
Chapter X

Consideration of the provisions of Chapter VI of the Charter

Contents

Introductory note	1071
Part I. Referral of disputes and situations to the Security Council	1074
Note	1074
Part II. Investigation of disputes and fact-finding	1080
Note	1080
Part III. Decisions of the Security Council concerning the pacific settlement of disputes ...	1086
Note	1086
A. Recommendations relating to terms, methods or procedures of settlement	1088
B. Decisions involving the Secretary-General in the Council's efforts at the pacific settlement of disputes	1099
C. Decisions involving regional arrangements or agencies	1101
Part IV. Constitutional discussion bearing on the interpretation or application of the provisions of Chapter VI of the Charter	1102
Note	1102

Introductory note

Chapter X deals with the practice of the Security Council in relation to the pacific settlement of disputes within the framework of Articles 33 to 38 of Chapter VI and Articles 11 and 99 of the Charter. The period under review was marked by a considerably expanded scope of Council action within the framework of Chapter VI of the Charter, the aim of which is to promote and institute appropriate methods for the peaceful settlement of disputes.

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 will not consider in a comprehensive manner the practice of the Security Council aimed at the peaceful settlement of disputes. Instead, it will focus on selected material which may best serve to highlight how the provisions of Chapter VI of the Charter were interpreted in deliberations and applied in the relevant decisions of the Council.

The manner of presenting and classifying the relevant material has been devised to set forth the practices and procedures to which the Council has had recourse in a readily accessible form. As in the previous volume of the *Repertoire*, covering the period 1993-1995, the material has been categorized under thematic headings rather than individual Articles of the Charter, so as to avoid ascribing to specific Articles of the Charter Council proceedings or decisions, which do not themselves refer to any such Article.

Thus, part I illustrates how, under Article 35, Member States and non-Member States have brought new disputes and situations to the attention of the Security Council. This part also includes the practice of the General Assembly in calling the attention of the Security Council under Article 11, paragraph 3, to situations which are likely to endanger international peace and security, and the Secretary-General's practice in bringing to the attention of the Security Council matters which may threaten the maintenance of international peace and security, as ascribed under Article 99. Part II sets out investigative and fact-finding activities performed and initiated by the Security Council that may be deemed to fall under the scope of Article 34. Part III provides, under the relevant Articles of the Charter, an overview of Council recommendations and decisions with regard to the pacific settlement of disputes. Specifically, it illustrates Council recommendations to the parties to a conflict and the Council's support for the endeavours of the Secretary-General in the peaceful settlement of disputes. Finally, part IV reflects constitutional discussions within the Security Council on the interpretation or application of the provisions of Chapter VI of the Charter.

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

Article 11, paragraph 3

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

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial

settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

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

Article 34

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

Article 35

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

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

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

Article 36

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

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

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

Article 37, 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 period under review, disputes and situations were exclusively referred to the Council by communications from Member States. While Article 35 was expressly referred to in a small number of communications,¹ most communications did not cite any specific Article as the basis on which they were submitted. Also considered are referrals of such situations by the Secretary-General under Article 99 and the General Assembly under Article 11 (3).

¹ See the following communications addressed to the President of the Security Council: letter dated 9 January 1996 from the representative of Ethiopia (S/1996/10), concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia; letter dated 8 June 1996 from the representative of Zaire (S/1996/413), concerning an alleged military attack by Uganda against Zaire; letter dated 30 July 1996 from the representative of the Libyan Arab Jamahiriya (S/1996/609), concerning alleged terrorist activities against the Libyan Arab Jamahiriya; letter dated 25 August 1996 from the representative of Burundi (S/1996/690), concerning “an illegal economic blockade imposed by the States of the Great Lakes region”; letter dated 25 September from the representative of Afghanistan, concerning “an aggravated and alarming situation in Afghanistan” (S/1996/781); letter dated 3 February 1997 from the representative of Zaire (S/1997/98), concerning an alleged aggression by the armed forces of Uganda, Rwanda and Burundi; letter dated 12 March 1997 from the representative of Italy (S/1997/214), concerning the situation in Albania; letter dated 13 March 1997 from the representative of Albania (S/1997/215), concerning the situation in Albania; letter dated 5 July 1997 from the representative of Eritrea (S/1997/517), concerning “an aborted assassination plot by the National Islamic Front regime of the Sudan on Mr. Isaias Afwerki, President of Eritrea”; and letter dated 31 August 1998 from the representative of the Democratic Republic of the Congo (S/1998/827), concerning an alleged armed aggression by the Rwandan-Ugandan coalition against the Democratic Republic of the Congo.

In a note by the President,² the Security Council considered the simplification of the list of matters of which the Security Council is seized. As part of their efforts to improve the documentation of the Security Council, the President noted that the members of the Council had reviewed the list of matters of which it was seized. In that regard, he stated that the Council had decided that matters which had not been considered by the Council in the preceding five years would be automatically deleted from the list of matters of which the Security Council was seized. Furthermore, the Council noted that the removal of a matter from the list of matters of which the Security Council was seized had no implication for the substance of the matter and did not affect the exercise by Member States of their right to bring matters to the attention of the Security Council in conformity with Article 35 of the Charter of the United Nations.

Referrals by States

While Article 35 (2) provides that a State which is not a member of the United Nations may bring a dispute to the Security Council, no dispute or situation was submitted by a State other than a member of the United Nations during the period under review. For the most part, situations were referred to the Security Council by directly affected States, either exclusively³

² S/1996/603.

³ See, for example, the following letters addressed to the President of the Security Council: letter dated 9 January 1996 from the representative of Ethiopia (S/1996/10), requesting an urgent meeting of the Council to consider the Sudan's refusal to comply with repeated demands for extradition to Ethiopia of the terrorists sought for their role in the assassination attempt against President Mubarak; letter dated 26 February 1996 from the representative of the United States (S/1996/130), requesting an urgent meeting to consider the situation created by the shooting down of two civil aircraft by Cuban forces; letter dated 8 June 1996 from the representative of Zaire (S/1996/413), requesting an urgent meeting of the Council, to consider a situation arisen at the borders between Zaire and Uganda; letter dated 25 September 1996 from the representative of Afghanistan (S/1996/781), requesting an emergency meeting to consider “an aggravated and alarming

or simultaneously with communications from third States.⁴ For example, the situation in Albania was brought to the Council's attention in a letter dated 12 March 1997 from the representative of Italy addressed to the President of the Security Council requesting the Council to convene a meeting.⁵ A similar request was made in a letter dated 13 March 1997 from the representative of Albania addressed to the President of the Security Council.⁶ Following both requests, the Council held its 3751st meeting to consider the situation in Albania, during which it issued a statement explicitly referring to the letters from the representatives of Italy and Albania,⁷ and requested the Secretary-General to keep it informed of any developments. In another instance, the situation in the Federal Republic of Yugoslavia was brought to the Council's attention in a letter dated 24 March 1999 from the representative of the Russian Federation addressed to the President of the Security Council requesting a meeting.⁸ Following the request, the Council convened a meeting,⁹ and drew attention to letters from the representatives of the Federal Republic

of Yugoslavia and Belarus requesting a similar meeting.¹⁰

Referrals by the Secretary-General

While Article 99 stipulates that the Secretary-General may bring any matter to the attention of the Security Council, he did not invoke Article 99, either expressly or by implication, during the period under review. However, he drew the attention of the Security Council to a deteriorating situation which was already on the Council's agenda, and requested the Council to consider taking appropriate action. In connection with the situation in the Great Lakes region, by a letter dated 14 October 1996 addressed to the President of the Security Council, the Secretary-General referred to developments in eastern Zaire,¹¹ and especially in South Kivu Province, where the situation had been deteriorating.¹² In a subsequent letter, the Secretary-General informed the Council that the situation had further deteriorated.¹³ In response, the Council convened a meeting to consider both letters of the Secretary-General.¹⁴

In addition to the above-mentioned communications, the Secretary-General, as part of his general reporting obligations, informed the Security Council of relevant developments on matters of which the Council was seized.

Referrals by the General Assembly

Under Article 11 (3) of the Charter, the General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security. During the period

situation in Afghanistan emanating from an open and widespread incursion and aggression into the Afghan territory by Pakistani militia forces in support of the Taliban"; letter dated 31 August 1998 from the representative of the Democratic Republic of the Congo (S/1998/827), transmitting a memorandum on the "armed aggression by the Rwandan-Ugandan coalition against the Democratic Republic of Congo"; letter dated 30 November 1998 from the representative of Iraq (S/1998/1130), requesting a meeting of the Council, to consider the "acts of aggression" committed by the United States; and letter dated 7 May 1999 from the representative of China (S/1999/523), requesting an urgent meeting to discuss the North Atlantic Treaty Organization (NATO) attack at the Chinese Embassy in Belgrade.

⁴ For instance, the situation in Somalia was brought to the Council's attention by a letter dated 17 May 1999 from the representative of Ethiopia addressed to the President of the Council (S/1999/563). The situation in Somalia was also brought to the Council's attention by a letter dated 24 May 1999 from the representative of Djibouti addressed to the President of the Council (S/1999/600).

⁵ S/1997/214.

⁶ S/1997/215.

⁷ S/PRST/1997/14.

⁸ S/1999/320.

⁹ The Council held its 3988th meeting on 24 March 1999.

¹⁰ See letter dated 24 March 1999 from the representative of the Federal Republic of Yugoslavia addressed to the President of the Council (S/1999/322), requesting an urgent meeting to consider an extremely dangerous situation caused by the unilateral military action of NATO against his country. A similar concern was brought to the attention of the Council in a letter dated 24 March 1999 from the representative of Belarus addressed to the President of the Council (S/1999/323).

¹¹ By a communication dated 20 May 1997, the Secretariat was informed by the Member State known formerly as "Zaire" that the name of the State had been changed on 17 May to "Democratic Republic of the Congo".

¹² S/1996/875.

¹³ S/1996/878.

¹⁴ See S/PV.3708.

under review, the General Assembly did not refer any matters to the Security Council under this Article.¹⁵

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 dispute", or "any situation" which might lead to international friction or give rise to a "dispute". During the period under review, several new items were brought to the Council's attention, which were mostly referred to as "situation[s]".¹⁶ In other instances, the subject matter of the relevant communication was referred to by a different term, such as "conflict", or described in a narrative form.¹⁷

It should also be noted that, while the provisions of the Charter setting out the basis on which States may bring matters concerning international peace and security to the attention of the Council form part of Chapter VI of the Charter, the subject matter of communications submitted to the Council and the type of action requested in relation thereto are not limited by the scope of that Chapter. During the period under

review, several communications submitted to the Council described situations as threatening¹⁸ or endangering regional or international peace and security, or as acts of aggression.¹⁹ For example, in connection with the situation concerning the Democratic Republic of Congo, by a letter dated 31 August 1998 addressed to the President of the Security Council, the representative of the Democratic Republic of the Congo drew the attention of the Council to the aggression by the regular armies of Rwanda and Uganda against his country and stated that it posed a serious "threat to peace and security in the Central African region in general and in the Great Lakes region in particular".²⁰ By a statement of the President dated 31 August 1998, Council members expressed their deep concern about the conflict in the Democratic Republic of the Congo, which posed a serious threat to regional peace and security.²¹ Situations in which the Council did indeed determine the existence of a threat to the peace, a breach of the

¹⁵ See chap. VI, part I, section B for additional details.

¹⁶ In connection with "The shooting down of two civil aircraft on 24 February 1996", see the letter dated 26 February 1996 from the representative of the United States addressed to the President of the Council (S/1996/130). In connection with the situation in Albania, see the letter dated 12 March 1997 from the representative of Italy addressed to the President of the Security Council (S/1997/214) and the letter dated 13 March 1997 from the representative of Albania addressed to the President of the Security Council (S/1997/215). In connection with the situation in the Federal Republic of Yugoslavia, see the letter dated 24 March 1999 from the representative of the Russian Federation addressed to the President of the Security Council (S/1999/320) and letter dated 24 March 1999 addressed to the President of the Security Council from the representative of Belarus (S/1999/323).

¹⁷ See, for instance, the letter dated 9 January 1996 from the representative of Ethiopia addressed to the President of the Security Council (S/1996/10); and the letter dated 4 March 1999 from the representative of the Democratic Republic of the Congo addressed to the President of the Security Council (S/1999/278).

¹⁸ See the letter dated 23 September 1996 from the representative of the Republic of Korea addressed to the President of the Security Council (S/1996/774), stating his belief that the incident involving submarine of the Democratic People's Republic of Korea on 18 September 1996 posed a serious threat "to peace and security on and around the Korean peninsula". In connection with the situation between Eritrea and Ethiopia, see the letter dated 9 June 1998 from the representative of Eritrea addressed to the President of the Security Council (S/1998/492), stating that the actions of Ethiopia were creating a grave threat to international security. In connection with the situation between Eritrea and Ethiopia, see the letter dated 17 May 1999 from the representative of Ethiopia addressed to the President of the Security Council (S/1999/563), stating that the activities carried out by Eritrea constituted a threat to the peace of the subregion.

¹⁹ See, for example, the letter dated 30 November 1998 from the representative of Iraq addressed to the President of the Security Council (S/1998/1130), in which the representative of Iraq referred to "the acts of aggression" committed by the United States against Iraq; and the letter dated 24 March 1999 from the representative of the Federal Republic of Yugoslavia addressed to the President of the Security Council (S/1999/322), stating that the armed forces of NATO had committed "an act of aggression" on the territory of the Federal Republic of Yugoslavia.

²⁰ S/1998/827.

²¹ S/PRST/1998/26.

peace or an act of aggression are considered in chapter XI of this volume.

Action requested of the Security Council

In their communications to the Security Council, States for the most part requested the Council to convene a meeting of the Council (see table). In several instances, more concrete actions requested of the Council were specified. For example, in connection with the agenda item entitled "Letter dated 9 January 1996 from the representative of Ethiopia to the United Nations addressed to the President of the Security Council, concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, on 26 June 1995", the representative of Ethiopia called on the Council to adopt a resolution commensurate with the gravity of the crime.²² Furthermore, in connection with the situation relating to the Federal Republic of Yugoslavia, following the air strikes by the North Atlantic Treaty Organization, the representative of the Federal Republic of Yugoslavia requested the Council to convene, "on the basis of Chapter VII of the Charter", an urgent meeting of the Security Council so that the Council might take immediate action to condemn and to stop the NATO aggression against his country and to protect its sovereignty and territorial integrity.²³

Communications

Disputes and situations were generally submitted to the Security Council by means of a communication to the President of the Security Council. In one instance, a Member State, 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 a letter dated 24 May 1996 addressed to the President of the Security Council, the representative of

Rwanda drew to the attention of the Security Council the fate of 3,000 Rwandan and Zairian families who were under siege by former Rwandan Government forces "responsible for the massacre of more than one million Tutsis and moderate Hutus in Rwanda" two years earlier. For that reason, he called for an emergency meeting of the Security Council "to take immediate action to prevent genocide in eastern Zaire".²⁴

In response, by a letter dated 3 June 1996 addressed to the President of the Security Council, the representative of Zaire raised objections to the content of the above-mentioned letter and rejected the action by the representative of Rwanda which, in his opinion, was taken "in complete ignorance" of all the texts that governed the functioning of the Security Council. He stated that the unrest that had been occurring for some time in the Massisi region was a completely internal situation which the Zairian authorities were taking steps to resolve. Consequently, he argued that the situation referred to by that Rwanda was not one of the situations described in Article 33 of the Charter of the United Nations, as a dispute between parties which was "likely to endanger the maintenance of international peace and security". Moreover, he maintained that Rwanda was not involved in the unrest in Massisi and therefore could not invoke Article 35 of the Charter.

In several instances, however, matters were brought to the Council's attention through communications addressed to the Secretary-General.²⁵ For instance, by a letter dated 14 April 1998 addressed to the Secretary-General, the representative of Georgia made a complaint, concerning an alleged "ethnic-related massacre of Georgian civilians in the Gali region" by Abkhaz separatists, and requested that the letter be circulated as a document of the Council.²⁶

²⁴ S/1996/374.

