
Chapter XII

Consideration of the provisions of other Articles of the Charter

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Introductory note

Chapter XII covers the consideration by the Security Council of Articles of the Charter not dealt with in the preceding chapters. It consists of four parts: part I covers material pertaining to the purposes and principles of the United Nations, namely Articles 1 (2), 2 (4), 2 (5), 2 (6) and 2 (7). In part II, Articles 24 and 25 are considered in relation to the functions and powers of the Security Council. Part III deals with the practice of the Security Council in connection with the provisions of Chapter VIII of the Charter, Articles 52-54, concerning regional arrangements. Part IV considers miscellaneous provisions of the Charter, including material relating to Articles 102 and 103.

Since Chapter VIII of the *Repertoire* sets out the entire chain of Council proceedings on all the agenda items that the Council has taken up under its responsibility for the maintenance of international peace and security, the present chapter will focus on selected material which may best serve to highlight how the provisions of relevant Articles featured in the chapter were interpreted and applied in deliberations and decisions of the Council.

Part I

Consideration of the purposes and principles of the United Nations (Articles 1 and 2 of the Charter)

A. Article 1, paragraph 2

Article 1, paragraph 2

[The Purposes of the United Nations are:]

To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take appropriate measures to strengthen universal peace.

Note

During the period under review, none of the decisions adopted by the Security Council contained an explicit reference to Article 1 (2) of the Charter. The Security Council, however, adopted 11 resolutions in connection with the situation concerning Western Sahara in which the principle of self-determination was referred to without giving rise to a constitutional discussion.¹ The principle of equal rights of peoples was invoked in a statement by the President issued on 7 March 1997 on the situation in Croatia.² The Council also called for, welcomed or otherwise expressed support for the holding of elections in a number of cases, including Bosnia and Herzegovina,³ Cambodia,⁴ the Central African Republic,⁵ Croatia,⁶ the

Democratic Republic of the Congo,⁷ Guinea-Bissau,⁸ Haiti,⁹ Liberia,¹⁰ Sierra Leone¹¹ and Tajikistan.¹²

During the deliberations of the Council in connection with the situation concerning Western Sahara,¹³ the situation in the Middle East,¹⁴ the situation in Bosnia and Herzegovina¹⁵ and others, the principle of self-determination was invoked without giving rise to a constitutional discussion.¹⁶

In communications, there was one explicit reference to Article 1 (2). In a letter dated 25 September 1996 addressed to the Secretary-General, the representative of Iraq stated that the hostile actions of the United States constituted a flagrant violation of the provisions of Article 1 (2).¹⁷

The case below reflects the Council's consideration of questions relating to the principle enshrined in Article 1 (2), in connection with the situation in East Timor¹⁸ (case 1).

¹ Resolutions 1042 (1996), para. 1; 1056 (1996), para. 1; 1084 (1996), para. 1; 1108 (1997), para. 1; 1131 (1997), fourth preambular para.; 1133 (1997), fourth preambular para. and para. 4; 1163 (1998), fourth preambular para.; 1185 (1998) fourth preambular para.; 1198 (1998) third preambular para.; 1204 (1998), third preambular para.; and 1238 (1999), para. 5.

² S/PRST/1997/10, paras. 5 and 6.

³ See, for example, resolutions 1088 (1996), sixth preambular para. and 1074 (1996), sixth preambular para. and para. 1.

⁴ S/PRST/1997/37, para. 6.

⁵ See resolutions 1182 (1998), fourth preambular para.; 1201 (1998), fourth preambular para.; 1230 (1999), second preambular para., and 1271 (1999), second preambular para.

⁶ See, for example, S/PRST/1997/10, para. 3 and S/PRST/1997/26, para. 1.

⁷ See, for example, S/PRST/1998/26, para. 2 and resolution 1234 (1999), para. 4.

⁸ See, for example, resolutions 1216 (1998), paras. 2 and 3 and 1233 (1999), ninth preambular para. and para. 6.

⁹ See, for example, S/PRST/1998/8, para. 6.

¹⁰ See, for example, resolutions 1100 (1997), fourth preambular para. and 1116 (1997), fourth preambular para.

¹¹ S/PRST/1996/7, para. 2 and S/PRST/1996/12, para. 2.

¹² See resolutions 1167 (1998), para. 3; 1206 (1998), para. 3; 1240 (1999), para. 2; and 1274 (1999), sixth preambular para.

¹³ S/PV.4080, p. 2 (Namibia).

¹⁴ See S/PV.3652, p. 21 (United Arab Emirates), S/PV.3698, p. 4 (Permanent Observer of Palestine), S/PV.3745, p. 12 (Russian Federation), and S/PV.3900, p. 12 (United Kingdom), p. 17 (Slovenia) and p. 21 (United Arab Emirates).

¹⁵ S/PV.3842, p. 24 (Pakistan).

¹⁶ There were other references to the principle of self-determination occurred but they were often incidental.

¹⁷ S/1996/782, p. 4.

¹⁸ As from the 4041st meeting, on 3 September 1999, the agenda item "The Situation in Timor" was reformulated to read "The Situation in East Timor".

Case 1

The situation in East Timor

On 5 May 1999, the Secretary-General submitted to the Council a report on the question of East Timor.¹⁹ The Secretary-General recalled that since 1983 the Governments of Indonesia and Portugal had undertaken, through his good offices, to find a just, comprehensive and internationally acceptable solution to the question of East Timor. Those efforts had culminated in the signature, on 5 May 1999, of an overall Agreement between the Republic of Indonesia and the Portuguese Republic,²⁰ which had entrusted him with the task of organizing and conducting a popular consultation to ascertain whether the East Timorese people accepted or rejected a proposed constitutional framework providing for a special autonomy for East Timor within Indonesia. The Agreement provided that if the popular consultation resulted in a majority of the East Timorese people rejecting the proposed autonomy, the Government of Indonesia would take the constitutional steps necessary to terminate Indonesia's links with East Timor and that the Governments of Indonesia and Portugal would agree with the Secretary-General on arrangements for a peaceful and orderly transfer of authority in East Timor to the United Nations, which would then initiate a process enabling East Timor to begin a transition towards independence. The Governments of Indonesia and Portugal had also signed two supplementary agreements with the United Nations, on the modalities for the popular consultation of the East Timorese through a direct ballot²¹ and on security arrangements,²² which stated that a secure environment devoid of violence or other forms of intimidation was a prerequisite for the holding of a free and fair popular consultation, while the authorities of Indonesia had the responsibility to ensure such an environment and the United Nations would ascertain the existence of such an environment.

By resolution 1236 (1999) of 7 May 1999, the Council welcomed the intention of the Secretary-General to establish as soon as practicable a United Nations presence in East Timor, with a view to assisting in the implementation of the above

Agreements, in particular by conducting a popular consultation of the East Timorese people on the acceptance or rejection of a constitutional framework for autonomy for East Timor, scheduled for 8 August 1999, in accordance with the Agreement.²³

By a presidential statement dated 29 June 1999, the Council emphasized that a popular consultation of the East Timorese people through a direct, secret and universal ballot represented a historic opportunity to resolve the question of East Timor peacefully.²⁴

By a letter dated 3 September 1999 to the President, the Secretary-General informed the Council that the United Nations Mission in East Timor (UNAMET), established by resolution 1246 (1999) of 11 June 1999, had completed the popular consultation in East Timor on the proposed autonomy, in which the people had rejected the proposed special autonomy and expressed their wish to begin a process of transition towards independence.²⁵

By a presidential statement dated 3 September 1999, the Council welcomed the successful popular consultation of the East Timorese people on 30 August 1999 and expressed its support for the courage of those who had turned out in record numbers to express their views. It regarded the popular consultation as an accurate reflection of the views of the East Timorese people.²⁶

At the 4043rd meeting, on 11 September 1999, which was held in response to the request for a meeting from the representatives of Brazil and Portugal to discuss "the grave and alarming" situation and "the reports of mass killings and wanton destruction" in East Timor following the ballot,²⁷ most speakers underlined the responsibility of the Government of Indonesia for security in East Timor, as stipulated in the Agreement, and called on the Indonesian authorities to act immediately to reestablish law and order, and allow the results of the popular consultation to be implemented peacefully. They also urged the Government to accept the offer of international assistance and to agree to the deployment of a multinational force to assist in restoring order and in

¹⁹ S/1999/513.

²⁰ *Ibid.*, annex I.

²¹ *Ibid.*, annex II.

²² *Ibid.*, annex III.

²³ Resolution 1236 (1999), para. 3 (a).

²⁴ S/PRST/1999/20.

²⁵ S/1999/944.

²⁶ S/PRST/1999/27.

²⁷ S/1999/955 and S/1999/961.

securing a peaceful transition to independence for East Timor. Several speakers stressed that the results of the popular consultation reflected the will of the people for self-determination and had to be respected.²⁸

At the same meeting, the representative of Brazil expressed the view that the international community must not remain passive in the face of the atrocities committed against the East Timorese, who were also being denied the most fundamental right the Organization stood for — the right to self-determination — and be prepared to use all available means at its disposal, under the Charter, to guarantee the restoration of peace and the full implementation of the General Agreement.²⁹ The representative of Ireland stated that there had been a widespread systematic campaign to negate the clear result of this transparent exercise in self-determination, through organized intimidation and violence.³⁰ The representative of South Africa noted that it had seemed as if the people of East Timor would finally realize their long-held dream of self-determination and stressed that the Council needed to ensure that the so-called militias and other undemocratic forces were not allowed to reverse the democratic process in East Timor.³¹ The representative of Indonesia maintained that his Government would continue to support United Nations efforts in East Timor and would not renege on its commitments under the Agreement. He reiterated that the Government had never condoned any form of

violence or intimidation. It had accepted the results of the popular consultation and would honour them.³²

By resolution 1264 (1999) of 15 September 1999, the Council reiterated its welcome for the successful conduct of the popular consultation of the East Timorese people of 30 August 1999, and took note of its outcome, which it regarded as an accurate reflection of the views of the East Timorese people, and authorized the establishment of a multinational force to restore peace and security in East Timor.³³

At the 4057th meeting, on 25 October 1999, the Council adopted resolution 1272 (1999) establishing the United Nations Transitional Administration in East Timor (UNTAET), which would be endowed with overall responsibility for the administration of East Timor with a mandate to, inter alia, support capacity-building for self-government. In that resolution, the Council also stressed the need for UNTAET to consult and cooperate closely with the East Timorese people in order to carry out its mandate effectively with a view to the development of local democratic institutions, including an independent East Timorese human rights institution, and the transfer to those institutions of its administrative and public service functions.³⁴

At the same meeting, the representative of Portugal stressed that East Timor was a Non-Self-Governing Territory whose privileges and rights accorded to it by Article 73 of the Charter had been denied, a situation which needed to be addressed. He maintained that the establishment of UNTAET was the culmination of a process of self-determination for which the people of East Timor and Portugal had fought very hard. He welcomed the fact the people of East Timor had been able to express their will freely, albeit under extremely difficult circumstances, and could start the challenging task of building their own country.³⁵ The representative of Indonesia informed the Council that on 19 October 1999, the 1978 decree that had integrated East Timor with Indonesia was formally rescinded, thus closing a chapter of history during which East Timor was Indonesia's twenty-seventh province.³⁶ The representative of Australia noted that

²⁸ S/PV.4043, pp. 4-6 (Portugal); pp. 6-7 (Brazil); pp. 7-9 (United States); pp. 9-10 (France); pp. 10-11 (Argentina); pp. 11-12 (Canada); p. 12 (Gabon); pp. 15-16 (Australia); pp. 17-18 (Finland, on behalf of the European Union); p. 18 (Republic of Korea); p. 19 (Ireland); and pp. 20-21 (Philippines); S/PV.4043 (Resumption), pp. 2-3 (South Africa); pp. 3-4 (Egypt); pp. 6-7 (Mozambique); pp. 7-8 (Norway); pp. 8-9 (Ecuador); pp. 9-10 (Chile); pp. 9-11 (New Zealand); pp. 11-12 (Germany); pp. 13-14 (Italy); pp. 14-15 (Uruguay); p. 15 (Greece); pp. 15-16 (Pakistan); pp. 16-17 (Spain); pp. 17-18 (Papua New Guinea); pp. 18-19 (Guinea-Bissau); p. 21 (Sweden); p. 23 (Angola); pp. 23-24 (Cape Verde); p. 25 (Belgium); p. 26 (Denmark); pp. 26-27 (Luxembourg); p. 27 (Austria); pp. 30-31 (Slovenia); and p. 31 (Netherlands).

²⁹ S/PV.4043, pp. 6-7.

³⁰ *Ibid.* p. 19.

³¹ S/PV.4043 (Resumption) and Corr.1, pp. 2-3.

³² *Ibid.*, pp. 27-30.

³³ Resolution 1264 (1999), third preambular para. and para. 3.

³⁴ Resolution 1272 (1999), paras. 1, 2 (e) and 8.

³⁵ A/PV.4057, pp. 2-4.

³⁶ *Ibid.*, pp. 4-6.

the mandate of UNTAET would culminate in a democratic election in which the people of East Timor would choose their first Government and then take their place formally in the community of nations.³⁷

B. Article 2, paragraph 4

Article 2, paragraph 4

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Note

The practice of the Security Council touching upon the provisions of Article 2 (4), as illustrated by its decisions and deliberations, is set out below. In addition, there were a few communications containing explicit references to Article 2 (4).³⁸

1. Decisions relating to Article 2 (4)

During the reporting period, the Security Council adopted no decisions which contained an explicit reference to Article 2 (4). One draft resolution, which failed to be adopted, contained an explicit reference to Article 2 (4).³⁹

³⁷ Ibid., pp. 6-7.

³⁸ See, for example, letters dated 10 September 1996, 23 September 1996 and 30 November 1998 from the representative of Iraq (S/1996/739, p. 2; S/1996/782, p. 4; and S/1998/1130, p. 4); letter dated 28 August 1997 from the representative of the Sudan (S/1997/674, p. 4); letters dated 26 September 1997, 4 February 1998 and 23 June 1998 from the representative of Cyprus to the Secretary-General (S/1997/739, p. 2; S/1998/101, p. 3; and S/1998/559, p. 2); letters dated 31 August 1998, 24 February 1999 and 1 October 1999 from the representative of the Democratic Republic of the Congo (S/1998/827, p. 13; S/1999/205, p. 12; and S/1999/1029, p. 7); letter dated 1 February 1999 from the representative of the Federal Republic of Yugoslavia (S/1999/107, p. 2); and letter dated 22 March 1999 from the representative of Eritrea (S/1999/304, p. 2).

³⁹ In connection with the item entitled "Letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed

By its resolutions and decisions, the Council, on a number of occasions, touched upon the principle enshrined in Article 2 (4). The Council affirmed the principle of non-threat or non-use of force in international relations, expressed its commitment to inviolability of international borders, called for respect for the sovereignty, territorial integrity and political independence of States, reiterated its position against interference by States in internal affairs of others and condemned hostile action across the border of a Member State, as elaborated below.

Affirmation of the principle of non-threat or non-use of force

By a number of its decisions, the Council reaffirmed the principle of non-threat or non-use of force in international relations embodied in Article 2 (4). For instance, in connection with the situation in the Middle East, by a series of presidential statements, the Council asserted that all States should refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations.⁴⁰

Commitment to inviolability of international borders

In dealing with a few situations under consideration, the Council reaffirmed its commitment to the inviolability of the borders of States. For example, in connection with the situation in Tajikistan and along the Tajik-Afghan border, the Council reaffirmed its commitment to the sovereignty and territorial integrity of Tajikistan and to inviolability of its borders.⁴¹ With regard to the situation in the Great

to the President of the Security Council", see S/1999/328.

⁴⁰ S/PRST/1996/5, para. 2; S/PRST/1996/33, para. 2; S/PRST/1997/1, para. 2; S/PRST/1997/40, para. 2; S/PRST/1998/2, para. 2; S/PRST/1998/23, para. 2; S/PRST/1999/4, para. 2; and S/PRST/1999/24, para. 2.

⁴¹ Resolutions 1061 (1996), third preambular para.; 1089 (1996), third preambular para.; 1099 (1997), third preambular para.; 1113 (1997), third preambular para.; 1128 (1997), third preambular para.; 1138 (1997), fourth preambular para.; 1167 (1998), third preambular para.; 1206 (1998), third preambular para.; 1240 (1999), third preambular para.; and 1274 (1999), third preambular para.; and S/PRST/1996/25 and S/PRST/1996/38.

Lakes region, the Council reaffirmed its commitment to the sovereignty and territorial integrity of Zaire⁴² and other States in the Great Lakes region and to the principle of the inviolability of borders.⁴³

Call for respect for the sovereignty, territorial integrity and political independence of States

In dealing with various situations, the Council often reaffirmed the sovereignty, territorial integrity and political independence of States.⁴⁴ On a few occasions during the period under review, the Council also explicitly called upon States to respect those principles.

Concerning the situation in the Middle East, the Council reaffirmed its commitment to the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized boundaries and to the security of all States in the region, and called upon all concerned fully to respect those principles.⁴⁵

In connection with the situation in the Great Lakes region, the Council called upon all States to respect the sovereignty and territorial integrity of the States in the region in accordance with their obligations under the Charter of the United Nations and stressed the need of such respect.⁴⁶

In connection with the situation concerning the Democratic Republic of the Congo, the Council reaffirmed the obligation to respect the territorial integrity, political independence and national sovereignty of the Democratic Republic of the Congo and other States in the region, including the obligation to refrain from the threat or use of force against the territorial integrity or political independence of any

State or in any other manner inconsistent with the purposes of the United Nations.⁴⁷

In addition, with regard to the situation in Cyprus, the Council, calling upon all States to respect the sovereignty, independence and territorial integrity of the Republic of Cyprus, and requesting them, along with the parties concerned, to refrain from any action which might prejudice that sovereignty, independence and territorial integrity, as well as from any attempt at partition of the island or its unification with any other country, called upon both sides to refrain from the threat or use of force or violence as a means to resolve the Cyprus problem.⁴⁸

Reiteration of the position against interference by States in the internal affairs of others

In some cases, the Council reiterated its position against interference by States in the internal affairs of other States. For example, in connection with the situation in Afghanistan, by a series of decisions, the Council called upon all States to refrain from interference in the internal affairs of Afghanistan, and in some cases, called on all States to prevent both the flow of arms to all parties to the conflict and the involvement of foreign military personnel.⁴⁹ With regard to the situation concerning the Democratic Republic of the Congo, the Council reaffirmed the need for all States to refrain from any interference in each other's internal affairs⁵⁰ and called for the withdrawal of all external forces.⁵¹ Concerning the situation in the Great Lakes region, the Council reaffirmed the need for the States in the region to refrain from any interference in each other's internal affairs.⁵² In connection with the situation in the Republic of the

⁴² By a communication dated 20 May 1997, the Secretariat was informed by the Member State known formerly as "Zaire" that the name of the State had been changed on 17 May to "Democratic Republic of Congo".

⁴³ S/PRST/1997/5, para. 3.

⁴⁴ Such references were numerous: see, for example, in connection with the situation in Croatia, resolution 1238 (1996), third preambular para.

⁴⁵ Resolution 1052 (1996), para. 3.

⁴⁶ S/PRST/1996/44, para. 2 and resolutions 1078 (1996), twelfth preambular para. and para. 4; and 1080 (1998), fourth preambular para.

⁴⁷ S/PRST/1998/36, para. 2 and resolution 1234 (1999), para. 1.

⁴⁸ Resolution 1251 (1999), fourth preambular para. and para. 9.

⁴⁹ Resolutions 1076 (1996), ninth preambular para. and para. 3; 1193 (1998), para. 3; and 1214 (1998), eighth preambular para. and para. 10; and S/PRST/1996/6, para. 6; S/PRST/1996/40, para. 4; S/PRST/1997/35, para. 5; S/PRST/1997/55, para. 4; S/PRST/1998/9, para. 6; S/PRST/1998/22, para. 4; S/PRST/1998/24, para. 5; and S/PRST/1999/29, para. 4.

⁵⁰ S/PRST/1998/26, para. 2.

⁵¹ S/PRST/1997/31, para. 4 and resolution 1234 (1999), para. 2.

⁵² Resolution 1097 (1997), fourth preambular para.

Congo, the Council condemned all external interference in the Republic of the Congo, including the intervention of foreign forces, in violation of the Charter, and called for the immediate withdrawal of all foreign forces, including mercenaries.⁵³

Condemnation of hostile action across the border of a State

On a few occasions, the Council condemned the hostile action against another State. In connection with the situation between Eritrea and Ethiopia, the Council condemned the use of force by Eritrea and Ethiopia and demanded that both parties immediately cease hostilities.⁵⁴ Furthermore, the Council, expressing grave concern over the risk of armed conflict between Ethiopia and Eritrea and the escalating arms build-up along the common border between the two countries, called upon them in the strongest terms to exercise maximum restraint and to refrain from taking any military action.⁵⁵

The Council also called upon States not to allow the use of their territory to attack or plan an attack against other States. In connection with the situation in Rwanda, by resolutions 1053 (1996) and 1161 (1998), the Council called upon States in the Great Lakes region to ensure that their territory was not used as a base for armed groups to launch incursions or attacks against any other State in violation of principles of international law and the Charter.⁵⁶

Furthermore, a few decisions dealing with counter-terrorism touched upon the responsibility of States not to be involved in terrorist acts in another State. By resolution 1044 (1996) of 31 January 1996, in connection with the letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995,⁵⁷ the Council condemned the terrorist assassination attempt and

strongly deplored the flagrant violation of the sovereignty and integrity of Ethiopia and the attempt to disturb the peace and security of Ethiopia and the region as a whole. The Council called upon the Government of the Sudan to desist from engaging in activities of assisting, supporting and facilitating terrorist activities and from giving shelter and sanctuary to terrorist elements, and urged it to act in its relations with its neighbours and with others in full conformity with the Charter.⁵⁸ In another instance, following the terrorist bomb attacks on 7 August 1998 in Nairobi and Dar-es-Salaam, the Council stressed that every Member State had the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts.⁵⁹

2. Deliberations relating to Article 2 (4)

During the period under review, there were instances in the deliberations of the Council in which explicit and implicit references were made to Article 2 (4).

In connection with the item entitled "Maintenance of peace and security and post-conflict peacebuilding", at the 3954th meeting, on 23 December 1998, the representative of Argentina noted that with regard to peacebuilding, the concept of international peace and security rested on more qualitative and complex aspects than those which emerged from the traditional interpretation of Article 2 (4). This was, in his opinion, logical because a strict interpretation of concepts established in 1945 no longer met current needs since the end of the Cold War.⁶⁰

During an open debate on 12 February 1999, in connection with the item entitled "Protection of civilians in armed conflict", the representative of China maintained that, in a humanitarian crisis, the wilful invocation of Chapter VII of the Charter to use force, or even the unilateral use or threat of use of force, against a sovereign State without the authorization of the Security Council, with no consideration given to the specific causes of the crisis, would only complicate matters and further intensify the conflict. In that

⁵³ S/PRST/1997/47, para. 2.

⁵⁴ Resolutions 1177 (1998), para. 1 and 1227 (1999), paras. 1-2; and S/PRST/1999/9, para. 2.

⁵⁵ Resolution 1226 (1999), second preambular para. and para. 7.

⁵⁶ Resolutions 1053 (1996), para. 4 and 1161 (1998), para. 4.

⁵⁷ S/1996/10.

⁵⁸ Resolution 1044 (1996), paras. 1, 2 and 4 (b).

⁵⁹ Resolution 1189 (1998), fifth preambular para.

⁶⁰ S/PV.3954 (Resumption), p. 11.

connection, he expressed hope that the countries and organizations concerned would strictly abide by the principles of international law and the Charter and respect the sovereignty, territorial integrity and political independence of all countries.⁶¹

In connection with the situation between Iraq and Kuwait, at the 3858th meeting, on 2 March 1998, the representative of Egypt stated that the use of force was not only prohibited internationally under the rules of international law but also in accordance with Article 2 (4) of the Charter. He added that there were controls in Article 42 on when force could be resorted to, and also in Article 51, which was related to legitimate self-defence. In all cases, those controls needed to be subjected to the discretion of the Security Council.⁶²

The cases below depict the debates and decisions relevant to the principle enshrined in Article 2 (4), in connection with (a) the situation in Angola (case 2); (b) the letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council⁶³ (case 3); (c) Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998) and 1239 (1999) (case 4); (d) the situation concerning the Democratic Republic of the Congo (case 5); (e) the situation between Iraq and Kuwait (case 6); (f) the situation in the Middle East (case 7); and (g) the situation in Afghanistan (case 8).

Case 2

The situation in Angola

In his report on the United Nations Angola Verification Mission (UNAVEM III) dated 14 April 1997, the Secretary-General expressed his concern at recent reports of involvement by the Angolan parties in the Zairian conflict. Reporting that the Angolan authorities had denied that they were providing support to the warring parties in Zaire, he held that such interference would have serious consequences not only for the peace process in Angola, but also for the ongoing efforts to bring the crisis in Zaire to an end, in

⁶¹ S/PV.3977, p. 30.

⁶² S/PV.3858, p. 22.

⁶³ S/1999/320.

accordance with the peace plan endorsed by the Security Council.⁶⁴

At the 3769th meeting, on 16 April 1997, a few speakers shared their worries about the alleged involvement of the Government of Angola in the Zaire conflict. Citing the above-mentioned reference in the report, the representative of Costa Rica expressed the view that if the information should prove to be accurate, it would represent a grave risk of instability, not only in Angola but in other parts of Africa and hence, the parties should abstain from any intervention in Zaire.⁶⁵ The representative of Uruguay argued that at an important moment of the peace process in Angola, the latent threat that the Angolan parties might intervene in Zaire was one of the most worrying aspects.⁶⁶

In response, the representative of Angola stated that from the beginning of the civil unrest in Zaire, his Government had pleaded for its rapid resolution and appealed very strongly to the parties involved to choose the negotiating table as a means to settle their differences. He emphasized that it was an internal matter and up to the Zairians to find the appropriate solution without any external interference. The representative underscored, in addition, that the Government of Angola had never been involved in any way in other countries' internal affairs and therefore, strongly rejected the reports suggesting interference by his country in the internal affairs of Zaire.⁶⁷

Case 3

*Letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council*⁶⁸

By a letter dated 24 March 1999 addressed to the President of the Security Council,⁶⁹ the representative of the Russian Federation requested that an urgent meeting be convened in view of the situation caused by the "unilateral military action" of the North Atlantic

⁶⁴ S/1997/304, para. 10.

⁶⁵ S/PV/3769, p. 3.

⁶⁶ *Ibid.*, p. 7.

⁶⁷ *Ibid.*, p. 17.

⁶⁸ S/1999/320.

⁶⁹ *Ibid.*

Treaty Organization (NATO) against the Federal Republic of Yugoslavia.

At the 3988th meeting, on 24 March 1999, the representative of the Russian Federation expressed outrage at the use of military force by NATO. Stressing that the countries involved in the unilateral use of force against the sovereign Federal Republic of Yugoslavia — carried out in violation of the Charter and without the authorization of the Council — needed to realize the heavy responsibility they bore for subverting the Charter and other norms of international law, and for attempting to establish in the world, *de facto*, the primacy of force and unilateral diktat. He further argued that the members of NATO were not entitled to decide the fate of other sovereign and independent States and were not only members of their alliance but also Members of the United Nations. The representative demanded the immediate cessation of the illegal military action against the Federal Republic of Yugoslavia and reserved the right to raise the question of the adoption by the Council, under the Charter, of appropriate measures with respect to that situation, which had arisen as a result of the illegal actions by NATO and which posed a clear threat to international peace and security.⁷⁰

Similarly, the representative of China held that the military strikes against the Federal Republic of Yugoslavia by NATO amounted to a blatant violation of the Charter and the accepted norms of international law. He argued that the question of Kosovo,⁷¹ which was an internal matter of the Federal Republic of Yugoslavia, should be resolved among the parties concerned in that country and on the basis of respect for the sovereignty and territorial integrity of the Federal Republic of Yugoslavia. He expressed opposition to the use or threat of use of force in international affairs and to power politics whereby the strong bullied the weak; and to interference in the internal affairs of other States, under whatever pretext or in whatever form.⁷² The representative of Belarus stressed that the use of military force against the

Federal Republic of Yugoslavia “without a proper decision” of the only competent international body, the Security Council, as well as any introduction of foreign military contingents against the wish of the Government of the Federal Republic of Yugoslavia qualified as an act of aggression. He stated that under those circumstances, no rationale or, and reasoning presented by NATO could justify the “unlawful use of military force”. He further stressed that such unilateral military action meant an international disregard for the role and responsibility of the Council in the maintenance of international peace and security.⁷³ The representative of India reiterated that the sovereignty and territorial integrity of the international borders of the Federal Republic of Yugoslavia were inviolable, which was to be fully respected by all States.⁷⁴

Mr. Vladislav Jovanovic⁷⁵ maintained that the Federal Republic of Yugoslavia had not threatened any country or the peace and security of the region and had been attacked because it had sought to solve an internal problem and use its sovereign right to fight terrorism and prevent the secession of a part of its territory. He held that the decision to attack an independent country had been taken outside the Security Council and that such a blatant aggression was a flagrant violation of the basic principles of the Charter. He insisted that the United States and NATO must assume full responsibility for all consequences of their “act of open aggression” and appealed to all States to categorically oppose “the aggression” of NATO and the United States against the Federal Republic of Yugoslavia.⁷⁶

In contrast, the representative of the United States, referring to Belgrade’s brutal persecution of Kosovar Albanians, violations of international law, excessive and indiscriminate use of force, refusal to negotiate and resolve the issue peacefully, and recent military build-up in Kosovo, reminded the Council that resolutions 1199 (1998) and 1203 (1998) had

⁷⁰ S/PV.3988, pp. 2-3.

⁷¹ For purposes of this *Supplement*, the term “Kosovo” refers to “Kosovo, Federal Republic of Yugoslavia”, without prejudice to issues of status. In other instances, the terminology originally used in official documents has been preserved to the extent possible.

⁷² S/PV.3988, p. 12.

