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## **Chapter XII**

### **Consideration of the provisions of other Articles of the Charter**

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## **Introductory note**

Chapter XII covers the consideration by the Security Council of Articles of the Charter not dealt with in the preceding chapters. It consists of six parts: parts I and II deal with consideration of the purposes and principles of the United Nations, particularly with regard to Article 1 (2) in part I and various provisions of Article 2 in part II, parts III, IV and V deal with consideration by the Council of the provisions of Articles 24, 25 and 26, respectively, which relate to the functions and powers of the Council. Part VI focuses on the consideration of the provisions of Chapter VIII of the Charter regarding regional arrangements.

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## Part I

### Consideration of the provisions of Article 1, paragraph 2, of the Charter

*Article 1, paragraph 2*

*[The purposes of the United Nations are:]*

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

#### Note

During the period under review, there were no explicit references to Article 1, paragraph 2, of the Charter contained in any of the resolutions or other decisions adopted by the Security Council. However, the Council adopted a number of decisions in support of the principle of self-determination. In the case of Namibia, which, in 1989, was the last remaining colony on the African continent, the Council's decisions helped to pave the way towards national independence and sovereignty (case 1). In connection with the situation concerning Western Sahara, the Council worked towards the holding of a referendum by which the people of Western Sahara would be able to choose between independence and integration with Morocco (case 2).<sup>1</sup> With respect to Cambodia, the Council actively supported a political settlement which would enable the Cambodian people to exercise its right to self-determination through free and fair elections (case 3).<sup>2</sup> In connection with the situation in the occupied Arab territories, the Council reiterated its position that a just and lasting solution to the Israeli-Arab conflict must take into account the legitimate

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<sup>1</sup> Resolutions 658 (1990) of 27 June 1990, second preambular para.; 690 (1991) of 29 April 1991, first preambular para. and para. 2; and 725 (1991) of 31 December 1991, paras. 1 and 2; and letter dated 3 June 1992 from the President of the Security Council to the Secretary-General (S/24059).

<sup>2</sup> Resolutions 668 (1990) of 20 September 1990, sixth preambular para.; 717 (1991) of 16 October 1991, third preambular para.; 745 (1992) of 28 February 1992, fourth preambular para.; and 792 (1992) of 30 November 1992, sixth preambular para.

political rights of the Palestinian people (case 4).<sup>3</sup> In connection with the status of the Trust Territory of the Pacific Islands, the Council noted that three constituent parts of the Trust Territory had opted to exercise their right of self-determination. Accordingly, the Council declared that the Trusteeship Agreement had terminated with respect to those entities (case 5).<sup>4</sup>

In addition to these cases, the principle of self-determination was discussed or referred to during the Council's deliberations in connection with the situation relating to the former Yugoslavia, the situation in Cyprus, the situation relating to Afghanistan and the question of South Africa.

In connection with the situation in the former Yugoslavia, a number of Council members, while stressing the need for a peaceful settlement of the crisis, emphasized that any political solution needed to be based on the principle of self-determination.<sup>5</sup>

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<sup>3</sup> Resolution 672 (1990) of 12 October 1990, second preambular para., and presidential statement of 20 December 1990 (S/22027).

<sup>4</sup> Resolution 683 (1990), adopted at the 2972nd meeting on 22 December 1990.

<sup>5</sup> See for example S/PV.3009, pp. 23-26 (Austria), pp. 65-67 (France); S/PV.3082, pp. 17-20 (Ecuador); and S/PV.3106, pp. 31-33 (Hungary). The Security Council, by resolution 724 (1991), para. 7, urged all States and parties not to impede a negotiated solution which would "permit all the peoples of Yugoslavia to decide upon and to construct their future in peace". (A similar paragraph had already been included in resolution 713 (1991), para. 7, but in that resolution reference had been made to "all Yugoslavs" rather than "all the peoples of Yugoslavia". By resolution 752 (1992), adopted on 15 May 1992, the Council urged the three communities in Bosnia and Herzegovina to constructively continue their discussions on constitutional arrangements for Bosnia and Herzegovina, and demanded that all interference from outside Bosnia and Herzegovina cease immediately. On 18 and 20 May 1992, the Council recommended the admission as sovereign States of three of the former constituent republics, namely Croatia, Slovenia and Bosnia and Herzegovina (see resolutions 753 (1992) and 754 (1992), of 18 May 1992, and 755 (1992), of 20 May 1992). The status of the former Yugoslav Republic of Macedonia and of the Federal Republic of Yugoslavia (Serbia and Montenegro)

During the Council's debates held in connection with the situation in Cyprus, the representative of the Turkish Cypriot side, supported by the representative of Turkey, argued that any negotiated settlement would have to be based on the political equality of the two peoples in the island, and would require a genuine commitment to the right of self-determination for both peoples.<sup>6</sup> The representative of Cyprus, supported by the representative of Greece,<sup>7</sup> rejected the suggestion that the Turkish Cypriot community were a people entitled to a separate right of self-determination,<sup>8</sup> and maintained that a solution to the conflict should be based on the territorial integrity of Cyprus, in accordance with relevant Security Council resolutions.<sup>9</sup>

remained unresolved at the end of 1992.

<sup>6</sup> Turkish Cypriot side: S/PV.2898, p. 33; and S/PV.2928, pp. 31-35; Turkey: S/PV.2868, pp. 28-29; S/PV.2898, p. 36; and S/PV.2969, pp. 35-37.

<sup>7</sup> S/PV.3022, p. 28. For further details on the position of Greece, see S/PV.2898, p. 17.

<sup>8</sup> S/PV.2928, pp. 17-18; and S/PV.3022, pp. 21-23.

<sup>9</sup> S/PV.2868, pp. 8-11; S/PV.2898, p. 9; S/PV.2969, pp. 12-15; and S/PV.2992, p. 38. The Security Council, in its decisions adopted during the period under review, called upon the leaders of the two communities to pursue their efforts to reach freely a mutually acceptable solution providing for the establishment of a bi-communal and bi-zonal federation, and reaffirmed its position that the fundamental principles of a settlement were the sovereignty, independence, territorial integrity and non-alignment of the Republic of Cyprus (see in particular resolutions 649 (1990) of 12 March 1990; 716 (1991) of 11 October 1991, para. 4; 750 (1992) of 10 April 1992, para. 2; and 774 (1992) of 26 August 1992, para. 2). See also the statement made by the President of the Council on 23 December 1991 (S/23316). In this context, it may be interesting to note the Secretary-General's comments in his report dated 8 March 1990 (S/21183): the Secretary-General recalled that, in drawing up the mandate for his mission of good offices in Cyprus, the Council had envisaged a solution based on the existence of one State of Cyprus comprising two communities. Noting that in the course of recent discussions, the representative of the Turkish Cypriot side had stated that the term "communities" should be used synonymously with the term "peoples", each having a separate right to "self-determination", the Secretary-General stated that he had informed the two parties that any change in terminology could alter the conceptual framework to which all had so far adhered. See also the Secretary-General's report dated 19 December 1991 (S/23300), submitted to the Council, pursuant to resolution 716 (1991).

During the Council's deliberations in connection with the situation relating to Afghanistan, the representative of Afghanistan, supported by the representative of the Union of Soviet Socialist Republics and several other speakers, argued that Pakistan's alleged support for the creation of an "interim government" on its territory amounted to interference in the internal affairs of Afghanistan, and a violation of the Afghan people's right to self-determination.<sup>10</sup> The representative of Pakistan, however, supported by a number of other speakers, expressed the view that it was not foreign interference which prevented the Afghan people from exercising their right to self-determination, but rather "the unrepresentative regime which [had been] imposed as a result of foreign military intervention".<sup>11</sup>

In connection with the question of South Africa, a number of speakers described the struggle against

<sup>10</sup> For relevant statements by the representative of Afghanistan, see for example S/PV.2852, pp. 6-11 and 19-25; S/PV.2857, pp. 32, 43 and 71-74; and S/PV.2860, p. 3. For relevant comments by other speakers, see for example S/PV.2853, p. 22 (German Democratic Republic); p. 28 (Cuba); p. 33 (Mongolia); and p. 43 (Democratic Yemen); S/PV.2855, p. 3 (India); pp. 32, 49-51 and 63 (Soviet Union); S/PV.2856, p. 6 (Lao People's Democratic Republic); p. 11 (Nicaragua); p. 16 (Ethiopia); p. 21 (Viet Nam); p. 33 (Bulgaria); and p. 38 (Angola); S/PV.2857, p. 3 (Czechoslovakia); p. 16 (Yugoslavia); p. 18 (Ukrainian Soviet Socialist Republic); and pp. 28-32 (Congo); S/PV.2859, p. 7 (Algeria); p. 11 (Hungary); p. 20 (Poland); and p. 31 (Byelorussian Soviet Socialist Republic); and S/PV.2860, pp. 22 and 62 (Soviet Union).

<sup>11</sup> S/PV.2859, p. 42 (Pakistan). See also S/PV.2852, pp. 26-31 and 37-39 (Pakistan); S/PV.2853, pp. 6-11 (Organization of the Islamic Conference (OIC)); pp. 11-16 (Saudi Arabia); pp. 17-20 (Malaysia); pp. 21-22 (Syrian Arab Republic); pp. 38-41 (Turkey); pp. 42-43 (Japan); and pp. 51-53 (United States); S/PV.2855, pp. 8-11 (United Republic of Tanzania); pp. 12-13 (China); pp. 13-18 (United Kingdom); pp. 18-21 (France); pp. 21-23 (Canada); pp. 23-28 (Madagascar); and pp. 28-31 (Finland); S/PV.2856, pp. 27-30 (Comoros); pp. 31-33 (Iraq); and pp. 38-42 (Angola); S/PV.2857, pp. 11-12 (Bangladesh); pp. 12-15 (Nepal); pp. 16-18 (Yugoslavia); and pp. 28-32 (Congo); and S/PV.2859, p. 7 (Burkina Faso); pp. 16-17 (Somalia); p. 31 (Libyan Arab Jamahiriya); and pp. 38-42 (United States).

apartheid as a fight for self-determination by the indigenous majority against a white minority regime.<sup>12</sup>

### Case 1

#### *The situation in Namibia*

By resolutions 629 (1989) and 632 (1989),<sup>13</sup> the Security Council emphasized its determination to ensure the early independence of Namibia through free and fair elections under the supervision and control of the United Nations, in accordance with a settlement plan which it had first approved by its resolution 435 (1978), adopted more than a decade earlier.<sup>14</sup>

By resolution 643 (1989),<sup>15</sup> the Council reaffirmed its commitment to carrying out the continuing legal responsibility over Namibia until its independence “to ensure the unfettered and effective exercise by the people of Namibia of their inalienable rights to self-determination and genuine national

independence in accordance with resolutions 435 (1978) and 640 (1989)”.<sup>16</sup>

In accordance with the above-mentioned decisions, elections for a constituent assembly were held from 7 to 11 November 1989, and certified by the Special Representative of the Secretary-General as having been free and fair.<sup>17</sup>

On 20 November 1989,<sup>18</sup> the members of the Security Council, in a statement by the President of the Council,<sup>19</sup> welcomed the successful conclusion of the elections in Namibia, and reaffirmed the continuing important role of the United Nations in ensuring the implementation of the settlement plan, in particular with a view to the adoption of a constitution by the constituent assembly.

The constitution was adopted on 9 February 1990, and entered into force on 21 March 1990, which day marked the accession of Namibia to independence in accordance with Council resolution 435 (1978).<sup>20</sup>

On 17 April 1990,<sup>21</sup> the Council unanimously adopted resolution 652 (1990), recommending to the General Assembly that the Republic of Namibia be admitted to membership in the United Nations.<sup>22</sup>

After the resolution was adopted, speakers welcomed the historic occasion represented by the achievement of independence by the last colony on the African continent, and commended the positive role that had been played by the United Nations in that

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<sup>12</sup> Reference to the right to self-determination was, for example, made by the following speakers: Mr. Nelson Mandela, President of the African National Congress of South Africa. (S/PV.3095, pp. 17-20); the President of the Pan Africanist Congress of Azania (*ibid.*, p. 104); and the representative of the United Republic of Tanzania (*ibid.*, pp. 183-185). The Security Council, in its decisions adopted during the period under review, supported a peaceful transition towards a democratic, non-racial and united South Africa (resolutions 765 (1992) of 16 July 1992, seventh preambular para. and paras. 4 and 8; 772 (1992) of 17 August 1992, third preambular para. and para. 9; and the presidential statement of 10 September 1992 (S/24541)).

<sup>13</sup> Adopted unanimously at the Council’s 2842nd and 2848th meetings respectively. At the latter meeting, the President of the Council underlined the historic importance of resolution 632 (1989), noting that it had set in motion the process of Namibia’s transition towards independence through free and fair elections under the supervision of and control of the United Nations, marking the last major step towards decolonization in Africa (S/PV.2848, p. 3).

<sup>14</sup> By the same decisions, the Council also authorized the emplacement of the United Nations Transition Assistance Group, which had already been envisaged in resolution 435 (1978). By resolution 640 (1989), adopted at the 2882nd meeting on 29 August 1989, the Council reaffirmed its commitment to the decolonization of Namibia through the holding of free and fair elections under the supervision and control of the United Nations.

<sup>15</sup> Adopted at the 2886th meeting, on 31 October 1989.

<sup>16</sup> See resolution 643 (1989), para. 4.

<sup>17</sup> This was noted in the Secretary-General’s report dated 14 November 1989, on the implementation of resolution 435 (1978) on the question of Namibia (S/20967). See also S/20967/Add.1 of 29 November 1989.

<sup>18</sup> 2893rd meeting.

<sup>19</sup> S/20974.

<sup>20</sup> See the reports of the Secretary-General dated 16 and 28 March 1990 (S/20967/Add.2 and S/21215).

<sup>21</sup> 2918th meeting.

<sup>22</sup> Resolution 652 (1990), operative paragraph.

process.<sup>23</sup> Commenting specifically on the role of the Security Council, the Secretary-General stated that it was a source of great satisfaction that ultimately a solution to the question of Namibia had been reached on the basis of a settlement plan that had been adopted by the Council 12 years earlier.

### Case 2

#### *The situation concerning Western Sahara*

On 18 June 1990, the Secretary-General submitted to the Council a report on the situation concerning Western Sahara,<sup>24</sup> containing the text of a settlement plan that had been accepted in principle by the parties to the conflict.<sup>25</sup> He noted that the main elements of the settlement plan were a ceasefire and the holding of a referendum to enable the people of Western Sahara, in the exercise of their right to self-determination, to choose between independence and integration with Morocco. The plan would thus ensure that the necessary conditions existed for the holding of a free and fair referendum. By resolution 658 (1990),<sup>26</sup> the Council approved the settlement plan contained in the Secretary-General's report.

By resolution 690 (1991),<sup>27</sup> the Council expressed its full support for the efforts of the Secretary-General for the organization and the supervision, by the United Nations in cooperation with the Organization of African Unity, of a referendum for self-determination of the people of Western Sahara, and decided to establish a United Nations Mission for the Referendum in Western Sahara.

<sup>23</sup> S/PV.2918, p. 6 (Ethiopia); p. 7 (Secretary-General); pp. 9-11 (Malaysia); pp. 12-13 (Democratic Yemen); pp. 13-15 (Zaire); p. 17 (Côte d'Ivoire); pp. 20-21 (United States); pp. 22-23 (France); pp. 23-25 (Soviet Union); pp. 27-28 (United Kingdom); pp. 29-31 (Finland); pp. 31-32 (China); pp. 34-35 (Colombia); pp. 36-38 (Romania); pp. 39-41 (Canada); pp. 42-43 (Cuba); pp. 47-48 (Brazil); pp. 49-52 (South Africa); pp. 54-56 (Vice-President of the United Nations Council for Namibia); pp. 57-58 (Mali); and pp. 61-62 (Ethiopia).

<sup>24</sup> S/21360.

<sup>25</sup> The Government of Morocco and the Frente Polisario had accepted the proposals in principle on 30 August 1988.

<sup>26</sup> Adopted at the 2929th meeting, on 27 June 1990.

<sup>27</sup> Adopted at the 2984th meeting, on 29 April 1991.

By its resolution 725 (1991),<sup>28</sup> the Council reiterated its support for the Secretary-General's efforts, but noted with concern "the difficulties and delays encountered in the implementation of the settlement plan regarding the question of Western Sahara".

The Council members confirmed their continued support for the implementation of the settlement plan in several letters<sup>29</sup> transmitted during the course of 1992, in response to reports of the Secretary-General on the United Nations operation in Western Sahara,<sup>30</sup> and the obstacles encountered by it.

In a letter dated 22 December 1992 to the President of the Council,<sup>31</sup> the Secretary-General concluded with much regret that the considerable efforts made by his Special Representative over the past several months to reach agreements with all parties on the major aspects of the settlement plan had not achieved the desired results. He therefore felt obliged to take concrete steps towards the holding of the referendum, notwithstanding the continued absence of the agreements sought. In his forthcoming report, to be submitted in January 1993, he intended to set forth the various steps that should be taken in order to hold the referendum at the earliest possible date.

### Case 3

#### *The situation in Cambodia*

By a letter dated 30 August 1990,<sup>32</sup> the representatives of the five permanent members of the Security Council transmitted to the Secretary-General a joint statement, adopted in New York two days earlier, defining the key elements of a proposed framework for a comprehensive political settlement of the Cambodian conflict based on an enhanced United Nations role. The

<sup>28</sup> Adopted at the 3025th meeting, on 31 December 1991.

<sup>29</sup> See letters dated 25 March, 3 June, 31 August and 8 October 1992, respectively, from the President of the Council to the Secretary-General (S/23755, S/24059, S/24504 and S/24645). For further details relating to those letters, see the study on the situation in Western Sahara in chapter VIII of the present Supplement.

<sup>30</sup> Reports of the Secretary-General dated 28 February, 29 May and 20 August 1992, respectively (S/23662, S/24040 and S/24464). See also the letter dated 2 October 1992 from the Secretary-General to the President of the Council (S/24644).

<sup>31</sup> S/25008.

<sup>32</sup> S/21689, annex and appendix.

fundamental principle of the framework was “to enable the Cambodian people to determine their own political future through free and fair elections, organized and conducted by the United Nations in a neutral political environment with full respect for the national sovereignty of Cambodia”. By resolution 668 (1990),<sup>33</sup> the Council endorsed this framework for a comprehensive political settlement. It further noted<sup>34</sup> that the efforts of the permanent members, as well as efforts by France and Indonesia in their capacity as Co-Chairs of the Paris Conference on Cambodia,<sup>35</sup> were “aimed at enabling the Cambodian people to exercise their inalienable right to self-determination through free and fair elections organized and conducted by the United Nations in a neutral political environment with full respect for the national sovereignty of Cambodia”.

By resolution 717 (1991)<sup>36</sup> the Security Council welcomed the progress made towards a comprehensive political settlement, noting that such a settlement would enable the Cambodian people to exercise its inalienable right to self-determination through free and fair elections organized and conducted by the United Nations.

By resolution 745 (1992),<sup>37</sup> the Council again expressed its desire to contribute “to the assurance of the right to self-determination of the Cambodian people through free and fair elections”, and approved the Secretary-General’s implementation plan for the mandate envisaged in the agreements on a comprehensive political settlement.<sup>38</sup>

By resolution 792 (1992),<sup>39</sup> the Council determined that elections were to be held in April/May 1993.<sup>40</sup>

<sup>33</sup> Adopted at the 2941st meeting, on 20 September 1990.

<sup>34</sup> Resolution 668 (1990), sixth preambular para.

<sup>35</sup> The Council also took note with appreciation of the efforts of all participants in the Paris Conference as well as those undertaken by the countries of the Association of Southeast Asian Nations.

<sup>36</sup> Adopted at the 3014th meeting, on 16 October 1991.

<sup>37</sup> Adopted at the 3057th meeting, on 28 February 1992.

<sup>38</sup> Report of the Secretary-General on Cambodia (S/23613 and Add.1).

<sup>39</sup> Adopted at the 3143rd meeting, held on 30 November 1992.

<sup>40</sup> By resolution 792 (1992), the Council again recalled that, in accordance with the Agreement on a Comprehensive Political Settlement, all Cambodians had

## Case 4

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

During the Council’s deliberations in connection with the situation in the occupied Arab territories, the representative of Palestine reiterated the Palestinian position that peace could not be established unless the Palestinian people was allowed to exercise its right to self-determination and to establish an independent State on its national soil.<sup>41</sup> He requested that the Council consider deploying a United Nations observer force in the occupied Palestinian territory, which would permit the United Nations to supervise the transition towards a final settlement, and enable the Palestinian people to exercise its right to self-determination.<sup>42</sup>

The representative of Israel, on the other hand, stated that his country sought to resolve the ultimate status of the territories and of the Palestinian Arab residents through direct negotiations with Israel’s neighbours and the Palestinian Arabs residing in the territories, on the basis of Security Council resolutions 242 (1967) and 338 (1973). He observed that a solution recognizing both Israel’s security needs and the Palestinians’ legitimate rights might be found if negotiations were to begin with Arab States and representatives of the Palestinians living in the territories.<sup>43</sup>

A significant number of speakers reiterated their support for the right of the Palestinian people to self-determination<sup>44</sup> and for the establishment of a

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the right to determine their own political future through the free and fair election of a constituent assembly.

<sup>41</sup> S/PV.2910, p. 32.

<sup>42</sup> S/PV.2953, p. 18.

<sup>43</sup> S/PV.2845, pp. 61-63.

