

CHAPTER VI
RELATIONS WITH OTHER UNITED NATIONS ORGANS
(1993 – 1995)

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INTRODUCTORY NOTE

This chapter deals, in Parts I - V, with relations of the Security Council with the other principal organs of the United Nations. It also includes, in Part VI, material relating to the Military Staff Committee, which has been placed, by Articles 45, 46 and 47 of the Charter, in a special relationship with the Security Council.

PART I

GENERAL ASSEMBLY

NOTE

Part I concerns various aspects of the relationship between the Security Council and the General Assembly. Section A deals with the election by the Assembly of non-permanent members of the Council. Section B considers the General Assembly's practice in making recommendations to the Council under Articles 10 and 11 of the Charter, and calling its attention under Article 11, paragraph 3, to situations which are likely to endanger international peace and security. Section C concerns the limitation imposed by Article 12, paragraph 1, on the authority of the General Assembly to make recommendations with respect to any dispute or situation while the Council is exercising the functions assigned to it by the Charter in respect of that dispute or situation. It also describes the procedure under Article 12, paragraph 2, by which the Secretary-General notifies the Assembly of matters relating to the maintenance of international peace and security which are being dealt with by the Council, and when the Council ceases to deal with such matters.

Section D considers those instances in which a decision by the Council must be taken before that of the General Assembly: for example, the appointment of the Secretary-General, the admission, suspension, or expulsion of Members, and the election of the judges of the International Tribunals for the former Yugoslavia and Rwanda, respectively.

Section E describes the annual and special reports submitted by the Council to the General Assembly.

Lastly, Section F concerns relations between the Security Council and certain subsidiary organs established by the General Assembly which have reported to or otherwise play a role in the work of the Council.

A. ELECTION BY THE GENERAL ASSEMBLY OF NON-PERMANENT MEMBERS OF THE SECURITY COUNCIL

NOTE

During the period under review, in accordance with Article 23 of the Charter, the General Assembly, at each regular session, elected five non-permanent members to the Security Council for a two-year term to replace those members whose terms of office were to expire on 31 December of the respective year. At the forty-eighth session, the Assembly elected four non-permanent members during its 43rd plenary meeting and the fifth non-permanent member at its 44th plenary meeting. At the forty-ninth and fiftieth sessions, the Assembly elected the five non-permanent members in the course of one plenary meeting. A tabulation of these elections is set out below.

<i>General Assembly decision no.</i>	<i>Plenary meeting and date of election</i>	<i>Members elected to two-year terms beginning January of the following year</i>
48/306	43 rd 29 October 1993	Argentina Czech Republic Oman Rwanda
48/306	40 th 29 October 1993	Nigeria
49/306	40 th 20 October 1994	Botswana Germany Honduras Indonesia Italy
50/306	53 rd 8 November 1995	Chile Egypt Guinea-Bissau Poland Republic of Korea

B. RECOMMENDATIONS BY THE GENERAL ASSEMBLY TO THE SECURITY COUNCIL IN THE FORM OF RESOLUTIONS UNDER ARTICLES 10 AND 11 OF THE CHARTER

Articles 10 and 11

Article 10

“The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters. “

Article 11

“1. The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2. The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10.”

NOTE

During the period under review, the General Assembly made a number of recommendations, in the form of resolutions, to the Security Council regarding the maintenance of international peace and security. Several of these recommendations were of a general nature, touching upon the “powers and functions” of the Council under the Charter, and/or upon “the general principles of co-operation in the maintenance of international peace and security”. As

such, they may be seen to be illustrative of the General Assembly's recommendation-making powers under Articles 10 and 11 (1), of the Charter respectively. A tabulation of these recommendations is set out in Section 1 below.

In other instances, the General Assembly made recommendations to the Security Council either with regard to specific questions relating to the maintenance of international peace and security, or requesting action from the Council with regard to such questions, in accordance with Article 11 (2). The recommendations all concerned items already on the Council's agenda. Examples of the General Assembly requesting action from the Council include its resolutions urging the Council to take "all appropriate steps to uphold and restore fully the sovereignty, political independence, territorial integrity and unity of the Republic of Bosnia and Herzegovina". A tabulation of these Article 11 (2)-related recommendations, which also includes one instance in which the Assembly resolution was subsequently referred to in a request for a meeting of the Council, is set out in Section 2.

The General Assembly did not draw the attention of the Security Council to any situations under Article 11 (3).

1. Recommendations on matters relating to the Council's powers and functions, or with regard to the general principles of co-operation in the maintenance of international peace and security

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
47/120 B 20 September 1993	An Agenda for Peace	<p style="text-align: center;">II</p> <p style="text-align: center;">PREVENTIVE DEPLOYMENT AND DEMILITARIZED ZONES</p> <p>4. Invites the competent organs of the United Nations, within their respective mandates, to consider implementing preventive deployment and/or the establishment of a demilitarized zone with the objective of preventing conflict and of promoting efforts to achieve the peaceful settlement of disputes, and to continue to examine practical, operational and financial aspects of such preventive deployment and demilitarized zones with a view to increasing their efficacy and effectiveness.</p>

*General Assembly
resolution*

Title of agenda item

Recommendation

IV

SPECIAL ECONOMIC PROBLEMS
ARISING FROM THE
IMPLEMENTATION OF
PREVENTIVE OR ENFORCEMENT
MEASURES

2. Invites the Security Council to consider what could be done within the United Nations system and involving international financial institutions with regard to solutions to the special economic problems of States arising from the carrying out of the measures imposed by the Council and to consider, *inter alia*, the following measures:

(a) Strengthening of the consultative process for studying, reporting on and suggesting solutions to the special economic problems, with a view to minimizing such economic problems through consultations with States adversely affected or, as appropriate, with States likely to be adversely affected as a result of their implementing the preventive or enforcement measures, as well as with the Secretary-General, the principal organs, programmes and agencies of the United Nations, and international financial institutions;

(b) Other measures, in consultation with Member States and, as appropriate, with international financial institutions, such as voluntary funds to provide assistance to States experiencing special economic problems arising from carrying out the measures imposed by the Security Council, additional credit lines, assistance for the promotion of exports of the affected countries, assistance for technical cooperation projects in such countries and/or assistance for the promotion of investment in the affected countries.

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
48/25 ^a 29 November 1993	Cooperation between the United Nations and the Organization of African Unity	4. Calls upon the United Nations organs, in particular the Security Council and the Economic and Social Council, to continue to involve the Organization of African Unity closely in all their activities concerning Africa.
48/42 10 December 1993	Comprehensive review of the whole question of peace-keeping operations in all their aspects	<p>Organization and effectiveness</p> <p>24. Suggests that the Security Council and the Secretary-General should continue to analyse a given situation very carefully before the establishment of a United Nations peace-keeping operation, that a realistic mandate, including clear objectives and a time-frame for the resolution of the problem, as appropriate, should be formulated in each case, conducive to the furtherance of the political process, that the Security Council should review periodically the effectiveness of current operations with a view to ensuring that they are consistent with the objectives and the mandates as approved by the Council, and affirms that no change in the mandate, character or duration of peace-keeping operations authorized by the Council is possible except through a specific decision of the Council;</p> <p>44. Welcomes the increasingly frequent informal consultations between the Secretariat and contributing States, strongly recommends the continuation of such consultations on peace-keeping operations from their initial stages to their conclusion and strongly encourages the presence of the President of the Security Council and other members of the Council, as appropriate, at such consultations.</p> <p>Status and safety of United Nations peace-keeping personnel</p> <p>76 (b). Calls upon the Security</p>

^a See also paragraph 3 of General Assembly resolutions 49/64 of 15 December 1994 and 50/158 of 21 December 1995 on this item, which contained identical provisions.

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
		Council to include in mandates for the deployment of United Nations personnel, specific provisions recalling the obligations of Member States and the expectations of the United Nations concerning the status and safety of United Nations personnel.
48/264 29 July 1994	Revitalization of the work of the General Assembly	3. Welcomes the ongoing efforts of the Security Council to improve its working methods, and in that context encourages the Council, in the submission of reports to the Assembly, to provide in a timely manner a clear and informative account of its work, including its resolutions and other decisions, inclusive of measures taken under Chapter VII of the Charter.
49/31 9 December 1994	Protection and security of small States	7. Calls upon the Security Council and other relevant organs of the United Nations to pay special attention to the protection and security of small States in the restructuring and revitalization of the work of the United Nations, especially within the context of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization and in the follow-up activities of the report of the Secretary-General of 17 June 1992 entitled "An Agenda for Peace".
49/57 9 December 1994	Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security	Annex Declaration on the Enhancement of Cooperation between the United Nations and Regional Arrangements or Agencies in the Maintenance of International Peace and Security Solemnly declares that: 1. In accordance with the provisions of the Charter of the United Nations concerning the role of regional arrangements or agencies in the maintenance of international peace and security, in particular Chapter VIII of the Charter:

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
50/6 24 October 1995	Declaration on the Occasion of the Fiftieth Anniversary of the United Nations	<p>(b) The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the States concerned or by reference from the Council;</p> <p>(d) The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority, but no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Council;</p> <p>5. Regional efforts undertaken by regional arrangements or agencies in the area of the maintenance of international peace and security, within their respective fields of competence and in accordance with the purposes and principles of the Charter, should be encouraged and, where appropriate, supported by the Security Council.</p> <p style="text-align: center;">DECLARATION ON THE OCCASION OF THE FIFTIETH ANNIVERSARY OF THE UNITED NATIONS</p> <p style="text-align: center;">United Nations Organization</p> <p>14. ...The Security Council should, <i>inter alia</i>, be expanded and its working methods continue to be reviewed in a way that will further strengthen its capacity and effectiveness, enhance its representative character and improve its working efficiency and transparency.</p>
50/30 6 December 1995	Comprehensive review of the whole question of peace- keeping operations in all their aspects	3. Urges Member States, the Secretariat and relevant organs of the United Nations to take all necessary steps to implement the proposals, recommendations and conclusions of the Special Committee [on Peace-keeping Operations].

2. Recommendations with regard to questions relating to the maintenance of international peace and security, or requesting action on such questions by the Council

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
48/40 H 10 December 1993	United Nations Relief and Works Agency for Palestine Refugees in the Near East	Protection of Palestine refugees 3. Urges the Security Council to remain seized of the situation in the occupied Palestinian territory.
48/88 20 December 1993	The situation in Bosnia and Herzegovina	4. Condemns the continued violation of the international border between the Republic of Bosnia and Herzegovina and the Republic of Croatia by Serbian forces, and thereby requests the Security Council to take all necessary measures to implement its resolution 769 (1992) of 7 August 1992; 5. Requests the Security Council to follow and immediately implement its resolution 838 (1993) of 10 June 1993 to ensure that the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to Bosnian Serb paramilitary units, as demanded in its resolution 819 (1993) of 16 April 1993; 12. Urges the Council to implement fully its resolution 770 (1992) to ensure the free flow of humanitarian assistance, particularly, to the "safe areas" [in Bosnia and Herzegovina]; 15. Urges the Security Council, in fulfilling its responsibility under Article 24 of the Charter of the United Nations, to take all appropriate steps to uphold and restore fully the sovereignty, political independence, territorial integrity and unity of the Republic of Bosnia and Herzegovina, in cooperation with States Members of the United Nations and the Government of the Republic;

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
48/91 20 December 1993	Third Decade to Combat Racism and Racial Discrimination	<p>17. Also urges the Security Council to give all due consideration, on an urgent basis, to exempt the Republic of Bosnia and Herzegovina from the arms embargo as imposed on the former Yugoslavia under Security Council resolution 713 (1991) of 25 September 1991;</p> <p>21. Requests the Security Council to act immediately to close all detention camps in Bosnia and Herzegovina and further to close concentration camps established by the Serbs in Serbia and Montenegro and in Bosnia and Herzegovina and, until implementation, to assign international observers to those camps;</p> <p>27. Calls upon the Security Council to ensure that the proposals contained in the "Geneva peace package" are in conformity with Charter of the United Nations, the principles of international law, previous resolutions of the General Assembly and those adopted by the Security Council, and the principles adopted at the International Conference on the Former Yugoslavia.</p> <p style="text-align: center;">ANNEX</p> <p style="text-align: center;">Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (1993-2003)</p> <p style="text-align: center;">MEASURES TO ENSURE A PEACEFUL TRANSITION FROM APARTHEID TO A DEMOCRATIC, NON-RACIAL REGIME IN SOUTH AFRICA</p> <p>4. The General Assembly and the Security Council should ... continue to exercise constant vigilance with regard to South Africa until a democratic regime is installed in that country. These two bodies might, moreover, consider initiating a mechanism to advise and assist the parties concerned in order to bring apartheid to an end, not only in law</p>

<i>General Assembly resolution</i>	<i>Title of agenda item</i>	<i>Recommendation</i>
48/159 A 20 December 1993	Elimination of apartheid and establishment of a united, democratic and non-racial South Africa	but also in fact. International efforts towards the total eradication of apartheid and support for the establishment of a united, non-racial and democratic South Africa
49/10 ¹ 3 November 1994	The situation in Bosnia and Herzegovina	11. ... [R]equests the [Security] Council to continue to monitor effectively the strict implementation of [the] [mandatory arms] embargo [it imposed on South Africa]. 18. [U]rges the Security Council to implement fully its resolution 770 (1992) to ensure the free flow of humanitarian assistance, particularly to the safe areas [in Bosnia and Herzegovina]; 21. Urges the Security Council, in fulfilling its responsibility under Article 24 of the Charter of the United Nations, to take all appropriate steps to uphold and restore fully the sovereignty, political independence, territorial integrity and unity of the Republic of Bosnia and Herzegovina, in cooperation with States Members of the United Nations and the Government of the Republic; 22. Encourages the Security Council to give all due consideration and exempt the Governments of the Republic and of Federation of Bosnia and Herzegovina from the embargo on deliveries of weapons and military equipment originally imposed by the Council in resolution 713 (1991) of 25 September 1991 and as further outlined in the eighth preambular paragraph of the present resolution; 24. Requests the Security Council to act immediately to close all detention camps in Bosnia and Herzegovina and further to close concentration camps established by the Serbs in Serbia and Montenegro and in Bosnia and Herzegovina and, until implementation, to assign international observers to these camps.