⁷³ *Ibid.*, p. 15.

⁷⁴ *Ibid.*

⁷⁵ From 1992 onwards, representatives of the Federal Republic of Yugoslavia participated in Council meetings under a special arrangement that invited the representatives by name, without mentioning the State they represented and without referring to rules 37 or 39 of the provisional rules of procedure. See also chapter III, part I, section C.

⁷⁶ S/PV.3988, pp. 13-14.

recognized that the situation in Kosovo constituted a threat to peace and security in the region and had invoked Chapter VII of the Charter. Recounting the actions of the Federal Republic of Yugoslavia, including refusal to comply with the demands of the Security Council, and violation of its commitments and obligations under the Helsinki Final Act and the international law of human rights, he held that the action by the Federal Republic of Yugoslavia in Kosovo could not be dismissed as an internal matter. He further stressed that Belgrade's systematic policy of undermining previous agreements and thwarting diplomatic efforts, which had prevented a peaceful solution, had led his country and its allies to the action that day and in that context, justified the action by NATO as necessary to stop the violence and prevent a greater humanitarian disaster.⁷⁷

The representative of Malaysia asserted that as a matter of principle, his delegation did not favour the use or threat of force to resolve any conflict situation, regardless of where it occurred. He held that the use of force, in the event that it was at all necessary, should be a recourse of last resort, to be sanctioned by the Council, which had been vested with the primary responsibility for the maintenance of international peace and security. He stated that the ongoing conflict in Kosovo would have international repercussions and thus the international community could not afford to stand idly by, given the dimension of the violence and the worsening of humanitarian conditions in Kosovo in the wake of the repressive military actions by the Serbian and Yugoslav authorities. His delegation would have wished that the crisis in Kosovo could have been dealt with directly by the Council and regretted that the absence of a consensus in the Council had necessitated that action be taken outside of the Council.⁷⁸

Other speakers also asserted that the conflict in Kosovo threatened to precipitate a larger humanitarian disaster and destabilize the entire region and that the NATO action was the only way to avert it.⁷⁹

At the 3989th meeting, on 26 March 1999, the Council had before it a draft resolution, by which, affirming that the unilateral use of force by NATO

against the Federal Republic of Yugoslavia constituted a flagrant violation of the Charter, in particular Articles 2 (4), 24 and 53, and a threat to international peace and security, the Council, acting under Chapters VII and VIII of the Charter, would have demanded an immediate cessation of the use of force against the Federal Republic of Yugoslavia and urgent resumption of negotiations.⁸⁰ The draft resolution was not adopted because it did not obtain the required majority.⁸¹

Pointing out that the draft resolution appeared to have made a "fundamentally flawed factual assessment" of the situation, the representative of Slovenia further criticized that while the draft tried to invoke some of the basic norms of the Charter, it failed to address the relevant circumstances and ignored the situation which had led to the ongoing international military action. In his opinion, the political jargon of "flagrant violation" of the Charter described that action could not disguise the lack of a convincing argument.⁸²

The representative of the Netherlands, recalled that resolution 1203 (1998) clearly stated that the Council was acting under Chapter VII of the Charter and demanded the full and prompt implementation by the Federal Republic of Yugoslavia, of the agreements signed between that country and the Organization for Security and Cooperation in Europe (OSCE) and NATO respectively. He noted that the NATO action emanated directly from that resolution, in conjunction with the non-compliance on the part of the Federal Republic of Yugoslavia. Hence, he maintained that his delegation could not allow the NATO action to be described as unilateral use of force and emphasized that if the Council should demand an immediate cessation of the NATO action, it would send the wrong signal to the President of the Federal Republic of Yugoslavia, leading to further bloodshed in Kosovo.⁸³

The representative of Ukraine stated that adhering to the norms and principles enshrined in the Charter, his country considered as inadmissible the use of military force against a sovereign State without the authorization of the Council. At the same time, he held

⁷⁷ *Ibid.*, pp. 4-5.

⁷⁸ *Ibid.*, pp. 9-10.

⁷⁹ *Ibid.*, pp. 5-6 (Canada); p. 8 (Netherlands); and p. 12 (United Kingdom).

⁸⁰ S/1999/328. The draft resolution was submitted by Belarus and the Russian Federation and co-sponsored by India.

⁸¹ S/PV.3989, p. 6.

⁸² *Ibid.*, p. 3.

⁸³ *Ibid.*, p. 4.

that Belgrade's refusal to sign agreements elaborated through the mediation of the Contact Group had resulted in the breakdown of the negotiating process and that therefore the provisions of resolutions 1160 (1998) and 1199 (1999) had not been fully implemented, which had led to the use of force.⁸⁴

On the other hand, the representative of the Russian Federation argued that the aggressive military action unleashed by NATO against a sovereign State without the authorization, and in circumvention, of the Council was a real threat to international peace and security and a gross violation of the Charter, in particular, Article 2 (4) which required all Members of the United Nations to refrain from the threat or use of force in their international relations, including against the territorial integrity or political independence of any State. He continued to argue that the draft resolution proposed a solution that should be urgently sought by the international community if it was indeed interested in "preventing unilateral approaches and the prevalence of force in world affairs".⁸⁵

The representative of Belarus stressed that it was scarcely possible to accept the arguments put forward by NATO about the alliance resolving the humanitarian crisis in Kosovo through the use of force. He underscored that the decision to use force, an extreme measure, might be made only by the Council taking into account the views of Member States. He condemned the violation of basic principles of international law that made no provision for military intervention for humanitarian purposes and observed that the consequences of those actions could not be predicted, and that they threatened to undermine the United Nations system and international relations as a whole. He reaffirmed the position that the settlement of the Kosovo conflict should be based on, *inter alia*, unconditional respect for the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the non-use of force.⁸⁶

⁸⁴ *Ibid.*, p. 10.

⁸⁵ *Ibid.*, pp. 5-6.

⁸⁶ *Ibid.*, p. 12.

Case 4

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

At the 4011th meeting, on 10 June 1999, the Council adopted resolution 1244 (1999), by which reaffirming the commitment of all Member States to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, and acting under Chapter VII of the Charter, it, *inter alia*, authorized Member States and relevant international organizations to establish an international security presence in Kosovo,⁸⁷ with substantial NATO participation. By the same resolution, the Council also authorized the Secretary-General to establish an international civil presence in Kosovo, to be known as the United Nations Interim Administration Mission in Kosovo (UNMIK).⁸⁸

Speaking before the vote, Mr. Vladislav Jovanovic reiterated the position of the Federal Republic of Yugoslavia concerning the "unilateral, unauthorized military action by NATO" against his country, which violated all the basic principles of the Charter, including the principle of non-intervention and non-interference in internal affairs. He further held that the draft resolution⁸⁹ was another attempt to "marginalize the world Organization aimed at legalizing post festum" the aggression against the Federal Republic of Yugoslavia. In doing so, the Council and the international community would become "accomplices" in the most drastic violation of the basic principles of the Charter and in legalizing the rule of force rather than the rule of international law. He underscored that by adopting the draft resolution, the Council would support a "nefarious theory of limited sovereignty and open floodgates to the unimpeded intervention and interference of the mighty and powerful in the internal affairs of other States".⁹⁰

The representative of China emphasized that ethnic problems within a State must not be used as an excuse for external intervention, much less used by foreign States as an excuse for the use of force. He reminded that respect for sovereignty and

⁸⁷ Kosovo Force (KFOR).

⁸⁸ Resolution 1244 (1999), tenth preambular para. and paras. 7 and 10.

⁸⁹ S/1999/661.

⁹⁰ S/PV.4011, pp. 3-6.

non-interference in each other's internal affairs were basic principles of the Charter.⁹¹

The representative of Costa Rica reiterated that with the limited exception of the right to legitimate defence, any option involving the use of force required the clear authorization of the Council in each specific case. He reminded the Council that all States and in particular the members of the Council, were obliged to ensure full respect for the machinery established by the Charter and the balance of principles included therein, which included non-intervention and respect for the territorial integrity of States.⁹²

The representative of Cuba considered that the adoption of resolution 1244 (1999) did not change the fact that it had been an "invasion" by the United States and NATO. He further argued that the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, while being "solemnly and hypocritically proclaimed", were violated and held that such a proclamation could not "conceal the disintegration by force of a sovereign State". Regretting that the United States was the only country benefiting from unipolarism and the weakening of the United Nations, he opined that the only alternative was, among others, to restore respect for and implementation of the Charter, preserve the principles of non-intervention, non-aggression, non-use of force or threats of force and respect for sovereignty.⁹³

Case 5

The situation concerning the Democratic Republic of the Congo

At the 3987th meeting, on 19 March 1999, the representative of the Democratic Republic of the Congo repeatedly appealed to the Security Council to act concerning the situation in his country that was "under occupation of the regular armed forces" of the neighbouring countries, Uganda and Rwanda.⁹⁴ A number of speakers referred to not only internal but also external factors involved in the situation in the Democratic Republic of the Congo.⁹⁵ Many advocated

the withdrawal of foreign troops from the Democratic Republic of the Congo as a critical element for the settlement of the dispute.⁹⁶ The representative of the Sudan held that the Council was expected to fulfil its obligations and responsibilities for the maintenance of peace and security by putting an end to the aggression committed against the Democratic Republic of the Congo and ensuring the withdrawal of invading forces that had violated the sovereignty of that State.⁹⁷

The representative of Rwanda argued that the presence in the Democratic Republic of the Congo of large numbers of armed elements of Rwandan nationality, including former Government forces and militia responsible for the genocide of 1994, and their ability to reorganize and rearm on the territory of the Congo with the support of the Government of the Democratic Republic of the Congo, was a destabilizing factor for Rwanda. The Democratic Republic of the Congo, in accepting such presence, violated its own sovereignty as well as that of Rwanda. He stressed that the concerns of his country stemmed from acts of aggression against Rwanda by the Democratic Republic of the Congo. At the same time, he held that his Government was committed to respect for the territorial integrity and sovereignty of all countries, as enshrined in the Charters of the United Nations and the Organization of African Unity (OAU) and called on the Democratic Republic of the Congo to use its sovereign rights and take steps to dismantle the dozen non-State armies being used in aggression against the territorial integrity of its neighbours.⁹⁸

Similarly arguing the linkage between the genocide in Rwanda in 1994 and the crisis in the Democratic Republic of the Congo, the representative of Uganda stated that attacks had been launched against Uganda from what was then Zaire, often by *genocidaires* who had reorganized and rearmed with the support of the Government of Zaire. He stated that his Government had decided to act in self-defence by first recapturing the territory those criminals had captured, following them into Zairian territory in hot

⁹¹ Ibid., pp. 8-9.

⁹² S/PV.4011 (Resumption 1), p. 5.

⁹³ Ibid., pp. 6-9.

⁹⁴ S/PV.3987, pp. 2-5.

⁹⁵ Ibid., p. 8 (Argentina); and p. 19 (Malaysia); S/PV.3987 (Resumption 1), pp. 15-16 (South Africa).

⁹⁶ S/PV.3987, p. 5 (Democratic Republic of the Congo); p. 6 (Canada); p. 13 (France); p. 16 (Slovenia); p. 20 (Malaysia); p. 21 (Russian Federation); and p. 22 (United Kingdom); S/PV.3987 (Resumption 1), p. 2 (Sudan); p. 16 (South Africa).

⁹⁷ S/PV.3987 (Resumption 1), p. 2.

⁹⁸ Ibid., pp. 5-6.

pursuit. He further stated that it was that act of self-defence against the then Government of Zaire that had resulted in the fall of President Mobutu and the rise to power of President Kabila. He also added that President Kabila had invited the Government of Uganda to deploy its Defence Forces inside the Congo to flush out the Allied Democratic Forces, a rebel group that had been infiltrated into Zaire by the Sudan and which had attacked Uganda. A protocol to that effect was signed between the two Governments in April 1998. Following the deployment of the two battalions from Uganda, a rebellion had broken out in August 1998 and President Kabila had looked for foreign military assistance from Zimbabwe, Angola and Namibia, which had decided on a unilateral military intervention, instead of waiting for a regional, concerted approach. In his opinion, while Uganda had been primarily concerned about the activities of the Ugandan rebel groups in the Democratic Republic of the Congo, the intervention by Zimbabwe, Angola, Namibia, and later, Chad and the Sudan, had introduced a new dimension to the conflict. He stressed that Uganda and Rwanda had acted in self-defence, as the external dimension in the Congolese conflict had been prompted by activities hostile to those countries emanating from the Congo.⁹⁹

The representative of Namibia explained that the South African Development Community (SADC) had a stated obligation to ensure that the legitimate Government of a fellow SADC member should not be removed by invasion. By adhering to that principle and respecting the inviolability of the territorial integrity and sovereignty of States, he held that Namibia, along with Angola and Zimbabwe, was compelled to intervene in the Democratic Republic of the Congo at the expressed invitation of that Government, with the sole purpose of preventing the collapse of the State machinery and the violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo. He further argued that there needed to be a clear distinction between invited and uninvited foreign troops in the Democratic Republic of the Congo, which was echoed by the representative of Brazil.¹⁰⁰ He also underscored that while the security concerns of any State were legitimate, a State should refrain from defining such security needs beyond its own borders

without working within the framework of the United Nations and OAU. The unprovoked invasion of the Congo and the violation of its sovereignty and territorial integrity constituted “an act of interference in the internal affairs” of that country.¹⁰¹

The representative of Zimbabwe dismissed the security thesis in the argument put forward by Uganda and Rwanda and maintained that his country, together with Angola, Namibia and Chad, responding to a distress call by the legitimate Government of the Democratic Republic of the Congo, was assisting that country to uphold its territorial integrity and national sovereignty. He expressed the view that the intervention of the allied forces of SADC was upheld by the inherent right to individual or collective self-defence, in accordance with Article 51 of the Charter. He made it clear that the allied forces had no ulterior motives at all and that they were ready to pull out their forces when conditions were met, including when a ceasefire had taken effect and the invading States had withdrawn their forces from the Democratic Republic of the Congo. The representative further argued that all countries had a right to have their boundaries respected. Therefore, he called for the unconditional withdrawal of the invading forces from the Democratic Republic of the Congo and appealed to the Council to assist in the preservation of the national sovereignty and territorial integrity of that State.¹⁰²

In response, the representative of the Democratic Republic of the Congo contended that the origins of the conflict in his country were the export of external conflicts from “aggressor countries” and that “contrarily” to the excuses offered by them, their aggression pre-dated the intervention of the allied forces, implemented at the formal request of his Government, in the context of the legitimate right of self-defence. He further appealed to the Council, given that border insecurity was cited by those aggressors as a pretext, to take the steps necessary to reestablish the territorial integrity of the Democratic Republic of the Congo and security in that region.¹⁰³

Many speakers reiterated the importance of adhering to the principles enshrined in the Charter, in particular non-interference in the domestic affairs of

⁹⁹ Ibid., pp. 9-10.

¹⁰⁰ S/PV.3987, p. 11.

¹⁰¹ Ibid., pp. 9-10.

¹⁰² S/PV.3987 (Resumption 1), pp. 17-18.

¹⁰³ Ibid., p. 22.

other States and respect for the territorial integrity of the Democratic Republic of the Congo,¹⁰⁴ with some speakers citing the presidential statement of 11 December 1998.¹⁰⁵ The representative of Argentina underlined that use of force did not bring territorial rights or legitimize changes in established border.¹⁰⁶ The representative of Gabon underlined that in the Great Lakes region, where cross-border populations played an important role and could be used as a pretext by one State or another to interfere inappropriately in the affairs of its neighbours, strict respect by all sides of the principle of non-interference would enable the creation of a climate of mutual confidence and promote sounder and more friendly relations.¹⁰⁷

Case 6

The situation between Iraq and Kuwait

By identical letters dated 2 July 1998 addressed to the Secretary-General and the President, the representative of Iraq stated that the armed forces of the United States and the United Kingdom continued to carry out acts of aggression against the integrity of the territory and airspace of Iraq, in flagrant violation of the provisions of the Charter and the principles of international law. He stressed that the imposition of the “no-fly zones” over northern and southern Iraq, which was the result of a unilateral decision taken by the United States and which was not authorized by the Security Council, constituted a violation of the sovereignty, territorial integrity and political independence of Iraq. He further asserted that the reliance of the United States and the United Kingdom on resolution 688 (1991) to justify imposition of the “no-fly zones” contradicted the provisions of that resolution, including its reaffirmation of the commitment of all Member States to respect the sovereignty, territorial integrity and political independence of Iraq. Therefore, the Government of Iraq demanded that the Council take resolute action to put a stop to those acts of military aggression, which

constituted a threat to the sovereignty, national security and territorial integrity of Iraq and which threatened international peace and security in the area. Arguing that the United States bore full responsibility for that aggression, the representative further stated that his Government, in accordance with international law, reserved the legitimate right to define an appropriate response to those acts of military aggression and violations of the territory and airspace of Iraq.¹⁰⁸

At the 4008th meeting, on 21 May 1999, the representative of the Russian Federation condemned the continuing aerial bombing of civilian and military facilities in Iraq by the United States and the United Kingdom, carried out “under the illegal pretext of the no-fly zones”, which were created “unilaterally, in circumvention of the Security Council”,¹⁰⁹ Similarly, strongly opposing the bombing of civilian targets in the so-called “no-fly zones”, the representative of China demanded that the United States and the United Kingdom immediately halt their bombing missions.¹¹⁰

In response, concerning the activity in the “no-fly zones”, the representative of the United Kingdom held that a simple way to reduce the tension was for Iraq to cease targeting coalition aircraft. He maintained that the operations of his country were purely reactive and targeted relevant military facilities only. He added that the “no-fly zones” were necessary in order to limit the capacity of Iraq to oppress its own people and to monitor its compliance with its obligations under resolution 688 (1991).¹¹¹ The representative of the United States associated his country with the statement by the representative of the United Kingdom regarding the rationale for the military action in the “no-fly zones”.¹¹²

At the 4084th meeting, on 17 December 1997, the representative of the Russian Federation maintained that the Council had never authorized the “no-fly zones”, nor had it authorized subversive acts against the Government of Iraq. He opined that such illegal unilateral actions needed to end if new approaches

¹⁰⁴ S/PV.3987, p. 10 (Namibia); p. 11 (Brazil); p. 12 (France); p. 15 (Gabon); p. 16 (Slovenia); p. 19 (Bahrain); and p. 25 (Germany, speaking on behalf of the European Union); S/PV.3987 (Resumption 1), p. 3 (Japan); and p. 13 (Libyan Arab Jamahiriya).

¹⁰⁵ S/PRST/1998/36.

¹⁰⁶ S/PV.3987, p. 8.

¹⁰⁷ Ibid., p. 15.

¹⁰⁸ S/1998/606.

¹⁰⁹ S/PV.4008, p. 2.

¹¹⁰ Ibid., p. 4.

¹¹¹ Ibid., p. 3.

¹¹² Ibid.

were sought in the Council to a long-term settlement in the Gulf.¹¹³

The representative of China maintained that the use of force or any other means could not substitute for the role of the Council in the maintenance of international peace and security and reiterated that the “no-fly zone” in Iraq had never been authorized or approved by the Council, and that members concerned needed to immediately cease such actions.¹¹⁴

Case 7

The situation in the Middle East

By a letter dated 13 April 1996 to the President, the representative of Lebanon requested the convening of an urgent meeting of the Council to consider the grave situation in Lebanon resulting from the large-scale Israeli bombardment in his country, including the southern suburb of Beirut. The representative held that the bombardment constituted a flagrant violation of the sovereignty and territorial integrity of Lebanon and the Charter, and posed a threat to international peace and security.¹¹⁵

At the 3653rd meeting, held on 15 April 1996, the representative of Lebanon reiterated the appeal of his Government to the Council to take action to stop the military aggression by Israel against Lebanon and its territorial integrity, independence and sovereignty. He stressed that while Lebanon condemned all forms of terrorism, it supported the legitimate right of peoples to resist foreign occupation, which was the situation in south Lebanon. Hence, he maintained that the Lebanese were within their legitimate rights in defending themselves against occupation. Recalling the provisions of resolution 425 (1978) by which the Council called for strict respect for the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized boundaries and called upon Israel immediately to cease military action and withdraw forthwith its forces from all Lebanese territory, he held that no peace could be achieved between Lebanon and Israel until, among others, Israel withdrew from south Lebanon, in implementation of resolution 425 (1978). He appealed to the Council to condemn Israeli aggression and to

force Israel to withdraw to the internationally recognized boundaries of Lebanon.¹¹⁶

The representative of Israel, for his part, maintained that his country had the primary obligation to protect the security of its citizens from Hizbullah activities which the Government of Lebanon did not have the ability or the will to control. Therefore, he stated that Israel must defend the security of its north by all necessary means. At the same time, he held that his country had no territorial claim on Lebanon and no intention of entering into battles with either the Syrian or the Lebanese armies. He argued that no country would allow its citizens to be attacked and killed by terrorists and would refrain from exercising the right of self-defence.¹¹⁷

The representative of the United States asserted that Hizbullah attacks into northern Israel had compelled the Government of Israel to take steps it deemed necessary to protect its people from direct threats emanating from Lebanese territory, which, in her opinion, were “actions of self-defence” in response to Hizbullah violence. She emphasized that her country was committed to using its influence to help ensure the right of nations to live within secure, internationally recognized borders and to the sovereignty, independence, territorial integrity and national unity of Lebanon.¹¹⁸

Many speakers at the meeting reiterated that the infringement of the principles of sovereignty, territorial integrity and political independence of Lebanon was inadmissible¹¹⁹ and considered the attacks on Lebanon by Israel as a violation of the Charter.¹²⁰ Some demanded that Israel cease its military action and withdraw all reinforcements and asked the Council to take action in that regard.¹²¹ In that context, some also

¹¹³ S/PV.4084, pp. 5-6.

¹¹⁴ Ibid., pp. 16-17.

¹¹⁵ S/1996/280.

¹¹⁶ S/PV.3653 and Corr.1, pp. 2-6.

¹¹⁷ Ibid., pp. 6-7.

¹¹⁸ Ibid., pp. 12-13.

¹¹⁹ Ibid., p. 11 (Republic of Korea); p. 12 (Botswana); p. 13 (Poland); and p. 28 (Colombia).

¹²⁰ Ibid., p. 8 (Indonesia); p. 9 (China); p. 14 (Egypt); p. 17 (United Arab Emirates); p. 17 (Saudi Arabia); p. 19 (Syrian Arab Republic); p. 20 (Cuba); p. 20 (Kuwait); p. 22 (Algeria); p. 23 (Morocco); p. 24 (Islamic Republic of Iran); p. 25 (Tunisia); p. 26 (Malaysia); and p. 27 (Jordan).

¹²¹ Ibid., p. 8 (Indonesia); p. 9 (China); p. 10 (Russian Federation); p. 11 (Botswana); p. 15 (Egypt); p. 16

referred to resolution 425 (1978), highlighting the relevant provisions.¹²²

Several speakers argued that Israel had invaded Lebanon and attacked its sovereignty and territorial integrity and continued occupying part of southern Lebanon on the pretext of ensuring the security of northern Israel.¹²³ The representative of Egypt added that any armed aggression against a neighbouring State, whatever the motive, constituted prohibited aggression. He further pointed out that self-defence could be invoked under Article 51 of the Charter, when an actual armed attack had occurred, and that in the case of Katyusha rockets fired across the border, which was a proscribed act and should be ceased forthwith, the mechanisms provided for in the armistice agreement between Lebanon and Israel should have been invoked to deal with the issue.¹²⁴

Other speakers underscored that while self-defence itself was legitimate, measures of self-defence should abide by the basic rule of law prescribing proportionality.¹²⁵

Some appealed to all parties involved to exercise restraint so as to safeguard peace and stability in the region.¹²⁶ In that connection, the representative of China urged all sides to eschew force or the threat of force.¹²⁷

(Chile); p. 17 (United Arab Emirates); p. 19 (Syrian Arab Republic); pp. 19-20 (Cuba); p. 21 (Kuwait); p. 22 (Libyan Arab Jamahiriya); p. 22 (Algeria); p. 23 (Morocco); p. 25 (Islamic Republic of Iran); p. 26 (Tunisia); and p. 26 (Malaysia).

¹²² *Ibid.*, p. 9 (Germany); p. 10 (Russian Federation); p. 15 (Egypt); p. 16 (Chile); p. 17 (United Arab Emirates); p. 17 (Saudi Arabia); p. 19 (Syrian Arab Republic); p. 19 (Cuba); p. 21 (Kuwait); p. 21 (Libyan Arab Jamahiriya); p. 22 (Algeria); p. 23 (Afghanistan); p. 23 (Morocco); p. 24 (Islamic Republic of Iran); p. 27 (Jordan); and p. 29 (Pakistan).

¹²³ *Ibid.*, p. 14 (Egypt); p. 17 (United Arab Emirates); p. 19 (Syrian Arab Republic); p. 21 (Kuwait); pp. 21-22 (Libyan Arab Jamahiriya); and p. 24 (Islamic Republic of Iran).

¹²⁴ *Ibid.*, p. 14.

¹²⁵ *Ibid.*, p. 9 (Germany); p. 10 (Russian Federation); p. 14 (Egypt); and p. 23 (Afghanistan).

¹²⁶ *Ibid.*, p. 9 (Germany); p. 11 (Republic of Korea); p. 12 (Italy, speaking on behalf of the European Union); p. 14 (Poland); and p. 16 (Chile).

¹²⁷ *Ibid.*, pp. 9-10.

At the 3654th meeting, on 18 April 1996, the Council voted on two draft resolutions.¹²⁸ The draft resolution submitted by the Arab Group was not adopted because it did not obtain the required majority. By that draft resolution, the Council would have, *inter alia*, called upon Israel immediately to cease its military action against the Lebanese territorial integrity and withdraw forthwith its forces from all Lebanese territory and called for strict respect for the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized boundaries.¹²⁹

By resolution 1052 (1996), adopted at the meeting, the Council, *inter alia*, called for an immediate cessation of hostilities by all parties and reaffirmed its commitment to the territorial integrity, sovereignty and political independence of Lebanon within its internationally recognized boundaries and to the security of all States in the region, and called upon all concerned fully to respect those principles.¹³⁰

A number of speakers regretted that the draft resolution submitted by the Arab Group had not been adopted.¹³¹ In that connection, the representative of Egypt wished that resolution 1052 (1996) included a clear condemnation of Israel and covered the entire scope of the Israeli aggression against Lebanon.¹³²

On the other hand, several speakers stated their support for the provisions of resolution 1052 (1996). In this statement, the representative of Israel noted that the Prime Minister of his country had accepted a United States initiative to reach a ceasefire and hoped that a ceasefire would be achieved without delay. He further stated that such a move would put an end to the situation which had forced Israel to retaliate and to use its right of self-defence against those who had attacked innocent civilians in northern Israel.¹³³

¹²⁸ S/1996/292 and S/1996/304.

¹²⁹ S/1996/292.

¹³⁰ Resolution 1052 (1996), paras. 1 and 3.

¹³¹ S/PV.3654, pp. 3-4 (Egypt); pp. 13 (Lebanon); and p. 17 (United Arab Emirates, speaking on behalf of the Arab Group).

¹³² *Ibid.*, p. 4.

¹³³ *Ibid.*, p. 14.

Case 8

The situation in Afghanistan

At the 4039th meeting, on 27 August 1999, the Under-Secretary-General for Political Affairs, in his briefing, stated that the unabated involvement of neighbouring and other countries in the Afghan conflict not only continued to fuel the fighting inside the country but also appeared to call into question the practical significance of the various declarations agreed upon by the members of the “six plus two” group, which included all of the neighbouring States of Afghanistan.¹³⁴

The representative of Afghanistan referred to the “long-standing bitter reality of Pakistani intervention in Afghanistan” and drew attention of the Council to the need to address the Pakistani aggression in Afghanistan and the implications of the Pakistani-Taliban agenda. In that context, explicitly citing Article 2 (4) of the Charter, the representative held that all Member States should refrain from the threat or use of force against the territorial integrity or political independence of any State and stated that the “Pakistani intervention in Afghanistan” ran counter to “this transparent and unambiguous disposition of the United Nations Charter”. He argued that Pakistan had continuously committed acts against the sovereignty, independence and territorial integrity of Afghanistan, naming Pakistan as a State-sponsored terrorist country, and held that the Inter-Services Intelligence of Pakistan had been recruiting and training mercenaries from abroad and internally to achieve its hegemonic purposes in South and Central Asia, all of which were, in his opinion, in defiance of relevant resolutions of the Security Council.¹³⁵

Several speakers expressed concern about external interference in the internal affairs of Afghanistan.¹³⁶ In that regard, the representative of the Russian Federation pointed out the direct participation in combat, on the Taliban side, of fighters from Pakistan and other countries and called on Pakistan to

take immediate measures to prevent its territory from being used to provide military support to the Taliban. He added that it would be in line with the commitment made by Pakistan as a member of the “six plus two” group, in accordance with the Tashkent Declaration on Fundamental Principles for a Peaceful Settlement of the Conflict in Afghanistan.¹³⁷ A number of speakers appealed to States, especially those bordering on Afghanistan, immediately to cease the provision of military assistance to the various factions in Afghanistan.¹³⁸ Similarly, the representative of Canada held that all countries should refrain from providing financial or material support to the warring factions in Afghanistan.¹³⁹ The representative of Malaysia observed that by pursuing a policy of non-interference, there would be prospects of a durable peace in Afghanistan and regretted that despite the pronouncements in the Tashkent Declaration of the “six plus two” group not to provide military support to any Afghan party and to prevent the use of their territories for such purpose, the reality was the infusion of massive war material to fuel the Afghan conflict, with the involvement of external actors.¹⁴⁰

The representative of Pakistan, for his part, expressed the view that a peaceful and stable Afghanistan with its unity, territorial integrity and sovereignty fully intact was in the highest national interest of his country. He noted that Afghan history was witness to the fact that external solutions could not be imposed on Afghanistan and that his country had no desire to interfere in the internal affairs of Afghanistan. He further held that Pakistan did not lend any support to any side in Afghanistan and that in order to promote an intra-Afghan dialogue, it was imperative that all outside interference in Afghanistan cease, adding that the most glaring aspect of such interference was the supply of military equipment. As to the allegation of the involvement of Pakistani nationals in the fighting in Afghanistan, the representative rejected such an allegation as “false and malicious” and contended that

¹³⁴ S/PV.4039, p. 4.