<sup>44</sup> S/PV.2845, p. 22 (Palestine); p. 37 (Senegal); p. 48 (Jordan); pp. 51-52 and 54-55 (Egypt); S/PV.2846, p. 9 (Syrian Arab Republic); pp. 19-20 (Malaysia); p. 26 (Kuwait); p. 33 (Bahrain); p. 41 (Ethiopia); p. 47 (Zimbabwe); pp. 52 and 56 (Pakistan); S/PV.2847, pp. 7-8 (Sudan); p. 12 and 15b-z (OIC); pp. 24 and 27 (Yugoslavia); p. 32 (Turkey); p. 37 (Democratic Yemen); pp. 44-45 (Afghanistan); pp. 61-62 and 64 (Islamic Republic of Iran); pp. 66-67 and 69-70 (Japan); pp. 79-80 and 82 (Czechoslovakia); p. 87 (Ukrainian Soviet Socialist Republic); S/PV.2849, p. 6 (India); p. 8 (Morocco); p. 22 (Soviet Union); p. 26 (United Kingdom); p. 31 (China); pp. 32-33 (Finland); pp. 39-40 and 42-43 (Panama); pp. 46-47 (Lao People’s Democratic Republic); S/PV.2850, pp. 7-8 (Colombia); pp. 13-15 (Nicaragua); p. 27 (France); pp. 28-31



(Nepal); S/PV.2863, pp. 36-37 (Syrian Arab Republic); p. 43 (Senegal); p. 47 (Jordan); S/PV.2864, p. 16 (Algeria); pp. 21-22 and 24 (OIC); p. 36 (League of Arab States); 48-50 and 52 (Yemen); pp. 57 and 61-62 (Bahrain); S/PV.2865, p. 8 (Egypt); p. 17 (Qatar); pp. 41-42 (Pakistan); p. 45 (Yugoslavia); p. 52 (Kuwait); pp. 56-57 (Democratic Yemen); pp. 63-65 (Syrian Arab Republic); S/PV.2866, pp. 14-15 (Ukrainian Soviet Socialist Republic); p. 23 (Zimbabwe); S/PV.2867, p. 7 (Soviet Union); p. 12 (Finland); pp. 14-15 (France); p. 22 (China); p. 33 (Palestine); S/PV.2888, pp. 13-15 (Senegal); p. 28 (Yugoslavia); pp. 39-40 (Islamic Republic of Iran); p. 42 (League of Arab States); S/PV.2889, p. 17 (Finland); pp. 24-25 (Algeria); p. 36 (Colombia); S/PV.2910, p. 18 (Soviet Union); pp. 32-35 (Palestine); p. 46 (Malaysia); pp. 51-53 (Cuba); S/PV.2912, pp. 23-25 (Yemen); p. 37 (Syrian Arab Republic); pp. 49-51 (Indonesia); S/PV.2914, pp. 14-15 (Pakistan); pp. 19-20 (India); S/PV.2915, pp. 9-10 (France); pp. 11-12 (United Kingdom); p. 17 (Algeria); p. 27 (Iraq); pp. 46-47 (Morocco); p. 52 (Islamic Republic of Iran); p. 52 (Afghanistan); S/PV.2920, p. 22 (Palestine); pp. 34-35 (Egypt); S/PV.2923, p. 21, (Palestine); pp. 64-65 (United Kingdom); pp. 108-110 (Soviet Union); p. 121 (France); pp. 148-152 (Yemen); pp. 159-160 (Zaire); p. 173 (Senegal); p. 182 (OIC); p. 211 (Iraq); pp. 217 and 223 (Egypt); pp. 228-230 (Islamic Republic of Iran); p. 242 (Qatar); p. 271 (Morocco); p. 282 (Yugoslavia); pp. 307-308 (Turkey); S/PV.2926, p. 7 (Pakistan); S/PV.2945, p. 9-15 (Palestine); p. 48 (Senegal); S/PV.2946, pp. 24-25 and 27 (Libyan Arab Jamahiriya); pp. 44-45 (China); p. 64 (Yugoslavia); S/PV.2947, pp. 38-40 (Iraq); S/PV.2948, p. 5 (United Arab Emirates); p. 17 (Morocco); p. 31 (Côte d'Ivoire); S/PV.2949, p. 37 (Sudan); S/PV.2953, p. 18 (Palestine); S/PV.2957, p. 39 (Syrian Arab Republic); and S/PV.2970, pp. 44-45 (Cuba).

sovereign, independent Palestinian State.<sup>45</sup> However, a number of speakers, while recognizing the political rights of the Palestinian people, emphasized that the situation could only be resolved in the context of an overall negotiated settlement which would also have to take account of the need to guarantee the right of Israel to live within secure and recognized borders.<sup>46</sup>

In its decisions,<sup>47</sup> the Council reaffirmed that a just and lasting solution to the Arab-Israeli conflict had to be based on a process which took into account the right to security for all States in the region, including

<sup>45</sup> S/PV.2846, p. 9 (Syrian Arab Republic); p. 26 (Kuwait); p. 47 (Zimbabwe); S/PV.2847, pp. 7-8 (Sudan); pp. 12 and 15b-z (OIC); pp. 24 and 27 (Yugoslavia); p. 37 (Democratic Yemen); pp. 44-45 (Afghanistan); pp. 61-62 and 64 (Islamic Republic of Iran); pp. 79-80 and 82 (Czechoslovakia); S/PV.2849, pp. 39-40 and 42-43 (Panama); pp. 46-47 (Lao People's Democratic Republic); S/PV.2864, p. 16 (Algeria); pp. 21-22 (OIC); pp. 36-37 (League of Arab States); pp. 48-50 and 52 (Yemen); pp. 61-62 (Bahrain); S/PV.2865, pp. 41-42 (Pakistan); p. 52 (Kuwait); pp. 56-57 (Democratic Yemen); pp. 63-65 (Syrian Arab Republic); S/PV.2866, p. 23 (Zimbabwe); S/PV.2867, p. 22 (China); S/PV.2888, pp. 13-15 (Senegal); pp. 39-40 (Islamic Republic of Iran); p. 42 (League of Arab States); S/PV.2889, pp. 24-25 (Algeria); p. 36 (Colombia); pp. 38-41 (China); S/PV.2910, p. 18 (Soviet Union); pp. 32-35 (Palestine); S/PV.2912, pp. 23-25 (Yemen); p. 46 (Syrian Arab Republic); S/PV.2914, pp. 14-15 (Pakistan); S/PV.2915, p. 17 (Algeria); pp. 46-47 (Morocco); p. 52 (Islamic Republic of Iran); p. 52 (Afghanistan); S/PV.2923, pp. 148-152 (Yemen); pp. 159-160 (Zaire); p. 173 (Senegal); p. 182 (OIC); p. 223 (Egypt); p. 242 (Qatar); p. 271 (Morocco); p. 282 (Yugoslavia); pp. 307-308 (Turkey); S/PV.2926, p. 7 (Pakistan); S/PV.2946, pp. 42-45 (China); S/PV.2948, p. 5 (United Arab Emirates); p. 17 (Morocco), p. 31 (Côte d'Ivoire).

<sup>46</sup> S/PV.2847, p. 27 (Yugoslavia); pp. 66-67 (Japan); S/PV.2849, p. 6 (India); p. 22 (Soviet Union); p. 42 (Panama); S/PV.2849, p. 26 (United Kingdom); S/PV.2850, p. 8 (Colombia); p. 27 (France); pp. 28-31 (Nepal); pp. 32-34 (United States); S/PV.2865, p. 45 (Yugoslavia); S/PV.2867, p. 7 (Soviet Union); p. 12 (Finland); pp. 14-15 (France); S/PV.2889, p. 17 (Finland); p. 36 (Colombia); pp. 37-38 (France); S/PV.2910, p. 18 (Soviet Union); S/PV.2914, pp. 19-20 (India); S/PV.2915, pp. 9-10 (France); S/PV.2923, pp. 64-65 (United Kingdom); p. 121 (France); S/PV.2946, p. 64 (Yugoslavia).

<sup>47</sup> Resolution 672 (1990), adopted unanimously at the 2948th meeting, on 12 October 1990, and the statement by the President of the Council adopted at the 2970th meeting, on 19 December 1990 (S/22027).

Israel, as well as the legitimate political rights of the Palestinian people, in accordance with resolutions 242 (1967) and 338 (1973).

### Case 5

#### *Trust Territory of the Pacific Islands*

On 22 December 1990,<sup>48</sup> the Council considered a draft resolution<sup>49</sup> on the applicability of the Trusteeship Agreement for the Trust Territory of the Pacific Islands to the Federated States of Micronesia, the Marshall Islands and the Northern Mariana Islands.<sup>50</sup>

Speaking before the vote, the representative of New Zealand recalled that, some years earlier, these three island groups had indicated their desire for independent political status. The speaker noted that the United Nations had long been guided in its approach to decolonization by the principle that the wishes of the people should be uppermost in the process of political self-determination. On the basis of the express wish of the people of the three island groups concerned, New Zealand endorsed the call for the partial termination of the Trusteeship Agreement.<sup>51</sup>

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<sup>48</sup> 2972nd meeting.

<sup>49</sup> S/22001.

<sup>50</sup> This matter was considered under the agenda item entitled "Letter dated 7 December 1990 from the President of the Trusteeship Council addressed to the President of the Security Council".

<sup>51</sup> S/PV.2972, pp. 9-12.

At the same meeting, the Council adopted resolution 683 (1990),<sup>52</sup> by which it recalled that the Trusteeship Agreement for the Trust Territory, in conformity with Article 76 of the Charter, had obligated the Administering Authority to promote the development of the Trust Territory towards self-government or independence. Noting that the peoples of three constituent parts of the Trust Territory had freely exercised their right to self-determination through plebiscites observed by visiting missions of the Trusteeship Council, the Council determined that the objectives of the Trusteeship Agreement had been fully attained. The applicability of the Trusteeship Agreement with respect to those entities had therefore terminated.<sup>53</sup>

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<sup>52</sup> The resolution was adopted by 14 votes to 1 (Cuba).

<sup>53</sup> By resolution 683 (1990), the Council also expressed the hope that the people of Palau would be able in due course to complete the process of freely exercising their right to self-determination. Speaking after the vote, most speakers noted that the resolution just adopted had been designed to facilitate the exercise of the right to self-determination by the peoples of the Federated States of Micronesia, the Marshall Islands and the Northern Mariana Islands, and that ending the trusteeship status would make it possible for the Territories concerned fully to implement the status that their respective peoples had freely chosen (S/PV.2972, p. 13 (France); pp. 14-16 (China); pp. 26-27 (United Kingdom); pp. 27-28 (United States); pp. 28-30 (Soviet Union); and pp. 30-31 (Ethiopia)).

## Part II

### Consideration of the provisions of Article 2 of the Charter

#### A. Article 2, paragraph 4

##### *Article 2, paragraph 4*

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

#### Note

This note describes the action taken by the Security Council in the form of resolutions, presidential statements and other decisions in connection with Article 2 (4). It is followed by six case studies which present the discussions that arose in the Council pertaining to that Article.

During the period under review, the Council adopted one resolution which contained an explicit

reference to Article 2 (4).<sup>54</sup> By resolution 748 (1992), by which it imposed sanctions on the Libyan Arab Jamahiriya, the Council reaffirmed that, “in accordance with the principle in Article 2, paragraph 4, of the Charter of the United Nations, every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involve a threat or use of force”.<sup>55</sup>

The Council also adopted 13 presidential statements,<sup>56</sup> in which it invoked the provisions of Article 2 (4) or the principle enshrined therein. In six presidential statements relating to the situation in the Middle East, the members of the Council reaffirmed “their commitment to the full sovereignty, independence, territorial integrity and national unity of Lebanon within its internationally recognized boundaries”. In this context, they asserted that “any State shall refrain from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations”.<sup>57</sup> In six other presidential statements issued on the occasion of the admission to membership in the United Nations of Armenia, Azerbaijan, Croatia, Slovenia, Bosnia and Herzegovina and Georgia, respectively, the members of the Council “noted with great satisfaction” each State’s “solemn commitment to uphold the purposes and principles of the Charter of the United Nations, which include the principles relating to the peaceful settlement of disputes and the non-use of force”.<sup>58</sup> The statements made on the occasion of the admission of Armenia and Azerbaijan,

respectively, were recalled in a further presidential statement concerning the situation in Nagorny-Karabakh, “in particular the reference to the principles in the Charter of the United Nations relating to the peaceful settlement of disputes and the non-use of force”.<sup>59</sup>

During the period under review, the Council adopted several resolutions and presidential statements that contained implicit references to the principle enshrined in Article 2 (4).

In connection with the situation between Iraq and Kuwait, the Council condemned the invasion and, subsequently, the continued occupation of Kuwait by the military forces of Iraq.<sup>60</sup> In connection with the situation in the former Yugoslavia, the members of the Council condemned publicly and unreservedly the use of force and called upon all regular and irregular military forces involved to act in accordance with this principle.<sup>61</sup> In connection with the situation in Georgia, the members of the Council recalled the commitment by the parties not to resort to the use of force.<sup>62</sup>

In a number of instances, the Council reaffirmed the principles of territorial integrity, sovereignty and political independence of States and asked that they be fully respected.<sup>63</sup> The Council also reaffirmed the

<sup>54</sup> Resolution 748 (1992), adopted at the 3063rd meeting on 31 March 1992 by 10 votes to none, with 5 abstentions (Cape Verde, China, India, Morocco, Zimbabwe).

<sup>55</sup> Resolution 748 (1992), sixth preambular para.

<sup>56</sup> S/21418 of 31 July 1990, S/22176 of 30 January 1991, S/22862 of 31 July 1991, S/23495 and S/23496 of 29 June 1992, S/23597 of 14 February 1992, S/23610 of 19 February 1992, S/23904 of 12 May 1992, S/23945 and S/23946 of 18 May 1992, S/23982 of 20 May 1992, S/24241 of 6 July 1992 and S/24362 of 30 July 1992.

<sup>57</sup> S/21418; S/22176; S/22862; S/23495; S/23610; and S/24362.

<sup>58</sup> S/23496; S/23597; S/23945; S/23946; S/23982; and S/24241. In the cases of Croatia, Slovenia and Bosnia and Herzegovina, the Council also noted each State’s commitment “to fulfil all the obligations contained in the Charter” (see S/23945, S/23982 and S/24241).

<sup>59</sup> S/23904.

<sup>60</sup> Resolutions 660 (1990), para. 1; 670 (1990), second preambular para.; and 674 (1990), third preambular para.

<sup>61</sup> Presidential statement of 24 April 1992 (S/23842).

<sup>62</sup> Presidential statement of 8 October 1992 (S/24637).

<sup>63</sup> In connection with the situation in the Middle East, see resolutions 630 (1989), para. 2; 639 (1989), para. 2; 648 (1990), para. 2; 659 (1990), para. 2; 684 (1991), para. 2; 701 (1991), para. 2; 734 (1992), para. 5; and 768 (1992), para. 2; and the statements of 31 March 1989 (S/20554); 15 August 1989 (S/20790); 20 September 1989 (S/20855); 7 November 1989 (S/20953); 22 November 1989 (S/20988); and 27 December 1989 (S/21056). See also S/21418; S/22862; S/23495; S/23610; and S/24362 (see footnote 56). In connection with the situation in the occupied Arab territories, see resolution 799 (1992), para. 3. In connection with the situation between Iraq and Kuwait, see resolutions 686 (1991), eighth preambular para., and 687 (1991), third preambular para. In connection with the letter dated 2 April 1991 from the representative of Turkey to the President of the Security Council and the letter dated 4 April 1991 from the representative of France to the President of the Security Council, see resolution 688 (1991), seventh preambular para. In connection with the letter dated 17 May 1991 from the representative of Angola to the Secretary-

inadmissibility of the acquisition of territory by war,<sup>64</sup> the unacceptability of territorial gains or changes brought about by violence,<sup>65</sup> the inviolability of international boundaries,<sup>66</sup> and the inadmissibility of any encroachment upon the principle of territorial integrity.<sup>67</sup> In connection with the situation between Iraq and Kuwait, the Council decided that “annexation of Kuwait by Iraq under any form and whatever pretext has no legal validity, and is considered null and void”, and further called upon all States, international organizations and agencies “not to recognize that annexation, and to refrain from any action or dealing that might be interpreted as an indirect recognition of the annexation”.<sup>68</sup> In connection with the situation in the former Yugoslavia, the Council demanded that all parties and others concerned in Bosnia and Herzegovina cooperate with efforts to bring about urgently a negotiated political solution respecting the principle that any change of borders by force is not acceptable”.<sup>69</sup>

The Council also reaffirmed that the taking of territory by force or any practice of “ethnic cleansing” is unlawful and unacceptable, and would not be

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General and the report of the Secretary-General on the United Nations Angola Verification Mission, see resolution 696 (1991), third preambular para. In connection with the situation in the former Yugoslavia, see resolutions 752 (1992), para. 3; 757 (1992), fourth preambular para.; and 770 (1992), fourth preambular para.

<sup>64</sup> In connection with the situation in the occupied Arab territories; see resolution 681 (1990), second preambular para.

<sup>65</sup> In connection with the situation in the former Yugoslavia; see resolutions 713 (1991), eighth preambular para.; 752 (1992), para. 1; and 757 (1992), third preambular para.

<sup>66</sup> In connection with the situation between Iraq and Kuwait, see resolutions 687 (1991), paras. 2 and 4; and 773 (1992), para. 4; and the presidential statements of 17 June 1992 (S/24113); 11 March 1992 (S/23699); and 23 November 1992 (S/24836). In connection with the situation in the former Yugoslavia, see resolution 757 (1992), third preambular para. In connection with the situation in Georgia, see the statement of 10 September 1992 (S/24542).

<sup>67</sup> In connection with the situation in Georgia; see the statements of 10 September 1992 (S/24542) and 8 October 1992 (S/24637).

<sup>68</sup> Resolution 662 (1990), paras. 1-2. See also resolutions 661 (1990), para. 9 (b), and 664 (1990), para. 3.

<sup>69</sup> Resolution 752 (1992), para. 1.

permitted to affect the outcome of the negotiations on constitutional arrangements for the Republic of Bosnia and Herzegovina.<sup>70</sup> It further called on all parties and others concerned to respect strictly the territorial integrity of the Republic of Bosnia and Herzegovina and affirmed that any entities unilaterally declared or arrangements imposed in contravention thereof would not be accepted.<sup>71</sup> The Council also expressed concern about possible developments which could undermine confidence and stability in the former Yugoslav Republic of Macedonia or threaten its territory.<sup>72</sup>

In connection with the situation in the former Yugoslavia, the Council demanded that all forms of interference from outside Bosnia and Herzegovina, including by units of the Yugoslav People’s Army as well as elements of the Croatian Army, cease immediately, and that Bosnia and Herzegovina’s neighbours take swift action to end such interference and respect the territorial integrity of Bosnia and Herzegovina.<sup>73</sup> In a number of cases, the Council appealed for an end to interference from outside States in the form of “foreign military assistance”,<sup>74</sup> including through “support for irregular forces”,<sup>75</sup> overt or covert “supply of aid to irregular forces or insurrectional movements”,<sup>76</sup> and “infiltration of irregular units and personnel”.<sup>77</sup> In connection with the situation in Angola, the Council stressed the importance of all States refraining from taking any actions which could undermine the peace agreement there.<sup>78</sup> In connection

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<sup>70</sup> Resolution 787 (1992), para. 2.

<sup>71</sup> *Ibid.*, para. 3.

<sup>72</sup> Resolution 795 (1992), fourth preambular para.

<sup>73</sup> Resolution 752 (1992), para. 3. See also resolution 757 (1992), fourth preambular para.

<sup>74</sup> In connection with the situation in Cambodia; see resolution 717 (1991), fifth preambular para.

<sup>75</sup> In connection with the item entitled “Central America: efforts towards peace”; see resolution 637 (1989), second preambular para.

<sup>76</sup> In connection with the item entitled “Central America: efforts towards peace”; see resolution 637 (1989), para. 4.

<sup>77</sup> In connection with the situation in the former Yugoslavia; see resolution 787 (1992), para. 5. See also resolutions 752 (1992), para. 3; and 757 (1992), third preambular para.; and the presidential statement of 24 April 1992 (S/23842).

<sup>78</sup> In connection with the letter dated 17 May 1991 from the representative of Angola to the Secretary-General and the report of the Secretary-General on the United Nations Angola Verification Mission, see resolution 696 (1991), third preambular para.

with the situation in Liberia, the Council also called on the parties to the conflict to respect and implement the various accords of the peace process ..., including refraining from actions which endanger the security of neighbouring States,<sup>79</sup> and, conversely, called on Member States to exercise self-restraint in their relations with all parties to the Liberian conflict and to refrain from any action that would be inimical to the peace processes.<sup>80</sup> In other instances, the Council called upon all States and/or parties in neighbouring countries to refrain from any action which might contribute to increasing tension, to inhibiting the establishment of an effective ceasefire and to impeding or delaying a peaceful and negotiated outcome to the conflict.<sup>81</sup> The Council also deplored “the false alarm by South Africa ... concerning the alleged movement of forces of the South West Africa People’s Organization across the Namibia-Angola border” and called on that State to desist from any such further action.<sup>82</sup>

In connection with the situation between Iraq and Kuwait, the Council considered that acts of violence committed by Iraq against diplomatic missions and their personnel, including violations of diplomatic premises and abduction of personnel enjoying diplomatic immunity as well as foreign nationals present in such premises, constitute aggressive acts and a flagrant violation of its international obligations which strike at the root of the conduct of international relations in accordance with the Charter of the United Nations and strongly condemned such acts.<sup>83</sup>

In connection with the Libyan Arab Jamahiriya, the Council expressed its concern at the worldwide persistence of acts of international terrorism in all its forms, including those in which States are directly or indirectly involved, which endanger or take innocent lives, have a deleterious effect on international relations and jeopardize the security of States,<sup>84</sup> and expressed its conviction that the suppression of such acts is essential for the maintenance of international peace and security.<sup>85</sup> It decided that the Libyan Government must commit itself definitely to cease all forms of terrorist action and assistance to terrorist groups and that it must promptly, by concrete actions, demonstrate its renunciation of terrorism.<sup>86</sup> In connection with the situation between Iraq and Kuwait, the Council required Iraq to inform the Council that it will not commit or support any act of international terrorism or allow any organization directed towards commission of such acts to operate within its territory and to condemn unequivocally and renounce all acts, methods and practices of terrorism.<sup>87</sup> The Council further expressed concern at, or deplored, statements by Iraq “threatening to use weapons in violation of its obligations”, reports that “Iraq has attempted to acquire military materials for a nuclear-weapons programme contrary to its obligations”, and threats by Iraq “to make use of terrorism against targets outside Iraq and the taking of hostages by Iraq”.<sup>88</sup>

In a number of cases, the Council called on parties to respect and maintain ceasefire agreements and condemned violations of such agreements.<sup>89</sup> It also called for the cessation of hostilities and/or acts of violence, including violations of international humanitarian law, and the exercise of restraint or the

<sup>79</sup> Presidential statement of 7 May 1992 (S/23886).

<sup>80</sup> Resolution 788 (1992), para. 11.

<sup>81</sup> In connection with the situation in the former Yugoslavia; see resolutions 713 (1991), para. 7; and 724 (1991), para. 7. See also, in connection with the situation in Somalia, resolution 733 (1992), para. 6; in connection with the situation in Tajikistan, see the statement of 30 September 1992 (S/24742); in connection with the letter dated 27 November 1989 from the Representative of El Salvador to the President of the Security Council and the letter dated 28 November 1989 from the representative of Nicaragua to the President of the Security Council, see the statement of 8 December 1989 (S/21011).

<sup>82</sup> In connection with the situation in Namibia; see the statement of 3 November 1989 (S/20946).

<sup>83</sup> See resolution 667 (1990), sixth preambular para. and para. 1.

<sup>84</sup> See resolution 731 (1992), first preambular para.

<sup>85</sup> See resolution 748 (1992), fourth preambular para.

<sup>86</sup> *Ibid.*, para. 2.

<sup>87</sup> In connection with the situation between Iraq and Kuwait; see resolution 687 (1991), para. 32; and the statements of 11 March 1992 (S/23699); and 23 November 1992 (S/24836).

<sup>88</sup> Resolution 687 (1991), eighth, fifteenth and twenty-third preambular paras.

<sup>89</sup> In connection with the situation in the former Yugoslavia; see resolutions 713 (1991), para. 4; 721 (1991), para. 3; 743 (1992), para. 8; 752 (1992), para. 1; 758 (1992), paras. 5-6; and 761 (1992), paras. 2-3; and the statements of 7 January 1992 (S/23389); 24 April 1992 (S/23842); 17 July 1992 (S/24307); and 24 July 1992 (S/24346).

cessation of provocative actions.<sup>90</sup> In some instances, the Council also called for the withdrawal of troops from foreign territory.<sup>91</sup> In connection with the situation in the former Yugoslavia, the Council demanded that those units of the Yugoslav People's Army and elements of the Croatian Army now in Bosnia and Herzegovina must either be withdrawn, or be subject to the authority of the Government of Bosnia and Herzegovina, or be disbanded and disarmed with the weapons placed under effective international monitoring.<sup>92</sup> The Council strongly condemned any violations of international humanitarian law, including those involved in the practice of "ethnic cleansing", and demanded that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law, including from actions such as those described above.<sup>93</sup> It further called on all parties in the Republic of Bosnia and Herzegovina to fulfil their commitments to put into effect an immediate cessation of hostilities and to negotiate, continuously and in uninterrupted session, to end the blockades of Sarajevo and other towns and to demilitarize them, with heavy weapons under international supervision.<sup>94</sup>

Similar calls for the respect and maintenance of ceasefire agreements, the cessation of hostilities, including violations of international humanitarian law, and the exercise of restraint were made in the context

of internal conflicts.<sup>95</sup> In connection with the situation in the former Yugoslavia, the Council called upon all parties and others concerned to ensure that forcible expulsions of persons from the areas where they lived and any attempts to change the ethnic composition of the population, anywhere in the former Socialist Federal Republic of Yugoslavia, cease immediately.<sup>96</sup> In another case, the Council condemned the repression of the Iraqi civilian population in many parts of Iraq, including in the Kurdish populated areas, the consequences of which threatened international peace and security in the region and demanded that Iraq, as a contribution to removing the threat to international peace and security in the region, immediately end that repression.<sup>97</sup>

During the period under review, a number of draft resolutions that were not adopted by the Council contained explicit references to Article 2 (4) or invoked the provisions of that Article 2 (4) or the principle

<sup>90</sup> In connection with the situation in the former Yugoslavia, see resolutions 727 (1992), para. 4; 749 (1992), paras. 5-6; 752 (1992), para. 1; 762 (1992), para. 2; 764 (1992), para. 3; 770 (1992), para. 1; and 787 (1992), para. 6; and the statement of 13 April 1992 (S/23802). In connection with the situation in the Middle East, see the statements of 31 March 1989 (S/20554); 15 August 1989 (S/20790); and 19 February 1992 (S/23610). In connection with the situation between Iraq and Kuwait, see resolution 686 (1991), para. 3 (a). In connection with the situation relating to Nagorny-Karabakh, see the statement of 12 May 1992 (S/23904).