¹ Letter dated 3 November 1994 from the representative of Pakistan to the President of the Security Council, requesting an urgent meeting of the Security Council to consider the situation in the Republic of Bosnia and

C. PRACTICE IN RELATION TO ARTICLE 12 OF THE CHARTER

Article 12

“1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters.”

NOTE

During the period under review, the Council did not request that the General Assembly make a recommendation in respect of a dispute or situation in accordance with the exception provided for in Article 12 (1). There was no discussion in the Security Council of the nature of the limitation placed by Article 12 (1) upon the authority of the General Assembly to make recommendations.

In accordance with Article 12 (2), the Secretary-General continued to notify the General Assembly of “matters relative to the maintenance of international peace and security which are being dealt with by the Security Council” and of matters with which the Council has ceased to deal.² These notifications were based upon the “Summary statement of matters of which the Security Council is seized and of the stage reached in their consideration”, circulated each week

Herzegovina in light of the adoption by the General Assembly of resolution 49/10. (S/2004/1248). At its 3454th meeting on 8 November 1994, the Security Council included the letter in its agenda, under the item entitled “The situation in the Republic of Bosnia and Herzegovina”, and considered the matter.

² See Notes by the Secretary-General entitled “Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations”: A/48/411 (20 Sept. 1993), Add.1 (16 Nov. 1993), Add. 2 (10 Dec. 1993) and Add. 3 (3 Aug. 1994); A/49/390 (15 Sept. 1994); A/50/442 (18 Sept. 1995) and Add. 1 (30 Jan. 1996). The latter informed the Assembly that the Security Council had decided (S/1996/55) to remove one item relating to the maintenance of international peace and security from the list of matters of which the Security Council is seized. That decision necessitated an amendment to the notification of 18 September 1995 (A/50/442).

to the members of the Security Council, in accordance with rule 11³ of the provisional rules of procedure of the Council. The items in the notifications were the same as those in the summary statements for the relevant period, apart from the omission of those items not considered to relate to the maintenance of international peace and security.

The matters being dealt with by the Security Council in the notifications have been listed since 1951 in two categories: (a) matters discussed during the period since the last notification; and (b) other matters of which the Council remained seized, but which it had not discussed at a formal meeting since the last notification. When the Council subsequently ceased to deal with a matter listed in a notification, the Secretary-General so informed the General Assembly through the circulation of an addendum to the relevant notification⁴ in the period under review. The addenda also indicated one instance in which the Council had altered the list of items of which it was seized, subsuming four previously discussed items under a single new item,⁵ as well as one instance in which the Council had concluded its consideration of a particular item.⁶

The consent of the Council for the notifications, required by Article 12 (2), was obtained through the circulation by the Secretary-General to the members of the Council of copies of the draft notifications. The General Assembly formally took note of the various notifications.

D. PRACTICE IN RELATION TO PROVISIONS OF THE CHARTER INVOLVING RECOMMENDATIONS BY THE SECURITY COUNCIL TO THE GENERAL ASSEMBLY

NOTE

On a number of matters, the United Nations Charter provides for joint decision-making by the Security Council and the General Assembly, but requires the decision by the Council to be taken first. This is the case, for instance, with respect to the appointment of the Secretary-General (Article 97), the admission, suspension, or expulsion of Members (Articles 4, 5, and 6) ,

³ Rule 11 reads as follows: “The Secretary-General shall communicate each week to the representatives on the Security Council a summary statement of matters of which the Security Council is seized and of the stage reached in their consideration”.

⁴ See, during the period under review, A/48/411/Add.1 (16 Nov. 1993), Add. 2 (10 Dec. 1993) and Add. 3 (3 Aug. 1994); A/50/442/Add. 1 (30 Jan. 1996).

⁵ See A/48/411/Add. 1.

⁶ See A/48/411/Add. 3.

and the conditions under which a State which is not a United Nations member may become a party to the Statute of the International Court of Justice (Article 93 (2)).

The Statute of the International Court of Justice provides for the Security Council to make recommendations to the General Assembly regarding the conditions under which a State which is a party to the Statute but is not a Member of the United Nations may participate in electing members of the Court, and in making amendments to the Statute (Articles 4 (3) and 69 of the Statute).

This section considers briefly the Council's practice during the period under review in relation to the admission of Members. No questions arose concerning the other matters.

1. Membership in the United Nations

NOTE

The admission of a State to membership in the United Nations, and the suspension or expulsion of a Member State from the Organization, is effected by "the General Assembly upon the recommendation of the Security Council" (Articles 4 (2), 5 and 6 of the Charter). In accordance with rule 60 of its provisional rules of procedure, the Council submits to the General Assembly within specified time limits its recommendation concerning each application for membership together with a record of its discussion of the application.

During the period under review, the Council recommended the admission of 7 States to membership in the United Nations.⁷ It made no negative recommendations, requiring it to submit a special report to the General Assembly. The Council did not discuss or recommend the suspension or expulsion of any Member.

Concerning the former Yugoslavia, the Council, in resolution 821 (1993) of 28 April 1993, reaffirmed that the Federal Republic of Yugoslavia (Serbia and Montenegro) could not continue automatically the membership of the former Socialist Federal Republic of Yugoslavia in the United Nations⁸; and therefore recommended to the General Assembly "that, further to the

⁷ Czech Republic (A/47/863, 8 January 1993); Slovak Republic (A/47/864, 8 January 1993); The former Yugoslav Republic of Macedonia (A/47/923, 7 April 1993); Eritrea (A/47/953, 26 May 1993); Principality of Monaco (A/47/954, 26 May 1993); Principality of Andorra (A/47/976, 9 July 1993); Republic of Palau (A/49/722, 30 November 1994). For the consideration by the Council of the aforementioned applications, see Chapter VII.

⁸ In its resolution 47/1 of 22 September 1992, the Assembly had, on the recommendation of the Council, decided

decision taken in resolution 47/1, it decide that the Federal Republic of Yugoslavia (Serbia and Montenegro) shall not participate in the work of the Economic and Social Council". The General Assembly so decided.⁹

2. Election of the judges of the International Tribunal for the former Yugoslavia and of the International Tribunal for Rwanda

NOTE

The procedure for the election of judges of the two Tribunals is set out in Article 13(2), (3) and (4) of the Statute of the International Tribunal for the former Yugoslavia and Article 12(2), (3), (4) and (5) of the Statute of the International Tribunal for Rwanda.¹⁰

In each case, in accordance with the Statute, the Secretary-General forwarded to the President of the Security Council the nominations received. The Security Council then convened a meeting, in accordance with the understanding reached in its prior consultations, and adopted a resolution establishing the list of candidates for judges. Subsequently, the President of the Security Council formally transmitted, via letter, the text of the resolution to the President of the General Assembly. The Assembly then proceeded to elect the judges from the list contained in that resolution.

CASE 1

At its 3265th meeting¹¹ on 20 August 1993, the Security Council adopted resolution 857 (1993) whereby, in accordance with Article 13(2)(c) of the Statute of the International Tribunal for the former Yugoslavia, it established a list of 23 candidates from which the General

that the Federal Republic of Yugoslavia (Serbia and Montenegro) should apply for membership in the United Nations and that it should not participate in the work of the General Assembly.

⁹ A/RES/47/229 of 29 April 1993.

¹⁰ For the text of the Statute of the International Tribunal for the former Yugoslavia, see S/26704, annex, which was adopted in Council resolution 827 (1993) of 25 May 1993. For the text of the Statute of the International Tribunal for Rwanda, see Council resolution 955 (1994) of 8 November 1994, annex.

¹¹ S/PV.3265.

Assembly could elect the 11 judges of the Tribunal. By a letter¹² of the same date, the President of the Security Council transmitted to the President of the General Assembly the text of resolution 857 (1993). During the forty-seventh session, at the 111th plenary meeting¹³ from 15 to 17 September 1993, in accordance with Article 13(2)(d) of the Statute, the General Assembly elected 11 judges for the Tribunal – that is, those candidates who received the absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining Permanent Missions at United Nations Headquarters. In accordance with Article 13(4) of the Statute, the judges were elected for a term of four years, beginning on 17 November 1993.

CASE 2

At its 3524th meeting¹⁴ on 24 April 1995, the Security Council adopted resolution 989 (1995) whereby, in accordance with Article 12(3)(c) of the Statute of the International Tribunal for Rwanda, it established a list of 12 candidates from which the General Assembly could elect the 6 judges of the Tribunal. In accordance with Article 12(2) of the Statute, the members of the Appeal Chamber of the International Tribunal for the former Yugoslavia would also serve as members of the Appeals Chamber of the International Tribunal for Rwanda. By a letter¹⁵ of the same date, the President of the Security Council transmitted to the President of the General Assembly the text of resolution 989 (1995). During the forty-ninth session, at the 103rd plenary meeting¹⁶ on 24 May 1995, in accordance with Article 12(3)(d) of the Statute, the General Assembly elected 6 judges for the Tribunal – that is, those candidates who received the absolute majority of the votes of States Members of the United Nations and of the non-member States maintaining Permanent Missions at United Nations Headquarters. In accordance with Article 12(5) of the Statute, the judges were elected for a term of four years, to begin, upon two months' notice, shortly before the commencement of trial proceedings.

¹² A/47/1003. Subsequently, one of the 23 candidates on the list decided to withdraw his candidacy.

¹³ A/47/PV.111.

¹⁴ S/PV.3265.

¹⁵ A/49/889.

E. REPORTS OF THE SECURITY COUNCIL TO THE GENERAL ASSEMBLY**Article 24 (3)**

“The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.”

Article 15 (1)

“The General Assembly shall receive and consider annual and special reports from the Security Council; these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.”

NOTE

In accordance with Article 24, paragraph 3, of the Charter, the Security Council continued during the period under review to submit annual reports to the General Assembly.¹⁷ Each report covered the period from 16 June of one year to 15 June of the next. The basic format of the report remained unaltered during this period, though the content contained in the “introduction” was expanded, beginning from the report covering the period 1993-1994. As before, the report comprised four main parts: Part I provided a summary of the questions considered by the Security Council under its responsibility for the maintenance of international peace and security; Part II dealt with “other matters” considered by the Council, such as the admission of new members to the United Nations, the election of members of the International Court of Justice, the appointment of the Prosecutor of the International Tribunals for the Former Yugoslavia and Rwanda, and Security Council documentation and working methods and procedure; Part III provided an account of the work of the Military Staff Committee; and Part IV noted matters that were brought to the attention of the Council but not discussed during the period covered by the report. Until 1992, the reports had been adopted at private meetings of the Security Council. On 30 June 1993, via a note¹⁸ by the President, the members of the Council indicated their agreement to the proposal that, thenceforth, the draft reports should be adopted at

¹⁶ A/49/PV.103.

¹⁷ Annual reports were adopted by the Security Council at the following public meetings: 48th report (covering the period 1992-1993), 3294th meeting, 19 October 1993; 49th report (covering the period 1993-1994), 3440th meeting, 18 October 1994; 50th report (covering the period 1994-1995), 3593rd meeting, 13 November 1995.

¹⁸ Note by the President (S/26015).

a public meeting of the Council. They also agreed to proposals concerning the timing of the submission of the report, the use of cross-referencing within the report, and the accessibility of the report in its draft version.¹⁹ In addition, on 29 March 1995, via a note²⁰ by the President, the members of the Council indicated their agreement to a number of proposals related to making the procedures of Security Council Sanctions Committees more transparent, including the proposal that the annual report should contain, in the introduction, more information about each Committee than it did at that time.