¹³⁵ *Ibid.*, p. 6.

¹³⁶ *Ibid.*, p. 8 (Russian Federation); p. 11 (Argentina); and p. 13 (United States); S/PV.4039 (Resumption 1), pp. 4-5 (Slovenia); p. 6 (Brazil); p. 12 (Islamic Republic of Iran); p. 13 (India); p. 16 (Tajikistan); and p. 17 (Turkey).

¹³⁷ S/PV.4039, p. 8.

¹³⁸ *Ibid.*, p. 10 (China); p. 14 (France); and p. 15 (Netherlands); S/PV.4039 (Resumption 1), p. 5 (Slovenia); p. 7 (Finland); p. 10 (Kazakhstan); p. 10 (Norway); pp. 14-15 (Japan); p. 19 (Egypt); and p. 24 (representative of the Organization of the Islamic Conference).

¹³⁹ S/PV.4039, p. 12.

¹⁴⁰ S/PV.4039 (Resumption 1), pp. 2-3.

because of a porous border between Pakistan and Afghanistan, it was possible and likely that young Afghan refugees might have returned to Afghanistan and participated in the fighting.¹⁴¹

C. Article 2, paragraph 5

Article 2, paragraph 5

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

Note

During the period under review, there were no explicit references to Article 2 (5) in the decisions or deliberations of the Security Council. However, the Council did adopt several resolutions and issued a number of presidential statements which might have an implicit bearing on the principle enshrined in Article 2 (5). The examples of calls for assistance relating to peacekeeping operations, other subsidiary bodies, mandatory measures within the framework of Article 41 of the Charter, multinational forces and other calls for assistance, as provided below, can be considered representative of the practice of the Council during the period under review concerning the principle enshrined in Article 2 (5).

Assistance relating to peacekeeping missions

In a number of decisions of the Council, Member States were called upon to provide assistance to peacekeeping missions, including provision of troops and material support.¹⁴²

For example, on a number of occasions in connection with the situation in Haiti, the Council requested all States or Member States to provide appropriate support for the actions undertaken by the United Nations and by Member States in order to carry

¹⁴¹ Ibid., pp. 21-23.

¹⁴² For the provisions in resolutions adopted under Chapter VII of the Charter requesting Member States to provide assistance to peacekeeping operations, see chapter XI, part VII, section C.

out the provisions of the mandate of the United Nations Support Mission in Haiti (UNSMIH),¹⁴³ the United Nations Transition Mission in Haiti (UNTMIH),¹⁴⁴ and the United Nations Civilian Police Mission in Haiti (MIPONUH).¹⁴⁵ In connection with the situation in the former Yugoslav Republic of Macedonia, the Council called upon Member States to consider favourably requests by the Secretary-General for necessary assistance to the United Nations Preventive Deployment Force (UNPREDEP) in the performance of its mandate.¹⁴⁶ In connection with the situation in the Central African Republic, the Council urged Member States to respond positively to the request made by the Secretary-General to contribute personnel, equipment and other resources to the United Nations Mission in the Central African Republic (MINURCA) in order to facilitate its early deployment.¹⁴⁷ In connection with the situation in Bosnia and Herzegovina, the Council, by resolution 1103 (1997),¹⁴⁸ urged Member States to provide qualified police monitors and other forms of assistance and support to the International Police Task Force (IPTF) and in support of the General Framework Agreement for Peace in Bosnia-Herzegovina.¹⁴⁹

Assistance relating to investigative bodies

In some cases, the Council called on Member States to provide support to investigative bodies, including commissions of inquiry, investigation commissions and others. For example, by resolution 1053 (1996) concerning the situation in Rwanda, the Council called upon States to make available to the International Commission of Inquiry established pursuant to resolution 1013 (1995)¹⁵⁰ the results of their investigations, and to cooperate with the Commission by providing, inter alia, access to airfields and witnesses.¹⁵¹

¹⁴³ Resolutions 1063 (1996), para. 6 and 1086 (1996), para. 5.

¹⁴⁴ Resolution 1123 (1997), para. 6.

¹⁴⁵ Resolutions 1141 (1997), para. 6 and 1212 (1998), para. 4.

¹⁴⁶ Resolutions 1058 (1996), para. 3 and 1082 (1996), para. 2.

¹⁴⁷ Resolution 1159 (1998), para. 17.

¹⁴⁸ Resolution 1103 (1997), para. 3.

¹⁴⁹ S/1995/999, annex.

¹⁵⁰ See chapter V for more information.

¹⁵¹ Resolution 1053 (1996), para. 10.

Assistance relating to measures imposed within the framework of Article 41 of the Charter

During the period under review, implicit references were frequently made in decisions of the Council in connection with the measures imposed by the Council under Article 41 of the Charter.¹⁵² In a number of instances, the Council called on States to take action, or otherwise strengthen their efforts in support of sanctions or other measures that had been imposed by the Council.¹⁵³

For example, by resolution 1053 (1996) of 23 April 1996, in connection with the situation in Rwanda, the Council urged all States, in particular those in the region, to intensify their efforts to prevent military training and the sale or supply of weapons to militia groups or former Rwandan government forces, and to take the steps necessary to ensure the effective implementation of the arms embargo imposed under resolutions 918 (1994), 997 (1995) and 1011 (1995), including by creation of all necessary national mechanisms for implementation.¹⁵⁴ The same resolution called upon States to investigate alleged violations by their officials or private citizens of the arms embargo.¹⁵⁵

During the period under review, the Council also called for Member States to give assistance to its subsidiary bodies, particularly sanctions committees, and other international organizations in conjunction with measures imposed under Article 41. For example, in connection with the situation in Angola, the Council, by resolution 1127 (1997) of 28 August 1997, requested Member States having information on flights prohibited in paragraph 4 (d) of the same resolution to provide that information to the Committee created pursuant to resolution 864 (1993).¹⁵⁶ In the same resolution, the Council requested Member States to provide information to the Committee on the measures that they had adopted in order to implement the prohibitions in paragraph 4 of the resolution.¹⁵⁷ In

another instance, with regard to the situation between Iraq and Kuwait, the Council, by resolution 1051 (1996) of 27 March 1996, called upon all States and international organizations to cooperate fully with the Committee established under resolution 661 (1990), the Special Commission and the Director General of the International Atomic Energy Agency in the fulfilment of their tasks in connection with the export/import monitoring mechanism, including supplying such information as may be sought by them in implementation of the mechanism,¹⁵⁸ and by resolution 1284 (1999) of 17 December 1999, the Council requested Member States to give full cooperation to the United Nations Monitoring, Verification and Inspection Commission and the International Atomic Energy Agency in the discharge of their mandates.¹⁵⁹

Assistance relating to multinational forces authorized by the Security Council

In a number of cases, the Council called on States to provide assistance to multinational forces that had been authorized by the Council. For example, in connection with the situation in the Great Lakes region, by resolution 1080 (1996) of 15 November 1996, which authorized the establishment of a temporary multinational force in eastern Zaire, the Council called upon all concerned in the region to cooperate fully with the multinational force and humanitarian agencies and to ensure the security and freedom of movement of their personnel.¹⁶⁰ Similarly, in connection with the situation in East Timor, the Council called upon Member States to make further contributions of personnel, equipment and other resources to the multinational force in East Timor authorized by resolution 1264 (1999).¹⁶¹

Other calls for assistance

The Council also called on Member States during this period to provide assistance to the efforts of the United Nations, humanitarian or otherwise, often within a broader context of post-conflict development in countries.

¹⁵² For more information on measures under Article 41, see chapter XI.

¹⁵³ For more information on actions that the Council has required Member States to take relating to measures under Article 41 can be found in the chapter XI, part VI.

¹⁵⁴ Resolution 1053 (1996), para. 5.

¹⁵⁵ *Ibid.*, para. 9.

¹⁵⁶ Resolution 1127 (1997), para. 12.

¹⁵⁷ *Ibid.*, para. 13. See also resolutions 1135 (1997), para. 8,

and 1157 (1998), para. 4.

¹⁵⁸ Resolution 1051 (1996), para. 12.

¹⁵⁹ Resolution 1284 (1999), para. 10.

¹⁶⁰ Resolution 1080 (1996), para. 6.

¹⁶¹ Resolution 1264 (1999), para. 6.

By resolution 1052 (1996), in connection with the situation in the Middle East, the Council called upon Member States to offer humanitarian assistance to alleviate the suffering of the population and to assist the Government of Lebanon in the reconstruction of the country, and requested the Secretary-General to ensure that the United Nations and its agencies played their part in meeting the humanitarian needs of the civilian population.¹⁶²

D. Article 2, paragraph 6

Article 2, paragraph 6

The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

During the period under review, there were no explicit references to Article 2 (6) in the decisions or deliberations of the Security Council, nor did any constitutional discussions arise in connection with Article 2 (6). In one instance, the Council explicitly called upon States that were not members of the United Nations. In connection with the item entitled “Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995”,¹⁶³ the Council, by resolution 1054 (1996), called upon “all States, including States not members of the United Nations”, to act strictly in conformity with the resolution, notwithstanding the existence of any rights granted or obligations conferred or imposed by any international agreement or of any contract entered into or any licence or permit granted prior to the entry into force of the provisions of the resolution.¹⁶⁴ In general, the Security Council in its decisions tended to refer to “all States” or simply to “States” when it made calls for States to take specific actions.¹⁶⁵

¹⁶² Resolution 1052 (1996), para. 6.

¹⁶³ S/1996/10.

¹⁶⁴ Resolution 1054 (1996), para. 5.

¹⁶⁵ For Council decisions under Chapter VII of the Charter

E. Article 2, paragraph 7

Article 2, paragraph 7

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

Note

During the period under review, there were no explicit references to Article 2 (7) contained in the decisions adopted by the Security Council.

In communications sent to the Council, there were two explicit references made to Article 2 (7), both in the context of the situation between Iraq and Kuwait. By identical letters dated 2 July 1998 addressed to the Secretary-General and the President of the Security Council,¹⁶⁶ the Minister for Foreign Affairs of Iraq stressed that the imposition of the no-fly zones represented a “flagrant act of aggression” against Iraq for a number of reasons. He argued that the reliance of the Government of the United States on resolution 688 (1991) as justification for the no-fly zones contradicted the provisions of that resolution, particularly the second preambular paragraph of the resolution that referred to Article 2 (7), which declared that the United Nations was not authorized to intervene in matters within the domestic jurisdiction of any State. He continued to state that the seventh preambular paragraph of resolution 688 (1991) also reaffirmed the commitment of all Member States to respect the sovereignty, territorial integrity and political independence of Iraq. By a letter dated 13 February 1999 addressed to the Secretary-General, the representative of Iraq maintained that silence on the part of the United Nations in the face of stepped-up violations of the airspace of Iraq by the United States and the United Kingdom for the purpose of enforcing the no-fly zones would constitute a dangerous precedent in international relations and would violate

which include calls for action addressed to States, see also chapter XI, part VI entitled “Obligations of Member States under Article 48 of the Charter”.

¹⁶⁶ S/1998/606.

the norms and covenants that governed such relations. In particular, it would violate the peremptory norm of international law requiring non-interference in the internal affairs of States, which was affirmed in Article 2 (7) and which did not allow even the United Nations itself to interfere in affairs that pertained to the core of the internal authority of States.¹⁶⁷

During the deliberations of the Council, there were several explicit references to Article 2 (7), while on other occasions the principle of the Charter provision regarding non-interference in domestic affairs was referred to. These are examined in the six case studies included below. Case 9 deals with the situation in Burundi, and cases 10 and 11 examine the response of the Council to the situation in Kosovo, Federal Republic of Yugoslavia, in connection with the letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council; the letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council; and the letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council, respectively.¹⁶⁸ Case 12 deals with the situation in Albania. The last two cases deal with the thematic debates on the protection of civilians in armed conflict (case 13) and the role of the Security Council in the prevention of armed conflicts (case 14).

Case 9

The situation in Burundi

At the 3616th meeting, on 5 January 1996, the Security Council considered the letter dated 29 December 1995 from the Secretary-General addressed to the President on the developments in Burundi.¹⁶⁹ By that letter, the Secretary-General shared his deep concern about the persistence of violence and the further escalation of human rights violations in Burundi. As there was a real danger of the situation degenerating to the point where it might explode into

ethnic violence on a massive scale, he suggested the maintenance in Zaire, subject to the agreement of the Government of Zaire, of a military presence capable of intervening rapidly in the event of a sudden deterioration of the situation in Burundi, a preventive measure that could help to avoid a repetition of the tragic events in Rwanda.¹⁷⁰

By a statement by the President issued at the same meeting, the Council noted the proposals referred to in the above-mentioned letter from the Secretary-General and stated that it would consider those and other proposals he might submit.¹⁷¹

By a letter dated 18 January 1996, the representative of Burundi responded to the Secretary-General's proposal for a rapid response force and stated that not only was the plan for an inter-position force inappropriate, even the "spectre" of a military deployment in Burundi was exacerbating the crisis.¹⁷²

At the 3623rd meeting, on 29 January 1996, the representative of Burundi, drawing attention to the reference in the letter of the Secretary-General of 16 January 1996¹⁷³ to a difference in opinion among Burundian officials on how best to approach the crisis, underlined that the official position of his Government was clear and that it unanimously rejected military intervention in Burundi. He stressed that to defuse the crisis in Burundi, it was important to stress the pre-eminence of judicious diplomacy over military intervention.¹⁷⁴

By resolution 1040 (1996) adopted at the same meeting, the Council requested the Secretary-General to consider what further steps of a preventive nature might be necessary in order to avoid the situation deteriorating further, to develop contingency plans as appropriate and to submit a report to the Council on the situation, including contingency planning.¹⁷⁵

On 15 February 1996, the Secretary-General submitted a report on Burundi,¹⁷⁶ in which he reiterated his conviction that an assertive approach involving contingency planning to avoid a catastrophe

¹⁶⁷ S/1999/153.

¹⁶⁸ S/1998/223, S/1998/272 and S/1999/320, respectively.

¹⁶⁹ S/1995/1068.

¹⁷⁰ Ibid.

¹⁷¹ S/PRST/1996/1.

¹⁷² S/1996/40.

¹⁷³ S/1996/36.

¹⁷⁴ S/PV.3623, pp. 4-6.

¹⁷⁵ Resolution 1040 (1996), paras. 5 and 7.

¹⁷⁶ S/1996/116.

if preventive diplomacy failed, including establishment of a multinational force for humanitarian intervention under Chapter VII of the Charter, would improve the chances of convincing the parties in Burundi to show more flexibility.

At the 3639th meeting, on 5 March 1996, the representative of Burundi noted that in his report, the Secretary-General had strongly advocated a multinational military force “designed to descend upon Burundi on the smallest pretext, like a vulture upon its prey”. Stressing that the army of Burundi was completely prepared to confront any expeditionary corps, regardless of its humanitarian or military label, he emphasized that there were reasons impelling his Government to militate not only against foreign troops but also against any reference to such a possibility. Among those, he highlighted that the Charter would be flagrantly violated, as Article 2 (7) prohibited the United Nations from interfering with the national sovereignty of its Member States. He argued that the multinational military force, which had been “given a humanitarian cloak to wear”, would be tantamount to an affront to the State of Burundi and that in the event that the catastrophe occurred, it would be up to the Government of Burundi and its army to decide when and if to ask for humanitarian assistance.¹⁷⁷

At the same meeting, several Council members expressed support for continued contingency planning for a robust response or humanitarian intervention in the event that the humanitarian situation deteriorated further and violence became widespread and uncontrollable.¹⁷⁸ In that regard, the representative of the United States stated that it was critical that the leaders of the various factions in Burundi not misunderstand the intentions and motives of the international community as it was not interested in any action that would undermine Burundi’s sovereignty. The goal was simply to encourage outcomes within Burundi that were consistent with internationally recognized principles of human rights, and with Burundi’s own legal and constitutional processes. Noting the concerns raised over even planning for the contingency that widespread violence might resume, she stressed that the Government of the United States nonetheless believed that such a step was essential. She

¹⁷⁷ S/PV.3639, pp. 2-6.

¹⁷⁸ *Ibid.*, p. 9 (United Kingdom); pp. 12-13 (United States); pp. 16-17 (Republic of Korea); and p. 21 (Botswana).

also maintained that the contingency planning called for in the draft resolution¹⁷⁹ was precisely the type of exercise that had been envisioned when the United Nations had established its standby arrangement system.¹⁸⁰ The representative of Nigeria also expressed support for the Security Council maintaining a hands-on policy in Burundi, including contingency planning for possible humanitarian intervention. However, he stressed that any such efforts or preparations must respect the sovereignty of Burundi and the expressed wish of its Government. Any initiative that attempted to sidestep that condition would carry with it serious difficulties and could be counterproductive.¹⁸¹ The representative of China reaffirmed that the internal affairs of a country should be settled by the people of that country themselves. The international community could provide assistance, but it could not engage in interference in the name of assistance. He further stated that it was his Government’s understanding, with regard to the draft resolution, that no matter what kind of action the Security Council took in the future, including a humanitarian response, it needed to consult with the country concerned, obtain its consent and broadly canvass the view of all parties.¹⁸²

At that meeting, the Council adopted the draft resolution as resolution 1049 (1996), by which the Council, *inter alia*, recognizing the urgent need for preparations aimed at anticipating and preventing the escalation of the present crisis in Burundi, encouraged the Secretary-General to continue his consultations with the Member States concerned and the Organization of African Unity on contingency planning for a rapid humanitarian response in the event of widespread violence or a serious deterioration of the humanitarian situation in Burundi.¹⁸³

In his report of 15 August 1996, the Secretary-General informed the Council that regarding the proposed contingency force, few countries had offered troops and none had offered to lead a multinational force.¹⁸⁴

¹⁷⁹ S/1996/162.

¹⁸⁰ S/PV.3639, p. 13.

¹⁸¹ *Ibid.*, pp. 26-27.

¹⁸² *Ibid.*, p. 16.

¹⁸³ Resolution 1049 (1996), eleventh preambular para. and para. 13.

¹⁸⁴ S/1996/660.

Case 10

*Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council*¹⁸⁵

*Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council*¹⁸⁶

At its 3868th meeting, on 31 March 1998, the Council adopted resolution 1160 (1998),¹⁸⁷ by which it condemned the use of excessive force by Serbian police forces against civilians and peaceful demonstrators in Kosovo, as well as all acts of terrorism by the Kosovo Liberation Army or any other group or individual and all external support for terrorist activity in Kosovo, including finance, arms and training. Acting under Chapter VII of the Charter, the Council decided that all States should, for the purposes of fostering peace and stability in Kosovo, prevent the sale or supply to the Federal Republic of Yugoslavia, including Kosovo, of arms and related materiel of all types.¹⁸⁸

At that meeting, the representative of Costa Rica stated that safeguarding human rights was not solely and exclusively a matter of the internal jurisdiction of States. In that connection, he believed that there were certain circumstances in which a violation of such fundamental rights was so serious that it constituted, in and of itself, a threat to international peace and security and therefore fully justified the Security Council invoking the powers granted to it under Chapter VII of the Charter.¹⁸⁹ The representative of Slovenia agreed that the situation in Kosovo had been giving rise to legitimate international concern for quite some time, and, thus, could no longer be described as an internal affair since it had already developed into a threat to international peace and security in the

region.¹⁹⁰ The representative of the United Kingdom held that Belgrade could not pass off the repressive acts of recent weeks as purely internal matters, pointing out that human rights abuses were a matter for all and stressed that the tension in the region should be reduced before it caused instability in neighbouring countries.¹⁹¹ Similarly, the representative of the United States reiterated the position of the Contact Group¹⁹² that the situation in Kosovo was not simply an internal matter but also had a direct impact on regional stability.¹⁹³ Several other speakers stressed that the situation in Kosovo did constitute a threat to international peace and security and that the involvement of the Council was necessary.¹⁹⁴

The representative of Brazil stated that although the Charter enshrined the principle of non-intervention in matters which were essentially within the domestic jurisdiction of any State, members of the Council were all aware that the principle did not prejudice the application of enforcement measures under Chapter VII, in accordance with Article 2 (7). He noted that in recent years, some observers had gone so far as to suggest that there might have been a tendency to frame emergencies under Chapter VII of the Charter so as to circumvent the principle of non-intervention, which would be a distortion of the waiver provided by Article 2 (7), incompatible with its original purpose.¹⁹⁵

Mr. Vladislav Jovanovic maintained, however, that Kosovo and Metohija was a Serbian province that had always been, and was, an integral part of the Republic of Serbia. He underscored that the meeting of the Security Council and the adoption of a resolution were not acceptable to the Government of the Federal Republic of Yugoslavia, since questions that represented an internal matter for Serbia and the Federal Republic of Yugoslavia were at stake. His Government considered that the internal question could not be the subject of deliberation in any international forum without its consent and that such consent had

¹⁸⁵ S/1998/223.

¹⁸⁶ S/1998/272.

¹⁸⁷ Adopted by 14 votes to none with one abstention (China).

¹⁸⁸ Resolution 1160 (1998), third preambular paragraph and para. 8.

¹⁸⁹ S/PV.3868, pp. 3-4.

¹⁹⁰ *Ibid.*, pp. 7-9.

¹⁹¹ *Ibid.*, p. 12.

¹⁹² The Contact Group was composed of France, Germany, Italy, the Russian Federation, the United States and the United Kingdom.

¹⁹³ S/PV.3868, p. 13.

¹⁹⁴ *Ibid.*, p. 3 (Japan); p. 5 (Sweden); pp. 9-10 (Portugal); pp. 19-20 (Germany); and pp. 26-27 (Croatia).

¹⁹⁵ *Ibid.*, p. 6.

not been granted. He noted that the pretext for the action by the Security Council had been found in two anti-terrorist police actions in Kosovo and Metohija, the autonomous province of Serbia and that there was not, nor had there been any armed conflict in Kosovo and Metohija. There was, therefore, no danger of a spillover, no threat to peace and security, and no basis for invoking Chapter VII of the Charter.¹⁹⁶ The representative of the Russian Federation reiterated that from the outset, his Government had viewed the recent events in Kosovo as the internal affair of the Federal Republic of Yugoslavia. Moreover, while the events in Kosovo had an adverse regional impact, the situation in Kosovo, despite its complexity, did not constitute a threat to regional, much less international, peace and security.¹⁹⁷ Similarly, the representative of China stressed that Kosovo was an integral part of the territory of the Federal Republic of Yugoslavia and therefore, the question of Kosovo was an internal matter of the Federal Republic. He emphasized that if the Council was to get involved in a dispute without a request from the country concerned, it might set a bad precedent and have wider negative implications.¹⁹⁸

Case 11

*Letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council*¹⁹⁹

By a letter dated 24 March 1999 to the President of the Security Council, the representative of the Russian Federation requested that an urgent meeting of the Security Council be convened to consider “an extremely dangerous situation” caused by the unilateral military action of the North Atlantic Treaty Organization against the Federal Republic of Yugoslavia.²⁰⁰

At the 3988th meeting held on 24 March 1999 in response to the above-mentioned letter, Mr. Jovanovic maintained that the Federal Republic of Yugoslavia had not threatened any country or the peace and security of the region. It had been attacked because it sought to

solve an internal problem and used its sovereign right to fight terrorism and prevent the secession of a part of its territory that had always belonged to Serbia and Yugoslavia.²⁰¹ The representative of India, agreeing that Kosovo was recognized as part of the sovereign territory of the Federal Republic of Yugoslavia, stressed that under the application of Article 2 (7), the United Nations had no role in the settlement of the domestic political problems. He stated that the only exception laid down by Article 2 (7) would be the “application of enforcement measures under Chapter VII”, and argued that the attacks had not been authorized by the Council, acting under Chapter VII, and were therefore illegal. Commenting on the suggestion that the attack would be called off if the Government of the Federal Republic of Yugoslavia accepted “NATO peacekeeping forces” on its territory, he stressed that this was also a violation of Article 2 (7) as a peacekeeping operation could be deployed only with the consent of the Government concerned.²⁰² The representative of China agreed that the question of Kosovo was an internal matter of the Federal Republic of Yugoslavia and emphasized that China opposed interference in the internal affairs of other States, under whatever pretext or in whatever form.²⁰³

The representative of the United States maintained that resolutions 1199 (1998) and 1203 (1998) had recognized that the situation in Kosovo constituted a threat to peace and security in the region and invoked Chapter VII of the Charter. Moreover, Belgrade had failed to comply with agreements and understandings with NATO and the Organization for Security and Cooperation in Europe to verify its compliance with Security Council demands. The actions of the Federal Republic of Yugoslavia also violated its commitments under the Helsinki Final Act, as well as its obligations under the international law of human rights. Therefore, Belgrade’s actions in Kosovo could not be dismissed as an internal matter.²⁰⁴ The representative of France added that the actions of NATO were a response to the violation by the Federal Republic of Yugoslavia of its international obligations, which stemmed in particular from the Security Council

¹⁹⁶ Ibid., pp. 15-19.

¹⁹⁷ Ibid., p. 10.

¹⁹⁸ Ibid., pp. 11-12.

¹⁹⁹ S/1999/320.

²⁰⁰ Ibid.

²⁰¹ S/PV.3988, pp. 13-15.

²⁰² Ibid., pp. 15-16.

²⁰³ Ibid., pp. 12-13.

²⁰⁴ Ibid., pp. 4-5.

resolutions adopted under Chapter VII.²⁰⁵ The representative of Slovenia expressed his delegation's expectation that the actions of NATO would be carried out strictly within the substantive parameters established by the relevant Council resolutions. He also agreed that, since the situation in Kosovo had been defined by the Council as a threat to international peace and security in the region, and thus not a matter which was essentially within the domestic jurisdiction of a State, Article 2 (7) of the Charter did not apply.²⁰⁶ The representative of the Netherlands, while agreeing that the Council should be involved in any decision to resort to the use of force, stressed that if "due to one or two permanent members' rigid interpretation of the concept of domestic jurisdiction", such a resolution was not attainable, they could not simply let a humanitarian catastrophe occur. He held that, in such a situation, they would act on the legal basis they had available and what was available in the case of Kosovo was "more than adequate".²⁰⁷

Case 12

The situation in Albania

By a letter dated 28 March 1997 addressed to the President of the Security Council,²⁰⁸ the representative of Albania informed the Council that following the collapse of the pyramid investment schemes, massive unrest had swept entire regions of the country. The complete disorder and lack of security was bound to bring about another wave of tens of thousands of refugees, sailing and landing in neighbouring Italy and forcing the Government to also proclaim an emergency. As a result, the Organization for Security and Cooperation in Europe had agreed to support the willingness of some Member States to participate with a military or a police force in the protection of humanitarian activities in Albania. The Government of Albania felt that such a force also had to have the necessary support and authorizations of the Security Council.

At the 3758th meeting, on 28 March 1997, speaking in regard to the proposed multinational protection force in Albania, the representative of China

stressed that while his delegation was concerned by developments in Albania and supported the political and diplomatic efforts made by the international community, the situation was essentially an internal affair of Albania. He stated that for the Security Council to authorize action in a country because of strife resulting from the internal affairs of a country was inconsistent with the provisions of the Charter and therefore needed to be handled with extreme caution.²⁰⁹

At the same meeting, the Council adopted resolution 1101 (1997),²¹⁰ by which it welcomed the offer made by certain Member States to establish a temporary and limited multinational protection force to facilitate the safe and prompt delivery of humanitarian assistance. It authorized the Member States participating in the multinational protection force to conduct the operation in a neutral and impartial way and to help to create a secure environment for the missions of international organizations in Albania, including those providing humanitarian assistance, and, acting under Chapter VII of the Charter, further authorized those Member States to ensure the security and freedom of movement of the personnel of the multinational protection force.²¹¹

Case 13

The protection of civilians in armed conflict

At the 3977th meeting, on 12 February 1999, the representative of the Netherlands expressed the view that in the modern age, when most wars were internal conflicts, there was a need to find a solution to the problem of maintaining contact with both warring parties. He argued that it would not be possible to promote respect for humanitarian law, if establishing contact with the non-State party was not allowed in the case of an internal conflict between the State and a rebel movement or insurgency. The problem became even more intractable when the sovereign State was itself the terrorizing party. The representative disagreed

²⁰⁵ Ibid., p. 9.

²⁰⁶ Ibid., pp. 7 and 19.

²⁰⁷ Ibid., p. 8.

²⁰⁸ S/1997/259.

²⁰⁹ S/PV.3758, pp. 2-3. The representative of China reiterated those points at the 3791st meeting, on 19 June 1997, when the Council renewed the mandate of the multinational protection force by resolution 1114 (1997) (S/PV.3791, p. 4).

²¹⁰ Adopted by 14 votes to none, with one abstention (China).

