take the necessary steps to guarantee the security and freedom of movement of their personnel and to ensure the protection of civilians immediately threatened with physical violence within their zones of operation, using the means available to them, for a period of six months.

⁷³⁴ Resolution 1305 (2000), para. 10.

⁷³⁵ *Ibid.*, paras. 16 and 18.

⁷³⁶ Resolution 1386 (2001), paras. 1, 2, and 7.

⁷³⁷ Resolutions 1413 (2002), para. 3; and 1444 (2002), para. 3. By resolution 1510 (2003), the Council strengthened the mandate of ISAF but did not make a renewed call for contributions.

The resolution also called upon all States neighbouring Côte d'Ivoire to support the peace process by preventing any action that might undermine the security and territorial integrity of Côte d'Ivoire, particularly the movement of armed groups and mercenaries across their borders and illicit trafficking and proliferation of arms in the region, including small arms and light weapons.⁷³⁸

By resolution 1498 (2003) of 4 August 2003, the Council extended the Mission's mandate and requested ECOWAS, through the command of its force, and France to report to the Council periodically, through the Secretary-General, on all aspects of the implementation of their respective mandates.⁷³⁹

8. The situation between Iraq and Kuwait

By resolution 1511 (2003) of 16 October 2003, the Council authorized a multinational force under a unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq. In this connection, the Council urged Member States to contribute assistance, including military forces, to the multinational force and requested that the United States, on behalf of the multinational force, report to the Security Council on the efforts and progress of this force, as appropriate, and not less than every six months.⁷⁴⁰

9. The situation in East Timor

By resolution 1410 (2002) of 17 May 2002, the Council established the United Nations Mission of Support in East Timor (UNMISET), authorizing the Mission to take the necessary actions to fulfill its mandate which consisted of the following elements: (i) to provide assistance to core administrative structures critical to the viability and political stability of East Timor; (ii) to provide interim law enforcement and public security and to assist in the development of a new law enforcement agency in East Timor, the East Timor

⁷³⁸ Resolution 1464 (2003), paras. 9 and 11.

⁷³⁹ Resolution 1498 (2003), paras. 1 and 2.

⁷⁴⁰ Resolution 1511 (2003), paras. 14 and 25.

Police Service (ETPS); and (iii) to contribute to the maintenance of the external and internal security of East Timor.⁷⁴¹

By the same resolution, the Council also decided that the Mission was to be headed by a Special Representative of the Secretary-General and should consist of: (i) a civilian component comprising an office of the Special Representative of the Secretary-General with focal points for gender and HIV/AIDS, a Civilian Support Group of up to 100 personnel filling core functions, a Serious Crimes Unit and a Human Rights Unit; (ii) a civilian police component initially comprised of 1,250 officers; (iii) a military component with an initial strength of up to 5,000 troops, including 120 military observers.⁷⁴² The Council also urged Member States, international agencies and organizations to provide assistance “as requested by the Secretary-General”, in particular in support of the full establishment of the East Timor Police and Defence Forces.⁷⁴³

By resolution 1473 (2003) of 4 April 2003, the Council decided that the composition and strength of the police component of UNMISSET and the schedule for its downsizing should be adjusted in line with paragraphs 33 and 35 of the special report of the Secretary-General dated 3 March 2003,⁷⁴⁴ and should include the following specific measures: (i) inclusion of an internationally formed unit for one year; (ii) provision of additional training capacity in key areas specified in the special report of the Secretary-General; (iii) greater emphasis on human rights and rule of law elements; (iv) retention of a greater monitoring and advisory presence in districts where policing authority has been handed over to the East Timor Police Force; (v) follow-up of the recommendations outlined in the report of the Joint Assessment Mission on policing of November 2002; and (vi) adjustment of planning for the gradual transfer of policing authority to the East Timor Police Force.⁷⁴⁵ The Council further decided that the schedule for the downsizing of the military component of UNMISSET for the period up until December 2003 should be adjusted in line with the letter of 28 March 2003 from the Under-Secretary-General for Peacekeeping Operations to the members of the Security Council; and, accordingly, that two battalions be retained within regions adjoining the Tactical Coordination Line during

⁷⁴¹ Resolution 1410 (2002), para. 2.

⁷⁴² *Ibid.*, para. 3.

⁷⁴³ *Ibid.*, para. 6.

⁷⁴⁴ S/2003/243.

⁷⁴⁵ Resolution 1473 (2003), para. 1.

this period, together with associated force elements, including mobility; and that the number of military peacekeepers be reduced to 1,750 more gradually than was foreseen in resolution 1410 (2002).⁷⁴⁶ Finally, the Council requested the Secretary-General to provide for approval by the Security Council, by 20 May 2003, a detailed military strategy for the revised schedule for the downsizing of the military component of UNMISSET, as well as to keep the Council closely and regularly informed of developments on the ground and on implementation of the revised military and police strategies.⁷⁴⁷

By resolution 1480 (2003) of 19 May 2003, the Council took note of the military strategy outlined by the Secretary-General in his report dated 21 April 2003,⁷⁴⁸ and decided to extend “the current mandate” of UNMISSET until 20 May 2004.⁷⁴⁹

B. Discussions relating to Article 43

1. The situation in Sierra Leone

At its 4139th meeting, on 11 May 2000, the Council met to discuss the deterioration of the situation in Sierra Leone, including the detention of several hundred United Nations peacekeepers in various parts of the country. During the debate several tributes were paid to troop-contributing countries, and a discussion took place on whether the peacekeeping force had been sufficiently mandated and equipped.⁷⁵⁰ The representative of Algeria, while advocating for a review of UNAMSIL’s mandate within the context of Chapter VII of the Charter, informed the Council of the willingness of certain members of ECOWAS, as stated at the Abuja summit of 9 May 2000, to make the necessary troops available to the United Nations to strengthen its Mission in Sierra Leone. He further appealed to countries with the necessary resources to offer an appropriate logistic and financial contribution to UNAMSIL so that it could best

⁷⁴⁶ Ibid., para. 2.

⁷⁴⁷ Ibid., paras. 3 and 4.

⁷⁴⁸ S/2003/449.

⁷⁴⁹ Resolution 1480 (2003), para. 1.

⁷⁵⁰ S/PV.4139.

discharge its revised mandate.⁷⁵¹ The representative of the United Kingdom reported that his country had taken a number of “important steps” to support UNAMSIL, in particular by deploying the British Spearhead Battalion to Freetown securing the Lungi airport, thus freeing up UNAMSIL troops to concentrate on their wider tasks. He also pointed out that, at United Nations request, a United Kingdom military advisory team was also sent to Freetown to help the United Nations assess what technical support was needed to strengthen UNAMSIL. He therefore stated that the Council should be ready to do anything necessary to assist UNAMSIL’s reinforcement and that, in this regard, the United Kingdom would continue to offer technical and logistical support to help strengthen the Mission. He welcomed the willingness of the ECOWAS leaders, following their summit meeting in Abuja on 9 May, to consider, in the event of any new involvement of regional forces in Sierra Leone, the practical modalities of such involvement and, in this connection, warned that new troops should be “blue-hatted, properly equipped for the job they have to do, under a single United Nations chain of command and with the same rules of engagement”.⁷⁵² The representative of Canada, recognizing the importance of a “truly multilateral and under the United Nations flag” peacekeeping mission, encouraged Member States to work towards the creation of a “strong, united and cohesive force” that should take the form of “an expanded UNAMSIL and should respect the fundamental military principle of unity of command, in this case the command of Major-General Jetley”. He added that his country would offer an air lift for rapid deployment of troops from India and Bangladesh and that Canada was considering increasing its assistance to UNAMSIL’s troops which were without sufficient equipment.⁷⁵³ Similarly, the representative of the United States stated that his country would “assist the deployment of additional troops for UNAMSIL”.⁷⁵⁴ In his statement, the representative of Malaysia held the view that, among the immediate priorities for UNAMSIL, there should be the strengthening of the Mission’s presence by regrouping in larger numbers to enable the Force to better defend itself in case of rebel attack. He believed that the time had come for the Council to consider the “possible next steps”,

⁷⁵¹ Ibid., p. 5.

⁷⁵² Ibid., pp. 7-8.

⁷⁵³ Ibid., p. 8.

⁷⁵⁴ Ibid., p. 12.

including as a priority the dispatch of a rapid reaction force to Sierra Leone for the purpose of stabilizing the situation and putting the political process “back on track”. Although supporting the idea that ECOMOG should play a pivotal role in assisting the international community to restore order in the country, he stated that, under the present circumstances, all countries deploying troops in Sierra Leone should come under “the United Nations banner and under one command structure”, with adequate resources.⁷⁵⁵ The representative of Bangladesh stressed the need to bolster UNAMSIL by bringing it up to its mandated strength at the earliest date, by deploying “additional numbers on the ground”. In this regard, he informed the Council that the battalion his country promised to the Mission would be ready for airlifting along with all its equipment by 20 May 2000. He maintained that the Council should look into the possibility of mobilizing more troops and stated his appreciation for the ECOWAS countries who expressed their intention of providing extra forces to bring stability to Sierra Leone. He cautioned, however, that the entire military presence on the ground should be under an integrated United Nations command with “one mandate provided by the Security Council”.⁷⁵⁶ Likewise, the representative of Namibia advocated for UNAMSIL to be strengthened and welcomed the decision of ECOWAS to put the ECOMOG troops immediately at the disposal of UNAMSIL and their integration into the Mission. He added that many troop-contributing countries did not have the equipment that would make “a Chapter VII mandate meaningful” and thus appealed to those in a position to do so to contribute equipment to UNAMSIL. He further stated that the Council should not “abdicate” its responsibility in Sierra Leone and “pass it to ECOMOG”, unless ECOMOG would be provided with financial and logistical support.⁷⁵⁷ The representative of Argentina emphasized that the transportation of the battalions that had been pledged in order to provide the required number of troops and the equipment needed to deal with the current situation should be speeded up. He supported the Secretary-General’s request to increase the number of troops to 11,100, as quickly as possible.⁷⁵⁸ Similarly, the representative of the Russian Federation attached paramount importance to the speedy increase of UNAMSIL to

⁷⁵⁵ Ibid., pp. 8-9.

⁷⁵⁶ Ibid., p. 13.

⁷⁵⁷ Ibid., p. 14.

⁷⁵⁸ Ibid., p. 14.

11,100 soldiers and officers and specified that his country was currently addressing practical issues with the United Nations for providing an airlift to Sierra Leone for additional units to UNAMSIL and for sending a number of Russian military helicopters to Sierra Leone.⁷⁵⁹ In his statement, the representative of Jamaica commended the countries which had pledged to rapidly increase the troop strength of the Mission, endorsed the integration of ECOMOG troops into UNAMSIL and called upon the international community to commit the necessary funding and the logistical expertise as required.⁷⁶⁰ Echoing the previous speaker, the representative of Ukraine supported a substantial reinforcement of UNAMSIL by increasing its “combat capabilities” and by being equipped accordingly under the United Nations chain of command. He confirmed his country’s availability to support the reinforced Mission and, in this regard, he recalled that Ukraine was already involved in providing airlift support for the needs of UNAMSIL.⁷⁶¹ The representative of France voiced his support for any proposal of the Secretary-General to reinforce UNAMSIL “with Blue Helmets” and stood ready to think about reviewing the mandate of the force to take into account the unilateral breaking of the Lomè Agreement by the Revolutionary United Front (RUF).⁷⁶² Supporting the strengthening of UNAMSIL through ECOWAS troops, the representative of Tunisia held the view that, for effective implementation, sufficient equipment and appropriate financial and logistical support should be given to the peacekeeping force under UNAMSIL command.⁷⁶³ Speaking on behalf of the European Union, the representative of Portugal encouraged all States in a position to do so to assist and provide the means deemed necessary for the accomplishment of the Mission’s mandate. He echoed the words of the Secretary-General by inviting the Council to “back words with deeds, and mandates with resources needed to make them work”.⁷⁶⁴ The representative of India informed the Council that his country was sending a second battalion urgently, together with other reinforcements, to bolster UNAMSIL’s strength. He further underlined that, in the current crisis, it would be essential to preserve the unity of command of UNAMSIL,

⁷⁵⁹ Ibid., p. 16.

⁷⁶⁰ Ibid., p. 17.

⁷⁶¹ Ibid., p. 18.

⁷⁶² Ibid., p. 18.

⁷⁶³ Ibid., pp. 19-20.

⁷⁶⁴ Ibid., p. 22.

which should function as “a cohesive force”, in order to avoid undermining the leadership of UNAMSIL with dangerous consequences for the Mission as a whole and for the troops under its command.⁷⁶⁵ The representative of Pakistan stated that, in carrying out their mandate, peacekeepers in Sierra Leone were mandated to take the necessary action to ensure the security and freedom of UNAMSIL personnel and, within their capabilities and areas of deployment, to afford protection to civilians under imminent threat of physical violence. According to the speaker, while an adequate mandate was given to the Mission to address such situations as hostage-taking, the peacekeepers deployed on the ground were not adequately equipped to act as per the mandate. He therefore requested the Secretariat to assess what went wrong in the planning and deployment of peacekeepers in Sierra Leone, including the configuration of the force, in order to ensure that, in future, the security component of a peacekeeping mission would serve as an asset rather than become a liability. He concluded by remarking that his country wished to see “a practical concept of operation and configuration of force [...] in a manner that is capable of supporting the implementation of the mandate of the Mission and such that its success does not depend only on the declared intentions of the parties involved in the conflict”.⁷⁶⁶ The representative of Jordan reported that his country was in the process of reinforcing UNAMSIL by committing two extra companies drawn from the country’s special forces, as well as another battalion within a few days. He thus appealed to the Council not to consider “new initiatives” during the process of deployment of the Jordanian troops.⁷⁶⁷

2. Ensuring an effective role of the Security Council in the maintenance of international peace and security.

At its 4220th meeting, on 13 November 2000, the Council considered the report of the Security Council Working Group on the Brahimi Report, which included a draft resolution containing decisions and recommendations to strengthen United Nations peacekeeping operations.⁷⁶⁸ The draft resolution was subsequently unanimously adopted

⁷⁶⁵ Ibid., p. 24.

⁷⁶⁶ Ibid., p. 27.

⁷⁶⁷ Ibid., p. 27.

⁷⁶⁸ S/2000/1084.

without change as resolution 1327 (2000). A key point in resolution 1327 (2000), as noted by many representatives in their statements following the voting, was the Council's resolve to give peacekeeping operations clear, credible and achievable mandates.⁷⁶⁹ Several representatives noted the importance of rapid deployment and admitted that there was a gap between Council mandates and Member States commitments to make these achievable. The representative of Bangladesh explicitly referred to Article 43 and stated that his country had proposed the inclusion of a paragraph in the just-adopted resolution which would have addressed the commitment gap. He proposed that "the Council recognize that the contribution of troops by Member States possessing the greatest capacity and means, particularly permanent members of the Security Council, is critically important for bridging the commitment gap, facilitating rapid deployment and further increasing the operational effectiveness of United Nations peacekeeping operations". His delegation therefore suggested that each of the permanent members agree to provide at least five per cent, or another agreed percentage, of the troops for each United Nations peacekeeping operation.⁷⁷⁰ The proposal was not included in the final draft resolution.

3. Strengthening cooperation with troop-contributing countries

At its 4257th meeting, on 16 January 2001, the Council held an open debate on "Strengthening cooperation with troop-contributing countries". In his statement, the representative of Zambia noted that, whenever the use of peacekeeping forces was contemplated, the Security Council should "adhere to the provisions of Article 43 and Article 44 of the United Nations Charter".⁷⁷¹ Similarly, the representative of Mali stated that his country "would like us to be able to invoke Articles 43 and 44 whenever useful and whenever possible".⁷⁷²

⁷⁶⁹ S/PV.4220, p. 3 (Jamaica); p. 5 (United States and Bangladesh); p. 9 (Canada); p. 9 (the Russian Federation); p. 10 (Argentina); p. 11 (United Kingdom); p. 13 (Tunisia); p. 14 (Ukraine); p. 16 (Mali); and p. 16 (the Netherlands). See also resolution 1327 (2000), Annex I, para. 1.

