

## **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.

This chapter consists of four parts: In part I, material pertaining to the purposes and principles of the United Nations is considered, namely Articles 1 (2), 2 (4), 2 (5), 2 (6) and 2 (7). In part II, Articles 24 and 25 are covered relating to the functions and powers of the Security Council. Part III provides for the practice of the Security Council in connection with the provisions of Chapter VIII of the Charter, Articles 52-54, concerning regional arrangements. In part IV, under consideration of miscellaneous provisions of the Charter, material relating to Article 103 is included.

## 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, there was one explicit reference to Article 1 (2) of the Charter in a resolution in connection with the situation in Western Sahara: by resolution 1359 (2001) of 29 June 2001, the Council reaffirmed the provisions contained in Article 1 (2) of the Charter.<sup>1</sup> There were also implicit references to the principle enshrined in Article 1 (2) in a number of resolutions and presidential statements.<sup>2</sup>

Article 1 (2) was explicitly invoked twice in the deliberations of the Council, without giving rise to a constitutional discussion. In the first instance, at the 4841<sup>st</sup> meeting, on 14 October 2003, concerning the situation in the Middle East, including the Palestinian question, the Article was invoked by the representative of Palestine in connection with the construction of a “separation wall” by Israel.<sup>3</sup> In the second instance, at the 4625<sup>th</sup> meeting, on 16 October 2002

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<sup>1</sup> Resolution 1359 (2001), third preambular para.

<sup>2</sup> In connection with the situation in Western Sahara, see resolutions 1292 (2000), fifth preambular para.; 1301 (2000), fifth preambular para.; 1309 (2000), fourth preambular para.; 1324 (2000), fourth preambular para.; 1342 (2001), fourth preambular para.; 1349 (2001), fourth preambular para.; 1359 (2001), sixth and eighth preambular paras.; 1429 (2002), sixth preambular para. and para. 1; and 1495 (2003), para. 1. In connection with the situation between Iraq and Kuwait, see resolution 1483 (2003), fifth preambular para. In connection with the situation concerning the Democratic Republic of the Congo, see resolution 1291 (2000), second and third preambular paras. In connection with the situation in East Timor, see resolutions 1366 (2001), fourth preambular para.; 1392 (2002), second and fifth preambular paras.; and 1410 (2002), second, third and sixth preambular paras.; S/PRST/2002/13, para. 1; and S/PRST/2001/32, paras. 3, 5 and 6.

<sup>3</sup> S/PV.4841, p. 5 (Palestine).

concerning the situation between Iraq and Kuwait, the representative of Iraq argued that the United Nations sanctions against his country were “a violation of Article 1, paragraph 2 of the Charter, which deal[t] with respect for the principle of equality among peoples – their equal rights and their right to self determination - since no sanctions should be imposed that [would] cause international disagreements that [were] incompatible with the legal rights of the State or that prejudice[d] the people’s right to self-determination”.<sup>4</sup>

The principle of self-determination was frequently invoked without giving rise to a constitutional discussion in the consideration of the agenda items entitled “the situation in East Timor”,<sup>5</sup> “the situation in Western Sahara”,<sup>6</sup> “the situation in the Middle East”,<sup>7</sup> and “Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)”.<sup>8</sup> The Council also called for, welcomed, or otherwise expressed support for the holding of elections in a number of cases, including Tajikistan,<sup>9</sup> Guinea-Bissau,<sup>10</sup> East Timor,<sup>11</sup> Central African Republic,<sup>12</sup> Haiti,<sup>13</sup> Somalia,<sup>14</sup> Kosovo, Federal Republic of Yugoslavia,<sup>15</sup> Liberia,<sup>16</sup> Côte d’Ivoire,<sup>17</sup> Bosnia and Herzegovina<sup>18</sup> and Sierra Leone.<sup>19</sup>

The cases below reflect instances where the Council dealt with questions relating to the principle enshrined in Article 1 (2), in connection with the situation in East Timor (Case 1); Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999), and 1244 (1999) (Case 2); and the situation between Iraq and Kuwait (Case 3).

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<sup>4</sup> S/PV.4625, p.7.

<sup>5</sup> See, for example, S/PV.4537, pp. 3, 8, 10, 17, 18, 22, 26, 31 and 33.

<sup>6</sup> See, for example, S/PV.4149, pp. 2, 3 and 5.

<sup>7</sup> See, for example, S/PV.4231, p. 4, 6, 14 and 25 or S/PV.4478 pp. 9, 25, 26, 29 and 35.

<sup>8</sup> See, for example, S/PV.4403, pp. 8 and 22. Where there were also other references to the principle of self-determination, they were often incidental and too numerous to be listed here.

<sup>9</sup> See, for example, S/PRST/2000/17.

<sup>10</sup> See, for example, S/PRST/2000/11 and S/PRST/2000/37.

<sup>11</sup> See, for example, resolution 1338 (2001), fifth preambular para.; S/PRST/2000/26; and S/PRST/2000/39.

<sup>12</sup> See, for example, S/PRST/2000/5.

<sup>13</sup> See, for example, S/PRST/2000/8.

<sup>14</sup> See, for example, S/PRST/2001/1.

<sup>15</sup> See, for example, S/PRST/2001/8 and S/PRST/2001/34.

<sup>16</sup> See resolutions 1408 (2002), seventh preambular para. and 1509 (2003), para. 3(f).

<sup>17</sup> See, for example, S/PRST/2003/20.

<sup>18</sup> See, for example, S/PRST/2001/11.

<sup>19</sup> See resolutions 1346 (2001), fourth preambular para.; 1370 (2001), fifth preambular para.; 1389 (2002), fifth preambular para.; 1400 (2002), eighth preambular para.; and 1436 (2002), third preambular para.

## Case 1

### The situation in East Timor

On 20 May 2002, the Security Council convened the 4537<sup>th</sup> meeting on the occasion of independence by East Timor. At that meeting, several speakers congratulated the efforts of the people of East Timor to attain independence by democratic means or by exercising their right to self-determination.<sup>20</sup> The Deputy Secretary-General noted the courageous contribution made in 1999 by Indonesia and Portugal in the signing of the 5 May agreement, allowing the people of East Timor to express their will for self-determination.<sup>21</sup> The representative of Portugal congratulated East Timor which had “exerted the right of self-determination and affirmed its independence.”<sup>22</sup> The representative of Indonesia commemorated the milestone event of the “birth of East Timor as a fully-fledged sovereign and independent nation.”<sup>23</sup> Several speakers noted the role played by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples and that the General Assembly, through its adoption of resolution 56/282, had removed East Timor from the list of non-self-governing territories.<sup>24</sup>

In a presidential statement issued at that meeting, the Council welcomed the attainment of independence by East Timor, which marked the “culmination of a process of self-determination” and transition that had begun in May 1999 and looked forward to the day when East Timor would join as a State Member of the United Nations. The Council also affirmed its commitment to the sovereignty, political independence, territorial integrity and national unity of East Timor within its internationally recognized boundaries.<sup>25</sup>

Following its consideration of the application of East Timor for admission to the United Nations<sup>26</sup> at the 4542<sup>nd</sup> meeting on 23 May 2002, the Council adopted resolution 1414 (2002) by

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<sup>20</sup> S/PV.4537, pp. 10-11 (Costa Rica, on behalf of the Rio Group); p. 13 (Philippines); pp. 14-15 (Brazil); pp. 16-17 (Venezuela); pp. 18-19 (Jamaica, on behalf of the Caribbean Community); pp. 22-23 (Syrian Arab Republic); pp. 23-24 (Russian Federation); pp. 25-26 (Guinea); pp. 30-31 (Mexico); and pp. 31-32 (Colombia).

<sup>21</sup> *Ibid.*, pp. 2-3.

<sup>22</sup> *Ibid.*, pp. 8-9.

<sup>23</sup> *Ibid.*, pp. 19-20.

<sup>24</sup> *Ibid.*, p.7 (Spain); p. 14 (Cuba); p. 17 (Venezuela); and p. 27 (Bulgaria).

<sup>25</sup> S/PRST/2002/13, paras.1 and 9.

<sup>26</sup> S/2002/558.

which it recommended to the General Assembly that East Timor be admitted to membership of the United Nations.<sup>27</sup>

## Case 2

### Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999)

As part of the political process designed to determine the future status of Kosovo, Federal Republic of Yugoslavia, in accordance with resolution 1244 (1999),<sup>28</sup> the Secretary-General, in his report of 22 April 2002, noted the need for a political roadmap for both the United Nations Interim Administration Mission in Kosovo (UNMIK), whose duties included facilitating such a process and for the provisional institutions of self-government in Kosovo. He informed the Security Council that he had asked his Special Representative to develop benchmarks against which progress in the critical areas of the rule of law, functioning of democratic institutions, the economy, freedom of movement, the return of internally displaced persons (IDPs) and refugees and contributions to regional stability could be measured.<sup>29</sup> In his report of 9 October 2002, the Secretary-General informed the Council that the benchmarks process was being publicized in Kosovo under the slogan of “standards before status”.<sup>30</sup>

By a presidential statement dated 6 February 2003, the Council reiterated its full support for the “standards before status” policy which postulated targets in the eight key areas: functioning of the democratic institutions, the rule of law, freedom of movement, the return of refugees and IDPs, economy, property rights, dialogue with Belgrade, and the Kosovo Protection Corps. The Council welcomed the presentation of a detailed plan for its implementation that would provide the appropriate baseline against which progress could be measured and stated that the “fulfilment of [those] targets [was] essential to commencing a political process designed to determine Kosovo’s future, in accordance with resolution 1244 (1999).”<sup>31</sup>

At the 4742<sup>nd</sup> meeting, on 23 April 2003, most speakers reiterated their support for the “standards before status” approach to the situation in Kosovo reflected in resolution 1244

<sup>27</sup> For details, see chapter VII.

<sup>28</sup> Resolution 1244 (1999) para. 11(e).

<sup>29</sup> S/2002/436, para. 54.

<sup>30</sup> S/2002/1126, para. 2.

<sup>31</sup> S/PRST/2003/1.

(1999).<sup>32</sup> The representative of the United Kingdom condemned unilateral statements on Kosovo's final status from either side and agreed that there was considerable work to be done to fulfil the benchmarks. He further underlined that democratic governance needed to take hold in Kosovo before there could be a settlement of Kosovo's status.<sup>33</sup> The representative of China expressed concern that the Secretary-General in his report<sup>34</sup> had included from time to time comments regarding the status of Kosovo and reiterated the belief that Security Council resolution 1244 (1999) remained the international community's policy basis with respect to the question of Kosovo.<sup>35</sup> The representative of Pakistan, while supporting the full implementation of resolution 1244 (1999), noted that it considered the "standards before status" approach to be unique and applicable only in the case of Kosovo and expressed the view that the resolution of the status question should be the primary focus of the work of the Council in "all but the most exceptional cases".<sup>36</sup> The representative of Albania reiterated its position that the processes underway in Kosovo were paving the way for the final status of Kosovo, which should "reflect and respect the right and will of all the people there to determine their future".<sup>37</sup>

By a presidential statement dated 12 December 2003, the Council expressed support for the prospect of a comprehensive review of the progress of the Provisional Institutions of Self-Government in meeting the standards. The Council stressed that further advancement towards a process to determine the future status of Kosovo in accordance with resolution 1244 (1999) would depend on the positive outcome of that comprehensive review.<sup>38</sup>

### Case 3

#### The situation between Iraq and Kuwait

At the 4726<sup>th</sup> meeting, on 26 March 2003, which was convened following the commencement of the military action against Iraq, the Secretary-General regretted that the

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<sup>32</sup> S/PV.4742, p. 5 (Chile); pp. 7-8 (Germany); pp. 9-10 (Bulgaria); pp. 10-11 (Russian Federation); pp. 11-12 (France); pp. 14-15 (United States); pp. 15-16 (Angola); and pp. 20-21 (Greece, on behalf of the European Union).

<sup>33</sup> *Ibid.*, pp. 16-17.

<sup>34</sup> S/2003/421, para. 44.

<sup>35</sup> S/PV.4742, p. 10.

<sup>36</sup> *Ibid.*, pp. 6-7. This position was reiterated in subsequent meetings (see S/PV.4770, p. 13; S/PV.4853, p. 7; and S/PV.4886, p. 13).

<sup>37</sup> *Ibid.*, pp. 21-23.

<sup>38</sup> S/PRST/2003/26, para. 5.



intense efforts to achieve a peaceful solution, through the Security Council, had not succeeded and that the earlier inability of the Council to agree on a collective course of action placed an even greater burden on the Council. In that context, he emphasized that the Council should consider two guiding principles which should underpin all the efforts by the Council and its future decisions on Iraq: respect for the sovereignty, territorial integrity and independence of Iraq and respect for the right of the Iraqi people to determine their own political future and control their own natural resources.<sup>39</sup> During the debate, a number of speakers reiterated the importance of the two principles in finding a solution to the situation in Iraq.<sup>40</sup>

By resolution 1472 (2003) of 28 March 2003, the Council, *inter alia*, reaffirmed the respect for the right of the Iraqi people “to determine their own political future and to control their own natural resources”.<sup>41</sup>

By resolution 1483 (2003) of 22 May 2003, the Council stressed the right of the Iraqi people freely to determine their own political future and control their own natural resources, expressed resolve that the day when Iraqis governed themselves had to come quickly, and encouraged efforts by the people of Iraq to form a representative government based on the rule of law that afforded equal rights and justice to all Iraqi citizens without regard to ethnicity, religion, or gender.<sup>42</sup> By the same resolution, the Council also noted the letter of 8 May 2003 from the representatives of the United States and the United Kingdom to the President<sup>43</sup> and recognized the specific authorities, responsibilities, and obligations under applicable international law of those States as occupying Powers under unified command (the “Authority”). The Council called upon the Authority, consistent with the Charter and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions “in which the Iraqi people [could] freely determine their own political future”.<sup>44</sup>

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<sup>39</sup> S/PV.4726, pp. 3-4.

<sup>40</sup> *Ibid.*, pp. 17-18 (Libyan Arab Jamahiriya); pp. 20-21 (South Africa); pp. 23-24 (India); pp. 24-25 (Poland); pp. 40-41 (former Yugoslav Republic of Macedonia); S/PV.4726 (Resumption 1), pp. 26-27 (Russian Federation); pp. 28-29 (France); pp. 29-30 (Spain); pp. 30-31 (Chile); pp. 31-32 (Bulgaria); and pp. 33-34 (Germany).

<sup>41</sup> Resolution 1472 (2003), seventh preambular para.

<sup>42</sup> Resolution 1483 (2003), fourth and fifth preambular paras.

<sup>43</sup> S/2003/538.

<sup>44</sup> Resolution 1483 (2003), thirteenth preambular para. and para. 4.

At the 4808<sup>th</sup> meeting, on 14 August 2003, the Council adopted resolution 1500 (2003), by which it welcomed “the establishment of the broadly representative Governing Council of Iraq on 13 July 2003, as an important step towards the formation by the people of Iraq of an internationally recognized, representative government that [would] exercise the sovereignty of Iraq”.<sup>45</sup> Following the vote, a number of speakers welcomed the establishment of the Governing Council as a first step towards a sovereign, stable and democratic Iraq.<sup>46</sup> The representative of the United States maintained that in its expression of support for the Governing Council of Iraq, the resolution hastened the day when the people of Iraq would be in full command of their own affairs.<sup>47</sup> The representative of Pakistan wished that the resolution should have contained the reaffirmation of other principles, including the right of the Iraqi people to choose their own political destiny and form of government and to exercise their right of self-determination.<sup>48</sup> The representative of Mexico held that, while his delegation associated itself with the consensus on welcoming the establishment of the interim Governing Council as a first logical step towards establishing a genuinely representative government that exercised the sovereignty of the Iraqi people, such welcome did not constitute legal recognition or endorsement, because the Governing Council was still under the authority of the occupying Powers.<sup>49</sup> The representative of the Syrian Arab Republic, which had abstained in the voting, stressed that the formation of the interim Governing Council of Iraq would only gain credibility from the fact that it was paving the way for the formation of a national Government that represented the full spectrum of Iraqi society and was capable of fulfilling the aspirations of the Iraqi people. Therefore, only the Iraqi people could lend legitimacy to the Governing Council. He expressed the hope that the Council would work to, inter alia, establish an elected national Government that enjoyed the support of the Iraqi people and was recognized by the international community.<sup>50</sup>

At the 4844<sup>th</sup> meeting, on 16 October 2003, the Council adopted resolution 1511 (2003), by which it reaffirmed the right of the Iraqi people freely to determine their own political future and control their own natural resources, and reiterated its resolve that the day when Iraqis govern themselves must come quickly. By the same resolution, the Council also underscored the

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<sup>45</sup> Resolution 1500 (2003), para. 1.

<sup>46</sup> S/PV.4808, p. 4 (Spain); pp. 4-5 (Germany); pp. 5-6 (Russian Federation); and p. 6 (China).

<sup>47</sup> *Ibid.*, pp. 2-3.

<sup>48</sup> *Ibid.*, pp. 3-4.

<sup>49</sup> *Ibid.*, p. 5.

<sup>50</sup> *Ibid.*, pp. 6-7.

temporary nature of the exercise by the Coalition Provisional Authority of the specific responsibilities, authorities, and obligations under applicable international law recognized and set forth in resolution 1483 (2003), which would cease when an internationally recognized, representative government established by the people of Iraq was sworn in and assumed the responsibilities of the Authority.<sup>51</sup>

Following the vote, the representative of the Russian Federation stated that it was essential that international efforts be united in the search for a long-term and stable political settlement that would enable the Iraqi people to take the leadership of their country into their own hands through a legitimately elected Government. Regarding resolution 1511 (2003), he noted that the functions of the multinational force were subordinate to the tasks of promoting the restoration of the sovereignty of Iraq,<sup>52</sup> and as soon as that happened, the mandate of the multinational force would expire. If the legitimately elected Government of Iraq requested some form of assistance to maintain security, then the Council would consider such a request.<sup>53</sup> The representative of Germany stated that his delegation would have wished for clearer guidelines with regard to timing of the transfer of sovereignty to the Iraqis, because only in that way could it be made clear that the current political status of Iraq was a temporary one. The representative of France also maintained that it would have been desirable for a clear text to set nearer and stricter deadlines for the transfer of responsibilities and the political transition. In particular, his country remained convinced that the sovereign assumption by the Iraqis of their own destiny was a necessary starting point to allow for the reconstruction and stabilization of Iraq; to marginalize those in Iraq who had chosen violence; and to mobilize the international community on behalf of Iraq.<sup>54</sup> The representative of Pakistan commented that the resolution would have gained considerably in clarity and credibility if it had clearly stipulated the principles which should guide the political transition in Iraq: respect for political independence, unity and territorial integrity of Iraq; the right of the Iraqi people to choose their own political destiny and form of Government; permanent sovereignty and control over their natural resources; and non-intervention and non-interference in their internal affairs.<sup>55</sup>

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<sup>51</sup> Resolution 1511 (2003), second preambular para.

<sup>52</sup> By para. 13 of resolution 1511 (2003), the Council authorized a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq.

<sup>53</sup> S/PV.4844, pp. 2-3.

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

<sup>55</sup> *Ibid.*, pp. 6-8.

At the same meeting, the representative of the United Kingdom noted that, while resolution 1511 (2003) was clear about giving control of Iraq to its people as quickly as possible, it did not prescribe to the Iraqis artificial schedules for the transfer of power. Instead it put the people of Iraq in the driving seat through the Iraqi interim administration and reaffirmed the temporary nature of the Coalition's powers.<sup>56</sup> The representative of the United States maintained that resolution 1511 (2003) confirmed Iraqi leadership in establishing a political horizon for the transfer of power and made clear that the interim Iraqi leadership embodied Iraqi sovereignty during the transition. He stressed that the Coalition would not waver from its stated objectives of transferring governing responsibilities and authorities to the people of Iraq as soon as practicable.<sup>57</sup>

## **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 captured below. In addition, there were a few communications containing explicit references to Article 2 (4) during the reporting period.<sup>58</sup>

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<sup>56</sup> Ibid., pp. 4-5.

<sup>57</sup> Ibid., pp. 9-10.

<sup>58</sup> See, for example, the letter dated 5 October 2000 from the representative of Yugoslavia addressed to the President (S/2000/961); letters dated 14 February 2001, 12 April 2001 and 29 May 2001 from the representative of Cyprus addressed to the Secretary-General (S/2001/136, S/2001/395 and S/2001/541); letters dated 11 June 2002, 20 December 2002 and 9 March 2003 from the representative of Iraq addressed to the Secretary-General (S/2002/659, S/2002/1400 and S/2003/296); identical letters dated 11 June 2002 from the representative of Mali addressed to the Secretary-General and the President (S/2002/657); and the letter dated 24 March 2003 from the representative of the League of Arab States addressed to the President (S/2003/365\*).

## Decisions relating to Article 2 (4)

During the reporting period, the Council adopted no decisions which included an explicit reference to Article 2 (4). However, a number of decisions adopted by the Council contained references which might be considered to have a bearing on the principle enshrined in Article 2 (4). In dealing with a number of situations, the Council called upon the parties to refrain from any actions involving acts of violence and to exercise restraint,<sup>59</sup> called for parties to cease hostilities,<sup>60</sup> and deplored and condemned violations of ceasefire agreements, and demanded respect for the ceasefire agreements.<sup>61</sup> Furthermore, the Council, in its decisions, reaffirmed the principle of non-threat or non-use of force in international relations, 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 enshrined in Article 2 (4).

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<sup>59</sup> In connection with the situation in Georgia, see S/PRST/2000/32. In connection with Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999), see S/PRST/2000/35 and S/PRST/2001/8. In connection with the situation in Burundi, see resolution 1375 (2001), para. 2 and S/PRST/2003/30. In connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1399 (2002), para. 9; and 1493 (2003), para. 8. In connection with the situation in the Middle East, see resolutions 1337 (2001), para. 8; 1365 (2001), para. 9; 1391 (2002), para. 9; 1428 (2002), para. 9; 1461 (2003), para. 8; and 1496 (2003), para. 7; and S/PRST/2000/3. In connection with the situation between Eritrea and Ethiopia, see resolution 1430 (2002), para. 6. In connection with the situation in Somalia, see S/PRST/2001/30 and S/PRST/2003/2. In connection with the situation in Liberia, see resolution 1478 (2003), para. 9.

<sup>60</sup> In connection with the situation in Burundi, see resolutions 1286 (2000), para. 3; and 1375 (2001), para. 3; S/PRST/200/29; S/PRST/2001/17; S/PRST/2001/26; S/PRST/2001/33; S/PRST/2001/25; and S/PRST/2002/40. In connection with Security Council resolutions 1160 (1998), 1199 (1998), 1203 (1998), 1239 (1999) and 1244 (1999), see S/PRST/2000/40. In connection with letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council, see S/PRST/2001/7. In connection with the situation in Burundi, see resolution 1375 (2001), para. 3; S/PRST/2000/29; S/PRST/2001/17; S/PRST/2001/26; S/PRST/2001/33; S/PRST/2001/35; and S/PRST/2002/40. In connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1468 (2003), para. 8; and 1484 (2003), para. 5; S/PRST/2002/27; and S/PRST/2003/6. In connection with the situation in the Middle East, including the Palestinian question, see resolutions 1322 (2000), para. 4; 1397 (2002), para. 1; 1402 (2002), para. 2; and 1435 (2002), para. 1.

<sup>61</sup> In connection with the situation in Georgia, see resolutions 1339 (2001), para. 10; 1364 (2001), para. 15; 1393 (2002), para. 8; 1427 (2002), para. 8; 1462 (2003), para. 10; and 1494 (2003), para. 19. In connection with the situation in the former Yugoslav Republic of Macedonia, see S/PRST/2001/20. In connection with the situation in Burundi, see S/PRST/2003/4. In connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1304 (2000), para. 3; 1332 (2000), fifth preambular para.; and 1493 (2003), para. 14; and S/PRST/2001/15. In connection with the situation in Liberia, see resolutions 1497 (2003), para. 12; and 1509 (2003), para. 4; and S/PRST/2003/14.

On the occasion of the Security Council Summit held on 7 September 2000,<sup>62</sup> by resolution 1318 (2000), the Council adopted the declaration on ensuring an effective role for the Council in the maintenance of international peace and security, particularly in Africa, in which it reaffirmed the importance of adhering to the principles of non-threat or non-use of force in international relations in any manner inconsistent with the purposes of the United Nations, and the peaceful settlement of international disputes.<sup>63</sup>

In connection with the situation concerning the Democratic Republic of the Congo, by a series of resolutions,<sup>64</sup> the Council reaffirmed the obligation of all States 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”.

In connection with the situation in the Middle East, by one presidential statement, the Council reaffirmed its commitment to the full sovereignty, political independence, territorial integrity and national unity of Lebanon within its internationally recognized boundaries and, in that context, it 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 manner inconsistent with the purposes of the United Nations.”<sup>65</sup>

*Reiteration of the principle of non-interference by States in 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 presidential statement of 7 April 2000, the Council reiterated that “outside interference in the internal affairs of Afghanistan, including the involvement of foreign combatants and military personnel and the supply of weapons and other materials used in the conflict, should cease immediately.” It further called upon all States to take resolute measures to prohibit their military personnel from planning and participating in combat operations in Afghanistan, and immediately to withdraw their personnel and to assure that the supply of ammunition and other war-making materials was halted. The Council also expressed its deep concern at the continuing involvement

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<sup>62</sup> S/PV.4194.

<sup>63</sup> Resolution 1318 (2000), annex, section I, second para.

<sup>64</sup> Resolutions 1291 (2000), second preambular para.; 1304 (2000), third preambular para.; 1332 (2000), third preambular para.; 1341 (2001), third preambular para.; 1355 (2001), third preambular para.; 1376 (2001), second preambular para.; 1417 (2002), third preambular para.; 1445 (2002), third preambular para.; and 1493 (2003), third preambular para.

<sup>65</sup> S/PRST/2000/3.

in the fighting in Afghanistan, on the side of the Taliban forces, of thousands of non-Afghan nationals.<sup>66</sup> By a presidential statement of 17 June 2003, the Council believed that constructive and mutually supportive bilateral and regional relations between Afghanistan and all States, and in particular its neighbours, “based on the principles of mutual respect and non-interference in each others affairs,” were important for stability in Afghanistan.<sup>67</sup>

Furthermore, in connection with the situation in Somalia, the Council, in a series of its decisions,<sup>68</sup> reiterated its insistence that all States, in particular those of the region, should “not interfere in the internal affairs of Somalia” and that such interference could jeopardize the sovereignty, territorial integrity, political independence and unity of that State.

In addition, in connection with the situation in Côte d’Ivoire, by a presidential statement of 20 December 2002, the Council stressed the need to respect the sovereignty, political unity and territorial integrity of that country and called upon all States in the region to “refrain from any interference in Côte d’Ivoire.”<sup>69</sup> Furthermore, by resolution 1464 (2003) of 4 February 2003, the Council called upon all States neighbouring Côte d’Ivoire to support the peace process by preventing “any action that might undermine the security and territorial integrity” of that country.<sup>70</sup> The appeal was renewed in a subsequent resolution.<sup>71</sup>

### *Condemnation of hostile action across the border of a Member State*

In several situations under consideration, the Council called for cessation of involvement by foreign Governments in the conflicts and demanded withdrawal of foreign forces from the territories of others. For example, in connection with the situation concerning the Democratic Republic of the Congo, the Council, by its decisions, repeatedly called for the withdrawal of all foreign forces from the territory of the Democratic Republic of the Congo.<sup>72</sup> By resolution 1304 (2000) of 16 June 2000, the Council reiterated its unreserved condemnation of the fighting

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<sup>66</sup> S/PRST/2000/12.

<sup>67</sup> S/PRST/2003/7.

<sup>68</sup> Resolutions 1425 (2002), third preambular para.; 1474 (2003), fourth preambular para.; and 1519 (2003), third preambular para.; S/PRST/2001/1; S/PRST/2001/30; S/PRST/2002/8; and S/PRST/2002/35.

<sup>69</sup> S/PRST/2002/42.

<sup>70</sup> Resolution 1464 (2003), para. 11.

<sup>71</sup> Resolution 1479 (2003), para. 13.