<sup>91</sup> In connection with the situation between Iraq and Kuwait; see resolutions 660 (1990), para. 1; 662 (1990), third preambular para.; and 674 (1990), second preambular para. In connection with the situation in the former Yugoslavia, see resolutions 752 (1992), para. 4; 757 (1992), para. 2; 761 (1992), para. 3; 762 (1992), paras. 3-4; and 779 (1992), para. 4.

<sup>92</sup> Resolutions 752 (1992), para. 4; and 757 (1992), para. 2.

<sup>93</sup> Resolution 771 (1992), paras. 2-3. See also the statement of 30 October 1992 (S/24744).

<sup>94</sup> Resolution 787 (1992), para. 6.

<sup>95</sup> In connection with the situation in Cyprus, see resolution 649 (1990), para. 5; and the statement of 19 July 1990 (S/21400). In connection with the situation in Afghanistan, see the statement of 16 April 1992 (S/23818). In connection with the situation in Cambodia, see resolutions 718 (1991), para. 5; 728 (1992), para. 3; 766 (1992), para. 3; 783 (1992), para. 7; and 792 (1992), paras. 8 and 15. In connection with the situation in Somalia, see resolutions 733 (1992), paras. 4 and 6; 746 (1992), fifth preambular para. and para. 2; 751 (1992), para. 9; 767 (1992), para. 9; 775 (1992), para. 11; and 794 (1992), paras. 1 and 4. In connection with the situation in Angola, see resolutions 785 (1992), paras. 3 and 7; and 793 (1992), para. 4; and the statements of 7 July 1992 (S/24249); 20 October 1992 (S/24683); and 27 October 1992 (S/24720). In connection with the situation in Liberia, see resolution 788 (1992), paras. 3-6. In connection with the situation in Mozambique, see resolution 797 (1992), para. 4; and the statement of 27 October 1992 (S/24719). In connection with the item entitled "Central America: efforts towards peace", see resolution 791 (1992), para. 4. In connection with the situation concerning Western Sahara, see the statement of 31 August 1992 (S/24504).

<sup>96</sup> Resolution 752 (1992), para. 6. See also resolution 757 (1992), fifth preambular para.

<sup>97</sup> In connection with the letter dated 2 April 1991 from the representative of Turkey to the President of the Security Council and the letter dated 4 April 1991 from the representative of France to the President of the Security Council, see resolution 688 (1991), paras. 1-2.

enshrined therein.<sup>98</sup> Other such draft resolutions contained what might be considered implicit references to the principle enshrined in Article 2 (4).<sup>99</sup>

### Case 6

#### *The situation between Iraq and Kuwait*

None of the decisions of the Security Council mentioned above concerning the situation between Iraq and Kuwait gave rise to a constitutional discussion of Article 2 (4). Pertinent arguments with reference to the provisions of that paragraph were however made in the course of the Council's deliberations on the item.

On the one hand, Kuwait described the military invasion by Iraq as "a flagrant violation of the Charter, particularly in paragraphs 3 and 4 of its Article 2", which made it incumbent on the Security Council to shoulder its responsibilities to maintain international peace and security, including the protection of Kuwait's security, sovereignty and territorial integrity. It affirmed that the existing differences between Kuwait and Iraq should be dealt with by peaceful means and negotiations, and not through the use of force, in accordance with international norms, instruments and laws, "first and foremost the Charter of the United Nations".<sup>100</sup>

On the other hand, Iraq held that the events taking place in Kuwait were internal matters and that Iraq was pursuing no goal or objective in Kuwait. The Government of Iraq had acted solely on the basis of a request for assistance from the Free Provisional Government of Kuwait to establish security and order. The Iraqi forces would withdraw as soon as order had been restored, as requested by the Free Provisional Government of Kuwait.<sup>101</sup>

In the course of the Council's consideration of the item, Council members and non-members condemned the Iraqi invasion of Kuwait as an act of military aggression in flagrant violation of the Charter, international law and all fully accepted norms of international behaviour.<sup>102</sup> They reaffirmed the principles of prohibition of the use or threat of force, non-interference in the internal affairs of States, and respect for territorial integrity, sovereignty and political independence,<sup>103</sup> emphasizing that such principles were particularly important to small States.<sup>104</sup> Further reaffirming the principle of peaceful settlement of disputes,<sup>105</sup> they condemned the acquisition of territory by force as a violation of the Charter and international law<sup>106</sup> and rejected the

<sup>98</sup> In connection with the situation in Panama, see S/21048, third preambular para. and para. 1. In connection with the letter dated 4 January 1989 from the representative of the Libyan Arab Jamahiriya to the President of the Security Council and the letter dated 4 January 1989 from the representative of Bahrain to the President of the Security Council, see S/20378, fourth preambular para. and paras. 1 and 3. In connection with the letter dated 27 April 1992 from the representative of Cuba to the President of the Security Council, see S/23990, third preambular para.

<sup>99</sup> In connection with the situation in Panama, see S/21048, third preambular para. In connection with the situation between Iraq and Kuwait, see S/22231, fifth preambular para.; S/22232, first and fourth preambular paras. and para. 1; S/22232/Rev.3, first, second and fifth preambular paras.; S/22233/Rev.2, third preambular para. In connection with the letter dated 27 April 1992 from the representative of Cuba to the President of the Security Council, see S/23990, first and second preambular paras. and para. 7. See also, in connection with the situation in the occupied Arab territories, S/20463, S/20677, S/20945 and S/21933/Rev.1.

<sup>100</sup> S/PV.2932, pp. 3-10.

<sup>101</sup> *Ibid.*, pp. 11-12.

<sup>102</sup> *Ibid.*, pp. 13-15 (United States); p. 17 (Canada); p. 18 (Malaysia); and p. 22 (Finland).

<sup>103</sup> For relevant statements, see S/PV.2932, p. 17 (Colombia); p. 18 (Malaysia); p. 22 (Finland); and pp. 26-27 (Yemen); S/PV.2933, p. 18 (United States); pp. 28-30 (China); p. 36 (Côte d'Ivoire); p. 37 (Cuba); pp. 48-50 (Colombia); p. 52 (Yemen); and p. 53 (Romania); S/PV.2934, p. 21 (Malaysia); S/PV.2937, pp. 53-55 (Italy); and S/PV.2963, p. 11 (Kuwait); pp. 44-45 (Zaire); p. 87 (Côte d'Ivoire); and p. 107 (Kuwait). Support for these principles was also reaffirmed with reference to the Five Principles of Peaceful Coexistence among States; see S/PV.2933, pp. 28-30 (China); and S/PV.2963, pp. 61-62 (China).

<sup>104</sup> S/PV.2932, p. 16 (Colombia); p. 18 (Malaysia); S/PV.2933, p. 6 (Kuwait); S/PV.2963, p. 87 (Côte d'Ivoire).

<sup>105</sup> S/PV.2932, pp. 24-25 (Romania); S/PV. 2933, p. 22 (Malaysia); pp. 29-30 (Soviet Union); p. 33 (Zaire); p. 53 (Romania); S/PV.2937, pp. 53-55 (Italy); S/PV.2938, p. 7 (Yemen); p. 53 (China); and S/PV.2963, pp. 61-62 (China).

<sup>106</sup> S/PV.2934, p. 22 (China); p. 28 (Finland); p. 28 (Colombia); p. 36 (Kuwait); pp. 41-42 (Oman); S/PV.2938, p. 41 (Soviet Union); pp. 49-50 (Côte d'Ivoire); p. 56 (Romania); and S/PV.2963, p. 72 (Canada).

annexation of Kuwait by Iraq as null and void and without legal effect.<sup>107</sup> Some speakers also recalled the collective security mechanism set forth in the Charter as the appropriate basis for dealing with conflict situations such as the one under consideration.<sup>108</sup>

### Case 7

#### *Items relating to the situation in the former Yugoslavia*

None of the decisions of the Security Council mentioned above concerning the situation in the former Yugoslavia gave rise to a constitutional discussion of Article 2 (4). Several pertinent arguments with reference to the provisions of that paragraph were however made in the course of the Council's deliberations on the item.

Council members and non-members reaffirmed the principles of prohibition of the use or threat of force,<sup>109</sup> respect for territorial integrity, sovereignty and independence, and peaceful settlement of disputes.<sup>110</sup> They affirmed the unacceptability of any modification of external or internal borders or acquisition of territory through the use of force,<sup>111</sup> including on the basis of separatist policies<sup>112</sup> or through policies of "ethnic cleansing", genocide or

human rights abuses.<sup>113</sup> According to one member, "all the parties to the conflict must understand that there is no alternative to a political settlement of the crisis in Bosnia and Herzegovina and that any attempts to bring about a military solution to these problems by force of arms, in particular by establishing so-called ethnically pure States, constitute a crime against their own people and against all humankind".<sup>114</sup>

Following the admission of Croatia and Bosnia and Herzegovina to membership in the United Nations,<sup>115</sup> Council members reaffirmed the principles of non-interference in the internal affairs of States, and respect for territorial integrity, sovereignty and political independence of States,<sup>116</sup> as well as their opposition to aggression against a Member State, including through military support from outside to irregular or insurrectionist forces in materiel and personnel.<sup>117</sup> On the other hand, it was also argued that

<sup>107</sup> For relevant statements, see S/PV.2934, p. 7 (United States); p. 11 (France); p. 15 (Canada); pp. 18-20 (Ethiopia); p. 21 (Malaysia); p. 22 (China); p. 28 (Finland); p. 28 (Colombia); p. 36 (Kuwait); pp. 41-42 (Oman); S/PV.2937, pp. 53-55 (Italy); and S/PV.2963, pp. 61-62 (China); and p. 81 (United Kingdom).

<sup>108</sup> S/PV.2933, p. 53 (Romania); and S/PV.2934, p. 12 (Soviet Union).

<sup>109</sup> S/PV.3009, p. 22 (Belgium); p. 26 (Austria); p. 26 (Ecuador); p. 59 (United States); S/PV.3082, pp. 9-10 (China); p. 45 (Austria); and S/PV.3137, p. 119 (China).

<sup>110</sup> S/PV.3009, pp. 26-27 (Ecuador); p. 66 (France); and S/PV.3082, p. 11 (China); p. 22 (India); p. 38 (Russian Federation).

<sup>111</sup> S/PV.3009, p. 12 (Yugoslavia); p. 22 (Belgium); p. 26 (Austria); p. 27 (Ecuador); pp. 59 and 61 (United States); S/PV.3082, p. 18 (Ecuador); S/PV.3106, p. 31 (Hungary); p. 38 (United States); S/PV.3136, p. 18 (Venezuela); pp. 29-30 (Pakistan); p. 59 (Indonesia); pp. 61-62 (Palestine); p. 67 (Jordan); and S/PV.3137, p. 11 (Hungary); pp. 67-70 (Yugoslavia); pp. 94 and 96-97 (Greece).

<sup>112</sup> S/PV.3009, p. 37 (Cuba); p. 60 (United States); and S/PV.3137, pp. 34-35 (Lithuania); pp. 45-47 (Azerbaijan); p. 94 (Greece).

<sup>113</sup> S/PV.3082, pp. 15-16 (Hungary); p. 25 (Morocco); pp. 28-30 (Venezuela); S/PV.3106, p. 11 (India); p. 31 (Hungary); S/PV.3136, p. 5 (Russian Federation); p. 9 (Ecuador); p. 18 (Venezuela); pp. 37 and 41 (Slovenia); p. 45 (Canada); pp. 50 and 53 (Albania); and S/PV.3137, p. 32 (Norway); p. 84 (Ukraine); pp. 89-90 (United Arab Emirates); p. 94 (Greece); and pp. 109-110 (Bangladesh). On the legitimacy of the use of force on humanitarian grounds under the collective security mechanism of the Charter, see S/PV.3106, pp. 11-15 (India); pp. 16-17 (Zimbabwe); pp. 34-35 (United Kingdom); pp. 43-44 (Venezuela); p. 45 (Belgium); and p. 47 (France).

<sup>114</sup> S/PV.3136, p. 5 (Russian Federation).

<sup>115</sup> Bosnia and Herzegovina and Croatia were admitted to membership in the United Nations on 22 May 1992; see General Assembly resolutions 46/237 and 46/238, respectively.

<sup>116</sup> S/PV.3082, p. 18 (Ecuador); p. 28 (Venezuela); p. 31 (Belgium); S/PV.3106, pp. 19-20 (Morocco); p. 33 (Hungary); S/PV.3136, p. 8 (Russian Federation); p. 41 (Slovenia); pp. 61-62 (Palestine); and S/PV.3137, p. 13 (Hungary); pp. 18-20 (Qatar); pp. 27-28 (Comoros); pp. 45-47 (Azerbaijan); p. 58 (Afghanistan); p. 84 (Ukraine); p. 92 (United Arab Emirates); p. 106 (Algeria); p. 116 (Senegal).

<sup>117</sup> S/PV.3082, p. 11 (China); p. 13 (Zimbabwe); S/PV.3106, p. 24 (Austria); S/PV.3136, p. 6 (Russian Federation); p. 53 (Albania); p. 67 (Jordan); p. 68 (Islamic Republic of Iran); and S/PV.3137, pp. 49-50 (Kuwait); p. 118 (Bosnia and Herzegovina).



the situation in Bosnia and Herzegovina was “essentially a civil war”.<sup>118</sup>

### Case 8

#### *The situation in Central America*

The decision adopted by the Security Council under this item<sup>119</sup> did not give rise to a constitutional discussion of Article 2 (4). Pertinent arguments with reference to the provisions of the paragraph were however made in the course of the Council’s deliberations on the item.

On the one hand, it was argued that in its consideration of the situation in Central America, the Security Council had “adopted resolutions containing a series of principles and recommendations for all States”. They included “the right of all States of the region to live in peace and security, free from outside interference; the avoidance of any measure or attempt to destabilize or undermine other States and their institutions; respect for sovereignty and the inalienable right of peoples freely to choose their own political, economic and social system; the development of relations in accordance with the interests of the peoples, excluding outside interference, subversion, direct or indirect coercion and threats of any kind; the non-use against any State in the region of any measure that could impede the pursuit of peace, and renunciation of support for or promotion of such measures; and an immediate halt to any kind of aid, whether given openly or covertly, by any Government, within the region or outside, to irregular forces or insurgent forces operating in the region”.<sup>120</sup> Those principles and recommendations provided rights but they also imposed obligations on the parties concerned “so that third-party States are not provided with an opportunity to justify intervening” in the crisis.<sup>121</sup>

Specifically, the provision of assistance to “anti-democratic irregular forces” or “minority insurgent groups” in El Salvador by the Government of Nicaragua in the form of “weapons, military equipment, logistic support or sanctuary”, or “moral, propaganda and diplomatic support”, was denounced as

amounting to a “violation of the principle of non-intervention in the internal affairs of other States and the commission of acts of aggression as defined in international instruments”, including the Charter of the United Nations and the various agreements supporting the Central American peace process.<sup>122</sup> With reference to the actions of the United States in Nicaragua, it was claimed that the United States had “armed and managed the counter-revolutionary forces” and that such actions could be considered “not as an external factor but as a cause of destabilization, both in the region and within each of the Central American countries”.<sup>123</sup> In particular, the United States’ decision to postpone the demobilization of the *contras* in Nicaragua was qualified as “plain interference in Nicaragua’s domestic politics” and “a clear violation” of the agreements supporting the Central American peace process.<sup>124</sup>

In response to those arguments, it was stated that the United States had ceased all lethal aid to the Nicaraguan resistance, in compliance with the agreements supporting the Central American peace process.<sup>125</sup> The massive rearming of the Frente Farabundo Martí para la Liberación Nacional in El Salvador, however, had been made possible by the Governments of Nicaragua and Cuba. It was claimed that Nicaragua was aiding “an insurrectionist group whose political representatives had received less than 4 per cent of the recent vote and which had returned to fight the constitutionally elected Government [of El Salvador], in direct violation of the peace process”. Such aid was “not only military in nature but was also perpetuating the worst kind of inhumane aid — the abetting of guerrilla terrorism that resulted in the tragic loss of more lives”.<sup>126</sup> That was why, on the other hand, “economic, military and humanitarian assistance” was being provided by the United States to El Salvador, “as aid directed to a constitutionally elected Government in support of the peace process and used to offset guerrilla damage and attacks on the economy and infrastructure of that country”. It was argued that such continued “support of the

<sup>118</sup> S/PV.3106, pp. 16-17 (Zimbabwe); S/PV.3136, p. 26 (Zimbabwe); and S/PV.3137, p. 72 (Yugoslavia).

<sup>119</sup> Statement by the President of 8 December 1989 (S/21011).

<sup>120</sup> S/PV.2896, p. 22 (El Salvador).

<sup>121</sup> *Ibid.*

<sup>122</sup> *Ibid.*, pp. 8-11 (El Salvador).

<sup>123</sup> *Ibid.*, pp. 56-57 (Nicaragua).

<sup>124</sup> *Ibid.*, p. 58 (Nicaragua).

<sup>125</sup> *Ibid.*, pp. 54-56 (United States).

<sup>126</sup> *Ibid.*

democratically elected Government of El Salvador” was justified “so that democracies can survive”.<sup>127</sup>

### Case 9

#### *The situation in Panama*

The decision adopted by the Security Council under this item<sup>128</sup> did not give rise to a constitutional discussion of Article 2 (4). Pertinent arguments relating to the provisions of that Article were however made during the Council’s consideration of the item.

With explicit reference to Article 2 (4), the Charter of the United Nations and/or norms of international law, Council members and non-members reaffirmed the principles of peaceful settlement of dispute, non-interference in the internal affairs of States, respect for the territorial integrity, sovereignty and political independence of States, and prohibition of the threat or use of force,<sup>129</sup> including through policies of destabilization and coercion.<sup>130</sup> It was argued that the application of such principles allowed no exception<sup>131</sup> and should not be selective,<sup>132</sup> and that the use of force “[could not] be approved per se, whatever the causes”.<sup>133</sup> The view was also expressed that major Powers and/or permanent members of the Security Council were expected to assume a special responsibility in upholding those principles,<sup>134</sup> which

were deemed to be of particular importance to small Member States.<sup>135</sup>

Specifically, it was stated that “the pretext of protection of American citizens used to justify intervention was the same pretext reasserted time and again by Governments and doctrines of the United States to attempt to justify what cannot be justified and legitimize acts of force and violence”.<sup>136</sup> No ethical or legal norm, however, could make aggression a legal act and make the use of force a moral principle.<sup>137</sup> Similarly, it was argued that whatever arguments the United States used to try to justify its action in Panama, it remained a flagrant violation of the elementary norms of international law and the Charter.<sup>138</sup> In this connection, it was explicitly stated that reliance by the United States on Article 51 of the Charter did not justify its action in Panama,<sup>139</sup> as it reflected “the shamelessness of those who, themselves guilty of the crime of aggression, try to pass themselves off as victims”.<sup>140</sup> It was also noted that “the military intervention undertaken by the United States in Panama was a disproportionate response”.<sup>141</sup>

On the other hand, it was argued that the United States action took place on the basis of Article 51 of the Charter and was “designed to protect American lives as well as to defend the integrity of the Panama Canal Treaties”.<sup>142</sup> In this regard, it was observed that the Charter, in Article 51, did recognize a basic exception to the prohibition of the use of force and affirmed the inherent right to self-defence which was vested in Member States.<sup>143</sup> After examination of “all circumstances” to determine whether or not there were “compelling reasons” which justified the United States action in Panama, it was believed that such compelling reasons did exist.<sup>144</sup> It was further argued that the United States had “consulted with the democratically elected leadership of Panama” prior to its actions in

<sup>127</sup> Ibid.

<sup>128</sup> For the Council’s decision, by 14 votes to none, with 1 abstention (United States), to invite the representative of Panama to participate, without vote, in the discussion of the question, see S/PV.2901, p. 6. See also chapter III, case 1.

<sup>129</sup> S/PV.2899, pp. 3-17 (Nicaragua); p. 18 (Soviet Union); pp. 21-22 (China); pp. 28-30 (Canada); and S/PV.2900, pp. 6-7 (Yugoslavia); pp. 8-10 (Nepal); p. 13 (Ethiopia); p. 17 (Algeria); p. 21 (Brazil); p. 22 (Malaysia); pp. 34-36 (Peru). Support for the principles of Article 2 (4) was also affirmed with reference to General Assembly resolutions 2131 (XX) and 2625 (XXV), the opinion of the International Court of Justice in the Corfu Channel case, and the Five Principles of Peaceful Coexistence among States; see S/PV.2899, pp. 3-17 (Nicaragua); and pp. 21-22 (China).

<sup>130</sup> S/PV.2900, p. 26 (Cuba).

<sup>131</sup> S/PV.2899, pp. 3-17 (Nicaragua); and S/PV.2900, pp. 6-7 (Yugoslavia); p. 13 (Ethiopia); and pp. 17-18 (Algeria).

<sup>132</sup> S/PV.2899, p. 18 (Soviet Union).

<sup>133</sup> S/PV.2899, pp. 23-25 (France).

<sup>134</sup> S/PV.2900, pp. 8-10 (Nepal); p. 13 (Ethiopia); pp. 17-18 (Algeria); and pp. 22-23 (Malaysia).

<sup>135</sup> Ibid., p. 13 (Ethiopia); pp. 17-18 (Algeria); pp. 22-23 (Malaysia); and pp. 43-45 (Libyan Arab Jamahiriya).

<sup>136</sup> S/PV.2899, pp. 3-17 (Nicaragua).

<sup>137</sup> Ibid.

<sup>138</sup> Ibid., p. 18 (Soviet Union); and S/PV.2900, p. 13 (Ethiopia).

<sup>139</sup> S/PV.2900, p. 41 (Libyan Arab Jamahiriya).

<sup>140</sup> Ibid., p. 28 (Cuba).

<sup>141</sup> Ibid., pp. 14-15 (Finland). See also chapter XI, part IX, on Article 51.

<sup>142</sup> S/PV.2899, pp. 31-32 (United States).

<sup>143</sup> Ibid., pp. 28-30 (Canada).