⁷⁷⁰ S/PV.4220, p. 6.

⁷⁷¹ S/PV.4257, p. 25.

⁷⁷² *Ibid.*, p. 21. For a more detailed summary of the debate, see below section D, "Discussions relating to Article 44".

C. Decisions relating to Article 44

1. Ensuring an effective role for the Security Council in the maintenance of international peace and security, particularly in Africa

By resolution 1318 (2000) of 7 September 2000, the Council affirmed its determination to strengthen United Nations peacekeeping operations by, among other things, strengthening consultations with troop-contributing countries when deciding on such operations.⁷⁷³

2. Ensuring an effective role of the Security Council in the maintenance of international peace and security

By resolution 1327 (2000) of 13 November 2000, the Security Council: (i) encouraged the Secretary-General to begin his consultations with potential troop contributors well in advance of the establishment of peacekeeping operations, and requested him to report on his consultations during the consideration of new mandates; (ii) underlined the importance of an improved system of consultations among the troop-contributing countries, the Secretary-General and the Security Council, in order to foster a common understanding of the situation on the ground, of the mandate of the mission and of its implementation; (iii) agreed, in this regard, to strengthen significantly the existing system of consultations through the holding of private meetings with troop-contributing countries, including at their request and without prejudice to the Provisional Rules of Procedure of the Security Council, in particular when the Secretary-General had identified potential troop-contributing countries for a new or ongoing peacekeeping operation, during the implementation phase of an operation, when considering a change in, or renewal or completion of a peacekeeping mandate, or when a rapid deterioration in the situation on the ground threatened the safety and security of United Nations peacekeepers; and (iv) welcomed the proposals of the Panel on United Nations Peace Operations for improving the capacity of the United Nations to deploy military, civilian police and other personnel rapidly, including through the United Nations standby–

⁷⁷³ Resolution 1318 (2000), Annex, III.

arrangements system, and urged the Secretary-General to consult current and potential troop-contributing countries on how best to achieve this important objective.⁷⁷⁴

3. Strengthening cooperation with troop-contributing countries

Following an open debate on strengthening cooperation with troop-contributing countries at the 4257th meeting on 16 January 2001,⁷⁷⁵ the Council made two related decisions under this agenda item during the period under review.

By a statement of the President dated 31 January 2001, the Council decided to establish a Working Group of the Whole on United Nations peacekeeping operations.⁷⁷⁶ While not replacing the private meetings with the troop-contributing countries, the Working Group was to address both generic peacekeeping issues relevant to the responsibilities of the Council and technical aspects of individual peacekeeping operations without prejudice to the competence of the Special Committee on Peacekeeping Operations. As a first step, the Working Group was tasked to undertake an in-depth consideration of, inter alia, all the proposals made in the course of the Council's 4257th meeting, including ways to improve the three-way relationship between the Council, the troop-contributing countries and the Secretariat.

At its 4326th meeting, on 13 June 2001, the Council resumed its consideration of the item "Strengthening cooperation with troop-contributing countries", and specifically the first report of the Security Council Working Group on Peacekeeping Operations.⁷⁷⁷ Based on a draft resolution contained in the report, the Council adopted resolution 1353 (2001) of 13 June 2001 which, inter alia, stressed the need to improve the relationship between the Security Council, the troop-contributing countries and the Secretariat to foster a spirit of partnership, cooperation, confidence and mutual trust. It also encouraged Member States to take steps to bridge the commitment gap with regard to personnel and equipment for specific United Nations peacekeeping operations.⁷⁷⁸ Annex II of the resolution laid out the format, procedures and documentation of meetings with the troop-contributing countries.

⁷⁷⁴ Resolution 1327 (2000), Annex I, II, and IV.

⁷⁷⁵ For a detailed summary of the debate, see below section D, "Discussions relating to Article 44".

⁷⁷⁶ S/PRST/2001/3.

⁷⁷⁷ S/2001/546.

⁷⁷⁸ Resolution 1353 (2001), eighth preambular para. and Annex I, A, para. 2.

D. Discussions relating to Article 44

1. *The situation in Sierra Leone*

At its 4139th meeting, on 11 May 2000, the Council discussed, inter alia, a possible mandate revision for UNAMSIL. With respect to a mandate review and an increase of troops on the ground, the representative of India stated that he expected that “troop contributors will be associated in the Council’s decision-making process, in the spirit of Article 44 of the Charter”.⁷⁷⁹

2. *Strengthening cooperation with troop-contributing countries*

At its 4257th meeting, on 16 January 2001, the Council held an open debate on “Strengthening cooperation with troop-contributing countries”, during which 37 speakers, including representatives of 21 troop-contributing countries (TCCs) and the Deputy Secretary-General, addressed the Council.⁷⁸⁰

The representative of Egypt stated that measures to strengthen the relationship between the TCCs and the Security Council should lead to the participation by TCCs in the Council’s decision-making process “at all stages of the establishment, deployment and withdrawal of a peacekeeping operation”, especially when the use of force was involved, “as provided for clearly in Article 44 of the Charter of the United Nations”.⁷⁸¹ Similarly, the representative of Zambia noted that, whenever the use of peacekeeping forces was contemplated, the Security Council should adhere to the provisions of Article 43 and Article 44 of the United Nations Charter.⁷⁸² The representative of New Zealand affirmed that the question of strengthening cooperation with troop contributors should be approached from the perspective that the Charter guarantees, under Article 44, those troop contributors who are not members of the Council the right to be heard by the Council, “at the very least”. Echoing previous speakers, he noted that the Charter

⁷⁷⁹ S/PV.4139, p. 24.

⁷⁸⁰ Prior to the 4257th meeting, by a letter dated 8 January 2001 addressed to the Secretary-General, the representative of Singapore announced his country’s intention, during its Presidency, to hold an open debate on strengthening cooperation with troop-contributing countries. The letter also contained two papers on the subject, providing background information to the issue as well as suggesting some specific questions that could be addressed by the participants in the open debate. See S/2001/21.

⁷⁸¹ S/PV.4257, p. 24.

⁷⁸² *Ibid.*, p. 25.

included provisions contemplating the invitation of troop contributors to participate in the decisions of the Security Council concerning the employment of their contingents. He therefore maintained that these provisions should be considered as a “starting point in considering the possible establishment of new mechanisms and the procedural issues that flow therefrom”. He concluded by affirming that Article 44 should be given “due weight in United Nations peacekeeping in the twenty-first century”.⁷⁸³ The representative of Malaysia emphasized the need to establish a formalized mechanism of consultations between the Council and TCCs in order “to give effect to Article 44 of the Charter”. In this connection, he added that meetings with TCCs could be made “more interactive and useful and less ritualistic if they were convened well ahead of the renewal of a peacekeeping operation, not just before, as is often the case”.⁷⁸⁴ The representative of Bangladesh asserted that, as a policy issue, his country strongly favoured the involvement of TCCs in the decisions of the Council “as per the provisions of Article 44 of the Charter of the United Nations”.⁷⁸⁵ Likewise, the representative of Mali stated that it should be possible “to invoke Articles 43 and 44 whenever useful and whenever possible”.⁷⁸⁶

During the debate, several representatives referred to a proposal contained in the Brahimi report but not included in resolution 1327 (2000) which suggested the institutionalization of consultations with the TCCs through the establishment of ad hoc subsidiary organs of the Council, as provided for in Article 29.⁷⁸⁷ The representative of India, in referring to this proposal, expressed disappointment that this “attempt to arrive at an appropriate mechanism of mutually advantageous communication between troop contributors and the Council” was seen as “root canal work by the Council, particularly when this is an obligation on the Council and not an indulgence by it”.⁷⁸⁸ Maintaining that, when the use of force was being authorized, the Council should implement Articles 43 and 44 of the Charter, he further specified that Article 44 stipulated that TCCs should “participate in the Council’s decisions, not just be consulted”.⁷⁸⁹ The representative of the Republic of Korea noted that what mattered was not the number of times TCCs were

⁷⁸³ Ibid., p. 26.

⁷⁸⁴ Ibid., p. 28.

⁷⁸⁵ S/PV.4257 (Resumption 1), p. 9.

⁷⁸⁶ Ibid., p. 21.

⁷⁸⁷ S/2000/809, para. 61.

⁷⁸⁸ S/PV.4257, p. 8.

⁷⁸⁹ Ibid., pp. 8 and 11.

briefed or allowed to speak in the Council, but the degree to which they could substantially contribute to the decision-making process of peacekeeping operations.⁷⁹⁰ Similarly, the representative of Canada pointed out that the main issue was not a proper communication or consultation process with TCCs, even though improvements were possible, but that of a better “cooperation and participation”.⁷⁹¹ The representative of Argentina stated that, notwithstanding the fact that the Security Council had exclusive decision-making power, the Council’s decisions directly affected troop contributors, “since the risks of the operations fell mainly on their shoulders”.⁷⁹² The representative of Nigeria felt the need for better coordination and consultation between troop-contributing countries, the Security Council and the Secretariat. This, in his view, was the best way to forge trust and understanding among the various stakeholders and to ensure the success of the various United Nations peacekeeping operations. He added that, while the Security Council was responsible for issuing mandates and the Secretariat for logistics and administration through the Department of Peacekeeping Operations, it was the troop-contributing countries that actually translated Security Council mandates into action. He therefore deemed important that these three bodies continued to consult among themselves for the eventual success of any operation at hand.⁷⁹³

E. Decisions relating to Articles 46-47

1. Ensuring an effective role of the Security Council in the maintenance of international peace and security

By resolution 1327 (2000) of 13 November 2000, the Security Council undertook “to consider the possibility of using the Military Staff Committee as one of the means of enhancing the United Nations peacekeeping capacity”.⁷⁹⁴

2. Strengthening cooperation with troop-contributing countries

⁷⁹⁰ Ibid., p. 13.

⁷⁹¹ Ibid., p. 22.

⁷⁹² Ibid., pp. 19 and 20.

⁷⁹³ Ibid., p. 31.

⁷⁹⁴ Resolution 1327 (2000), Annex IV.

By resolution 1353 (2001) of 13 June 2001, the Council undertook “to consider the possibility of using the Military Staff Committee as one of the means of enhancing United Nations peacekeeping operations”.⁷⁹⁵

F. Discussions relating to Articles 46-47

1. Ensuring an effective role of the Security Council in the maintenance of international peace and security

At the Council’s 4220th meeting, on 13 November 2000, the Russian Federation commented that, following the resolution on the Brahimi Report,⁷⁹⁶ the Council had entered the equally important stage of implementing agreed decisions. He believed that the approach of using the Military Staff Committee as one of the means of enhancing the United Nations peacekeeping capacity would maintain balance in the distribution of responsibilities between Member States and the United Nations Secretariat.⁷⁹⁷

At the resumption of the 4288th meeting, on 7 March 2001, the representative of the Russian Federation recalled that, in resolution 1327 (2000), a decision was made to consider the question of how to best utilize the Military Staff Committee. He commented that there was a need “not to leave [it] on paper or simply within the sphere of conversation”, but to see what in fact could really be done.⁷⁹⁸

2. No exit without strategy

At the Council’s 4223rd meeting, on 15 November 2000, the representative of China noted that, in order for peacekeeping operations to conclude successfully, the United Nations rapid deployment capacity should be developed, the effectiveness of the planning enhanced, and the technical and financial resources of operations ensured. In this connection, he added the importance of strengthening relevant Secretariat units, including the possibility of making full use of the capacity of the Military Staff Committee as “an

⁷⁹⁵ Resolution 1353, Annex I, C.

⁷⁹⁶ A/55/305 and S/2000/809.

⁷⁹⁷ S/PV.4220, p. 9.

⁷⁹⁸ S/PV.4288 (Resumption 1), p. 15.

important source for military expertise both for preparing for the possible deployment of an operation and for wrapping one up”.⁷⁹⁹

3. Strengthening cooperation with troop-contributing countries

At the Council’s 4257th meeting, on 16 January 2001, the representative of India, in advancing his views on the relationship between the Security Council and the troop-contributing countries, reminded the Council that Article 47(2) of the Charter stipulated that the Military Staff Committee could include officers from any Member State, “when the efficient discharge of the Committee’s responsibilities require[d] the participation of that Member in its work”. He further invited the Council to revive the Military Staff Committee and use it as a forum for consultations with troop-contributing countries on purely military aspects.⁸⁰⁰ In response, the representative of the Russian Federation stated that his delegation would regard India’s proposal on making more use of the Military Staff Committee in line with resolution 1327 (2000).⁸⁰¹ The representative of Columbia also voiced his support for reviving the Military Staff Committee, with a broadened mandate that would reflect the concerns voiced by other delegations, while the representative of Mauritius concurred with India’s statement.⁸⁰²

4. Wrap-up discussion of the work of the Security Council

At its 4343rd meeting, on 29 June 2001, the Council held a wrap-up discussion on the work of the Security Council during the month of June 2001. During the debate, the representative of the Russian Federation, recalling the need to follow up implementation of the Council’s decisions, stated that the Military Staff Committee, as a mechanism which should be useful for the Council’s work on peacekeeping, had been underutilized. He further recalled that the Council, in resolutions 1327 (2000) and 1353 (2001), had already emphasized the need to study the means to make more active use of the Military Staff Committee in order to strengthen United Nations peacekeeping operations. He concluded by stating that his delegation expected the Military Staff Committee “to

⁷⁹⁹ S/PV.4223, p. 15.

⁸⁰⁰ S/PV.4257, p. 11.

⁸⁰¹ S/PV.4257 (Resumption 1), p. 13.

⁸⁰² *Ibid.*, p. 19 (Columbia); and p. 21 (Mauritius).

respond to the Council's resolutions".⁸⁰³ By a letter dated 6 July 2001 addressed to the President of the Security Council,⁸⁰⁴ the representative of the Russian Federation enclosed a position paper containing proposals to enhance the activities of the Military Staff Committee in the context of strengthening the United Nations peacekeeping potential.

⁸⁰³ S/PV.4343, p. 6.

⁸⁰⁴ S/2001/671.

Part VI

Member States' obligations 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

In accordance with Article 48, action required to carry out the Council's decisions "shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine", both "directly and through their action in the appropriate international agencies". During the period under review, no decisions were adopted by the Council referring expressly to Article 48. In a number of instances, however, the Council adopted decisions in accordance with Chapter VII of the Charter that underlined the mandatory nature of those measures imposed and contained provisions that might be construed as implicit references to the principle enshrined in Article 48.⁸⁰⁵ In the absence of express references to the Article, it is not always possible to ascribe to the Council with any certainty decisions concerning that particular Article.

The following Council decisions may, nevertheless, help to shed light on the Council's interpretation and application of Article 48. Section A provides an overview of action required to carry out the Council's decisions adopted in accordance with the provisions of Article 41 of the Charter, while the following section focuses on the action required to carry out Council's decisions imposing measures which involved the use of armed force in accordance with the provisions of Article 42 of the Charter.

⁸⁰⁵ In connection with the situations in Afghanistan, Angola, Bosnia and Herzegovina, Côte d'Ivoire, Liberia, Sierra Leone, the Democratic Republic of the Congo, Eritrea and Ethiopia, Iraq, Somalia, and Sierra Leone.

During the period under consideration, the interpretation and application of Article 48 did not give rise to any significant constitutional discussion in the Council's deliberations.