²⁵ See, for example, the letter dated 25 February 1999 from the representative of Sierra Leone addressed to the Secretary-General (S/1999/73); and the letter dated 25 February 1999 from the representative of Liberia addressed to the Secretary-General (S/1999/213). In accordance with rule 6 of the Council's provisional rules of procedure, the Secretary-General is obliged immediately to bring such communications to the attention of the Security Council.

²⁶ S/1998/329.

²² S/1996/10.

²³ S/1999/322.

Communications by which new disputes or situations were referred to the Council and on the basis of which the Council convened meetings under new agenda items during the period under review are listed in the table in this section entitled "Communications bringing disputes or situations to the attention of the Security Council during the period 1996-1999". It should be borne in mind that the designation of a new agenda item does not necessarily imply the existence of a new dispute or situation, as it can simply be a change in the formulation of the item on the agenda which has been before the Council. 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 as referrals under Article 35. Furthermore, as in the previous Supplement, the table does not include communications referring to disputes or situations considered under the then-existing agenda items by the Council, so as not to codify or classify new developments and deterioration of situations in the ongoing conflicts. The above-mentioned delimitation criteria have been used only for the purpose of the table.

Communications bringing disputes or situations to the attention of the Security Council during the period 1996-1999

<i>Communications^a</i>	<i>Article invoked in communication</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Shooting down of two civilian aircraft on 24 February 1996			
Letter dated 26 February 1996 from the representative of the United States (S/1996/130)		An urgent meeting in view of the seriousness of the situation created by the shooting down of two civil aircraft by Cuban forces.	3634th meeting 27 February 1996
Letter dated 9 January 1996 from the Permanent Representative of Ethiopia to the United Nations addressed to the President of the Security Council concerning the extradition of the suspects wanted in the assassination attempt on the life of the President of the Arab Republic of Egypt in Addis Ababa, Ethiopia, on 26 June 1995			
Letter dated 9 January 1996 from the representative of Ethiopia (S/1996/10)	Article 35	An urgent meeting in view of the refusal by the Government of the Sudan to comply with repeated demands for extradition to Ethiopia of the terrorists sought for their role in the assassination attempt against President Mubarak of Egypt and the serious implications of such non-compliance.	3627th meeting 31 January 1996
The situation in Albania			
Letter dated 12 March 1997 from the representative of Italy (S/1997/214)	Article 35	An urgent meeting to consider the situation in Albania.	3751st meeting 13 March 1997
Letter dated 13 March 1997 from the representative of Albania (S/1997/215)	Article 35	An urgent meeting to consider the situation in Albania.	

<i>Communications^a</i>	<i>Article invoked in communication</i>	<i>Action requested of the Security Council</i>	<i>Meeting and date</i>
Letter dated 24 March 1999 from the Permanent Representative of the Russian Federation addressed to the President of the Security Council			
Letter dated 24 March 1999 from the representative of the Russian Federation (S/1999/320)		An urgent meeting to consider an “extremely dangerous situation” caused by the unilateral military action of the North Atlantic Treaty Organization (NATO) against the Federal Republic of Yugoslavia.	3988th meeting 24 March 1999
Letter dated 7 May 1999 from the Permanent Representative of China to the United Nations addressed to the President of the Security Council			
Letter dated 7 May 1999 from the representative of China (S/1999/523)		An urgent meeting to discuss the NATO attack at the Chinese Embassy in Belgrade.	4000th meeting 8 May 1999

^a Unless otherwise specified, all letters listed were addressed to the President of the Security Council.

Part II

Investigation of disputes and fact-finding

Note

Article 34 provides that the Security Council may investigate any dispute or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuation of the dispute or situation is likely to endanger the maintenance of international peace and security. 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 to dispatching a fact-finding mission.

During the period under review, the Council performed and initiated a number of investigative and fact-finding activities that may be deemed to fall within the scope of Article 34 or be related to its provisions. In one instance, the Council dispatched a mission consisting of Council members to Jakarta and Dili, which was specifically mandated to discuss with the Government of Indonesia concrete steps to allow the peaceful implementation of the 5 May 1999 agreement on the question of East Timor.²⁷ The Council mission was not expressly charged with concrete investigative tasks, but did serve, *inter alia*, to form an impression of the respective situation on the ground. Further details of the mission are laid out in case 1. References to the Security Council mission were also made in connection with mechanisms used for conflict prevention during the Council's consideration of the agenda item entitled "Role of the Security Council in the prevention of armed conflicts" as set out in case 2.

During the period under consideration, the Security Council adopted several decisions containing an explicit request to the Secretary-General to initiate or perform fact-finding or investigative functions. By resolution 1193 (1998) of 28 August 1998, the Council requested the Secretary-General to continue investigations into alleged mass killings of prisoners of war and civilians as well as the forced displacement of

large groups of the population based on their ethnic origin and other forms of mass persecution in Afghanistan.²⁸ In connection with the situation concerning Rwanda, by resolution 1161 (1998) of 9 April 1998, the Security Council requested the Secretary-General to reactivate the International Commission of Inquiry to collect information and investigate reports relating to the sale, supply and shipment of arms and related materiel to former Rwandan government forces and militias in the Great Lakes region of central Africa, in violation of Security Council resolutions 918 (1994), 997 (1995) and 1011 (1995).²⁹

In another instance, in connection with the situation in Burundi, by a letter dated 25 July 1996 addressed to the President of the Security Council,³⁰ the Secretary-General referred to resolution 1012 (1995) in which the Council had requested him to establish the International Commission of Inquiry concerning the assassination of the President of Burundi and the massacres that followed. In that regard, he enclosed a copy of the final report of the Commission. In the report, the Commission concluded that with the evidence at hand, it was not in a position to identify the persons that should be brought to justice for the crime. In response, by a letter dated 24 September 1996 addressed to the Secretary-General,³¹ the President noted that the members of the Council took note of the recommendations made by the Commission, and also noted its conclusion that its recommendations could not be implemented under the current conditions in Burundi.

In other instances, the Security Council, through letters, resolutions and statements by its President, welcomed, supported, encouraged or noted with satisfaction the dispatch by the Secretary-General of fact-finding missions to areas in conflict. For example, in connection with the agenda item entitled

²⁸ Resolution 1193 (1998), para. 13.

²⁹ Resolution 1161 (1998), para. 1.

³⁰ S/1996/682.

³¹ S/1996/780.

²⁷ S/1999/972.

“Communications concerning relations between the Republic of Cameroon and the Federal Republic of Nigeria”, the members of the Security Council by a letter dated 29 February 1996 addressed to the President of the Republic of Cameroon and the Head of State and Commander-in-Chief of the armed forces of the Federal Republic of Nigeria,³² welcomed the Secretary-General’s proposal to the parties that he should send a fact-finding mission to the Bakassi peninsula, and also requested the Secretary-General, in consultation with the Secretary-General, of the Organization of African Unity, to continue to monitor the matter closely and to report to the Council on the results of the fact-finding mission and any other significant developments.

In connection with the situation in Afghanistan, by a statement of the President dated 16 December 1997,³³ the Council noted with deep concern the reports about mass killings of prisoners of war and civilians in Afghanistan and supported the Secretary-General’s intention to continue to investigate fully such reports. By two subsequent statements of the President dated 6 April 1998,³⁴ and 14 July 1998,³⁵ respectively, the Council expressed support for the Secretary-General to launch an investigation into alleged mass killings of prisoners of war and civilians in Afghanistan, the outcome of which was to be submitted to the General Assembly and the Security Council. By resolution 1214 (1998) of 8 December 1998, the Security Council expressly encouraged the Secretary-General to continue his efforts to dispatch a mission to Afghanistan to investigate numerous reports of grave breaches and serious violations of international humanitarian law in that country, in particular mass killings and mass graves of prisoners of war and civilians and the destruction of religious sites.³⁶

On one occasion, Member States and regional organizations requested the Security Council to carry out an investigation or a fact-finding mission to the Sudan, following the strike on the Al-Shifa Pharmaceutical Factory in the north of Khartoum.³⁷

³² S/1996/150.

³³ S/PRST/1997/55.

³⁴ S/PRST/1998/9.

³⁵ S/PRST/1998/22.

³⁶ Resolution 1214 (1998), para. 6.

³⁷ Following the strike on the Al-Shifa pharmaceutical plant in the north of Khartoum, by a letter dated

21 August 1998 addressed to the President of the Security Council, the representative of the Sudan requested the Council to send a technical mission of inquiry to establish the facts of the United States’ allegations and to take whatever steps were necessary to ensure that there was no recurrence, and to preserve the security and peace of his country (S/1998/786). By a subsequent letter dated 21 August 1998 addressed to the President of the Security Council, the representative of Qatar, Chairman of the Group of Islamic States, endorsed that request and called upon the Security Council to send a fact-finding mission to the Sudan (S/1998/790). By a letter dated 21 August 1998 addressed to the President of the Council, the representative of Kuwait, acting in his capacity as Chairman of the Arab Group, noted that the Group had decided to support the request of the Sudan that the Security Council consider the matter of the United States’ attack on a pharmaceutical plant in Khartoum (S/1998/791). That request was reiterated again in a letter dated 22 August 1998 from the representative of the Sudan addressed to the President of the Security Council, requesting the Council to send a fact-finding and verification team to visit the Sudan (S/1998/792). By a letter dated 24 August 1998 addressed to the President of the Security Council, the representative of Kuwait, in his capacity as Chairman of the Arab Group and on behalf of the States members of the League of Arab States, reiterated his request that the Council send a fact-finding mission to establish the nature of the products manufactured by the Al-Shifa Pharmaceutical Factory in Khartoum and to satisfy itself that the factory is not producing chemical weapons (S/1998/800). By a letter dated 25 August 1998 addressed to the President of the Security Council, the representative of Namibia, Chairman of the African Group, requested the Council to dispatch a fact-finding mission to the Sudan to establish the facts surrounding the activities of the said pharmaceutical plant (S/1998/802). By a subsequent letter dated 25 August 1998 addressed to the President of the Security Council, the representative of Colombia, acting in his capacity as Chairman of the Coordinating Bureau of the Movement of Non-Aligned Countries again called for the Council to examine the situation and send a fact-finding mission to the Sudan (S/1998/804). By a letter dated 22 September 1998 addressed to the President of the Security Council, the representative of the Sudan transmitted a statement made on 21 September 1998 by the Chairman of the Organization of African Unity on the Sudan, during which the latter stated that Africa supported the request made by the Sudan to the Security Council to send a fact-finding mission to the Sudan (S/1998/886). At its 3931st meeting, on 24 September 1998, the Council met to consider the agenda item entitled “The situation in Africa”. During the

Those requests for investigations did not result in the establishment or dispatch of an investigative body or fact-finding mission, neither did the Security Council adopt a decision referring to the matter nor meet to discuss the issue.

The following case studies set out details of the decision-making process involved in the Security Council mission to East Timor and Indonesia (case 1); and the “Role of the Security Council in the prevention of armed conflicts” (case 2).

Case 1

*The situation in East Timor*³⁸

In connection with the situation in East Timor, by resolution 1236 (1999) of 7 May 1999, the Security Council welcomed the concluding of the Agreement between Indonesia and Portugal on 5 May 1999 on the question of East Timor.³⁹ It further welcomed the intention of the Secretary-General to establish as soon as practicable a United Nations presence in East Timor, with a view to assisting in the implementation of the Agreement.⁴⁰

meeting, the representative of Burkina Faso, speaking in his capacity as Chairman of the Organization of African Unity, referred to the bombing of the pharmaceutical factory in the Sudan, and reiterated that the Non-Aligned Movement, the States of the Arab League, and the Organization of African Unity supported the dispatch of an international commission of inquiry, as requested by the Sudan, to clarify fully the matter (S/PV.3931, p. 4). By a letter dated 25 November 1998 addressed to the President of the Security Council, the representative of Yemen, acting in his capacity as Chairman of the Arab Group and on behalf of States members of the League of Arab States, transmitted a draft resolution prepared by the Arab Group. The text contained a request to the Secretary-General to dispatch a fact-finding mission to the Sudan “to verify the facts about the said factory, including its production and ownership” (S/1998/1120).

³⁸ As from the 4041st meeting, on 3 September 1999, the agenda item “The situation in Timor” was reformulated to read “The situation in East Timor”.

³⁹ In accordance with the Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor signed on 5 May 1999, the United Nations would be required to play a substantive role in East Timor in the implementation of either possible result of the consultation (A/53/951-S/1999/513, annex I) in the post-ballot period.

⁴⁰ Resolution 1236 (1999), paras. 1 and 3.

At its 4041st meeting, on 3 September 1999, the Council met to consider the situation in East Timor. During the debate, the Secretary-General made a statement announcing the result of the popular consultation conducted on 30 August 1999. In fulfilling the task entrusted to him by the Agreement, the Secretary-General announced that the result of the vote was 94,388 or 21.5 per cent, in favour and 344,580 or 78.5 per cent, against the proposal for special autonomy. By that result, the people of East Timor had thus rejected the proposed special autonomy and expressed their will to begin a process of transition towards independence.⁴¹

By a statement of the President dated 3 September 1999,⁴² the Council welcomed the successful popular consultation of the East Timorese people on 30 August 1999 and the letter dated 3 September 1999 from the Secretary-General to the President of the Council announcing the ballot result.⁴³ In the same statement, it recognized that the Agreement of 5 May 1999 which led to the popular consultation of the East Timorese people would not have been possible without the timely initiative of the Government of Indonesia and the constructive attitude of the Government of Portugal. Furthermore, it commended the sustained efforts of the Governments of Indonesia and Portugal, through the good offices of the Secretary-General, to find a just, comprehensive and internationally acceptable solution to the question of East Timor, and expressed its appreciation to the Government of Indonesia for its cooperation with the United Nations in the process.

By a letter dated 5 September 1999 addressed to the Secretary-General, the President of the Council informed the Secretary-General that it had agreed to dispatch a Security Council mission to discuss with the Government of Indonesia concrete steps to allow the peaceful implementation of the ballot result in East Timor.⁴⁴ The mandate of the mission was to welcome the undertaking by the Government of Indonesia to fulfil its obligations under the Agreement but also to note that the Government’s efforts so far had not been able to prevent an intensification of violence in the Territory. It was to state its particular concern at the

⁴¹ S/PV.4041, pp. 2-3.

⁴² S/PRST/1999/27.

⁴³ S/1999/944.

⁴⁴ S/1999/946.

recent campaign of violence against the United Nations Mission in East Timor (UNAMET) and urge the Government to ensure security and to allow UNAMET to implement its mandate without hindrance. The mission was asked to stress that the people of East Timor had made a clear choice in favour of independence, that their will must be respected and that the international community looked forward to working with the Government of Indonesia in bringing East Timor to independence.⁴⁵

In a letter dated 6 September 1999 from the President of the Council addressed to the Secretary-General,⁴⁶ the President informed him that its members had agreed on the terms of reference of the mission. He also stated that it was the intention of the mission to depart for Indonesia on 6 September 1999. The terms of reference for the presentation of the Security Council mission to the Government of Indonesia were the following:⁴⁷

1. The Security Council commends the sustained efforts of the Government of Indonesia through the good offices of the Secretary-General to find a just, comprehensive and internationally acceptable solution to the question of East Timor. It expresses its appreciation to the Government of Indonesia for its cooperation with the United Nations in this process.

2. The Council is nevertheless seriously concerned about the deteriorating security situation in East Timor, particularly since the popular consultation. The Council welcomes the undertaking by the Government of Indonesia that it will fulfil its obligations under the Agreement of 5 May 1999. But the Government's effort so far have not been able to prevent an intensification of violence in the territory.

3. The Council is particularly concerned at the campaign of violence against the United Nations Mission in East Timor in recent days. This has meant the closure of all but four of the Mission's regional offices; the Mission's headquarters is now under a virtual state of siege. The Council deplores the murders of local staff members of the Mission and the attack on 4 September 1999 which left an international staff member seriously wounded.