Thus, from 1993 onwards, a member of the Secretariat, at the request of the President of the Security Council, made an explanatory statement on the draft report at a public meeting²¹ of the Council, following which the Council adopted the report without a vote. The Council's decision was subsequently reflected in a note by the President.²²

For its part the General Assembly, in 1993, adopted resolution 47/233 in which, *inter alia*, it encouraged Member States to “participate actively in a substantive and in-depth discussion on, and consideration of, the reports of the Security Council”.²³ Subsequently, in 1994, the Assembly adopted resolution 48/264 in which it, *inter alia*, invited the President of the General Assembly to “propose appropriate ways and means to facilitate an in-depth discussion by the Assembly of matters contained in the reports submitted to it by the Security Council”.²⁴

In the General Assembly, the President of the Security Council introduced the Council's report, each year. His statement was followed, on each occasion, by discussion by the Member States.²⁵ Some of the points raised during the discussion were reflected in resolution 47/233, in

¹⁹ The relevant paragraphs of the Note read as follows: “1. The Security Council should take all the necessary measures to ensure the timely submission of its report to the General Assembly. For that purpose: (a) The Security Council should retain the existing practice whereby the annual report is submitted to the General Assembly in a single volume covering the period from 16 June of one year to 15 June of the next year; (b) The Secretariat should submit the draft report to the members of the Security Council no later than 30 September immediately following the period covered by the report, so that the report may be adopted by the Council in time for consideration by the Assembly during the main part of its regular session. 3. The appendices in the annual report of the Security Council listing the resolutions and presidential statements should provide cross-references to the relevant chapter, section and subsection of the report, for each resolution and presidential statement. 4. The draft annual report of the Security Council to the General Assembly should no longer be issued as a confidential document; it should be a document with a “limited distribution” designation, as is the common practice in other bodies of the United Nations”.

²⁰ Note by the President (S/1995/234).

²¹ See footnote 23. Also, refer to Chapter III, Part I(B) regarding the participation by the Secretariat in the proceedings of the Security Council.

²² See the following Notes by the President: S/26596 (which states that the Security Council adopted the report unanimously), S/1994/1176, S/1995/948.

²³ A/Res/47/233 of 14 Sept. 1993, on Revitalization of the work of the General Assembly para. 5.

²⁴ A/Res/48/264 of 29 July 1994, on Revitalization of the work of the General Assembly, para. 4.

²⁵ For the relevant Assembly debates, see A/48/PV.41, p.5 ff. and A/48/PV.42, p.1 ff.; A/49/PV.48, p.1 ff. and

which the General Assembly also encouraged the Council to “provide in a timely manner a clear and informative account of its work, including its resolutions and other decisions, inclusive of measures taken under Chapter VII of the Charter”.²⁶ Subsequently, following the conclusion of its debate on the Council’s report for the period 1995-1996²⁷, the General Assembly, in 1996, adopted resolution 51/193 in which it, *inter alia*, encouraged the Council to “provide, in a timely manner, a substantive, analytical and material account of its work” and called upon the Council to adopt a number of measures, which it outlined, in connection with the contents of future reports.²⁸ One such measure was the inclusion, as appropriate, of “information on the consultations of the whole undertaken prior to action or deliberation by the Council on issues within its mandate and on the process leading to such action”.

During the period covered by this Supplement, the Council did not submit any special reports to the Assembly (as, for example, under rule 60 (3) of the Council’s provisional rules of procedure)²⁹

F. RELATIONS WITH SUBSIDIARY ORGANS ESTABLISHED BY THE GENERAL ASSEMBLY

NOTE

Certain subsidiary organs established by the General Assembly have played a part in the work of the Security Council, either because they have been placed in a special relationship to the Council by resolution of the General Assembly, or because the Council has made use of the services of a subsidiary organ or invited its officers to participate in its meetings.

During the period under review, there was no constitutional discussion bearing on the relations between such subsidiary organs and the Security Council. Those subsidiary organs still

A/49/PV.49, p.1 ff.; A/50/PV.72, p.9 ff. and A/50/PV.73, p.1 ff.; and A/51/PV.65, p.9 ff., A/51/PV.66, p.1 ff. and A/51/PV.87, p.1 ff.

²⁶ A/Res/48/264 of 29 July 1994, on Revitalization of the work of the General Assembly, paras. 3 and 4.

²⁷ A/51/2. The report covered the period 16 June 1995 – 15 June 1996.

²⁸ A/Res/51/193 of 17 Dec. 1996, on Report of the Security Council, paras. 3 and 4(a)-(e). For further developments in 1996 concerning the Council’s annual report, see Chapter VI of the 13th Supplement to the *Repertoire*, covering the period 1996-1999.

²⁹ That rule provides that if the Security Council does not recommend an applicant State for membership or postpones the consideration of the application, it “shall submit a special report to the General Assembly with a complete record of the discussion”.

active included the following: the Special Committee on the Situation with regard to the Implementation of the Declaration of the Granting of Independence to Colonial Countries and Peoples; the Special Committee Against Apartheid; the Committee on the Exercise of the Inalienable Rights of the Palestinian People; and the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa. These entities submitted reports and recommendations to the Security Council, and/or to the General Assembly, as appropriate, pursuant to a request by the General Assembly. Two of them, the Intergovernmental Group to Monitor the Supply and Shipping of Oil and Petroleum Products to South Africa and the Special Committee against Apartheid, submitted their last communications, respectively, in November 1993 and June 1994. The mandate of the Intergovernmental Group was terminated by General Assembly resolution 48/159 C of 20 December 1993. The mandate of the Special Committee against Apartheid was terminated by General Assembly resolution 48/258 A of 23 June 1994, following the end of apartheid and the establishment of “a democratic and united, non-racial South Africa”³⁰.

The Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People participated in meetings of the Council. The President of the Council participated in two meetings of the Committee commemorating the International Day of Solidarity with the Palestinian People during the period covered by the present Supplement.³¹

The tabulations below give an account of the communications from these organs to the Council; their participation in Council meetings is recorded in Chapter III of the present *Supplement*. During the period under consideration, no decisions adopted by the Security Council contained references to these entities. The Council did, however, mention four other subsidiary organs (see cases 3-6) established by the General Assembly in its decisions.

CASE 3

Continuing its consideration of the report of the Secretary-General entitled “An Agenda for Peace: preventive diplomacy, peacemaking and peace-keeping”,³² the Security Council

³⁰ Para. 3.

³¹ For the relevant verbatim records, see: A/AC.183/PV.202; and A/AC.183/PV.218.

³² S/24111.

acknowledged the contributions made by the Special Committee on Peace-keeping Operations, on the same subject. In a statement³³ of 28 May 1993, the President said:

“The Security Council has studied thoroughly the recommendations of the Secretary-General contained in ‘An Agenda for Peace’. It pays tribute to the valuable contributions made by the Special Committee on Peace-keeping Operations and other relevant bodies of the General Assembly. These discussions and consultations make it possible to formulate more clearly the common priorities of the Member States. [...]

In a subsequent statement³⁴ made on 3 May 1994, the President touched on the Special Committee’s consideration of the report of the Secretary-General entitled “Improving the capacity of the United Nations for peace-keeping”³⁵.

“The Security Council notes that the report ‘Improving the capacity of the United Nations for peace-keeping’ has been transmitted to the General Assembly and also notes that the Special Committee on Peace-keeping Operations has made recommendations on the report.”

CASE 4

In several decisions taken during the period under review, in connection with the item entitled “The question concerning Haiti”, the Council expressed support for, and acknowledged the contribution of, the International Civilian Mission to Haiti (MICIVIH). The United Nations participation in this Mission had been authorized by General Assembly resolution 47/20 B of 20 April 1993 in connection with the item entitled “The situation of democracy and human rights in Haiti”.

By its resolution 867 (1993) of 23 September 1993, adopted at its 3282nd meeting, the Security Council authorized the establishment and immediate dispatch of the United Nations Mission in Haiti (UNMIH). In paragraph 5 of the same resolution, the Council welcomed the intention of the Secretary-General to place the peace-keeping mission under the oversight of the

³³ S/25859.

³⁴ S/PRST/1994/22.

³⁵ S/26450.

Special Representative of the Secretaries-General of the United Nations and of the Organization of American States, who also oversaw the activities of MICIVIH.

In a statement³⁶ made at the Council's 3403rd meeting, on 12 July 1994, the President, on behalf of the Council, condemned the decision of the "illegal de facto regime and military leadership in Haiti" to expel from the country the joint United Nations/Organization of American States International Civilian Mission (MICIVH), "whose work ha[d] the highest approbation of the Council and whose mandate [had been] extended by the ... General Assembly on 8 July 1994 (A/RES/48/27 B)".

In its resolutions 944 (1994) and 948 (1994) of 29 September and 15 October 1994, adopted at the 3430th and 3437th meetings, respectively, the Council, *inter alia*, expressed support for the immediate return to Haiti of MICIVIH.

Following the return to Haiti of President Jean-Bertrand Aristide, and the subsequent return of MICIVIH, the Council, in 1995, took three decisions³⁷ in which, *inter alia*, it expressed its appreciation for the work of that mission, particularly for its assistance with the electoral process in Haiti. In the last of these decisions, the Council also expressed its confidence that "the Special Representative of the Secretary-General, UNMIH and UN/OAS MICIVIH [would] continue to assist the Government and the people of Haiti".

CASE 5

In four statements made during the period under review, in connection with the situation in Afghanistan, the President, on behalf of the Council, supported a special mission to the country authorized by the General Assembly. In a statement³⁸ made at the Council's 3330th meeting, on 24 January 1994, he stated:

"The Council notes General Assembly resolution 48/208 requesting the Secretary-General to dispatch as soon as possible a United Nations special mission to Afghanistan to canvass a broad spectrum of Afghanistan's leaders to solicit their views on how the United Nations can best assist Afghanistan in facilitating national

³⁶ S/PRST/1994/32.

³⁷ S/RES/975 (1995), adopted at the 3496th meeting, on 30 January 1995; S/Res/1007 (1995), adopted at the 3559th meeting, on 31 July 1995; and Statement by the President (S/PRST/1995/55) made at the 3594th meeting, on 16 November 1995.

³⁸ S/PRST/1994/4.

rapprochement and reconstruction. The Council welcomes the reaffirmation of support for such a mission issued on 12 January 1994 by the Secretary-General and his intention to dispatch this mission.”

In a subsequent statement³⁹ made at the Council’s 3353rd meeting, on 23 March 1994, the President said:

“The Council welcomes the Secretary-General’s appointment of a special mission to Afghanistan, in accordance with General Assembly resolution 48/208. [...] The Council supports this mission, which is due to leave Geneva soon, and urges all Afghans to assist it in carrying out its mandate and thus promote a cessation of hostilities, the resumption of humanitarian aid and the restoration of peace in Afghanistan.”

In a third statement⁴⁰ made at the Council’s 3415th meeting, on 11 August 1994, the President stated:

“The [Council] notes with appreciation the efforts of the United Nations Special Mission to Afghanistan in accordance with General Assembly resolution 48/208, headed by Ambassador Mahmoud Mestiri, and welcomes his progress report of 1 July 1994 (S/1994/766), in particular the recommendations contained in paragraph 40 [on “the first phase of a re-engaged United Nations effort” in Afghanistan] of the report.

The Council expresses its appreciation for the cooperation the Afghan people and leaders provided to the Special Mission. It calls on all Afghans to continue to work with the Special Mission as it seeks to help Afghans begin a peaceful political process to end their differences.”

Finally, in a statement⁴¹ made at the Council’s 3474th meeting, on 30 November 1994, the President stated:

“The Security Council notes with appreciation the progress made by the United Nations Special Mission to Afghanistan, led by Ambassador Mahmoud Mestiri, and the report of the Secretary-General of 22 November 1994 (A/49/688).

The Security Council fully supports the Special Mission’s broad-based consultations with Afghan representatives and its proposals to bring about an end to the factional fighting, institute a process of political reconciliation and begin the tasks of rehabilitation and reconstruction of Afghanistan.

³⁹ S/PRST/1994/12.

⁴⁰ S/PRST/1994/43.

⁴¹ S/PRST/1994/77.

[...]

Recognizing that the rehabilitation, reconstruction and development of war-torn Afghanistan will be dependent in large part upon the progress made towards the establishment of a reliable cease-fire and the development of a viable political process, the Security Council urges all States to support the peacemaking proposals of the Special Mission and to recognize its primary role in the peacemaking process.”

CASE 6

At its 3583rd meeting, held at the level of Foreign Ministers, on 26 September 1995, the Council met to commemorate the Fiftieth Anniversary of the United Nations. At the conclusion of the meeting, the President made a statement⁴² on behalf of the Council in which she, *inter alia*, took note of the conclusion of the Working Group of the General Assembly on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council . This entity had been established by the General Assembly by resolution 48/26 of 3 December 1993 and its mandate had been extended annually thereafter.⁴³ Thus, commenting on the subject of “strengthening” and “revitalizing” the United Nations, the President of the Security Council stated:

“[The members of the Security Council] take note of the conclusions of the Working Group of the General Assembly on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters Related to the Security Council, *inter alia*, that the Council should be expanded, and that its working methods should continue to be reviewed, in a way that further strengthens its capacity and effectiveness, enhances its representative character and improves its working efficiency and transparency; and that important differences on the key issues continue to exist.”

⁴² S/PRST/1995/48.

⁴³ See General Assembly decisions 48/498, 49/499 and 50/489.