A. Obligations arising pursuant to the Council's decisions adopted in accordance with Article 41

In decisions imposing measures not involving the use of armed force under Article 41 of the Charter, the Security Council consistently called upon "all States" to comply with relevant prohibitions.⁸⁰⁶ In some instances, the Council addressed its calls to comply with relevant prohibitions to "States" in general⁸⁰⁷ or "all Member States".⁸⁰⁸

In connection with the measures imposed against Sierra Leone and Liberia, the Council expressly included "all States in the region"⁸⁰⁹ and "all States in West Africa"⁸¹⁰ among the addressees of its decisions.⁸¹¹ In one instance, in connection with the mandatory measures imposed against the Democratic Republic of the Congo (DRC), the Council explicitly decided that "all States, including the Democratic Republic of the Congo" were to take the necessary measures to comply with the relevant provisions of the resolution.⁸¹² Similarly, in connection with measures imposed against Iraq, the

⁸⁰⁶ Resolutions 1298 (2000), paras. 6 and 8; 1306 (2000), para. 9; 1343 (2001) paras. 4, 5, 6, 7, and 21; 1356 (2001), para. 1; 1519 (2003), para. 1; 1295 (2000), para. 15; 1343 (2001), paras. 5, 6, 7, and 21; 1408 (2002), para. 18; 1478 (2003), paras. 17, 27, and 28; 1521 (2003), paras. 2, 4, 6, and 10; 1333 (2000), paras. 4, 5, 8, 10, and 11; 1363 (2001), para. 8; 1373 (2001), para. 3; 1390 (2002), para. 8; and 1455 (2003), para. 5.

⁸⁰⁷ Resolutions 1306 (2000), para. 17; and 1333 (2000), para. 18.

⁸⁰⁸ Resolution 1390 (2002), para. 4.

⁸⁰⁹ Resolutions 1343 (2001), para. 4; 1408 (2002), para. 4; and 1478 (2003), para. 9.

⁸¹⁰ Resolution 1521 (2003), para. 3.

⁸¹¹ In connection with the situation in Liberia, the Council also requested "all States, in particular arms exporting countries" to exercise the highest degree of responsibility in small arms and light weapons transactions to prevent illegal diversion and re-export. See resolution 1408 (2002), para. 19.

⁸¹² Resolution 1493 (2003), para. 20.

Council urged “all States, and in particular the Government of Iraq”, to provide their full cooperation in the effective implementation of the provisions of the resolution.⁸¹³

In connection with the measures imposed against Angola, the Council called upon “relevant States” to take measures to ensure that members of the diamond industry abided by the measures contained in the relevant resolutions.⁸¹⁴ The Council also urged “all States, including those geographically close to Angola” to take immediate steps to ensure criminal prosecution of nationals or other individuals operating on their territory to violate the measures imposed by the Council against the National Union for the Total Independence of Angola (UNITA).⁸¹⁵

When imposing measures against Afghanistan, Sierra Leone and Ethiopia/Eritrea, the Security Council in each case expressly stated in its decisions that States were to act strictly in accordance with the provisions of the resolution, “notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted before the date of the respective resolution”.⁸¹⁶

In addition, when imposing sanctions against Afghanistan, Sierra Leone, Somalia, Eritrea and Ethiopia, and Liberia, the Council required “all States”,⁸¹⁷ or more generally “States”,⁸¹⁸ to report on their compliance with relevant prohibitions, and provided that implementation reports received from States were to be examined by committees specifically mandated to monitor the implementation of sanctions, and to consider any information concerning violations of relevant State obligations. In order to ensure full compliance with relevant prohibitions, in connection with the situation in Sierra Leone and Eritrea and Ethiopia, the Security Council, by the same decisions, also requested “all

⁸¹³ Resolution 1302 (2000), para. 15.

⁸¹⁴ Resolution 1295 (2000), para. 19.

⁸¹⁵ *Ibid.*, para. 27.

⁸¹⁶ In connection with the measures imposed against Afghanistan, see resolution 1333 (2000), para. 17. In connection with the measures imposed against Sierra Leone, see resolutions 1306 (2000), para. 9, and 1343 (2001), para. 22. In connection with the measures imposed against Eritrea and Ethiopia, see resolution 1298 (2000), para. 9.

⁸¹⁷ In connection with the situation in Sierra Leone, see resolutions 1306 (2000), para. 8, and 1343 (2001), para. 18. In connection with the situation in Somalia, see resolution 1407 (2002), para. 8. In connection with the situation in Afghanistan, see resolutions 1333 (2000), para. 20; 1390 (2002), para. 6; and 1455 (2003), para. 6.

⁸¹⁸ In connection with the situation in Eritrea and Ethiopia, see resolution 1298 (2000), para. 11. In connection with the situation in Angola, see resolution 1295 (2000), para. 27.

States, relevant United Nations bodies and, as appropriate, other organizations and interested parties” to report to the Committee information on possible violations of the measures imposed by the Council.⁸¹⁹ In one instance, when imposing measures against Somalia, the Council called on “the neighbouring States” to report to the Committee quarterly on their efforts to implement the arms embargo.⁸²⁰

By a number of decisions, while setting reporting obligations on the compliance with relevant prohibitions, the Council also addressed its calls to “all States” to cooperate with the relevant Panels of Experts and sanctions committees.⁸²¹ In other instances, the Council explicitly called upon “all States, relevant United Nations bodies and, as appropriate, other organizations and interested parties” to cooperate fully with the Committee and the Panel of Experts.⁸²² With regard to the measures imposed against Somalia, the Council called upon “all States, in particular those in the region”⁸²³ to provide the relevant Committee with all available information on violations of the arms embargo and also requested “all States and the Transitional National Government and local authorities in Somalia” to cooperate fully with the Panel of Experts in its quest for information. By a subsequent resolution, the Council called upon “all States in the region and regional organizations, in particular the InterGovernmental Authority on Development (IGAD), the African Union (AU), and the League of Arab States (LAS),” to establish focal points to enhance cooperation with the Monitoring Group and to facilitate information exchange.⁸²⁴ By the same resolution, it further requested that “the neighbouring States” report to the Committee quarterly on their efforts to implement the arms embargo.⁸²⁵

⁸¹⁹ In connection with the situation in Eritrea and Ethiopia, see resolution 1298 (2000), para 12. In connection with the situation in Sierra Leone, see resolution 1306 (2000), paras. 16 and 18.

⁸²⁰ Resolution 1519 (2003), para. 8.

⁸²¹ In connection with the situation in Sierra Leone, see resolution 1306 (2000), para. 21. In connection with the situation in Angola, see resolutions 1295 (2000), paras. 4 and 26, and 1439 (2002), para. 7. In connection with the situation in Liberia, see resolution 1408 (2002), para. 15. In connection with the situation in Afghanistan see resolution 1333 (2000), para. 19.

⁸²² In connection with the situation in Liberia, see resolutions 1408 (2002), para. 21, and 1478 (2003), para. 33. By resolution 1478 (2003), the Council also called on “all member States of ECOWAS” to cooperate fully with the Panel of Experts in the identification of aircraft and vessels suspected of being used in violation of the arms embargo (para. 30). In connection with the situation in Afghanistan, see resolutions 1363 (2001), para. 7; 1390 (2002), para. 7, and 1455 (2003), para. 7.

⁸²³ Resolutions 1407 (2002), paras. 4 and 9, and 1425 (2002) para. 7.

⁸²⁴ Resolution 1519 (2003), para. 5.

⁸²⁵ *Ibid.*, para. 8.

In its resolutions concerning, respectively the International Criminal Tribunals for the former Yugoslavia (ICTY) and Rwanda (ICTR), the Council decided that “all States” should cooperate fully with the International Tribunals and their organs in accordance with resolutions 827 (1993) and 955 (1994) and the Statutes of the Tribunals.⁸²⁶ Furthermore, by resolution 1503 (2003), the Council set the “completion strategies” for the two Tribunals and called on “the international community” to assist national jurisdictions, in improving their capacity to prosecute cases transferred from the ICTY and the ICTR.⁸²⁷ By the same resolution, the Council also called on “all States, especially Serbia and Montenegro, Croatia, and Bosnia and Herzegovina, and on the Republika Srpska within Bosnia and Herzegovina” to intensify cooperation with and render all necessary assistance to the ICTY.⁸²⁸ Similarly, the Council called on “all States, especially Rwanda, Kenya, the DRC, and the Republic of the Congo” to intensify cooperation with and render all necessary assistance to the ICTR.⁸²⁹ Finally, by the same resolution, the Council called on “all States” to cooperate with the International Criminal Police Organization (ICPO-Interpol) in apprehending and transferring persons indicted by the ICTY and the ICTR.⁸³⁰

B. Obligations arising pursuant to the Council’s decisions adopted in accordance with Article 42

While the above decisions were formulated to ensure universal compliance and to create binding obligations for all or some States, decisions in accordance with the provisions of Article 42 of the Charter, imposing measures involving the use of armed force, frequently took the form of authorizations or calls on States willing and in a position to take such action.

⁸²⁶ Resolutions 1329 (2000), para. 5, and 1431 (2000), para. 3.

⁸²⁷ Resolution 1503 (2003), para. 1.

⁸²⁸ *Ibid.*, para. 2.

⁸²⁹ *Ibid.*, para. 3.

⁸³⁰ *Ibid.*, para. 4.

In a number of decisions providing for the use of “all necessary measures”⁸³¹ to enforce previous resolutions, the Council addressed such authorizations to “Member States” in general,⁸³² or more specifically to “Member States participating”⁸³³ and “Member States acting”.⁸³⁴

By resolution 1386 (2001) of 20 December 2001, authorizing the establishment of an International Security Assistance Force (ISAF) to assist the interim authority of Afghanistan in the maintenance of security in Kabul and its surrounding areas, the Council called upon Member States to contribute personnel, equipment and other resources to the Force,⁸³⁵ authorized those Member States “participating in [ISAF] to take all necessary measures to fulfill its mandate,”⁸³⁶ and called on them to assist the Afghan Interim Authority in the “establishment and training of new Afghan security and armed forces”.⁸³⁷

By resolution 1497 (2003) of 1 August 2003, in connection with the situation in Liberia, the Council authorized “Member States” to establish a Multinational Force to “support the implementation of the 17 June 2003 ceasefire agreement”.⁸³⁸ By the terms of the resolution, the Council called on Member States’ full cooperation with the Multinational Force, authorizing the use of “all necessary measures”⁸³⁹ in the execution of the Force’s mandate. The Council also demanded “all States in the region” to refrain from any action that could contribute to the instability in Liberia or on the borders between Liberia, Guinea, Sierra Leone and Côte d’Ivoire.⁸⁴⁰

⁸³¹ The phrase “all necessary measures” was used by the Security Council in connection with the situation in: Liberia in resolution 1497 (2003), para. 5; Afghanistan in resolution 1386 (2001), para. 3; and Bosnia and Herzegovina in resolution 1305 (2000), para. 11. In connection with the situation in Côte d’Ivoire, reference was made to “the necessary steps”; see resolution 1464 (2003), para. 9. In connection with the situation in Sierra Leone, the Council authorized UNAMSIL to “take the necessary action” to fulfill its mandate; see resolution 1289 (2000), para. 10.

⁸³² In connection with the situation in Liberia, see resolution 1497 (2003). In connection with the situation between Iraq and Kuwait, see resolution 1511 (2003).

⁸³³ In connection with the situation in Afghanistan, see resolution 1386 (2001). In connection with the situation in the Democratic Republic of the Congo, see resolution 1484 (2003).

⁸³⁴ In connection with the situation in Bosnia and Herzegovina, see resolution 1305 (2000).

⁸³⁵ Resolution 1386 (2001), para. 2.

⁸³⁶ *Ibid.*, para. 3.

⁸³⁷ *Ibid.*, para. 10.

⁸³⁸ Resolution 1497 (2003), para. 1.

⁸³⁹ *Ibid.*, para. 5.

⁸⁴⁰ *Ibid.*, para. 9.

By resolution 1484 (2003) of 30 May 2003, authorizing the deployment of an Interim Emergency Multinational Force in Bunia in close coordination with MONUC, the Council authorized the “Member States participating in the Multinational Force in Bunia” to take all necessary measures to fulfil its mandate and called upon “Member States” to contribute personnel, equipment and other necessary financial and logistic resources to the Multinational Force.⁸⁴¹

By resolution 1511 (2003) of 16 October 2003, the Council authorized a multinational force under unified command “to take all necessary measures” to contribute to the maintenance of security and stability in Iraq, and urged Member States to contribute assistance under this United Nations mandate, including military forces, to the multinational force.⁸⁴²

Some of the decisions authorizing the use of all necessary measures, in accordance with Article 42 of the Charter, expressly envisaged possible action through regional agencies or arrangements. In one decision,⁸⁴³ adopted in connection with the situation in Bosnia and Herzegovina, the Council authorized “Member States acting” through or in cooperation with the North Atlantic Treaty Organization (NATO), to fulfill the role determined in the Dayton Agreement.⁸⁴⁴ It further authorized “Member States” to take all necessary measures, at the request of the Stabilization Force (SFOR), either in defence of SFOR or to assist the force in carrying out its mission.⁸⁴⁵ By the same resolution the Council also invited “all States, in particular those in the region” to continue to provide appropriate support and facilities, including transit facilities, for the above-mentioned Member States.⁸⁴⁶ In one instance, related to the situation in Côte d’Ivoire, the Council authorized “Member States participating in the ECOWAS forces deployed in accordance with Chapter VIII together with the French forces supporting them” to take the necessary steps to guarantee the security and freedom of movement of their personnel and to ensure, without prejudice to the responsibilities of the Government

⁸⁴¹ Resolution 1484 (2003), paras. 3 and 4.

⁸⁴² Resolution 1511 (2003), para. 14.

⁸⁴³ Resolution 1305 (2000).

⁸⁴⁴ *Ibid.*, para. 10.

⁸⁴⁵ *Ibid.*, para. 12.

⁸⁴⁶ *Ibid.*, para. 16.

of National Reconciliation, the protection of civilians immediately threatened with physical violence within their zones of operation.⁸⁴⁷

⁸⁴⁷ Resolution 1464 (2003), para. 9.

Part VII

Member States' obligations 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 measures to enforce the Council's resolutions, even though those decisions contained no explicit references to Article 49. In the absence of explicit references to the Article, it is not always possible to ascribe to the Council with any certainty decisions concerning that particular Article. The following Council decisions may, however, help to shed light on the Council's interpretation and application of Article 49. The first section below provides an overview of the Council's decisions calling upon Member States to provide mutual assistance in carrying out the decisions adopted in accordance with the provisions of Article 41 of the Charter, while the following section focuses on the Council's decisions making similar calls in connection with the implementation of measures which involved the use of armed force in accordance with the provisions of Article 42 of the Charter.

During the period under consideration, the interpretation and application of Article 49 did not give rise to any significant constitutional discussion in the Council's deliberations.

A. Calls for mutual assistance in the implementation of decisions adopted under Article 41

In its decisions imposing measures not involving the use of armed force, in accordance with the provisions of Article 41 of the Charter, the Security Council, in a number of instances, requested Member States in a position to do so to offer assistance to concerned States in the implementation of those measures. Such requests were made by the decisions outlined below.

1. The situation in Liberia

By resolution 1343 (2001) of 7 March 2001, the Council decided that all States were to take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia. In this connection, it also urged all diamond exporting countries in West Africa to establish certificate-of-origin regimes for the trade in rough diamonds and called upon “States, relevant international organizations and other bodies in a position to do so to offer assistance” to the concerned Governments.⁸⁴⁸

2. The situation in Sierra Leone

By resolution 1306 (2000) of 5 July 2000, in connection with its request to all States to take the necessary measures to prohibit the import of all rough diamonds from Liberia, the Council requested “States, relevant international organizations and other bodies in a position to do so to offer assistance” to the Government of Sierra Leone to facilitate the full implementation of an effective certificate-of-origin regime for rough diamonds.⁸⁴⁹ By a subsequent resolution,⁸⁵⁰ the Council reiterated its call upon “States, relevant international organizations and other bodies in a position to do so to offer assistance” to the Government of Liberia and other diamond exporting countries in West Africa with their certificate-of-origin regimes.