<sup>144</sup> Ibid. See also chapter XI, part IX, on Article 51.

that country.<sup>145</sup> Support for the use of force undertaken by the United States was affirmed in this context “as a last resort ... against a régime which had itself turned to force to subvert the democratic process” in Panama and “with the agreement of the Panamanian leaders who had won [the last] election”.<sup>146</sup>

Doubts were expressed, however, that democracy could be promoted by foreign military means.<sup>147</sup> It was argued that “any effort aimed at eliminating an authoritarian and usurping power is legitimate, provided that the foundation of international relations is not undermined. That foundation is after all but an expression in the international arena of the profound desire of the peoples of the United Nations to make democracy the sole alternative to anarchy in international relations”.<sup>148</sup> In that perspective, rejection of authoritarianism could be seen as twofold: “repudiation of the use of force against one’s own people and of the use of power politics among the peoples of the world”.<sup>149</sup>

### Case 10

#### *Items relating to the Libyan Arab Jamahiriya*

In the course of the Council’s consideration of this item, under which no decision was taken, pertinent arguments were made concerning the provisions of Article 2 (4).

The Libyan Arab Jamahiriya argued that the United States had committed an act of premeditated, deliberate aggression by shooting down, without any justification, two unarmed Libyan reconnaissance aircraft on routine patrol near the Libyan coast. The act was described as a prelude to a large-scale attack upon the economic and military installations in the Libyan Arab Jamahiriya and as forming part of the United States policy of aggression against that country. That policy had reached a peak under the current United States Administration, subjecting the Libyan Arab Jamahiriya to threats, provocations and acts of aggression. The Libyan Arab Jamahiriya claimed that the United States systematically conducted provocative naval and air manoeuvres in its territorial waters and in its airspace in an attempt to draw the country into

military confrontation and that a continuing campaign of disinformation to destabilize the country had paved the way for the United States’ latest aggression. It called upon the Council to condemn the American military aggression, and to take all measures to put an end to the aggression and to use whatever means were necessary to prevent its repetition. It also urged the Council to call upon the United States, to withdraw its naval fleet and to put an end to its provocative manoeuvres directed against the Libyan Arab Jamahiriya.<sup>150</sup> Indignation was also expressed on behalf of the Group of Arab States at the “unwarranted act of aggression” by the United States. The Arab States believed such acts of aggression would continue unless deterrent measures were taken to end military operations of that kind. The Council was called upon to condemn such irresponsible acts of aggression, to adopt appropriate measures to prevent their repetition against the Libyan Arab Jamahiriya and to shoulder its responsibility under the Charter for the maintenance of international peace and security in the region.<sup>151</sup>

The United States argued that it was the aggrieved party and not the Libyan Arab Jamahiriya, whose air force had aggressively challenged routine operations conducted by the United States well beyond the 12-mile limit of the territorial seas claimed by the Government of the Libyan Arab Jamahiriya. The action by the United States aircraft, in response to provocation and threat by two armed Libyan fighter aircraft, was fully consistent with internationally accepted principles of self-defence. The United States Government had so informed the Secretary-General and the President of the Council under Article 51 of the Charter.<sup>152</sup>

Council members and non-members<sup>153</sup> characterized the action taken by the United States as

<sup>145</sup> S/PV.2899, pp. 31-32 (United States).

<sup>146</sup> *Ibid.*, pp. 26-27 (United Kingdom).

<sup>147</sup> S/PV.2900, pp. 6-7 (Yugoslavia).

<sup>148</sup> *Ibid.*, p. 37 (Peru).

<sup>149</sup> *Ibid.*

<sup>150</sup> S/PV.2835, pp. 6-13.

<sup>151</sup> *Ibid.*, pp. 17-21 (Bahrain).

<sup>152</sup> *Ibid.*, pp. 13-17 (United States). See also chapter XI, part IX, on Article 51.

<sup>153</sup> *Ibid.*, pp. 24-28 (Observer for the League of Arab States); pp. 32-38 (Syrian Arab Republic); pp. 39-42 (Cuba); S/PV.2836, pp. 6-10 (Uganda); pp. 23-28 (Madagascar); pp. 28-33 (Nicaragua); pp. 39-42 (Afghanistan); pp. 43-46 (Democratic Yemen); S/PV.2837, pp. 7-11 (Algeria); pp. 16-22 (Islamic Republic of Iran); pp. 22-28 (Zimbabwe); S/PV.2839, pp. 21-25 (Sudan); S/PV.2840, pp. 22-27 (United Arab Emirates); pp. 27-31 (German Democratic Republic); pp. 41-46 (Yemen); and S/PV.2841, pp. 28-31 (Mongolia).

an act of aggression in violation of international law and the Charter, which posed a threat to peace and security in the region. They rejected the claim of self-defence invoked by the United States and urged the Council to condemn the act of aggression and to take measures to prevent the recurrence of such acts. Several speakers<sup>154</sup> appealed for the exercise of restraint and the prevention of further escalation of tension, some recalling the importance of the Charter principles relating to the non-use or threat of force against territorial integrity or economic independence of any State and the peaceful settlement of disputes. It was held that the Council would not be living up to its responsibilities if it did not assert strongly that actions of States conform with international obligations in compliance with the norms regulating relations, particularly respect for sovereignty and inviolability and refraining from the threat or use of force against States.<sup>155</sup>

Other speakers<sup>156</sup> accepted the explanation of the United States for its actions. One member explained that it would vote against a draft resolution before the Council on this item,<sup>157</sup> owing, inter alia, to a reference contained therein to the definition of aggression, which could imply a deliberate will on the part of the United States to create the incident.<sup>158</sup>

### Case 11

#### *Items relating to the Libyan Arab Jamahiriya*

The decisions adopted by the Security Council in relation to the Libyan Arab Jamahiriya<sup>159</sup> did not give rise to a constitutional discussion on Article 2 (4).

<sup>154</sup> S/PV. 2835, pp. 21-23 (Burkina Faso); pp. 28-32 (Tunisia); S/PV.2836, pp. 18-23 (Nepal); pp. 37-40 (Mali); S/PV.2837, pp. 12-13 (Colombia); pp. 28-32 (Pakistan); S/PV.2839, pp. 16-18 (Senegal); pp. 24-26 (India); pp. 27-31 (Morocco); pp. 31-33 (Bangladesh); S/PV.2840, pp. 8-12 (Malta); pp. 38-41 (Poland); and S/PV.2841, pp. 32-37 (Palestine); pp. 41-45 (Malaysia).

<sup>155</sup> S/PV.2841, pp. 41-45 (President).

<sup>156</sup> Ibid., pp. 37-40 (Canada); p. 41 (United Kingdom); pp. 44-46 (France); p. 46 (Finland).

<sup>157</sup> S/20378. The draft resolution received 9 votes in favour, 4 against (Canada, France, United Kingdom, United States), with 2 abstentions (Brazil, Finland) and was not adopted owing to the negative votes of three permanent members of the Council (see S/PV.2841, p. 48).

<sup>158</sup> S/PV.2841, pp. 44-46 (France).

<sup>159</sup> Resolutions 731 (1992) and 748 (1992).

However, pertinent arguments were made concerning the provisions of that Article during the Council's consideration of the item.

In the course of the Council's consideration of resolutions 731 (1992) and 748 (1992), members and non-members of the Council denounced and condemned acts of international terrorism,<sup>160</sup> State-sponsored terrorism<sup>161</sup> or acts of terrorism in which States had been involved directly or indirectly,<sup>162</sup> including "through material, political or moral assistance to terrorists".<sup>163</sup> It was held that the "logic of confrontation" which fed into terrorism in all its forms and manifestations was "in contradiction with the principles and purposes of the Charter, which in Article 2, paragraph 4, calls upon Members of our Organization to refrain in their international relations from the threat or use of force".<sup>164</sup> It was also noted, however, that resolution 731 (1992) of 21 January 1992 was "limited strictly to acts of terrorism involving State participation".<sup>165</sup> It was exceptional by its nature and could not be considered in any way as a precedent but was intended only "for those cases in which States are involved in acts of terrorism".<sup>166</sup>

## B. Article 2, paragraph 5

### *Article 2, paragraph 5*

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

### Note

During the period under review, the Security Council adopted three resolutions<sup>167</sup> containing

<sup>160</sup> S/PV.3033, pp. 24-25 (Libyan Arab Jamahiriya); pp. 43-45 (Italy); p. 47 (Canada); p. 83 (Belgium); p. 92 (Austria); and S/PV.3063, p. 59 (India).

<sup>161</sup> S/PV.3033, pp. 24-25 (Libyan Arab Jamahiriya).

<sup>162</sup> Ibid., p. 47 (Canada); p. 83 (Belgium).

<sup>163</sup> S/PV.3063, p. 59 (India).

<sup>164</sup> S/PV.3033, p. 51 (Mauritania).

<sup>165</sup> Ibid., p. 101 (Venezuela).

<sup>166</sup> Ibid.

<sup>167</sup> In connection with the situation between Iraq and Kuwait, see resolution 661 (1990). In connection with

provisions that may have some bearing on the principle of Article 2 (5).

By resolution 661 (1990) of 6 August 1990, the Council imposed, under Chapter VII of the Charter, a sanctions regime on both Iraq and Kuwait, as detailed in paragraphs 3 to 8 of the resolution.<sup>168</sup> In paragraph 9, however, the Council decided that “notwithstanding paragraphs 4 to 8 above, nothing in the present resolution shall prohibit assistance to the legitimate Government of Kuwait”, and it called upon all States (a) to take appropriate measures to protect assets of the legitimate Government of Kuwait and its agencies; and (b) not to recognize any regime set up by the occupying Power.<sup>169</sup>

By resolution 740 (1992) of 7 February 1992, concerning the situation in the former Yugoslavia, the Council expressed its “concern at the indications that the arms embargo imposed on Yugoslavia by resolution 713 (1991) [was] not being fully observed, as noted in paragraph 21 of the report<sup>170</sup> of the Secretary-General”.<sup>171</sup>

By resolution 787 (1992) of 16 November 1992, the Council expressed its deep concern “about reports of continuing violations of the arms embargo imposed on Yugoslavia by its resolutions 713 (1991) and 724 (1991) of 15 December 1991”.<sup>172</sup> By the same resolution, the Council requested “all States to provide in accordance with the Charter such assistance as may be required” by those States acting in accordance with its authorization to use such measures, commensurate with the specific circumstances, as might be necessary to halt inward and outward maritime and riparian shipping, in order to ensure the strict implementation of the arms embargo imposed by resolution 713 (1991) and the sanctions imposed by resolution 757 (1992).<sup>173</sup>

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the situation in the former Yugoslavia, see resolutions 740 (1992) and 787 (1992).

<sup>168</sup> Resolution 661 (1990), paras. 3-8. See also chapter XI, part III, on Article 41.

<sup>169</sup> Resolution 661 (1990), para. 9. See also resolution 670 (1990), para. 9.

<sup>170</sup> S/23513.

<sup>171</sup> Resolution 740 (1992), seventh preambular para.

<sup>172</sup> Resolution 787 (1992), eleventh preambular para. See also resolutions 713 (1991) and 724 (1991).

<sup>173</sup> For the Council’s request to all States to provide assistance in accordance with the Charter, see resolution 787 (1992), para. 15. For the Council’s authorization of States to take such action as necessary to halt maritime

Statements were made during the course of the Council’s consideration of the draft text<sup>174</sup> of resolution 787 (1992) that also have a bearing on the principle set out in Article 2 (5). Some States<sup>175</sup> called for a partial lifting of the arms embargo imposed on Yugoslavia by resolution 713 (1991), so as to allow Bosnia and Herzegovina to exercise its right of self-defence. They also referred to the need to assist Bosnia and Herzegovina to that end.<sup>176</sup> It was argued that “from the standpoint of justice and equality, a policy that would prevent Bosnia from obtaining military assistance to enable it to exercise its legitimate right to self-defence [was] untenable”.<sup>177</sup> It was up to all, therefore, including the Security Council, “to ensure that assistance of all types — military and material — be provided to Bosnia so that it could defend itself against aggression”.<sup>178</sup> The international community was called upon “to provide all necessary material, military and moral support to enable the Government of Bosnia and Herzegovina to exercise its right of self-defence”.<sup>179</sup> Furthermore, those who were in a position to and had the will to provide appropriate assistance which would “help the Bosnians to deter Serbian aggression” were requested to hasten in doing so.<sup>180</sup> In that context, the representative of Croatia noted that his Government had offered “military help to the Croats in Bosnia and Herzegovina and to the Bosnian

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shipping, see para. 12 of that resolution. For the Council’s authorization of riparian States to take such action as necessary to halt shipping on the Danube, see para. 13 of that resolution. For further reference to the Council’s invocation of Chapter VII in this instance, see chapter XI, part III, of the present Supplement. For further reference to the Council’s invocation of Chapter VIII in this instance, see part VI of the present chapter.

<sup>174</sup> S/24808/Rev.1.

<sup>175</sup> S/PV.3137, p. 28 (Comoros); p. 41 (Croatia); p. 51 (Kuwait); and p. 92 (United Arab Emirates).

<sup>176</sup> See also chapter XI, part III, on Article 41, and part IX, on Article 51.

<sup>177</sup> S/PV.3137, p. 92 (United Arab Emirates).

<sup>178</sup> *Ibid.* See also the letter dated 13 August 1992 from the representative of Egypt to the President of the Security Council (S/24438), in which it is stated that it is necessary for the Council, *inter alia*, “to permit the Government of Bosnia and Herzegovina to exercise the right of self-defence within the framework of the Charter and to assist it in implementing this right by enabling it to obtain the essential defensive means necessary for that purpose”.

<sup>179</sup> S/PV.3137, p. 51 (Kuwait).

<sup>180</sup> *Ibid.*, p. 28 (Comoros).

Government forces”, in accordance with bilateral agreements.<sup>181</sup>

### C. Article 2, paragraph 6

#### *Article 2, paragraph 6*

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

#### Note

There were no explicit references to the provision of Article 2 (6) in the resolutions or decisions of the Security Council. The Council did, however, adopt three resolutions<sup>182</sup> which touched upon the provisions of Article 2 (6). Each of those resolutions contained a specific reference to the cooperation of States non-members of the United Nations in the imposition of sanctions under Chapter VII of the Charter. All three resolutions may be seen as implicitly invoking the provisions of Article 2 (6) in order to call on States non-members of the United Nations to comply with the principle enshrined in Article 2 (5).

In resolution 661 (1990) of 6 August 1990, by which the Council imposed sanctions on Iraq, the Council called upon “all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution”.<sup>183</sup>

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<sup>181</sup> Ibid., p. 41 (Croatia).

<sup>182</sup> In connection with the situation between Iraq and Kuwait, see resolution 661 (1990). In connection with the Libyan Arab Jamahiriya, see resolution 748 (1992). In connection with the situation in the former Yugoslavia, see resolution 757 (1992). See also part II, section B, concerning Article 2 (5), in the present chapter.

<sup>183</sup> Resolution 661 (1990), para. 5. During the Council’s consideration of resolution 661 (1990) in its draft form (S/21441), it was noted that “as operative paragraph 5 also makes clear, the draft resolution speaks to all States, Members and non-members alike”; see S/PV.2933, p. 18 (United States).

In resolution 748 (1992) of 31 March 1992, by which it imposed sanctions on the Libyan Arab Jamahiriya, the Council called upon “all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted before 15 April 1992”.<sup>184</sup>

In resolution 757 (1992) of 30 May 1992, by which it imposed sanctions on the Federal Republic of Yugoslavia (Serbia and Montenegro), the Council called upon “all States, including States not members of the United Nations, and all international organizations, to act strictly in accordance with the provisions of the present resolution, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted prior to the date of the present resolution”.<sup>185</sup>

In addition, the Council adopted several resolutions and presidential statements containing provisions that might be construed as implicit references to Article 2 (6). In connection with the situation in the occupied Arab territories, the Council called upon “the High Contracting Parties to the [1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War] to ensure respect by Israel, the occupying Power, for its obligations under the Convention in accordance with article 1 thereof”.<sup>186</sup> In other cases, provisions of the Council’s resolutions were addressed to “all States”. The majority of those provisions related to the application of sanctions and embargoes, the Council deciding that “all States” should take steps to impose measures in accordance with the relevant sanctions regime, or calling upon “all States” to take measures connected with the implementation or administration of

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<sup>184</sup> Resolution 748 (1992), para. 7.

<sup>185</sup> Resolution 757 (1992), para. 11.

<sup>186</sup> Resolution 681 (1990), para. 5. On the date of adoption of the resolution, the High Contracting Parties to the Convention included Monaco, San Marino, the Holy See and Switzerland, none of which were Members of the United Nations.

sanctions.<sup>187</sup> By other provisions not directly related to the imposition, implementation or administration of sanctions, the Council requested “all States” to undertake a variety of actions, including: (i) to support peace initiatives,<sup>188</sup> including by voluntary contributions;<sup>189</sup> (ii) to contribute to international cooperation in a particular field;<sup>190</sup> (iii) to provide appropriate support to or to cooperate with a Council-mandated body or force;<sup>191</sup> (iv) to provide assistance or support to the United Nations and its programmes or agencies;<sup>192</sup> (v) to provide assistance to States acting pursuant to resolutions of the Council;<sup>193</sup> (vi) to take

steps to ensure the cooperation of parties to a dispute or conflict with initiatives of the United Nations;<sup>194</sup> (vii) to support humanitarian efforts;<sup>195</sup> (viii) to use political influence to achieve a certain objective;<sup>196</sup> (ix) to ratify certain international legal instruments;<sup>197</sup> (x) to refrain from recognition of a declared annexation;<sup>198</sup> and (xi) to refrain from actions which could undermine peace initiatives or increase tensions in a particular situation.<sup>199</sup>

In one resolution, the Council reminded “all States” of their obligation to “observe strictly” certain specified resolutions of the Security Council.<sup>200</sup> Some resolutions distinguished between obligations placed on “Member States” and obligations placed on “all States”.<sup>201</sup>

Other resolutions adopted by the Council contained different forms of language. In resolution 670 (1990), the Council addressed a decision to “each

<sup>187</sup> In connection with the sanctions regime imposed against Iraq, see resolutions 661 (1990), paras. 5 and 7; 670 (1990), paras. 1, 7-8 and 10; 687 (1991), paras. 25 and 27; 700 (1991), paras. 3-4; 706 (1991), para. 8; and 778 (1992), paras. 3 and 13. In connection with the arms embargo imposed against the former Yugoslavia, see resolutions 724 (1991), para. 5; and 740 (1992), para. 8. In connection with the sanctions imposed against the Federal Republic of Yugoslavia (Serbia and Montenegro), see resolutions 757 (1992), paras. 11-12 and 14; and 787 (1992), paras. 11 and 15. In connection with the sanctions imposed against the Libyan Arab Jamahiriya, see resolution 748 (1992), paras. 3-8 and 10. In connection with the arms embargo imposed against Liberia, see resolution 788 (1992), para. 8.

<sup>188</sup> In connection with the item entitled “Central America: efforts towards peace”, see resolution 637 (1989), para. 4. In connection with the situation in Cambodia, see resolution 668 (1990), para. 11. In connection with the situation in Angola, see resolution 696 (1991), third preambular para.

<sup>189</sup> In connection with the situation in El Salvador, see resolution 791 (1992), para. 7.

<sup>190</sup> In connection with the item entitled “The marking of plastic or sheet explosives for the purposes of detection”; see resolution 635 (1989), third preambular para. and paras. 2, 5 and 6. In connection with the Libyan Arab Jamahiriya, see resolution 731 (1992), fourth preambular para.

<sup>191</sup> In connection with the situation between Iraq and Kuwait, see resolution 692 (1991), para. 8. In connection with the situation in the former Yugoslavia, see resolution 743 (1992), para. 11. In connection with the situation in Cambodia, see resolutions 766 (1992), para. 8, and 783 (1992), para. 4.

<sup>192</sup> In connection with the situation in Cambodia, see resolution 745 (1992), para. 9. In connection with the situation in Angola, see resolution 747 (1992), para. 7. In connection with the situation in the former Yugoslavia, see resolution 757 (1992), para. 19.

<sup>193</sup> In connection with the situation between Iraq and Kuwait, see resolutions 665 (1990), para. 3, and 678 (1990), para. 3. In connection with the situation in the former Yugoslavia, see resolution 770 (1992), para. 5. In connection with the situation in Somalia, see resolution

794 (1992), para. 17.

<sup>194</sup> In connection with the situation in the former Yugoslavia, see resolution 740 (1992), para. 6. In connection with the Libyan Arab Jamahiriya, see resolution 731 (1992), para. 5.

<sup>195</sup> In connection with the situation in Somalia, see resolution 733 (1992), para. 9. In connection with the situation in the former Yugoslavia, see resolution 761 (1992), para. 5.

<sup>196</sup> In connection with the question of hostage-taking and abduction, see resolution 638 (1989), para. 3. In connection with the situation between Iraq and Kuwait, see resolution 674 (1990), para. 12.

<sup>197</sup> In connection with the situation between Iraq and Kuwait, see resolution 674 (1990), para. 5.

<sup>198</sup> In connection with the situation between Iraq and Kuwait, see resolution 665 (1990), para. 2.

<sup>199</sup> In connection with the situation in Angola, see resolutions 696 (1991), third preambular paragraph, 785 (1992), para. 4, and 793 (1992), para. 8. In connection with the situation in the former Yugoslavia, see resolutions 713 (1991), para. 7, and 724 (1991), para. 7. In connection with the situation in Somalia, see resolution 733 (1992), para. 6.

<sup>200</sup> In connection with the situation between Iraq and Kuwait, see resolution 667 (1990), para. 5, by which the Council reminded “all States” that they were “obliged to observe strictly resolutions 661 (1990), 662 (1990), 664 (1990), 665 (1990) and 666 (1990)”.

<sup>201</sup> In connection with the situation between Iraq and Kuwait, see resolutions 665 (1990), paras. 1-3, and 678 (1990), paras. 2-3. In connection with the situation in Somalia, see resolution 794 (1992), paras. 10-12 and 17.

State”<sup>202</sup> and set out the consequence of violation of the resolution by “a State”.<sup>203</sup> In resolution 748 (1992), the Council reaffirmed the duty of “every State” to refrain from involvement in terrorism in accordance with the principle enshrined in Article 2 (4) of the Charter.<sup>204</sup> In resolution 757 (1992), the Council decided that “no State” should make funds available to the authorities of or to any undertaking in the country concerned.<sup>205</sup> A number of provisions in resolutions were also addressed to “States”.<sup>206</sup>

The Council adopted a number of resolutions during the period under review preceding the admission to membership in the United Nations of Bosnia and Herzegovina, Croatia, and the Federal Republic of Yugoslavia (Serbia and Montenegro), in which it called upon or demanded action by “all States” or “all parties and others concerned”.<sup>207</sup>

The Council also adopted two presidential statements in which it called for action from “all States”.<sup>208</sup> It adopted five presidential statements concerning the situation in the Middle East by which it imposed a duty on “any State”; in that case, the Council asserted that “any State [should] refrain from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations”.<sup>209</sup>

None of those decisions gave rise to a constitutional discussion of Article 2 (6). On a number of occasions, however, Council members made implicit references to Article 2 (6) by calling for action from “all States”<sup>210</sup> or interpreting provisions of resolutions

<sup>202</sup> In connection with the situation between Iraq and Kuwait, see resolution 670 (1990), para. 5.

<sup>203</sup> Resolution 670 (1990), para. 12, by which the Council decided “to consider, in the event of evasion of the provisions of resolution 661 (1990) or the present resolution by a State or its nationals or through its territory, measures directed at the State in question to prevent such evasion”.

<sup>204</sup> In connection with the Libyan Arab Jamahiriya, see resolution 748 (1992), sixth preambular para.

<sup>205</sup> In connection with the situation in the former Yugoslavia, see resolution 757 (1992), para. 5, by which the Council decided that “no State [should] make available to the authorities in the Federal Republic of Yugoslavia (Serbia and Montenegro) or to any commercial, industrial or public utility undertaking in the Federal Republic of Yugoslavia (Serbia and Montenegro), any funds or any other financial or economic resources and [should] prevent their nationals and any persons within their territories from removing from their territories or otherwise making available to those authorities or to any such undertaking any such funds or resources ...”.

