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## **Chapter X**

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

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## Introductory note

This chapter deals with the practice of the Security Council in relation to the pacific settlement of disputes within the framework of Articles 33 to 38 of Chapter VI and Articles 11 and 99 of the Charter.

As chapter VIII of this volume sets out a full account of Council proceedings with regard to the pacific settlement of disputes, this chapter will not discuss the practice of the Council aimed at the peaceful settlement of disputes in a comprehensive manner. Instead, this chapter will focus on selected material which may best serve to highlight how the provisions of Chapter VI of the Charter were interpreted in deliberations and applied in the relevant decisions of the Council.

The manner of presenting and classifying the relevant material has been devised to set forth the practices and procedures to which the Council has had recourse in a readily accessible form. As in the previous volume of the *Repertoire* covering the period 1989-1992, the material has been categorized under thematic headings rather than individual Articles of the Charter, so as to avoid ascribing to specific Articles of the Charter Council proceedings or decisions which do not themselves refer to any such Article.

Thus, part I illustrates how, under Article 35, Member States and non-Member States have brought new disputes and situations to the attention of the Security Council. Part II sets out investigative and fact-finding activities performed and initiated by the Council that may be deemed to fall under the scope of Article 34. Part III provides an overview of Council recommendations and decisions, under the relevant Articles of the Charter, with regard to the pacific settlement of disputes. Specifically, it will illustrate Council recommendations to the parties to a conflict. Finally, part IV will reflect constitutional discussions within the Council on the interpretation or application of the provisions of Chapter VI of the Charter.

The following Articles of the Charter are cited in this chapter:

*Article 11, paragraph 3*

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

*Article 33*

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.
2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.

*Article 34*

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

*Article 35*

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.
2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.
3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

*Article 36*

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.
2. The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.
3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

*Article 37*

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.
2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

*Article 38*

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

*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.

## Part I Referral of disputes and situations to the Security Council

### Note

Within the framework of the Charter, Articles 35, 37 (1) and 38 are generally regarded as the provisions on the basis of which States may or, in the case of Article 37 (1), shall, refer disputes to the Security Council. During the period under review, considerably fewer such referrals were made to the Council than during the preceding period (1989-1992). While Article 35 was expressly referred to in a small number of communications,<sup>1</sup> most communications did not cite any specific Article as the basis on which they were submitted.

Under Articles 11 (3) and 99 of the Charter, the General Assembly and the Secretary-General, respectively, may refer matters to the Security Council. During the period under review, the General Assembly did not refer any matters to the Council under Article 11 (3),<sup>2</sup> nor did the Secretary-General as provided for under Article 99.<sup>3</sup>

<sup>1</sup> See Letter dated 16 July 1993 from the representative of Ukraine addressed to the President of the Council (S/26100) concerning a Decree of the Supreme Soviet of the Russian Federation; letters dated 3 March 1993, 18 March 1993, 4 May 1993, 30 May 1993 and 13 June 1993 from the representative of Bosnia and Herzegovina addressed to the President of the Council (S/25358, S/25434, S/25718, S/25872 and S/25943); letter dated 16 May 1994 from the representative of Rwanda addressed to the President of the Council (S/1994/586); and letter dated 1 December 1995 from the representative of Afghanistan addressed to the President of the Council (S/1995/1004).

<sup>2</sup> See chapter VI, part I.B, for more details.

<sup>3</sup> See chapter VI, part V.B, for more details. For example, by a letter dated 1 February 1995 addressed to the President of the Council (S/1995/120), the Secretary-General brought information regarding the situation in Sierra Leone to the attention of the members of the Council. According to his letter, the exploratory mission to Sierra Leone, dispatched on 15 December 1994, had noted that the conflict in that country would further complicate the problem of bringing peace to Liberia and could have a more general destabilizing effect in the region, if it continued. By a letter dated 7 February 1995 addressed to the Secretary-General (S/1995/121), the President of the Council informed the Secretary-General that his letter had been brought to the attention of the

### Referrals by States

Situations were referred to the Security Council most often by directly affected States, either exclusively<sup>4</sup> or simultaneously with communications from third States.<sup>5</sup> A notable exception was the referral of the situation in Yemen by neighbouring countries. In that case, the Government of Yemen, by a letter dated 31 May 1994 from the representative of Yemen addressed to the Secretary-General,<sup>6</sup> explicitly resisted the referral of the situation to the Security Council, as it considered the referral of the matter and its consideration by the Council as interference in its internal affairs.

### Nature of matters referred to the Security Council

According to Article 35, which, in the absence of evidence pointing to other provisions of the Charter, is commonly regarded as the basis on which matters are referred to the Security Council by States, any Member State may bring to the Council's attention any "dispute", or "any situation which might lead to international friction or give rise to a dispute". During the period under review, several new matters were brought to the Council's attention, most of which were

members of the Council. At its 3597th meeting, on 27 November 1995, the Council included in its agenda the item entitled "The situation in Sierra Leone".

<sup>4</sup> For example, by a letter dated 16 July 1993 addressed to the President of the Council (S/26100), the representative of Ukraine requested an urgent meeting of the Council, in accordance with Article 35 of the Charter, to consider a Decree of the Supreme Soviet of the Russian Federation concerning Sevastopol.

<sup>5</sup> Following the military coup d'état of 21 October 1993, the situation in Burundi was brought to the Council's attention by a letter dated 25 October 1993 from the representative of Burundi addressed to the President of the Council (S/26626), in which an urgent meeting of the Council was requested. Similar requests were made by a letter of the same date from the representatives of Cape Verde, Djibouti and Morocco addressed to the President of the Council (S/26625). In another instance, the situation concerning Rwanda was brought to the attention of the Council by letters dated 4 March 1993 from the representatives of Rwanda and France (S/25363 and S/25371, respectively).

<sup>6</sup> S/1994/642.

referred to as a “situation”.<sup>7</sup> In some instances, the subject matter of the communications was referred to by a different term, such as “incident”,<sup>8</sup> or described in a narrative form.<sup>9</sup>

It should also be noted that, while the provisions setting out the basis on which States may bring matters concerning international peace and security to the attention of the Council form part of Chapter VI of the Charter, the subject matter of communications submitted to the Council and the type of action requested in relation thereto are not limited by the scope of that Chapter. During the period under review, several communications submitted to the Council described situations as threatening regional or international peace and security,<sup>10</sup> or as acts of

aggression.<sup>11</sup> Situations in which the Council did indeed determine the existence of a threat to the peace, a breach of the peace or an act of aggression are considered in chapter XI.

### Action requested of the Security Council

In most of their communications to the Security Council, States requested the Council to convene an urgent meeting.<sup>12</sup> In some cases, more concrete actions requested of the Council were specified. For instance, in connection with the situation in Georgia, in a note verbale dated 25 December 1992 from the Ministry of Foreign Affairs of Georgia addressed to the Secretary-General,<sup>13</sup> Georgia requested a formal debate in the Council, and the adoption of a resolution by which the Council would decide to urgently send a peacekeeping force to Abkhazia. In another instance, by a letter dated 4 March 1993 addressed to the President of the Council,<sup>14</sup> the representative of Rwanda requested an immediate meeting of the Council to consider ways of ensuring the cessation of the fighting in the country, the observance of the ceasefire agreement between the parties, and the continuation of the search for a negotiated political solution.

### Communications

Disputes and situations were generally submitted to the Security Council by means of a communication to the President of the Security Council. In several instances, matters were brought to the Council’s attention through a communication addressed to the

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civil war with incalculable consequences for international peace and security”.

<sup>7</sup> See, for instance, in connection with the situation prevailing in and adjacent to the United Nations Protected Areas in Croatia, a letter dated 25 January 1993 from the representative of France addressed to the President of the Council (S/25156); in connection with the situation concerning Rwanda, a letter dated 4 March 1993 from the representative of France addressed to the President of the Council (S/25371); in connection with the complaint by Ukraine regarding the Decree of the Supreme Soviet of the Russian Federation concerning Sevastopol, a letter dated 16 July 1993 from the representative of Ukraine addressed to the President of the Security Council (S/26100); in connection with the situation in Burundi, letters dated 25 October 1993 addressed to the President of the Council from the representatives of Cape Verde, Djibouti and Morocco (S/26625), Burundi (S/26626) and Zimbabwe (S/26630); and in connection with the situation in Afghanistan, a letter dated 1 December 1995 from the representative of Afghanistan addressed to the President of the Council (S/1995/1004).

<sup>8</sup> In connection with the situation in Afghanistan, see the letter dated 7 December 1995 from the representative of Afghanistan addressed to the President of the Council (S/1995/1014).

<sup>9</sup> See the note verbale dated 25 December 1992 from the Ministry of Foreign Affairs of Georgia to the President of the Council (S/25026), in connection with the situation in Georgia.