²¹¹ Resolution 1101 (1997), paras. 2 and 4.

with those who believed that even then Article 2 (7) of the Charter provided “the ultimate answer” and stressed that the Article should never be read in isolation. He maintained that the opening words of the Charter did not refer to sovereign States but to the peoples of the United Nations, and it was the peoples who were entitled to the protection being discussed. Therefore, nothing contained in the Charter authorized a State to terrorize its own citizens.²¹² The representative of Canada agreed that it was the obligation of States to ensure the protection of all citizens. In cases of weakened State structures or failed States, Council action to defend civilians in armed conflict would also diminish the threat to the States themselves. The responsibility of the Council to protect civilians was therefore compelling both in terms of fulfilling the Council’s own mandate and in the interest of enhancing State sovereignty. The reluctance to involve the Council, justified by some by the need to uphold State sovereignty, served only to undermine this very principle itself.²¹³

The representative of China countered that while the international community could not afford to turn away from humanitarian crises, the current tendency in international relations to politicize humanitarian issues and interfere in a country’s internal affairs under the guise of humanitarianism was a cause for concern.²¹⁴

At the 3980th meeting, on 22 February 1999, the representative of Egypt noted that as many current conflicts were taking place within rather than between States, it was necessary to determine the extent to which the United Nations could actually intervene to settle such conflicts. He held that the international community needed to preserve the fundamental characteristic of States’ sovereignty, which was the very foundation of contemporary international law. Sovereignty was also a key principle addressed in Article 2 (7) of the Charter, which defined the relationship between matters which were essentially within the domestic jurisdiction of any State and the enforcement measures the Council might take when international peace and security were threatened.²¹⁵ The representative of Iraq maintained that any action taken in the context of the protection of civilians in

armed conflict had to strictly observe Article 2 (7), as breaching that Article would “throw the door wide open” to intervention in the internal affairs of States.²¹⁶ The representative of Indonesia further noted that, as international law did not take precedence over national law, in the context of the rights of refugees and civilians in situations of armed conflict, a balance needed to be sought so as not to violate national sovereignty or the purposes and principles of the Charter.²¹⁷ The representative of India emphasized that, according to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, there was no automatic right of access to civilian populations affected by conflict, and to press for it would violate both international humanitarian law and the sovereignty of States.²¹⁸

In contrast, the representative of New Zealand welcomed the growing acceptance of the fact that the protection of individuals transcended the domestic affairs of States. He stressed that national sovereignty was not an absolute in the context of the protection of civilians in armed conflict.²¹⁹

At its 4046th meeting, on 17 September 1999, at which the Council considered the report of the Secretary-General dated 8 September 1999 on the protection of civilians in armed conflict,²²⁰ the representative of Egypt noted that the logic of the report was to give the Security Council a role beyond that currently mandated by the Charter. He observed that the legal framework for Council action was defined by respect for the purposes and principles of the Charter, including the non-use of force except in the implementation of Council resolutions adopted pursuant to Chapter VII. That meant that a conflict had to threaten or violate international peace or be deemed aggressive and that the Council should not intervene in the internal affairs of States pursuant to Article 2 (7). Regarding the report of the Secretary-General, he noted that it disregarded the principle of obtaining the agreement of States to preventive measures that might violate their sovereignty or reduce or affect their political unity or territorial integrity, and thus flouted the sacrosanct Charter principle of the sovereignty of

²¹² S/PV.3977, p. 21.

²¹³ *Ibid.*, p. 31.

²¹⁴ *Ibid.*, p. 30.

²¹⁵ S/PV.3980 (Resumption 1), p. 4.

²¹⁶ *Ibid.*, p. 9.

²¹⁷ S/PV.3980, p. 22.

²¹⁸ *Ibid.*, p. 17.

²¹⁹ *Ibid.*, pp. 14-15.

²²⁰ S/1999/957.

States.²²¹ The representative of India also expressed concerns that some of the recommendations in the report of the Secretary-General, including the recommendations that the Council urge neighbouring States to ensure access for humanitarian assistance and that it deploy international military observers to monitor the situation in camps for internally displaced persons and refugees when the presence of armed combatants and armed elements was suspected, would violate the principle of State sovereignty.²²²

Case 14

Role of the Security Council in the prevention of armed conflicts

At the 4072nd meeting, on 30 November 1999, the representative of the Netherlands stated that positions were sometimes taken which stood in the way of effective Security Council action in the prevention of conflicts. He pointed out that everything the Charter said with regard to the prevention of armed conflict in Chapters VI and VII and in Article 99 appeared to have been drafted with conflicts between States in mind, while the overwhelming majority of conflicts on the Council's agenda were of an internal, domestic nature. Against that background, while all Council members subscribed to the purposes and principles in Chapter I of the Charter, including Article 2 (7), he argued that a rigid interpretation of Article 2 (7) would preclude adaptation to that reality and, in effect, make all the

Charter provisions on the prevention of armed conflict ineffectual. He stressed that Article 2 (7) could not possibly be the alpha and omega of the Charter in the present day. He maintained that in the context of conflict prevention, the Council could not avoid addressing the internal situation of States wherever negative developments were apt to degenerate into large-scale atrocities and massive dislocation of civilians. That could not be rejected on grounds of domestic jurisdiction.²²³

Speaking in regard to the concept of "humanitarian intervention", the representative of the Libyan Arab Jamahiriya noted that it was not difficult to cite the problems in a given country in order to justify and provide cover for an intervention that had implicit and predetermined purposes that affected the interests of those who would intervene, and not the humanitarian situation of those affected. Giving an example that his country had lost half its population to gain independence, the representative held that Libyan Arab Jamahiriya was therefore not prepared to accept any resolution that would contravene Article 2 (7), conveying the right to intervene in the domestic affairs of any State, "even under the lofty pretext of humanitarian considerations".²²⁴

Several other speakers stressed the importance of the Council only acting with full respect for the sovereignty of States, their territorial integrity and political unity and in accordance with the principle of non-interference in the internal affairs of States.²²⁵

²²¹ S/PV.4046 (Resumption 1), pp. 19-21.

²²² *Ibid.*, pp. 24-28.

²²³ S/PV.4072, pp. 28-29.

²²⁴ *Ibid.*, p. 32.

²²⁵ *Ibid.*, p. 14 (China); pp. 15-16 (Russian Federation); p. 35 (United Arab Emirates); pp. 41-42 (Sudan); and p. 45 (Belarus); S/PV.4072 (Resumption 1), p. 3 (Egypt); p. 19 (Pakistan); and p. 25 (Iraq).

Part II

Consideration of the functions and powers of the Security Council (Articles 24 and 25 of the Charter)

A. Article 24

Article 24

1. *In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.*

2. *In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.*

3. *The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.*¹

Note

During the period under review, none of the resolutions and presidential statements adopted by the Security Council contained an explicit reference to Article 24 of the Charter. A draft resolution contained an explicit reference to that Article,² but was not adopted as it did not obtain the required majority.³

Nevertheless, the Charter provision by which Members conferred on the Security Council the primary responsibility for the maintenance of peace and security was implicitly referred to in a number of resolutions and presidential statements. The majority of

such decisions concerned thematic and cross-cutting issues. For instance, in connection with the role of the Security Council in the prevention of armed conflicts, a presidential statement of 30 November 1999 began with the provision that the Security Council had considered, “within its primary responsibility for the maintenance of international peace and security”, its role in the prevention of armed conflicts.⁴ In connection with the situation in Africa, by a presidential statement dated 16 September 1998, the Council, noting that it had the primary responsibility under the Charter of the United Nations for international peace and security, expressed its commitment to exercising that responsibility in relation to Africa.⁵ In other cases, the Council stressed, reaffirmed, recalled or bore in mind its primary responsibility for the maintenance of international peace and security.⁶

Furthermore, implicit references to the principle enshrined in Article 24 were also made in decisions of the Council dealing with such regional situations as Kosovo, the Federal Republic of Yugoslavia, the Democratic Republic of the Congo, Iraq and Kuwait. In connection with the items relating to the situation in Kosovo, Federal Republic of Yugoslavia,⁷ in resolution

⁴ S/PRST/1999/34.

⁵ S/PRST/1998/28.

⁶ In connection with the situation in Africa, see resolutions 1170 (1998), fifth preambular para.; 1196 (1998), sixth preambular para.; and 1197 (1998), first preambular para.; S/PRST/1997/46; fifth para.; and S/PRST/1998/35, first para. In connection with the responsibility of the Security Council in the maintenance of international peace and security, see resolution 1172 (1998), eighth preambular para. In connection with the maintenance of peace and security and post-conflict peacebuilding, see S/PRST/1998/38, second para. In connection with the protection of civilians in armed conflict, see resolution 1265 (1999), fifth preambular para. and S/PRST/1999/6, fourth para. In connection with small arms, see S/PRST/1999/28, first para.

⁷ This includes agenda items entitled “Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to

¹ See Chapter VI, part I, section E for a consideration of Article 24 (3) in connection with the annual report of the Security Council to the General Assembly.

² In connection with the letter dated 24 March 1999 from the representative of the Russian Federation to the President of the Security Council, see S/1999/328, third preambular para.

³ See/PV.3989.

1203 (1998) of 24 October 1998, the Council reaffirmed that, under the Charter, primary responsibility for the maintenance of international peace and security was conferred on the Security Council, and in resolution 1244 (1999) of 10 June 1999, the Council bore in mind the primary responsibility of the Council for the maintenance of international peace and security.⁸ Similar provisions were found in resolutions with regard to the situation concerning the Democratic Republic of the Congo.⁹ In a note by the President dated 30 January 1999, by which three separate panels related to Iraq were established, it was stated that the establishment was in accordance with the Security Council's primary responsibility, under the Charter, for the maintenance of international peace and security.¹⁰

In addition, Article 24 was explicitly referred to in connection with the list of matters of which the Council was seized.¹¹ In a note by the President dated 29 August 1996, which laid out the simplified procedure concerning the list of matters of which the Council was seized, the members of the Council recalled the Council's primary responsibility under Article 24 of the Charter for the maintenance of international peace and security as well as its own responsibility with regard to the implementation of its resolutions.¹²

During the period under review, explicit references to Article 24 were made on a number of occasions in the proceedings of the Council.¹³ Among

the President of the Security Council"; "Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council" and "Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998) and 1239 (1999)".

⁸ Resolutions 1203 (1998), seventh preambular para.; and 1244 (1999), first preambular para.

⁹ Resolutions 1258 (1999), second preambular para.; and 1279 (1999), second preambular para.

¹⁰ S/1999/100, para. 1.

¹¹ For details, see chapter II, part III, section B.

¹² S/1996/704, para. 3.

¹³ See, in connection with the situation in the Middle East, S/PV.3654, p. 4 (Egypt); in connection with the situation in Burundi, S/PV.3692, p. 5 (Burundi); in connection with the situation between Iraq and Kuwait, S/PV.3831, p. 2 (Costa Rica); in connection with letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States

them, four cases that touched upon the provisions of Article 24 are set out below in connection with the following: (a) the situation between Iraq and Kuwait (case 15); (b) letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council (case 16); (c) the role of the Security Council in the prevention of armed conflicts (case 17); and (d) the protection of civilians in armed conflict (case 18).

Case 15

The situation between Iraq and Kuwait

At the 3939th meeting, on 5 November 1998, the Council adopted resolution 1205 (1998), by which, acting under Chapter VII of the Charter, the Council, inter alia, condemned the decision by Iraq of 31 October 1998 to cease its cooperation with the United Nations Special Commission as a flagrant violation of resolution 687 (1991) and other relevant resolutions, and demanded that Iraq rescind immediately and unconditionally that decision. Furthermore, in the final paragraph of resolution 1205 (1998), the Council decided, "in accordance with its

of America, S/PV.3864, p. 37 (Organization of African Unity); p. 56 (Ghana); and pp. 57-58 (Iraq); in connection with the responsibility of the Security Council in the maintenance of international peace and security, S/PV.3890, p. 15 (Australia); in connection with the question concerning Haiti, S/PV.3949, p. 4 (Costa Rica); in connection with the maintenance of peace and security and post-conflict peacebuilding, S/PV.3954, p. 6 (Costa Rica); in connection with the protection of civilians in armed conflict, S/PV.3980 (Resumption 1), p. 7 (Uruguay), and S/PV.4046 (Resumption 1), pp. 13-14 (the former Yugoslav Republic of Macedonia); p. 19 (Egypt); and p. 24 (India); S/PV.4046 (Resumption 2), p. 7 (Iraq); in connection with the situation in the former Yugoslav Republic of Macedonia, S/PV.3982, p. 4 (the former Yugoslav Republic of Macedonia); and p. 6 (Slovenia); in connection with a letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council (S/1999/320), S/PV.3989, p. 5; in connection with the situation in Africa, S/PV.4049 (Resumption 1), p. 9 (Malaysia); and in connection with the role of the Security Council in the prevention of armed conflicts, S/PV.4072, p. 30 (Libyan Arab Jamahiriya); p. 38 (South Africa); S/PV.4072 (Resumption 1), p. 6 (Zambia); and p. 24 (Iraq).

primary responsibility under the Charter of the United Nations for the maintenance of international peace and security”, to remain actively seized of the matter.¹⁴

At the same meeting, several Council members stressed the importance of the last paragraph of the draft resolution¹⁵ subsequently adopted as resolution 1205 (1998). The representative of France held that the paragraph affirmed unambiguously the responsibilities and the prerogatives of the Council in the maintenance of international peace and security, responsibilities that included evaluating situations as and when necessary and making the appropriate conclusions.¹⁶ The representative of the Russian Federation pointed out that the draft resolution made it clear that the Council, in accordance with its primary responsibility under the Charter for the maintenance of peace and security, would remain actively seized of the situation.¹⁷ The representative of Sweden noted that a very important principle was reflected in the last paragraph. He further maintained that the Council’s primary responsibility for the maintenance of international peace and security must not be circumvented and that the paragraph was an expression of the desire of members to safeguard such a responsibility.¹⁸ The representative of Brazil similarly expressed the view that the principle envisaged in the last paragraph should continue to guide the consideration of the matter.¹⁹

Case 16

Letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council (S/1998/320)

At the 3989th meeting, on 26 March 1999, the Security Council had before it a draft resolution submitted by Belarus, India and the Russian Federation.²⁰ By that draft resolution, the Council would have recalled its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and affirmed that unilateral use of force by the North Atlantic Treaty

Organization against the Federal Republic of Yugoslavia without the authorization by the Council constituted a flagrant violation of the Charter, in particular Article 24, along with Articles 2 (4) and 53.

At the meeting, the representative of Slovenia, in opposing the draft resolution, touched upon the authority of the Council under the Charter. He held that the use of force by the Belgrade Government against the civilian population had created a situation that had made the current military action inevitable. While he would have preferred such military action to be fully authorized by the Council, it was not possible. Hence, he considered it critical in the current circumstances to be aware that the Council, according to the Charter, had the primary but not exclusive responsibility for the maintenance of international peace and security. At such time, all the Council members had to think hard about what needed to be done to ensure the Council’s authority and to make its primary responsibility as real as the Charter required, he concluded.²¹

As a co-sponsor of the draft resolution, the representative of the Russian Federation expressed the view that the aggressive military action by NATO against a sovereign State without the authorization and in circumvention of the Security Council was, *inter alia*, a gross violation of the Charter, including Article 24, which entrusted the Council with the primary responsibility for the maintenance of international peace and security. He reminded the members of the Council that they bore a special responsibility not only to their peoples but also to all Members of the United Nations, upon which decisions of the Council were binding under the Charter. He continued to argue that the voting on the draft resolution was not just on the problem of Kosovo, but went directly to the authority of the Council in the eyes of the world.²² The representative of China also maintained that the military strikes against the Federal Republic of Yugoslavia by NATO constituted a blatant violation of the principles of the Charter and of international law, as well as “a challenge to the authority of the Security Council”.²³

Mr. Vladislav Jovanović criticized the “aggression” by NATO countries and held that the

¹⁴ Resolution 1205 (1998), para. 6.

¹⁵ S/1998/1038.

¹⁶ S/PV.3939, p. 3.

¹⁷ *Ibid.*, p. 4.

¹⁸ *Ibid.*, p. 6.

¹⁹ *Ibid.*

²⁰ S/1999/328.

²¹ S/PV.3989, p. 4.

²² *Ibid.*, pp. 5-6.

²³ *Ibid.*, p. 9.

“aggressor” displayed “arrogant contempt for the United Nations and its Charter” and arrogated the prerogatives of the Security Council as the only organ in charge of maintaining international peace and security. He stated that it was up to the Council to decide whether it would retain the responsibility that it bore under the Charter for the maintenance of international peace and security, or whether it would cede the responsibility to NATO.²⁴

The draft resolution was not adopted because it did not obtain the required majority.²⁵

Case 17

Role of the Security Council in the prevention of armed conflicts

At the 4072nd meeting, on 29 November 1999, the representative of China, citing the report of the Secretary-General on the work of the Organization²⁶ submitted to the fifty-fourth session of the General Assembly, concurred with the Secretary-General's view that if the primacy of the Security Council with respect to the maintenance of international peace and security was rejected, then the very foundations of international law as represented by the Charter would be brought into question and that conflict prevention, peacekeeping and peacemaking must not become an area of competition between the United Nations and regional organizations. The representative expressed the belief that any attempt to replace the Council in its leading role in conflict prevention was tantamount to replacing the Council in its primary role in maintaining peace and security. He further suggested that such an attempt would not only weaken the authority of the Council but also would end up severely damaging the effectiveness of conflict prevention measures, or might even lead to the outbreak or escalation of conflicts.²⁷

A few speakers explicitly cited Article 24 in their statements.²⁸ Among them, the representative of South

Africa held that the Council's considerable array of powers were conferred upon it by the Members of the United Nations, under Article 24 of the Charter. In conferring those powers, the Members expected that the Council's approach in dealing with conflicts should at all times be informed by the universally applicable norms espoused by the Charter. He further held that in order to be truly empowered by the membership to act consistently in defence of the ideals expressed within the Charter, and in order to be able to pursue its mandate of preventing armed conflict effectively and consistently, the Council must be perceived to be legitimate in both form and function, and therefore the powers, composition and functioning of the Security Council must be made more representative.²⁹ The representative of Iraq also called for a comprehensive reform of the Security Council, including the Council's decision-making process which should, in his opinion, fully respect the purposes and principles of the Charter in accordance with Article 24 (2).³⁰

At the same meeting, other speakers shared their views on the role of the Security Council in the prevention of armed conflict with respect to other principal organs of the Council. The representative of Namibia observed that while the primary responsibility for the maintenance of international peace and security rested with the Council, the prevention of conflict and its recurrence required a multifaceted approach by the Security Council and other principal organs. Given that the causes of armed conflict in Africa remained poverty and underdevelopment, he argued that as the Council considered its role in the prevention of armed conflict to be within its primary responsibility, the principles and provisions of the Charter must be adhered to.³¹

The representative of the Libyan Arab Jamahiriya noted that the Charter entrusted the maintenance of international peace and security to both the General Assembly and the Security Council. He cited Article 11 (1) according to which the General Assembly might consider the general principles of cooperation in the maintenance of international peace and security and might make recommendations with regard to such principles to its Members, the Security Council or to both. He further explained that under Article 24 of the Charter, Members of the United Nations had entrusted

²⁴ Ibid., pp. 11-12.

²⁵ The draft resolution received 3 votes in favour and 12 votes against (Argentina, Bahrain, Brazil, Canada, France, Gabon, Gambia, Malaysia, Netherlands, Slovenia, United Kingdom and United States).

²⁶ A/54/1, para. 69.

²⁷ S/PV.4072 and Corr.1, pp. 14-15.

²⁸ Ibid., p. 38 (South Africa); S/PV.4072 (Resumption 1), p. 6 (Zambia) and p. 24 (Iraq).

²⁹ S/PV.4072 and Corr.1, p. 38.

³⁰ S/PV.4072 (Resumption 1), p. 24.

³¹ S/PV.4072 and Corr. 1, p. 26.

the Council with the primary responsibility for the maintenance of international peace and security and that Member States agreed that the Council, in carrying out its duties under that responsibility, acted on their behalf. He continued that, in discharging those duties, the Council should act in accordance with the purposes and principles of the Organization and the powers vested in the Council. He believed therefore that the mandate for the maintenance of international peace and security was a joint responsibility of the General Assembly and the Council, not an exclusive function of the Council.³²

The representative of Egypt argued that while Article 1 of the Charter charged the United Nations with preventing conflicts, the Charter required the involvement of all principal organs of the United Nations and detailed the role of those organs and conveyed upon each its own competence to combat the causes of armed conflict, be they economic, social, cultural or humanitarian. He stressed that the Council should, therefore, deal with the issue in the context of full respect for the delicate system of checks and balances between the principal organs of the United Nations as established in the Charter, particularly the General Assembly. The representative concluded that the issue of the prevention of armed conflict should be included in the agendas of the General Assembly and the Economic and Social Council so that more detailed and comprehensive discussions in those forums could complement the initiative of the Security Council.³³

The representative of Bangladesh, reaffirming the primary responsibility of the Council for the maintenance of international peace and security, noted that the Council's primary responsibility should be seen within the broad framework of the principles and purposes of the United Nations, in which specific roles were assigned to each of the principal organs with their contributions converging towards the progress of mankind in a world of peace.³⁴

Case 18

Protection of civilians in armed conflict

At the 4046th meeting, on 16 September 1999, the Council held a debate on the report of the

Secretary-General on the protection of civilians in armed conflict.³⁵ The representative of Slovenia stated that the report was a useful reminder of the basic role of the Council in situations which generated humanitarian problems. He argued that the Council, with the primary responsibility for international peace and security under the Charter, had the task of preventing military conflicts and if they occurred, to make a meaningful contribution towards their resolution. After the end of military conflicts, the Council had a responsibility to enable transition to post-conflict peacebuilding. He pointed out that the Council must avoid the trap of using humanitarian action as a substitute for the necessary political or military action, bearing in mind the primacy of those essential political purposes of the Council.³⁶

The representative of China, reaffirming the primary responsibility of the Council for international peace and security, stated that the Council had an unshirkable duty in the area of the protection of civilians in armed conflict. Strongly opposing military actions in circumvention of the Council that might result in conflict on an even larger scale, he expressed the belief that the Council should continue its active efforts to put an early end to conflicts and defusing crises, for that was the contribution it should make to the protection of civilians in armed conflict. He further cautioned that if the Council were to become overly involved in issues, such as human rights, which fell under the purview of other United Nations bodies, its attention to peace and security issues would be diverted and the work of the other United Nations bodies unduly affected.³⁷

The representative of the former Yugoslav Republic of Macedonia commended the Council for its involvement in the protection of civilians in armed conflict and noted that it was of paramount importance that the permanent members of the Council had agreed with that course of action, which meant that they would be guided by Article 24 (1) of the Charter. He urged the Council to be resolute, inventive and innovative and to act under Article 24 (1) on behalf of

³² Ibid., p. 30.

³³ S/PV.4072 (Resumption 1), pp. 2-5.

³⁴ Ibid., p. 12-13.

³⁵ S/1999/957.

³⁶ S/PV.4046, pp. 9-10.

³⁷ Ibid., p. 21.

the Member States, and cautioned the members of the Council not to act on their own behalf.³⁸

The representative of Egypt, expressing his view on the question of the mandate and responsibility of the Council, stated that Article 24 of the Charter defined the role of the Council in the maintenance of peace and security and that, in carrying out that task, the Council was duty-bound to respect the purposes and principles of the Charter. He underscored that the mandate of the Council was to decide whether the continuation of a conflict might threaten international peace and security and to submit a report in that connection containing recommendations on ways to resolve the conflict pursuant to Chapter VI. The Council might also act pursuant to the Charter within the framework of Chapter VII if peace was threatened or violated or incidents constituted aggression pursuant to Article 39. He argued that the Council's role was thus to act to ensure peace in a practical manner, whereas the role of the General Assembly was legislative, to consider all issues pertaining to peace and the general principles of cooperation to alleviate human suffering, including protection of civilians in armed conflict. On that basis, he expressed the hope that the Council was able to address the subject of civil protection of civilians in armed conflict within the framework defined by the Charter, while respecting the purviews of other bodies of the United Nations responsible for the protection of civilians, especially the General Assembly.³⁹

The representative of India recalled that Article 24 set out the functions and powers of the Council and, in particular, paragraph 2 of that Article noted that the specific powers granted to the Council were laid down in Chapters VI, VII, VIII and XII. He observed that in each chapter the Council's powers were narrowly defined by the Charter. On that basis, he considered it odd that the bulk of recommendations in the report of the Secretary-General invited the Council to take actions in areas "not within its competence".⁴⁰

At the same meeting, the representative of Iraq urged the Council to integrate views of non-members of the Council into the Council's programme of work in accordance with its functions, as contained in Article 24 of the Charter, under which it was to act as a

representative of the States Members of the United Nations in the fulfilment of its duties, thereby complementing the work of the General Assembly, the Economic and Social Council, United Nations agencies and the international community in general.⁴¹

B. Article 25

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Note

During the period under review, the Security Council did not adopt any decisions that explicitly invoked Article 25 of the Charter. However, the principle enshrined in Article 25 was referred to, without being invoked explicitly, in a large number of resolutions and presidential statements. In particular, the binding nature of Council decisions, within the context of Article 25, was reaffirmed in one resolution, in connection with the situation in Afghanistan, by which the Council reminded all parties of "the obligation to abide strictly by the decisions of the Council".⁴² In another instance, in a statement by the President of 12 February 1999, in connection with the protection of civilians in armed conflict, the Council called upon all parties concerned "to comply strictly with their obligations under international law ... as well as with all decisions of the Council".⁴³ In a number of instances, the Council recalled the binding nature of certain types of Council action. For example, in connection with the situation in Africa, the Council reiterated the obligation of all Member States to carry out decisions of the Council on arms embargoes.⁴⁴

During the period under review, there were a few instances in which Article 25 was explicitly cited in communications, relating to the situation in Cambodia⁴⁵ and the situation between Iraq and

³⁸ S/PV.4046 (Resumption 1) and Corr.2, pp. 13-14.

³⁹ Ibid., pp. 19-20.

⁴⁰ Ibid., pp. 24-25.

⁴¹ S/PV.4046 (Resumption 2), p. 7.

⁴² Resolution 1193 (1998), para. 16.

⁴³ S/PRST/1999/6.

⁴⁴ For information on the binding nature of Chapter VII measures, see chapter XI, part VI, section A.

⁴⁵ S/1999/231.

Kuwait.⁴⁶ In relation to the situation in Cambodia, by a letter dated 16 March 1999 addressed to the Presidents of the General Assembly and the Security Council, the Security-General transmitted the report of the Group of Experts for Cambodia;⁴⁷ the Group of Experts had been established pursuant to General Assembly resolution 52/135 and had been given the task of exploring legal options for bringing Khmer Rouge leaders to justice before an international or national jurisdiction for the crimes committed from 1975 to 1979. In the report, the Group of Experts argued that the difference between a tribunal created under Chapter VII and one under another part of the Charter might or might not be significant in principle or practice. The key issue, in its opinion, was the legally binding nature of the resolution creating such a tribunal — especially provisions requesting cooperation with it. The Group of Experts also held that while Chapter VII decisions were always legally binding on all States, the Council might make binding decisions under various parts of the Charter and not merely Chapter VII, which meant that the obligation of States to comply with the decisions of the Council under Article 25 of the Charter extended to all decisions of the Council, not merely those under Chapter VII.⁴⁸

In the deliberations of the Council, explicit references to Article 25 of the Charter were made on several occasions. In connection with the situation in East Timor, at the 4057th meeting, on 25 October 1999, calling upon the Security Council to ensure the guarantee by the Government of Indonesia not to allow its militias to use the territory of West Timor as a platform to destabilize East Timor, the representative of Portugal considered that it was useful to recall Article 25 of the Charter, which stated that resolutions of the Council were legally binding on all Member States.⁴⁹

In connection with the item entitled “Role of the Security Council in the prevention of armed conflicts”, at the 4072nd meeting, on 29 November 1999, the representative of the Libyan Arab Jamahiriya stated that the Security Council’s work and resolutions could not be respected or complied with by Member States unless they reflected the will of the majority of Member States. He further held that this was embodied

in Article 25 of the Charter, which stated that Members of the United Nations agreed to accept and carry out the decisions of the Security Council in accordance with the Charter.⁵⁰

In connection with the situation between Iraq and Kuwait, at the 4084th meeting, on 17 December 1999, the representative of the Netherlands stated that it did not matter that resolution 1284 (1999) had not been adopted by consensus,⁵¹ as Article 27 of the Charter described how Council decisions were made, and Article 25 stipulated that every Member of the United Nations was obliged to accept and carry out such decisions. Nothing in the Charter allotted a higher degree of legitimacy to a Security Council resolution that was adopted by consensus.⁵²

In this section, two cases are included below, in connection with the items entitled “Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America (S/23306, S/23307, S/23308, S/23309 and S/23317)” and “Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995 (S/1996/10)”, in which the Council engaged in a discussion on the interpretation of Article 25, in particular the binding nature of Security Council decisions. These cases include the remaining explicit references to Article 25 found in the deliberations of the Council and in communications during the period under review.

⁵⁰ S/PV.4072 and Corr.1, p. 30.

⁵¹ Adopted at the 4084th meeting on 17 December 1999 by 11 votes to none, with 4 abstentions (China, France, Malaysia, Russian Federation).

⁵² S/PV.4084 and Corr.1, p. 26.

⁴⁶ S/1998/439.

⁴⁷ S/1999/231.

⁴⁸ *Ibid.*, annex, para. 143.

⁴⁹ S/PV.4057, p. 4.