<sup>206</sup> In connection with the question of hostage-taking and abduction, see resolution 638 (1989), para. 6. In connection with the situation in the former Yugoslavia, see resolutions 757 (1992), para. 1; 770 (1992), paras. 2 and 4; 771 (1992), para. 5; and 780 (1992), para. 1. In connection with the situation in Bosnia and Herzegovina, see resolutions 781 (1992), para. 5, and 787 (1992), para. 12. In connection with the situation between Iraq and Kuwait, see resolutions 674 (1990), paras. 2 and 9, and 712 (1991), para. 11. In connection with the situation in Somalia, see resolution 794 (1992), para. 16.

<sup>207</sup> For this and similar language, see resolution 740 (1992), paras. 6-8; 743 (1992), paras. 8-10 and 12; 749 (1992),

paras. 3-6; 752 (1992), paras. 1, 3, 6, 8, 11 and 13; 757 (1992), paras. 3-5, 7-9, 11, 12, 14, 17 and 20; 758 (1992), paras. 5-8; 761 (1992), paras. 2-5; 762 (1992), paras. 2, 5 and 11; 764 (1992), paras. 3, 5, 8 and 10; 769 (1992), para. 3; 770 (1992), paras. 1, 5 and 6; 771 (1992), paras. 1 and 3; 779 (1992), paras. 2 and 3; 786 (1992), para. 4; and 787 (1992), paras. 3, 4, 6, 11, 15 and 18. See also the presidential statement of 24 April 1992 (S/23842). For relevant statements concerning the status of the Federal Republic of Yugoslavia (Serbia and Montenegro), see S/PV.3116, p. 2 (Russian Federation); p. 12, (France); p. 12 (United States); p. 14 (China); p. 16 (Austria); p. 16 (Hungary); and S/PV.3137, p. 67 (Mr. Ilija Djukic); p. 117 (Bosnia and Herzegovina). See also resolutions 752 (1992), 757 (1992) and 777 (1992).

<sup>208</sup> In connection with the situation in El Salvador, see the presidential statement of 8 December 1989 (S/21011). In connection with the situation in the former Yugoslavia, see the statement of 4 August 1992 (S/24378).

<sup>209</sup> Statements of 30 January 1991 (S/22176); 30 July 1991 (S/22862); 29 January 1992 (S/23495); 19 February 1992 (S/23610); and 30 July 1992 (S/24362). See also the discussion relating to Article 2 (4) in the present chapter.

<sup>210</sup> In connection with the item entitled “Central America: efforts towards peace”, see S/PV.2871, p. 4 (United States). In connection with the situation between Iraq and Kuwait, see S/PV.2933, p. 18 (United States); p. 53 (Romania); S/PV.2934, p. 28 (Colombia); p. 31 (Romania); S/PV.2938, p. 56 (Romania); and S/PV.2940, p. 22 (Romania). In connection with the situation in the former Yugoslavia, see S/PV.3009, p. 36 (Yemen). In connection with the situation in Liberia, see S/PV.3138, p. 82 (Ecuador). In connection with the situation in Somalia, see S/PV.3145, p. 27 (Russian Federation).



as authorizing actions by “all States”.<sup>211</sup> Further, several references were made to the obligation of “all States” to comply with the Council’s resolutions and the Charter.<sup>212</sup> In one instance, a distinction was expressed between the respective duties of Member States and all States with regard to the situation under discussion.<sup>213</sup>

#### D. Article 2, paragraph 7

##### *Article 2, paragraph 7*

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

#### Note

During the period under review, the Security Council adopted one resolution which contained an explicit reference to Article 2 (7).<sup>214</sup> In the Council debates in relation to the adoption of a number of resolutions, there were explicit references to paragraph 7 of Article 2, while on other occasions the principle of the Charter provision regarding the principle of non-interference in domestic affairs was referred to. A debate on the interpretation of the Article was also held in connection with the adoption of resolution 688 (1991) and in connection with the adoption of resolution 706 (1991) regarding the establishment of a programme to ameliorate the humanitarian situation in Iraq.

<sup>211</sup> See, for example, in connection with the situation in the former Yugoslavia, S/PV.3106, p. 16 (Zimbabwe); and p. 51 (China).

<sup>212</sup> In connection with the situation between Iraq and Kuwait, see S/PV.2933, p. 18 (United States); S/PV.2940, p. 21 (United States); and S/PV.2951, p. 83 (Zaire). In connection with the situation in Angola, see S/PV.3130, p. 23 (Russian Federation). In connection with the Libyan Arab Jamahiriya, see S/PV.3033, p. 91 (Hungary).

<sup>213</sup> In connection with the situation between Iraq and Kuwait, see S/PV.2938, p. 56 (Romania).

<sup>214</sup> Resolution 688 (1991), second preambular paragraph.

More generally, the principle enshrined in Article 2 (7) and, in particular, its impact on the Council’s ability to address situations of civil war and massive violations of human rights, was also discussed at the Council’s summit meeting on the item entitled “The responsibility of the Security Council in the maintenance of international peace and security”.<sup>215</sup>

#### Case 12

##### *Repression of the Iraqi civilian population in parts of Iraq; resolution 688 (1991)*

In response to requests from Turkey and France,<sup>216</sup> the President of the Security Council called an urgent Council meeting on 5 April 1991,<sup>217</sup> to discuss concerns with regard to the repression of the Iraqi civilian population in parts of Iraq. The Council adopted resolution 688 (1991) by which it, inter alia, condemned the repression, and demanded that Iraq, “as a contribution to removing the threat to international peace and security in the region, immediately end this repression”.

The representative of Turkey stated that his Government had requested the meeting “in view of the grave threat to the peace and security of the region posed by the tragic events taking place in Iraq”. He highlighted both the human suffering of those affected and the impact of the flow of refugees on his country.<sup>218</sup>

The representative of the Islamic Republic of Iran, whose country was similarly affected, stated that it was evident “that the situation inside Iraq, due to its gravity and implications for the neighbouring countries, ha[d] consequences that threaten[ed] regional and international peace and security”.<sup>219</sup>

The representative of France expressed the view that “violations of human rights such as those now being observed become a matter of international interest when they take on such proportions that they assume the dimension of a crime against humanity”. He added that “the influx of refugees, the continued fighting in the border areas [and] the increasing number of massacres [were] arousing indignation and

<sup>215</sup> 3046th meeting, held on 31 January 1992.

<sup>216</sup> Letters dated 2 and 4 April 1991 (S/22435 and S/22442).

<sup>217</sup> 2982nd meeting.

<sup>218</sup> S/PV.2982, p. 4.

<sup>219</sup> *Ibid.*, p. 15.

threatening international peace and security in the region".<sup>220</sup>

The representative of the United States, while reaffirming that it was "not the role or the intention of the Security Council to interfere in the internal affairs of any country", stated that it was "the Council's legitimate responsibility" to respond to concerns by Iraq's neighbours "about the massive number of people fleeing, or disposed to flee, from Iraq across international frontiers because of the repression and brutality of Saddam Hussein".<sup>221</sup>

The representative of the United Kingdom reminded Council members that human rights questions, for example in South Africa, had often been found not to be "essentially domestic" matters within the meaning of Article 2 (7). The situation could not, therefore, be described as an entirely internal matter. In any event, the situation was of international concern, as "the huge surge of refugees [was] destabilizing the whole region".<sup>222</sup>

Several other speakers agreed that the situation constituted a threat to peace and stability in the region, in particular in view of the large-scale outflow of refugees from Iraq across international borders.<sup>223</sup>

The representative of Iraq, on the other hand, asserted that the refugees were in fact "saboteurs who [had] penetrated through the borders" and were now escaping to safe havens. Accordingly, he described the action to be taken by the Council as "a flagrant, illegitimate intervention in Iraq's internal affairs and a violation of Article 2 of the Charter prohibiting the intervention in the internal affairs of other States".<sup>224</sup>

The representative of India, who abstained from the vote on the draft resolution, noted that he would have preferred the Council to focus its attention "on the aspect of the threat or likely threat to peace and security in the region", and that the Council should

have left the other aspects to "other, more appropriate organs of the United Nations".<sup>225</sup>

The representative of China, while expressing sympathy for the difficulties confronting Turkey and the Islamic Republic of Iran as a result of the influx of refugees, observed that the matter was "a question of great complexity, because the internal affairs of a country [were] also involved". He reminded Council members that, according to Article 2 (7) of the Charter, the Council should "not consider or take action on questions concerning the internal affairs of any State".<sup>226</sup>

The representative of Yemen noted that, according to Article 2 of the Charter, it was "not within the Council's purview to address internal issues in any country". He stated that Yemen did not share the view that there was a problem threatening international peace and security, as there was "no conflict or war taking place across the borders of Iraq with its neighbours". Accordingly, he stated that the draft resolution was an attempt "to politicize the humanitarian issue", which could set "a dangerous precedent that would open the way to diverting the Council away from its basic functions and responsibilities for safeguarding international peace and security".<sup>227</sup>

The representative of Cuba asserted that Article 2 (7) set strict limits on Security Council authority, and that the existence of a humanitarian emergency did not permit the Council to disregard those limits, especially where the Charter empowered other organs of the United Nations to address humanitarian issues.<sup>228</sup> A similar view was taken by the representative of Zimbabwe.<sup>229</sup>

The majority of speakers, while emphasizing that as a matter of principle they were opposed to any form of interference in the internal affairs of any country, agreed that Council action was required, and believed that the text of the draft resolution adequately addressed the situation.<sup>230</sup>

<sup>220</sup> Ibid., p. 53.

<sup>221</sup> Ibid., pp. 57-58. The representative of the United States conceded, however, that the resolution addressed a special case following the end of the Gulf war and should not be viewed as a general precedent for future Security Council action.

<sup>222</sup> Ibid., pp. 64-65.

<sup>223</sup> Ibid., p. 24 (Romania); p. 36 (Ecuador); p. 56 (Austria); p. 60 (Soviet Union); p. 67 (Belgium); p. 69 (Italy); p. 74 (Luxembourg); and p. 92 (Canada).

<sup>224</sup> Ibid., p. 17.

<sup>225</sup> Ibid., p. 63.

<sup>226</sup> Ibid., pp. 54-55.

<sup>227</sup> Ibid., pp. 27-30.

<sup>228</sup> Ibid., pp. 42-52.

<sup>229</sup> Ibid., pp. 31-32.

<sup>230</sup> See for example S/PV.2982, pp. 6-8 (Turkey); pp. 9-10 (Pakistan); pp. 11-15 (Islamic Republic of Iran); pp. 23-25 (Romania); pp. 35-37 (Ecuador); p. 53

A number of speakers expressly welcomed the explicit reference to Article 2 (7) contained in the preamble to the resolution as acknowledging the limits of United Nations authority to intervene in the internal affairs of Member States.<sup>231</sup>

In connection with proposals made at meetings in August and November 1992,<sup>232</sup> however, that Mr. Van der Stoel, Special Rapporteur on the situation of human rights in Iraq, be invited to give a briefing, the representatives of China and India stressed that the Council should restrict its deliberations and actions to its sphere of competence under the Charter. The Council had primary responsibility for the maintenance of international peace and security. It should exercise caution in the manner in which it interpreted that mandate. It could not discuss human rights situations per se or make recommendations in that regard. The representatives considered it inappropriate, therefore, that the Security Council should invite the Special Rapporteur to participate in the meetings of the Council.<sup>233</sup> This position was supported by the delegation of Zimbabwe.<sup>234</sup>

The representative of Ecuador, on the other hand, observed that the invitation to Mr. Van der Stoel (in that case) did not affect or increase the normal authority of the Council as it fell within the scope of a resolution already adopted, and should be understood to reflect all the limitations inherent in that resolution itself. Recalling that by resolution 688 (1991) the Council had condemned the acts of repression committed by Iraq against the Iraqi civilian population in many parts of the country, and found this repression and its consequences to be a threat to peace and security in the region, the representative noted that the Special Rapporteur would thus be providing information on matters that were within the purview of the Council.<sup>235</sup>

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(France); p. 56 (Austria); and p. 58 (United States).

<sup>231</sup> S/PV.2082, p. 23 (Romania); see also p. 37 (Ecuador); p. 38 (Zaire); p. 61 (Soviet Union); and pp. 79-80 (Ireland).

<sup>232</sup> 3105th and 3139th meetings.

<sup>233</sup> S/PV.3105, pp. 6-7 (India); pp. 12-13 (China); and S/PV.3139, p. 3 (China).

<sup>234</sup> S/PV.3105, pp. 11-12 (Zimbabwe); and S/PV.3139, pp. 4-5 (Zimbabwe).

<sup>235</sup> S/PV.3105, pp. 7-10. At the 3139th meeting, the Council decided to extend the invitation (see S/PV.3139, p. 6). See also chapter III, case 4.

### Case 13

*Issues raised in connection with the establishment of a programme to ameliorate the humanitarian situation in Iraq; resolution 706 (1991)*

In the deliberations held in connection with the adoption of resolution 706 (1991), by which the Council established a programme under which Iraq would be permitted to sell certain quantities of petroleum and petroleum products in order to finance the purchase of foodstuffs, medicine and supplies essential for civilian needs, issues in connection with the principle enshrined in Article 2 (7), were raised.

The representative of Iraq argued that the programme set out in resolution 706 (1991) would impinge on Iraq's national sovereignty and impose a "foreign guardianship" on the Iraqi people. It would deprive the Government of Iraq of its "powers and responsibilities with respect to its citizens and abolish its role in caring for them and providing for their livelihood, their daily need for foodstuffs and health and medical services". He alleged that the resolution involved "colonialist restrictions that would rob Iraq of its right to full sovereignty, interfere in its internal affairs, plunder its oil wealth and usurp its right to dispose of its own funds".<sup>236</sup> He asserted that the attempt to impose a United Nations supervision system was aimed at "derogating from Iraq's sovereignty".<sup>237</sup>

The representative of Cuba stated that the establishment of the mechanism proposed by the resolution would mean "appropriating elements of Iraqi sovereignty and would seek to apply to Iraq a type of trusteeship". He contended that the Charter did not authorize the Council "to take upon itself certain functions and responsibilities, or to entrust them to the Secretary-General, which are clearly a breach of the principle of non-intervention in the internal affairs of States and of the principle of the sovereign equality of States".<sup>238</sup>

The representative of China stated that the resolution had to be implemented with full respect for the sovereignty of Iraq, which was entitled to play a role in the purchase and distribution of food, medicine and other materials to meet essential civilian needs.<sup>239</sup>

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<sup>236</sup> S/PV.3004, p. 37

<sup>237</sup> Ibid., p. 41.

<sup>238</sup> Ibid., pp. 68-70.

<sup>239</sup> Ibid., p. 82.

The representative of India stated that humanitarian assistance should be provided through means consistent with the Charter, “particularly the all-important principle of non-interference in the internal affairs of countries”. It was especially important that the measures adopted did not adversely affect or undermine the sovereignty of Iraq, whose consent would therefore be of “cardinal importance”. He believed that the provisions in the resolution did not “call for arrangements of a tutelary kind that might have the effect of interfering in Iraq’s internal affairs”. That was to be borne in mind by the Secretary-General when making his recommendations on the implementation of the resolution.<sup>240</sup>

The representative of Ecuador considered “that supervision and monitoring by the United Nations should not lead the Organization to engage in actions at variance with permanent respect for the principles of the Charter, particularly paragraphs 1 and 2 of Article 2”.<sup>241</sup>

The representative of Zimbabwe expressed “reservations regarding those provisions of the resolution encroaching on national sovereignty”, and believed that “monitoring arrangements could have been put in place to ensure transparency, without infringing on sovereignty”.<sup>242</sup>

A number of speakers underlined the need for strict monitoring and supervisions.<sup>243</sup>

The representative of the United States noted that the importance of vigilant monitoring of the distribution of humanitarian assistance, to deter its diversion to privileged sectors of Iraqi society or its misuse at the expense of those most in need, could not be overemphasized.<sup>244</sup>

The representative of France believed that “very specific modalities for the sale of Iraqi oil, for the use of the resources thus generated and for the distribution of essential goods thus purchased” were indispensable to meet the humanitarian needs of the Iraqi population as a whole, as the Government of Iraq could not be trusted.<sup>245</sup>

Similarly, the representative of the United Kingdom believed that, “in view of the past record of the Iraqi Government”, effective United Nations monitoring arrangements for the oil sales and the equitable distribution of humanitarian supplies were indeed essential.<sup>246</sup>

#### Case 14

##### *Initial response to the situation in the former Yugoslavia; resolution 713 (1992)*

During the debate held in connection with the adoption of resolution 713 (1992)<sup>247</sup> by which the Council, inter alia, determined that the situation constituted a threat to international peace and security, and imposed a complete embargo on all deliveries of arms and military equipment to Yugoslavia, the representative of Yugoslavia emphasized his country’s historic devotion to the principle of non-interference and the sovereign right of all States to decide their own future, but acknowledged that the Council’s concern was fully justified. He observed that Yugoslavia was “in conflict with itself” and believed that the Yugoslav people were no longer capable of solving the crisis by themselves. He also expressed his belief that “the Yugoslav crisis threaten[ed] peace and security on a large scale”.<sup>248</sup>

Several members of the Council placed emphasis on the fact that the conflict had begun to spill over national borders and that it was, therefore, of international concern,<sup>249</sup> while others emphasized that, in the light of the Charter provisions prohibiting the intervention by the United Nations in the internal affairs of any State, the explicit agreement of the Government of Yugoslavia to the Council’s involvement in the Yugoslav crisis had been a decisive

<sup>246</sup> Ibid., p. 84.

<sup>247</sup> Adopted at the 3009th meeting, on 25 September 1991.

<sup>248</sup> S/PV.3009, pp. 6-20. See also the letter dated 24 September 1991, from the representative of Yugoslavia to the President of the Security Council, by which Yugoslavia indicated its agreement to the Council’s involvement in the crisis (S/23069).

<sup>249</sup> S/PV.3009, p. 21 (Belgium); pp. 51-53 (Soviet Union); pp. 58-62 (United States); pp. 55-57 (United Kingdom); and pp. 44-48 (India).

<sup>240</sup> Ibid., pp. 97-98.

<sup>241</sup> Ibid., pp. 101-102.

<sup>242</sup> Ibid., p. 62.

<sup>243</sup> Ibid., pp. 73-75 (France); p. 84 (United Kingdom); p. 87 (Austria); and p. 92 (Belgium).

<sup>244</sup> Ibid., pp. 79-80 (United States).

<sup>245</sup> Ibid., pp. 73-75.

factor in their decision to vote for the draft resolution.<sup>250</sup>

### Case 15

#### *Response to the situation in Bosnia and Herzegovina; resolution 757 (1992) and 770 (1992)*

During the debate held in connection with the adoption of resolution 757 (1992),<sup>251</sup> by which the Council determined that the situation in Bosnia and Herzegovina and in other parts of the former Socialist Federal Republic of Yugoslavia constituted “a threat to international peace and security”, Council members expressed differing views with regard to the nature of that threat. While several speakers perceived the conflict as a foreign aggression against Bosnia and Herzegovina,<sup>252</sup> others saw the threat to the peace as

emanating essentially from ethnic strife within Bosnia and Herzegovina.<sup>253</sup>

In spite of those differences, a broad majority of Council members agreed on the necessity of addressing the threat by adopting measures under Chapter VII of the Charter.<sup>254</sup> The representatives of China and Zimbabwe,<sup>255</sup> however, were of the view that the situation ought to be addressed by negotiations rather than action under Chapter VII of the Charter.

In the discussions held in connection with the adoption of resolution 770 (1991),<sup>256</sup> by which the Council, acting under Chapter VII of the Charter, called upon States “to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery by relevant United Nations humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina”, the representative of China stated that his delegation had voted in favour of the resolution “solely out of humanitarian considerations”. He further noted that China deemed the invoking of Chapter VII of the Charter to be inappropriate and placed China’s reservations on record. Noting that Chapter VII of the Charter could be invoked only under situations that seriously threatened international peace and security, not under other circumstances, he stated his delegation’s view that the invoking of Chapter VII in the resolution should not constitute a precedent.<sup>257</sup>

Most other members of the Council expressly welcomed the action taken by the Council in response

<sup>250</sup> Ibid., pp. 28-32 (Zimbabwe); pp. 32-37 (Yemen); pp. 44-48 (India); pp. 49-51 (China); pp. 51-53 (Soviet Union); and pp. 55-57 (United Kingdom). Yemen and Zimbabwe, in particular, voiced the concern that the proposed draft resolution could be seen as Security Council involvement in matters essentially related to the domestic affairs of a Member State. The representative of Yemen noted the tendency of the Council to deal with new problems posed by internal conflicts “experimentally” and warned that such an approach ran counter to the principles of the Charter, including the principles of respect for sovereignty of States and non-intervention in their domestic affairs. He stressed the importance of observing Charter principles and avoiding experimentation in settling internal disputes (S/PV.3009, p. 32 (Zimbabwe); pp. 33 and 36 (Yemen)). See also the letter dated 25 September 1991, from the representative of Canada to the President of the Security Council, in which Canada stated that, although the concept of sovereignty was fundamental to statehood, the concept of sovereignty had to respect higher principles; no longer would the wanton destruction of human life be considered a matter of purely internal concern (S/23076).

<sup>251</sup> Adopted at the 3082nd meeting, on 30 May 1992.

<sup>252</sup> See for example the statement made by the representative of the United States: “The aggression of the Serbian regime and the armed forces it has unleashed against Bosnia and Herzegovina represent a clear threat to international peace and security” (S/PV.3082, p. 33). See also the statement made by the representative of Hungary: “To sum up, the provisions of resolution 752 (1992) are not being complied with at all, and the aggression against Bosnia and Herzegovina is raging on” (ibid., p. 15). The representative of Venezuela noted that

“Belgrade” was “waging war against other States, sovereign members of our Organization” (ibid., pp. 26-30).

<sup>253</sup> See for example the statement made by the representative of the Russian Federation: “The expansion of the ethnic strife into a broader bloody conflict involving groups and forces from republics bordering on Bosnia and Herzegovina constitutes a real threat to the countries of the region and to international peace and security” (S/PV.3082, p. 36).

<sup>254</sup> Resolution 757 (1992) was adopted by 13 votes to none, with 2 abstentions (China, Zimbabwe).

<sup>255</sup> S/PV.3082, pp. 9-13.

<sup>256</sup> Adopted at the 3106th meeting, on 13 August 1992.