<sup>10</sup> For example, in a letter dated 14 July 1994 addressed to the President of the Council (S/1994/823) the representative of France stated that the deteriorating situation in Rwanda might lead to a further humanitarian disaster and threaten peace and security in the region; in connection with the situation in Burundi, in a letter dated 25 October 1993 addressed to the President of the Council (S/26626), the representative of Burundi stated that if nothing was done to stop massacres of all kinds, “the country [ran] the risk of becoming engulfed in a

<sup>11</sup> See for example a letter dated 25 January 1993 from the representative of Angola addressed to the President of the Council (S/25161), which alleged “acts of aggression by outside forces” and that “Zairean soldiers and mercenaries from different nationalities [were] combating alongside UNITA against the government forces”.

<sup>12</sup> See table entitled “Communications from States Members or non-Members of the United Nations bringing disputes or situations to the attention of the Security Council during the period 1993-1995”.

<sup>13</sup> S/25026.

<sup>14</sup> S/25363.

Secretary-General.<sup>15</sup> Those communications either enclosed a document addressed to the Council,<sup>16</sup> contained an express reference to Article 35 (1)<sup>17</sup> or a request to be circulated as a document of the Council,<sup>18</sup> or called for the convening of a meeting of the Council.<sup>19</sup>

- <sup>15</sup> See, for instance, a note verbale dated 25 December 1992 from the Ministry of Foreign Affairs of Georgia addressed to the Secretary-General (S/25026). In accordance with rule 6 of the Council's provisional rules of procedure, the Secretary-General is obliged to immediately bring such communications to the attention of the Security Council.
- <sup>16</sup> See, for instance, a letter dated 25 January 1993 from the representative of Angola addressed to the President of the Council (S/25161).
- <sup>17</sup> See, for instance, a letter dated 16 July 1993 from the representative of Ukraine addressed to the President of the Council (S/26100).
- <sup>18</sup> See, for instance, a letter dated 4 March 1993 from the representative of France addressed to the President of the Council (S/25371).
- <sup>19</sup> See, for instance, a letter dated 25 January 1993 from the representative of France (S/25156), a letter dated 4 March 1993 from the representative of Rwanda (S/25363), a letter of the same date from the representative of France (S/25371), a letter dated 16 July 1993 from the representative of Ukraine (S/26100) and letters dated 25 October 1993 from the representatives of Cape Verde, Djibouti and Morocco (S/26625), Burundi (S/26626) and Zimbabwe (S/26630), all addressed to the President of the Council.

Communications by which new disputes or situations were referred to the Council and on the basis of which the Council convened meetings under new agenda items during the period under review are listed in the table below. It should be borne in mind that the designation of a new agenda item does not necessarily imply the existence of a new dispute or situation, as it can be a change in the formulation of an item which has been before the Council.<sup>20</sup> Communications by which Member States merely conveyed information, but did not request a Council meeting or other specific Council action, have not been included in the table, as such communications cannot be considered referrals under Article 35. Furthermore, in contrast to the previous volume of the *Repertoire* covering the period 1989-1992, the table does not include communications referring to disputes or situations considered by the Council under existing agenda items so as not to codify or classify new developments and deterioration of situations in the ongoing conflicts. It should be noted that these delimitation criteria have been utilized only for the purpose of the table.

<sup>20</sup> For example, while an item entitled "The situation in Afghanistan" was added to the list of matters of which the Council was seized during the period 1993-1995, the subject had previously been considered under an item entitled "The situation relating to Afghanistan".

### Communications from States Members or non-Members of the United Nations bringing disputes or situations to the attention of the Security Council during the period 1993-1995

<i>Communication<sup>a</sup></i>	<i>Article invoked in communication</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
<b>The situation prevailing in and adjacent to the United Nations Protected Areas in Croatia</b>			
Letter dated 25 January 1993 from the representative of France (S/25156)		An immediate meeting to consider the grave situation which existed in the United Nations Protected Areas in Croatia, and especially the attacks to which UNPROFOR personnel in these areas had been subjected.	3163rd meeting 25 January 1993

<i>Communication<sup>a</sup></i>	<i>Article invoked in communication</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
<b>The situation concerning Rwanda</b>			
Letter dated 4 March 1993 from the representative of Rwanda (S/25363)		An immediate meeting to consider ways of ensuring the cessation of the fighting, the observance of the ceasefire agreement signed at Arusha on 12 July 1992 and the implementation of the declarations issued by the Rwandese Patriotic Front and the Government of Rwanda.	3183rd meeting 12 March 1993
Letter dated 4 March 1993 from the representative of France (S/25371)		An immediate meeting to consider the grave situation in Rwanda and the consequences which it had for peace and security in the region.	
<b>Complaint by Ukraine regarding the Decree of the Supreme Soviet of the Russian Federation concerning Sevastopol</b>			
Letter dated 16 July 1993 from the representative of Ukraine (S/26100)	Article 35 (1)	An urgent meeting to consider the situation which had been created as a result of the adoption on 9 July 1993 of a Decree of the Supreme Soviet of the Russian Federation concerning the Ukrainian city of Sevastopol.	3256th meeting 20 July 1993
<b>The situation in Burundi</b>			
Letter dated 25 October 1993 from the representatives of Cape Verde, Djibouti and Morocco (S/26625)		An urgent meeting to consider the situation in Burundi as a result of the military coup d'état that had taken place in that country on 21 October 1993.	3297th meeting 25 October 1993
Letter dated 25 October 1993 from the representative of Burundi (S/26626)		An urgent meeting on the tragic situation prevailing in that country.	
<b>The situation in Yemen</b>			
Letter dated 27 May 1994 from the representatives of Bahrain, Egypt, Kuwait, Oman, Saudi Arabia and the United Arab Emirates (S/1994/630)		A meeting of the Security Council to discuss the situation in Yemen, and the resulting tragic loss in civilian lives.	3386th meeting 1 June 1994

<sup>a</sup> Unless otherwise specified, all letters listed were addressed to the President of the Security Council.



## Part II

### Investigation of disputes and fact-finding

Article 34 provides that “the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuation of the dispute or situation is likely to endanger the maintenance of international peace and security”. Article 34 does not however exclude other organs from performing investigative functions nor does it limit the Council’s general competence to obtain knowledge of the relevant facts of any dispute or situation by dispatching a fact-finding mission.

During the period under review, the Council performed and initiated a number of investigative and fact-finding activities that may be deemed to fall within the scope of Article 34 or be related to its provisions.

In several instances, the Council dispatched missions consisting of Council members to conflict areas, including Bosnia and Herzegovina,<sup>21</sup> Burundi,<sup>22</sup>

<sup>21</sup> The mission visited Bosnia and Herzegovina from 22 to 27 April 1993. The Council decided to dispatch the mission by resolution 819 (1993). For details, see the mission report (S/25700).

<sup>22</sup> Council missions visited Burundi on 13 and 14 August 1994 and on 10 and 11 February 1995. For details, see the mission reports (S/1994/1039 and S/1995/163).

Mozambique,<sup>23</sup> Rwanda,<sup>24</sup> Somalia<sup>25</sup> and Western Sahara.<sup>26</sup> Those missions were not expressly charged with concrete investigative tasks, but did allow the Council, *inter alia*, to form an impression of the respective situations on the ground. For example, the Council mission to Bosnia and Herzegovina was specifically mandated by resolution 819 (1993) to “ascertain the situation and report thereon to the Security Council”.

Furthermore, during the period under review, the Council also requested the Secretary-General to initiate or perform fact-finding or investigative functions, or to establish a body to be entrusted with such functions, examples of which are set out in the table below.

- <sup>23</sup> The mission visited Mozambique from 7 to 12 August 1994. The Council decided to dispatch the mission by a statement by the President of the Council dated 19 July 1994 (S/PRST/1994/35). For details, see the mission report (S/1994/1009).
- <sup>24</sup> The mission visited Rwanda on 12 and 13 February 1995. For details, see the mission report (S/1995/164).
- <sup>25</sup> The mission visited Somalia on 26 and 27 October 1994. For details, see the mission report (S/1994/1245).
- <sup>26</sup> The mission visited Western Sahara from 3 to 9 June 1995. The Council decided to dispatch the mission by resolution 995 (1995). For details, see the mission report (S/1995/498).

### Security Council requests to the Secretary-General regarding the investigation of disputes and fact-finding

<i>Item</i>	<i>Mandating decision</i>	<i>Request to the Secretary-General</i>
The situation in Somalia	Resolution 885 (1993)	To appoint a Commission of Inquiry to investigate armed attacks on UNOSOM II personnel.
The situation in Cambodia	Statement by the President of the Council dated 22 May 1993 (S/25822)	To investigate the shelling on 21 May 1993 of UNTAC and to report urgently to the Council.
The situation in Liberia	Statement by the President of the Council dated 9 June 1993 (S/25918)	To commence a thorough and full investigation of a massacre perpetrated on 6 June 1993.