Case 19

*Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America*⁵³

At the 3864th meeting, on 20 March 1998,⁵⁴ the representative of the Libyan Arab Jamahiriya noted that right from the start, his Government had dealt with its two citizens who were suspected of being involved in the incident of the destruction of Pan Am flight 103 over Lockerbie, Scotland, in 1988 within the framework of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,⁵⁵ of which article 7 accorded his country judicial competence for trying the two suspects. However, the countries concerned had transformed the question from a legal to a political one by submitting it to the Security Council, following which the Council had adopted resolution 731 (1992), by which it urged the Government of the Libyan Arab Jamahiriya to provide a full and effective response to the demands contained in the letters from the United States and the United Kingdom.⁵⁶ He argued that a new situation had arisen since the issuance of the judgments by the International Court of Justice on 27 February 1998.⁵⁷ The judgments stated that the Court had jurisdiction, on the basis of article 14 (1) of the Convention, and that the requests of the Libyan Arab Jamahiriya to handle the cases against its two citizens within the framework of its own legal system were admissible notwithstanding resolutions 748 (1992) and 883 (1993). He stated that those judgments should have been binding for all United Nations organs and their members given that, under Article 92 of the Charter, the Court was the principal judicial organ of the United Nations and that each Member of the United Nations needed to comply with the judgments of the Court in any case to which it was a party, pursuant to Article 94 (1). Therefore, the

representative argued that the sanctions provided for in resolutions 748 (1992) and 883 (1993) had become irrelevant since the Court had accepted jurisdiction in the matter of where the two accused should be tried, which was what the resolutions were based on. He called on the Council to suspend, as an interim measure, the implementation of the two resolutions insofar as they related to the sanctions imposed against the Libyan Arab Jamahiriya.⁵⁸

The representative of the League of Arab States (LAS) stated that the conflict essentially was a legal dispute over the interpretation and application of the Convention. Owing to the judgment, which the Court had rendered to the effect that a legal dispute did exist, it was no longer acceptable for the sanctions against the Libyan Arab Jamahiriya to continue without proving the international responsibility of the Libyan Arab Jamahiriya or the responsibility of the two suspects. On those bases, LAS called upon the Security Council to suspend resolutions 748 (1992) and 883 (1992), until the Court settled the substance of the dispute.⁵⁹ The representative of the Organization of African Unity also argued that as the Court had stated that it did have jurisdiction in the case, the only action worth taking to stay within the spirit of the judgments of the Court was suspension of the flight ban.⁶⁰

The representative of Mali, speaking on behalf of the Group of African States, stressed that with regard to the judgments of the Court, the African Group believed that there was no longer any reason for the Council to maintain sanctions against the Libyan people, for the following reasons: first, the International Court of Justice had rejected claims that the Convention did not apply to the Lockerbie conflict; second, the Court had decided that there was a dispute between the United States and the United Kingdom, on the one hand, and the Libyan Arab Jamahiriya, on the other, and that it was up to the Court itself to decide on the case; third, the Court had rejected the claim that the rights of the Libyan Arab Jamahiriya under the Convention were suspended following the adoption of resolutions 748 (1992) and 883 (1993), which had imposed sanctions against the Libyan Arab Jamahiriya on the basis of Articles 25 and 103; fourth, the Court explicitly rejected the claims that resolutions 731

⁵³ S/23306, S/23307, S/23308, S/23309 and S/23317.

⁵⁴ In connection with the proceedings of the 3864th meeting, additional information is provided in chapter VIII. See the section on Africa, under the item "Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America".

⁵⁵ United Nations, *Treaty Series*, vol. 974, No. 14118.

⁵⁶ S/23307, S/23308 and S/23317.

⁵⁷ S/1998/179, annex.

⁵⁸ S/PV.3864 and Corr.1, pp. 4-12.

⁵⁹ *Ibid.*, pp. 35-36.

⁶⁰ *Ibid.*, p. 39.

(1992), 748 (1992) and 883 (1993) obliged the Libyan Arab Jamahiriya to extradite its nationals to the United States or the United Kingdom so that they could be brought to trial notwithstanding the rights of the Libyan Arab Jamahiriya under the Convention; and fifth, the Court had rejected claims that the relevant legal proceedings needed to be immediately halted on the presumption that the resolutions of the Security Council could not be challenged in the Court. Therefore, according to the judgments rendered by the International Court of Justice on 27 February 1998, it seemed, *inter alia*, that the sanctions provided for in resolutions 748 (1992) and 883 (1993) “no longer had any *raison d’être*”. Accordingly, the Group of African States believed that there needed to be a suspension of the application of the resolutions relative to sanctions against the Libyan Arab Jamahiriya, including the flight ban, reduced diplomatic representation and the freeze on assets, until the Court ruled on the substance of the matter.⁶¹ A number of other representatives also maintained that following the judgments, the measures imposed against the Libyan Arab Jamahiriya no longer had any justification and needed to be suspended until a final decision had been taken by the Court.⁶²

The representative of Jordan called on the Council to respect the judgments rendered by the Court and stressed the importance of respecting and implementing all Security Council resolutions fully and precisely.⁶³ Similarly, the representative of Kuwait underlined that the implementation by all States of all relevant Security Council resolutions was essential to ensure respect for the Charter, but also that the decisions of the International Court of Justice should be seriously considered by the Council in order to achieve progress.⁶⁴

The representative of the United States stressed that the rulings of the International Court of Justice in no way questioned the legality of the actions of the Security Council affecting the Libyan Arab Jamahiriya or the merits of the criminal cases against the two

accused suspects. He held that the rulings of the Court involved technical, procedural issues. Contrary to the assertions of the Government of the Libyan Arab Jamahiriya, the Court was not calling for the review or suspension of Security Council resolutions. The Court had simply stated that the parties needed to argue the legal merits of the case, and while the case was proceeding, the Libyan Arab Jamahiriya needed to comply with its obligation pursuant to Security Council decisions and turn over the two accused suspects for a fair trial.⁶⁵

The representative of the United Kingdom stated that the decisions delivered by the Court were rulings on preliminary objections lodged by the United Kingdom and the United States to the claim by the Libyan Arab Jamahiriya that, under the Convention, it had the exclusive right to try the two Libyans accused of the Lockerbie bombing. The Court had decided that it did have jurisdiction to decide on the merits of the case of the Libyan Arab Jamahiriya about the Convention, but it had not decided that the claims of the Libyan Arab Jamahiriya were justified. He noted that the United Kingdom was arguing before the Court that the matter was governed by resolutions 731 (1992), 748 (1992) and 883 (1993), which obliged the Libyan Arab Jamahiriya to surrender the two accused for trial in Scotland or the United States. He underscored that obligations under the Charter, including compliance with binding Security Council resolutions, took precedence over any other alleged international obligations. Moreover, the resolutions had been unaffected by the ruling of the Court, which had been just one stage in the judicial proceedings, with the main argument on merits still to come, and therefore remained in force.⁶⁶

A few speakers maintained that the judgments merely addressed preliminary procedural questions and did not decide on the merits of the case, and did not question the validity of the relevant resolutions of the Security Council, which remained in full force and which the Libyan Arab Jamahiriya needed to comply with as required by the Charter of the United Nations.⁶⁷ The representative of Portugal also noted that any compromise solution could not depart from the

⁶¹ *Ibid.*, pp. 41-42.

⁶² *Ibid.*, p. 22 (Bahrain); p. 48 (Syrian Arab Republic); p. 49 (United Arab Emirates); p. 51 (Yemen); p. 56 (Ghana); pp. 58-59 (Iraq); p. 60 (Pakistan); p. 61 (Zimbabwe); p. 66 (Sudan); p. 69 (India); p. 72 (Oman); and p. 73 (Islamic Republic of Iran).

⁶³ *Ibid.*, p. 52.

⁶⁴ *Ibid.*, p. 50.

⁶⁵ *Ibid.*, p. 12.

⁶⁶ *Ibid.*, pp. 31-32.

⁶⁷ *Ibid.*, p. 18 (Portugal); p. 29 (France); and p. 40 (United Kingdom, on behalf of the European Union).

crucial legal and political aspects enshrined in the relevant resolutions.⁶⁸

By a letter dated 10 June 1998 from the representative of the Libyan Arab Jamahiriya and a letter dated 29 June 1998 from the representatives of Burkina Faso, Cuba, the Lao People's Democratic Republic, Malaysia, South Africa and Zimbabwe, both addressed to the President of the Security Council,⁶⁹ the Council was informed that the Ministerial Conference of the Non-Aligned Movement (NAM), held in Cartagena, Colombia, from 18 to 20 May 1998, in its final communiqué, had welcomed the judgments of the International Court of Justice dated 27 February 1998 and called for the immediate suspension of the sanctions until the Court decided on the issue. It had also recommended that the twelfth summit of the Non-Aligned Movement take a decision not to continue compliance with the resolutions imposing sanctions against the Libyan Arab Jamahiriya on the basis of Article 25 of the Charter because they were in violation of Articles 27 (3), 32, 33, 36 and 94 of the Charter.

By resolution 1192 (1998) of 27 August 1998, the Council demanded once again that the Government of the Libyan Arab Jamahiriya immediately comply with resolutions 731 (1992), 748 (1992) and 883 (1993) and reaffirmed that the measures set forth in its resolutions 748 (1992) and 883 (1993) remained in effect and binding on all Member States, and in that context reaffirmed the provisions of paragraph 16 of resolution 883 (1993).⁷⁰

Case 20

*Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995*⁷¹

At the 3627th meeting, on 31 January 1996, the Council adopted resolution 1044 (1996), by which it

called upon the Government of the Sudan to comply without further delay with the requests of the Organization of African Unity to take immediate action to extradite to Ethiopia for prosecution the three suspects sheltering in the Sudan and wanted in connection with the assassination attempt on the basis of the 1964 Extradition Treaty between Ethiopia and the Sudan; and to desist from engaging in activities of assisting, supporting and facilitating terrorist activities and from giving shelter and sanctuary to terrorist elements, and to act in its relations with its neighbours and with others in full conformity with the Charter of the United Nations and with the charter of the Organization of African Unity.⁷²

At the meeting, the representative of Ethiopia stated that the Sudan should "accept and carry out the decision of the Security Council, as stipulated in Article 25 of the Charter of the United Nations".⁷³ This was also reiterated by the representative of Egypt, who expressed hope that the Sudan would take the Council's resolution "with all necessary seriousness, given that, under the Charter, all the Council's resolutions are binding on all States".⁷⁴

The representative of Sudan, for his part, reiterated the efforts made by the Sudan towards solving the issue and reaffirmed that his country had always abided by resolutions adopted by the United Nations. He further underlined that his Government wished "to put on record that it abides by the Charter of the United Nations and that it accepts that all Security Council resolutions are binding and must be complied with".⁷⁵

⁷² Resolution 1044 (1996), para. 4.

⁷³ S/PV.3627, p. 3.

⁷⁴ Ibid., p. 16.

⁷⁵ Ibid., pp. 4-6.

⁶⁸ Ibid., p. 18.

⁶⁹ S/1998/548 and S/1998/596, respectively.

⁷⁰ Resolution 1192 (1998), paras. 1 and 8.

⁷¹ S/1996/10.

Part III

Consideration of the provisions of Chapter VIII of the Charter

Article 52

1. *Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.*

2. *The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.*

3. *The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.*

4. *This Article in no way impairs the application of Articles 34 and 35.*

Article 53

1. *The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.*

2. *The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.*

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

Note

During the period under review, the Security Council broadened its cooperation and coordination with regional arrangements or agencies in the maintenance of international peace and security, as provided for in Chapter VIII of the Charter.¹ The expanded scope and modalities of cooperation with regional organizations varied in terms of their mandate, structure, capacity and experience.

As chapter VIII of this volume sets out a full account of Council proceedings with regard to its responsibility for maintenance of international peace and security, Chapter XII will not discuss the practice of the Security Council in connection with regional organizations in a comprehensive manner. Instead, the present chapter will focus on selected material which may best serve to highlight how the provisions of Chapter VIII of the Charter were interpreted in deliberations and applied in the relevant decisions of the Council.

The decisions adopted by the Council during the period under consideration revealed an increased recognition of regional organizations and of their growing or potential role in the maintenance of international peace and security. Most of the activities of regional organizations praised, endorsed or supported by the Council concerned efforts at the peaceful settlement of disputes. In other instances, regional organizations were called upon to assist in the monitoring and implementation of mandatory measures

¹ Chapter VIII of the Charter refers to “regional arrangements and agencies”. The *Repertoire* follows the practice of the Council in its use of these terms as synonymous with “regional organizations”.

imposed by the Council under Chapter VII of the Charter. Moreover, on two occasions, the Council authorized the use of force by regional organizations, to support the respective peacekeeping operations in the performance of their mandates.

While all instances of cooperation with regional arrangements could be considered to fall within the framework of Chapter VIII of the Charter, the Council only occasionally invoked Chapter VIII, or the relevant Articles therein, in its decisions.² In particular, one decision defined the provisions of Chapter VIII as those which “set out the basic principles governing the activities of regional arrangements and agencies and establish the legal framework for cooperation in the United Nations, in the area of the maintenance of international peace and security”.³ One draft resolution, which was not adopted because it did not obtain the required majority, contained explicit references to Article 53 and Chapter VIII of the Charter.⁴ In addition, explicit references to Chapter VIII,⁵ as well as to Articles 52, 53 and 54 of the Charter were made in the course of deliberations.⁶

² In connection with the situation in Sierra Leone, see resolution 1132 (1997), para. 8. In connection with the situation in Africa, see resolutions 1170 (1998), sixth preambular para. and 1197 (1998), third preambular para.; and presidential statements dated 25 September 1997 and 30 November 1998 (S/PRST/1997/46 and S/PRST/1998/35). In connection with the item entitled “Role of the Security Council in the prevention of armed conflicts”, see the presidential statement dated 30 November 1999 (S/PRST/1999/34).

³ Resolution 1197 (1998), third preambular para.

⁴ S/1999/328.

⁵ In connection with the situation in Africa, see S/PV.3819, p. 3 (Zimbabwe, Chairman of the Organization of African Unity); and p. 8 (Secretary-General of the Organization of African Unity); S/PV.3875, p. 18 (Slovenia); and S/PV.3875 (Resumption 1), p. 8 (South Africa); p. 25 (Egypt); p. 40 (Indonesia); and p. 48 (Libyan Arab Jamahiriya); S/PV.3931, p. 13 (Bahrain) and p. 32 (Slovenia); S/PV.4049, p. 19 (Russian Federation); S/PV.4081, p. 10 (Argentina) and p. 15 (Gabon). In connection with the item entitled “Role of the Security Council in the prevention of armed conflicts”, see S/PV.4072, p. 15 (China); p. 16 (Russian Federation); p. 21 (Brazil); p. 25 (Gambia); p. 27 (Namibia); and p. 45 (Belarus). In connection with the situation in Sierra Leone, see S/PV.3822, p. 9 (Republic of Korea); p. 13 (Portugal); and p. 16 (United States); S/PV.4054, p. 7 (Nigeria). In

connection with the situation in Georgia, see S/PV.4029, p. 6 (Russian Federation). In connection with the item entitled “Maintenance of peace and security and post-conflict peacebuilding”, see S/PV.3954, p. 12 (Portugal); p. 13 (Gabon); and p. 15 (Brazil); and S/PV.3954 (Resumption 1), p. 9 (Pakistan); and p. 20 (Indonesia). In connection with the item entitled “Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council; letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council” (S/1998/223 and S/1998/272), see S/PV.3937, p. 10 (Brazil). In connection with the item entitled “Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America” (S/23306, S/23307, S/23308, S/23309 and S/23317), see S/PV.3864, p. 34 (League of Arab States). In connection with the situation in Liberia, see S/PV.3621, p. 6 (China); S/PV.3667, p. 20 (China) and p. 27 (Zimbabwe); S/PV.3694, p. 3 (Liberia) and p. 8 (China); and S/PV.3757, p. 3 (Liberia). In connection with the item entitled “Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995” (S/1996/10), see S/PV.3660, p. 3 (Sudan). In connection with the situation in Burundi, see S/PV.3639, p. 8 (Egypt).

⁶ Council” (S/1999/320), see S/PV.3988, p. 13 (Mr. Jovanović) and p. 15 (India); and S/PV.3989, p. 5 (Russian Federation). In connection with the item entitled “Protection of civilians in armed In connection with the situation in Africa, see S/PV.3875 (Resumption 1), p. 18 (Canada); S/PV.4081 (Resumption 1), p. 17 (Ireland). In connection with the situation concerning the Democratic Republic of the Congo, see S/PV.3987, p. 2 (Democratic Republic of the Congo). In connection with the item entitled “Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America” (S/23306, S/23307, S/23308, S/23309 and S/23317), see S/PV.3864, p. 5 (Libyan Arab Jamahiriya). In connection with the situation in Burundi, see S/PV.3692, p. 5 (Burundi). In connection with the item entitled “Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (S/1998/223); letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations

In communications, one explicit reference to Article 52,⁷ as well as several explicit references to Article 53 were made.⁸ Explicit references to Article 54 were made occasionally by regional organizations in communications informing the Council of activities undertaken or contemplated by them for the maintenance of international peace and security.⁹

The practice of the Council under Chapter VIII of the Charter is described below in five sections, without ascribing that practice to specific Articles. Section A

addressed to the President of the Security Council” (S/1998/223 and S/1998/272), see S/PV.3937, p. 10 (Brazil). In connection with the item entitled “Letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council”, see S/PV.4046 (Resumption 1), p. 27 (India). In connection with the item entitled “Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995” (S/1996/10), see S/PV.3627, p. 16 (Egypt). In connection with the situation in Africa, see S/PV.4081, pp. 24-25 (Cameroon).

⁷ See the letter dated 28 June 1999 from the representative of the Democratic Republic of the Congo to the President of the Security Council (S/1999/733).

⁸ See the letter dated 26 March 1999 from the representative of Mexico to the Secretary-General (S/1999/347); and the letters dated 1 February 1999, 17 March 1999, 24 March 1999 and 30 April 1999 from the representative of the Federal Republic of Yugoslavia to the President of the Security Council (S/1999/107, S/1999/292, S/1999/322 and S/1999/497).

⁹ See the following letters addressed to the President of the Security Council, unless indicated otherwise: letters dated 24 September 1996, 27 November 1996, 26 June 1997, 6 August 1997, 22 September 1997, 27 January 1998, 25 September 1998, 6 April 1999, 15 April 1999, 28 June 1999 and 23 September 1999 from the representative of the League of Arab States (S/1996/796, S/1996/991, S/1997/497, S/1997/623, S/1997/737, S/1998/83, S/1998/895, S/1999/395, S/1999/424, S/1999/734 and S/1999/997); letters dated 11 November 1996 and 7 November 1997 from the representative of the Organization of African Unity (S/1996/922 and S/1997/869); letter dated 28 June 1999 from the representative of the Democratic Republic of the Congo (S/1999/733); and letter dated 26 March 1999 from the representative of Mexico to the Secretary-General (S/1999/347).

captures the relevant debates and decisions of the Council on general and thematic issues touching upon the provisions of Chapter VIII of the Charter. Section B illustrates the ways in which the Council, in dealing with specific situations under its consideration, encouraged and supported the efforts of regional organizations towards the pacific settlement of disputes. Section C lays out cases where regional arrangements were involved in the implementation of Chapter VII measures. Section D describes two cases in which the Council authorized the use of force by regional organizations. The final part of the chapter, section E, presents two cases in which Member States discussed the appropriateness of Council action in situations where regional organizations were involved.

A. General consideration of the provisions of Chapter VIII

On a few occasions, as captured below, the Security Council discussed the provisions of Chapter VIII of the Charter in the context of its deliberations on thematic and cross-cutting issues.

The situation in Africa

During the period under review, speakers at the meetings on the situation in Africa acknowledged the important role of regional and subregional organizations in Africa in preventing and resolving conflicts on the continent, called for technical, logistical and financial assistance to their efforts, and supported the strengthening of contacts, cooperation and coordination between the United Nations and those organizations, in particular the Organization of African Unity. In that context, some argued that such cooperation with regional arrangements did not relieve the Security Council from its responsibility in the maintenance of international peace and security under the Charter and that the role of regional arrangements was, rather, complementary. Furthermore, it was generally stressed that African peacekeeping capacities should be strengthened.¹⁰

At the 3819th meeting, on 25 September 1997, the President of Zimbabwe and current Chairman of OAU stated that given that the Council was endowed

¹⁰ S/PV.3819, S/PV.3875, S/PV.3931, S/PV.4049 and S/PV.4081.

with the primary responsibility for the maintenance of international peace and security, it could never be an exclusively African agenda for peace. Rather, it would be the United Nations agenda, to which the entire international community subscribed and lent support. That was the understanding of OAU of the provisions of Chapter VIII of the Charter, which was devoted entirely to cooperation between the United Nations and regional organizations.¹¹ The Secretary-General of OAU called for a new partnership between the United Nations and OAU, in keeping with the provisions of Chapter VIII of the Charter and the “Agenda for Peace”, on the role of the regional organizations in the maintenance of peace and international security.¹² As to the use of sanctions or force by regional arrangements, the representative of the Russian Federation emphasized that no coercive actions should be taken by regional structures unless authorized by the Council.¹³

By a presidential statement dated 25 September 1997,¹⁴ the Council welcomed the important contributions of OAU, including through its Mechanism for Conflict Prevention, Management and Resolution, as well as those of subregional arrangements, in preventing and resolving conflicts in Africa, and looked forward to a stronger partnership between the United Nations and OAU, as well as subregional arrangements, in conformity with Chapter VIII of the Charter. The Council expressed its support for enhancement of the capacity of African States to contribute to peacekeeping operations, including in Africa, in accordance with the Charter. Furthermore, the Council expressed its full support for the engagement of the United Nations in Africa through its diplomatic, peacekeeping and other activities, which were often undertaken in cooperation with regional and subregional organizations.

In his report dated 13 April 1998 entitled “The causes of conflict and the promotion of durable peace and sustainable development in Africa”,¹⁵ the Secretary-General noted that where a peace process was needed, it was the role of the United Nations, with OAU, to help create one. The Secretary-General

pointed out that cooperation between the United Nations and subregional organizations, which were working to address issues of peace and security in their subregions, was being strengthened. Addressing the issue of supporting regional and subregional initiatives, the Secretary-General reported that within the context of the primary responsibility of the United Nations for matters of international peace and security, providing support for regional and subregional initiatives in Africa was both necessary and desirable because the United Nations lacked the capacity, resources and expertise to address all problems that might arise in Africa. As to the authorization of the use of forceful action, the Secretary-General held that the obligation to obtain Council authorization prior to the use of force was clear. He added that while authorizing forceful action by Member States or coalitions of States could sometimes be an effective response to situations where significant force was likely to be required, it also raised many questions for the future, particularly on the need to enhance the ability of the Council to monitor activities that had been authorized.¹⁶

Discussing the co-deployment with regional, subregional or multinational forces, the Secretary-General referred to the collaboration with the Monitoring Group of the Economic Community of West African States (ECOMOG) in Liberia as a successful example of cooperation between the United Nations and a subregional organization, and maintained that such cooperation might be applicable to other situations. However, he cautioned that the conclusion should not be drawn that the responsibilities could henceforth be delegated solely to regional organizations, either in Africa or elsewhere. The Secretary-General, in his report, also stressed the need to strengthen the capacity of Africa for peacekeeping, whether those operations took place in the framework of a United Nations peacekeeping mission or one authorized by the Security Council but conducted by a regional organization or group of States. He maintained, however, that those efforts were not in any way intended to relieve the broader international community of its collective obligations under the Charter of the United Nations, but rather within the

¹¹ S/PV.3819, p. 3.

¹² *Ibid.*, p. 8.

¹³ *Ibid.*, p. 25.

¹⁴ S/PRST/1997/46.

¹⁵ S/1998/318, paras. 18-20.

¹⁶ *Ibid.*, paras. 41-42.

framework of those responsibilities to make Africa's own contribution more effective.¹⁷

At its 3875th meeting, on 24 April 1998, the Council discussed the above-mentioned report. The representative of Slovenia supported the cooperation between the United Nations and OAU and other regional and subregional arrangements and believed that such cooperation should be based on the framework established by Chapter VIII of the Charter.¹⁸ The representative of South Africa, speaking on behalf of the States members of the Southern African Development Community (SADC), stated that Chapter VIII of the Charter made provision for regional arrangements to ensure the maintenance of international peace and security and stipulated that such arrangements should be consistent with the purposes and principles of the Charter. That provision provided the framework for developing closer cooperation between Africa and the United Nations in peace missions. He, therefore, held that there was a need to reinforce and implement the existing measures in a manner that promoted meaningful interaction between the United Nations and OAU.¹⁹

The representative of Canada underscored that regional and subregional bodies should respond not to vacuums created as a result of inaction on the part of the Security Council, but to collaborative programmes developed in close consultation with the Council. Such collaboration should be based on Articles 53 and 54 of the Charter and ought to fully reflect the exclusive mandate of the Council for authorizing the use of force.²⁰ The representative of Egypt, while praising the work of the United Nations in Liberia and Sierra Leone in cooperation with the Economic Community of West African States (ECOWAS) as successful experiences, maintained that it needed to remain clear that the proper framework was to enable such regional arrangements to play an effective role which complemented the efforts of the United Nations, as provided for in Chapter VIII of the Charter. The efforts of such arrangements, he stressed, should not be used as a pretext for the Council to shirk its primary responsibilities or as a justification for the Council not to adopt the appropriate decisions at the appropriate

¹⁷ Ibid., paras. 43-44.

¹⁸ S/PV.3875, p. 18.

¹⁹ S/PV.3875 (Resumption), p. 8.

²⁰ Ibid., p. 18.

times.²¹ The representative of Indonesia stated that OAU and the United Nations should work in concert to remove obstacles endangering the peace and thereby facilitate the peace process. He noted that such a partnership of cooperation could be built within the framework of Chapter VIII of the Charter.²² The representative of the Libyan Arab Jamahiriya welcomed the consolidation of cooperation between the United Nations and OAU in the area of the peaceful settlement of disputes and saw it as a natural matter lying within the provisions of Chapter VIII of the Charter that afforded regional arrangements an important role in the maintenance of international peace and security.²³ Noting the fundamental role of the Council in peacekeeping operations in Africa, the representative of the Russian Federation emphasized the need to strengthen the capacity of the Council to monitor the authorized activities of regional and subregional organizations in the field of peacekeeping.²⁴

By resolution 1170 (1998) of 28 May 1998, the Council recalled the provisions of Chapter VIII of the Charter on regional arrangements. In addition, the Council welcomed the important contributions of OAU to conflict prevention and resolution in Africa, including its Mechanism for Conflict Prevention, Management and Resolution, as well as those of subregional arrangements. It also welcomed the efforts made by Member States, regional organizations and the United Nations to enhance the capacity of African States to contribute to peacekeeping operations in accordance with the Charter.²⁵

By a presidential statement dated 16 September 1998,²⁶ the Council affirmed that strengthening the capacity of Africa to participate in all aspects of peacekeeping operations was a key priority. The Council also encouraged increased bilateral and multilateral cooperation in the field of peacekeeping, especially capacity-building, between Member States, the United Nations and OAU, as well as subregional organizations in Africa. The Council expressed its

²¹ Ibid., p. 25.

²² Ibid., p. 40.

²³ Ibid., p. 48.

²⁴ S/PV.3875, p. 6.

²⁵ Resolution 1170 (1998), sixth preambular para. and paras. 7-8.

²⁶ S/PRST/1998/28.

support for the efforts of the United Nations as well as those of regional and subregional organizations in the field of training for peacekeeping. The Council stressed the need for it to be fully informed of peacekeeping activities carried out or planned by regional or subregional organizations and underlined the fact that the improved flow of information and the holding of regular briefing meetings between members of the Council as well as African regional and subregional organizations involved in peacekeeping operations had an important role to play in helping to enhance African peacekeeping capacity. In that context, the Council encouraged the Secretary-General to establish appropriate United Nations liaison with regional and subregional organizations and invited those organizations and Member States to provide the Council and the Secretary-General with information on their activities in the field of peacekeeping.

By resolution 1197 (1998) of 18 September 1998, the Council recalled the provisions of Chapter VIII of the Charter on regional arrangements or agencies, which set out the basic principles governing their activities and established the legal framework for cooperation with the United Nations in the area of the maintenance of international peace and security. The Council was mindful of the need for continued cooperation between the United Nations and its relevant bodies and specialized agencies on the one hand, and OAU and subregional organizations in Africa on the other. It noted that subregional arrangements in Africa, as well as OAU through its Mechanism for Conflict Prevention, Management and Resolution, were developing their capacities in preventive diplomacy, and encouraged African States to make use of those arrangements and mechanisms in the prevention of conflict and maintenance of peace in Africa. Furthermore, the Council encouraged the enhancement of consultation and coordination between the United Nations and OAU and between the United Nations and subregional organizations in Africa, both at the field and headquarters levels, and recognized that the nomination of joint special representatives might be useful to further those aims. It also welcomed the fact that both the United Nations and OAU had agreed to strengthen and broaden their cooperation on measures to prevent and resolve conflicts in Africa.²⁷

²⁷ Resolution 1197 (1998), third, sixth and eighth

At the 3931st meeting, on 24 September 1998, at which the report of the Secretary-General²⁸ was again included in the agenda, the representative of Bahrain emphasized the role of the Council in the prevention of conflicts and the elimination of tensions. He supported the efforts of the Secretary-General to enhance the capabilities of the United Nations in that respect through the development of contacts between the Organization and regional organizations. He expressed his support for all steps taken with a view to containing or preventing conflicts, as provided for in Chapter VIII of the Charter. He also welcomed the Secretary-General's recommendations to improve African peacekeeping capabilities, to enhance the role of OAU in the management and settlement of disputes and to strengthen cooperation between OAU and the United Nations so that the African contribution in the field of peacekeeping might be more effective. Furthermore, he stressed the importance of the enhancement of the capability of African States in the peacekeeping missions in Africa, whether those missions were United Nations missions or were within the framework of a regional organization with a mandate from the Security Council.²⁹

The representative of the Gambia called for collaboration between the United Nations and regional and subregional organizations in Africa and for the creation of a partnership more suitable for dealing with conflicts in Africa. He emphasized, however, that it was imperative to avoid relegating responsibility for peacekeeping from a global level to regional or subregional levels on a selective basis. The Security Council could not subcontract its responsibility for the maintenance of international peace and security — not even by default. He maintained that cooperation between the United Nations and subregional and regional organizations needed to be in accordance with Articles 53 and 54 of the Charter.³⁰

With regard to the use of force, supporting the recommendations of the Secretary-General for closer coordination between the United Nations, OAU and African subregional organizations in conflict prevention and resolution, the representative of Portugal stressed that the final responsibility to

preambular paras. and paras. 9-10.

²⁸ S/1998/318.

²⁹ S/PV.3931, pp. 13-14.

