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## **Chapter X**

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

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## Introductory note

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

The period under review was marked by a considerably expanded scope of Council action in this field,<sup>1</sup> which has been attributed both to the improved opportunities for conflict resolution, and the necessity to take action in relation to acute situations resulting from changes to State structures following the end of the cold war period.<sup>2</sup>

At the Council's summit meeting on 31 January 1992, on the subject of its responsibility for the maintenance of international peace and security,<sup>3</sup> speakers expressed the hope that this new era would present new opportunities for the maintenance of peace and security on a global scale. At the same time, several speakers also highlighted the risks resulting from the break-up and the transformation of several Member States.

In a statement adopted at the conclusion of the summit meeting, the members of the Council reiterated that "all disputes between States should be peacefully resolved in accordance with the provisions of the Charter" and expressed the belief that there were now "new favourable international circumstances" under which the Security Council had begun "to fulfil more effectively its primary responsibility for the maintenance of international peace and security".<sup>4</sup>

In his report entitled "An Agenda for Peace" dated 17 June 1992,<sup>5</sup> which the Secretary-General had been invited to prepare by the Council in the above-mentioned statement, the Secretary-General observed that the Organization's "security arm, once disabled by circumstances it was not created or equipped to control, ha[d] emerged as a central instrument for the prevention and resolution of conflicts and for the preservation of peace".<sup>6</sup> The Secretary-General further observed that "the present determination in the Security Council to resolve international disputes in the manner foreseen in the Charter ha[d] opened the way for a more active Council role" and that "with greater unity ha[d] come leverage and persuasive power to lead hostile parties towards negotiations".<sup>7</sup>

Responding to that report, the General Assembly, in a resolution adopted on 18 December 1992, encouraged the Security Council "to utilize fully the provisions of Chapter VI of the Charter on procedures and methods for peaceful settlements of disputes and to

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<sup>1</sup> See for example the comments on the expanding activities of the Council in the report of the Secretary-General on the work of the Organization for 1992 (*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 1 (A/47/1)*, para. 16).

<sup>2</sup> See for example the verbatim record of the debate held on 31 January 1992 at the summit meeting on the responsibility of the Security Council in the maintenance of international peace and security (3046th meeting), an outline of which is also contained in chapter VIII, section 28. See also the statement by the President of the Council adopted at the conclusion of that summit (S/23500), and the report of the Secretary-General entitled "An Agenda for Peace", dated 17 June 1992 (S/24111).

<sup>3</sup> The first ever meeting of the Council at the level of Heads of State and Government (see footnote 2).

<sup>4</sup> S/23500. In that statement, the members of the Council further agreed that the world now had "the best chance

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of achieving international peace and security since the founding of the United Nations", but also recognized that change, however welcome, had "brought new risks for stability and security", noting that "some of the most acute problems result[ed] from changes to State structures".

<sup>5</sup> S/24111. The full title of the report is "An Agenda for Peace: preventive diplomacy, peacemaking and peacekeeping".

<sup>6</sup> S/24111, para. 15. The Secretary-General also gave definitions of the terms "preventive diplomacy", "peacemaking" and "post-conflict peacebuilding" (*ibid.*, para. 20). "Peacemaking" is defined as "action to bring hostile parties to agreement, essentially through such peaceful means as those foreseen in Chapter VI of the Charter of the United Nations". In further comments on peacemaking in the report, the following explanation is provided: "Between the tasks of seeking to prevent conflict and keeping the peace lies the responsibility to bring hostile parties to agreement by peaceful means. Chapter VI of the Charter set forth a comprehensive list of such means for the resolution of conflict" (*ibid.*, para. 34).

<sup>7</sup> S/24111, para. 35.

call upon the parties concerned to settle their disputes peacefully”.<sup>8</sup>

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

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

Part I illustrates how, under Article 35, Member States and non-member States have brought new disputes and situations to the attention of the Security Council. Also considered are referrals of such situations by the Secretary-General under Article 99 and the General Assembly under Article 11 (3). Part II sets out investigations and fact-finding missions mandated by the Security Council under Article 34, taking into consideration fact-finding missions by the Secretary-General in regard to which the Council expressed its support or of which it took note. Furthermore, this part will look at several instances, and one in particular, in which Member States demanded or suggested to the Council that an investigation be carried out or a fact-finding mission be dispatched. Part III provides an overview of Council recommendations and decisions, under the relevant

Articles of the Charter, with regard to the pacific settlement of disputes. Specifically, it will illustrate Council recommendations to the parties to a conflict as well as Council decisions requesting the Secretary-General’s good offices in the pacific settlement of disputes. Finally, part IV will reflect constitutional discussions within the Security Council and in its communications with Member States, on the interpretation or application of the provisions of Chapter VI of the Charter.

*Article 11, paragraph 3*

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

*Article 33*

*1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.*

*2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.*

*Article 34*

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

*Article 35*

*1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.*

*2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter.*

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<sup>8</sup> Resolution 47/120 A, section I, para. 3; the General Assembly also encouraged the Secretary-General and the Security Council “to engage at an early stage in close and continuous consultation in order to develop, on a case-by-case basis, an appropriate strategy for the peaceful settlement of specific disputes, including the participation of other organs, organizations and agencies of the United Nations system, as well as regional arrangements and organizations as appropriate” (ibid., para. 4).

3. *The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.*

*Article 36*

1. *The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.*

2. *The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.*

3. *In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.*

*Article 37, paragraph 1*

*Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.*

*Article 38*

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

*Article 99*

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

## Part I

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

#### Note

Within the framework of the Charter, Articles 35, 37 (1) and 38 are generally regarded as the provisions on the basis of which States may or, in the case of Article 37 (1), shall refer disputes to the Security Council. During the reporting period, disputes and situations were almost exclusively referred to the Security Council by communications from Member States. While Article 35 was expressly referred to in a small number of communications,<sup>9</sup> most

communications did not cite any specific Article as the basis on which they were submitted.<sup>10</sup>

concerning the situation in Nagorny-Karabakh (S/23896); and letter dated 7 December 1992 from the representative of Bosnia and Herzegovina, concerning the deteriorating situation in Bosnia and Herzegovina (S/24916). See also the verbatim record of the 2861st meeting of the Security Council held on 28 April 1989; at that meeting, the representative of Panama thanked the Council in his opening statement for having agreed to Panama's request for a meeting "to be convened on the basis of Articles 34 and 35" (S/PV.2861, p. 6).

<sup>9</sup> See the following communications addressed to the President of the Security Council: letters dated 22 March and 3 April 1989 from the representative of Afghanistan, concerning an alleged military aggression by Pakistan (S/20545 and S/20561); letter dated 28 January 1991 from the representative of Cuba, concerning the situation between Iraq and Kuwait (S/22157); note verbale dated 8 February 1991 from the Permanent Mission of the Libyan Arab Jamahiriya, concerning the situation in the occupied Arab territories (S/22211); letter dated 8 May 1992 from the representative of Cuba, concerning alleged terrorist activities against Cuba (S/23890); letter dated 11 May 1992 from the representative of Armenia,

<sup>10</sup> In his report on the work of the Organization for 1990, the Secretary-General expressed the belief that the peacemaking capacity of the United Nations would be considerably strengthened if the Security Council had a peace agenda that was not confined to items formally included in the agenda at the request of Member States, and if it held periodic meetings to survey the political scene and identify points of danger at which preventive and anticipatory diplomacy was required (*Official Records of the General Assembly, Forty-fifth Session, Supplement No. 1 (A/45/1)*, p. 7). Similarly, in his annual report for 1989, the Secretary-General had proposed that the Council could meet periodically to

Under Articles 11 (3) and 99 of the Charter, the General Assembly and the Secretary-General may refer matters to the Security Council.<sup>11</sup> While during the period under review the General Assembly did not refer any matters to the Security Council under Article 11 (3),<sup>12</sup> the Secretary-General referred matters to the Security Council as provided for under Article 99 in a limited number of instances.

### Referrals by States

No dispute or situation was submitted by a State other than a Member of the United Nations under Article 35 (2). In connection with the situation in Cyprus, an issue was raised, however, by the representative of Cyprus with regard to the submission, by a Member State, namely Turkey, of a communication from a non-State entity, namely the “Turkish Republic of Northern Cyprus”.<sup>13</sup>

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consider the state of international peace and security in different regions at the level of foreign ministers and, when appropriate, in closed session, and that, where international friction appeared likely, the Council could act on its own or request the Secretary-General to exercise his good offices (*ibid.*, *Forty-fourth Session, Supplement No. 1 (A/44/1)*, p. 5).

<sup>11</sup> In addition, Article 11 (2) provides that the General Assembly shall refer to the Security Council questions relating to the maintenance of international peace and security on which action is necessary.

<sup>12</sup> Numerous communications, relating to the situation in the occupied Arab territories, were, however, submitted to the Security Council by a subsidiary organ of the General Assembly — the Committee on the Exercise of the Inalienable Rights of the Palestinian People. Those communications are listed in chapter VI, part I, “Relations with the General Assembly”. In one such communication, a letter dated 9 February 1989 (S/20455), the Committee supported a request made by Tunisia, on behalf of the Arab Group, for an immediate meeting of the Security Council. The letter was included in the Council’s agenda as a sub-item at the 2845th meeting and further considered at the 2846th, 2847th, 2849th and 2850th meetings.

<sup>13</sup> At the 2928th meeting, on 15 June 1990, the representative of Cyprus complained about the “unacceptable practice of the representative of Turkey to the United Nations, repeated many times, of requesting circulation and having circulated as United Nations documents letters and statements emanating from and expressing the views of the pseudo-State, which had been strongly and unequivocally condemned by Security Council resolutions 541 (1983) and 550 (1984)” (S/PV.2928, p. 21). See also the letters dated 28 August,

While most disputes and situations were brought to the attention of the Council by one or more of the parties to such dispute or situation, the internal conflicts in the former Yugoslavia, in Liberia and in Tajikistan were referred to the Council by other Member States.<sup>14</sup> However, the States affected by those conflicts expressly confirmed their agreement to an intervention by the Council. In connection with the situation in Yugoslavia, which was brought to the attention of the Council in September 1991 by letters from several Member States,<sup>15</sup> Yugoslavia, by a letter to the President of the Security Council dated 24 September 1991,<sup>16</sup> expressly welcomed the decision to call a meeting of the Council to consider the situation. In connection with the situation in Liberia, which was brought to the attention of the Council by a letter dated 15 January 1991 from Côte d’Ivoire,<sup>17</sup> the representative of Liberia, at the 2974th meeting on 22 January 1991, not only confirmed Liberia’s agreement to an intervention by the Council, but also expressed regret that such intervention had not occurred earlier. He recalled that his country had been trying for several months to have the Council seized of the situation and deplored the fact that the strict application of the Charter provisions relating to non-interference in the internal affairs of Member States had “hampered the effectiveness of the Council and its principal objective of maintaining international peace and security”.<sup>18</sup> In connection with the situation in

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14 September and 16 October 1989 from the representative of Turkey to the Secretary-General (S/20821, S/20845 and S/20903).

<sup>14</sup> In connection with the situation in Yugoslavia, see the letter dated 24 September 1991 from the representative of Yugoslavia to the President of the Security Council (S/23069). In connection with the situation in Liberia, see the letter dated 15 January 1991 from the representative of Côte d’Ivoire to the President of the Security Council (S/22076). In connection with the situation in Tajikistan, see the letter dated 19 October 1992 from the representative of Kyrgyzstan to the Secretary-General (S/24692).

<sup>15</sup> Letters dated 19 and 20 September 1991 from the representatives of Austria, Canada and Hungary to the President of the Security Council (S/23052, S/23053 and S/23057).

<sup>16</sup> S/23069.

<sup>17</sup> S/22076.

<sup>18</sup> S/PV.2974, p. 3.

Tajikistan,<sup>19</sup> the Government of Tajikistan, by a letter to the President of the Council dated 21 October 1992,<sup>20</sup> acknowledged that the efforts by the country's political leadership to settle the conflict by peaceful means had failed, and *inter alia* expressly requested the dispatch of a "peacemaking mission".

In addition to the above-mentioned internal conflicts, the situation following the intervention by the armed forces of the United States in Panama was also brought to the attention of the Security Council by a third party, namely Nicaragua, which, on 20 December 1989, requested an immediate meeting of the Security Council.<sup>21</sup> Two communications emanating from different Panamanian authorities on the ground were received by the Secretary-General on the same day.<sup>22</sup>

### Referrals by the Secretary-General

In connection with the situation in the Middle East, the Secretary-General, by a letter to the President of the Security Council dated 15 August 1989,<sup>23</sup> in which he referred to the exercise of his responsibilities under the Charter, brought to the Council's attention the deterioration of the situation in Lebanon. In response to the Secretary-General's urgent appeal, the Council immediately convened its 2875th meeting to consider the item.

In connection with the situation in Angola, the Secretary-General, by a letter to the President of the Security Council dated 27 October 1992,<sup>24</sup> drew the Council's attention to the deteriorating political situation and the rising tension in that country. On the

same day, the Council convened its 3126th meeting to consider the item.

In addition to those communications, the Secretary-General, as part of his general reporting obligations, informed the Security Council of relevant developments in matters of which the Council was seized. In his annual reports on the work of the Organization issued during the period under review, the Secretary-General deplored, however, that, owing to insufficient means of information, he was not always in the best position to assess whether and when an issue needed to be brought to the Council's attention.<sup>25</sup> In this regard, the members of the Council, in a statement by the President of the Council dated 30 November 1992, in connection with the item entitled "An agenda for peace: preventive diplomacy, peacemaking and peacekeeping",<sup>26</sup> expressed the view that an increased use of fact-finding, in accordance with the Charter and the Declaration adopted by the General Assembly on 9 December 1991,<sup>27</sup> would assist the Secretary-General to execute his responsibilities under Article 99 and facilitate the deliberations of the Council.<sup>28</sup>

### Nature of matters referred to the Security Council

According to Article 35, which, in the absence of evidence pointing to other Charter provisions, is commonly regarded as the basis on which matters are referred to the Security Council by States, any Member State may bring to the Council's attention "any

<sup>19</sup> The situation in Tajikistan had been brought to the Council's attention by a letter dated 19 October 1992 from the representative of Kyrgyzstan (S/24692).

<sup>20</sup> S/24699.

<sup>21</sup> See the letter dated 20 December 1989 from the representative of Nicaragua to the President of the Security Council (S/21034).

<sup>22</sup> In response to a request made by the President of the Security Council at its 2901st meeting, on 21 December 1989, the Secretary-General, pursuant to rule 15 of the Council's provisional rules of procedure, submitted a report on the credentials of those authorities, but was not in a position to formulate an opinion as to the adequacy of the provisional credentials which had been submitted (see S/21047).

<sup>23</sup> S/20789.

<sup>24</sup> The letter was not issued as a document of the Council; see S/PV.3126, p. 2.

<sup>25</sup> See *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 1 (A/44/1)*, p. 5; *ibid.*, *Forty-fifth Session, Supplement No. 1 (A/45/1)*, p. 7; and *ibid.*, *Forty-sixth Session, Supplement No. 1 (A/46/1)*, p. 3. The Secretary-General also noted that, even though the Charter mandated prevention, situations were often addressed only after they had taken a clear turn towards the use of force (see for example A/44/1, p. 5).

<sup>26</sup> S/24872.

<sup>27</sup> Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (resolution 46/59, annex).

<sup>28</sup> The General Assembly, in a resolution adopted on 18 December 1992, also encouraged the Secretary-General "to continue, in accordance with Article 99 of the Charter of the United Nations, to bring to the attention of the Security Council, at his discretion, any matter which in his opinion may threaten the maintenance of international peace and security, together with his recommendation thereon" (resolution 47/120 A, section II, para. 4).

dispute”, or “any situation which might lead to international friction or give rise to a dispute”. During the reporting period, several new matters were brought to the Council’s attention, which were mostly referred to as “situations”,<sup>29</sup> and only rarely as “disputes”.<sup>30</sup> In other instances, the subject matter of the relevant communications was referred to by a different term, such as “conflict”<sup>31</sup> or “incident”,<sup>32</sup> or described in narrative form.<sup>33</sup>

It should also be noted that, while the Charter provisions setting out the basis on which States may bring matters concerning international peace and security to the attention of the Security Council form part of Chapter VI of the Charter, the subject matter of communications submitted to the Council and the type of action requested in relation thereto are not limited by the scope of that Chapter. During the period under review, several communications submitted to the Council explicitly alleged a threat to regional or international peace and security,<sup>34</sup> referred to an

“invasion”<sup>35</sup> or “aggression”,<sup>36</sup> or called for action under Chapter VII of the Charter.<sup>37</sup> Situations in which the Council did indeed determine the existence of a threat to the peace, a breach of the peace or an aggression are considered in Chapter XI of this volume.