4. Reflecting the will of the international community, the Council is determined to see the Agreements of 5 May 1999 implemented fully. The people of East Timor have made a clear choice in favour of independence; their will must be respected.

5. For its part, the United Nations is bringing forward planning for phase III of the transition process. This will be done in consultation with the Government of Indonesia.

6. The International community is looking forward to working with the Government of Indonesia in bringing East Timor to independence. The Council urges the Government of Indonesia to ensure security and allow the Mission to implement its mandate without hindrance.

The Security Council mission to Jakarta and Dili transmitted its report⁴⁸ on 14 September 1999 to the Council. As one of its recommendations, the mission suggested that the Security Council should welcome the decision of the President of Indonesia to invite an international peacekeeping force to cooperate with Indonesia in restoring peace and security in East Timor, and should adopt a resolution without delay to provide a framework for the implementation of that proposal.

By resolution 1264 (1999) of 15 September 1999, the Council, welcoming the statement by the President of Indonesia of 12 September 1999 in which he expressed the readiness of Indonesia to accept an international peacekeeping force through the United Nations in East Timor, endorsed the report of the Security Council mission to Jakarta and Dili.⁴⁹

By resolution 1272 (1999) of 25 October 1999, the Security Council decided to establish, in accordance with the report of the Secretary-General,⁵⁰ a United Nations Transitional Administration in East Timor, which would be endowed with overall responsibility for the administration of East Timor and would be empowered to exercise all legislative and executive authority, including the administration of justice.⁵¹

By a statement of the President dated 30 November 1999 in connection with the agenda item entitled "Role of the Security Council in the prevention of armed conflicts", the Council reaffirmed its responsibility under the Charter to take action on its own initiative in order to maintain international peace and security. In that regard, it noted that the results of the Council's mission to Jakarta and Dili from 6 to

⁴⁵ S/1999/976 and Corr.1.

⁴⁶ S/1999/972.

⁴⁷ *Ibid.*, annex.

⁴⁸ S/1999/976 and Corr.1.

⁴⁹ Resolution 1264 (1999), ninth and tenth preambular paras.

⁵⁰ S/1999/1024.

⁵¹ Resolution 1272 (1999), para. 1.

12 September 1999 demonstrated that such missions undertaken with the consent of the host country and with clear goals could be useful if dispatched in a timely and appropriate manner.⁵²

Case 2

Role of the Security Council in the prevention of armed conflicts

At its 4072nd meeting, on 29 November 1999, the Council met to consider its role in the prevention of armed conflicts. During the debate, the Secretary-General stated that the Council should use the meeting to examine how it could make prevention a tangible part of its day-to-day work. In that regard, he suggested, *inter alia*, that the Council could make greater use of fact-finding missions, either by the Secretary-General or by the Council itself, at much earlier stages of a dispute in accordance with the Council's Charter responsibility to "investigate any dispute, or any situation which might lead to international friction or give rise to a dispute" and "endanger the maintenance of international peace and security"; and encourage States which became aware of potential conflict to bring the issue promptly to the Council's attention.⁵³

Speakers drew attention to the usefulness of the Security Council mission sent to Jakarta and Dili, noting that it had made international intervention possible following the popular consultation in East Timor in August 1999.⁵⁴

The representative of Canada stressed that the Council was served by the Office of the Secretary-General with the ability to mediate, investigate disputes, promote dialogue and send peace envoys. In that connection, he stated that the Council should take full advantage of this preventive capacity by backing the Secretary-General in those efforts. He further stated that the Council should make greater use of the provisions for the peaceful settlement of disputes under Chapter VI of the Charter, in particular by launching its own investigations into potential conflicts and encouraging Member States to bring such matters to

the Council's attention. He noted that the practice of dispatching delegations of Council members to conflict situations to bring the will and commitment of the Council should be used sparingly as a preventive measure.⁵⁵ Similarly, the representative of Brazil said that in discussing the means to prevent armed conflict, there should be clarity about which tools were available to the Security Council in that endeavour. He emphasized that, guided by the provisions of Chapter VI of the Charter, the Security Council was in a unique position to promote, through negotiation and persuasion, "the ascendancy of reason where intolerance and misunderstanding prevail". In that regard, missions by Security Council members, based on the model of that to Timor and to Indonesia, should also perhaps become common practice.⁵⁶

The representative of Malaysia emphasized that there should be greater recourse to the use of preventive diplomacy, and that the positive outcome of the Council's mission to Jakarta and Dili would argue for greater utilization of this mechanism by the Council in respect of future conflict situations, before they got out of hand. He stated that it was perhaps timely to dispatch such a mission to Africa, as had been proposed by the Council.⁵⁷ Similarly, the representative of Finland, speaking on behalf of the European Union and associated and aligned countries,⁵⁸ stated that the Council's mission to East Timor and Indonesia was a good example of its success in using some of the tools at its disposal in a swift and decisive manner.⁵⁹

The representative of Japan pointed out that the mission had been effective not only in ensuring that the Council's debate was based on first-hand information but also in gaining the cooperation of the Government of Indonesia.⁶⁰ The representative of France described the mission as an example of the value of preventive Council action carried out publicly, but noted that in other cases it was preferable to act with discretion.⁶¹

⁵² S/PRST/1999/34.

⁵³ S/PV.4072 and Corr.1, p. 3.

⁵⁴ *Ibid.*, p. 5 (United States); pp. 7-9 (France); pp. 10-12 (Canada); pp. 12-14 (United Kingdom); pp. 19-21 (Malaysia); pp. 21-22 (Brazil); and pp. 26-27 (Namibia).

⁵⁵ *Ibid.*, p. 11.

⁵⁶ *Ibid.*, p. 21.

⁵⁷ *Ibid.*, p. 19.

⁵⁸ *Ibid.*, p. 32 (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia; and Cyprus, Malta and Iceland).

⁵⁹ *Ibid.*, pp. 32-34.

⁶⁰ *Ibid.*, p. 46.

⁶¹ *Ibid.*, p. 7.

The representative of Australia reiterated that the Council should be ready more often to deal directly with the parties to a dispute. She stated that such dialogue might take place in New York or through special missions, such as the highly successful Council mission to Indonesia to discuss the situation in East Timor. She believed that such missions could help ease tensions, could provide a very important circuit-breaker for a dispute or could clearly inform both sides of the risks of escalation and of the possible responses of the Council and of the international community should conflict ensue.⁶²

The representative of Argentina stated that the power to adopt preventive measures resided mainly with the Security Council, and that the Council should intensify its use of all options available under the Charter to establish conflict prevention. In that regard, he noted that the Charter provided a series of measures whose timely use could resolve situations of potential danger: for example, prompt investigation, in accordance with Article 34.⁶³

Reiterating the provisions contained in Article 34, the representative of New Zealand argued that there had also been some very positive developments in the Council's recent handling of its conflict prevention responsibilities. He noted that perhaps the highlight was the rapid dispatch of a mission of the Security Council to Indonesia and to East Timor in response to the violence following the popular consultation.⁶⁴

⁶² *Ibid.*, p. 40.

⁶³ *Ibid.*, p. 10.

⁶⁴ S/PV.4072 (Resumption 1), pp. 9-11.

In contrast, the representative of the Sudan noted that in many of the issues the Council considered, and particularly those dealing with aggression, the Council had undertaken a policy of double standards. In his view the Council sometimes ignored cases of threats that actually endangered international peace and security. Referring to the bombing of the Al-Shifa pharmaceutical plant in Khartoum by the United States, he stated that although the issue had been on the Council's agenda for over a year, his country's request for the dispatch of a fact-finding mission had been ignored. He considered this to be "a clear indication of the injustice wrought towards the Sudan by the Council by not even sending a fact-finding mission to the Sudan".⁶⁵

By a statement of the President dated 30 November 1999 in connection with the role of the Security Council in the prevention of armed conflicts, the Council noted that it was aware of the importance of its early consideration of situations which could deteriorate into armed conflicts. In that context, it underlined the importance of the settlement of disputes by peaceful means, in accordance with Chapter VI of the Charter of the United Nations. The Council recalled that parties to any dispute, the continuance of which was likely to endanger the maintenance of international peace and security, had an obligation to seek peaceful means of settlement. Moreover, the Security Council reaffirmed its responsibility under the Charter of the United Nations to take action on its own initiative in order to maintain international peace and security.⁶⁶

⁶⁵ S/PV.4072, pp. 41-43.

⁶⁶ S/PRST/1999/34.

Part III

Decisions of the Security Council concerning the pacific settlement of disputes

Note

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

As part of its efforts aimed at the pacific settlement of disputes 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,⁶⁷ political settlement or

dialogue aimed at achieving national reconciliation,⁶⁸ such democratic means as elections⁶⁹ or the establishment of a representative government.⁷⁰ In several instances, the Council made recommendations with regard to good offices, mediation or conciliation efforts to be undertaken by the Secretary-General, or with regard to such efforts undertaken by Governments of neighbouring countries or regional leaders,⁷¹ or

⁶⁷ For instance, in connection with the situation in Burundi, by resolution 1049 (1996), the Security Council called upon all concerned in Burundi to engage, as a matter of urgency, in serious negotiations. In connection with the situation in Tajikistan and along the Tajik-Afghan border, by a statement of the President (S/PRST/1997/6), the Council urged the parties to make further substantive progress at the next rounds of the inter-Tajik talks. In connection with the situation in Afghanistan, by a statement of the President (S/PRST/1997/20), the Council called upon the Afghan parties to enter into sustained negotiations. By a subsequent statement of the President (S/PRST/1997/35), the Council expressed the belief that peace and stability in Afghanistan could best be attained through intra-Afghan political negotiations under United Nations auspices with the active and coordinated assistance of all countries concerned. In connection with the situation in Croatia, by resolution 1147 (1998), the Security Council urged the parties to take concrete steps towards a negotiated solution of the disputed issue of Prevlaka in good faith and without delay.

⁶⁸ For example, in connection with the situation in Burundi, by resolution 1049 (1996), the Security Council reiterated the urgent need for all concerned in Burundi to commit themselves to a dialogue aimed at establishing a permanent political settlement and the creation of conditions conducive to national reconciliation. In connection with the situation concerning the Democratic Republic of the Congo, by a statement of the President (S/PRST/1998/26), the Council called for the initiation of a peaceful process of political dialogue with a view to national reconciliation. In connection with the situation in Afghanistan, by a statement of the President (S/PRST/1996/40), the Council called upon the leaders of the Afghan parties to engage in a political dialogue aimed at achieving national reconciliation.

⁶⁹ To illustrate, in connection with the situation in Liberia, by resolution 1100 (1997), the Security Council emphasized that the holding of free and fair elections as scheduled was an essential phase of the peace process in Liberia. In connection with the situation concerning the Democratic Republic of the Congo, by a statement of the President (S/PRST/1997/31), the Council reiterated its call for rapid agreement on peaceful transitional arrangements leading to the holding of democratic and free elections with the participation of all parties.

⁷⁰ For instance, in connection with the situation in Somalia, by a statement of the President (S/PRST/1996/4), the Council called upon all Somali political leaders and parties to return to an inclusive process of consultation and negotiation aimed at national reconciliation leading to the establishment of a broad-based national government.

⁷¹ To illustrate, in connection with the situation in the Republic of the Congo, by a statement of the President (S/PRST/1997/43), the Council called upon the two parties to resolve the crisis on the basis of the proposal submitted by the President of Gabon, including agreement on an interim government of national unity. In connection with the situation in Sierra Leone, by a statement of the President (S/PRST/1999/1), the Council

undertaken under regional arrangements,⁷² by expressing its support and calling upon the parties to a conflict to cooperate with such efforts.⁷³

A useful example is the letter dated 31 March 1998 from the representative of Papua New Guinea addressed to the President of the Security Council,⁷⁴ which demonstrates how new practices of Member States can contribute to the evolving interpretation of Chapter VI and, in particular, to the role of the Security Council in the pacific settlement of disputes. In the aforementioned communication, the representative of Papua New Guinea requested that the Security Council deal with the conflict in Bougainville by endorsing a peace agreement and sending a peace monitoring group, whereas the Charter leaves such decisions to the Council's discretion. In response, the Council issued a

welcomed the offers made by leaders in the region, aimed at resolving the conflict and in that context urged them to facilitate the peace process. In connection with the situation in Sierra Leone, by a statement of the President (S/PRST/1999/13), the Council underlined its strong support for the mediation efforts and for the key role being played by the President of Togo.

⁷² In connection with the situation in Somalia, for example, by a statement of the President (S/PRST/1996/4), the Council welcomed with appreciation the efforts of the Organization of African Unity, the Organization of the Islamic Conference, the League of Arab States, the European Union and the neighbouring States in promoting national dialogue in search for a solution to the crisis in Somalia. (see chapter XII, part III, section B, for further details on the manner in which the Security Council has encouraged efforts undertaken by regional arrangements in the pacific settlement of disputes).

⁷³ For example, in connection with the situation in Georgia, by resolution 1036 (1996), the Council stressed the need for the parties to intensify efforts, under the auspices of the United Nations and with the assistance of the Russian Federation as facilitator, to achieve an early and comprehensive political settlement of the conflict. In connection with the situation in Cyprus, by resolution 1250 (1999) the Council requested the two sides in Cyprus, including military authorities on both sides, to work constructively with the Secretary-General and his Special Representative to create a positive climate on the island that would pave the way for negotiations (see chapter VI, part V, section A for further details on functions entrusted to the Secretary-General by the Security Council).

⁷⁴ S/1998/287.

presidential statement dated 22 April 1998,⁷⁵ expressing support for the Agreement on Peace, Security and Development on Bougainville of January 1996 (Lincoln Agreement).⁷⁶

During the period under review, the Council dealt with a growing number of intra-State conflicts characterized by inter-ethnic and/or interreligious violence, collapse of central State authority, humanitarian crisis and regional implications threatening the stability of the whole subregion. For example, in connection with the situation in the Democratic Republic of the Congo, by a statement of the President dated 11 December 1998,⁷⁷ the Council members called for a peaceful solution to the conflict in the Democratic Republic of the Congo, including an immediate ceasefire, the orderly withdrawal of all foreign forces, arrangements for security along the country's international borders, the re-establishment of the authority of the Government of the Democratic Republic of the Congo over the whole territory of the country and the initiation of an all-inclusive national reconciliation process which fully respected the equality and rights of all, irrespective of ethnic origin.

In setting out the parameters for a peaceful settlement in order for a peace process to achieve its objective and to prevent a relapse into conflict, the Council often made precise recommendations. For instance, in connection with the situation in Liberia, the Council emphasized that the holding of free and fair elections as scheduled was an essential phase of the peace process.⁷⁸ In addition, in connection with the situation in the Republic of the Congo, by a statement of the President dated 13 August 1997,⁷⁹ the Council called upon the two parties to the conflict to resolve the crisis on the basis of the proposals submitted by the President of Gabon, including agreement on an interim government of national unity and a timetable for the holding of presidential elections. Furthermore, in connection with the situation in Cyprus, the Council continued to reaffirm its position that a Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial

⁷⁵ S/PRST/1998/10.

⁷⁶ S/1998/287.

⁷⁷ S/PRST/1998/36.

⁷⁸ Resolution 1100 (1997), fourth preambular para.

⁷⁹ S/PRST/1997/43.

integrity safeguarded, and comprising two politically equal communities in a bicomunal and bizonal federation, and that such a settlement had to exclude union in whole or in part with any other country or any form of partition or secession.⁸⁰

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

The objective of this section is to provide an overview of the Council's practices aimed at the pacific settlement of disputes in application of Chapter VI of the Charter. It lists Council decisions containing recommendations made in relation to terms, methods or procedures of pacific settlement. Relevant decisions are set out in a systematic order, without ascribing them to any specific Articles of the Charter. While Council decisions related to investigation and fact-finding missions have been already covered in part II of this chapter, this section provides in regional and chronological order examples of instances in which the Council proposed or endorsed, welcomed or supported terms of settlement; requested or called upon parties to settle their disputes by peaceful means; or recommended procedures or methods of settlement.