³⁰ *Ibid.*, p. 23.

authorize the use of force to restore peace always belonged to the Council.³¹ The representative of the Russian Federation considered it important actively to use the provisions of the Charter that encouraged regional organizations to show greater initiative in the field of preventive diplomacy and the peaceful settlement of disputes, which presupposed that the expansion of the practice of regional peacebuilding operations was backed by the Security Council. At the same time, he stressed that the principles stipulated in the Charter regarding the role of the Security Council in launching peacekeeping operations needed to be complied with, and reiterated that military operations conducted by regional structures, especially those involving the use of force, were permissible only if they were explicitly authorized by the Council.³²

The representative of Slovenia supported the efforts to strengthen cooperation between the United Nations and OAU, as well as with other regional and subregional arrangements, focusing on conflict prevention, management and resolution. He reiterated that such cooperation should be based on the framework established by Chapter VIII of the Charter.³³

By a presidential statement dated 24 September 1998,³⁴ the Council commended the efforts by African States and regional and subregional organizations, in particular OAU, to resolve conflicts by peaceful means. The Council called for an enhanced partnership between the United Nations and African regional and subregional organizations in support of their efforts in conflict prevention, the maintenance of peace and security and dispute settlement. The Council noted that it had taken action to help strengthen support for regional and subregional initiatives as well as to enhance coordination between the United Nations and regional and subregional organizations in the areas of conflict prevention and the maintenance of peace. It also recalled that it had addressed the need to support the strengthening of African peacekeeping capacity.

By a presidential statement dated 30 November 1998,³⁵ the Council, while reaffirming its primary

responsibility under the Charter of the United Nations for the maintenance of international peace and security, underlined the increasingly important role of regional arrangements and agencies in the conduct of activity in that field. The Council reaffirmed that all such activity undertaken under regional arrangements or by regional agencies, including enforcement action, would be carried out in accordance with Articles 52, 53 and 54 of Chapter VIII of the Charter. In addition, the Council welcomed the views expressed by the Secretary-General in paragraphs 42 to 44 of his report,³⁶ in particular as they related to Africa. By the same presidential statement³⁷ The Council recognized that the authorization by the Council of action by regional or subregional organizations could be one type of effective response to conflict situations, and commended Member States and regional and subregional organizations which had undertaken efforts and initiatives towards the maintenance of peace and security. To enhance its ability to monitor any activities that it had authorized, the Council expressed its readiness to examine appropriate measures whenever such an authorization was being considered. In that regard, the Council noted that there was a wide variety of arrangements and relationships which had developed in different instances of cooperation between the United Nations, Member States and regional and subregional organizations in the maintenance of peace and security, and that monitoring requirements would vary and should be tailored according to the specifics of the operations in question, including in relation to ongoing peace efforts. Nevertheless, in general, operations should have a clear mandate, including, among others, arrangements for regular reporting to the Council. In addition, the Council underlined the fact that the monitoring of such operations could be enhanced by the improved flow and exchange of information, inter alia, through regular submission of reports and through the holding of regular briefing meetings between its members and regional and subregional organizations and Member States conducting such operations. The Council shared the view of the Secretary-General that one possible means of monitoring activities of forces authorized by it, while also contributing to the broader aspects of a peace process, was through co-deployment of United

³¹ *Ibid.*, p. 29.

³² *Ibid.*, p. 31.

³³ *Ibid.*, p. 32.

³⁴ S/PRST/1998/29.

³⁵ S/PRST/1998/35.

³⁶ S/1998/318.

³⁷ S/PRST/1998/35.

Nations observers and other personnel together with an operation carried out by a regional or subregional organization. It agreed with the Secretary-General that, while such collaboration was not applicable in all cases, co-deployment could make an important contribution to peacekeeping efforts, as in the cases of Liberia and Sierra Leone, where United Nations observer missions had been deployed alongside the Monitoring Group of ECOWAS. The Council underlined the importance, whenever the United Nations deployed forces alongside forces of regional or subregional organizations or Member States, of establishing a clear framework for cooperation and coordination between the United Nations and the regional or subregional organization. Such a framework should include specifying objectives, the careful delineation of the respective roles and responsibilities of the United Nations and the regional or subregional organization concerned and of the areas of interaction of forces, and clear provisions regarding the safety and security of personnel. The Council also stressed the importance of ensuring that United Nations missions maintain their identity and autonomy with regard to operational command and control and logistics. Furthermore, the Council urged Member States and regional and subregional organizations to ensure that the Council was kept fully informed of their activities for the maintenance of peace and security. The Council also undertook to consult regularly with Member States and regional and subregional organizations involved in such activities to facilitate that.

At the 4049th meeting, on 29 September 1999, the representative of the Russian Federation stressed that the provisions of the Charter needed to be actively implemented in encouraging regional organizations to take a more active initiative in preventive diplomacy and the peaceful settlement of disputes. That would mean strengthening regional peacekeeping operations, with the support of the Security Council; the implementation by regional structures of peacekeeping operations through the use of force was admissible only with the clear sanction of the Security Council, pursuant to Chapter VIII of the Charter. He maintained that African efforts should be backed and assisted —

though not replaced — by the authority and capabilities of the United Nations.³⁸

At the 4081st meeting, on 15 December 1999, the representative of Argentina stressed the importance of close cooperation and dialogue between the United Nations, OAU and subregional organizations and maintained that all possible mechanisms available under Chapter VIII of the Charter should be explored.³⁹ The representative of Gabon noted that Chapter VIII of the Charter established the legal framework for cooperation involving the United Nations and its agencies.⁴⁰ The representative of Burundi stressed that the Security Council, which alone had such a mandate, needed to endorse all major interventions such as sending a regional peacekeeping force.⁴¹

The representative of Cameroon referred to the indispensable partnership between the United Nations and Africa developed via the activities of African regional and subregional mechanisms in conflict prevention and settlement. He noted that those developments shared the goal of demonstrating that Africa was a partner with the institutional capacity to respond to the provisions of Articles 52 and 53 of the Charter, which encouraged the regional settlement of conflicts and were intended to stimulate joint action by those bodies and by the United Nations. He also maintained that the Security Council might consider the appointment of a coordinator for Africa to work with the Secretary-General and to implement the provisions of Article 54 of the Charter.⁴²

The representative of Ireland stressed the central role of OAU and other subregional organizations in conflict prevention and resolution and noted that it had opened the possibility of the application of Articles 52 and 53 of the Charter, a highly positive development which deserved the strongest possible support.⁴³

³⁸ S/PV.4049, pp. 19-20.

³⁹ S/PV.4081, p. 10.

⁴⁰ *Ibid.*, p. 15.

⁴¹ S/PV.4081 (Resumption 1) and Corr. 1, p. 22.

⁴² S/PV.4081, pp. 24-25.

⁴³ S/PV.4081 (Resumption 1) and Corr. 1, p. 27.

Maintenance of international peace and security and post-conflict peacebuilding

At the 3954th meeting, on 16 December 1998, discussions involving the interpretation and application of Chapter VIII of the Charter were held, in the context of peacekeeping and post-conflict peacebuilding.

The representative of the Russian Federation expressed the view that enforcement peacekeeping operations, whether carried out by the United Nations or by regional organizations or multinational coalitions, could be implemented only through a decision of the Security Council and “under the tight political and appropriate operational control” of the Council. In that context, he maintained that regional peacekeeping operations could not be deployed without the authorization of the Council and needed to be transparent and accountable to the Council. While praising the recent practice of constructive interaction between regional organizations or multinational coalitions and the United Nations in the conduct of peacekeeping operations, the representative expressed concern about attempts to make it possible for individual States or coalitions to use force or take enforcement measures without the approval of the Council. He noted that the North Atlantic Treaty Organization (NATO) was going in such a direction by considering transforming itself into a leading international peacekeeping organization whose actions would be taken solely on the basis of its own assessments and decisions, thereby sidestepping the Council. He cautioned that such a move by NATO would attempt to replace the Charter-based functions and the prerogative of the Security Council with unilateral actions taken by regional mechanisms, directly contravening the Charter.⁴⁴

The representative of Brazil, explicitly citing Chapter VIII of the Charter, stated that regional global burden-sharing would in principle make as much sense for enforcement as it could make for peacekeeping. Moreover, he held that regional initiatives could be particularly effective in the post-conflict phases of stabilization efforts. However, he regretted that there were overt violations of sanctions regimes or armed interventions and manifestations of readiness to use armed force by regional actors “without the specific authority” of the Council, which raised serious legal

⁴⁴ S/PV.3954, p. 4.

and political questions. In his view, enforcement interventions with no clear legal foundation would lack moral authority and would not be able to meet with the approval of world opinion in the long run. He also argued that the Security Council should focus on the question of enforcement, underlining the importance of preserving the indispensable degree of harmony between regional initiatives and the universal collective security regime in line with the Charter.⁴⁵

At the same meeting, other explicit references to Chapter VIII of the Charter were made on several occasions.⁴⁶ For instance, the representative of Portugal welcomed an important and appropriate division of labour with regional organizations in the realm of the maintenance of international peace and security, “as foreseen in Chapter VIII of the Charter”. In that context, he considered it important to identify the peacebuilding activities within peacekeeping that could benefit from an effective cooperation with regional organizations. He pointed to the case of Guinea-Bissau and cooperation there between the United Nations, ECOWAS and as the Community of Portuguese Speaking Countries.⁴⁷

The representative of Indonesia held that maintaining peace and security, whether in a conflict or a potential conflict area, required concerted and coordinated efforts by international and regional organizations. If those activities were conducted within the framework of Chapter VIII of the Charter, regional organizations could make a distinct contribution to the efforts by the Security Council to seek peaceful solutions. He further stated that close cooperation and coordination between the regional organizations and the Council could substantially enhance the prospects for the political settlement of disputes without intervening in the internal affairs of States.⁴⁸

A few representatives cited ECOMOG in Sierra Leone, Liberia and Guinea-Bissau as concrete examples of cooperation in the area of peacekeeping between the United Nations and regional arrangements, and called for support for such regional efforts.⁴⁹

⁴⁵ *Ibid.*, pp. 15-16.

⁴⁶ *Ibid.*, p. 13 (Gabon) and S/PV.3954 (Resumption), p. 9 (Pakistan).

⁴⁷ S/PV.3954, p. 12.

⁴⁸ *Ibid.*, pp. 20-21.

⁴⁹ *Ibid.*, p. 13 (Gabon) and S/PV. 3954 (Resumption), p. 17

Role of the Security Council in the prevention of armed conflicts

At the 4072nd meeting, on 29 November 1999, a number of speakers, some explicitly citing Chapter VIII of the Charter, recognized the role played by regional organizations in conflict prevention, such as OAU and ECOWAS and called for further cooperation between the Security Council and regional arrangements.⁵⁰

At the same meeting, the representative of China held that the Security Council should recognize the important roles that could be played by the various regional organizations and cooperate more closely with them. Such cooperation should be based on the adherence by regional organizations to the purposes and principles of the Charter and the stipulations of Chapter VIII and be performed under the guidance and monitoring of the United Nations.⁵¹ Similarly the representative of the Russian Federation emphasized that activities of regional and subregional organizations in early warning and conflict prevention needed to comply strictly with the provisions of Chapter VIII of the Charter.⁵² The representative of Namibia maintained that the tendency by regional arrangements to undertake peace enforcement without a specific mandate from the Council and without acting in accordance with the Charter should be discouraged as it undermined the credibility of the Council and diminished its role in the maintenance of international peace and security.⁵³

Furthermore, some speakers, in recognizing the central role of the Council in the maintenance of international peace and security, stressed that the cooperation between the Council and regional organizations should not be seen as competition.⁵⁴ The representative of Zambia argued that efforts by regional and subregional organizations in the resolution of disputes were complementary and were

not meant to absolve the Council of its responsibility for the maintenance of peace and security in the world.⁵⁵

The representative of Bangladesh was of the view that the role of regional organizations was recognized in the Charter and that those organizations had played a critically important role in preventing or containing armed conflicts in recent years. However, the Council then had been criticized for “subcontracting” its peace and security mission. Therefore, he proposed that appropriate mechanisms and elaborate policy guidelines for involvement and intervention of the regional organizations should be formulated, while being specific to a given situation.⁵⁶

By a presidential statement dated 30 November 1999,⁵⁷ the Council recognized the important role that regional organizations and arrangements were playing in the prevention of armed conflicts, including through the deployment of confidence- and security-building measures. The Council also emphasized the importance of supporting and improving regional capacities for early warning. It emphasized the importance of cooperation between the United Nations and regional organizations in preventive activities in accordance with Chapter VIII of the Charter.

B. Encouragement by the Security Council of efforts undertaken by regional arrangements in the pacific settlement of disputes

During the period under review, the Security Council, on various occasions, expressed encouragement and support for the efforts undertaken by regional organizations in the pacific settlement of disputes, including the signing of peace agreements under the auspices of regional organizations. The practice of the Council in this regard is set out below, by region and by chronological order.

(Nigeria).

⁵⁰ S/PV.4072, p. 13 (United Kingdom); p. 20 (Malaysia); p. 24 (Gabon); p. 33 (Finland); p. 35 (United Arab Emirates); p. 37 (South Africa); p. 44 (Republic of Korea); and p. 47 (Japan); S/PV. 4072 (Resumption 1), p. 8 (Nigeria); and p. 16 (Norway).

⁵¹ S/PV.4072, p. 15.

⁵² Ibid., p. 16.

⁵³ Ibid., p. 27.

⁵⁴ Ibid., pp. 21-22 (Brazil); and p. 25 (Gambia).

⁵⁵ S/PV.4072 (Resumption 1), p. 7.

⁵⁶ Ibid., p. 12.

⁵⁷ S/PRST/1999/34.

Africa

The situation in Liberia

During the period under review, the Security Council, by its decisions, commended the positive role of the Economic Community of West African States (ECOWAS) in its continuing efforts to restore peace, security and stability in Liberia and commended the States that had contributed to the Monitoring Group of the Economic Community of West African States.⁵⁸

At the 3621st meeting, on 25 January 1996, the representative of the United States, sharing some observations from her trip to Liberia, commended the neutral and constructive role being played at that time by ECOMOG troops, as opposed to the past, and asserted that ECOMOG deserved the support of the Council as it represented an important precedent in regional peacekeeping.⁵⁹ The representative of the Republic of Korea added that the peacekeeping operation in Liberia was unique in that, for the first time in Africa, a subregional organization, ECOWAS, had taken a primary role, while the United Nations assisted and monitored ECOMOG.⁶⁰ The representative of China observed that ECOWAS had made tremendous efforts to end the fighting in Liberia and had sent peacekeeping forces to Liberia, “in accordance with Chapter VIII”, despite their economic difficulties.⁶¹

By resolution 1041 (1996) of 29 January 1996, and subsequent decisions, the Council called upon the Monitoring Group, in accordance with the agreement regarding the respective roles and responsibilities of the United Nations Observer Mission in Liberia (UNOMIL) and ECOMOG in the implementation of the Cotonou Agreement⁶² and with the concept of operations of the Mission, to intensify the action

necessary to provide security for UNOMIL observers and civilian staff. The Council also stressed the need for close contact and enhanced coordination between UNOMIL and ECOMOG in their operational activities at all levels.⁶³

Furthermore, by a presidential statement dated 9 April 1996, the Council reaffirmed its support for the crucial role of ECOWAS in bringing the conflict to an end.⁶⁴ Similar support was reiterated in a presidential statement dated 6 May 1996.⁶⁵

At the 3667th meeting, on 28 May 1996, the representative of Liberia repeated his appeal for continued assistance to ECOMOG in order to allow it to carry out its mandate under the Abuja Agreement. While being aware of some reservations about the viability of ECOMOG as a peacekeeping force, he reminded the Council that ECOMOG had taken on a responsibility that should have been shouldered by the United Nations. As the United Nations had relied on ECOMOG to provide security to UNOMIL, their respective functions were complementary. The collaboration could only bear fruit when the requisite support was given to ECOMOG. He reiterated that if the pioneering effort by ECOWAS was to be brought to fruition, the Charter provision encouraging subregional initiatives in the pacific settlement of disputes needed to be amended to ensure a mechanism whereby any subregional peacekeeping operation sanctioned by the Council would be financed by the United Nations.⁶⁶ The representative of Zimbabwe expressed surprise at suggestions that the continued involvement of UNOMIL might be contingent upon the presence of ECOMOG in Liberia. In a direct reference to Chapter VIII, he maintained that active support from the United Nations needed to be given to regional organizations seeking to arrest threats to peace and security. He further argued that, rather than playing the role of a substitute for the uniquely mandated role of the United Nations, those regional efforts needed to be viewed as facilitators in the efforts of the United Nations in pursuit of its Charter-enshrined responsibility to maintain international peace and

⁵⁸ Resolutions 1041 (1996), third and seventh preambular paras.; 1059 (1996), sixth and eighth preambular paras.; 1071 (1996), sixth and seventh preambular paras.; 1083 (1996), sixth preambular para.; 1100 (1997), sixth preambular para.; and 1116 (1997), seventh preambular para.

⁵⁹ S/PV.3621, p. 4.

⁶⁰ *Ibid.*, p. 12.

⁶¹ *Ibid.*, p. 6.

⁶² Peace Agreement between the Interim Government of National Unity of Liberia, the National Patriotic Front of Liberia and the United Liberation Movement of Liberia for Democracy (S/26272).

⁶³ Resolutions 1041 (1996), paras. 10-11; 1059 (1996), para. 14; 1071 (1996), ninth preambular para. and para. 15; and 1083 (1996), para. 12.

⁶⁴ S/PRST/1996/16.

⁶⁵ S/PRST/1996/22.

⁶⁶ S/PV.3667, p. 4.

security.⁶⁷ The representative of China expressed appreciation for the efforts of ECOWAS by the dispatch of its peacekeeping forces to Liberia, “in accordance with Chapter VIII” and also by its offer of good offices and mediation for the pacific settlement of the dispute.⁶⁸

By resolution 1059 (1996) of 31 May 1996 and subsequent resolutions, the Council stressed that the presence of UNOMIL in Liberia was predicated on the presence of ECOMOG and its commitment to ensure the safety of military observers and civilian staff of UNOMIL.⁶⁹

By the same resolution, the Council encouraged the members of ECOWAS to consider ways and means to strengthen the Monitoring Group and to persuade the faction leaders to resume the peace process, and expressed support for the resolve of the ministers of the countries members of ECOWAS not to recognize any Government in Liberia that came to office through the use of force. Furthermore, noting especially the recent broader deployment of ECOMOG in the city of Monrovia, the Council also called upon the Liberian parties to, among other things, allow the deployment of ECOMOG and restore Monrovia as a safe haven.⁷⁰

At the 3694th meeting, on 30 August 1996, the representative of Liberia stated that while the ECOWAS peace initiative had faced some financial and administrative difficulties, it represented a “pioneering effort to bring to fruition Chapter VIII of the Charter”, and thus deserved greater support from the United Nations.⁷¹

By resolution 1071 (1996), adopted at that meeting, the Council welcomed the agreement of ECOWAS in Abuja, on 17 August 1996,⁷² which extended until 15 June 1997, the Abuja Agreement of 1995,⁷³ established a timetable for implementation of the Agreement, adopted a mechanism to verify

compliance by the faction leaders with the Agreement and proposed possible measures against the factions in the event of non-compliance.⁷⁴

Following the agreement between the Liberian Council of State and ECOWAS on a basic framework for the holding of elections in Liberia scheduled for 30 May 1997, by resolution 1100 (1997) of 27 March 1997, the Council again stressed the importance of close contacts and enhanced coordination between UNOMIL and ECOMOG at all levels and, in particular, the importance of ECOMOG continuing to provide effective security for international personnel during the election process.⁷⁵

Subsequent to the decision of ECOWAS to postpone the election date to 19 July 1997, by resolution 1116 (1997) of 27 June 1997, while reiterating its position on the importance of close coordination among various actors and of the provision of security by ECOMOG during the election process, the Council emphasized the need for constructive collaboration between the United Nations, ECOWAS, the Liberian Independent Elections Commission and the international community in coordinating assistance for the elections.⁷⁶

Following the successful holding of presidential and legislative elections on 19 July 1997, by a presidential statement of 30 July 1997,⁷⁷ the Council commended all international personnel, especially those of UNOMIL and ECOMOG, who had contributed to the successful holding of elections.

The situation in Sierra Leone

In Sierra Leone, the Security Council supported the efforts of ECOWAS, including its mediation and continued deployment of a regional peacekeeping force, ECOMOG, which was responsible for providing security to the United Nations Observer Mission in Sierra Leone (UNOMSIL) and the United Nations Mission in Sierra Leone (UNAMSIL), established during the period under review.

⁶⁷ Ibid., p. 27.

⁶⁸ Ibid., p. 20.

⁶⁹ Resolutions 1059 (1996), tenth preambular para.; 1071 (1996), ninth preambular para.; 1083 (1996), eighth preambular para.; 1100 (1997), eighth preambular para.; and 1116 (1997), sixth preambular para.

⁷⁰ Resolution 1059 (1996), fourth preambular para., paras. 8, 12 and 15.

⁷¹ S/PV.3694, p. 3.

⁷² S/1996/679.

⁷³ S/1995/742.

⁷⁴ Resolution 1071 (1996), para. 3.

⁷⁵ Resolution 1100 (1997), para. 5.

⁷⁶ Resolution 1116 (1997), paras. 4-5.

⁷⁷ S/PRST/1997/41.

By a presidential statement dated 11 July 1997,⁷⁸ the Council strongly supported the decision of the Organization of African Unity appealing to the leaders of ECOWAS and the international community to help restore the constitutional order in Sierra Leone. The Council also welcomed the mediation efforts initiated by ECOWAS and expressed its full support for the objectives of those efforts as set out in the final communiqué,⁷⁹ issued at the meeting of the Ministers for Foreign Affairs of ECOWAS, held in Conakry on 26 June 1997.

By a presidential statement dated 6 August 1997,⁸⁰ the Council expressed its appreciation to the Committee of Four Foreign Ministers of the Economic Community of West African States for its efforts to negotiate with representatives of the military junta on 17 and 18 and 29 and 30 July 1997 in Abidjan on a peaceful resolution of the crisis, and reiterated its full support for the objectives of that mediation.

By resolution 1132 (1997) of 8 October 1997, and by subsequent decisions, the Council expressed its strong support for the efforts of the Committee of ECOWAS to resolve the crisis in Sierra Leone, and encouraged it to continue to work for the peaceful restoration of the constitutional order, including through the resumption of negotiations.⁸¹

By a presidential statement of 26 February 1998,⁸² the Council encouraged the Monitoring Group of ECOWAS to proceed in its efforts to foster peace and stability in Sierra Leone, in accordance with the relevant provisions of the Charter. It underlined the need for close cooperation between the legitimate Government of Sierra Leone, ECOWAS, the commanders of the Monitoring Group, the Special Envoy of the Secretary-General and his staff, United Nations agencies and relevant international organizations in their work.

Following the return to Sierra Leone of its democratically elected President on 10 March 1998, by resolution 1162 (1998) of 17 April 1998, the Council commended ECOWAS and its Monitoring Group,

deployed in Sierra Leone, on the important role they were playing in support of the objectives related to the restoration of peace and security.⁸³ By a presidential statement dated 20 May 1998,⁸⁴ the Council reiterated its appreciation of ECOWAS and encouraged ECOWAS to renew its political efforts to foster peace and stability.

By resolution 1181 (1998) of 13 July 1998, the Council recognized the important contribution of ECOWAS in support of the objectives to restore peaceful and secure conditions in the country, to re-establish effective administration and the democratic process and to embark on the task of national reconciliation, reconstruction and rehabilitation. It commended the positive role of ECOWAS and its Monitoring Group in their efforts to restore peace and stability throughout the country at the request of the Government of Sierra Leone.⁸⁵

By the same resolution, the Council noted the role of the ECOWAS Monitoring Group in assisting the implementation of the disarmament, demobilization and reintegration plan adopted by the Government, including the provision of security and responsibility for arms collection and destruction. The Council also welcomed the commitment of that Group to ensure the security of United Nations personnel and stressed the need for full cooperation and close coordination between UNOMSIL, established by the same resolution, and the Monitoring Group in their respective operational activities.⁸⁶

By a presidential statement of 7 January 1999,⁸⁷ the Council welcomed the offers made by leaders in the region aimed at resolving the conflict and, in that context, urged them, including the Committee of Six on Sierra Leone of ECOWAS, to facilitate the peace process.

By resolution 1231 (1999) of 11 March 1999, the Council expressed its support for all efforts, in particular by States members of ECOWAS, aimed at peacefully resolving the conflict and restoring lasting peace and stability in Sierra Leone.⁸⁸ In addition, the

⁷⁸ S/PRST/1997/36.

⁷⁹ S/1997/499, annex.

⁸⁰ S/PRST/1997/42.

⁸¹ Resolution 1132 (1997), sixth preambular para. and para. 3; and S/PRST/1997/52 and S/PRST/1998/5.

⁸² S/PRST/1998/5.

⁸³ Resolution 1162 (1998), para. 2.

⁸⁴ S/PRST/1998/13.

⁸⁵ Resolution 1181 (1998), third preambular para. and para. 5.

⁸⁶ Resolution 1181 (1998), paras. 5, 9 and 11.

⁸⁷ S/PRST/1999/1.

⁸⁸ Resolution 1231 (1999), para. 9.

Council commended the efforts of the Monitoring Group towards the restoration of peace and security and stability in Sierra Leone, and called upon all Member States to provide ECOMOG with technical, financial and logistical support.⁸⁹

By resolution 1245 (1999) of 11 June 1999, the Council acknowledged the cooperation provided by ECOWAS and its Monitoring Group and underlined its strong support for the key role being played by the President of Togo as the current Chairman of ECOWAS in the Lomé process.⁹⁰ By resolution 1260 (1999) of 20 August 1999, the Council, in welcoming the signing of the Lomé Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone on 7 July 1999,⁹¹ commended, among others, the President of Togo and ECOWAS in facilitating the negotiations in Lomé on their contribution to that achievement.⁹² By the same resolution, the Council, while authorizing the expansion of UNOMSIL, decided that the additional military observers should operate for the time being under security provided by the Monitoring Group.⁹³

At the 4054th meeting, on 22 October 1999, the Council adopted resolution 1270 (1999), by which the Council welcomed the steps taken by the Monitoring Group, among others, towards the implementation of the Lomé Peace Agreement.⁹⁴ The Council also reiterated its appreciation for the indispensable role ECOMOG forces continued to play in the maintenance of security and stability and the protection of the people in Sierra Leone and approved the new mandate of ECOMOG,⁹⁵ adopted by ECOWAS on 25 August 1999.⁹⁶ By the same resolution, the Council, acting under Chapter VII of the Charter, established UNAMSIL and commended the readiness of ECOMOG to continue to provide security for the areas where it was located, in particular around Freetown and Lungi, to provide protection for the Government of Sierra

Leone, to conduct other operations in accordance with their mandate to ensure the implementation of the Peace Agreement, and to initiate and proceed with disarmament and demobilization in conjunction and full coordination with UNAMSIL. The Council also stressed the need for close cooperation and coordination between ECOMOG and UNAMSIL in carrying out their respective tasks, and welcomed the intended establishment of joint operation centres at headquarters and, if necessary, at subordinate levels in the field as well.⁹⁷

At that same meeting, the representative of Nigeria praised UNAMSIL as representing a rare, but desirable form of cooperation between the United Nations and a subregional organization in fulfilment of Chapter VIII of the Charter. He expressed the hope that the United Nations would continue to employ a similar approach with other regional and subregional organizations in the pursuit of international peace and security.⁹⁸ The representative of the United Kingdom maintained that the success of UNAMSIL would depend significantly on joint deployment and close cooperation with ECOMOG. He noted that the readiness of ECOWAS to work in tandem with the United Nations in Sierra Leone was an important example of cooperation with regional peacekeeping efforts around the world.⁹⁹

The situation in Burundi

By a presidential statement dated 5 January 1996, the Security Council commended the role played by the Organization of African Unity (OAU) in Burundi and welcomed the decision of OAU in Addis Ababa on 19 December 1995 to extend the mandate of its mission in Burundi for another three months and to strengthen the civilian component of the mission.¹⁰⁰ By resolution 1040 (1996) of 29 January 1996, the Council noted with appreciation the ongoing efforts of OAU, its military observers in Burundi and the European Union.¹⁰¹

At the 3639th meeting, on 5 March 1996, the representative of Egypt stated that OAU had played an

⁸⁹ Resolutions 1231 (1999), para. 10; 1260 (1999), para. 3; and S/PRST/1999/13.

⁹⁰ Resolution 1245 (1999), second preambular para. and para. 3.

⁹¹ S/1999/777, annex.

⁹² Resolution 1260 (1999), para. 1.

⁹³ *Ibid.*, para. 4.

⁹⁴ Resolution 1270 (1999), para. 1.

⁹⁵ Resolution 1270 (1999), para. 7.

⁹⁶ S/1999/1073, annex.

⁹⁷ Resolution 1270 (1999), paras. 8, 11 and 12.

⁹⁸ S/PV.4054, pp. 7-8.

⁹⁹ *Ibid.*, p. 9.

¹⁰⁰ S/PRST/1996/1.

¹⁰¹ Resolution 1040 (1996), tenth preambular para.

important role in Burundi since 1993, and even though that role had not received political or material support from other international organizations, it had become one of the major axes of development, reaffirming the importance of the support of regional organizations for containing crises and conflicts “under Chapter VIII of the Charter”.¹⁰² The representative of the Russian Federation considered it important to make optimum use of the peacekeeping potential of OAU and other regional organizations.¹⁰³ By resolution 1049 (1996), adopted at that meeting, the Council expressed strong support for the efforts of OAU, the European Union and others seeking to facilitate political dialogue in Burundi. In addition, the Council encouraged OAU to increase the size of its observer mission in Burundi, as formally requested by the Government of Burundi.¹⁰⁴

By a presidential statement dated 15 May 1996, the Council underscored the importance of the continued cooperation of the United Nations with OAU and the European Union, among others, aimed at achieving the objective of a comprehensive political dialogue between the parties in Burundi. In that regard, the Council expressed its support for the efforts of OAU and its observer mission and called upon all States to contribute generously to the Peace Fund of OAU in order to enable the organization to increase the size of its mission and extend its mandate.¹⁰⁵ By a subsequent presidential statement of 24 July 1996, the Council also welcomed the extension of the mandate of the observer mission of OAU.¹⁰⁶

By a presidential statement of 29 July 1996, the Council expressed its full support for regional mediation efforts, including those of former President Nyerere and OAU.¹⁰⁷

By a note dated 5 August 1996, the Secretary-General transmitted a copy of the communiqué issued on 5 August 1996 by the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the Organization of African Unity, which relayed that the Central Organ, having considered the role of the OAU Mission in Burundi and in the light of

the new situation in that country, decided to terminate the deployment of the military component of the Mission as soon as possible. The communiqué also noted that, depending on the evolution of the situation in Burundi, the Secretary-General of OAU could consider the possibility of strengthening the civilian and political component of the Mission.¹⁰⁸

By resolution 1072 (1996) of 30 September 1996, the Council took note of the above-mentioned note by the Secretary-General and underlined the importance it attached to the continuation of the efforts of OAU and its observer mission. The Council further expressed its strong support for the efforts of regional leaders of OAU and of former President Nyerere, to assist Burundi to overcome peacefully the grave crisis which it was undergoing, and encouraged them to continue to facilitate the search for a political solution.¹⁰⁹ By the same resolution, the Council also welcomed the efforts made by the European Union to contribute to a peaceful solution of the political crisis in Burundi.¹¹⁰

By a presidential statement dated 30 May 1997,¹¹¹ the Council reiterated its support and appreciation to OAU in its efforts to find a peaceful solution to the crisis in Burundi.