1. Communications from subsidiary organs established by the General Assembly

(a) COMMUNICATIONS FROM THE SPECIAL COMMITTEE AGAINST APARTHEID

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/25895	16.6.93	Letter dated 2 June 1993 from the Chairman submitting the report of his mission to South Africa, from 1 to 11 March 1993.
S/26048	7.7.93	Letter dated 7 July 1993 from the Chairman transmitting the following texts: the Declaration of the International Conference on Southern Africa: Making Hope a Reality, held in London on 14-15 June 1993; the report of the Secretary of the Conference; and the Appeal of its Conveners.
S/26714	17.11.93	Letter dated 3 November 1993 from the Chairman submitting the report of the Special Committee against Apartheid, in which, <i>inter alia</i> , the Special Committee recommended (para. 247 (f)) that the General Assembly request that mandatory measures imposed by the Security Council with regard to South Africa remain in effect and urge Member States to continue to respect them until the Council, in response to the election of a non-racial and democratic Government, may decide to lift them.
S/1994/261	7.3.94	Letter dated 3 March 1994 from the Acting Chairman transmitting the texts of his opening statement, the keynote address and the concluding remarks made at the International Briefing on South Africa's First Democratic and Non-Racial Elections, held at Brussels from 28 February to 1 March 1994.
S/1994/383	5.4.94	Letter dated 31 March 1994 from the Chairman submitting the report of his mission to South Africa, from 28 February to 6 March 1994.
S/26714/Add.1	14.6.94	Letter dated 14 June 1994 from the Chairman submitting the addendum to the report of the Special Committee against Apartheid, in which the Special Committee noted that the system of apartheid having been brought to an end, it had fulfilled its mandate in accordance with the provisions of relevant General Assembly resolutions and had successfully concluded its work.

(b) COMMUNICATIONS FROM THE COMMITTEE ON THE EXERCISE OF THE INALIENABLE RIGHTS OF THE PALESTINIAN PEOPLE

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/25464	23.3.93	Letter dated 23 March 1993 from the Chairman drawing attention to the increasingly grave situation in the occupied Palestinian territory since the deportation of over 400 Palestinians in mid-December, and appealing to the Security Council to take the necessary measures to provide appropriate protection to the Palestinian people.

S/25862	28.5.93	Letter dated 28 May 1993 from the Chairman drawing attention to the serious situation in the occupied Palestinian territory as a result of Israel's prolonged and indefinite closure of the West Bank and Gaza Strip and the isolation of East Jerusalem since 30 March, and stating that it was of the utmost importance for the international community as a whole, and the High Contracting Parties to the Fourth Geneva Convention in particular, to take all necessary measures to ensure the safety and protection of Palestinian civilians, particularly children, living under Israeli occupation.
S/1994/220	25.2.94	Letter dated 25 February 1994 from the Chairman drawing attention to the tragic massacre of unarmed Palestinian worshippers in Hebron, and calling on all concerned to do everything possible to surmount current obstacles in the "peace negotiations" and to advance towards full implementation of the agreements that had been reached.
S/1995/50	18.1.95	Letter dated 17 January 1995 from the Chairman expressing concern at the growing Israeli settlement activity in the occupied West Bank, and appealing to the Secretary-General, the Security Council, the co-sponsors of the peace process and all others concerned to exert their influence on the Israeli Government to end its settlement policy.

(c) COMMUNICATIONS FROM THE INTERGOVERNMENTAL GROUP TO MONITOR THE SUPPLY AND SHIPPING OF OIL AND PETROLEUM PRODUCTS TO SOUTH AFRICA

<i>Document symbol</i>	<i>Date</i>	<i>Subject</i>
S/26789	22.11.93	Letter dated 3 November 1993 from the Chairman transmitting the report of the Intergovernmental Group, which, <i>inter alia</i> , concluded that the changes in South Africa were sufficiently profound and irreversible to warrant the lifting of the oil embargo against South Africa (para. 31) and recommended to the General Assembly that, provided that the Transitional Executive Council was operational at that time, the mandate of the Intergovernmental Group be terminated upon the adoption of the present report by the Assembly (para. 35).

PART II**RELATIONS WITH THE ECONOMIC AND SOCIAL COUNCIL****A. PRACTICE IN RELATION TO ARTICLE 65 OF THE CHARTER****Article 65**

“The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.”

NOTE

During the period under consideration, the Security Council did not formally address a request for information or assistance to the Economic and Social Council (ECOSOC) nor mention Article 65 in its decisions. The Security Council did, however, receive information from the ECOSOC, through one of its subsidiary bodies, the Commission on Human Rights, about grave human rights abuses and violations of international humanitarian law identified by the Security Council as being of concern in three situations before the Security Council: respectively, the situation between Iraq and Kuwait; the situation in the former Yugoslavia; and the situation concerning Rwanda. These instances are dealt with in cases 7-9 below. The Security Council also received information in relation to the situation in Burundi from a commission of inquiry established by the Secretary-General at its request. The commission's report included information provided by the Special Rapporteur of the United Nations Commission on Human Rights. This is dealt with in case 10.

In his report entitled “An agenda for peace: preventive diplomacy, peacemaking and peace-keeping”, submitted in 1992 at the request of the Security Council, the Secretary-General had touched upon the potential relevance of Article 65 as part of an early warning system. He had recommended “that the Security Council invite a reinvigorated and restructured Economic and Social Council to provide reports, in accordance with Article 65 of the Charter, on those economic and social developments that may, unless mitigated, threaten international peace and security”. During the period under review, in a follow-up report⁴⁴ entitled “Implementation of the recommendations contained in an ‘Agenda for Peace’”, the Secretary-General recalled his

⁴⁴ See S/25944, para. 42.

earlier recommendation and expressed the hope that discussion would continue on ways to put it into practice. In a subsequent report⁴⁵ entitled “Supplement to an agenda for peace: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations”, the Secretary-General did not expressly refer to the Economic and Social Council. The Security Council discussed the “Supplement” at its 3492nd meeting, on 18 and 19 January 1995. One Council member, echoed by two additional speakers, supported cooperation between the Security Council and the Economic and Social Council to help better identify and address economic and social tensions before the outbreak of conflict or after its conclusion.⁴⁶

CASE 7

(The situation between Iraq and Kuwait)

At each of its 49th, 50th and 51st sessions, respectively, the Commission on Human Rights adopted a resolution⁴⁷, in which it extended, for one year, the mandate of the Special Rapporteur on the situation of human rights in Iraq. In each of the three resolutions, the Commission requested the Special Rapporteur to submit an interim report to the General Assembly as well as a report to the Commission on Human Rights.

In his interim report⁴⁸ of 18 November 1993, the Special Rapporteur concluded, *inter alia*, that a number of acts of the Government of Iraq constituted a policy of repression in violation of paragraph 2 of Security Council resolution 688 (1991). He also concluded that the continuing difficulties in facilitating the humanitarian work of international organizations in the country constituted a violation of paragraph 3 of the same resolution.

By a letter⁴⁹ dated 7 December 1993, the representative of Hungary drew the attention of the President of the Security Council to the interim report of the Special Rapporteur, highlighting the references made therein to resolution 688 (1991), and asked that it be circulated as a document of the Security Council.

⁴⁵ S/1995/1.

⁴⁶ S/PV.3492: United States, p. 24. S/PV.3492/Rev.1: Canada, p. 32. S/PV.3492/Rev.2: Ireland, p. 18.

⁴⁷ Commission on Human Rights resolutions 1993/74 of 10 February 1993, 1994/74 of 9 March 1994 and 1995/76 of 8 March 1995.

⁴⁸ A/48/600, paras. 61 and 81.

⁴⁹ S/26869.

CASE 8

(The situation in the former Yugoslavia)

At each of its 49th, 50th and 51st sessions, respectively, the Commission on Human Rights adopted a resolution in which it extended, for one year, the mandate of the Special Rapporteur on the situation of human rights in the territory of the former Yugoslavia. In each of the three resolutions,⁵⁰ the Commission requested the Special Rapporteur to continue to submit periodic reports, as appropriate, to the Commission on Human Rights and the General Assembly, and requested the Secretary-General to continue to make the reports of the Special Rapporteur available also to the Security Council. The Secretary-General did so via notes,⁵¹ to which the reports were annexed.

At its 3612th meeting, on 21 December 1995, the Security Council adopted resolution 1034 (1994) on the situation in Bosnia and Herzegovina. The Council affirmed that the violations of humanitarian law and human rights in the areas of Srebrenica, Zepa, Banja Luka and Sanski Most from July to October 1995 had to be fully and properly investigated by “the relevant United Nations and other international organizations and institutions”. It demanded that the Bosnian Serb party give immediate and unrestricted access to the areas in question, including for the purpose of the investigation of the atrocities, to representatives of “the relevant United Nations and other international organizations and institutions, including the Special Rapporteur of the Commission on Human Rights”.

CASE 9

(The situation concerning Rwanda)

At its third special session, the Commission of Human Rights adopted a resolution,⁵² in the preambular part of which it, *inter alia*, recalled the request⁵³ of the Security Council to the

⁵⁰ Commission on Human Rights resolutions 1993/7 of 23 February 1993, 1994/72 of 9 March 1994 and 1995/89 of 8 March 1995.

⁵¹ S/26469 of 28 September 1993; S/26383 of 30 August 1993; S/26415 of 8 September 1993; S/26765 of 20 November 1993; S/1994/265 of 7 March 1994; S/1994/743 of 23 June 1994; S/1994/967 of 9 August 1994; S/1994/1252 of 4 November 1994; S/1995/79 of 26 January 1995; S/1995/80 of 27 January 1995; S/1995/597 of 19 July 1995; S/1995/801 of 18 September 1995; S/1995/933 of 27 November 1995.

⁵² Commission on Human Rights resolution S-3/1 of 25 May 1994.

⁵³ See the Statement by the President of the Security Council (S/PRST/1994/16) of 7 April 1994, para. 1, and

Secretary-General to collect information on the responsibility for the tragic incident that had resulted in the deaths of the Presidents of Rwanda and Burundi. In the operative part, the Commission requested its Chairman to appoint a special rapporteur to investigate first-hand the human rights situation in Rwanda. It also requested the Secretary-General to make the report of the Special Rapporteur available to the Economic and Social Council, the General Assembly and the Security Council. The Secretary-General did so via notes,⁵⁴ to which the reports were annexed.

At its 3388th meeting, on 8 June 1994, the Security Council unanimously adopted resolution 925 (1994) on the situation concerning Rwanda. In the preambular part of this resolution, the Council noted the appointment, by the United Nations Commission on Human Rights, of a Special Rapporteur for Rwanda. In the operative part, the Council, *inter alia*, requested the Secretary-General to ensure that the United Nations Mission for Rwanda (UNAMIR) extended close cooperation to the Special Rapporteur. During the discussion, the representative of China expressed reservations on “the resolution’s elements relating to the human rights rapporteur”. Recalling that the United Nations Charter contained explicit provisions on the mandates of the Security Council, the General Assembly and other United Nations organs, he stressed that the Council should “refrain from involvement in activities that [went] beyond its mandate”. He added that his delegation was “not in favour of wilfully linking the work of the Council with that of other organs”.⁵⁵ Conversely, the representative of New Zealand welcomed “the recognition given in [the] resolution to the importance of close cooperation between UNAMIR and the activities of the...recently-appointed United Nations Special Rapporteur for Rwanda”.⁵⁶ The representative of the Czech Republic spoke of “going...beyond the horizon of today’s draft resolution”, suggesting that in future the Council might wish to request the Special Rapporteur to report to it directly.⁵⁷

Subsequently, at its 3400th meeting, on 1 July 1994, the Security Council unanimously adopted resolution 935 (1994), in the preambular part of which it again noted the appointment of the Special Rapporteur. By the operative part, the Council, *inter alia*, requested the Secretary-General to establish a commission of experts which would provide to him its conclusions on the

S/RES/1994 of 21 April 1994, para. 2.

⁵⁴ S/1994/1157 of 13 October 1994 and Add. 1 of 14 November 1994; S/1995/915 of 2 November 1995.

⁵⁵ S/PV.3388, p. 12.

⁵⁶ *Ibid.*, pp. 9-11.

evidence of grave violations of international humanitarian law committed in the territory of Rwanda, and also requested the Secretary-General to make the information submitted to the Special Rapporteur available to the Commission of Experts and to facilitate adequate coordination and cooperation between the work of the Commission of Experts and the Special Rapporteur in the performance of their respective tasks. At the Council meeting, the representative of China reiterated his reservations on the involvement of the Council in matters within the purview of other organs, whereas other Council members stressed the need for close cooperation between the Special Rapporteur and the Commission of Experts.⁵⁸

CASE 10

(The situation in Burundi)

At its 3571st meeting, on 28 August 1995, the Security Council adopted resolution 1012 (1995) on the situation in Burundi. By this resolution, the Council requested the Secretary-General to establish an international commission of inquiry which would, *inter alia*, establish the facts relating to the assassination of the President of Burundi on 21 October 1993, the massacres and other related acts of violence that followed. By the same resolution, the Council called upon States, “relevant United Nations bodies” and, as appropriate, international humanitarian organizations to collate substantiated information in their possession relating to the above-mentioned acts, to make such information available as soon as possible and to provide appropriate assistance to the commission of inquiry. The Commission of Inquiry noted in its final report⁵⁹ that it had, in the course of its work, met with the Special Rapporteur of the United Nations Commission on Human Rights for Burundi.