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<i>Item</i>	<i>Mandating decision</i>	<i>Request to the Secretary-General</i>
The situation in the Republic of Yemen	Resolution 924 (1994)	To send a fact-finding mission to the area to assess prospects for a renewed dialogue among all those concerned.
The situation concerning Rwanda	Resolution 935 (1994)	To establish an impartial Commission of Experts to examine and analyse information submitted pursuant to the present resolution, 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.
The situation in Burundi	Resolution 1012 (1995)	To establish an international commission of inquiry, with the mandate of (a) establishing the facts relating to the assassination of the President of Burundi on 21 October 1993, the massacres and other related serious acts of violence which followed and (b) recommending measures of a legal, political or administrative nature, as appropriate, after consultation with the Government of Burundi, and measures with regard to the bringing to justice of persons responsible for those acts, to prevent any repetition of deeds similar to those investigated by the commission and, in general, to eradicate impunity and promote national reconciliation in Burundi.
The situation in Bosnia and Herzegovina	Statement by the President of the Council dated 8 January 1993 (S/25079)	To undertake a full investigation of the incident of the killing of the Deputy Prime Minister of Bosnia and Herzegovina by Bosnian Serb forces.
	Statement by the President of the Council dated 28 October 1993 (S/26661)	To submit a report on the responsibility for a massacre of the civilian population in Stupni Do on 23 October 1993 by troops of the Croatian Defence Council, and attacks against UNPROFOR and a humanitarian convoy under its protection on 25 October 1993 in Central Bosnia.

<i>Item</i>	<i>Mandating decision</i>	<i>Request to the Secretary-General</i>
	Statement by the President of the Council dated 9 November 1993 (S/26717)	To undertake a thorough investigation of an incident involving the taking hostage by Bosnian Serb forces of two persons travelling in armoured vehicles of UNPROFOR.
	Statement by the President of the Council dated 14 April 1995 (S/PRST/1995/19)	Again to investigate the circumstances of attacks on UNPROFOR personnel in Bosnia and Herzegovina.

In other instances, the Security Council, through resolutions and statements by its President, welcomed, supported or noted with satisfaction the dispatch by the Secretary-General of fact-finding missions to countries in conflict,<sup>27</sup> including Afghanistan, Burundi, Georgia, Liberia, Rwanda and Tajikistan.<sup>28</sup>

On a number of occasions, requests made by Member States for investigations did not result in the establishment or dispatch of investigative bodies or fact-finding missions, for example in relation to items

settlement to the dispute, and, by resolution 877 (1993), the Council demanded that all parties refrain from the use of force and from any violations of international humanitarian law and welcomed the decision of the Secretary-General to send a fact-finding mission to Georgia in that regard, in particular to investigate reports of "ethnic cleansing". In connection with the situation in Liberia, by resolution 950 (1994), the Council welcomed the Secretary-General's intention to send a high-level mission to consult with ECOWAS member States on how the international community could best continue to assist the peace process in Liberia, and, also by resolution 1014 (1995), the Council welcomed the Secretary-General's intention to dispatch a mission to Liberia to consult with the Liberian leaders and other interested parties on the requirements in the evolving implementation of the Abuja Agreement. In connection with the situation concerning Rwanda, by a statement by the President dated 10 September 1993 (S/26425), the Council welcomed the decision taken by the Secretary-General to send a reconnaissance mission to Rwanda and hoped to have the report of the Secretary-General based on the recommendations of the mission in the next few days so that it could consider the contribution the United Nations could make to facilitate the implementation of the Arusha Peace Agreement signed on 4 August 1993. In connection with the situation in Tajikistan and along the Tajik-Afghan border, by a statement by the President dated 23 August 1993 (S/26341), in the light of the unstable situation on the Tajik-Afghan border, the Council welcomed the Secretary-General's decision to dispatch his Special Envoy to Afghanistan and other countries in the region.

<sup>27</sup> By a statement by the President of the Council dated 28 May 1993 (S/25859), in connection with "An Agenda for Peace", the Council noted with satisfaction the increased use of fact-finding missions.

<sup>28</sup> In connection with the situation in Afghanistan, by a statement by the President of the Council dated 24 January 1994 (S/PRST/1994/4), the Council noted General Assembly resolution 48/208 of 21 December 1993, in which the Assembly had requested 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 could best assist Afghanistan in facilitating national rapprochement and reconstruction, and welcomed the reaffirmation of support for such a mission issued on 12 January 1994 by the Secretary-General and his intention to dispatch the mission. In connection with the situation in Burundi, by a statement by the President dated 25 October 1993 (S/26631), the Council took note with appreciation of the dispatch by the Secretary-General of a Special Envoy to Burundi, and, by a statement by the President dated 16 November 1993 (S/26757), the Council noted with satisfaction the immediate response of the Secretary-General to the situation by dispatching a Special Envoy in a good offices mission to facilitate the return of the country to constitutional rule. In connection with the situation in Georgia, by a statement by the President dated 17 September 1993 (S/26463), the Council welcomed the Secretary-General's intention to send his Special Envoy for Georgia to Moscow and to the area to assess the situation and to establish a way forward to a peaceful

such as the situation in Angola and the situation in the occupied Arab territories.<sup>29</sup>

The following case studies set out details of the decision-making process leading to the establishment of a commission of experts to examine information relating to grave violations of international humanitarian law committed in Rwanda; and the establishment of an international commission of inquiry in connection with the assassination of the President of Burundi on 21 October 1993 and the acts of violence that followed.

### Case 1

#### *The situation concerning Rwanda*

##### *Establishment of the Commission of Experts to examine information with a view to providing the Secretary-General with its conclusions on the evidence of grave violations of international humanitarian law in Rwanda*

In connection with the situation concerning Rwanda, the Security Council, by a statement by the President of the Council dated 30 April 1994,<sup>30</sup> condemned all breaches of international humanitarian law in Rwanda, particularly those perpetrated against the civilian population, and recalled that persons who instigated or participated in such acts were individually responsible. It further recalled, in that context, that the killing of members of an ethnic group with the intention of destroying such group, in whole or in part, constituted a crime punishable under international law.

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<sup>29</sup> In connection with the situation in Angola, at the 3168th meeting, on 29 January 1993, the representative of Angola requested the Security Council to conduct “an international investigation” to look into the involvement of South Africa and Zaire in the internal affairs of Angola (S/PV.3168, p. 11). In connection with the situation in the occupied Arab territories, at the 3340th meeting, on 28 February 1994, the representative of Egypt, speaking as the Chairman of the Group of Arab States, called upon the Security Council to send an international commission to investigate the killing of Palestinian worshippers in the Mosque of Ibrahim in Hebron, on 25 February 1994, and to take the necessary measures to enable the commission to carry out its mandate (S/PV.3340, p. 11). The request was supported by the representative of Jordan (*ibid.*, p. 29).

<sup>30</sup> S/PRST/1994/21.

By that statement, the Council requested the Secretary-General to make proposals for investigation of the reports of serious violations of international humanitarian law during the conflict.

By resolution 918 (1994) of 17 May 1994, the Council reiterated its condemnation of the continued killing of civilians with impunity, and recalled that such killings constituted a crime punishable under international law. By the same resolution, the Council requested the Secretary-General to present a report as soon as possible on the investigation of serious violations of international humanitarian law committed in Rwanda during the conflict. By resolution 925 (1994) of 8 June 1994, the Council noted with grave concern the reports indicating that acts of genocide had occurred in Rwanda and recalled that genocide constituted a crime punishable under international law.

In his report on the situation in Rwanda, the Secretary-General noted that massacres and killings were continuing in a systematic manner throughout that country, and indicated that “only a proper investigation [could] establish the facts and definite culpability”. The Secretary-General concluded, on the basis of the findings and evidence of the special mission to Rwanda, that there could be little doubt that the large-scale killings of communities and families belonging to a particular ethnic group constituted genocide.<sup>31</sup>

By resolution 935 (1994) of 1 July 1994, the Council, recalling the requests it had addressed to the Secretary-General in the statement by the President of the Council of 30 April 1994 and in resolution 918 (1994), concerning the investigation of serious violations of international humanitarian law committed in Rwanda during the conflict, requested the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse information submitted pursuant to resolution 935 (1994), together with such further information as the Commission might obtain through its own investigations or the efforts of other persons or bodies, including the information made available by the Special Rapporteur for Rwanda of the Commission on

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<sup>31</sup> S/1994/640, paras. 6, 10 and 36.

Human Rights,<sup>32</sup> 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; requested the Secretary-General to report to the Council on the establishment of the Commission of Experts; and further requested him, within four months from the establishment of the Commission, to report to the Council on the conclusions of the Commission and to take account of those conclusions in any recommendations for further appropriate steps.