In some instances, Member States challenged the referral of a matter to the Council by rejecting claims that a dispute, or a situation which might lead to international friction or give rise to a dispute, as required under Article 35, did indeed exist.

In response to Afghanistan’s request in a letter dated 3 April 1989<sup>38</sup> that the Council convene a meeting to consider Pakistan’s interference in its

<sup>29</sup> See the communications listed in the table below, drawing attention to the situations in Panama, the former Yugoslavia, Haiti, Liberia, Somalia, Nagorny-Karabakh, Georgia and Tajikistan.

<sup>30</sup> See for example the letter dated 11 May 1992, from the representative of Armenia to the President of the Security Council (S/23896), which refers to “the dispute between the Nagorno-Karabakh Republic and the Azerbaijani Republic”. In the same letter, however, reference is made to “the situation of armed conflict ... in and around the Nagorno-Karabakh Republic”.

<sup>31</sup> See the letter dated 21 October 1992 from the representative of Tajikistan to the President of the Security Council (S/24699).

<sup>32</sup> See the letter dated 2 April 1992 from the representative of Venezuela to the President of the Security Council (S/23771), and the letter dated 27 April 1992 from the representative of Cuba to the President of the Security Council (S/23850).

<sup>33</sup> See the letter dated 3 January 1990 from the representative of Nicaragua to the President of the Security Council (S/21066).

<sup>34</sup> See the following letters addressed to the President of the Security Council: in connection with the situation in Panama, letter dated 25 April 1989 from the representative of Panama (S/20606) and letter dated 23 December 1989 from the representative of Nicaragua (S/21051); in connection with the situation between Iraq and Kuwait, letter dated 2 April 1991 from the representative of Turkey (S/22435), letters dated 7 August 1992 from the representatives of the United Kingdom and the United States (S/24395 and S/24396) and letter dated 28 October 1992 from the representative

of Benin (S/24735), in connection with the situation in the Middle East, letter dated 17 February 1992 from the representative of Lebanon (S/23604); in connection with the situation relating to Nagorny-Karabakh, letter dated 9 May 1992 from the representative of Azerbaijan (S/23894); and, in connection with the situation in Georgia, letter dated 6 October 1992 from the representative of Georgia (S/24619).

<sup>35</sup> See the letter dated 2 August 1990 from the representative of Kuwait to the President of the Security Council (S/21423).

<sup>36</sup> See the following letters addressed to the President of the Security Council: letters dated 4 January 1989 from the representatives of the Libyan Arab Jamahiriya and Bahrain (S/20364 and S/20367); letter dated 3 April 1989 from the representative of Afghanistan (S/20561); letters dated 27 May and 13 July 1992 from the representative of Bosnia and Herzegovina (S/24024 and S/24266); and letters dated 11, 12 and 13 July 1992 from the representatives of Croatia and Slovenia (S/24264, S/24265 and S/24270).

<sup>37</sup> See the following letters addressed to the President of the Security Council: in connection with the situation in Bosnia and Herzegovina, letters dated 27 May, 13 July, 10 August, 4 November and 7 December 1992 from the representative of Bosnia and Herzegovina (S/24024, S/24266, S/24401, S/24761 and S/24916); letters dated 11 and 12 July 1992 from the representative of Croatia (S/24264 and S/24265); letters dated 10 August 1992 from the representatives of Turkey, the Islamic Republic of Iran and Kuwait (S/24409, S/24410 and S/24416); letters dated 11, 12 and 13 August 1992 from the representatives of Malaysia, Pakistan, Egypt, the United Arab Emirates, Bahrain, the Comoros and Qatar (S/24412, S/24419, S/24423, S/24431, S/24433, S/24439 and S/24440); and, in connection with the situation in the occupied Arab territories, letter dated 18 December 1992 from the representative of Lebanon (S/24980).

<sup>38</sup> S/20561.



internal affairs, Pakistan, by a letter dated 7 April 1989,<sup>39</sup> questioned the appropriateness of such meeting and contended that Article 35 had no bearing on the matter. Pakistan maintained that the situation was a purely internal one, in which the Afghan people were resisting the rule of an illegal and unrepresentative regime, and involved neither a dispute between Afghanistan and another country nor a situation that endangered the maintenance of international peace and security.

In several other instances, the referral of a matter to the Council was challenged for similar reasons, but without an express reference to Article 35 of the Charter.<sup>40</sup> As the arguments advanced in those

instances were more closely related to the Council's general competences under Chapter VI of the Charter than the right of Member States to refer a dispute under Article 35, the details of those arguments are set out in part IV of the present chapter, which provides an overview of debates relating to various salient issues raised in the Council's deliberations.

### Communications

Disputes and situations were generally submitted to the Council by means of a communication to the President of the Council. In several instances, however, matters were brought to the Council's attention through a communication addressed to the Secretary-General.<sup>41</sup> Those communications either enclosed a document addressed to the Security Council,<sup>42</sup> called for the convening of a Security Council meeting,<sup>43</sup> or contained a request to be circulated as a document of

<sup>39</sup> S/20577.

<sup>40</sup> In connection with a letter dated 2 February 1990 from the representative of Cuba to the President of the Security Council, concerning the alleged harassment of a Cuban merchant ship by the United States (S/21120), the representative of the United States, at the 2907th meeting, stated, *inter alia*, that the incident was not "a spat between the United States and Cuba, although the Cuban Government, for reasons that are opaque, trie[d] to make it one" and that "the United States [saw] no reason whatsoever for the Council to consider this routine law-enforcement matter, which in no way threaten[ed] international peace and security" (S/PV.2907, pp. 34 and 37). In connection with a letter dated 25 April 1989 from the representative of Panama to the President of the Security Council (S/20606), alleging a "flagrant intervention in Panama's internal affairs by the United States", the United States contended that Panama had requested the Council meeting for reasons of internal politics only (S/PV.2861, pp. 18-27). In connection with a letter dated 3 January 1990 from the representative of Nicaragua to the President of the Security Council (S/21066), concerning the alleged interference by the United States with the residence of the Nicaraguan Ambassador to Panama, the United States disputed that the incident constituted a potential threat to international peace and security which would "require a formal Council meeting or even Council consideration of this issue" (S/PV.2905, p. 21). In connection with requests that the Libyan Arab Jamahiriya fully cooperate with investigations into the terrorist acts against Pan Am flight 103 on 21 December 1988 and UTA flight 772 on 19 September 1989, the representative of the Libyan Arab Jamahiriya, at the 3033rd meeting, on 21 January 1992, contended that the Council was not competent to consider the matter, as it was not in the nature of a political dispute (see the letters dated 20 and 23 December 1991 from the representatives of France, the United Kingdom and the United States to the Secretary-General (S/23306,

S/23307, S/23308, S/23309 and S/23317); see also the discussion of this matter in part IV of the present chapter, and the opening statement of the Libyan Arab Jamahiriya at the 3033rd meeting (S/PV.3033, pp. 13-15 and 22).

<sup>41</sup> Under rule 6 of the Council's provisional rules of procedure, the Secretary-General is obliged to immediately bring such communications to the attention of all representatives on the Security Council. See letters dated 22 March 1989 from the representative of Afghanistan (S/20545); 23 December 1989 from the representative of Nicaragua (S/21051); 15 August 1990 from the representative of the Libyan Arab Jamahiriya (S/21529); 11 October 1990 from the representative of Tunisia (S/21870); 24 November 1990 from the representative of the Libyan Arab Jamahiriya (S/21964); 20 and 23 December 1991 from the representatives of France, the United Kingdom and the United States (S/23306, S/23307, S/23308, S/23309 and S/23317); and 19 October 1992 from the representative of Kyrgyzstan (S/24692).

<sup>42</sup> See for example letter dated 23 December 1989 from the representative of Nicaragua to the Secretary-General, transmitting a letter of same date addressed to the President of the Security Council (S/21051).

<sup>43</sup> See for example letters dated 15 August and 24 November 1990 from the representative of the Libyan Arab Jamahiriya to the Secretary-General (S/21529 and S/21964).

the Security Council<sup>44</sup> or an express reference to Article 35 (1) of the Charter.<sup>45</sup>

Communications by which new disputes or situations were referred to the Security Council during the period under review are listed in the table below. In addition, the letters dated 27 and 28 November 1989 from the representatives of El Salvador and Nicaragua, respectively, to the President of the Security Council,<sup>46</sup> have been included in the table, as the matters complained of, while forming part of the broader conflict in Central America, arose after the conclusion of the regional peace agreements by which that conflict was to be brought to an end.<sup>47</sup> Similarly, a complaint by Afghanistan concerning an alleged military

aggression by Pakistan<sup>48</sup> has also been included in the table, as this matter, which was considered by the Council under the existing agenda item “the situation relating to Afghanistan”,<sup>49</sup> arose after the conclusion of the Geneva Agreements,<sup>50</sup> by which Afghanistan and Pakistan had, inter alia, undertaken to conduct their relations “in strict compliance with the principle of non-interference and non-intervention by States in the affairs of other States”.

Communications by which Member States merely conveyed information, but did not request a Council meeting or other specific Council action, have not been included in the table, as such communications cannot be considered referrals under Article 35.

<sup>44</sup> See for example letter dated 19 October 1992 from the representative of Kyrgyzstan to the Secretary-General (S/24692); and letters dated 20 and 23 December 1991 from the representatives of France, the United Kingdom and the United States to the Secretary-General (S/23306, S/23307, S/23308, S/23309 and S/23317).

<sup>45</sup> See for example letter dated 22 March 1989 from the representative of Afghanistan to the Secretary-General (S/20545).

<sup>46</sup> S/20991 and S/20999.

<sup>47</sup> Procedure for the establishment of a firm and lasting peace in Central America (Esquipulas II Agreement) (S/19085, annex); the Joint Declaration of the Central American Presidents (S/20491, annex); and the Tela Agreement (see S/20778).

<sup>48</sup> See the letters dated 22 March and 3 April 1989 from the representative of Afghanistan to the President of the Security Council (S/20545 and S/20561).

<sup>49</sup> This item had first been included in the Council’s agenda at its 2828th meeting, on 31 October 1988. Afghanistan’s complaint of 22 March and 3 April 1989 and a letter from the representative of Pakistan dated 7 April 1989 (S/20577) were considered by the Council at the 2852nd and the 2853rd meetings, on 11 and 17 April 1989 respectively.

<sup>50</sup> The Agreements were signed by Afghanistan and Pakistan on 14 April 1988 (see S/19835, annex I).

## Communications bringing disputes or situations to the attention of the Security Council during the period 1989-1992

### 1 January to 31 December 1989

<i>Communication</i>	<i>Article or rule invoked</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 4 January 1989 from the Chargé d’affaires a.i. of the Permanent Mission of the Libyan Arab Jamahiriya to the United Nations addressed to the President of the Security Council (S/20364)		Requesting that the Security Council be convened immediately in order to halt the aggression with respect to the downing of two Libyan reconnaissance aircraft by the United States Air Force over international waters.	2835th meeting 5 January 1989

<i>Communication</i>	<i>Article or rule invoked</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 4 January 1989 from the Chargé d'affaires a.i. of the Permanent Mission of Bahrain to the United Nations addressed to the President of the Security Council (S/20367)		Requesting the Security Council be convened immediately to consider the question of the downing of the two Libyan reconnaissance aircraft over international waters by the United States Air Force, and to put an end to the aggression against the Socialist People's Libyan Arab Jamahiriya.	
Letter dated 3 April 1989 from the Chargé d'affaires a.i. of the Permanent Mission of Afghanistan to the United Nations addressed to the President of the Security Council (S/20561)		Requesting the Security Council to convene an emergency meeting in order to consider Pakistan's military aggression and its interference in the internal affairs of Afghanistan.	2852nd meeting 11 April 1989
Letter dated 25 April 1989 from the Permanent Representative of Panama to the United Nations addressed to the President of the Security Council (S/20606)		Requesting that a meeting of the Security Council be convened immediately to consider the grave situation faced by Panama as a result of intervention in its internal matters by the United States.	2861st meeting 28 April 1989
Letter dated 15 August 1989 from the Secretary-General addressed to the President of the Security Council (S/20789)		Requesting that the Council be convened urgently in order to contribute to a peaceful solution to the deteriorating situation in Lebanon, which posed a serious threat to international peace and security.	2875th meeting 15 August 1991
Letter dated 27 November 1989 from the Permanent Representative of El Salvador to the United Nations addressed to the President of the Security Council (S/20991)		Requesting the Security Council to convene as a matter of urgency, to consider actions by the Nicaraguan Government, which constituted breaches of regional agreements.	2896th meeting 30 November 1989
Letter dated 28 November 1989 from the Permanent Representative of Nicaragua to the United Nations addressed to the President of the Security Council (S/20999)		Requesting that the scope of the urgent meeting requested by El Salvador be expanded to include consideration of the grave repercussions, which the serious deterioration of the situation in El Salvador was having on the peace process in Central America.	
Letter dated 20 December 1989 from the Permanent Representative of Nicaragua to the United Nations addressed to the President of the Security Council (S/21034)		Requesting the Security Council to convene an urgent meeting on 20 December 1989 to consider the situation following the invasion of the Republic of Panama by the United States.	2899th meeting 20 December 1989

**1 January to 31 December 1990**

<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 3 January 1990 from the Chargé d'affaires a.i. of the Permanent Mission of Nicaragua to the United Nations addressed to the President of the Security Council (S/21066)		Requesting the Security Council to convene an urgent meeting on 8 January 1990 concerning the occupation of Panama by United States troops.	2905th meeting 17 January 1990
Letter dated 2 February 1990 from the Permanent Representative of Cuba to the United Nations addressed to the President of the Security Council (S/21120)		Requesting the Security Council to convene a meeting to consider the harassment of and an armed attack on a Cuban merchant ship by the United States Coast Guard.	2907th meeting 9 February 1990
Letter dated 2 August 1990 from the Permanent Representative of Kuwait to the United Nations addressed to the President of the Security Council (S/21423)		Requesting an immediate meeting of the Security Council to consider the Iraqi invasion of Kuwait in the early morning of 2 August 1990.	2932nd meeting 2 August 1990
Letter dated 2 August 1990 from the Permanent Representative of the United States of America to the United Nations addressed to the President of the Security Council (S/21424)		Requesting an urgent meeting of the Security Council in the light of the invasion of Kuwait by Iraqi forces and the request of the Permanent Representative of Kuwait.	

**1 January to 31 December 1991**

<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 15 January 1991 from the Chargé d'affaires a.i. of the Permanent Mission of Côte d'Ivoire to the United Nations addressed to the President of the Security Council (S/22076)		Requesting a meeting of the Security Council concerning the deterioration of the economic and social situation in Liberia.	2974th meeting 22 January 1991
Letter dated 2 April 1991 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council (S/22435)		Requesting the Security Council to convene an urgent meeting to consider the alarming situation concerning Iraqis on the Turkish border, and to adopt necessary measures to put an end to the repression of the Iraqi population in northern Iraq by the Iraqi army.	2982nd meeting 5 April 1991

<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 4 April 1991 from the Chargé d'affaires a.i. of the Permanent Mission of France to the United Nations addressed to the President of the Security Council (S/22442)		Requesting the Security Council to convene an urgent meeting to discuss the serious situation resulting from abuses being committed against the Iraqi population.	
Letter dated 19 September 1991 from the Permanent Representative of Austria to the United Nations addressed to the President of the Security Council (S/23052)		Requesting urgent consideration of the deteriorating situation regarding Yugoslavia in informal consultations of the members of the Security Council.	3009th meeting 25 September 1991
Letter dated 19 September 1991 from the Permanent Representative of Canada to the United Nations addressed to the President of the Security Council (S/23053)		Requesting the urgent convening of a meeting of the Security Council concerning the deteriorating situation regarding Yugoslavia.	
Letter dated 20 September 1991 from the Permanent Representative of Hungary to the United Nations addressed to the President of the Security Council (S/23057)		Requesting the urgent convening of a meeting of the Security Council concerning the deteriorating situation regarding Yugoslavia.	
Letter dated 24 September 1991 from the Permanent Representative of Yugoslavia to the United Nations addressed to the President of the Security Council (S/23069)		Requesting a meeting of the Security Council to discuss the situation in Yugoslavia, requesting the participation of the Federal Secretary for Foreign Affairs of Yugoslavia in the meeting, and hopeful that the Council would be able to adopt a resolution at the meeting to contribute to the current peace efforts for Yugoslavia.	
Letter dated 30 September 1991 from the Permanent Representative of Haiti to the United Nations addressed to the President of the Security Council (S/23098)		Requesting the immediate convening of a meeting of the Security Council to consider the situation in Haiti and its consequences for regional stability.	3011th meeting 3 November 1991
Letter dated 24 November 1991 from the Secretary-General addressed to the President of the Security Council (S/23239)			3018th meeting 27 November 1991

## Repertoire of the Practice of the Security Council

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<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 21 November 1991 from the Permanent Representative of Germany to the United Nations addressed to the President of the Security Council (S/23232)		Requesting the convening of an urgent meeting of the Security Council to discuss the situation in Yugoslavia.	
Letter dated 26 November 1991 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council (S/23247)		Requesting the convening of an emergency meeting of the Security Council to discuss the situation in Yugoslavia.	