<sup>72</sup> Resolutions 1291 (2000), sixth preambular para.; 1304 (2001), para. 4; 1332 (2000) para. 10; 1341 (2001), para. 2; 1355 (2001), para. 3; 1376 (2001), para. 2; 1417 (2002), para. 11; 1445 (2002), para. 2; and 1468 (2003), paras. 11-12; S/PRST/2000/2; S/PRST/2001/29; and S/PRST/2002/5. In connection with ensuring an effective role of the Security Council in the maintenance of international peace and security, see S/PRST/2000/28.

between Ugandan and Rwandan forces in Kisangani “in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo”;<sup>73</sup> demanded that Ugandan and Rwandan forces as well as forces of the Congolese armed opposition and other armed groups immediately and completely withdraw from Kisangani;<sup>74</sup> and further demanded that Uganda and Rwanda, “which [had] violated the sovereignty and territorial integrity of the Democratic Republic of the Congo,” withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay.<sup>75</sup>

In other instances, the Council demanded cessation of military action and further use of force and called for withdrawal of troops. In connection with the situation between Eritrea and Ethiopia, the Council, in its resolutions, reaffirming the commitment of all Member States to the sovereignty, independence and territorial integrity of Eritrea and Ethiopia, demanded that both parties cease immediately all military action and refrain from the further use of force.<sup>76</sup>

In connection with the situation in the Middle East, including the Palestinian question, the Council, by resolution 1402 (2002) of 30 March 2002, called for the withdrawal of Israeli troops from Palestinian cities, including Ramallah,<sup>77</sup> and by resolution 1435 (2002) of 24 September 2002, it demanded the expeditious withdrawal of the Israeli occupying forces from Palestinian cities towards the return to the positions held prior to September 2000.<sup>78</sup>

Furthermore, on a number of occasions, the Council condemned incursions by States into other States, demanded that States, in particular, the neighbouring States, end military and financial support for armed groups and parties engaged in conflict, or insisted that the territory of a State should not be used to undermine stability in the area in question.

In connection with the situation in Somalia, the Council insisted, in its decisions, that the territory of Somalia should not be used to undermine stability in the subregion.<sup>79</sup>

In connection with the situation in Sierra Leone, by resolution 1470 (2003) of 28 March 2003, the Council noted with concern the instability on the border between Sierra Leone and

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<sup>73</sup> Resolution 1304 (2000), para. 2.

<sup>74</sup> *Ibid.*, para. 3.

<sup>75</sup> *Ibid.*, para. 4.

<sup>76</sup> Resolutions 1297 (2000), third preambular para. and para. 2; and 1298 (2000), fifth preambular para. and para. 2.

<sup>77</sup> Resolution 1402 (2002), para. 1.

<sup>78</sup> Resolution 1435 (2002), para. 3.

<sup>79</sup> S/PRST/2001/1; and S/PRST/2001/30.



Liberia and demanded that the armed forces of Liberia and any armed groups “refrain from illegal incursions into the territory of Sierra Leone.”<sup>80</sup>

In connection with the situation in Guinea following recent attacks along its borders with Liberia and Sierra Leone, the Council, by a presidential statement of 21 December 2000, condemned the incursion into Guinea by rebel groups coming from Liberia and Sierra Leone. The Council reaffirmed its commitment to the sovereignty, political independence and territorial integrity of Guinea, expressed its serious concern over reports that “external military support” was being provided to those rebel groups, and called upon “all States, particularly Liberia, to refrain from providing any such military support and from any act that might contribute to further destabilization of the situation on the borders between Guinea, Liberia and Sierra Leone.” The Council further called upon all States in the region to prevent armed individuals from using their national territory to prepare and commit attacks in neighboring countries.<sup>81</sup>

In connection with the situation in Liberia, by resolution 1343 (2001) of 7 March 2001, the Council demanded that the Government of Liberia immediately cease its support for the Revolutionary United Front in Sierra Leone and for other armed rebel groups in the region.<sup>82</sup> Furthermore, in a number of resolutions, the Council demanded that all States in the region cease military support for armed groups in neighbouring countries and take action to prevent armed individuals and groups from using their territory to prepare and commit attacks on neighbouring countries, and refrain from any action that might contribute to further destabilization of the situation in the region.<sup>83</sup>

In connection with the situation concerning the Democratic Republic of the Congo, by resolution 1468 (2003) of 30 March 2003, the Council demanded that all Governments in the Great Lakes region immediately cease military and financial support to all parties engaged in armed conflict in the Ituri region.<sup>84</sup> Such demand was extended to all States in resolution 1493 (2003) of 28 July 2003, by which the Council demanded that “all States, in particular those in the region, including the Democratic Republic of the Congo” ensure that “no direct or indirect

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<sup>80</sup> Resolution 1470 (2003), para. 14.

<sup>81</sup> S/PRST/2000/41.

<sup>82</sup> Resolution 1343 (2001), para. 2.

<sup>83</sup> *Ibid.*, para. 4; resolutions 1408 (2002), para. 4; 1478 (2003), para. 9; 1497 (2003), para. 9; 1509 (2003), para. 13; and 1521 (2003), para. 3.

<sup>84</sup> Resolution 1468 (2003), para. 11.

assistance, especially military or financial assistance” was given to the movements and armed groups present in the Democratic Republic of the Congo.<sup>85</sup>

### **Deliberations relating to Article 2 (4)**

During the period under review, there were instances in the deliberations of the Council in which explicit references were made to Article 2 (4).<sup>86</sup>

Four cases included below depict the debates and decisions relevant to the principle enshrined in Article 2 (4), in connection with (i) the situation concerning the Democratic Republic of the Congo (Case 4), (ii) the situation between Iraq and Kuwait (Case 5), and (iii) “Letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council; Letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council”(Case 6).

## **Case 4**

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

At the 4092<sup>nd</sup> meeting, on 24 January 2000, the Secretary-General, in his briefing, stressed as a top priority the need for an understanding of the limits of the use of force.<sup>87</sup> The President of the Democratic Republic of the Congo expressed his hope that the Council would be able to achieve agreement to “end the occupation” of a part of his country’s national territory by the “occupying armies of Rwanda, Uganda and Burundi,” in conformity with resolution 1234 (1999). He further recalled that Article 2 (3) and (4) of the Charter required Members to settle their international disputes by peaceful means and called on them to refrain from the threat or use

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<sup>85</sup> Resolution 1493 (2003), para. 18.

<sup>86</sup> See, for example, in connection with the situation concerning the Democratic Republic of the Congo, S/PV.4092, p. 12 (Democratic Republic of the Congo); in connection with the situation between Eritrea and Ethiopia, S/PV.4227, p. 8 (Argentina); in connection with the situation between Iraq and Kuwait, S/PV.4726, p. 5 (Iraq); in connection with the role of the Security Council in the pacific settlement of disputes, S/PV.4753, p. 10 (Mexico); in connection with letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (S/2003/939) and letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/2003/943), S/PV.4836, p. 17 (Morocco) and p. 18 (Jordan); and in connection with the situation in the Middle East, including the Palestinian question, S/PV.4841, p. 5 (Palestine).

<sup>87</sup> S/PV.4092, p. 5.

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.<sup>88</sup>

The President of Zimbabwe noted that the meeting was devoted to the preservation of the territorial integrity of the Democratic Republic of the Congo, as enshrined in Chapter I, Article 2, of the Charter. He added that the Southern African Development Community (SADC) allied forces had no territorial or other hidden agendas in that country and stressed that their presence, at the invitation of the sovereign Government of the Democratic Republic of the Congo, was to “uphold one of the most fundamental principles of the Charter,” namely, respect for the sovereignty and territorial integrity of States and non-interference in the domestic affairs of a sovereign country.<sup>89</sup> Similarly, the representative of Namibia emphasized that his country was in the Democratic Republic of the Congo at the expressed invitation of that Government and in response to the request by a SADC member State. While reiterating Namibia’s adherence to the Lusaka Agreement, he pointed out that there was the problem of interference by some of the other interlocutors who were not being too helpful because they seemed to have their own hidden agendas and pursued an outcome that was a blatant violation of the sovereignty, territorial integrity and political independence and unity of the Democratic Republic of the Congo.<sup>90</sup>

The President of Uganda, for his part, argued that his country and the other neighbouring countries of the Democratic Republic of the Congo had legitimate security concerns, which had been recognized by the region and by the international community in the Lusaka Ceasefire Agreement. He also asked for the Council to be cognizant of the terrorist role played by the Sudan, sometimes using the territory of the Democratic Republic of the Congo, with or without cooperation from Kinshasa, to destabilize the neighbouring countries. The issue, according to him, was not the territorial integrity of the Congo as his country supported the territorial integrity of all the countries in Africa. He expected all foreign troops to withdraw in accordance with a timetable to be worked out according to the Ceasefire Agreement, by the United Nations and the Organization of African Unity (OAU), under the supervision of the United Nations interpositional force.<sup>91</sup> After touching on the genocide in Rwanda and arguing its linkage to the situation concerning the Democratic Republic of the Congo, the President of Rwanda declared

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<sup>88</sup> Ibid., p. 12.

<sup>89</sup> Ibid., p. 16.

<sup>90</sup> Ibid., pp. 29-30.

<sup>91</sup> Ibid., pp. 19-22.

his country's commitment to the principles of the Ceasefire Agreement, stating that Rwanda had faithfully respected the ceasefire. Furthermore, he added that article II of the Agreement was fundamental to them, which addressed the security of the Democratic Republic of the Congo and its neighbouring countries.<sup>92</sup> A few speakers acknowledged that the lasting solution to the conflict would require taking into account the legitimate security concerns of neighbouring States.<sup>93</sup>

In his statement, the Secretary-General of OAU underscored the attachment of OAU to the principles enshrined in its Charter, of respect for the sovereignty, unity and territorial integrity of its member States and the peaceful settlement of disputes. Since those same principles had been "under serious threat" in the Democratic Republic of the Congo "because of the internal and external dimensions of that conflict," OAU, in tandem with the region and other partners, had worked assiduously to bring an end to the conflict.<sup>94</sup> The facilitator of the internal Congolese dialogue, echoing the views expressed by the Secretary-General of OAU concerning the inviolability of the national sovereignty and territory integrity of the country in question, explained that the origins of the conflict in the Democratic Republic of the Congo reflected the internal political, economic and social problems within the country itself, as well as an external dimension relating to the security concerns of that country and of the neighbouring countries.<sup>95</sup>

A number of speakers stressed, *inter alia*, the importance of respect for the territorial integrity, political independence and national sovereignty of the Democratic Republic of the Congo and other States in the region and the need for orderly withdrawal of all foreign forces.<sup>96</sup> In addition, the representative of Argentina argued that consideration of other key principles of international law was needed: non-interference in its internal affairs, the inalienable right to individual or collective self-defence, the illegality of the acquisition of territory by force and the inviolability of boundaries.<sup>97</sup> The representative of the Russian Federation observed that due to the complex nature of the conflict in question, any settlement would be also complex, which would need to ensure security and the inviolability of the borders of all the States in the region and strengthen cooperation between those States on the basis of the principles of "non-

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<sup>92</sup> *Ibid.*, pp. 21-22.

<sup>93</sup> S/PV.4092 (Resumption 1), p. 20 (Argentina); S/PV.4092 (Resumption 2), p. 2 (Netherlands) and p. 8 (Malaysia).

<sup>94</sup> S/PV.4092, p. 24.

<sup>95</sup> *Ibid.*, p. 27.

<sup>96</sup> S/PV.4092 (Resumption 1), p. 9 (Mali); p. 11 (Canada); p. 17 (Bangladesh); and p. 18 (Tunisia); S/PV.4092 (Resumption 2), p. 3 (China); p. 5 (Jamaica); and p. 8 (Malaysia).

<sup>97</sup> S/PV.4092 (Resumption 1), p. 20.

intervention in the internal affairs of other States and the non-use of force, in accordance with the Charter”.<sup>98</sup>

At the same meeting, the Council issued a presidential statement by which it reaffirmed the territorial integrity and national sovereignty of the Democratic Republic of the Congo, including over its natural resources, in accordance with the principles of the Charter of the United Nations and the Charter of OAU and in that regard, reiterated its call for the immediate cessation of hostilities and the orderly withdrawal of all foreign forces from the territory of the Democratic Republic of the Congo, in accordance with the Ceasefire Agreement.<sup>99</sup>

At the 4104<sup>th</sup> meeting, on 24 February 2000, prior to the adoption of resolution 1291 (2000), the representative of Ukraine remarked that his Government attached particular significance to the fact that the draft resolution<sup>100</sup> was accompanied by the explicit reaffirmation of the purposes and principles of the Charter, and the emphasis on the obligation of all States 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 Organization.<sup>101</sup> In the preamble of resolution 1291 (2000), the Council reaffirmed the above-mentioned principles and reiterated its call for the orderly withdrawal of all foreign forces from the territory of the Democratic Republic of the Congo in accordance with the Ceasefire Agreement.<sup>102</sup>

By resolution 1304 (2000) of 16 June 2000, the Council, acting under Chapter VII of the Charter, reiterated its unreserved condemnation of the fighting between Ugandan and Rwandan forces in Kisangani in violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, demanded that those forces and those allied to them desist from further fighting, and further demanded that Ugandan and Rwandan forces as well as forces of the Congolese armed opposition and other armed groups immediately and completely withdraw from Kisangani. The Council demanded also: (a) that Uganda and Rwanda, which had violated the sovereignty and territorial integrity of the Democratic Republic of the Congo, withdraw all their forces from the territory of the Democratic Republic of the Congo without further delay, in conformity with the timetable of the Ceasefire Agreement and the Kampala Disengagement Plan; (b) that each phase of withdrawal completed by Ugandan and Rwandan forces be reciprocated by

<sup>98</sup> S/PV.4092 (Resumption 2), p. 9.

<sup>99</sup> S/PRST/2000/2.

<sup>100</sup> S/2000/143.

<sup>101</sup> S/PV.4104, p. 2.

<sup>102</sup> Resolution 1291 (2000), second, third and sixth preambular paras.

the other parties, in conformity with the same timetable; and (c) that all other foreign military presence and activity, direct and indirect, in the territory of the Democratic Republic of the Congo be brought to an end, in conformity with the provisions of the Ceasefire Agreement. The Council demanded, in that context, that all parties abstain from any offensive action during the process of disengagement and withdrawal of foreign forces.<sup>103</sup>

By resolution 1332 (2000) of 14 December 2000, the Council called for the withdrawal of Ugandan and Rwandan forces, and all other foreign forces, from the territory of the Democratic Republic of the Congo in compliance with resolution 1304 (2000) and the Ceasefire Agreement, and urged the forces to take urgent steps to accelerate that withdrawal.<sup>104</sup>

At the 4271<sup>st</sup> meeting, on 2 February 2001, the Secretary-General, recalling the provisions of resolution 1304 (2000), looked forward to early withdrawal of all foreign forces, as provided by the Ceasefire Agreement.<sup>105</sup> The President of the Democratic Republic of the Congo invited the authorities in Rwanda, Uganda and Burundi to return to a better sense of good-neighbourliness, with a view to achieving a peaceful settlement of differences. He further underscored commitment of his country to relaunch the Ceasefire Agreement so that it would, among others, preserve the fundamental attributes of his country: independence, sovereignty, territorial integrity and unity, which the Council had continuously reconfirmed. He also appealed to the international community to support the Congolese people as they moved toward the dialogue of peace which must be among them “without any interference”.<sup>106</sup>

A number of speakers considered it imperative for foreign forces to withdraw in order to establish peace in the Democratic Republic of the Congo.<sup>107</sup> The representative of the United States held that the Government of the Democratic Republic of the Congo had a right, under the Charter, to demand that uninvited foreign forces depart its territory. At the same time, he maintained that the Governments of Rwanda and Uganda had a right, under the Charter, to demand that the Congolese territory not be used as a launching pad for attacks against their countries. He further argued that just as the international community was justified in calling for the withdrawal of Rwandan and Ugandan forces from the Democratic Republic of the Congo, so

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<sup>103</sup> Resolution 1304 (2000), eighteenth preambular para. and paras. 2-5.

<sup>104</sup> Resolution 1332 (2000), para. 10.

<sup>105</sup> S/PV.4271, p. 3.

<sup>106</sup> *Ibid.*, p. 5.

<sup>107</sup> *Ibid.*, p. 8 (France); p. 15 (Columbia); p. 16 (Mauritius); p. 17 (Ukraine); p. 18 (Norway); p. 20 (Russian Federation); and p. 21 (Singapore).

too must they call on all the Lusaka signatories to abandon support for former members of the Rwandese Armed Forces (ex-FAR) and Interhamwe.<sup>108</sup>

The President of the Democratic Republic of the Congo, in responding to various statements made in the meeting, added that the final objective of democratization would come about only if the forces that had “invaded” his country were one way or the other forced to get out of it so that the country regained its national territorial integrity. He highlighted that his country was “under foreign occupation” which must end as soon as possible.<sup>109</sup>

By a letter dated 13 July 2001 from the representative of the Democratic Republic of the Congo addressed to the Secretary-General, the former expressed his concern over the “openly proclaimed desire” of Rwanda and the Rassemblement Congolais pour la Démocratie (RCD-Goma) to “create a secessionist State” in the eastern Democratic Republic of the Congo, which was in violation of the principle of OAU Charter regarding the inviolability of the borders that had emerged from decolonization, and of the purposes and principles of the Charter of the United Nations, as well as of the relevant provisions of all the resolutions by which the Council reaffirmed the sovereignty, territorial integrity and political independence of his country and all the States in the region.<sup>110</sup> In response, the representative of Rwanda, in his letter dated 19 July 2001 addressed to the President, rejected the claim made by the Democratic Republic of the Congo, by, inter alia, recalling the issue of nationality in the Democratic Republic of the Congo, which, according to him, affected neighbouring countries such as Rwanda.<sup>111</sup>

At the 4348<sup>th</sup> meeting, on 24 July 2001, the representative of the Democratic Republic of the Congo commented that all the leaders of the region had been able to confirm their willingness to withdraw from the territory of his country in accordance with resolution 1304 (2000). However, while certain parties were indeed withdrawing some of their contingents, others showed reluctance to do so, combining withdrawal with rotation and redeployment and expressing their willingness to maintain troops in the border towns that happened to be rich in natural resources. With respect to the security concerns raised by certain parties and in particular by Rwanda, the representative maintained that those concerns represented yet another pretext aimed at maintaining the Rwandan occupation of his country. Recalling that from 1997 to 1998,

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<sup>108</sup> Ibid., pp. 6-8.

<sup>109</sup> Ibid., p. 22.

<sup>110</sup> S/2001/694, p. 1.

<sup>111</sup> S/2001/716.

his country had benefited from technical military assistance with Rwanda, with a view to helping to reorganize the Congolese armed forces, he pointed out that throughout the time, no one had mentioned any security concerns nor any relating to ex-FAR or Interahamwe activities. He further argued that it had taken months for Rwanda to recognize the extent of its intervention and that Rwanda then used as a justification the need to defend those Congolese whose nationality had been supposedly questioned and who had been reportedly persecuted by the Congolese authority. Referring to the 4273<sup>rd</sup> meeting,<sup>112</sup> the representative argued that the President of Rwanda did not answer convincingly the questions addressed to him “concerning the presence of forces of aggression on the Congolese territory, the permeability of common borders and the need to build a free, secure and democratic Rwandan society based on human rights, equality and respect for diversity”. He stressed that his country had no hidden agenda in Rwanda and that his country, “which [bore] no responsibility for the Rwandan genocide of 1994,” would not tolerate its territory being used as a base for the launching of operations aimed at destabilizing neighbouring countries with which it wished to be on good terms. Furthermore, he argued that the security guarantees in the Great Lakes region should not come at the expense of the sovereignty of the Democratic Republic of the Congo nor interfere with its territorial integrity.<sup>113</sup>

By a presidential statement dated 24 July 2001, the Council reiterated its demand that all parties accelerate the finalization and the implementation of comprehensive plans for the orderly withdrawal of all foreign troops from the territory of the Democratic Republic of the Congo and the disarmament, demobilization, reintegration, repatriation and resettlement of all armed groups referred to in chapter 9.1 of annex A to the Lusaka Ceasefire Agreement. Concerning the Inter-Congolese Dialogue, the Council emphasized the importance of an open, representative and inclusive dialogue, free from outside interference, leading to a consensus settlement.<sup>114</sup>

By resolution 1376 (2001) of 9 November 2001, the Council reaffirmed the obligation of all States to refrain from the use of force against the territorial integrity and political independence of any State or in any other manner inconsistent with the purposes of the United Nations, and reaffirmed also the political independence, territorial integrity and sovereignty of the Democratic Republic of the Congo, including over its natural resources. It further welcomed the withdrawal of some foreign forces from the Democratic Republic of the Congo, including the

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<sup>112</sup> S/PV.4273, under the agenda item entitled “The situation in the Great Lakes region”.

<sup>113</sup> S/PV.4348, pp. 29-30.

<sup>114</sup> S/PRST/2001/19, seventh and ninth paras.



full Namibian contingent, as a positive step towards the full withdrawal of all foreign forces, and requested all States that had not yet done so to begin to implement, without delay, their full withdrawal in accordance with resolution 1304 (2000) of 16 June 2000.<sup>115</sup>

By resolution 1417 (2002) of 14 June 2002, the Council, reaffirming the obligation of all States to refrain from the use of force against the territorial integrity and political independence of any State or in any other manner inconsistent with the purposes and principles of the United Nations, welcomed the commitments made by the President of the Democratic Republic of the Congo, during the Security Council mission to the Great Lakes, not to support the armed groups referred to in the Lusaka Ceasefire Agreement and urged the Government of the Democratic Republic of the Congo urgently to take all necessary steps to ensure that its territory was not used to support those armed groups.<sup>116</sup>

At the 4596<sup>th</sup> meeting, on 8 August 2002, held following the signing of the Pretoria Agreement between the Governments of Rwanda and the Democratic Republic of the Congo on 30 July 2002,<sup>117</sup> the representative of the Democratic Republic of the Congo thanked the Council for having convened a meeting to welcome the “recent and very significant advances made to put an end to the war of aggression” that had been waged against his country for more than four years. He affirmed that the Pretoria Agreement fell within the framework of the Lusaka Ceasefire Agreement and was in conformity with the provisions of relevant resolutions calling for the orderly withdrawal of all foreign troops. The representative continued that among the countries that had come to the assistance of his country in “defending its national sovereignty and its territorial integrity”, Namibia had totally withdrawn and Angola and Zimbabwe had repatriated a large number of their contingents. On the other hand, withdrawal movements of the uninvited forces had been observed only on the part of Uganda and Burundi. Rwanda had considerably increased its forces and remained the only country to be engaged in large-scale military operations on Congolese soil, he added. He asserted that the Pretoria Agreement was “the most serious opportunity for peace” since the beginning of war on 2 August 1998 and provided a response to security concerns expressed by Rwanda, although it was his country that had been experiencing total insecurity for four years. He believed that the Agreement also envisaged the restoration of the national sovereignty and territorial integrity of his country which

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<sup>115</sup> Resolution 1376 (2001), second preambular para. and para. 2.

<sup>116</sup> Resolution 1417 (2002), third preambular para. and para. 10.

<sup>117</sup> S/2002/914, annex.

had been gravely imperiled by the Rwandan presence and embodied the ingredients for a return to normality for the Great Lakes region. The representative further argued that it was urgent that his country conclude with the Governments of Uganda and Burundi agreements similar to the Pretoria Agreement.<sup>118</sup>

The representative of Rwanda also praised the signing of the Pretoria Agreement which he considered was an “unprecedented” step towards the resolution of the conflict. He observed that for a long time the Council had urged Rwanda and the Democratic Republic of the Congo to work together to resolve the root causes of the conflict, that is, to find how to dissuade the ex-FAR and Interahamwe forces from carrying out attacks on Rwanda from bases in the Democratic Republic of the Congo. In his opinion, the disarmament, demobilization and repatriation of the armed forces in the Lusaka Ceasefire Agreement was not effectively implemented, and therefore, the security threat to affected countries, principally Rwanda had not been reduced. What the Pretoria Agreement brought to the process was a solemn commitment by the Government of the Democratic Republic of the Congo to track, assemble and disarm ex-FAR and Interahamwe. He stated that his country had undertaken to withdraw its troops from the Democratic Republic of the Congo as soon as the above-mentioned process got under way and was judged to be irreversible. The representative further stated that Rwanda fully recognized the problems caused by the presence and activities of their nationals in the Democratic Republic of the Congo and welcomed the decision of the Government of the Democratic Republic of the Congo to negotiate the Pretoria Agreement.<sup>119</sup>

By a presidential statement of 15 August 2002, the Council welcomed the Peace Agreement between the Governments of the Democratic Republic of the Congo and Rwanda and the Programme of Implementation for the Withdrawal of Rwandan Troops from the Territory of the Democratic Republic of the Congo and the Dismantling of the ex-Rwandese Armed Forces and Interahamwe in the Democratic Republic of the Congo, signed in Pretoria on 30 July 2002. The Council also welcomed the commitment of the Government of Rwanda, under the Peace Agreement, regarding the withdrawal of its troops from the territory of the Democratic Republic

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<sup>118</sup> S/PV.4596, pp. 4-7.

<sup>119</sup> Ibid., pp. 8-9.

of the Congo and took note of the submission by Rwanda of its initial troop withdrawal plan to the “Third Party”.<sup>120</sup>

By a presidential statement of 18 October 2002, the Council welcomed the progress on withdrawal of foreign forces from the territory of the Democratic Republic of the Congo and stressed that the withdrawals must be completed. The Council called upon all parties to the conflict to cease hostilities immediately and without preconditions and called upon the Government of the Democratic Republic of the Congo and all Governments in the region to exert their influence on all the parties to that effect and to refrain from any action which would further exacerbate the situation or undermine the peace process. The Council further stressed that no Government, military force or organization or individual should provide military or other supplies or any other form of support to any of the groups involved in the fighting in the east of the Democratic Republic of the Congo and in Burundi.<sup>121</sup>

By resolution 1445 (2002) of 4 December 2002, the Council welcomed the signature of the Luanda Agreement on 6 September 2002 by the Democratic Republic of the Congo and the Republic of Uganda. The Council further welcomed the decision taken by all foreign parties to withdraw fully their troops from the territory of the Democratic Republic of the Congo, as well as progress in the implementation of those processes, particularly the withdrawals by Rwanda, Uganda, Zimbabwe and Angola. The Council noted the commitment of Uganda under the Luanda Agreement to complete the withdrawal of its forces no later than 15 December 2002, welcomed the positive interaction between the Governments of the Democratic Republic of the Congo and Uganda since the signing of the Agreement, called upon both parties to work, together and with the United Nations Mission in the Democratic Republic of the Congo (MONUC), towards conditions that would allow the Agreement to be implemented in full, and reiterated that no Government, military force or organization or individual should provide military or any other form of support to any of the groups involved in the fighting in the east of the Democratic Republic of the Congo, in particular in Ituri. The Council further encouraged the Governments of the Democratic Republic of the Congo and, respectively, Rwanda and Uganda to take steps to normalize their relations and to cooperate to ensure mutual security along their borders, as provided for in the Pretoria Peace Agreement and the Luanda Agreement, and also

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<sup>120</sup> S/PRST/2002/24.

<sup>121</sup> S/PRST/2002/27.

encouraged the Governments of the Democratic Republic of the Congo and Burundi to take similar steps.<sup>122</sup>

By a presidential statement of 16 May 2003, the Council called upon all parties in the region to end all support to armed groups and to refrain from any action that might compromise the restoration of peace in Ituri, in particular the work of the Ituri interim administration, and reaffirmed its strong commitment to the sovereignty of the Democratic Republic of the Congo over all its territory.<sup>123</sup>

By resolution 1484 (2003) of 30 May 2003, the Council, acting under Chapter VII of the Charter, demanded that all Congolese parties and all States in the Great Lakes region refrain from any military activity or from any activity that could further destabilize the situation in Ituri, and in that regard demanded also the cessation of all support, in particular weapons and any other military materiel, to the armed groups and militias, and demanded further that all Congolese parties and all States in the region actively prevent the supply of such support.<sup>124</sup>

## Case 5

### The situation between Iraq and Kuwait

The Security Council convened the 4726<sup>th</sup> meeting, on 26 March 2003, in connection with the situation between Iraq and Kuwait, in response to letters dated 24 March 2003 from the representatives of Iraq and Malaysia to the President of the Council.<sup>125</sup> The letter from the representative of Iraq, in particular, requested the convening of an urgent meeting with a view to “halting American-British aggression and the immediate withdrawal of the invading forces outside the international boundaries” of Iraq, reconfirming the sovereignty, political independence and territorial integrity of Iraq and preventing all States from interfering in its internal affairs.<sup>126</sup>

At the meeting, the representative of Iraq argued that his country was subject to the American-British full-scale military aggression since 20 March 2003 which constituted a violation of international law and the Charter, in particular Article 2 (4) and (7). He emphasized

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<sup>122</sup> Resolution 1445 (2002), paras. 1, 2, 16, 17 and 20.

