

Chapter XII

CONSIDERATION OF THE PROVISIONS OF OTHER ARTICLES OF THE CHARTER

INTRODUCTORY NOTE.....	1
 PART I.	
CONSIDERATION OF THE PURPOSES AND PRINCIPLES OF THE UNITED NATIONS (Articles 1 and 2 of the Charter)	1
A.	
Article 1, paragraph 2: the principle of equal rights and self-determination of peoples	1
B.	
Article 2, paragraph 4: the prohibition of the threat or use of force against the territorial integrity or political independence of any State.....	7
C.	
Article 2, paragraph 5: the obligation to give assistance to the United Nations in any action it takes in accordance with the Charter.....	25
D.	
Article 2, paragraph 6: the obligation of non-Member States to act in accordance with the principles of the United Nations	28
E.	
Article 2, paragraph 7: the principle of non-intervention by the United Nations within the domestic jurisdiction of any State	31
 PART II.	
CONSIDERATION OF THE FUNCTIONS AND POWERS OF THE SECURITY COUNCIL (Articles 24 to 25 of the Charter).....	47
A.	
The primary responsibility of the Security Council for the maintenance of international peace and security (Article 24)	47
B.	
The obligation of Member States to accept and carry out decisions of the Security Council (Article 25)	51
 PART III.	
CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII OF THE CHARTER ON REGIONAL ARRANGEMENTS (Articles 52 to 54 of the Charter)	58
 PART IV.	
CONSIDERATION OF THE MISCELLANEOUS PROVISIONS OF THE CHARTER (Articles 102 and 103 of the Charter).....	87

INTRODUCTORY NOTE

Chapter XII covers the consideration by the Security Council of Articles of the Charter not dealt with in the preceding chapters.

PART I

CONSIDERATIONS OF THE PURPOSES AND PRINCIPLES OF THE UNITED NATIONS (Articles 1 and 2 of the Charter)

A. Article 1, paragraph 2

“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, Article 1 (2) was not explicitly referred to in any of the Council’s decisions or deliberations. There were nevertheless a number of explicit and implicit references to the principle of self-determination in the Council’s deliberations and decisions in connection with the situations in Palau¹, in Western Sahara², and in Haiti. In addition, the Council touched upon the principle of self-determination in connection with the situation in Cambodia, for which the Council recalled that the Cambodian people had the right to determine their own political future through the free and fair election of a constituent assembly.³

The cases below reflect the practice of the Council touching upon the provisions of Article 1(2), as illustrated by its decisions and deliberations in connection with 1) the situation in Palau; 2) the situation in Western Sahara; and 3) the situation in Haiti.

¹ Resolution 956 (1994) of 10 November 1994, preambular paragraph 7.

² Resolution 809 (1993) of 2 March 1993, paragraph 4; S/PRST/1994/67 of 15 November 1994, paragraph 4; Resolution 973 (1995) of 13 January 1995; Resolution 995 (1995) of 26 May 1995; Resolution 1002 (1995) of 30 June 1995; Resolution 1017 (1995) of 22 September 1995; Resolution 1033 (1995) of 19 December 1995.

³ Resolution 810 (1993) of 8 March 1993, preambular paragraph 4.

CASE 1

*Letter dated 2 November 1994 from the Representative of the Trusteeship Council
Addressed to the President of the Security Council*

At its 3455th meeting, held on 10 November 1994, the Council included a letter⁴ dated 2 November 1994, addressed to the President of the Security Council, from the President of the Trusteeship Council in its agenda. The letter contained the text of a draft resolution recommended by the Trusteeship Council for adoption by the Security Council on the termination of the Trusteeship Agreement for the Trust Territory of the Pacific Islands (Palau).

At the same meeting, the Security Council adopted resolution 956 (1994), by which the Council expressed its satisfaction that the people of Palau had freely exercised their right to self-determination in approving the new status agreement in a plebiscite observed by the visiting mission of the Trusteeship Council and that, in addition to this plebiscite, the duly constituted legislature of Palau had adopted a resolution approving the new status agreement, thereby freely expressing their wish to terminate the status of Palau as a Trust Territory. By that resolution, the Council determined, in the light of the entry into force on 1 October 1994 of the new status agreement for Palau, that the objectives of the Trusteeship Agreement had been fully attained, and that the applicability of the Trusteeship Agreement had terminated with respect to Palau.

Speaking after the vote, some speakers commented on the historic place of the resolution adopted by noting that the termination of the Trusteeship Agreement for the last Trust Territory of the Pacific Islands, Palau, represented the successful end of an important chapter in the work of the Trusteeship Council and marked the conclusion of its immediate responsibilities.⁵ The representative of China said that the Chinese Government and people, over the years, had consistently supported the efforts of the peoples of the Trust Territories, including Palau, to attain self-determination and independence. They were now willing further to promote friendly relations and cooperation between the two countries on the basis of the five principles of peaceful coexistence.⁶ The President, speaking in her capacity as representative of the United States, said that her country had also always recognized and supported the fundamental premise

⁴ S/1994/1234.

⁵ S/PV.3455, p.3 (United Kingdom); pp. 2-3 (France); p. 3 (New Zealand).

⁶ Ibid, p. 4.

of the Trusteeship: that the people of Palau must be free to follow the path of their own choosing.⁷

CASE 2

The Situation in Western Sahara

On 26 January 1993, the Secretary-General submitted to the Council a progress report⁸ on the situation concerning Western Sahara, in which he recalled the basic positions of Morocco and the Frente POLISARIO regarding the provisions of the settlement plan⁹ which related to the establishment of the electorate. The two parties, the Secretary-General reported, had radically opposing points of view on this issue, with one attaching primary importance to the list of persons counted in 1974, and the other considering that its importance was relative.

At its 3179th meeting, held on 2 March 1993, the Council adopted resolution 809 (1993), by which it determined that the settlement plan should be implemented without further delay in order to achieve a just and lasting solution, invited the Secretary-General and his Special Representative to intensify their efforts, with the parties, in order to resolve the issues identified in the report, in particular those relating to the interpretation and application of the criteria for voter eligibility, and invited the Secretary-General to make the necessary preparations for the organization of the referendum of self-determination of the people of Western Sahara and to consult accordingly with the parties for the purpose of commencing voter registration on a prompt basis, starting with the updated lists of the 1974 census.

Speaking after the vote, the representative of the Russian Federation stressed the need to take measures that would lead to mutually acceptable solutions and move forward the settlement process on the basis of appropriate decisions of the Security Council. In his view, the resolution constituted a reaffirmation of the support for the Secretary-General's efforts to organize a referendum on self-determination for the people of Western Sahara, in cooperation with the OAU.¹⁰

⁷ S/PV.3455, p. 5.

⁸ S/25170.

⁹ S/21360.

¹⁰ S/PV.3179, pp. 3-4.

Similarly, the representative of Venezuela said that his country attached great importance to the self-determination process in Western Sahara and shared the international community's concerns over the delays and difficulties in completing the process. He emphasized that any agreement should be based on ongoing consultations with the parties and therefore on their agreement and supported the appeal calling for their cooperation with the Secretary-General in the implementation of the settlement plan, on the understanding that that was the only available and agreed basis that could serve as a framework for this exercise.¹¹

By resolution 907 (1994), adopted at the Council's 3555th meeting, 0.

held on 29 March 1994, the Council welcomed the compromise proposal of the Secretary-General concerning the interpretation and application of criteria for voter eligibility (S/26185) as a sound framework for determining participation in the referendum for self-determination of the people of Western Sahara.

On 15 November 1994, Council members welcomed, through a presidential statement¹², the decision of the Secretary-General to visit the region later that month, and expressed their hope for significant progress towards implementing the settlement plan and holding the long overdue referendum. The Council further stated that it strongly believed that there should be no further undue delay in the holding of a free, fair and impartial referendum for self-determination of the people of Western Sahara in accordance with the settlement plan.

By subsequent resolutions¹³, the Council reiterated its commitment to holding, without further delay, a free, fair and impartial referendum for self-determination of the people of Western Sahara in accordance with the settlement plan (S/21360 and S/22464), which had been accepted by the two parties.

¹¹ Ibid, pp. 4-6.

¹² S/PRST/1994/67.

¹³ Resolutions 973 (1995) of 13 January 1995, 995 (1995) of 26 May 1995, 1002 (1995) of 30 June 1995, 1017 (1995) of 22 September 1995, and 1033 (1995) of 19 December 1995.

In reports¹⁴ and letters¹⁵ submitted to the Council between 21 May 1993 and 24 November 1995, the Secretary-General reported on obstacles that had prevented the timely implementation of the settlement plan, in particular provisions relating to the establishment of the electorate. In letters¹⁶ responding to the Secretary-General between 4 August 1993 and 6 November 1995, the President of the Council noted that the members of the Council had reiterated their support for the implementation of the settlement plan, had expressed the hope that both parties would cooperate fully with the Secretary-General and his Special Representative, and had emphasized the urgency of settling the pending questions.

CASE 3

The Situation concerning Haiti

At its 3413th meeting, on 31 July 1994, the Council included two reports¹⁷ of the Secretary-General in its agenda. The President drew the attention of the members of the Council to a letter¹⁸ dated 29 July 1994 addressed to the Secretary-General from the representative of Haiti, transmitting a letter from President Aristide, in which he called on the international community to take prompt and decisive action, under the authority of the United Nations, to allow for the full implementation of the Governors Island Agreement. The President further drew

¹⁴ S/25818, report of the Secretary-General on the situation concerning Western Sahara, dated 21 May 1993; S/26185, report of the Secretary-General on the situation in Western Sahara, dated 28 July 1993; S/26797, report of the Secretary-General on the situation in Western Sahara, dated 24 November 1993; S/ 1994/ 283 and Add.1 and Add. 1/Corr. 1, report of the Secretary-General on the situation in Western Sahara, dated 10 March 1994; S/1994/819, report of the Secretary-General on the situation in Western Sahara, dated 12 July 1994; S/1994/1257, report of the Secretary-General on the situation in Western Sahara, dated 5 November 1994; S/1994/1420 and Add.1, report of the Secretary-General on the situation in Western Sahara, dated 14 December 1994; S/1995/240 and Add.1, report of the Secretary-General on the situation in Western Sahara, dated 12 April 1995; S/1995/404, report of the Secretary-General on the situation in Western Sahara, dated 19 May 1995; S/1995/779, report of the Secretary-General on the situation in Western Sahara, dated 8 September 1995; S/1995/986, report of the Secretary-General on the situation concerning Western Sahara, dated 24 November 1995.

¹⁵ S/1995/924, letter dated 27 October 1995 from the Secretary-General addressed to the President of the Security Council.

¹⁶ S/26239, letter dated 4 August 1993, from the President of the Security Council to the Secretary-General; S/26848, letter dated 6 December 1993 from the President of the Council to the Secretary-General; S/1995/925, letter dated 6 November 1995 from the President of the Council to the Secretary-General.

¹⁷ S/1994/828; S/1994/871.

¹⁸ S/1994/905.

their attention to a draft resolution¹⁹ submitted by Argentina, Canada, France and the United States, as well as to a letter²⁰ dated 30 July 1994 addressed to the President of the Council from the representative of Haiti, informing him of the agreement of the Government of President Aristide with that draft resolution, which it considered as an appropriate framework for the implementation of the Governors Island Agreement.

The representative of Haiti argued that by stating the consent of the Government of President Aristide to the draft resolution, his delegation was calling on the international community to join it in defending its national sovereignty.²¹ The representative of Canada contended that, from the outset of the Haitian crisis, the United Nations had sought to restore democracy in that country through mediation and other diplomatic means as well as through a gradually more severe set of sanctions, and that the restoration of the democratically elected President of Haiti, Jean-Bertrand Aristide, was a key element of the restoration of democracy in that country. Furthermore, because living conditions in Haiti continued to decline seriously and brutal repression continued, the status quo could not be allowed to persist. It was for that reason that his Government had co-sponsored the draft resolution before the Council.²²

The representative of Mexico contended that the Council had, since the beginning of the matter, been acting at the request of the lawful Government and that President Aristide was not opposed to the use of force to re-establish his rights and those of the Haitian people. However, while Mexico was aware of the difficulties and of the need to restore constitutional order and democracy to Haiti, it also believed that there were not sufficient elements to justify the use of force and, still less, to justify across-the-board authorization for the action of ill-defined multinational forces. In his opinion, the continuation of political and diplomatic efforts to achieve solutions consistent with the Charter continued to be the best alternative to bring about the return of constitutional law and the exercise of self-determination for the Haitian people.²³

At its 3413th meeting, held on 31 July 1994 the Council adopted resolution 940 (1994) by which it reiterated its commitment for the international community to assist and support the economic, social and institutional development of Haiti and requested that the Mission assist the legitimate constitutional authorities of Haiti in establishing an environment conducive to the

¹⁹ S/1994/904.

²⁰ S/1994/910.

²¹ S/PV.3413, pp. 4.

²² Ibid, pp. 7-8.

²³ Ibid, pp. 4-5.

organization of free and fair legislative elections to be called by those authorities and, when requested by them, monitored by the United Nations, in cooperation with the Organization of American States.

At the 3429th meeting, held on 29 September 1994, the representative of Brazil reiterated that whatever action was taken should be fully consistent with the Charters of the United Nations and of the OAS. His country would support the democratic reconstruction of Haiti in full respect of its sovereignty and in compliance with the principles of non-intervention and self-determination.²⁴

B. 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

During the period under review, the Security Council adopted no decision containing an explicit reference to Article 2(4). The Council did adopt six presidential statements invoking the provisions of that Article. In these statements²⁵, all of which related to the situation in the Middle East, the members of the Council reaffirmed their commitment to the full sovereignty, independence, territorial integrity and national unity of Lebanon within its internationally recognized boundaries, and in that context, “assert[ed] that any State shall 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”.

The Security Council also adopted numerous resolutions and presidential statements touching upon the principle of the non-use of force embodied in Article 2(4). The Council thus condemned hostile actions across the border of a Member State²⁶ and condemned intrusions into the territory of a Member State. It reaffirmed the principles of territorial integrity, sovereignty

²⁴ S/PV 3429, pp. 6-7.

²⁵ S/25185, para. 2; S/26183, para. 2; S/PRST/1994/5, para. 2; S/PRST/1994/37, para. 2; S/PRST/1995/4, para. 2; S/PRST/1995/35, para. 2.

²⁶ In connection with the situation in the Republic of Bosnia and Herzegovina, S/PRST/1994/69, paras. 1-2.

and political independence of States and asked that they be fully respected;²⁷ the inviolability of international boundaries and borders;²⁸ and the inadmissibility of the use of force for the acquisition of territory.²⁹

²⁷ In connection with the situation in the Republic of Bosnia and Herzegovina, S/25080, para. 1; 819 (1993), third preambular paragraph; 820 (1993), fourth preambular paragraph; 824 (1993), second preambular paragraph; S/25746, para. 6; 836 (1993), third and fourth preambular paragraphs and para. 3; 838 (1993), second preambular paragraph; 859 (1993), second preambular paragraph and para. 6(a); S/PRST/1994/6, paras. 3 and 4; 900 (1994), sixth preambular paragraph; 913 (1994), third preambular paragraph; 941 (1994), second preambular paragraph; 959 (1994), third preambular paragraph; 970 (1995), para. 2; 988 (1995), para. 4; 1003 (1995), second preambular paragraph and para. 3; 1004 (1995), second preambular paragraph; 1010 (1995), fourth and fifth preambular paragraphs; 1015 (1995), second preambular paragraph; 1026 (1995), second preambular paragraph; 1031 (1995), second preambular paragraph. In connection with the situation prevailing in and adjacent to the United Nations Protected Areas in Croatia, S/26084, para. 3; S/PRST/1995/6, para. 2. In connection with the United Nations Protection Force (UNPROFOR), 815 (1993), second preambular paragraph; 847 (1993), fifth preambular paragraph; 871 (1993), para. 3; 908 (1994) A, para. 2; S/PRST/1994/44, para. 4; 947 (1994), para. 12; 981 (1995), third and fourth preambular paragraphs; 982 (1995), third and fourth preambular paragraphs; 983 (1995), third and fourth preambular paragraphs; 998 (1995), fifteenth preambular paragraph. In connection with the Conference on Security and Cooperation in Europe (CSCE) missions, 855 (1993), seventh preambular paragraph. In connection with the situation in Croatia, S/26436, para. 2. In connection with the situation in the Middle East, 803 (1993), para. 2; S/25185, para. 2; 852 (1993), para. 2; S/26183, para. 2; 895 (1994), para. 2; S/PRST/1994/5, para. 2; 938 (1994), para. 2; S/PRST/1994/37, para. 2; 974 (1995), para. 2; S/PRST/1995/4, para. 2; 1006 (1995), para. 2; S/PRST/1995/35, para. 2. In connection with the situation in Angola, 804 (1993), eleventh preambular paragraph; 811 (1993), eighth preambular paragraph; 834 (1993), seventh preambular paragraph; 851 (1993), eleventh preambular paragraph; 864 (1993), ninth preambular paragraph; 890 (1993), tenth preambular paragraph; 903 (1994), twelfth preambular paragraph; 922 (1994), fourth preambular paragraph; 932 (1994), third preambular paragraph; 945 (1994), fourth preambular paragraph; 952 (1994), third preambular paragraph; 966 (1994), third preambular paragraph; 976 (1995), third preambular paragraph; 1008 (1995), fourth preambular paragraph. In connection with the situation in Georgia, S/25198, para. 2; 876 (1993), para. 1; 896 (1994), paras. 4 and 5; 906 (1994), paras. 2 and 4; 937 (1994), paras. 4 and 7; S/PRST/1994/78, paras. 1 and 2; 971 (1995), third preambular paragraph; S/PRST/1995/12, para. 2; 993 (1995), third preambular paragraph. In connection with the situation relating to Nagorny Karabakh, S/25539, para. 2; 822 (1993), seventh preambular paragraph; 853 (1993), eighth preambular paragraph; S/26326, para. 3; 874 (1993), fifth preambular paragraph; 884 (1993), sixth preambular paragraph; S/PRST/1995/21, para. 3; In connection with the situation in Cambodia, fifth preambular paragraph; 880 (1993), para. 4. ; In connection with the situation in Tajikistan and along the Tajik-Afghan border, S/26341, para. 3; 999 (1995), third preambular paragraph; S/PRST/1995/42, para. 3; 1030 (1995), third preambular paragraph. In connection with the complaint by Ukraine, S/26118, para. 4. In connection with the situation prevailing in and around the safe area of Bihac, 958 (1994), fourth preambular paragraph. In connection with the situation concerning Rwanda, 912 (1994), para. 14; S/PRST/1994/21, para. 13; 918 (2003), sixteenth preambular paragraph; 925 (1994), seventeenth preambular paragraph; In connection with the situation in Somalia, 897 (1994), fifth preambular paragraph; In connection with the situation between Iraq and Kuwait, S/PRST/1994/58, para. 4; 949 (1994), ninth preambular paragraph; S/PRST/1994/68, para. 2; 986 (1995), fifth preambular paragraph. In connection with the situation in Afghanistan, S/PRST/1994/43, para. 7, S/PRST/1994/77, para. 7; In connection with the situation in Cyprus, 939 (1994), para. 2. In connection with the situation in Croatia, 1009 (1995), sixth preambular paragraph; 1023 (1995), paras. 2-3; 1025 (1995), fourth preambular paragraph. In connection with the situation in the former Yugoslav Republic of Macedonia, 1027 (1995), second preambular paragraph.

²⁸ In connection with the situation between Iraq and Kuwait, S/25091, para. 2; 806 (1993), para. 1; S/26006, para. 3; S/26787, para. 3; In connection with the situation relating to Nagorny Karabakh, S/25539, para. 2; 822 (1993), eighth preambular paragraph; 853 (1993), ninth preambular paragraph; S/26326, para. 3; 874 (1993), sixth preambular paragraph; 884 (1993), seventh preambular paragraph; S/PRST/1995/21, para. 3. In connection with the situation in Tajikistan and along the Tajik-Afghan border, S/26341, para. 3; 999 (1995), third preambular paragraph; S/PRST/1995/42, para. 3. In connection with the situation in the Republic of Bosnia and Herzegovina, S/PRST/1994/66, para. 2; S/PRST/1994/69, para. 2; 959 (1994), para. 2; S/PRST/1994/71, para. 4.

It also reaffirmed that any taking or acquisition of territory by the threat or use of force, including through the practice of “ethnic cleansing”, was unlawful and unacceptable.³⁰ The Council demanded that any taking of territory by force cease immediately.³¹ It also stressed the unacceptability of all attempts to resolve the conflict “by military means”³² and called upon parties to a conflict to refrain from the threat or use of force.³³

In a number of cases, the Council appealed for an end to interference from outside States,³⁴ and called for States to refrain from, prevent or discourage action which would undermine peace processes,³⁵ or exacerbate conflicts or increase tension.³⁶

Some Council decisions also touched upon the relationship between international terrorism and the non-use of force, whereby the Council expressed its conviction that the suppression of acts of international terrorism, including those in which States were directly or indirectly involved, was essential for the maintenance of international peace and security,³⁷ and demanded an immediate end to terrorist attacks.³⁸ In another decision, the Council, considering that, in accordance with the relevant provisions of the Charter of the United Nations, any aggression with the use of nuclear weapons would endanger international peace and security,

²⁹ In connection with the situation relating to Nagorny Karabakh, 822 (1993), eighth preambular paragraph; 853 (1993), ninth preambular paragraph; 874 (1993), sixth preambular paragraph; 884 (1993), seventh preambular paragraph; S/PRST/1995/21, para. 3.

³⁰ In connection with the situation in the Republic of Bosnia and Herzegovina, resolution 819 (1993), sixth preambular paragraph and para. 5; 820 (1993), fifth preambular paragraph; S/25746, para. 6; 836 (1993), sixth preambular paragraph and para. 3; S/26134, para. 4; 859 (1993), tenth preambular paragraph and para. 6(c); S/PRST/1994/6, para. 4.

³¹ Resolution 824 (1993), para. 2.

³² Resolution 987 (1995), third preambular paragraph; S/PRST/1995/24, para. 1; S/PRST/1995/31, para. 3; 1004 (1995), ninth preambular paragraph; S/PRST/1995/47, para. 2; 1016 (1995), para. 6.

³³ In connection with the United Nations Protection Force, 981 (1995), para. 8.

³⁴ In connection with the situation in Angola, 804 (1993), para. 9. In connection with the situation in the Republic of Bosnia and Herzegovina, 819 (1993), para. 3; S/25746, para. 5; 838 (1993), third and fourth preambular paragraphs.

³⁵ In connection with the situation in Angola, 834 (1993), para. 10; 851 (1993), para. 11; 864 (1993), B, third preambular paragraph. In connection with the situation in Liberia, 813 (1993), para. 12. In connection with the situation in Tajikistan and along the Tajik-Afghan border, S/PRST/1994/65, para. 6; 968 (1994), para. 11; S/PRST/1995/16, para. 3; 999 (1995), para. 11; S/PRST/1995/42, para. 3; 1030 (1995), para. 11. In connection with the situation in Georgia, 876 (1993), para. 8.