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### 1 January to 31 December 1992

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<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letters dated 20 and 23 December 1991 from the representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America addressed to the Secretary-General (S/23306, S/23307, S/23308, S/23309 and S/23317)		No action requested. Requesting circulation of letters and attached documents by the Governments and judicial bodies of the aggrieved States in connection with the destruction of Pan Am flight 103 on 21 December 1988 and UTA flight 772 on 19 September 1989 as documents of the General Assembly and the Security Council.	3033rd meeting 21 January 1992
Letter dated 20 January 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Somalia to the United Nations addressed to the President of the Security Council (S/23445)		Requesting the Council to convene immediately a meeting to discuss the deteriorating human dilemma prevailing in Somalia.	3039th meeting 23 January 1992
Letter dated 2 April 1992 from the Permanent Representative of Venezuela to the United Nations addressed to the President of the Security Council (S/23771)	Rule 3 of the Council's provisional rules of procedure	Requesting an urgent meeting of the Council to bring to its attention the violation of the diplomatic mission of Venezuela to Tripoli, Libyan Arab Jamahiriya, on 2 April 1992.	3064th meeting 2 April 1992

<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 23 April 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Austria to the United Nations addressed to the President of the Security Council (S/23833)		Requesting an urgent meeting of the Security Council on the deteriorating situation in Bosnia and Herzegovina, which was endangering international peace and security.	3070th meeting 24 April 1992
Letter dated 24 April 1992 from the Permanent Representative of France to the United Nations addressed to the President of the Security Council (S/23838)		Requesting an urgent meeting of the Security Council to take such action as might be conducive to the re-establishment of peace in Bosnia and Herzegovina.	
Letter dated 9 May 1992 from the Permanent Representative of Azerbaijan to the United Nations addressed to the President of the Security Council (S/23894)		Bringing to the attention of the Security Council the grave situation in Nagorny-Karabakh.	3072nd meeting 12 May 1992
Letter dated 11 May 1992 from the Permanent Representative of Armenia to the United Nations addressed to the President of the Security Council (S/23896)		Requesting an emergency meeting of the Security Council to discuss the escalation of the conflict in Nagorny-Karabakh.	
Letter dated 27 April 1992 from the Permanent Representative of Cuba to the United Nations addressed to the President of the Security Council (S/23850)		Requesting the Council to convene a meeting as soon as possible in order to consider the terrorist activities being carried out against the Republic of Cuba.	3080th meeting 21 May 1992
Report of the Secretary-General pursuant to Security Council resolution 752 (1992) (S/24000)			3082nd meeting 30 May 1992
Letter dated 26 May 1992 from the Permanent Representative of Canada to the United Nations addressed to the President of the Security Council (S/23997)		In the light of the situation in Bosnia and Herzegovina, requesting the Council to convene an urgent formal meeting with a view to imposing economic, trade and oil sanctions against the Belgrade authorities and to consider steps that would allow United Nations-escorted relief convoys to reach civilians in Bosnia and Herzegovina and to open Sarajevo Airport for humanitarian reasons.	

## Repertoire of the Practice of the Security Council

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<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 27 May 1992 from the Minister for Foreign Affairs of Bosnia and Herzegovina addressed to the President of the Security Council (S/24024)		Requesting urgent consultation with the members of the Security Council, with a view to the Council taking such measures as might be deemed appropriate to end the brutality in Bosnia and Herzegovina	
Letter dated 11 July 1992 from the Minister for Foreign Affairs of Croatia addressed to the President of the Security Council (S/24264)		Requesting the Council to call an emergency meeting and to approve an international military action with regard to the situation in Croatia and Bosnia Herzegovina.	3097th meeting 17 July 1992
Letter dated 12 July 1992 from the Minister for Foreign Affairs of Croatia addressed to the President of the Security Council (S/24265)		Suggesting the Council meet immediately and approve a military intervention with regard to the situation in Croatia and Bosnia and Herzegovina.	
Letter dated 13 July 1992 from the Permanent Representative of Bosnia and Herzegovina to the United Nations addressed to the President of the Security Council (S/24266)		With regard to the situation in Croatia and Bosnia and Herzegovina, requesting the Council to take all steps necessary, including air power, to stop the humanitarian nightmare from deepening, and to initiate relief flights to Tuzla, a city north of Sarajevo.	
Letter dated 13 July 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Slovenia to the United Nations addressed to the President of the Security Council (S/24270)		Requesting the Council to discuss with utmost urgency the present situation in Bosnia and Herzegovina and to take the necessary measures to put an end to the aggression, armed terror, and so-called ethnic purification, and to ensure strict respect for the sovereignty, territorial integrity and independence of the Republic of Bosnia and Herzegovina and its recognized borders.	
Letter dated 17 July 1992 from the Permanent Representatives of Belgium, France and the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (S/24305)			



<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 4 August 1992 from the Chargé d'affaires a.i. of the United States Mission to the United Nations addressed to the President of the Security Council (S/24376)		Requesting an immediate meeting of the Security Council to discuss the reports of abuses of civilian prisoners in camps throughout the former Yugoslavia.	3103rd meeting 4 August 1992
Letter dated 4 August 1992 from the Permanent Representative of Venezuela to the United Nations addressed to the President of the Security Council (S/24377)		Requesting the Council to convene an urgent meeting to discuss reports in the international communication media about concentration camps and the torture of citizens of the Republic of Bosnia and Herzegovina by citizens of the Federal Republic of Yugoslavia.	
Letter dated 7 August 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Belgium to the United Nations addressed to the President of the Security Council (S/24393)		Requesting an urgent meeting of the Council to discuss the question of repression in Iraq, and to allow the Special Rapporteur on the situation of human rights in Iraq to participate in the meeting under rule 39 of the Council's provisional rules of procedure.	3105th meeting 11 August 1992
Letter dated 7 August 1992 from the Chargé d'affaires a.i. of the Permanent Mission of France to the United Nations addressed to the President of the Security Council (S/24394)		Requesting that an urgent meeting of the Council be convened to consider the situation which had arisen and which constituted a threat to peace and international security in Iraq.	
Letter dated 7 August 1992 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council (S/24395)		Requesting the Council to convene an urgent meeting to consider the further repression of the Iraqi civilian population.	
Letter dated 7 August 1992 from the Chargé d'affaires a.i. of the United States Mission to the United Nations addressed to the President of the Security Council (S/24396)		Requesting that an urgent meeting of the Council be convened to consider the further repression of the Iraqi civilian population, and to request that the Council extend an invitation to the Special Rapporteur on the situation of human rights in Iraq under rule 39 of the Council's provisional rules of procedure.	

## Repertoire of the Practice of the Security Council

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<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 10 August 1992 from the Permanent Representative of Bosnia and Herzegovina to the United Nations addressed to the President of the Security Council (S/24401)		Requesting an urgent meeting of the Security Council, with formal debate, to consider the situation in Bosnia and Herzegovina, and take appropriate collective measures as provided for in Chapter VII of the Charter to restore peace and stability in the region.	3106th meeting 13 August 1992
Letter dated 10 August 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Turkey to the United Nations addressed to the President of the Security Council (S/24409)		Requesting the Council to hold an urgent meeting with a formal debate to consider the situation in Bosnia and Herzegovina and take appropriate measures as provided for in Chapter VII of the Charter to alleviate the plight of Bosnia and Herzegovina.	
Letter dated 10 August 1992 from the Chargé d'affaires a.i. of the Permanent Mission of the Islamic Republic of Iran to the United Nations addressed to the President of the Security Council (S/24410)		Supporting the request made by the Permanent Representative of Bosnia and Herzegovina for an urgent meeting of the Security Council, with formal debate, to consider the grave situation in that country and to take appropriate measures as provided for in Chapter VII of the Charter to restore peace and stability in the region; renewing a call made on the Security Council by the Organization of the Islamic Conference to take necessary measures under Article 42 of the Charter, without further delay.	
Letter dated 11 August 1992 from the Permanent Representative of Malaysia to the United Nations addressed to the President of the Security Council (S/24412)		Requesting an urgent meeting of the Council, with formal debate, to consider the deteriorating situation in Bosnia and Herzegovina, and to take appropriate collective action including measures provided under Article 42, Chapter VII, of the Charter.	
Letter dated 11 August 1992 from the Permanent Representative of Senegal to the United Nations addressed to the President of the Security Council (S/24413)		Requesting the Security Council to convene an urgent meeting, followed by a substantive debate, for the purpose of considering the situation in Bosnia and Herzegovina.	

<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 11 August 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Saudi Arabia to the United Nations addressed to the President of the Security Council (S/24415)		Requesting an urgent meeting of the Council to consider the serious situation in Bosnia and Herzegovina and to find an immediate solution to restoring peace and stability.	
Letter dated 10 August 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the President of the Security Council (S/24416)		Requesting an urgent meeting of the Council to consider the grave and deteriorating situation in Bosnia and Herzegovina threatening international peace and security, and to adopt appropriate measures as provided for under Chapter VII of the Charter.	
Letter dated 11 August 1992 from the Permanent Representative of Pakistan to the United Nations addressed to the President of the Security Council (S/24419)		Requesting an urgent meeting of the Council with a formal debate to consider the grave situation in Bosnia and Herzegovina, including the adoption of appropriate measures as provided in Chapter VII of the Charter.	
Letter dated 12 August 1992 from the Permanent Representative of Egypt to the United Nations addressed to the President of the Security Council (S/24423)		Requesting an urgent meeting of the Council, with formal debate, to consider the situation in Bosnia and Herzegovina and to take appropriate collective action, including measures provided for under Article 42, Chapter VII of the Charter to restore peace and stability in the region.	
Letter dated 13 August 1992 from the Permanent Representative of the United Arab Emirates to the United Nations addressed to the President of the Security Council (S/24431)		Requesting an urgent meeting of the Council to be convened under the deteriorating situation in Bosnia and Herzegovina which posed a threat to international peace and security, and to adopt appropriate measures under Chapter VII of the Charter with a view to restoring peace and stability in the region.	

## Repertoire of the Practice of the Security Council

<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 13 August 1992 from the Permanent Representative of Bahrain to the United Nations addressed to the President of the Security Council (S/24433)		Requesting an urgent meeting of the Security Council to consider the grave situation in Bosnia and Herzegovina, with a view to the adoption of appropriate measures under Chapter VII of the Charter, for the purpose of putting an end to the worsening situation that presented a threat to international peace and security.	
Letter dated 13 August 1992 from the Permanent Representative of the Comoros to the United Nations addressed to the President of the Security Council (S/24439)		Requesting an urgent meeting of the Security Council, with formal debate, to consider the situation in Bosnia and Herzegovina and take appropriate collective action including measures provided under Article 42, Chapter VII of the Charter to restore peace and stability in the region.	
Letter dated 13 August 1992 from the Permanent Representative of Qatar to the United Nations addressed to the President of the Security Council (S/24440)		Requesting an urgent formal meeting of the Council to look into the deteriorating situation in Bosnia and Herzegovina and to consider taking appropriate action under the provisions of Chapter VII of the Charter.	
Letter dated 5 October 1992 from the representatives of Egypt, the Islamic Republic of Iran, Pakistan, Saudi Arabia, Senegal and Turkey to the United Nations addressed to the President of the Security Council (S/24620)		On behalf of the Contact Group of the Organization of the Islamic Conference, requesting the Council to establish safe corridors and effective measures to allow the humanitarian process to be unhindered; take appropriate measures to prevent air attacks against Bosnia and Herzegovina consequent to the agreements reached concerning the "no-fly zone" at the London Conference; to take steps to bring before an international tribunal those responsible for the practice of ethnic cleansing, mass killings, and the commission of other grave breaches of international humanitarian law and in particular the Geneva Conventions.	3119th meeting 6 October 1992

<i>Communication</i>	<i>Article or rule invoked as basis for submission</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 6 October 1992 from the First Deputy Foreign Minister of Georgia addressed to the President of the Security Council (S/24619)		Requesting an urgent meeting of the Council to consider the grave situation in Georgia and take appropriate action to restore peace and stability in the region.	3121st meeting 8 October 1992
Letter dated 27 October 1992 from the Secretary-General addressed to the President of the Security Council (not issued as a document of the Council; see S/PV.3126, p. 2)		Suggesting to the Council consideration of the deteriorating political situation and rising tension in Angola.	3126th meeting 27 October 1992
Letter dated 29 October 1992 from the Secretary-General addressed to the President of the Security Council (S/24739)			3131st meeting 30 October 1992
Letter dated 19 October 1992 from the Permanent Representative of Kyrgyzstan to the United Nations addressed to the Secretary-General (S/24692)		Suggesting that the situation in Tajikistan be examined by the Security Council under the supervision of the President of the Security Council.	
Letter dated 21 October 1992 from the Permanent Representative of Tajikistan to the United Nations addressed to the President of the Security Council (S/24699)		Requesting the Council to send a peacekeeping mission to provide humanitarian aid to Tajikistan urgently.	
Letter dated 5 March 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Belgium to the United Nations addressed to the President of the Security Council (S/23685 and Add.1)			3139th meeting 23 November 1992
Letter dated 3 August 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Belgium to the United Nations addressed to the President of the Security Council (S/24386)			
Letter dated 19 November 1992 from the Permanent Representative of Belgium to the United Nations addressed to the President of the Security Council (S/24828)		Suggesting that the participation of the Special Rapporteur on the situation of human rights in Iraq would greatly benefit the Security Council deliberations concerning Iraq on 23 November 1992.	

## Part II

### Investigation of disputes and fact-finding

#### Note

Article 34 provides that the Security Council may investigate any dispute, or any situation that might lead to international friction or give rise to a dispute, in order to determine whether the continuation of the dispute or situation is likely to endanger the maintenance of international peace and security. However, Article 34 does not exclude other organs from performing investigative functions nor does it limit the Council's general competence to obtain knowledge of the relevant facts of any dispute or situation by dispatching a fact-finding mission.<sup>51</sup>

The importance of fact-finding for the prevention of conflicts was highlighted by the Security Council in a statement by its President dated 30 November 1992, in connection with the item entitled "An agenda for peace: preventive diplomacy, peacemaking and peacekeeping".<sup>52</sup> By that statement, the Security Council took note of the Declaration on fact-finding adopted by the General Assembly<sup>53</sup> and welcomed the

proposals on fact-finding in the Secretary-General's report entitled "An Agenda for Peace".<sup>54</sup> The members of the Council expressed the view "that an increased resort to fact-finding as a tool of preventive diplomacy ... [could] result in the best possible understanding of the objective facts of a situation, which [would] enable the Secretary-General to meet his responsibilities under Article 99 of the Charter and facilitate Security Council deliberations". In the same statement, the Council members stated that they would "facilitate and encourage every appropriate use of fact-finding missions on a case-by-case basis", endorsed the Secretary-General's view "that in some cases a fact-finding mission [could] help defuse a dispute or situation" and noted with satisfaction "the recent greater use of fact-finding missions".<sup>55</sup>

During the reporting period, the Security Council adopted two decisions containing an express request to the Secretary-General to initiate or perform fact-finding or investigative functions. By resolution 780 (1992), the Council requested the Secretary-General to establish an impartial Commission of Experts to examine and analyse evidence of grave breaches of the Geneva Conventions and other violations of international humanitarian law committed in the

<sup>51</sup> According to the proposals on fact-finding contained in the Secretary-General's report entitled "An Agenda for Peace", "formal fact-finding can be mandated by the Security Council or by the General Assembly, either of which may elect to send a mission under its immediate authority or may invite the Secretary-General to take the necessary steps, including the designation of a special envoy" (S/24111, para. 25). According to the Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security adopted by the General Assembly on 9 December 1991, the Security Council and the General Assembly should give preference to the Secretary-General in fact-finding (General Assembly resolution 46/59, annex, para. 15). The above-mentioned proposals on fact-finding also envisage that "in exceptional circumstances the Council may meet away from Headquarters as the Charter provides, in order not only to inform itself directly, but also to bring the authority of the Organization to bear on a given situation" (S/24111, para. 25).

<sup>52</sup> S/24872.

<sup>53</sup> Resolution 46/59, annex (see footnote 51). In the year preceding the reporting period, the importance of fact-finding missions had already been emphasized in the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field (General Assembly resolution 43/51, annex,

para. 1 (12)).

<sup>54</sup> According to those proposals, an "increased resort to fact-finding is needed". It is also suggested that "a request by a State for the sending of a United Nations fact-finding mission to its territory should be considered without undue delay" (S/24111, para. 25; see also footnote 51). Calls for improved fact-finding arrangements are also contained in the annual reports of the Secretary-General on the work of the Organization (see for example, *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 1 (A/45/1)*, p. 7; and *ibid.*, *Forty-fourth Session, Supplement No. 1 (A/44/1)*, p. 5).