⁵⁷ Ibid., pp. 3-4.

⁵⁸ S/PV.3400: China, p. 7; United States, pp. 3-4; France, p. 5.

⁵⁹ S/1996/682, para. 35

PART III

RELATIONS WITH THE TRUSTEESHIP COUNCIL

NOTE

This part of Chapter VI concerns the relationship between the Security Council and the Trusteeship Council in relation to those trust territories designated as “a strategic area or areas”, under Articles 77 and 82 of the Charter. Article 83, paragraph 1, provides that “all functions of the United Nations” relating to strategic areas – “including the approval of the terms of the trusteeship agreement and of their alteration or amendment” – are to be exercised by the Security Council. Article 83, paragraph 2, further provides that the Security Council shall avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social and educational matters in the strategic areas”. Those supervisory functions are specified in Articles 87 and 88 of the Charter. Only one territory, the Pacific Islands, was placed under a trusteeship agreement as a strategic area and the agreement was approved by the Security Council in resolution 21 of 2 April 1947.

During the period under review, the Security Council adopted a resolution terminating the applicability of the Trusteeship Agreement for the Pacific Islands with respect to Palau. Palau was the sole remaining Trust Territory of the Pacific Islands and the last Trust Territory under the International Trusteeship system to have attained independence (case 12). The Trusteeship Council had thus completed its mandate under the Charter. On 25 May 1994, the Trusteeship Council adopted an amendment to its rules of procedure under which it no longer needed to meet regularly.⁶⁰

⁶⁰ Trusteeship Council resolution 2200 (LXI), adopted on 25 May 1994.

A. PRACTICE RELATING TO THE TERMINATION OF A TRUSTEESHIP AGREEMENT UNDER ARTICLE 83, PARAGRAPH 1

CASE 12

By a letter⁶¹ dated 2 November 1994, the President of the Trusteeship Council transmitted to the President of the Security Council a draft resolution recommended for adoption by the Council on the termination of the Trusteeship Agreement for the Trust Territory of the Pacific Island (Palau). In the draft resolution, the Council would determine, in the light of the entry into force on 1 October 1994 of the new status agreement⁶² for Palau, that the objectives of the Trusteeship Agreement had been fully attained, and that the applicability of the Trusteeship Agreement had terminated with respect to Palau.

At its 3455th meeting, on 10 November 1994, the Council included the above letter in its agenda. Following the adoption of the agenda, the draft resolution was put to the vote and adopted unanimously as resolution 956 (1994). Speaking in explanation of vote, the representative of France acknowledged that with Palau's accession to independence, the Trusteeship Council had successfully completed the task entrusted to it under the Charter with respect to those territories placed under the Trusteeship System following the Second World War. He cautioned, however, against an amendment to the Charter to terminate the legal existence of the Trusteeship Council, arguing that a recent amendment of its rules of procedure, under which the Trusteeship Council would no longer need to meet regularly, reduced to a minimum the budgetary implications of its continuation, and thus obviated the need to modify its status. The speaker concluded by stating that the Trusteeship Council remained an instrument that the international community could resort to if necessary.⁶³

⁶¹ S/1994/1234.

⁶² Palau entered a Compact of Free Association with its former Administering Authority, the United States, on 1 October 1994.

⁶³ S/PV.3455, pp. 2-3.

B. TRANSMISSION TO THE SECURITY COUNCIL BY THE TRUSTEESHIP COUNCIL OF REPORTS

Between 1 January 1993 and 31 December 1995, the Secretary-General transmitted to the Council the following reports of the Trusteeship Council on the Trust Territory of the Pacific Islands, which continued to be the only Territory designated as a strategic area:

- (a) Forty-fifth report, covering the period from 22 December 1992 to 18 January 1994;⁶⁴
and
- (b) Forty-sixth report, covering the period from 19 January to 1 November 1994.⁶⁵

⁶⁴S/1994/346.

⁶⁵S/1994/1400.

Part IV**RELATIONS WITH THE INTERNATIONAL COURT OF JUSTICE****NOTE**

This Part concerns the relationship between the Security Council and the International Court of Justice. Section A deals with the election of the members of the Court, which requires that action be taken by the Security Council in conjunction with the General Assembly, but with both organs proceeding independently. During the period under review, five elections took place to elect nine members to fill casual and regular vacancies (see cases 13-17). Section B notes the discussion that continued in the Security Council regarding the respective roles of the Council and the Court, in connection with the situation concerning the alleged involvement of Libyan nationals in the destruction of two civilian airliners (see case 18). It also deals with two instances where the Council took decisions: noting an Order of the Court, in connection with the situation in Bosnia and Herzegovina (see case 19); and assisting the parties, Libya and Chad, in implementing a Judgment of the Court concerning their territorial dispute (see case 21). An instance is also described where the members of the Council, via letter, welcomed the referral to the Council of a dispute between Cameroon and Nigeria concerning the peninsula of Bakassi, to the Court (see case 20).

A. PRACTICE IN RELATION TO THE ELECTION OF MEMBERS OF THE INTERNATIONAL COURT OF JUSTICE

The procedure for the election of members of the Court is set out in Articles 4 and 8, and 10 to 14 of the Statute of the International Court of Justice; Rules 150 and 151 of the rules of procedure of the General Assembly; and Rules 40 and 61 of the provisional rules of procedure of the Security Council.

For each of the five elections that took place during this period, the Security Council began the election procedure to fill a vacancy, or vacancies, by fixing the date of election, in accordance with Article 14 of the Court's Statute.⁶⁶ The Security Council and the General Assembly then proceeded independently with the elections.⁶⁷ At the Security Council meetings, the President of the Council drew attention to a memorandum⁶⁸ by the Secretary-General describing the composition of the Court and setting out the procedure to be followed in the conduct of the election. He reminded the Council that, Article 10, paragraph 1 of the Court's Statute provides that, "Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected", adding that the required majority in the Security Council was, therefore, eight votes. He explained further that the voting would be by secret ballot.

CASE 13

At its 3209th meeting, on 10 May 1993, the Council met to elect a member of the ICJ, to fill a vacancy in the Court caused by the death of one of its members. On the first ballot, one candidate obtained the required majority of votes in the Council. The President stated that he would communicate the result of the vote to the President of the General Assembly, and requested the Council to remain in session until the result of the voting in the General Assembly had been received. Subsequently, he informed members of the Council that he had received a letter from the President of the General Assembly informing him that the same candidate had received an absolute majority in the General Assembly at its 103rd plenary meeting. The candidate in question was therefore elected a member of the ICJ. As the new member was elected to replace a member whose term of office had not expired, he was elected to the remainder of his predecessor's term of office, expiring on 5 February 1994

CASE 14

⁶⁶ In four of the five instances, the Council adopted resolutions (see S/RES/805 (1993), S/RES/951 (1994), S/RES/979 (1995) and S/RES/980 (1995)) fixing the date of the election; in the remaining instance, relating to the election to fill regular vacancies, it appears that the Council informally set the date of the election.

⁶⁷ For the verbatim records of the relevant Security Council meetings, see: S/PV.3209; S/PV.3309-3311th; S/PV.3493; S/PV.3546; and S/PV.3552. For the verbatim records of the relevant General Assembly plenary meetings, see: A/47/PV.103; A/48/PV.51-53; A/49/PV.96; A/49/PV.104; and A/49/PV.105.

At its 3309th meeting⁶⁹, on 10 November 1993, the Council proceeded with the election of five members of the International Court of Justice, to fill the seats which would become vacant on 5 February 1994. At the outset, the President of the Council reported his decision to the Council not to preside over its proceedings in connection with the election of five members of the International Court of Justice and to invite the President for the following month to assume the Presidential Chair⁷⁰. He noted that having fully considered the exceptional circumstances of the case – the President himself having been among the candidates for election to the International Court of Justice – he had reached the conclusion to act within the discretion of rule 20⁷¹ of the Council’s provisional rules of procedure.

The election required three meetings⁷². On the first ballot, five candidates obtained the required majority of votes in the Council. The Council then remained in session until the result of the voting in the 51st plenary meeting of the General Assembly had been received. The results, when compared, revealed that the Security Council and the General Assembly had agreed on four candidates. Those four candidates had therefore been elected as members of the Court for a term of office of nine years, beginning on 6 February 1994. The President of the Council then stated that, in accordance with Article 11 of the Statute of the Court, the Council would proceed to hold a new meeting to elect one candidate, by further ballot, for the seat remaining to be filled. He accordingly adjourned the first meeting and called to order the second meeting – the 3310th meeting.⁷³ On the first ballot, one candidate received the required majority of votes in the Council. However, in the 52nd plenary meeting of the General Assembly, a different candidate received the absolute majority of votes. Having been informed of this result, the President of the Council announced that the Council would have to proceed to a third meeting on the item. At

⁶⁸ See, e.g., S/26489.

⁷⁰ Refer to Chapter I, Part III, Case 3.

⁷¹ Rule 20 states: “Whenever the President of the Security Council deems that for the proper fulfilment of the responsibilities of the presidency he should not preside over the Council during the consideration of a particular question with which the member he represents is directly connected, he shall indicate his decision to the Council. The presidential chair shall then devolve, for the purpose of the consideration of that question, on the representative of the member next in English alphabetical order, it being understood that the provisions of this rule shall apply to the representatives on the Security Council called upon successively to preside. This rule shall not affect the representative capacity of the President as stated in rule 19, or his duties under rule 7”.

⁷² S/PV.3310; 3311 and 3312

⁷³ S/PV.3310.

the 3311th meeting⁷⁴ of the Security Council and the 53rd plenary meeting of the General Assembly, held in accordance with Article 11 of the Statute of the Court, the same candidate received the required majority of votes in the Council and the absolute majority of votes in the Assembly and was therefore elected a member of the International Court of Justice for a term of office of nine years, beginning on 6 February 1994.

CASE 15

At its 3493rd meeting, on 26 January 1995, the Council met to elect a member of the ICJ, to fill a vacancy in the Court caused by the death of one of its members. On the first ballot, one candidate obtained the required majority of votes in the Council. The President stated that he would communicate the result of the vote to the President of the General Assembly, and requested the Council to remain in session until the result of the voting in the General Assembly had been received. Subsequently, he informed members of the Council that he had received a letter from the President of the General Assembly informing him that the same candidate had received an absolute majority in the General Assembly at its 96th plenary meeting. The candidate in question was therefore elected a member of the ICJ. As the new member was elected to replace a member whose term of office had not expired, he was elected to the remainder of his predecessor's term of office, expiring on 5 February 1997

CASE 16

At its 3546th meeting, on 21 June 1995, the Council met to elect a member of the ICJ, to fill a vacancy in the Court caused by the death of one of its members. On the first ballot no candidate obtained the required majority of votes in the Council. The Council thus proceeded to a second ballot, in accordance with rule 61 of the provisional rules of procedure. No candidate obtained the required majority of votes in the Council on the second, nor on the subsequent ballot. The Council thus proceeded to a fourth ballot. The President stated that he would communicate the result of the vote to the President of the General Assembly, and requested the Council to remain in session until the result of the voting in the General Assembly had been

⁷⁴ S/PV.3311.

received. Subsequently, he informed members of the Council that he had received a letter from the President of the General Assembly informing him that the same candidate had received an absolute majority in the General Assembly at its 104th plenary meeting. The candidate in question was therefore elected a member of the ICJ. As the new member was elected to replace a member whose term of office had not expired, he was elected to the remainder of his predecessor's term of office, expiring on 5 February 1997.

CASE 17

At its 3552nd meeting, on 12 July 1995, the Council met to elect a member of the ICJ, to fill a vacancy in the Court caused by the resignation of one of its members. On the first ballot, one candidate obtained the required majority of votes in the Council. The President stated that he would communicate the result of the vote to the President of the General Assembly, and requested the Council to remain in session until the result of the voting in the General Assembly had been received. Subsequently, he informed members of the Council that he had received a letter from the President of the General Assembly informing him that the same candidate had received an absolute majority in the General Assembly at its 105th plenary meeting. The candidate in question was therefore elected a member of the ICJ. As the new member was elected to replace a member whose term of office had not expired, he was elected to the remainder of his predecessor's term of office, expiring on 5 February 2000.

B. CONSIDERATION OF THE RELATIONSHIP BETWEEN THE SECURITY COUNCIL AND THE COURT

CASE 18

During the period under review, the Security Council continued its consideration of the situation concerning the alleged involvement of Libyan nationals in the destruction of two

civilian aircraft (Pan Am flight 103 over Lockerbie, Scotland, in 1988 and UTA flight 772 over Niger in 1989). In particular, in 1993, the Council intensified the sanctions against Libya, on the basis of its determination that Libya's continued failure to demonstrate by concrete action its renunciation of terrorism, and in particular its continued failure to respond fully and effectively to the requests and decisions in resolutions 731 (1992) and 748 (1992) concerning full cooperation in establishing responsibility for the terrorist acts, constituted a threat to international peace and security. Meanwhile, Libya's Applications⁷⁵ before the International Court of Justice, contending that the acts alleged in the indictment by the United States and the United Kingdom of the two accused Libyan nationals constituted an offence under the 1971 Montreal Convention and should be dealt with within the framework of that Convention, remained pending for judgment. Thus, on the occasion of the expansion of the sanctions against Libya, some discussion again arose concerning the respective roles of the Council and the Court.