Africa

The situation in Angola

By three subsequent resolutions, the Security Council stressed the urgent need for the Government of Angola and in particular the União Nacional para a Independência Total de Angola (UNITA) to complete, in accordance with the timetable approved by the Joint Commission on 9 January 1998,⁸¹ the implementation of their obligations under the Lusaka Protocol⁸² as well as to complete the implementation of their obligations under the "Acordos de Paz"⁸³ and relevant Security Council resolutions.⁸⁴

By resolution 1164 (1998) of 29 April 1998, the Security Council called upon the Government of Unity

and National Reconciliation and in particular UNITA to complete all remaining obligations under the "Acordos de Paz", the Lusaka Protocol and relevant Security Council resolutions.⁸⁵

By resolution 1195 (1998) of 15 September 1998, the Security Council strongly urged the Government of Angola, UNITA and States in the region to reject military action, to pursue dialogue to resolve the crisis and to refrain from any steps which could exacerbate the current situation, and urged the Government of Angola and UNITA to cooperate fully with the Special Representative of the Secretary-General and with other relevant initiatives by Member States to seek a peaceful resolution of the crisis.⁸⁶

By a series of resolutions, the Security Council reiterated the validity of the "Acordos de Paz", the Lusaka Protocol and relevant Security Council resolutions as the fundamental basis of the peace process.⁸⁷ In addition, by resolution 1202 (1998) of 15 October 1998, the Security Council stressed that there could be no military solution to the conflict in Angola, and called upon the Government of Angola and in particular UNITA to seek a political settlement, and to cooperate fully with the Special Representative of the Secretary-General, including by facilitating his contact with all those key to the peace process in order to convey, inter alia, the demands reiterated in the resolution.⁸⁸

The situation in Sierra Leone

By a statement of the President dated 4 December 1996,⁸⁹ the Council warmly welcomed the Peace Agreement signed by the Government of Sierra Leone and the Revolutionary United Front in Abidjan on 30 November 1996.

By several subsequent decisions, the Council underlined the necessity of implementing the Abidjan Agreement,⁹⁰ which continued to serve as a viable

⁸⁰ Resolution 1179 (1998), para. 2.

⁸¹ S/1998/56, annex.

⁸² S/1994/1441.

⁸³ S/22609, annex.

⁸⁴ Resolutions 1127 (1997), third preambular para.; 1135 (1997), third preambular para.; 1149 (1998), para. 1; and 1157 (1998), para. 1.

⁸⁵ Resolution 1164 (1998), para. 1.

⁸⁶ Resolution 1195 (1998), paras. 6 and 7.

⁸⁷ Resolutions 1202 (1998), third preambular para.; 1229 (1999), sixth preambular para.; and 1268 (1999), fifth preambular para.

⁸⁸ Resolution 1202 (1998), paras. 3 and 8.

⁸⁹ S/PRST/1996/46.

⁹⁰ S/1996/1034, annex.

framework for peace, stability and reconciliation in Sierra Leone.⁹¹

By a statement of the President dated 14 November 1997,⁹² expressing its full support and appreciation for the continued efforts of the Committee of Five on Sierra Leone of the Economic Community of West African States to seek a peaceful settlement of the crisis and the restoration of the democratically elected Government and constitutional order, the Council welcomed the peace plan agreed in Conakry on 23 October 1997 between the Committee and representatives of the junta as set out in the documents issued after the meeting.⁹³ In the statement, it called upon the junta to fulfil its obligations under the peace plan, and in particular the ongoing maintenance of the ceasefire. In addition, it called upon all parties concerned to work for the early and effective implementation of the peace plan.

By a statement of the President dated 26 February 1998,⁹⁴ the Council expressed the view that the Conakry Agreement⁹⁵ and the Abidjan Agreement provided important elements for a framework for peace, stability and national reconciliation in Sierra Leone. The Council also called upon all parties in Sierra Leone to work towards those objectives through peaceful means and political dialogue.

By a statement of the President dated 7 January 1999,⁹⁶ the Council stressed the importance of dialogue and national reconciliation for the restoration of lasting peace and stability to Sierra Leone. It welcomed the offers made by leaders in the region aimed at resolving the conflict and, in that context urged them, including the Committee of Six on Sierra Leone of the Economic Community of West African States, to facilitate the peace process.

By a statement of the President dated 15 May 1999,⁹⁷ the Council called upon all concerned to remain committed to the process of negotiation and to demonstrate flexibility in their approach to the process.

In that context, the Council underlined its strong support for the mediation efforts of the United Nations within the Lomé process, in particular the work of the Special Representative of the Secretary-General to facilitate dialogue, and for the key role being played by the President of Togo. Furthermore, the Council urged both parties to commit themselves to a cessation of hostilities for the duration of the Lomé talks, to ensure that this was fully respected on the ground and to work constructively and in good faith for a ceasefire agreement. It called upon both sides to refrain from any hostile or aggressive act which could undermine “the talks process”.

By resolution 1260 (1999) of 20 August 1999, the Security Council welcomed the signing of the Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone in Lomé on 7 July 1999. Furthermore, the Council called upon both sides to ensure that the provisions of the Peace Agreement were fully implemented.⁹⁸

The situation in the Central African Republic

By a statement of the President dated 18 February 1999,⁹⁹ the Council took note with satisfaction of the commitment expressed by the President of the Central African Republic to maintain peace in the Central African Republic through dialogue and consultation. In that context, it strongly reaffirmed that the complete implementation of the Bangui Agreements¹⁰⁰ and of the National Reconciliation Pact¹⁰¹ was essential to peace and national reconciliation in the Central African Republic. Furthermore, the Council emphasized the importance of continuing efforts in the Central African Republic to settle outstanding contentious issues peacefully and democratically in accordance with the Bangui Agreements, and stressed the need for both the “mouvance présidentielle” and the opposition parties to cooperate closely and work actively with the aim of achieving the political consensus indispensable to stability in the Central African Republic.

⁹¹ S/PRST/1997/29, S/PRST/1997/36 and S/PRST/1997/42 and resolution 1132 (1997); sixth preambular para.

⁹² S/PRST/1997/52.

⁹³ S/1997/824, annexes I and II.

⁹⁴ S/PRST/1998/5.

⁹⁵ S/1996/1034, annex.

⁹⁶ S/PRST/1999/1.

⁹⁷ S/PRST/1999/13.

⁹⁸ Resolution 1260 (1999), para. 1.

⁹⁹ S/PRST/1999/7.

¹⁰⁰ S/1997/561, appendices III and IV.

¹⁰¹ S/1998/219, appendix.

The situation in Liberia

Following the agreement between the Council of States and the Economic Community of West African States (ECOWAS) on a basic framework for the holding of elections in Liberia scheduled for 30 May 1997, by resolution 1100 (1997) of 27 March 1997, the Security Council emphasized that the holding of free and fair elections as scheduled was an essential phase in the peace process in Liberia and urged all Liberian parties to cooperate with the peace process.¹⁰²

By resolution 1116 (1997) of 27 June 1997, noting the decision of ECOWAS to postpone the election date to 19 July 1997, the Security Council called upon the Liberian parties to implement fully all the agreements and commitments they had entered into, and urged all Liberians to participate peacefully in the electoral process.¹⁰³

By a statement of the President dated 30 July 1997,¹⁰⁴ the Council welcomed the successful holding of presidential and legislative elections in Liberia on 19 July 1997.

The situation in Burundi

By a statement of the President dated 5 January 1996,¹⁰⁵ the Council reaffirmed its support for the Convention of Governance of 10 September 1994, which constituted the institutional framework for national reconciliation in Burundi and for the institutions of Government established in line with it.

By resolution 1040 (1996) of 29 January 1996, the Security Council stressing the paramount importance and imperative need for all concerned in Burundi to pursue dialogue and national reconciliation, called upon all concerned in Burundi to participate in a positive spirit and without delay in a comprehensive political dialogue and to support the efforts of the Special Representative of the Secretary-General and others seeking to facilitate such dialogue.¹⁰⁶

By resolution 1049 (1996) of 5 March 1996, the Security Council, reiterating the urgent need for all concerned in Burundi, including extremists inside and outside the country, to make concerted efforts to defuse the crisis and to commit themselves to a dialogue aimed at establishing a permanent political settlement and the creation of conditions conducive to national reconciliation, called upon all concerned in Burundi to engage, as a matter of urgency, in serious negotiations and mutual accommodation within the framework of the national debate agreed upon by the signatories to the Convention on Governance and to increase efforts towards national reconciliation.¹⁰⁷

By a statement of the President dated 25 April 1996,¹⁰⁸ the Council extended its full support for and confidence in the efforts of the Special Representative of the Secretary-General and those of former President Julius Nyerere and other envoys to facilitate negotiations to resolve the crisis.

By a statement of the President dated 15 May 1996,¹⁰⁹ the Council reiterated its full support for the ongoing efforts of former President Nyerere to facilitate negotiations and political dialogue to resolve the crisis in Burundi and looked forward to a successful outcome of the meeting in Mwanza, United Republic of Tanzania, on 22 May 1996. The Council also called upon the parties to make full use of the meeting to achieve progress towards national reconciliation. In a subsequent presidential statement dated 24 July 1996,¹¹⁰ the Council again stressed its full support for the efforts of former President Nyerere, including the agreements of the Arusha Regional Summit of 25 May 1996. In that regard, the Council encouraged all parties to work in a constructive manner with former President Nyerere.

By resolution 1072 (1996) of 30 August 1996, the Security Council reiterating its support for the immediate resumption of dialogue and negotiations under the auspices of the Mwanza peace process facilitated by former President Nyerere and the joint communiqué of the Second Arusha Regional Summit on Burundi of 31 July 1996, demanded that all of

¹⁰² Resolution 1100 (1997), fourth preambular para. and para. 6.

¹⁰³ Resolution 1116 (1997), third preambular para. and para. 2.

¹⁰⁴ S/PRST/1997/41.

¹⁰⁵ S/PRST/1996/1.

¹⁰⁶ Resolution 1040 (1996), eighth preambular para and para. 3.

¹⁰⁷ Resolution 1049 (1996), ninth preambular para. and para. 4.

¹⁰⁸ S/PRST/1996/21.

¹⁰⁹ S/PRST/1996/24.

¹¹⁰ S/PRST/1996/31.

Burundi's political parties and factions without exception, whether inside or outside the country and including representatives of civil society, initiate unconditional negotiations immediately, with a view to reaching a comprehensive political settlement.¹¹¹

By a statement of the President dated 30 May 1997,¹¹² the Council welcomed the fact that the talks held in Rome were complementary to the Arusha process. It also welcomed the commitment of the Government of Burundi to the comprehensive political dialogue among all the parties within the framework of the Arusha process. Furthermore, it urged all the parties in Burundi to continue to pursue a negotiated settlement and to refrain from actions which were detrimental to such dialogue. In the same statement, the Council expressed its support and appreciation to former President Nyerere as well as to the Special Representative of the Secretary-General of the United Nations and the Organization of African Unity in their efforts to find a peaceful solution to the crisis in Burundi.

By a statement of the President dated 12 November 1999,¹¹³ the Council, noting with concern the outbreak of violence in Burundi and the delays in the peace process, called on all the parties to put an end to the violence and pursue negotiations towards the peaceful resolution of Burundi's ongoing crisis. In the same statement, the Council reiterated its support for the Arusha peace process and expressed its firm belief that the process chaired by former President Nyerere offered the best hope for peace in Burundi, and should be the foundation for all-party talks leading to the conclusion of a peace agreement. In addition, the Council commended those Burundian parties, including the Government, that had demonstrated their commitment to continue negotiations and called on those parties that remained outside the process to cease hostilities, and to participate fully in Burundi's inclusive peace process.

The situation in the Republic of the Congo

Following the outbreak of factional fighting in Brazzaville on 5 June 1997, by a statement of the

President dated 13 August 1997,¹¹⁴ the Council expressed its full support for the efforts of the International Mediation Committee, under the chairmanship of the President of Gabon, and the National Mediation Committee, under the chairmanship of the Mayor of Brazzaville, to persuade the parties involved to reach an agreement on a ceasefire and a peaceful settlement of the crisis. Furthermore, it called upon the two parties to resolve the crisis on the basis of the proposals submitted by the President of Gabon which were under discussion in Libreville, including agreement on an interim government of national unity and a timetable for the holding of presidential elections.

By a statement of the President dated 16 October 1997,¹¹⁵ the Council reiterated the importance of a political settlement and national reconciliation, and called upon the parties to cooperate with the International Mediation Committee and the joint United Nations/Organization of African Unity Special Envoy in reaching rapid agreement on peaceful transitional arrangements leading to the holding of democratic free and fair elections with the participation of all parties.

The situation in Guinea-Bissau

By a statement of the President dated 6 November 1998,¹¹⁶ the Council welcomed the agreement reached on 1 November 1998, in Abuja, between the Government of Guinea-Bissau and the Self-Proclaimed Military Junta. The Council considered the agreement to be a positive step towards national reconciliation and lasting peace in Guinea-Bissau. Also, it called upon the Government and the Self-Proclaimed Military Junta to respect fully their obligations under the Abuja Agreement and the Praia Agreement of 26 August 1998.¹¹⁷

By resolution 1216 (1998) of 21 December 1998, the Security Council welcomed the agreements between the Government of Guinea-Bissau and the Self-Proclaimed Military Junta signed in Praia on 26 August 1998,¹¹⁸ and in Abuja on 1 November

¹¹¹ Resolution 1072 (1996), eleventh preambular para. and para. 6.

¹¹² S/PRST/1997/32.

¹¹³ S/PRST/1999/32.

¹¹⁴ S/PRST/1997/43.

¹¹⁵ S/PRST/1997/47.

¹¹⁶ S/PRST/1998/31.

¹¹⁷ S/1998/825, annex I.

¹¹⁸ Ibid.

1998¹¹⁹ and the Additional Protocol signed in Lomé on 15 December 1998.¹²⁰ Furthermore, it called upon the Government and the Self-Proclaimed Military Junta to implement fully all the provisions of the agreements.¹²¹

The situation in the Great Lakes region

By resolution 1097 (1997) of 18 February 1997, welcoming the letter dated 18 February 1997 from the Secretary-General addressed to the President of the Security Council¹²² regarding progress in the efforts to resolve the crisis in the Great Lakes region, the Security Council endorsed the five-point peace plan for eastern Zaire, as set out in the letter from the Secretary-General of 18 February 1997.¹²³

The situation concerning the Democratic Republic of the Congo

Expressing its support for the people of the Democratic Republic of the Congo as they began a new period in their history, by a statement of the President dated 29 May 1997,¹²⁴ the Council, in accordance with the United Nations five-point peace plan, called for the rapid and peaceful settlement of the crisis through dialogue and the convening of an international conference on peace, security and development in the Great Lakes region.

By a statement of the President dated 31 August 1998,¹²⁵ the Council called for a peaceful solution to the conflict in the Democratic Republic of the Congo, including an immediate ceasefire, the withdrawal of all foreign forces, and the initiation of a peaceful process of political dialogue with a view to national reconciliation. Furthermore, it expressed its view that the problems of the Democratic Republic of the Congo must be solved on the basis of a process of all-inclusive national reconciliation which fully respected the equality and harmony of all ethnic groups and which led to the holding of democratic, free and fair elections, as soon as possible.

¹¹⁹ S/1998/1028, annex.

¹²⁰ S/1998/1178, annex II.

¹²¹ Resolution 1216 (1998), paras. 1 and 2.

¹²² S/1997/136.

¹²³ Resolution 1097 (1997), second preambular para. and para. 1.

¹²⁴ S/PRST/1997/31.

¹²⁵ S/PRST/1998/26.