<sup>123</sup> S/PRST/2003/6.

<sup>124</sup> Resolution 1484 (2003), ninth preambular para. and para. 7.

<sup>125</sup> S/2003/362 and S/2003/363, respectively.

<sup>126</sup> S/2003/362.

that the Council had not authorized the use of force by those two States and that resolution 1441 (2002) did not allow the use of force.<sup>127</sup> The latter argument was supported by the Libyan Arab Jamahiriya.<sup>128</sup> Similarly, pointing out that there was no authorization by the Council of the military action, the representative of Malaysia underlined that the pre-emptive use of force threatened the foundation of international law.<sup>129</sup> The representative of Yemen stressed that using force against others for reasons other than self-defence and without a Council mandate constituted a flagrant violation of the principles of international law and the Charter.<sup>130</sup> The representatives of Yemen and the Libyan Arab Jamahiriya further regarded the declared policy to change the Iraqi regime “an act of aggression” carried out against a sovereign, independent State that was a Member State of the Organization and interference in the domestic affairs of Iraq.<sup>131</sup> A number of other speakers concurred that the military action was a violation of the Charter, calling it a “unilateral action,” “act of aggression” and “unilateral attack.”<sup>132</sup> Furthermore, the representative of Iran held that the unilateral war against Iraq did not meet any standard of international legitimacy and that it was not waged in self-defence against any prior armed attack nor could Iraq be considered an imminent threat against the national security of the “belligerent Powers.”<sup>133</sup>

According to the representatives of Argentina and Morocco, the use of force should be the last resort, once all peaceful means had been exhausted, and the use of force should be authorized by the Security Council.<sup>134</sup> The representative of Venezuela maintained that the Council must categorically reject the use of force, and therefore it should direct its efforts toward achieving an immediate ceasefire and ending the use of force.<sup>135</sup>

On the other hand, the representative of Poland regretted that Iraq had not abided by the provisions of resolution 1441 (2002) and held that the resolution contained “a warning of grave consequences in case of non-compliance, based on Chapter VII” of the Charter. He continued that the use of force remained the only option when the peaceful means for the resolution of the

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<sup>127</sup> S/PV.4726, pp. 4-5.

<sup>128</sup> *Ibid.*, p. 17.

<sup>129</sup> *Ibid.*, p. 8.

<sup>130</sup> *Ibid.*, p. 13.

<sup>131</sup> S/PV.4726, p. 13 (Yemen); and p. 16 (Libyan Arab Jamahiriya).

<sup>132</sup> *Ibid.*, p. 19 (Indonesia); p. 21-22 (Cuba); p. 28 (Brazil); p. 32 (Viet Nam); and S/PV.4726 (Resumption 1), p. 9 (United Republic of Tanzania).

<sup>133</sup> *Ibid.*, p. 33.

<sup>134</sup> *Ibid.*, p. 37 (Argentina); and p. 44 (Morocco).

<sup>135</sup> *Ibid.*, p. 46.

Iraqi crisis had been exhausted as Council decisions, particularly those relating to weapons of mass destruction, were not abided by and the Iraqi regime constituted a threat to international peace and security.<sup>136</sup> The representative of Australia noted that existing Security Council resolutions, including resolutions 678 (1990), 687 (1991) and 1441 (2002), provided authority for the use of force to disarm Iraq of weapons of mass destruction and to restore international peace and security to the region.<sup>137</sup> The representative of the United Kingdom stressed that the action of his country with its coalition partners, to uphold United Nations resolutions, was both legitimate and multilateral and that the use of force was authorized in the circumstances under resolutions 678 (1990), 687 (1991) and 1441 (2002).<sup>138</sup> The representative of the United States underscored that the actions the coalition forces were undertaking were an appropriate response, legitimate and not unilateral, arguing that resolution 1441 (2002) explicitly found Iraq in continuing material breach and in view of additional material breaches by Iraq, the basis for the existing ceasefire had been removed and the use of force was authorized under resolution 678 (1990).<sup>139</sup>

## Case 6

### **Letter dated 5 October 2003 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the President of the Security Council (S/2003/939); Letter dated 5 October 2003 from the Permanent Representative of Lebanon to the United Nations addressed to the President of the Security Council (S/2003/943)**

On 5 October 2003, the Security Council convened the 4836<sup>th</sup> meeting in response to the request contained in a letter dated 5 October 2003 from the representative of the Syrian Arab Republic addressed to the President of the Council.<sup>140</sup> By that letter, the representative of the Syrian Arab Republic requested a meeting to consider the “violations of Syrian and Lebanese airspace committed on that date by the Israeli airforce and the missile attack carried out by the latter on the same day against a civilian site situated inside Syrian territory”.<sup>141</sup>

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<sup>136</sup> Ibid., pp. 24-25.

<sup>137</sup> Ibid., p. 27.

<sup>138</sup> S/PV.4726 (Resumption 1), p. 23.

<sup>139</sup> Ibid., pp. 25-26.

<sup>140</sup> S/2003/939.

<sup>141</sup> Ibid., p. 1.

At the meeting, the representative of the Syrian Arab Republic condemned the “unwarranted aggression” in flagrant violation of the Charter and of the 1974 Disengagement Agreement between the Syrian Arab Republic and Israel.<sup>142</sup> The representative of Lebanon argued that excessive violations by Israel of his country’s air space and of the Blue Line arrangements sponsored by the United Nations in southern Lebanon led to an act of aggression against a Member State. He further argued that the Charter and the norms of international law “warn[ed]” against any act of aggression by any Member State against another irrespective of the reason and also held that a State should first resort to the Council to argue its case.<sup>143</sup>

On the other hand, the representative of Israel argued that its “measured defensive response to the horrific suicide bombings against a terrorist training facility in Syria [was] a clear act of self-defence in accordance with Article 51 of the Charter”. He underscored that those actions came after Israel had exercised tremendous restraint despite countless acts of terrorism that had claimed hundreds of innocent lives, for which the Syrian Arab Republic was responsible, and after his country and the international community had repeatedly called on the Syrian Arab Republic to end its support of terrorism and comply with international law. He further argued that like any State faced with a critical and prolonged threat, Israel needed to exercise its inherent right and obligation to defend its citizens.<sup>144</sup> The representative of the United States called on all sides to avoid heightening the tension in the Middle East and to think carefully about the consequences of their actions. He added that it was in the interest of the Syrian Arab Republic and in the broader interests of Middle East peace that the Syrian Arab Republic stop harbouring and supporting the groups that perpetrated terrorist acts such as the one that had occurred in Haifa.<sup>145</sup>

While a number of speakers condemned the air attack by Israel against the Syrian Arab Republic as a violation of the norms of international law and the Charter and/or called on parties to exercise restraint and restore the political process,<sup>146</sup> some strongly opposed the attack, calling

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<sup>142</sup> S/PV.4836, p. 3.

<sup>143</sup> Ibid., pp.15-16.

<sup>144</sup> Ibid., p. 7.

<sup>145</sup> Ibid., pp. 13-14.

<sup>146</sup> Ibid., p. 9 (Spain); p. 9 (United Kingdom); p. 10 (Russian Federation); p. 10 (Germany); p. 11 (Bulgaria); p. 11 (Chile); and p. 11 (Mexico).

it an act of aggression against a Member State and echoing the argument made by the representative of the Syrian Arab Republic.<sup>147</sup>

The representative of Pakistan opined that the Charter prescribed strict rules for the use of force by Member States, which was envisaged in only two circumstances: the first was in exercise of the right of self-defence against a direct act of aggression or use of force and the second was the collective use of force under Article 42 of the Charter, with the explicit authorization of the Council. He continued to argue that the attack by Israel against the territory of the Syrian Arab Republic had not met those strict requirements set out in the Charter and considered it an arbitrary attack in violation of the Charter and the relevant Council resolutions concerning the Middle East.<sup>148</sup> The representative of Morocco underlined that the Syrian Arab Republic had been a victim of Israeli recourse to the use of force, in violation of the Charter: Article 2 (4) called on all Member States to refrain from the use of force against the territorial integrity or the political independence of any State. He continued that the Israeli attack had been a flagrant violation of sovereignty and territorial integrity of the Syrian Arab Republic and opined that it could not be the object of the sole legal justification envisaged in the Charter—legitimate self-defence.<sup>149</sup> Furthermore, the representative of Jordan made it clear that no party could act outside the jurisdiction of Article 2 (4) of the Charter, which prohibited the use of force except in two cases. The first case was if force was used under Article 51 of the Charter which reflected the principle of self-defence. However, the exercise of that right on the part of any State was conditioned on a prior armed attack against it. The second case was if the Council authorized the use of force under Chapter VII of the Charter. Neither case applied in the case of the aerial attack by Israel against the Syrian Arab Republic, he argued.<sup>150</sup>

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<sup>147</sup> Ibid., p. 14 (League of Arab States); pp. 16-17 (Algeria), p. 19 (Palestine); pp. 21-22 (Islamic Republic of Iran); pp. 22-23 (Bahrain); p. 23 (Yemen); and p. 24 (Qatar).

<sup>148</sup> Ibid., p. 8.

<sup>149</sup> Ibid., p. 17.

<sup>150</sup> Ibid., p. 18.



### 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, in the report of the Panel on the United Nations Peacekeeping Operations, Article 2 (5) was explicitly cited in the context of conflict prevention: The Panel, as one of its key recommendations on preventive action, supported the Secretary-General's more frequent use of fact-finding missions to the areas of tensions, and stressed obligations of Member States, under Article 2 (5) of the Charter, to give "every assistance" to such activities of the United Nations.<sup>151</sup>

In addition, the Council adopted 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 provided below of calls for assistance relating to the good offices of the Secretary-General, mandatory measures within the framework of Article 41 of the Charter, peacekeeping operations, enforcement actions of regional arrangements authorized by the Council and multinational forces 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 good offices of the Secretary-General*

With regard to good offices by the Secretary-General and his representatives, for example, by a presidential statement of 26 January 2000, in connection with the situation concerning the Democratic Republic of the Congo, the Council urged all parties to provide the Special

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<sup>151</sup> S/2000/809, para. 34.

Representative of the Secretary-General in the Democratic Republic of the Congo with “the assistance and cooperation he [would] require to carry out his functions”.<sup>152</sup>

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

During the period under review, implicit references to Article 2 (5) were frequently made in decisions of the Security Council in connection with the measures imposed by the Council under Chapter VII of the Charter. In a number of cases, 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. Also, in some cases, the Council explicitly requested Member States to cooperate with the relevant Committees and the monitoring and expert bodies established to oversee the implementation of the sanctions measures as well as inspection bodies.

For instance, with regard to the situation in Liberia, by resolution 1343 (2001) of 7 March 2001, the Council called on all States to take the appropriate measures to ensure that individuals and companies in their jurisdiction acted in conformity with United Nations embargoes, in particular those established by resolutions 1171 (1998) and 1306 (2000), and to take the necessary judicial and administrative action to end any illegal activities by those individuals and companies.<sup>153</sup>

In connection with the situation in Angola, by resolution 1295 (2000) of 18 April 2000, the Council called on all States to cooperate fully with the monitoring mechanism established by that resolution “in the discharge of its mandate.”<sup>154</sup> Furthermore, in a presidential statement dated 15 November 2001, the Council called on Member States to comply fully with the implementation of the sanctions regime against the União Nacional para a Independência Total de Angola (UNITA) and to cooperate fully with the Security Council Committee and the Monitoring Mechanism on Sanctions against UNITA.<sup>155</sup>

In connection with the situation in Somalia, by resolution 1407 (2002) of 3 May 2002, the Council called on “all States, the Transitional National Government and local authorities in Somalia” to cooperate fully with the Chairman of the Committee established pursuant to resolution 751 (1992) and the Team of Experts to be established by the same resolution in their

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<sup>152</sup> S/PRST/2000/2.

<sup>153</sup> Resolution 1343 (2001), para. 21.

<sup>154</sup> Resolution 1295 (2000), para. 4.

<sup>155</sup> S/PRST/2001/36.

quests for information in accordance with the resolution. It also requested all States to report to the Committee on measures they had in place to ensure the full implementation of the arms embargo and called upon all States, particularly those in the region, to provide the Committee with all available information on violations of the embargo.<sup>156</sup> In addition, by resolution 1519 (2003) of 16 December 2003, the Council called on all States in the region to cooperate with the Monitoring Group set up by that resolution, by establishing the focal points to enhance its cooperation and to facilitate information exchange.<sup>157</sup>

In connection with the situation between Iraq and Kuwait, by resolution 1302 (2000) of 8 June 2000 and other subsequent resolutions, while extending the “oil for food” programme established by resolution 986 (1995), the Council appealed to all States to continue to facilitate the transit of humanitarian supplies to Iraq authorized by the Committee established pursuant to resolution 661 (1990) and to take all other appropriate measures in order to ensure that urgently needed humanitarian supplies reach the Iraqi people as rapidly as possible and further urged all States, specifically the Government of Iraq, to provide their full cooperation in the “effective implementation” of the relevant resolution.<sup>158</sup>

Furthermore, also with regard to the situation between Iraq and Kuwait, by resolution 1441(2002) of 8 November 2002, recalling that the effective operation of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) established pursuant to resolution 1284 (1999) and the International Atomic Energy Agency (IAEA) was essential for the implementation of resolution 687 (1991) and other relevant resolutions, the Council requested all Member States “to give their full support” to UNMOVIC and IAEA “in the discharge of their mandates”.<sup>159</sup>

#### *Assistance relating to peacekeeping missions*

In a number of decisions of the Council, Member States were requested to provide assistance to peacekeeping operations, including provision of troops and material support.<sup>160</sup> For example, in connection with the situation between Eritrea and Ethiopia, by resolution 1312

<sup>156</sup> Resolution 1407 (2002), paras. 4, 8 and 9.

<sup>157</sup> Resolution 1519 (2003), para. 5.

<sup>158</sup> Resolutions 1302 (2000), para. 16; 1330 (2000), paras. 16 and 21; 1360 (2001), paras. 10 and 13; and 1454 (2002), para. 4.

<sup>159</sup> Resolution 1441 (2002), twelfth preambular para. and para. 10.

<sup>160</sup> 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 V, section A.

(2000) of 31 July 2000, the Council called upon the parties to provide the United Nations Mission in Ethiopia and Eritrea (UNMEE) “with access, assistance, support and protection required for the performance of its duties”.<sup>161</sup>

*Assistance relating to enforcement actions by regional arrangements authorized by the Security Council*

In some cases, the Security Council called upon Member States to assist enforcement actions taken by the regional arrangements which were authorized by the Security Council. For instance, in connection with the situation in Côte d’Ivoire, by a presidential statement of 25 July 2003, the Council called upon Member States to provide logistic and financial support to the Economic Community of West African States Mission in Côte d’Ivoire, authorized under Chapter VII of the Charter by resolution 1464 (2003) of 4 February 2003, so that it could continue to fulfill its mandate.<sup>162</sup>

*Assistance relating to multinational forces authorized by the Security Council*

On occasion, the Security Council called for assistance to be provided to the multinational forces authorized by it. For example, in connection with the situation concerning the Democratic Republic of the Congo, by resolution 1501 (2003) of 26 August 2003, the Council, acting under Chapter VII of the Charter, authorized the States members of the Interim Emergency Multinational Force that had been authorized by resolution 1484 (2003) to “provide assistance” to the United Nations Organization Mission in the Democratic Republic of the Congo deployed in and the immediate surroundings of Bunia, if requested and if exceptional circumstances demanded it.<sup>163</sup>

In other instances, the Council, by its resolutions,<sup>164</sup> requested full cooperation of Member States with the multinational forces. For instance, in connection with the situation in Afghanistan, by resolution 1386 (2001) of 20 December 2001, the Council encouraged neighbouring States and other Member States to “provide to the International Security Assistance

<sup>161</sup> Resolution 1312 (2000), para. 3.

<sup>162</sup> S/PRST/2003/11.

<sup>163</sup> Resolution 1501 (2003), para. 2.

<sup>164</sup> In connection with the situation in Bosnia and Herzegovina, see resolutions 1305 (2000), para. 16; 1357 (2001), para. 16; 1423 (2002), para. 16; and 1491 (2003), para. 16. In connection with the situation in Afghanistan, see resolution 1386 (2001), para. 7. In connection with the situation concerning the Democratic Republic of the Congo, see resolution 1484 (2003), para. 8. In connection with the situation in Liberia, see resolution 1497 (2003), para. 11. In connection with the situation between Iraq and Kuwait, see resolution 1511 (2003), para. 14.

Force such necessary assistance as [might] be requested, including overflight clearances and transit.”<sup>165</sup>

#### *Other activities of the United Nations*

During the period under review, the Council called upon Member States to support the efforts by the United Nations in areas of counter terrorism, conflict resolution and humanitarian assistance.

For example, in connection with threats to international peace and security caused by terrorist acts, by resolution 1373 (2001) of 28 September 2001, the Council, acting under Chapter VII of the Charter, decided that all States should “refrain from providing any form of support,” active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.<sup>166</sup>

As to humanitarian assistance, the Council, in connection with the situation between Iraq and Kuwait, by resolution 1483 (2003) of 22 May 2003, called upon “all Member States in a position to do so to respond immediately to the humanitarian appeals by the United Nations and other international organizations for Iraq”.<sup>167</sup>

#### **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.*

##### **Note**

During the period under review, there was no explicit reference to Article 2 (6) in the decisions of the Security Council. Furthermore, no decisions included a reference to “States not

<sup>165</sup> Ibid., para. 7. See also chapter XI, part VI, section B.

<sup>166</sup> Resolution 1373 (2001), para. 2 (a).

<sup>167</sup> Resolution 1483 (2003), para. 2.

Members of the United Nations” that might be described as an implicit reference to the principle enshrined in Article 2 (6). 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.<sup>168</sup> There were no explicit references to Article 2 (6) during the Council’s deliberations, nor did any constitutional discussion arise in connection with that Article.

## **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 was no explicit reference to Article 2 (7) contained in the decisions adopted by the Council.

Article 2 (7) was explicitly referred to in several communications<sup>169</sup> during the reporting period. In addition, in a letter dated 16 September 2002 from the Secretary-General addressed to the President, transmitting a letter from the Minister of Foreign Affairs of Iraq addressed to the Secretary-General, the Minister drew attention to the decision of his Government to allow the return of the United Nations weapons inspectors to Iraq without conditions, and reiterated the importance of the commitment of all States Members of the Council and the United Nations to

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<sup>168</sup> For references to “all States” or “States” contained in the decisions of the Council adopted under Chapter VII of the Charter, see chapter XI, part VI entitled “Obligations of Member States under Article 48 of the Charter”.

<sup>169</sup> See, for example, the letter dated 5 October 2000 from the representative of Yugoslavia addressed to the President (S/2000/961); the letter dated 26 May 2001 from the representative of Iraq addressed to the Secretary-General (S/2001/532); and the letter dated 20 December 2002 from the representative of Iraq addressed to the Secretary-General (S/2002/1400).

respect the sovereignty, territorial integrity and political independence of Iraq, as stipulated in the relevant Council resolutions and “in Article 2 of the Charter”.<sup>170</sup>

During the deliberations of the Security Council, the principle enshrined in Article 2 (7), while not always invoked explicitly, was touched upon frequently, as illustrated by three cases included below. The first two cases deal with the thematic debates on humanitarian aspects of issues before the Security Council (Case 7) and on protection of civilians in armed conflict (Case 8). The last case captures the relevant deliberations of the Council in two meetings held in connection with the situation between Iraq and Kuwait: one meeting was held following the decision by the Government of Iraq to allow the return of the United Nations weapons inspectors to Iraq without conditions, as informed by the Secretary-General in his letter to the President dated 16 September 2002,<sup>171</sup> and the other following the military action against Iraq by the United States, the United Kingdom and their allies which commenced on 20 March 2003 (Case 9).

### Case 7

#### **Maintaining peace and security: humanitarian aspects of issues before the Security Council**

At the 4109<sup>th</sup> meeting, on 9 March 2000, the Council held a thematic debate on the agenda item entitled “Maintaining peace and security: humanitarian aspects of issues before the Security Council.” In the course of the debate, speakers engaged in discussing the role and responsibility of the Security Council in dealing with humanitarian crises and providing humanitarian assistance. In particular, the representative of France argued that humanitarian crisis could reach such degrees of seriousness that the response could only be a political one and, in certain circumstances, one that would also require the use of force in order to end large-scale violations of human rights and international humanitarian law, as those violations in themselves threatened international peace and security, and therefore fully justified the use of such action, in accordance with the Charter. He continued that such was the case in Kosovo and that under

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<sup>170</sup> S/2002/1034, p. 2.

<sup>171</sup> S/2002/1034.

those circumstances the Council could not but exercise the responsibilities assigned to it under the Charter.<sup>172</sup>

While acknowledging the provision of humanitarian activities in armed conflicts as a basic and undisputed duty of the international community, in particular, the Security Council, the representative of Tunisia underscored that the conduct of such humanitarian assistance “must of necessity strictly comply with the principles of sovereignty of States, their political independence, their territorial integrity and non-interference in their internal affairs, as stipulated by the United Nations Charter and the international conventions in force”.<sup>173</sup>

The representative of Pakistan pointed out that the prospects of preventive action must be studied within the five fundamental parameters, one of which was respect for the principle of State sovereignty and non-interference and non-intervention in the internal affairs of States, although that principle could not be extended to situations where people under colonial rule, foreign occupation or alien domination were struggling for their inalienable right to self-determination.<sup>174</sup> The representative of India, explicitly referring to Article 2 (7), argued that, it was the sovereign right of a State to determine whether it needed humanitarian assistance. According to him, if the State chose not to seek assistance, coercion or use of force by the Council or any other body would violate that Article.<sup>175</sup>

## Case 8

### Protection of civilians in armed conflict

At the 4130<sup>th</sup> meeting, on 19 April 2000, the Council held a thematic debate on protection of civilians in armed conflict. Various speakers referred to the need to observe the purposes and principles of the United Nations, in particular, respect for the sovereignty, political independence and territorial integrity of States and non-interference in their internal affairs.<sup>176</sup>

The representative of China held that the Government of a country in armed conflict tended to decide on the measures necessary to protect civilians in accordance with the nature and

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<sup>172</sup> S/PV.4109, p. 7.

<sup>173</sup> Ibid., pp. 12-13.

<sup>174</sup> S/PV.4109 (Resumption 1), p. 9.

<sup>175</sup> Ibid., p. 13.

<sup>176</sup> S/PV.4130, p. 14 (China); p. 17 (Tunisia), p. 22 (Ukraine); S/PV.4130 (Resumption 1), p. 12 (Egypt); and p. 14 (Bahrain).



characteristics of the conflict and the circumstances of civilians in the area of conflict, and in that regard, the positions of sovereign States should be respected by the Security Council, as action taken without the understanding and cooperation of the countries involved might lead those countries to resist. He further pointed out that any attempts to politicize humanitarian concerns, wantonly interfere in other countries' internal affairs or worse yet, overturn a legitimate Government under the pretext of protecting civilians ran counter to the purposes and principles of the Charter.<sup>177</sup> The representative of Tunisia also believed it essential, when dealing with the protection of civilians in armed conflict, to respect the principles of the sovereignty, political independence and territorial integrity of States and non-interference in their internal affairs, as well as to secure the consent and cooperation of the parties, in particular the Governments of the countries concerned.<sup>178</sup>

In a similar vein, the representative of Egypt believed that the provision of humanitarian assistance to civilians in time of war, under the auspices of the United Nations or the International Committee of the Red Cross, should be conducted with the consent of or at the request of the countries concerned and that the sovereignty, territorial integrity and political independence of States should be respected. He further insisted that humanitarian assistance must not be used as a cover for action in support of the political interests of any particular State or group of States.<sup>179</sup>

At the end of the meeting, resolution 1296 (2000) was adopted, in the preamble of which the Council reaffirmed its commitment to the purposes of the Charter as set out in Article 1, paragraphs 1 to 4, and to the principles of the Charter as set out in Article 2, paragraphs 1 to 7, including its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States, and respect for the sovereignty of all States.<sup>180</sup>

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<sup>177</sup> S/PV.4130, p. 14.

<sup>178</sup> *Ibid.*, p. 17.

<sup>179</sup> S/PV.4130 (Resumption 1), pp. 12-13.

<sup>180</sup> Resolution 1296 (2000), sixth preambular para.

## Case 9

### The situation between Iraq and Kuwait

At the 4625<sup>th</sup> meeting, on 16 October 2002, in connection with the situation between Iraq and Kuwait, speakers touched upon the principle enshrined in Article 2 (7), in conjunction with the discussion on the sanctions regime against Iraq and on the role of the Council in resolving the situation.

Throughout the deliberations, a number of speakers reaffirmed their respect for the sovereignty, territorial integrity and political independence of Iraq.<sup>181</sup> The representative of the United Arab Emirates drew attention to the provisions of relevant Council resolutions calling for respect for the sovereignty and territorial integrity of Iraq and non-interference in its internal affairs.<sup>182</sup>

In his intervention, the representative of Iraq maintained that the sanctions regime was in violation of numerous Articles of the Charter, including Article 2 (7), which did not “allow the United Nations to intervene in matters that [were] essentially within the domestic jurisdiction of any State.”<sup>183</sup>

The representative of Malaysia argued that the focus in the Council should be on promoting United Nations diplomacy to resolve the problem through effective inspections and weapons destruction, not on “legitimizing war against Iraq to effect regime change.” He held that removing the Head of State or Government of a sovereign State was “illegal and against the Charter.”<sup>184</sup> A similar argument was also made by the representative of Viet Nam.<sup>185</sup>

The Council held the 4726<sup>th</sup> meeting, on 26 March 2003, in response to the request contained in letters dated 24 March 2003 from the representatives of Iraq and Malaysia to the President of the Council.<sup>186</sup> At the meeting, the Secretary-General underscored that respect for the sovereignty, territorial integrity and independence of Iraq should be one guiding principle in

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<sup>181</sup> S/PV.4625, p. 16 (Egypt); p. 19 (Pakistan); pp. 23-24 (Tunisia); S/PV.4625 (Resumption 1), p. 23 (Cuba); S/PV.4625 (Resumption 2), p. 3 (Morocco); p. 11 (India); p. 13 (Djibouti); p. 21 (Organization of the Islamic Conference); p. 26 (Nepal); and S/PV.4625 (Resumption 3), p. 10 (China).

<sup>182</sup> S/PV.4625, p. 20.

<sup>183</sup> *Ibid.*, p. 7.

<sup>184</sup> S/PV.4625 (Resumption 2), p. 7.

<sup>185</sup> *Ibid.*, p. 12.

<sup>186</sup> S/2003/362 and S/2003/363, respectively.

the future decisions by the Council on Iraq.<sup>187</sup> The representative of Iraq emphasized that the full-scale Anglo-Saxon military invasion and the aggressive war against his country constituted a blatant material breach of international law and the Charter, particularly Articles 2 (4) and 2 (7).<sup>188</sup> The representative of Pakistan underlined the principles prescribed in the Charter, including the principle of non-intervention and non-interference in internal affairs of a State, in containing the conflict and restoring the rule of law in Iraq.<sup>189</sup>

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<sup>187</sup> S/PV.4726, p. 4.

<sup>188</sup> *Ibid.*, p. 5.

<sup>189</sup> S/PV.4726 (Resumption 1), p. 22.

## 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.*

#### **Note**

During the period under review, none of the decisions adopted by the Council contained an explicit reference to Article 24 of the Charter.<sup>190</sup> On the other hand, Article 24, the provision by which Members of the United Nations conferred on the Council primary responsibility for the maintenance of peace and security, was implicitly referred to in a number of resolutions and presidential statements, mostly in context of the agenda items dealing with thematic and cross-cutting issues. By such decisions, the Council reaffirmed, reiterated, recalled or bore in mind its

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<sup>190</sup> It should be noted that Article 24 (3) in connection with the Annual Report of the Security Council to the General Assembly is dealt with in chapter VI, part I, section E.