³⁶ In connection with the situation in Somalia, 954 (1994), para. 11; S/PRST/1995/15, para. 8. In connection with the situation in Burundi, S/PRST/1995/13, para. 8. In connection with the situation relating to Nagorny-Karabakh, 853 (1993), para. 10; S/26326, para. 4; 874 (1993), para. 10; 884 (1993), paras. 2 and 6. In connection with the situation concerning Rwanda, 812 (1993), para. 9; S/PRST/1994/21, para. 12; S/PRST/1995/22, para. 4. See also resolution 912 (1994), eleventh preambular paragraph. In connection with the situation in the Republic of Yemen, 924 (1994), para. 2; 931 (1994), para. 5.

³⁷ In connection with the Libyan Arab Jamahiriya, resolution 883 (1993), fifth preambular paragraph.

³⁸ In connection with Security Council action regarding the terrorist attacks in Buenos Aires and London, S/1994/1113, para. 5.

took note with appreciation of the statements by nuclear weapon states giving security assurances against the use of nuclear weapons to non-nuclear-weapon States that were parties to the Treaty on the Non-Proliferation of Nuclear Weapons.³⁹

In a number of cases, the Council called on parties to respect and maintain cease-fire agreements and condemned violations of such agreements. It also called for the cessation of hostilities and/or acts of violence, including violations of international humanitarian law, and the exercise of restraint or the cessation of provocative actions.⁴⁰ In one instance, the Council demanded the withdrawal of foreign troops from the territory of a Member State.⁴¹ In another instance, it emphasized the importance of the immediate removal of all foreign forces, advisers and military personnel.⁴²

Similar calls for the respect and maintenance of cease-fire agreements, the cessation of hostilities, including violations of international humanitarian law, the withdrawal of forces and the exercise of restraint were made in the context of internal conflicts.⁴³

³⁹ In connection with the proposal by China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America on security assurances, resolution 984 (1995), seventh preambular paragraph and para. 1.

⁴⁰ In connection with the situation in the Republic of Bosnia and Herzegovina, S/PRST/1994/66, paras. 1-3; S/PRST/1994/69, paras. 2-4; S/PRST/1994/69, paras. 2 and 4; 959 (1994), eighth preambular paragraph and paras. 1 and 4; S/PRST/1994/71, para. 4. In connection with the situation in Tajikistan and along the Tajik-Afghan border, S/26341, para. 2; S/PRST/1994/56, para. 4; S/1994/1118, para. 3; S/PRST/1994/65, para. 3; 968 (1994), para. 9; S/PRST/1995/16, para. 3; 999 (1995), tenth preambular paragraph and para. 11; 1030 (1995), para. 11. In connection with the situation between Iraq and Kuwait, 949 (1994), paras. 2-4. In connection with the situation concerning Western Sahara, 1002 (1995), para. 5. In connection with the situation concerning Rwanda, 978 (1995), para. 4.

⁴¹ In connection with the situation in the Republic of Bosnia and Herzegovina, S/PRST/1994/6, para. 3.

⁴² In connection with the situation in Cambodia, resolution 810 (1993), twelfth preambular paragraph.

⁴³ In connection with the situation in the Republic of Bosnia and Herzegovina, S/25079, para. 3; S/25162, para. 2; S/25361, paras. 1-3; S/25426, para. 3; S/25471, paras. 34; S/25520, para. 3; 819 (1993), fourth preambular paragraph and para. 2; 820 (1993), A, para. 4; S/25646, para. 2; 824 (1993), para. 4(a); S/25746, para. 2; S/26134, paras. 2 and 3; 859 (1993), para. 2; S/26716, paras. 2 and 5; S/26717, para. 4; S/PRST/1994/1, paras. 2 and 5; S/PRST/1994/6; S/PRST/1994/14, paras. 3 and 7; S/PRST/1994/19, para. 2; 913 (1994) A, paras. 1 and 3; B, para. 4; S/PRST/1994/23, para. 1; S/PRST/1994/26, para. 3; S/PRST/1994/29, para. 2; S/PRST/1994/31, para. 2; S/PRST/1994/50, para. 1; 942 (1994) A, para. 4; S/PRST/1994/71, para. 2; S/PRST/1995/1, para. 2; S/PRST/1995/8, paras. 2-3; S/PRST/1995/24, para. 2; S/PRST/1995/31, para. 3; 1004 (1995), para. 1; S/PRST/1995/33, para. 2; S/PRST/1995/34, para. 2; S/PRST/1995/47, para. 2; S/PRST/1995/52, para. 3. In connection with the situation prevailing in and adjacent to the United Nations Protected Areas in Croatia, 802 (1993), paras. 1, 4 and 9; S/25178, para. 2; S/26084, paras. 1 and 2; S/26199, para. 3; 871 (1993), para. 6. In connection with the situation in Croatia, S/26436, para. 2. In connection with the situation in Mozambique, 882 (1993), para. 11; 898 (1994), para. 7. In connection with the situation in the Middle East, S/25185, para. 4; S/26183, para. 4; S/PRST/1994/5, para. 4; S/PRST/1994/37, para. 4; S/PRST/1995/4, para. 4; S/PRST/1995/35, para. 4. In connection with the situation in Angola, 804 (1993), para. 3; 811 (1993), para. 3; 834 (1993), paras. 4, 5 and 7; S/25899, paras. 2 and 3; 851 (1993), paras. 6 and 8; 864 (1993), A, paras. 7, 8 and 10; 890 (1993), para. 6; S/PRST/1994/7, para. 5; 903 (1994), paras. 2-3; S/PRST/1994/445, para. 4; 922 (1994), para. 9; 932 (1994), paras. 3 and 9; S/PRST/1994/52, para. 4; 945 (1994), para. 7; 952 (1994), paras. 3 and 6; S/PRST/1994/63, paras. 1, 3 and 4; S/PRST/1994/70, paras. 1 and 3; S/PRST/1995/11, para. 2; S/PRST/1995/51, para. 5; S/PRST/1995/62, para. 5. In connection with the situation in

During the period under review, the Council rejected two draft resolutions which contained provisions that might be considered as implicit references to Article 2(4).⁴⁴

The Cases below reflect the practice of the Council touching upon the provisions of Article 2(4), as illustrated by its decisions and deliberations in connection with the following matters: (1) The situation in the Republic of Bosnia and Herzegovina; (2) The situation relating to Nagorny-Karabakh; (3) United States notification of 26 June 1993 measures against Iraq; (4) Complaint by Ukraine regarding the Decree of the Supreme Soviet of the Russian Federation concerning Sevastopol; (5) The situation between Iraq and Kuwait; and (6) The situation in Croatia.

CASE 4

The situation in the Republic of Bosnia and Herzegovina

In its decisions concerning the situation in the Republic of Bosnia and Herzegovina, the Security Council reaffirmed the prohibition of threat or use of force in international relations in two main contexts. First, the Council demanded the cessation of forms of external interference in the Republic of Bosnia and Herzegovina. Second, it demanded the cessation of hostile actions across the borders of the Republic of Bosnia and Herzegovina and the Republic of Croatia. In a third context, the Council called for action consistent with the principles enshrined in Article

Georgia, S/25198, para. 2; S/26032; S/26463, para. 3; 876 (1993), para. 4; 892 (1993), para. 8; 896 (1994), para. 13; S/PRST/1994/17, para. 3; 971 (1995), para. 5; 993 (1995), para. 5. In connection with the situation relating to Nagorny Karabakh, S/25539, paras. 1 and 3; 822 (1993), para. 1; 853 (1993), paras. 3, 4 and 8; S/26326, para. 2; 874 (1993), paras. 1, 5 and 9; 884 (1993), para. 4; In connection with the situation in Somalia, 814 (1994), B, paras. 8 and 13; 837 (1993), para. 4; 886 (1993), para. 6; 897 (1994), para. 7; 954 (1994), para. 4; In connection with the situation in Cambodia, 810 (1993), para. 17; 880 (1993), para. 5. In connection with the situation concerning Rwanda, 812 (1993), para. 1; 846 (1993), para. 7; S/PRST/1994/16, para. 4; 912 (1994), para. 6; S/PRST/1994/21, paras. 2 and 4; 918 (1994), A, para. 1; 925 (1994), para. 6; 929 (1994), para. 9; S/PRST/1994/34, para. 2; In connection with the situation in Liberia, 813 (1993), para. 7; S/25198, para. 4; 856 (1993), para. 4; S/PRST/1994/9, para. 3; 911 (1994), para. 5; S/PRST/1994/25, para. 5; 950 (1994), para. 4; 972 (1995), ninth preambular paragraph and para. 3; 985 (1995), para. 2; 1001 (1995), para. 4(b); 1014 (1995), eighth preambular paragraph; 1020 (1995), paras. 5 and 10. In connection with the situation in Tajikistan and along the Tajik-Afghan border, S/26341, para. 2; S/1994/597, para. 3; S/PRST/1994/56, para. 4; S/1994/1118, para. 3; S/PRST/1994/65, para. 3; 968 (1994), para. 9. In connection with the United Nations Protection Force (UNPROFOR), 908 (1994) A, para. 9; C, para. 22. In connection with the situation in Afghanistan, S/PRST/1994/4, para. 4; S/PRST/1994/12, para. 2; S/PRST/1994/43, para. 3; S/PRST/1994/77, para. 4; In connection with the situation in the Republic of Yemen, 924 (1994), para. 1; 931 (1994), para. 1. In connection with the situation in Croatia, 1023 (1995), para. 3. In connection with the situation in the former Yugoslavia, S/PRST/1995/50, para. 1.

⁴⁴ In connection with the situation in the Republic of Bosnia and Herzegovina, see S/25997, seventh preambular paragraph and para. 1 and S/1994/1358, sixth preambular paragraph.

2(4), albeit with respect to relations not exclusively international in character, by reaffirming the unacceptability of the acquisition of territory by force.

i. The situation in the Republic of Bosnia and Herzegovina and the prohibition upon acts of interference by external actors

At its 3199th meeting on 16 April 1993, the Council adopted resolution 819 (1993), by which it demanded that the Federal Republic of Yugoslavia (Serbia and Montenegro) immediately cease the supply of military arms, equipment and services to the Bosnian Serb paramilitary units in the Republic of Bosnia and Herzegovina.

At the 3210th meeting on 10 May 1993, the Council, by a presidential statement⁴⁵ called upon the Republic of Croatia to exert all its influence on the Bosnian Croat leadership and paramilitary units with a view to ceasing immediately their attacks particularly in the areas of Mostar, Jablanica and Dreznica. It further called on Croatia to adhere strictly to its obligations under Council resolution 752 (1992) of 15 May 1992, including putting an end to all forms of interference and respecting the territorial integrity of Bosnia and Herzegovina.

At its 3234th meeting on 10 June 1993, the Security Council adopted resolution 838 (1993), by which it reiterated that all forms of interference from outside Bosnia and Herzegovina cease immediately and that its neighbours take swift action to end all interference and respect its territorial integrity.

At the 3333rd meeting on 3 February 1994, the Council strongly condemned⁴⁶ the Republic of Croatia for a serious hostile act⁴⁷ against a State Member of the United Nations, which constituted a violation of international law, the Charter of the United Nations and relevant Council resolutions, in particular resolution 752 (1992) of 15 May 1992, in which the Council had demanded an immediate end to all forms of interference and full respect for the territorial integrity of the Republic of Bosnia and Herzegovina.

⁴⁵ S/25746.

⁴⁶ S/PRST/1994/6.

⁴⁷ The Republic of Croatia had deployed elements of the Croatian Army along with heavy military equipment in the central and Southern parts of the Republic of Bosnia and Herzegovina.

ii. *The situation in the Republic of Bosnia and Herzegovina and the prohibition upon hostile acts across its international border with the Republic of Croatia*

At its 3456th meeting on 13 November 1994 the Council adopted a presidential statement⁴⁸, by which it condemned any violation of the international border between the Republic of Croatia and the Republic of Bosnia and Herzegovina. It also demanded that all parties and others concerned, in particular the so-called Krajina Serb forces, fully respect that border and refrain from hostile acts across it. The Council called upon all parties and others concerned to abstain from any action that could cause a further escalation in the fighting.

At the 3460th meeting on 18 November 1994, the Council issued a statement⁴⁹ by which it condemned in the strongest possible terms the attack on the safe area of Bihac by aircraft belonging to the so-called Krajina Serb forces [...] as well as the shelling by the so-called Krajina Serb forces from the United Nations Protected Areas as a flagrant violation of the territorial integrity of the Republic of Bosnia and Herzegovina and relevant Council resolutions. The Council demanded that all parties and others concerned, in particular the so-called Krajina Serb forces, cease immediately all hostile actions across the international border between the Republic of Croatia and the Republic of Bosnia and Herzegovina. The Council reiterated this position in resolution 959 (1994) of 19 November 1994 and in a Statement⁵⁰ by the President of the Council on 26 November 1994.

At the 3501st meeting on 17 February 1995, the Council demanded⁵¹ that all forces in the Bihac area cease fighting immediately and cooperate fully with the United Nations Protection Force in achieving an effective ceasefire. The Council also reiterated its condemnation of the continued violations of the international border between the Republic of Croatia and the Republic of Bosnia and Herzegovina.

At its 3581st meeting on 21 September 1995, the Council adopted resolution 1016 (1995), by which it noted the assurances given by the Governments of the Republic of Bosnia and Herzegovina and the Republic of Croatia regarding offensive actions in western Bosnia and affirmed, while taking note of the reports that offensive actions had slowed down, the need for full compliance with the demands set out in the statement by its President of 18 September 1995.

⁴⁸ S/PRST/1994/66.

⁴⁹ S/PRST/1994/69.

⁵⁰ S/PRST/1994/71

⁵¹ S/PRST/1995/8.

iii. Reaffirmation of the unacceptability of the acquisition of territory by force

On 16 April 1993, the Council adopted, at its 3199th meeting, resolution 819 (1993), by which it reaffirmed that any taking or acquisition of territory by the threat or use of force, including through the practice of “ethnic cleansing”, was unlawful and unacceptable; and condemned and rejected the deliberate actions of the Bosnian Serb party to force the evacuation of the civilian population from Srebrenica and its surrounding areas as well as from other parts of Bosnia and Herzegovina as part of its overall abhorrent campaign of “ethnic cleansing.” The Council reaffirmed that position in resolution 820 (1993) of 17 April 1993.

By resolution 824 (1993), adopted at the Council’s 3208th meeting on 6 May 1993, the Council declared that the capital city of the Republic of Bosnia and Herzegovina, Sarajevo, and other such threatened areas, in particular the towns of Tuzla, Zepa, Gorazde and Bihac, as well as Srebrenica, and their surroundings should be treated as safe areas by all the parties concerned and should be free from armed attacks and from any other hostile act.

By its subsequent decisions⁵², the Council reaffirmed the sovereignty, territorial integrity and independence of the Republic of Bosnia and Herzegovina and condemned the practice of ‘ethnic cleansing’ and acquisition of territory by force.

At its 3554th meeting on 14 July 1995, the Council demanded⁵³ that the Bosnian Serb party respect fully the rights of those civilians who wish to remain in the [Srebrenica] safe area and cooperate with efforts to ensure that civilians who wished to depart were allowed to do so with their families in an orderly, safe way in conformity with international law.

CASE 5

The situation relating to Nagorny-Karabakh

In its decisions and deliberations concerning the situation relating to Nagorny-Karabakh, the Security Council reaffirmed the prohibition of the use or threat of force in international

⁵² Presidential statement of 10 May 1993 (S/25746); resolution 836 (1993) of 4 June 1993; resolution 859 (1993); presidential statement of 22 July 1993 (S/26134); presidential statement of 3 February 1994 (S/PRST/1994/6); resolution 941 (1994) of 23 September 1994; presidential statement of 12 October 1995 (S/PRST/1995/52).

⁵³ S/PRST/1995/32.

relations by calling for the cessation of all forms of external interference in Azerbaijan. It also called for action consistent with the principles enshrined in Article 2(4), albeit with respect to relations not exclusively international in character, by reaffirming the unacceptability of the acquisition of territory by force.

At its 3205th meeting on 30 April 1993, the Security Council adopted resolution 822 (1993), by which it expressed its serious concern at the deterioration of the relations between the Republic of Armenia and the Azerbaijani Republic, noted with alarm the escalation in armed hostilities, and reaffirmed the respect for sovereignty and territorial integrity of all States in the region as well as the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory. By that resolution, the Council further demanded the immediate cessation of all hostilities and hostile acts with a view to establishing a durable cease-fire, as well as immediate withdrawal of all occupying forces from the Kelbadjar district and other recently occupied areas of Azerbaijan; and urged the parties concerned immediately to resume negotiations for the resolution of the conflict within the framework of the peace process of the Minsk Group of the Conference on Security and Cooperation in Europe (CSCE).

At that meeting, the representative of Djibouti stated that it was disturbing that his delegation had to accept that the conflict was local and was being perpetrated and carried out solely by local Armenian forces. The truth was that it was a conflict between Armenia and Azerbaijan.⁵⁴ Conversely, the representative of France expressed the view that the preambular part of the resolution seemed to strike a reasonable balance between acknowledging that tensions existed between Armenia and Azerbaijan and recognizing the localized nature of the fighting.⁵⁵ The representative of Venezuela stated that, as a result of having become Members of the United Nations, Armenia and Azerbaijan had both won rights and assumed obligations. They were entitled to find within the United Nations, and in particular within the Security Council, a neutral and objective body in which to air their differences. But it was a fundamental corollary that they were also obliged to respect and to ensure that their national communities, and anyone else claiming a special relationship with them, respected all of the norms and principles of international conduct, which they had assumed when they had signed the United Nations Charter. In particular, they needed to “show absolute respect for one another’s independence and

⁵⁴ S/PV.3205, pp. 7-8.

⁵⁵ Ibid, pp. 11-12.

territorial integrity and to renounce the use of force as a way of solving disputes”. Two aspects of the conflict were of particular concern to his delegation: on the one hand his delegation saw alarming similarity between the situation in the former Yugoslavia; on the other hand, it saw a distorted concept of what should be the right to self-determination.⁵⁶

At its 3259th meeting on 29 July 1993, the Security Council adopted resolution 853 (1993), by which it reaffirmed the sovereignty and territorial integrity of Azerbaijan and of all other States in the region as well as the inviolability of international borders and the inadmissibility of the use of force for the acquisition of territory. By that resolution, the Council demanded the immediate cessation of all hostilities and the immediate, complete and unconditional withdrawal of the occupying forces involved from the district of Agdam and all other recently occupied areas of Azerbaijan; called on the parties concerned to reach and maintain durable cease-fire arrangements; and urged the parties concerned to refrain from any action that would obstruct a peaceful solution to the conflict, and to pursue negotiations within the Minsk Group, as well as through direct contacts between them, towards a final settlement.

At that meeting, the representative of Pakistan condemned the continuing “Armenian aggression” against the Azerbaijani Republic and demanded the immediate withdrawal of “Armenian forces” from all occupied Azerbaijani territories. Pakistan urged the Republic of Armenia to respect the sovereignty, territorial integrity and political independence of the Republic of Azerbaijan, and it called for a just and peaceful settlement of the problem on the basis of respect for the principles of the territorial integrity of States and the inviolability of internationally recognized frontiers.⁵⁷ Other members, in calling for a cessation of hostilities, referred to the “attacks by local Armenian forces” and the “offensive actions taken by armed units of Nagorny-Karabakh Armenians”.⁵⁸

By a presidential statement⁵⁹, the Council expressed, on 18 August 1993, its concern at the deterioration of relations between the Republic of Armenia and the Azerbaijani Republic and at the tensions between them. The Council further demanded a stop to all attacks and an immediate cessation of the hostilities and bombardments, which endangered peace and security in the region, and an immediate, complete and unconditional withdrawal of occupying forces

⁵⁶ Ibid, pp. 16-18.

⁵⁷ S/PV.3259, pp. 7-8.

⁵⁸ Ibid, pp. 8-10 (France); pp. 9-11 (Russian Federation).

⁵⁹ S/26326.

from the area of Fizuli and from the districts of Kelbadjar and Agdam and other recently occupied areas of Azerbaijan. The Council also reaffirmed the sovereignty and territorial integrity of the Azerbaijani Republic and of all other States in the region and the inviolability of their borders. It reiterated this position in its resolutions 874 (1993) of 14 October 1993 and 884 (1993) of 12 November 1993.

CASE 6

United States notification of 26 June 1993 measures against Iraq

The Security Council's deliberations concerning the United States notification of 26 June 1993 measures against Iraq touched upon the relationship between the use of force and the exercise of the right of self-defence.

By a letter⁶⁰ dated 26 June 1993 addressed to the President of the Security Council, the representative of the United States reported, in accordance with Article 51 of the Charter, that her country had exercised its right of self-defence by responding to the Government of Iraq's unlawful attempt to murder the former President of the United States and to its continuing threat to United States nationals. The United States had decided to respond, as a last resort, by striking at an Iraqi military and intelligence target, so as to minimize risks of collateral damage to civilians. In light of the above, the United States Government requested an urgent meeting of the Council. By a letter⁶¹ dated 27 June 1993 addressed to the President, the Minister for Foreign Affairs of Iraq reported that the United States had committed, on that day, an "act of military aggression against Iraq", which had left a large number of dead and wounded among the Iraqi civilian population.

The Council considered the item at its 3245th meeting on 27 June 1993. The representative of the United States contended that the attempt against the former President of the United States, during his visit to Kuwait in April 1993 was "an attack on the United States of America". She described in detail the investigation and the "physical evidence" that led her government to conclude that Iraq had planned, equipped and launched the "terrorist operation".

⁶⁰ S/26003.

⁶¹ S/26004.

The United States had responded directly, as it was entitled to do under Article 51 of the Charter, which provided for the exercise of the right of self-defence in such cases. The response had been proportionate and aimed at a target directly linked to the operation against the former President of the United States. It was designed to “damage the terrorist infrastructure of the Iraqi regime, reduce its ability to promote terrorism and deter further acts of aggression against the United States”. She stressed that the action of the United States was not directed against the Iraqi people and expressed regret for the loss of civilian life. However, she said, one should keep in mind that had the Iraqi attempt in Kuwait succeeded hundreds of civilians could have died.⁶²

In contrast, the representative of Iraq argued that, on 27 June 1993, the United States had committed another “act of aggression” against Iraq and had tried to justify it by linking it to the story of the alleged attempt to assassinate its former President, a story which had been completely fabricated by the Kuwaiti regime. Pointing out that the United States Government had carried out its “sentence” against Iraq without providing evidence against it or inviting it to clarify its position, he stated that the rules of international law gave the United States no right to overlook the principle of due process of law or the provisions of the Charter. With that “act of aggression”, the United States had breached its responsibility as a permanent member of the Council and had violated the norms of international law and of the Charter. The speaker called upon the Council to condemn the “act of aggression” and to take the action necessary to prevent a repetition in the future.⁶³

In the course of the discussion, Council members expressed their condemnation of all forms of terrorism, including State-sponsored terrorism. Several members voiced their support for, or expressed their understanding of, the action taken by the United States, given the circumstances, while regretting the civilian casualties.⁶⁴ Speaking on behalf of the Non-Aligned countries that were Council members, the representative of Cape Verde urged “the exercise of restraint by all States, consistent with the principles of the Charter and in particular for the maintenance of international peace and security” and “the avoidance of the use of force inconsistent with the purposes of the United Nations”.⁶⁵ The representative of China stated that disputes between or among countries should be settled through peaceful means of dialogue and

⁶² S/PV.3245, pp. 3-7.