<sup>55</sup> As examples of such fact-finding missions, the President of the Council cited the missions which had been sent, during the course of the same year, to Moldova, Nagorny-Karabakh, Georgia, Uzbekistan and Tajikistan. For further information on those missions, see the relevant report of the Secretary-General on the work of the Organization (*Official Records of the General Assembly, Forty-seventh Session, Supplement No. 1 (A/47/1)*, p. 18).

territory of the former Yugoslavia, and to report to the Council on the conclusions of that Commission.<sup>56</sup> In connection with the civil conflict in Liberia, and after having been requested, at the 3138th meeting on 19 November 1992, by the representatives of States members of the Economic Community of West African States (ECOWAS), Liberia and several other interested States, to support ECOWAS efforts to bring peace and stability to the country, the Security Council, by resolution 788 (1992), requested the Secretary-General to dispatch a Special Representative to Liberia to evaluate the situation, and to report to the Council with any recommendations he might wish to make.

In addition to those decisions, the Security Council, in statements by its President, expressly welcomed or supported fact-finding missions dispatched by the Secretary-General to Cambodia, Moldova, Nagorny-Karabakh, Georgia, Uzbekistan and Tajikistan, among others.<sup>57</sup>

Earlier in the reporting period, by resolution 672 (1990), the Council had welcomed the Secretary-General's decision to send a fact-finding mission to the occupied Arab territories, which decision could not be implemented because of the refusal of the occupying Power to receive that mission.<sup>58</sup>

On a number of other occasions, Member States demanded or suggested to the Security Council that an investigation be carried out or a fact-finding mission be dispatched. Those demands and suggestions, none of

which resulted in a decision by the Security Council, related to the following:

- In connection with Afghanistan's complaint about Pakistan's aggression against it,<sup>59</sup> the representative of Afghanistan, at the 2852nd meeting on 11 April 1989, requested that the Security Council send a fact-finding mission, consisting of Council members, to Afghanistan and Pakistan.
- In connection with El Salvador's claim that Nicaragua had committed acts of aggression against it,<sup>60</sup> the representative of El Salvador, at the 2896th meeting, on 30 November 1989, suggested that the Council send a mission to corroborate the facts in situ.<sup>61</sup>
- In connection with allegations made by Nicaragua concerning the actions of the United States against the residence of the Nicaraguan Ambassador to Panama on 29 December 1989,<sup>62</sup> the representative of Nicaragua, at the 2905th meeting, on 16 January 1990, demanded that an investigation be carried out.<sup>63</sup>
- In connection with international concerns relating to the repression of the Iraqi civilian population in parts of Iraq,<sup>64</sup> the representative of Iraq, at the 2982nd meeting on 5 April 1991, stated that the Government of Iraq would welcome "an international mission to be formed by the Secretary-General or the Security Council in Iraq, with full guarantees for free movement and

<sup>56</sup> For further details, see case 1 below.

<sup>57</sup> By a letter dated 3 August 1989 (S/20769), the President of the Council informed the Secretary-General that the members of the Council agreed to his proposal, contained in a letter dated 2 August 1989 (S/20768), to dispatch a fact-finding mission to Cambodia. By a statement of the President dated 12 May 1992 (S/23904), the Council members welcomed the dispatch by the Secretary-General of a fact-finding mission to Nagorny-Karabakh. By a note by the President dated 10 September 1992, the Council took note of the Secretary-General's intention to send a goodwill mission to Abkhazia (S/24542). By a statement of the President dated 8 October 1992 (S/24637), the Council supported the Secretary-General's decision to send a mission to Georgia. By a statement of the President dated 30 October 1992, the Council welcomed the Secretary-General's decision to send a goodwill mission to Tajikistan and Central Asia (S/24742).

<sup>58</sup> For further details, see case 2 below.

<sup>59</sup> This matter had been brought to the attention of the Security Council by a letter dated 3 April 1989 from the representative of Afghanistan (S/20561).

<sup>60</sup> This matter had been brought to the attention of the Security Council by a letter dated 27 November 1989 from the representative of El Salvador (S/20991).

<sup>61</sup> S/PV.2896, p. 17.

<sup>62</sup> This matter had been brought to the attention of the Security Council by a letter dated 3 January 1990 from the representative of Nicaragua (S/21066).

<sup>63</sup> S/PV.2905, p. 12.

<sup>64</sup> These concerns were brought to the Council's attention by letters dated 2 and 4 April 1991 from the representatives of Turkey and France respectively (S/22435 and S/22442).

communications, so that its members [could] ascertain the facts and see things as they stand”.<sup>65</sup>

- In connection with requests for the cooperation of the Libyan Arab Jamahiriya with investigations into the terrorist acts against Pan Am flight 103 on 21 December 1988 and UTA flight 772 on 19 September 1989,<sup>66</sup> the representative of the Libyan Arab Jamahiriya, at the 3033rd meeting on 21 January 1992, stated that “the international dimension of the alleged events might make an international investigation an appropriate means of starting to resolve the dispute” and that it “would have welcomed a neutral investigation committee”.<sup>67</sup>

The case studies that follow set out the details of the decision-making processes involved in establishing a commission to examine breaches of international humanitarian law in the former Yugoslavia; to dispatch a fact-finding mission to the occupied Arab territories; and summarize the arguments advanced during the debate relating to the request of Afghanistan for the dispatch of a fact-finding mission to Afghanistan and Pakistan.

### Case 1

#### *The situation in the former Yugoslavia*

*Establishment of a Commission of Experts to investigate alleged violations of international humanitarian law in the former Yugoslavia.* In connection with the situation in the former Yugoslavia,

<sup>65</sup> S/PV.2982, p. 20. The representative of Iraq further stated that he “had expected that the Security Council would wait and find out the true facts from such a mission before making haste — which [had] been its habit in past months”. See also India’s comments in support of a fact-finding mission (S/PV.2982, p. 63).

<sup>66</sup> See the letters dated 20 and 23 December 1989 from the representatives of France, the United Kingdom and the United States to the Secretary-General (S/23306, S/23307, S/23308, S/23309 and S/23317). See also the reports of the Secretary-General dated 11 February and 3 March 1992 (S/23574 and S/23672), submitted pursuant to resolution 731 (1992).

<sup>67</sup> S/PV.3033, p. 11. At the same meeting, the observer for the League of Arab States proposed “to place this question before a neutral international commission of inquiry”, suggesting “the establishment of a joint commission of the United Nations and the League of Arab States to study all the documentation relating to the matter” (S/PV.3033, pp. 29-30).

the Security Council, in a statement made by its President at the 3103rd meeting, on 4 August 1992, reaffirmed that all parties were bound to comply with the obligations under international humanitarian law and that persons who committed or ordered the commission of grave breaches of the Geneva Conventions were individually responsible in respect of such breaches.

At the 3106th meeting, on 13 August 1992, the Council adopted resolution 771 (1992), by which, inter alia, it called upon States and international humanitarian organizations “to collate substantiated information relating to the violation of international humanitarian law being committed in the territory of the former Yugoslavia and to make this information available to the Council” and requested the Secretary-General “to submit a report to the Council summarizing the information and recommending additional measures that might be appropriate in response to the information”.

By a note dated 3 September 1992,<sup>68</sup> the Secretary-General transmitted to the Council a report on the situation in the territory of the former Yugoslavia submitted by the Special Rapporteur of the Commission on Human Rights. In his report, the Special Rapporteur had noted “an urgent need to establish an investigative commission, under the auspices and in cooperation with the competent United Nations bodies, vested with the task of determining the fate of the thousands of persons who disappeared after the seizure of Vukovar as well as of other persons who disappeared during the conflicts in the former Yugoslavia”.<sup>69</sup> The Special Rapporteur emphasized that “the need to prosecute those responsible for mass and flagrant human rights violations and for breaches of international humanitarian law and to deter future violators require[d] the systematic collection of documentation on such crimes and of personal data concerning those responsible”.<sup>70</sup> Accordingly, the report contained a recommendation for the establishment of a commission to assess and further investigate specific cases in which prosecution might be warranted.<sup>71</sup>

<sup>68</sup> S/24516.

<sup>69</sup> S/24516, annex, para. 67.

<sup>70</sup> Ibid., para. 69.

<sup>71</sup> Ibid., para. 70.



At the 3119th meeting, on 6 October 1992, several speakers expressed strong support for the establishment of such commission on an urgent basis. The President of the Council, speaking in his capacity as the representative of France, believed that it was indeed “very important that the Council send a clear warning to the perpetrators of those violations, who must understand that their personal responsibility is involved”, adding that the decision to establish an investigative commission would be “part of the prospective creation by the appropriate bodies of an international penal jurisdiction to rule on such acts”.<sup>72</sup> In a similar vein, the representative of Belgium noted that the establishment of the commission would make “more operational the principle contained in the Geneva Conventions regarding the personal responsibility of war criminals”.<sup>73</sup> The representative of the Russian Federation, expressing the hope that such commission would, “on the basis of carefully substantiated information, give the true picture of the violations of the Geneva Conventions and other violations of international humanitarian law taking place on the territory of the former Yugoslavia”, stated that the decision to establish such commission would go beyond the settlement of the Yugoslav question insofar as it would also be a warning to all who violated the norms of international humanitarian law in other spheres of conflict.<sup>74</sup> The representative of Venezuela believed that “the decision to establish a commission of experts to investigate ... violations of international humanitarian law would be inspired by the commission that was set up in 1943 for similar purposes and later served as the basis for the proceedings of the Nuremberg tribunal”, which, in the words of the representative of Venezuela, “would not only serve to establish responsibility and punish the guilty, but would also ... constitute an important deterrent”.<sup>75</sup>

At the same meeting, the Council unanimously adopted resolution 780 (1992),<sup>76</sup> by which it requested the Secretary-General to establish, as a matter of urgency, an impartial Commission of Experts to examine and analyse the information submitted to it

<sup>72</sup> S/PV.3119, p. 16.

<sup>73</sup> *Ibid.*, p. 12.

<sup>74</sup> *Ibid.*, pp. 15-16.

<sup>75</sup> *Ibid.*, pp. 7-8.

<sup>76</sup> The relevant draft resolution had been submitted by Belgium, France, Morocco, the United Kingdom, the United States and Venezuela, joined by Hungary.

together with such further information as the Commission might obtain through its own investigations and efforts.<sup>77</sup>

At the 3137th meeting, on 16 November 1992, the Council adopted resolution 787 (1992), by which it welcomed the establishment of the Commission of Experts and requested that Commission to pursue actively its investigations with regard to grave breaches of the Geneva Conventions of 12 August 1949 and other violations of international humanitarian law committed in the territory of the former Yugoslavia, in particular the practice of “ethnic cleansing”.

## Case 2

### *The situation in the occupied Arab territories*

*Proposed investigative mission to the occupied Arab territories.* At the 2926th meeting, on 31 May 1990, in connection with the situation in the occupied Arab territories, the Council considered a draft resolution envisaging the establishment of a commission consisting of three Council members, which would be dispatched to the Palestinian territory “to examine the situation relating to the policies and practices of Israel” in that territory.<sup>78</sup> The draft resolution, which had been proposed by several Council members, was not adopted owing to the negative vote of a permanent member.<sup>79</sup>

On 8 October 1990, after violence had erupted in the Old City of Jerusalem and resulted in the death of more than 20 Palestinians, the Permanent Observer of Palestine, at the 2946th meeting, recalled the proposal contained in the above-mentioned draft resolution and, in the light of the above tragic events, demanded the “immediate dispatch of a commission by the Council to investigate what happened in Jerusalem”.<sup>80</sup> At the 2947th meeting, held on the following day, several

<sup>77</sup> Prior to the adoption of resolution 780 (1992), the Council had requested the submission of such information by resolution 771 (1992).

<sup>78</sup> The commission would have been requested to submit a report containing recommendations on ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation.

<sup>79</sup> S/21326, submitted by Colombia, Côte d'Ivoire, Cuba, Ethiopia, Malaysia, Yemen and Zaire. A draft resolution containing almost identical provisions was submitted on 9 October 1990 but was not put to the vote (S/21851).

<sup>80</sup> S/PV.2946, pp. 10-11.

speakers supported the Palestinian call for an investigation or a fact-finding mission.<sup>81</sup>

At the 2948th meeting, on 12 October 1990, the Council, having been informed by the Secretary-General of his decision to send a mission to the region, considered a draft resolution by which it would welcome that decision.<sup>82</sup> The President stated that the Secretary-General, in the informal consultations of the members of the Council leading up to the consideration of the draft resolution, had explained “that the purpose of the mission ... would be to look into the circumstances surrounding the recent tragic events in Jerusalem and other similar developments in the occupied territories, and to submit ... a report containing findings and recommendations to the Council on ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation.”<sup>83</sup> Following the statement by the President, the draft resolution was put to the vote and adopted unanimously as resolution 672 (1990).

Having learned of Israel’s refusal to receive the proposed mission of the Secretary-General,<sup>84</sup> the Council convened on 24 October 1990 to continue its consideration of the situation, at its 2949th meeting. At that meeting, the representative of Israel explained that Israel had expressed its readiness to assist the Secretary-General in the preparation of a report on the relevant events, but emphasized that Israel, like any other sovereign State, was the exclusive authority in the territory under its control. The representative noted that Israel had appointed its own “independent commission of inquiry consisting of three prominent figures”, which commission would shortly “present its findings and conclusions of the chain of events, their causes and the actions of Israel’s security forces”.<sup>85</sup>

Many speakers expressed regret at Israel’s refusal to receive the mission of the Secretary-General and stressed that Israel was under an obligation to comply with resolution 672 (1990).<sup>86</sup> It was also noted that Israel’s sensitivities had been taken into account in the Council’s approach to this matter and that in resolution 672 (1990), instead of calling for the establishment of a Council mission to investigate the incident, the Council had discreetly welcomed the Secretary-General’s decision to send a mission to the region.<sup>87</sup> Following further deliberations, the Security Council, on 24 October 1990, unanimously adopted resolution 673 (1990),<sup>88</sup> by which it deplored Israel’s refusal to receive the mission of the Secretary-General to the region; urged the Israel Government to reconsider its decision; and insisted that it comply fully with resolution 672 (1990) and permit the mission to proceed in keeping with its purpose.

In his report to the Security Council dated 31 October 1990, the Secretary-General noted that, owing to Israel’s refusal to receive his mission, he had been unable to secure independent information, on the spot, about the circumstances surrounding the recent events in Jerusalem and similar developments in the West Bank and Gaza Strip.<sup>89</sup>

The report was discussed at the 2953rd meeting, on 7 November 1990, at which several speakers denounced Israel’s rejection of the above-mentioned resolutions. The representative of Israel stated, however, that Israel had the sole responsibility for the occupied territories and that it would “reject any encroachment on its sovereignty and authority”. The representative believed that the proposed mission was “not intended to ascertain facts [but was] rather a transparent attempt to encroach on Israel’s sovereignty”.<sup>90</sup>

On 20 December 1990, the Council adopted resolution 681 (1990) in which it requested the Secretary-General to monitor and observe the situation regarding Palestinian civilians under Israeli occupation, to utilize and designate or draw upon

<sup>81</sup> S/PV.2947, pp. 8-10 (Kuwait); p. 16 (Egypt); pp. 36-37 (Syrian Arab Republic); and pp. 54-55 (Pakistan).

<sup>82</sup> S/21859, submitted by Canada and the United Kingdom and co-sponsored by Côte d’Ivoire, Finland, France, the Union of Soviet Socialist Republics and Zaire.

<sup>83</sup> In the cited statement the Secretary-General had recalled, however, “that under the Fourth Geneva Convention the principal responsibility for ensuring the protection of the Palestinians rested with the occupying Power, namely Israel” (see S/PV.2948, p. 27).

<sup>84</sup> See the statement adopted by the Israeli Cabinet on 14 October 1990, cited in the report of the Secretary-General of 31 October 1990 (S/21919, para. 3).

<sup>85</sup> S/PV.2949, p. 17.

<sup>86</sup> *Ibid.*, p. 27 (Palestine); pp. 38-40 (Sudan); p. 43 (Yemen); p. 48 (Zaire); p. 52 (Malaysia); p. 54 (Colombia); and p. 56 (Cuba).

<sup>87</sup> See for example S/PV.2949, pp. 44-45.

<sup>88</sup> The draft resolution (S/21893) was sponsored by Colombia, Cuba, Malaysia and Yemen.

<sup>89</sup> S/21919 and Corr.1, para. 8.

<sup>90</sup> S/PV.2953, pp. 52 and 56.