By a statement of the President dated 11 December 1998,¹²⁶ the Council, expressing concern about the continuing conflict in the Democratic Republic of the Congo, called for a peaceful solution to the conflict in the Democratic Republic of the Congo, including an immediate ceasefire, the orderly withdrawal of all foreign forces, arrangements for security along the international borders of the Democratic Republic of the Congo, the re-establishment of the authority of the Government of the Democratic Republic of the Congo over the whole territory of the country, and the initiation of an all-inclusive national reconciliation process in the Democratic Republic of the Congo. Furthermore, the Council welcomed the public commitments made in Paris by the Presidents of the Democratic Republic of the Congo, Uganda and Rwanda and the Presidents and heads of delegation of Namibia, Zimbabwe, Angola and Chad, and strongly urged them to give effect to these commitments.

By resolution 1234 (1999) of 9 April 1999, the Security Council urged all parties to the conflict to continue to work constructively through the regional mediation process towards the signing of a ceasefire agreement and settlement of the conflict in the Democratic Republic of the Congo.¹²⁷

By a statement of the President dated 24 June 1999,¹²⁸ the Council called upon all parties to demonstrate commitment to the peace process and to participate with a constructive and flexible spirit in the summit in Lusaka scheduled for 26 June 1999. In that context, it further called upon the parties to sign immediately a ceasefire agreement which included the appropriate modalities and mechanisms for its implementation. Also, the Council emphasized the need for a peaceful settlement of the conflict in the Democratic Republic of the Congo in order to permit the economic reconstruction of the country, so as to enhance development and foster national reconciliation.

By resolution 1258 (1999) of 6 August 1999, the Security Council welcomed the signing of the Ceasefire Agreement on the conflict in the Democratic Republic of the Congo by the States concerned in

¹²⁶ S/PRST/1998/36.

¹²⁷ Resolution 1234 (1999), para. 12.

¹²⁸ S/PRST/1999/17.

Lusaka on 10 July 1999 which represented a viable basis for a resolution of the conflict in the Democratic Republic of the Congo. It also welcomed the signing of the Ceasefire Agreement on 1 August 1999 by the Movement for the Liberation of the Congo and called upon the Congolese Rally for Democracy to sign the Agreement without delay in order to bring about national reconciliation and lasting peace in the Democratic Republic of the Congo. By the same resolution, the Security Council called upon all parties to the conflict, in particular the rebel movements, to cease hostilities, to implement fully and without delay the provisions of the Ceasefire Agreement, to cooperate fully with the Organization of African Unity and the United Nations in the implementation of the Ceasefire Agreement and to desist from any act that may further exacerbate the situation. Furthermore, it stressed the need for a continuing process of genuine national reconciliation, and encouraged all Congolese to participate in the national debate to be organized in accordance with the provisions of the Ceasefire Agreement.¹²⁹

By resolution 1279 (1999) of 30 November 1999, the Security Council reaffirmed that the Ceasefire Agreement signed at Lusaka on 10 July 1999¹³⁰ represented the most viable basis for a resolution of the conflict in the Democratic Republic of the Congo. In addition, it expressed its concern at the alleged violations of the Ceasefire Agreement, and urged all parties to refrain from any declarations or action that could jeopardize the peace process. Furthermore, the Council stressed the need for a continuing process of genuine national reconciliation, encouraged all Congolese to participate in the national dialogue, and called upon all Congolese parties to finalize agreement on the facilitator for the national dialogue.¹³¹

The situation in Somalia

By a statement of the President dated 24 January 1996,¹³² the Council deeply concerned about the absence of any credible progress towards national reconciliation, called upon all Somali political leaders and parties to return to an inclusive process of

consultation and negotiation aimed at national reconciliation leading to the establishment of a broad-based national government.

By a statement of the President dated 20 December 1996,¹³³ the Council fully supported the efforts of the countries in the region, as well as of international and regional organizations, in particular the Organization of African Unity (OAU) and the League of Arab States (LAS), to facilitate a political settlement of the crisis in Somalia. It appealed to all Somali factions to join in such efforts and to start a process of national reconciliation aimed at the establishment of a broad-based national Government.

By a statement of the President dated 27 February 1997,¹³⁴ the Council called upon all Somali factions to cease immediately all hostilities and to cooperate with the regional and other efforts for peace and national reconciliation in Somalia, including the initiatives taken at Sodere, Ethiopia, and Nairobi.

By a statement of the President dated 23 December 1997,¹³⁵ the Council welcomed the outcome of meetings between the Somali leaders held in Cairo, which concluded on 22 December 1997, in particular their decision to adopt a federal system with regional autonomy and their agreement to form a transitional government of national unity and to hold an inclusive conference of national reconciliation in Baidoa, Somalia, through which a presidential council and a Prime Minister would be elected. Furthermore, it welcomed the signing of the Cairo Declaration on Somalia¹³⁶ and other important agreements attached thereto, particularly on the creation of an elected Constituent Assembly, the establishment of an independent judicial system and the preparation of a transitional charter. Finally, the Council called upon all Somali leaders to contribute positively to the current momentum for peace and reconciliation created by the significant progress achieved in Cairo and by the other previous initiatives of Sodere, Nairobi and Sanaa, through the widest possible participation in the planned conference, and to cease immediately all acts of violence and to observe the ceasefire.

¹²⁹ Resolution 1258 (1999), paras. 1, 2, 4 and 5.

¹³⁰ S/1999/815, annex.

¹³¹ Resolution 1279 (1999), fourth and fifth preambular paras. and para. 2.

¹³² S/PRST/1996/4.

¹³³ S/PRST/1996/47.

¹³⁴ S/PRST/1997/8.

¹³⁵ S/PRST/1997/57.

¹³⁶ S/1997/1000, annex.

Expressing its support for the activities of the Standing Committee on Somalia, by a statement of the President dated 27 May 1999,¹³⁷ the Council called upon all Somali factions to cease immediately all hostilities and to cooperate with the regional and other efforts to achieve peace and reconciliation.

By a statement of the President dated 12 November 1999,¹³⁸ the Council expressed its full support for the efforts exerted by the Intergovernmental Authority on Development to find a political solution to the crisis in Somalia. In that context, it welcomed the initiative of the President of Djibouti aimed at restoring peace and stability in Somalia.¹³⁹ In the same statement, the Council endorsed the call made by the President of Djibouti to the warlords to recognize fully and accept the principle that the Somali people are free to exercise their democratic right to choose their own regional and national leaders. Furthermore, the Council called upon the leaders of the Somali factions and all others concerned to cooperate constructively and in good faith in the efforts to resolve the crisis.

The situation between Eritrea and Ethiopia

By resolution 1177 (1998) of 26 June 1998, the Security Council, welcoming the official statements by the Government of Ethiopia and the Government of Eritrea that they shared the ultimate goal of delimiting and demarcating their common border on the basis of a mutually agreeable and binding arrangement, taking into account the charter of OAU, colonial treaties and international law applicable to such treaties, called upon the parties to avoid any steps which would aggravate tensions such as provocative actions or statements, and to take steps to build confidence between them including by guaranteeing the rights and safety of each other's nationals.¹⁴⁰

By resolution 1226 (1999) of 29 January 1999, the Security Council expressed its strong support for the mediation efforts of OAU and for the Framework Agreement as approved on 17 December 1998 by the Summit of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution of

OAU,¹⁴¹ and affirmed that the Framework Agreement provided the best hope for peace between the two parties. The Council stressed that it was of primary importance that the Framework Agreement be accepted. In addition, the Council welcomed the acceptance by Ethiopia of the Framework Agreement. It also welcomed Eritrea's engagement in the process undertaken by OAU, and strongly urged Eritrea to accept the Framework Agreement as the basis for a peaceful resolution of the border dispute between Ethiopia and Eritrea without delay. Furthermore, the Council strongly urged Ethiopia and Eritrea to maintain their commitment to a peaceful resolution of the border dispute and called upon them in the strongest terms to exercise maximum restraint and to refrain from taking any military action.¹⁴²

Asia

Letters dated 23 September and 3 and 11 October 1996 from the Permanent Representative of the Republic of Korea to the United Nations addressed to the President of the Security Council

Letters dated 23 September 1996 from the Permanent Representative of the Democratic People's Republic of Korea to the United Nations addressed to the President of the Security Council and 27 September 1996 addressed to the Secretary-General

Following the incident involving a submarine of the Democratic People's Republic of Korea on 18 September 1996, by a statement of the President dated 15 October 1996,¹⁴³ the Council urged that the Korean Armistice Agreement¹⁴⁴ should be fully observed and that no action should be taken that might increase tension or undermine peace and stability on the Korean peninsula. The Council stressed that the Armistice Agreement should remain in force until it was replaced by a new peace mechanism. Furthermore, the Council encouraged both sides of the Korean peninsula to settle their outstanding issues by peaceful means through dialogue, so that peace and security on the peninsula would be strengthened.

¹³⁷ S/PRST/1999/16.

¹³⁸ S/PRST/1999/31.

¹³⁹ See S/1999/1007.

¹⁴⁰ Resolution 1177 (1998), sixth preambular para. and para. 6.

¹⁴¹ S/1998/1223, annex.

¹⁴² Resolution 1226 (1999), paras. 1, 3, 5 and 7.

¹⁴³ S/PRST/1996/42.

¹⁴⁴ S/3079.

The responsibility of the Security Council in the maintenance of international peace and security

Following the nuclear tests conducted by India on 11 and 13 May 1998 and by Pakistan on 28 and 30 May 1998, by resolution 1172 (1998) of 6 June 1998, the Security Council urged India and Pakistan to resume the dialogue between them on all outstanding issues, particularly on all matters pertaining to peace and security, in order to remove the tensions between them, and encouraged them to find mutually acceptable solutions that addressed the root causes of those tensions, including Kashmir.¹⁴⁵

The situation in Timor

By resolution 1236 (1999) of 7 May 1999, the Security Council welcomed the progress made at the last round of talks between the Governments of Portugal and Indonesia,¹⁴⁶ under the auspices of the Secretary-General, which led to the conclusion of a series of agreements in New York on 5 May 1999. By the same resolution, it welcomed the concluding of the Agreement between the Republic of Indonesia and the Portuguese Republic on the question of East Timor on 5 May 1999.¹⁴⁷

The situation in Tajikistan and along the Tajik-Afghan border

By a statement of the President dated 7 February 1997,¹⁴⁸ the Council welcomed the signing in Moscow on 23 December 1996 by the President of Tajikistan and the leader of the United Tajik Opposition of the Agreement,¹⁴⁹ including the Protocol on the Commission on National Reconciliation,¹⁵⁰ and noted the progress made in the inter-Tajik talks in Tehran. The Council believed that those agreements, provided that they were carried out as written, represented a qualitative change for the better and gave a new impetus to efforts aimed at achieving national reconciliation. Furthermore, the Council urged the parties to honor and implement consistently and in

good faith the agreements already reached, in particular in the course of negotiating future agreements. It also urged them to make further substantive progress at the next rounds of the inter-Tajik talks.

Letter dated 31 March 1998 from the Permanent Mission of Papua New Guinea to the United Nations addressed to the President of the Security Council

By a statement of the President dated 22 April 1998,¹⁵¹ the Council expressed support for the Agreement on Peace, Security and Development on Bougainville, signed at Lincoln University, New Zealand, on 23 January 1998,¹⁵² achieved by the Government of Papua New Guinea, the Bougainville Transitional Government, the Bougainville Resistance Force, the Bougainville Interim Government, the Bougainville Revolutionary Army and the Bougainville leaders, with regard to a ceasefire among conflicting parties. In that context, it encouraged all parties to cooperate in promoting reconciliation, so that the objectives of the Lincoln Agreement could be met, and urged all parties to continue to cooperate in accordance with the Lincoln Agreement in order to achieve and maintain peace, to renounce the use of armed force and violence, to resolve any differences by consultation, both now and in the future, and to confirm their respect for human rights and the rule of law.

The situation in Afghanistan

By resolution 1076 (1996) of 22 October 1996, the Security Council urged all Afghan parties to resolve their differences through peaceful means and achieve national reconciliation through political dialogue.¹⁵³ By the same decision and in a prior statement,¹⁵⁴ the Council called upon all Afghan parties immediately to cease all armed hostilities, to renounce the use of force, to put aside their differences, and to engage in a political dialogue aimed at achieving national reconciliation and a lasting political settlement of the conflict and establishing a fully representative and broad-based transitional government of national unity.

¹⁴⁵ Resolution 1172 (1998), para. 5.

¹⁴⁶ Resolution 1236 (1999), fourth preambular para. and para. 1.

¹⁴⁷ S/1999/513, annex I.

¹⁴⁸ S/PRST/1997/6.

¹⁴⁹ S/1996/1070, annex I.

¹⁵⁰ S/1996/1070, annex II.

¹⁵¹ S/PRST/1998/10.

¹⁵² S/1998/287.

¹⁵³ Resolution 1076 (1996), eighth preambular para.

¹⁵⁴ *Ibid.*, para. 1, and S/PRST/1996/40.

By a statement of the President dated 16 April 1997,¹⁵⁵ the Council called upon the Afghan parties to cease all hostile actions and to enter into sustained negotiations. It strongly believed that a negotiated settlement was the only solution to the long-standing conflict in that country.

By a statement of the President dated 9 July 1997,¹⁵⁶ the Council called upon all Afghan parties to return to the negotiating table immediately and to work together towards the formation of a broad-based, fully representative government that would protect the rights of all Afghans and abide by Afghanistan's international obligations. In the same statement, the Council, taking into account risks of regional destabilization, expressed its belief that peace and stability in Afghanistan could best be attained through intra-Afghan political negotiations under United Nations auspices with the active and coordinated assistance of all countries concerned.

By a statement of the President dated 16 December 1997,¹⁵⁷ the Council stressed that the Afghan conflict had no military solution and that the primary responsibility for finding a peaceful settlement rested with the Afghan parties themselves. It also urged all Afghan parties to take genuine confidence-building measures, to agree immediately on a ceasefire, and to engage without preconditions in a political dialogue aimed at achieving national reconciliation, a lasting political settlement of the conflict and the formation of a broad-based, fully representative government that would protect the rights of all Afghans and abide by Afghanistan's international obligations.

By a statement of the President dated 6 August 1998,¹⁵⁸ the Council called upon all Afghan parties to return to the negotiating table without delay and preconditions and to cooperate with the aim of creating a broad-based and fully representative government, which would protect the rights of all Afghans and observe the international obligations of Afghanistan.

In two subsequent decisions,¹⁵⁹ the Council reiterated that the Afghan crisis could be settled only by peaceful means, through direct negotiations

between the Afghan factions under United Nations auspices, aimed at achieving mutually acceptable solutions accommodating the rights and interests of all ethnic, religious and political groups of Afghan society.

By a statement of the President dated 15 September 1998,¹⁶⁰ the Council called upon the parties, in particular the Taliban, to take action in response to the strong concerns expressed by the international community, to stop fighting and resume negotiations aimed at achieving a peaceful settlement of the conflict on the basis of the relevant resolutions of the General Assembly and of the Council.

By resolution 1214 (1998) of 8 December 1998, the Security Council demanded that the Taliban, as well as other Afghan factions, stop fighting, conclude a ceasefire and resume negotiations without delay and preconditions under United Nations auspices, and cooperate with the aim of creating a broad-based and fully representative government, which would protect the rights of all Afghans and observe the international obligations of Afghanistan.¹⁶¹

By a statement of the President dated 22 October 1999,¹⁶² the Council reiterated that there was no military solution to the conflict in Afghanistan and that only a negotiated political settlement aimed at the establishment of a broad-based, multi-ethnic and fully representative government acceptable to all Afghans could lead to peace and reconciliation. It recalled its demand that the parties to the conflict, especially the Taliban, resume negotiations under United Nations auspices without delay and preconditions in full compliance with the relevant resolutions of the General Assembly and the Council.

Europe

(a) *The situation in Croatia*

By resolution 1093 (1997) of 14 January 1997, commending the Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia, signed in Belgrade on 23 August 1996¹⁶³ and committing the parties to resolve peacefully the disputed issue of Prevlaka by

¹⁵⁵ S/PRST/1997/20

¹⁵⁶ S/PRST/1997/35.