⁶³ Ibid., pp. 9-13.

⁶⁴ Ibid, pp. 13-15 (France); p. 16 (Japan); pp. 18-20 (Hungary); pp. 21-22 (United Kingdom); p. 23 (New Zealand); pp. 23-25 (Spain).

⁶⁵ Ibid., pp. 16-17.

consultation. China did not endorse “any action that might intensify the tension in the region, including the use of force”.⁶⁶ No proposal was submitted on which the Council was required to take action.

CASE 7

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

The Security Council’s decision concerning the complaint by Ukraine reaffirmed the prohibition of the threat or use of force in international relations by calling on the States concerned to take steps to ensure the avoidance of tension. In both its decision and its deliberations, the Council also reaffirmed the principle of territorial integrity.

By a letter⁶⁷ dated 16 July 1993 addressed to the President of the Security Council, the representative of Ukraine transmitted the text of a letter dated 14 July from the Minister for Foreign Affairs of Ukraine, in which the latter requested an urgent meeting of the Council to consider the situation resulting from the adoption, on 9 July 1993, of a decree by the Supreme Soviet of the Russian Federation which proclaimed “Russian federal status” for the city of Sevastopol. Previously, the representative of Ukraine had transmitted⁶⁸ the text of a statement made by the President of Ukraine, in which the latter, pointing out that the decree described Sevastopol as “the main base of the single Black fleet”, had asserted that the Supreme Soviet was trying to “insert tension and strife into relations between Ukraine and Russia” and stressed that “there should be no place for the ‘law of the jungle’ in today’s international relations”.

The Council considered the item at its 3256th meeting on 20 July 1993. The representative of Ukraine contended that the “irresponsible” decision taken by the Russian Parliament could only be described as “flagrant flouting” of the fundamental principles and norms of international law, in particular Article 2, paragraph 4, of the United Nations Charter. It constituted, he said, a clear encroachment on Ukraine’s territorial inviolability, a revision of existing boundaries, interference in its internal affairs, and was, in both spirit and letter,

⁶⁶ Ibid., p. 21.

⁶⁷ S/26100.

⁶⁸ By a letter (S/26075) dated 13 July 1993 addressed to the President of the Council.

incompatible with the purposes and principles of the United Nations. The decision was also a flagrant violation of the international commitments flowing from Russia's membership in the United Nations, its participation in the CSCE, and the Kiev Treaty. The Decree was, in essence, a "time bomb"; if the Russian authorities attempted to "implement" it, Ukraine might be forced to take "appropriate actions" to defend its sovereignty, territorial integrity and inviolability. It was quite clear that the decision by the Supreme Soviet of the Russian Federation was in essence an overt territorial claim by one state against another.⁶⁹

The representative of the Russian Federation emphasized that the Decree of the Supreme Soviet diverged from the policy of his President and his Government. He maintained that his country remained dedicated to the principle of the inviolability of the borders within the Commonwealth of Independent States and would strictly abide by its obligations under international law, the Charter and the principles of the CSCE. Regarding its relations with Ukraine, Russia would continue to be guided by its bilateral treaties and agreements, and in particular those concerning respect for each other's sovereignty and territorial integrity.⁷⁰

At the same meeting, the Council adopted a presidential statement⁷¹, by which it reaffirmed its commitment to the territorial integrity of Ukraine, in accordance with the Charter of the United Nations. The Council further stated that the Decree of the Supreme Soviet of the Russian Federation was incompatible with the Treaty between the Russian Federation and Ukraine, signed at Kiev on 19 November 1990, as well as with the purposes and principles of the Charter of the United Nations, and without effect.

CASE 8

The situation between Iraq and Kuwait

In its decision and deliberations concerning the situation between Iraq and Kuwait, the Security Council reaffirmed the prohibition of the threat or use of force in international relations.

⁶⁹ S/PV.3256, pp. 7-8.

⁷⁰ Ibid, pp. 14-16.

⁷¹ S/26118.

By a letter⁷² dated 14 October 1994 addressed to the President of the Security Council, the representatives of Iraq and the Russian Federation transmitted the text of a joint communiqué on the outcome of the meeting held, on 13 October 1994, between the President of Iraq and the Minister for Foreign Affairs of the Russian Federation. The joint communiqué provided, *inter alia*, that Iraq had announced officially that, on 12 October 1994, it had completed the withdrawal of its troops in southern Iraq to rearguard positions and had affirmed its readiness to resolve in a positive manner the issue of recognizing Kuwait's sovereignty and borders, as laid down in Council resolution 833 (1993). By a letter⁷³ dated 14 October 1994 addressed to the President, the representative of Kuwait transmitted the text of a statement issued on the same day by the Kuwaiti Council of Ministers concerning "the most recent Iraqi military threat to the State of Kuwait and the States of the region", as well as media reports concerning the aforementioned joint communiqué. The statement of the Council of Ministers provided, *inter alia*, that Kuwait considered that the persistent mobilization of Iraqi military forces in their current positions continued to pose a serious threat to its security and sovereignty. Kuwait requested the Council to shoulder its responsibility to put an end to "the violations and threats" by taking effective steps under Chapter VII of the Charter to guarantee the security of Kuwait, respect for its sovereignty and independence and the integrity of its international frontiers, and the security of the States of the region.

At its 3438th meeting on 15 October 1994, the Council adopted resolution 949 (1994), by which the Council noted past Iraqi threats and instances of actual use of force against its neighbours, recognized that any hostile or provocative action directed against its neighbours by the Government of Iraq constituted a threat to peace and security in the region, and reaffirmed the commitment of all Member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq. By that resolution, the Council condemned recent military deployments by Iraq in the direction of the border with Kuwait; demanded that Iraq immediately complete the withdrawal of all military units recently deployed to southern Iraq to their original positions; and demanded that Iraq not again utilize its military or any other forces in a hostile or provocative manner to threaten either its neighbours or United Nations operations in Iraq.

⁷² S/1994/1173.

⁷³ S/1994/1165.

The representative of the United Kingdom noted that Iraq had tried to justify its behaviour by speaking of its sovereign right to deploy its troops wherever it liked within its own territory; however, Article 2, paragraph 4, of the Charter required all Member States to refrain from the threat or use of force against the territorial integrity or political independence of any state. Four years prior to that, similar Iraqi troop movements had led to the invasion of Kuwait. Thus, he asserted, the recent deployment of Iraqi artillery and tanks in positions pointing towards and within range of Kuwait, with ammunition at the ready, was “a threat to Kuwait and represented a breach of the provisions of the Charter”.⁷⁴ Along similar lines, other Council members characterised Iraq’s actions as “threats of unprovoked aggression”, “an aggressive threat” and “a threat or a provocation directed at Kuwait and, hence, at the international community as a whole”.⁷⁵ They drew attention to Iraq’s invasion of Kuwait in 1990 and to the fact that Iraq had not yet formally recognized Kuwait’s sovereignty, territorial integrity and borders, as required by resolution 833 (1993).⁷⁶ In addition, the representative of the United States warned that pursuant to the Council’s resolutions and Article 51 of the Charter, her Government would take all appropriate action if Iraq failed to comply with the demands in resolutions 949 (1994).⁷⁷

The representative of Spain, while affirming that there should be no troop movements or redeployments whatsoever that could threaten neighbouring countries, expressed the view that Iraq should not be prohibited from keeping defensive units of a reasonable size in a large part of its territory, particularly in Basra.⁷⁸ The representative of Nigeria recognized the sovereign right of every State to determine the direction and content of its domestic policies, including measures deemed necessary for the defence of its sovereignty and territorial integrity, provided those policies and activities did not constitute a threat to its neighbours or had the potential of undermining international peace and security.⁷⁹ The representatives of the Czech Republic and Spain emphasized that resolution 949 (1994) did not question the territorial integrity of Iraq.⁸⁰

⁷⁴ S/PV.3438, pp. 11-12.

⁷⁵ Ibid, p. 5 (United States); p. 9 (New Zealand); p. 10 (Argentina).

⁷⁶ Ibid, p. 3 (Rwanda); pp. 4-5 (United States); p. 6 (Czech Republic); p. 9 (New Zealand); p. 10 (Argentina).

⁷⁷ Ibid, p. 6.

⁷⁸ Ibid, p. 8.

⁷⁹ Ibid, pp. 2-3.

⁸⁰ Ibid, pp. 7-8.

CASE 9

The situation in Croatia

The Security Council's deliberations concerning the situation in Croatia touched upon the relationship between the use of force and the exercise of the right of self-defence.

By a letter⁸¹ dated 4 August 1995 addressed to the President of the Security Council, the representative of Croatia transmitted a letter of the same date from the Deputy Prime Minister and Minister for Foreign Affairs of Croatia, in which the latter reported that, on the morning of 4 August, Croatian military and police forces had commenced "decisive action" in the occupied territories of Croatia. He contended that the action was aimed at restoring the rule of law, constitutional order and public safety, as well as at helping to sustain the defence of the United Nations safe area of Bihac. He also recalled that his Government had warned in a letter dated 20 July 1995 addressed to the President that, should the Bihac area be gravely threatened, Croatia's vital strategic interests would be threatened and it would be compelled to take decisive action, in accordance with its international obligations towards Bosnia and Herzegovina and with Article 51 of the Charter.

At its 3563rd meeting on 10 August 1995, the Security Council resumed its consideration of the item entitled, "The situation in Croatia". The representative of Croatia stated that, after years of "patience", Croatia had concluded that the least costly solution for both it and the international community to end humanitarian concerns in Bosnia and Herzegovina would require a "limited but credible" use of force to end the siege of Bihac and restore order in adjacent occupied territories of Croatia. That action had been successfully completed within 84 hours. The speaker contended that Croatia's actions had been carried out mostly on its internationally-recognized territory and in part of the territory of Bosnia and Herzegovina, at the express request of that Government, arguing that establishing sovereignty and security on its own territory and coming to the aid of a friendly Government were fully consistent with the Charter of the United Nations. He then claimed that that the siege of Bihac, which had been a serious concern for the international community, had been resolved at minimal cost to the international community and to the civilian population in the area.⁸² Similarly, the representative of Bosnia and Herzegovina

⁸¹ S/1995/647.

⁸² S/PV.3563, pp. 2-4.

argued that Croatia's action had been in defence of its territories and rights and in promotion of peace and stability within its borders. He also contended that Croatia had preserved the Bihac safe area.⁸³ Another speaker, however, alleged that one of Croatia's main goals had been to inflict heavy losses on the civilian population and incite a mass exodus of Serbs, thus creating an "ethnically pure" Croat State.⁸⁴

At that meeting, the Council adopted resolution 1009 (1995), by which it *strongly deplored* the broad military offensive launched on 4 August 1995 by the Government of the Republic of Croatia, thereby unacceptably escalating the conflict, and demanded that the Government of the Republic of Croatia cease immediately all military actions and that there be full compliance with all Council resolutions, including resolution 994 (1995).

Speaking after the vote, the representative of France stated that, whilst the areas in which Croatian offensives had taken place were parts of the territory of Croatia, the Serb population in those regions nevertheless possessed rights recognized by the international community, which prohibited recognizing such military operations as legitimate.⁸⁵ The representative of the Czech Republic expressed the view that, while Croatia could not be faulted for pursuing its sovereign right to reintegrate parts of its sovereign territory, his Government deplored the fact that Croatian authorities had chosen to pursue their goal by military means, particularly at a time when diplomatic avenues had not been exhausted.⁸⁶ The representative of the United States, while regretting the means used, stated that it was also necessary to recognize that the new safe area of Bihac was now open to humanitarian relief.⁸⁷

C. 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 action."

⁸³ Ibid, pp. 5-7.

⁸⁴ Ibid.: Mr. Djokic, pp. 7-9.

⁸⁵ Ibid, pp. 16-17.

⁸⁶ Ibid, pp. 18-19.

⁸⁷ Ibid, p. 20.

During the period under review, there were no explicit references to Article 2(5) during the Council's deliberations. The Council adopted, however, on a number of instances, in connection with the situations in Liberia, Angola, Somalia, and Rwanda respectively, resolutions, which contained provisions that might be construed as implicit references to the principle enshrined in Article 2(5).

At its 3489th meeting on 13 January 1995, at which resolution 972 (1995) was adopted, the Council discussed the extension of the mandate of the UN observer mission in Liberia. In the seventh preambular paragraph of that resolution, the Council noted with concern that there had been a continuing inflow of arms in Liberia in violation of the existing arms embargo, which had further destabilized the situation in Liberia.

Another implicit reference to Article 2(5) emerged in resolution 985 (1995), adopted on 13 April 1995, by which the Council urged all States, and in particular all neighbouring States, to comply fully with the embargo on all deliveries of weapons and military equipment to Liberia imposed by resolution 788 (1992).

Similar language was adopted in resolution 1020 (1995) of 10 November 1995, by which the Council reminded all States of their obligations to comply with the embargo on all deliveries of weapons and military equipment to Liberia imposed by resolution 788 (1992) and to bring all instances of violations of the arms embargo before the Committee established pursuant to resolution 985 (1995).

With regard to the situation in Angola, the Council adopted, at the 3254th meeting, held on 15 July 1993, resolution 851 (1993), by which the Council urged all States to refrain from any action which directly or indirectly could jeopardize the implementation of the "Acordos de Paz," especially from providing any form of direct or indirect military assistance to UNITA, or any other support to UNITA inconsistent with the peace process. The Council expressed its "readiness to consider the imposition of measures under the Charter of the United Nations, including a mandatory embargo on the sale or supply to UNITA of arms and related materiel and other military assistance." ⁸⁸

Another implicit reference to Article 2(5) emerged in resolution 886 (1993), in connection with the situation in Somalia, whereby the Council reaffirmed the obligations of

⁸⁸ S/RES/ 851 (1993), paragraph 12.

States to implement fully the embargo on all deliveries of weapons and military equipment to Somalia imposed by paragraph 5 of resolution 733 (1992). Similar language was employed in several other resolutions pertaining to the situation in Somalia.⁸⁹

On another occasion, in connection with the situation in Rwanda, the Council made implicit reference to Article 2(5) of the Charter. At the 3526th meeting of 27 April 1995, the Council noted with concern the increased incursions into Rwanda from neighbouring countries, and allegations of arms shipments into the Goma airport.⁹⁰

In another resolution, adopted on 20 June 1994, the Council stressed “the need for the observance and strict monitoring of the general and complete embargo of all deliveries of weapons and military equipment to Rwanda, as described in paragraph 13 of its resolution 918 (1994).”⁹¹

By resolution 1013 (1995) of 7 September 1995, the Council expressed its grave concern at allegations of the sale and supply of arms and related matériel to former Rwandan government forces in violation of the embargo imposed under its resolutions 918 (1994), 997 (1995), and 1011 (1995), and underlined the need for Governments to take action to ensure the effective implementation of the embargo.

On several occasions, statements were made in the course of the Council’s deliberations that may also have a bearing on the principle of Article 2(5). During the period under review, some States not members of the Council called for a partial lifting of the arms embargo imposed on Yugoslavia in order to facilitate Bosnia and Herzegovina’s right of self-defence, as granted by Article 51. Thus, at the 3201st meeting of the Council, held on 19 April 1993, the representative of Senegal noted that lifting the embargo against Bosnia and Herzegovina would enable the “victim of aggression to secure the means to exercise its right of self-defence under Article 51 of the Charter.”⁹² On another occasion, at the 3367th meeting of the Council on 21 April 1994, the Turkish representative called for lifting the arms embargo, imposed in accordance with resolution 713 (1991), noting that it was in clear contradiction of Article 51 of the United Nations Charter.⁹³

⁸⁹ Resolutions 897 (1993), 923 (1994), and 954 (1994).

⁹⁰ S/PRST/1995/22.

⁹¹ Resolution 928 (1994), fifth preambular para.

⁹² S/PV.3201, p.31.

⁹³ S/PV.3367, p.8.

During the period under review, there was no constitutional discussion that arose in connection with Article 2, paragraph 5 of the Charter.

D. 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 were no explicit references to Article 2 (6). Neither did any constitutional discussion arise in connection with that article. The Council adopted, however, in a number of instances, resolutions imposing measures under Chapter VII in connection with the situations in Libya, Haiti, and Rwanda, which contained provisions that might be construed as implicit references to the principle enshrined in Article 2(6). Each of those resolutions related to the cooperation of States not members of the United Nations in the imposition of sanctions.

At the 3312th meeting on 11 November 1993, at which resolution 883 (1993) was adopted, the Council imposed sanctions against the Libyan Arab Jamahiriya for its failure to comply with resolutions 731 (1992) and 748 (1992). In that instance, the Council

“[called] upon all States, including States not Members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the effective time of this resolution;”⁹⁴

A similar formulation was adopted in resolution 917 (1994) of 6 May 1994, by which the Council decided to expand the sanctions imposed against Haiti until the return of the legitimately elected president. The Council

⁹⁴ Resolution 883(1993), para. 12.

“[called] upon all States, including States not Members of the United Nations, and international organizations to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the effective date of measures in this resolution or earlier relevant resolutions;”⁹⁵

On another occasion, in connection with the situation in Rwanda, the Council adopted resolution 918 (1994) of 17 May 1994, by which it

“[called] upon all States, including States not Members of the United Nations, and international organizations to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of the adoption of this resolution;”⁹⁶

In several other cases, the Council made implicit references to Article 2(6) by calling for action from “all States.” The majority of those provisions related to the application of sanctions and embargoes which required that “all states” should take steps to impose measures in accordance with the relevant resolutions.

At the 3238th meeting on 16 June, 1993, at which resolution 841 (1993) was adopted, in connection with the sanctions against Haiti, the Security Council

“[called] upon all States, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to 23 June 1993;”⁹⁷

A similar provision was contained in the Council’s resolution imposing measures under Chapter VII in respect to Angola’s UNITA.⁹⁸ By resolution 864 (1993), adopted on 15 September 1993, the Council

⁹⁵ Resolution 917 (1994), para. 12.

⁹⁶ Resolution 918 (1994), para. 15.

⁹⁷ Resolution 841(1993), para. 9.

⁹⁸ The resolution envisioned a possible oil and arms embargo against Angola’s UNITA movement in the instance that it would break the cease-fire and the implementations of “Acordo de Paz.”

“[called] upon all States, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of adoption of this resolution;”⁹⁹

In connection with the embargo imposed against Rwanda, the Council decided that

“...all states shall continue to prevent the sale or supply, by their national or from their territories or using their flag vessels or aircraft, of arms and related equipment, paramilitary police equipment and spare parts, to Rwanda, or to persons in the State neighbouring Rwanda..”¹⁰⁰

By other provisions not directly related to the imposition, implementation or administration of sanctions, the Council requested “all States” or “all parties and other concerned” to undertake a variety of actions including supporting peace initiatives, cooperating with the UN and its programmes and agencies, and others.¹⁰¹

On two occasions, the Council reminded “all parties and others concerned” of their obligation to comply with specific resolutions. Thus by resolution 947 (1994) adopted on 30 September 1994, the Council called on all parties and others concerned fully to comply with all Security Council resolutions regarding the situation in the former Yugoslavia.¹⁰²

A similar provision emerged in resolution 982 (1995) of 31 March 1995.¹⁰³ A number of provisions in resolutions were also addressed to “States.”¹⁰⁴

⁹⁹ Resolution 864 (1993), para. 20.

¹⁰⁰ Resolution 1011(1995), para. 9.

¹⁰¹ In connection with the situation in Bosnia and Herzegovina, see resolutions 959 (1994), para. 4; 987 (1995), para. 4; 1016 (1995), para.3. In connection with Cambodia, see resolution 880 (1993), para. 4; In connection with FYROM, see 970(1995), para. 2; 984 (1995), para.8; In connection with Burundi. Resolution 1012 (1995), para. 6. In connection with Rwanda 1013(1995), paras. 3 and 5; In connection with the situation in Tajikistan see resolution 999(1995), paras. 7and 8; 1030(1995), paras. 7 and 8.

¹⁰² Resolution 947 (1994), para. 9.

¹⁰³ Resolution 982 (1995), para.9.

¹⁰⁴ In connection with Burundi, see Resolution 1012 (1995), para. 6, In connection with Haiti, 1007 (1995), para. 10., In Connection with Rwanda , see resolution 997 (1995), 1029 (1995), para.11, 978 (1995), paras. 1 and 3, 935 (1994), para. 2; In connection with the situation in Bosnia and Herzegovina, see resolution 900 (1994), paras. 2, 6; 942(1994), paras. 6, 12.

E. 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, the Security Council adopted no resolution that explicitly referred to Article 2 (7). Council members referred explicitly to that Article during the Council’s consideration of the “Supplement to An Agenda for Peace: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations”.¹⁰⁵ Article 2 (7) was also explicitly referred to in a letter¹⁰⁶ dated 31 May 1994 by the representative of Yemen addressed to the President of the Security Council. Article 2(7) was explicitly referred to in a number of the Council’s decisions and deliberations.

The cases below reflect the practice of the Council touching upon the provisions of Article 2(7), as illustrated by its decisions and deliberations in connection with the following matters: 1) Letter dated 12 March 1993 from the representative of the Democratic Republic of Korea; 2) The Situation between Iraq and Kuwait; 3) Kosovo, Sandjak and Vojvodina, The Federal Republic of Yugoslavia (Serbia and Montenegro); 4) The Situation in the Republic of Yemen; 5) The Situation concerning Haiti; 6) Supplement to An Agenda for Peace; 7) the Situation in Angola; and 8) The Situation in Burundi.

¹⁰⁵ S/1995/1.

¹⁰⁶ S/1994/644.

CASE 10

*Letter dated 12 March 1993 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council*¹⁰⁷

By a letter¹⁰⁸ dated 12 March 1993 addressed to the President of the Council, the Minister for Foreign Affairs of the Democratic People's Republic of Korea (DPRK) informed the Council that the Government of the DPRK had decided, on 12 March 1993, to withdraw from the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), in accordance with paragraph 1 of Article X of the NPT, in connection with the extraordinary situation prevailing in the DPRK, which jeopardized its supreme interests. He stated that the United States together with South Korea had resumed the "Team Spirit" joint military exercises, a nuclear war rehearsal, threatening the DPRK, and had instigated some officials of the International Atomic Energy Agency (IAEA) Secretariat and certain member States to adopt an unjust resolution, at the meeting of the IAEA Board of Governors on 25 February 1993, demanding the DPRK to open its military sites that had no relevance at all to the nuclear activities, in violation of the IAEA Statute, the Safeguards Agreement and the agreement the IAEA had reached with the DPRK. He affirmed that to tolerate such an act would only set a precedent for helping to legitimize the nuclear threats against the non-nuclear-weapon State parties and interference in their internal affairs.