United Nations and other personnel and resources, and to keep the Council regularly informed.<sup>91</sup>

### Case 3

#### *The situation relating to Afghanistan*

*Request for the dispatch of a fact-finding mission to Afghanistan and Pakistan.* At the 2852nd to 2860th meetings, from 11 to 26 April 1989, the Council considered the situation relating to Afghanistan, having received a communication from Afghanistan alleging a military aggression by Pakistan.<sup>92</sup>

The representative of Afghanistan, referring to the “dangerous implications of the aggression by Pakistan for peace and security in the region and in the world”, explained that his country was turning to the Security Council “on the basis of the obligations of the Security Council stemming from Articles 34 and 35 of the Charter” and requested that the Security Council send a fact-finding mission, consisting of Council members, to Afghanistan and Pakistan.<sup>93</sup>

The representative of Pakistan stated that Articles 34 and 35 had no bearing on the current situation inside Afghanistan, as that situation in no way endangered peace and security as defined in Article 34, but rather represented the continuing “struggle of the

Afghan people to overthrow an illegal and unrepresentative regime ... imposed on them by external military intervention”.<sup>94</sup> Many speakers agreed that Articles 34 and 35 were not applicable<sup>95</sup> and expressed the view that the conflict in Afghanistan had to be seen as a legitimate struggle for self-determination.<sup>96</sup> Several speakers also noted that a mechanism established under the Geneva Agreements, the United Nations Good Offices Mission in Afghanistan and Pakistan, had already repeatedly been called upon to undertake investigations, and that, therefore, no further investigative mechanism or procedure was required.<sup>97</sup>

In contrast, the representative of the Union of Soviet Socialist Republics contended that Afghanistan’s recourse to the Council was “entirely right, proper and timely”, as Afghanistan was suffering from outside interference by Pakistan.<sup>98</sup> This view was shared by several other speakers.<sup>99</sup>

The Security Council concluded its consideration of the item at the 2860th meeting, on 26 April 1989, without adopting a decision.

<sup>91</sup> In a statement adopted on 4 January 1991 (S/22046), the President of the Council expressed the support of Council members for the work of the Secretary-General in implementing resolution 681 (1990). The Secretary-General dispatched his Personal Representative to the area from 1 to 11 March 1991. The discussions held with Palestinians and Israeli officials during this period are summarized in a report to the Security Council dated 9 April 1991 (S/22472).

<sup>92</sup> Letter dated 3 April 1989 (S/20561).

<sup>93</sup> S/PV.2852, pp. 6 and 25.

<sup>94</sup> *Ibid.*, p. 26.

<sup>95</sup> S/PV.2853, pp. 12-15 (Saudi Arabia); S/PV.2856, p. 28 (Comoros); and S/PV.2859, p. 16 (Somalia).

<sup>96</sup> S/PV.2853, p. 11 (Organization of the Islamic Conference (OIC)); p. 42 (Japan); p. 53 (United States); S/PV.2855, p. 22 (Canada); and S/PV.2859, p. 17 (Somalia).

<sup>97</sup> S/PV.2853, pp. 19-20 (Malaysia); S/PV.2855, p. 13 (China); S/PV.2856, pp. 29-30 (Comoros); and S/PV.2857, p. 11 (Bangladesh).

<sup>98</sup> S/PV.2855, pp. 32-53 (Union of Soviet Socialist Republics).

<sup>99</sup> S/PV.2857, pp. 6-7 (Czechoslovakia); p. 17 (Yugoslavia); pp. 21-26 (Ukrainian Soviet Socialist Republic); and S/PV.2859, p. 12 (Hungary); and pp. 32-36 (Byelorussian Soviet Socialist Republic).

## Part III

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

#### Note

Chapter VI of the Charter contains various provisions according to which the Council may make recommendations to the parties to a dispute or

situation. According to Article 33 (2) of the Charter, the Council may call on the parties to settle their dispute by such peaceful means as provided for in Article 33 (1). According to Article 36 (1) the Council may recommend appropriate methods or procedures of

adjustment. Article 37 (2) envisages that the Council may recommend such terms of settlement as it may consider appropriate, and Article 38 provides that it may make recommendations to the parties with a view to a pacific settlement of the dispute.

As part of its efforts aimed at the peaceful settlement of conflicts within the framework of Chapter VI of the Charter, the Council frequently endorsed or supported peace agreements concluded by the parties to a conflict, or recommended various methods or procedures of settlement, such as bilateral or multilateral negotiations,<sup>100</sup> mediation or conciliation efforts undertaken by the Secretary-General,<sup>101</sup> or resorted to regional arrangements.<sup>102</sup> In

one instance, in connection with the situation in Cambodia, the five permanent members of the Council took the initiative of proposing concrete terms of settlement in an effort to resolve the conflict.<sup>103</sup>

Relevant appeals and recommendations were addressed not only to States but also, in several instances, to non-State actors. This was the case, for instance, in the internal conflicts in Cambodia, Cyprus, El Salvador, Lebanon, Liberia, Somalia, Tajikistan and the former Yugoslavia, in which the Council either specifically called on the relevant factions or communities involved in the conflict or, in a more general fashion, called on all parties to the conflict.<sup>104</sup>

<sup>100</sup> See for example, in connection with the situation between Iraq and Kuwait, resolution 660 (1990), by which the Council condemned the Iraqi invasion of Kuwait and called upon both countries “to begin immediately intensive negotiations for the resolution of their differences”. (Resolution 660 (1990) was adopted expressly under Articles 39 and 40 of the Charter. However, insofar as negotiations, for the purpose of the resolution, are deemed to be “provisional measures” within the meaning of Article 40, they cannot be distinguished from the parties’ efforts, required under Article 33 (1), to find a solution by peaceful means.) See also for example resolution 765 (1992), by which the Council urged all parties to the conflict in South Africa to cooperate in the resumption of the negotiation process. In connection with the situation in Tajikistan, see the statement of the President of the Security Council dated 30 October 1992 (S/24742), by which the members of the Council urged “the Government of Tajikistan, local authorities, party leaders and other groups concerned to enter into a political dialogue with a view to reaching an overall settlement of the conflict by peaceful means”.

<sup>101</sup> See, for instance, in connection with the situation in Cyprus, resolution 649 (1990), by which the Council called on the leaders of the two communities to cooperate with the Secretary-General in completing an outline of an overall agreement.

<sup>102</sup> See chapter XII, part VI, for further details on the manner in which the Security Council has encouraged efforts undertaken by regional arrangements in the pacific settlement of disputes. For example, in connection with the question of Western Sahara, the Council, in resolution 658 (1990), called on the two parties to cooperate fully with the Chairman of the Assembly of Heads of State and Government of the Organization of African Unity in their efforts aimed at an early settlement. In connection with the situation in Liberia, the members of the Council, by a presidential statement dated 22 January 1991 (S/22133), called on

the parties to cooperate with the Economic Community of West African States (ECOWAS) to restore peace. In connection with the situation in the former Yugoslavia, the Council, by resolutions 749 (1992), 752 (1992) and 764 (1992), called on the parties to cooperate with the efforts of the European Union to bring about a negotiated political solution. In connection with the situation in Nagorny-Karabakh, the members of the Council, by presidential statements of 26 August 1992 (S/24493) and 27 October 1992 (S/24721), appealed to the parties to cooperate with the Conference on Security and Cooperation in Europe with a view to reaching a peaceful settlement of their disputes.

<sup>103</sup> For details, see section A below.

<sup>104</sup> In connection with the situation in Cyprus, the Security Council, by resolution 649 (1990), called upon the leaders of the two communities in Cyprus to pursue negotiations to reach an overall framework agreement on Cyprus. In connection with the situation in El Salvador, the Council, by resolutions 693 (1991) and 714 (1991), called on both the Government of El Salvador and FMLN to pursue constructive negotiations. In connection with the situation in Yugoslavia, the Council, by resolutions 740 (1992) and 743 (1992), called on all Yugoslav parties to cooperate with the Conference on Yugoslavia. By resolution 749 (1992), the Council called on all parties and others concerned in Bosnia and Herzegovina to cooperate with the efforts of the European Community, and, by resolution 757 (1992), called on the three communities in Bosnia and Herzegovina to resume their discussions on constitutional arrangements. In connection with the situation in Tajikistan, the members of the Council, in a statement by its President dated 30 October 1992 (S/24742), urged the Government of Tajikistan, local authorities, party leaders and other groups concerned to enter into a political dialogue. In connection with the situation in Lebanon, the members of the Council, in statements by the President dated 31 March 1989 (S/20554) and 15 August 1989 (S/20790), called on all

This part of the chapter will aim to provide an overview of the Council's practice in relation to the peaceful settlement of disputes by setting out examples of the most relevant decisions adopted by the Council during the period under review. As it is not always possible to ascertain the concrete basis within the framework of the Charter on which individual Council decisions have been made, the overview sets out relevant decisions in a systematic order, without ascribing them to specific Articles of the Charter.

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

Set out below are instances in which the Security Council proposed or endorsed terms of settlement, or recommended methods or procedures of settlement.

By resolution 696 (1991), the Council welcomed the decision of the Government of Angola and the National Union for the Total Independence of Angola to conclude the Peace Accords for Angola.

With regard to the situation in Cambodia, following a meeting of their respective Governments in Paris on 27 and 28 August 1990, the permanent members of the Council transmitted to the Secretary-General, by a letter dated 30 August 1990,<sup>105</sup> a framework document defining "the key elements of a comprehensive political settlement of the Cambodia conflict based on an enhanced United Nations role". After the Cambodian parties had indicated their

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parties to observe a ceasefire. In a statement by the President dated 27 December 1989 (S/21056), the members of the Council called on the Lebanese people, and in particular all Government officials, civilian and military, to support their President and the constitutional process initiated at Taif. In connection with the situation in Liberia, the members of the Council, in a statement by the President dated 22 January 1991 (S/22133), called on all parties to the conflict to cooperate with ECOWAS, and, by resolution 788 (1992), the Council called on them to respect and implement the various agreements to which they had agreed. By resolution 668 (1990), the Council urged all parties to the conflict in Cambodia to exercise self-restraint. By resolution 733 (1992), the Council urged all parties to the conflict in Somalia to promote a political settlement in Somalia, and by resolution 751 (1992) it called upon all parties, movements and factions in Somalia immediately to maintain a ceasefire.

<sup>105</sup> S/21689.

acceptance of this framework for settlement,<sup>106</sup> the Council, by resolution 668 (1990), endorsed the framework and welcomed its acceptance by the parties. By resolution 718 (1991), the Council expressed its full support for the "comprehensive political settlement of the Cambodia conflict, signed in Paris on 23 October 1991".<sup>107</sup>

In connection with peace efforts in Central America, the Council, by resolution 637 (1989), expressed its support for the Guatemala Agreement<sup>108</sup> and the Joint Declaration of the Central American Presidents,<sup>109</sup> and called upon the Presidents to continue their efforts to achieve a firm and lasting peace in Central America through the implementation of the commitments entered into in the Guatemala agreement and in the expressions of good will contained in the Joint Declaration.

By resolution 693 (1991), the Council welcomed the Mexico Agreement signed by the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional (FMLN) on 27 April 1991, and called upon both parties to pursue negotiations "urgently and with flexibility, in a concentrated format on the items agreed upon in the Caracas Agenda, in order to reach, as a matter of priority, a political agreement on the armed forces and the accords necessary for the cessation of the armed confrontation". By the same resolution, the Council called upon the parties "to pursue a continuous process of negotiations in order to reach at the earliest possible date the objectives set forth in the Mexico Agreements of 27 April 1991 and all other objectives contained in the Geneva Agreement of 4 April 1990, and to this end

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<sup>106</sup> The Cambodian parties had indicated their acceptance at an informal meeting convened by France and Indonesia, in their capacity as Co-Chairmen of the International Conference on Cambodia; see letter dated 11 September 1990 from the representatives of France and Indonesia to the Secretary-General (S/21732).

<sup>107</sup> By resolution 717 (1991), the Council had decided to establish a United Nations Advance Mission in Cambodia immediately after the signing of such an agreement.

<sup>108</sup> Procedure for the establishment of a firm and lasting peace in Central America signed at Guatemala City on 7 August 1987 by the Presidents of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua (S/19085, annex).

<sup>109</sup> Declaration signed by the Central American Presidents on 14 February 1989 (S/20491, annex).

to cooperate fully with the Secretary-General and his Personal Representative in their efforts”.

By resolution 714 (1991), the Council welcomed the New York Agreement of 25 September 1991, by which the parties had agreed on guarantees and conditions on which to reach a peaceful settlement, including provisions permitting the reintegration of FMLN members into the civil, institutional and political life of the country. By the same resolution, the Council urged the parties to proceed, at the next round of negotiations, “at an intensive and sustained pace to reach at the earliest possible date a ceasefire and a peaceful settlement to the armed conflict in accordance with the framework of the New York Agreement”.

In connection with the situation in Cyprus, the Council, by resolution 649 (1990), called upon the leaders of the two communities to pursue efforts to reach freely a mutually acceptable agreement and “to cooperate, on an equal footing, with the Secretary-General in completing, in the first instance and on an urgent basis, an outline of an overall agreement, as agreed in June 1989”.<sup>110</sup>

Following the submission, on 21 August 1992, of the Secretary-General’s report on the outcome of his mission of good offices in Cyprus,<sup>111</sup> the Council, by resolution 774 (1992), urged the parties to pursue uninterrupted negotiations at United Nations Headquarters until an overall framework agreement was reached on the basis of the set of ideas reflected in the Secretary-General’s report of 3 April 1992.<sup>112</sup>

By resolution 750 (1992), the Council endorsed the set of ideas reflected in the Secretary-General’s report of 8 October 1991 as an appropriate basis for reaching an overall agreement, being brought to a conclusion as an integrated package mutually agreed upon by both communities.<sup>113</sup>

With regard to the situation in former Yugoslavia, the Council, by resolution 713 (1991), called on all

parties to the conflict to settle their disputes “through negotiation at the Conference on Yugoslavia, including through the mechanisms set forth within it”.<sup>114</sup>

Following the serious deterioration of the situation in Bosnia and Herzegovina, the Council, by resolution 752 (1992), urged the three communities in Bosnia and Herzegovina to participate “actively and constructively” and “on a continuous basis” in the tripartite talks on constitutional arrangements under the auspices of the Conference on Yugoslavia and “to conclude and implement the arrangements being developed at those talks”.

In a statement by the President dated 2 September 1992,<sup>115</sup> the Council members expressed their full support for the Statement of Principles adopted and the other agreements reached at the London stage of the International Conference on the former Yugoslavia, held on 26 and 27 August 1992, and noted with satisfaction that the Conference held in London had established the framework within which an overall political settlement of the crisis in the former Yugoslavia in all its aspects could be achieved through a continuous and uninterrupted effort.<sup>116</sup>

By resolution 779 (1992), the Council welcomed the Joint Declaration signed at Geneva on 30 September 1992 by the Presidents of Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro), which, *inter alia*, reaffirmed the demilitarization of the Prevlaka peninsula, and endorsed the principles agreed by the Presidents that all statements or commitments made under duress, particularly those relating to land and property, were wholly null and void and that all displaced persons had the right to return in peace to their former homes.

By resolution 787 (1992), the Council appealed to the parties to continue negotiations for constitutional arrangements on the basis of the draft outline constitution for Bosnia and Herzegovina under the auspices of the Co-Chairmen of the Steering Committee of the International Conference on the

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<sup>110</sup> This appeal was reiterated in a statement by the President of the Council dated 19 July 1990 (S/21400).

<sup>111</sup> S/24472.

<sup>112</sup> S/23780.

<sup>113</sup> By resolutions 774 (1992) and 789 (1992), in addition to reaffirming this endorsement, the Council also endorsed the territorial adjustments reflected in the map contained in the annex to the report of the Secretary-General dated 21 August 1992 (S/24472) as the basis for reaching an overall agreement.

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<sup>114</sup> The appeal to the parties to cooperate with the Conference was repeated in resolutions 740 (1992), 743 (1992), 752 (1992), 762 (1992), 764 (1992) and 787 (1992), and in a statement by the President of the Council dated 2 September 1992 (S/24510).

<sup>115</sup> S/24510.

<sup>116</sup> The Council reiterated its support for these agreements in resolution 776 (1992).

former Yugoslavia, these negotiations to be held in continuous and uninterrupted session.

In connection with the situation in Georgia, in a statement of the President dated 10 September 1992, the Council members welcomed the principles of settlement relating to Abkhazia contained in the Final Document of the Moscow meeting of 3 September 1992 between the Russian Federation and Georgia, which affirmed the territorial integrity of Georgia, provided for the establishment of a ceasefire and constituted the basis for an overall political settlement.<sup>117</sup>

With regard to Lebanon, in a statement by the President dated 22 November 1989,<sup>118</sup> and in several subsequent statements,<sup>119</sup> the Council members reaffirmed their support for the Taif Agreement ratified by the Lebanese Parliament on 5 November 1989 as the only basis for guaranteeing the full sovereignty, independence, territorial integrity and national unity of Lebanon.