By resolution 1478 (2003) of 6 May 2006, calling upon States of the subregion to strengthen the measures they had taken to combat the spread of small arms and light weapons and mercenary activities, the Council urged “States in a position to do so to provide assistance to the Economic Community of West African States”.⁸⁵¹

⁸⁴⁸ Resolution 1343 (2001), para. 16.

⁸⁴⁹ Resolution 1306 (2000), para. 6.

⁸⁵⁰ Resolution 1408 (2002), para. 9.

⁸⁵¹ Resolution 1478 (2003), para. 22.

By resolution 1521 (2003) of 22 December 2003, in connection with its request to the National Transitional Government of Liberia to take urgent steps to establish an effective certificate-of-origin regime for trade in rough diamonds from Liberia, the Council called upon “States, relevant international organizations and others in a position to do so to offer assistance” to the National Transitional Government of Liberia in achieving the aforementioned objective.

3. The situation in Somalia

By a statement of the President dated 31 October 2001, the Council members emphasized the necessity for efforts against international terrorism in accordance with resolution 1373 (2001), and welcomed the intention of the Transitional National Government of Somalia to take steps in this regard.⁸⁵² By the same presidential statement, the Council members urged the international community, including through the Counter-Terrorism Committee, to “provide assistance” to Somalia for the implementation of the aforementioned resolution.

B. Calls for mutual assistance in the implementation of decisions adopted under Article 42

In its decisions imposing measures involving the use of armed force, while calling upon 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 by the decisions outlined below.

1. The situation in Bosnia and Herzegovina

By resolution 1305 (2000) of 21 June 2000, the Council paid tribute to those Member States which participated in the multinational Stabilization Force (SFOR) established in accordance with resolution 1088 (1996), and welcomed their willingness to assist the parties to the Peace Agreement by continuing to deploy a multinational

⁸⁵² S/PRST/2001/30.

Stabilization Force.⁸⁵³ By the same resolution, the Council also 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”.⁸⁵⁴

2. The situation in Afghanistan

By resolution 1386 (2001) of 20 December 2001, authorizing the International Security Assistance Force (ISAF) to take “all necessary means” to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, the Council called upon Member States to “contribute personnel, equipment and other resources to the Force”, and invited those Member States to inform the leadership of the Force and the Secretary-General.⁸⁵⁵ The Council further encouraged neighbouring States and other Member States to provide to the Force such necessary assistance as may be requested, including overflight clearances and transit.⁸⁵⁶ By subsequent resolutions extending the mandate of the ISAF, the Council called upon Member States to “contribute personnel, equipment and other resources to the Force, and to make contributions to the Trust Fund established pursuant to resolution 1386 (2001)”.⁸⁵⁷

3. The situation in Liberia

By resolution 1497 (2003) of 1 August 2003, establishing a Multinational Force in Liberia, the Council called upon Member States to “contribute personnel, equipment and other resources to the Multinational Force”, and stressed that the expenses of the Multinational Force would be borne by the participating Member States and other voluntary contributions.⁸⁵⁸ By the same resolution, it also called upon all Liberian parties and Member States to “cooperate fully” with the Multinational Force in the execution of its mandate and to respect the security and freedom of movement of the Multinational

⁸⁵³ Resolution 1305 (2000), para. 8.

⁸⁵⁴ *Ibid.*, para. 16.

⁸⁵⁵ Resolution 1386 (2001), para. 2.

⁸⁵⁶ *Ibid.*, para. 7.

⁸⁵⁷ Resolutions 1413 (2001), para. 3, and 1444 (2002), para. 3.

⁸⁵⁸ Resolution 1497 (2003), para. 6.

Force, as well as to ensure the safe and unimpeded access of international humanitarian personnel to populations in need in Liberia.⁸⁵⁹

4. The situation in Sierra Leone

By a statement of the President dated 4 May 2000,⁸⁶⁰ in connection with the situation in Sierra Leone, the Council expressed its full support for the continued efforts of the United Nations Mission in Sierra Leone (UNAMSIL) in the fulfilment of its mandate and called upon all States in a position to do so to “assist the Mission” in this regard. By resolution 1299 (2000) of 19 May 2000, the Council members expressed their appreciation to all States which, in order to expedite the rapid reinforcement of the Mission, had accelerated the deployment of their troops to the Mission, made available additional personnel and offered logistical, technical and other forms of military assistance, and called upon “all those in a position to do so to provide further support”.⁸⁶¹

5. The situation in the Democratic Republic of the Congo

By resolution 1484 (2003) of 30 May 2003, the Council, authorizing the deployment of an Interim Emergency Multinational Force in Bunia in close coordination with the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC), called upon all Member States and “in particular those in the Great Lakes region” to provide all necessary support to facilitate the swift deployment in Bunia of the Multinational Force.⁸⁶²

⁸⁵⁹ Ibid., para. 11.

⁸⁶⁰ S/PRST/2000/14.

⁸⁶¹ Resolution 1299 (2000), para. 2.

⁸⁶² Resolution 1484 (2003), para. 8.

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 paid close attention to the issue of sanctions and their unintended negative impact on civilian populations and third States. With a view to minimizing these effects, the Council, through a note by the President, decided to establish an Informal Working Group to develop general recommendations on how to improve the effectiveness of sanction regimes and limit their unintended negative effects.⁸⁶³ The Council also held three meetings on the item entitled “General issues relating to sanctions” and, while considering other agenda items, also made decisions and discussed topics related to Article 50.

Section A of this Part examines decisions of the Council relevant to Article 50, while section B highlights the salient issues raised in the Council’s deliberations regarding the interpretation and application of the Article. Finally, section C briefly presents material relating to the Council’s subsidiary bodies in connection with Article 50, as included in their reports to the Council, as well as in the Reports of the Secretary-General on the “Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions”.⁸⁶⁴

⁸⁶³ S/2003/319.

⁸⁶⁴ See, for the period under consideration: A/55/295, A/56/303, A/57/165, A/58/346, and A/59/334.

A. Decisions relating to Article 50

1. Establishment of an Informal Working Group

In a note by the President dated 17 April 2000, the members of the Council decided to establish an Informal Working Group to develop general recommendations on how to improve the effectiveness of United Nations sanctions.⁸⁶⁵ The Working Group was tasked to examine, among other things, the unintended impact of sanctions on third States and assistance to Member States in implementing sanctions. It was to report its findings to the Council by 30 November 2000, but the Working Group was unable to reach a consensus on all of the recommendations. By two subsequent notes by the President dated 15 January 2002 and 18 December 2003 respectively, the Council agreed to extend the mandate of the Working Group until 31 December 2004.⁸⁶⁶ The Working Group's proposed outcome document thus remained under consideration, with focus being placed on those issues upon which there was no provisional agreement.

2. The situation in Angola

By resolution 1295 (2000) of 18 April 2000, having noted the conclusions and recommendations of the Panel of Experts established by the Security Council pursuant to resolution 1237 (1999) of 7 May 1999, the Council requested the Secretary-General to establish a monitoring mechanism composed of up to five experts, for a period of six months, to collect additional relevant information and investigate relevant leads relating to any allegations of violations of the measures contained in resolutions 864 (1993), 1127 (1997) and 1173 (1998) concerning the situation in Angola, "including through visits to relevant countries", and to report periodically to the relevant Committee established pursuant to resolution 864 (1993), including providing a written report by 18 October 2000, with a view to "improving the implementation of the measures imposed against UNITA".⁸⁶⁷ The Council further requested the Secretary-General, acting in consultation with the Committee, to appoint experts to serve on the monitoring mechanism. Following

⁸⁶⁵ S/2000/319.

⁸⁶⁶ S/2002/70 and S/2003/1185, respectively.

⁸⁶⁷ Resolution 1295 (2000), para. 3.

consultations with the Committee, on 11 July 2000, the Secretary-General appointed five experts to serve on the monitoring mechanism.⁸⁶⁸

3. The situation in Sierra Leone

By resolution 1306 (2000) of 5 July 2000, the Security Council requested the Committee established pursuant to resolution 1132 (1997) to hold an exploratory hearing in New York to assess the role of diamonds in the Sierra Leone conflict and the link between trade in Sierra Leone diamonds and trade in arms and related materiel in violation of resolution 1171 (1998), “involving representatives of interested States and regional organizations”, the diamond industry and other relevant experts.⁸⁶⁹ The exploratory hearing was held on 31 July and 1 August 2000.⁸⁷⁰

4. The situation between Iraq and Kuwait

By resolution 1483 (2003) of 22 May 2003, the Council decided to terminate, with certain exceptions, all prohibitions related to trade with Iraq and the provision of financial or economic resources to Iraq, as established by resolution 661 (1990) and subsequent relevant resolutions.⁸⁷¹ By the same resolution, the Council also decided to impose new targeted financial sanctions.⁸⁷² By resolution 1518 (2003) of 24 November 2003, the Council established a new Committee to administer the new measures imposed by resolution 1483 (2003). In his report on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, the Secretary-General observed that, as a result of the modifications made to the measures imposed on Iraq since May 2003, all of the Council’s existing sanctions regimes “were now targeted in nature and, the unintended consequences for civilian populations and third States were minimized”.⁸⁷³

⁸⁶⁸ A/55/295, p. 4.

⁸⁶⁹ Resolution 1306 (2000), para. 12.

⁸⁷⁰ A/55/295, p. 4.

⁸⁷¹ Resolution 1483 (2003), para. 10.

⁸⁷² *Ibid.*, para. 23.

⁸⁷³ A/59/334, para. 10.

5. The situation in Liberia

By resolution 1478 (2003) of 6 May 2003, the Council decided to consider how best to minimize any humanitarian or socio-economic impact of the measures imposed by paragraph 17 of its resolution, and requested the Secretary-General and the Panel of Experts to submit a report in that regard.⁸⁷⁴ Pursuant to the request, the Secretary-General submitted a report dated 5 August 2003 by which he provided observations and recommendations on the possible humanitarian and socio-economic impact of the timber sanctions imposed against Liberia.⁸⁷⁵ By a letter dated 7 August 2003 addressed to the President of the Council,⁸⁷⁶ the Acting Chairman of the Security Council Committee established pursuant to resolution 1343 (2001) transmitted to the members of the Council the report of the Panel of Experts which, *inter alia*, included observations and recommendations concerning the possible humanitarian and socio-economic impact of the timber sanctions imposed on Liberia.⁸⁷⁷

By resolution 1521 (2003) of 22 December 2003, the Security Council requested the Panel of Experts on Liberia to report with observations and recommendations including, *inter alia*, how to minimize any humanitarian and socio-economic impact of timber sanctions against Liberia.⁸⁷⁸ In a report transmitted in response, the Panel of Experts outlined various observations and recommendations relating to the humanitarian and socio-economic impact of the timber sanctions.⁸⁷⁹

B. Discussions relating to Article 50

1. General issues relating to sanctions

The Council held three meetings on the item “General issues relating to sanctions”, with much discussion focusing on issues relating to Article 50.⁸⁸⁰ No

⁸⁷⁴ Resolution 1478 (2003), paras. 18 and 19.

⁸⁷⁵ S/2003/793.

⁸⁷⁶ S/2003/779.

⁸⁷⁷ *Ibid.*, Annex.

⁸⁷⁸ Resolution 1521 (2003), para. 22.

⁸⁷⁹ S/2004/396 and Corr.1, Annex.

⁸⁸⁰ S/PV.4128, S/PV.4394, and S/PV.4713.

decisions arose from these meetings, although progress made in the design and implementation of sanctions regimes was described.

At the Council's 4128th meeting, on 17 April 2000, the Under-Secretary-General for Political Affairs asserted that it was essential for the United Nations system to develop a coordinated and integrated approach to minimize unintended consequences on civilian populations and third States. To that end, he recommended that the Council consider authorizing the Secretariat to dispatch assessment missions to targeted States and neighbouring countries either before sanctions were imposed or shortly thereafter. He also proposed that the Council consider including in its resolutions provisions to address the impact of sanctions on non-targeted States. He suggested that "practical assistance arising from Article 50" be addressed through special arrangements with individual neighbouring States and through donors' conferences to identify possible forms of financial assistance and support for non-targeted States.⁸⁸¹ The representative of France stated that third States and targeted States were often not invited to speak before sanctions committees. He added that measures had been planned to that end, but had not been applied.⁸⁸² The representative of Namibia noted that, while he believed that parties should be heard by the Council under the terms of Article 50, solutions needed to include the provision of special assistance to compensate for economic losses and adverse social impact.⁸⁸³ The representative of Tunisia agreed that, notwithstanding Article 50, there was still no effective mechanism to compensate for losses suffered by third countries.⁸⁸⁴ Several representatives noted the negative effects that their countries had suffered as a result of sanctions placed against another country,⁸⁸⁵ while others affirmed that the Council had to do more to minimize negative consequences for third States.⁸⁸⁶ The President, speaking in his capacity as the representative of Canada, suggested that donor-country conferences addressing the needs of particular Member States adversely affected by sanctions might be a measure to address concerns related to Article 50.⁸⁸⁷ The

⁸⁸¹ S/PV.4128, pp. 2-4.

⁸⁸² *Ibid.*, p. 8.

⁸⁸³ *Ibid.*, p. 11.

⁸⁸⁴ *Ibid.*, p. 19.

⁸⁸⁵ *Ibid.*, p. 29 (Pakistan); p. 35 (Bulgaria); p. 44 (former Yugoslav Republic of Macedonia); and p. 45 (Turkey).

⁸⁸⁶ *Ibid.*, p. 23 (Russian Federation); p. 32 (Sweden); and p. 44 (former Yugoslav Republic of Macedonia).

⁸⁸⁷ *Ibid.*, p. 25.

representative of Malaysia stated that sanctions affected third countries since they often imposed extremely high economic costs on the major economic partners of targeted States. Emphasizing that this aspect was well recognized in Article 50 of the Charter, but very rarely invoked or seriously addressed, he regretted that assistance to disadvantaged States had been ad hoc and inadequate and, while some provisions for third-party compensation had been made, no such aid had been forthcoming in the case of the African sanctions regimes. Where little or no assistance was available, he asserted, the affected States may have had no choice but to continue surreptitiously with their traditional economic relationships in order to avoid economic hardship. On occasion, they had done so openly, as was clearly the case with respect to the sanctions regime on the Libyan Arab Jamahiriya, when the Organization of African Unity decided in 1998 to cease complying with the United Nations sanctions directed against the Libyan Arab Jamahiriya.⁸⁸⁸ The representative of the former Yugoslav Republic of Macedonia stated that the implementation of Article 50 of the Charter had enormous political, economic, social and humanitarian importance for many Member States. His country regretted the non-implementation of Article 50 but was pleased by the decision to establish, on a temporary basis, an Informal Working Group of the Council to develop general recommendations on how to improve the effectiveness of United Nations sanctions. He hoped that these recommendations would not neglect Article 50 of the Charter.⁸⁸⁹ The representative of Bulgaria similarly voiced the importance of proper implementation of Article 50 and, in this connection, of the Informal Working Group.⁸⁹⁰

By a letter dated 17 April 2000 addressed to the President of the Security Council,⁸⁹¹ the representative of Egypt informed the Council that, since he could not deliver his statement in person at the 4128th meeting, he was transmitting the statement and requesting it to be circulated as a document of the Security Council. In the text of the statement, the representative of Egypt drew the attention of the Council to the “collateral” and “large-scale damage” caused by sanctions to the interests of third States and their population, as it had been the case for his country. He invited the Council to consider

⁸⁸⁸ Ibid., pp. 14-15.

⁸⁸⁹ Ibid., p. 44.