At its 3212th meeting, held on 11 May 1993, the Council considered the letter dated 12 March 1993 from the representative of the DPRK, as well as a letter¹⁰⁹ dated 19 March 1993 and a note¹¹⁰ dated 12 April 1993 by the Secretary-General on the issue. Laying out the reasons that had forced his country to withdraw from the NPT, the representative of North Korea stated that the DPRK's refusal to allow the IAEA's "unlawful inspection" of the "suspicious locations" was nothing but a sovereign State's full exercise of a fair right, which could never be considered non-

¹⁰⁷ The full title of the agenda item is "Letter dated 12 March 1993 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council; Letter dated 19 March 1993 from the Secretary-General addressed to the President of the Security Council; Noted by the Secretary-General (S/25556)."

¹⁰⁸ S/25405.

¹⁰⁹ S/25445. By that letter, the Secretary-General transmitted to the Council a communication conveyed to him by the Director-General of the IAEA concerning the implementation of the Safeguards Agreement between the DPRK and the Agency.

¹¹⁰ S/25556. By that note, the Secretary-General transmitted to the members of the Security Council a letter dated 6 April 1993 from the Director-General of the IAEA transmitting his report on behalf of the Board of Governors to the Security Council and the General Assembly concerning non-compliance of the DPRK with the Safeguards Agreement and on the Agency's inability to verify the non-diversion of material required to be safeguarded.

compliance with the Safeguards Agreement. He further stated that signing, accession to, termination of and withdrawal from the Treaty were legal actions within the sovereign rights of an independent State and no one was entitled to interfere in those. Moreover, the DPRK'S withdrawal from the NPT was a self-defence measure based on a State's right to withdraw from the Treaty in the exercise of its national sovereignty, in case a State party to the Treaty decides that its supreme interests are threatened. With regard to the draft resolution, the representative stated that it was aimed at infringing upon the sovereignty of the DPRK, ignoring the requirements of the Charter of the United Nations, Article 33 of Chapter VI, the statute of the IAEA and the norms of international law, that disputes should be resolved through dialogue and negotiations. The draft resolution would be rejected, since it was unreasonable and in contravention of paragraph 4, Article 2, Chapter I of the United Nations Charter and of paragraph d, Article 3, of the IAEA Statute, which called for respect of the sovereignty of the member States. Its adoption would compel the DPRK to take corresponding measures in self-defence.¹¹¹

The representative of the Republic of Korea stated that the IAEA had referred the matter to the Security Council after having exhausted all means available to it under its Statute to resolve the issue. Referring to the reasons invoked by the DPRK for rejecting the IAEA's inspection and to its decision to withdraw from the NPT, the representative stated that the DPRK's characterization of the two sites as military sites in no way immunized them from inspection. It was the right of the IAEA under the Agreement with the DPRK to inspect locations which it had bona fide reason to believe were nuclear-related, regardless of whether they were military or not. Recalling the presidential statement¹¹² adopted at the Security Council summit meeting of 31 January, the representative of the Republic of Korea stated that the primary obligation to stop nuclear-weapons development by the DPRK rested with the international community as a whole and particularly on the Security Council, which was entrusted with the maintenance of international peace and security under the Charter¹¹³.

The representative of the United States stated that the DPRK's failure to adhere to its obligations under a Safeguards Agreement with the IAEA and its subsequent announcement that

¹¹¹ S/PV.3212, pp.7- 25.

¹¹² S/23500. The statement provided, *inter alia*, that the members of the Council would take appropriate measures in the case of any violations notified to them by the IAEA.

¹¹³ S/PV.3212, pp. 26- 33.

it intended to withdraw from the NPT concerned international agencies and the international community, not just any single country.¹¹⁴ In contrast, the representative of China expressed the view that the issue concerning the DPRK was mainly a matter between the DPRK and the IAEA, between the DPRK and the United States, and between the DPRK and the Republic of Korea. It should therefore be settled properly through direct dialogue and consultation between the DPRK and the three other parties concerned, respectively. China was not in favour of having that issue handled by the Security Council, let alone having a resolution adopted on this issue by the Council. As that would only complicate the situation rather than contribute to its appropriate settlement, China would abstain on the draft resolution.¹¹⁵

The representative of the United Kingdom stated that his delegation did not question the right of States to withdraw from treaties if such withdrawal was in accordance with the provisions of the treaty concerned. He recalled, in this connection, the joint statement¹¹⁶ issued on 1 April 1993 by the three co-depositaries of the NPT – the Russian Federation, the United States and the United Kingdom - in which they questioned whether the DPRK's stated reasons for withdrawal in fact constituted extraordinary events related to the subject matter of the Treaty. He noted that the DPRK remained bound by its obligation under its safeguards agreement. While accepting that there was an important role for bilateral contacts, he maintained that the issue under consideration was about multilateral disciplines maintained by multilateral organizations such as the IAEA. It was therefore absolutely right and proper that the Security Council should remain seized of the matter since further action could be considered¹¹⁷

At that meeting the Council adopted resolution 825 (1993) by which it called upon the Democratic People's Republic of Korea to honour its non-proliferation obligations under the Treaty and comply with its safeguards agreement with the Agency, and decided to remain seized of the matter and to consider further action if necessary.

¹¹⁴ S/PV.3212, pp. 33-35.

¹¹⁵ Ibid, pp. 42-43.

¹¹⁶ See *supra*, S/25516, annex.

¹¹⁷ S/PV.3212, pp.53-55.

CASE 11

The situation between Iraq and Kuwait

By a letter¹¹⁸ dated 21 May 1993 addressed to the President of the Council, the Secretary-General transmitted the “Final Report on the Demarcation of the International Boundary between the Republic of Iraq and the State of Kuwait by the United Nations Iraq- Kuwait Boundary Demarcation Commission” dated 20 May 1993, conveying the final results of the work of the Commission. The Secretary-General recalled that, in accordance with its mandate and terms of reference, the Commission was called to perform a technical and not a political task and had made every effort to strictly confine itself to that objective. Through the technical process of demarcation, the Commission was not reallocating territory between Iraq and Kuwait, but had performed the technical task necessary to demarcate the international boundary between the two countries set out in the “Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of Friendly Relations, Recognition and Related Matters” signed, at Baghdad, on 4 October 1963.

During the Council’s consideration of the item at the 3224th meeting on 27 May 1993, some members of the Council reflected on the implications of Council action pertaining to the demarcation of boundaries for the sovereignty of nations in this case and in general. Thus, the representative of Brazil pointed out that his country had consistently supported action taken by the United Nations with a view to ensuring full respect for the sovereignty and territorial integrity of Kuwait. Any attempt to challenge that sovereignty and integrity was unacceptable. It was the understanding of his Government that the decisions taken by the Council concerning the international boundary between Iraq and Kuwait could be justified only in the light of the exceptional and unique circumstances in which those decisions had been taken and did not establish a precedent for future action by the Council in other matters pertaining to the definition or demarcation of boundaries between Member States. Brazil’s support for the resolution under consideration and other decisions in that matter was without prejudice to its reservations regarding the competence of the Council in questions related to the definition or demarcation of boundaries between Member States, which should be settled directly by the States concerned.¹¹⁹

¹¹⁸ S/25811.

¹¹⁹ S/PV.3224, pp. 8-9.

Similarly, the representative of China stated that, with respect to the question of boundaries, the countries concerned should, in accordance with international law and the Charter, seek a peaceful solution in agreements or treaties arrived at through negotiation and consultation. The existing demarcation of the boundary between Iraq and Kuwait was a special case arising from the specific historical circumstances involved and, as such, was not generally applicable. For that reason, the Council's invocation of Chapter VII of the Charter with respect to the demarcation of the disputed boundary between the two countries must not be viewed as setting a precedent.¹²⁰

The representative of France observed on the other hand that, on the basis of an agreement between Iraq and Kuwait, which had been submitted to the United Nations and was still in effect to that day, the Commission had carried out the technical task of demarcating a boundary whose limits had been set by the States themselves a long time ago. The report showed quite unambiguously that the Commission had not attributed any territory to one side or the other and had not encroached on the sovereignty of either State in any way.¹²¹

By resolution 833 (1993), adopted at that meeting, the Council reaffirmed that the decisions of the Commission regarding the demarcation of the boundary were final; demanded that Iraq and Kuwait, in accordance with international law and relevant Security Council resolutions, respect the inviolability of the international boundary, as demarcated by the Commission, and underlined and reaffirmed its decision to guarantee the inviolability of the above-mentioned international boundary which had now been finally demarcated by the Commission and to take as appropriate all necessary measures to that end in accordance with the Charter of the United Nations, as provided for in paragraph 4 of resolution 687 (1991) and paragraph 4 of resolution 773 (1992).

¹²⁰ S/PV.3224: p. 12.

¹²¹ S/PV.3224, p. 8.

CASE 12

Conference on Security and Cooperation (CSCE) Missions in Kosovo, Sandjak and Vojvodina, The Federal Republic of Yugoslavia (Serbia and Montenegro)

By a letter¹²² dated 20 July 1993, the Chairman-in-Office of the Council of Ministers of the CSCE informed the President of the Security Council that it was the considered opinion of the CSCE participating States that the decision by the Belgrade authorities not to allow the continued functioning of the CSCE missions in Kosovo, Sandzak, and Vojvodina aggravated the existing threats to peace and security in the region.

On 9 August 1993, the representative of China stated at the Council's 3262nd meeting, that the issue of Kosovo was an internal affair of the Republic of Yugoslavia. The sovereignty, political independence and territorial integrity of the Republic of Yugoslavia should be respected in line with the basic principles of the United Nations Charter and international law. His delegation believed that the Council should exercise extreme prudence and should act in strict conformity with the purposes and the principles of the Charter, especially the principle of non-interference in the internal affairs of sovereign States. The representative pointed out that practice over the years had shown that the consent and cooperation of the parties concerned were essential factors in ensuring the success of the endeavours of the United Nations and regional organizations. He observed that, when differences arose between a regional organization and a sovereign State, it was important to consider the question whether the Security Council should involve itself and, if so, which principle should guide its actions.¹²³

In contrast, other speakers¹²⁴ expressed their support for the continued presence of the CSCE-missions in Kosovo, Sandzak, and Vojvodina. The representative of Hungary stated that Hungary, like the CSCE community as a whole, was of the view that the expulsion of the CSCE mission was an act that further aggravated the threat to peace and security in the Balkan region. Therefore, his country considered that the call of the Council to the Belgrade Government to re-examine its position was a perfectly legitimate and sound action, supporting the efforts of the CSCE in a matter of grave concern.¹²⁵ The representative of France held that, as the resolution

¹²² S/26121.

¹²³ S/3262, pp. 4-5.

¹²⁴ S/PV.3262, p.8 (Pakistan), pp. 12-13 (Spain), pp. 17-18 (United States).

¹²⁵ Ibid, pp. 5-6.

emphasized, the activities of the mission were in no way aimed at affecting the sovereignty of a State but were designed to ensure respect for the fundamental principles to which all the member States of the CSCE, including the Federal Republic of Yugoslavia (Serbia and Montenegro) had committed themselves.¹²⁶ At that meeting, the Council adopted resolution 855 (1993), by which it endorsed the efforts of the CSCE and called upon the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) to reconsider their refusal to allow the continuation of the activities of the CSCE missions in Kosovo, Sandjak and Vojvodina, to cooperate with the CSCE and to agree to an increase in the number of monitors as decided by the CSCE.

CASE 13

The Situation in the Republic of Yemen

By a letter¹²⁷ dated 31 May 1994 addressed to the President of the Security Council, the representative of Yemen stated that his Government considered the request¹²⁸ to convene a meeting of the Security Council to discuss the situation in Yemen to be interference in its internal affairs, contrary to Article 2, paragraph 7 of the Charter of the United Nations.

At the Council's 3386th meeting on 1 June 1994, the representative of China emphasized that, in his country's consideration of any issue of concern, the Security Council should respect the relevant views of the countries or parties concerned. It was the view of his delegation that the consideration of the situation of the Republic of Yemen by the Council under the then existing special circumstances should not constitute a precedent for the handling of other similar issues.¹²⁹

The representative of the Russian Federation expressed, at the Council's 3394th meeting on 29 June 1994, his support for the resolution under consideration¹³⁰ and stated that his country strongly supported the efforts undertaken by the world community, primarily in the Security Council, with a view to normalizing the situation in Yemen, restoring a peaceful dialogue and

¹²⁶ Ibid, p. 9.

¹²⁷ S/1994/644.

¹²⁸ Letter dated 27 May 1995 from the representatives of Bahrain, Egypt, Kuwait, Oman, Saudi Arabia and the United Arab Emirates addressed to the President of the Security Council (S/1994/630).

¹²⁹ S/PV.3386, p 3.

¹³⁰ S/1994/931.

establishing an appropriate mechanism for monitoring the cease-fire.¹³¹ The representative of the United Kingdom also believed that the United Nations should take urgent steps to address the deteriorating humanitarian situation in Yemen, and in particular in Aden. He hoped that the adoption of the resolution by the Council would demonstrate to the parties the seriousness with which the international community viewed the situation and that they would draw the appropriate conclusions.¹³² Along similar lines, the representative of France stated that, in adopting a new resolution, the Security Council had affirmed its determination to contribute to the peaceful settlement of a dispute that was “unleashing a humanitarian disaster and shaking the foundations of regional security”.¹³³

The President, speaking in his capacity as representative of Oman, recalled that his country had joined five other countries of the region in calling for the convening of a meeting of the Security Council to address the situation in Yemen. That meeting had culminated in the adoption of resolution 924 (1994), calling for an immediate cease-fire and requesting the parties to go back to the negotiating table, as the most appropriate means of resolving their differences. Oman believed that the resolution was very balanced in its demands and that, if it had been implemented fully by the parties, it could have helped the parties to settle their differences.¹³⁴

At that meeting, the Council adopted resolution 931 (1994), by which it strongly deplored the infliction of civilian casualties and destruction resulting from the continuing military assault on Aden, reiterated its call for an immediate cease-fire, and requested the Secretary-General and his Special Envoy to continue talks under their auspices with all concerned, with a view to implementing a durable cease-fire.

CASE 14

The situation concerning Haiti

By a letter¹³⁵ dated 29 July 1994 from the President of Haiti, addressed to the Secretary-General, the President stated that the High Command of the Armed Forces of Haiti had no intention of respecting the Governors Island Agreement signed on 3 July 1993, under the

¹³¹ S/PV 3394, p. 5.

¹³² Ibid, p. 3.

¹³³ Ibid.

¹³⁴ Ibid, p. 6.

¹³⁵ S/1994/905.

auspices of the United Nations and the Organization of American States. The President declared that, in light of an alarming deterioration of the human rights situation in Haiti and a dramatic increase in the suffering of the Haitian people, the time had come for the international community, as a party in the process which led to that Agreement, to take prompt and decisive action, under the authority of the United Nations, to allow for its full implementation.

At the Council's 3413th meeting, on 31 July 1994, Council members considered a draft resolution¹³⁶ authorizing Member States to form a multinational force to use all necessary means to facilitate the departure from Haiti of the military leadership. During the debate, several Council members reflected on that decision in the context of Article 2(7) of the Charter.

The representative of Haiti stated that, by requesting the help of the international community to solve the Haitian crisis, his country was sharing with it the dream that all compatriots of his country should be united in the exercise of the prerogatives of their sovereignty to decide the future of their country. By stating the consent of the Government of President Aristide to the draft resolution before the Council, his delegation was calling on the international community, through the President of the Council, to join with the country in defending its national sovereignty.¹³⁷

The representative of Nigeria observed that the draft resolution before the Council took it to another, entirely new level of external action to deal with the situation in Haiti and also to an entirely new territory in the Charter of the United Nations, in particular the use of Chapter VII. That was why his delegation had reacted to it with the greatest caution but was delighted that its concerns had been addressed. One of those concerns was his delegation's belief that whatever was done in the Security Council, the sovereignty and territorial integrity of Haiti should not be compromised. Respect for the sovereignty and territorial integrity of Member States was the minimum basis of association by Members of the United Nations Organization. It should be observed in the case of all nations. Furthermore, his delegation's understanding was that any collective action authorized in the draft resolution was country-specific. His country reaffirmed the special character of the situation in Haiti. The adoption of the draft resolution should

¹³⁶ S/1994/904.

¹³⁷ S/PV.3413, p. 4.

therefore not be seen as a global license for external interventions through the use of force or any other means in the internal affairs of Member States.¹³⁸

In the same vein, the representative of Spain stated that his country, which attached great importance to the principle of non-intervention, especially on the American continent, supported resolution 940 (1994) because of the singular and exceptional circumstances of that case, because of the clear position taken by the legitimate authorities of Haiti and because the action to be initiated would not be carried out unilaterally but, rather, within a multilateral and institutional framework, under the authority and control of the United Nations. Had it been otherwise, his delegation should not have been able to support such an action.¹³⁹ The representative of the United States asserted that the purpose was not to impinge upon the sovereignty of Haiti, but to restore the power to exercise that sovereignty to those who rightfully possessed it. The purpose was to enable Haiti, in the words of the United Nations Charter, to pursue "social progress and better standards of life in larger freedom". The choice was to allow Haiti to build a future more free, more secure and more prosperous than its past.¹⁴⁰

At that meeting, the Council adopted the draft resolution before it as resolution 940 (1994), by which the Council authorized the above-mentioned action by a multinational force while recognizing the unique character of the present situation in Haiti and its deteriorating, complex and extraordinary nature, requiring an exceptional response.

CASE 15

Supplement to An Agenda for Peace

At the Council's first consideration of the Secretary-General's position paper "Supplement to an Agenda for Peace"¹⁴¹ at the 3492nd meeting on 18 January 1995, several speakers touched upon the application of the principles contained in Article 2 (7) of the UN Charter. The representative of Indonesia, speaking on behalf of the Non-Aligned Movement (NAM), noted that it was important that respect for State sovereignty be recognized as one of the

¹³⁸ Ibid, p. 11.

¹³⁹ Ibid, p. 20.

¹⁴⁰ S/PV.3413, p. 12.

¹⁴¹ "Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations" (S/1995/1).

basic principles in the conduct of international relations. In connection with the Secretary-General's proposals to establish a rapid reaction force, the representative observed, with regard to the circumstances under which it would be deployed, that it was not clear which types of emergency the Secretary-General's report referred to and who would determine the existence of such crises. Those ambiguities may lend themselves to interpretations that would challenge the sovereignty and independence of States.¹⁴²

The representative of China stated that the principle of respect for State sovereignty and non-interference in a country's internal affairs always had to be observed. The involvement of the United Nations, in recent years, in the settlement of internal conflicts in some countries at the request of the Governments or factions of these countries, was a new and highly sensitive issue, which, if handled improperly, would make the United Nations a party to the conflict or even make it become an instrument of a few countries in interfering in other countries' internal affairs, thus throwing United Nations operations into difficulties and failure. Therefore, involvement of the United Nations should follow the principle, among others, that United Nations operations had to be at the request, and obtain the consent, of the parties concerned. The representative further emphasized that the United Nations was an intergovernmental organization composed of sovereign States rather than a world government. Matters concerning a country should, in the final analysis, be settled by its own people, and those concerning a region by the countries in the region through consultations, in which the international community, including the United Nations, could play only a supplementary and promotive role. With regard to United Nations activities in preventive diplomacy and post-conflict peace-building, he stated that the United Nations had to respect the will of the Governments and peoples of the countries concerned instead of imposing its views on them. It should especially be prudent on questions, such as early warning, that involved a country's sovereignty. It should obtain prior consent of the countries concerned before sending fact-finding or other missions, and time-limits should be clearly defined.¹⁴³

Similarly, the representative of Sri Lanka stated that the United Nations should scrupulously respect the principles of the sovereignty, territorial integrity and political independence of States and should not intrude into areas which lay within their domestic

¹⁴² S/PV.3492, p. 7-8.

¹⁴³ Ibid, p. 13.

jurisdiction.¹⁴⁴ In connection with the increase and complexity of internal conflicts that were diagnosed in the Secretary-General's report, the representative of Colombia stated that the framework for the Organization's actions had to be based on the provisions of the Charter, especially paragraph 7 of Article 2. That was why his delegation agreed with the assertion made in the document that the United Nations, for eminently valid reasons, was reluctant to shoulder responsibility for maintaining law and public order and to impose new political structures or State institutions.¹⁴⁵ In contrast, the representative of Ukraine pointed out that the defence of human rights in contemporary circumstances could no longer be considered as the exclusively domestic affair of a given State. In this regard, promoting the observance of human rights and cooperating with the United Nations in this sphere - including the dispatch of fact-finding verification missions - should be a moral injunction, incumbent upon all. An analysis of recent successes and failures in peace-keeping operations showed that an imperative in producing the mandate for operations and in laying down their fundamental principles was clear-cut observance of universally accepted norms of international law, in particular respect for sovereignty, territorial integrity and inviolability of frontiers.¹⁴⁶

CASE 16

The Situation in Angola

During the consideration of a draft resolution¹⁴⁷, at the 3499th meeting of the Council held on 8 February 1995, a number of speakers touched upon the application of the principles contained in Article 2 (7) of the UN Charter and its implications for the situation under review.

The representative of Angola declared that the military situation on the ground was calm and the ceasefire was being observed without any major incidents. He expressed the hope that the adoption of the resolution under consideration establishing UNAVEM III would be a step towards the definitive establishment of lasting peace. He expressed concern with regard to some paragraphs in that resolution, specifically, paragraphs 6, 8 and 12, and added that his delegation

¹⁴⁴ S/PV.3492 (Resumption 2), p. 11.

¹⁴⁵ Ibid, p. 14.

¹⁴⁶ S/PV.3492 (Resumption 1), p. 23.