In a statement by the President dated 7 May 1992 in connection with the situation in Liberia,<sup>120</sup> the members of the Council expressed the belief that the Yamoussoukro Accord of 30 October 1991 offered the best possible framework for a peaceful resolution of the Liberian conflict by creating the necessary conditions for free and fair elections in Liberia. By resolution 788 (1992), the Council reaffirmed this position and called on the parties to respect and implement the various agreements to which they had agreed within the framework of the peace process.

With regard to Mozambique, the Council welcomed, by resolution 782 (1992), the signature, on 4 October 1992 in Rome, of a General Peace Agreement<sup>121</sup> between the Government of

Mozambique and the Resistência Nacional Moçambicana (RENAMO).<sup>122</sup>

In connection with the situation in Namibia, the Council, by resolution 628 (1989), welcomed the signature of the agreement between Angola, Cuba and South Africa on the one hand, and the agreement between Angola and Cuba on the other hand, both of which had been signed on 22 December 1988, and expressed its full support for those agreements.

With regard to the situation concerning Western Sahara, the Council approved, by resolution 658 (1990), the report of the Secretary-General dated 18 June 1990,<sup>123</sup> which contains the full text of the settlement proposals accepted by the parties on 30 August 1988 as well as an outline of the plan provided by the Secretary-General to implement those proposals.

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

While Article 99 of the Charter provides that the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security, the Charter does not otherwise describe or define the role of the Secretary-General in relation to matters of peace and security.

However, the Council's efforts aimed at the peaceful settlement of disputes frequently require the involvement of the Secretary-General, who, in coordination with the Council or at its request, facilitates peace efforts in various ways. This was reconfirmed in a statement by the President of the Council, adopted at the summit meeting held on 31 January 1992 in connection with the item entitled "The responsibility of the Security Council in the maintenance of international peace and security",<sup>124</sup> by

<sup>117</sup> S/24542. See also the statement of the President of the Security Council dated 8 October 1992 (S/24637), by which the Council called on all the parties to observe the terms of that Agreement.

<sup>118</sup> S/20988. The statement was adopted following the assassination of the President of Lebanon in Beirut earlier the same day.

<sup>119</sup> Presidential statements of 27 December 1989, 31 July 1990, 30 January 1991, 31 July 1991, 29 January 1992 and 30 July 1992 (S/21056, S/21418, S/22176, S/22862, S/23495 and S/24362).

<sup>120</sup> S/23886.

<sup>121</sup> S/24635, annex.

<sup>122</sup> By resolution 797 (1992), the Council again stressed the importance it attached to the General Peace Agreement and to the fulfilment by the parties in good faith of the obligations contained therein.

<sup>123</sup> S/21360 (transmitted to the Council in accordance with resolution 621 (1988)).

<sup>124</sup> S/23500.

which the members of the Council emphasized that the Secretary-General had a crucial role to play in promoting international peace and security.<sup>125</sup>

During the period under review, the Council frequently called on the parties to a dispute or situation to cooperate in negotiations held under the auspices of the Secretary-General, expressed support for conciliation efforts undertaken by the Secretary-General or expressly requested the Secretary-General to assume an active role in the process of achieving a political settlement.

Decisions calling on conflicting parties to cooperate with the Secretary-General's efforts have been set out above. The following overview sets out examples of decisions by which the Security Council specifically requested or welcomed the Secretary-General's endeavours in this area.

Having considered the report of the Secretary-General on the situation in Central America, dated 26 June 1989,<sup>126</sup> which provided details of the progress achieved by the Central American Governments and the role of the Secretary-General in the process, the Council, by resolution 637 (1989), expressed its full support to the Secretary-General to continue his mission of good offices, in consultation with the Council. The Council reconfirmed its support in subsequent resolutions.<sup>127</sup>

Following the consideration of reports of the Secretary-General dated 21 December 1990 and 16 April 1991,<sup>128</sup> in which the Secretary-General had provided an account of his efforts to promote the achievement of a negotiated political situation to the conflict in El Salvador, the Council, by resolution 693 (1991), *inter alia*, commended the Secretary-General and his Personal Representative for their efforts at

good offices and expressed its full support for their continuing efforts to facilitate a peaceful settlement to the conflict in El Salvador.

By resolution 714 (1991), the Council congratulated the Secretary-General and his Personal Representative for Central America for their skilful and tireless efforts which had been vital to the peace process. By resolution 729 (1992), the Council reaffirmed its support for the Secretary-General's continuing mission of good offices with regard to the Central American peace process.

The Secretary-General continued his mission of good offices in Cyprus on the basis of Security Council authorization, renewed every six months.<sup>129</sup>

In a statement by the President dated 9 June 1989,<sup>130</sup> the members of the Council welcomed and reaffirmed their support for the direct talks launched in August 1988 under the auspices of the Secretary-General in the context of his mission of good offices in Cyprus, and called on the parties to cooperate with the Special Representative of the Secretary-General to achieve a negotiated, just and lasting settlement.

After a meeting between the leaders of the two communities in Cyprus, held from 26 February to 2 March 1990, had not resulted in any progress,<sup>131</sup> the Council, by resolution 649 (1990), called upon those leaders to cooperate, on an equal footing, with the Secretary-General in completing, in the first instance and on an urgent basis, an outline of an overall agreement, and expressed its full support for the "effort of the Secretary-General in carrying out his mission of good offices concerning Cyprus".<sup>132</sup>

After a set of ideas had emerged in talks held in 1991 between the leaders of the two communities in Cyprus and the representatives of the Secretary-General, the Council, in a statement made by its

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<sup>125</sup> The General Assembly, by a resolution adopted on 18 December 1992, also encouraged the Secretary-General and the Security Council "to engage at an early stage in close and continuous consultation in order to develop, on a case-by-case basis, an appropriate strategy for the peaceful settlement of specific disputes, including the participation of other organs, organizations and agencies of the United Nations system, as well as regional arrangements and organizations as appropriate" (resolution 47/120 A, section I, para. 4).

<sup>126</sup> S/20699.

<sup>127</sup> Resolutions 654 (1990), 693 (1991), 729 (1992) and 791 (1992).

<sup>128</sup> S/22031 and S/22494 and Corr.1.

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<sup>129</sup> Authorization was regularly given in connection with the semi-annual extension of the mandate of the peacekeeping force established under resolution 186 (1964); see resolutions 634 (1989), 646 (1989), 657 (1990), 680 (1990), 691 (1991), 697 (1991), 723 (1991), 750 (1992), 759 (1992) and 796 (1992). For the original authorization, see resolution 367 (1975), para. 6.

<sup>130</sup> S/20682.

<sup>131</sup> See the report of the Secretary-General dated 3 April 1990 (S/23780, para. 3).

<sup>132</sup> Such support was also expressed in a statement by the President of the Council dated 19 July 1990 (S/21400).



President on 13 July 1992,<sup>133</sup> endorsed the Secretary-General's intention to invite the two leaders to a joint meeting as soon as the two sides "were in agreement range on the set of ideas".

Following the submission, on 21 August 1992, of the Secretary-General's report on the outcome of his mission of good offices in Cyprus,<sup>134</sup> the Council, by resolution 774 (1992), reaffirmed its position, previously expressed in resolution 716 (1991), that a high-level international meeting, convened and chaired by the Secretary-General, in which the two communities and Greece and Turkey would participate, represented an effective mechanism for concluding an overall framework mechanism on Cyprus.

With regard to the situation in Cambodia, the Secretary-General informed the Council members, by a letter dated 2 August 1989 addressed to the President of the Security Council,<sup>135</sup> that he had attended the Conference on Cambodia convened in Paris on 30 July 1989 at the initiative of the Government of France, at which time he had expressed the view that peace in Cambodia could be achieved only in the framework of a comprehensive political settlement. By a letter dated 30 August 1990,<sup>136</sup> the representatives of the five permanent members of the Security Council transmitted to the Secretary-General a joint statement which, together with an appended framework document, defined the key elements of a comprehensive political settlement of the Cambodia conflict.<sup>137</sup> That framework was accepted by the parties at an informal meeting held at Jakarta on 10 September 1990,<sup>138</sup> and endorsed by the Security

Council in resolution 668 (1990), adopted on 20 September 1990.

In connection with the situation concerning Western Sahara, the Council, by resolution 658 (1990), expressed its full support for the Secretary-General in his mission of good offices and approved his report<sup>139</sup> containing the full text of the settlement proposals accepted by the parties on 30 August 1988, as well as an outline of his plan to implement those proposals.

By resolutions 690 (1991) and 725 (1991), the Council expressed its full support for the efforts of the Secretary-General for the organization and supervision of a referendum for self-determination of the people of Western Sahara.

With regard to the former Yugoslavia, the Council, by resolution 713 (1991), invited the Secretary-General to offer his assistance in relation to the collective efforts for peace and dialogue in Yugoslavia undertaken under the auspices of the States members of the European Union.

By resolution 765 (1992), the Council invited the Secretary-General to appoint a Special Representative for South Africa in order to recommend, after discussions with the parties, measures which would assist in bringing an effective end to the violence and in creating conditions for negotiations leading towards a peaceful transition to a democratic, non-racial and united South Africa.

On 23 January 1992, by resolution 733 (1992), the Council requested the Secretary-General to assist in the process of a political settlement in Somalia.<sup>140</sup> Following a meeting of the Secretary-General with leaders of the Somali factions at a conference of national reconciliation and unity held in New York from 12 to 14 February 1992,<sup>141</sup> and after further international negotiations conducted in Somalia from 29 February to 3 March 1992, a ceasefire agreement was secured.

<sup>133</sup> S/24271.

<sup>134</sup> S/24472.

<sup>135</sup> S/20768.

<sup>136</sup> S/21689, annex and appendix.

<sup>137</sup> The statement had been adopted in New York on 27 and 28 August 1990, at the sixth meeting of the five permanent members, held at the vice-ministerial level.

<sup>138</sup> By a letter dated 11 September 1990 (S/21732) addressed to the Secretary-General, the representatives of France and Indonesia, in their capacity as Co-Chairmen of the International Conference on Cambodia, transmitted the joint statement of the informal meeting on Cambodia issued at Jakarta, by which the Cambodian parties had accepted the framework document formulated by the five permanent members as the basis for settling the Cambodia conflict, and had committed themselves to elaborating that framework into a comprehensive political settlement through the processes of the Paris Conference.

<sup>139</sup> S/21360.

<sup>140</sup> This request was reiterated in resolutions 751 (1992), 767 (1992), 775 (1992) and 794 (1992).

<sup>141</sup> A joint delegation of the United Nations and three regional and intergovernmental organizations, headed by the Secretary-General's envoy for Somalia, met separately with the two Somali factions on 13 and 14 February; see the report of the Secretary-General dated 11 March 1992 (S/23693), para. 22.

By resolution 751 (1992), the Council requested the Secretary-General to facilitate the maintenance of a ceasefire throughout the country and to continue his consultations with all Somali parties, movements and factions towards the convening of a conference for national reconciliation and unity in Somalia. By the same resolution, the Council decided to establish a United Nations Operation in Somalia to support the Secretary-General's efforts.

With regard to the situation in Georgia, the members of the Council took note, in a statement by the President dated 10 September 1992,<sup>142</sup> of the intention of the Secretary-General to send a goodwill mission and requested him to inform the Council periodically of the developments in Abkhazia.

In connection with alleged terrorist acts by the Libyan Arab Jamahiriya, the Council requested the Secretary-General, by resolution 731 (1992), to seek the full cooperation of the Libyan Government with investigations into the destruction of Pan Am flight 103 on 21 December 1988 and UTA flight 772 on 19 September 1989.<sup>143</sup>

On 25 January 1992, following consultations with the Libyan authorities, the Secretary-General, through a Special Envoy, sent a personal message to the Libyan leader, in which he expressed the hope that the matter could be resolved quickly, but emphasized that he was acting under the terms of resolution 731 (1992) and not as a mediator between the Security Council and the Libyan authorities.<sup>144</sup>

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<sup>142</sup> S/24542.

<sup>143</sup> See the letters dated 20 and 23 December 1989 from the representatives of France, the United Kingdom and the United States to the Secretary-General (S/23306, S/23307, S/23308, S/23309 and S/23317).

<sup>144</sup> See the reports of the Secretary-General dated 11 February and 3 March 1992 (S/23574 and S/23672), submitted pursuant to resolution 731 (1992).

With regard to the situation between Iraq and Kuwait,<sup>145</sup> several days after the Council had demanded Iraq's immediate and unconditional withdrawal from Kuwait by resolution 660 (1990) and imposed a general trade embargo against Iraq by resolution 661 (1990), it adopted, on 18 August 1990, resolution 664 (1990) by which it welcomed the efforts of the Secretary-General to pursue urgent negotiations with the Government of Iraq, following the concern and anxiety expressed by the members of the Council on 17 August 1990.

By resolution 670 (1990), the Council welcomed the Secretary-General's use of his good offices to advance a peaceful resolution based on the relevant resolutions of the Council and noting with appreciation his continuing efforts to this end. The Council later stated, in resolution 674 (1990) that it reposed its trust in the Secretary-General to make available his good offices and, as he considered appropriate, to pursue them and to undertake diplomatic efforts in order to reach a peaceful solution to the crisis caused by the Iraqi invasion and occupation of Kuwait, on the basis of resolutions 660 (1990), 662 (1990) and 664 (1990).

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<sup>145</sup> While the use of the Secretary-General's good offices is not typically associated with situations in which enforcement measures under Chapter VII of the Charter have become necessary, efforts to employ such good offices may sometimes be undertaken in parallel with the imposition of enforcement measures. As mediation and good offices are instruments typically undertaken within the framework of Chapter VI of the Charter, the decisions mentioned here have been included in spite of the fact that they were adopted, in whole or in part, under Chapter VII of the Charter.

## Part IV

### Constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter

#### Note

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

In accordance with the relevant provisions of Chapter VI, the Council shall, when it deems necessary, make recommendations in relation to disputes or situations which are likely to endanger international peace and security. Accordingly, this part will focus on discussions concerning the existence of a dispute or situation within the meaning of Chapter VI of the Charter.

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

Since the referral of a situation or dispute to the Council was challenged on the basis of distinct arguments, some situations are considered under several sub-headings.

#### Questions regarding the existence of a dispute

In the following instances, the referral of a situation to the Council by a Member State was challenged on the basis of an assertion that the incident in question did not constitute a dispute.<sup>146</sup>

<sup>146</sup> Instances in which the existence of a dispute was denied

During the Council's deliberations at the 2835th meeting on 5 January 1989, in connection with the downing of two Libyan reconnaissance aircraft by the United States,<sup>147</sup> the United States denied that the incident was part of or related to any differences between the two countries and maintained that its aircraft had acted in self-defence under Article 51 of the Charter.<sup>148</sup>

A draft resolution, submitted by several countries at the 2841st meeting, on 11 January 1989, was voted upon but was not adopted. By that draft resolution, the Council would have deplored the downing of the two Libyan aircraft; and called upon the parties to resolve their differences by peaceful means and to cooperate with the Secretary-General in an effort to bring about a peaceful settlement of the differences existing between them.<sup>149</sup>

In connection with a letter dated 2 February 1990, from the representative of Cuba to the President of the Security Council,<sup>150</sup> concerning the alleged harassment of a Cuban merchant ship by the United States, the representative of the United States, at the 2907th meeting on 9 February 1990, maintained that the incident was not "a spat between the United States and Cuba", but a "routine drug-interdiction case", which was an "entirely routine and normal law-enforcement procedure on the high seas" and "in accordance with

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on the grounds that an incident or conflict did not involve any other State, but was essentially an internal matter, are considered in chapter XII.

<sup>147</sup> The incident was brought to the Council's attention by letters dated 4 January 1989 from the representatives of the Libyan Arab Jamahiriya and Bahrain to the President of the Security Council (S/20364 and S/20367). Those letters, which describe the incident as an aggression, were considered at the 2835th, 2836th, 2839th, 2840th and 2841st meetings of the Council. For a more comprehensive treatment of this matter, see chapter VIII, section 3.

<sup>148</sup> S/PV.2835, pp. 14-17.

<sup>149</sup> S/20378, submitted by Algeria, Colombia, Ethiopia, Malaysia, Nepal, Senegal and Yugoslavia. The result of the voting was as follows: 9 votes in favour, 4 against (Canada, France, United Kingdom, United States) and 2 abstentions (Brazil, Finland) (see S/PV.2841, p.48).