The situation in the Great Lakes region

In the Great Lakes region, the Security Council supported the mediation efforts of OAU in coordination with those of the United Nations, including the appointment of the joint United Nations/OAU Special Representative and the resultant five-point peace plan for eastern Zaire.

By a presidential statement of 1 November 1996,¹¹² the Security Council, concerned at the deteriorating situation in the Great Lakes region, in particular eastern Zaire, expressed the hope that the mediation efforts of OAU and the European Union would complement those of the Special Envoy of the Secretary-General.

¹⁰² S/PV.3639, p. 8.

¹⁰³ *Ibid.*, p. 15.

¹⁰⁴ Resolution 1049 (1996), paras. 8 and 10.

¹⁰⁵ S/PRST/1996/24.

¹⁰⁶ S/PRST/1996/31.

¹⁰⁷ S/PRST/1996/32.

¹⁰⁸ S/1996/628, annex.

¹⁰⁹ Resolution 1072 (1996), tenth, thirteenth preambular paras. and para. 2.

¹¹⁰ Resolution 1072 (1996), fourteenth preambular para.

¹¹¹ S/PRST/1997/32.

¹¹² S/PRST/1996/44.

By resolution 1078 (1996) of 9 November 1996, the Council welcomed the efforts of the mediators and representatives of OAU and the European Union, among others, and encouraged them to coordinate closely their efforts with those of the Special Envoy. In addition, the Council requested the Secretary-General to draw up a concept of operations and framework for a humanitarian task force, in consultation with OAU and the Special Envoy of the European Union, among other actors. Furthermore, the Council called upon OAU, the States of the region and other international organizations to examine ways in which to contribute and to complement the efforts undertaken by the United Nations to defuse tension in the region, in particular in eastern Zaire.¹¹³ By subsequent decisions, the Council reiterated its encouragement of the efforts of OAU and the European Union.¹¹⁴

By a letter dated 22 January 1997,¹¹⁵ the Secretary-General informed the Council that, given the gravity and complexity of the situation in the Great Lakes region, he intended to propose the appointment of a joint United Nations/OAU Special Representative, who would be reporting to both the United Nations and OAU and take guidance from those Secretaries-General. He noted that such an appointment would be in conformity with the request of the Council that the Secretary-General cooperate closely with OAU in addressing the problems of the Great Lakes region.

By a presidential statement dated 7 February 1997,¹¹⁶ the Council expressed its full support for the joint United Nations/OAU Special Representative for the Great Lakes region, in the fulfilment of his mandate. In subsequent decisions, the Council reiterated this position.¹¹⁷

In his letter dated 18 February 1997,¹¹⁸ the Secretary-General reported on the mission of the joint United Nations/OAU Special Representative for the Great Lakes region who was working on a five-point peace plan, on the basis of the presidential statement of

7 February 1997.¹¹⁹ The Secretary-General noted that it would greatly assist the efforts of the joint United Nations/OAU Special Representative if consideration were to be given by the Council, on an urgent basis, to an appropriate acknowledgement and support of his initiative.

By a presidential statement dated 7 March 1997,¹²⁰ the Council underlined the urgent need for a comprehensive and coordinated response by the international community in support of the efforts of the joint United Nations/OAU Special Representative for the Great Lakes region to prevent any further escalation of the crisis there and, in that respect, reiterated its full support for the five-point peace plan for eastern Zaire contained in resolution 1097 (1997). The Council welcomed the endorsement of that plan by OAU at its sixty-fifth ordinary session of the Council of Ministers held in Tripoli from 24 to 28 February 1997. The Council also welcomed all efforts, including those of the organizations and States of the region, aimed at resolving the crisis.

The situation in the Republic of the Congo

With regard to the situation in the Republic of the Congo, the Security Council, by a presidential statement dated 13 August 1997,¹²¹ affirmed its support for the role of the joint United Nations/Organization of African Unity Special Representative for the Great Lakes region in the negotiations to reach agreement on a ceasefire and a peaceful settlement of the crisis.

The situation concerning the Democratic Republic of the Congo

In connection with the situation concerning the Democratic Republic of the Congo, the Security Council supported the mediation efforts of OAU and the Southern African Development Community (SADC) towards the restoration of peace and stability in the region, which culminated in the signing of the Ceasefire Agreement in Lusaka on 10 July 1999.¹²²

¹¹³ Resolution 1078 (1996), fifteenth preambular para. and paras. 10 (a) and 11.

¹¹⁴ Resolution 1080 (1996), eighth preambular para.; and S/PRST/1997/5 and S/PRST/1997/11.

¹¹⁵ S/1997/73.

¹¹⁶ S/PRST/1997/5.

¹¹⁷ Resolution 1097 (1997), sixth preambular para.; and S/PRST/1997/11 and S/PRST/1997/22.

¹¹⁸ S/1997/136.

¹¹⁹ S/PRST/1997/5.

¹²⁰ S/PRST/1997/11.

¹²¹ S/PRST/1997/43.

¹²² S/1999/815, annex.

By a presidential statement dated 29 May 1997,¹²³ the Council expressed its appreciation to the Secretaries-General of the United Nations and OAU and their Special Representative, among others, for their efforts to facilitate a peaceful solution to the crisis in the Democratic Republic of the Congo.

Furthermore, by a presidential statement dated 11 December 1998,¹²⁴ the Council expressed its support for the regional mediation process begun by OAU and SADC, led by the President of Zambia, took note of the steps which had been taken towards the peaceful settlement of the conflict and encouraged the President of Zambia to continue his efforts.

At the 3987th meeting, on 19 March 1999, the representative of the Democratic Republic of the Congo stated that Article 52 of the Charter encouraged the Council to support the peaceful settlement of local disputes through regional agreements. While expressing his gratitude for the efforts of the Council to ensure the proper implementation of that provision, in particular, through the two presidential statements the Council had adopted on the topic, he recalled that the last paragraph of Article 52 allowed the Council to simultaneously apply the provisions of Articles 34 and 35 of the Charter.¹²⁵

By resolution 1234 (1999) of 9 April 1999, the Council expressed its support for the regional mediation process by OAU and SADC to find a peaceful settlement to the conflict in the Democratic Republic of the Congo and called upon the international community to support those efforts. The Council also requested the Secretary-General to work closely with the Secretary-General of OAU in promoting a peaceful solution of the conflict.¹²⁶

By a presidential statement of 24 June 1999,¹²⁷ the Council reaffirmed its support for the regional mediation process facilitated by the President of Zambia on behalf of SADC, in cooperation with OAU and with support from the United Nations, to find a peaceful settlement to the conflict in the Democratic Republic of the Congo and took note of the constructive efforts being made to promote a peaceful

settlement of the conflict in the context of the above-mentioned regional mediation process.

By resolution 1258 (1999) of 6 August 1999, which welcomed the signing of the Ceasefire Agreement in Lusaka on 10 July 1999,¹²⁸ the Council commended OAU and SADC for their efforts to find a peaceful settlement to the conflict in the Democratic Republic of the Congo.¹²⁹

By resolution 1279 (1999) of 30 November 1999, the Council stressed the need for a continuing process of genuine national reconciliation and encouraged all Congolese to participate in the national dialogue to be organized in coordination with OAU. The Council further called upon all Congolese parties and OAU to finalize agreement on the facilitator for the national dialogue.¹³⁰

The situation in Angola

In Angola, OAU and SADC supported the efforts of the United Nations in furthering the Angolan peace process.

By a series of resolutions, the Security Council welcomed the efforts of OAU, among other actors, to promote peace and security in Angola.¹³¹

By resolution 1075 (1996) of 11 October 1996, the Council welcomed the efforts of OAU and SADC, among other actors, and encouraged them to continue their efforts to promote peace and security in Angola. While welcoming the Summit of the SADC Organ on Politics, Defence and Security which had taken place in Luanda on 2 October 1996,¹³² the Council regretted the failure of the leader of the União Nacional para a Independência Total de Angola (UNITA) to attend the Summit and seize the opportunity for a more rapid advancement of the process. It expressed support for the continuing efforts of the heads of States and Government of SADC to accelerate the peace process in Angola.¹³³ In a subsequent decision, the Council

¹²³ S/PRST/1997/31.

¹²⁴ S/PRST/1998/36.

¹²⁵ S/PV.3987, pp. 2-3.

¹²⁶ Resolution 1234 (1999), paras. 11 and 16.

¹²⁷ S/PRST/1999/17.

¹²⁸ S/1999/815, annex.

¹²⁹ Resolution 1258 (1999), paras. 1 and 3.

¹³⁰ Resolution 1279 (1999), para. 2.

¹³¹ Resolutions 1045 (1996), eleventh preambular para.; 1055 (1996), fifteenth preambular para.; and 1064 (1996), fourteenth preambular para.

¹³² For the communiqué issued at the Summit, see S/1996/841, annex.

¹³³ Resolution 1075 (1996), ninth preambular para. and

continued to encourage the continuation of the efforts of OAU and SADC in promotion of peace and security in Angola.¹³⁴

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

In connection with the extradition of the three suspects wanted in the assassination attempt on the life of the President of Egypt in Addis Ababa on 26 June 1995, by a letter dated 9 January 1996 from the representative of Ethiopia, the Council was informed that the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the Organization of African Unity issued two statements, on 11 September 1995 and 19 December 1995, respectively, on the matter. By the former statement, the Central Organ, inter alia, called upon the Government of the Sudan to hand over to Ethiopia the three terrorists who were sheltering in the Sudan, on the basis of the 1964 Extradition Treaty between Ethiopia and the Sudan.¹³⁵ The latter statement included provisions that requested the Government of the Sudan to implement the earlier statement in all its aspects and cooperate with OAU, the Secretary-General and the Central Organ, and urged the Government of the Sudan to take the necessary measures to extradite the three suspects.¹³⁶

By resolution 1044 (1996) of 31 January 1996, the Security Council supported the implementation of the requests contained in the above-mentioned statements of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the Organization of African Unity and regretted the fact that the Government of the Sudan had not yet complied with the requests. The Council urged the Government of the Sudan to comply with the requests of the Organization of African Unity without further delay and welcomed the efforts of the Secretary-General of OAU aimed at the implementation of the

para. 9.

¹³⁴ Resolution 1087 (1996), seventh preambular para.

¹³⁵ S/1996/10, annex I, para. 6.

¹³⁶ Ibid., annex II, paras. 2-3.

relevant provisions of the statements of the Central Organ of the Mechanism of 11 September 1995 and of 19 December 1995, and supported OAU in its continued efforts to implement its decisions.¹³⁷

By subsequent resolutions, the Council took note of the continued efforts of the Secretary-General of OAU to ensure the compliance of the Sudan with the requests of the Central Organ of the Mechanism.¹³⁸

The situation in Guinea-Bissau

Following the Abuja Agreement of 1 November 1998 brokered by the Economic Community of West African States, the Council supported the deployment of the Monitoring Group of ECOWAS in Guinea-Bissau, as specified in the Abuja Agreement.

By a presidential statement dated 6 November 1998,¹³⁹ the Council welcomed the agreement reached on 1 November 1998, in Abuja, between the Government of Guinea-Bissau and the Self-Proclaimed Military Junta during the Twenty-first Summit of the Authority of the Heads of State and Government of ECOWAS,¹⁴⁰ commended the mediation efforts of ECOWAS and of the Community of Portuguese-speaking Countries, and their respective Chairmen; and took note of the agreement regarding the withdrawal from Guinea-Bissau of all foreign troops and of the simultaneous deployment of the interposition force from the Monitoring Group of ECOWAS, which would take over from the withdrawn forces.

By resolution 1216 (1998) of 21 December 1998, the Council commended the States Members of the Community of Portuguese-speaking Countries and ECOWAS on the key role they were playing to restore peace and security throughout Guinea-Bissau and on their intention to participate with others in the observation of the forthcoming general and presidential elections. The Council welcomed the role of ECOMOG in the implementation of the Abuja Agreement, aimed at guaranteeing security along the Guinea-Bissau/Senegal border, keeping apart the parties in conflict and guaranteeing free access to humanitarian organizations and agencies to reach the affected

¹³⁷ Resolution 1044 (1996), para. 4.

¹³⁸ Resolutions 1054 (1996), sixth preambular para. and 1070 (1996), seventh preambular para.

¹³⁹ S/PRST/1998/31.

¹⁴⁰ S/1998/1028, annex.

civilian populations. The Council approved the implementation by the interposition force of ECOMOG of its mandate in a neutral and impartial way and in conformity with United Nations peacekeeping standards in order to achieve its objective to facilitate the return to peace and security. The Council further affirmed that the interposition force might be required to take action to ensure the security and freedom of movement of its personnel in the discharge of its mandate. By the same resolution, the Council requested ECOMOG to provide periodic reports at least every month through the Secretary-General, the first report to be made one month after the deployment of its troops.¹⁴¹ By a letter dated 16 April 1999, the Secretary-General transmitted the report prepared by the Executive Secretary of ECOWAS, including information regarding the deployment of ECOMOG.¹⁴²

By resolution 1233 (1999) of 6 April 1999, the Council welcomed the report of the Secretary-General of 17 March 1999, which included a report on the implementation of the mandate by ECOMOG,¹⁴³ and welcomed the deployment of troops constituting the Interposition Force of ECOMOG by States in the region to implement their peacekeeping mandate. The Council again commended, among others, the Community of Portuguese-speaking Countries and States members of ECOWAS for the key role they were playing to bring about national reconciliation and consolidating peace and security throughout Guinea-Bissau.¹⁴⁴ By the same resolution, the Council supported the decision of the Secretary-General to establish the United Nations Peacebuilding Support Office in Guinea-Bissau (UNOGBIS)¹⁴⁵ for which the mandate included the facilitation of the implementation of the Abuja Agreement, “in close cooperation with” ECOWAS and the Monitoring Group, among other actors.¹⁴⁶

¹⁴¹ Resolution 1216 (1998), paras. 3-4, 6-7.

¹⁴² S/1999/432, annex.

¹⁴³ S/1999/294.

¹⁴⁴ Resolution 1233 (1999), eighth preambular para. and para. 3.

¹⁴⁵ Resolution 1233 (1999), para. 7. For more details on UNOGBIS, see chapter V.

¹⁴⁶ Following the events of 7 May 1999 in Guinea-Bissau, which resulted in the removal from office of President João Bernardo Vieira, and in view of difficulties encountered in financing the operations, ECOWAS withdrew its Monitoring Group. Given the changed

The situation in Somalia

In a statement by the President dated 24 January 1996,¹⁴⁷ the Security Council welcomed the efforts of OAU, the Organization of the Islamic Conference (OIC), the League of Arab States, the European Union and the neighbouring States in promoting national dialogue in the search for a solution to the Somali crisis. Welcoming and supporting the intention of the Secretary-General to maintain the United Nations Political Office for Somalia, the Council stressed the importance of maintaining close cooperation with regional organizations.

By a presidential statement dated 20 December 1996,¹⁴⁸ the Council fully supported the efforts of the countries of the region as well as of international and regional organizations, in particular OAU and LAS, to facilitate a political settlement of the crisis in Somalia.

In his report dated 17 February 1997,¹⁴⁹ the Secretary-General, at the request of the Security Council, reported on his consultations with countries in the region in the hope of assisting those regional efforts. In that context, he attached a joint letter dated 31 January 1997 from the representative of Ethiopia, which had been given a mandate for Somalia on behalf of OAU and the Intergovernmental Authority on Development (IGAD), and from the representative of Kenya, as Chairman of IGAD. In that letter, they shared the view that coordination and cooperation between the IGAD countries and OAU, on the one hand, and the United Nations, on the other, from 1993 to 1995, on the question of Somalia had been inadequate. They had detected some changes for the better and hoped that such a recent trend would be strengthened in the future. They further stated that the most critical support that the United Nations could provide for the regional efforts was through exerting the necessary pressure on Somali factions to show greater commitment to national reconciliation, and asserted that the declaration of national pledges and commitments of 3 January 1997 achieved at Sodere,

circumstances, the mandate of UNOGBIS was also revised. For more details, see the letter dated 28 June 1999 from the Secretary-General to the President of the Council (S/1999/737) and the report of the Secretary-General dated 1 July 1999 (S/1999/741, paras. 8 and 21).

¹⁴⁷ S/PRST/1996/4.

¹⁴⁸ S/PRST/1996/47.

¹⁴⁹ S/1997/135.

Ethiopia, under the auspices of the IGAD countries was sufficiently inclusive to merit the full support of the United Nations.¹⁵⁰

By subsequent presidential statements dated 27 February and 23 December 1997,¹⁵¹ the Council similarly expressed its support for the efforts of various international and regional organizations in facilitating a political settlement of the crisis in Somalia.

By a presidential statement dated 12 November 1999,¹⁵² the Council expressed its full support for the efforts of IGAD to find a political solution to the crisis in Somalia; welcomed the initiative of the President of Djibouti aimed at restoring peace and stability in Somalia, outlined in his letter of 23 September 1999 to the President of the Council;¹⁵³ and looked forward to the finalization of the proposals of the President of Djibouti at the forthcoming IGAD Summit and stood ready to work with IGAD to help bring about national unity and the restoration of a national government in Somalia.

The situation between Eritrea and Ethiopia

In connection with the situation between Eritrea and Ethiopia, the Security Council supported the efforts of OAU to achieve a peaceful settlement of the conflict.

By resolution 1177 (1998) of 26 June 1998, the Council commended the efforts of OAU and of others, in cooperation with that organization, to achieve a peaceful settlement of the conflict, and expressed its strong support for the decision of the Assembly of the Heads of State and Government of OAU of 10 June 1998 to send to Eritrea and Ethiopia a delegation of its Central Organ.¹⁵⁴ The Council urged OAU to follow up on its initiative as quickly as possible.¹⁵⁵

By resolution 1226 (1999) of 29 January 1999, the Council, commending the efforts of concerned countries and regional bodies aimed at facilitating a peaceful solution to the border dispute between Ethiopia and Eritrea, expressed its strong support for

the mediation efforts of OAU and for the Framework Agreement as approved on 17 December 1998 by the Summit of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of the Organization of African Unity,¹⁵⁶ and affirmed that the Framework Agreement provided the best opportunity for peace between the two parties.¹⁵⁷

By resolution 1227 (1999) of 10 February 1999, the Council again expressed its full support for the efforts of OAU and stressed that the Framework Agreement remained a viable and sound basis for a peaceful resolution of the conflict.¹⁵⁸ In a presidential statement dated 27 February 1999, the Council reiterated that position.¹⁵⁹

Americas

The question concerning Haiti

In Haiti, the Security Council continued to encourage and support the efforts of the Organization of American States (OAS), particularly within the framework of the International Civilian Mission in Haiti (MICIVIH), a joint mission carried out by the United Nations and OAS, in accordance with the General Assembly resolution 47/20 B.

By resolution 1048 (1996) of 29 February 1996, the Security Council welcomed and supported the efforts of OAS to promote, in cooperation with the United Nations, consolidation of peace and democracy in Haiti. The Council also commended the contribution of, among others, MICIVIH.¹⁶⁰

By resolution 1063 (1996) of 28 June 1996, taking note of the resolution adopted at the seventh plenary session of the twenty-sixth regular session of OAS, which encouraged the international community to sustain the same level of commitment it had demonstrated during the years of crisis, and at the request of the Government of Haiti, the Council decided to establish the United Nations Support

¹⁵⁰ Ibid, annex II.

¹⁵¹ S/PRST/1997/8 and S/PRST/1997/57, respectively.

¹⁵² S/PRST/1999/31.

¹⁵³ S/1999/1007.

¹⁵⁴ S/1998/494.

¹⁵⁵ Resolution 1177 (1998), eighth preambular para. and para. 4.

¹⁵⁶ S/1998/223, annex.

¹⁵⁷ Resolution 1226 (1999), fifth preambular para., and para. 1.

¹⁵⁸ Resolution 1227 (1999), paras. 4 and 5.

¹⁵⁹ S/PRST/1999/9.

¹⁶⁰ Resolution 1048 (1996), seventh and tenth preambular paras. See also resolutions 1086 (1996), ninth preambular para., and 1277 (1999), fourth preambular para.

Mission in Haiti (UNSMIH). By the same resolution, the Council invited the “further participation” of OAS.¹⁶¹ Prior to the vote, at the 3676th meeting, held on 28 June 1996, the representative of the Russian Federation stated that his Government had “misgivings” about the need for a new operation. However, taking into consideration the appeal made by the President of Haiti and the position of OAS and the Group of Friends of the Secretary-General for Haiti,¹⁶² his delegation had joined other members of the Council in consenting to the establishment of UNSMIH. He underlined that it was important that the draft resolution sought to continue and further step up the efforts of OAS to provide assistance in resolving problems in Haiti.¹⁶³

By a presidential statement dated 25 March 1998,¹⁶⁴ the Council reaffirmed that further assistance to the Haitian National Police, should it be needed, should be provided with the full support of the international community through international and regional organizations, among other actors.

Asia

The situation in Tajikistan and along the Tajik-Afghan border

In Tajikistan, the Council encouraged close cooperation between the United Nations Mission of Observers in Tajikistan (UNMOT), the collective peacekeeping forces of the Commonwealth of Independent States (CIS) and the mission in Tajikistan of the Organization for Security and Cooperation in Europe in support of the efforts of the international community towards resolving the inter-Tajik conflict.

In the context of the inter-Tajik talks, which had been conducted under the auspices of the United Nations since 1994, the Council, by a presidential statement dated 21 May 1996,¹⁶⁵ called upon the countries and regional organizations acting as observers at those talks to render all possible support to the efforts of the Secretary-General and his Special

Representative aimed at the earliest possible resumption of the talks. By a series of decisions during the review period, the Council continued to express its satisfaction at the regular contacts between, among others, UNMOT, the collective peacekeeping forces of CIS, the border forces of the Russian Federation and the mission of OSCE in Tajikistan.¹⁶⁶

Following the successful conclusion of the inter-Tajik talks with the signing of the General Agreement on the Establishment of Peace and National Accord in Tajikistan,¹⁶⁷ in his report of 4 September 1997,¹⁶⁸ the Secretary-General stated that UNMOT would continue to cooperate closely with OSCE, which had been requested to facilitate the implementation of the General Agreement in the areas related to the observance of human rights and the establishment of democratic political and legal institutions and processes. The report noted that it was envisaged that UNMOT and the OSCE mission in Tajikistan would complement and support each other in those activities.

In a subsequent report dated 5 November 1997,¹⁶⁹ the Secretary-General informed the Council that the military component of UNMOT had maintained close working relations with the CIS peacekeeping forces. The report further noted the decision of CIS to authorize its peacekeeping forces in Tajikistan to provide security to the personnel of UNMOT, OSCE and other international organizations.

By resolution 1138 (1997) of 14 November 1997, the Council welcomed the decision of CIS to authorize its collective peacekeeping forces to assist in providing security for United Nations personnel, at the request of UNMOT and with the agreement of the parties. By the same resolution, the Council authorized the Secretary-General to expand UNMOT and mandated the Mission to, among other tasks, maintain close contact with the parties, as well as cooperative liaison with the CIS peacekeeping forces, the border forces of the Russian Federation and the OSCE mission in Tajikistan. In addition, the Council welcomed the

¹⁶¹ Resolution 1063 (1996), ninth preambular para., and para. 2.

¹⁶² Argentina, Canada, Chile, France, the United States of America and Venezuela.

¹⁶³ S/PV.3676, pp. 5-6.

¹⁶⁴ S/PRST/1998/8.

¹⁶⁵ S/PRST/1996/25.

¹⁶⁶ Resolutions 1061 (1996), eighth preambular para.; 1089 (1996), seventh preambular para.; 1167 (1998), ninth preambular para.; 1206 (1998), sixth preambular para.; 1240 (1999), sixth preambular para.; and 1274 (1999), seventh preambular para.

¹⁶⁷ S/1997/510, annex I.

¹⁶⁸ S/1997/686, para. 22.

¹⁶⁹ S/1997/859, para. 5.

continued contribution made by the collective peacekeeping forces in assisting the parties in the implementation of the General Agreement, in coordination with all concerned.¹⁷⁰ The same provision continued to be included in subsequent decisions.¹⁷¹

By a presidential statement dated 24 February 1998¹⁷², the Council welcomed the readiness of the CIS peacekeeping forces to arrange for the guarding of United Nations premises in Dushanbe, as mentioned in the Secretary-General's report of 10 February 1998, and encouraged UNMOT and CIS collective peacekeeping forces to make the relevant arrangements.

By resolution 1167 (1998) of 14 May 1998, the Council encouraged the Mission and CIS collective peacekeeping forces to continue discussion of options for improving security cooperation, as set out in the Secretary-General's report of 6 May 1998.¹⁷³

Following the report by the Secretary-General on the launching of preparations for elections by the United Nations and OSCE,¹⁷⁴ by resolution 1240 (1999) of 15 May 1999, the Council encouraged OSCE to continue its close cooperation with the United Nations on matters relating to constitutional reform, democratization and elections, as requested under the General Agreement.¹⁷⁵

The situation in Afghanistan

By a presidential statement dated 15 February 1996,¹⁷⁶ the Council reaffirmed its readiness to assist the Afghan people in their efforts to return peace and normalcy to their country, and encouraged all States, as well as the Organization of the Islamic Conference, the Movement of Non-Aligned Countries and others, to support the efforts of the United Nations Special Mission to Afghanistan (UNSMA) to the same end.

¹⁷⁰ Resolution 1138 (1997), seventh preambular para. and paras. 4, 6 and 10.

¹⁷¹ Resolutions 1206 (1998), para. 5 and 1274 (1999), para. 7; and S/PRST/1999/8 and S/PRST/1999/25.

¹⁷² S/PRST/1998/4.

¹⁷³ Resolution 1167 (1998), para. 7.

¹⁷⁴ S/1999/514, para. 8.

¹⁷⁵ Resolution 1240 (1999), para. 4.

¹⁷⁶ S/PRST/1996/6.

Europe

*Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council*¹⁷⁷

*Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council*¹⁷⁸

By resolution 1160 (1998) of 31 March 1998, the Security Council expressed its support for the efforts of the Organization for Security and Cooperation in Europe for a peaceful resolution of the crisis in Kosovo, including through the Personal Representative of the Chairman-in-Office for the Federal Republic of Yugoslavia, who was also the Special Representative of the European Union. The Council also welcomed the return of the OSCE long-term missions.¹⁷⁹

The situation in Bosnia and Herzegovina

In Bosnia and Herzegovina, the United Nations cooperated with regional organizations in the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto (collectively the "Peace Agreement").¹⁸⁰

By a presidential statement dated 8 August 1996,¹⁸¹ the Security Council welcomed the efforts of the European Union Administration of Mostar to facilitate the agreement reached by the Bosniac and Bosnian Croat leaderships in Mostar.

By resolution 1074 (1996) of 1 October 1996, the Council expressed its appreciation to the Commander of the multinational Implementation Force (IFOR) and to OSCE, among others, for their contributions to the implementation of the Peace Agreement.¹⁸²

¹⁷⁷ S/1998/223.

¹⁷⁸ S/1998/272.

¹⁷⁹ Resolution 1160 (1998), para. 7.

¹⁸⁰ S/1995/999.

¹⁸¹ S/PRST/1996/34.

¹⁸² Resolution 1074 (1996), third preambular para.

The situation in Georgia

In Georgia, the Security Council continued to encourage the efforts of the collective peacekeeping force of the Commonwealth of Independent States, operating side by side with the United Nations Mission in Georgia (UNOMIG). The Council also encouraged the efforts of the Organization for Security and Cooperation in Europe, aimed at achieving a comprehensive political settlement of the conflict.

By resolution 1036 (1996) of 12 January 1996, the Council, noting that the Agreement on a Ceasefire and Separation of Forces signed in Moscow on 14 May 1994¹⁸³ had generally been respected by the parties with the assistance of the collective peacekeeping force of CIS and UNOMIG, reaffirmed its support for the efforts of, among others, OSCE, aimed at achieving a comprehensive political settlement of the conflict.¹⁸⁴

In his report of 1 July 1996, the Secretary-General recommended the creation of an office for the protection and promotion of human rights in Abkhazia, to be carried out by the United Nations High Commissioner for Human Rights, in cooperation with OSCE.¹⁸⁵ By resolution 1077 (1996) of 22 October 1996,¹⁸⁶ the Council welcomed the report of the Secretary-General of 1 July 1996, and in particular its paragraph 18, and decided that the Office referred to in that report should form part of UNOMIG, under the authority of the Head of UNOMIG, consistent with the arrangements described in paragraph 7 of the report of the Secretary-General of 9 August 1996.¹⁸⁷

By a series of decisions, the Council commended the important contribution made by UNOMIG and the collective peacekeeping force of CIS to the stabilization of the situation.¹⁸⁸ Noting that the

cooperation between the Mission and CIS had been good and had developed considerably, the Council also stressed the importance of continued close cooperation and coordination between the two in the performance of their respective mandates.¹⁸⁹

At the 4029th meeting, on 30 July 1999, the representative of Georgia recalled that his country had always supported the idea of introducing a self-protection unit in the conflict zone to protect UNOMIG. He regretted that the cooperation between the United Nations and OSCE on resolving the conflict was still lagging in view of the decision adopted at the December 1998 Oslo ministerial OSCE meeting towards the promotion of cooperation.¹⁹⁰ The representative of the Russian Federation noted, however, that the continuing close interaction between the United Nations and the CIS peacekeeping force was taking place strictly on the basis of Chapter VIII of the Charter, adding that the activities of the CIS peacekeeping force were backed by the relevant resolutions of the Council. Steps had also been taken to enhance the effectiveness of the CIS peacekeeping force in order to ensure the security of the international personnel of the United Nations.¹⁹¹

C. Calls by the Security Council for involvement of regional arrangements in the implementation of Chapter VII measures

During the period under review, regional arrangements were called upon to assist in the implementation of measures imposed by the Security Council under Chapter VII of the Charter, as in the cases of Angola, the Sudan and the Federal Republic of Yugoslavia described below. In this context, the Council often called upon “all international and regional organizations” to act in accordance with the

¹⁸³ S/1994/583.