¹⁴⁷ S/1995/117.

would present specific proposals to improve the text, at the appropriate time.¹⁴⁸ The representative of Mozambique stressed the importance of upholding the principles of sovereignty, non-intervention and non-interference in the internal affairs of Angola, in line with the Peace Accords and the Lusaka Protocol, and in accordance with the United Nations Charter. It was the view of his delegation that the international community could assist States Members of the United Nations while fully respecting those principles. In that context, his Government could not agree that the deployment of any peacekeeping operation should have any “strings attached”, and therefore supported the views expressed by the Angolan delegation that some paragraphs of the draft resolution should be revised in order to enjoy its full agreement.¹⁴⁹

In contrast, the representative of Nigeria, expressing his delegation’s support for the draft resolution, contended that none of its paragraphs contained any provisions that derogated from the sovereign rights of the Angolan Government in the maintenance of law and order and the preservation of territorial integrity – either before, during, or after UNAVEM III.¹⁵⁰ The representative of Malawi, speaking on behalf of the OAU Council of Ministers’ delegation¹⁵¹, contended that, notwithstanding the concerns of those who urged caution against any increased international involvement until peace had been firmly established, the Angolan people were tired of war and the situation had changed. The OAU delegation therefore urged the Council to authorize the establishment and immediate deployment of UNAVEM III.¹⁵² Other speakers contended that while the Council’s decision to increase the United Nations operation in Angola underlined its commitment to support the people of that country in their long search for peace and national reconciliation, the Council had made it clear that it was not prepared to countenance further substantial delays or lack of cooperation from the parties in fulfilling certain obligations, and that it would, in those circumstances, review the United Nations role in Angola. The resolution was also a reaffirmation by the international community of its commitment to United Nations mechanisms for resolving conflicts that went beyond the means or ability of individual nations to solve. However, as Council resolutions had said repeatedly, the people of Angola were

¹⁴⁸ S/PV.3499, pp. 2-5.

¹⁴⁹ S/PV.3499 (resumption), p. 7.

¹⁵⁰ Ibid., pp. 9-10.

¹⁵¹ The delegation comprised the Foreign Ministers from Angola, Botswana, Lesotho, Namibia, South Africa, Tunisia and Zambia, as well as representatives of Senegal and Guinea-Bissau.

¹⁵² Ibid., p. 6.

ultimately responsible for the future of their country.¹⁵³ At that meeting, the Council adopted resolution 976 (1995), by which it reaffirmed its commitment to preserve the unity and territorial integrity of Angola and established UNAVEM III.

CASE 17

The situation in Burundi

By a letter¹⁵⁴ dated 28 July 1995, addressed to the President of the Security Council, the Secretary-General recommended, with regard to the situation in Burundi, the establishment of a commission of inquiry to establish the facts relating to the assassination of the President of Burundi and to recommend modalities for the trial and punishment of persons it had identified. He noted that the full cooperation of the Burundian Government would be needed and described the modalities for such cooperation.

At its 3571st meeting on 28 August 1995, the Security Council considered the recommendations by the Secretary-General. Several speakers pointed out the importance of close cooperation of the commission with the Government of Burundi and the need to respect the sovereignty of that country. Thus, the representative of Burundi stated that the initiative for the establishment of the commission of inquiry came from his Government in search of an impartial international arbiter. He stressed that the success of the work of the commission would depend on close cooperation with the Government of Burundi, its security forces, and the national judicial system. The commission would have to resist any temptation to exceed its mandate, as delineated in the terms of reference proposed by the Government, and set out in the draft resolution before the Council. Moreover, it should avoid any compromise of national sovereignty and any interference in the internal affairs of his country.¹⁵⁵

In the same vein, the representative of China stated that his delegation endorsed the proposed establishment of an international commission of inquiry in principle. The international community should, however, fully respect the independence and sovereignty of Burundi and should not interfere in its internal affairs. It also had to heed and respect the views of the

¹⁵³ Ibid, pp. 18-19 (USA); 19-20 (UK).

¹⁵⁴ S/1995/631.

¹⁵⁵ Ibid, pp. 2-4.

Burundian Government in connection with the establishment of the commission. In that context, he expressed his delegation's reservations in relation to some elements of the commission's mandate, which was rather extensive and, in certain aspects, touched upon Burundi's sovereignty and internal affairs.¹⁵⁶ The President, speaking in his capacity as representative of Indonesia, also stated that Burundi's sovereignty and territorial integrity were of great importance and that the recommendations of the Commission should not impinge upon those sacrosanct principles. Given the complexities of the situation, observance of those principles would make a distinct contribution to resolving the situation and to furthering the national unity and reconciliation that Burundi required.¹⁵⁷

At that meeting, the Council adopted resolution 1012 (1995), by which it took into account the initiative of the Government of Burundi in calling for the establishment of an international judicial commission of inquiry as referred to in the Convention on Governance, requested the Secretary-General to establish, as a matter of urgency, an International Commission of Inquiry, and called upon the Burundian authorities and institutions, including all Burundian political parties, to cooperate fully with the Commission of Inquiry in the accomplishment of its mandate.

¹⁵⁶ Ibid., pp. 5-6.

¹⁵⁷ Ibid, p. 13.

PART II

CONSIDERATION OF THE FUNCTIONS AND POWERS OF THE SECURITY COUNCIL (Articles 24 and 25 of the Charter)

- A. *The primary responsibility of the Security Council for the maintenance of international peace and security (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 purpose 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 resolutions adopted by the Council contained an explicit reference to Article 24 of the Charter. The Charter provision by which the members conferred on the Security Council primary responsibility for the maintenance of peace and security was also implicitly referred to in a number of resolutions adopted by the Council. A number of explicit references to Article 24 were made on several occasions in the proceedings of the Council. The following cases reflect the practice of the Council touching upon the provisions of Article 24 as illustrated by its decisions and deliberations: (1) An Agenda for Peace; (2) the Situation in the Republic of Bosnia and Herzegovina; and (3) the question concerning Haiti.

In addition to the cases set out below, Article 24 was explicitly mentioned during the deliberations of the Council on two other occasions. In connection with the establishment of an international tribunal for the former Yugoslavia, the representative of Brazil recalled, at the 3175th meeting, on 22 February 1993, that the Security Council, in the exercise of its responsibilities, acted on behalf of the States Members of the United Nations, in accordance with Article 24, paragraph 1, of the Charter. Just as the authority of the Council did not spring from the Council itself but derived from the fact that certain responsibilities had been conferred upon it by all the Members of the United Nations, the powers of the Council could not be created, recreated or reinterpreted creatively by decisions of the Council itself, but had to be based invariably on specific Charter provisions.¹⁵⁸

During the Council's 3483rd meeting, held on 16 December 1994, in connection with agenda item "Security Council Working Methods and Procedure", the representative of Spain stressed the need for greater transparency and flexibility in the Council. He believed that that would lead to increased legitimacy and credibility of the Security Council in the eyes of Member States, on whose behalf, in accordance with Article 24 of the Charter, the Council acted. That, he noted, would ultimately lead to greater effectiveness of the Council's decisions.¹⁵⁹ The President of the Council stated that Article 24 implied a two-way flow of information, which required more information flowing out of the Council to the wider membership on all aspects of its work.¹⁶⁰

Article 24 was also explicitly referred to in a number of communications of the Council.¹⁶¹

¹⁵⁸ S/PV.3175, p. 6.

¹⁵⁹ S/PV.3483, p. 8.

¹⁶⁰ S/PV.2483, p. 26.

¹⁶¹ In connection with the working methods of the Security Council, see Letter dated 11 September 1994 from the Permanent Representative of France to the Secretary-General (S/1994/1279): para.1; In connection with the Hague declaration on the Lockerbie case, see Letter dated 5 April 1995 from the Permanent Representative of the Libyan Arab Jamahiriya (S/1995/267), p.2; In connection with the format of the Annual Report of the Security Council to the General Assembly, see note S/26015, dated 30 June 1993, by the President of the Security Council on behalf of Council members.

Case 18

An agenda for peace – Peace-Keeping

Article 24 (1), was explicitly referred to during the deliberations of the Council held in connection with the agenda item “An agenda for peace – peace-keeping.” During the 3449th meeting¹⁶² of the Council, Turkey stressed that there was a need for improvement of procedures of communication and consultation between Council members and troop contributing countries. The authority of Council decisions emanated from the fact that the Council, in accordance with Article 24 of the Charter, acted on behalf of all Members of the United Nations. Therefore, the lack of a sufficient consultation mechanism undermined the legitimacy of Council decisions on peace-keeping operations.¹⁶³

At the 3611th meeting of the Council, held on 20 December 1995, a number of speakers explicitly referred to the provisions of Article 24. The representative of France stated that it was the duty of the Council to listen and reflect on ways in which they could follow up on ideas expressed by those on whose behalf the Council acted in accordance with Article 24 of the Charter.¹⁶⁴ The representative of Botswana noted that, since the Security Council derived its authority and legitimacy from the general membership of the United Nations that were not members of the Security Council, it was only fair that they should make a contribution to the work of the Council if it was to act effectively on their behalf in accordance with Article 24 (1) of the Charter.¹⁶⁵ Also referring to Article 24, the representative of Algeria noted that acts of the Council acquired additional legitimacy when they flowed from expanded consultations carried out in a spirit of partnership and aimed at optimal efficiency. From that point of view, the informal practice of “groups of friends” would stand to gain in terms of both usefulness and credibility if the objective of such groups were rigorous and in-depth follow-up of situations concerning which the Security Council was shouldering responsibilities.¹⁶⁶

¹⁶² Held on 4 November 1994.

¹⁶³ S/PV.3449, p. 20.

¹⁶⁴ S/PV.3611, p. 5.

¹⁶⁵ Ibid, p. 10.

¹⁶⁶ Ibid, p. 16.

Case 19

The situation in the Republic of Bosnia and Herzegovina

During the Council's consideration of the situation in Bosnia and Herzegovina and its implications for international peace and security, three resolutions¹⁶⁷ were adopted which called for the full and immediate implementation of all its relevant resolutions. By resolutions 836 (1993) of 4 June 1993, 838 (1993) of 10 June 1993 and 859 (1993) of 24 August 1993, the Council reaffirmed the sovereignty, territorial integrity and political independence of Bosnia and Herzegovina and the responsibility of the Security Council in this regard. By resolution 859 (1993), the Council stated explicitly that it was mindful of its primary responsibility under the Charter for the maintenance of international peace and security.

There were a number of explicit references¹⁶⁸ to Article 24 in the course of the Council's debates as Member States stressed the need for the Council to bear its responsibilities under Article 24 of the Charter by taking all necessary steps to protect and fully restore the sovereignty and political independence of the Republic of Bosnia and Herzegovina. At its 3247th meeting, held on 29 June 1993, Member States highlighted the challenges the Council faced in fulfilling its obligations under Article 24 of the Charter concerning the situation in Bosnia and Herzegovina, namely to take prompt and effective measures to restore peace. Thus, the representative of Malaysia stated that a member of the United Nations (Bosnia and Herzegovina) was being dismembered and the Council should take a more determined and concrete action in accordance with its primary responsibility under Article 24 of the Charter using all the powers available under Chapter VII.¹⁶⁹

In connection with the situation in Bosnia and Herzegovina, Article 24 was also explicitly invoked in several communications of the Council. In a letter¹⁷⁰ dated 7 June 1993 (S/25893), the representative of Malaysia expressed concern in connection with the Council's response to the suppression of the civilian population, especially the Bosnian Muslims. In his view, the Council needed to strengthen its obligations as stipulated in Article 24 of the Charter of the UN, which

¹⁶⁷ In connection with the situation in Bosnia and Herzegovina, see Res 836 (1993) para.3 ; Res 838 (1993) para.2 ; Res 859 (1993) para. 2,12,14.

¹⁶⁸ In connection with the situation in Bosnia and Herzegovina see: S/PV.3247: pp.38, 58, 61, 101; S/PV.3336: pp.153, 175; S/PV.3370: p.12; S/PV.3454: pp. 16 and 17, S/PV.3454 (Resumption 1): p.46; S/PV.3367: p. 18.

¹⁶⁹ S/PV.3247, p. 38.

¹⁷⁰ S/25893.

was to take prompt and effective measures to restore peace. Also, in a note¹⁷¹ by the Secretary-General addressed to the President of the Security Council, dated 4 November 1994, the Secretary-General urged the Security Council to fulfill its responsibility under Article 24 (1) of the Charter, and take all appropriate steps to uphold and restore fully the sovereignty and political independence of the Republic of Bosnia and Herzegovina.

CASE 20

The question concerning Haiti

By resolutions 862 (1993) of 31 August 1993, and 867 (1993) of 23 September 1993, the Council recalled the situation in Haiti and the continuing responsibility of the Council, under the Charter of the United Nations, for the maintenance of international peace and security.

In a letter¹⁷² dated 14 June 1993 addressed to the President of the Security Council, the representative of Cuba stated that Cuba advocated a return of constitutional order in Haiti, and of its sole legitimate representative, President Aristide. That did not, however, prevent a categorical repudiation by Cuba of the adoption of measures concerning the internal situation of Haiti by the Security Council, whose primary responsibility, as set forth in Article 24 of the United Nations Charter, was the maintenance of international peace and security, a context which did not embrace the situation prevailing in Haiti, however many pretexts were advanced in an efforts to demonstrate the contrary.

B. The obligation of Member States to accept and carry out decisions of the Security Council (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."

¹⁷¹ S/1994/1251: para.21.

¹⁷² S/25942.

NOTE

During the period under review, none of the resolutions adopted by the Council explicitly invoked Article 25 of the Charter. On five occasions, explicit references were made in the Council debates¹⁷³ to the obligations of Member States to accept and carry out the decisions of the Security Council. In these instances, the Council did not engage, however, in constitutional discussions concerning Article 25 that went beyond a reaffirmation of views about its interpretation and application.

On other occasions, statements¹⁷⁴ by members of the Council had an implicit bearing on Article 25. In one case, the deliberations and decisions of the Council concerning the establishment of an international tribunal for the former Yugoslavia touched upon two aspects of the application of Article 25, namely that all parties comply with the decision of the Council, and the cooperation and assistance on the part of Member States to guarantee the smooth functioning of the tribunal. In relation to the latter, there were some debates in which the President of the Security Council demanded that the parties to a cease fire agreement comply with their commitments and all relevant resolutions of the Security Council.

Article 25 was explicitly invoked in letters¹⁷⁵ by the Chairman of the Security Council Committee established by resolution 724 (1991), addressed to the President of the Security Council concerning applications made under Article 50 of the Charter of the United Nations as a consequence of the implementation of measures imposed against the former Yugoslavia. The

¹⁷³ In connection with the establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia, see: S/PV.3217: France, p. 12. In connection with the issue of consultations between members of the Security Council and troop-contributing countries, see: S/PV.3449: Turkey, p. 20; S/PV.3611: Turkey, pp. 34-35. In connection with the issue of Security Council working methods and procedures, see: S/PV.3483: Turkey, p. 18. In connection with the “Supplement to an Agenda for Peace” by the Secretary-General on the occasion of the fiftieth anniversary of the United Nations, see: S/PV.3492 (resumption II): Hungary, p. 16.

¹⁷⁴ In connection with the situation in the Republic of Bosnia and Herzegovina, see S/PV.3180: p.3; S/PV.3192: p.7; S/PV.3210: p.3; S/PV.3456: p.2; S/PV.3530: p.2; S/PV.3554 : p.3; S/PV.3557: p.2; S/PV.3580: p.2; S/PV.3587: p.2.

¹⁷⁵ S/26040 (letter from the acting chairman of the Security Council committee established pursuant to Resolution 724 (1991) concerning Yugoslavia addressed to the President of the Security Council dated 2 July 1993); S/25763 (letter from Uruguay to the Secretary-General dated 6 May 1993); S/26040 (Add.1) (letter from the chairman of the Security Council committee established pursuant to resolution 724 (1991) concerning Yugoslavia addressed to the President of the Security Council dated 4 August 1993); S/26040 (Add.2) (letter from the chairman of the Security Council committee established pursuant to resolution 724 (1991) concerning Yugoslavia addressed to the President of the Security Council dated 10 December 1993).

article was also explicitly invoked in several communications¹⁷⁶ from Member States addressed to the United Nations, often in the context of the general responsibility upon states under international law. In addition, Article 25 was explicitly invoked in three note verbales¹⁷⁷ from a Member State to the Secretary-General, in which the Member State informed the Secretary-General that it had instituted in time all necessary measures for meeting the obligations set out in resolutions 841 (1993) and 917 (1994) respectively.

Of the draft resolutions submitted to the Security Council which were either not put to the vote or voted upon and not adopted, none contained explicit references to Article 25; and several draft resolutions¹⁷⁸ contained paragraphs which might be deemed to have an implicit bearing on the article. Article 25 was explicitly referred to in one draft resolution¹⁷⁹ that was voted upon but not adopted by the Council, confirming that the expropriation of land by Israel in East Jerusalem was invalid and in violation of relevant Security Council resolutions.

A number of statements¹⁸⁰ made by the President of the Security Council, on behalf of the members of the Council, contained formulations that might be considered as implicit

¹⁷⁶ S/25667 (letter from New Zealand to the Secretary-General dated 26 April 1993); S/25686 (letter from the Secretary-General addressed to the President of the Security Council dated 27 April 1993);

¹⁷⁷ S/26414 (*note verbale* from Myanmar to the Secretary-General dated 2 September 1993); S/1994/754 (*note verbale* from the representative of Myanmar to the Secretary-General dated 15 June 1994); S/25763 (*note verbale* from the representative of Uruguay to the Secretary General dated 6 May 1993).

¹⁷⁸ In connection with the situation in the Republic of Bosnia and Herzegovina, see resolutions 816 (1993), third preambular paragraph; 820 (1993), eight preambular paragraph and para. 17; 836 (1993), para. 1; 859 (1993), fourth preambular paragraph; 871 (1993), fifth preambular paragraph; 942 (1994), para. 18; 982 (1995), para. 9; 992 (1995), fourth preambular paragraph; 994 (1995), second preambular paragraph; 1009 (1995), fourth preambular paragraph and para. 1 and 8; 1016 (1995), para. 1; 1019 (1995), para. 8; 1034 (1995), first preambular paragraph and para. 12. In connection with the situation between Iraq and Kuwait, see resolution 833 (1993), para. 5; 949 (1994) paras. 2,3,5. In connection with the situation in the Middle East, see resolution 830 (1993), para. (a); 887 (1993), para. (a); 962 (1994), para. (a); 996 (1995), para. (a); 1024 (1995), para. (a). In connection with the situation in Angola, see resolution 864 (1993), tenth preambular paragraph; 890 (1993), para. 13; 903 (1994), para. 9; 922 (1994), para. 8; 932 (1994), para. 8; 945 (1994), para. 13; 952 (1994), ninth preambular paragraph; 966 (1994), tenth preambular paragraph; 976 (1995), para. 12. In connection with the situation in Somalia, see resolution 886 (1993), para. 11; 897 (1994), para. 9; 923 (1994), para. 6. In connection with the situation concerning Rwanda, see resolutions 955 (1994), para. 2; 978 (1995), fourth and ninth preambular paragraph; 1013 (1995), fifth preambular paragraph. In connection with the situation in Liberia, see resolutions 813 (1993), para. 9; 950 (1994), para. 6; 972 (1995), para. 6; 985 (1995), fifth preambular paragraph and para. 4; 1001 (1995), tenth preambular paragraph and para. 10; 1014 (1995), para. 11; 1020 (1995), para. 11. In connection with the 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 resolution 883 (1993), paras. 1, 2. In connection with the question concerning Haiti, see resolutions 841 (1993), para. 10 (b), 13; 875 (1993), para. 1; 917 (1994), twelfth preambular paragraph and para. 10, 12, 13; 940 (1994), ninth preambular para. 6. In connection with the situation in the occupied Arab territories, see S/1995/394, para. 1.

In connection with the situation in Croatia, see S/25178, para. 2; S/PRST/1995/30, paras. 1, 2; S/PRST/1995/38, para. 1; S/PRST/1995/23, paras. 2,3; S/PRST/1995/37, para.4; In connection with the situation in the Republic of Bosnia and Herzegovina, see S/25302, para. 2; S/25334, para. 4; S/25426, paras. 1, 2, 3; S/25520, para. 3; S/25646,

references to Article 25. Several resolutions and presidential statements were directed at Member States in particular, at states in general, or at multiple parties, not all of which were Member States, often calling upon them to abide by their obligations to accept and carry out decisions of the Security Council.

The following cases reflect the practice of the Council touching upon the provisions of Article 25 as illustrated by its decisions and deliberations: (1) Establishment of an International Tribunal for the prosecution of persons in the former Yugoslavia; (2) The Situation concerning Rwanda; and (3) The Situation between Iraq and Kuwait.

CASE 21

Establishment of an International Tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia

At its 3175th meeting, on 22 February 1993, the Council adopted resolution 808 (1993), by which it decided the establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the former Yugoslavia since 1991.

By resolution 827 (1993) of 25 May 1993¹⁸¹ the Council decided that all states should cooperate fully with the International Tribunal and its organs in accordance with that resolution and the Statue of the International Tribunal, and that consequently all States should take any measures necessary under their domestic laws to implement the provisions of resolution 827 (1993) and the Statue, including the obligation of States to comply with requests for assistance or orders issued by a trial chamber under article 29 of the Statue. The Council also urged all States

para. 3; S/PRST/1994/6, para. 2; S/PRST/1994/19, para. 1; S/PRST/1994/26, para. 4; S/PRST/1994/29, para. 3; S/PRST/1995/34, para. 2; S/PRST/1995/43 para. 2; S/PRST/1994/71, para.1; S/PRST/1994/11, para. 3;) In connection with the situation between Iraq and Kuwait, see S/25081, para. 4; S/25970, para. 5, 6; S/26006, para. 3; S/26787, para. 3; S/PRST/1994/58, para. 1, 4; S/PRST/1994/68, paras. 2, 3. In connection with items relating to An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping, see S/25859, para. 2. In connection with the situation in Angola, see S/PRST/1994/45, para. 9; S/PRST/1995/11, para. 4. In connection with the situation between Armenia and Azerbaijan, see S/26326, para. 6. In connection with the situation in Somalia, see S/PRST/1995/15, para. 8. In connection with the situation concerning Rwanda, see S/PRST/1994/21 para.2, S/PRST/1995/53, para. 5. In connection with the question concerning Haiti, see S/26460, para. 8; S/26747, para. 8. In connection with the situation in the Republic of Yemen, see S/PRST/1994/30, para. 4.

¹⁸¹ Resolution 827 (1993) was adopted at the Council's 3217th meeting.

and intergovernmental and non governmental organizations to contribute funds, equipment and services to the International Tribunal, including the offer of expert personnel.

At the same meeting, the representative of France noted that the resolution, which was a decision within the meaning of Article 25 of the Charter, thus now applied to all states. That meant, specifically, that all states were required to cooperate fully with the tribunal, even if this obliged them to amend certain provisions of their domestic law.¹⁸²

At its 3591st meeting, on 9 November 1995, the Council acknowledged a letter¹⁸³ from the President of the International Criminal Tribunal for the former Yugoslavia of 31 October 1995, in which it handed over its first indictment. At the same meeting, the Council unanimously adopted resolution 1019 (1995), by which the Council demanded that all states, in particular those in the region of the former Yugoslavia, and all parties to the conflict in the former Yugoslavia, comply fully and in good faith with the obligations contained in paragraph 4 of resolution 827 (1993). The Council reiterated that request in resolution 1034 (1995).¹⁸⁴

CASE 22

The situation concerning Rwanda

At its 3453rd meeting, on 8 November 1994, the Council adopted Resolution 955 (1994), by which the Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994. By that resolution, the Council also decided that all States should cooperate fully with the International Tribunal and its organs in accordance with the resolution and the Statute of the International Tribunal and that consequently all States should take any measures necessary under their domestic law to implement the provisions of the resolution and the Statute, including the obligation of States to comply with requests for

¹⁸² S/PV.3217, p. 12.