⁸⁹⁰ Ibid., pp. 35-36.

⁸⁹¹ S/2000/324.

establishing “more permanent mechanisms and measures” for the holding of the consultations provided for in Article 50 with third States that found or might find themselves confronted with special economic problems arising from the carrying out of enforcement measures imposed by the Council. He further noted that, in order to “implement Article 50 of the Charter in full”, the conclusions arrived at by the Ad Hoc Expert Group, convened in June 1998 in accordance with General Assembly resolution 52/162 to develop a methodology for assessing the consequences incurred by third States, constituted “an important step towards the practical implementation of the provisions of Articles 49 and 50 of the Charter”.⁸⁹²

At the Council’s 4394th meeting, on 22 and 25 October 2001, discussions on general issues relating to sanctions continued, with many representatives again emphasizing the need to minimize sanctions’ negative effects on third States.⁸⁹³ In their statements, two speakers explicitly invoked Article 50 and the need to improve its implementation.⁸⁹⁴ Pointing to improvements in sanctions regimes, the representative of Jamaica observed that there had been a shift by the Council in its approach to the design of sanctions. She stated that recent sanctions on Eritrea and Ethiopia, Sierra Leone, Liberia, and the Taliban regime of Afghanistan had all been targeted and that, in designing those sanctions, the Council had borrowed extensively from the preliminary work and reports of the Bonn-Berlin and Interlaken process, as well as from the work of its own Working Group on General Issues on Sanctions.⁸⁹⁵

At the Council’s 4713th meeting, on 25 February 2003, the State Secretary for Foreign Affairs of Sweden presented to the Council the results of the Stockholm Process on the Implementation of Targeted Sanctions.⁸⁹⁶ The Foreign Secretary recognized that, while the use of sanctions had increased, there had been growing concern over the negative

⁸⁹² Ibid., pp. 2-3.

⁸⁹³ S/PV.4394, p. 2 (Switzerland); pp. 4-5 (Germany); and p. 8 (France); S/PV.4394 (Resumption 1), p. 8 (Mali); and pp. 10-11 (China).

⁸⁹⁴ S/PV.4394, p. 6 (Assistant Secretary-General for Political Affairs); S/PV.4394 (Resumption 1), p. 10 (Tunisia).

⁸⁹⁵ S/PV.4394 (Resumption 1), p. 2. The report from the Bonn-Berlin process, under the leadership of Germany, was titled “Design and implementation of arms embargoes and travel and aviation-related sanctions”. The report issuing from the Interlaken process, under the leadership of Switzerland, was entitled “Targeted financial sanctions: A manual for design and implementation”.

⁸⁹⁶ The Stockholm Process on the Implementation of Targeted Sanctions dealt with how to increase the efficiency of sanctions by reforming and improving their implementation, while also minimizing unintentional negative consequences.

effects of economic sanctions on vulnerable populations and societies in general, with the collateral effects of sanctions on third States being highlighted.⁸⁹⁷ In his statement, the representative of Bulgaria informed the Council that, as an active participant both in the preparatory discussion and in the final meeting, held at Stockholm in November 2002, Bulgaria shared and supported the conclusions, guidelines and recommendations laid down in the final text of the report. He added that the inclusion of a special section dedicated to unintended consequences of sanctions implementation for third States and to the need for direct or indirect compensation for damages caused to them was backed by the experience of Bulgaria as a State severely affected by the sanctions imposed on the former Federal Republic of Yugoslavia, the Libyan Arab Jamahiriya and Iraq. He concluded that, although the practical implementation of the provisions of Article 50 had been extensively discussed in the General Assembly's Sixth Committee, in the Security Council and during the Stockholm Process, there were still aspects to be clarified and work on these issues should continue.⁸⁹⁸

2. Briefing by Mr. Carl Bildt, Special Envoy of the Secretary-General for the Balkans

At the Council's 4164th meeting, on 23 June 2000, the representative of the former Yugoslav Republic of Macedonia suggested that if the Security Council would like to "shoulder fully its responsibility under the Charter", it should address the implementation of Article 50 of the Charter.⁸⁹⁹

3. Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa

At the Council's 4288th meeting, on 7 March 2001, the representative of Egypt emphasized that hopefully the Council would consistently adhere to the provisions of Article 50 and would apply it without discrimination or politicization.⁹⁰⁰ At the same meeting, the representative of Tunisia indicated that reforms in the area of sanctions had

⁸⁹⁷ S/PV.4713, pp. 2-3.

⁸⁹⁸ Ibid., pp. 5-6.

⁸⁹⁹ S/PV.4164 (Resumption 1), p. 8.

⁹⁰⁰ S/PV.4288, p. 14.

to take into account the adverse impact of sanctions and the provisions of the Charter, in particular those of Article 50.⁹⁰¹

4. The situation between Iraq and Kuwait

At the Council's 4336th meeting, on 28 June 2001, the representative of India observed that the sanctions on Iraq had caused acute economic and financial hardship to other countries, including India. He complained that India's request for relief under Article 50 was still pending with the sanctions committee.⁹⁰²

Similarly, by a letter dated 24 June 2002 addressed to the President of the Security Council,⁹⁰³ the representative of Tunisia submitted a matter relating to the requirements of Article 50 concerning the losses incurred by his country as a result of the consequences of the embargo imposed on Iraq by the Security Council since 1990. He therefore requested the Security Council to take note "once more" of the very serious impact of the sanctions and the challenges which the Tunisian national economy continued to face since the imposition of the embargo regime on Iraq. In this connection, he insisted on the necessity for the Council to "understand [Tunisia's] urgent and vital need to maintain its national interests in cooperation with Iraq on the basis of Article 50 of the Charter of the United Nations".⁹⁰⁴

By a similar letter dated 17 July 2001 addressed to the President of the Security Council,⁹⁰⁵ the representative of Malaysia brought to the attention of the Council that many countries, including Malaysia, had suffered "enormous economic losses" as a result of the implementation of the Council's sanctions against Iraq. In order to address these problems in accordance with the provisions of Article 50 of the Charter, the representative asked the Council to enable Malaysia to benefit from the provisions of Article 50 in the context of its economic and trade relations with Iraq, and thus to alleviate the negative consequences the country had suffered as a result of more than a decade of sanctions imposed against Iraq.

⁹⁰¹ Ibid. (Resumption 1), p. 18.

⁹⁰² S/PV.4336 (Resumption 1), p. 5.

⁹⁰³ S/2002/698.

⁹⁰⁴ Ibid., p. 2.

⁹⁰⁵ S/2001/703.

C. Instances arising in the Council's subsidiary bodies

1. Security Council Committee established pursuant to resolution 661 (1990)

At its 4673rd meeting, on 18 December 2002, the Council heard a briefing by the Chairman of the Security Council Committee established pursuant to resolution 661 (1990) concerning the situation between Iraq and Kuwait. In his statement, the Chairman reported that the Committee was devoting a great deal of time to discussing reported violations of sanctions, as well as to humanitarian exemptions under resolution 661 and application of Article 50 of the Charter and, in this regard, drew attention to the various reports submitted to the Council by the Committee.⁹⁰⁶

The Chairman reported that in its deliberations concerning issues related to Article 50, the Committee had granted permission for Member States that were not members of the Committee to address it at formal meetings concerning their special economic problems falling under Article 50.

At its 215th meeting, on 19 March 2001, the Committee discussed how to proceed with the communications from Belarus and India concerning the application of Article 50 of the United Nations Charter. In this connection, at its 223rd meeting, on 10 September 2001, the Committee was briefed by the Secretariat on the history of the application of Article 50 and the past practice of the Committee. At its 224th meeting, on 9 October 2001, in response to letters from Belarus and India, the Committee agreed to send letters, with attached questions on matters for which clarifications were sought, inviting the representatives of Belarus and India to present their cases to the Committee. At its 227th meeting, on 3 December 2001, the Additional Secretary of the Ministry of External Relations of India addressed the Committee regarding special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Council and stated that his country estimated to have lost \$25 billion to \$30 billion as a result of United Nations sanctions against Iraq. He suggested that India be compensated through an India-Iraq "wheat for oil" programme, given India's surplus production of wheat.⁹⁰⁷

⁹⁰⁶ S/PV.4673, p. 3.

⁹⁰⁷ S/2002/647, paras. 52 and 53.

By a letter from the Chairman dated 28 February 2002, the Committee informed India that it had considered the matter at several formal and informal meetings but had been unable to reach a consensus, although it would continue to study the matter. India replied in a letter dated 26 March 2002, stating its disappointment that no consensus had been reached and requesting an expeditious and positive decision on the matter.⁹⁰⁸

In a letter dated 24 June 2002 addressed to the President of the Security Council,⁹⁰⁹ the representative of Tunisia brought to the attention of the Council the impact of the Iraqi sanctions regime on the Tunisian economy during the past 11 years, totalling \$7 billion as at May 2002. The members of the Council agreed to refer the letter to the Committee for its consideration.⁹¹⁰ On 31 July 2002, at its 236th meeting, the Committee agreed to have its Chairman approach the Permanent Representative of Tunisia to hear what kind of response, if any, he was expecting from the Committee.⁹¹¹

2. Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities

On 15 December 2003, several Member States attended an informal meeting of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities. They addressed alleged inaccuracies contained in the second report completed by the Monitoring Group established pursuant to Security Council resolution 1363 (2001) and mandated by the Council to monitor the implementation of the measures imposed against Al-Qaida and the Taliban.⁹¹² Although the measures imposed against Al-Qaida and the Taliban and associated individuals and entities were targeted in nature and were not in themselves cited as causing special economic problems, one of the States appearing before the Committee argued that the allegations levelled against it by the Monitoring Group might result in decreased tourism, thus causing an adverse effect upon its economy.⁹¹³

⁹⁰⁸ For details, see A/57/165, p. 5.

⁹⁰⁹ S/2002/698.

⁹¹⁰ A/57/165.

⁹¹¹ S/2003/300, para. 67.

⁹¹² S/2003/1070 and Corr.1, Annex.

⁹¹³ A/59/334, para. 8.

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 reaffirmed the principle set out in Article 51 in four decisions relating to “threats to international peace and security caused by terrorist acts” and “small arms”, respectively. These cases are presented in section A.

During the same period, in the course of the deliberations in the Council, various issues occasioned pertinent arguments relating to the interpretation of the principle of self-defence. Specifically, the Council debated the application and interpretation of Article 51 in connection with the following agenda items: (i) the situation in Afghanistan; (ii) threats to international peace and security caused by terrorist acts; (iii) the situation between Iraq and Kuwait; (iv) the situation in the Middle East, including the Palestinian question; (v) the situation in the Democratic Republic of the Congo; (vi) letters dated 5 October 2003 from, respectively, the representatives of the Syrian Arab Republic and Lebanon addressed to the President of the Security Council; (vii) small arms; (viii) the role of the Security Council in the pacific settlement of disputes; and (ix) the role of the Security Council in the prevention of armed conflicts. The arguments advanced during the Council’s deliberations in connection with these situations are presented in section B.

These cases will be followed by a brief overview in section C 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.

A. Decisions relating to Article 51

1. Threats to international peace and security caused by terrorist acts

By resolution 1368 (2001) of 12 September 2001, the Council condemned the terrorist attacks which took place on 11 September 2001 and called on States to work together to bring to justice the perpetrators, organizers, and sponsors of these attacks, and redouble their efforts to prevent and suppress terrorist acts.⁹¹⁴ The Council also expressed its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001 and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations.⁹¹⁵ In the preambular paragraph of the same resolution, the Council recognized “the inherent right of individual or collective self-defence in accordance with the Charter”.⁹¹⁶

By resolution 1373 (2001) of 28 September 2001, the Security Council decided that all States were to prevent and suppress the financing of terrorist acts and called on States to work together urgently to achieve these goals. The Council asserted that such acts constituted a threat to international peace and security and expressed its deep concern about the increase of acts of terrorism in various regions of the world. In this connection, the Council reaffirmed “the inherent right of individual or collective self-defence as recognized by the Charter”.⁹¹⁷

2. Small arms

⁹¹⁴ Resolution 1368 (2001), paras. 1 and 3.

⁹¹⁵ *Ibid.*, para. 5.

⁹¹⁶ *Ibid.*, third preambular para.

⁹¹⁷ Resolution 1373 (2001), fourth preambular para.

By two statements of the President dated 4 September 2001 and 31 October 2002, respectively,⁹¹⁸ in connection with the Council’s consideration of the destabilizing role played by the accumulation and uncontrolled spread of small arms and light weapons in many regions of the world, the Council members reaffirmed “the inherent right of individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations and, subject to the Charter, the right of each State to import, produce and retain small arms and light weapons for its self-defence and security needs”.⁹¹⁹

B. Discussions relating to Article 51

1. The situation in Afghanistan

By a letter dated 7 October 2001 addressed to the President of the Security Council,⁹²⁰ the representative of the United States announced that, acting in accordance with Article 51 of the Charter of the United Nations, his Government, together with other States, would initiate actions “in the exercise of its inherent right of individual and collective self-defence following the armed attacks that were carried out against the United States on 11 September 2001”.⁹²¹ He reported that the United States armed forces had initiated actions against Al-Qaida terrorist training camps and military installations of the Taliban regime in Afghanistan.

Through a series of letters addressed to the President of the Security Council,⁹²² the representatives of the United Kingdom, Canada, France, Australia, Germany, the Netherlands, New Zealand, and Poland reported that, in accordance with “the inherent right of individual or collective self-defence”, their respective Governments had undertaken actions involving the participation of military forces within the international efforts to combat the terrorist network responsible for the attacks against targets in the United States. By two letters addressed to the Secretary-General dated 8 and 17 October

⁹¹⁸ S/PRST/2001/21 and S/PRST/2002/30.

⁹¹⁹ S/PRST/2001/21, para. 4, and S/PRST/2002/30, para. 3.

⁹²⁰ S/2001/946.

⁹²¹ *Ibid.*, p. 1.

⁹²² S/2001/947, S/2001/1005, S/2001/1103, S/2001/1104, S/2001/1127, S/2001/1171, S/2001/1193, and S/2002/275.

2001, respectively,⁹²³ the representative of Belgium conveyed the European Union's solidarity with the United States and its support for the actions taken by the latter "in self-defence".

At its 4414th meeting, on 13 November 2001, the Council held an open debate on the situation in Afghanistan, mainly focusing on the country's future political transition. During the debate, a number of speakers made reference to the actions taken by the United States armed forces in Afghanistan initiated on 7 October 2001. The representative of Norway emphasized the necessity of breaking the cycle of war and misrule in Afghanistan and argued that the Taliban regime in Afghanistan had ignored binding Security Council resolutions demanding it to stop harboring and supporting terrorists. He therefore concluded that there was "no alternative but to use military force - in accordance with the right of self-defence".⁹²⁴ The representative of Egypt recalled that military operations were pursued in Afghanistan in connection with the Council's commitment to "the inherent right of individual or collective self-defence" as expressed in resolution 1368 (2001) of 12 September 2001.⁹²⁵ By contrast, the representative of Malaysia cautioned that although the use of military force was "a legitimate course of action as an act of self-defence", it was not "the only course of action, the most effective or politically wise", given the consequences of the military action on the Afghan people.⁹²⁶

By a letter dated 16 November 2001 addressed to the Secretary-General,⁹²⁷ the representative of Chile transmitted the statement issued by the Ministers for Foreign Affairs of the Rio Group on the subject of international terrorism at their meeting, on 14 November 2001. The statement reaffirmed the strong support by the Rio Group for the action taken to combat terrorism, "in exercise of the right of self-defence, according to the Charter of the United Nations [...], following the appalling attacks in New York and Washington, D.C".⁹²⁸

⁹²³ S/2001/967 and S/2001/980.

⁹²⁴ S/PV.4414, p. 13.