¹⁵⁷ S/PRST/1997/55.

¹⁵⁸ S/PRST/1998/24.

¹⁵⁹ S/PRST/1998/24 and resolution 1193 (1998), para. 1.

¹⁶⁰ S/PRST/1998/27.

¹⁶¹ Resolution 1214 (1998), para. 1.

¹⁶² S/PRST/1999/29.

¹⁶³ S/1996/706 and S/1996/744.

negotiations in the spirit of the Charter of the United Nations and good neighbourly relations, the Security Council urged the parties to abide by their mutual commitments and to implement fully the Agreement on Normalization of Relations and stressed that those were critical for the establishment of peace and security throughout the region.¹⁶⁴

By a statement of the President dated 25 April 1997,¹⁶⁵ the Council called upon the Republic of Croatia and the Federal Republic of Yugoslavia to resolve the disputed issue of Prevlaka through bilateral negotiations pursuant to the Agreement on Normalization of Relations and in the spirit of the Charter of the United Nations and good neighborly relations.

By resolution 1119 (1997) of 14 July 1997, the Security Council renewed its calls upon the parties to abide by their mutual commitments, implement fully the Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia, adopt the practical options proposed by the United Nations military observers for the improvement of safety and security in the area, cease all violations of the demilitarization regime and military or other activities which may increase tension, and cooperate fully with the United Nations military observers and ensure their safety and freedom of movement, including through the removal of landmines.¹⁶⁶

By resolution 1147 (1998) of 13 January 1997, the Security Council urged the parties to take concrete steps towards a negotiated resolution of the disputed issue of Prevlaka in good faith and without delay.¹⁶⁷

By resolution 1222 (1999) of 15 January 1999, the Security Council, noting with approval the continuing bilateral negotiations between the parties pursuant to the Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia, expressed serious concern that such negotiations had not yet resulted in

any substantive progress towards a settlement of the disputed issue of Prevlaka.¹⁶⁸

By several subsequent resolutions,¹⁶⁹ the Security Council continued to urge the parties to abide by their mutual commitments and to implement fully the Agreement on Normalization of Relations between the Republic of Croatia and the Federal Republic of Yugoslavia.

Items relating to the situation in Kosovo, Federal Republic of Yugoslavia

By a statement of the President dated 19 January 1999,¹⁷⁰ the Council called upon all parties to respect fully their commitments under the relevant resolutions and affirmed once again its full support for international efforts to facilitate a peaceful settlement on the basis of equality for all citizens and ethnic communities in Kosovo.

By a statement of the President dated 29 January 1999,¹⁷¹ the Council welcomed and supported the decisions of the Contact Group, following their meeting in London on 29 January 1999,¹⁷² aimed at reaching a political settlement between the parties and establishing a framework and timetable for that purpose.

The situation in Albania

By a statement of the President dated 13 March 1997,¹⁷³ expressing its deep concern about the deteriorating situation in Albania, the Council urged all concerned to refrain from hostilities and acts of violence and to cooperate with diplomatic efforts to reach a peaceful solution to the crisis. In addition, the Council called upon the parties involved to continue the political dialogue and to live up to the commitments undertaken on 9 March 1997 in Tirana. It further urged all political forces to work together to lower tension and facilitate the stabilization of the country.

¹⁶⁴ Resolution 1093 (1997), seventh preambular para. and para. 2.

¹⁶⁵ S/PRST/1997/23.

¹⁶⁶ Resolution 1119 (1997), para. 2.

¹⁶⁷ Resolution 1147 (1997), para. 6.

¹⁶⁸ Resolution 1222 (1999), ninth preambular para.

¹⁶⁹ See resolutions 1093 (1997), para. 2; 1147 (1998), para. 4; 1183 (1998), para. 4; 1222 (1999), para. 5; and 1252 (1999), para. 4.

¹⁷⁰ S/PRST/1999/2.

¹⁷¹ S/PRST/1999/5.

¹⁷² S/1996/96, annex.

¹⁷³ S/PRST/1997/14.

The situation in Georgia

By resolutions 1036 (1996) of 12 January 1996 and 1065 (1996) of 12 July 1996, the Council stressed the need for the parties to intensify efforts, under the auspices of the United Nations and with the assistance of the Russian Federation as facilitator, to achieve an early and comprehensive political settlement of the conflict, including on the political status of Abkhazia, fully respecting the sovereignty and territorial integrity of Georgia.¹⁷⁴ Furthermore, the Council called upon the parties, in particular the Abkhaz side, to achieve substantive progress without further delay towards a comprehensive political settlement, and also called upon them to cooperate fully with the efforts undertaken by the Secretary-General with the assistance of the Russian Federation as facilitator.¹⁷⁵

By several subsequent decisions, the Council continued to express concern that no significant progress had yet been achieved towards a comprehensive political settlement of the conflict. It also continued to call upon the parties, in particular the Abkhaz side, to achieve substantive progress without further delay.¹⁷⁶

By resolutions 1096 (1997) of 30 January 1997 and 1124 (1997) of 31 July 1997, as well as by two presidential statements dated 8 May 1997¹⁷⁷ and 6 November 1997¹⁷⁸, the Security Council recalled its position with regard to a comprehensive political settlement in Georgia, as contained in previous resolutions.¹⁷⁹ In the above-mentioned decisions, the Security Council continued to welcome the renewal of direct dialogue at a high level between the parties, and called upon them to intensify the search for a peaceful solution by further expanding their contacts, and requested the Secretary-General to make available all appropriate support if so requested by the parties.¹⁸⁰

¹⁷⁴ Resolution 1036 (1996), third preambular para., and resolution 1065 (1996), third preambular para.

¹⁷⁵ Resolution 1036 (1996), para. 4.

¹⁷⁶ S/PRST/1996/20, resolution 1065 (1996), third preambular and para. 5; S/PRST/1996/43; and resolution 1096 (1997), fourth preambular para. and para. 6.

¹⁷⁷ S/PRST/1997/25.

¹⁷⁸ S/PRST/1997/50.

¹⁷⁹ See resolutions 1036 (1996) and 1065 (1996).

¹⁸⁰ Resolution 1096 (1997), para. 7; S/PRST/1997/25; resolution 1124 (1997), para. 8; S/PRST/1997/50; and resolution 1150 (1998), para. 6.

By a statement of the President dated 28 May 1998,¹⁸¹ the Council expressed its deep concern at the slowing of the peace process. It called upon the parties to display the necessary political will to achieve substantial results on the key issues of the negotiations within the framework of the United Nations-led peace process and through direct dialogue, with full respect for the sovereignty and territorial integrity of Georgia.

By resolution 1225 (1999) of 28 January 1999, the Security Council demanded that both sides widen their commitment to the United Nations-led peace process, continue to seek and engage in dialogue, expand their contacts at all levels and display without delay the necessary will to achieve substantial results on the key issues of the negotiations, and underlined the necessity for the parties to achieve an early and comprehensive political settlement, which included a settlement on the political status of Abkhazia within the State of Georgia, which fully respected the sovereignty and territorial integrity of Georgia within its internationally recognized borders.¹⁸²

By two subsequent decisions,¹⁸³ the Council reiterated its demand that both sides widen their commitment to the United Nations-led peace process, continue to seek and engage in dialogue, expand their bilateral contacts and display without delay the necessary will to achieve substantial results on the key issues of the negotiations, and underline the necessity for the parties to achieve an early and comprehensive political settlement, which included a settlement on the political status of Abkhazia within the State of Georgia.

The situation in Cyprus

By resolution 1062 (1996) of 28 June 1996, the Security Council reiterated its concern that there had been no progress towards a final political solution, and agreed with the assessment of the Secretary-General that the negotiations had been at an impasse for too long.¹⁸⁴ It also reiterated that the status quo was unacceptable, and called upon the parties to demonstrate concretely their commitment to an overall political settlement.¹⁸⁵ It urged the leaders of the two

¹⁸¹ S/PRST/1998/16.

¹⁸² Resolution 1225 (1999), para. 3.

¹⁸³ S/PRST/1999/11 and resolution 1255 (1999), para. 2.

¹⁸⁴ Resolution 1062 (1996), sixth preambular para.

¹⁸⁵ *Ibid.*, para. 10.

communities to respond positively and urgently to the Secretary-General's call upon them to work with him and with the many countries who supported his mission of good offices to break the present impasse and establish common ground on which direct negotiations could be resumed.¹⁸⁶

In several subsequent resolutions,¹⁸⁷ the Security Council reiterated that the status quo was unacceptable, and stressed its support for the Secretary-General's mission of good offices and the importance of the concerted efforts to work with the Secretary-General towards an overall comprehensive settlement.

By resolution 1179 (1998) of 29 June 1998, the Security Council reiterated its growing concern that negotiations on a comprehensive political solution had yet to make progress, despite the efforts of the Secretary-General and his Special Adviser and others in support of the United Nations efforts to promote a comprehensive settlement.¹⁸⁸

By resolution 1217 (1998) of 22 December 1998, the Security Council reaffirmed that the status quo was unacceptable and that negotiations on a final political situation of the Cyprus problem had been at an impasse for too long. The Council also reaffirmed its position that a Cyprus settlement was to be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded, and comprising two politically equal communities as described in the relevant Security Council resolutions, in a bicomunal and bizonal federation, and that such a settlement was to exclude union in whole or in part with any other country or any form of partition or secession. Furthermore, it called once again upon the leaders of the two communities to commit themselves to this process of negotiations, to cooperate actively and constructively with the Secretary-General, his Special Adviser and Deputy Special Representative and to resume when appropriate the direct dialogue.¹⁸⁹

By resolution 1250 (1999) of 29 June 1999, the Security Council expressed the view that both sides had legitimate concerns that should be addressed through

comprehensive negotiations covering all relevant issues. In that regard, it called upon the two leaders to give their full support to such a comprehensive negotiation, under the auspices of the Secretary-General, and to commit themselves to the following principles: no preconditions; all issues on the table; commitment in good faith to continue to negotiate until a settlement was reached; and full consideration of relevant United Nations resolutions and treaties.¹⁹⁰

By resolution 1251 (1999) of 29 June 1999, the Security Council reiterated the need to make progress on a comprehensive political solution.¹⁹¹

Middle East

The situation in the occupied Arab Territories

Expressing concern about the clashes between the Israeli army and the Palestinian police and the casualties on both sides, by resolution 1073 (1996) of 28 September 1996, the Security Council called for an immediate resumption of negotiations within the Middle East peace process on its agreed basis and the timely implementation of the agreements reached.¹⁹²

B. Decisions involving the Secretary-General in the Council's efforts at the pacific 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.

Nevertheless, Security Council 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. With regard to the situation in the Great Lakes, the Secretary-General informed the Council, by a letter dated 18 February 1997 addressed to the President of the Security Council,¹⁹³ that the joint

¹⁸⁶ Ibid., para. 12.

¹⁸⁷ See resolutions 1092 (1996), para. 10; 1117 (1997), para. 7; and 1146 (1997), para. 8.

¹⁸⁸ Resolution 1179 (1998), fourth preambular para.

¹⁸⁹ Resolution 1217 (1998), para. 6, 7 and 9.

¹⁹⁰ Resolution 1250 (1999), para. 5 and 7.

¹⁹¹ Resolution 1251 (1999), seventh preambular para.

¹⁹² Resolution 1073 (1999), para. 3.

¹⁹³ S/1997/136.

United Nations/Organization of African Unity Special Representative for the Great Lakes region, Mr. Mohammed Sahnoun, was working on a five-point peace plan,¹⁹⁴ which was based on the Council's statement¹⁹⁵ of 7 February 1997, and that Mr. Sahnoun hoped it would be accepted by all parties. In light of the numerous peace initiatives undertaken to restore peace in eastern Zaire, the Secretary-General asked for immediate Council acknowledgement and support for Mr. Sahnoun's initiative. In response, by resolution 1097 (1997) of 18 February 1997, the Security Council welcomed the letter addressed to the President¹⁹⁶ regarding progress in the efforts to resolve the crisis in the Great Lakes region.¹⁹⁷ It also endorsed the five-point peace plan for eastern Zaire, as set out in the letter from the Secretary-General of 18 February 1997.¹⁹⁸

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, expressly requested the Secretary-General to assume an active role in the process of achieving a political settlement, or endorsed the initiative of the Secretary-General within the framework of his mission of good offices.

The following overview sets out examples of decisions by which the Security Council specifically requested, supported, endorsed, encouraged or welcomed the Secretary-General's endeavors in the peaceful settlement of disputes.

¹⁹⁴ The plan called for the immediate cessation of hostilities; withdrawal of all external forces, including mercenaries; reaffirmation of respect for the national sovereignty and territorial integrity of Zaire and other States of the Great Lakes region; protection and security for all refugees and displaced persons and facilitation of access to humanitarian assistance; and rapid and peaceful settlement of the crisis through dialogue, the electoral process and the convening of an international conference on peace, security and development in the Great Lakes region.

¹⁹⁵ In its presidential statement, the Council had expressed full support for the Special Representative and had urged the parties to cooperate fully with his mission (S/PRST/1997/5).

¹⁹⁶ S/1997/136.

¹⁹⁷ Resolution 1097 (1997), second preambular para.

¹⁹⁸ *Ibid.*, para. 1.

The situation in Angola

By resolution 1195 (1998) of 15 September 1998, the Security Council reiterated its support to the Secretary-General for his personal engagement in the peace process, and urged the Government of Angola and UNITA to cooperate fully with the Special Representative of the Secretary-General and with other relevant initiatives by Member States to seek a peaceful resolution of the crisis.¹⁹⁹ By resolution 1202 (1998) of 15 October 1998, the Security Council encouraged the Special Representative of the Secretary-General to coordinate his efforts with regional and subregional organizations in order to bring about a solution within the framework of the Lusaka Protocol.²⁰⁰

The situation in Sierra Leone

While welcoming the offers made by leaders in the region aimed at resolving the conflict and in that context urged them, including the Economic Community of West African States (ECOWAS) Committee of Six, to facilitate the peace process, by a statement of the President dated 7 January 1999,²⁰¹ the Council called on the Secretary-General to do all he could to assist in those efforts, including through his Special Representative. By resolution 1231 (1999) of 11 March 1999, the Security Council expressed its support for all efforts, in particular by States members of ECOWAS, aimed at peacefully resolving the conflict and restoring lasting peace and stability to Sierra Leone, and encouraged the Secretary-General, through his Special Representative for Sierra Leone, to facilitate dialogue to those ends.²⁰²

The situation in the Republic of the Congo

By a statement of the President dated 13 August 1997,²⁰³ while expressing its full support for the efforts of the International Mediation Committee, under the chairmanship of the President of Gabon, and the National Mediation Committee, under the Chairmanship of the Mayor of Brazzaville, to persuade the parties involved to reach agreement on a ceasefire and a peaceful settlement of the crisis, the Council affirmed its support for the important and constructive role of the Joint United

¹⁹⁹ Resolution 1195 (1998), para. 7.

²⁰⁰ Resolution 1202 (1998), para. 9.

²⁰¹ S/PRST/1999/1.

²⁰² Resolution 1231 (1999), para. 9.

²⁰³ S/PRST/1997/43.

Nations/Organization of African Unity Special Representative for the Great Lakes region in those negotiations.

The situation concerning the Democratic Republic of the Congo

By a statement of the President dated 11 December 1998,²⁰⁴ the Council welcomed in particular the initiative taken by the Secretary-General at the Twentieth Conference of Heads of State of Africa and France, held in Paris from 26 to 28 November 1998, to bring about an end to the conflict and reach an immediate, unconditional ceasefire. By a statement of the President dated 24 June 1999,²⁰⁵ the Council expressed its appreciation and full support for the continuing efforts of the Secretary-General and his Special Envoy for the peace process in the Democratic Republic of the Congo.