In the deliberations held in connection with the adoption of resolution 935 (1994), several Council members supported the establishment of a commission of experts. The representative of Spain considered that the establishment of such a commission would contribute to clarifying the facts with respect to the killings in Rwanda and to the carrying out of justice, and would also “make it possible to facilitate a political settlement” by focusing responsibility on specific persons rather than on ethnic, social or political groups.<sup>33</sup> The representative of the United States stressed that the Council’s goal must be “individual accountability and responsibility for grave violations of international humanitarian law in Rwanda”. He further stated that the Council must be ready to respond as quickly as possible to the commission’s report and that it was imperative that it

avoid any unnecessary delay in bringing to justice those responsible for serious breaches of international humanitarian law.<sup>34</sup> Touching upon the question of jurisdiction, the representative of France argued that the establishment of a commission of experts to investigate human rights violations in Rwanda should make it possible to identify those responsible for those crimes so that the Council could then decide, on the basis of the Secretary-General’s recommendations, “under which jurisdiction they [could] be dealt with”.<sup>35</sup> In a similar vein, the representative of New Zealand stated that genocide and other grave breaches of humanitarian law were international crimes which were subject to universal jurisdiction and stressed that there was the need to ensure that information on the killings was collected and organized so that there was at least “a basis upon which subsequent prosecutions, whether undertaken internationally or through the Rwandan legal system”, could proceed.<sup>36</sup> On the other hand, the representative of China held that the establishment of the Commission of Experts as authorized by the resolution was “an exceptional action” adopted in line with the special situation in Rwanda, and therefore should not be considered as a precedent.<sup>37</sup>

In his report of 26 July 1994 on the establishment of the Commission of Experts pursuant to paragraph 1 of resolution 935 (1994),<sup>38</sup> the Secretary-General expressed the hope that, given the urgency of the matter, the report would be submitted no later than 30 November 1994, as provided for in that resolution. To that end, he envisaged that the work of the Commission would be in two stages: in a first stage, the members of the Commission would review and update the information that was available from all sources and carry out its own investigations in Rwanda to complement those already undertaken by the Special Rapporteur. The second stage of the Commission’s work would be to draw up its conclusions on the evidence of specific violations of international humanitarian law, in particular acts of genocide, on the basis of which identification of persons responsible for those violations could be made. In the light of those conclusions, the Commission would examine the question of the jurisdiction, international or national,

<sup>32</sup> By its resolution S-3/1 of 25 May 1994, the Commission on Human Rights requested its Chairman to appoint a Special Rapporteur to investigate at first hand the human rights situation in Rwanda and to receive relevant, credible information on the human rights situation from Governments, individuals and intergovernmental and non-governmental organizations, including on the root causes and responsibilities for the recent atrocities. The Commission requested the Special Rapporteur to visit Rwanda and report on the human rights situation in that country, including recommendations for bringing violations and abuses to an end and preventing future violations and abuses. The Special Rapporteur was also requested to gather and compile systematically information on possible violations of human rights and acts that might constitute breaches of international humanitarian law and crimes against humanity, including acts of genocide, in Rwanda and to make that information available to the Secretary-General. The Special Rapporteur submitted his report on the situation of human rights in Rwanda on 29 June 1994 (E/CN.4/1995/7).

<sup>33</sup> S/PV.3400, p. 3.

<sup>34</sup> *Ibid.*, p. 4.

<sup>35</sup> *Ibid.*, p. 5.

<sup>36</sup> *Ibid.*, p. 6.

<sup>37</sup> *Ibid.*, p. 7.

<sup>38</sup> S/1994/879.

before which such persons should be brought to trial. Therefore, the Secretary-General decided to establish a Commission of Experts to be composed of three members, taking into account their qualifications in the areas of human rights, humanitarian law, criminal law and prosecution, as well as their integrity and impartiality. Subsequently, by a letter dated 29 July 1994 addressed to the President of the Council,<sup>39</sup> the Secretary-General informed the Council that, following extensive consultations, he had decided to appoint the three members of the Commission.

By a letter dated 1 October 1994 addressed to the President of the Council,<sup>40</sup> the Secretary-General submitted the interim report of the Commission of Experts covering its preliminary investigations and activities prior to 30 September 1994. The Commission recommended that the Council take all necessary and effective action to ensure that the individuals responsible for the grave violations of human rights in Rwanda during the armed conflict were brought to justice before “an independent and impartial international criminal tribunal”. In order to enhance the fair and consistent interpretation, application and adjudication of international law on individual responsibility for serious human rights violations and to achieve the most efficient allocation of resources, the Commission further recommended that the Security Council amend the statute of the International Tribunal for the Former Yugoslavia so that it could consider crimes under international law committed during the armed conflict in Rwanda.

By a statement by the President of the Council dated 14 October 1994,<sup>41</sup> the Council, reaffirming its view that those responsible for serious breaches of international humanitarian law and acts of genocide must be brought to justice, stated that it was considering the recommendations of the Commission of Experts in respect of the establishment of an international tribunal and would act expeditiously in the matter.

By resolution 955 (1994) of 8 November 1994, the Council expressed appreciation for the work of the Commission of Experts established pursuant to resolution 935 (1994), in particular its preliminary report on violations of international humanitarian law

in Rwanda transmitted by the Secretary-General’s letter of 1 October 1994,<sup>42</sup> and considered that the Commission should continue the collection of information relating to evidence of grave violations of international humanitarian law and should submit its final report to the Secretary-General by 30 November 1994. By the same resolution, acting under Chapter VII of the Charter, the Council decided, having received the request of the Government of Rwanda,<sup>43</sup> 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.<sup>44</sup>

The final report of the Commission of Experts was transmitted by the Secretary-General by a letter dated 9 December 1994 addressed to the President of the Council,<sup>45</sup> in which he summarized as follows the conclusions of the Commission: there existed overwhelming evidence to prove that acts of genocide against the Tutsi ethnic group had been committed by Hutu elements, and that crimes against humanity and serious violations of international humanitarian law had been committed by individuals on both sides of the conflict, but there was no evidence to suggest that acts committed by Tutsi elements had been perpetrated with an intent to destroy the Hutu ethnic group as such, within the meaning of the Genocide Convention; the Commission recommended that investigation of violations of international humanitarian law and of human rights law attributed to the Rwandese Patriotic Front be continued by the Prosecutor of the International Tribunal for Rwanda established by resolution 955 (1994).<sup>46</sup>

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<sup>39</sup> S/1994/906.

<sup>40</sup> S/1994/1125.

<sup>41</sup> S/PRST/1994/59.

<sup>42</sup> S/1994/1125.

<sup>43</sup> S/1994/1115.

<sup>44</sup> For more details concerning the establishment of the tribunal, see chapter V, part I.F.

<sup>45</sup> S/1994/1405.

<sup>46</sup> Pursuant to article 15 of the statute of the International Tribunal for Rwanda, the Prosecutor of the International Tribunal for the Former Yugoslavia shall also serve as the Prosecutor of the International Tribunal for Rwanda (see resolution 955 (1994), annex). The Prosecutor of the International Tribunal for the Former Yugoslavia was appointed by resolution 936 (1994).

In the above-mentioned letter, the Secretary-General also said he believed that, in view of resolution 955 (1994), the Commission's recommendations, namely, the establishment of an international tribunal and the continuation of the investigation into allegations of violations of international humanitarian law, had been already acted upon. Therefore, he considered that the Commission had discharged the mandate entrusted to it by the Council in its resolution 935 (1994).

## Case 2

### *The situation in Burundi*

#### *Dispatch of a Council mission to Burundi from 10 to 11 February 1995 and subsequent establishment of the International Commission of Inquiry in connection with the assassination on 21 October 1993 of the President of Burundi and the acts of violence that followed*

As recorded in the note by the President of the Council dated 6 February 1995,<sup>47</sup> Council members, at the consultations of the whole of that date, decided to send a mission to Burundi and Rwanda. The mission's terms of reference in Burundi were (a) to hold consultations with the Special Representative of the Secretary-General on the situation regarding the political and security developments in Burundi and his efforts in that regard, and additional ways in which the United Nations might further underpin his efforts; (b) to hold talks with the President, the Prime Minister, the leadership of the security forces and the leaders of the opposition parties as well as United Nations agencies, members of the diplomatic corps, non-governmental organizations, the Office of the Organization of African Unity and other interested parties and convey to them the serious concerns of the Security Council over the recent political developments in Burundi; (c) to stress to all the parties the strong support of the Council for the Convention on Governance of 10 September 1994<sup>48</sup> and the Government constituted on the basis of it and for the process of national reconciliation, and the Council's rejection of all attempts to undermine them or to destabilize the region; and (d) to submit a report to the Council. The mission followed up on work done by an

<sup>47</sup> S/1995/112.

<sup>48</sup> S/1995/190, annex.

earlier Security Council mission to Burundi, on 13 and 14 August 1994.

By a letter dated 28 February 1995 addressed to the President of the Council,<sup>49</sup> the members of the Security Council mission to Burundi transmitted the report on their mission, which was conducted on 10 and 11 February 1995. As one of its recommendations, the mission suggested that an international commission of inquiry into the coup attempt of October 1993 and the massacres that had followed, as proposed by the Government of Burundi in accordance with the Convention on Governance, should be established as soon as possible.