<sup>257</sup> S/PV.3106, p. 52.

to the humanitarian crisis in Bosnia and Herzegovina, or accepted the necessity of such actions.<sup>258</sup>

### Case 16

#### *The situation relating to Afghanistan*

By a letter to the President of the Security Council dated 3 April 1989,<sup>259</sup> the representative of Afghanistan requested the convening of an emergency meeting to consider “Pakistan’s military aggression and its overt and covert interference in the internal affairs of the Republic of Afghanistan”.<sup>260</sup>

Afghanistan reiterated its allegations against Pakistan during the Council’s debates on this matter,<sup>261</sup> claiming that “peace, stability and security in South-West Asia” were threatened, and drawing attention to the “dangerous implications of the aggression by Pakistan for peace and security in the region and in the world”. He requested the Security Council “to take all urgent measures within its competence” under the Charter “to stop Pakistani aggression and intervention against Afghanistan”.<sup>262</sup>

The representative of Pakistan, on the other hand, maintained that the situation in Afghanistan was a purely internal one and represented the continuing “struggle of the Afghan people to overthrow an illegal

and unrepresentative regime that [had been] imposed on them by external military intervention”.<sup>263</sup>

A number of speakers were also of the view that, following the withdrawal of Soviet troops from Afghanistan, the situation in Afghanistan was no longer an international dispute, and therefore not a matter for Council involvement.<sup>264</sup>

Numerous other speakers, however, contended that the continued support given by Pakistan and the United States to Afghan rebel groups in their attempt to overthrow the lawful Government of Afghanistan constituted a serious threat to international peace and security in the region. Accordingly, the situation could not be seen as an internal matter, and had been properly brought before the Security Council.<sup>265</sup>

### Case 17

#### *The situation in Liberia*

At a meeting held on 22 January 1991,<sup>266</sup> the Liberian representative recalled that his country had been trying for several months to have the Council seized with the situation in his country. He deplored the fact that the strict application of the Charter

<sup>258</sup> Ibid., p. 6 (Cape Verde); p. 9 (Ecuador); p. 11 (India); p. 16 (Zimbabwe); p. 21 (Morocco); p. 21 (Japan); pp. 22-23 (Austria); p. 28 (Russian Federation); p. 32 (Hungary); p. 34 (United Kingdom); p. 38 (United States); p. 44 (Venezuela); p. 45 (Belgium); and p. 47 (France). The representative of Ecuador stated his belief that “the provision of humanitarian assistance [was] without doubt a basic condition for the restoration of peace and security in the region” (ibid., p. 9).

<sup>259</sup> S/20561. See also the letter dated 28 March 1989 from the representative of Afghanistan to the President of the Security Council (S/20545).

<sup>260</sup> In response, the representative of Pakistan, by a letter to the President of the Council dated 7 April 1989 (S/20577), contended that international peace and security were not endangered. Pakistan maintained that the situation inside Afghanistan was a purely internal one, in which the Afghan people were resisting the rule of an illegal and unrepresentative regime that had been imposed on them by external military intervention.

<sup>261</sup> 2852nd to 2860th meetings, held from 11 to 26 April 1989.

<sup>262</sup> S/PV.2852, pp. 5-25; and S/PV.2857, pp. 39-45.

<sup>263</sup> S/PV.2852, pp. 26-27; S/PV.2859, p. 42; and S/PV.2860, p. 56.

<sup>264</sup> S/PV.2853, pp. 6-11 (Organization of Islamic Conference); pp. 11-12 (Saudi Arabia); pp. 17-18 (Malaysia); pp. 42-43 (Japan); pp. 51-53 (United States); S/PV.2855, pp. 12-13 (China); pp. 13-16 (United Kingdom); and pp. 21-22 (Canada); S/PV.2856, pp. 27-30 (Comoros); S/PV.2857, pp. 11-12 (Bangladesh); and p. 12 (Nepal); S/PV.2859, pp. 13-17 (Somalia); p. 24 (Saudi Arabia); p. 38 (United States) and S/PV.2860, p. 54 (United States).

<sup>265</sup> S/PV.2853, pp. 22-30 (German Democratic Republic); pp. 29-30 (Cuba); pp. 33-36 (Mongolia); and pp. 43-48 (Democratic Yemen); S/PV.2855, pp. 3-7 (India); pp. 32-33 (Soviet Union); S/PV.2856, pp. 6-7 (Lao People’s Democratic Republic); pp. 11-15 (Nicaragua); pp. 16-20 (Ethiopia); pp. 21-23 (Viet Nam); pp. 33-37 (Bulgaria); and pp. 38-41 (Angola); S/PV.2857, pp. 3-10 (Czechoslovakia); pp. 16-17 (Yugoslavia); pp. 18-22 (Ukrainian Soviet Socialist Republic); pp. 28-31 (Congo); S/PV.2859, pp. 7-8 (Algeria); pp. 11-12 (Hungary); pp. 21-22 (Poland); pp. 31-38 (Byelorussian Soviet Socialist Republic); and S/PV.2860, pp. 22-26, 41, 62 (Soviet Union).

<sup>266</sup> 2974th meeting. The meeting had been requested by the representative of Côte d’Ivoire in a letter dated 15 January 1991 to the President of the Security Council (S/22076).

provisions relating to non-interference in the internal affairs of Member States had “hampered the effectiveness of the Council and its principal objective of maintaining international peace and security”. This raised the question whether it would be necessary to review, and perhaps reinterpret, the Charter provisions calling for non-interference in the internal affairs of Member States.<sup>267</sup>

During the debate held in connection with the adoption of resolution 788 (1992),<sup>268</sup> by which the Council determined the existence of a threat to international peace and security, and imposed a general arms embargo on Liberia, the Minister for Foreign Affairs of Liberia emphasized the international dimension of the civil war, stating that the conflict, by its spillover effects, was “already a clear and present danger to neighbouring Sierra Leone”, which might be “slowly transforming West Africa into an arms market”. He insisted that the civil war had to be “perceived in the context of the Council’s responsibility for the maintenance of international peace and security”.<sup>269</sup>

Similar views were expressed by other speakers.<sup>270</sup>

<sup>267</sup> S/PV.2974, p. 3.

<sup>268</sup> Adopted at the 3138th meeting, on 19 November 1992.

<sup>269</sup> S/PV.3138, pp. 18-20.

<sup>270</sup> The representative of the Russian Federation believed that “the failure of some belligerent Liberian groups to implement the plan for a peaceful settlement in Liberia agreed to under the auspices of ECOWAS [would] lead to an exacerbation of the situation in that country and [was] fraught with danger not only to neighbouring States but also to international peace and security, particularly in West Africa” (S/PV.3138, p. 66). This view was shared by the representative of China, who felt that the conflict “had threatened the peace and security of the neighbouring States and the region as a whole” (ibid., p. 71). The representative of Cape Verde noted that the dimension that the conflict in Liberia had assumed had become “a destabilizing factor in West Africa as a whole and pose[d] a real threat to international peace and security” (ibid., p. 69). The representative of Ecuador felt that the extension of the consequences of the crisis to neighbouring countries had given the crisis an “international character” and that “the persistence of the problem threatened the peace and security of the subregion as a whole” (ibid., p. 81). The Minister for Foreign Affairs of Benin, speaking on behalf of ECOWAS, feared that there remained a great risk that the civil war would spread to the entire West

## Case 18

### *The situation in Somalia*

During the debate held in connection with the adoption of resolution 794 (1992),<sup>271</sup> by which the Council determined that “the magnitude of the human tragedy caused by the conflict in Somalia” constituted a threat to international peace and security,<sup>272</sup> most Council members agreed that the humanitarian situation itself necessitated the adoption of measures under Chapter VII of the Charter,<sup>273</sup> without expressly

African subregion and that its continuation “threatened the peace and security of the West African subregion and therefore international peace and security” (ibid., pp. 8-11 and 97). The representative of Senegal believed that the war posed a “genuine threat to the peace and security of the 16 countries of ECOWAS” and was, therefore, a “destabilizing factor for the countries of the region” (ibid., p. 22). The representative of Zimbabwe noted that the conflict had now “spilled over into neighbouring countries and thus present[ed] a threat not only to the region but to international peace and security” (ibid., p. 62). The representative of Egypt agreed that the situation posed a “threat to peace and security in the region of West Africa and, therefore, [made] it incumbent upon the Security Council to act” (ibid. pp. 93-95).

<sup>271</sup> Adopted at the 3145th meeting, on 3 December 1992.

<sup>272</sup> By a letter dated 29 November 1992 to the President of the Security Council (S/24868), the Secretary-General had advised the Council that there was no alternative but to adopt “more forceful measures to secure the humanitarian operations in Somalia”. Noting that no government existed in Somalia that could request and allow the use of force, he observed that the Council had “to make a determination under Article 39 of the Charter that a threat to the peace existed, as a result of the repercussions of the Somali conflict on the entire region, and to decide what measures should be taken to maintain international peace and security”. In this context, it may be interesting to note, however, that resolution 794 (1992) does not contain any reference to the “repercussion of the Somali conflict on the entire region”.

<sup>273</sup> S/PV.3145. See for example the statement made by the representative of the Russian Federation: “The Russian delegation is convinced that, at the present juncture, resolution of the crisis requires the use of international armed forces under the auspices of the Security Council to ensure the delivery and safe keeping of the humanitarian assistance and its distribution to the country’s starving population” (S/PV.3145, p. 26). See also the statement made by the representative of the United Kingdom: “The international community has no wish to intervene in the internal affairs of [Somalia], but

referring to any specific regional or international implications of the crisis.<sup>274</sup>

While a number of Council members emphasized the unique character of the situation in Somalia, and cautioned that the action taken by the Council should not be seen as a precedent,<sup>275</sup> other members of the Council saw the new nature of the threat posed by the situation in Somalia as symptomatic for the new challenges to which the United Nations and the international community had to adapt.<sup>276</sup>

### Case 19

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

Following the eruption of violence in the Old City of Jerusalem, which had resulted in the death of more than 20 Palestinians, the Council adopted resolution 672 (1990).<sup>277</sup> The Council welcomed the

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it cannot stand by and permit a humanitarian crisis of this magnitude to continue" (ibid., p. 35). The representative of France noted that, in adopting resolution 794 (1992), the Council had "demonstrated its determination to put an end to the suffering of the Somali people", adding that the commitment was "part of the principle of establishing access to victims and of the right to emergency humanitarian assistance" (ibid., p. 29).

<sup>274</sup> A few such references were however made during the debate. See S/PV.3145, pp. 19-20 (Cape Verde); p. 42 (Venezuela); p. 44 (Morocco); and p. 38 (United States).

<sup>275</sup> See for example S/PV.3145, p. 51 (India) and p. 17 (China). It should be noted that a reference to the "unique character" of the situation in Somalia is also contained in the preamble to resolution 794 (1992).

<sup>276</sup> The representative of the United States noted that, "by acting in response to the tragic events in Somalia, the international community [was] also taking an important step in developing a strategy for dealing with the potential disorder and conflicts of the post-cold-war world" (S/PV.3145, p. 36). The representative of France believed that by the resolution the United Nations had "demonstrated its capacity to adapt to new challenges" (ibid., p. 30). The representative of Hungary felt that it would "be difficult, confronted with world public opinion, for the international community to avoid its responsibility to meet the challenges arising in hotbeds of crisis as serious as the one that [was] continuing to tear Somalia apart" (ibid., p. 48).

<sup>277</sup> Adopted at the 2948th meeting, on 12 October 1990. See also the verbatim records of the 2946th and 2947th meetings held in connection with the same matter on 8 and 9 October 1990 respectively. See also the case study on the proposed fact-finding mission (chapter X,

Secretary-General's decision to send a fact-finding mission to the region, to look into the circumstances surrounding the recent tragic events in Jerusalem and other similar developments in the occupied territories, and to submit a report containing findings and recommendations to the Council on ways and means for ensuring the safety and protection of the Palestinian civilians under Israeli occupation.<sup>278</sup>

Having learned of Israel's refusal to receive the proposed mission of the Secretary-General,<sup>279</sup> the Council met on 24 October 1990.<sup>280</sup> At that meeting, the representative of Israel explained that Israel had expressed its readiness to assist the Secretary-General in the preparation of a report on the relevant events, but emphasized that Israel, like any other sovereign State, was the exclusive authority in the territory under its control. The representative noted that Israel had appointed its own "independent commission of inquiry consisting of three prominent figures", which would "present its findings and conclusions on the chain of events, their causes and the actions of Israel's security forces".<sup>281</sup>

Many speakers expressed regret at Israel's refusal to receive the mission of the Secretary-General, and underlined that Israel was under an obligation to comply with resolution 672 (1990).<sup>282</sup> It was also noted that Israel's sensitivities had been taken into account in the Council's approach to this matter, and that resolution 672 (1990), instead of calling for the establishment of a Council mission to investigate the

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part II, case 2).

<sup>278</sup> S/PV.2948, p. 27. According to the President of the Security Council, the purpose of the mission had been so stated by the Secretary-General in informal consultations. The Secretary-General had also recalled, however, "that under the Fourth Geneva Convention the principal responsibility for ensuring the protection of the Palestinians rested with the occupying power, namely Israel" (ibid.).

<sup>279</sup> The relevant statement, which had been adopted by the Israeli Cabinet on 14 October 1990, was cited in the Secretary-General's report of 31 October 1990 (S/21919, para. 3).

<sup>280</sup> 2949th meeting.

<sup>281</sup> S/PV.2949, p. 17.

<sup>282</sup> Ibid., p. 27 (Palestine); pp. 38-40 (Sudan); p. 43 (Yemen); p. 48 (Zaire); p. 52 (Malaysia); p. 54 (Colombia); and p. 56 (Cuba).



incident, had discreetly welcomed the Secretary-General's decision to send a mission to the region.<sup>283</sup>

Following further deliberations, the Council, on 24 October 1990, unanimously adopted resolution 673 (1990),<sup>284</sup> by which it deplored Israel's refusal to receive the mission of the Secretary-General to the region; urged the Government of Israel to reconsider its decision; and insisted that it comply fully with resolution 672 (1990) and permit the mission to proceed in keeping with its purpose.

In his report to the Council, however, the Secretary-General noted that, owing to Israel's continued refusal to receive his mission, he had been unable to secure independent information about the circumstances surrounding the recent events.<sup>285</sup>

In the Council's consideration of the report, several speakers again denounced Israel's rejection of the above-mentioned resolutions.<sup>286</sup> The representative of Israel, however, was of the view that the proposed mission was "not intended to ascertain facts" but rather "a transparent attempt to encroach upon Israel's sovereignty". He maintained that Israel had the sole responsibility for the occupied territories, and reiterated that Israel would "reject any encroachment on its sovereignty and authority".<sup>287</sup>

On 20 December 1990, the Council adopted resolution 681 (1990), by which it expressed its grave concern over the rejection by Israel of resolutions 672 (1990) and 673 (1990) and requested the Secretary-General to monitor and observe the situation regarding Palestinian civilians under Israeli occupation, and to keep the Council regularly informed.

## Case 20

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

During the Council's summit meeting on the item entitled "The responsibility of the Security Council in

the maintenance of international peace and security",<sup>288</sup> speakers discussed the question how the concept of national sovereignty and the principle of non-interference in domestic affairs could be reconciled with the need to address violations of human rights<sup>289</sup> and threats posed by internal conflicts.<sup>290</sup> Many speakers expressed the view that the principle of non-interference should not be interpreted in a way which would prevent the Council from addressing such threats and violations.<sup>291</sup>

The Secretary-General observed that, in the context of changes in the global order, and in the light of new challenges to the collective security of States, the concept of State sovereignty had taken on a new meaning. It comprised not only a "dimension of right", but also a "dimension of responsibility, both internal and external". Although a violation of State sovereignty was and would remain an offence against the global order, its misuse could "undermine human rights and jeopardize a peaceful global life".<sup>292</sup>

The President of the Russian Federation believed that the protection of human rights and freedoms could not be considered an internal matter for States, as it was an obligation under the Charter and other international legal instruments. The Council was therefore called upon to underline the collective responsibility for the protection of human rights and freedoms.<sup>293</sup>

The President of the United States, noting that human dignity and human rights were not the

<sup>288</sup> 3046th meeting. For the first time since its inception, the Council met at the level of Heads of State and Government.

<sup>289</sup> S/PV.3046, p. 41 (Morocco); p. 46 (Russian Federation); p. 66 (Austria); pp. 69 and 73 (Belgium); pp. 114-115 (Hungary); pp. 130-131 (Zimbabwe); and pp. 136 and 139 (United Kingdom).

<sup>290</sup> Ibid., p. 63 (Austria); p. 81 (Cape Verde); and p. 130 (Zimbabwe).

<sup>291</sup> Ibid., pp. 27-28 (Ecuador); p. 57 (Venezuela); pp. 114-115 (Hungary); and pp. 130-131 (Zimbabwe).

<sup>292</sup> S/PV.3046, p. 9. The Secretary-General also noted that "civil wars [were] no longer civil, and the carnage that they inflict [would] not let the world remain indifferent". He further observed that "the narrow nationalism that would oppose or disregard the norms of a stable international order and the micro-nationalism that resist[ed] healthy economic and political integration [could] disrupt a peaceful global existence".

<sup>293</sup> Ibid., p. 46.

<sup>283</sup> Ibid., for example pp. 44-45.

<sup>284</sup> The resolution was sponsored by Colombia, Cuba, Malaysia and Yemen.

<sup>285</sup> S/21919, para. 8.

<sup>286</sup> S/PV.2953, pp. 6-22 (Palestine); pp. 22-32 (Lebanon); pp. 32-45 (Jordan); pp. 57-62 (Yemen); and pp. 63-66 (Iraq).

<sup>287</sup> Ibid., pp. 52 and 56.

“possessions of the State”, but universal rights, stated that “in Asia, in Africa, in Europe [and] in the Americas, the United Nations must stand with those who seek greater freedom and democracy”.<sup>294</sup>

The President of Ecuador observed that “the liberty of States, which is called sovereignty, is not undermined but rather is strengthened by the establishment of international organizations”.<sup>295</sup>

The President of Venezuela believed that it was necessary to “adapt the traditional concept of national sovereignty, incorporating into it the transnational responsibilities implicit in the interdependence of all our nations”.<sup>296</sup>

The Federal Chancellor of Austria expressed the view that many items on the Council’s agenda were increasingly related to internal conflicts that, sooner or later, could affect international peace and security.<sup>297</sup> He emphasized that States should not be permitted to use “outdated interpretations of legal documents as protective walls behind which human rights [could] be systematically and massively violated with total impunity”.<sup>298</sup>

The Prime Minister of Belgium emphasized that States had a responsibility to the international community at large to respect the human rights of their peoples. He asserted further that “the *raison d’être* of the principle of non-interference [was] to allow States to foster in freedom the well-being of their peoples”. He warned, however, that no Government should use that principle as a legal argument to condone abuses of human rights, and that State rights were subservient to human rights.<sup>299</sup>

The Minister for Foreign Affairs of Hungary stated that “respect for human rights and the rights of minorities [was] not merely a legal and humanitarian

question [but] also an integral part of international collective security”, and that it was “indispensable for the Security Council to take resolute action to defend and protect these rights”.<sup>300</sup>

The Minister for Foreign Affairs of Zimbabwe asserted that established principles governing international relations, such as that of non-interference in the internal affairs of other States, would have to accommodate efforts by the United Nations and by regional organizations to protect the basic human rights of individuals and social groups. Recalling the international concern for and action against apartheid, the Minister asserted that “[m]assive and deliberate violations of human rights” and “situations of oppression and repression” could no longer be tolerated anywhere. He cautioned, however, that the Council would have to exercise great care to avoid using such conflicts as a pretext for intervention by big Powers in the legitimate domestic affairs of small States.<sup>301</sup>

While the speakers quoted above generally supported international action to counter gross violations of human rights, the Chinese Premier emphasized that, while human rights and fundamental freedoms should be fully respected, these matters fell within the sovereignty of each State. It was neither appropriate nor workable to demand that all States measure up to the human rights criteria or models of one country or a small number of countries. He emphasized that “such basic principles as the sovereign equality of Member States and non-interference in their internal affairs, as enshrined in the Charter of the United Nations, should be observed by all its Members without exception”. While China was ready to engage in dialogue and to cooperate on an equal footing with other countries with regard to human rights, it would oppose any interference in the internal affairs of other countries under the pretext of human rights.<sup>302</sup>

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<sup>294</sup> *Ibid.*, p. 51.

<sup>295</sup> *Ibid.*, pp. 27-28.

<sup>296</sup> *Ibid.*, p. 57.

<sup>297</sup> *Ibid.*, p. 63. The representative of Cape Verde, also commenting on internal national conflicts, believed that “without interfering with the sovereignty of countries, the deployment of United Nations peacekeeping forces [could] play an important and decisive role in helping bring about a speedy peaceful outcome to national conflicts whenever no Government is really in charge and chaos sets in” (*ibid.*, p. 81).

<sup>298</sup> *Ibid.*, p. 66.

<sup>299</sup> *Ibid.*, p. 73.

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<sup>300</sup> *Ibid.*, pp. 114-115.

<sup>301</sup> *Ibid.*, pp. 130-131.

<sup>302</sup> *Ibid.*, p. 91.

### Part III

## Consideration of the provisions of Article 24 of the Charter

#### Article 24

1. *In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.*
2. *In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII and XII.*
3. *The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.*

#### Note

None of the resolutions adopted by the Council during the period under review contained an explicit reference to Article 24 of the Charter, but the principles contained in that Article were nevertheless reflected in a number of the Council's decisions.<sup>303</sup> Explicit references were made to Article 24 on several

<sup>303</sup> In connection with the situation between Iraq and Kuwait, see resolutions 661 (1990), fifth preambular para.; and 678 (1990), third preambular para. See also a draft resolution submitted by Cuba but not put to the vote (S/22232, third preambular para.). In connection with items relating to the situation in the former Yugoslavia, see resolutions 713 (1991), fifth preambular para.; 724 (1991), third preambular para.; 727 (1992), third preambular para.; 740 (1992), fifth preambular para.; 743 (1992), sixth preambular para.; 749 (1992), third preambular para.; 752 (1992), fourth preambular para.; 757 (1992), twelfth preambular para.; and 762 (1992), third preambular para. In connection with the letters dated 2 and 4 April 1991 from the representatives of Turkey and France to the President of the Security Council, see resolution 688 (1991), first preambular para. In connection with the item entitled "Central America: efforts toward peace", see the presidential statement of 23 May 1990 (S/21331). In connection with the item entitled "United Nations peacekeeping operations", see the statement of 30 May 1990 (S/21323).

occasions during the proceedings of the Council.<sup>304</sup> The cases below reflect the practice of the Council touching upon the provisions of Article 24 as illustrated by its decisions and deliberations in connection with the situation between Iraq and Kuwait and the responsibility of the Security Council in the maintenance of international peace and security.

#### Case 21

##### *The situation between Iraq and Kuwait*

At the 2981st meeting of the Council, on 2 April 1991, some speakers contended, without invoking Article 24 explicitly, that the Security Council was assuming powers not granted to it under the Charter of the United Nations.<sup>305</sup> The representative of Yemen stated that "imposition of the boundaries between Iraq and Kuwait" was counter to resolution 660 (1990), which called on the parties to negotiate to resolve their differences. The Security Council had never before set boundaries; that task had always been left to negotiations, or the International Court of Justice. Furthermore, there was "no precedent whatsoever" for the Security Council to guarantee the boundaries of any country.<sup>306</sup> The representative of Cuba affirmed that international boundaries should be respected and that the Security Council had the obligation to ensure that they were not violated. He contended, however, that the Council totally lacked "the authority to demand respect for certain border lines, or to demarcate them, or to determine in what part of what region of the world those boundaries [were] violable, boundaries in respect to which it proclaim[ed] the determination to shoulder special responsibility".<sup>307</sup> The representative of Ecuador argued that the case of

<sup>304</sup> In connection with the situation in the occupied Arab territories, see S/PV.2949, p. 48 (Zaire); and p. 58 (Cuba). In connection with the situation between Iraq and Kuwait, see S/PV.2951, p. 6 (Iraq); S/PV.2977 (Part I), p. 23 (Cuba); and p. 62 (Zaire); and S/PV.2977 (Part II) (closed), pp. 89-90 (Austria). In connection with the letters dated 2 and 4 April 1991 from the representatives of Turkey and France to the President of the Security Council, see S/PV.2982, p. 46 (Cuba).

<sup>305</sup> S/PV.2981, p. 41 (Yemen); p. 61 (Cuba); and pp. 107-108 (Ecuador).

<sup>306</sup> *Ibid.*, p. 41.