“primary responsibility” under the Charter for the maintenance of international peace and security.<sup>191</sup>

During the period under review, explicit references to Article 24 were also made on several occasions in the proceedings of the Council.<sup>192</sup> Explicit references to Article 24 were also found in several communications of the Council.<sup>193</sup>

<sup>191</sup> For example, in connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1291 (3000), second preambular para.; 1304 (2000), second preambular para.; 1341 (2001), ninth preambular para.; and 1355 (2001), ninth preambular para. In connection with ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa, see resolution 1318 (2000), annex, section I, third para. In connection with protection of civilians in armed conflict, see resolution 1296 (2000), fifth preambular para.; and S/PRST/2002/6. In connection with children and armed conflict, see resolutions 1314 (2000), fourth preambular para.; and 1379 (2001), fourth preambular para. In connection with women and peace and security, see resolution 1325 (2000), third preambular para. In connection with strengthening cooperation with troop-contributing countries, see resolution 1353 (2001), fifth preambular para. In connection with the responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations, see resolution 1308 (2000), fifteenth preambular para. and S/PRST/2001/16. In connection with role of the Security Council in the prevention of armed conflicts, see resolution 1366 (2001), sixth preambular para. and S/PRST/2000/25. In connection with protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones, see resolution 1502 (2003), first preambular para. In connection with promoting peace and security: humanitarian assistance to refugees in Africa, see S/PRST/2000/1. In connection with maintaining peace and security: humanitarian aspects of issues before the Security Council, see S/PRST/2000/7. In connection with maintenance of peace and security and post-conflict peace-building, see S/PRST/2000/10. In connection with peace-building: towards a comprehensive approach, see S/PRST/2001/5. In connection with small arms, see S/PRST/2001/21. In connection with the situation in Africa, see S/PRST/2002/2.

<sup>192</sup> For instance, in connection with the situation in Africa, see S/PV.4087 (Resumption 1), p. 20 (South Africa); S/PV.4460, p. 33 (South Africa); and S/PV.4538 (Resumption 1), p. 10 (South Africa). In connection with the situation concerning the Democratic Republic of the Congo, see S/PV.4092 (Resumption 1), p. 2 (South Africa); and S/PV.4143 (Resumption 1), p. 10 (Zimbabwe). In connection with general issues relating to sanctions, see S/PV.4128, p. 43 (Iraq). In connection with strengthening cooperation with troop-contributing countries, S/PV.4257, p. 12 (India); and S/PV.4257 (Resumption 1), p. 13 (Ireland). In connection with ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa, see S/PV.4288, p. 12 (Egypt). In connection with role of the Security Council in the prevention of armed conflicts, see S/PV.4334 (Resumption 1), p.18 (Nigeria). In connection with the situation between Iraq and Kuwait, see S/PV.4336 (Resumption 1), p. 14 (Canada); p. 18 (Iraq); S/PV.4625, p. 3 (Deputy Secretary-General); p. 7 (Iraq); p. 21 (Jordan); S/PV.4625 (Resumption 2), p. 2 (Morocco); p. 22 (Jamaica); S/PV.4625 (Resumption 3), p. 16 (Singapore); p. 20 (Ireland); p. 25 (Bulgaria); S/PV.4709, p. 8 (Kuwait), p. 16 (Jordan); and S/PV.4726, p. 32 (Jamaica). In connection with the situation in the Middle East, including the Palestinian question, see S/PV.4357 (Resumption 1), p. 13 (Bahrain); S/PV.4506 (Resumption 1), p. 18 (United Republic of Tanzania); and S/PV.4515 (Resumption 1), p. 14 (Singapore). In connection with the situation in East Timor, see S/PV.4403, p. 15 (Singapore). In connection with the situation in Bosnia and Herzegovina, see S/PV.4568, p. 15 (Islamic Republic of Iran); p. 16 (Jordan); p. 19 (Mongolia); and S/PV.4568 (Resumption 1), p. 2 (Fiji). In connection with small arms, see S/PV.4623 (Resumption 1), p. 5 (Egypt). In connection with wrap-up discussions on the work of the Security Council for the current month, see S/PV.4677, p. 9 (Singapore). In connection with the role of the Security Council in the pacific settlement of disputes, see S/PV.4753, p. 27 (Cameroon). In connection with United Nations peacekeeping, S/PV.4772, p. 10 (Islamic Republic of Iran); p. 17 (Nigeria); and p. 21 (Pakistan). In connection with justice and the rule of law: the United Nations role, see S/PV.4835, p. 35 (Bahrain).

<sup>193</sup> In connection with the situation between Eritrea and Ethiopia, see the letter dated 7 April 2000 from the representative of Ethiopia to the President of the Council (S/2000/296, p. 4). In connection with the situation between Iraq and Kuwait, see identical letters dated 22 January 2001, 4 November 2002, 2 December 2002, 31 December 2002 and 27 January 2003 from the representative of Iraq to the Secretary-General and to the President of the Council (S/2001/68, p. 8; S/2002/1222, p. 3; S/2002/1316, p. 3; S/2002/1439, p. 3; and S/2003/108, p. 4). In

In order to illustrate the interpretation and application of Article 24 by the Council, the following cases were drawn from deliberations in which the Council members engaged in discussing the role and responsibilities of the Council.

Under Cases 10-16, a number of thematic debates have been featured in which Member States touched upon the question of the mandate of the Security Council vis-à-vis other United Nations bodies in accordance with the Charter.

Case 17 depicts discussions in connection with the agenda items entitled “the situation in Bosnia and Herzegovina” and “United Nations Peacekeeping,” in which the Council dealt with the issue of exception of prosecution of cases involving personnel from States not Parties to the Rome Statute of the International Criminal Court. In Cases 18 and 19, relevant debates were set out concerning the situation in the Middle East, including the Palestinian question, and the situation between Iraq and Kuwait, respectively.

### Case 10

#### **Maintaining peace and security: humanitarian aspects of issues before the Security Council**

At the outset of the 4109<sup>th</sup> meeting, on 9 March 2000, the President reaffirmed that the Charter of the United Nations conferred upon the Security Council the primary responsibility for the maintenance of international peace and security and stressed that the Council, in discharging such functions, needed a broad, more proactive approach. Furthermore, he expressed the view that the Council had a responsibility to address humanitarian issues relating to situations of conflict and take appropriate action.<sup>194</sup>

At the same meeting, the representative of Canada pointed out that while advocating for the implementation of a comprehensive approach to conflict prevention, the Council must be prepared to respond quickly to situations in which populations were in grave need, by supporting

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connection with peace-building: towards a comprehensive approach, see the letter dated 25 January 2001 from the representative of Tunisia to the Secretary-General (S/2001/82, p. 5). 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 of America, see the letter dated 14 February 2001 from the representative of Mali to the President of the Council (S/2001/140, p. 2). In connection with threats to international peace and security caused by terrorist acts, see the letter dated 22 December 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism to the President of the Council, transmitting the third report from Angola submitted pursuant to para. 6 of resolution 1373 (2001) (S/2003/1210, p. 4).

<sup>194</sup> S/PV.4109, p. 2.

their access to protection and assistance and by identifying political solutions to resolve the underlying causes of humanitarian crises. He argued that given that humanitarian actions did not respond to the causes of conflict but to the needs of victims, humanitarian efforts should be matched by corresponding actions enabling political actors, and in particular the Council, to address and resolve conflict.<sup>195</sup> The representative of France opined that the Council had the primary responsibility to deal with situations in which violations of international humanitarian law and human rights threatened international peace and security - as in East Timor. Therefore, the Council also had the responsibility for continuing to deal with humanitarian situations in all aspects of its activities - as in the case with Iraq. The representative further stressed that although relieving the civilian suffering was the task of United Nations agencies and humanitarian organizations, it should not absolve the Council of its responsibilities for dealing with crises.<sup>196</sup> The representative of Tunisia argued that the Security Council should shoulder its responsibility in the field of humanitarian activities as the duty of the international community.<sup>197</sup>

The representative of China was of the view that the Security Council, in fulfilling its primary responsibility of maintaining international peace and security, and in reviewing situations of armed conflict, should also pay attention to humanitarian issues caused by conflicts and especially take into consideration factors such as humanitarian assistance, in order to help eliminate or alleviate humanitarian crises, while respecting the sovereignty of a recipient State.<sup>198</sup> The representative of the Russian Federation considered that, while not equating the functions of the Council with those of humanitarian organizations, the Council must lend active political support to the activities of those organizations which in general must be backed up by the authority of the Council.<sup>199</sup> Others also considered it essential that the Council, in dealing with specific situations, ensure protection of civilians and consider humanitarian aspects of conflicts.<sup>200</sup>

In that context, many speakers emphasized the importance of strengthening the coordination mechanisms in humanitarian activities among the relevant bodies of the United

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<sup>195</sup> Ibid., p. 5.

<sup>196</sup> Ibid., pp. 6-7.

<sup>197</sup> Ibid., p. 12.

<sup>198</sup> Ibid., p. 16.

<sup>199</sup> Ibid., p.

<sup>200</sup> Ibid., p. 8 (Jamaica); p. 10 (Malaysia); p. 11 (Mali); p. 17 (Ukraine); S/PV.4109 (Resumption 1), p. 15 (Bulgaria); and p. 17 (Brazil).

Nations system and others.<sup>201</sup> At the same time, several speakers stressed the need to respect the mandate of all organs of the United Nations in accordance with the Charter.<sup>202</sup> For example, the representative of Egypt warned that the delicate balance established in the Charter between the responsibilities and functions of the primary bodies of the United Nations should be maintained, so that each could fulfil its respective tasks without encroaching upon the responsibilities of the other. He urged the Council, in fulfilling its tasks, to act in compliance with all the provisions of the Charter and in conformity with the specific role and responsibility assigned to it, in order to address all threats to international peace and security.<sup>203</sup> The representative of Colombia expressed concern that if the Council assumed the role, outside the scope of the Charter, of directing the response of the entire United Nations system to humanitarian emergencies, it would be unable to properly fulfil its mission of preserving international peace and security. He further underlined that the matter of humanitarian emergencies be addressed at the General Assembly where the “proper guidance” to the humanitarian action could be given by all Member States.<sup>204</sup> The representative of Brazil considered that the role of the Council was to add to the work of the other bodies of the United Nations including the Economic and Social Council (ECOSOC) and the General Assembly without trying to replace them.<sup>205</sup>

At the same meeting, the representative of India pointed out that the Council was a creature of the Charter, of which Article 24 conferred on the Council primary responsibility for the maintenance of international peace and security. In that regard, he argued that nowhere did the Charter speak of humanitarian action or its aspects. The representative opined that the membership of the United Nations, on behalf of which the Council acted in accordance with Article 24, agreed that peacekeeping, another activity not mentioned in the Charter, was set up as a practical instrument. On the other hand, there was no agreement on the humanitarian aspect, and whether the Council should have a role in it.<sup>206</sup>

By a presidential statement dated 9 March 2000, the Council, recalling its primary responsibility under the Charter for the maintenance of international peace and security, recognized the importance of the humanitarian dimension to the maintenance of international

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<sup>201</sup> S/PV.4109, p. 5 (Canada); p. 9 (Jamaica); p. 12 (Mali); p. 13 (Tunisia); p. 14 (Namibia); p. 15 (Russian Federation); p. 17 (Netherlands); S/PV.4109 (Resumption 1), p. 16 (Bulgaria); and p. 17 (Brazil).

<sup>202</sup> S/PV.4109, p. 19 (Argentina); and p. 21 (Egypt); S/PV.4109 (Resumption 1); p. 9 (Pakistan).

<sup>203</sup> S/PV.4109, pp. 20-21.

<sup>204</sup> S/PV.4109 (Resumption 1), pp. 7-8.

<sup>205</sup> Ibid., p. 17.

<sup>206</sup> Ibid., p. 13.



peace and security and to its consideration of humanitarian issues relating to the protection of all civilians and other non-combatants in situations of armed conflict. It also recognized that humanitarian crises could be both causes and consequences of conflicts and that they could affect the Council's efforts to prevent and end conflicts and to deal with other threats to international peace and security. By the same presidential statement, the Council also underlined the importance of effective coordination among relevant United Nations organs and agencies as well as other organizations and actors in the field in situations of ongoing conflict and peace-building, and expressed its willingness to consider ways to improve such coordination.<sup>207</sup>

## Case 11

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

By resolution 1308 (2000) of 17 July 2000, the Council emphasized the important role of the General Assembly and ECOSOC in addressing HIV/AIDS, and stressed the need for coordinated efforts of all relevant United Nations organizations to address the HIV/AIDS pandemic in line with their respective mandates and to assist, wherever possible, in global efforts against it. By the same resolution, the Council also stressed that the HIV/AIDS pandemic, if unchecked, might pose a risk to stability and security.<sup>208</sup>

At the 4259<sup>th</sup> meeting, on 19 January 2001, recalling that his delegation as the President for that month had introduced the issue of HIV/AIDS for the first time into the agenda of the Council in January 2000,<sup>209</sup> the representative of the United States pointed out that there had been debates about whether the Council, “the highest international body legitimizing international involvement across borders” should address the matter at all. While acknowledging that others considered it appropriate that the issue be left entirely to ECOSOC, the representative maintained that the earlier debate on the topic had been worth it, because the continued work by the Council would save lives.<sup>210</sup> In that connection, some speakers recalled resolution 1308

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<sup>207</sup> S/PRST/2000/7.

<sup>208</sup> Resolution 1308 (2000), third, fourth and eleventh preambular paras.

<sup>209</sup> At the 4087<sup>th</sup> meeting, on 10 January 2000, the Council discussed the agenda item entitled “the situation in Africa: the impact of AIDS on peace and security in Africa”.

<sup>210</sup> S/PV.4259, pp. 9-10.

(2000) and argued that HIV/AIDS was a threat to international peace and security, for which the Council had a role to play.<sup>211</sup>

On the other hand, the representative of Costa Rica, while registering concern with the spread of HIV/AIDS through peacekeepers, stressed that under the Charter, it was up to the General Assembly to study and coordinate efforts to combat the epidemic and for ECOSOC to assess, and deal with, the social and developmental effects of the disease. He held that the competence of the Council in that area was severely limited.<sup>212</sup>

## Case 12

### Peace-building: towards a comprehensive approach

At the 4272<sup>nd</sup> meeting, on 5 February 2001, several speakers acknowledged that peace-building was a multidimensional task, which required partnership and better coordination of the Security Council with other organs such as the General Assembly and ECOSOC as well as other agencies responsible for peace-building.<sup>213</sup>

The representative of the United States argued that, while directing multiple United Nations agencies involved in peace-building was not the responsibility of the Council, the Council had in the past agreed that certain peace-building measures, such as disarmament, demobilization and reintegration activities and the rebuilding of local police forces, fell within its purview.<sup>214</sup> The representative of Colombia opined that the Council should be considered as only one of the actors and sometimes “the least relevant one” among those involved in peace-building.<sup>215</sup> For its part, underscoring the importance of the main bodies of the Organization carrying out their work within their mandates in conformity with the Charter, the representative of Egypt held that the issue of peace-building fell within the competence of the General Assembly and ECOSOC, and therefore, urged the Council to give more attention to emerging or ongoing conflicts and to focus on peace-building in a controlled manner as it related to post-

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<sup>211</sup> Ibid., p. 20 (United Kingdom); S/PV.4259 (resumption 1), p. 3 (Ireland); p. 7 (Canada); and p. 8 (Sweden, on behalf of the European Union).

<sup>212</sup> S/PV.4259 (Resumption 1), p. 10.

<sup>213</sup> S/PV.4272, p. 6 (France); pp. 9-10 (United States); p. 10 (United Kingdom); p. 15 (Colombia); p. 17 (China); p. 25 (Bangladesh); S/PV.4272 (Resumption 1), p. 4 (Algeria); p. 11 (Egypt); p. 25 (Argentina); p. 26 (Malaysia) and pp. 33-34 (Tunisia).

<sup>214</sup> S/PV.4272, p. 9.

<sup>215</sup> Ibid., p. 15.

conflict situations, in order not to “[divert] from its main function of maintaining international peace and security”. While recognizing the Council’s role in peace-building, he further expressed concern about the overlap in the functions of the main bodies of the United Nations.<sup>216</sup> A similar concern was expressed by the representative of India who held that most of what post-conflict peace-building involved lay “outside the mandate of the Council” and “within the purview of the General Assembly”.<sup>217</sup>

By a presidential statement dated 20 February 2001, the Council reaffirmed its primary responsibility for the maintenance of international peace and security and reiterated the value of including, as appropriate, peace-building elements in the mandates of peacekeeping operations. The Council further reiterated its willingness to consider ways to improve its cooperation with other United Nations bodies and organs directly by peace-building, in particular the General Assembly and ECOSOC, which had a primary role in that field.<sup>218</sup>

### Case 13

#### Role of the Security Council in prevention of armed conflict

At the 4334<sup>th</sup> meeting, on 21 June 2001, many speakers expressed general support for greater interaction between the Council, the General Assembly and ECOSOC in dealing with the issue of conflict prevention. They also discussed the distribution of competencies established by the Charter among those principle organs of the United Nations. Some, in that context, stressed that the Council did have a key but not exclusive role to play in the area of conflict prevention.<sup>219</sup> For example, the representative of Iraq stressed that the Charter, in particular Articles 10, 11 and 14, entrusted the General Assembly with a role in the maintenance of international peace and security and in the prevention and settlement of conflicts. Nonetheless, the Security Council had expanded its mandate, and thereby exceeded the terms of reference of the General Assembly, which had led to a diminished role and competence of the General Assembly.<sup>220</sup> The

<sup>216</sup> S/PV.4272 (Resumption 1), pp. 10-11.

<sup>217</sup> Ibid., p. 22.

<sup>218</sup> S/PRST/2001/5.

<sup>219</sup> S/PV/ 4334, p. 9 (United Kingdom); p. 12 (Tunisia); p. 13 (Russian Federation); p. 19 (Norway); p. 20 (Ukraine); p. 27 (Canada); S/PV.4334 (Resumption 1), p. 3 (Sweden, on behalf of the European Union); p. 5 (Republic of Korea); pp. 5-7 (Argentina); p. 8 (Costa Rica); p. 13 (Egypt); p. 14 (Mexico); p. 16 (Brazil); p. 21 (Iraq); p. 25 (Belarus); and p. 26 (Nepal).

<sup>220</sup> S/PV.4334 (Resumption 1), p. 21.

representative of Nigeria argued that although Article 24 of the Charter bestowed on the Council the primary responsibility for the maintenance of international peace and security, a successful conflict prevention strategy required cooperation of all the United Nations actors.<sup>221</sup>

By a presidential statement dated 20 July 2000, bearing in mind its primary responsibility under the Charter for the maintenance of international peace and security, the Council reaffirmed its role in taking appropriate steps aimed at the prevention of armed conflicts. In addition, the Council, stressing the importance of effective post-conflict peace-building strategies in preventing the re-emergence of conflicts, recognized the need for close cooperation among bodies of the United Nations system in the area of post-conflict peace-building and expressed its willingness to consider ways to improve such cooperation. The Council further affirmed that a reformed, strengthened and effective United Nations remained central to the maintenance of peace and security, of which prevention was a key component.<sup>222</sup> By resolution 1366 (2001) of 30 August 2001, the Council expressed its determination to pursue the objective of prevention of armed conflict “as an integral part of its primary responsibility for the maintenance of international peace and security.”<sup>223</sup>

## Case 14

### Small arms

At the 4355<sup>th</sup> meeting, convened on 2 August 2001, following the conclusion of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects held on 9-20 July 2001, many speakers recognized that the Security Council had an important contribution to make with respect to the issue of small arms, indicating that certain provisions of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects adopted at the conclusion of the Conference<sup>224</sup> were relevant to the role of the Council. At the same time, the representative of the United States cautioned the Council from seeking a more elaborate role beyond its competence.<sup>225</sup> As to the relationship with the General Assembly, the representative of Brazil emphasized that with

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<sup>221</sup> Ibid., p. 18.

<sup>222</sup> S/PRST/2000/25.

<sup>223</sup> Resolution 1366 (2001), para. 1.

<sup>224</sup> A/CONF.192/15, para. 24.

<sup>225</sup> S/PV.4355, p. 5.

respect to small arms, the Council should avoid creating a process parallel to that of the Conference and concern itself with dimensions related to conflict prevention, arms embargoes and disarmament, demobilization and reintegration of former combatants.<sup>226</sup> Stressing that the Programme of Action was adopted through a process initiated by the General Assembly, the representative of South Africa suggested that involvement of the Council on the issue of small arms should be “confined to specific areas related to the Council’s agenda.”<sup>227</sup> Furthermore, the representative of Sudan, speaking on behalf of the Group of Arab States, pointed out that the role of the Council must be a “supporting one in respect of the efforts undertaken by the General Assembly”.<sup>228</sup> The representative of Pakistan maintained that the Council could contribute to the question of small arms, by focusing on the areas that were directly within its competence and jurisdiction, which meant that it fulfilled its Charter obligations towards pacific settlement of disputes and the prevention of armed conflicts.<sup>229</sup>

At the same meeting, speakers encouraged coordination between the Security Council and other organs of the Organization, particularly the General Assembly and the specialized agencies, to promote a coherent system-wide approach to small arms.<sup>230</sup>

By a presidential statement dated 31 August 2001, the Council noted with grave concern that the destabilizing accumulation and uncontrolled spread of small arms and light weapons in many regions of the world, among other things, increased the intensity and duration of armed conflicts, undermined the sustainability of peace agreements and compromised the effectiveness of the Council in discharging its primary responsibility for the maintenance of international peace and security. Welcoming the adoption of the Programme of Action, the Council recognized its responsibility in assisting in its implementation.<sup>231</sup>

By a statement by the President dated 31 October 2002, the Council recognized its responsibility to examine ways in which it could further contribute to dealing with the question of illicit trade in small arms and light weapons in situations under its consideration.<sup>232</sup>

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<sup>226</sup> S/PV.4355 (Resumption 1), p. 7.

<sup>227</sup> Ibid., p. 11.

<sup>228</sup> Ibid., p. 17.

<sup>229</sup> Ibid., pp. 22-24.

<sup>230</sup> S/PV.4355, p. 7 (Jamaica); p. 10 (Bangladesh); p. 14 (China); p. 23 (Singapore); and p. 27 (Peru); S/PV.4355 (Resumption 1); p. 7 (Brazil).

<sup>231</sup> S/PRST/2001/21.

<sup>232</sup> S/PRST/2002/30.

## Case 15

### Protection of civilians in armed conflict

At the 4492<sup>nd</sup> meeting, on 15 March 2002, the Council heard supportive opinions on the role of the Security Council in the protection of civilians in armed conflicts. The representative of France, pointing out that the majority of the victims of conflicts had shifted from soldiers to civilians, reaffirmed the primary responsibility of the Council for the maintenance of peace and security, and asserted that the current debate was entirely justified.<sup>233</sup> The representative of the United States opined that it had always considered the protection of civilians to be at the heart of the task of the United Nations and of the Security Council in dealing with conflicts.<sup>234</sup> The representative of the Syrian Arab Republic maintained that the Council had decided to focus on the question of protection of civilians as an early warning element of the maintenance of international peace and security. He further expressed the view that the Council had a special responsibility to encourage Member States to fulfil their obligations with respect to the protection of civilians and that ways must be found to improve cooperation among the Council, the General Assembly and ECOSOC, each according to its mandate.<sup>235</sup> Noting that resolutions 1265 (1999) and 1296 (2000) had established a solid base for the work of the Council in the area of protection of civilians, the representative of the Russian Federation was of the view that it was “only normal” for the Council to devote its attention to the issue.<sup>236</sup>

By a presidential statement dated 15 March 2002, the Council reaffirmed its concern at the hardships borne by civilians during armed conflict and recognized the consequent impact this had on durable peace, reconciliation and development, bearing in mind its primary responsibility for the maintenance of international peace and security, and underlining the importance of taking measures aimed at conflict prevention and resolution.<sup>237</sup>

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<sup>233</sup> S/PV.4492, p. 6.

<sup>234</sup> *Ibid.*, p. 12.

<sup>235</sup> *Ibid.*, p. 15.

<sup>236</sup> *Ibid.*, p. 18.

<sup>237</sup> S/PRST/2002/6.

By subsequent presidential statements dated 20 December 2002 and 15 December 2003, the Council reaffirmed the need to keep the protection of civilians in armed conflict as an important item on the agenda of the Council.<sup>238</sup>

## Case 16

### **The situation in Africa: Ad Hoc Working Group on Conflict Prevention and Resolution in Africa**

At the 4538<sup>th</sup> meeting, on 22 May 2002, following a briefing by the Chairman of the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa, the representative of Cuba opined that many measures necessary for eliminating the causes of conflict in Africa and consolidating peace and sustainable development were “clearly beyond the mandate of the Security Council” and corresponded to the work of such organs as the General Assembly and ECOSOC. Therefore, one of the functions of the Working Group should be to consider carefully the activities undertaken by the Council in Africa as the Council might not be the appropriate organ to undertake them. He further argued that his delegation’s concerns stemmed not only from the conceptual perspective but also from a concern over the suffering of the countries where the Council assumed functions that were beyond its competence, and for which it was not duly prepared. He emphasized that the work of the Working Group should “complement and not substitute” for the efforts of other organs to address African problems, and should avoid duplications. He also hoped that it would contribute to improved coordination and communication among the General Assembly, the Council and ECOSOC.<sup>239</sup> The representative of India contended that post-conflict peace-building did not fall within the purview of the Council, but lay with other bodies and organs of the Organization. He contended that as and when those bodies required the involvement and the cooperation of the Security Council, they would invite it.<sup>240</sup>

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<sup>238</sup> S/PRST/2002/41 and S/PRST/2003/27.

<sup>239</sup> S/PV.4538, pp. 23-24.

<sup>240</sup> Ibid., p. 32.

## Case 17

### The situation in Bosnia and Herzegovina

#### United Nations peacekeeping

In a letter dated 3 July 2002 addressed to the President of the Security Council, the representative of Canada requested the Council to convene a meeting on the situation in Bosnia and Herzegovina, stressing that at issue was not just an extension of the United Nations Mission in Bosnia and Herzegovina (UNMIBH), but the “potentially irreversible” decision of the Council which could negatively affect, inter alia, the integrity of treaty negotiations and the “credibility of the Council”.<sup>241</sup> In response to that request, the Council convened the 4568<sup>th</sup> meeting on 10 July 2002 in connection with the situation in Bosnia and Herzegovina.

At the meeting, the representative of Canada raised concerns over the discussion that had been taking place in the Council regarding exemptions for peacekeepers from prosecution by the International Criminal Court. He maintained that the Council had not been empowered to rewrite treaties. He further argued that the draft resolutions being circulated<sup>242</sup> contained elements that “exceed[ed] the Council’s mandate” and that passage of them would “undermine the credibility of the Council”.<sup>243</sup> Similarly, the representatives of New Zealand and South Africa stated that the authority and the role of the Council entrusted by the Charter would be questioned, if the Council attempted to change the negotiated terms of a treaty without the approval of its States parties.<sup>244</sup> Other speakers also expressed concern over the legitimacy of the proposal which, in their opinion, exceeded the competency of the Council.<sup>245</sup>

Specifically referring to Article 24 of the Charter, the representative of the Islamic Republic of Iran expressed regret that the one-sided approach adopted by a permanent member of the Council was, inter alia, putting in jeopardy the future of United Nations peacekeeping. He further argued that such an approach ran counter to the spirit and letter of the Charter, especially Article 24, which maintained that the Council acted “on behalf of the general membership”.<sup>246</sup> The representative of Jordan was of the view that it was almost inconceivable, given the

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<sup>241</sup> S/2002/723.

<sup>242</sup> Not issued as documents of the Council.

<sup>243</sup> S/PV.4568, p. 3.

<sup>244</sup> Ibid., pp. 5-6 (New Zealand) and p. 6 (South Africa).

<sup>245</sup> Ibid., p. 14 (Costa Rica, on behalf of the Rio Group); p. 15 (Islamic Republic of Iran); pp. 26-27 (Mexico); p. 30 (Venezuela); S/PV.4568 (Resumption 1), p. 13; pp. 13-14 (Cuba); and p. 16 (United Kingdom).