¹⁸³ S/1995/910.

¹⁸⁴ S/RES/1034 (1995), para. 12.

assistance or orders issued by a Trial Chamber under Article 28 of the Statute, and requests to States to keep the Secretary-General informed of such measures.

At its 3504th meeting, on 27 February 1995, the Council adopted resolution 978 (1995), by which it stressed the need for States to take measures necessary under their domestic law to implement the provisions of resolution 978 (1994) and the Statute of the International Tribunal for Rwanda. The Council also urged all States to arrest and detain, in accordance with their national law and relevant standards of international law, pending prosecution by the International Tribunal for Rwanda or by the appropriate national authorities, persons found within their territory against whom there was sufficient evidence that they were responsible for acts within the jurisdiction of the International Tribunal for Rwanda.

CASE 23

The situation between Iraq and Kuwait

By resolution 833 (1993)¹⁸⁵, adopted at the Council's 3224th meeting¹⁸⁶ the Council, acting under Chapter VII of the Charter, demanded that Iraq and Kuwait, in accordance with international law and relevant Security Council resolutions, respect the inviolability of the international boundary, as demarcated by the commission, and the right to navigational access.

At its 3246th meeting, on 28 June 1993, the President of the Council drew attention to letters from the Representative of Iraq (S/25905) and Kuwait (S/25963) which reflected both government's initial view point on resolution 833 (1993). At that meeting, through a statement¹⁸⁷ by the President, Council members reminded Iraq that the Boundary Demarcation Commission had acted on the basis of resolution 687 (1991) and the Secretary General's report on implementing paragraph 3 of that resolution, both of which were formally accepted by Iraq.

At its 3319th meeting, on 23 November 1993, through a statement¹⁸⁸ of the President of the Security Council, members of the Council demanded that Iraq, in accordance with international

¹⁸⁵ S/PV.3438.

¹⁸⁶ Held on 27 May 1994.

¹⁸⁷ S/26006.

¹⁸⁸ S/26787.

law and relevant Council resolution, respect the inviolability of the international boundary and take all necessary measures to prevent any violations of that boundary.

By resolution 949 (1994) of 15 October 1994, the Council reaffirmed the commitment of all member States to the sovereignty, territorial integrity and political independence of Kuwait and Iraq, and demanded that Iraq withdraw all military units deployed to Southern Iraq to their original positions. By that resolution, the Council also demanded that Iraq should not utilize its military or any other forces in a hostile or provocative manner to threaten either its neighbours or United Nations operations in Iraq, and that Iraq cooperate fully with the United Nations Special Commission.

At the Council's 3459th meeting, on 16 November 1994, the President drew the attention of the members of the Council to a letter¹⁸⁹ dated 12 November 1994 addressed to the President of the Security Council from the Foreign Minister of Iraq, which confirmed Iraq's irrevocable and unqualified recognition of the sovereignty, territorial integrity and political independence of the State of Kuwait, and of the international boundary between the Republic of Iraq and the State of Kuwait as demarcated by the United Nations Iraq-Kuwait Boundary Demarcation Commission. At that meeting, the members of the Council welcomed, through a statement by the President, that development, noted that Iraq had taken this action in compliance with Security Council resolution 833 (1993) and had unequivocally committed itself by full and formal constitutional procedures to respect Kuwait's sovereignty, territorial integrity and borders, as required by Security Council resolutions 687 (1991), 833 (1993) and 949 (1994).

PART V

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 decided in a number of situations under its consideration to engage in cooperation with regional arrangements or agencies in the maintenance of peace and security, as provided for in Chapter VIII of the Charter. Following the trend indicated by the previous Supplement of the *Repertoire*, the number of instances of cooperation further increased. While all of these instances are to be considered within the framework of Chapter VIII of the Charter, the Council has not always evoked this Chapter in its decisions. The record of the deliberations of the Council during the period under review displays, however, a practice of constant reference by its members to Chapter VIII and its provisions in the meetings of the Council.

The more active involvement of regional organizations¹⁹⁰ in the maintenance of peace and security during the period under review has provided for a wider range of options for the Council as to the nature and modalities of cooperation with these regional arrangements, which differ in mandate, structure, capacity and experience in peace-related activities. Most of the activities by regional organizations appreciated or endorsed by the Council, and in some cases actively supported through the Secretary-General, concerned attempts at the peaceful settlement of disputes. The period under review marks a departure from Council practice insofar as the Council, for the first time, deployed a peace-keeping mission to a region where a peace-keeping operation of a regional organization was already operating. In addition, the Council authorized regional organizations to use force in order to implement trade and arms embargoes and, for the first time, authorized enforcement actions for the imposition of a flight ban and to support a mission in the performance of its mandate.

The Council's practice under Chapter VIII of the Charter is described in four parts. Part I captures the Council's discussion of the provisions of Chapter VIII in the context of the consideration of the Secretary-General's report "An Agenda for Peace" of 1992 and the 1994 supplement thereto. Part II sets out the various ways in which the Security Council encouraged and/or supported efforts by regional organizations in the peaceful settlement of disputes. Part III deals with a case in which a Council member challenged the Council's competence to consider a

¹⁹⁰ Chapter VIII of the Charter refers to of "regional arrangements and agencies." The *Repertoire* follows the Council's practice in its synonymous use of these terms with "regional organizations".

dispute on the basis of Article 52. The final part of this section depicts two cases in which the Council authorized various enforcement actions by regional agencies.

A. GENERAL CONSIDERATION OF THE PROVISIONS OF CHAPTER VIII

On several occasions during the period under review, Council members expressed, in the context of the Council's consideration of the Secretary-General's report "An agenda for peace: preventive diplomacy, peacemaking and peace-keeping"¹⁹¹, their support for closer cooperation between the United Nations and regional arrangements and organizations within the framework of Chapter VIII of the Charter; invited those organizations to study ways and means to strengthen their functions to maintain international peace and security within their areas of competence, paying due regard to the characteristics of their respective regions; and expressed its readiness to support and facilitate peace-keeping efforts undertaken in the framework of regional organizations and arrangements in accordance with Chapter VIII of the Charter.¹⁹²

At the Council's first consideration of the Secretary-General's position paper "Supplement to an Agenda for Peace"¹⁹³ at the 3492nd meeting on 18 January 1995, Council members as well as a number of Member States reflected in their contributions to the debate on the cooperation between the United Nations and regional organizations. The broad majority of speakers¹⁹⁴ emphasized the importance of cooperation of the United Nations with regional arrangements and agencies and expressed their support for the proposals by the Secretary-General in this regard. The representative of the Russian Federation noted, in addition, that, in all instances of regional peace-keeping carried out on the basis of voluntary regional agreements and arrangements in accordance with Article 52 of the Charter, United Nations involvement should be on the basis of voluntary, equitable cooperation without any monitoring or attempt to interfere in the settlement process, and without having responsibility — political and financial —

¹⁹¹ S/24111 dated 17 June 1992.

¹⁹² See presidential statements of 28 January 1993 (S/25184), of 28 May 1993 (S/25859), and of 3 May 1994 (S/PRST/1994/22).

¹⁹³ "Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations" (S/1995/1).

¹⁹⁴ S/PV.3492, p. 4 (United Kingdom), p. 9 (Indonesia, on behalf of the Non-Aligned Movement), p. 11 (Botswana); S/PV. 3492 (resumption 1), p. 1 (Italy), p. 5 (Nigeria), p. 6 (Oman), p. 14 (Argentina), p. 17 (France, on behalf of the European Union), p. 21 (Honduras), p. 26 (Poland), p. 29 (Netherlands), p. 31 (Turkey), p. 33 (Canada), p. 34 (Japan); S/ PV.3492 (resumption 2), p. 16 (Hungary), p. 17 (Ireland), p. 20 (Romania), p. 24 (Bulgaria), p. 31 (Egypt).

for the outcome of that process.¹⁹⁵ The representative of the United States pointed out that the Council may continue, at times, to look to regional organizations or to individual Member States or ad-hoc coalitions when peace enforcement was required. In those cases, it was essential that the Council retain the capacity to monitor such operations to ensure that they were conducted in accordance with accepted international principles.¹⁹⁶

By a presidential statement¹⁹⁷ on 22 February 1995, in reference to the Secretary-General's "Supplement to an Agenda for Peace", Council members welcomed the Secretary-General's willingness to assist regional organizations and arrangements as appropriate in developing a capacity for preventive action, peacemaking and, where appropriate, peace-keeping. It drew particular attention in this regard to the needs of Africa.

B. SECURITY COUNCIL ENCOURAGEMENT OF EFFORTS UNDERTAKEN BY REGIONAL ORGANIZATIONS IN THE PEACEFUL SETTLEMENTS OF DISPUTES

The Security Council encouraged, during the period under review, a number of peace efforts undertaken by regional arrangements or agencies. In some cases, the Council supported these efforts by mandating the Secretary-General to cooperate with the regional organizations. The Council sent, for the first time, a peace-keeping mission to a region where a mission of a regional agency was already operating. The Council's varied practice in support of regional efforts is set out in regional order below.

Africa

In order to achieve a pacific settlement of the situation in **Somalia**, the Security Council cooperated, during the period under review, with the Organization of African Unity (OAU), the League of Arab States (LAS), and the Organization of the Islamic Conference (OIC). On 3, 11 and 22 March 1993, pursuant to resolution 794 (1992) of 3 December 1992, the Secretary-General submitted a report¹⁹⁸ on Somalia, in which he stated that he had continued to promote efforts towards political reconciliation in cooperation with regional organizations. At its 3188th meeting, held on 26 March 1993, the Council adopted resolution 814 (1993), by which it

¹⁹⁵ S/PV.3492, p. 19.

¹⁹⁶ S/PV.3492, p. 23.

¹⁹⁷ S/PRST/1995/9.

¹⁹⁸ S/25354 and Add.1 and 2.

expressed its appreciation to the OAU, the LAS, the OIC and the Movement of Non-Aligned Countries for their cooperation with, and support of the efforts of the United Nations in Somalia. In pursuance of resolution 814 (1993) of 26 March 1993, the Secretary-General submitted to the Council a further report¹⁹⁹ in which he observed that there was strong support for the United Nations role in Somalia from the OAU, LAS and OIC, in particular for the need to take appropriate measures to ensure the implementation of the disarmament provisions of the Addis Ababa Agreement.

At the Council's 3280th meeting, held on 22 September 1993, several Council members²⁰⁰ expressed their appreciation of the efforts of the OAU and the LAS in rendering assistance to the Secretary-General. By resolution 865 (1993), adopted at the same meeting, the Council welcomed the efforts of African countries, the OAU, in particular its Horn of Africa Standing Committee, the LAS and the OIC, in cooperation with and in support of the United Nations, to promote national reconciliation in Somalia. By that resolution, the Council also called on all Member States to assist, in all ways possible, the Secretary-General, in conjunction with regional organizations, in his efforts to reconcile the parties and rebuild Somali political institutions; and invited the Secretary-General to consult the countries of the region and regional organizations concerned on means of further reinvigorating the reconciliation process.

At the Council's 3315th meeting, on 16 November 1993, the President drew the attention of the Council members to a letter dated 25 October 1993 from the Permanent Representative of Ethiopia addressed to the President of the Security Council (S/26627), by which the President of Ethiopia informed the President of the Council that he was writing pursuant to the mandate given to him by the heads of State and Government of the OAU and the leaders of countries members of the Intergovernmental Authority for Drought and Development (IGADD), to follow developments in Somalia. In his letter, the President of Ethiopia stated that it had now been fully recognized that an African solution had be found to the problems of Somalia. It was his conviction that it was time for that concept to be incorporated in a Security Council resolution or be endorsed by the Security Council. In that context, he further stated that it would be extremely helpful if UNOSOM were to be explicitly directed to carry out its mandate in partnership with the OAU and the countries of the subregion, especially with regard to seeking and implementing

¹⁹⁹ S/26317 of 17 August 1993.

²⁰⁰ S/PV.3280, p. 11 (China), p. 27 (Russian Federation), p. 28 (Spain).

a political solution to Somalia's problems. At that meeting, the Council adopted resolution 885 (1993), by which the Council noted further proposals made by Member States, in particular from the OAU, including those contained in the letter²⁰¹ dated 25 October 1993 from the representative of Ethiopia addressed to the President of the Security Council, which recommended the establishment of a Commission of Inquiry to investigate armed attacks on UNOSOM II.

At the 3317th meeting, held on 18 November 1993, the representative of Ethiopia stated that a genuine partnership between the OAU, the countries of the sub-region and the United Nations was important to the political process in Somalia.²⁰² The representative of China stated that he hoped that, in that connection, the positive role of the OAU and of countries in the region would be brought more fully into play and that with the gradual realization of national reconciliation, UNOSOM II would become a peace-keeping operation in the traditional sense.²⁰³ At that meeting, the Council unanimously adopted resolution 886 (1993), by which it welcomed and supported the ongoing diplomatic efforts being made by Member States and international organizations, in particular those in the region, to assist United Nations efforts to bring all parties in Somalia, including movements and factions, to the negotiating table.

In subsequent meetings, Council members²⁰⁴ continued to commend and to stress the importance of the role played by regional organizations, in particular, the OAU, the LAS and the OIC, in promoting the necessary reconciliation in Somalia and restoring civil society, and expressed their support for these organizations. The Council expressed these views in its resolutions 897 (1994) of 4 February 1994 and 954 (1994) of 4 November 1994 as well as through a presidential statement²⁰⁵ adopted on 6 April 1995.

In connection with the situation in **Liberia**, the Security Council sent, during the period under review, for the first time a UN-force, the United Nations Observer Mission in Liberia (UNOMIL), into a conflict where a regional organization, the Economic Community of West African States (ECOWAS), was already operating. ECOWAS had been involved in Liberia

²⁰¹ S/26627.

²⁰² S/PV.3317, p. 4.

²⁰³ S/PV.3317, p. 21.

²⁰⁴ Meeting held on 4 February 1994: S/PV.3334, p. 11 (Russian Federation); Meeting held on 4 November 1994.: S/PV.3334, p. 13 (Argentina), p. 17 (Spain), p. 18 (Russian Federation).

²⁰⁵ S/PRST/1995/15.

diplomatically and, through its Cease-Fire Monitoring Group (ECOMOG), militarily since the beginning of the conflict, while the Security Council had thus far commended its initiatives and endeavours. Pursuant to resolution 788 (1992), the Secretary-General, in his report of 12 March 1993²⁰⁶, stated that Liberia represented a good example of systematic cooperation between the United Nations and a regional organization, as envisaged in Chapter VIII of the Charter. He also suggested that it would be the wish of the Council to continue to expand, as appropriate, the cooperative relationship between the United Nations and the concerned regional body.

In the Council's subsequent deliberations²⁰⁷ on the situation in Liberia, Council members expressed their support for enhanced cooperation between the United Nations and ECOWAS. By resolution 813 (1993), adopted at the Council's 3187th meeting on 26 March 1993, the Council, recalling the provisions of Chapter VIII, commended ECOWAS and the OAU for their efforts towards a peaceful resolution of the Liberian conflict and expressed its readiness to take measures in support of ECOWAS. Pursuant to that resolution, the Secretary-General submitted to the Council a further report²⁰⁸ on Liberia, in which he outlined the proposed role of the United Nations in the implementation of the Cotonou Agreement. That Agreement, signed on 1 August 1993, provided that ECOMOG would supervise and carry out the implementation of the provisions of the Agreement, while the United Nations would undertake monitoring and verification. In addition, the Secretary-General reported that ECOWAS had requested that the United Nations establish a Trust Fund to enable African countries to send reinforcements to ECOMOG and to provide assistance to countries already participating in ECOMOG.

At the Council's 3263rd meeting on 10 August 1993, the representative of Benin, on behalf of the Presidency of ECOWAS, assured the Council that ECOWAS would cooperate fully with the United Nations in the fulfilment of its mission in Liberia.²⁰⁹ Several Council members described the conclusion of the Cotonou Agreement as a good example of cooperation between the United Nations and regional organizations, as advocated in Chapter VIII of the Charter, and encouraged the Secretary-General to also set up the proposed Trust Fund to assist ECOMOG-contributing countries. The representative of France welcomed the fact that it was one of the first

²⁰⁶ S/25402.

²⁰⁷ Council meetings of 26 March 1993 (S/PV.3187) and of 10 August 1993 (S/PV.3263). The Council also expressed its support for strengthening its cooperation with ECOWAS in a Statement by the President of the Security Council (S/25918) adopted at the 3233rd meeting.

²⁰⁸ S/26200, dated 4 August 1993.

²⁰⁹ S/PV.3263, pp. 9-10.

times that the United Nations, in the spirit of Chapter VIII of the Charter, had undertaken a peace-keeping operation in cooperation with a regional organization. He added that, for that first experiment, it was important that the competences and prerogatives of the two organizations be strictly respected, with it being understood that the United Nations had to maintain its precedence. He further commented that the United Nations activities should be funded through mandatory contributions, whereas ECOMOG activities should be financed through the special trust fund, contributions to which would be voluntary.²¹⁰ At that meeting, the Council adopted resolution 856 (1993), by which it stated that it looked forward to the report of the Secretary-General on the proposed establishment of UNOMIL including, among other aspects, how to ensure coordination between UNOMIL and the peace-keeping forces of ECOWAS and their respective roles and responsibilities.

At the Council's 3281st meeting on 22 September 1993, all speakers stated that the cooperation between the United Nations and ECOMOG could serve as a precedent for future undertakings between the United Nations and regional organizations in other conflicts. The representative of Brazil noted that it was a case in which new modalities were being designed for close cooperation in the field between the United Nations and the regional organization. Brazil was convinced that such cooperation, with clearly defined roles for each organization, each in accordance with its own rules and procedures, was a very encouraging development.²¹¹ At that meeting, the Council adopted resolution 866 (1993), by which it established UNOMIL and welcomed the intention of the Secretary-General to conclude with the Chairman of ECOWAS an agreement defining, before deployment of UNOMIL, the roles and responsibilities of the UNOMIL and ECOWAS in the implementation of the Peace Agreement. By that resolution, the Council also welcomed the establishment, by the Secretary-General, of a Trust Fund in order to facilitate the sending of reinforcements by African States to ECOMOG.

By subsequent presidential statements²¹² and by resolution 911 (1994) of 21 April 1994, the Council, *inter alia*, commended UNOMIL and ECOMOG for their continued efforts to restore peace, security and stability in Liberia and welcomed the close cooperation between the two missions. By resolution 911 (1994), the Council, *inter alia*, welcomed ECOMOG's commitment to ensure the safety of UNOMIL observers and civilian staff.

²¹⁰ S/PV.3263, p. 28.

²¹¹ S/PV.3281, pp. 19-20.

²¹² S/PRST/1994/9 of 25 February 1994, S/PRST/1994/25 of 23 May 1994, S/PRST/1994/33 of 13 July 1994.

In the light of continued attacks against on and abduction and harassment of United Nations and ECOMOG personnel, the Council, by a Statement²¹³ of the President of the Council on 13 September 1994, requested ECOWAS to ensure that ECOMOG continued to extend protection to the extent possible to UNOMIL personnel, in accordance with the exchange of letters of 7 October 1993 between the Secretary-General and the Chairman of ECOWAS defining the respective roles and responsibilities of the two missions in Liberia.

On 10 June 1995, pursuant to resolution 985 (1995), the Secretary-General submitted to the Council a progress report, in which he recommended that UNOMIL's role in Liberia and its relationship with ECOMOG would have to be adjusted, to enable the two operations to function more effectively.

At the Council's 3549th meeting on 30 June 1995, the representative of Nigeria stated that the creation of ECOMOG had given practical expression to the cooperation envisaged in Chapter VIII of the United Nations Charter between regional organizations and the United Nations in the maintenance of international peace and security. He further commented that there was a need to assist ECOMOG with logistics and financial resources so that it could deliver on its commitments. Without a viable ECOMOG, UNOMIL's role and effectiveness in Liberia would be seriously constrained.²¹⁴ In contrast, the representative of the Czech Republic warned that the shortcomings in cooperation between UNOMIL and ECOMOG were a troubling aspect of the Liberian situation. He stated that the parallel and concerted functioning of the two forces had been viewed as a model for Chapter VIII-style cooperation between a United Nations observer mission and a regional force in other parts of the world. It was therefore disturbing that, at the working level, cooperation "had not always been satisfactory," as had been outlined in the Secretary-General's report²¹⁵. The Czech Republic saluted the ECOWAS countries that had been shouldering the burden of ECOMOG, but it was particularly concerned that ECOMOG provide the necessary security for UNOMIL personnel, in line with the Cotonou Agreement, as specified by paragraph 12 of the adopted resolution.²¹⁶

²¹³ S/PRST/1994/53.

²¹⁴ S/PV.3549, p. 4.

²¹⁵ S/1995/473, dated 10 June 1995.

²¹⁶ S/PV.3549.

By resolution 1001 (1995), adopted at that meeting, as well as by subsequent resolutions²¹⁷, the Council commended the positive role of ECOWAS in its continuing efforts to restore peace, security and stability in Liberia and called on ECOWAS, in accordance with the agreement regarding the respective roles and responsibilities of UNOMIL and ECOMOG in the implementation of the Cotonou Agreement, to take necessary action to provide security for UNOMIL observers and civilian staff.

At the Council's 3577th meeting, held on 15 September 1995, the representative of Liberia stated that, for five years, ECOWAS had borne a substantial burden to maintain its presence in Liberia. In keeping with article 52 of Chapter VIII of the Charter of the United Nations, the Security Council had, through the creation and dispatch of UNOMIL, complemented the efforts of ECOWAS. UNOMIL's involvement in the peace process had inspired confidence among Liberians that the international community was supportive of their desire to restore peace and normality in Liberia. It was the hope of the Liberian Government and people that the United Nations would provide even more financial support to ECOMOG. He concluded by stating that, when a democratically elected government was inaugurated in Liberia, the cooperation between ECOWAS and the United Nations would indeed be recorded in the annals of the Organization as a unique success story, the lessons of which could be applied to other conflicts in other parts of the world.²¹⁸ Other speakers pointed out that improved and effective cooperation between UNOMIL and ECOMOG would be the key to the success of both missions and that they were looking forward to the Secretary-General's recommendations in that regard. The representative of Rwanda stated that his delegation was convinced that the United Nations, and the Security Council in particular, were not able to put an end to conflict in the region without the participation of regional and sub-regional African organizations. That was the reason why cooperation between the Security Council and the Secretariat and African regional organizations had to be recommended.²¹⁹

On 10 November 1995, several Council members expressed, at the Council's 3592nd meeting, their support for the adjustments of UNOMIL's mandate as it clarified the division of tasks between UNOMIL and ECOMOG on the ground. In contrast to those statements, the representative of Rwanda pointed out that the funds necessary for ECOMOG's operations for

²¹⁷ Resolutions 1014 (1995) of 15 September 1995 and 1020 (1995) of 10 November 1995.