The situation in Cyprus

By resolution 1179 (1998) of 29 June 1998, the Security Council stressed its full support for the Secretary-General's mission of good offices and for the efforts of his Special Adviser on Cyprus to resume a sustained process of direct negotiations aimed at achieving a comprehensive settlement on the basis of the relevant Security Council resolutions, and stressed also the importance of concerted efforts to work with the Secretary-General to that end.²⁰⁶

By resolution 1218 (1998) of 22 December 1998, the Security Council endorsed the initiative of the Secretary-General announced on 30 September 1998 within the framework of his mission of good offices, with the goal of reducing tensions and promoting progress towards a just and lasting settlement in Cyprus. The Council also requested the Secretary-General, in view of the objectives of promoting progress towards a just and lasting settlement and of reducing tension, set out in his initiative of 30 September 1998, and building on the serious engagement already demonstrated by the two sides, to continue to make progress towards these two objectives, on the basis of relevant Security Council resolutions. Furthermore, taking into account resolution 1178 (1998) of 29 June 1998, it requested

the Secretary-General, in particular, to work intensively with the two sides on the following: (a) an undertaking to refrain from the threat or use of force or violence as a means to resolve the Cyprus problem; (b) a staged process aimed at limiting and then substantially reducing the level of all troops and armaments on Cyprus; (c) implementation of the package of measures of the United Nations Peacekeeping Force in Cyprus (UNFICYP) aimed at reducing tensions along the ceasefire lines, and a commitment to enter into discussions with the Force with a view to early agreement on further specific and related tension-reducing steps, including demining along the buffer zone; (d) further progress in the area of tension-reduction; (e) efforts to achieve substantive progress on the core aspects of a comprehensive Cyprus settlement; and other measures that will build trust and cooperation between the two sides.²⁰⁷

By resolution 1250 (1999) of 29 June 1999 the Council reiterated its endorsement of the initiative of the Secretary-General announced on 30 September 1998, within the framework of his mission of good offices, with the goal of reducing tensions and promoting progress towards a just and lasting settlement in Cyprus.²⁰⁸

C. Decisions involving regional arrangements or agencies

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

²⁰⁴ S/PRST/1998/36.

²⁰⁵ S/PRST/1999/17.

²⁰⁶ Resolution 1179 (1998), para. 3.

²⁰⁷ Resolution 1218 (1998), para. 2, 4 and 5.

²⁰⁸ Resolution 1250 (1999), para. 3.

Part IV

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

Note

Part IV highlights the most important arguments raised in the deliberations of the Council with regard to the interpretation of specific provisions of the Charter concerning the Council's role in the peaceful settlement of disputes. It 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. It also includes the consideration by the Council of the conditions under which it is appropriate for Member States and non-Member States to bring any dispute or situation to the attention of the Security Council.

In accordance with the relevant provisions of Chapter VI, the Council shall, when it deems necessary, make recommendations in relation to disputes or situations which are likely to endanger international peace and security. Accordingly, this part will focus on discussions concerning the existence of a dispute or situation within the meaning of Chapter VI of the Charter. When making recommendations to the parties, the Council is also required, pursuant to Article 36 of the Charter, to take into consideration (a) procedures for settlement which have already been adopted by the parties, and (b) the general rule that disputes of a legal nature ought to be referred to the International Court of Justice. Instances in which the requirements stipulated by Article 36 (2) and (3) became the subject of deliberations will, therefore, also be considered below.

Part IV is divided into seven thematic subheadings in accordance with the relevant provisions of Chapter VI, with the inclusion of Article 99 dealing with matters brought to the attention of the Security Council by the Secretary-General. The thematic subheadings that include more than one item are organized by agenda item of the Council. Further, those agenda items under which more than one provision of Chapter VI was dealt with at once are included under different subheadings. It is important to note that in

some cases it is difficult to establish a clear-cut distinction between the constitutional developments relevant to Chapter VI and Chapter VII. In several instances, Member States provided different interpretations of the provisions of Chapter VI or challenged the Security Council's interpretation of those provisions, or even its role in the peaceful settlement of disputes. Since the referral of a situation or dispute to the Council was challenged by Member States on the basis of distinct arguments, some items are considered under several subheadings.

Assertion that peaceful means of settlement were not exhausted in the light of Article 33 (1) of the Charter

During the Council's deliberations, Article 33 was explicitly invoked to underline that the imposition of measures against the Libyan Arab Jamahiriya had taken place without exhausting the provisions and arrangements for the peaceful settlement of disputes set forth in Article 33.

*Letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America*²⁰⁹

At its 3864th meeting, on 20 March 1998, the representative of the Libyan Arab Jamahiriya argued that resolutions 731 (1992), 748 (1992) and 883 (1993) had been adopted in clear violation of Article 33 of the Charter, thus challenging the relevance of the Council's procedures. He argued that his country had applied the provisions contained in Article 33 of the Charter, resorting to regional and international organizations to seek a solution by negotiation, enquiry, mediation, conciliation, arbitration or judicial settlement. He stated that his Government had submitted the issue to the League of Arab States, the Organization of African

²⁰⁹ (S/23306, S/23307, S/23308, S/23309 and S/23317).

Unity, the Organization of the Islamic Conference and the Non-Aligned Movement. Those organizations established committees which contacted the parties concerned in search of a solution that would satisfy all parties. However, their noble endeavours had been aborted through rejection, disregard and worse. He further stated that those organizations, once their efforts of mediation or conciliation had failed, submitted proposals aimed at the judicial settlement of the question through one of three options.²¹⁰ Three options were proposed for the trial of the two Libyan nationals suspected in the Lockerbie bombing: they could be tried in a neutral country chosen by the Council; at the World Court in the Hague by Scottish judges; or in a special tribunal to be created at The Hague.

Several speakers²¹¹ supported the view of the Libyan Arab Jamahiriya. In that connection, referring to the provisions in Article 33 stating that disputes between States must be resolved, the representative of Pakistan questioned whether all those options had been exhausted before sanctions were imposed on the Libyan Arab Jamahiriya. He argued that the Security Council should reconsider whether it can remain seized of an issue which was now sub judice in the ICJ.²¹²

The representatives of the Organization of African Unity and the Organization of the Islamic Conference explicitly referred to the provisions under Article 33 of the Charter calling on the parties to any dispute to 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.²¹³ The representative of the Organization of African Unity considered that the dispute between the Libyan Arab Jamahiriya and two permanent members of the Security Council fell under Article 33 of the Charter of the United Nations.²¹⁴

Speaking on behalf of the Group of African States, the representative of Mali referred to the resolutions of the Organization of African Unity inviting all the parties to begin negotiations with a view to arriving at a negotiated solution to the dispute, in accordance with Article 33 of the Charter, which calls for the solution of disputes by negotiation, mediation and judicial settlement, in accordance with the norms of international law.²¹⁵

The representative of the Sudan echoed the belief of his Government that the peaceful settlement of disputes in accordance with the provisions of the Charter was a necessity in the context of the maintenance of international peace and security, as reflected in the provisions contained in Article 33 (1). For this reason, the Sudan believed that the Security Council was, first and foremost, duty-bound to compel the parties to the conflict to settle their dispute by peaceful means.²¹⁶

No action was taken at the end of the deliberations at the 3864th meeting.

Relevance of recommendations for the settlement of disputes by the Security Council, in the light of Article 33 (2) of the Charter

Whereas Article 33 (1) gives primary responsibility in resolving a dispute to the parties concerned, the Security Council is vested, under Article 33 (2), with discretionary power to request the parties to settle their dispute by peaceful means.

Article 33 (2) provides that “the Security Council shall, when it deems necessary, call upon the parties to settle their disputes by such means”, as referred to in Article 33 (1), namely, negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of the choice by the parties to a dispute or situation. 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

²¹⁰ S/PV.3864 and Corr.1, pp. 4-9.

²¹¹ Ibid., p. 37 (Organization of African Unity); p. 38 (Organization of the Islamic Conference); p. 50 (Kuwait); pp. 59-60 (Pakistan); pp. 65-66 (Sudan); and p. 76 (Lebanon).

²¹² Ibid., pp. 59-60.

²¹³ Ibid., pp. 36-37 (Organization of African Unity) and pp. 38-39 (Organization of the Islamic Conference).

²¹⁴ Ibid., p. 36.

²¹⁵ Ibid., pp. 40-42.

²¹⁶ Ibid., p. 66.

the parties". In the following instance, the Security Council called upon the parties to resolve their dispute through dialogue and negotiation.

The responsibility of the Security Council in the maintenance of international peace and security

For example, following the nuclear tests conducted by India and Pakistan, by resolution 1172 (1998), adopted at its 3890th meeting held on 6 June 1998, the Security Council demanded that those countries refrain from further nuclear tests, and called upon them immediately to stop their nuclear weapon development programmes, to refrain from weaponization or from the deployment of nuclear weapons, to cease development of ballistic missiles capable of delivering nuclear weapons and any further production of fissile material for nuclear weapons, to confirm their policies not to export equipment, materials or technology that could contribute to weapons of mass destruction or missiles capable of delivering them and to undertake appropriate commitments in that regard. Furthermore, the Council urged them to become parties to the Treaty on the Non-Proliferation of Nuclear Weapons and to the Comprehensive Nuclear-Test-Ban Treaty without delay and without conditions.²¹⁷

At the same meeting, speakers unanimously expressed concern about the threat posed to the peace and stability of the South Asia region, and called upon India and Pakistan to resolve their disputes by peaceful means, through dialogue and negotiation. Expressing grave concern at the negative effect of the nuclear tests on peace and stability in South Asia and beyond, speakers unanimously urged India and Pakistan to exercise maximum restraint and to avoid threatening military movements. They were also urged to resume their dialogue on all outstanding issues, particularly on all matters pertaining to peace and security, in order to remove the tensions between them. Several speakers²¹⁸ emphasized the need to address the root causes of the tension between them, and to try to build confidence rather than seek confrontation.

²¹⁷ Resolution 1172 (1998), para. 3, 7 and 13.

²¹⁸ S/PV.3890, p. 3 (Japan); p. 4 (Sweden); p. 10 (France); p. 11 (China); p. 13 (United Kingdom, on behalf of the European Union and associated and aligned countries); p. 15 (Islamic Republic of Iran); and pp. 15-16 (Australia).

The representative of Sweden encouraged India and Pakistan to resume and strengthen a political dialogue on all outstanding issues, including Kashmir. In that regard, he stated that the international community should stand ready to facilitate such dialogue, at the request of the parties, in order to reduce tension and build confidence and security between them.²¹⁹

The representative of the Russian Federation stressed his delegation's readiness to help India and Pakistan in their search for reconciliation and cooperation through direct dialogue.²²⁰

Speaking after the adoption of resolution 1172 (1998), the Secretary-General said that he particularly welcomed the call by the Council on India and Pakistan to resume their bilateral talks on the issues that divided them. He stated that he would continue with his own efforts to encourage dialogue in the hope that it would reduce tensions and the danger of an escalation into a nuclear arms race.²²¹ Responding to this, the representative of the Islamic Republic of Iran noted that the situation at hand was a good example of an area where the good offices of the Secretary-General could be best utilized.²²²

The representative of the United Arab Emirates appealed to the international community, which was represented by the Security Council whose mission was to preserve international peace and security, to follow that peaceful path and use its good offices as a preventive measure so as to contain any escalation of tensions between the two countries.²²³

Commenting on statements made by other speakers, the representative of Pakistan considered the approach of giving responsibility in resolving the dispute to the parties involved erroneous, given the failure of the two parties to find a peaceful solution. He argued that the Council had failed to address the root causes of tensions between India and Pakistan, by merely "deal[ing] with the non-proliferation aspects". He asserted that non-proliferation was no longer an issue in South Asia, which was nuclearized "thanks to the encouragement and acquiescence of major

²¹⁹ *Ibid.*, p. 4.

²²⁰ *Ibid.*, p. 5.

²²¹ *Ibid.*, p. 13.

²²² *Ibid.*, p. 15.

²²³ *Ibid.*, p. 22.

Powers". Furthermore, he maintained that the resolution calling upon India and Pakistan to settle by themselves the issues bedeviling their relations was irrelevant given the failure of the two States to find a negotiated solution. He added that if Pakistan and India could have sorted out those problems themselves, South Asia would not be nuclearized. In conclusion, the representative of Pakistan emphasized that his country was ready to enter into talks with India on all matters of mutual concern, including a non-aggression pact, on the basis of a just, equitable and expeditious settlement of the Jammu and Kashmir dispute.²²⁴

At the end of deliberations, the Council adopted resolution 1172 (1998), by which it urged India and Pakistan to resume the dialogue between them on all outstanding issues, particularly on all matters pertaining to peace and security, in order to remove the tensions between them, and encouraged them to find mutually acceptable solutions that addressed the root causes of those tensions, including Kashmir.

Role of the Security Council in the prevention of armed conflicts

During the period under review, in thematic debates of the Security Council speakers suggested new ideas and new approaches to the role of the Security Council as defined under Chapter VI. The idea of early-warning mechanisms, likely to enable the Council to take early action with regard to emerging disputes, was the most outstanding example of the evolving interpretation of Chapter VI. In his report²²⁵ entitled "The causes of conflict and the promotion of durable peace and sustainable development in Africa", the Secretary-General suggested that a better response to rising conflicts could be given by the Council if it were informed at the earliest stage possible. He noted that early warning mechanisms were widely regarded as serving an important role in conflict prevention but, without early action, early warning was of little use. He argued that the critical concern today was no longer lack of early warning of impending crisis, but rather the need to follow up early warning with early and effective action.

At its 3875th meeting, on 24 April 1998, the Council considered the report of the Secretary-General.

²²⁴ Ibid., pp. 28-32.

²²⁵ S/1998/318.

During the debate, speakers discussed ways to detect the early signs of a conflict, with regard to the referral of the Council about any situation or any dispute likely to endanger the maintenance of international peace and security. The representative of Guyana affirmed that stronger regional bodies which were closer to the local situation and therefore better able to understand and respond to them could help stem the tide of conflict through the early initiation of the procedures for peaceful settlement set out in Article 33 of the Charter.²²⁶ At its 4081st meeting, on 15 December 1999, one of the several themes of discussion included the identification of additional instruments that the Council could bring to bear to help solve and, where possible, prevent conflicts in Africa. Noting that the United Nations Charter provided a number of tools which could and should be used in conflict prevention, the representative of Finland, speaking on behalf of the European Union and the associated and aligned countries,²²⁷ emphasized that existing methods, such as those enumerated in Article 33 of the Charter, should be strengthened and complemented.²²⁸

In connection with the agenda item entitled "Role of the Security Council in the prevention of armed conflicts", at its 4072nd meeting, on 29 November 1999, several speakers highlighted the importance and effectiveness of the provisions enshrined in Article 33, and how they could play an important role in settling many disputes and preventing armed conflicts. The representative of Bahrain underlined that there were many important tools available for the settlement of disputes under Article 33 of the Charter: negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement and other peaceful means.²²⁹ The representative of Gabon noted that the provisions stipulated in Article 33, calling on the parties to settle their disputes through the use of peaceful means, gave a mandate to the Council in the field of prevention of armed conflict.²³⁰ Referring to the tools that could and should be used in conflict prevention, the representative of Finland, speaking on behalf of the European Union and the associated and aligned

²²⁶ S/PV.3875 (Resumption 1), p. 62.

²²⁷ S/PV.4081, pp. 27-28.

²²⁸ Ibid., p. 27 (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia; and Iceland and Liechtenstein).

²²⁹ S/PV.4072 and Corr.1, p. 17.

²³⁰ Ibid., p. 23.

countries,²³¹ called on such methods enumerated in Article 33 to be strengthened and complemented.²³² The representative of Norway noted that early consideration and preventive action by the Security Council in disputes or potential conflict situations should remain the primary instrument of the international community's conflict prevention efforts. He stated that the higher the readiness of the Council for preventive action, the more likely it was that disputes could be settled peacefully, in accordance with Article 33 of the Charter.²³³

Recourse to investigation by the Security Council in the light of Article 34

Article 34 of the Charter provides that the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security. In the instance described below, the Article was explicitly invoked during the consideration of measures whose timely use could resolve situations of conflict.