<sup>150</sup> S/21120.

customary international law and practice”. Accordingly, the United States believed that such a matter did not merit Security Council consideration.<sup>151</sup>

### **Assertion that international peace and security are not endangered**

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

In connection with a letter dated 3 January 1990 from the representative of Nicaragua to the President of the Council,<sup>152</sup> concerning the alleged interference by the United States with the residence of the Nicaraguan Ambassador to Panama, the representative of Nicaragua, at the 2905th meeting on 17 January 1990, explained that Nicaragua had requested the Council to meet in order to obtain a resolution by which the Council would denounce that action, which he described as “a provocation designed to obtain an equivalent response — which would result in the unleashing of even broader actions against Nicaragua, with a serious threat to international peace and security”.<sup>153</sup>

In response, the United States contended that no formal Council meeting or even Council consideration was required, as the incident did not constitute an actual or a potential threat to international peace and security, and as clear remedies for dealing with such incident already existed.<sup>154</sup> In a similar vein, the United Kingdom stated that, in its view, the matter did not constitute a threat to international peace and security or provide any basis for a Council resolution under Chapter VI of the Charter.<sup>155</sup>

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<sup>151</sup> S/PV.2907, pp. 26-34. For further details, see chapter VIII, section II.

<sup>152</sup> S/21066.

<sup>153</sup> S/PV.2905, pp. 3 and 13-15.

<sup>154</sup> *Ibid.*, pp. 21, 33 and 34.

<sup>155</sup> *Ibid.*, pp. 34-35.

A draft resolution submitted by several Member States, in which the Council would have expressed its concern about the incident, was voted upon but was not adopted.<sup>156</sup>

The representatives of Canada and Finland, the only other speakers in the debate, explained that they had voted for the draft resolution as the incident in question constituted a violation of general principles of international law. The representative of Finland noted, however, that he continued to have difficulty in accepting that the subject matter of the draft fell within the competence of the Security Council as defined in the Charter, as it was “not of such a character as to present a threat to international peace and security”.<sup>157</sup>

In connection with alleged terrorist acts by the Libyan Arab Jamahiriya against Pan Am flight 103 on 21 December 1988 and UTA flight 772 on 19 September 1989, the Security Council, at its 3033rd meeting, on 21 January 1992, considered letters dated 20 and 23 December 1991 from the representatives of France, the United Kingdom and the United States to the Secretary-General, alleging the involvement of Libyan Government officials in those incidents.<sup>158</sup> The Council also considered a draft resolution proposed by the three countries, in which the Council would have condemned the destruction of the two aircraft and urged the Libyan Government to cooperate fully in establishing responsibility for the terrorist acts.<sup>159</sup>

During the Council’s deliberations on the draft resolution, the representative of the Libyan Arab Jamahiriya asserted that the matter was not a dispute of a political nature within the meaning of Chapter VI of the Charter, as the Libyan Arab Jamahiriya had never threatened any country and could not “behave in such a way as to endanger peace and security”.<sup>160</sup>

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<sup>156</sup> S/21084, submitted by Colombia, Côte d’Ivoire, Cuba, Democratic Yemen, Ethiopia, Malaysia and Zaire. The result of the voting was as follows: 13 votes in favour, 1 against (United States) and 1 abstention (United Kingdom).

<sup>157</sup> S/PV.2905, p. 38.

<sup>158</sup> S/23306, S/23307, S/23308, S/23309 and S/23317. For a comprehensive discussion of the item, see chapter VIII, section 3. See also the reports of the Secretary-General pursuant to resolution 731 (1992) (S/23574 and S/23672).

<sup>159</sup> S/23422, submitted by France, the United Kingdom and the United States.

<sup>160</sup> S/PV.3033, p. 23.

This view was not shared, however, by the sponsors of the draft resolution, who believed that the situation did constitute a threat to international peace and security.<sup>161</sup> Other speakers, some of whom characterized international terrorism as a threat to international peace and security, also expressed clear support for the draft resolution,<sup>162</sup> which was subsequently adopted as resolution 731 (1992).

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

Article 36 (3) of the Charter provides that the Security Council, in making recommendations under Article 36, should take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.<sup>163</sup>

<sup>161</sup> See in particular S/PV.3033, p. 79 (United States); p. 82 (France); and p. 103 (United Kingdom); and S/PV.3063, p. 67 (United States); pp. 68-69 (United Kingdom); and p. 73 (France).

<sup>162</sup> See S/PV.3033, P. 47 (Canada); p. 72 (Ecuador); p. 83 (Belgium); and pp. 87-89 (Russian Federation); and S/PV.3063, p. 76 (Hungary); p. 77 (Austria); pp. 79-81 (Russian Federation); and pp. 82-83 (Venezuela).

<sup>163</sup> In his report entitled "An Agenda for peace", the Secretary-General stated that "greater reliance on the Court would be an important contribution to United Nations peacemaking" and called attention to the power of the Security Council under Articles 36 and 37 of the Charter to recommend to Member States the submission of a dispute to the International Court of Justice, arbitration or other dispute-settlement mechanism (S/24111, para. 38). Similar recommendations are contained in the Secretary-General's reports on the work of the Organization (see for example *Official Records of the General Assembly, Forty-fourth Session, Supplement No. 1 (A/44/1)*, p. 6; *ibid.*, *Forty-fifth Session, Supplement No. 1 (A/45/1)*, p. 7; and *ibid.*, *Forty-sixth Session, Supplement No. 1 (A/46/1)*, p. 4.). In addition to recommending greater recourse to the International Court of Justice in adjudicating disputes of a legal nature, the Secretary-General proposed that advisory opinions on the legal aspects of a dispute should be requested more often. He also suggested that, in addition to the rights granted to the General Assembly and the Security Council under Article 96 of the Charter, the Secretary-General should enjoy a right to make such requests (see A/45/1, p. 7, and A/46/1, p. 4). In order to assist developing countries that lacked the necessary

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

In connection with the alleged terrorist acts by the Libyan Arab Jamahiriya against Pan Am flight 103 on 21 December 1988 and UTA flight 772 on 19 September 1989, the Council, at its 3033rd meeting, on 21 January 1992, considered letters dated 20 and 23 December 1991 from the representatives of France, the United Kingdom and the United States to the Secretary-General,<sup>164</sup> alleging the involvement of Libyan Government officials in those acts. The Council also considered a draft resolution proposed by the aggrieved countries, by which the Council would, *inter alia*, condemn the destruction of the two aircraft and urge the Libyan Government to cooperate fully in establishing responsibility for the terrorist acts.<sup>165</sup>

At that meeting, the representative of the Libyan Arab Jamahiriya asserted that the investigations undertaken in the said three countries had never proved the involvement of the Libyan State, and that the incident in question was a matter of a purely legal nature, which ought to be dealt with by the judiciary and which the Council was not competent to consider. The Libyan Arab Jamahiriya emphasized that it had initiated investigatory proceedings against the two accused individuals, who would be brought to trial, and, if convicted, punished according to the provisions of Libyan law. The Libyan representative also noted that "the competent authorities in his country [had] expressed their readiness to receive investigators to participate in the investigation". He believed "that the international dimensions of the alleged events might make an international investigation an appropriate means of starting to resolve the dispute". The representative contended that, if there was an issue before the Council, it was "a question concerning a

means for recourse to the Court or for implementing its decisions, the Secretary-General established a special voluntary trust fund (see A/44/1, p. 6).

<sup>164</sup> S/23306, S/23307, S/23308, S/23309 and S/23317. For a comprehensive discussion of the matter, see chapter VIII, section 3. See also the reports of the Secretary-General pursuant to resolution 731 (1992) (S/23574 and S/23672).

<sup>165</sup> S/23422; adopted unanimously at the same meeting as resolution 731 (1992).

conflict of jurisdiction, a dispute over the legal determination to be made in connection with a request for extradition". Accordingly, he believed that the Council ought to take into consideration that, under Article 36 (3) of the Charter, legal disputes should as a general rule be referred to the International Court of Justice in accordance with the provisions of the Statute of the Court.<sup>166</sup> More generally, the representative stated that the Council ought to recommend settlement through the divers legal channels that are available, not only within the framework of the Charter, but also under the provisions of more relevant international conventions.<sup>167</sup>

Several non-members of the Council, which had been invited to participate in the debate, supported the position of the Libyan Arab Jamahiriya. The representative of the Arab League believed that the dispute should be placed before a neutral international commission of inquiry.<sup>168</sup> The Sudan and the Islamic Republic of Iran believed that the dispute should be resolved within the framework of existing international instruments, through an international inquiry or by arbitration.<sup>169</sup> The representative of Iraq noted that there was "no precedent for such judicial disputes being brought before the Security Council."<sup>170</sup> Mauritania believed that the case appeared to be "a question essentially juridical in nature".<sup>171</sup> Yemen thought that the question should be "dealt with in a legal manner".<sup>172</sup>

However, the sponsors of the draft resolution, supported by other Council members, believed that the situation constituted a threat to international peace and security, which could only be appropriately addressed by the Security Council.<sup>173</sup>

The representative of the United States stated that the matter was "a situation to which standard procedures [were] clearly inapplicable", and called upon the Council not to be "distracted by Libyan attempts to convert this issue of international peace and security into one of bilateral differences". The proposed resolution was to ensure "that the people accused be simply and directly turned over to the judicial authorities of the Governments which are competent under international law to try them". The suggestion of the Libyan Arab Jamahiriya that its nationals be tried elsewhere, was described by the representative as a "tortured attempt to identify or create venues that could reduce and even negate the value of the evidence so painfully collected in long and thorough investigations by the requesting States". The representative asserted that neither the Libyan Arab Jamahiriya nor indeed any other State could seek "to hide support for international terrorism behind traditional principles of international law and State practice".<sup>174</sup>

The representative of the United Kingdom emphasized that it was the exceptional circumstance of government involvement in terrorism that had made it appropriate for the Council to adopt a resolution urging the Libyan Arab Jamahiriya to make the accused available for trial in Scotland or the United States and to cooperate with the French judicial authorities. He added that his Government was "not asserting the guilt of these men before they were tried", but that "there was serious evidence against them which they had to face in court". The representative believed that "since the crime occurred in Scotland and the aircraft was American, and since the investigation [had] been carried out in Scotland and in the United States, the trial should clearly take place in Scotland or in the United States." With regard to the suggestion that the matter be referred to an international tribunal, he noted that this was "simply not practical", that the International Court of Justice had no criminal jurisdiction and that there was no other international tribunal with such jurisdiction. The representative acknowledged that he did understand the position of those countries whose law prevented the extradition of their nationals, but noted that there was no rule of international law which precluded the extradition of

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<sup>166</sup> S/PV.3033, pp. 8-22.

<sup>167</sup> *Ibid.*, p. 22. Reference was made in particular to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal in 1971.

<sup>168</sup> S/PV.3033, p. 28.

<sup>169</sup> *Ibid.*, pp. 33-36 and 63-65.

<sup>170</sup> *Ibid.*, p. 38.

<sup>171</sup> *Ibid.*, p. 52.

<sup>172</sup> *Ibid.*, p. 56.

<sup>173</sup> *Ibid.*, pp. 78-79 (United States); p. 82 (France); p. 103 (United Kingdom) and p. 46 (Italy); pp. 47-48 (Canada); pp. 72-73 (Ecuador); p. 76 (Cape Verde); p. 83. (Belgium); pp. 87-89 (Russian Federation); pp. 91-92 (Hungary); pp. 92-93 (Austria); p. 97 (Japan).

<sup>174</sup> *Ibid.*, pp. 79-80.

nationals, adding that “indeed many countries place no bar on this and regularly do extradite their nationals”. As to prosecution in the Libyan Arab Jamahiriya, he stated that “it must be clear to all that the State which is itself implicated in the acts of terrorism cannot try its own officials”.<sup>175</sup>

The representative of France expressed the hope that the unanimous reaction of the international community, expressed by the adoption of the proposed Security Council resolution, would induce the Libyan authorities to respond quickly to the requests of the judicial authorities conducting the investigation into the terrorist attacks.<sup>176</sup>

The representative of the Russian Federation believed it to be important that, “in accordance with universally acknowledged legal norms, the judicial organs of those countries to which the downed aircraft belonged and over whose territory the crime was committed should be allowed to deal with this case”. He believed that the “international interest in this trial should ensure that it is open and impartial in nature”.<sup>177</sup>

At the same meeting, the draft resolution was adopted unanimously as resolution 731 (1992). However, several Council members emphasized the exceptional nature of the case or expressed certain reservations.

The representative of Morocco felt that the Council was “touching on a principle of international law that is well established in both unwritten law and in various instruments”, namely the principle of “extradite or prosecute”. Accordingly, it could not share the view that the adoption of the draft resolution “enshrine[d] any exception to that uncontested principle of international law”.<sup>178</sup>

The representative of Venezuela noted that “the inability of the General Assembly to take a stand on the establishment of an international crime tribunal [had] made it necessary for the Council to act”, noting that “although this measure [was] exceptional and [had] involved problems for many countries in the area of

jurisdiction and extradition of nationals, the Council [did] have the necessary competence and [had to] be prepared to assume the enormous responsibility involved in filling this institutional gap in result of the lack of alternative machinery to deal with crimes against mankind”.<sup>179</sup>

The Council resumed its consideration of the matter on 31 March 1992, at its 3063rd meeting, at which it discussed and adopted the text of resolution 748 (1992).<sup>180</sup>

The Libyan Arab Jamahiriya again emphasized that it would welcome a neutral investigation, or consideration of the matter by the International Court of Justice. It reaffirmed its view that a referral to the Court should have been duly considered by the Council, in accordance with Article 36 (3) of the Charter.<sup>181</sup> Referring to an application it had made to the Court itself several days earlier, the Libyan Arab Jamahiriya questioned why the aggrieved parties, instead of awaiting the Court’s judgment, exerted pressure on the Security Council to consider this matter at the same time at which the Court was considering it, noting also that the United States had “declared in advance its rejection of any ruling of the International Court of Justice that would not be in its favour.”<sup>182</sup>

In statements made prior to the vote on the draft resolution, four Council members expressed themselves in favour of an appropriate role for the International Court of Justice in this matter.<sup>183</sup>

The representative of China believed that the hearings held recently by that Court would “undoubtedly help clarify the facts and ascertain the truth through investigations”. He also stated that China

<sup>175</sup> Ibid., pp. 103-105.

<sup>176</sup> Ibid., p. 82.

<sup>177</sup> Ibid., p. 88.

<sup>178</sup> Ibid., pp. 58-59. A similar view was expressed by Zimbabwe (ibid., p. 71), which also voted in favour of the resolution.

<sup>179</sup> Ibid., p. 99. Certain reservations were also expressed by the representatives of China and India.

<sup>180</sup> By resolution 748 (1992), which was adopted by 10 votes to none, with 5 abstentions (Cape Verde, China, India, Morocco, Zimbabwe), the Council imposed against the Libyan Arab Jamahiriya a broad range of measures under Chapter VII of the Charter. While the relevant deliberations would therefore seem to fall outside the framework of this chapter, they have been included here because of the repeated citation, by several speakers, of Article 36 (3) of the Charter.

<sup>181</sup> S/PV.3063, pp. 6-7 and 18.

<sup>182</sup> Ibid., pp. 14-16.

<sup>183</sup> These Council members (Cape Verde, China, India and Zimbabwe), in addition to Morocco, abstained from voting on the draft resolution.

was in favour of “conducting serious, thorough, fair and objective investigations of the bombing incidents”, in accordance with the Charter and the relevant principles of international law.<sup>184</sup>

The representative of India, noting that the judicial proceedings before the Council had not yet run their course, believed that “a little delay on that account in the Security Council’s moving on to the next stage would have merited positive consideration”. The representative felt that “it should be feasible for these two principal organs of the United Nations to function in tandem in a manner so as to reinforce each other’s efficacy and prestige in the course of international peace and security”.<sup>185</sup>

The representative of Cape Verde believed that the International Court of Justice should “have a role to play whenever a legal issue was at stake, as mentioned in paragraph 3 of Article 36 of the Charter”. He added that it would therefore be “more appropriate” for the Council to act after the International Court of Justice — which was seized of the matter — had decided what was the applicable law, if any, as to the issue of jurisdiction. The representative also explained that it would be difficult for his country to endorse measures that could run counter to its Constitution, which did not allow the extradition of its own nationals.<sup>186</sup>

The representative of Zimbabwe agreed that it would have been preferable for the Council to await the outcome of the judicial proceedings. He believed that, “while there [was] no specific provision in the Charter that precluded parallel consideration of the matter by these two principal organs ... the authors of the Charter [had] intended the two bodies to complement each other’s efforts rather than proceed in a manner that could produce contradictory results”.<sup>187</sup>

Similar views were held by the States non-members of the Security Council which had been invited to attend the meeting.<sup>188</sup>

The sponsors of the draft resolution, supported by other Council members, believed however that the measures imposed against the Libyan Arab Jamahiriya by resolution 748 (1992) were appropriate and necessary to deal with the threat to international peace and security posed by that country’s alleged failure to implement resolution 731 (1992) and cooperate with the investigations.<sup>189</sup>

Commenting on the proceedings before the International Court of Justice, the representative of the United Kingdom said he believed that the application by the Libyan Arab Jamahiriya to the Court was in fact “directed at interfering with the exercise by the Security Council of its rightful functions and prerogatives” under the Charter. He emphasized that the Council was “fully entitled to concern itself with issues of terrorism and the measures needed to address acts of terrorism in any particular case or to prevent it in the future”.<sup>190</sup>

The representative of Venezuela agreed that, although it would have been desirable for there to be a simultaneous decision by the Court and the Council, the absence of such a decision could not inhibit the actions which one or other of them might take, since both were independent of each other. However, the representative noted that Venezuela also saw a need for

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International Court of Justice, to which it has been submitted, ha[d] been considering it since last Thursday” (S/PV.3063, pp. 31-32). The representative of Iraq stated that his country did “not believe that harm [would] be done to international peace and security if the Council show[ed] patience and persist[ed] in following up efforts to achieve the desired solution, especially since the International Court of Justice [was] considering the question and the Libyan Arab Jamahiriya ha[d] expressed in advance its acceptance of the Court’s opinion” (ibid., p. 37). The representative of Uganda “welcomed as a positive step this issue’s being brought before the International Court of Justice” (ibid., p. 40). The representative of Jordan more generally recalled its emphasis “on the need to call upon the Security Council to resolve the conflict through negotiations, mediation and a judicial settlement, in accordance with the stipulations of Chapter VI, Article 33, of the Charter” (ibid., pp. 26-27).