At its 3312th meeting, on 11 November 1993, the Council adopted resolution 883 (1993) whereby, acting under Chapter VII of the Charter, it expanded the sanctions against Libya.⁷⁶ At the same meeting, speaking before the vote, the representative of Libya challenged the argument that the Security Council was considering a matter that threatened international peace and security. He contended that the matter should be dealt with by the Council under Chapter VI, instead of Chapter VII, of the Charter, due to the fact that the issue in question was a legal dispute over which country had the competence to try the two accused Libyan nationals – a dispute which was essentially settled by the provisions of the 1971 Montreal Convention. He cautioned against involving the Council in the question of extradition which would set a “dangerous precedent”.⁷⁷ The representative of Sudan, speaking in his capacity as Chairman of the Group of Arab States, characterised it as “curious” that the draft resolution was based on Chapter VII of the Charter; this, in his opinion, did not apply to the dispute between Libya and the three other States involved, as it was a legal dispute relating to the extradition of two accused Libyan nationals. Such a dispute, he said, should be dealt with in a court of law, and specifically

⁷⁵ Cases concerning *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom and Libya Arab Jamahiriya v. United States)*.

⁷⁶ The sanctions were expanded to incorporate further aviation sanctions, financial sanctions, and sanctions against particular items used in the refinement and export of oil.

⁷⁷ S/PV.3312: Libyan Arab Jamahiriya, pp. 4-6 and 22-24.

by the International Court of Justice. Alternatively, it should be addressed in conformity with Chapter VI of the Charter, and especially on the basis of Article 33.⁷⁸

Conversely, speaking after the vote, several Council members pointed out that the issue in question related to “international terrorism”, as well as to Libya’s non-compliance with Security Council resolutions 731 (1992) and 748 (1992), both of which threatened international peace and security. The Council was, therefore, justified in imposing additional measures on Libya, in order to fight international terrorism and secure Libya’s compliance with its previous decisions.⁷⁹ One Council member added that, in his understanding, the action taken by the Council was aimed exclusively at addressing a “political problem”, as the body could not pass judgment on the merits of a criminal case. Echoed by another Council member,⁸⁰ he stated that such action could not be construed in a manner inconsistent with the presumption of innocence. He also noted that the action taken by the Council was not intended to establish a “legal precedent” – especially not a precedent that would question the validity of time-honoured rules and principles of international law or the appropriateness of different domestic legislations with respect to the prevention and elimination of international terrorism.⁸¹ Only one Council member explicitly opposed the imposition, and expansion, of sanctions against Libya as, in its view, only “negotiation and consultation” could lead to a solution.⁸²

On 16 and 20 June 1995, respectively, at the International Court of Justice, the United Kingdom and the United States filed preliminary objections to the jurisdiction of the Court to entertain Libya’s Applications. On 22 September 1995, the Court issued Orders that fixed, in each case, 22 December as the time-limit within which Libya might present a written statement of its observations and submissions on those preliminary objections, which Libya did.⁸³

CASE 19

On 20 March 1993, Bosnia and Herzegovina instituted proceedings against the Federal Republic of Yugoslavia (Serbia and Montenegro) before the International Court of Justice, “for

⁷⁸ Ibid.: Sudan (speaking in his capacity as Chairman of the Group of Arab States), pp. 31-32.

⁷⁹ Ibid.: see United States, pp. 40-42; France, 42-44; United Kingdom, pp. 44-46; Brazil, pp. 47-48; Russian Federation, pp. 54-55; Spain, p. 56; Hungary, pp. 59-60; Venezuela, pp. 61-62; Japan, pp. 62-63.

⁸⁰ Ibid.: Spain, p. 56.

⁸¹ Ibid.: Brazil, pp. 49-50.

⁸² Ibid.: China, p. 53.

⁸³ *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident and Lockerbie (Libyan Arab Jamahiriya v. United Kingdom and Libyan Arab Jamahiriya v. United States)*, Orders,

violating the Genocide Convention”.⁸⁴ On the same day, it also filed a request for provisional measures, “to prevent further the loss of human life in Bosnia and Herzegovina”.⁸⁵ On 8 April 1993, the Court issued an Order indicating interim measures of protection.⁸⁶

By a letter⁸⁷ dated 16 April 1993 addressed to the President of the Security Council, the representative of Bosnia and Herzegovina requested that the Council, pursuant to Article 94, paragraph 2, of the Charter, “take immediate measures under Chapter VII of the Charter to stop the assault” on Bosnia and Herzegovina, which he alleged was being carried out by forces directed, controlled and supported by the Federal Republic of Yugoslavia (Serbia and Montenegro), and “enforce the Order of the International Court of Justice”. On the same day, at its 3199th meeting, the Security Council, acting under Chapter VII, adopted resolution 819 (1993) demanded, *inter alia*, that the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to the Bosnian Serb paramilitary units in the Republic of Bosnia and Herzegovina, having noted that “the International Court of Justice in its Order of 8 April 1993 in the case concerning application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)) unanimously indicated as a provisional measure that the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent the commission of the crime of genocide”. The Council At its 3200th meeting, on 17

I.C.J. Reports 1995, pp. 282 and 285.

⁸⁴ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*.

⁸⁵ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Provisional Measures, Order of 8 April 1993, I.C.J. Reports 1993, p. 3.

⁸⁶ *Ibid.*, p. 24. Relevant paragraphs of the Court’s order read as follows: Paragraph 52 A (1): The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its powers to prevent commission of the crime of genocide”. Paragraph 52 A (2): “The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnic, racial or religious groups”. Paragraph 52 B: “The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Government of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution”.

⁸⁷ S/25616.

April 1993, the Security Council adopted resolution 820 (1993) whereby, acting under Chapter VII, it strengthened both the economic and financial sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) in order to secure improved compliance. No reference was made, however, to the Order of the Court in this resolution.

On 27 July 1993, Bosnia and Herzegovina filed a second request for provisional measures, “because the Respondent ha[d] violated each and every one of the three measures of protection on behalf of Bosnia and Herzegovina that were indicated by th[e] Court on 8 April 1993, to the grave detriment of both the People and State of Bosnia and Herzegovina”. On 10 August 1993, the Federal Republic of Yugoslavia (Serbia and Montenegro) filed a request for provisional measures, “to prevent commission of the crime of genocide against the Serb ethnic group”.⁸⁸ On 13 September 1993, the Court issued an Order by which it reaffirmed the provisional measures indicated in its Order of 8 April 1993, which measures, the Court stated, should be immediately and effectively implemented.⁸⁹

By a letter⁹⁰ dated 15 September 1993 addressed to the President of the Security Council, the representative of Bosnia and Herzegovina requested that the Council, pursuant to Article 94, paragraph 2, of the Charter, “take the necessary measures under Chapter 7 of the Charter in order to enforce the order of 13 September 1993 of the International Court of Justice”. He also called upon the Council to “take the necessary and immediate steps to lift the sieges [of Bosnian cities] and thereby confront the ongoing genocide”. The Security Council did not take any action on this particular request.

CASE 20

By a letter⁹¹ dated 28 February 1994 addressed to the President of the Council, the representative of Cameroon reported an incident involving the Cameroonian army and the Nigerian army in the Cameroonian peninsula of Bakassi and requested an urgent meeting of the Security Council “given that this matter has implications for peace and security in the region”.

⁸⁸ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*, Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993, p. 325.

⁸⁹ *Ibid.*, p. 349.

⁹⁰ S/26442.

⁹¹ S/1994/228.

By a follow-up letter⁹² dated 28 March 1994, the representative of Cameroon transmitted the communiqué of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the Organization of African Unity (OAU) on its border dispute with Nigeria.

By a letter⁹³ dated 4 March 1994 addressed to the President of the Council, the representative of Nigeria expressed his Government's surprise that Cameroon had, among other things, called for a discussion of the issue by the Security Council, and expressed the hope that the Council would encourage a bilateral resolution of the dispute, in accordance with Article 33(1) of the Charter of the United Nations.

On 29 March 1994, Cameroon instituted proceedings⁹⁴ against Nigeria before the International Court of Justice in a dispute concerning the question of sovereignty over the peninsula of Bakassi, and requested the Court to determine the course of the maritime frontier between the two States in so far as that frontier had not already been established in 1975.⁹⁵

In a third letter⁹⁶ to the President of the Council, dated 20 April 1994, the representative of Cameroon recalled that in his recent conversation with the Council President he had confirmed and reiterated his Government's request for an urgent meeting of the Council and, in that context, stated that he was submitting an informal text of a draft resolution⁹⁷ "that could mark the conclusion of the Council's consideration of this case".

The President of the Security Council responded to the four aforementioned letters, on behalf of the members of the Council, via identical letters⁹⁸ dated 29 April 1994, addressed to the representatives of Cameroon and Nigeria, respectively. In the letter he stated, *inter alia*, that the members of the Council "welcome[d] the fact that the dispute ha[d] been referred to the International Court of Justice". They also requested the Secretary-General, in consultation with the Secretary-General of the OAU, to follow developments and to use his good offices to help

⁹² S/1994/351.

⁹³ S/1994/258.

⁹⁴ *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*.

⁹⁵ On 6 June 1994, Cameroon filed an Additional Application, "for the purpose of extending the subject of the dispute" to a further dispute described as essentially relating "to the question of sovereignty over a part of the territory of Cameroon in the area of Lake Chad", while also asking the Court to specify definitely the frontier between Cameroon and Nigeria from Lake Chad to the sea. Cameroon requested the Court to join the two Applications "and to examine the whole in a single case". There being no objection to the suggested procedure from the Government of Nigeria, the Court dealt with the matter as requested. *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*.

⁹⁶ S/1994/472.

⁹⁷ S/1994/472, annex.

promote the ongoing dialogue aimed at resolving peacefully the dispute between the two countries over the peninsula, and to keep Council members appropriately informed.

On 13 December 1995, at the International Court of Justice, Nigeria filed certain preliminary objections to the jurisdiction of the Court and to the admissibility of Cameroon's claims.

CASE 21

At its 3363rd meeting, on 14 April 1994, the Council included in its agenda the item entitled, "Agreement signed on 4 April 1994 between the Government of Chad and the Libyan Arab Jamahiriya concerning the practical modalities for the implementation of the Judgment delivered by the International Court of Justice on 3 February 1994". The aforementioned Judgment⁹⁹ related to the definition, and course, of the boundary between Chad and Libya. The subsequent Agreement¹⁰⁰ between the two Governments provided for the withdrawal of the Libyan administration and troops from the Aouzou Strip, as well as the presence of United Nations observers to establish that the withdrawal had actually been effected

Subsequently, the Security Council adopted, at its 3373rd meeting, on 4 May 1994, resolution 915 (1994). By this resolution, the Council, expressing its determination to "assist the parties in implementing the Judgment of the International Court of Justice concerning their territorial dispute and thereby to help promote peaceful relations between them, in keeping with the principles and purposes of the Charter of the United Nations", established the United Nations Aouzou Strip Observer Group (subsequently to be known as UNASOG) and set out its mandate.

⁹⁸ S/1994/519.

⁹⁹ *Territorial dispute (Libyan Arab Jamahiriya/Chad)*, Judgment, I.C.J. Reports 1994, p. 6.

¹⁰⁰ See S/1994/402 and S/1994/424, from the representatives of Libya and Chad, respectively, transmitting the text of the Agreement to the Secretary-General.

PART V

RELATIONS WITH THE SECRETARIAT

NOTE

This Part is concerned with the functions other than those of an administrative nature entrusted to the Secretary-General by the Security Council under Article 98 of the Charter¹⁰¹ (Section A) and with the Secretary-General's power of initiative under Article 99 (Section B).

Article 98

“The Secretary-General shall act in that capacity¹⁰² in all meetings of the General Assembly, of the Security Council, of the Economic and Social Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs....

Article 99

“The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.”

A. FUNCTIONS OTHER THAN THOSE OF AN ADMINISTRATIVE NATURE ENTRUSTED TO THE SECRETARY-GENERAL BY THE SECURITY COUNCIL

During the period under review, the Secretary-General was requested or authorized by the Security Council to carry out a broad range of actions, particularly in relation to the peaceful settlement of disputes and peacekeeping. His functions in that regard expanded during that period as the activities of the Security Council continued to expand and diversify. In addition to carrying on his responsibilities in the area of peaceful settlement of disputes (political/diplomatic functions) and peacekeeping (security functions), the Secretary-General was entrusted with the establishment of international criminal tribunals as subsidiary bodies of the Security Council and

¹⁰¹ The functions and powers of the Secretary-General in regard to the meetings of the Security Council, conferred under Article 98, are delineated in rules 21-26 of the Council's Provisional Rules of Procedure: see, further, Chapter I, Part IV, of the present Supplement.