<sup>307</sup> *Ibid.*, p. 61.

the boundary between Iraq and Kuwait was not one of the exceptions envisaged in Article 36, the relevant provision of which provides “that legal disputes should as a general rule be referred by the parties to the International Court of Justice”. He added that Chapter VII of the Charter authorized the use of all necessary means to implement the resolutions of the Council; it could not confer on the Council more powers than those set forth in the Charter. The speaker noted with satisfaction the statement of the representative of the United States to the effect that the present case of the boundary between Iraq and Kuwait could not be considered in any way an applicable precedent and that its character as an exception was its distinguishing feature.<sup>308</sup>

Other speakers, on the other hand, maintained that the Council was not creating a new boundary in the case of the situation between Iraq and Kuwait.<sup>309</sup> The representative of India, while emphasizing that boundaries had to be settled freely by countries in exercise of their sovereignty and could not be arbitrarily imposed by the Council, observed that the Council was not engaging itself in establishing any new boundary between Iraq and Kuwait. Rather, the draft that would become resolution 687 (1991) recognized an existing boundary that had been agreed to by the two countries in exercise of their full sovereignty, and it called upon those countries to respect the boundary’s inviolability. It was India’s understanding that the provision of the draft resolution that guaranteed the inviolability of the boundary did “not confer authority on any country to take unilateral action under any previous resolutions of the Security Council”. The sponsors of the draft resolution had explained to his delegation that, in the case of a threat to or violation of the boundary, the Council would meet to take, as appropriate, all necessary measures in accordance with the Charter.<sup>310</sup>

The representative of the United States maintained that the task at hand, which was consistent with Chapter VII of the Charter, was to establish peace in such a way that Iraq never again threatened Kuwait’s sovereignty and integrity. For that reason, the Council in resolution 687 (1991) demanded that Iraq and

Kuwait respect their boundary as agreed upon in 1963, requested that the Secretary-General assist in arranging the demarcation of the boundary, and decided to guarantee its inviolability. The United States did not seek a new role for the Security Council as the body that determined international boundaries. Border disputes were issues to be negotiated directly between States or resolved through other pacific means of settlement.<sup>311</sup>

The representative of the Union of Soviet Socialist Republics stressed that resolution 687 (1991) aimed not only at restoring justice but also at issuing a serious warning to all those who might be inclined to embark on the path of aggression, occupation and annexation. He emphasized that the crux of the resolution was the establishment of a permanent ceasefire between Iraq and Kuwait and those States cooperating with Kuwait, after official notification by Iraq of its acceptance of the resolution. He stressed, in that regard, that the deployment on the boundary between Kuwait and Iraq of United Nations observers would create conditions for the withdrawal of multinational forces from the region. An important element in the process was the demarcation of the boundary between Iraq and Kuwait in accordance with the agreement to that effect deposited with the United Nations. It was of prime importance to observe the provision that the task of ensuring the inviolability of the boundary between Iraq and Kuwait lay with the Security Council, which, to that end, could take all necessary steps in accordance with the Charter of the United Nations.<sup>312</sup>

The representative of the United Kingdom stated that rapid demarcation of the boundary, the establishment of a United Nations observer unit to monitor a demilitarized zone along the frontier and a guarantee by the Security Council to step in if ever it were violated again were a carefully integrated package designed to ensure there would be no repetition of the invasion by Iraq. The intention was not to overturn the principle that it was for the parties to negotiate and reach agreement. Naturally, the Council had a duty to respond when disputes over boundaries arose and came to threaten international peace and security.<sup>313</sup>

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<sup>308</sup> *Ibid.*, pp. 107-108.

<sup>309</sup> See for example S/PV.2981, p. 78 (India); p. 86 (United States); pp. 98-105 (Russian Federation); and p. 113 (United Kingdom).

<sup>310</sup> *Ibid.*, p. 78.

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<sup>311</sup> *Ibid.*, p. 86.

<sup>312</sup> *Ibid.*, pp. 98-105.

<sup>313</sup> *Ibid.*, p. 113.

At the same meeting the Council adopted resolution 687 (1991) by 12 votes to 1 (Cuba), with 2 abstentions (Ecuador, Yemen). The resolution reads in part:

*The Security Council,*

...

2. *Demands* that Iraq and Kuwait respect the inviolability of the international boundary and the allocation of islands set out in the "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters", signed by them in exercise of their sovereignty at Baghdad on 4 October 1963 and registered with the United Nations;

3. *Calls upon* the Secretary-General to lend his assistance to make arrangements with Iraq and Kuwait to demarcate the boundary between Iraq and Kuwait, drawing on appropriate material including maps transmitted with the letter dated 28 March 1991 addressed to him by the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations, and to report back to the Council within one month;

4. *Decides* to guarantee the inviolability of the above-mentioned international boundary and to take, as appropriate, all necessary measures to that end in accordance with the Charter of the United Nations;

At its 3108th meeting, on 26 August 1992, the Council again considered the demarcation of the boundary between Iraq and Kuwait. The representative of Ecuador reiterated the argument that Article 36 of the Charter did not grant the Security Council competence under Chapter VII to pronounce itself on the territorial boundary between Iraq and Kuwait, or to determine any settlement intended to demarcate that boundary. The means used to implement Security Council resolutions could not endow the Council with powers beyond those set out in the Charter itself, and moreover those means had to be in strict conformity with international law.<sup>314</sup> The representative of Venezuela regarded the process of demarcation in the context of the special circumstances following Iraq's invasion of Kuwait, which had posed a threat to international peace and security. The draft resolution did not establish a precedent altering the general principle expressed in Article 33 of the Charter, that the parties directly involved in disputes should negotiate in order to overcome their differences.<sup>315</sup> The representative of India reiterated that boundaries were

<sup>314</sup> S/PV.3108, p. 3.

<sup>315</sup> *Ibid.*, p. 3.

extremely sensitive issues and should be freely settled by the parties in the exercise of their sovereignty. In the present case, the Council itself was not establishing any new boundary between Iraq and Kuwait. Rather, it was simply making arrangements for the demarcation of an already agreed-upon boundary.<sup>316</sup> The representative of the Russian Federation observed that concluding the demarcation of the boundary in accordance with resolution 687 (1991), which guaranteed the inviolability of the boundary, was an important element in strengthening regional stability.<sup>317</sup>

At the same meeting, the Council adopted resolution 773 (1992) by 14 votes to none, with one abstention (Ecuador). The resolution reads in part:

*The Security Council,*

...

*Recalling* in this connection that through the demarcation process the Commission is not reallocating territory between Iraq and Kuwait but is simply carrying out the technical task necessary to demarcate for the first time the precise coordinates of the boundary set out in the "Agreed Minutes between the State of Kuwait and the Republic of Iraq regarding the restoration of friendly relations, recognition and related matters", signed by them in exercise of their sovereignty at Baghdad on 4 October 1963, and that this task is being carried out in the special circumstances following Iraq's invasion of Kuwait and pursuant to resolution 687 (1991) and the Secretary-General's report on the implementation of paragraph 3 of that resolution,

...

4. *Underlines* the guarantee of the inviolability of the above-mentioned international boundary and its decision to take all appropriate measures to that end in accordance with the Charter of the United Nations, as provided for in paragraph 4 of resolution 687 (1991);

## Case 22

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

At its 3046th meeting, on 31 January 1992, the Security Council met at the level of Heads of State and Government, to consider the responsibility of the Council in the maintenance of international peace and security.

<sup>316</sup> *Ibid.*, pp. 7-8.

<sup>317</sup> *Ibid.*, p. 9.

In the course of the debate, speakers underlined the need to guarantee and strengthen the system of collective security.<sup>318</sup> The primary task of the Council was summed up as being to prevent, in accordance with the Charter of the United Nations, crises such as war, the break-up of States and terrorism.<sup>319</sup> It was also held that the United Nations, through the Security Council, had to act as the guardian of the security of nations, especially of small countries, and that it should serve as a catalyst for the promotion of the primacy of the rule of law in international relations.<sup>320</sup> It was also noted that the provisions of the Charter concerning collective security could not become operational unless all countries fully respected international law and unless the principle of equality among States was made a reality.<sup>321</sup> In addition, it was stated that the collective enforcement arrangements of the United Nations should ensure uniformity, with action being taken irrespective of the identity of the aggressor or of the victim.<sup>322</sup>

A number of speakers addressed the Council's decision-making and the veto. It was stated that the actions of the Security Council should flow from the "collective will" of the international community and not from the "views or predilections of a few".<sup>323</sup> As the Council took decisions of major importance on behalf of the entire membership of the United Nations, its decisions should be representative of the will of the general membership.<sup>324</sup> It was also observed that history had largely superseded the circumstances on which the veto had been based, and that the risks the veto had been designed to counter no longer existed. The time had come for the Organization to restore the basic principle underlying its validity: that of the equality of rights and obligations.<sup>325</sup> The protection and advancement of human rights was referred to by a number of speakers. On the one hand, there were those who proposed that the principle of non-interference ought not to be invoked to condone human rights abuses and that the Security Council had a role to play in the protection of human rights. Thus, it was stated

that human rights and freedoms were not an internal matter of States, but rather that they constituted obligations under the Charter, international covenants and conventions. The Council was thus called upon to underscore the protection of human rights and freedoms.<sup>326</sup> It was further suggested that the Security Council should deal with cases of serious violations of human rights at an early stage and support action taken elsewhere to put an end to unacceptable situations that could pose a direct threat to international peace and security.<sup>327</sup> One speaker underlined that for his country "respect for human rights and the rights of national minorities [was] not merely a legal and humanitarian question: it [was] an integral part of international collective security". Therefore, it was indispensable for the Council to take resolute action to defend and protect those rights.<sup>328</sup>

On the other hand, a number of speakers, while affirming the importance of human rights, considered that such rights should not be defined unilaterally or be used to determine the relations between States.<sup>329</sup> It was contended that the issue of human rights fell within the sovereignty of each country. Further, although human rights were valued, the human rights issue ought not to be used as pretext for interference in the internal affairs of other countries.<sup>330</sup> It was stated that the established principles governing inter-State relations — such as that of non-interference in the internal affairs of States — would have to accommodate efforts by the United Nations and regional organizations to protect the basic human rights of individuals and social groups. In the future the Council would be called upon to consider an increasing number of conflicts and humanitarian situations of a domestic nature that could pose threats to international peace and stability. Great care would thus have to be taken to ensure that those domestic conflicts were not used as a pretext for the intervention of big Powers in the legitimate domestic affairs of small States, or that human rights issues were not used for the purpose of destabilizing other Governments. The question of when a domestic situation warranted international action — either by the Council or regional organizations —

<sup>318</sup> S/PV.3046, p. 11 (Secretary-General); p. 16 (France); p. 53 (United States); and pp. 79-80 (Cape Verde).

<sup>319</sup> *Ibid.*, pp. 14-15 (France).

<sup>320</sup> *Ibid.*, p. 78.

<sup>321</sup> *Ibid.*, pp. 34-36 (Morocco).

<sup>322</sup> *Ibid.*, p. 126 (Zimbabwe).

<sup>323</sup> *Ibid.*, p. 97 (India).

<sup>324</sup> *Ibid.*, p. 126 (Zimbabwe).

<sup>325</sup> *Ibid.*, p. 56 (Venezuela).

<sup>326</sup> *Ibid.*, p. 46 (Russian Federation).

<sup>327</sup> *Ibid.*, p. 73 (Belgium).

<sup>328</sup> *Ibid.*, p. 115 (Hungary).

<sup>329</sup> *Ibid.*, pp. 92-93 (China); pp. 98-99 (India); pp. 130-131 (Zimbabwe).

<sup>330</sup> *Ibid.*, pp. 92-93 (China).

called for the establishment of principles to guide such decisions.<sup>331</sup> The need for the Council to engage in preventive action was also raised during the debate.<sup>332</sup> The Chancellor of Austria noted that recent crises underlined the need for an early reaction to potential conflicts. The instrument of preventive diplomacy, including by the Security Council, would have to be developed further. The Council would also have to consider the possibility of the preventive deployment of peacekeeping personnel.<sup>333</sup> The Prime Minister of the United Kingdom underlined that in future the Council would have to be prepared to act before tension became conflict.<sup>334</sup>

At the close of the meeting, the President, on behalf of the members, made a statement containing several references to the responsibility of the Council in the maintenance of international peace and security.<sup>335</sup> The statement in part reads:

...

The Security Council met at United Nations Headquarters in New York on 31 January 1992, for the first time at the level of Heads of State and Government. The members of the Council considered, within the framework of their commitment to the Charter of the United Nations, "The responsibility of the Security Council in the maintenance of international peace and security".

The members of the Council consider that their meeting is a timely recognition of the fact that there are new favourable international circumstances under which the Security Council has begun to fulfil more effectively its primary responsibility for the maintenance of international peace and security.

#### *A time of change*

This meeting of the Council takes place at a time of momentous change. The ending of the cold war has raised hopes for a safer, more equitable and more humane world. Rapid progress has been made, in many regions of the world, towards democracy and responsive forms of government, as well as towards achieving the purposes set out in the Charter of the United Nations. The completion of the dismantling of apartheid in South Africa would constitute a major contribution to these purposes and positive trends, including to the encouragement of respect for human rights and fundamental freedoms.

<sup>331</sup> Ibid., pp. 130-131 (Zimbabwe).

<sup>332</sup> Ibid., p. 63 (Austria); and p. 71 (Belgium).

<sup>333</sup> Ibid., p. 63.

<sup>334</sup> Ibid., pp. 137-138 (United Kingdom).

<sup>335</sup> Statement by the President of 31 January 1992 (S/23500).

Last year, under the authority of the United Nations, the international community succeeded in enabling Kuwait to regain its sovereignty and territorial integrity, which it had lost as a result of Iraqi aggression. The resolutions adopted by the Council remain essential to the restoration of peace and stability in the region and must be fully implemented. At the same time the members of the Council are concerned by the humanitarian situation of the innocent civilian population of Iraq.

The members of the Council support the Middle East peace process, facilitated by the Russian Federation and the United States of America, and hope that it will be brought to a successful conclusion on the basis of Council resolutions 242 (1967) of 22 October 1967 and 338 (1973) of 22 October 1973.

...

The members of the Council also recognize that change, however welcome, has brought new risks for stability and security. Some of the most acute problems result from changes to State structures. The members of the Council will encourage all efforts to help achieve peace, stability and cooperation during these changes.

The international community therefore faces new challenges in the search for peace. All Member States expect the United Nations to play a central role at this crucial stage. The members of the Council stress the importance of strengthening and improving the United Nations to increase its effectiveness. They are determined to assume fully their responsibilities within the United Nations in the framework of the Charter.

The absence of war and military conflicts among States does not in itself ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies, needs to give the highest priority to the solution of these matters.

#### *Commitment to collective security*

The members of the Council pledge their commitment to international law and to the Charter of the United Nations. All disputes between States should be peacefully resolved in accordance with the provisions of the Charter.

The members of the Council reaffirm their commitment to the collective security system of the Charter to deal with threats to peace and to reverse acts of aggression.

The members of the Council express their deep concern over acts of international terrorism and emphasize the need for the international community to deal effectively with all such acts.

...

In conclusion, the members of the Council affirm their determination to build on the initiative of their meeting in order to secure positive advances in promoting

international peace and security. They agree that the Secretary-General has a crucial role to play.

## Part IV Consideration of the provisions of Article 25 of the Charter

### *Article 25*

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

### Note

During the period under review, the Council adopted four resolutions that explicitly invoked Article 25 of the Charter.<sup>336</sup> By three of those resolutions the Council emphasized Iraq's obligation to comply with Council resolutions.<sup>337</sup> By one of those three resolutions the Council also called upon all States to carry out their obligations to implement sanctions against Iraq.<sup>338</sup> By the fourth resolution the Council recalled the provisions of Article 25 before deciding to establish the United Nations Protection Force (UNPROFOR), which was to implement the United Nations peacekeeping plan for Yugoslavia.<sup>339</sup>

In addition, Article 25 was touched upon, without being invoked explicitly, in a large number of resolutions<sup>340</sup> and statements<sup>341</sup> made by the President

on behalf of the members of the Council, as well as in one draft resolution<sup>342</sup> that was voted upon but not adopted by the Council. Those resolutions and presidential statements were directed at Member States in particular, at States in general, or at multiple parties, not all of which were Member States.

In provisions directed at one or more Member States, the Security Council called upon, demanded or insisted that a Member State comply with Council

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<sup>336</sup> In connection with the situation between Iraq and Kuwait, see resolutions 667 (1990), 670 (1990) and 686 (1991). In connection with the situation in the former Yugoslavia, see resolution 743 (1992).

<sup>337</sup> See resolutions 667 (1990), eighth preambular para.; 670 (1990), seventh and eighth preambular paras.; and 686 (1991), second preambular para.

<sup>338</sup> Resolution 670 (1990), seventh and eighth preambular paras. and para. 1.

<sup>339</sup> Resolution 743 (1992), seventh preambular para. and paras. 1-3.

<sup>340</sup> In connection with the situation in Namibia, see resolutions 629 (1989), para. 4; 632 (1989), para. 4; 640 (1989), para. 1; and 643 (1989), para. 5. In connection with the situation in the Middle East, see resolutions 633 (1989), para. (a); 639 (1989), para. 3; 645 (1989), para. (a); 648 (1990), para. 3; 655 (1990), para. (a); 659 (1990), para. 3; 679 (1990), para. (a); 684 (1991), para. 3; 695 (1991), para. (a); 701 (1991), para. 3; 722 (1991), para. (a); 756 (1992), para. (a); and 790 (1992),

para. (a). In connection with the situation in the occupied Arab territories, see resolutions 636 (1989), first and second preambular paras. and para. 2; 641 (1989), first and second preambular paras. and para. 2; 673 (1990), first, second and fourth preambular paras. and para. 2; and 681 (1990), para. 2. In connection with the situation between Iran and Iraq, see resolutions 631 (1989), para. (a); 642 (1989), para. (a); and 651 (1990), para. (a). In connection with the situation between Iraq and Kuwait, see resolutions 661 (1990), paras. 1 and 5; 665 (1990), fifth preambular para.; 666 (1990), fifth preambular para. and para. 2; 667 (1990), paras. 3 and 5; 670 (1990), second preambular para. and paras. 7 and 9; 674 (1990), third and twelfth preambular paras. and paras. 1, 3 and 10; 678 (1990), para. 1; 686 (1991), first preambular para. and para. 2; 687 (1991), para. 25; 707 (1991), paras. 1 and 5; 712 (1991), para. 11; 715 (1991), para. 5; and 778 (1992), third and sixth preambular paras. and para. 13. In connection with the items relating to the former Yugoslavia, see resolution 787 (1992), paras. 4-5. In connection with the items relating to the Libyan Arab Jamahiriya, see resolution 748 (1992), seventh preambular para. and paras. 1 and 7.

<sup>341</sup> In connection with the situation in Cyprus, see the presidential statement of 28 March 1991 (S/22415). In connection with the situation between Iraq and Kuwait, see the statements of 28 June 1991 (S/22746); 5 February 1992 (S/23517); 19 February 1992 (S/23609); 28 February 1992 (S/23663); 17 June 1992 (S/24113); 6 July 1992 (S/24240); and 24 November 1992 (S/24839). In connection with the situation in the former Yugoslavia, see the statement of 24 July 1992 (S/24346).

<sup>342</sup> In connection with the situation in the occupied Arab territories; see S/20463, paras. 2 and 4.



resolutions;<sup>343</sup> expressed the expectation that a Member State would comply with its obligations under Council resolutions;<sup>344</sup> reminded a Member State of its obligations under Council resolutions;<sup>345</sup> expressed alarm or grave concern at a Member State's rejection of, or refusal or failure to comply with, Council resolutions;<sup>346</sup> condemned or deplored a Member State's actions in violation of, or its failure to comply with, Council resolutions;<sup>347</sup> demanded that a Member State desist from action in violation of Council resolutions;<sup>348</sup> required a Member State to comply with Council resolutions;<sup>349</sup> decided that a Member State

must comply with Council resolutions;<sup>350</sup> and noted that a Member State's failure to comply with Council resolutions constituted a material breach of its resolutions.<sup>351</sup>

In provisions directed at States in general, the Council called upon "all States" or "States" to implement measures contained in its resolutions,<sup>352</sup> and reminded "all States" of their obligation to observe its resolutions.<sup>353</sup> In provisions addressing multiple parties to a dispute, at least one of which was a Member State, the Council reaffirmed the responsibility of parties to implement a settlement plan in accordance with a Council resolution;<sup>354</sup> demanded that parties comply with its resolutions;<sup>355</sup> called upon parties to implement its resolutions;<sup>356</sup> called upon parties to cooperate with a peacekeeping force in the implementation of its mandate;<sup>357</sup> condemned the

<sup>343</sup> In connection with the situation in Namibia, see resolutions 640 (1989), para. 1; and 643 (1989), para. 5. In connection with the situation between Iraq and Kuwait, see resolutions 667 (1990), para. 3; 674 (1990), twelfth preambular para. and para. 3; 678 (1990), para. 1; 686 (1991), first preambular para. and para. 2; 715 (1991), para. 5; and 778 (1992), para. 13. See also the statements by the President of 28 February 1992 (S/23663); and 6 July 1992 (S/24240). In connection with the situation in the occupied Arab territories, see resolutions 636 (1989), first and second preambular paras. and para. 2; 641 (1989), first and second preambular paras. and para. 2; and 673 (1990), first and second preambular paras. and para. 2.

<sup>344</sup> In connection with the situation between Iraq and Kuwait, see resolution 666 (1990), para. 2.

<sup>345</sup> In connection with the situation between Iraq and Kuwait, see the statement of 17 June 1992 (S/24113).

<sup>346</sup> In connection with the situation in the occupied Arab territories, see resolutions 673 (1990), fourth preambular para.; and 681 (1990), para. 2. In connection with the situation between Iraq and Kuwait, see resolutions 665 (1990), fifth preambular para.; and 666 (1990), fifth preambular para. See also the statements by the President of 5 February 1992 (S/23517); and 19 February 1992 (S/23609).

<sup>347</sup> In connection with the situation between Iraq and Kuwait, see resolutions 670 (1990), second preambular para.; 674 (1990), third preambular para.; 707 (1991), para. 1; and 778 (1992), third and sixth preambular paras. See also the statement by the President of 28 June 1991 (S/22746).

<sup>348</sup> In connection with the situation between Iraq and Kuwait, see resolution 674 (1990), para. 1.

<sup>349</sup> In connection with the situation between Iraq and Kuwait, see resolutions 674 (1990), para. 10; 707 (1991), para. 5; 712 (1991), para. 11; 715 (1991), para. 5; and 778 (1992), third and sixth preambular paras. and para. 13. See also the statements by the President of 5 February 1992 (S/23517); and 24 November 1992 (S/24839).

<sup>350</sup> In connection with the items relating to the Libyan Arab Jamahiriya, see resolution 748 (1992), para. 1.

<sup>351</sup> In connection with the situation between Iraq and Kuwait, see the statements by the President of 19 February 1992 (S/23609); and 6 July 1992 (S/24240).

<sup>352</sup> In connection with the situation between Iraq and Kuwait, see resolutions 661 (1990), para. 5; 670 (1990), para. 7; 687 (1991), para. 25; and 712 (1991), para. 11. In connection with the items relating to the Libyan Arab Jamahiriya, see resolution 748 (1992), para. 7.

<sup>353</sup> In connection with the situation between Iraq and Kuwait, see resolutions 667 (1990), para. 5; and 670 (1990), para. 9.

<sup>354</sup> In connection with the situation in Namibia, see resolutions 629 (1989), para. 4; and 632 (1989), para. 4.

<sup>355</sup> In connection with the situation in Namibia, see resolutions 640 (1989), para. 1; and 643 (1989), para. 5. In connection with the situation between Iraq and Kuwait, see the statements by the President of 28 June 1991 (S/22746); 5 February 1992 (S/23517); 19 February 1992 (S/23609); 28 February 1992 (S/23663); 17 June 1992 (S/24113); 6 July 1992 (S/24240); and 24 November 1992 (S/24839).