<sup>246</sup> S/PV.4568, p. 15.



obligations conferred upon it by Article 24, that the Council could ponder putting at risk the lives of potentially millions of people and existing peacekeeping operations because of differences in opinions on the International Criminal Court.<sup>247</sup> Explicitly citing Article 24 of the Charter, the representative of Mongolia recalled that Member States viewed the Council as the main United Nations body that was called upon, not only to strengthen international peace and security, but also to safeguard State sovereignty and independence in the case of threats or a crisis.<sup>248</sup>

The representative of Fiji explicitly referred to Article 24 (1), stating that the functions and powers of the Council, including those set out in Chapter VII, did not include amending treaties and that doing so would violate established principles of international treaty law.<sup>249</sup>

On the other hand, the representative of the United States argued that the proposal by his delegation, in which article 16 of the Rome Statute was used, was consistent with both the Statute and the primary responsibility of the Council for maintaining international peace and security.<sup>250</sup>

By resolution 1422 (2002) of 12 July 2002, under the agenda item entitled “United Nations peacekeeping”, the Council, acting under Chapter VII of the Charter, requested the International Criminal Court to suspend for 12 months, starting 1 July 2002, the investigation or prosecution cases involving personnel from States not Parties to the Rome Statute of the Court, and expressed the intention to renew that request under the same conditions each 1 July for further twelve-month periods for as long as it might be necessary.<sup>251</sup>

At the 4772<sup>nd</sup> meeting, on 12 June 2003, in connection with United Nations peacekeeping, some speakers, without explicitly invoking Article 24, contested the proposed renewal of the provisions of resolution 1422 (2002). The representative of Canada indicated his concern about the legitimacy of the action recommended by the Council and stated that under the Charter, Member States had entrusted “certain powers under certain conditions” to the Council in order to maintain international peace and security. The representative further indicated his dismay that the Council, in purporting to act in the name of Member States, would take action in the absence of any apparent threat to international peace and security which was the precondition for action

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<sup>247</sup> Ibid., p. 16.

<sup>248</sup> Ibid., p. 19.

<sup>249</sup> S/PV.4568 (Resumption 1), p. 2.

<sup>250</sup> S/PV.4568, p. 10.

<sup>251</sup> Resolution 1422 (2002), paras. 1-2.

under Chapter VII of the Charter.<sup>252</sup> The representative of New Zealand also expressed concern that the intention of the Council to renew resolution 1422 (2002) on an annual basis, was inconsistent with both the terms and the purpose of the provision. As such, it touched directly on the obligations assumed by State parties under the Rome Statute without their consent. He further stated that such an approach stretched the legitimate limits of the role and responsibility entrusted to the Council under the Charter.<sup>253</sup> The representative of Jordan expressed the belief that the Council should not be rewriting treaties previously negotiated by all States comprising the entire international community.<sup>254</sup>

The representative of Liechtenstein stated that resolution 1422 (2002) was more damaging to the Council itself than to the International Criminal Court, and that many of the comments offered the previous year made it clear that the resolution effectively raised questions about the credibility of the action by the Council. He drew attention to the fact that at a time when the relevance of the Council and the Organization as a whole was openly questioned by many critics, the Council would do itself a disservice by renewing automatically or indefinitely the provisions of resolution 1422 (2002).<sup>255</sup> The representative of South Africa also questioned the renewal of resolution 1422 (2002) and urged the Council to use its authority wisely and in the interest of humankind as a whole, and not allow itself to jeopardize the Court or frustrate the ends of international criminal justice.<sup>256</sup>

At the same meeting, there were a number of explicit references to Article 24. The representative of the Islamic Republic of Iran expressed regret that a unilateral approach by one member of the Council had created an untenable and unsound situation in the Council and undoubtedly, such an approach ran counter to the spirit and letter of the Charter, especially Article 24, which maintained that the Council acted on behalf of the membership of the United Nations.<sup>257</sup> The representative of Nigeria also reaffirmed that Member States had collectively conferred on the Council the primary responsibility for the maintenance of international peace and security, under Article 24.<sup>258</sup> While supporting the draft resolution,<sup>259</sup> the representative of

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<sup>252</sup> S/PV.4772, p. 5.

<sup>253</sup> Ibid., pp. 5-6.

<sup>254</sup> Ibid., p. 6.

<sup>255</sup> Ibid., p. 8.

<sup>256</sup> Ibid., pp. 16-17.

<sup>257</sup> Ibid., p. 10.

<sup>258</sup> Ibid., p. 17.

<sup>259</sup> S/2003/630.

Pakistan stated that his Government strongly adhered to the position that the Council, despite its wide authority and responsibilities, was not empowered to unilaterally amend or abrogate international treaties and agreements freely entered into by sovereign States. He further reaffirmed that the powers of the Security Council were constrained under paragraph 2 of Article 24 of the Charter, which obliged it to discharge its duties in accordance with the purposes and principles of the Charter.<sup>260</sup> At the meeting, the draft resolution was adopted as resolution 1487 (2003) by which the Council extended for a further twelve-months period the provisions of resolution 1422 (2002).

## Case 18

### **The situation in the Middle East, including the Palestinian question**

At the 4231<sup>st</sup> meeting, on 22 November 2000, convened in connection with the situation in the Middle East, including the Palestinian question, the representative of Palestine affirmed that, to put an end to the situation, the responsibility of the Council was consistent and clear in accordance with the Charter. He noted that first, concrete measures needed to be taken to end the Israeli campaign against the Palestinian people and secondly, the Council must provide the necessary international protection for Palestinian civilians under Israeli occupation.<sup>261</sup> For its part, the representative of Israel held the belief that as the organ with the primary responsibility for the maintenance of international peace and security, the Council was duty-bound to encourage the parties to return to the path of bilateral negotiation and compromise. He further urged the Council to call upon the Palestinians to adhere to the commitments they had undertaken to renew security cooperation with Israel and to call an end to the violence and to return to the negotiating table. The representative of Israel assured that, if the Palestinians were to take those actions, the bloodshed would end immediately.<sup>262</sup>

Several speakers called upon the Council to fulfil its obligations under the Charter and to act without delay to stop the violence. The representative of Malaysia underscored that the Council, with the primary responsibility for the maintenance of international peace and security,

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<sup>260</sup> Ibid., p. 21.

<sup>261</sup> S/PV.4231, pp. 3-4.

<sup>262</sup> Ibid., p. 7.

must live up to its obligations and that its credibility was at stake.<sup>263</sup> The representative of the Libyan Arab Jamahiriya appealed to the Council that if it was to express the will of the international community and to maintain international peace and security, it should be just and shoulder its responsibilities under the Charter and its own resolutions.<sup>264</sup> A similar call was made by the representative of Egypt.<sup>265</sup>

In the following meetings on the agenda items, opinions were also expressed by speakers that the Council should assume the responsibility vested in it by the Charter, by explicitly citing Article 24.<sup>266</sup>

## Case 19

### The situation between Iraq and Kuwait

The 4336<sup>th</sup> meeting was held on 28 June 2001, in response to the request contained in a letter dated 15 June 2001 from the representative of the Russian Federation,<sup>267</sup> to discuss, inter alia, the effects of the sanctions imposed on Iraq and consider ways of improving the humanitarian situation in that country. At the meeting, the representative of Canada, referring to a draft resolution submitted by the United Kingdom to modify the “oil for food” programme,<sup>268</sup> recalled that Article 24 of the Charter specified that members of the Council were to “act on behalf of the entire United Nations membership”. Therefore, he appealed to all members of the Council to act corporately in the common interest by supporting the draft resolution, since this was “their duty under the Charter” and “our expectation of them as our representatives.”<sup>269</sup>

At the 4625<sup>th</sup> meeting, on 16 October 2002, following the decision of the Government of Iraq to resume weapons inspections in Iraq, the Deputy Secretary-General stated that non-compliance by Iraq with Security Council resolutions posed a challenge to the Organization and in particular to the Council. She further reaffirmed that in Article 24 of the Charter, Member States had conferred on the Council primary responsibility for the maintenance of international

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<sup>263</sup> Ibid., p.16.

<sup>264</sup> Ibid., p. 19.

<sup>265</sup> Ibid., p. 22.

<sup>266</sup> See S/PV.4357 (Resumption 1), p. 13 (Bahrain); S/PV.4506 (Resumption 1), p. 18 (United Republic of Tanzania); and S/PV.4515 (Resumption 1), pp. 14-15 (Singapore).

<sup>267</sup> S/2001/597.

<sup>268</sup> Not issued as a document of the Council.

<sup>269</sup> S/PV.4336 (Resumption 1), p. 14.

peace and security and that it was essential that the Council should face up to its grave responsibility.<sup>270</sup>

At the same meeting, the representative of Jordan called on all Member States to work towards achieving a solution through peaceful means in order to avoid making the situation in the Middle East even more critical, which, in his opinion, compelled the Council to assume its responsibilities as provided for in the Charter, including paragraphs 1 and 2 of Article 24.<sup>271</sup>

The representative of Morocco expressed the view that resolutions of the Council should be respected as the Council adopted them “on behalf of” Member States, in accordance with the purposes and principles of the United Nations and in line with the provisions of Article 24 of the Charter.<sup>272</sup> Explicitly citing Article 24, the representative of Jamaica also reaffirmed that the Council was entrusted with the primary responsibility for the maintenance of international peace and security on behalf of the membership of the Organization and that in discharging its responsibilities, the Council should act in accordance with the purposes and principles of the United Nations. As such, he argued that the Council was accountable to the wider membership, especially in discussing a matter of great importance for the world.<sup>273</sup>

At the same meeting, the representative of Iraq held that the embargo imposed against his country was a blatant violation of several provisions of the Charter of the United Nations, such as Article 24, which called for the Council to work in keeping with the purposes and principles of the Charter.<sup>274</sup>

Subsequent to the commencement of the military action against Iraq by the United States and its allies, at the 4726<sup>th</sup> meeting, on 26 March 2003, the Secretary-General urged Member States to reunite to uphold the principles of the Charter. This was essential for the Council to recover its rightful role, entrusted to it by the Charter, as the body with primary responsibility for the maintenance of international peace and security.<sup>275</sup>

The representative of Iraq argued that, while consideration of humanitarian questions was important, the Council should pay attention first to the cessation of “the war of aggression”, not the humanitarian aspects. He continued that the focus on the latter was an attempt to distract the

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<sup>270</sup> S/PV.4625, p. 3.

<sup>271</sup> Ibid., p. 21.

<sup>272</sup> S/PV.4625 (Resumption 2), p. 2.

<sup>273</sup> Ibid., p. 22.

<sup>274</sup> Ibid., p. 7.

<sup>275</sup> S/PV.4726, p. 4.

Council from its main role in the maintenance of international peace and security.<sup>276</sup> Similarly, the representative of the Islamic Republic of Iran held that the international community expected the Council to live up to its obligations and call for an immediate ceasefire and the withdrawal of foreign troops from Iraq.<sup>277</sup>

The representative of Malaysia, speaking on behalf of the Non-Aligned Movement, expressed disappointment at the failed attempts to avert the war in Iraq and called on the Council to pronounce itself on the issue of the ongoing military action against Iraq. He called on the Council to use its power and authority as mandated by the Charter, “to revert to the multilateral process” to resolve the current issue. He further pointed out that “as the custodian of international peace and security”, the Council had a “special and heightened” responsibility to ensure that the international world order was based on the principles of justice and international law.<sup>278</sup> The representative of the League of Arab States called upon the Council to shoulder its obligations as the organ responsible for the maintenance of international peace and security. He urged the Council to put an end to the war and initiate an immediate withdrawal of the “invading forces”, which was the responsibility of the Council. The credibility of the Council, he said, depended upon that.<sup>279</sup> The representative of Jamaica, explicitly referring to Article 24, reminded the Council of its responsibility from which it must not resile.<sup>280</sup>

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<sup>276</sup> Ibid., p. 6.

<sup>277</sup> Ibid., p. 34.

<sup>278</sup> Ibid., pp. 6-8.

<sup>279</sup> Ibid., p. 9.

<sup>280</sup> Ibid., p. 32.

## 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 Council did not adopt any decisions that explicitly invoked Article 25 of the Charter. In the deliberations of the Council, however, there were several occasions<sup>281</sup> on which explicit references to Article 25 of the Charter were made.

On one such occasion, a speaker noted the relationship between Articles 24 and 25: at the 4568<sup>th</sup> meeting, on 10 July 2002, the representative of Mongolia noted that Article 24 of the Charter conferred on the Security Council primary responsibility for the maintenance of international peace and security and that Member States viewed the Council as the main United Nations body that was called upon, not only to strengthen international peace and security, but also to safeguard their sovereignty and independence in case of threats or crisis. He continued that it was because of that trust and faith that Member States agreed, in Article 25 of the Charter, to accept and carry out the decisions of the Council.<sup>282</sup>

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 the decisions of the Council, within the context of Article 25, was reaffirmed in a resolution in connection with the situation between Iraq and Kuwait, by which the Council requested the

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<sup>281</sup> In connection with children and armed conflict, see S/PV.4176 (Resumption 1), p. 16 (Iraq). In connection with the situation between Iraq and Kuwait, see S/PV.4625, p. 18 (Pakistan); S/PV.4625(Resumption 1), p. 7 (League of Arab States); S/PV.4625(Resumption 3), p. 7 (Syrian Arab Republic); p. 16 (Singapore); p. 23 (Colombia); p. 27 (Mauritius); and p. 29 (Palestine); S/PV.4709 (Resumption 1), p. 27 (Iceland); and S/PV.4717 (Resumption 1), p. 9 (El Salvador). In connection with the situation in the Middle East, including the Palestinian question, see S/PV.4506 (Resumption 1), p. 4 (Kuwait); p. 10 (Iraq); p. 30 (Singapore); and p. 37 (Mexico); S/PV.4510, p. 3 (Palestine); and S/PV.4525, p. 13 (Canada). In connection with the situation in Bosnia and Herzegovina, see S/PV.4568, p. 19 (Mongolia). In connection with the role of the Security Council in the pacific settlement of disputes, see S/PV.4753, p. 26 (Cameroon). In connection with justice and the rule of law: the United Nations role, see S/PV.4835, p. 9 (Japan).

<sup>282</sup> S/PV.4568, p. 19.

Secretary-General immediately to notify Iraq of the resolution, “which [was] binding on Iraq.”<sup>283</sup> In addition, by a presidential statement of 20 July 2000, in connection with the role of the Security Council in the prevention of armed conflicts, the Council recalled “the obligation of all Member States to accept and carry out” its decisions, including those for the prevention of armed conflicts.<sup>284</sup>

In other instances, the Council demanded that Member States comply with relevant resolutions, reminding that non-compliance was in a violation of the Charter. For example, in connection with the situation in Somalia, by resolution 1474 (2003) of 8 April 2003, noting with regret that the arms embargo on Somalia had been continuously violated since its imposition in 1992, the Council stressed the obligation of “all States and other actors” to comply with resolution 733 (1992) and reaffirmed that “non-compliance constitute[d] a violation of the provisions of the Charter.”<sup>285</sup> Similar provisions were included in resolution 1519 (2003) of 16 December 2003.<sup>286</sup>

In one draft resolution that was not adopted during the period under review, the Council, recalling “the obligation of Members of the United Nations to accept and carry out the decision of the Security Council,” would have condemned the failure of implementation of its resolutions and demanded the immediate implementation of a resolution.<sup>287</sup>

During the period under review, there were a few instances in which Article 25 was explicitly cited in communications.<sup>288</sup>

In one case, during the deliberations of the Council concerning the situation between Iraq and Kuwait, an aspect of the application of Article 25 was touched upon, namely the binding nature of the decisions of the Council (Case 20).

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<sup>283</sup> Resolution 1441 (2002), para. 9.

<sup>284</sup> S/PRST/2000/25.

<sup>285</sup> Resolution 1474 (2003), second preambular para. and para. 1.

<sup>286</sup> Resolution 1519 (2003), fourth preambular para. and para. 1.

<sup>287</sup> S/2002/363.

<sup>288</sup> See letters dated 2 January 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism to the President of the Security Council (S/2002/2, p. 12 and S/2002/10, p. 6); identical letters dated 26 September 2002 from the representative of Palestine to the Secretary-General and the President of the Council (S/2002/1083, p. 2); and the letter dated 3 June 2003 from the representative of the Islamic Republic of Iran to the Secretary-General (S/2003/619, p. 43).



## Case 20

### The situation between Iraq and Kuwait

At the 4625<sup>th</sup> meeting, on 16 and 17 October 2002, many speakers urged Iraq to implement relevant Security Council resolutions. The representative of Pakistan, explicitly citing Article 25 of the Charter, opined that the Article imposed a “clear-cut” obligation on Member States to implement the decisions of the Security Council without conditions.<sup>289</sup>

However, several speakers expressed concern about “discrimination” or “double standards” of the Council in seeking the implementation of its decisions in connection with the situation between Iraq and Kuwait, compared to those, in particular, in connection with the situation in the Middle East, including the Palestinian question.<sup>290</sup> The representative of South Africa argued that the Council should ensure consistency in the way it acted to enforce its decisions and to avoid subjectivity and vagueness in its resolutions. He further underlined that, the Council, by clearly defining the objectives of its decisions and setting clear benchmarks for compliance, could facilitate efforts by Member States to fully comply with their obligations.<sup>291</sup> Similarly, the representative of Algeria, in referring to resolution 1435 (2002), opined that the Council must be consistent and fair and ensure compliance with its resolutions in every instance.<sup>292</sup> The representative of Jordan stated that the implementation of Security Council resolutions was an obligation of all States, without exception, including resolutions on the Middle East, whether they were adopted with regard to Iraq or to the occupied Palestinian territories.<sup>293</sup> The representative of Malaysia argued that what was required of Iraq, with respect to compliance with Council decisions, must also be required of others, particularly Israel, which had ignored many of them with impunity.<sup>294</sup> The representative of Saudi Arabia stressed that Council resolutions, under whatever Chapter of the Charter they might be adopted, were binding, particularly since they addressed issues of international peace and security.<sup>295</sup>

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<sup>289</sup> S/PV.4625, p. 18.

<sup>290</sup> Ibid., p. 17 (Egypt); and p. 24 (Tunisia); S/PV.4625 (Resumption 1), p. 7 (League of Arab States); and p. 24 (Sudan); S/PV.4625 (Resumption 2); p. 8 (Malaysia); pp. 9-10 (Lebanon); p. 17 (Palestine); pp. 18-19 (Saudi Arabia); p. 20 (Organization of the Islamic Conference); p. 24 (Zimbabwe); and p. 25 (Qatar); and S/PV.4625 (Resumption 3), p. 7 (Syrian Arab Republic).

<sup>291</sup> S/PV.4625, p. 6.

<sup>292</sup> Ibid., p. 16.

<sup>293</sup> Ibid., p. 21.

<sup>294</sup> S/PV.4625 (Resumption 2), p. 8.

<sup>295</sup> Ibid., p. 19.

The representative of Israel, for his part, contended that there was indeed a double standard directed against Israel, which could explain the failure to see any distinction between “binding resolutions, adopted under Chapter VII of the Charter - resolutions that set out specific actions to be taken by Iraq, independent of the actions of any other party - and interdependent recommendations or statements of the principle, adopted under Chapter VI, that [were] designed to move all the parties forward in the Middle East.” He continued by affirming that unlike resolutions concerning Iraq, the resolutions of the Council on the Israeli-Palestinian conflict did not envision Israeli action without reciprocal commitment and implementation by other parties to the dispute, and that they could not be compared to resolutions adopted under Chapter VII which addressed the threat posed by the aggressive intentions of one regime to both the region and the world.<sup>296</sup>

The representative of the Syrian Arab Republic, on the other hand, rejected the view expressed by the representative of Israel as “distortion” of the Charter and affirmed that Article 25 called on all States to implement Council resolutions and that all Council resolutions were binding and must be implemented, and therefore, all resolutions were binding on all Members.<sup>297</sup> The representative of Singapore, echoed by the representative of Mauritius, explicitly cited Article 25 and held that irrespective of whether they were adopted under Chapter VI or Chapter VII of the Charter, all Council resolutions must be complied with and no Council resolution on any issue could be cast aside without consequences. He continued to state that hence, to maintain its credibility and authority, the Council must vigorously pursue the implementation of all its resolutions, whether they were on Iraq, the Middle East, the Balkans or Africa.<sup>298</sup> The representative of Palestine renounced the statement by the representative of Israel indicating that there was a difference in the nature of the resolutions adopted pursuant to Chapter VII and those pursuant to Chapter VI of the Charter. He continued that, while recognizing the existence of an enforcement mechanism pursuant to Chapter VII, to attempt to give the impression that some resolutions were binding and others were not was “legally false”, and maintained that Article 25 was clear and all Council resolutions were binding.<sup>299</sup>

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<sup>296</sup> S/PV.4625 (Resumption 3), pp. 2-3.

<sup>297</sup> *Ibid.*, p. 7.

<sup>298</sup> *Ibid.*, p. 16 (Singapore); and p. 27 (Mauritius).

<sup>299</sup> *Ibid.*, pp. 28-29.

## 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 further 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.<sup>300</sup> The more active involvement of regional organizations in the maintenance of peace and security provided for a wider range of options for the Council as to the nature and modalities of cooperation with those regional arrangements, which differed in mandate, structure, capacity and experience in peace-related activities.

Underscoring its expanding cooperation with regional organizations, in April 2003, the Security Council held its first thematic debate, with participation of several regional organizations,<sup>301</sup> on the agenda item entitled “The Security Council and regional organizations: facing new challenges to international peace and security”.<sup>302</sup>

The resolutions and presidential statements adopted by the Council during the period under consideration revealed an increased recognition of regional organizations and of their growing or potential role in international peace and security. Most of the activities of regional organizations praised or endorsed 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 imposed by the Council under Chapter VII of the Charter. Furthermore, in three instances, the Council authorized the use of force by regional

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<sup>300</sup> Chapter VIII of the Charter refers to “regional arrangements and agencies”. The *Repertoire* follows the practice of the Council in its synonymous use of these terms with “regional organizations”.

<sup>301</sup> Participating regional organizations included the Organization of American States (OAS), the League of Arab States (LAS), the Organization for Security and Cooperation in Europe (OSCE), the African Union, the European Union and the Economic Community of West African States (ECOWAS). For additional information regarding participation of representatives of regional organizations in meetings of the Council, see Chapter III, annex, table 2.

<sup>302</sup> In parallel, the Secretary-General continued a high-level meeting process with the heads of regional organizations with a view to strengthening mutual cooperation between regional organizations and the United Nations, particularly, in the context of Chapter VIII of the Charter, on issues related to peace and security. By a presidential statement dated 20 February 2001 (S/PRST/2001/5), the Council welcomed the convening of the Fourth High-level United Nations-Regional Organizations Meeting and its results as conveyed by the Secretary-General in his letter of 12 February 2001 (S/2001/138). Upon the conclusion of the Fifth High-level United Nations-Regional Organizations Meeting in July 2003, by identical letters dated 22 October 2003 addressed to the President of the Security Council and the General Assembly (S/2003/1022), the Secretary-General transmitted the conclusions of the meeting. Subsequently, reference was made to the outcome of the Fifth High-level Meeting during the deliberations of the Council.

organizations, in order 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, on occasion, invoked Chapter VIII or the relevant Articles therein in its decisions.<sup>303</sup> A number of explicit references to Chapter VIII as well as to Articles 52, 53 and 54 of the Charter were also made in the course of the deliberations of the Council, particularly during the debates on thematic issues.<sup>304</sup>

In addition, two explicit references to Article 52 were made in communications.<sup>305</sup> One explicit reference to Article 53 was also made in another communication.<sup>306</sup> Explicit references to Article 54 were made occasionally by regional organizations in communications informing the

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<sup>303</sup> In connection with the item entitled “Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa”, see resolution 1318 (2000), annex, section VII, first para. In connection with the item entitled “The situation in Côte d’Ivoire”, see resolution 1464 (2003), para. 9. In connection with the item entitled “The situation in Liberia”, see resolution 1497 (2003), fifth preambular para. In connection with the item entitled “Role of the Security Council in the prevention of armed conflicts”, see S/PRST/2000/25. In connection with the item entitled “The situation in Africa”, see S/PRST/2002/2.

<sup>304</sup> In connection with the item entitled “Protection of civilians in armed conflict”, see S/PV.4660, p. 28 (Russian Federation). In connection with the item entitled “Strengthening cooperation between the United Nations system and the Central African region in the maintenance of peace and security”, see S/PV.4630 (Resumption 1), p. 29. In connection with the item entitled “Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones”, see S/PV.4100, p. 11 (Russian Federation). In connection with the item entitled “High-level meeting of the Security Council: combating terrorism”, see S/PV.4688, p. 14 (Mexico). In connection with the item entitled “Wrap-up discussion on the work of the Security Council for the current month”, see S/PV.4818, p. 4 (Cameroon) and p. 9 (Russian Federation); and S/PV.4445, p. 4 (Tunisia). In connection with the item entitled “Justice and the rule of law: the United Nations role”, see S/PV.4835, p. 24 (Australia). In connection with the item entitled “Maintaining peace and security: Humanitarian aspects of issues before the Security Council”, see S/PV.4109 (Resumption 1), p. 10 (Pakistan); and p. 13 (India). In connection with the item entitled “No exit without strategy”, see S/PV.4223 (Resumption 1), p. 10 (Thailand). In connection with the item entitled “Role of the Security Council in the prevention of armed conflicts”, see S/PV.4334, p. 18 (Norway) and S/PV.4334 (Resumption 1), p. 20 (South Africa). In connection with the item entitled “Letter dated 30 April 2001 from the Secretary-General addressed to the President of the Security Council (S/2001/434)”, see S/PV.4439, p. 19 (Tunisia).

<sup>305</sup> By a letter dated 5 April 2000 to the President of the Council, the representative of Djibouti, as President of the Intergovernmental Authority on Development (IGAD) at the time, emphasized that IGAD was the main forum for peace efforts in the Sudan. While recognizing the primary responsibility of the Council for the maintenance of peace and security and its involvement in the pacific settlement of conflicts, he held that taking up the question of peace in the Sudan in the Council might have a negative impact on the peace process currently under way under the auspices of IGAD. He expressed hope that the Council, in accordance with Article 52 of the Charter, would do its utmost to “give a chance to the laudable efforts undertaken by IGAD for the resolution of the conflict in the Sudan” (S/2000/288). Additionally, by a letter dated 31 July 2000 addressed to the President of the Council, the representative of the Federal Republic of Yugoslavia argued that the sanctions imposed since 1998 against his country by the European Union were not in line with Article 52 of the Charter and had never been referred to the Council. Considering that the sanctions by the European Union were not based on international law and were contrary to the purposes and principles of the Charter, the Council was called upon to consider the lack of legal basis of the continued impositions of the sanctions, to declare them illegal and to propose that they be urgently lifted (S/2003/753).

<sup>306</sup> See the letter dated 14 February 2001 from the representative of Cyprus to the President of the Council (S/2001/136).

Council of activities undertaken or contemplated by them for the maintenance of international peace and security.<sup>307</sup>

The practice of the Council under Chapter VIII of the Charter is described below in five sections, without making ascription to specific Articles. Section A 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 various ways in which the Council, in dealing with specific situations under its consideration, encouraged and supported efforts by regional organizations in the peaceful settlement of disputes. Section C sets out cases where regional organizations were involved in the implementation of Chapter VII measures. Section D depicts four cases where the Council considered or authorized enforcement action by regional organizations. The final part of this chapter, section E, captures the modalities and mechanisms of communication, consultation and reporting between the Council and regional organizations.

#### **A. General considerations of the provisions of Chapter VIII**

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

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

At the 4194<sup>th</sup> meeting, on 7 September 2000, the President of China, while underscoring the responsibility of the Council for the maintenance of international peace and security, stressed the need to pay close attention to the opinions of regional organizations, such as the Organization of African Unity (OAU).<sup>308</sup> The President of France also emphasized the need to strengthen the partnership between the Council and regional organizations. He noted that some progress had been made, but closer consultations at an earlier stage were critical when planning to call on the

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<sup>307</sup> See the letter dated 2 July 2003 from the representative of Fiji to the President of the Council (S/2003/753); and letters dated 7 September 2000, 25 September 2000, 21 March 2001, 9 April 2001, 6 August 2001, 10 October 2001, 23 September 2002, 24 September 2002, 11 November 2002, 3 March 2003, 24 March 2003, 3 June 2003, 21 July 2003, 6 October 2003, 4 November 2003 and 11 November 2003 from the representative of the League of Arab States to the President of the Council (S/2000/863, S/2000/900, S/2001/257, S/2001/341, S/2001/349, S/2001/769, S/2001/957, S/2002/1074, S/2002/1077/, S/2002/1078, S/2002/1079, S/2002/1080, S/2002/1081, S/2002/1082, S/2002/1188, S/2002/1238, S/2003/254, S/2003/365, S/2003/613, S/2003/753, S/2003/949, S/2003/1072 and S/2003/1079).