⁹²⁵ S/PV.4414 (Resumption 1), p. 22.

⁹²⁶ *Ibid.*, p. 23.

⁹²⁷ S/2001/1091.

⁹²⁸ *Ibid.*, p. 2.

By a letter dated 20 November 2001 addressed to the Secretary-General,⁹²⁹ the representative of Belgium presented the conclusions of the General Affairs Council of the European Union on Afghanistan. The General Affairs Council welcomed the recent developments on the ground which contributed to achieving the objectives of the international coalition against terrorism and confirmed its unreserved support for the coalition's action "undertaken in self-defence and in conformity with Security Council resolution 1368 (2001) of 12 September 2001".

2. Threats to international peace and security caused by terrorist acts

At its 4413th meeting, on 12 November 2001, the Council discussed the threats to international peace and security caused by terrorist acts in the context of the attacks of 11 September 2001 against the United States. The representative of France argued that the armed response by the United States against Osama bin Laden, the Al-Qaida network, and the Taliban system that supported them, was taken "in exercise of its right of self-defence" and therefore expressed "solidarity with that action".⁹³⁰ The representative of Norway concurred that resolution 1368 (2001) made it clear that the attacks on 11 September 2001 against the United States constituted a threat to international peace and security, and thus "triggered the right to self-defence". He added that the pursuit of terrorists and their backers in Afghanistan was being carried out in the exercise of that right, and that his Government fully supported the United States' action.⁹³¹

At the Council's 4512th meeting, on 15 April 2002, in relation to the terrorist acts on 11 September 2001, the representative of Mexico noted that the fight against terrorism should conform to the provisions of the United Nations Charter and of international law and that the use of force "must be governed by a valid interpretation of the legitimate right of self-defence and must in all circumstances conform to the principle of proportionality".⁹³² The representative of Israel reiterated the provisions of resolutions 1373 (2001) and 1368 (2001), which recognized that terrorism constituted a threat to

⁹²⁹ S/2001/1101.

⁹³⁰ S/PV.4413, p. 7.

⁹³¹ Ibid., p. 10.

⁹³² S/PV.4512, p. 14.

international peace and security and that States had “an inherent right to individual and collective self-defence against it”.⁹³³

At its 4618th meeting, on 4 October 2002, the Council continued its debate on ways to combat terrorism internationally. In that context, the representative of Egypt cautioned that terrorism should not be confused with “the legitimate right to self-defence against foreign occupation”.⁹³⁴

3. Wrap-up discussion of the work of the Security Council for the current month

At its 4445th meeting, on 21 December 2001, the Council held a wrap-up discussion of the work of the Security Council during the year 2001. Referring to Afghanistan as a successful case, the representative of Singapore noticed that after 11 September 2001, the “decisive intervention of the United States-led military coalition, exercising the right of self-defence under Article 51 of the Charter, paved the way for a new Afghanistan to emerge” in which the humanitarian situation of the Afghan people had improved.⁹³⁵

4. The situation between Iraq and Kuwait

In a series of letters addressed to the Secretary-General and the President of the Security Council between 2000 and 2001,⁹³⁶ the representative of Iraq, denouncing the violations of Iraq’s airspace by the United States and British aircraft based in Saudi Arabia, Kuwait, and Turkey, informed the Council that the Iraqi air forces, “acting in self-defence”, had engaged the aircrafts and had driven them off.

At its 4152nd meeting, on 8 June 2000, the Council unanimously adopted resolution 1302 (2000) by which it reaffirmed the commitment of all Member States to

⁹³³ S/PV.4512 (Resumption 1), p. 12.

⁹³⁴ S/PV.4618 (Resumption 1), p. 17.

⁹³⁵ S/PV.4445, p. 17.

⁹³⁶ S/2000/12, S/2000/45, S/2000/58, S/2000/85, S/2000/104, S/2000/134, S/2000/159, S/2000/191, S/2000/259, S/2000/291, S/2000/308, S/2000/341, S/2000/383, S/2000/439, S/2000/471, S/2000/507, S/2000/540, S/2000/571, S/2000/614, S/2000/628, S/2000/652, S/2000/694, S/2000/776, S/2000/735, S/2000/754, S/2000/774, S/2000/775, S/2000/795, S/2000/802, S/2000/820, S/2000/826, S/2000/848, S/2000/849, S/2000/850, S/2000/851, S/2000/895, S/2000/924, S/2000/968, S/2000/997, S/2000/1012, S/2000/1069, S/2000/1128, S/2000/1155, S/2000/1165, S/2000/1208, S/2000/1229, S/2000/1248, S/2001/37, S/2001/79, S/2001/116, S/2001/122, S/2001/141, S/2001/161, S/2001/168, S/2001/227, S/2001/248, S/2001/297, S/2001/316, S/2001/369, S/2001/484, S/2001/536, S/2001/620, S/2001/638, S/2001/650, and S/2001/692.

the sovereignty and territorial integrity of Iraq and renewed the “oil-for-food” programme intended to alleviate the humanitarian impact of the sanctions imposed on Iraq. Responding to assertions made by the representative of the Russian Federation that the United States and United Kingdom aircraft had targeted civilian sites and the economic infrastructure in Iraq, the representative of the United States stated that the limited military operations of the United States aircraft were carried out “in self-defence” against military targets that threatened them and that they did not impact the overall humanitarian situation.⁹³⁷

By a letter dated 17 February 2001 addressed to the Secretary-General,⁹³⁸ the representative of Iraq pointed out that the right of self-defence could not justify the military actions initiated by the United States against Iraq, which could be qualified as “a unilateral use of armed force against the sovereignty of an independent State”. In a subsequent letter dated 20 February 2001 addressed to the Secretary-General,⁹³⁹ the representative of Iraq reaffirmed his country’s “legitimate and inherent right of self-defence under Article 51 of the Charter and its inherent right under international law to compensation for the damage, in both human and material terms”, that was caused by military acts against its territory undertaken by the United States and the United Kingdom.⁹⁴⁰ By the same letter the representative of Iraq urged the Council to put an end to the aggression and to ensure that the aggressors would be made responsible. Furthermore, in identical letters dated 16 August 2001 addressed to the Secretary-General and to the President of the Security Council,⁹⁴¹ the representative of Iraq replied to allegations by the United States that its military attacks were a response to provocation on the part of Iraqi air defence personnel. He cautioned that such a view would mean that Iraq would be denied the right to self-defence affirmed by Article 51 of the Charter of the United Nations.⁹⁴²

At its 4531st meeting, on 14 May 2002, the Council debated a number of proposals by the Syrian Arab Republic with a view to amending the draft resolution

⁹³⁷ S/PV.4152, p. 5.

⁹³⁸ S/2001/146.

⁹³⁹ S/2001/152.

⁹⁴⁰ *Ibid.*, p. 2.

⁹⁴¹ S/2001/805.

⁹⁴² *Ibid.*, p. 2.

before Council members extending the provisions of the “oil-for-food” programme.⁹⁴³ In this connection, the representative of the Syrian Arab Republic affirmed that the proposals were intended to ensure that Iraq was not denied “its natural right to acquire means for self-defence, in accordance with Article 51 of the Charter, provided they did not include weapons of mass destruction”.⁹⁴⁴

By a letter dated 28 May 2002 addressed to the Secretary-General,⁹⁴⁵ the representative of Iraq reaffirmed that the Iraqi army and people would continue “to exercise the right to legitimate self-defence” against the attacks by the United States and urged the international community “to endeavour to halt this aggression and bring its perpetrators to account”.⁹⁴⁶ By a subsequent letter dated 11 June 2002 addressed to the Secretary-General,⁹⁴⁷ the representative of Iraq declared that the United States had violated resolutions 255 (1968) and 984 (1995) by threatening to use nuclear weapons against States that did not have nuclear weapons. He made reference to the advisory opinion of the International Court of Justice of 8 July 1996⁹⁴⁸ that held as unlawful the “threat or use of force by means of nuclear weapons that is contrary to Article 2(4) of the United Nations Charter and that fails to meet all the requirements of Article 51”.⁹⁴⁹ By a subsequent letter dated 15 August 2002 addressed to the Secretary-General,⁹⁵⁰ the representative of Iraq reported on the effects of the United States-led military action against Iraq and requested the Council to recognize Iraq’s right to defend itself under Article 51 of the Charter of the United Nations, and to reconsider its decisions that prevented Iraq from exercising its right of self defence.

At its 4625th meeting, on 16 October 2002, the Council debated the question of Iraq’s compliance with the norms of international law and relevant Security Council resolutions. The representative of the Islamic Republic of Iran noted that the concept of “pre-emptive strike” distorted the “conventional understanding of the right of self-

⁹⁴³ S/2002/532. The draft resolution was adopted by the Council at its 4531st meeting, on 14 May 2002, as resolution 1409 (2002).

⁹⁴⁴ S/PV.4531, p. 2.

⁹⁴⁵ S/2002/589.

⁹⁴⁶ *Ibid.*, p. 2.

⁹⁴⁷ S/2002/659.

⁹⁴⁸ A/51/218.

⁹⁴⁹ S/2002/659, p. 2.

⁹⁵⁰ S/2002/939.

defence as clearly enshrined in customary international law and codified in the United Nations Charter”.⁹⁵¹ The representative of Cuba concurred that the collective security system should be based on cooperation and not on doctrines that “constitute a violation of the spirit and letter of the Charter of the United Nations and that distort the inherent right of legitimate self-defence, as recognized by Article 51 of the Charter”.⁹⁵² During the course of the debate, several speakers made reference to the Secretary-General’s address to the General Assembly on 12 September 2002 in which he emphasized that, while Article 51 of the Charter provided States with the right of self-defence, if attacked, when it came to addressing the broader threats to international peace and security, there was no substitute for the unique legitimacy provided by the United Nations.⁹⁵³

At the 4644th meeting on 8 November 2002, the representative of the United States, welcoming the adoption of resolution 1441 (2002), and affirming that the resolution did not contain any “hidden triggers” or “automaticity”, noted that, “in one way or another”, Iraq should be disarmed. He added that if the Council failed to act decisively in the event of further Iraqi violations, the resolution would “not constrain any Member State from acting to defend itself against the threat posed by Iraq or to enforce relevant United Nations resolutions and protect world peace and security”.⁹⁵⁴

At its 4709th meeting, on 18 February 2003, the Council discussed the issue of disarmament related to Iraq. The representative of Cuba remarked that the doctrine of pre-emptive attack advocated the right to use, or threaten to use, force and to take unilateral military action against other States, in advance and in the face of indeterminate and vague threats. He asserted that this interpretation was a violation of the spirit and the letter of the Charter of the United Nations and turned “the inherent right of legitimate self-defence into a blank cheque”.⁹⁵⁵ The representative of Gambia argued that the position taken by African Governments on the issue was clear and fully consistent with the provisions of the Charter of the United Nations. Article 51 permitted the use of force only if an armed attack occurred and, even then, only “until the Security Council has

⁹⁵¹ S/PV.4625 (Resumption 1), p. 2.

⁹⁵² *Ibid.*, p. 23.

⁹⁵³ S/PV.4625 (Resumption 2), p. 10 (India); and p. 12 (Viet Nam).

⁹⁵⁴ S/PV.4644, p. 3.

⁹⁵⁵ S/PV.4709, p. 11.

taken measures necessary to maintain international peace and security”.⁹⁵⁶ Meanwhile, the representative of Zimbabwe reminded the Council that a Member State could engage in individual and collective measures of self-defence even without the United Nations but, as shown by the Iraq case, “Security Council authority has assisted United States policy by adding the teeth of economic sanctions, extending a broad political umbrella and authorizing on-site monitoring on foreign-State territory”.⁹⁵⁷

At its 4717th meeting, on 11 March 2003, the Council continued its deliberations on Iraq’s compliance with Security Council resolutions and, specifically, on the alleged possession by Iraq of weapons of mass destruction. The representative of Cuba emphasized that, in the absence of evidence from inspections by the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) and the International Atomic Energy Agency (IAEA), a war against Iraq would be “unjust and totally unnecessary”. Consequently, he concluded that Iraq did not pose a credible threat or risk to the national security of the United States and war against Iraq could not be seen as “an act of self-defence”.⁹⁵⁸ In the continuation of the debate, the representative of the Sudan highlighted that the conventional view in international law was that the Charter prohibited war except in the case of self-defence, pursuant to Article 51 and to Chapter VII on the basis of Security Council resolutions”.⁹⁵⁹

By a letter dated 16 March 2003 addressed to the Secretary-General,⁹⁶⁰ the representative of Iraq declared that in view of the escalation of threats of aggression against Iraq and the increased massing of United States’ and British military in Kuwait, Iraq would take the necessary steps to exercise its legitimate right of self-defence, pursuant to Article 51 of the Charter of the United Nations, in order to protect the area of the port and city of Umm Qasr, the lives and property of Iraqi citizens and public property.

In the aftermath of the United States led military action against Iraq initiated on 20 March 2003, by a letter dated 24 March 2003 addressed to the President of the

⁹⁵⁶ Ibid., p. 18.

⁹⁵⁷ S/PV.4709 (Resumption 1), p. 33.

⁹⁵⁸ S/PV.4717, p. 26.

⁹⁵⁹ S/PV.4717 (Resumption 1), p. 3.

⁹⁶⁰ S/2003/327.

Security Council,⁹⁶¹ the Permanent Observer of the League of Arab States to the United Nations transmitted a resolution adopted by the League that condemned the United States-led military action against Iraq, in conformity with Article 51 of the Charter.

At its 4726th meeting, on 26 March 2003, the Council convened in response to letters dated 24 March 2003 from the representatives of Iraq and Malaysia to the President of the Council,⁹⁶² and discussed, inter alia, the issue of the use of force in connection with the right of self-defence. The representative of Yemen stressed that using force against others for reasons other than self-defence and without a Council mandate constituted a flagrant violation of the principles of international law and the Charter.⁹⁶³ The representative of the Islamic Republic of Iran held that the unilateral war against Iraq did not meet any standard of international legitimacy and that it was not waged in self-defence against any prior armed attack nor could Iraq be considered an imminent threat against the national security of “belligerent Powers”.⁹⁶⁴ Along the same lines, the representative of Lebanon cautioned that the invocation of the right to self-defence was an invalid argument, “since Article 51 of the Charter recognizes the inherent right of individual or collective self-defence only if an armed attack occurs against a Member of the United Nations”,⁹⁶⁵ a condition not met in the case of Iraq. Finally, the representative of Iraq reiterated his country’s commitment to the Geneva Conventions and the provisions of international humanitarian law, which his country would not disobey except in “self-defence of its people, its dignity, sovereignty and independence”.⁹⁶⁶

5. The situation concerning the Democratic Republic of the Congo

At its 4092nd meeting, on 24 January 2000, the Council debated the conflict in the Democratic Republic of the Congo (DRC) and the necessity of implementing the Lusaka Ceasefire Agreement. The representative of Argentina acknowledged that the conflict in the DRC could not “be analysed or effectively resolved without consideration of other key principles of international law such as respect for the territorial integrity and political

⁹⁶¹ S/2003/365.

⁹⁶² S/2003/362 and S/2003/363, respectively.

⁹⁶³ S/PV.4726, p. 13.

⁹⁶⁴ Ibid., p. 33.

⁹⁶⁵ Ibid., p. 35.