²¹⁸ S/PV.3577, p. 5.

²¹⁹ Ibid,16.

one year were less than those used in one week by the peace-keeping forces in the former Yugoslavia. For that reason, his country wished to reiterate its appeal to the Security Council and the Secretariat to resolve African problems only through Africa's own institutions, for the effect would be greater and the costs less. In the light of the African continent's economic situation, regional and sub-regional organizations needed only material and moral support in order to carry out better the tasks that States had assigned them.²²⁰ At that meeting, the Council adopted resolution 1020 (1995), by which it adjusted the mandate of UNOMIL and stressed the need for close contacts and enhanced coordination between UNOMIL and ECOMOG in their operational activities at all levels.

In connection with **Angola**, the Security Council cooperated with the OAU in order to achieve a peaceful settlement of the situation in that country. At the Council's 3254th meeting, held on 15 July 1993, the representative of Egypt stated that, as Chairman of the OAU, Egypt was pleased to participate in the current stage of the Security Council's deliberations on the questions of peace in Angola. He then briefed Council members on the efforts made within the framework of discussions on Angola at the meeting of Heads of State and Government of the OAU, which Egypt had hosted from 28 to 30 June 1993. On behalf of the OAU, he emphasized the importance of continuing coordination and consultation between the United Nations and the OAU in regard to the Angolan problem.²²¹ At that meeting, the Council adopted resolution 851 (1993), by which the Council welcomed the Declaration on the Situation in Angola adopted by the Assembly of Heads of State and Government of the OAU and the resolution on the situation in Angola adopted by the Council of Ministers of the OAU at its fifty-eighth ordinary session, held at Cairo from 21 to 26 June 1993.

On 13 September 1993, pursuant to resolution 851 (1993), the Secretary-General submitted to the Council a further report²²² on UNAVEM II. In his report, the Secretary-General welcomed the international community's growing efforts, especially those made by the OAU Ad Hoc Committee on Southern Africa, the heads of State of neighbouring countries and the three observer States, in support of the search for a peaceful resolution to the Angolan conflict, and urged them to continue in those efforts.

²²⁰ S/PV.3592, p. 14.

²²¹ S/PV.3254, pp. 59-60.

²²² S/26434 and Add.1.

By its subsequent resolutions²²³, the Council welcomed the efforts of the Ad Hoc Committee on Southern Africa of the OAU and of heads of State of neighbouring countries to facilitate the resumption of the peace process in Angola and commended the efforts of the Secretary-General, his Special Representative and those of the three observer States to the Angolan peace process and of the OAU and some neighbouring States, in particular Zambia, and encouraged them to continue their efforts aimed at the earliest resolution of the Angolan crisis through negotiations within the framework of the "Acordos de Paz" and relevant Security Council resolutions.

At the Council's 3499th meeting, held on 8 February 1995, the Council invited a delegation of OAU Council of Ministers²²⁴ to participate in the discussion on the situation in Angola. The representative of Tunisia emphasized the great interest that President Zine El Abidine Ben Ali, Chairman of the OAU, took in a final settlement of the conflict in Angola, and the OAU's determination to spare no effort, in collaboration with the Security Council, to maintain and consolidate peace in Angola and in Africa as a whole. The representative further pointed out that the presence of the ministerial delegation also provided an opportunity to reaffirm the OAU's desire to continue and to strengthen its cooperation with the United Nations, particularly in the area of preventive diplomacy, through the OAU's central mechanism for the prevention, management and settlement of conflicts in Africa. That cooperation had proved very useful in a number of situations, and the case of Angola once again provided an opportunity to observe a successful peace-keeping operation conducted by the United Nations with the participation of the African countries.²²⁵ Several speakers welcomed the presence of the OAU ministerial delegation and its participation in the debate as a sign of the OAU's and other regional organizations' readiness to contribute to the settlement of conflicts and stressed that the involvement of regional organizations in solving crises was vital to the success of the United Nations.²²⁶ These views were reflected in resolution 976 (1995), adopted at that meeting.

²²³ Resolutions 864 (1993) of 15 November 1993, 903 (1994) of 16 March 1994, 922 (1994) of 31 May 1994, 932 (1994) of 30 June 1994, 945 (1994) of 29 September 1994, 952 (1994) of 27 October 1994, and 966 (1994) of 8 December 1994. By the latter, the Council acknowledged that the mentioned efforts had resulted in the signing of the Lusaka Protocol.

²²⁴ The delegation was made up of Foreign Ministers from Angola, Botswana, Lesotho, Namibia, South Africa and Zambia and representatives of Senegal and Guinea-Bissau.

²²⁵ S/PV.3499, p. 16.

²²⁶ Ibid, p.8 (Norway), p.11 (China), p.13 (France), p. 14 (Italy), p. 16 (Rwanda).

With regard to **South Africa**, the Council invited, through a presidential statement²²⁷ adopted on 23 November 1993, the Secretary-General, as requested by the General Assembly²²⁸, to accelerate contingency planning for a possible United Nations role in the election process of that country, including coordination with the observer missions of the OAU, the European Community and the Commonwealth.

At the 3329th meeting, held on 14 January 1994, Council members welcomed the cooperation between the intergovernmental institutions involved in the monitoring of the South African elections and emphasized the importance of the coordinating role of the United Nations. By resolution 894 (1994), adopted at that meeting, the Council commended the positive contribution already made by the United Nations Observer Mission in South Africa (UNOMSA) to the transitional process in South Africa and the positive contribution of the OAU, the Commonwealth and the European Union (EU) in that regard. By that resolution, the Council agreed with the proposals by the Secretary-General concerning for the coordination of the activities of the international observers provided by the OAU, the Commonwealth and the EU.

In his last report²²⁹ to the Council on the question of South Africa, on 16 June 1994, the Secretary-General noted that, as an exercise in preventive diplomacy, drawing on the strengths of several international organizations to support indigenous efforts towards peace and national reconciliation, the international community's efforts in South Africa since 1992 offered a unique and positive demonstration of the benefits of such cooperation. It had been probably the closest form of cooperation achieved by those organizations so far. He intended to invite the OAU, the Commonwealth and the EU, as well as other concerned regional organizations, to work out guidelines for future cooperation based on the success, as well as the mistakes, of their common experience in South Africa. By resolution 930 (1994), adopted at the Council's 3393rd meeting on 27 June 1994, the Council commended the vital role played by the Special Representative of the Secretary-General and the Mission, together with the OAU, the Commonwealth and the EU, in support of the establishment of a united, non-racial and democratic South Africa.

Asia

²²⁷ S/1994/16.

²²⁸ General Assembly resolutions 48/159 A of 20 December 1993 and 48/230 of 23 December 1993.

²²⁹ S/1994/717.

In **Tajikistan**, the Security Council established, during the period under review, the United Nations Mission of Observers in Tajikistan (UNMOT) in order to achieve, in cooperation with a collective peace-keeping force of the Commonwealth of Independent States (CIS) as well as in cooperation with the CSCE through the good offices of the Secretary-General, a cease-fire and a peaceful settlement of the conflict.

Initially, the Council welcomed, through its decisions²³⁰ and communications²³¹, the efforts by regional parties and the CSCE aimed at stabilizing the situation. At the 3482nd meeting on 16 December 1994, the Council decided, by resolution 968 (1994), to establish UNMOT with the mandate to assist in maintaining the cease-fire, and to maintain, to this end, close contacts with the parties to the conflict, as well as close liaison with the CSCE Mission in Tajikistan and with the Collective Peace-keeping Forces of the CIS in Tajikistan and with the border forces. At that meeting, the representative of Tajikistan stated that his delegation considered the collective peace-keeping Forces of the CIS to be a regional arrangement concluded in conformity with Chapter VIII of the Charter and with the purposes and principles of the Organization. The neutrality and impartiality of those forces were clearly reflected in their mandate, as reported by the Secretary-General.²³² The representative of the Russian Federation stated that the collective peace-keeping forces of the CIS and the United Nations observer mission had separate mandates, but a single goal: to promote the stabilization of the situation and the process of national reconciliation in Tajikistan, a process which required their interaction.²³³ The representative of the Czech Republic stressed the principle of neutrality and impartiality for the activities of “other forces” in Tajikistan and stated that his Government believed that monitoring their neutrality and impartiality should be a part of UNMOT’s job.²³⁴

By its subsequent decisions²³⁵, the Council commended the efforts of the Secretary-General and his Special Envoy as well as of the countries and regional organizations acting as observers at the inter-Tajik talks, expressed its satisfaction at the close contacts of UNMOT with the parties to the conflict, as well as at its close liaison with the collective peace-keeping forces,

²³⁰ Presidential statement of 23 August 1993 (S/26341).

²³¹ Letter dated 23 November 1993 (S/26794).

²³² S/PV.3482. p. 3.

²³³ Ibid, p. 6.

²³⁴ Ibid, p. 8.

²³⁵ Resolutions 999 (1995) of 16 June 1995 and 1030 (1995) of 14 December 1995; presidential statement of 25 August 1995 (S/PRST/1995/42).

the border forces and the mission in Tajikistan of the OSCE, and extended the mandate of UNMOT twice²³⁶ during the remainder of the period under review.

Europe

The Security Council and the Conference on Security and Cooperation in Europe (CSCE) joined efforts in order to achieve a peaceful settlement regarding the situation in **Nagorno-Karabakh**. Besides expressing²³⁷ its full support for the efforts taken within the CSCE-framework, and specifically for the Minsk Conference, the Council requested²³⁸ the Secretary-General, in consultation with the CSCE, to ascertain facts and submit urgently a report to the Council containing an assessment of the situation on the ground. In his report²³⁹ of 14 April 1993, the Secretary-General confirmed his continued full and active support for the CSCE's effort to convene the Minsk Conference as soon as possible and to lend technical assistance in the deployment of the CSCE monitoring mission. By its subsequent decisions²⁴⁰ regarding the situation in Nagorno-Karabakh, the Council continued to support, also through requesting the good offices of the Secretary-General, the efforts of the so-called Minsk group of the CSCE, including a monitoring mission sent by that organization.

The CSCE stressed the importance of the Security Council's guidance for the peace process. The Chairman of the CSCE noted in his report²⁴¹ of 1st October 1993, considered at the Council's 3292nd meeting on 14 October 1993, that the adoption of a Security Council resolution or a presidential statement on the Nagorny-Karabakh conflict would represent a source of guidance and encouragement, both for the parties to the conflict and for the Minsk Group and suggested some points to be included in such a decision, such as, among others, an expression of readiness on the part of the United Nations to send its representatives to observe the Minsk Conference, if invited, to provide all possible assistance for the substantive negotiations that would follow the opening of the Conference, and an expression of support for the monitoring mission developed by the CSCE and of the willingness of the United Nations to be associated

²³⁶ By resolution 999 (1995) until 15 December 1995; by resolution 1030 (1995) until 15 June 1996.

²³⁷ Through its presidential statements of 29 January 1993 (S/25199) and of 6 April 1993 (S/25539).

²³⁸ S/25539.

²³⁹ S/25600.

²⁴⁰ Resolutions 822 (1993) of 30 April 1993, 853 (1993) of 26 May 1993, 874 (1993) of 14 October 1993, 884 (1993) of 12 November 1993, and a presidential statement of 18 August 1993 (S/26326).

²⁴¹ S/26522.

with it in any possible way. Resolution 874 (1993), adopted at that meeting, incorporated these as well as other points proposed by the Chairman of the CSCE.

In a letter²⁴² dated 20 April 1995 from the Co-Chairmen of the OSCE Minsk Conference addressed to the President of the Security Council, the Co-Chairman observed that the continuing political support from the Security Council for the possible deployment of an OSCE peace-keeping force, as well as continued United Nations technical advice and expertise were required. The Chairman further expressed his gratefulness for the assistance the United Nations Secretariat had afforded the High-Level Planning Group in its work. By a presidential statement²⁴³, adopted on 26 April 1995, the Council stressed the urgency of concluding a political agreement on the cessation of the armed conflict on the basis of the relevant principles of the Charter of the United Nations and of the OSCE. It emphasized that the achievement of such an agreement was a prerequisite for the deployment of a multinational OSCE peace-keeping force. By that statement, the Council also confirmed its readiness to provide continuing political support, *inter alia*, through an appropriate resolution regarding the possible deployment of a multinational peace-keeping force of the OSCE following agreement among the parties for cessation of the armed conflict. The United Nations also stood ready to provide technical advice and expertise.

During the period under review, the Security Council decided to send an observer mission to **Georgia** in order to monitor a cease-fire in cooperation with a peace-keeping force by the CIS. In addition, the Council supported in its decisions²⁴⁴, the Secretary-General's ongoing cooperation with the Chairman-in-Office of the CSCE in their efforts to bring peace to the region as well as the decisions taken by the CSCE to that end. The cooperation between the missions of the United Nations and of the CIS in the region was subject to extensive debates in the Council and will therefore be laid out in more detail.

At the Council's 3268th meeting, held on 24 August 1993, the representative of France stated that, "after Liberia, just recently," the Security Council was "once again faced with a situation that was new to it," which consisted in the United Nations intervening on the ground alongside other, regional players. That type of action posed a number of problems, in particular

²⁴² S/1995/321.

²⁴³ S/PRST/1995/21.

²⁴⁴ Resolutions 849 (1993) of 9 July 1993, 858 (1993) of 24 August 1993, 876 of 19 October 1993, 881 (1993) of 4 November 1993, 892 (1993) of 22 December 1993, 894 (1994) of 31 January 1994; S/PRST/1994/17 of April 1994; resolutions 937 (1994) of 21 July 1994, 971 (1995) of 12 January 1995, and 993 (1995) of 12 May 1995.

the problem of delimiting precisely who had what responsibilities.²⁴⁵ At that meeting, the Council adopted resolution 858 (1993), by which it established the United Nations Observers Mission in Georgia (UNOMIG), welcomed the deployment of mixed interim monitoring groups of Georgian/Abkhaz/Russian units designed to consolidate the cease-fire, and requested the Secretary-General to facilitate cooperation between the United Nations observers and those units within their respective mandates.

By a letter²⁴⁶ dated 21 June 1994, the Minister of Foreign Affairs of the Russian Federation informed the Secretary-General that, acting on the basis of the provisions of Chapter VIII of the Charter of the United Nations, the CIS had decided to introduce a collective force into the conflict zone for a period of six months. The Security Council would always be kept fully informed of the size of such forces and of their activities, in accordance with Article 54 of the Charter. The Minister stated further that the CIS was anxious not to supplant the United Nations, but to help create the most favourable conditions for the efforts of the United Nations. It was therefore essential to establish from the very outset close cooperation between the peace-keeping force and UNOMIG. The Russian Federation hoped that the Security Council would decide to enlarge the staff of the Mission and expand and refine its mandate.

At the 3398th meeting on 30 June 1994, the Council adopted resolution 934 (1994), by which the Council noted with satisfaction the beginning of CIS assistance in the zone of conflict, in continued coordination with UNOMIG, and on the basis of further coordinating arrangements with UNOMIG to be agreed by the time of the Council's consideration of the Secretary-General's recommendations on the expansion of UNOMIG; and requested the Secretary-General to report to the Council on the outcome of discussions between UNOMIG, the parties and the CIS peace-keeping force designed to reach an agreement on the arrangements which would exist on the ground for coordination between an expanded UNOMIG and the CIS peace-keeping force. At that meeting, the representative of France stated that it was necessary that, together with the deployment of the CIS, a new mandate be rapidly entrusted to UNOMIG to verify all aspects of the implementation of the agreement of 14 May 1994. The Council would not be able to adopt a resolution to that effect until the Observer Mission and the CIS force had concluded the necessary arrangements concerning the coordination of their activities and until the parties had

²⁴⁵ S/PV.3268, p. 3.

²⁴⁶ S/1994/732.

given the assurances that would guarantee full freedom of movement.²⁴⁷ The representative of the Czech Republic stated that his delegation believed that the new element in the resolution, introduced originally by the Russian Federation, ran counter to the general understanding in the Security Council that the Council would be in a position to consider and pass judgement on the peace-keeping operation of the CIS in Abkhazia, Georgia, only after it had received and deliberated upon the Secretary-General's substantive report on UNOMIG. That report should be available shortly and should address a number of important, and so far unclear, aspects of the peace-keeping operation in Abkhazia, Georgia, including the vital issue of coordination and cooperation between UNOMIG and the CIS peace-keeping forces. He reiterated his delegation's concern that many aspects of the CIS peace-keeping operation, including coordination and interaction with UNOMIG, remained unclear and hazy.²⁴⁸

At the Council's 3407th meeting, held on 21 July 1994, Council members discussed the modalities of the cooperation between UNOMIG and the CIS peace-keeping force and reflected on the implications of cooperation between missions of the United Nations and a regional organization or of a Member State in general. With regard to the situation in Georgia, the representative of France stated that there was a need to find a balance between the action of the peace-keeping force of the CIS member States - autonomous action - and that of a United Nations mission with a mandate from the Council. It was also important to give UNOMIG the mandate to observe the action of the peace-keeping force of the CIS member States within the framework of the implementation of the Agreement of 14 May – a requirement that became legitimate once the United Nations was requested to participate in the implementation of that Agreement. His delegation welcomed the fact that the Russian Federation had sought the support of the Council for a regional stabilization operation in the CIS and that that operation thus became a part of the process of a political settlement that was under the auspices of the United Nations. That positive development emphasized the regulatory functions that the Security Council had now shouldered for peace-keeping activities carried out by Powers or by regional forums.²⁴⁹ The representative of the Russian Federation stated that Russia and the other States of the CIS believed that the closest interaction between the peace-keeping forces of the Commonwealth and UNOMIG was the most important condition for the successful attainment of

²⁴⁷ S/PV.3398, p. 2.

²⁴⁸ S/PV.3398, p. 3.

²⁴⁹ S/PV.3407, p. 4.

their parallel objectives.²⁵⁰ The representative of New Zealand stated that the presence of two peace-keeping operations in one country made it imperative that the relationship between those two forces be clearly set out and well understood by all involved at all levels. There were a number of elements which – as past experience with UN peace-keeping operations suggested – needed to be addressed in such a situation, which the resolution did²⁵¹.

The representative of the Czech Republic noted that the observation of the CIS mission by UNOMIG had been an issue of great concern and importance to his delegation throughout the Council's deliberations on Abkhazia, Georgia. UNOMIG's reports on that issue should therefore be followed with particular interest. He stressed that by adopting the resolution, the Security Council had entered uncharted waters. For the first time, Council members had been faced with a situation in which a State with openly declared national interests in the region was undertaking a peace-keeping operation in a neighbouring country. After that first case may come other cases. No two peace-keeping operations were identical; each had its unique settings and features. Therefore, his delegation did not regard the resolution as one that would set a precedent.²⁵² The representative of the United Kingdom acknowledged that in many ways the resolution and the arrangements set out in it broke new ground. That approach came against the background of increasing demands on United Nations peace-keeping capabilities, demands that threatened to outstrip supply. It represented a response to a situation of grave concern to all, but in which the conditions allowing for the deployment of a United Nations peace-keeping operation did not, at that point, exist.²⁵³

The representative of Nigeria observed that his delegation did not see the resolution as “ground-breaking”. With the demands for United Nations collective peace-keeping outstripping its ability and resources, it had already become clear and imperative that regional organizations and/or arrangements had to step in. The representative pointed out that “in all modesty, we in the West African subregion can claim to have already blazed that trail with the arrangement in Liberia of the ECOWAS, which was later complemented by UNOMIL.”²⁵⁴ The President, speaking in his capacity as the representative of Pakistan, expressed concern over an emerging

²⁵⁰ Ibid, pp. 5-6.

²⁵¹ The Ambassador named as elements: Consistency between the concept of operations of the two forces; conformity with peace-keeping principles; and thirdly, satisfactory arrangements for interaction between the forces. See S/PV.3407, p. 6.

²⁵² Ibid, pp. 8-9.

²⁵³ Ibid, p. 9.

²⁵⁴ Ibid, p. 12.

tendency to attribute peace-keeping roles to the countries of the region, especially when such countries had direct political interests in the area of the conflict. The States Members of the United Nations should in no way abrogate their Charter responsibilities in such a manner. His delegation was aware of the financial difficulties faced by the United Nations, particularly in relation to its peace-keeping operations. These constraints, however, should not be allowed to impinge upon the obligations of the United Nations to uphold peace and security around the world. It was common responsibility not to allow any erosion of the system of collective security as envisaged in the United Nations Charter. His delegation did not favour the practice of post-facto endorsement by the Security Council of a regional peace-keeping operation which was outside the purview of the United Nations.²⁵⁵

By resolution 937 (1994), adopted at that meeting, the Council, noting the assurances given by the parties and the representatives of the CIS peace-keeping force concerning the full freedom of movement for UNOMIG in the performance of its mandate; decided that the mandate of an expanded UNOMIG should include observing the operation of the CIS peace-keeping force. By that resolution, the Council also noted the Secretary-General's intention to write to the Chairman of the Council of Heads of State of the CIS on the respective roles and responsibilities of UNOMIG and the CIS peace-keeping force and requested the Secretary-General to establish an appropriate arrangement to that effect.

In its subsequent decisions²⁵⁶ on the situation in Georgia, the Council commended the cooperation between the United Nations and the CIS forces and decided twice, during the remainder of the period under review, to extend the mandate of UNOMIG.

During the period under review, the Security Council supported the efforts of the CSCE to achieve a peaceful settlement of the situation in the **former Yugoslavia**, and specifically its continued presence in the region to that end. By a letter²⁵⁷ dated 20 July 1993, the Chairman-in-Office of the Council of Ministers of the CSCE informed the President of the Security Council, in conformity with Article 54 of the Charter, that it was the considered opinion of the CSCE participating States that the decision by the Belgrade authorities not to allow the continued

²⁵⁵ Ibid, p. 13.

²⁵⁶ Resolution 971 (1995) of 12 January 1995 extended UNOMIG's mandate until 15 May 1995; Resolution 993 (1995) of 12 May 1995 until 12 January 1996.

²⁵⁷ S/26121.

functioning of the CSCE missions in Kosovo, Sandzak, and Vojvodina aggravated the existing threats to peace and security in the region.

At the Council's 3262nd meeting, held on 9 August 1993, the representative of China, referring to the principle of non-interference in the internal affairs of sovereign States, observed that practice over the years had shown that the consent and cooperation of the parties concerned were essential factors in ensuring the success of the endeavours of the United Nations and regional organizations. The speaker noted that, when differences arose between a regional organization and a sovereign State, it was important to consider the question whether the Security Council should involve itself and, if so, which principle should guide its actions.²⁵⁸ The representative of Hungary stated that the CSCE missions had proven extremely valuable in promoting stability and counteracting the risk of ethnically motivated violence in Kosovo, Sandjak and Vojvodina. Hungary, like the CSCE community as a whole, was of the view that the expulsion of the CSCE mission was an act that further aggravated the threat to peace and security in the Balkan region. Therefore, his country considered that the call of the Council to the Belgrade Government to re-examine its position was a perfectly legitimate and sound action, supporting the efforts of the CSCE in a matter of grave concern.²⁵⁹ That position was echoed by the representatives of Pakistan²⁶⁰, France²⁶¹, Spain²⁶² and the United States²⁶³. By resolution 855 (1993), adopted at that meeting, the Council endorsed the efforts of the CSCE and called upon the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) to reconsider their refusal to allow the continuation of the activities of the CSCE missions in Kosovo, Sandjak and Vojvodina, the Federal Republic of Yugoslavia (Serbia and Montenegro); to cooperate with the CSCE by taking the practical steps needed for the resumption of the activities of these missions; and to agree to an increase in the number of monitors as decided by the CSCE.