<sup>308</sup> S/PV.4194, pp. 7-8.

United Nations to facilitate implementation of an agreement or to take over a regional action.<sup>309</sup> The President of Mali noted that cooperation with regional organizations should be strengthened to enable the United Nations to be more effective at prevention and at deploying locally based operations. He added that the international community and the Council had to employ a consistent strategy to build the capacity of OAU and of a future African union, and of regional organizations, as well as to cooperate with them.<sup>310</sup> A few speakers called for greater coordination<sup>311</sup> and consultation with regional organizations.<sup>312</sup>

By resolution 1318 (2000), adopted at that meeting, the Security Council called for the strengthening of cooperation and communication between the United Nations and regional or sub-regional organizations or arrangements, in accordance with Chapter VIII of the Charter, and in particular with respect to peacekeeping operations.<sup>313</sup>

At the 4288<sup>th</sup> meeting, on 7 March 2001, several speakers stressed the need to strengthen cooperation and communication with regional and subregional organizations, citing examples of Council meetings with the ministerial delegation of the Economic Community of West African States (ECOWAS) and the Political Committee of the Lusaka Ceasefire Agreement process, both on the situation concerning the Democratic Republic of the Congo.<sup>314</sup> The representative of Canada held that, while the Secretary-General had made substantial progress in improving the ability to work with regional and subregional bodies, that progress had not been matched by the Council, which had been “too often absent” when peace agreements were negotiated, resulting in the United Nations falling short of fulfilling its commitments. On the other hand, he held that where the Council had engaged regional or subregional bodies, too often the result had been to delay effective Council action.<sup>315</sup> Similarly, while acknowledging the existing cooperation between the Council and regional organizations, the representative of France underscored the importance of implementing that cooperation in a satisfactory manner. Pointing out the limited capacity of regional and subregional organizations to implement their decisions, he urged for the

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

<sup>310</sup> Ibid., p. 20.

<sup>311</sup> Ibid., p. 6 (Argentina) and p. 12 (Tunisia).

<sup>312</sup> Ibid., p. 10 (Namibia).

<sup>313</sup> Resolution 1318 (2000), annex, section VII, first para.

<sup>314</sup> S/PV.4288, p. 4 (Canada); p. 7 (Sweden) and pp. 8-9 (Argentina) and S/PV.4288 (Resumption 1); p. 2 (Mali); p. 4 (France); p. 9 (China); p. 12 (United Kingdom); pp. 15-16 (United States); p. 18 (Tunisia); p. 20 (Norway); and p. 23 (Mauritius).

<sup>315</sup> S/PV.4288, p. 4.

early involvement of the Council in the preparation of regional action, so that the Council could assume a mandate or undertake a mission from the regional organizations.<sup>316</sup>

## *2. Peace-building: towards a comprehensive approach*

At the 4272<sup>nd</sup> meeting, on 5 February 2001, several speakers welcomed the timing of the debate in light of the Fourth High-level Meeting between the United Nations and regional organizations,<sup>317</sup> to be held on 6-7 February 2001 on the topic of cooperation with regional organizations in peacebuilding.<sup>318</sup> With respect to developing a comprehensive peacebuilding strategy, a number of speakers maintained that an integrated approach required a thorough and timely coordination between actors on the ground and those at the centre and, most notably, between the United Nations and regional organizations.<sup>319</sup> The representative of the United Kingdom noted that the capacity of regional organizations could be extended, for example, by sharing information and analysis, the “double-hatting” of special envoys, and the arrangement of specialized training and secondments.<sup>320</sup> The representative of Colombia held that peacebuilding missions need not be carried out principally by the United Nations. Rather, depending on the specific conditions, the lead could be taken by a regional organization.<sup>321</sup>

Some speakers also argued that the United Nations and the regional actors possessed different strengths and capabilities in the area of conflict prevention and peacebuilding, and therefore the focus should be on achieving greater complementarity and synergy between the United Nations and regional organizations, using their respective comparative advantages.<sup>322</sup>

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<sup>316</sup> S/PV.4288 (Resumption 1), p. 5.

<sup>317</sup> S/PV.4272, p. 13 (Singapore); p. 24 (Mali); p. 27 (Mauritius) and S/PV.4272 (Resumption 1), p. 4 (Sweden, on behalf of the European Union); p. 8 (Republic of Korea); p. 20 (Mongolia); and p. 25 (Malaysia).

<sup>318</sup> For details, see the letter of the Secretary-General dated 12 February 2001 to the President of the Council (S/2001/138).

<sup>319</sup> S/PV.4272, p. 8 (Jamaica); p. 10 (United States); p. 11 (United Kingdom); p. 20 (Ireland); p. 21 (Norway); p. 24 (Mali); and p. 26 (Bangladesh) and S/PV/4272 (Resumption 1), p. 4 (Sweden); p. 8 (Nigeria); p. 17 (Islamic Republic of Iran); p. 18 (Japan); and p. 25 (Argentina).

<sup>320</sup> S/PV.4272, p. 10.

<sup>321</sup> *Ibid.*, p. 16.

<sup>322</sup> S/PV.4272 (Resumption 1), p. 4 (Sweden, on behalf of the European Union); and p. 19 (Romania, on behalf of the Organization for Security and Cooperation in Europe).



### 3. Role of the Council in the prevention of armed conflicts

At the 4174<sup>th</sup> meeting, on 20 July 2000, some representatives expressed support for stronger cooperation with regional organizations.<sup>323</sup> While commending on the increasingly important role played by regional organizations in the maintenance of peace and security and conflict prevention, in line with their mandate under Chapter VIII of the Charter, a couple of speakers reminded that intervention by regional organizations needed to be done with the authorization of the Council, as provided for by Article 53 of the Charter.<sup>324</sup> Other speakers, while urging for more cooperation with regional arrangements, reaffirmed the primacy of the Security Council in the maintenance of international peace and security.<sup>325</sup> Furthermore, the representative of the United Republic of Tanzania asserted that preventive action at the regional level, in the context of Chapter VIII, needed to be enhanced and that regional arrangements could act as an effective spearhead for subsequent Council action.<sup>326</sup> The representative of Canada cited examples of cooperation, albeit “far from perfect”, between the United Nations and regional organizations such as in Sierra Leone, the Democratic Republic of the Congo and Ethiopia/Eritrea, where regional organizations had taken the lead in the negotiation of peace agreements with the United Nations following the implementation phase. He argued that for such joint efforts to succeed, close coordination was needed.<sup>327</sup> The representative of Indonesia called for regional organizations to play an active role in initiating and implementing conflict-prevention measures.<sup>328</sup> The representative of the Organization of the Islamic Conference (OIC), commenting that conflict prevention differed from one region to the next, noted that creating an effective coordination mechanism among the United Nations agencies and regional organizations would make it possible to derive benefits, as laid out in Chapter VIII of the Charter, from the comparative advantages of every organization.<sup>329</sup>

By a presidential statement of the same date, the Council recognized the important role that regional organizations played in the prevention of armed conflicts and reemphasized the need for effective and sustained cooperation and coordination between the United Nations and

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<sup>323</sup> S/PV.4174, p. 5 (United States); pp. 6-7 (United Kingdom); p. 11 (Russian Federation); p. 14 (Tunisia); p. 21 (Canada); p. 23 (Ukraine); and p. 27 (France) and S/PV.4174 (Resumption 1), p. 16 (Kenya).

<sup>324</sup> S/PV.4174, p. 13 (China); and p. 18 (Namibia).

<sup>325</sup> *Ibid.*, p. 14 (Tunisia); and p. 23 (Ukraine).

<sup>326</sup> S/PV.4174 (Resumption 1), p. 14.

<sup>327</sup> S/PV.4174, p. 21.

<sup>328</sup> S/PV.4174 (Resumption 1), p. 11.

<sup>329</sup> *Ibid.*, p. 18.

regional organizations and arrangements, in accordance with the provisions of Chapter VIII of the Charter. The Council expressed its willingness, within its responsibilities, to support the efforts of the Secretary-General in collaborating with the leadership of regional organizations and arrangements in order to develop strategies and programmes to be employed at the regional level. In that regard, the Council encouraged the strengthening of the modalities of cooperation between the United Nations and regional organizations and arrangements, including in early warning and the mutual exchange of information. Additionally, it recognized the need to enhance the capacity of OAU.<sup>330</sup>

In his report dated 7 June 2001, included in the agenda of the 4360<sup>th</sup> meeting, held on 30 August 2001, the Secretary-General recognized that Chapter VIII of the Charter provided a broad mandate for interaction between the United Nations and regional organizations in conflict prevention. He held that regional organizations, because of their proximity, could contribute to conflict prevention in a number of ways, as they could provide a local forum for efforts to decrease tensions, and promote and facilitate a comprehensive regional approach to cross-border issues.<sup>331</sup>

By resolution 1366 (2001) of 30 August 2001, the Council, bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security and reaffirming its role in the prevention of armed conflicts, called upon Member States as well as regional and subregional organizations and arrangements to support the development of a comprehensive conflict prevention strategy, as proposed by the Secretary-General in his report of 7 June 2001.<sup>332</sup> It called for the enhancement of the capacity for conflict prevention of regional organizations, in particular in Africa, by extending international assistance to, inter alia, OAU, its successor organization and ECOWAS.<sup>333</sup>

#### *4. The Security Council and regional organizations: facing new challenges to international peace and security*

At the 4739<sup>th</sup> meeting, on 11 April 2003, the Security Council held its first thematic debate on the agenda item entitled “The Security Council and regional organizations: facing new

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<sup>330</sup> S/PRST/2000/25.

<sup>331</sup> S/2001/574, paras. 137-138.

<sup>332</sup> Ibid., recommendation 26.

<sup>333</sup> Resolution 1366 (2001), paras. 3, 19, and 20.

challenges to international peace and security”. While recalling the primary responsibility of the Council for the maintenance of international peace and security, a number of speakers stated that cooperation with regional organizations was important and that a dynamic relationship with regional organizations needed to be developed, based on the provisions of Chapter VIII of the Charter.<sup>334</sup> The representative of Germany, welcoming the initiative of the President to discuss questions related to Chapter VIII, commented that the potential of that Chapter seemed to be unfolding in a positive manner. However, he noted that if the primacy of the Council in the maintenance of international peace and security was rejected, the very foundation of international law as represented by the Charter would be brought into question. Therefore, it was imperative that regional security operations remained mandated by the Council. The representative added that in order to bring in sync with each other the primacy of the United Nations and the Council and the complementarity of regional organizations, regular dialogue between them should take place.<sup>335</sup> The representative of France echoed that position.<sup>336</sup> The representative of Angola reasserted the key role regional organizations played, but added that they could not substitute for the role and character of the United Nations as a universal Organization.<sup>337</sup> The representative of Chile commented that the fruitful work of regional organizations should be promoted through a dynamic and energetic relationship with the Council in the framework of Chapter VIII, adding that there were clear benefits to the close synergy between those organizations and the Council.<sup>338</sup> The representative of the United States asserted that regional organizations had a greater vested interest and sensitivity in regional situations and underlined that the United Nations should rely increasingly on regional organizations to assume responsibility for peacekeeping efforts and, in that regard, welcomed the decision of the African Union to establish a Peace and Security Council.<sup>339</sup>

Referring to the “distressing circumstances” in the Middle East, the representative of the League of Arab States (LAS) noted that it had played the role expected of it by responding to the deteriorating situation in the region with regard to Palestine, Iraq and regional security, all in sync with the principles and purposes of the Charter and the Articles relevant to the role of

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<sup>334</sup> S/PV.4739, p. 22 (Russian Federation); p. 23 (Bulgaria); and p. 28 (China).

<sup>335</sup> *Ibid.*, p. 5.

<sup>336</sup> *Ibid.*, p. 34.

<sup>337</sup> *Ibid.*, p. 6.

<sup>338</sup> *Ibid.*, p. 9.

<sup>339</sup> *Ibid.*, pp. 9-10.

regional organizations in the pacific settlement of disputes. He further stated that LAS, working collectively with Arab diplomacy, had put tremendous effort in their support of the Council in inspections of weapons of mass destruction in Iraq. Recalling that Chapter VIII allowed regional organizations considerable leeway in the settlement of disputes, while leaving primary responsibility with the Council, the representative of LAS stated that the Council did not deal with all regional organizations on the same footing, as it sometimes utilized some regional organizations while at other times it ignored others in a similar situation.<sup>340</sup> The representative of Pakistan reiterated that regional arrangements were valuable only so long as they acted on the basis of the principles of the Charter.<sup>341</sup>

Referring to the need for a sensible division of labor among regional and subregional structures, by taking each of their comparative advantages into account, the representative of the Russian Federation reaffirmed that authorization by, and accountability to, the Council should be inherent in any regional or coalition peacekeeping operation, particularly when enforcement action was included in its mandate.

Quoting Articles 52, 53 and 54 of the Charter, which recognized the potential of regional organizations in conflict prevention and the maintenance of peace, the representative of Cameroon stated that regional organizations aspired to, and had managed to, become more involved in conflict prevention and peacekeeping operations carried out by the United Nations in their respective areas.<sup>342</sup> The representative of Greece, speaking on behalf of the European Union, commented that, in relation to operational interaction, the European Union was intensifying its practical cooperation with the United Nations system and other regional and subregional organizations. He highlighted the European Union Police Mission in Bosnia and Herzegovina as the “first example of the practical possibilities of cooperation” between the United Nations and the European Union crisis management operations. He further expressed the view that in order to strengthen the collective security system of the United Nations, regional arrangements or agencies should enhance their role in conflict prevention.<sup>343</sup>

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<sup>340</sup> Ibid., pp. 14-16.

<sup>341</sup> Ibid., p. 17.

<sup>342</sup> Ibid., p. 26.

<sup>343</sup> Ibid., p. 29.

### *5. Maintenance of peace and security and post-conflict peace-building*

At the 4118<sup>th</sup> meeting, on 23 March 2000, the representative of Algeria asserted that the growing reluctance of some countries to participate in peacekeeping operations, especially in Africa, had led to the greater involvement of regional organizations. This, in turn, made more acute the problem of the relationship between the United Nations and regional peacekeeping organizations, against the backdrop of the problem of financing operations and the material, logistic and military capacities of the regional organizations in playing their new role.<sup>344</sup>

Underscoring the role of regional organizations in post-conflict peacebuilding, the representative of Mongolia expressed the view that the international community and regional organizations should play an important role in addressing the problems of various post-conflict groups on the basis of new power-sharing or other agreed arrangements. He noted that, bearing in mind their nature, obligations and interests, regional organizations had a special stake and role to play in post-conflict peacebuilding—a role that no other international body could effectively fulfil.<sup>345</sup>

### *6. Strengthening cooperation between the United Nations system and the Central African region in the maintenance of peace and security*

At the 4630<sup>th</sup> meeting, on 22 October 2002, some speakers called for strengthening the relationship between the Security Council and African regional and subregional organizations.<sup>346</sup> In that context, the representative of Egypt urged the Council to give its political weight to the limited peacekeeping operations that regional organizations were able to undertake.<sup>347</sup> Asserting that the African Union and subregional organizations could work closely with the United Nations on the basis of a comparative advantage in advocacy, preventive actions and peacemaking, the representative of Mauritius commented that subregional institutions could, in certain situations, advise the United Nations as to whether the situations necessitated that the Organization play a lead role or that of a simple coordinator. He concluded that in that way their respective roles would be clearly defined at the very early stages of emerging conflicts.<sup>348</sup> The representative of the Russian Federation pointed out that regional organizations, because of their geographical

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<sup>344</sup> S/PV.4118, p. 20.

<sup>345</sup> S/PV.4118 (Resumption 1), p. 4.

<sup>346</sup> S/PV.4630, p. 21 (Democratic Republic of the Congo); p. 22 (Equatorial Guinea); p. 24 (Denmark, on behalf of the European Union); p. 26 (Egypt); and p. 27 (Japan) and S/PV.4630 (Resumption 1), p. 9 (United States); p. 12 (China); p. 13 (Syrian Arab Republic); pp. 15-16 (Ireland); and p. 29 (Cameroon).

<sup>347</sup> S/PV.4630, p. 26.

<sup>348</sup> S/PV.4630 (Resumption 1), p. 11.

proximity and greater familiarity with unique local situations, could take the initiative in preventive diplomacy and the peaceful settlement of disputes, as demonstrated in Angola and, to a certain extent, the Democratic Republic of the Congo. However, he added that peacekeeping operations by regional organizations could be launched only with “clear authorization by the Security Council”.<sup>349</sup> The representative of Mexico asserted that cooperation between the United Nations and regional organizations, recognized in Chapter VIII of the Charter, ensured not only better knowledge of the situation on the ground, but also a strategy that was commensurate with needs.<sup>350</sup>

### *7. The role of the Security Council in the pacific settlement of disputes*

At the 4753<sup>rd</sup> meeting, on 13 May 2003, referring to the various ways in which the Security Council had used Chapter VI in recent years, the Secretary-General mentioned Council attempts to work more closely with regional and subregional organizations to prevent and resolve conflicts in Africa.<sup>351</sup> The Secretary-General recalled some of the recommendations contained in his report of 7 June 2001, including the use of regional prevention mechanisms.<sup>352</sup> Some speakers highlighted the importance of coordination by the Council with regional organizations in the pacific settlement of disputes.<sup>353</sup> A few speakers noted that regional organizations played a crucial role in assisting the Council in understanding the root causes of conflict and in advising on the best way to cope with a situation. They further emphasized that regional organizations had closer knowledge and were particularly well placed to provide early warning and to maintain political mechanisms for the settlement of disputes.<sup>354</sup> The representative of Guinea, while noting that the Council had a crucial role to play in seeking pacific settlement of conflicts, emphasized that regional organizations were appropriate channels for the prevention, management and settlement of conflicts.<sup>355</sup> Other speakers emphasized the role of the Council under Chapter VIII to encourage the pacific settlement of disputes through

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<sup>349</sup> Ibid., p. 20.

<sup>350</sup> Ibid., p. 21.

<sup>351</sup> S/PV.4753, pp. 2-3.

<sup>352</sup> S/2001/574.

<sup>353</sup> S/PV.4753, p. 12 (Spain); pp. 14-15 (Germany); p. 19 (Chile); p. 20 (Bulgaria); pp. 20-21 (Guinea); pp. 21-22 (France); p. 25 (Syrian Arab Republic); and p. 27 (Cameroon).

<sup>354</sup> Ibid., pp. 15-16 (Germany); and p. 27 (Cameroon).

<sup>355</sup> Ibid., pp. 20-21.

regional arrangements.<sup>356</sup> The representative of Greece, speaking on behalf of the European Union, reiterated the call of the European Union on States parties to regional arrangements to try to achieve pacific settlement of their disputes in accordance with Articles 33 and 52 of the Charter.<sup>357</sup>

#### *8. The situation in Africa*

By a presidential statement dated 31 January 2002, the Security Council, recalling its primary responsibility for the maintenance of international peace and security as well as the provisions of Chapter VIII of the Charter of the United Nations, underscored the importance of partnership and enhanced coordination and cooperation, based on complementarity and comparative advantage, between the United Nations, OAU and subregional organizations in Africa in the promotion of regional peace and stability. The Council also emphasized the importance of enhanced cooperation and of ensuring better coordination between the United Nations and OAU with the view to achieving a lasting solution to conflicts. The Council further expressed its readiness to deepen its cooperation with OAU and subregional organizations and invited them to inform it at the earliest possible stage over their decisions and initiatives that could have implications relating to its responsibilities under the Charter. In addition, the Council called on the United Nations system to intensify its cooperation with OAU and subregional organizations in Africa in the field of capacity-building, particularly in early warning, conflict prevention and peacekeeping. It also stressed the importance of effective interaction between the United Nations system and OAU and subregional organizations through the exchange of information and analysis at the conflict prevention stage; coordination and clear understanding of respective roles in forwarding peace processes; and coordinated support to national and regional peacebuilding efforts.<sup>358</sup>

At the 4460<sup>th</sup> meeting, on 29 January 2002, many speakers focused on the need to strengthen and develop the relationship between the United Nations, OAU, and African sub-regional organizations in order to develop integrated approaches to conflict prevention, conflict

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<sup>356</sup> S/PV.4753 (Resumption 1), p. 11 (Colombia); p. 13 (Ethiopia); and p. 14 (Armenia).

<sup>357</sup> *Ibid.*, p. 3.

<sup>358</sup> S/PRST/2002/2.

settlement, and post-conflict peacebuilding, reconstruction and development.<sup>359</sup> Some speakers supported the proposal by Mauritius to establish a working group to examine ways of improving relations between OAU and the United Nations.<sup>360</sup> Given the primary responsibility of the United Nations in matters of international peace and security, the representative of Mexico considered it necessary to strengthen support for the regional and subregional measures adopted in Africa because the United Nations had neither the capacity nor the resources to deal with all the problems that might arise on the African continent.<sup>361</sup> The representative of South Africa, while recalling Article 24 of the Charter, expressed the belief that the mandate of the Council was not premised on isolation and included maintaining peace and security through regional and subregional arrangements, as specified in Chapter VIII of the Charter.<sup>362</sup> The representative of Cameroon noted that Central Africa, as a partner of the Council, met the requirements of Articles 52 and 53 of the Charter, promoting conflict settlement on a regional level.<sup>363</sup>

Reminding that the maintenance of international peace and security was first and foremost the responsibility of the Council and that there should be no dilution by shifting the obligation to regional organizations, the representative of India commented that the idea of building an African peacekeeping capacity looked attractive, more importantly, through an infusion of the resources required. Citing the important role that regional and subregional organizations played in Ethiopia and Eritrea or Burundi, he nevertheless remained skeptical of the tendency, particularly evident in Africa, to transfer responsibility and subcontract initiatives to regional and subregional organizations, which might not necessarily be prepared for them.<sup>364</sup>

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<sup>359</sup> S/PV.4460, p. 10 (United Kingdom); p. 12 (Ireland); p. 14 (Norway); p. 16 (Mexico); p. 18 (Guinea); p. 20 (Democratic Republic of the Congo); p. 23 (Algeria); p. 24 (Senegal); p. 26 (Zambia); pp. 28-29 (Mozambique); and p. 33 (South Africa); S/PV.4460 (Resumption 1), p. 2 (Colombia); pp. 3-4 (China); p. 5 (Russian Federation); p. 7 (Bulgaria); pp. 8-9 (Cameroon); p. 10 (Singapore); pp. 12-13 (Syrian Arab Republic); p. 17 (United States); pp. 23-24 (Spain, on behalf of the European Union); p. 26 (Tunisia); p. 28 (Bangladesh); p. 30 (Cuba); p. 32 (Côte d'Ivoire); and p. 37 (Nigeria); S/PV.4460 (Resumption 2); pp. 3-4 (Ghana); p. 5 (Jamaica); p. 10 (Ukraine); and p. 13 (Malaysia).

<sup>360</sup> S/PV.4460, p. 10 (United Kingdom); S/PV.4460 (Resumption 1); p. 14 (France); S/PV.4460 (Resumption 2); p. 15 (Kenya).

<sup>361</sup> S/PV.4460, p. 16.

<sup>362</sup> *Ibid.*, p. 33.

<sup>363</sup> S/PV.4460 (Resumption 1), p. 9.

<sup>364</sup> S/PV.4460 (Resumption 2), p. 8.



### *9. Conflicts in Africa: Council missions and United Nations mechanisms to promote peace and security*

At the 4766<sup>th</sup> meeting, on 30 May 2003, a number of speakers emphasized the importance of coordination and cooperation between the Security Council and regional and subregional bodies,<sup>365</sup> while others underlined the importance of providing regional arrangements with financial and political support.<sup>366</sup> The representative of Cameroon maintained that the Council had, in a consistent and encouraging way, developed exemplary institutional relationship with ECOWAS, citing the situation in Côte d'Ivoire as one example, but added that the Council had sometimes proved to be highly selective when there had been a contradictory regional decision on a conflict under consideration.<sup>367</sup> The representative of the Russian Federation shared his satisfaction with the intensification of the peacekeeping efforts of the African Union, ECOWAS, the Southern African Development Community (SADC), and the Intergovernmental Authority on Development (IGAD), but expressed concern that, in some cases, the assessments of the Council and the African institutions did not coincide and that the requests of the African partners did not always find Council support.<sup>368</sup> Citing the role of the African Union, among others, in resolving the situations in Central and Western Africa, the representative of Tunisia held that the efforts and initiatives to be carried out should be based on parameters established by African States themselves in pursuance of the principles and objectives of the African Union and in close cooperation with the Council.<sup>369</sup>

#### **B. Encouragement or calls by the Security Council for action 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 efforts undertaken by regional organizations in the pacific settlement of disputes, including the signing of peace agreements under the auspices of regional

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<sup>365</sup> S/PV.4766, p. 8 (Mauritius); p. 12 (Angola), p. 13 (Mexico); p. 15 (Egypt); p. 18 (Burundi); p. 20 (Cameroon) and S/PV.4766 (Resumption 1), p. 3 (Bulgaria); p. 5 (Japan); p. 6 (Malaysia); p. 7 (Chile); p. 10 (Greece, on behalf of the European Union); and p. 14 (Philippines).

<sup>366</sup> S/PV.4766, p. 7 (United Kingdom); p. 15 (Egypt); p. 21 (United States) and S/PV.4766 (Resumption 1), p. 3 (Bulgaria); p. 5 (Japan); p. 6 (Malaysia); p. 7 (Chile); p. 10 (Greece, on behalf of the European Union), p. 12 (Guinea); p. 13 (Syrian Arab Republic); p. 17 (China); p. 18 (Russian Federation); and p. 20 (Tunisia).

<sup>367</sup> S/PV.4766, p. 20.

<sup>368</sup> S/PV.4766 (Resumption 1), p. 18.

<sup>369</sup> *Ibid.*, p. 20.

organizations, such as the Lomé Peace Agreement in Sierra Leone. The Council also supported the regional peacekeeping operation in Sierra Leone and the deployment of the subregional peacekeeping force in Côte d'Ivoire, both by the Economic Community of West African States (ECOWAS). Furthermore, to harmonize the activities of the Organization and to promote cooperation with ECOWAS, the Council supported the establishment of the first United Nations regional peacebuilding office—the United Nations Office in West Africa (UNOWA). The practice of the Council in this regard is set out below, by region and by chronological order.

## **Africa**

### *The situation in Côte d'Ivoire*

In connection with the situation in Côte d'Ivoire, the Security Council supported the efforts by ECOWAS to achieve a pacific settlement of the conflict, which included support for deployment of a subregional peacekeeping force.

By a presidential statement dated 20 December 2002, the Council strongly supported the efforts of ECOWAS to promote a peaceful resolution of the conflict and urged the leaders of ECOWAS to continue their efforts in a coordinated manner.<sup>370</sup> Furthermore, the Council expressed its full support for the deployment in Côte d'Ivoire of the Economic Community of West African States Monitoring Group (ECOMOG) by 31 December 2002, as called for in the final communiqué of the ECOWAS Summit in Dakar, adopted on 18 December 2002.<sup>371</sup>

By resolution 1464 (2003) of 4 February 2003, the Council recalled its full support for the efforts of ECOWAS to promote a peaceful settlement of the conflict, and also appreciated the efforts of the African Union to reach a settlement.<sup>372</sup> By the same resolution, the Council welcomed the deployment of the ECOWAS forces with a view to contributing to a peaceful solution of the crisis and, in particular, to the implementation of the Linas-Marcoussis Agreement.<sup>373</sup>

At the 4746<sup>th</sup> meeting, on 29 April 2003, the Executive Secretary of ECOWAS opined that the Council was being challenged to find ways to support worthy subregional efforts to

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<sup>370</sup> S/PRST/2002/42.

<sup>371</sup> S/2002/1386, annex.

<sup>372</sup> Resolution 1464 (2003), fourth preambular para.