By a statement by the President of the Council dated 9 March 1995,<sup>50</sup> the Council considered the report of its mission to Burundi, which had visited Bujumbura on 10 and 11 February,<sup>51</sup> and welcomed the observations and recommendations contained therein. The Council reaffirmed the view that impunity was a fundamental problem in Burundi, one which seriously endangered security in the country, and stressed the importance it attached to assistance being given to help strengthen the national judicial system. It underlined the role that could be played by an international commission of inquiry into the 1993 coup attempt and into the massacres that had followed, established in accordance with the Convention on Governance.

By a statement by the President of the Council dated 29 March 1995,<sup>52</sup> the Council recalled the statement by the President of 9 March 1995 and requested the Secretary-General to report to the Council on an urgent basis on what steps should be taken to establish an impartial commission of inquiry.

By a letter dated 28 July 1995 addressed to the President of the Council,<sup>53</sup> the Secretary-General submitted to the Council the report of his Special Envoy on the options for the establishment of an international commission of inquiry. The report concluded that neither a commission on the truth based on the Salvadoran model nor an international judicial commission of inquiry whose mandate was limited to purely judicial matters would be an adequate response to the need to put an end to impunity in Burundi. An

<sup>49</sup> S/1995/163.

<sup>50</sup> S/PRST/1995/10.

<sup>51</sup> S/1995/163, annex.

<sup>52</sup> S/PRST/1995/13.

<sup>53</sup> S/1995/631.

international judicial commission of inquiry, however, could be viable and useful if its mandate would guarantee that its conclusions and recommendations would be put into effect and achieve the objective of prosecuting and punishing those responsible for the assassination of the President of Burundi on 21 October 1993, for the massacres that had followed and for other serious acts of violence and political crimes committed since October 1993. It also concluded that the international commission should be mandated not only to undertake a judicial inquiry but also to make recommendations of an institutional nature in the legal, political and/or administrative fields. On the basis of the conclusions, the Secretary-General recommended to the Council to establish such a commission by adopting a resolution as soon as possible.

By letters dated 8 and 23 August 1995 addressed to the President of the Council,<sup>54</sup> the representative of Burundi informed the Council that his Government had taken note with great interest of the contents of the report of the Secretary-General of 28 July 1995, and transmitted a statement of motives for the request for the constitution of an international commission of inquiry, together with the terms of reference of the Commission.

During the deliberations held in connection with the adoption of resolution 1012 (1995), the representative of Burundi stated that the initiative for establishing the commission came from the Burundi political actors in search of an impartial international arbiter. He stressed that the success of the work of the commission would depend on close and steady cooperation with the Government of Burundi in general and with the security forces and the national judicial system in particular. The commission would have to resist any temptation to exceed the mandate and the field of action delineated in the terms of reference proposed by the Government of Burundi and set out in the draft resolution. That code of conduct was dictated by a concern to prevent any compromise of national sovereignty, any interference in the internal affairs of Burundi and any possible mingling of matters within the commission's mandate with subjects outside its area of competence.<sup>55</sup>

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<sup>54</sup> S/1995/673 and S/1995/731.

<sup>55</sup> S/PV.3571, pp. 3-4.

The representative of China stated that his country was of the view that the international community, in assisting with the settlement of the Burundi question, should fully respect the independence and sovereignty of Burundi and should not interfere in its internal affairs. Therefore, it was very important to heed and respect the views of the Government of Burundi in connection with the establishment of the commission. His delegation noted that while the mandate of the commission was extensive, touching on certain aspects upon Burundi's sovereignty and internal affairs, and although China had certain reservations about some elements of the mandate, it could be treated as a special case, in view of the acceptance by the Government of Burundi and of the special circumstances in that country.<sup>56</sup>

The representative of the United States, stating that the resolution was drafted in close consultation with the Burundi authorities, underlined that it was the hope and intent of the Council that the commission would help to set Burundi firmly on the path to renewed peaceful and democratic governance along with respect for human rights. The commission would recommend measures to prevent any repetition of deeds similar to those investigated by the commission and to eradicate impunity in Burundi. It would remain up to the Government of Burundi to decide on what measures were taken.<sup>57</sup>

The representative of Rwanda maintained that his delegation had important questions with respect to the role of the commission and the result it would be able to achieve.<sup>58</sup>

By resolution 1012 (1995), which was adopted unanimously, the Council requested the Secretary-General to establish, as a matter of urgency, an international commission of inquiry, with the mandate (a) to establish the facts relating to the assassination of the President of Burundi on 21 October 1993, the massacres and other related serious acts of violence which followed; and (b) to recommend measures of a legal, political or administrative nature, as appropriate, after consultation with the Government of Burundi, and measures with regard to the bringing to justice of persons responsible for those acts, to prevent any repetition of deeds similar to those investigated by the

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<sup>56</sup> *Ibid.*, pp. 5-6.

<sup>57</sup> *Ibid.*, p. 10.

<sup>58</sup> *Ibid.*, p. 12.



commission and, in general, to eradicate impunity and promote national reconciliation in Burundi. In addition, the Council recommended that the international commission of inquiry be composed of five impartial and internationally respected, experienced jurists who should be selected by the Secretary-General and should be furnished with adequate expert staff, and that the Government of Burundi be duly informed. The Council also requested the Secretary-General to report to the Council on the establishment of the commission of inquiry, and further requested him, within three months from the commission's establishment, to submit an interim report to the Council on the work of the commission and to submit a final report when the commission completed its work.

By a letter dated 22 September 1995 addressed to the President of the Council,<sup>59</sup> the Secretary-General informed the Council that, in accordance with resolution 1012 (1995), he had appointed five members of the Commission. The President of the Council, by a letter dated 27 September 1995 addressed to the Secretary-General,<sup>60</sup> informed the Secretary-General that his letter had been brought to the attention of the members of the Council, who took note of the decision contained therein.

<sup>59</sup> S/1995/825.

<sup>60</sup> S/1995/826.

### Part III

## Decisions of the Security Council concerning the pacific settlement of disputes

### Note

Chapter VI of the Charter contains various provisions according to which the Security Council may make recommendations to the parties to a dispute or situation. According to Article 33 (2) of the Charter, the Council may call on the parties to settle their disputes by such peaceful means as provided for in Article 33 (1). According to Article 36 (1) the Council may "recommend appropriate methods or procedures of adjustment". Article 37 (2) envisages that the Council may "recommend such terms of settlement as it may consider appropriate", and Article 38 provides that it may "make recommendations to the parties with a view to a pacific settlement of the dispute".

As part of its efforts aimed at the peaceful settlement of conflicts within the framework of Chapter VI of the Charter, the Council frequently endorsed or supported peace agreements concluded by the parties to a conflict, or recommended various methods or procedures of settlement, such as bilateral or multilateral negotiations,<sup>61</sup> mediation or conciliation

Front to resume the negotiations on 15 March 1993 as agreed, in order to resolve the pending questions with a view to signing a peace agreement at the beginning of April 1993 at the latest. In connection with the situation in the Republic of Yemen, by resolution 924 (1994), the Council reminded all concerned that their political differences could not be resolved through the use of force, and urged them to return immediately to negotiations which would permit a peaceful resolution of their differences and a restoration of peace and stability. In connection with the situation in Tajikistan, by a statement by the President of the Council dated 6 November 1995 (S/PRST/1995/54), the Council called upon the Tajik parties to begin as a matter of urgency "the continual round of talks with the aim of concluding a general agreement" in accordance with the provisions of the Protocol on the fundamental principles for establishing peace and national accord in Tajikistan signed by the President of Tajikistan and the leader of the Tajik opposition on 17 August 1995 (S/1995/72, annex).

<sup>61</sup> For instance, in connection with the situation concerning Rwanda, by resolution 812 (1993), stressing the need for a negotiated political solution, in the framework of the agreements signed by the parties in Arusha, in order to put an end to the conflict in Rwanda, the Council urged the Government of Rwanda and the Rwandese Patriotic

efforts undertaken by the Secretary-General<sup>62</sup> or by regional arrangements.<sup>63</sup>

Relevant appeals and recommendations were in general addressed to the parties involved or concerned, which were not only States but also, in several instances, non-State actors. For instance, in connection with the situation in Tajikistan, by a statement by the President of the Council dated 23 August 1993,<sup>64</sup> the Council urged “the Government of Tajikistan and all opposition groups” to accept as soon as possible the need for an overall political solution and to participate

<sup>62</sup> For example, in connection with the situation in Cyprus, by resolution 839 (1993), the Council called on both parties to carry forward expeditiously and in a constructive manner the intercommunal talks under the auspices of the Secretary-General. In connection with the situation in Tajikistan, by a statement by the President of the Council dated 8 November 1994 (S/PRST/1994/65), the Council reaffirmed its support for the efforts by the Secretary-General and his Special Envoy to facilitate the political dialogue between the Government of Tajikistan and the Tajik opposition aimed at achieving national reconciliation. In connection with the situation in Sierra Leone, by a statement by the President of the Council dated 27 November 1995 (S/PRST/1995/57), the Council expressed its appreciation to the Secretary-General for his offer of good offices in Sierra Leone and urged the Revolutionary United Front to take advantage of that offer, thus enabling both parties to enter into negotiations.