Americas

During the period under review, the Security Council cooperated with the Organization of American States (OAS) in order to achieve a pacific settlement of the situation in **Haiti**. The

²⁵⁸ S/3262, pp. 4-5.

²⁵⁹ S/PV.3262, pp. 5-6.

²⁶⁰ Ibid, p. 8

²⁶¹ Ibid, p. 9.

²⁶² Ibid, pp. 12-13.

²⁶³ Ibid, pp. 17-18.

cooperation between the United Nations and the OAS took place at various levels and included a number of measures by the Council²⁶⁴. The most important elements of its decisions in support of the cooperation between the Secretary-Generals of the United Nations and the OAS are described in the following.

At the 3238th meeting, on 16 June 1993, the Council adopted resolution 862 (1993), by which the Council commended the efforts undertaken by the Secretary-General's Special Representative for Haiti and the Secretary-General of the OAS to establish a political dialogue with the Haitian parties; recalled in this respect, the provisions of Chapter VIII of the Charter; and stressed the need for effective cooperation between regional organizations and the United Nations. By that resolution, the Council also welcomed the request by the General Assembly that the Secretary-General take the necessary measures in order to assist, in cooperation with the OAS, in the solution of the crisis in Haiti and requested the Secretary-General to report to the Security Council on progress achieved in the efforts jointly undertaken by him and the Secretary-General of the OAS with a view to reaching a political solution to the crisis in Haiti.

On 12 July 1993, pursuant to resolution 841 (1993), the Secretary-General submitted to the Council a report²⁶⁵, in which he informed the Council that he had met with the President of Haiti and the Commander-in-Chief of the Armed Forces of Haiti at Governors Island, New York, from 27 June to 3 July 1993. The meeting had resulted in the signing of a 10-point Agreement²⁶⁶ containing, *inter alia*, the following arrangements: (1) organization under the auspices of the United Nations and the OAS of a political dialogue between representatives of the political parties represented in the Parliament, with the participation of representatives of the Presidential Commission; (4) suspension, on the initiative of the United Nations Secretary-General, of the sanctions adopted under resolution 841 (1993), and the suspension, on the initiative of the Secretary-General of the OAS, of the OAS sanctions, immediately after the Prime Minister was

²⁶⁴ In addition to its support of the measures taken in order to achieve a peaceful settlement, the Security Council officially authorized sanctions imposed by the OAS and imposed additional ones (see Subsection D). The Council also established UNMIH (resolution 867 (1993)) and authorized, by resolution 940 (1994), Member States to form a multinational force and to use all necessary means to facilitate the departure from Haiti of the military leadership, and the restoration of the legitimate authorities of the Government of Haiti, and to establish and maintain a secure environment that would permit the implementation of the Governors Island Agreement (see Chapter V of this Supplement).

²⁶⁵ S/26063.

²⁶⁶ Ibid.

confirmed and had assumed office in Haiti; and (10) verification by the United Nations and the OAS of fulfillment of all the commitments contained in the Governors Island Agreement.

At the 3282nd meeting, on 23 September 1993, the Council adopted unanimously resolution 867 (1993), by which it established the United Nations Mission in Haiti (UNMIH) for a period of six months; and by which the Council, *inter alia*, welcomed the intention of the Secretary-General to place the peace-keeping Mission under the oversight of the Special Representative of the Secretary-General of the United Nations and the Secretary-General of the OAS²⁶⁷, who also oversaw the activities of the International Civilian Mission in Haiti²⁶⁸, so that the peace-keeping Mission may benefit from the experience and information already obtained by the Civilian Mission. By that resolution, the Council also expressed its appreciation for the constructive role of the OAS in cooperation with the United Nations in promoting the solution of the political crisis and the restoration of democracy in Haiti, and stressed in this context the importance of ensuring close coordination between the United Nations and the OAS in their work in Haiti.

By its subsequent decisions²⁶⁹ concerning the situation in Haiti, the Council expressed its support for the joint efforts of the Secretaries-General of the United Nations and the OAS to achieve a political settlement through the implementation of the Governors Island Agreement, for their efforts to facilitate the immediate return to Haiti of MICIVIH, and called upon them to continue to render all appropriate assistance to the Haitian electoral process.

²⁶⁷ These functions were jointly held by Mr. Dante Caputo.

²⁶⁸ On 20 April 1993, the General Assembly authorized, by its resolution 47/20B, the United Nations' participation, jointly with the OAS, in the International Civilian Mission in Haiti (MICIVIH) with the initial task of verifying compliance with Haiti's international human rights obligations.

²⁶⁹ Presidential statements of 30 October 1993 (S/26668) and of 15 November 1993 (S/26747); resolutions 917 (1994) of 29 September 1994, 944 (1994) of 6 May 1994, 975 (1994) of 30 January 1995, 1007 (1005) of 31 July 1995; and S/PRST/1995/55 of 16 November 1995.

C. CHALLENGES TO THE APPROPRIATENESS OF SECURITY COUNCIL ACTION IN THE LIGHT OF ARTICLE 52

The enumeration of the peaceful means by which the parties to a dispute, in accordance with Article 33 (1) of the Charter, shall first of all seek to settle their dispute, includes “resort to regional agencies or arrangements”. This is further emphasized in Article 52, which provides that Member States “shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council”; and that the Security Council “shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies”. During the period under review, Member States challenged the competence of the Security Council to consider a dispute on the basis of these provisions in the following instance.

CASE 24

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

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, the representative of Sudan, speaking on behalf of the LAS, stated at the Council’s 3312th meeting on 11 November 1993 that the matter before the Security Council concerned a State member of the LAS and pointed out that the LAS had expressed willingness to provide its good offices and to cooperate with the Secretary-General and the Security Council in resolving the deteriorating conflict. The representative noted that, in dealing with the crisis, the LAS had based itself on the Charter, which stipulated that all international disputes should be settled by peaceful means and without endangering international peace and security, and especially on Article 52 of the Charter.²⁷⁰

In his explanation of his vote of abstention, the representative of China pointed out that organizations such as the OAU, the LAS and the Movement of Non-Aligned Countries had expressed their willingness to contribute to the settlement of the crisis, and had already made

²⁷⁰ S/PV.3312, pp. 30-39.

unremitting efforts and achieved certain results. More time should be given for these continuing efforts by the organizations that were in a better position to promote the settlement of the dispute.²⁷¹

D. COUNCIL AUTHORIZATION OF ENFORCEMENT ACTION BY REGIONAL ORGANIZATIONS

During the period under review, with regard to the situation in **Bosnia and Herzegovina**, the Security Council, recalling Chapter VIII of the United Nations Charter in several of its decisions, authorized, for the first time, “States acting nationally or through regional organizations” to use force for the purposes of implementation of a flight ban and support of a UN-mission in the performance of its mandate. It further continued to authorize, under the same formula, Member States to enforce an arms and trade embargo.

At the Council’s 3191st meeting, held on 31 March 1993, the representative of France stated that the Security Council was adopting a resolution that would mark the involvement of new actors – States or regional organizations – which would intervene in new circumstances, as peacemakers and not simply as peacekeepers. The representative welcomed the fact that a balance had been struck between the technical necessity of setting up effective military structures and the political need to place them under the authority of the Security Council, in close coordination with the Secretary-General. Those principles should serve as a model for future peace-keeping or peacemaking operations, to be carried out with Member States acting in their national capacity or in the framework of regional organizations or arrangements.²⁷² The representative of Brazil stated that his delegation attached particular importance to the fact that, in accordance with the resolution, the Security Council would be kept thoroughly informed of the relevant actions and that regional organizations or arrangements involved in the action would be doing so under the provisions of Chapter VIII of the Charter.²⁷³ At that meeting, the Council adopted resolution 816 (1993), by which the Council, recalling the provisions of Chapter VIII of the Charter, authorized Member States, acting nationally or through regional organizations or arrangements, to take, under the authority of the Security Council, all necessary measures to

²⁷¹ Ibid, pp. 52-54.

²⁷² S/PV.3191, p. 4.

²⁷³ Ibid, pp. 19-20.

enforce a flight ban in the in the airspace of Bosnia and Herzegovina. Pursuant to that resolution, the Secretary-General informed the President of the Security Council by a letter dated 9 April 1993²⁷⁴ that Member States concerned, acting nationally as well as through the regional arrangement of the North Atlantic Treaty Organization (NATO), had been closely coordinating with him and the United Nations Protection Force (UNPROFOR) on the measures they were taking to ensure compliance with the ban on all flights in the airspace of Bosnia and Herzegovina.

On 17 April 1993, the Council adopted, at its 3200nd meeting, resolution 820 (1993), by which the Council, recalling the provisions of Chapter VIII of the Charter, reaffirmed the responsibility of riparian States to take necessary measures to monitor and, if necessary, halt and control, under the authority of the Security Council, shipping on the Danube in accordance with resolutions 713 (1991), 757 (1992), 787 (1992). By that resolution, the Council reiterated in this connection its request in resolution 787 (1992) to all States, including non-riparian States, to provide, acting nationally or through regional organizations or arrangements, such assistance as may be required by the riparian States.

At the 3228th meeting, held on 4 June 1993, the Council adopted resolution 836 (1993), by which it decided that, Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and the Force, all necessary measures, through the use of air power, in and around the safe areas in Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate.²⁷⁵ At that meeting, the representative of the United Kingdom stated that the resolution on "safe areas", which had just been adopted, was another essential step in the immediate agenda. A new element was that the United Kingdom, with France and the United States, probably acting in a NATO framework, were prepared, once authorized by this resolution, to make available air power in response to calls for assistance from United Nations forces in and around the "safe areas".²⁷⁶

Throughout the period under review, with regard to the situation in Bosnia and Herzegovina, cooperation between the United Nations and regional actors, including NATO, remained subject to extensive discussions in the Council. Thus, at the Council's 3336th meeting,

²⁷⁴ S/25567.

²⁷⁵ The Council reaffirmed this decision in resolution 844 (1993), adopted on 18 June 1993.

²⁷⁶ S/PV.3228, pp. 56-57.

held on 14 and 15 February 1994, the representative of the United States noted that, for the first time, a regional security organization, NATO, had acted to implement a decision of the Council to use force under Chapter VII of the United Nations Charter. Cooperation between NATO and the United Nations would be essential, not only for the citizens of Sarajevo and the other safe areas in Bosnia, but also for the precedent it would set for the future of collective security. The firm and fair implementation of NATO's decision would contribute much to the credibility of the Security Council and of the United Nations.²⁷⁷ In contrast, the Minister for Foreign Affairs of Malaysia observed at the Council's 3370th meeting on 27 April 1994, that the events in Gorazde had placed the Security Council, the major Powers and the machinery of the United Nations, reposed in the Secretary-General, in an untenable position. They had, among other things, exposed the break-down in the chain-of-command and between principled stand, responsibility and the need for action. One could only conclude that, between the United Nations machinery, as reposed in the Secretary-General, the Security Council and NATO, there had been a clear deflection of responsibility. It had raised the question in many quarters as to who was actually in charge.²⁷⁸ At the Council's 3578th meeting, held on 15 September 1995, the representative of Botswana stressed that it was critical that the Council guard against losing control altogether in transferring the authority of the United Nations to regional arrangements. In such situations, the United Nations should never assume the position of a bystander in an operation that was supposed to be under the command and control of the Security Council.²⁷⁹

In the light of the transfer of authority from UNPROF in Bosnia and Herzegovina to an implementation force (IFOR), the representative of Brazil observed at the Council's 3607th meeting on 15 December 1995 that, as the implementation force took up its position in a terrain that was still fraught with uncertainties, it was essential that the organ responsible for safeguarding international peace and security be given the necessary tools to enable it to exercise the role ascribed to it by the Charter. The representative noted that the creation of multinational forces at the behest of the Security Council had ceased to be an unusual feature. If those forces were to be perceived by the international community as legitimate and credible, however, the necessary accountability towards the Security Council had to be strictly observed. As an organ acting on behalf of the entire United Nations membership, the Security Council was given wide

²⁷⁷ S/PV.3336, p. 21.

²⁷⁸ S/PV.3370, p. 8.

²⁷⁹ S/PV.3578, p. 10.

powers in responding promptly to evolving situations. That it should envisage the creation of multinational forces for dealing with certain situations and not with others was a matter that deserved to be clarified for all United Nations Members in the most satisfactory manner if support for such decisions were to have the desired firmness and unanimity.²⁸⁰ At that meeting, the Council adopted resolution 1031 (1995), by which the Council authorized the Member States acting through or in cooperation with the organization referred to in the Peace Agreement to establish a multinational implementation force (IFOR) under unified command and control in order to fulfill the role specified by that Agreement.

With regard to the situation in **Haiti**, during the period under review, the Security Council, recalling Chapter VIII in several of its decisions, gave its authorization for a trade and arms embargo previously imposed by the OAS against Haiti and imposed additional measures under Chapters VII and VIII of the Charter.

By a letter²⁸¹ dated 7 June 1993, addressed to the President of the Security Council, the representative of Haiti requested that the Security Council make universal and mandatory the sanctions that were being applied against the *de facto* authorities in Haiti by the OAS. He recommended that the Council give priority to the embargo on petroleum products and the supply of arms and munitions.

At the Council's 3238th meeting, held on 16 June 1993, the representative of Canada noted that the OAS embargo on trade with Haiti was not binding on countries which were not members of that organization, thus reducing its impact and thereby allowing the illegal regime in Port-au-Prince to cling to power. Acknowledging that reality, the OAS had found it necessary to seek the support of the United Nations. Canada strongly supported the efforts of the past six months of the Special Envoy of the OAS and the United Nations to reach a negotiated settlement. The Council should respond positively to the call by President Aristide and impose an embargo on the delivery of oil supplies in order to bring about a speedy conclusion to the situation.²⁸² By resolution 841(1993), adopted at that meeting, the Council, considering that the request of the Permanent Representative of Haiti defined a unique and exceptional situation warranting extraordinary measures by the Security Council in support of the efforts undertaken

²⁸⁰ S/PV.3607, p. 27.

²⁸¹ S/25958.

²⁸² S/PV.3238, p.7.

within the framework of the OAS; decided to implement the provisions set forth in paragraphs 5 to 14 of that resolution, which were consistent with the trade embargo recommended by the OAS.

In subsequent resolutions²⁸³ regarding the situation in Haiti, the Council, continuously acting under Chapters VII and VIII of the Charter and calling upon Member States, acting nationally or through regional agencies or arrangements, decided on the suspension, reinstatement, expansion²⁸⁴, and termination of enforcement actions in accordance with the recommendations laid out in the reports²⁸⁵ by the Secretary-General, having regard for the views of the Secretary-General of the OAS.

At the 3437th meeting, held on 15 October 1994, the Council adopted resolution 948 (1994), by which the Council welcomed the fact that, now that President Aristide had returned to Haiti, sanctions would be lifted in accordance with resolution 944 (1994). At that meeting, the representative of Nigeria welcomed, like other members of the Council, the peaceful return, on that day, of President Aristide to Haiti, which was due to the tremendous efforts of the United Nations, its Secretary-General, the regional organization and other Member States.

²⁸³ Resolutions 861 (1993) of 27 August 1993, 873 (1993) of 13 October 1993, 875 (1993) of 16 October 1993, 917 (1994) of 6 May 1994, 944 (1994) of 29 September 1994, and 948 (1994) of 15 October 1994.

²⁸⁴ By resolution 917 (1994) of 6 May 1994, the Council also imposed a flight and a trade embargo against Haiti, a travel embargo for officers of the Haitian military, their families or those employed by them; and an asset freeze for persons defined by that resolution.

²⁸⁵ See reports by the Secretary-General dated 12 July 1993 (S/26063), 26 August 1993 (S/26361), 13 October 1993 (S/26573), 20 June 1994 (S/1994/742), 28 September 1994 (S/1994/1143).

PART IV

CONSIDERATION OF THE MISCELLANEOUS PROVISIONS OF THE CHARTER (Articles 102 and 103 of the Charter)

Article 102

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

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

Article 103

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

NOTE

During the period under review, Article 102 was not explicitly invoked in any resolution. The principle of Article 102 was referred to during the deliberations of the Council at the 3256th meeting, on 20 July 1993, in connection with the status of the city of Sevastopol.²⁸⁶ In response to a decree establishing the Russian federal status of the city of Sevastopol passed by the Supreme Soviet of the Russian Federation, the Ukrainian representative noted that the decree

“is a flagrant violation of the international commitments flowing from Russia’s membership in the United Nations, its participation in the Conference on Security and Cooperation in Europe and the Treaty between Ukraine and Russia ratified by that very same Russian Parliament on 19 November 1990, which has been registered with the United Nations Secretariat in accordance with the United Nations Charter.”²⁸⁷

²⁸⁶ S/PV.3256.

²⁸⁷ Ibid, p.7.

Other than the instance mentioned above, Article 102 was explicitly referred to in a letter from the representatives of Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama addressed to the Secretary General in connection with the Treaty on Central American Social Integration. The annex of the letter contained the text of the treaty, Section V of which envisioned its formal registration with the United Nations in accordance with Article 102.²⁸⁸

Implicit references to Article 102 emerged on several occasions in letters and notes by the President of the Council. The principle of Article 102 was invoked in a note by the President of the Security Council and in three letters from the Permanent Representative of Ukraine to the President of the Security Council, in reference to the status of the city of Sevastopol.²⁸⁹

Regarding the situation between Iraq and Kuwait, Article 102 was implicitly referred to twice: In a note by the President of the Security Council containing a statement of the President made on behalf of the Council and in a letter from the Permanent Representative of Kuwait addressed to the Secretary General.²⁹⁰

Article 102 was also implicitly invoked in a letter from the Secretary General addressed to the President of the Security Council in connection with the request for admission to membership in the United Nations of the State admitted as the Former Yugoslav Republic of Macedonia.²⁹¹

During the period under review, Article 103 was not explicitly invoked in any resolution. During the Council proceedings in connection with the situation in Bosnia and Herzegovina, Article 103 was expressly referred to on two occasions.

At the 3370th meeting on 27 April 1994, the representative of Egypt, referring to the inalienable right of all states of individual or collective self-defence (Article 51), stressed that the

²⁸⁸ S/1995/396, p.22.

²⁸⁹ S/26118. The letters by the representative of Ukraine reject the Decree of the Supreme Soviet of the Russian Federation concerning Sevastopol. S/26100, S/26109, S/26075, and S/26118.

²⁹⁰ S/26006 of 28 June 1993. The note made reference to "The Agreed Minutes Restoration of Friendly Relations, Recognition and Related matters" signed by both parties on 4 October 1963 and registered with the United Nations.. See also S/26132, dated 21 July 1993.

²⁹¹ Annex V of the letter contains a draft treaty confirming the existing frontier and establishing measures for confidence building, friendship and neighbourly cooperation. The penultimate paragraph envisions that four copies of the agreement, signed through the authorized representatives, together with translations into the languages of the parties involved will constitute part of the registration of this agreement with the Secretariat of the United Nations. S/25855.

military embargo against Bosnia and Herzegovina contradicted the provisions of the Charter and the most fundamental principles of justice. Explicitly referring to Article 103, the representative stressed the supremacy of the Charter over decisions of the Council and noted that “the continued imposition of the military embargo on the Bosnian Government...is contrary to the inherent right provided for in the Charter.”²⁹²

On the second occasion, at the 3454th meeting of the Security Council on 9 November 1994, the representative of Egypt stated that

“should the Council fail to break the deadlock by choosing not to adopt the anticipated resolution, the States concerned will have the right to invoke Article 51 of the Charter, and under Article 103, individually or collectively provide Bosnia and Herzegovina with the means of self-defence.”²⁹³

Other than those mentioned above, the Security Council adopted a number of resolutions imposing measures under Chapter VII of the Charter, in which it invoked the principle of Article 103 by emphasizing the primacy of the Charter obligations over obligations contracted by Member States under any other international agreement. Most of the resolutions by which the Council imposed measures under Chapter VII in respect of Haiti, Angola, Libya, and Rwanda included such provisions, as set out below.

At the Council’s 3238th meeting on 16 June, 1993, at which resolution 841 was adopted, the Security Council, in connection with the sanctions against Haiti, called upon

“... all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to 23 June 1993;”²⁹⁴

The Council’s resolution imposing measures under Chapter VII in respect to Angola’s UNITA contained the following provisions.²⁹⁵ In resolution 864 (1993) on 15 September 1993, the Council

²⁹² S/PV.3370, p. 19.

²⁹³ S/PV.3454 (Resumption 1), p. 49.

²⁹⁴ S/RES/841, paragraph 9.

²⁹⁵ The resolution envisioned a possible oil and arms embargo against Angola’s UNITA movement in the instance that it breaks the cease-fire and the implementations of “Acordo de Paz.”

[called] upon all States, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of adoption of this resolution;²⁹⁶

A similar formulation was adopted in resolution 883 (1993) of 11 November 1993, imposing sanctions against the Libyan Arab Jamahiriya for its failure to comply with Resolutions 731 (1992) and 748 (1992).²⁹⁷

On another occasion, at the 3376th meeting on 6 May 1994, at which resolution 917 was adopted, the Council decided for an expansion of the sanctions imposed against Haiti until the return of the legitimately elected president. The resolution

“[called] upon all States, including States not Members of the United Nations, and international organizations to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the effective date of measures in this resolution or earlier relevant resolutions;”²⁹⁸

A similar formulation was adopted in resolution 918 (1994) of 17 May 1994 in respect of Rwanda. Accordingly, the Council

“[called] upon all States, including States not Members of the United Nations, and international organizations to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of the adoption of this resolution;”²⁹⁹

During the period of review, Article 103 was not a subject of debate in the Security Council. Article 103 was however explicitly evoked in a note sent by the President of the Council to Council, transmitting the text of a statement made by the President to the media in

²⁹⁶ S/RES/864, paragraph 20.

²⁹⁷ S/RES/883, paragraph 12.

²⁹⁸ S/RES/917, paragraph 12.

²⁹⁹ S/RES/918, p. 4. paragraph 15.

reference to the situation concerning the navigation on the Danube River in the Federal Republic of Yugoslavia.³⁰⁰

³⁰⁰ S/25270, 10 February 1993; the note was in response to the detention of Romanian vessels on the Danube by the authorities of Yugoslavia.