¹⁸⁴ Resolution 1036 (1996), twelfth preambular para. and para. 3.

¹⁸⁵ S/1996/507, para. 17.

¹⁸⁶ Resolution 1077 (1996), para. 1.

¹⁸⁷ S/1996/644.

¹⁸⁸ Resolutions 1036 (1996), thirteenth preambular para.; 1065 (1996), sixth preambular para.; 1096 (1997), eighth preambular para.; 1124 (1997), seventh preambular para.; 1150 (1998), seventh preambular para.; 1187 (1998), seventh preambular para.; 1225 (1999), sixth preambular para.; 1255 (1999), fifth preambular para.; and S/PRST/1997/25, S/PRST/1997/50, S/PRST/1999/11 and S/PRST/1999/30.

¹⁸⁹ Resolutions 1065 (1996), sixth preambular para.; 1096 (1997), eighth preambular para.; 1124 (1997), seventh preambular para.; 1150 (1998), seventh preambular para.; 1187 (1998), seventh preambular para.; 1225 (1999), sixth preambular para.; and 1255 (1999), fifth preambular para.

¹⁹⁰ S/PV.4029, pp. 4-5.

¹⁹¹ *Ibid.*, pp. 6-7.

relevant provisions of resolutions imposing such mandatory measures.¹⁹²

The situation in Angola

By resolution 1127 (1997) of 28 August 1997, the Council, in imposing the travel ban on senior officials of the União Nacional para a Independência Total de Angola, urged all States and “international and regional organizations” to stop travel by their officials and official delegations to the central headquarters of UNITA, except for the purposes of travel to promote the peace process and humanitarian assistance.¹⁹³

Following the downing over territory controlled by UNITA of two aircraft chartered by the United Nations, by resolution 1221 (1999) of 12 January 1999, the Council, acting under Chapter VII, expressed its readiness to pursue reports of violations of the measures imposed against UNITA by resolutions 864 (1993), 1127 (1997) and 1173 (1998), to take steps to reinforce the implementation of those measures and to consider the imposition of additional measures on the basis of a report to be prepared by the Committee established pursuant to resolution 864 (1993). In that context, the Council encouraged the Chairman of the Committee to consult with the Organization of African Unity and the Southern African Development Community on ways to strengthen the implementation of the mandatory measures.¹⁹⁴

Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the

¹⁹² In connection with the situation in Sierra Leone, see resolution 1132 (1997), para. 11; in connection with the situation in Angola, see resolutions 1127 (1997), para. 10 and 1173 (1998), para. 17; and in connection with the item entitled “Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council; letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council”, see resolution 1160 (1998), para. 10.

¹⁹³ Resolution 1127 (1997) B, para. 6.

¹⁹⁴ Resolution 1221 (1999), paras. 8-9.

*President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995*¹⁹⁵

By resolution 1054 (1996) of 26 April 1996, the Council, in imposing mandatory measures against the Sudan and its armed forces, called upon “all international and regional organizations” not to convene any conference in the Sudan.¹⁹⁶

*Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council*¹⁹⁷

*Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council*¹⁹⁸

By resolution 1203 (1998) of 24 October 1998, acting under Chapter VII of the Charter, the Council endorsed and supported the agreements signed in Belgrade on 16 October 1998 between the Federal Republic of Yugoslavia and the Organization for Security and Cooperation in Europe¹⁹⁹ and between the Federal Republic of Yugoslavia and the North Atlantic Treaty Organization on 15 October 1998,²⁰⁰ concerning the verification of compliance by the Federal Republic of Yugoslavia and all others concerned in Kosovo with the requirements of resolution 1199 (1998).²⁰¹ To that end, the Council welcomed the establishment by OSCE of a verification mission in Kosovo and the establishment by NATO of an air verification mission over Kosovo, complementing the OSCE Verification Mission in Kosovo.²⁰²

At the 3937th meeting, on 24 October 1998, several speakers welcomed the readiness of NATO and OSCE to provide the necessary verification regimes to ensure the compliance of the Federal Republic of

¹⁹⁵ S/1996/10.

¹⁹⁶ Resolution 1054 (1996), paras. 3-4.

¹⁹⁷ S/1998/223.

¹⁹⁸ S/1998/272.

¹⁹⁹ S/1998/978.

²⁰⁰ S/1998/991.

²⁰¹ Resolution 1203 (1998), para. 1.

²⁰² Resolution 1203 (1998), third and fourth preambular paras.

Yugoslavia with resolutions 1160 (1998) and 1199 (1998).²⁰³

D. Authorization by the Security Council of the use of force by regional arrangements

During the period under review, the Security Council gave its authorization to regional arrangements to take necessary actions in the implementation of mandatory measures against Sierra Leone and regarding peacekeeping activities in Bosnia and Herzegovina and Kosovo.

The situation in Sierra Leone

In connection with the situation in Sierra Leone, the Security Council cooperated with the Economic Community of West African States in the implementation of the mandatory measures against Sierra Leone, by authorizing them explicitly under Chapter VIII of the Charter.

By resolution 1132 (1997), adopted at the 3822nd meeting, on 8 October 1997, the Council, “acting under Chapter VIII of the Charter”, authorized ECOWAS to ensure strict implementation of the provisions of the resolution concerning the petroleum and arms embargoes, including, where necessary and in conformity with applicable international standards, by halting inward maritime shipping in order to inspect and verify their cargoes and destinations, and called upon all States to cooperate with ECOWAS in that regard. The Council also requested ECOWAS to report every 30 days to the Committee established by the resolution on activities undertaken in that regard.²⁰⁴

At the meeting, before the adoption of resolution 1132 (1997), in welcoming the above-mentioned provisions, a few speakers explicitly referred to Chapter VIII of the Charter. The representative of the Republic of Korea welcomed the commitment of the ECOWAS countries to assume responsibilities for “enforcement action under Chapter VIII of the Charter” and expected ECOWAS to discharge its responsibility

²⁰³ S/PV.3937, pp. 2-3 (Poland); pp. 4-5 (Ukraine); p. 6 (Portugal); p. 6 (Costa Rica); p. 7 (Sweden); p. 7 (Slovenia); p. 8 (Kenya); p. 9 (Japan); and p. 10 (Gabon).

²⁰⁴ Resolution 1132 (1997), paras. 8-9.

in a way that would contribute to the peaceful resolution of the crisis in Sierra Leone.²⁰⁵ The representative of Portugal noted that ECOWAS was authorized to ensure the strict implementation of the mandatory measures “under Chapter VIII of the Charter”, which foresaw the utilization of regional arrangements for the enforcement of Council decisions.²⁰⁶ The representative of the United States stated that with resolution 1132 (1997), “in accordance with Chapter VIII of the Charter”, the Council joined the efforts of ECOWAS in resolving the crisis, as ECOWAS had done successfully for neighbouring Liberia.²⁰⁷

The representative of France expressed the view that the authorization of ECOWAS was “exceptional in nature”, legitimized by the past experience of cooperation between the United Nations and ECOWAS. He further stressed that the members of ECOWAS should properly discharge the mission entrusted to them.²⁰⁸ The representative of the Russian Federation reiterated that enforcement action should not be undertaken by regional organizations without the authorization of the Security Council. He expected ECOWAS to regularly inform the Council of the impact of the sanctions on the humanitarian situation.²⁰⁹

The situation in Bosnia and Herzegovina

In Bosnia and Herzegovina, during the period under review, the Security Council authorized the legal transition from a multinational Implementation Force (IFOR) to a multinational Stabilization Force (SFOR), repeatedly extended its mandate, and expressed appreciation for its efforts towards the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto (collectively the “Peace Agreement”).²¹⁰

By resolution 1088 (1996) of 12 December 1996, the Council, acting under Chapter VII of the Charter, authorized the Member States acting through or in cooperation with the organization referred to in annex 1-A

²⁰⁵ S/PV.3822, p. 9.

²⁰⁶ *Ibid.*, p. 13.

²⁰⁷ *Ibid.*, p. 16.

²⁰⁸ *Ibid.*, p. 6.

²⁰⁹ *Ibid.*, pp. 9-10.

²¹⁰ S/1995/999.

of the Peace Agreement to establish, for a planned period of 18 months, SFOR as the legal successor to IFOR, under unified command and control, in order to fulfil the role specified in annexes 1-A and 2 of the Peace Agreement.²¹¹ The Council also authorized Member States acting under the above provision to “take all necessary measures” to effect the implementation of and to ensure compliance with annex 1-A of the Peace Agreement, stressing that the parties should continue to be held equally responsible for compliance with that annex and should be equally subject to such enforcement action by SFOR as might be necessary to ensure implementation of that annex and the protection of the Force. The Council authorized Member States to “take all necessary measures”, at the request of SFOR, either in defence of the Force or to assist the Force in carrying out its mission, and recognized the right of the Force to take all necessary measures to defend itself from attack or threat of attack.²¹²

By resolutions 1174 (1998) of 15 June 1998 and 1247 (1999) of 18 June 1999, the Council, acting under Chapter VII, extended the mandate of SFOR for a further planned period of 12 months and emphasized its appreciation to SFOR, among others, for its contributions to the implementation of the Peace Agreement.²¹³

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

By resolution 1244 (1999) of 10 June 1999, the Council, acting under Chapter VII of the Charter, authorized Member States and relevant international organizations to establish an international security presence in Kosovo, with substantial North Atlantic Treaty Organization participation, with all necessary means to fulfil its responsibilities.²¹⁴

E. Deliberations on the appropriateness of Security Council action

The enumeration of the peaceful means by which the parties to a dispute, in accordance with Article 33 (1) of the Charter, shall first seek to settle their dispute, includes “resort to regional agencies or arrangements”. This is further emphasized in Article 52, which states that Member States “shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council” and that the Council “shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies”.

During the period under review, Member States challenged the competence of the Council to consider a dispute on the basis of these provisions in one instance, as demonstrated in the first case study in this section (case 21), in connection with the agenda item entitled “Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995”.²¹⁵

Furthermore, while Article 53 stipulates that the Council utilize, where appropriate, regional arrangements, it also states that “no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Council”. During the period under review, Member States discussed the necessity of Council action, arguing that Article 53 had been violated, as demonstrated in the two case studies concerning Kosovo (cases 22 and 23).

²¹¹ In accordance with the general obligations listed under annex 1-A of the Peace Agreement, it was understood and agreed that NATO might establish a multinational military implementation force, which would operate under the authority and be subject to the direction and political control of the North Atlantic Council through the NATO chain of command. See S/1995/999, annex 1-A, article I, para. 1 (b).

²¹² Resolution 1088 (1996), paras. 18-20.

²¹³ Resolutions 1174 (1998), fourth preambular para. and paras. 8 and 10; and 1247 (1999), fourth preambular para. and paras. 8 and 10.

²¹⁴ Resolution 1244 (1999), para. 7.

²¹⁵ S/1996/10.

Case 21

*Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995*²¹⁶

At the 3627th meeting, on 31 January 1996, the representative of Ethiopia urged the Council to adopt a resolution calling upon the Sudan to comply with the request made by the Organization of African Unity for the extradition of the three suspects wanted in the assassination attempt on the life of the President of Egypt in Addis Ababa, on 26 June 1995. He added that such action by the Council in support of the decisions of OAU would further strengthen cooperation and complementarity between the United Nations and regional organizations in the maintenance of peace and security.²¹⁷

The representative of the Sudan, however, maintained that, although his Government was disappointed at the outcome of the meeting of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of OAU, which adopted its resolution of 11 September 1995²¹⁸ without formally inviting his country, the Sudan had accepted it and continued its cooperation by responding to the OAU mission to the Sudan. He further noted that at its subsequent meeting on 19 December 1995, the Central Organ had issued a statement which urged the Government of the Sudan to “take the necessary measures to look for, locate and extradite” the three suspects and decided to remain seized with the issue.²¹⁹ Nonetheless, he argued, the Government of Ethiopia had brought the matter to the Security Council on the same day of the statement. He questioned the refusal by “some members of the Council” to await the outcome of OAU efforts on the question and the reason for exerting pressure on the Council to consider the question while OAU was considering the matter.²²⁰

The representative of Egypt stated that when Ethiopia resorted to the Council, it had done so by

using its right under Article 35 of the Charter. In his view, Article 54 made it clear that the Council should be kept fully informed of activities undertaken by regional organizations for the maintenance of international peace and security.²²¹

The representative of the Russian Federation maintained that, given the adoption of a series of decisions on the question of extradition, the greatest possible involvement by the regional machinery — OAU in the present case — was the best way to go. His delegation welcomed the constructive cooperation between the United Nations and regional organizations, and also the Council’s involvement, where necessary, in support of those organizations. However, he remarked that there was no justification for the Council to take the place of regional organizations on the issue of the Sudan and held that the ongoing form of cooperation between the Council and OAU was capable of yielding positive results in settling the question.²²²

By resolution 1044 (1996), adopted at that meeting, the Council, inter alia, called upon the Government of the Sudan to comply with the requests of OAU without further delay.²²³

At the 3660th meeting, on 26 April 1996, the representative of the Sudan emphasized that the provisions of Chapter VIII of the Charter established the legal framework for cooperation between the United Nations and regional organizations, including OAU. Nevertheless, the States parties to the dispute had resorted directly to the United Nations for adoption of measures to condemn and punish the Sudan. He was of the view that the OAU Mechanism for Conflict Prevention, Management and Resolution should have been given the opportunity to prove its ability in conflict prevention and resolution and should have been enabled to intervene appropriately in the initial stages, given the familiarity of OAU with regional conditions. He affirmed that it had spared no effort towards a solution to the dispute, and was continuing its activities in that regard. Pointing out the imminent adoption of coercive measures by the Council, the representative of the Sudan questioned the value of resolution 1044 (1996), which was primarily aimed at giving OAU the opportunity it needed to do its work. The representative wondered whether the conflict-settlement Mechanism of OAU had reached a dead

²¹⁶ Ibid.

²¹⁷ S/PV.3627, p. 3.

²¹⁸ S/1996/10, annex I.

²¹⁹ Ibid., annex II.

²²⁰ S/PV.3627, p. 5.

²²¹ Ibid., p. 16.

²²² Ibid., p. 17.

²²³ Resolution 1044 (1996), para. 4.

end, making it impossible to resolve the question, and therefore, making it incumbent upon the Council to discharge its responsibility under the Charter.²²⁴

Case 22

*Letter dated 11 March 1998 from the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council*²²⁵

*Letter dated 27 March 1998 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council*²²⁶

At the 3937th meeting, on 24 October 1998, at which the Council adopted resolution 1203 (1998), the representative of Brazil cautioned against the decision by the North Atlantic Treaty Organization of 13 October 1998 on the possible use of force against the Federal Republic of Yugoslavia. He asserted that, setting aside the question of how regional groups defined themselves, according to the Charter, non-universal organizations could resort to force only on the basis of either the right to legitimate self-defence, as stipulated in Article 51, or through the procedures of Chapter VIII, in particular Article 53, which imposed on regional organizations the obligation to seek the authorization of the Council and to abide by Council decisions. Stressing that there was no third way, he further observed that it would be regrettable if a two-tiered international system developed, in which the Council bore responsibility for the peace and security of most of the world, while bearing only secondary responsibility in regions that were covered by special defence agreements.²²⁷

The representative of the Russian Federation pointed out that the resolution did not contain any provision which would sanction directly or indirectly the automatic use of force or would be to the detriment of the prerogatives of the Council under the Charter. He expected the immediate cancellation by NATO of its decision on the possible use of force, the so-called "activation order", which remained in force.²²⁸ The representative of China stated that as the agreements on the question of Kosovo were being

concluded between the Federal Republic of Yugoslavia and the parties concerned, a regional organization had made the decision to take military actions against the Federal Republic of Yugoslavia and interfere in its internal affairs, a decision that had been made unilaterally, without consulting the Council or seeking its authorization, in blatant violation of the Charter.²²⁹

Case 23

*Letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the United Nations addressed to the President of the Security Council*²³⁰

At the 3988th meeting,²³¹ on 24 March 1999, Mr. Vladislav Jovanović remarked that the decision to attack an independent country had been taken outside the Council, the sole body responsible, under the Charter of the United Nations, for the maintenance of international peace and security. He expressed the view that such a blatant aggression was "in direct contravention of Article 53, paragraph 1 of the Charter".²³² In addition, the representative of India reaffirmed the commitment to the Charter, which clearly stipulated that no enforcement actions should be taken under regional arrangements without the authorization of the Security Council. He concurred that the attacks against the Federal Republic of Yugoslavia were in clear violation of Article 53 of the Charter and that no country, group of countries or regional arrangement could arrogate to themselves the right to take arbitrary and unilateral action against others.²³³

At the 3989th meeting, on 26 March 1999, the Council had before it a draft resolution, by which, affirming that the unilateral use of force by NATO against the Federal Republic of Yugoslavia constituted a flagrant violation of the Charter, in particular Articles 2 (4), 24 and 53, the Council, acting under Chapters VII and VIII of the Charter, would have demanded an immediate cessation of the use of force against the Federal Republic of Yugoslavia and urgent resumption of negotiations.²³⁴

²²⁴ S/PV.3660, p. 3.

²²⁵ S/1998/223.

²²⁶ S/1998/272.

²²⁷ S/PV.3937, pp. 10-11.

²²⁸ Ibid., pp. 11-12.

²²⁹ Ibid., p. 14.

²³⁰ S/1999/320.

²³¹ See also case 3 in section I.B of the present chapter, in connection with Article 2 (4).

²³² S/PV.3988, p. 14.

²³³ Ibid., p. 15.

²³⁴ S/1999/328.

The representative of the Russian Federation argued that the continuing military action, undertaken under the pretext of preventing a humanitarian catastrophe, had already caused severe humanitarian consequences in Kosovo. He maintained that the aggressive military action unleashed by NATO against a sovereign State without the authorization, and in circumvention, of the Council, was a real threat to international peace and security. Quoting Article 53 of the Charter, he reaffirmed the inadmissibility of any enforcement action under regional arrangements or

by regional agencies without the authorization of the Council.²³⁵

The draft resolution was not adopted because it did not obtain the required majority.²³⁶

²³⁵ S/PV.3989, pp. 5-6.

²³⁶ *Ibid.*, p. 6.

Part IV

Consideration of the miscellaneous provisions of the Charter (Articles 102 and 103)

Article 102

1. *Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.*

2. *No party to any such treaty or international agreement which has not been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.*

Article 103

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

Note

During the period under review, Article 102 was not explicitly invoked in any resolution. However, an express reference was made in a communication from the representative of the Russian Federation to the Secretary-General, transmitting the General Agreement on the

Establishment of Peace and National Accord in Tajikistan, signed in Moscow on 27 June 1997.¹

During the period under review, Article 103 was not explicitly invoked in any resolution or presidential statement. However, the Security Council adopted a number of resolutions imposing measures within the framework of Article 41, in which it implicitly invoked the principle enshrined in Article 103, by emphasizing the primacy of the Charter obligations over obligations contracted by Member States under any other international agreement. The resolutions by which the Council imposed mandatory measures against the Sudan, the União Nacional para a Independência Total de Angola, Sierra Leone, the Federal Republic of Yugoslavia and the Taliban included such provisions, as set out below.

In connection with the item entitled "Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995",² the Council, by resolution 1054 (1996) of 26 April 1996, imposed sanctions against the Sudan involving restrictions on diplomatic representation and travel by government officials, and called upon all States, including States not Members of the United Nations, and specialized agencies of the United Nations to act strictly in conformity with the

¹ S/1997/510, p. 3.

² S/1996/10.

resolution “notwithstanding the existence of any rights granted or obligations conferred or imposed by any international agreement or of any contract entered into or any licence or permit granted prior to the entry into force of the provisions” set out in the resolution.³ Similar language was employed in resolution 1267 (1999) of 15 October 1999, in connection with the situation in Afghanistan, by which, effective 14 November 1999, the Council imposed mandatory measures against individuals or entities belonging to or associated with the Taliban, if the Taliban failed to turn over Osama bin Laden to the appropriate authorities.⁴

With regard to the situation in Angola, by resolutions 1127 (1997) of 28 August 1997 and 1173 (1998) of 12 June 1998, the Council, in imposing sanctions against UNITA, called upon all States and all international and regional organizations to act strictly in accordance with the provisions of the respective resolutions, “notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of their adoption”.⁵ Such provisions were also contained in resolutions 1132 (1997) of 8 October 1997 and 1160 (1998) of 31 March 1998, by which the Council imposed the petroleum and arms embargo and selective travel ban against Sierra Leone and the arms embargo against the Federal Republic of Yugoslavia, including Kosovo, respectively.⁶

In addition, during the deliberations of the Council, Article 103 was explicitly referred to on several occasions. One such reference was made at the 3988th meeting, on 23 March 1999, in connection with the item entitled “Letter dated 24 March 1999 from the Permanent Representative of the Russian Federation to the President of the Security Council”,⁷ during which the representative of the Russian Federation condemned the “unilateral” use of force by the North Atlantic Treaty Organization against “the sovereign Federal Republic of Yugoslavia”, which was, in his opinion, carried out without the authorization of the Council. In that context, he reminded members of NATO of the obligations of States Members of the United

Nations under the Charter, in particular, Article 103, which established the supremacy of the Charter over any other international obligations.⁸ Two other explicit references to Article 103 were made during the 3864th meeting, on 20 March 1998, in connection with the item entitled “Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America”,⁹ which will be treated in the case below.¹⁰

Case 24, in the context of the destruction of Pan Am flight 103 over Lockerbie, Scotland, in 1988, concerns the application filed by the Libyan Arab Jamahiriya to the International Court of Justice on 3 March 1992, on the interpretation and application of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 23 September 1971.¹¹ The case covers the relevant deliberations of the Council at the meeting convened following the two judgments delivered by the Court on 27 February 1998.¹²

Case 24

*Letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America*¹³

By a letter dated 2 March 1998 addressed to the President of the Security Council, the representative of the Libyan Arab Jamahiriya informed the Council of the two judgments delivered on 27 February 1998 by the International Court of Justice.¹⁴

At the 3864th meeting, on 20 March 1998, at which no action was taken, the Council held a discussion on the question of compliance by the Libyan Arab Jamahiriya with its international obligations in the context of the destruction of Pan Am flight 103 as well as the measures imposed against that country by resolutions 731 (1992), 748 (1992) and 883 (1993). The representative of the Libyan Arab Jamahiriya recalled the demands of the United States and the United Kingdom upon the Libyan Arab Jamahiriya for the extradition of its two citizens suspected of being involved in the incident of the destruction of Pan Am flight

³ Resolution 1054 (1996), paras. 3 and 5.

⁴ Resolution 1267 (1999), paras. 2, 3, 4 and 7.

⁵ Resolutions 1127 (1997), para. 10, and 1173 (1998), para. 17.

⁶ Resolutions 1132 (1997), para. 11, and 1160 (1998), para. 10.

⁷ S/1999/320.

⁸ S/PV.3988, p. 2.

⁹ S/23306.

¹⁰ S/PV.3864, pp. 27 and 42.

¹¹ United Nations, *Treaty Series*, vol. 974, No. 14118.

¹² S/1998/179, annexes 1 and 2.

¹³ S/23306, S/23307, S/23308, S/23309 and S/23317.

¹⁴ *Ibid.*

103 over Lockerbie, Scotland, in 1988.¹⁵ He noted that the Libyan Arab Jamahiriya had dealt with the “suspicion” of its two citizens within the framework of the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, article 7 of which accorded the Libyan Arab Jamahiriya judicial competence for trying the two suspects.¹⁶ The representative of the Libyan Arab Jamahiriya further argued that by its judgments, rendered on 27 February 1998, the Court had confirmed that the dispute was a legal one and that the Court had jurisdiction over it.¹⁷ He noted that on the basis of article 14 (1) of the Montreal Convention,¹⁸ the requests of the Libyan Arab Jamahiriya were admissible, notwithstanding resolutions 748 (1992) and 883 (1993). He underscored that the sanctions provided for in resolutions 748 (1992) and 883 (1993) had become irrelevant and moot since the Court had accepted jurisdiction in the matter on which the resolutions were based. He further stated that although the Charter and the Statute of the International Court of Justice confirmed that each party to the dispute must comply with the judgments pursuant to Article 94 (2) of the Charter, the Council had the power to adopt measures to give effect to a judgment and to ensure that a judgment was binding on all Members of the United Nations. He added that under Article 92 of the Charter, the Court was the principal judicial organ of the United Nations and that each Member of the United Nations needed to comply with the judgments of the Court in any case to which it was a party, pursuant to Article 94 (1). He also stressed that the Council should call on the parties involved not to take any unilateral or

multilateral measures until the Court rendered its final judgment.¹⁹

The representative of Mali, speaking on behalf of the Group of African States, stressed that with regard to the judgments of the Court, the Group believed that there was no longer any reason for the Council to maintain sanctions against the people of the Libyan Arab Jamahiriya. The Court had rejected the claims that the Convention did not apply to the Lockerbie conflict and stated that it was up to the Court to decide the matter. He attested that the Court had also rejected the claim that the rights of the Libyan Arab Jamahiriya under the Convention were suspended following the adoption of resolutions 748 (1992) and 883 (1993), which had imposed sanctions against the Libyan Arab Jamahiriya on the basis of Articles 25 and 103 of the Charter. He reminded the Council that the Court explicitly rejected the claims that resolutions 731 (1992), 748 (1992) and 883 (1993) obliged the Libyan Arab Jamahiriya to extradite its nationals to the United States or the United Kingdom so that they could be brought to trial, notwithstanding the rights of the Libyan Arab Jamahiriya under the Convention. Recalling also that the Court had rejected the claims that the relevant legal proceedings needed to be halted immediately on the presumption that the resolutions of the Council could not be challenged in the Court, the representative of Mali argued that the sanctions provided for in resolutions 748 (1992) and 883 (1993) no longer had any *raison d’être*. Accordingly, the Group of African States believed that there needed to be a suspension of the application of the resolutions relative to sanctions against the Libyan Arab Jamahiriya, including the air embargo, reduced diplomatic representation and the freeze on assets, until the Court ruled on the substance of the matter.²⁰

The representative of the United Kingdom, however, stated that the International Court of Justice had decided that it did have jurisdiction to decide on the merits of the case of the Libyan Arab Jamahiriya in respect of the Convention, but it had not decided that the claims of the Libyan Arab Jamahiriya were justified. He noted that the United Kingdom was arguing before the Court that the matter was governed by resolutions 731 (1992), 748 (1992) and 883 (1993), which obliged the Libyan Arab Jamahiriya to surrender the two accused of the destruction of Pan Am flight 103 for trial in Scotland or the United States. He underscored that obligations under the Charter of the United Nations, including compliance with binding

¹⁵ S/PV.3864 and Corr.1, p. 4.

¹⁶ Article 7 of the Convention states the following: “The Contracting State in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State.”

¹⁷ S/PV.3864 and Corr.1, pp. 9-10.

¹⁸ Article 14 (1) of the Convention states: “Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court”.

¹⁹ S/PV.3864 and Corr.1, pp. 9-10.

²⁰ *Ibid.*, pp. 41-42.

Security Council resolutions, took precedence over any other alleged international obligations. The representative argued that the Court had decided that the above-mentioned point of the United Kingdom was a substantive one and that it could not be ruled on in a preliminary way but should be considered at a full hearing. The decision was just one stage in the judicial proceedings, with the main argument on the merits still to come. He stressed that the Government of the United Kingdom would contest the next phase of the case vigorously as the argument on the binding nature of the resolutions and their overriding authority was one that had implications beyond the facts of the case. He underscored that the resolutions were unaffected by the ruling of the Court and therefore remained in force.²¹

The representative of Brazil argued that the Governments of the United Kingdom, the United States and France, by bringing the issue to the Council, had demonstrated their faith in the multilateral system.²² He noted, however, that the ruling of the Court on the matter of the applicability of the Convention would have a bearing on how the Council assessed the conditions for the compliance of the Libyan Arab Jamahiriya with the relevant resolutions. He recalled the opinion of Judge Kooijmans of the Court, who stated:

Resolutions taken under Chapter VII may have far-reaching legal effects, but they are not irrevocable or unalterable ... [T]he Security Council is free to confirm, revoke or amend them and consequently they cannot be called “final” even if during their lifetime they may be dispositive of the rights and obligations of Member States, overriding rights and obligations these States may have under other treaties.²³

In an express reference to Article 103, the representative of Brazil also cited the position held by Judge Rezek of the Court in his individual opinion. Commenting on the necessity to resolve the “conflict between treaties”, Mr. Rezek stated:

Article 103 of the Charter is a rule for resolving conflict between treaties ... It resolves the conflict in favour of the Charter ... It is indeed the United Nations Charter (not a Security Council resolution, a General Assembly recommendation or a ruling of the International Court of Justice) which benefits from the pre-eminence established in this standard; it is the Charter, with all the weight of its principles, its system and its distribution of authority.²⁴

²¹ Ibid., pp. 31-32. See also the statement made by the representative of the United States, pp. 12-14.

²² Ibid., pp. 26-27.

²³ Ibid., p. 27. See also S/1998/191, annex, p. 23.

²⁴ Ibid., p. 27. See also S/1998/191, annex, p. 25.

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