<sup>63</sup> See chapter XII, part III, for further details on the manner in which the Security Council has encouraged efforts undertaken by regional arrangements in the peaceful settlement of disputes. By way of example, in connection with the situation in Afghanistan, by a statement by the President of the Council dated 24 January 1994 (S/PRST/1994/4), the Council commended the efforts of the Organization of the Islamic Conference to promote peace in Afghanistan through a political dialogue among the Afghan parties. In connection with the situation relating to Nagorno Karabakh, by resolution 853 (1993), the Council endorsed the continuing efforts by the Minsk Group of the Conference on Security and Cooperation in Europe to achieve a peaceful solution to the conflict. In connection with the situation concerning Rwanda, by resolution 812 (1993), the Council stressed the need for a negotiated political solution, in the framework of the agreements signed by the parties in Arusha, in order to put an end to the conflict in Rwanda and paid tribute to the efforts of the Organization of African Unity to promote such a solution.

<sup>64</sup> S/26341.

in a negotiating process for the early establishment of a ceasefire and eventual national reconciliation with the widest possible participation of all political groups and all the regions of the country. In connection with the situation in Burundi, by a statement by the President dated 22 December 1994,<sup>65</sup> the Council encouraged “the Government, the National Assembly, the political parties and all others concerned in Burundi, and in particular the army”, to respect and give support to the Convention on Governance of 10 September 1994. In connection with the situation in Liberia, by resolution 972 (1995), the Council called on “the Liberian leaders and factions” to demonstrate their commitment to the peace process by maintaining the ceasefire, which had come into effect on 28 December 1994.

This part of the chapter will aim to provide an overview of the Council’s practice in relation to the peaceful settlement of disputes by setting out examples of the most relevant decisions adopted by the Council during the period under review. As it is not always possible to ascertain the concrete basis within the framework of the Charter on which individual Council decisions have been made, the overview will aim to set out relevant decisions without ascribing them to specific Articles of the Charter. Council decisions related to investigation and fact-finding missions have been already covered in part II of this chapter.

### A. Recommendations relating to terms, methods or procedures of settlement

The following overview sets out instances in which the Council proposed or endorsed terms of settlement, or recommended procedures or methods of settlement.

#### *The situation in Bosnia and Herzegovina*

By resolution 820 (1993) of 17 April 1993, the Council commended the peace plan for Bosnia and Herzegovina in the form agreed to by two of the Bosnian parties and set out in the report of the Secretary-General of 26 March 1993,<sup>66</sup> namely the Agreement on Interim Arrangements, the nine Constitutional Principles, the provisional provincial map and the Agreement for Peace in Bosnia and Herzegovina.

<sup>65</sup> S/PRST/1994/82.

<sup>66</sup> S/25476.

By resolution 942 (1994) of 23 September 1994, the Council expressed its approval of the proposed territorial settlement for the Republic of Bosnia and Herzegovina which had been put to the Bosnian parties as part of an overall peace settlement.

In a statement by the President of the Council dated 6 January 1995,<sup>67</sup> the Council deemed it imperative to intensify efforts under the auspices of the Contact Group to achieve an overall settlement on the basis of the acceptance of the peace plan of the Contact Group as a starting point.

In a statement by the President of the Council dated 8 September 1995,<sup>68</sup> the Council welcomed the joint statement issued at the conclusion of the meeting held under the auspices of the Contact Group in Geneva on the same day between the Foreign Ministers of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro) and in particular the agreement by the parties on the Declaration of Principles.

By resolution 1031 (1995) of 15 December 1995, the Council welcomed and supported the General Framework Agreement for Peace in Bosnia and Herzegovina and the Annexes thereto (collectively the "Peace Agreement"),<sup>69</sup> signed on 14 December 1995 at the Paris Peace Conference.

#### *The situation in Burundi*

In a statement by the President of the Council dated 9 March 1995,<sup>70</sup> the Council reaffirmed its support for the Convention on Governance and for the coalition Government established under it, and the implementation of the provisions of the Convention calling for the holding of a national debate with the participation of all segments of the society in Burundi, as a means of fostering political dialogue.

#### *The situation in Tajikistan*

In a statement by the President of the Council dated 25 August 1995,<sup>71</sup> the Council welcomed the protocol on the fundamental principles for establishing peace and national accord in Tajikistan signed by the

President of Tajikistan and the leader of the Tajik opposition on 17 August 1995,<sup>72</sup> and supported the agreement of the parties to conduct the continual round of talks due to begin on 18 September 1995, with the aim of concluding a general agreement on the establishment of peace and national accord in Tajikistan.

#### *The situation in Afghanistan*

In a statement by the President of the Council dated 30 November 1994,<sup>73</sup> the Council welcomed the acceptance by the warring parties and other Afghan representatives of a step-by-step process of national reconciliation through the establishment of a fully representative and broad-based Authoritative Council, which would (a) negotiate and oversee a ceasefire, (b) establish a national security force to collect and safeguard heavy weapons and provide for security throughout the country and (c) form a transitional government to lay the groundwork for a democratically chosen government, possibly utilizing traditional decision-making structures such as a "Grand Assembly".

#### *The situation relating to Nagorny Karabakh*

In a statement by the President of the Council dated 6 April 1993,<sup>74</sup> the Council expressed its support for the peace process of the Conference on Security and Cooperation in Europe (CSCE). Similar expressions of support were made in the subsequent decisions.<sup>75</sup>

#### *Complaint by Ukraine regarding the Decree of the Supreme Soviet of the Russian Federation regarding Sevastopol*

In a statement by the President of the Council dated 20 July 1993,<sup>76</sup> the Council welcomed the efforts of the Presidents and the Governments of the Russian Federation and Ukraine to settle any differences between them by peaceful means.

<sup>67</sup> S/PRST/1995/1.

<sup>68</sup> S/PRST/1995/45.

<sup>69</sup> S/1995/999, annex.

<sup>70</sup> S/PRST/1995/10.

<sup>71</sup> S/PRST/1995/42.

<sup>72</sup> S/1995/720, annex.

<sup>73</sup> S/PRST/1994/77.

<sup>74</sup> S/25539.

<sup>75</sup> Resolutions 822 (1993), 853 (1993), 874 (1993) and 884 (1993) and statements by the President of 18 August 1993 (S/26326) and 26 April 1995 (S/PRST/1995/21).

<sup>76</sup> S/26118.

*The situation in the Middle East*

Throughout the reporting period, in statements by the President of the Council accompanying the resolutions by which the Council extended the mandate of the United Nations Interim Force in Lebanon, the Council reiterated its full support for the Taif Agreement.<sup>77</sup>

*The situation in the occupied Arab territories*

By resolution 904 (1994) of 18 March 1994, the Council reaffirmed its support for the peace process under way and called for the implementation of the Declaration of Principles, signed by the Government of Israel and the Palestine Liberation Organization on 13 September 1993 in Washington, D.C., without delay.

*Agreement signed on 4 April 1994 between the Governments of Chad and the Libyan Arab Jamahiriya*

By resolution 910 (1994) of 14 April 1994 and similarly by resolution 915 (1994) of 4 May 1994, the Council welcomed the agreement signed at Surt, Libyan Arab Jamahiriya, on 4 April 1994 by the Governments 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 regarding the Aouzou Strip.<sup>78</sup>

*The situation in Georgia*

In a statement by the President of the Council dated 8 April 1994,<sup>79</sup> the Council considered the signing in Moscow on 4 April 1994 of the Declaration on Measures for a Political Settlement of the

Georgian/Abkhaz Conflict<sup>80</sup> and the Quadripartite Agreement on Voluntary Return of Refugees and Displaced Persons<sup>81</sup> as an encouraging event, laying the basis for further progress towards the settlement of the conflict.

In a statement by the President of the Council dated 2 December 1994,<sup>82</sup> the Council called upon all parties, in particular the Abkhaz side, to reach substantive progress in the negotiations under the auspices of the United Nations and with the assistance of the Russian Federation as facilitator and with the participation of representatives of CSCE 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, based on the principles set out in all the relevant resolutions of the Council. By resolution 993 (1995) of 12 May 1995, the Council reiterated such a call.