⁹⁶⁶ S/PV.4726 (Resumption 1), p. 36.

independence of the DRC, non-interference in its internal affairs, the withdrawal of all foreign forces that are on its territory without its explicit consent, the inalienable right to individual or collective self-defence, and the illegality of the acquisition of territory by force”.⁹⁶⁷

At the 4273rd meeting, on 7 February 2001, the representative of the United States pointed out that the human rights situation in areas under Rwandan occupation or under the control of the Congolese Rally for Democracy (RCD) was deeply troubling. He noted that Rwanda’s claims to the right of self-defence were “badly undercut by the numerous Congolese civilian victims”.⁹⁶⁸

At its 4317th meeting, on 3 May 2001, the Council discussed the illegal exploitation of natural resources and other forms of wealth in the DRC. During the debate, the representative of Zimbabwe stated that the military intervention by Angola, Namibia, and Zimbabwe came as a result of the appeal of the Government of the DRC. He explained that the DRC’s request to the Southern African Development Community (SADC) was in line with Article 51 of the United Nations Charter regarding the right of a State to ask for military assistance when its security, sovereignty and territorial integrity were threatened.⁹⁶⁹ At the Council’s 4437th meeting, on 14 December 2001, the representative of the DRC emphasized that no army of a SADC member country would have been brought into his country without the consent of the Government. He insisted that the Congolese Government viewed the condemnation of an initiative that enabled it to defend its national sovereignty as amounting to “depriving a State of its basic right under Article 51 of the United Nations Charter to resort to individual or collective self-defence to preserve its sovereignty and territorial integrity”.⁹⁷⁰ Similarly, the representative of Zimbabwe pointed out that the Government of the DRC had invited the SADC countries to come to its assistance in fending off aggression against its territory in exercise of its right to self-defence as enshrined in Article 51 of the United Nations Charter.⁹⁷¹

⁹⁶⁷ S/PV.4092 (Resumption 1), p. 20.

⁹⁶⁸ S/PV.4273, p. 5.

⁹⁶⁹ S/PV.4317 (Resumption 1), p. 22.

⁹⁷⁰ S/PV.4437, p. 7.

⁹⁷¹ *Ibid.*, p. 38.

By a letter dated 18 July 2001 addressed to the President of the Security Council,⁹⁷² the representative of the DRC commented on the situation in Kisangani, following the refusal by Rwanda and its allies to demilitarize the city. He underlined that the reported abuses in the occupied territories could not be blamed on the Government, as such clashes were initiated by the Congolese resistance. He invoked peoples' right to resist foreign occupation and domination and characterized the situation in the DRC as a "case of self-defence by the Congolese in the face of aggression".⁹⁷³

By a letter dated 25 February 2002 addressed to the President of the Security Council,⁹⁷⁴ the representative of the DRC warned that troops of the Rwandan Patriotic Army (RPA) had flagrantly violated the ceasefire by attacking troops based in Muliro, in the vicinity of Lake Tanganyika. In response, faced with a "situation of self-defence", "the Forces Armées Congolaises (FAC) had put up fierce resistance to the attackers, and had succeeded in driving the enemy troops beyond Kamamba". By a subsequent letter dated 28 February 2002 addressed to the President of the Security Council,⁹⁷⁵ the representative of the DRC reiterated that the Congolese armed forces had acted in self-defence when resisting Rwandan armed forces and had pushed them back beyond Kamamba.

By another letter dated 18 March 2002 addressed to the President of the Security Council,⁹⁷⁶ the representative of the DRC underlined his Government's duty to safeguard the territorial integrity and national sovereignty of the DRC, "as authorized by the Charter of the United Nations, above all Article 51" against attacks from Rwanda and the Rassemblement Congolais pour la Démocratie (RCD)-Goma.⁹⁷⁷

By a letter dated 15 April 2002 addressed to the President of the Security Council,⁹⁷⁸ the representative of Rwanda reported that the Government of the DRC had "allied itself with the planners and perpetrators of the Rwandan genocide". He asked the members of the Council to re-examine the circumstances which had led Rwanda "to

⁹⁷² S/2001/709.

⁹⁷³ *Ibid.*, p. 3.

⁹⁷⁴ S/2002/198.

⁹⁷⁵ S/2002/217.

⁹⁷⁶ S/2002/286.

⁹⁷⁷ *Ibid.*, p. 2.

⁹⁷⁸ S/2002/420.

intervene militarily in the DRC, in exercise of the inherent right of self-defence, pursuant to Article 51 of the Charter of the United Nations”.⁹⁷⁹

At the Council’s 4634th meeting, on 24 October 2002, the representative of the DRC reaffirmed his Government’s conviction that it was within its legitimate rights to take all necessary measures to respond to the Rwandese armed aggression “in accordance with Article 51 of the United Nations Charter, including seeking assistance from the States members of the Southern Africa Development Community by invoking their natural right to collective and individual self-defence”.⁹⁸⁰

6. The situation in the Middle East, including the Palestinian Question

At its 4506th meeting, on 3 April 2002, the Council debated the situation in the occupied Palestinian territory, including Jerusalem. During the discussion, the representative of South Africa stressed that Israel’s decision “to destroy Palestinian infrastructure, to humiliate and humble Palestinian civilians and to threaten the life of the legitimate, elected and internationally recognized leader of the Palestinian people” could not be justified “as acts of counter-terrorism or even self-defence”.⁹⁸¹ The representative of Saudi Arabia concurred that Israel’s “state terrorism” was “not being undertaken in self-defence or as a means of protecting its citizens”, but as a means of protecting its occupation and of consecrating its usurpation of Palestinian territory.⁹⁸² Referring to the humanitarian situation in the occupied territories, the representative of Singapore acknowledged Israel’s right to “exercise self-defence”⁹⁸³ but emphasized that, under international law, Israel must allow immediate medical access to the occupied areas by international humanitarian agencies such as the International Committee of the Red Cross. At the resumption of the 4506th meeting, the representative of Cuba asserted that the “right of self-defence” could not justify the illegal occupation of territories or the

⁹⁷⁹ At the 4532nd meeting, on 14 May 2002, in connection with the situation in the Great Lakes region, the representative of Rwanda stated that his country had intervened militarily in the DRC “by virtue of its natural right of legitimate defence under Article 51 of the Charter of the United Nations”. See S/PV.4532, p. 13.

⁹⁸⁰ S/PV.4634, p. 8.

⁹⁸¹ S/PV.4506, p. 16.

⁹⁸² *Ibid.*, p. 17.

⁹⁸³ *Ibid.*, p. 17.

forced exile of Palestinians from their land of birth.⁹⁸⁴ The representative of Iraq warned that Israel and the United States sought to transform the right of self-defence into a political means to justify acts of aggression.⁹⁸⁵ Similarly, the representative of the Sudan qualified as unacceptable Israel's justification for its actions as aiming to combat terrorism or providing self-defence.⁹⁸⁶ This point of view was reinforced by the representative of Qatar who insisted that the "Israeli onslaught" could not be categorized as self-defence.⁹⁸⁷ On the other hand, the representative of Canada expressed his Government's recognition for "Israel's right to exist within secure and recognized borders and its right to self-defence against terrorist acts".⁹⁸⁸ Nonetheless, he recalled that the continuing Israeli incursions into Palestinian towns and cities fed the spiral of violence. The representative of the Syrian Arab Republic insisted that Israel was misleading the world by claiming to commit its acts of aggression under "the guise of self-defence".⁹⁸⁹ The representative of Mexico endorsed this view, declaring that his country was contesting Israel's invocation of the right to self-defence to explain its military incursions into Palestinian cities and the siege and kidnapping of the President of the Palestinian National Authority. He declared that, on the contrary, Israel was "not acting in accordance with the principles of legitimate self-defence recognized by Article 51 of the Charter of the United Nations".⁹⁹⁰ The Secretary-General cautioned that the Israeli actions since the adoption of Security Council resolution 1402 (2002) did not help stabilize the situation in the region and emphasized that Israel could not use the right to self-defence as a "blank cheque".⁹⁹¹ He added that there was an urgent need to comply with all provisions of international law, particularly those that ban indiscriminate and disproportionate use of force as well as the humiliating treatment of the civilian population.⁹⁹²

⁹⁸⁴ S/PV.4506 (Resumption 1), p. 2.

⁹⁸⁵ *Ibid.*, p. 10.

⁹⁸⁶ *Ibid.*, p. 17.

⁹⁸⁷ *Ibid.*, p. 20.

⁹⁸⁸ *Ibid.*, p. 24.

⁹⁸⁹ *Ibid.*, p. 27.

⁹⁹⁰ *Ibid.*, p. 37.

⁹⁹¹ S/PV.4506 (Resumption 2), p. 5.

⁹⁹² Similarly, at the 4525th meeting, on 3 May 2002, the representative of Mauritius recognized Israel's right to protect its people from terrorist attacks, but stressed that Israel should be aware that self-defence was not a "blank cheque". See, S/PV.4525 (Resumption 1), p. 28.

At the 4510th meeting, on 8 April 2002, a number of speakers echoed the Secretary-General's position that Israel's right to self-defence was not a "blank cheque" and it did not entitle it not to comply with the principles of international law.⁹⁹³ The representative of the United Arab Emirates called for the international community to distinguish between "the terrorism pursued by the Israeli Government and the legitimate right of the Palestinian people to self-defence and to resist occupation until their territories have been liberated and an independent State has been established in independent Palestine".⁹⁹⁴

At the 4515th meeting, on 18 April 2002, the representative of Brazil made reference to the Secretary-General's comment regarding the right of self-defence not constituting a "blank cheque" for aggression when stressing that Israel must allow full freedom of movement for humanitarian agencies in the Palestinian territories.⁹⁹⁵ Also referring to the humanitarian crisis in the occupied territories, the representative of India contended that the right of self-defence could not be used as justification for the crisis.⁹⁹⁶ In response, the representative of Israel declared that the "Israeli actions in Jenin and elsewhere were undertaken reluctantly and in self-defence against an unrelenting campaign of violence and terrorism incited, supported and financed by the Palestinian Authority". He added that these actions were taken only after the Palestinian Authority was given ample opportunity to fulfill its commitment and after Israel had exercised restraint in the face of a wave of suicide-bombing massacres.⁹⁹⁷

At its 4588th meeting, on 24 July 2002, the Council met to discuss the escalation of Israeli military acts in the Palestinian territory, and specifically the attack in the area of Yarmuk in the northern Gaza Strip. The representative of the Syrian Arab Republic reminded the Council that this was not the first time Israel had committed "massacre against the Palestinian people". He noted that Israel was pursuing "a systematic policy of destruction in a show of senseless force, for the sole purpose of preventing the Palestinian people from exercising their rights to self-determination". He further added that Israel's actions perpetrated against the "defenceless Palestinian people" could not be justified as

⁹⁹³ S/PV.4510, p. 21 (South Africa); and p. 23 (Kuwait).

⁹⁹⁴ S/PV.4510 (Resumption 1), p. 22.

⁹⁹⁵ S/PV.4515, p. 21.

⁹⁹⁶ *Ibid.*, p. 26.

⁹⁹⁷ S/PV.4515 (Resumption 1), p. 21.

acts of self-defence as Israel's nuclear weapons and weapons of mass destruction would be satisfactory for its defense, should it decide to withdraw to the lines it held prior to 4 June 1967.⁹⁹⁸ Similarly, a number of speakers advocated that the international community should not consider the recent Israeli aggression to be an act of self-defence.⁹⁹⁹ The President of the Council, speaking in his capacity as representative of the United Kingdom, emphasized that, according to the norms of international law, Israel's actions "taken in self-defence must be proportionate" and that Israel must avoid civilian casualties and avoid damaging civilian property and infrastructure.¹⁰⁰⁰

At its 4722nd meeting, on 19 March 2003, the Council was briefed on the situation in the Middle East by the Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General. In his statement, he emphasized Israel's obligation under international law to minimize the harm to innocent civilians but stressed that, like every other State, Israel had a "right to self-defence" which should be "exercised with caution, using reasonable means".¹⁰⁰¹ Similarly, at the 4741st meeting, on 16 April 2003, the Assistant Secretary-General for Political Affairs recognized Israel's right to self-defence, but cautioned that it should be exercised within the boundaries of international law.¹⁰⁰² At the 4846th meeting, on 21 October 2003, the Under-Secretary-General for Political Affairs reiterated that while "Israel's right to defend itself against terrorist attacks" was recognized, the right of self-defence was neither unconditional nor unlimited and should be exercised in proportionate terms and in keeping with Israel's obligations under international law.¹⁰⁰³

At its 4841st meeting, on 14 October 2003, the Council discussed the recent Israeli actions in the Rafah area. During the debate, the representative of France recognized

⁹⁹⁸ S/PV.4588, pp.13-14.

⁹⁹⁹ *Ibid.*, p.21 (Egypt); and p. 28 (Iraq).

¹⁰⁰⁰ *Ibid.*, p. 20.

¹⁰⁰¹ S/PV.4722, p. 3. At the 4757th meeting, on 19 May 2003, the Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General highlighted "Israel's right to self-defence in the face of repeated terrorist attacks". He maintained, however, that the United Nations must "repeat the call on the Israeli authorities to abandon the use of excessive force in densely populated areas and to protect the safety of civilians and preserve their property in keeping with Israel's obligations under international humanitarian law". See S/PV.4757, p. 3.

¹⁰⁰² S/PV.4741, p. 2. At the 4773rd meeting, on 13 June 2003, the Under-Secretary-General for Political Affairs reaffirmed Israel's "right to self-defence in the face of repeated terrorist attacks", but cautioned that it was "incumbent upon Israel to pursue its security and self-defence in a manner that minimizes the suffering of Palestinian civilians". See S/PV.4773, p. 4.

¹⁰⁰³ See S/PV.4846, p. 3.

“Israel’s inalienable right to security, its right to self-defence and its right to combat terrorist attacks”, but insisted that the struggle against terrorism could not justify everything and had to be carried out with respect for the law.¹⁰⁰⁴ A similar point was made by the representative of Italy, on behalf of the European Union, and by the representative of Norway.¹⁰⁰⁵ By contrast, the representative of Saudi Arabia argued that the international community viewed as terrorists those who resisted occupation, while the “unjust occupier and oppressor” who had usurped all the rights of others was “allowed to enjoy the right of self-defence to further its colonialism and entrench its occupation”.¹⁰⁰⁶ In response, the representative of Israel questioned whether “the energy of the Security Council should be expended debating security measures adopted in self-defence, or addressing the terrorism that made such measures necessary”.¹⁰⁰⁷

7. Letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (S/2003/939)

Letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/2003/943)

At its 4836th meeting, on 5 October 2003, the Council discussed two letters dated 5 October 2003 from the representatives of the Syrian Arab Republic and Lebanon, respectively.¹⁰⁰⁸ By the two letters, the aforementioned representatives requested the Security Council to convene an emergency meeting to consider Israel’s military action targeting a site situated on the Syrian territory. During the debate, the representative of Israel insisted that Israel’s response to the suicide bombings against a terrorist training facility in Syria was “a clear act of self-defence in accordance with Article 51 of the Charter”.¹⁰⁰⁹ On the other hand, a series of speakers contended that Israel’s actions did not qualify as an exercise of the right to self-defence.¹⁰¹⁰ The Permanent Observer of the League of Arab States to the United Nations reaffirmed its support to the Syrian Arab

¹⁰⁰⁴ S/PV.4841, p. 18.

¹⁰⁰⁵ Ibid., p. 42 (Italy, on behalf of the European Union); and p. 43 (Norway).

¹⁰⁰⁶ Ibid., p. 36.

¹⁰⁰⁷ Ibid., p. 50.

¹⁰⁰⁸ S/2003/939 and S/2003/943.

¹⁰⁰⁹ S/PV.4836, p. 7.

¹⁰¹⁰ Ibid., p. 8 (Pakistan); p. 17 (Morocco); and p. 18 (Jordan).