<sup>373</sup> *Ibid.*, para. 8. The Linas-Marcoussis Agreement was signed by the Ivorian political forces in Linas-Marcoussis on 23 January 2003 (S/2003/99, annex I).

maintain peace and security, which, after all, was the primary responsibility of the Council. In addition, he suggested that the Council should look at cases of “successful subregional deployment of troops under Chapter VIII” of the Charter to stabilize crisis situations and deliberate whether it might not be prudent for the Council to provide the requisite resources for such forces. Citing Côte d’Ivoire as an example, he argued that the Council should encourage ECOWAS and other subregional organizations to continue to play a leading role and called for the creation of the right synergy and collaborative working relationships between ECOWAS and the Council to deal with issues of peace and security.<sup>374</sup>

By a communiqué issued following the 4747<sup>th</sup> meeting, on 29 April 2003, the members of the Council welcomed the action taken by ECOWAS with a view to resolving the crisis in Côte d’Ivoire.<sup>375</sup> Furthermore, by resolution 1479 (2003) of 13 May 2003, the Council established the United Nations Mission in Côte d’Ivoire (MINUCI) with a mandate to facilitate the implementation by the Ivorian parties of the Linas-Marcoussis Agreement, complementing the operations of ECOWAS forces.<sup>376</sup>

By a presidential statement dated 25 July 2003, the Council welcomed the satisfactory deployment of the ECOWAS peacekeeping force in the western part of the country to support the implementation of the ceasefire agreement reached on 3 May 2003. By resolution 1514 (2003) of 13 November 2003, the Council continued to reiterate its full support for the efforts of ECOWAS in promoting a peaceful settlement of the conflict.<sup>377</sup>

*The situation in Guinea following recent attacks along its borders with Liberia and Sierra Leone  
Letter dated 30 April 2001 from the Secretary-General addressed to the President of the Security  
Council (S/2001/434)*

At the 4319<sup>th</sup> meeting, on 14 May 2001, at which no action was taken, the Council discussed, inter alia, the efforts of ECOWAS to advance the peace process and the report of the Inter-Agency Mission to West Africa.<sup>378</sup> The Under-Secretary-General for Peacekeeping Operations noted the efforts of ECOWAS to the advancement of the peace process.<sup>379</sup> The

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<sup>374</sup> S/PV.4746, p. 7.

<sup>375</sup> S/PV.4747.

<sup>376</sup> Resolution 1479 (2003), para. 2.

<sup>377</sup> Resolution 1514 (2003), ninth preambular para.

<sup>378</sup> S/2001/434.

<sup>379</sup> S/PV.4319, p. 3.

representative of Tunisia stated that ECOWAS should be fully involved in the activities in the subregion and supported the recommendations of the Inter-Agency Mission regarding the provision of assistance to ECOWAS to strengthen its institutional, logistical and financial capacities to enable it to shoulder its weighty responsibilities. He further recalled that the United Nations and the Council were called upon to support the initiatives of that subregional organization under Chapter VIII of the Charter, particularly its initiatives to settle the problems by political means and to put an end to the humanitarian crisis in the subregion.<sup>380</sup> Many speakers supported the role played by ECOWAS in the context of the West Africa region and called for more cooperation and coordination between the United Nations and ECOWAS.<sup>381</sup> Furthermore, a number of speakers welcomed the recommendation of the above-mentioned report to establish a United Nations office for West Africa.<sup>382</sup>

On the basis of its consideration of the report of the Inter-Agency Mission to West Africa,<sup>383</sup> the Council, by a presidential statement dated 19 December 2001, fully supported the initiatives taken with a view to implementing the recommendations in the report. In particular, the Council welcomed the establishment of the Office of the Special Representative of the Secretary-General for West Africa to ensure, inter alia, the strengthening of harmonization and coordination of the activities of the United Nations system in an integrated regional perspective and the development of a fruitful partnership with ECOWAS, other sub-regional organizations and international and national actors. The Council stressed the need to further strengthen the capacities of ECOWAS in areas that would enable it to act as the “engine of subregional integration and increased cooperation with the United Nations system”.<sup>384</sup>

### *The situation in Sierra Leone*

In Sierra Leone, the Security Council welcomed the efforts by ECOWAS in the pacific settlement of the dispute and provided its support by expanding the peacekeeping operation of

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<sup>380</sup> Ibid., p. 17.

<sup>381</sup> Ibid., pp. 13-14 (Mali); pp.15-16 (United Kingdom); p. 17 (Tunisia); p. 20 (Bangladesh); p. 21 (Russian Federation); p. 22 (Colombia); p. 23 (France); p. 25 (Jamaica); p. 26 (Singapore); p. 28 (China); p. 29 (Ukraine); p. 30 (Mauritius); p. 30 (Norway); and p. 31 (United States).

<sup>382</sup> Ibid., p. 14 (Mali); p. 16 (United Kingdom); p. 21 (Bangladesh); p. 23 (France); p. 25 (Jamaica); p. 28 (China); and p. 29 (Ukraine).

<sup>383</sup> S/2001/434.

<sup>384</sup> S/PRST/2001/38.

the United Nations to take over some functions performed by the ECOWAS peacekeeping operation, both of which continued to operate side by side throughout the reporting period.

In his report of 11 January 2000, the Secretary-General observed that, following the decision of Nigeria to withdraw its troops from Sierra Leone, the Monitoring Group of ECOWAS (ECOMOG) would be unable to continue to perform the vital functions of providing security and protection to the Government of Sierra Leone. He, therefore, recommended that the Council authorize the expansion of the mandate of the United Nations Mission in Sierra Leone (UNAMSIL), established by resolution 1270 (1999) of 22 October 1999, in order for UNAMSIL to assume the functions that were assigned to ECOMOG.<sup>385</sup>

By resolution 1289 (2000) of 7 February 2000, the Council welcomed the efforts made by ECOMOG and UNAMSIL towards the implementation of the Peace Agreement, signed in Lomé on 7 July 1999.<sup>386</sup> In addition, the Council, while taking note of the decision of the Governments of Nigeria, Guinea and Ghana to withdraw their remaining ECOMOG contingents from Sierra Leone,<sup>387</sup> expressed its appreciation of ECOMOG for its indispensable contribution towards the restoration of democracy and the maintenance of peace, security and stability in Sierra Leone. The Council, in deciding the expansion of the mandate of UNAMSIL,<sup>388</sup> stressed the importance of a smooth transition between ECOMOG and UNAMSIL for the successful implementation of the Peace Agreement and the stability of Sierra Leone and, in that regard, urged all those concerned to consult over the timing of troop movements and withdrawals.<sup>389</sup> By a series of its subsequent resolutions, the Council continued to support and encourage the efforts of ECOWAS towards a lasting and final settlement of the crisis in the Mano River Union region.<sup>390</sup> In particular, by resolution 1370 (2001) of 20 November 2001, the Council underlined the importance of the continuing political and other support that the United Nations provided to the efforts made by ECOWAS in order to stabilize the region.<sup>391</sup>

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<sup>385</sup> S/2000/13, paras. 43-44.

<sup>386</sup> S/1999/777, annex.

<sup>387</sup> As reported in the letter of the Secretary-General of 23 December 1999 (S/1999/1285).

<sup>388</sup> See chapter V for details.

<sup>389</sup> Resolution 1289 (2000), paras. 1, 2, 7-10, 12 and 14.

<sup>390</sup> Resolutions 1315 (2000), second preambular para.; 1346 (2001), para. 11; 1370 (2001), para. 11; 1400 (2002), para. 11; 1436 (2002), para. 12; 1470 (2003), para. 13; and 1508 (2003), para. 8; S/PRST/2000/14 and S/PRST/2000/31.

<sup>391</sup> Resolution 1370 (2001), para. 11.

### *The situation in Liberia*

With regard to the situation in Liberia, the Security Council continuously commended the efforts by ECOWAS and the African Union towards the restoration of peace and stability in the region. In particular, following the signing of the ceasefire agreement in July 2003, the Council commended the role of ECOWAS in facilitating the peace process, citing Chapter VIII of the Charter.

By a series of resolutions, the Council welcomed the continued efforts of ECOWAS towards the restoration of peace and security in the region and to bring lasting peace in Liberia.<sup>392</sup> By a presidential statement dated 13 December 2002, the Council recognized that the success of a comprehensive international strategy to Liberia rested on the direct and active involvement of the African Union, ECOWAS, and the International Contact Group, working with the United Nations Offices in the region in accordance with their mandates.<sup>393</sup> By resolution 1478 (2003) of 6 May 2003, the Council called upon the parties to enter without delay into bilateral ceasefire negotiations under the auspices of ECOWAS and the newly-appointed mediator of ECOWAS.<sup>394</sup>

By resolution 1497 (2003) of 1 August 2003, the Council commended ECOWAS for its leadership role in facilitating the achievement of the Ceasefire Agreement, signed in Accra on 17 June 2003,<sup>395</sup> and recognized the role it had played and necessarily would continue to play in the Liberia peace process, “consistent with Chapter VIII of the Charter”.<sup>396</sup>

At the 4815<sup>th</sup> meeting, on 27 August 2003, the Executive Secretary of ECOWAS noted that the excellent working relationship between the Council and ECOWAS in the resolution of the Liberian crisis was “a shining example of the partnership that should exist between the United Nations and regional organizations in tackling regional issues of peace and security”. He added that there was much to gain from deepening collaboration to better handle conflicts and political instability in that region.<sup>397</sup> By a presidential statement issued on that day, the Council appreciated the efforts of ECOWAS in negotiating the Comprehensive Peace Agreement reached

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<sup>392</sup> Resolutions 1408 (2002), sixth and seventh preambular paras., 1478 (2003), sixth preambular para., and 1509 (2003), eighth and ninth preambular paras.

<sup>393</sup> S/PRST/2002/36.

<sup>394</sup> Resolution 1478 (2003), sixth preambular para. and para. 5.

<sup>395</sup> S/2003/657, annex.

<sup>396</sup> Resolution 1497 (2003), fifth preambular para.

<sup>397</sup> S/PV.4815, pp. 5-6.

by the Government of Liberia, rebel groups, political parties and civil society on 18 August 2003 in Accra.<sup>398</sup>

Turning to the role played by the African Union, by resolution 1509 (2003) of 19 September 2003, the Council welcomed the continued support of the African Union for the leadership role of ECOWAS in the peace process in Liberia and further encouraged the African Union to continue to support the peace process through close collaboration and coordination with ECOWAS and the United Nations.<sup>399</sup>

### *The situation in Burundi*

In Burundi, the Security Council continued to support the peace process in cooperation with the Organization of African Unity/African Union. Following the establishment by the African Union of a peacekeeping force in Burundi in April 2003, the Council sustained its support for such a regional effort and began to consider ways to further support the regional peacekeeping operation on the ground.

By resolution 1375 (2001) of 29 October 2001, the Council commended the continued efforts of, and support from, the Organization of African Unity/African Union for the peace process in Burundi.<sup>400</sup> By a presidential statement dated 18 December 2002, the Council paid tribute to the role that the African Union, among other actors, had played in the process towards the signing of the Ceasefire Agreement on 2 December 2002.<sup>401</sup>

At the 4655<sup>th</sup> meeting, on 4 December 2002, the Facilitator of the Burundi Peace Process noted that the implementation process of the Ceasefire Agreement would require the strong support from the United Nations. While aware of the difficulties for the United Nations to deploy a peacekeeping operation in the absence of a total ceasefire as in Burundi, he noted that regional States felt that “creativity and innovation” in looking at the situation would make it possible for the United Nations to become involved. He argued that the United Nations’ support for a unique situation in Burundi was possible under Chapter VIII of the Charter, which supported the establishment of regional initiatives for the resolution of conflicts, provided that such arrangements were consistent with the purposes and principles of the United Nations, as well as

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<sup>398</sup> S/PRST/2003/14.

<sup>399</sup> Resolution 1509 (2003), ninth preambular para.

<sup>400</sup> Resolution 1375 (2001), seventh preambular para.

<sup>401</sup> S/PRST/2002/40.

Chapter VI, which provided for the use of regional initiatives for the resolution of disputes without the active, direct involvement of the United Nations, but with its full support. The Facilitator also explained that the decision by regional leaders to deploy the African mission was based on the understanding that it was a bridging mechanism to open the way for the United Nations to come in. He called for support from the Council as the African countries did not have all the resources.<sup>402</sup>

At the same meeting, the representative of Ireland noted that the efforts of all regional actors reflected well on the attempts of the African Union to find African solutions to the problems of the region.<sup>403</sup> Some speakers, while recognizing the peace process in Burundi as a regional initiative, held that the Council had a role to play in the settlement of the dispute.<sup>404</sup> The representative of France asserted that the Council would have to reflect on its support for a possible African mission or whatever formula the Secretary-General could recommend in support of the peace process, once all the parties had agreed to a ceasefire.<sup>405</sup>

On 2 April 2003, the African Mission in Burundi (AMIB) was established to provide security for the cantonment of combatants and to assist the demobilization, disarmament and reintegration of the armed groups.<sup>406</sup> By a presidential statement dated 2 May 2003, the Council expressed its support for the speedy deployment of AMIB to facilitate the continuing implementation of the ceasefire agreements.<sup>407</sup>

At the 4876<sup>th</sup> meeting, on 4 December 2003, the Facilitator commented that the establishment of the African Union mission was, in their view, “in line with Chapter VIII of the Charter” and called for “more direct” United Nations involvement to achieve the continued success of the Burundi peace process. The Facilitator held that conditions were conducive for the United Nations to take over AMIB, “re-hat” the existing military contingent and deploy a United Nations peacekeeping operation. He underscored that, in the interim, AMIB needed material, logistical and financial support to enable it to continue its work while preparations continued for more robust involvement by the United Nations.<sup>408</sup> A number of speakers expressed their

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<sup>402</sup> S/PV.4655, pp. 3-4 and p. 13.

<sup>403</sup> Ibid., p. 8.

<sup>404</sup> Ibid., p. 6 (Norway); p. 7 (Syrian Arab Republic); p. 8 (Singapore); and p. 10 (United States).

<sup>405</sup> Ibid., p. 6.

<sup>406</sup> S/2003/1146, paras. 25-32.

<sup>407</sup> S/PRST/2003/4.

<sup>408</sup> S/PV.4876, pp. 2-5.



appreciation to the African Union for solving regional problems by their own efforts.<sup>409</sup> Noting the importance of reinforcing efforts on the ground, some speakers supported the idea of establishing a United Nations peacekeeping operation to supplement or eventually replace AMIB.<sup>410</sup> In that context, the representative of Angola stressed that the presence of the African Union reflected the important engagement of Africa in peacebuilding in Burundi, in accordance with the provisions of the Charter and contended that it was necessary for the Council to apply equal standards to Burundi as in Liberia and the Democratic Republic of the Congo.<sup>411</sup>

*The situation concerning the Democratic Republic of the Congo*

In the Democratic Republic of the Congo, the Security Council supported the efforts by Southern African Development Community (SADC) and the Organization of African Unity/African Union to advance the peace process.

By a presidential statement dated 26 January 2000, the Council valued the vital contribution of SADC and expressed its appreciation for the role of OAU in the Lusaka process.<sup>412</sup> By resolution 1332 (2000) of 14 December 2000, the Council stressed the need for a coordinated approach involving the United Nations and OAU to create new momentum for further progress in the peace process.<sup>413</sup> By a presidential statement dated 23 July 2002, the Council welcomed the efforts and good offices of South Africa, in its capacity as chair of the African Union, to help the Democratic Republic of the Congo and Rwanda reach an agreement to tackle the problem of the armed groups and to take forward the withdrawal of Rwanda troops. In addition, the Council welcomed the support of the African Union for that process.<sup>414</sup>

Furthermore, by a series of resolutions, the Council continuously reaffirmed the importance of holding, at the appropriate time, an international conference on peace, security, democracy and development in the Great Lakes region under the auspices of the United Nations and OAU, with the participation of all the Governments of the region and all other concerned.<sup>415</sup>

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<sup>409</sup> Ibid., p. 8 (China); p. 9 (United Kingdom); p. 9 (Germany); p. 10 (United States); p. 11 (Syrian Arab Republic); p. 11 (Russian Federation); p. 12 (Spain); p. 12 (Guinea); and p. 15 (Bulgaria).

<sup>410</sup> Ibid., p. 6 (France); p. 7 (Angola); pp. 7-8 (Pakistan); p. 9 (United Kingdom); pp. 13-14 (Guinea); and p. 14 (Cameroon).

<sup>411</sup> Ibid., p. 7.

<sup>412</sup> S/PRST/2000/2.

<sup>413</sup> Resolution 1332 (2000), nineteenth preambular para.

<sup>414</sup> S/PRST/2002/22.

<sup>415</sup> Resolutions 1291(2000), para. 18; 1304 (2000), para. 18; and 1355 (2001), para. 26.

### *The situation in Somalia*

During the period under review, by a series of decisions, the Security Council continued to support and encourage the efforts made by the Intergovernmental Authority on Development (IGAD), the Organization of African Unity/African Union and the League of Arab States (LAS) to find a political solution to the crisis in Somalia and called for closer interaction between those organizations and the Council in support of national reconciliation.<sup>416</sup>

In his report of 25 October 2002, the Secretary-General observed that the international community had welcomed the opening of the Somali National Reconciliation Conference at Eldoret, on 15 October 2002, and stressed that efforts made by all the IGAD countries to bring about a coherent regional approach towards national reconciliation in Somalia were appreciated. He added that the progress made by the peace process since the IGAD Summit in Khartoum in January 2002<sup>417</sup> had indeed been significant and underlined the important role regional organizations could and did play in resolving conflicts.<sup>418</sup>

By a presidential statement dated 11 November 2003, the Council reiterated its firm support for the Somali Reconciliation Process launched under the auspices of IGAD and expressed its readiness to support IGAD in the implementation of the agreements reached. Furthermore, the Council commended the support given by the African Union to the Somali National Reconciliation Process, including its participation in the Process and its commitment to deploy a military observer mission to Somalia once a comprehensive agreement was reached.<sup>419</sup>

### *The situation between Ethiopia and Eritrea*

With regard to the situation between Ethiopia and Eritrea, the Council continued to support the role of the Organization of African Unity/African Union, under the auspices of which the Agreement on Cessation of Hostilities had been signed.<sup>420</sup>

By resolutions 1297 (2000) of 12 May 2000 and 1298 (2000) of 17 May 2000, the Council, expressing its strong support for the efforts of OAU to achieve a peaceful resolution of

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<sup>416</sup> S/PRST/2000/22, S/PRST/2001/1, S/PRST/2001/30, S/PRST/2002/8, S/PRST/2002/35 and resolution 1425 (2002).

<sup>417</sup> S/2002/189, paras. 20-25.

<sup>418</sup> S/2002/1201, para. 56.

<sup>419</sup> S/PRST/2003/19.

<sup>420</sup> S/200/601, annex.

the conflict, demanded the earliest possible reconvening of substantive peace talks, under OAU auspices, which would conclude a peaceful definitive settlement of the conflict.<sup>421</sup> By resolution 1298 (2000), the Council also requested that the current Chairman of OAU consider dispatching his Personal Envoy to the region to seek immediate cessation of hostilities and resumption of the peace talks.<sup>422</sup>

By resolution 1312 (2000) of 31 July 2000, the Council, commending OAU for successfully facilitating the Agreement on Cessation of Hostilities between the Governments of Ethiopia and Eritrea, signed in Algiers on 18 June 2000,<sup>423</sup> welcomed the discussions between the secretariats of the United Nations and OAU on cooperation in the implementation of the Agreement.<sup>424</sup>

By resolution 1320 (2000) of 15 September 2000, the Council stressed its commitment to work in coordination with OAU and the parties to implement fully the Agreement.<sup>425</sup> By a series of subsequent decisions, the Council further commended the efforts of OAU, among others, for its role in achieving the Algiers Agreement.<sup>426</sup> The Council also reaffirmed its strong support for the role played by the Organization of African Unity/African Unity Liaison Mission in Ethiopia and Eritrea.<sup>427</sup>

*Letter dated 2 October 2003 from the Permanent Representative of the Sudan to the United Nations addressed to the President of the Security Council*

With regard to the Sudan peace talks between the Government of Sudan and the Sudan People's Liberation Movement Army (SPLM/A), the Security Council, by a presidential statement dated 10 October 2003, welcomed the agreement on security arrangements reached in Naivasha, Kenya, on 25 September 2003, between the parties and expressed its appreciation of the key role played by IGAD, among others, in the Sudan peace talks.<sup>428</sup>

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<sup>421</sup> Resolutions 1297 (2000), fifth preambular para. and para. 5 and 1298 (2000), para. 4.

<sup>422</sup> Resolution 1298 (2000), para. 5.

<sup>423</sup> S/2000/601, annex.

<sup>424</sup> Resolution 1312 (2000), second preambular para. and para. 2.

<sup>425</sup> Resolution 1320 (2000), sixth preambular para.

<sup>426</sup> S/PRST/2000/34, S/PRST/2001/4, S/PRST/2001/14.

<sup>427</sup> Resolutions 1369 (2001), sixth preambular para.; 1398 (2002); eighth preambular para.; and 1430 (2002), seventh preambular para.

<sup>428</sup> S/PRST/2003/16.

## Europe

*Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council (S/2001/191)*

### *The situation in the former Yugoslav Republic of Macedonia*

By resolution 1345 (2001) of 21 March 2001, the Security Council welcomed the international efforts, including those of the United Nations Interim Administration Mission in Kosovo, the Kosovo Force (KFOR), the European Union, the North Atlantic Treaty Organization (NATO) and the Organization for Security and Cooperation in Europe (OSCE), in cooperation with the Governments of the former Yugoslav Republic of Macedonia, the Federal Republic of Yugoslavia and other States, to prevent the escalation of ethnic tensions in the area. The Council also welcomed the contribution of the European Union to a peaceful solution to the problems in certain municipalities in southern Serbia and its decision to substantially increase the presence of the European Union Monitoring Mission there. It further welcomed the cooperation between NATO and the authorities of the former Yugoslav Republic of Macedonia and the Federal Republic of Yugoslavia in addressing security problems in parts of the former Yugoslav Republic of Macedonia and certain municipalities in southern Serbia.<sup>429</sup>

By a presidential statement dated 13 August 2001, the Security Council welcomed the efforts of the European Union, NATO and OSCE, in support of the Framework Agreement on the former Yugoslav Republic of Macedonia, signed in Skopje on 13 August 2001.<sup>430</sup> By resolution 1371 (2001) of 26 September 2001, the Council, welcomed the efforts of the European Union and OSCE to contribute to the implementation of the Framework Agreement, in particular through the presence of international observers.<sup>431</sup>

### *The situation in Bosnia and Herzegovina*

Regarding the situation in Bosnia and Herzegovina, the Security Council welcomed the seamless transition of responsibilities from the International Police Task Force (IPTF) of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) to the European Union Police

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<sup>429</sup> Resolution 1345 (2001), fourth, fifth and sixth preambular paras.

<sup>430</sup> S/PRST/2001/20.

<sup>431</sup> Resolution 1371 (2001), fourth preambular para. and para. 4.

Mission, on 1 January 2003 and noted the contribution by OSCE to the implementation of the Peace Agreement.

By a series of resolutions, the Council emphasized its appreciation of, among others, the personnel of OSCE for its contribution to the implementation of the General Framework Agreement for Peace in Bosnia and Herzegovina and the annexes thereto.<sup>432</sup>

By resolution 1423 (2002) of 12 July 2002, and similarly by a presidential statement dated 12 December 2002, the Council welcomed the decision of the European Union to send a Police Mission to Bosnia and Herzegovina from 1 January 2003 to assume responsibilities from IPTF at the end of the mandate of UNMIBH on 31 December 2002, as well as the close coordination between the European Union, UNMIBH and the High Representative to ensure a seamless transition.<sup>433</sup>

At the 4631<sup>st</sup> meeting, on 23 October 2002, the Special Representative of the Secretary-General for Bosnia and Herzegovina<sup>434</sup> noted that the first operation by the European Union would be a practical embodiment of the recommendation called for in the Report of the Panel on United Nations Peacekeeping of August 2000, on greater cooperation between the United Nations and regional organizations in peacekeeping.<sup>435</sup> At the same meeting, the representative of the Russian Federation underscored that the Council, as the main body responsible for peacekeeping and international security, would, even after UNMIBH had completed its work, continue to receive, on a regular basis, reports on the process of implementation of the police operation in that country.<sup>436</sup>

By resolution 1491 (2003) of 11 July 2003, the Council welcomed the deployment of the European Union of its Police Mission to Bosnia and Herzegovina since 1 January 2003.<sup>437</sup>

At the 4837<sup>th</sup> meeting, on 8 October 2003, the representative of the United Kingdom considered it a highly desirable trend that regional organizations were taking over responsibilities from the United Nations, as seen in Bosnia and Herzegovina and also in Africa.<sup>438</sup>

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<sup>432</sup> Resolutions 1305 (2000), fourth preambular para.; 1357 (2001), fourth preambular para.; 1423 (2002), fifth preambular para.; and 1491 (2003), fifth preambular para.

<sup>433</sup> Resolution 1423 (2002), para. 20 and S/PRST/2002/33.

<sup>434</sup> S/PV.4631, pp. 10-11.

<sup>435</sup> S/2000/809.

<sup>436</sup> S/PV.4631, p. 16.

<sup>437</sup> Resolution 1491 (2003), para. 19.

<sup>438</sup> S/PV.4837, p. 15.

### *The situation in Georgia*

In Georgia, by a series of its decisions, the Security Council welcomed the important contributions that the United Nations Observer Mission in Georgia (UNOMIG) and the collective peacekeeping force of the Commonwealth of Independent States (CIS), operating side by side, made in stabilizing the situation in the conflict zone. The Council also noted the close working relationship between UNOMIG and the CIS peacekeeping force, and stressed the importance of continuing and increasing close cooperation and coordination between them in the performance of their respective mandates.<sup>439</sup> Furthermore, during the reporting period, the Council continued to express its support for the sustained efforts of OSCE to promote the stabilization of the situation and the achievement of a comprehensive political settlement, which included a settlement of the political status of Abkhazia within the State of Georgia.<sup>440</sup>

## **Middle East**

### *The situation between Iraq and Kuwait*

In Iraq, the Security Council recognized the efforts of such organizations as LAS and the Organization of the Islamic Conference (OIC), for a peaceful resolution of the situation.

By the letter dated 16 September 2002 addressed to the President, the Secretary-General transmitted a letter of the same date from the representative of Iraq informing that, in response to the appeals of the Secretaries-General of the United Nations and LAS, his country decided to allow the return of the United Nations weapons inspectors to Iraq without conditions.<sup>441</sup>

By resolution 1441 (2002) of 8 November 2002, the Council established an enhanced inspection regime with the aim of bringing to full and verified completion the disarmament process established by resolution 687 (1991) and subsequent resolutions. The Council also commended the Secretary-General and the members of LAS for their efforts.<sup>442</sup>

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<sup>439</sup> Resolutions 1287 (2000), tenth preambular para.; 1311 (2000), ninth preambular para.; 1339 (2001), eighth preambular para.; 1364 (2001), preambular para. 8 and para. 20; 1393 (2002), seventh preambular para.; 1427 (2002), seventh preambular para.; 1462 (2003), seventh preambular para.; 1494 (2003), eighth preambular para.; S/PRST/2000/16, S/PRST/2000/32 and S/PRST/2001/9.

<sup>440</sup> Resolutions 1287 (2000), para. 3 ; 1311 (2000), para. 2 ; 1339 (2001), para. 2 ; 1393 (2002), para. 2; 1427 (2002), para. 2; 1462 (2003), para. 3; and 1494 (2003), para. 3.

<sup>441</sup> S/2002/1034, annex.

<sup>442</sup> Resolution 1441 (2002), sixteenth preambular para. and para. 2.

At the 4717<sup>th</sup> meeting, on 11 March 2003, held in response to the request from the Non-Aligned Movement (NAM),<sup>443</sup> the representative of Algeria pointed out that the Council had to listen to the regional organizations and other groupings—be it the European Union, OAU, LAS or OIC—who had spoken out for a peaceful settlement to the crisis, the primacy of the role of the United Nations and respect for international legality. He asserted that the Council was all the more duty-bound to do so because close cooperation between the Council and regional organizations was desirable, encouraged and clearly provided for by the Charter and because all those bodies and regional groupings were calling on the Council unanimously to ensure that the logic of peace prevailed over that of war.<sup>444</sup>

### **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 increasingly 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 Sierra Leone, Liberia, Somalia, Afghanistan and the former Yugoslav Republic of Macedonia. In Liberia, the Council requested input from the Economic Community of West African States (ECOWAS) with a view to the termination of those measures. The practice of the Council in this regard is set out below by region.