¹⁰² Article 97 of the Charter stipulates that the Secretary-General shall be the chief administrative officer of the

with the implementation of sanctions regimes (legal functions). The practice described below is illustrative and does not purport to be comprehensive.¹⁰³

Measures to ascertain the facts

In a number of instances, the Secretary-General was asked to investigate the facts of a particular situation or his efforts to do so were endorsed:

- (a) *In relation to the situation in the Republic of Bosnia and Herzegovina*, the Secretary-General was requested to investigate a number of incidents involving UNPROFOR and/or committed in the territory of Bosnia and Herzegovina;¹⁰⁴
- (b) *In relation to the situation concerning Western Sahara*, the Secretary-General was invited to “intensify his efforts, with the parties, in order to resolve some outstanding issues, in particular those relating to the interpretation and application of the criteria for voter eligibility” and “to make the necessary preparations for the organization of the referendum of self-determination and to consult accordingly with the parties for the purpose of commencing voter registration on a prompt basis...”.¹⁰⁵ In a letter¹⁰⁶ dated 6 December 1993 to the Secretary-General, the Council reaffirmed the Secretary-General’s role as “a guarantor of an objective and impartial referendum...”.
- (c) *With regard to the situation relating to Nagorny Karabakh*, the Council requested the Secretary-General, in consultation with the Conference for Security and Cooperation in Europe (CSCE), to ascertain facts, as appropriate, regarding the situation on the ground;¹⁰⁷

Organization.

¹⁰³ For details of these and other instances where the Security Council entrusted functions to the Secretary-General, see the case studies in Chapter VIII of the present Supplement.

¹⁰⁴ Statements by the President of the Security Council of 8 January 1993 (S/25079), 17 March 1993 (S/25426), 28 October 1993 (S/26661), 9 November 1993 (S/26717), 14 April 1995 (S/PRST/1995/19)

¹⁰⁵ Resolution 809 (1993) of 2 March 1993.

¹⁰⁶ S/26848.

¹⁰⁷ Statement by the President of the Security Council of 6 April 1993 (S/25539).

- (d) *In relation to the situation in the Republic of Yemen*, the Council requested the Secretary-General “to send a fact-finding mission to the area as soon as practicable to assess prospects for a renewed dialogue among those concerned and for further efforts by them to resolve their differences”.¹⁰⁸
- (e) *In connection with the situation concerning Rwanda*, the Council requested the Secretary-General to “establish an impartial Commission of Experts to examine and analyse information submitted pursuant to resolution 935 (1994)..., with a view to providing the Secretary-General with its conclusions on the evidence of grave violations of international humanitarian law committed in the territory of Rwanda, including the evidence of possible acts of genocide”.¹⁰⁹ In connection with same item, the Council requested the Secretary-General “to establish, as a matter of urgency, an International Commission of Inquiry” to, *inter alia*, “collect information and investigate reports relating to the sale or supply of arms and related *matériel* to former Rwandan government forces in the Great Lakes region in violation of Council resolutions 918 (1994), 997 (1995) and 1011 (1995).¹¹⁰
- (f) *With regard to the situation in Burundi*, the Council requested the Secretary-General to establish an International Commission of Inquiry “to establish the facts relating to the assassination of the President of Burundi on 21 October 1993 and the massacres which followed and to recommend measures of a legal, political or administrative nature...”.¹¹¹

¹⁰⁸ S/RES/924 (1994) of 1 June 1994.

¹⁰⁹ S/RES/935 (1994) of 1 July 1994.

¹¹⁰ S/RES/1013 (1995) of 7 September 1995.

¹¹¹ S/RES/1012 (1995) of 28 August 1995.

Good offices

The Secretary-General was often requested to exercise or continue to exercise his “good offices” function: his independent political role in preventing or mediating conflicts between or within States, or his role in that regard was endorsed:

(a) *In relation to the item entitled “Central America: efforts towards peace”,* the Security Council reaffirmed its support for “the Secretary-General’s use of his good offices in the El Salvador peace process”.¹¹² In November 1994, the Council set 30 April 1995 as the date by which the United Nations Observer Mission in El Salvador (ONUSAL) would fulfill its mandate. That deadline was observed.

(b) *In connection with items relating to the Libyan Arab Jamahiriya,* the Security Council invited the Secretary-General “to continue his role as set out in paragraph 4 of resolution 731 (1992)”.¹¹³

(c) *In connection with the situation in Cyprus,* the Council requested the Secretary-General to “continue his mission of good offices”.¹¹⁴ In July 1994, the Council requested the Secretary-General “to begin consultations with members of the Council, the Guarantor Powers and with the two leaders in Cyprus with a view to undertaking a fundamental and far-reaching reflection on ways of approaching the Cyprus problem in a manner that will yield results.”¹¹⁵

(d) Via identical letters¹¹⁶ dated 24 April 1994, from the President of the Security Council to the representatives of Cameroon and Nigeria, respectively, the members of the Council requested the Secretary-General, in consultation with the Organization of African Unity, “to follow developments and to use his good offices to help promote the

¹¹² S/RES/832 (1993) of 27 May 1993; S/RES/888 (1993) of 30 November 1993; S/RES/920 (1994) of 26 May 1994.

¹¹³ S/RES/883 (1993) of 11 November 1993. In resolution 731 (1992), the Council had requested the Secretary-General “to seek the cooperation of the Libyan Government to provide a full and effective response” to the requests addressed to the Libyan authorities by France, the United Kingdom and the United States for the extradition of suspected terrorists involved in two airline bombings.

¹¹⁴ S/RES/839 (1993) of 29 March 1994.

¹¹⁵ S/RES/939 (1994) of 29 July 1994.

ongoing dialogue aimed at resolving peacefully the dispute” between Cameroon and Nigeria over the Bakassi peninsula, and to keep them appropriately informed.

Joint efforts to promote a political settlement

In several instances during the period under review, the Secretary-General was asked to undertake diplomatic efforts in conjunction with regional arrangements or other actors in order to achieve a political settlement¹¹⁷.

(a) *In relation to the situation in Liberia*, the Council requested the Secretary-General, in consultation with the Economic Community of West African States (ECOWAS), to consider the possibility of convening a meeting of the parties, to restate their commitment to the implementation of the Yamoussoukro IV Accord.¹¹⁸

(b) *With regard to the situation in Georgia*, the Council expressed its support for and encouraged the Secretary-General’s efforts aimed at achieving a comprehensive political settlement of the conflict, including on the political status of Abkhazia, respecting fully the sovereignty and territorial integrity of the Republic of Georgia, with the assistance of the Russian Federation as facilitator, and with the support of the Organization for Security and Cooperation in Europe (OSCE), to that end.¹¹⁹

(c) *In relation to the situation in Haiti*, the Security Council commended the efforts of the Secretary-General’s Special Representative for Haiti and the efforts of the Secretary-General of the Organization of American States (OAS) to establish a political dialogue with the Haitian parties. The Council, acting under Chapter VII of the Charter, *inter alia*, welcomed the request by the General Assembly that the Secretary-General take the necessary measures to assist, in cooperation with the OAS, in the solution of the

¹¹⁶ S/1994/519.

¹¹⁷ Please refer to Chapter XII of the present *Supplement* for a more comprehensive listing of instances of cooperation between the United Nations and regional arrangements in order to achieve a pacific settlement of a dispute and the role of the Secretary-General in these instances.

¹¹⁸ S/RES/813 (1993) of 26 March 1993.

¹¹⁹ See S/RES/849 (1993) of 9 July 1993; S/RES/858 (1993) of 24 August 1993; S/RES/876 (1993) of 19 October

crisis, and requested the Secretary-General to report to the Security Council on progress achieved in the efforts jointly undertaken by him and the Secretary-General of the OAS with a view to reaching a political solution to the crisis in Haiti.¹²⁰

(d) *Regarding the situation in Somalia*, the Security Council urged the Secretary-General to re-double his efforts at the local, regional and national levels to continue the process of national reconciliation and political settlement; called on all Member States to assist, in all ways possible, the Secretary-General, in conjunction with regional organizations, in his efforts to reconcile the parties and rebuild Somali political institutions; and invited the Secretary-General to consult the countries of the region and regional organizations concerned on means of further reinvigorating the reconciliation process.¹²¹

(e) *In relation to the situation in Angola*, the Security Council commended the efforts of the Secretary-General, his Special Representative and those of the three observer States to the Angolan peace process and of the Organisation of African Unity (OAU) and some neighbouring States, in particular Zambia, and encouraged them to continue their efforts aimed at the earliest resolution of the Angolan crisis through negotiations within the framework of the "Acordos de Paz" and relevant Security Council resolutions.¹²²

Peacekeeping and implementation of peace agreements

The Secretary-General was also entrusted with a leading role in dispatching and directing a number of peacekeeping missions authorized by the Council.¹²³ The Council authorized twelve new missions during the period under review,¹²⁴ many of which were multifaceted operations,

1993; and S/RES/993 (1995) of 12 May 1995.

¹²⁰ S/RES/862(1993) of 16 June 1993.

¹²¹ S/RES/865 (1993) of 22 September 1993.

¹²² See S/RES/922 (1994) 31 May 1994; S/RES/932 (1994) of 30 June 1994; S/RES/952 (1994) of 27 October 1994; and S/RES/966 (1994) of 8 December 1994.

¹²³ For further details of these decisions, please refer to Chapter V of the present Supplement.

¹²⁴ Pursuant to decisions of the Security Council, the Secretary-General deployed: the United Nations Operation in Somalia (UNOSOM II) to establish throughout Somalia a secure environment for humanitarian assistance; the United Nations Observer Mission for Uganda-Rwanda (UNOMUR) to monitor the border between Uganda and Rwanda and verify that no military assistance was provided across it; the United Nations Observer Mission in

containing political, humanitarian, social and economic components. They were tasked with helping to regroup and demobilize combatants, destroy weapons, coordinate humanitarian assistance, monitor human rights and organize elections. The Secretary-General had the responsibility for the executive direction and command of these peacekeeping operations, that is, their establishment, deployment, withdrawal and the implementation of their mandates.

*Establishment of international criminal tribunals*¹²⁵

During the period under review, the Security Council requested the Secretary-General to undertake certain actions relating to the establishment of international criminal tribunals.

The Council, acting under Chapter VII of the Charter, adopted resolutions 827(1993) of 25 May 1993 and 955(1994) of 8 November 1994, by which it established, respectively, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia¹²⁶ and the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994¹²⁷.

Georgia (UNOMIG) to verify compliance with the cease-fire agreement between Georgia and the Abkhaz authorities in Georgia; the United Nations Observer Mission in Liberia (UNOMIL) to work with ECOMOG towards the implementation of the peace agreement, monitor compliance with the cease-fire agreement, observe and verify elections, assist in demobilization of combatants, support humanitarian assistance, and investigate human rights violations; the United Nations Mission in Haiti (UNMIH) to help implement provisions of the Governor's Island Agreement of July 3, 1993; the United Nations Assistance Mission in Rwanda (UNAMIR) to help implement the peace agreement signed by the Rwandese parties on August 4, 1993; the United Nations Aouzou Strip Observer Group (UNASOG) to monitor the withdrawal of Libyan administration and forces from the Aouzou Strip in accordance with the Agreement to implement a decision of the International Court of Justice; the United Nations Mission of Observers in Tajikistan (UNMOT) to monitor the cease-fire agreement between the government of Tajikistan and the United Tajik Opposition; the United Nations Angola Verification Mission (UNAVEM III) to assist the government of Angola and the National Union for the Total Independence of Angola (UNITA) in restoring peace and achieving national reconciliation on the basis of the peace accords and the Lusaka Protocol; the United Nations Confidence Restoration Operation in Croatia (UNCRO) to perform the functions envisaged in the cease-fire agreement, facilitate implementation of the economic agreement, monitor the crossing of military equipment and personnel over specified international borders, facilitate humanitarian assistance and monitor the demilitarization of a specified zone; the United Nations Preventive Deployment Force (UNPREDEP) to monitor the borders in Macedonia; the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to perform tasks set out in the peace agreement.

¹²⁵ For a more in-depth treatment of this question, see Chapter V of the present Supplement.

¹²⁶ "The International Criminal Tribunal for the Former Yugoslavia (the ICTY)".

¹²⁷ "The International Criminal Tribunal for Rwanda (the ICTR)".