<sup>189</sup> See in particular the statements made by the representatives of the United States (S/PV.3063, pp. 66-67); the United Kingdom (ibid., pp. 68-69); France (ibid., pp. 73-74); Japan (ibid., pp. 74-75); Austria (ibid., pp. 76-88); and the Russian Federation (ibid., pp. 79-80).

<sup>190</sup> S/PV.3063, pp. 68-69.

<sup>184</sup> S/PV.3063, pp. 59-60.

<sup>185</sup> Ibid., p. 58.

<sup>186</sup> Ibid., pp. 46-47.

<sup>187</sup> Ibid., pp. 52-53.

<sup>188</sup> The representative of Mauritania noted that the States of the Arab Maghreb Union considered “that it could be possible to avoid the sanctions and other measures set out in the text, especially since the dispute in question seems to be basically juridical in nature and since the



the United Nations system “to be provided with legal mechanisms capable of dealing with the type of criminal activity now before the Council”. Accordingly, he reiterated Venezuela’s request “that an international criminal court be set up to complement the International Court of Justice”.<sup>191</sup>

With regard to the situation between Iraq and Kuwait<sup>192</sup> at the 2981st meeting, on 3 April 1991, the Council had before it a draft resolution by which it would call upon the Secretary-General to make arrangements with Iraq and Kuwait to demarcate the boundary between them.<sup>193</sup> At that meeting, several speakers expressed doubt as to whether the Council had the authority to deal with such a matter<sup>194</sup> and expressed the view that boundary questions ought to be referred to the International Court of Justice.<sup>195</sup>

Referring explicitly to Article 36 (3), the representative of Ecuador stated his country’s belief that the Council, in taking a position on the territorial boundary between Iraq and Kuwait and in requesting the Secretary-General to make arrangements with both countries to demarcate the boundary, had wrongly considered this case to be an exception to the general principle requiring such disputes to be referred to the International Court of Justice.<sup>196</sup>

In response, the sponsors of the draft resolution drew attention to the uniqueness of the situation, stressed that the border to be demarcated would be the international boundary previously agreed upon by the two countries,<sup>197</sup> and emphasized that the involvement

of the Council in the demarcation of the boundary was not an attempt to use the Council to replace the existing principles pertaining to the settlement of boundaries.<sup>198</sup>

Several speakers criticized the provisions in the draft resolution envisaging the establishment of a commission and fund to deal with reparations and compensation, and argued that the International Court of Justice, rather than the Security Council, should decide the financial claims against Iraq.<sup>199</sup>

The majority of Council members expressed support for these provisions, however, observing that the question of reparations was an essential part of the post-war process.<sup>200</sup>

At the same meeting, the draft resolution was adopted as resolution 687 (1991).<sup>201</sup>

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

Article 33 (1) requires the parties to a dispute, the continuance of which is likely to endanger the maintenance of international peace and security, first of all to seek a solution by peaceful means, such as negotiation, conciliation or arbitration. The importance placed on the parties’ efforts to reach a settlement is also reflected in Article 36 (2), which provides that the Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted between the parties.

In the following instances, the deliberations of the Security Council turned to the question whether the

Agreement concluded between Iraq and Kuwait in 1963, which was registered with the United Nations.

<sup>198</sup> S/PV.2981, pp. 84-86 (United States); and pp. 112-113 (United Kingdom).

<sup>199</sup> Ibid., p. 41 (Yemen); and pp. 68-71 (Cuba). See also letter dated 5 December 1990 from the representative of Colombia (S/21986) and letter dated 27 May 1991 from the representative of Iraq (S/22643, annex).

<sup>200</sup> S/PV.2981, p. 53 (Zaire); p. 87 (United States); p. 93 (France); p. 96 (China); p. 103 (Russian Federation); p. 114 (United Kingdom); p. 126 (Romania); and p. 129-130 (Belgium).

<sup>201</sup> The resolution was adopted by 12 votes to 1 (Cuba), with 2 abstentions (Ecuador, Yemen).

<sup>191</sup> Ibid., pp. 82-84.

<sup>192</sup> The situation between Iraq and Kuwait, which, as a whole, falls within the framework of Chapter VII of the Charter, has been included in this section only on account of the express references to Article 36 (3) made in the debate.

<sup>193</sup> S/22430, submitted by France, Romania, the United Kingdom and the United States.

<sup>194</sup> S/PV.2981, p. 32 (Iraq); p. 41 (Yemen); p. 61 (Cuba); pp. 77-78 (India); and pp. 107-108 (Ecuador).

<sup>195</sup> Ibid., p. 41 (Yemen): “We might mention that the Security Council has never set any boundaries. That task has always been left to negotiations or brought before the International Court of Justice, with the agreement of the parties concerned.”

<sup>196</sup> Ibid., pp. 107-108. See also the letter dated 18 June 1992 from the representative of Ecuador to the President of the Security Council (S/24117), and Ecuador’s statement at the 3108th meeting (S/PV.3108, pp. 3-4).

<sup>197</sup> The demarcation of the boundary was to be based on an

priority accorded to the parties' own efforts under those provisions might, in certain circumstances, restrict the Council's competence to consider a dispute in accordance with Article 33 (2).

In connection with alleged terrorist acts by the Libyan Arab Jamahiriya against Pan Am flight 103 on 21 December 1988 and UTA flight 772 on 19 September 1989, the representative of the Libyan Arab Jamahiriya asserted, at the Council's 3033rd meeting, that the Council was competent only to consider a dispute "in which the parties to it [had] not followed any of the means for peaceful settlement of disputes set out in Article 33 of the Charter". Referring to certain measures the Libyan Arab Jamahiriya had taken to respond to demands made by the aggrieved States, the representative reminded Council members that, in accordance with Article 36 (2) of the Charter, the Council should take into account any measures already adopted. As the Libyan Arab Jamahiriya had "frequently declared its readiness to negotiate and accept mediation and other peaceful means to settle the dispute", the Council ought to "call upon the other parties to respond favourably to that expression of readiness". In particular, the Council should call on the United States and the United Kingdom to enter promptly into negotiations with the Libyan Arab Jamahiriya on "proceedings leading to arbitration and the appointment of an arbitration panel".<sup>202</sup>

While several speakers supported the appeal of the Libyan Arab Jamahiriya to resolve the matter by the peaceful means of settlement set out in Article 33 (1),<sup>203</sup> others believed that the situation concerned a threat to international peace and security, which could not be resolved by such means.<sup>204</sup> Accordingly, they expressed support for the draft resolution before the Council, which at the same meeting was adopted as resolution 731 (1992).

Following the adoption of the resolution, the representative of the United States emphasized that the Council was dealing with a case of international terrorism, and not "some difference of opinion or

approach that [could] be mediated or negotiated". For that reason, he called upon the Council not to be "distracted by Libyan attempts to convert this issue of international peace and security into one of bilateral differences".<sup>205</sup> In a similar vein, the representative of France believed that "the exceptional gravity of these attacks and the considerations connected with the restoration of law and security justif[ied] this action in the Security Council".<sup>206</sup> This view was shared by the representative of the United Kingdom, who saw the action taken by the Council as the "proper reaction of the international community" to the situation arising from the failure, thus far, of the Libyan Arab Jamahiriya "to respond effectively to the most serious accusations of State involvement in acts of terrorism".<sup>207</sup>

The Council resumed its consideration of the item at the 3063rd meeting, on 31 March 1992. The Council members had before them another draft resolution proposed by the aggrieved three countries, by which the Council would impose a range of sanctions against the Libyan Arab Jamahiriya.<sup>208</sup>

The Libyan Arab Jamahiriya, while rejecting demands for the extradition of the two Libyan citizens accused of being implicated in the terrorist acts, again referred to its "full willingness to find a peaceful and just solution to the dispute" and declared its readiness to cooperate with all the parties concerned in the implementation of resolution 731 (1991). It maintained, however, that the Council, by adopting that resolution, had ignored "the provisions of Article 33 of the Charter concerning the settlement of disputes between Member States by peaceful means", adding that "the impasse in finding a solution [had] not been created by any lack of cooperation on the part of the Libyan authorities", but by the rejection, by the other parties, of all the initiatives the Libyan Arab Jamahiriya had taken.<sup>209</sup> As evidence of its assertions, the Libyan Arab Jamahiriya, *inter alia*, cited the

<sup>202</sup> S/PV.3033, pp. 14-15, 18 and 23.

<sup>203</sup> *Ibid.*, pp. 28 and 31 (League of Arab States); p. 36 (Sudan); pp. 38-40 (Iraq); pp. 51-52 (Mauritania); pp. 64-65 (Islamic Republic of Iran); pp. 67-69 (OIC); and p. 86 (China).

<sup>204</sup> *Ibid.*, p. 47 (Canada); p. 72 (Ecuador); p. 79 (United States); p. 82 (France); p. 83 (Belgium); pp. 87-89 (Russian Federation); and p. 103 (United Kingdom).

<sup>205</sup> *Ibid.*, p. 79.

<sup>206</sup> *Ibid.*, p. 82. France conceded, however, that "this action, motivated by these specific cases of international terrorism, [could] not constitute a precedent". With regard to the exceptional nature of the Council's action, see also the observations made by the representatives of India and Venezuela (*ibid.*, pp. 96 and 101).

<sup>207</sup> *Ibid.*, p. 104.

<sup>208</sup> S/23762, subsequently adopted as resolution 748 (1992).

<sup>209</sup> S/PV.3063, pp. 6-17.

Secretary-General's report to the Security Council dated 3 March 1992, in which the Secretary-General had noted "a certain evolution in the position of the Libyan authorities".<sup>210</sup>

Several other speakers reiterated their view that the parties, in accordance with Article 33, should first of all seek a solution by peaceful means.<sup>211</sup>

The sponsors of the draft resolution,<sup>212</sup> echoed by several other speakers,<sup>213</sup> insisted however that the Libyan Arab Jamahiriya had not complied with resolution 731 (1992), that the Council was faced with a threat to international peace and security, and that there was no alternative, therefore, to taking enforcement measures.

At the same meeting, the Council adopted the draft resolution before it as resolution 748 (1992).<sup>214</sup>

In connection with a letter dated 3 January 1990 from the representative of Nicaragua to the President of the Council,<sup>215</sup> alleging a violation of Nicaragua's diplomatic premises in Panama by the United States, the representative of the United States, at the 2905th meeting, on 17 January 1990, contended that, as the matter had already been dealt with diplomatically and as the United States had formally expressed its regret to the Government of Nicaragua, further consideration of the matter by the Security Council was unnecessary. More specifically, the representative stated that "in normal diplomatic practice, if an issue such as this cannot be resolved directly between those concerned,

then the dean of the diplomatic corps — in this case the Papal Nuncio — mediates the incident".<sup>216</sup>

In a similar vein, the representative of the United Kingdom, while observing that it viewed with concern any breach of the inviolability of diplomatic premises, placed emphasis on the fact that the United States had "formally and at the highest level expressed its regret to the Government of Nicaragua".<sup>217</sup>

A draft resolution submitted by several Member States, by which the Council would have expressed its concern about the incident, was voted upon but not adopted.<sup>218</sup>

In connection with the situation between Iraq and Kuwait,<sup>219</sup> the Council, at its 2981st meeting, adopted resolution 687 (1991), by which it called upon the Secretary-General to make arrangements with Iraq and Kuwait to demarcate the boundary between them. Several speakers expressed doubt as to whether the Council had the authority to deal with such matter<sup>220</sup> and expressed the view that boundary questions ought to be dealt with directly by the parties concerned, through negotiations.<sup>221</sup>

In response, the representative of the United States, being one of the sponsors of the relevant draft resolution,<sup>222</sup> drew attention to the uniqueness of the situation, stressed that the border to be demarcated would be the international boundary previously agreed upon between both countries,<sup>223</sup> and emphasized that

<sup>210</sup> S/23672, para. 6. The representative of India, noting that the non-aligned countries had spared no effort to bring about a peaceful negotiated settlement, also suggested that the Council consider the evolution in the position of the Libyan Arab Jamahiriya in deciding on its future course of action, as recommended by the Secretary-General in his report (S/PV.3063, p. 58).

<sup>211</sup> See S/PV.3063, p. 27 (Jordan: express reference to Article 33); p. 52 (Zimbabwe); p. 58 (India); p. 60 (China); p. 33 (Mauritania); p. 64 (Morocco: express reference to Article 33); p. 43 (OIC); and p. 47 (Cape Verde).

<sup>212</sup> *Ibid.*, p. 67 (United States); pp. 68-73 (United Kingdom); and pp. 73-74 (France).

<sup>213</sup> S/PV.3063, pp. 74-75 (Japan); p. 76 (Hungary); p. 77 (Austria); pp. 79-81 (Russian Federation); pp. 81-82 (Belgium); and pp. 82-83 (Venezuela).

<sup>214</sup> The resolution was adopted by 10 votes to none, with 5 abstentions.

<sup>215</sup> S/21066.

<sup>216</sup> S/PV.2905, p. 21.

<sup>217</sup> *Ibid.*, p. 34.

<sup>218</sup> S/21084, submitted by Colombia, Côte d'Ivoire, Cuba, Democratic Yemen, Ethiopia, Malaysia and Zaire. The result of the voting was as follows: 13 votes to 1 (United States), with 1 abstention (United Kingdom).

<sup>219</sup> The situation between Iraq and Kuwait, which, as a whole, falls within the framework of Chapter VII of the Charter, has been included in this section only on account of the express references to Article 33 (1) made in the debate.

<sup>220</sup> S/PV.2981, p. 32 (Iraq); p. 61 (Cuba); pp. 77-78 (India); and pp. 107-108 (Ecuador). See also the letter from the representative of Ecuador dated 18 June 1992 (S/24117), and Ecuador's statement at the 3108th meeting (S/PV.3108, pp. 3-4).

<sup>221</sup> S/PV.2981, p. 32 (Iraq); p. 4 (Yemen); and p. 96 (China).

<sup>222</sup> S/22430, submitted by France, Romania, the United Kingdom and the United States.

<sup>223</sup> Reference was made to an Agreement concluded between Iraq and Kuwait in 1963, which was registered with the United Nations.

the involvement of the Council in the demarcation of the boundary was not an attempt to use the Council to replace the existing principles pertaining to the settlement of boundaries.<sup>224</sup> Similar observations were made by the representative of the United Kingdom, who noted that the resolution was not attempting to settle the boundary, but believed that the dispute had resulted from “the failure do demarcate that boundary and the determination of Iraq to raise territorial claims that [were] incompatible with the 1963 Agreement”.<sup>225</sup>

The representative of Kuwait observed that, by adopting the resolution, the Security Council was merely calling upon the Secretary-General to offer the necessary technical aid to demarcate the border. Kuwait believed that, through the demarcation of the

boundary, the Council was “testing Iraq’s credibility in regard to its respect for legal documents and treaties”.<sup>226</sup>

The representative of Venezuela noted that the demarcation of the boundary was being carried out in the special circumstances following Iraq’s invasion of Kuwait, which posed a threat to international peace and security. It was Venezuela’s understanding, therefore, that the resolution did not alter the general principle expressed in Article 33 of the Charter that disputes of the nature currently before the Council had to be resolved by the party’s themselves through negotiation.<sup>227</sup>

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<sup>224</sup> S/PV.2981, pp. 84-86.

<sup>225</sup> *Ibid.*, pp. 112-113.

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<sup>226</sup> *Ibid.*, p. 133.

<sup>227</sup> S/PV.3108, p. 3. See also the letter dated 18 June 1992 from the representative of Venezuela to the President of the Security Council (S/24121, annex).