#### *The situation in Sierra Leone*

By resolution 1306 (2000) of 5 July 2000, the Council, acting under Chapter VII of the Charter, requested the Security Council Committee established pursuant to resolution 1132 (1997), to strengthen the existing contacts with, inter alia, regional organizations, in particular ECOWAS and the Organization of African Unity (OAU), with a view to identifying ways to improve the effective implementation of the arms embargo imposed by paragraph 2 of resolution 1171 (1998).<sup>445</sup>

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<sup>443</sup> See the letter dated 7 March 2003 from the representative of Malaysia to the President of the Council (S/2003/283).

<sup>444</sup> S/PV.4717, p. 11.

<sup>445</sup> Resolution 1306 (2000), para. 22.

*The situation in Liberia*

In connection with the situation in Liberia, the Security Council cooperated with ECOWAS in the implementation and termination of the mandatory measures against Liberia. Additionally, the Council extended logistical support to the ECOWAS forces in Liberia and subsequently, on 1 October 2003, reassigned those forces as United Nations peacekeepers.

By resolution 1343 (2001) of 7 March 2001, the Council welcomed the intention of ECOWAS to monitor, in close cooperation with the United Nations, the implementation of measures to prohibit the export of rough diamonds from Sierra Leone pursuant to resolution 1306 (2000) of 5 July 2000 and to report thereon after a period of two months.<sup>446</sup> By a series of resolutions, the Council further invited ECOWAS to report regularly to the Security Council Committee established pursuant to paragraph 14 of resolution 1343 (2001) on all activities undertaken by its members in the implementation of relevant measures.<sup>447</sup>

Furthermore, by resolution 1478 (2003) of 6 May 2003, the Council, following the establishment of the Panel of Experts, called upon all members of ECOWAS to cooperate fully with the Panel in the identification of violations of the arms embargo against Liberia.<sup>448</sup>

In addition, concerning the termination of sanctions against Liberia,<sup>449</sup> the Council, by a series of resolutions, expressed its readiness to terminate the measures imposed with regard to Liberian-registered aircraft, and the ban on the import of rough diamonds not controlled through the Certificate of Origin regime of the Government of Sierra Leone, taking into account, inter alia, “input from ECOWAS.”<sup>450</sup>

Concerning the peacekeeping activities, the Council, by resolution 1497 (2003) of 1 August 2003, authorized the establishment of a Multinational Force in Liberia under Chapter VII of the Charter. The Council also authorized the United Nations Mission in Sierra Leone (UNAMSIL) to extend the necessary logistical support to the forward elements of ECOWAS in the Multinational Force in Liberia for a limited duration.<sup>451</sup>

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<sup>446</sup> Resolution 1343 (2001), sixth preambular para. and para. 2 (c).

<sup>447</sup> Resolutions 1408 (2002), para. 12; and 1478 (2003), para. 21.

<sup>448</sup> Resolution 1478 (2003), para. 30.

<sup>449</sup> See, for details, chapter XI, part III.

<sup>450</sup> Resolutions 1343 (2001), para. 2 (a)-(g); 1408 (2002), para. 6; and 1478 (2003), para. 12.

<sup>451</sup> Resolution 1497 (2003), paras. 1-3.



By resolution 1509 (2003) of 19 September 2003, the Council commended the rapid and professional deployment to Liberia of the forces of the ECOWAS Mission in Liberia (ECOMIL) pursuant to resolution 1497 (2003).<sup>452</sup> Acting under Chapter VII of the Charter, the Council also established the United Nations Mission in Liberia (UNMIL) and requested the Secretary-General to transfer authority from the forces of ECOMIL to UNMIL on 1 October 2003.<sup>453</sup> In his report dated 15 December 2003, the Secretary-General informed that UNMIL had taken over peacekeeping duties from ECOMIL on 1 October 2003, as stipulated in resolution 1509 (2003) and all of the ECOMIL troops had been reassigned to UNMIL as United Nations peacekeepers.<sup>454</sup>

### *The situation in Somalia*

The Security Council called upon regional organizations, in particular, the Intergovernmental Authority on Development (IGAD), the African Union and the League of Arab States (LAS), to cooperate with it and its subsidiary bodies in the implementation of the arms embargo against Somalia imposed by resolutions 733 (1992) and 1356 (2001).

By resolution 1474 (2003) of 8 April 2003, the Council, acting under Chapter VII of the Charter, decided to re-establish a Panel of Experts whose mandate included exploring the possibility of establishing a monitoring mechanism for the implementation of the arms embargo with partners inside and outside Somalia, “in close cooperation with regional and international organizations, including with the African Union.” The Council also called upon regional organizations, in particular the African Union and LAS, to assist Somali parties and the States in the region in their efforts to implement fully the arms embargo.<sup>455</sup> By resolution 1519 (2003) of 16 December 2003, the Council, acting under Chapter VII, called upon regional organizations, in particular IGAD, the African Union and LAS, to establish focal points to enhance cooperation with the Monitoring Group established by the same resolution and to facilitate information exchange.<sup>456</sup>

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<sup>452</sup> Resolution 1509 (2003), tenth preambular para.

<sup>453</sup> *Ibid.*, para. 1.

<sup>454</sup> S/2003/1175, para. 2.

<sup>455</sup> Resolution 1474 (2003), paras. 3 (g) and 11.

<sup>456</sup> Resolution 1519 (2003), para. 5.

*The situation in Afghanistan*

In Afghanistan, the Security Council cooperated with regional organizations in the implementation of sanctions measures.

By resolution 1333 (2000) of 19 December 2000, the Council, in imposing further measures against Afghanistan under Taliban control, requested its Committee established pursuant to resolution 1267 (1999) to establish and maintain an updated list “based on information provided by States and regional organizations,” of all points of entry and landing areas for aircraft within the territory of Afghanistan under control by the Taliban and of individuals and entities designated as being associated with Usama bin Laden.<sup>457</sup> A similar reference was made in resolution 1390 (2002) of 28 January 2002.<sup>458</sup>

*Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council (S/2001/191)*

*The situation in the former Yugoslav Republic of Macedonia*

By resolution 1345 (2001) of 21 March 2001, the Council called on the Kosovo Force (KFOR) to continue to strengthen its efforts to prevent unauthorized movement and illegal arms shipments across borders and boundaries in the region, to confiscate weapons within Kosovo, Federal Republic of Yugoslavia, and to continue to keep the Council informed in accordance with resolution 1160 (1998).<sup>459</sup>

By resolution 1371 (2001) of 26 September 2001, the Security Council welcomed the efforts of the United Nations Mission in Kosovo (UNMIK) and KFOR to implement fully resolution 1244 (1999), in particular by further strengthening its efforts to prevent unauthorized movement and illegal arms shipments across borders and boundaries, to confiscate illegal weapons within Kosovo, Federal Republic of Yugoslavia, and to keep the Council informed.<sup>460</sup>

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<sup>457</sup> Resolution 1333 (2001), para. 16 (a) and (b).

<sup>458</sup> Resolution 1390 (2002), para. 5 (a).

<sup>459</sup> Resolution 1345 (2001), para. 10. See, for example, S/2000/50, S/2000/152, S/2000/235, S/2000/318, S/2000/489, S/2000/634, S/2000/814, S/2000/891, S/2000/1120, S/2000/1246, S/2001/205, S/2001/333, S/2001/465, S/2001/578, S/2001/707, S/2001/832, S/2001/910, S/2001/1002, S/2001/1131, S/2002/122, S/2002/183, S/2002/366, S/2002/611, S/2002/725, S/2002/978, S/2002/984, S/2002/1111, S/2002/1225, S/2002/1404, S/2002/1421, S/2003/130, S/2003/301, S/2003/378, S/2003/511, S/2003/616, S/2003/682, S/2003/855, S/2003/931, and S/2003/1141.

<sup>460</sup> Resolution 1371 (2001), para. 7.

## **D. Consideration or authorization by the Security Council of enforcement action by regional arrangements**

During the period under review, the Security Council gave its authorization to regional arrangements to take necessary actions in their peacekeeping activities, as in the cases of Côte d'Ivoire and Afghanistan. In the case of the former Yugoslav Republic of Macedonia, the Council recalled the authorization it had given the Kosovo Force (KFOR) by resolution 1244 (1999) of 10 June 1999. In one instance, the Council considered but did not take a decision on authorization of the use of force by a regional organization.

### *The situation in Guinea following recent attacks along its borders with Liberia and Sierra Leone* *The situation in Sierra Leone*

At the 4319<sup>th</sup> meeting, on 14 May 2001, the Council discussed the request by the Economic Community of West African States (ECOWAS) for assistance in deploying an interposition force along the borders of Guinea, Liberia and Sierra Leone as well as the report of the Inter-Agency Mission to West Africa.<sup>461</sup> Several speakers supported the deployment of an interposition force to monitor along the borders.<sup>462</sup> The representative of the Russian Federation expressed the view that building trust in the subregion could be furthered by the deployment of ECOWAS troops to areas of most intensive activity by the unlawful armed groups, while stressing that such an operation should be based on the agreement of all States on whose territories it would be conducted and on the basis of the mandate that included an enforcement component authorized by the Security Council.<sup>463</sup> No decisions of the Council were taken on this matter during the reporting period.

### *The situation in Côte d'Ivoire*

By resolution 1464 (2003) of 4 February 2003, the Council, recalling the decision taken at the ECOWAS Summit, held in Accra on 29 September 2002, to deploy a peacekeeping force

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<sup>461</sup> S/2001/434.

<sup>462</sup> S/PV.4319, p. 17 (Tunisia); p. 20 (Bangladesh); and p. 24 (Jamaica).

<sup>463</sup> Ibid., p. 21.

in Côte d'Ivoire, authorized Member States participating in the ECOWAS forces, in accordance with Chapter VIII of the Charter, to “take the necessary steps” to guarantee the security and freedom of movement of their personnel and to ensure the protection of civilians immediately threatened with physical violence within their zones of operation. In addition, the Council requested that ECOWAS, through the command of its force, report to the Council periodically, through the Secretary-General, on all aspects of implementation of its mandate.<sup>464</sup> The ECOWAS forces, whose authorization was renewed by resolution 1498 (2003) of 4 August 2003, remained on the ground in parallel to the United Nations Mission in Côte d'Ivoire (MINUCI), which was established by resolution 1479 (2003) of 13 May 2003.<sup>465</sup>

*Letter dated 4 March 2001 from the Permanent Representative of the former Yugoslav Republic of Macedonia to the United Nations addressed to the President of the Security Council (S/2001/191)*

By resolution 1345 (2001) of 21 March 2001,<sup>466</sup> the Security Council welcomed the efforts of KFOR to implement resolution 1244 (1999) of 10 June 1999, whereby, acting under Chapter VII of the Charter, the Council had authorized Member States and relevant international organizations to establish an international security presence in Kosovo, with substantial North Atlantic Treaty Organization (NATO) participation.<sup>467</sup>

*The situation in Afghanistan*

By resolution 1386 (2001) of 20 December 2001, the Council, acting under Chapter VII of the Charter, authorized, as envisaged in Annex 1 to the Bonn Agreement, the establishment for 6 months of an International Security Assistance Force (ISAF) to assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas, so that the Afghan Interim Authority as well as the personnel of the United Nations could operate in a secure

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<sup>464</sup> Resolution 1464 (2003), third preambular para. and paras. 8-10. See, for example, S/2003/472.

<sup>465</sup> Resolution 1479 (2003), para. 2.

<sup>466</sup> Resolution 1345 (2001), preambular para. 1.

<sup>467</sup> Resolution 1244 (1999), para. 7 and annex II, point 4. By resolution 1244 (1999), the Council also requested the Secretary-General to report to the Council at regular intervals on the implementation of the resolution, including reports from the leaderships of the international civil and security presences (para. 20).

environment.<sup>468</sup> The Council requested ISAF to provide periodic reports on progress towards the implementation of its mandate through the Secretary-General.<sup>469</sup>

By resolutions 1413 (2002) of 23 May 2002 and 1444 (2002) of 27 November 2002, the Council decided to extend the authorization of ISAF, as defined in resolution 1386 (2001).<sup>470</sup>

In his letter dated 7 October 2003 to the President, the Secretary-General transmitted the communiqué from the Secretary-General of NATO, in which the latter informed that NATO had assumed strategic command, control and coordination of ISAF on 11 August 2003 and informed of a consideration by NATO of a possible expansion of the mission of ISAF.<sup>471</sup> By resolution 1510 (2003) of 13 October 2003, the Council, noting the above-mentioned letter and acting under Chapter VII of the Charter, authorized expansion of the mandate of ISAF, and requested the leadership of ISAF to provide quarterly reports on the implementation of its mandate to the Council through the Secretary-General.<sup>472</sup>

## **E. Consultation, briefing and reporting by regional arrangements**

The increasing collaboration between the Security Council and regional arrangements witnessed a corresponding growth in the exchange of information between the two, using different modalities.

During the reporting period, the practice continued whereby the Security Council was kept informed of the activities of regional organizations by means of communications addressed to the President of the Council or the Secretary-General from various organs or States holding the rotating Chairmanship/Presidency or simply membership of the regional organizations, from States parties to a situation, or from other States concerning matters pertaining to regional organizations.<sup>473</sup> Moreover, while the reporting obligation of regional organizations under

<sup>468</sup> Resolution 1386 (2001), para. 1.

<sup>469</sup> *Ibid.*, para. 9. See for example, S/2002/274, S/2002/740, S/2002/940, S/2002/1092, S/2002/1196, S/2002/1340, S/2003/210, S/2003/555, and S/2003/807, among others.

<sup>470</sup> Resolutions 1413 (2002), para. 1 and 1444 (2002), para. 1.

<sup>471</sup> S/2003/970, annex I and II.

<sup>472</sup> Resolution 1510 (2003), paras. 1, 5.

<sup>473</sup> See the letter dated 2 July 2003 from the representative of Fiji to the President of the Council (S/2003/753); and letters dated 7 September 2000, 25 September 2000, 21 March 2001, 9 April 2001, 6 August 2001, 10 October 2001, 23 September 2002, 24 September 2002, 11 November 2002, 3 March 2003, 24 March 2003, 3 June 2003, 21 July 2003, 6 October 2003, 4 November 2003 and 11 November 2003 from the representative of the League of Arab States to the President of the Council (S/2000/863, S/2000/900, S/2001/257, S/2001/341, S/2001/349, S/2001/769,

Article 54 of the Charter applied to all activities undertaken or contemplated by them, in several instances where the Council authorized coercive measures within the meaning of Article 53, it explicitly requested the involved regional organizations to report to it on a regular basis.<sup>474</sup>

In addition to communications transmitting mainly reports, resolutions, memoranda and statements from regional arrangements, the Council has increasingly utilized the practice of receiving briefings by regional organizations at its formal meetings concerning activities undertaken or in contemplation by them for the maintenance of international peace and security, independently or in cooperation with the Council.<sup>475</sup> Regional organizations were frequently invited to participate and make statements in the context of thematic debates, as well as in Council deliberations on a number of specific situations of immediate concern to them.<sup>476</sup> In the context of its closed consultative meetings with troop contributing countries, the Council, by resolution 1353 (2001), annex II, section B, explicitly listed representatives of regional and sub-regional organizations among the parties to be invited, whether they were contributing troops or not.<sup>477</sup>

Furthermore, during the period under review, the Council welcomed and established several consultative mechanisms with a view to building a dialogue with regional organizations. For example, by presidential statements dated 19 December 2001 and 31 January 2002,<sup>478</sup> the Council welcomed the establishment of the Office of the Special Representative of the Secretary-General for West Africa to ensure, among other things, the development of a fruitful partnership

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S/2001/957, S/2002/1074, S/2002/1077/, S/2002/1078, S/2002/1079, S/2002/1080, S/2002/1081, S/2002/1082, S/2002/1188, S/2002/1238, S/2003/254, S/2003/365, S/2003/613, S/2003/753, S/2003/949, S/2003/1072 and S/2003/1079).

<sup>474</sup> For example, in connection with the item entitled “The situation in Côte d’Ivoire”, the Council, by paragraph 10 of resolution 1464 (2003) requested ECOWAS to report periodically on all aspects of implementation of its mandate. Similarly, in connection with the item entitled “The situation in Afghanistan”, by paragraphs 2 and 5 of resolution 1510 (2003), the Council requested ISAF to submit quarterly reports.

<sup>475</sup> For example, ECOWAS was invited to brief the Council at the 4720<sup>th</sup> meeting, on 18 March 2003, in connection with the item entitled “Proliferation of small arms and light weapons and mercenary activities: threats to peace and security in West Africa.” ECOWAS and the African Union briefed the Council at the 4739<sup>th</sup> meeting, on 11 April 2003, in connection with the item entitled “The Security Council and regional organizations: facing new challenges to international peace and security”. At the 4815<sup>th</sup> meeting, on 27 August 2003, in connection with the item entitled “The situation in Liberia” and at the 4873<sup>rd</sup> meeting, on 24 November 2003, in connection with the item entitled “The situation in Côte d’Ivoire”, the Council heard briefings by the Executive Secretary of ECOWAS. At the 4860<sup>th</sup> meeting, on 18 November 2003, in connection with the item entitled “The situation in Guinea-Bissau”, the Council heard a briefing by the representative of the Chairman of ECOWAS.

<sup>476</sup> For a comprehensive table of the participation of representatives of regional organizations in meetings of the Council, see Chapter III, annex, table 2.

<sup>477</sup> Resolution 1353 (2001), annex II, section B, 3 (g) and (h).

<sup>478</sup> S/PRST/2001/38 and S/PRST/2002/2.

with the Economic Community of West African States (ECOWAS) and other sub-regional organizations. With respect to threats to international peace and security caused by terrorist acts, the Council, by a presidential statement dated 15 April 2002, invited the Counter-Terrorism Committee to build a dialogue with international, regional, and subregional organizations active in the areas covered by resolution 1373 (2001).<sup>479</sup> Furthermore, by resolution 1377 (2001) of 12 November 2001, the Council invited the Counter-Terrorism Committee to explore with international, regional, and subregional organizations the promotion of best practices in the areas covered by resolution 1373 (2001), the availability of existing assistance programmes, which might facilitate the implementation of resolution 1373 (2001) and the promotion of possible synergies between those assistance programmes.<sup>480</sup>

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<sup>479</sup> S/PRST/2002/10.

<sup>480</sup> Resolution 1377 (2001), annex.

## Part IV

### Consideration of the miscellaneous provisions of the Charter

#### *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 103 was not explicitly invoked in any resolution or decision. However, the Security Council, in a number of resolutions imposing mandatory measures under Chapter VII of the Charter against Eritrea and Ethiopia, Sierra Leone, Afghanistan and Liberia, implicitly referred to the principle enshrined in Article 103, by emphasizing the primacy of the obligations under the Charter over those contracted by Member States under any other international agreement. For example, by resolution 1298 (2000) of 17 May 2000, in connection with the situation between Eritrea and Ethiopia, the Council called upon all States and all international and regional organizations 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 measures” imposed by the resolution.<sup>481</sup> Similar language or formulation was used in resolutions 1306 (2000) of 5 July 2000<sup>482</sup> and 1333 (2000) of 19 December 2000,<sup>483</sup> by which the Council imposed the mandatory measures against Sierra Leone and against individuals or entities belonging to or associated with Al-Qaida and/or the Taliban, respectively.

Additionally, by resolution 1343 (2001) of 7 March 2001, by which the Council imposed measures against Liberia, it called upon States and international and regional organizations to act strictly in accordance with the provisions of the resolution, “notwithstanding the existence of any rights

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<sup>481</sup> Resolution 1298 (2000), para. 9.

<sup>482</sup> Resolution 1306 (2000), para. 9.

<sup>483</sup> Resolution 1333 (2000), para. 17.



or obligations entered into or any licence or permit granted prior to the date of adoption of [the] resolution”.<sup>484</sup>

Article 103 was explicitly referred to once in the deliberations of the Council, at the 4568th meeting, on 10 July 2002, in connection with the situation in Bosnia and Herzegovina, in which Member States discussed the question of impunity of United Nations peacekeepers under the Rome Statute of the International Criminal Court that entered into force on 1 July 2002 (Case 21).<sup>485</sup> Furthermore, in connection with the situation in Angola, the principle enshrined in Article 103 was touched upon during the deliberations including obligations arising pursuant to decisions of the Council imposing mandatory measures under Chapter VII of the Charter (Case 22).

There was also one communication during the reporting period, in which explicit reference to Article 103 was made.<sup>486</sup>

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<sup>484</sup> Resolution 1343 (2001), para. 22.

<sup>485</sup> S/PV.4568, p. 23 (Singapore).

<sup>486</sup> S/2001/136.

## Case 21

### The situation in Bosnia and Herzegovina

#### United Nations peacekeeping

In connection with the situation in Bosnia and Herzegovina, at the 4563<sup>rd</sup> meeting, on 30 June 2002, a draft resolution,<sup>487</sup> by which the Security Council would have extended the mandate of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) for six months, was not adopted owing to the negative vote of a permanent member of the Council. The representative of the United States, before voting, explained his concern regarding the jurisdiction of the International Criminal Court which would enter into force on 1 July 2002, in particular the need for his Government to ensure national jurisdiction over its personnel and officials involved in United Nations peacekeeping. He stressed that the proposal by his Government, calling for the establishment of immunity for United Nations peacekeeping, built on immunities that were already recognized in the United Nations system and reflected in status-of-forces and status-of-mission agreements. He further insisted that the Rome Statute itself recognized the concept of immunity and that the consequence of providing United Nations peacekeepers with such immunity would be the creation of a legal obligation on States to observe that immunity. He opined that pursuant to Article 98 of the Rome Statute of the Court, the compliance of parties to the Statute with such obligations was “entirely consistent” with the Statute.<sup>488</sup>

Following that meeting, in his letter dated 3 July 2002 to the President, the representative of Canada requested an open meeting of the Council, stressing that the issue raised in the deliberations of the Council concerning UNMIBH involved not just the extension of the mission, but a “potentially irreversible decision negatively affecting the integrity of the Rome Statute of the Court, the integrity of treaty negotiations more generally, the credibility of the Council, the viability of international law with respect to the investigation and prosecution of grievous crimes, and the established responsibilities of States under international law to act on such crimes”.<sup>489</sup>

At the 4568<sup>th</sup> meeting, held on 10 July 2002 in response to the request contained in the above-mentioned letter, most speakers voiced their concerns over the draft text that was

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<sup>487</sup> S/2002/712.

<sup>488</sup> S/PV.4563, pp. 2-3.

<sup>489</sup> S/2002/723.

circulating among members of the Council<sup>490</sup> in connection with granting immunity from prosecution to United Nations peacekeepers from States not parties to the Rome Statute. Pointing out that sufficient safeguards against unwarranted and politically motivated prosecution were included in the Statute, a number of speakers expressed opposition to the circulating text as it would attempt to modify a provision of an international treaty, by means of a Council resolution, and undermine the viability and the integrity of the multinational legal framework.<sup>491</sup>

Furthermore, some speakers stated that, if such a text were to be adopted, Member States that were parties to the Statute would be forced to question the legality of the Council decision and the role of the Council.<sup>492</sup> In that connection, the representative of Mongolia pointed out that no State should be placed in a situation in which it was “forced to breach its international obligations” under either the Charter or the Statute.<sup>493</sup> The representative of Brazil opined that the Council was not vested with treating-making and treaty-reviewing powers and could not create new obligations for the States parties to the Statute which could be only amended through the provisions in the Statute.<sup>494</sup> The representative of Ukraine also argued against the creation of a conflict between the powers of the Council under Chapter VII of the Charter and the legal obligations entered into by Member States in compliance with the provisions of the Charter.<sup>495</sup> Stating that Article 103 provided for Charter obligations to prevail in the event of a conflict between Charter obligations and other international obligations, the representative of Singapore raised the question of the desirability of Council action in connection with the International Criminal Court.<sup>496</sup>

The representative of the United States, reiterating concerns over the legal exposure of his country’s peacekeepers under the Rome Statute, argued that his country respected the obligation of those States that had ratified the Statute and that in its proposals before the Council, it sought to work “within the provisions of the Statute”. He further stated that the proposed

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<sup>490</sup> Not issued as a document of the Council.

<sup>491</sup> S/PV.4568, p. 3 (Canada); p. 5 (New Zealand); p. 6 (South Africa); p. 11 (France); p. 15 (Costa Rica, on behalf of the Rio Group); p. 15 (Islamic Republic of Iran); p. 16 (Jordan); p. 22 (Brazil), p. 24 (Singapore); and pp. 26-27 (Mexico); S/PV.4568 (Resumption 1); p. 2 (Fiji); p. 5 (Guinea); p. 8 (Malaysia); p. 9 (Germany); p. 9 (Syrian Arab Republic); and p. 14 (Cuba).

<sup>492</sup> S/PV.4568, p. 4 (Canada); p. 6 (New Zealand); and p. 20 (Liechtenstein).

<sup>493</sup> *Ibid.*, p. 19.

<sup>494</sup> *Ibid.*, p. 22.

<sup>495</sup> S/PV.4568 (Resumption 1), p. 4.

<sup>496</sup> S/PV.4568, pp. 23-24.

solution was consistent with the obligations of all Member States, including those that were parties to the Statute.<sup>497</sup>

At the 4572<sup>nd</sup> meeting, on 12 July 2002, under the agenda item entitled “United Nations peacekeeping”, the Council adopted resolution 1422 (2002) by which, acting under Chapter VII of the Charter, it requested the International Criminal Court to suspend for 12 months starting 1 July 2002 any investigations or prosecutions involving personnel from States not Parties to the Rome Statute of the Court.<sup>498</sup> The Council also expressed the intention to renew the above-mentioned request under the same conditions each 1 July for further 12-month periods for as long as it might be necessary and decided that Member States should take no action inconsistent with the provision for deferral and “with their international obligations.” By resolution 1487 (2003) of 12 June 2003, the Council extended the provisions of resolution 1422 (2002) for a further 12-month period starting 1 July 2003.

## Case 22

### The situation in Angola

The Monitoring Mechanism established by resolution 1295 (2000) to monitor sanctions imposed against the União Nacional para a Independência Total de Angola (UNITA), in its final report dated 21 December 2000,<sup>499</sup> noted that the Schengen Agreement seemed to conflict with the sanctions imposed by resolution 1127 (1997), or was at least used as a reason for not implementing the sanctions fully. In addition, it pointed out that while paragraph 10 of resolution 1127 (1997) called upon States to act strictly in accordance with the provisions of the resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreements, many countries considered themselves unable to expel senior officers of UNITA and send them to Angola for reasons relating to the adherence of international instruments regarding refugees and political asylum.<sup>500</sup> In conclusion, the report recommended

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<sup>497</sup> Ibid., pp. 9-10.

<sup>498</sup> Resolution 1422 (2002), para. 1.

<sup>499</sup> S/2000/1225.

<sup>500</sup> Ibid., para. 109.

that the States parties to the Schengen Agreement should look into the problem of UNITA abusing its structures with a view to closing existing loopholes.<sup>501</sup>

At the 4283<sup>rd</sup> meeting, on 22 February 2001, members of the Council considered the above-mentioned report of the Monitoring Mechanism. The representative of Ukraine agreed that the relevant requirements of resolution 1127 (1997) regarding the travel restrictions on UNITA representatives should be fully implemented, “notwithstanding the existence of any rights or obligations under any other international agreements”.<sup>502</sup> The representative of Bangladesh, referring to the report of the Mechanism, emphasized that there was “a conflict between the national obligation of member States of the Schengen Agreement to allow their nationals free movement across their borders and the international obligation flowing from the relevant Council resolutions”.<sup>503</sup>

At the 4418<sup>th</sup> meeting, on 15 November 2001, the representative of Angola stressed that obligations resulting from Council resolutions prevailed over any other obligation to which Member States might be subject by virtue of any treaty or international agreement to which they were or might become party, and that such principle should also be applied to sanctions against UNITA.<sup>504</sup>

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<sup>501</sup> Ibid., para. 234.

<sup>502</sup> S/PV.4283, p. 16.

<sup>503</sup> Ibid., p. 18.

<sup>504</sup> S/PV.4418, p. 5.