*The situation in Liberia*

By resolution 813 (1993) of 26 March 1993, the Council reaffirmed its belief that the Yamoussoukro IV Accord of 30 October 1991 offered the best possible framework for a peaceful resolution of the Liberian conflict by creating the necessary conditions for free and fair elections in Liberia.<sup>83</sup>

By resolution 856 (1993) of 10 August 1993, the Council welcomed the signing under the auspices of the Economic Community of West African States, on 25 July 1993, at Cotonou, Benin, of a Peace Agreement between the Interim Government of National Unity of Liberia, the National Patriotic Front of Liberia and the United Liberation Movement for Democracy.<sup>84</sup>

By resolution 1014 (1995) of 15 September 1995, the Council welcomed the Abuja Agreement signed by the Liberian parties on 19 August 1995,<sup>85</sup> which amended and supplemented the Cotonou Agreement and the Akosombo Agreement<sup>86</sup> as subsequently clarified by the Accra Agreement.<sup>87</sup>

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<sup>77</sup> Statements of 28 January 1993 (S/25185), 28 July 1993 (S/26183), 28 January 1994 (S/PRST/1994/5), 28 July 1994 (S/PRST/1994/37), 30 January 1995 (S/PRST/1995/4) and 28 July 1995 (S/PRST/1995/35).

<sup>78</sup> In his report on the United Nations Aouzou Strip Observer Group (UNASOG) of 6 June 1994, the Secretary-General stated that the accomplishment of the mandate of UNASOG to observe the implementation of the Agreement amply demonstrated "the useful role, as envisaged by the Charter, which the United Nations [could] play in the peaceful settlement of disputes when the parties cooperate[d] fully with the Organization" (S/1994/672, para. 8).

<sup>79</sup> S/PRST/1994/17.

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<sup>80</sup> S/1994/397, annex I.

<sup>81</sup> Ibid., annex II.

<sup>82</sup> S/PRST/1994/78.

<sup>83</sup> S/24815, annex.

<sup>84</sup> S/26272, annex.

<sup>85</sup> S/1995/742.

<sup>86</sup> S/1994/1174.

<sup>87</sup> S/1995/7.

*The situation in Angola*

In a statement by the President of the Council dated 21 November 1994,<sup>88</sup> the Council welcomed the signing of the Lusaka Protocol<sup>89</sup> by the representatives of the Government of Angola and UNITA at Lusaka on 20 November 1994, and stated that the Protocol together with the Bicesse Accords should lay the foundation for lasting peace in Angola.

**B. Decisions involving the Secretary-General in the Council's efforts at the pacific settlement of disputes**

Article 99 of the Charter provides that 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". The Council's efforts aimed at the pacific settlement of disputes frequently require the involvement of the Secretary-General, who, in coordination with the Council or upon its request, in many instances, facilitates peace efforts in various

<sup>88</sup> S/PRST/1994/70.

<sup>89</sup> S/1994/1441, annex.

ways, such as his "good offices" function, diplomatic efforts for promotion of a political settlement, dispatch and command of peacekeeping operations, and establishment of international criminal tribunals. Council decisions related to these efforts by the Secretary-General, including the Council's endorsement and support for them during the period under review, are covered in chapter VI, part V.

**C. Decisions involving regional arrangements or agencies**

During the period under review, the Security Council not only called upon the parties to cooperate with regional arrangements, but also, in accordance with Article 52 of the Charter, frequently expressed its support and appreciation for the peace efforts undertaken by regional arrangements or requested the Secretary-General to undertake such efforts in conjunction with regional arrangements. Council decisions regarding the joint or parallel efforts undertaken by the Council and regional agencies or arrangements in the pacific settlement of disputes during the period under review are covered in detail in chapter XII.

**Part IV**  
**Constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter**

**Note**

This part of the chapter aims to highlight the most important aspects and arguments raised in deliberations of the Security Council with regard to the interpretation of specific provisions of the Charter concerning the Council's role in the peaceful settlement of disputes. This includes in particular discussions concerning the competence of the Council to consider a dispute or situation and its power to make appropriate recommendations within the framework of Chapter VI of the Charter.

In accordance with the relevant provisions of Chapter VI, the Council shall, when it deems necessary, make recommendations in relation to disputes or situations which are likely to endanger international peace and security. Accordingly, this part

will focus on discussions concerning the existence of a dispute or situation within the meaning of Chapter VI of the Charter.

When making recommendations to the parties, the Council is also required, pursuant to Article 36 of the Charter, to take into consideration (a) procedures for settlement which have already been adopted by the parties, and (b) the general rule that disputes of a legal nature ought to be referred to the International Court of Justice. Instances in which the requirements stipulated by Article 36 (2) and (3) became the subject of deliberations will, therefore, also be considered below.

Since the referral of a situation or dispute to the Council was challenged by Member States on the basis of distinct arguments, some items are considered under several subheadings.

## Assertion that international peace and security are not endangered

In several instances, Member States, by asserting that a dispute or situation did not pose a threat to international peace and security, also challenged the Council's general competence, under Chapter VI, to consider certain matters or make recommendations in relation thereto. Such instances may therefore be illustrated in this section, even though the expression "threat to the peace" usually indicates the consideration of a situation before the Council under Chapter VII of the Charter.

With regard to the situation in the Republic of Yemen, by a letter dated 31 May 1994 addressed to the President of the Council,<sup>90</sup> the Government of Yemen conveyed its "great surprise and sorrow" that the Council was addressing the internal issue of Yemen on the basis of "erroneous information and through intermediaries who [were] not involved", despite the fact that Yemen, a Member State, had yet to make any request to the Council in that regard. The Council was urged to reject all requests made by any party with regard to the issue between the Yemeni people and the rebels which was "an internal matter within the meaning of Article 2 (7) of the Charter". In its view, the provisions of the Charter affirmed that no Member State might submit the matter of an internal conflict other than in the case "where its interests [were] harmed or where the dispute [threatened] international peace and security". The Government of Yemen stressed that neither of those requirements was met in the case of the Yemen question. Therefore, the Council was urged to deal with the situation in Yemen as an internal matter in accordance with Article 2 (7); reject any request for a discussion of the question of Yemen that was not made by its Government; and bring pressure on the Member States that were "trying to find a foothold" for themselves in the situation in Yemen to refrain from interfering in the internal affairs of Yemen, since it was likely to "inflame the situation and prolong the warfare and widen its scope".

On 1 June 1994, the Council held its 3386th meeting to consider, for the first time, the situation in the Republic of Yemen and adopted resolution 924 (1994), by which it considered that the continuance of

the situation "could endanger peace and security in the region".

In deliberations concerning the decision by the Democratic People's Republic of Korea in respect of the Treaty on the Non-Proliferation of Nuclear Weapons, the representative of the Democratic People's Republic of Korea argued that his Government's withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons and the problems in implementing the safeguards agreement could not be considered to "wreck world peace and threaten the security of other countries"; it was a "self-defence measure" based on its "right under the Treaty" in the exercise of its national sovereignty. He further stressed that "no legal or technical grounds" could be found to discuss the so-called "nuclear problem" in the Council, and opposed such a discussion. The draft resolution before the Council was encroaching upon his country's sovereignty and ignored the "requirements of the Charter", the statute of the International Atomic Energy Agency (IAEA) and the norms of international law that disputes should be resolved through dialogue and negotiations, as stipulated in Article 33 of the Charter.<sup>91</sup>

On the other hand, the representative of the Republic of Korea underlined that by refusing IAEA inspections of suspected nuclear sites and by deciding to pull out of the Treaty, the Democratic People's Republic of Korea posed "a serious threat to international peace and security, in both the global and regional contexts".<sup>92</sup> The representative of the Russian Federation considered that the withdrawal of the Democratic People's Republic of Korea from the Treaty would be "a serious threat to regional and international security" and emphasized that the consideration of the issue in the Council was of particular importance.<sup>93</sup>

At the end of deliberations, the Council adopted resolution 825 (1993), by which it called upon the Democratic People's Republic of Korea to reconsider the announcement contained in the letter of 12 March 1993 from the representative of that country addressed to the President of the Council<sup>94</sup> and thus to reaffirm its commitment to the Non-Proliferation Treaty.

<sup>90</sup> S/1994/642.

<sup>91</sup> S/PV.3212, pp. 7-8 and 23.

<sup>92</sup> *Ibid.*, p. 29.

<sup>93</sup> *Ibid.*, pp. 64-65.

<sup>94</sup> S/25405.

### **The legal nature of disputes, in the light of Article 36 (3) of the Charter**

Article 36 (3) of the Charter provides that the Security Council, in making recommendations under Article 36, should “take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court”.

In the following instance, Member States questioned the competence of the Security Council to consider a dispute, owing to its alleged legal nature, or advanced arguments in favour of a referral of such dispute to the International Court of Justice.