Republic and any measures that it may adopt in “self-defence against such aggression”.¹⁰¹¹ Similar views were held by other representatives in their statements.¹⁰¹² The representative of Egypt referred to the similarities between the present situation and that of 30 years ago when Egypt and Syria took military action against Israel to regain Egyptian territory in the Sinai which, at the time, was occupied by Israel. He asserted that Egypt’s actions at that point in time were in conformity with the right of self-defence and had taken place on Egyptian territory.¹⁰¹³

8. *Small arms*

At its 4355th meeting, on 2 August 2001, the Council discussed the consequences of illicit trafficking of small arms and light weapons, especially in conflict situations. The representative of the Russian Federation spoke in favor of a responsible policy in the supply of weapons to the international market while expressing his support for the right to legally acquire weapons based on “the provisions of Article 51 of the United Nations Charter on the legitimate right of States to self-defence”.¹⁰¹⁴ The representative of Tunisia concurred that any action designed to cope with the problems of small arms and light weapons must take into account “the legitimate right of self-defence of States, in accordance with Article 51 of the Charter, and the right of peoples to self-determination”.¹⁰¹⁵ Several speakers endorsed the necessity of finding a solution for the problem of small arms that would respect States’ and peoples’ right to self-defence in conformity with Article 51 of the Charter.¹⁰¹⁶

At its 4623rd meeting, on 11 October 2002, the Council debated the Secretary-General’s report on small arms.¹⁰¹⁷ Several speakers reminded the Council of the importance of respecting the right to self-defence when considering a solution to the

¹⁰¹¹ Ibid., p. 14.

¹⁰¹² Ibid., p. 23 (Libyan Arab Jamahiriya); and p. 24 (the Sudan).

¹⁰¹³ Ibid., p. 18.

¹⁰¹⁴ S/PV.4355, p. 13.

¹⁰¹⁵ Ibid., p. 16.

¹⁰¹⁶ S/PV.4355 (Resumption 1), p. 15 (Venezuela); p. 17 (the Sudan); and p. 19 (Egypt).

¹⁰¹⁷ S/2002/1053.

problem of small arms and emphasized that States should have the right to acquire and produce small arms for self-defence and national security.¹⁰¹⁸

At its 4720th meeting, on 18 March 2003, the Council discussed the proliferation of small arms and light weapons and the phenomenon of mercenaries in view of their negative effects on West Africa. In this connection, the representative of the Syrian Arab Republic stated “the need to respect international law and the purposes and principles of the Charter of the United Nations, in particular respect for national sovereignty, non-interference in the internal affairs of Members States, the right to individual or collective self-defence as stipulated by Article 51 of the Charter”.¹⁰¹⁹

9. The role of the Security Council in the pacific settlement of disputes

At its 4753rd meeting, on 13 May 2003, the Council discussed the role of the Security Council in the pacific settlement of disputes. In his statement, the representative of India maintained that no State could permit aggression against its own territory. He added that nothing in the Charter “can impair the inherent right of each Member State to take all necessary measures for its self-defence if there is an armed attack against it”.¹⁰²⁰ Referring to the Nagorny-Karabakh conflict, and responding to the representative of Azerbaijan who stated that “one fifth” of his country’s territory remained “under Armenian occupation”,¹⁰²¹ the representative of Armenia argued that the conflict was not the result of armed aggression, as Azerbaijan tried to present it, “but the forced resort to self-defence of the Karabakh population”.¹⁰²²

10. The role of the Security Council in the prevention of armed conflicts

At its 4174th meeting, on 20 July 2000, the Council discussed the role of the Security Council in the prevention of armed conflicts. In this connection, the representative of Pakistan declared that the concept of preventive disarmament needed

¹⁰¹⁸ S/PV.4623, pp. 14-15 (Syrian Arab Republic); S/PV.4623 (Resumption 1), p. 5 (Egypt); p. 9 (Philippines); p. 15 (Israel); and p. 37 (Pakistan).

¹⁰¹⁹ S/PV.4720 (Resumption 1), p. 15.

¹⁰²⁰ S/PV.4753 (Resumption 1), p. 7.

¹⁰²¹ *Ibid.*, p. 8.

¹⁰²² *Ibid.*, p. 14.

further “discussion and elaboration, because such a concept would militate against the inherent right to self-defence sanctified by the Charter of the United Nations”.¹⁰²³

C. The invocation of the right of self-defence in other instances

1. Communications concerning relations between India and Pakistan

By a letter dated 23 January 2000 addressed to the Secretary-General,¹⁰²⁴ the representative of Pakistan reported that, on 22 January 2000, Indian forces had crossed the border and attacked a Pakistani post between the two channels of the Tawi River. In response, he declared that the Pakistani forces “fought gallantly in self-defence and succeeded in repelling the Indian attack”. He also announced that the Pakistan Armed Forces would “exercise their right of self-defence with their well-known sense of commitment and determination”.¹⁰²⁵

By a letter dated 22 May 2002 addressed to the President of the Security Council,¹⁰²⁶ the representative of Pakistan announced his Government’s readiness to join the international coalition against terrorism. He added that Pakistan would nevertheless be ready to meet resolutely any aggression by India, in the exercise of its inherent right to self-defence, against the territory of Pakistan or the territories in Kashmir.

2. Communications concerning relations between Iran and Iraq

By a letter dated 15 February 2000 addressed to the Secretary-General,¹⁰²⁷ the representative of the Islamic Republic of Iran reported that terrorist groups from the Iraqi territory were operating along the Iranian border. He noted that Iran reserved its legitimate right to self-defence and would respond to such hostile acts if they continued.

In a series of letters addressed to the Secretary-General,¹⁰²⁸ the representative of the Islamic Republic of Iran reported that members of the terrorist Mojahedin-e-Khalq

¹⁰²³ S/PV.4174 (Resumption 1), p. 5.

¹⁰²⁴ S/2000/48.

¹⁰²⁵ *Ibid.*, p. 2.

¹⁰²⁶ S/2002/571.

¹⁰²⁷ S/2000/128.

¹⁰²⁸ S/2000/216, S/2000/271, S/2000/912, S/2000/1036, and S/2001/271.

Organization (MKO), authorized by the Government of Iraq to be based on Iraqi soil, engaged in acts of sabotage against Iran. He reiterated that Iran considered intolerable the continuation of such hostile acts and reserved “its right to legitimate self-defence and removal of any threats”.¹⁰²⁹

By a letter dated 18 April 2001 addressed to the President of the Security Council,¹⁰³⁰ the representative of the Islamic Republic of Iran informed the Council that in response to the acts of terrorism committed by members of the MKO terrorist organization based in Iraq, the armed forces of Iran, in accordance with Article 51, took a “limited and proportionate defensive measure” against a number of MKO bases in Iraq. If the Government of Iraq was “to take appropriate measures” to put an end to the use of its territory for cross-border attacks and terrorist operations against Iran, it would render unnecessary the measures taken in accordance with Article 51 by the Government of Iran.¹⁰³¹

3. Communications concerning the situation in Eritrea and Ethiopia

By a letter dated 7 April 2000 addressed to the President of the Security Council,¹⁰³² the representative of Ethiopia presented the state of affairs of the Ethiopian-Eritrean conflict. He described the “liberation” of Badme by the Ethiopian forces in February 1999 as an “exercise of Ethiopia’s right of legitimate self-defence under international law enshrined in Article 51 of the Charter of the United Nations”.¹⁰³³

In response, the representative of Eritrea, by a letter dated 12 May 2000 addressed to the President of the Security Council,¹⁰³⁴ called upon the Council to support Eritrea’s right to self-defence “in the wake of the war of aggression” carried out by Ethiopia.

By a letter dated 2 June 2000 addressed to the President of the Security Council,¹⁰³⁵ the representative of Ethiopia asserted that his Government had acted in self-defence when it cleared its territories from the Eritrean forces.

¹⁰²⁹ Ibid., p. 3

¹⁰³⁰ S/2001/381.

¹⁰³¹ Ibid., p. 2.

¹⁰³² S/2000/296.

¹⁰³³ Ibid., p. 2.

¹⁰³⁴ S/2000/420.

¹⁰³⁵ S/2000/523.

In response, the representative of Eritrea, by a letter dated 9 June 2000 addressed to the President of the Security Council,¹⁰³⁶ argued that Ethiopia's offensive deep inside sovereign Eritrean territory was a flagrant act of invasion. He observed that while Eritrea had the right to self-defence, it could not engage in military activities in an area where it had redeployed "voluntarily from deep into its own sovereign territory".¹⁰³⁷

4. Communication concerning relations between Uganda and Rwanda

By a letter dated 15 June 2000 addressed to the President of the Security Council,¹⁰³⁸ the representative of Uganda reported repeated violations of the ceasefire in Kisangani by RPA which had forced the Ugandan People's Defence Forces (UPDF) to "take self-defence measures, including the securing of Tshopo Bridge and establishment of a defence at Sotexki junction".¹⁰³⁹

5. Communications concerning violations of the Lusaka Agreement

By a letter dated 8 November 2000 addressed to the President of the Security Council,¹⁰⁴⁰ the representative of Zimbabwe dismissed the Rwandan allegations of repeated violations of the Lusaka Ceasefire Agreement by SADC allied forces. He urged the Security Council to "see through Rwanda's subterfuge. The so-called right to self-defence is nothing more than an excuse by Rwanda to launch an offensive".¹⁰⁴¹

6. Communication concerning relations between Burundi and the Democratic Republic of the Congo

By a letter dated 11 May 2001 addressed to the President of the Security Council,¹⁰⁴² the representative of Burundi reported that the Burundian rebellion in the DRC, and the threat it posed to Burundian trade on Lake Tanganyika, led Burundi to deploy a military self-defence operation covering the part of the territory of the DRC along Lake Tanganyika. He noted that the purpose of the Burundian military operation

¹⁰³⁶ S/2000/554.

¹⁰³⁷ *Ibid.*, p. 2.

¹⁰³⁸ S/2000/596.

¹⁰³⁹ *Ibid.*, p. 4.

¹⁰⁴⁰ S/2000/1076.

¹⁰⁴¹ *Ibid.*, p. 2.

¹⁰⁴² S/2001/472.

was “strictly confined to self-defence, and Burundi has never had political, territorial or economic designs on the Democratic Republic of the Congo”.¹⁰⁴³

7. Communications concerning relations between Iraq and Saudi-Arabia

By identical letters dated 29 May 2001 addressed to the Secretary-General and to the President of the Security Council,¹⁰⁴⁴ the representative of Saudi Arabia reported that, on 23 May 2001, an Iraqi patrol crossed the Saudi-Iraqi international boundary. In response, members of the Saudi Frontier Force “were forced to respond to the fire in self-defence, and in the exchange between the Force and the members of the Iraqi patrol a number of Saudi soldiers were wounded”.¹⁰⁴⁵

8. Communications concerning relations between Georgia and the Russian Federation

By a letter dated 11 September 2002 addressed to the Secretary-General,¹⁰⁴⁶ the representative of the Russian Federation cautioned Georgia to establish a security zone in the area of the Georgian-Russian border and respect Security Council resolution 1373 (2001) of 28 September 2001. If Georgia failed to comply, and did not put an end to “the bandit sorties and attacks on adjoining areas in the Russian Federation”, the Russian Federation would reserve the right to act in accordance with Article 51 of the Charter of the United Nations.¹⁰⁴⁷

By a letter dated 13 September 2002 addressed to the Secretary-General,¹⁰⁴⁸ the representative of Georgia expressed his Government’s distress regarding the Russian Federation’s threat to use force against Georgia. He conveyed his Government’s willingness to cooperate in fighting global terrorism and qualified as unacceptable the Russian Federation’s “interpretation of Article 51 of the United Nations Charter”¹⁰⁴⁹ in a manner that would justify its aggressive intentions.

¹⁰⁴³ Ibid., p. 12.

¹⁰⁴⁴ S/2001/547.

¹⁰⁴⁵ Ibid., p. 1.

¹⁰⁴⁶ S/2002/1012.

¹⁰⁴⁷ Ibid., p. 3.

¹⁰⁴⁸ S/2002/1035.

¹⁰⁴⁹ Ibid., p. 2.

In a subsequent letter dated 15 September 2002 addressed to the Secretary-General and the President of the Security Council,¹⁰⁵⁰ the representative of Georgia reiterated the “inaptness” of Article 51 of the Charter to explain the Russian Federation’s actions towards Georgia considering that Georgia did not attack the Russian Federation.

9. Communications concerning relations between the Sudan and Eritrea

By a letter dated 7 October 2002 addressed to the President of the Security Council,¹⁰⁵¹ the representative of the Sudan drew attention to the Eritrean attacks on eight Sudanese locations along the Sudanese boundary with Eritrea. He noted that, at a time when Eritrea’s aggression against his country continued, the Sudan affirmed “its natural and legal right to defend its territory, its citizens and its installations, in accordance with the provisions of Article 51 of the Charter of the United Nations”¹⁰⁵² to repel the aggression.

10. Communications concerning the situation in Côte d’Ivoire

By a letter dated 28 April 2003 addressed to the President of the Security Council,¹⁰⁵³ the representative of Côte d’Ivoire informed the Council on the progress made in the implementation of the Linas-Marcoussis Agreement. He decried the international community’s condemnation of the Ivorian Government when it exercised “its right to self-defence, as provided for in Article 51 of the Charter of the United Nations”,¹⁰⁵⁴ in response to the “atrocities and violations of the Linas-Marcoussis Agreement”.

11. Communications concerning the situation in Liberia

By a letter dated 11 May 2001 addressed to the Secretary-General,¹⁰⁵⁵ the representative of Liberia indicated that the arms embargo imposed against Liberia had impaired the country’s capacity to adequately exercise its right of self-defence under

¹⁰⁵⁰ S/2002/1033.

¹⁰⁵¹ S/2002/1117.

¹⁰⁵² *Ibid.*, p. 4.

¹⁰⁵³ S/2003/510.

¹⁰⁵⁴ *Ibid.*, p. 2.

¹⁰⁵⁵ S/2001/474.

Article 51 of the Charter and announced that his Government reserved the right to defend itself in that connection.

By a letter dated 4 June 2001 addressed to the President of the Security Council,¹⁰⁵⁶ the representative of Liberia informed the Council of the armed attacks against Liberia from the territory of the Republic of Guinea. He reasserted his Government's right to self-defence in the wake of armed aggression.

In a subsequent letter dated 6 September 2001 addressed to the President of the Security Council,¹⁰⁵⁷ the representative of Liberia asked the Security Council "to grant a limited waiver of the arms embargo imposed by resolution 1343 (2001) to permit the importation of essential military supplies under United Nations monitoring to be used for the sole purpose of self-defence". He argued that Liberia had an inherent right to self-defence and a "constitutional responsibility to provide for the protection of its sovereign territory, and the life and property of its citizens".

By a letter dated 31 October 2001 addressed to the Secretary-General,¹⁰⁵⁸ the representative of Liberia reiterated that the Liberian nation had been under attack from dissidents in the Lofa County, in northern Liberia since April 1999. He declared that the Liberian Government, acting under Article 51 of the Charter of the United Nations, would utilize "every available means to defend its sovereignty, protect its territorial integrity and preserve its people".¹⁰⁵⁹

At the 4405th meeting, on 5 November 2001, the representative of Liberia asked the Council to remove any constraints imposed on Liberia so that the country could defend its territory and sovereignty, "as is the inherent right of every Member of this Organization under its constitution and Article 51 of the Charter of the United Nations".¹⁰⁶⁰

By a letter dated 20 March 2002 addressed to the President of the Security Council,¹⁰⁶¹ the representative of Liberia informed the Council that Liberia had "taken measures to provide for its legitimate self-defence in the wake of persistent armed attacks

¹⁰⁵⁶ S/2001/562.

¹⁰⁵⁷ S/2001/851.

¹⁰⁵⁸ S/2001/1035.

¹⁰⁵⁹ *Ibid.*, p. 4.

¹⁰⁶⁰ S/PV.4405, p. 27.

¹⁰⁶¹ S/2002/310.

against its territory”. He further assured the Council that these measures were without prejudice to Security Council resolution 1343 (2001), and that his Government would continue to comply with the demands outlined in resolution 1343 (2001).