In the case of the ICTY, the Security Council, by resolution 808(1993) of 22 February 1993, had previously decided that an international tribunal should be established “for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991”¹²⁸ and had requested the Secretary-General to submit to the Security Council “a report on all aspects of [that] matter, including specific proposals and where appropriate options for the effective and expeditious implementation of the decision contained in paragraph 1[...] taking into account suggestions put forward in [that] regard by Member States”.¹²⁹ Pursuant to that request, the Secretary-General submitted to the Council a report entitled “Report of the Secretary-General pursuant to paragraph 2 of Security Council resolution 808(1993)”¹³⁰ which set out, *inter alia*, the legal basis for the Tribunal, the competence of the Tribunal and proposals for the organization of the Tribunal. It also contained, as an annex, a draft statute of the International Tribunal. By resolution 827(1993) by which the Council formally established the Tribunal, it also, *inter alia*, requested the Secretary-General to “submit to the judges of the International Tribunal, upon their election, any suggestions received from States for the rules of procedure and evidence called for in Article 15 of the Statute of the International Tribunal”¹³¹ and, further, to “implement urgently the present resolution and in particular to make practical arrangements for the effective functioning of the International Tribunal at the earliest time and to report periodically to the Council”.¹³²

With respect to the establishment of the ICTR, by resolution S/RES/955 (1994), the Security Council decided, having received the request of the Government of Rwanda (S/1994/1115), “to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994 and to this end to adopt the Statute of the International Criminal Tribunal for Rwanda”. The Council also requested the Secretary-General to implement the resolution urgently

¹²⁸ S/RES/808(1993), paragraph 1.

¹²⁹ *Ibid.*, paragraph 2.

¹³⁰ S/25704 and Add.1.

¹³¹ Paragraph 3.

and in particular to make practical arrangements for the effective functioning of the tribunal, including recommendations to the Council as to possible locations for the seat of the tribunal.¹³³ The Council was periodically informed on the implementation of resolution 955(1994) through, *inter alia*, oral briefings and through the progress report on the United Nations Assistance Mission for Rwanda (UNAMIR).¹³⁴ On 13 February 1995, the Secretary-General submitted his first formal report pursuant to that request by the Council, in which he, *inter alia*, reported on the legal basis for the establishment of the ICTR, the competence of the Tribunal, its organization and structure, and made a recommendation for the seat of the Tribunal.¹³⁵

Regarding the election of the judges of both Tribunals, the role of the Secretary-General is set out in the Statutes of the respective tribunals, adopted by the Council. With respect to the ICTY, Article 13, subparagraph 2 (a) provides that the Secretary-General shall invite nominations for judges of the International Tribunal from States members of the United Nations and non-Member States maintaining permanent observer missions at United Nations Headquarters. Subparagraph 2 (c) stipulates that the Secretary-General shall forward the nominations received to the Security Council. At its 3265th meeting, on 20 August 1993, in accordance with that article, the Council established, by resolution 857(1993), a list of 23 candidates from the nominations received by the Secretary-General. By Memorandum dated 26 August 1993, the Secretary-General transmitted the list of candidates to the General Assembly (A/47/1005).¹³⁶

With respect to the ICTR, the role of the Secretary-General was similarly set out in Article 12 of its Statute, which provides in subparagraph 3 (a) that the Secretary-General shall invite nominations for judges of the International Tribunal from States members of the United Nations and non-Member States maintaining permanent observer missions at United Nations Headquarters. Subparagraph 2 (c) stipulates that the Secretary-General shall forward the nominations received to the Security Council. At its 3524th meeting, on 24 April 1995, in accordance with that article, the Council established, by resolution 989(1995) a list of 12

¹³² Paragraph 8.

¹³³ S/RES/955 (1994) of 8 November 1994.

¹³⁴ S/1995/107, paras.19-22).

¹³⁵ S/1995/134.

¹³⁶ Please refer to Case 1 of the present *Supplement*.

candidates from the nominations received by the Secretary-General. By Memorandum dated 2 May 1995, the Secretary-General transmitted the list of candidates to the General Assembly (A/49/893).¹³⁷

Implementation of sanctions regimes

During the period under review, the Security Council established four sanctions regimes bringing the total number of sanctions committees in place to nine.¹³⁸ In addition to providing all necessary assistance to the sanctions committees established to monitor implementation of the sanctions, the Secretary-General was also requested to support from within a territory the implementation of an arms embargo, in the case of Somalia;¹³⁹ to consult with countries of a region and other regional organizations about the practical implementation of an arms embargo, with regard to Rwanda;¹⁴⁰ and to ensure that all information on arms embargo was made available to the Council and publicized more widely as appropriate, in relation to Liberia.¹⁴¹

B. MATTERS BROUGHT TO THE ATTENTION OF THE SECURITY COUNCIL BY THE SECRETARY-GENERAL

NOTE

During the period under review, the Secretary-General did not invoke Article 99, either expressly or by implication. In a number of instances, however, he drew the attention of the Security Council to situations, already on the Council's agenda, that were deteriorating, and

¹³⁷ Please refer to Case 2 of the present *Supplement*.

¹³⁸ New sanctions regimes were imposed against Haiti, the National Union for the Total Independence of Angola (UNITA), Rwanda and Liberia. For more details, see Chapter V of the present *Supplement*.

¹³⁹ S/RES/814 (1993) of 26 March 1993 on the situation in Somalia

¹⁴⁰ Statement by the President of the Security Council of 30 April 1994 (S/PRST/1994/21) on the situation concerning Rwanda.

¹⁴¹ Statement by the President of the Security Council of 13 July 1994 (S/PRST/1994/33) on the situation in Liberia.

requested the Council to consider taking appropriate action.¹⁴² In addition, the Secretary-General exercised the implicit rights conferred upon him under Article 99¹⁴³ by initiating, for example, good offices missions in respect of Burundi, Georgia, Rwanda-Uganda and Sierra Leone. In the case of Burundi, the Security Council noted “with satisfaction the immediate response of the Secretary-General to this situation by the dispatch of a Special Envoy on a good offices mission...”¹⁴⁴ With regard to Georgia (the situation in Abkhazia), initially, the Secretary-General had sent on his own initiative a goodwill mission to the region in 1992. The Council then authorized the Secretary-General to begin to organize a UN Observer Group and welcomed the Secretary-General’s continuing efforts to launch a peace process with the participation of the Russian Federation and supported the Secretary-General’s continuing cooperation with the Chairman-in-Office of the Commission on Security and Cooperation in Europe (CSCE) in that regard.¹⁴⁵ In connection with Rwanda-Uganda, the Council welcomed “the decision of the Secretary-General to send a goodwill mission to the region...”¹⁴⁶ Regarding the situation in Sierra Leone, the Council expressed “its appreciation to the Secretary-General for his offer of good offices in Sierra Leone...”¹⁴⁷

¹⁴² Thus, for example, in connection with the situation in Bosnia and Herzegovina, the Secretary-General, by a letter (S/25519) dated 2 April 1993 addressed to the President of the Security Council, requested the members of the Council to consider “what supportive action they might take” in the “extremely worrying situation” which had developed in Srebrenica in eastern Bosnia; in connection with the situation [prevailing in and adjacent to the United Nations protected areas] in Croatia, the Secretary-General, in a letter (S/26082) dated 14 July 1993, stated that the developments at the Maslenica bridge and the Zemunik airport deserved the “urgent attention of the Council,” and that the Council might wish to consider the “danger” posed by that situation and decide upon appropriate action; in connection with the situation concerning Rwanda, the Secretary-General, in a letter (S/1994/518) dated 29 April 1994, stated that his Force Commander had reported “a further deterioration of the situation in Kigali and other parts of Rwanda”, and urged the Council to re-examine the decisions it had taken in resolution 912 (1994) and to consider again what action, including forceful action, it could take, or could authorize Member States to take, in order to restore law and order and end the massacre.

¹⁴³ The *Repertory of Practice of United Nations Organs* states in its Supplement No.8, Volume VI, Article 99 (1989-1994) that “the implicit powers of the Secretary-General in the spirit of Article 99 have been more liberally construed to include the right to initiate fact-finding missions, investigative commissions and the offer of good-offices or mediation”. See also report of the Secretary-General dated 17 June 1992 entitled “An Agenda for peace” (S/24111, paras. 23-27) and the Statement by the President of the Security Council of 30 November 1992 (S/24872).

¹⁴⁴ Statement by the President of the Security Council of 16 November 1993 (S/26757).

¹⁴⁵ S/RES/849 (1993) of 9 July 1993. See also S/RES/858(1993) of 24 August 1993, presidential statement of 6 October 1993 (S/26463), S/RES/876 (1993) of 19 October 1993, S/RES/881 (1993) of 4 November 1993, S/RES/896 (1994) of 31 January 1994, S/RES/901 (1994) of 4 March 1994, S/RES/906 (1994) of 25 March 1994, presidential statement of 8 April 1994 (S/PRST/1994/17), S/RES/971 (1995) of 12 January 1995, S/PRST/1995/12 of 17 March 1995, S/RES/993 (1995) of 12 May 1995, presidential statement of 18 August 1995 of 18 August 1995.

¹⁴⁶ S/RES/812 (1993) of 12 March 1993.

¹⁴⁷ Statement by the President of 27 November 1995 (S/PRST/1995/57). In a letter dated 7 February 1995 (S/1995/20), the Secretary-General had informed the Council that the Head of State of Sierra Leone had formally requested his good offices to facilitate negotiations between his Government and the Revolutionary United Front and that he had dispatched an exploratory mission to Sierra Leone to initiate consultations to that effect.

CASE 22

In his report¹⁴⁸ of 17 June 1992 entitled “An Agenda for Peace: preventive diplomacy, peacemaking and peace-keeping”, the Secretary-General had stressed that preventive diplomacy required timely and accurate knowledge of facts. He had said that an increased resort to fact-finding was needed, initiated either by the Secretary-General – to enable him to meet his responsibilities under the Charter, including Article 99 – or by the Security Council or the General Assembly. He had made a number of proposals in that regard on enhancing informal and formal fact-finding. During the period covered by the present Supplement, the Security Council continued its consideration of the Secretary-General’s report. At the Council’s 3225th meeting, on 28 May 1993, to consider agenda item “An Agenda for Peace: preventive diplomacy, peacemaking and peace-keeping”, the President of the Council made a statement on behalf of the Council, in which, *inter alia*, the Council noted with satisfaction the increased use of fact-finding missions. It invited Member States to provide the Secretary-General with relevant detailed information on situations of tension and potential crisis. It invited the Secretary-General to consider appropriate measures for strengthening the Secretariat capacity to collect and analyze information.

In a position paper¹⁴⁹ of 25 January 1995 entitled “Supplement to An Agenda for Peace: Position paper of the Secretary-General on the occasion of the Fiftieth Anniversary of the United Nations”, the Secretary-General, under the section on preventive diplomacy and peacemaking, noted that “collectively Member States encourage the Secretary-General to play an active role in this field; individually they are often reluctant that he should do so when they are a party to the conflict”. He stated that the “solution” might lie “in creating a climate of opinion, or ethos, within the international community in which the norm would be for Member States to accept an offer of United Nations good offices”. At the Council’s 3503rd meeting, on 22 February 1995, the President of the Council made a statement¹⁵⁰ on behalf of the Council, in which, *inter alia*, the Council welcomed and shared the priority given by the Secretary-General to action to prevent conflict. It encouraged all Member States to make the fullest possible use of instruments of preventive action, including “the Secretary-General’s good offices...”

¹⁴⁸ S/24111.

¹⁴⁹ S/1995/1.

PART VI

RELATIONS WITH THE MILITARY STAFF COMMITTEE

NOTE

The Military Staff Committee, established pursuant to Article 47 of the Charter, is composed of the Chiefs of Staff of the permanent members or their representatives. Its function is “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 at its disposal, the regulation of armaments, and possible disarmament”.¹⁵¹

During the period under review, the Military Staff Committee met regularly under its draft rules of procedure and remained prepared to carry out the functions assigned to it under Article 47. The need to revitalize the Military Staff Committee was discussed by Council’s members during the discussions on the Secretary-General’s Agenda for Peace and its Supplement (case 23).

CASE 23

At the Council’s 3492nd meeting, on 18 January 1995, in connection with the item entitled “Supplement to an Agenda for Peace: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations”, two speakers referred to the role of the Military Staff Committee.

The representative of the Russian Federation, commenting on the Secretary-General’s position paper¹⁵² and the proposal to create rapid reaction forces, stressed the importance of giving “the Military Staff Committee, which is intended to advise and assist the Security Council

¹⁵⁰ S/PRST/1995/9.

¹⁵¹ Article 47.

¹⁵² S/1995/1.

on all questions relating to the Security Council's military requirements, not only formal, but substantive work". He stated that it would also be useful "to analyze the Committee's potential to further the work of the Secretariat in developing the Agenda for Peace."¹⁵³

Touching on the issue of the command and management of peacekeeping operations, the representative of Ukraine noted that difficulties faced in that area could be addressed by revitalizing Article 47 of the Charter. Quoting paragraph 4 of that Article, the speaker believed that the Military Staff Committee should make use of the possibility of establishing regional sub-committees under that paragraph and that appropriate countries that contribute troops to peacekeeping operations could be included in the membership of such regional sub-committees.¹⁵⁴

At the Council's 3611th meeting, on 20 December 1995, in connection with the item entitled "An agenda for peace: peacekeeping", the representative of Italy suggested reflecting on the idea of revitalizing the Military Staff Committee, providing for inclusion in it of the countries that contributed troops to each operation.¹⁵⁵

¹⁵³ S/PV.3492, p. 18.

¹⁵⁴ S/PV.3492/Res. I, p. 23.

¹⁵⁵ S/PV.3611, pp. 10-11.