In deliberations concerning items relating to the Libyan Arab Jamahiriya, the representative of that country challenged the fact that the Council was meeting to consider a matter that threatened international peace and security. His delegation held that, whereas the Council was meeting to consider a draft resolution<sup>95</sup> that sought to intensify the sanctions imposed by resolution 748 (1992) under the pretext of the non-compliance of the Libyan Arab Jamahiriya with resolution 731 (1992), his country had in fact fully responded to the requirements of the latter resolution. The sole unresolved question, arising from the demand by the United States and the United Kingdom that the two alleged suspects in the bombing of Pan Am flight 103 over Lockerbie, Scotland, be extradited, remained outstanding because of a legal wrangle over which country had the competence to try those individuals. In his country’s view, the question was essentially settled by the provisions of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 1971, which stipulated jurisdiction regarding the trial of the accused to the Libyan Arab Jamahiriya. That country had therefore submitted the question of the application of the Convention’s rules to the International Court of Justice, the decision of which was still pending.<sup>96</sup>

The representative of the Sudan, speaking on behalf of the League of Arab States, expressed the view that the dispute was legal in nature and belonged in the courts and institutions directly concerned, and not in the Security Council, which was not mandated by the

Charter to exercise such a function. This legal dispute, between the Libyan Arab Jamahiriya and France, the United Kingdom and the United States, regarding the extradition of the two accused, should be dealt with in a court of law, specifically by the International Court of Justice. In this regard, the Libyan Arab Jamahiriya had expressed its willingness to accept the pending decision of the Court and had also expressed its eagerness to “respond to international efforts aimed at resolving the conflict through negotiations, mediation, and legal settlement, in accordance with Article 33 of the Charter”. His delegation argued that the draft resolution before the Council<sup>95</sup> was not the best way to end the dispute. It would lead to negative results and could shake the confidence of the smaller countries in the Council’s neutrality because of overlapping competence of the mechanisms engaged in the settlement of international disputes. The interpretation of legal texts, especially the Charter, should be carried out only by judicial organs, and no other body could arrogate that competence for itself.<sup>97</sup>

### **Reference to peaceful means of settlement of disputes adopted by the parties, in the light of Article 33 (1) of the Charter**

Article 33 (1) requires the parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, first of all to seek a solution by peaceful means, such as negotiation, conciliation or arbitration.

During the period under review, by a letter dated 4 March 1994 from the representative of Nigeria addressed to the President of the Security Council,<sup>98</sup> the Government of Nigeria expressed its hope that, concerning the border dispute between Nigeria and Cameroon, the Council would encourage “the initiative for bilateral resolution of the dispute”, in accordance with Article 33 (1) of the Charter, namely the summit talks to which the two countries had committed themselves.

<sup>97</sup> Ibid., pp. 30-39.

<sup>98</sup> S/1994/258.

<sup>95</sup> S/26701.

<sup>96</sup> S/PV.3312, pp. 3-26.

### **Relevance of procedures for the settlement of disputes adopted by the parties, in the light of Article 33 (2) of the Charter**

Article 33 (2) provides that “the Security Council shall, when it deems necessary, call upon the parties to settle their disputes by such means” as referred to in Article 33 (1), namely, negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their choice. The importance placed on the parties’ efforts to reach a settlement is also reflected in Article 36 (2), which provides that “the Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties”.

In one instance, a Member State called upon the Security Council to take action under Article 33 (2). By a letter dated 29 June 1995 from the representative of the Sudan addressed to the President of the Council,<sup>99</sup> the Government of the Sudan called on the Council, in connection with “the aggression on the Sudanese territory of Halaib by the Arab Republic of Egypt”, to urge the Government of Egypt to make an immediate start towards resolving the dispute through “negotiations” by peaceful means based on the previous agreements between the two countries, and in accordance with Article 33 (2) of the Charter.

In the following instances, the deliberations of the Security Council turned to the question whether the priority accorded to the parties’ own efforts by the above-mentioned provisions may, in certain circumstances, restrict the Council’s competence to consider a dispute.

In deliberations concerning the decision by the Democratic People’s Republic of Korea in respect of the Treaty on the Non-Proliferation of Nuclear Weapons, the representative of the Democratic People’s Republic of Korea stressed that the very convening of the Council blocked the efforts towards dialogue. In his view, if the Council adopted the draft resolution before it,<sup>100</sup> that would result in heightened

tension in the situation on the Korean peninsula and pose a threat to the peace and security of the world.<sup>101</sup>

The representative of the United States indicated that her Government would be willing to meet with the Democratic People’s Republic of Korea to help resolve, as part of the international community’s efforts, the situation resulting from actions it had taken in the nuclear area.<sup>102</sup> The representative of the United Kingdom stated the view of his Government that it was essential that the issue be treated “multilaterally as well as bilaterally”. His Government accepted that there was an important role to be played by bilateral contacts, but also underlined that it was “absolutely right and proper” that the Council should play its role in handling the multilateral aspect. While welcoming the efforts of IAEA and the prospect of contacts between the Democratic People’s Republic of Korea and other States, the speaker stressed that the Council must remain seized of the matter and that it might need to be prepared to consider further action as necessary.<sup>103</sup> In the view of the Russian Federation, multilateral efforts should work in tandem with a search for a solution to the problem through bilateral channels between interested parties.<sup>104</sup>

By resolution 825 (1993), the Council welcomed recent signs of improved cooperation between the Democratic People’s Republic of Korea and IAEA and the prospect of contacts between the Democratic People’s Republic of Korea and other Member States.

In deliberations concerning the situation in the occupied Arab territories, at the 3505th meeting, which was held in response to the request in a letter dated 22 February 1995 from the representative of Djibouti addressed to the President of the Council,<sup>105</sup> the observer of Palestine argued that the Council had a fundamental responsibility regarding the settlement activity in the occupied Palestinian territory, including the preservation of the integrity of international law, international humanitarian law and its previous resolutions. It also had the responsibility of guaranteeing the continuation and integrity of the peace process, as it had done with the adoption of resolution 904 (1994). The speaker stressed that, in

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<sup>99</sup> S/1995/534.

<sup>100</sup> S/25745.

<sup>101</sup> S/PV.3212, p. 24.

<sup>102</sup> *Ibid.*, p. 52.

<sup>103</sup> *Ibid.*, p. 55.

<sup>104</sup> *Ibid.*, pp. 64-65.

<sup>105</sup> S/1995/151.



order to achieve the ultimate goal of peace, the total cessation of all settlement activities was called for and that, in that respect, the backing and support of the Council was needed.<sup>106</sup> Other speakers also stressed the role of the Security Council and its responsibilities in the peace process and called upon the Council to adopt specific measures.<sup>107</sup>

On the other hand, the representative of Israel emphasized that the initiative of the Palestine Liberation Organization to debate the issue of settlements in the Council was “incompatible” with its signed commitments vis-à-vis Israel, whereby all outstanding permanent status issues, such as settlements and Jerusalem, would be resolved in direct and bilateral negotiations at a specific time, namely, in the negotiations on permanent status, at the final stage of the process. These commitments were made throughout the agreements including the Declaration of Principles and the Gaza-Jericho Agreement. Therefore, the place to address the differences between the two parties must be at the negotiating table as agreed.<sup>108</sup> The representative of the United States stated that it would not be productive or useful for the Council to

involve itself in a question that the parties had agreed to cover when they addressed permanent status issues in their negotiations. His Government believed that debate in the Council could only sour the atmosphere of the ongoing talks and deflect the parties from the need to work together, and therefore opposed any activity that would only complicate efforts to spur the negotiating process.<sup>109</sup> A similar argument was heard from other speakers who stressed that the bilateral negotiations between the parties were as the appropriate channel for solving issues such as the settlements.<sup>110</sup>

The representative of Italy expressed the opinion that the request for the meeting by Djibouti, on behalf of the Group of Arab States, was justified procedurally and substantively. Legally, Articles 34 and 35 of the Charter and rules 2 and 3 of the Council’s provisional rules of procedure provided for the President’s calling a meeting at the request of any member of the Council and, moreover, provided that any Member of the United Nations might bring to the Council’s attention any dispute or any situation that might lead to international friction or give rise to a dispute. Politically, the Council could not ignore a request emanating from 21 Member States.<sup>111</sup>

No action was taken at the end of the deliberations at the 3505th meeting.

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<sup>106</sup> S/PV.3505, pp. 4-6.

<sup>107</sup> Ibid., pp. 11-12 (Egypt); p. 16 (Honduras); S/PV.3505 (Resumption), p. 3 (Oman); p. 9 (Jordan); p. 11 (Algeria); p. 12 (Tunisia); p. 13 (United Arab Emirates); p. 15 (Chairman of the Committee on the Exercise of the Inalienable Rights of the Palestinian People); p. 16 (Malaysia); p. 17 (Islamic Republic of Iran); and p. 23 (Sudan).

<sup>108</sup> S/PV.3505, pp. 7-9.

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<sup>109</sup> Ibid., p. 15.

<sup>110</sup> Ibid., pp. 14-15 (United Kingdom); S/PV.3505 (Resumption); p. 2 (Germany); and p. 3 (Russian Federation).

<sup>111</sup> S/PV.3505, p. 13.