On 8 September 1999, the Secretary-General submitted his report entitled "Protection of civilians in armed conflict",²³⁴ in which he noted that while causes of conflict were complex and needed to be addressed in a comprehensive manner, there were a number of steps which the Council could take, acting within its sphere of responsibility, to identify potential conflict situations much sooner. In that regard, he recommended, inter alia, that the Security Council increase its use of relevant provisions in the Charter, including Article 34, by investigating disputes at an early stage, inviting Member States to bring disputes to the Security Council's attention, and recommending appropriate procedures for dealing with disputes.²³⁵

²³¹ Ibid., p. 32 (Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania and Slovakia; and Cyprus, Malta and Iceland).

²³² Ibid., p. 32-34.

²³³ S/PV.4072 (Resumption 1), p. 15.

²³⁴ S/1999/957.

²³⁵ Ibid., para. 13.

At its 4046th meeting, on 16 September 1999, the Council met to discuss the above-mentioned report of the Secretary-General. During the course of the debate, speakers unanimously expressed their concern over the seriousness of the issue of civilians in armed conflict and welcomed the action-oriented recommendations contained in the report of the Secretary-General. The representative of Canada expressed support for the suggestion in the Secretary-General's report that the Council should make greater use of, inter alia, Article 34 of the Charter, which allows the Council to investigate any situation.²³⁶

Appropriateness of bringing disputes to the Security Council in the light of Article 35

Article 35 (1) and (2) grants Member States and non-Member States the right to bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council. The instance described below reflects the action by a party to a dispute to seek a peaceful settlement through a regional organization.

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

In a letter dated 9 January 1999 addressed to the President of the Security Council,²³⁷ the representative of Ethiopia referred to the refusal of the Government of the Sudan to comply with repeated demands for extradition to Ethiopia of the terrorists sought for their role in the assassination attempt against President Mubarak of Egypt. In that connection, he requested, in accordance with Article 35 of the Charter of the United Nations, an urgent meeting of the Council to consider the matter.

At its 3627th meeting, on 31 January 1996, which was held in response to the above-mentioned letter, discussions revolved around the possibility of parallel

²³⁶ S/PV.4046, p. 7.

²³⁷ S/1996/10.

implementation by Member States of their power of initiative under Article 35 (1) of the Charter and their obligations within regional arrangements under Article 52 (2) of the Charter.

The representative of Ethiopia expressed regret that his delegation had brought before the Council the matter regarding the extradition of suspects to his country, and stated that it had been the intention of his Government to resolve the issue at the bilateral level with the Government of the Sudan. He presented arguments for the referral of the issue of extradition to the Council, asserting that his Government had, first, sought to resolve the issue at the bilateral level and, after the Sudan had failed to reciprocate, brought the matter to the attention of the Organization of Africa Unity. Referring to the fact that the Sudan opposed the efforts of OAU and refused to implement its resolution, he argued that his Government felt compelled to bring the matter to the Council.²³⁸ On a similar note, the representative of Egypt asserted that when Ethiopia resorted to the Security Council, it did so using its rights under the Charter, as ascribed under Article 35. He stated that the provisions enshrined in the article made it clear that any Member of the United Nations might bring to the Security Council's attention any dispute which could threaten international peace and security.²³⁹

Nevertheless, the representative of the Sudan questioned the haste with which Ethiopia had taken the matter to the Council and asked why some Council members had refused to await the outcome of the efforts of OAU on the matter. He expressed the view that resolution 1044 (1996) was imbalanced, and stated that it did not take into consideration the repeated position of the Sudan to cooperate fully and unconditionally. He declared his country's readiness to cooperate fully and unconditionally with all the parties concerned and pledged its "tireless help" to the Secretaries-General of OAU and the United Nations in accordance with the provisions of the resolution.²⁴⁰

The representative of Botswana held that it pained his delegation to discuss the issue before the Council, because it was an African problem that deserved an African solution. In that regard, he would

have preferred the issue to be resolved without reference to the Council.²⁴¹

The representative of the Russian Federation stated that given that the Organization of African Unity had adopted a number of important decisions designed to help solve the problem of the extradition of the suspects, his delegation was convinced that the greatest possible involvement by the regional machinery, OAU, was the best way to go. While welcoming constructive cooperation between the United Nations and regional organizations, he believed that there was no justification for the Council taking their place on the issue in question.²⁴²

At the end of the deliberations, the Council adopted resolution 1044 (1996), by which it commended the efforts of the Government of Ethiopia to resolve the issue through bilateral and regional arrangements. It also called upon the Government of the Sudan to comply with the requests of OAU.

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

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

In the following instance, Member States debated the question of whether the Security Council was competent to decide on a matter of which the International Court of Justice was seized.

*Letters dated 20 and 23 December 1991, from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America*²⁴³

The Council, at its 3864th meeting, on 20 March 1998, considered the Lockerbie dispute in the light of the two judgments of the International Court of Justice

²³⁸ S/PV.3627, p. 3.

²³⁹ Ibid., p. 16.

²⁴⁰ Ibid., pp. 4-7.

²⁴¹ Ibid., p. 8.

²⁴² Ibid., p. 17.

²⁴³ S/23306, S/23307, S/23308, S/23309 and S/23317.

and in the context of the review of the sanctions.²⁴⁴ The representative of the Libyan Arab Jamahiriya²⁴⁵ affirmed that resolutions 731 (1992), 748 (1992) and 883 (1993) were adopted in clear violation of Article 36 of the Charter. Rejecting those resolutions as an attempt to politicize a legal question, the representative of the Libyan Arab Jamahiriya referred to the judgments of the International Court of Justice rendered on 27 February 1998. In that regard, the representative of the Libyan Arab Jamahiriya concluded that the Lockerbie matter was a legal dispute between his country, on the one hand, and the United States and the United Kingdom, on the other. Hence, the sanctions provided for in Security Council resolutions 748 (1992) and 883 (1993) became irrelevant since the Court accepted jurisdiction in the matter on which the resolutions were based. Referring to the imposition of sanctions since 1992, he emphasized that his Government's point of view had been that the disputes between it and the United States and the United Kingdom were legal disputes, and that application of the provisions of Article 36, paragraph 3, of the Charter made it incumbent on the Council in making its recommendations, as in resolution 731 (1992), to take into consideration the fact that legal disputes should be referred by the parties to the Court.²⁴⁶

Several speakers²⁴⁷ supported the position of the representative of the Libyan Arab Jamahiriya, maintaining that the dispute was legal and not political in nature, and that in the light of the judgments of the Court, it was clearly in the Court's authority to decide on the case. They argued that by confirming its jurisdiction, the Court deprived the Security Council's decisions on the imposing of sanctions of their legal basis. The representative of Ghana asserted that the judgments of the Court appeared to weaken the foundations of the Council's resolutions 748 (1992),

and 883 (1993), which imposed sanctions on one of the parties.²⁴⁸

The representative of the Sudan maintained that sanctions gave "hegemonic forces" a pretext to use double standards by imposing sanctions on weaker countries without the necessary objective and legal conditions being met, which constituted a violation of the principles and values of justice enshrined in the Charter. He further stated that the judgments of the Court regarding its competence in this case demonstrated beyond any doubt that the conflict was of a legal nature. It was therefore incumbent upon the Council to assume the sacred duty bestowed upon it by the Charter of the United Nations and refer the case to the International Court of Justice in accordance with Article 36, paragraph 3 of the Charter, which was clear and unequivocal in this regard.²⁴⁹

Similarly, the representative of the League of Arab States asserted that the Libyan Arab Jamahiriya had, from the beginning, followed the correct path as it resorted to the Court, in accordance with Articles 33 and 36 of the Charter. He noted that this had taken place before the United States and United Kingdom resorted to the Council and before the renewal of the imposition of sanctions. In his delegation's view, the Council should have taken into account the nature of the dispute in accordance with Article 36 of the Charter.²⁵⁰

On the contrary, the representatives of France,²⁵¹ the United Kingdom of Great Britain and Northern Ireland²⁵² and the United States of America²⁵³ considered that the judgments of the Court were procedural in nature, and thus did not affect the relevant resolutions of the Security Council. The representative of the United States affirmed that the rulings of the Court in no way questioned the legality of the Security Council's actions affecting the Libyan Arab Jamahiriya or the merits of the criminal cases against the two accused suspects. He stated that the rulings of the Court involved technical, procedural issues and, contrary to the assertions of the

²⁴⁴ S/1998/179.

²⁴⁵ S/PV.3864 and Corr.1, pp. 5-6.

²⁴⁶ *Ibid.*, pp. 4-9.

²⁴⁷ *Ibid.*, pp. 21-22 (Bahrain); p. 36 (League of Arab States); pp. 41-42 (Mali); p. 47 (Syrian Arab Republic); p. 49 (United Arab Emirates); p. 51 (Yemen); pp. 53-54 (Egypt); p. 56 (Ghana); p. 58 (Iraq); p. 60 (Pakistan); pp. 65-66 (Sudan); p. 67 (Nigeria); and p. 74 (Malaysia).

²⁴⁸ *Ibid.*, p. 56.

²⁴⁹ *Ibid.*, pp. 65-66.

²⁵⁰ *Ibid.*, p. 35.

²⁵¹ *Ibid.*, p. 29.

²⁵² *Ibid.*, p. 32.

²⁵³ *Ibid.*, p. 12.

Government of the Libyan Arab Jamahirya, was not calling for the review or suspension of Security Council resolutions.²⁵⁴ Other speakers expressed similar views with regard to the validity of relevant resolutions of the Security Council.²⁵⁵ The representative of Japan pointed out that the judgments of the Court concerned exclusively the jurisdictional phase of the case and did not deal with the merits of the case regarding the destruction of Pan Am flight 103. In the light of the legal nature of those decisions, it was the view of his Government that they could not prejudice the power of the Security Council on an issue of which the Council had been legitimately seized.²⁵⁶

The representative of Slovenia expressed a view divergent from the aforementioned positions. He argued that situations in which the Security Council on the one hand and the Court on the other hand were both engaged in dealing with different aspects of a given situation, occurred as a result of the fact that international issues often had both political and legal aspects.²⁵⁷ He stated that in most situations in which the Council and the Court addressed the same events, the approach was different. In that regard, he gave the example of the judgment concerning military and paramilitary activities in and against Nicaragua. In that instance, he recalled that the Court explained that “the Charter confers primary and not exclusive responsibility upon the Security Council for the purpose of the maintenance of international peace and security”. The Court then noted that the Council has functions of a political nature assigned to it whereas the Court exercises purely judicial functions. Both organs can therefore perform their separate but complementary functions with respect to the same events.²⁵⁸ The representative of Slovenia drew the conclusion that those examples demonstrated that situations of parallel pursuit of the separate but complementary functions of the Court and the Security Council were not new, and that there was no conflict of jurisdiction involved.²⁵⁹

²⁵⁴ Ibid.

²⁵⁵ Ibid., pp. 17-19 (Portugal); pp. 22-24 (Japan) and pp. 39-40 (United Kingdom, on behalf of the European Union and associated and aligned countries).

²⁵⁶ Ibid., p. 23.

²⁵⁷ Ibid., p. 24.

²⁵⁸ ICJ Reports 1986, p. 434

²⁵⁹ S/PV.3864, pp. 24-25.

No action was taken at the end of the deliberations at the 3864th meeting.

Utilization of Article 99 by the Secretary-General for the peaceful settlement of disputes

Article 99 of the Charter empowers the Secretary-General to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. In the discussions below, Member States welcomed the recommendation made by the Secretary-General to strengthen the relevance of Article 99, and some underlined the importance of the role of the Secretary-General to this effect.

Protection of civilians in armed conflict

In his report of 8 September 1999 entitled “The protection of civilians in armed conflict”,²⁶⁰ the Secretary-General offered recommendations on measures that the Security Council could adopt within its sphere of responsibility to protect civilians. One of several recommendations was that the Council should strengthen the relevance of Article 99 of the Charter by taking concrete action in response to threats against peace and security as these were identified by the Secretariat.²⁶¹ Among them, the Secretary-General recommended that the Security Council “urge neighbouring Member States to ensure access for humanitarian assistance and call on them to bring any issues that might threaten the right of civilians to assistance to the attention of the Security Council as a matter affecting peace and security.”²⁶²

At its 4046th meeting, on 16 September 1999, the Council met to consider the above-mentioned report of the Secretary-General. During the debate, the representative of Canada welcomed the recommendation of the Secretary-General to strengthen the relevance of Article 99, as it would allow him to bring to the attention of the Council any matter which

²⁶⁰ S/1999/957.

²⁶¹ Ibid., para. 13.

²⁶² Ibid., para. 19.

in his opinion might threaten the maintenance of international peace and security.²⁶³

The representative of India disagreed with recommendation 19 of the report of the Secretary-General, and expressed concern about the possibility that neighbouring countries might bring to the Council's notice, as a matter affecting peace and security, any issue that might threaten the right of civilians to assistance. He asserted that it meant that even if there was no threat to peace and security, such a threat could be manufactured in the complaint, or that the complaint in itself would be considered proof that such a threat existed. In that regard, this would automatically sow dissension between neighbours, and undermine regional peace. The representative stated that as a matter of procedure, it would call into question the sovereign right of nation States to make decisions on matters which they considered to be a threat to peace and security in their region, by laying down parameters which were arbitrary and ill-defined.²⁶⁴

Role of the Security Council in the prevention of armed conflicts

At its 4072nd meeting, on 29 November 1999, a number of speakers explicitly invoked Article 99, and emphasized the importance of the role of the Secretary-General under Article 99 of the Charter.²⁶⁵ The representative of Australia encouraged the Secretary-General to make greater use of his authority under Article 99 of the Charter to bring to the attention of the Council any matter which in his opinion might threaten the maintenance of international peace and security.²⁶⁶

²⁶³ S/PV.4046, p. 7.

²⁶⁴ S/PV.4046 (Resumption 1 and Corr.2), pp. 26-27.

²⁶⁵ S/PV.4072 and Corr.1, p. 7 (France); p. 14 (China); pp. 19-20 (Malaysia); p. 21 (Brazil); p. 25 (Gambia); p. 29 (Netherlands); p. 33 (Finland); p. 40 (Australia); and p. 41 (Sudan); S/PV.4072 (Resumption 1), pp. 5-6 (Liechtenstein); p. 10 (New Zealand); and p. 16 (Norway).

²⁶⁶ *Ibid.*, p. 40.

The representative of Liechtenstein noted that an enhanced role for the Secretary-General was a further key element of successful United Nations action in the area of prevention. She further noted that Article 99 of the Charter gave a legally and politically sound basis for such an enhanced role.²⁶⁷

The representative of New Zealand noted that the Secretary-General had been given a particular role under Article 99, a role that would seem quite relevant to the idea of "early warning" so often mentioned in discussions of preventive diplomacy. In that regard, he was able to bring any matter that in his opinion might threaten international peace and security to the attention of the Council.²⁶⁸ The representative of Norway called for the enhancement of the role of the Secretary-General through the allocation of human and financial resources to enable him to fulfil his obligations under the Charter to bring threats to the attention of the Council.²⁶⁹

The situation in Africa

At its 4081st meeting, on 15 December 1999, the representative of Finland, speaking on behalf of the European Union, stated that the possibilities of the Secretary-General and his Secretariat were not fully utilized, and recalled the provisions contained in Article 99 of the Charter. For that purpose, the European Union considered that the Secretariat's capacity needed to be enhanced to enable the Security Council to conduct regular surveys of potential conflict areas.²⁷⁰

The representative of New Zealand emphasized that there should be a greater focus on prevention, especially through the Secretary-General exercising his early-warning role, as provided for in Article 99 of the Charter.²⁷¹

²⁶⁷ S/PV.4072 (Resumption 1), pp. 5-6.

²⁶⁸ *Ibid.*, p. 10.

²⁶⁹ *Ibid.*, p. 16.

²⁷⁰ S/PV.4081, p. 27.

²⁷¹ S/PV.4081 (Resumption 1), p. 14.