<sup>356</sup> In connection with the situation in the Middle East, see resolutions 633 (1989), para. (a); 645 (1989), para. (a); 655 (1990), para. (a); 679 (1990), para. (a); 695 (1991), para. (a); 722 (1991), para. (a); 756 (1992), para. (a); and 790 (1992), para. (a). In connection with the situation between Iran and Iraq, see resolutions 631 (1989), para. (a); 642 (1989), para. (a); and 651 (1990), para. (a).

<sup>357</sup> In connection with the situation in the Middle East, see resolutions 639 (1989), para. 3; 648 (1990), para. 3; 659 (1990), para. 3; 684 (1991), para. 3; and 701 (1991), para. 3.

refusal of parties to comply with its resolutions;<sup>358</sup> urged parties to act in a manner consistent with its resolutions;<sup>359</sup> and stressed the need for full compliance with its resolutions.<sup>360</sup>

A number of explicit references were also made to Article 25 and its binding nature during the debates in the Council.<sup>361</sup> The Council did not however engage in any constitutional discussion concerning Article 25 that went beyond upholding long-established views about its significance, interpretation and application. Article 25 was explicitly invoked in a special report dated 18 September 1990 of the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait,<sup>362</sup> and in a letter dated 19 December 1990 from that Committee's Chairman to the President of the Council,<sup>363</sup> as well as in several communications from Member States<sup>364</sup> in connection with the mandatory sanctions against Iraq. Article 25 was also explicitly invoked in four notes by the Secretary-General, dated

26 September and 4, 10 and 22 October 1990,<sup>365</sup> by which he transmitted to the members of the Council the text of communications received from the International Civil Aviation Organization on the situation in the Gulf area.

The deliberations and decisions of the Council concerning the situation between Iraq and Kuwait touched upon two aspects of the application of Article 25, namely Iraq's obligation to comply with the Council's decisions, and the obligation of Member States in general to implement the measures applied against Iraq under Chapter VII of the Charter (see case 23 below).

### Case 23

#### *The situation between Iraq and Kuwait*

At the 2933rd meeting of the Council, on 6 August 1990, during which the Council adopted resolution 661 (1990), speakers referred both to Iraq's obligation to comply with resolution 660 (1990) and to the obligation of Member States to implement the sanctions to be applied against Iraq by resolution 661 (1990). The representative of the United States noted that the draft resolution responded both to Iraq's aggression against Kuwait and to "Iraq's unacceptable failure to comply with resolution 660 (1990), a mandatory resolution which is binding on all Member States".<sup>366</sup> The representative of France observed that Iraq was required "to implement without delay or condition" resolution 660 (1990), which was "binding on all States".<sup>367</sup> The representative of Canada stated that the decisions of the Council were binding on all Member States, including Iraq, and warned that Iraq's failure to comply with the terms of resolution 660 (1990) left the Council with "no alternative but to consider what further measures can be applied to give effect to the resolution".<sup>368</sup>

The representative of the United States observed that the draft resolution was binding upon all Member States. He further contended that paragraph 5 made it clear that the draft resolution spoke "to all States, Members and non-members alike".<sup>369</sup> At subsequent meetings, other speakers expressed the view that the

<sup>358</sup> In connection with the items relating to the former Yugoslavia, see resolution 787 (1992), para. 4.

<sup>359</sup> In connection with the situation in Cyprus, see the statement by the President of 28 March 1991 (S/22415).

<sup>360</sup> In connection with the situation in the former Yugoslavia, see the statement of 24 July 1992 (S/24346).

<sup>361</sup> In connection with the situation in the occupied Arab territories, see S/PV.2926, pp. 39-40 (Palestine); S/PV.2949, p. 48 (Zaire); p. 54 (Colombia); S/PV.2953, p. 11 (Palestine); S/PV.2965, p. 10 (China); and S/PV.2989, pp. 58-60 (Yemen). In connection with the situation between Iraq and Kuwait, see S/PV.2939, pp. 8 and 12 (Yemen); S/PV.2977 (Part I), p. 62 (Zaire); S/PV.3108, pp. 4-5 (Ecuador); and S/PV.3139 (resumption I), p. 63 (Venezuela). In connection with items relating to the situation in the former Yugoslavia, see S/PV.3009, p. 43 (Romania). In connection with the situation in Bosnia and Herzegovina, see S/PV. 3136, pp. 19-20 (Venezuela).

<sup>362</sup> S/21786.

<sup>363</sup> S/22021.

<sup>364</sup> Communications addressed to the Secretary-General: letter from the representative of Uruguay dated 7 August 1990 (S/21464); letter from the representative of Qatar dated 11 August 1990 (S/21500); letter from the representative of Bulgaria dated 21 August 1990 (S/21576); note verbale from the representative of Yemen dated 23 August 1990 (S/21615); letter from the representative of Brazil dated 3 May 1991 (S/22567); and letter from the representative of Myanmar dated 16 July 1992 (S/24329). Letter from the representative of Ecuador to the President of the Council dated 18 June 1992 (S/24117).

<sup>365</sup> S/21828, S/21839, S/21862 and S/21895.

<sup>366</sup> S/PV.2933, p. 16.

<sup>367</sup> Ibid., p. 21.

<sup>368</sup> Ibid., p. 23.

<sup>369</sup> S/PV.2932, p. 18.

sanctions were binding upon all States, without referring explicitly to States Members of the United Nations.<sup>370</sup>

The excerpts from decisions reproduced below reflect the practice of the Council in interpreting and applying Article 25 in relation to the situation between Iraq and Kuwait. At its 2933rd meeting, the Council adopted resolution 661 (1990) by 13 votes to none, with 2 abstentions (Cuba, Yemen). The resolution reads in part:

*The Security Council,*

...

1. *Determines* that Iraq so far has failed to comply with paragraph 2 of resolution 660 (1990) and has usurped the authority of the legitimate Government of Kuwait;

...

5. *Calls upon* all States, including States non-members of the United Nations, to act strictly in accordance with the provisions of the present resolution notwithstanding any contract entered into or licence granted before the date of the present resolution;

...

At its 2938th meeting, on 25 August 1990, the Council adopted resolution 665 (1990) by 13 votes to none, with two abstentions (Cuba, Yemen). The resolution reads in part:

*The Security Council,*

...

*Gravely alarmed* that Iraq continues to refuse to comply with resolutions 660 (1990), 661 (1990), 662 (1990) and 664 (1990) and in particular at the conduct of the Government of Iraq in using Iraqi flag vessels to export oil,

1. *Calls upon* those Member States cooperating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990);

2. *Invites* Member States accordingly to cooperate as may be necessary to ensure compliance with the provisions of resolution 661 (1990) with maximum use of political and diplomatic measures, in accordance with paragraph 1 above;

<sup>370</sup> S/PV.2938, p. 33 (Canada); S/PV.2977 (Part II) (closed), p. 108 (Belgium); and S/PV.2978, p. 77 (India).

At its 2939th meeting, on 13 September 1990, the Council adopted resolution 666 (1990) by 13 votes to 2 (Cuba, Yemen). The resolution reads in part:

*The Security Council,*

...

*Deeply concerned* that Iraq has failed to comply with its obligations under Security Council resolution 664 (1990) of 18 August 1990 in respect of the safety and well-being of third-State nationals, and reaffirming that Iraq retains full responsibility in this regard under international humanitarian law including, where applicable, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,

...

2. *Expects* Iraq to comply with its obligations under resolution 664 (1990) in respect of third-State nationals and reaffirms that Iraq remains fully responsible for their safety and well-being in accordance with international humanitarian law including, where applicable, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949;

At its 2940th meeting, on 16 September 1990, the Council adopted resolution 667 (1990) unanimously. The resolution reads in part:

*The Security Council,*

*Reaffirming* its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990 and 666 (1990) of 13 September 1990,

...

*Determined* to ensure respect for its decisions and for Article 25 of the Charter,

*Considering further* that the grave nature of Iraq's actions, which constitute a new escalation of its violations of international law, obliges the Council not only to express its immediate reaction but also to consult urgently in order to take further concrete measures to ensure Iraq's compliance with the Council's resolutions,

...

1. *Strongly condemns* aggressive acts perpetrated by Iraq against diplomatic premises and personnel in Kuwait, including the abduction of foreign nationals who were present in those premises;

2. *Demands* the immediate release of those foreign nationals as well as all nationals mentioned in resolution 664 (1990);

3. *Also demands* that Iraq immediately and fully comply with its international obligations under resolutions 660

(1990), 662 (1990) and 664 (1990), the Vienna Convention on Diplomatic Relations of 18 April 1961, the Vienna Convention on Consular Relations of 24 April 1963 and international law;

...

5. *Reminds* all States that they are obliged to observe strictly resolutions 661 (1990), 662 (1990), 664 (1990), 665 (1990) and 666 (1990);

At its 2943rd meeting, on 25 September 1990, the Council adopted resolution 670 (1990) by 14 votes to 1 (Cuba). The resolution reads in part:

*The Security Council,*

*Reaffirming* its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990 and 667 (1990) of 16 September 1990,

*Condemning* Iraq's continued occupation of Kuwait, its failure to rescind its actions and end its purported annexation and its holding of third-State nationals against their will, in flagrant violation of resolutions 660 (1990), 662 (1990), 664 (1990) and 667 (1990) and of international humanitarian law,

...

*Determined* to ensure by all necessary means the strict and complete application of the measures laid down in resolution 661 (1990),

*Determined also* to ensure respect for its decisions and the provisions of Articles 25 and 48 of the Charter of the United Nations,

*Affirming* that any acts of the Government of Iraq which are contrary to the above-mentioned resolutions or to Articles 25 or 48 of the Charter, such as Decree No. 377 of 16 September 1990 of the Revolutionary Command Council of Iraq, are null and void,

...

7. *Calls upon* all States to cooperate in taking such measures as may be necessary, consistent with international law, including the Chicago Convention on International Civil Aviation of 7 December 1944, to ensure the effective implementation of the provisions of resolution 661 (1990) or the present resolution;

...

9. *Reminds* all States of their obligations under resolution 661 (1990) with regard to the freezing of Iraqi assets, and the protection of the assets of the legitimate Government of Kuwait and its agencies, located within their territory and to report to the Security Council Committee regarding those assets;

At its 2951st meeting, on 29 October 1990, the Council adopted resolution 674 (1990) by 13 votes to

none, with 2 abstentions (Cuba, Yemen). The resolution reads in part:

*The Security Council,*

*Recalling* its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, resolution 667 (1990) of 16 September 1990 and 670 (1990) of 25 September 1990,

...

*Condemning* the actions by the Iraqi authorities and occupying forces to take third-State nationals hostage and to mistreat and oppress Kuwaiti and third-State nationals, and the other actions reported to the Council, such as the destruction of Kuwaiti demographic records, the forced departure of Kuwaitis, the relocation of population in Kuwait and the unlawful destruction and seizure of public and private property in Kuwait, including hospital supplies and equipment, in violation of the decisions of the Council, the Charter of the United Nations, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, the Vienna Convention on Diplomatic Relations of 18 April 1961, the Vienna Convention on Consular Relations of 24 April 1963 and international law,

...

*Calling upon* Iraq to comply with its relevant resolutions, in particular resolutions 660 (1990), 662 (1990) and 664 (1990),

*Reaffirming* its determination to ensure compliance by Iraq with its resolutions by maximum use of political and diplomatic means,

1. *Demands* that the Iraqi authorities and occupying forces immediately cease and desist from taking third-State nationals hostage, mistreating and oppressing Kuwaiti and third-State nationals and any other actions, such as those reported to the Council and described above, that violate the decisions of the Council, the Charter of the United Nations, the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, the Vienna Convention on Diplomatic Relations of 18 April 1961, the Vienna Convention on Consular Relations of 24 April 1963 and international law;

...

3. *Reaffirms its demand* that Iraq immediately fulfil its obligations to third-State nationals in Kuwait and Iraq, including the personnel of diplomatic and consular missions, under the Charter, the above-mentioned Geneva Convention, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, general principles of international law and the relevant resolutions of the Council;

...

10. *Requires* that Iraq comply with the provisions of the present resolution and its previous resolutions, failing which

the Council will need to take further measures under the Charter;

At its 2963rd meeting, on 29 November 1990, the Council adopted resolution 678 (1990) by 12 votes to 2 (Cuba, Yemen), with 1 abstention (China). The resolution reads in part:

*The Security Council,*

*Recalling and reaffirming* its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990 and 677 (1990) of 28 November 1990,

*Noting* that, despite all efforts by the United Nations, Iraq refuses to comply with its obligations to implement resolution 660 (1990) and the above-mentioned subsequent relevant resolutions, in flagrant contempt of the Security Council,

...

*Determined* to secure full compliance with its decisions,

...

1. *Demands* that Iraq comply fully with resolution 660 (1990) and all subsequent relevant resolutions, and decides, while maintaining all its decisions, to allow Iraq one final opportunity, as a pause of goodwill, to do so;

2. *Authorizes* Member States cooperating with the Government of Kuwait, unless Iraq on or before 15 January 1991 fully implements, as set forth in paragraph 1 above, the above-mentioned resolutions, to use all necessary measures to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area;

At its 2978th meeting, on 2 March 1991, the Council adopted resolution 686 (1991) by 11 votes to 1 (Cuba), with 3 abstentions (China, India, Yemen). The resolution reads in part:

*The Security Council,*

*Recalling and reaffirming* its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990, 677 (1990) of 28 November 1990 and 678 (1990) of 29 November 1990,

*Recalling* the obligations of Member States under Article 25 of the Charter of the United Nations,

...

2. *Demands* that Iraq implement its acceptance of all twelve resolutions noted above and in particular that Iraq:

(a) Rescind immediately its actions purporting to annex Kuwait;

(b) Accept in principle its liability under international law for any loss, damage or injury arising in regard to Kuwait and third States and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq;

(c) Immediately release under the auspices of the International Committee of the Red Cross, Red Cross Societies or Red Crescent Societies all Kuwaiti and third-State nationals detained by Iraq and return the remains of any deceased Kuwaiti and third-State nationals so detained;

(d) Immediately begin to return all Kuwaiti property seized by Iraq, the return to be completed in the shortest possible period;

At its 2981st meeting, on 3 April 1991, the Council adopted resolution 687 (1991) by 12 votes to 1 (Cuba), with 2 abstentions (Ecuador, Yemen). The resolution reads in part:

*The Security Council,*

*Recalling* its resolutions 660 (1990) of 2 August 1990, 661 (1990) of 6 August 1990, 662 (1990) of 9 August 1990, 664 (1990) of 18 August 1990, 665 (1990) of 25 August 1990, 666 (1990) of 13 September 1990, 667 (1990) of 16 September 1990, 669 (1990) of 24 September 1990, 670 (1990) of 25 September 1990, 674 (1990) of 29 October 1990, 677 (1990) of 28 November 1990, 678 (1990) of 29 November 1990 and 686 (1991) of 2 March 1991,

...

1. *Affirms* all thirteen resolutions noted above, except as expressly changed below to achieve the goals of the present resolution, including a formal ceasefire;

...

24. *Decides* that, in accordance with resolution 661 (1990) and subsequent related resolutions and until it takes a further decision, all States shall continue to prevent the sale or supply to Iraq, or the promotion or facilitation of such sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of:

(a) Arms and related materiel of all types, specifically including the sale or transfer through other means of all forms of conventional military equipment, including for paramilitary forces, and spare parts and components and their means of production for such equipment;

(b) Items specified and defined in paragraphs 8 and 12 not otherwise covered above;

(c) Technology under licensing or other transfer arrangements used in the production, utilization or stockpiling of items specified in paragraphs (a) and (b);

(d) Personnel or materials for training or technical support services relating to the design, development, manufacture, use, maintenance or support of items specified in paragraphs (a) and (b);

25. *Calls upon* all States and international organizations to act strictly in accordance with paragraph 24, notwithstanding the existence of any contracts, agreements, licences or any other arrangements;

...

27. *Calls upon* all States to maintain such national controls and procedures and to take such other actions consistent with the guidelines to be established by the Council under paragraph 26 as may be necessary to ensure compliance with the terms of paragraph 24, and calls upon international organizations to take all appropriate steps to assist in ensuring such full compliance;

At the 2996th meeting of the Council, on 28 June 1991, the President (Côte d'Ivoire) made a statement on behalf of the Council.<sup>371</sup> The statement reads in part:

The members of the Council strongly deplore the incidents of 23, 25 and 28 June 1991 and in this connection condemn the conduct of the Iraqi authorities. All these incidents constitute flagrant violations of resolution 687 (1991) ... Furthermore, these incidents demonstrate Iraq's failure to abide by its solemn undertaking to comply with all the provisions of resolution 687 (1991).

At its 3004th meeting, on 15 August 1991, the Council adopted resolution 707 (1991) unanimously. The resolution reads in part:

*The Security Council,*

*Recalling* its resolution 687 (1991) of 3 April 1991 and its other resolutions on this matter,

...

*Determined* to ensure full compliance with resolution 687 (1991), and in particular its section C,

...

1. *Condemns* Iraq's serious violation of a number of its obligations under section C of resolution 687 (1991) and of its undertakings to cooperate with the Special Commission and the International Atomic Energy Agency, which constitutes a material breach of the relevant provisions of that resolution which established a ceasefire and provided the conditions essential to the restoration of peace and security in the region;

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<sup>371</sup> S/22746.

...

5. *Requires* the Government of Iraq forthwith to comply fully and without delay with all its international obligations, including those set out in the present resolution, in resolution 687 (1991), in the Treaty on the Non-Proliferation of Nuclear Weapons and its safeguards agreement with the International Atomic Energy Agency;

At its 3008th meeting, on 19 September 1991, the Council adopted resolution 712 (1991) by 13 votes to 1 (Cuba), with 1 abstention (Yemen). The resolution reads in part:

*The Security Council,*

*Recalling* its previous relevant resolutions, and in particular resolutions 661 (1990) of 6 August 1990, 686 (1991) of 2 March 1991, 687 (1991) of 3 April 1991, 688 (1991) of 5 April 1991, 692 (1991) of 20 May 1991, 699 (1991) of 17 June 1991, and 705 (1991) and 706 (1991) of 15 August 1991,

...

11. *Calls upon* States to cooperate fully in the implementation of resolution 706 (1991) and the present resolution, in particular with respect to any measures regarding the import of petroleum and petroleum products and the export of foodstuffs, medicines and materials and supplies for essential civilian needs as referred to in paragraph 20 of resolution 687 (1991), and also with respect to the privileges and immunities of the United Nations and its personnel implementing the present resolution, and to ensure that there are no diversions from the purposes laid down in these resolutions;

At its 3012th meeting, on 11 October 1991, the Council adopted resolution 715 (1991) unanimously. The resolution reads in part:

*The Security Council,*

*Recalling* its resolutions 687 (1991) of 3 April 1991 and 707 (1991) of 15 August 1991 and its other resolutions on this matter,

...

5. *Demands* that Iraq meet unconditionally all its obligations under the plans approved by the present resolution and cooperate fully with the Special Commission and the Director General of the Agency in carrying out the plans;

...

At the 3058th meeting of the Council, on 28 February 1992, the President (United States) made a statement on behalf of the Council.<sup>372</sup> The statement reads in part:

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<sup>372</sup> S/23663.

The members of the Council demand that Iraq immediately implement all its obligations under Council resolution 687 (1991) and subsequent resolutions on Iraq.

At its 3117th meeting, on 2 October 1992, the Council adopted resolution 778 (1992) by 14 votes to none, with 1 abstention (China). The resolution reads in part:

*The Security Council,*

*Recalling* its previous relevant resolutions and in particular resolutions 706 (1991) of 15 August 1991 and 712 (1991) of 19 September 1991,

...

*Condemning* Iraq's continued failure to comply with its obligations under relevant resolutions,

...

*Deploring* Iraq's refusal to cooperate in the implementation of resolutions 706 (1991) and 712 (1991), which puts its civilian population at risk and which results in the failure by Iraq to meet its obligations under relevant Council resolutions,

...

13. *Calls upon* all States to cooperate fully in the implementation of the present resolution;

At the resumed 3139th meeting of the Council, on 24 November 1992, the President (Ecuador) made a statement on behalf of the Council.<sup>373</sup> The statement reads in part:

In the view of the Council, while there have been some positive steps, the Government of Iraq has not yet complied fully and unconditionally with its obligations ... and must immediately take the appropriate actions in this regard.

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<sup>373</sup> S/24839.

## Part V

### Consideration of the provisions of Article 26 of the Charter

#### *Article 26*

*In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.*

#### **Note**

During the period under review, the Security Council did not adopt any decisions touching directly on Article 26. Council members did, however, address the issues of disarmament, arms control and weapons of mass destruction in a presidential statement adopted at the 3046th (summit) meeting held at the level of Heads of State and Government on 31 January 1992 under the agenda item entitled "The responsibility of the Security Council in the maintenance of international peace and security".<sup>374</sup> The relevant part

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<sup>374</sup> S/23500.

of the statement by the President on behalf of the Council included a section entitled "Disarmament, arms control and weapons of mass destruction", which reads:

The members of the Council, while fully conscious of the responsibilities of other organs of the United Nations in the fields of disarmament, arms control and non-proliferation, reaffirm the crucial contribution which progress in these areas can make to the maintenance of international peace and security. They express their commitment to take concrete steps to enhance the effectiveness of the United Nations in these areas.

The members of the Council underline the need for all Member States to fulfil their obligations in relation to arms control and disarmament; to prevent the proliferation in all its aspects of all weapons of mass destruction; to avoid excessive and destabilizing accumulations and transfers of arms; and to resolve peacefully in accordance with the Charter any problems concerning these matters threatening or disrupting the maintenance of regional and global stability. They emphasize the importance of the early ratification and implementation by the States concerned of all international and regional arms control arrangements, especially the Strategic Arms Reduction Talks and the Treaty on Conventional Armed Forces in Europe.

The proliferation of all weapons of mass destruction constitutes a threat to international peace and security. The members of the Council commit themselves to working to prevent the spread of technology related to the research for or

production of such weapons and to take appropriate action to that end.

On nuclear arms proliferation, the members of the Council note the importance of the decision of many countries to adhere to the Treaty on the Non-Proliferation of Nuclear Weapons of 1 July 1968 and emphasize the integral role in the implementation of that Treaty of fully effective International Atomic Energy Agency safeguards, as well as the importance of effective export controls. They will take appropriate measures in the case of any violations notified to them by the Agency.

On chemical weapons, the members of the Council support the efforts of the Third Review Conference of the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, held at Geneva from 9 to 27 September 1991, with a view to reaching agreement on the conclusion, by the end of 1992, of a universal convention, including a verification regime, to prohibit chemical weapons.

On conventional armaments, they note the General Assembly's vote in favour of a United Nations register of arms transfers as a first step, and in this connection recognize the importance of all States providing all the information called for in the General Assembly's resolution.

In their statements at the summit meeting, several Council members touched on aspects of the Security Council's role in the areas of arms control, non-proliferation and disarmament.<sup>375</sup> Two representatives made explicit reference to Article 26. One of them saw a more active involvement of the Council in these areas as one of its most important future tasks, observing that, in Article 26, the Charter had given the Council an excellent programme for future action.<sup>376</sup> Another suggested that multilateral disarmament could further be boosted by the use of the provisions of Article 26 and of paragraph 1 of Article 47, which empowered the Council, with the assistance of the Military Staff Committee, to put in place a system for the regulation of armaments. He thought that those provisions, which had been dormant since the founding of the Organization, would have rendered unnecessary the ad hoc creation by resolution 687 (1991) of the Special Commission dealing with the disarmament measures imposed on Iraq. In his view, an opportunity still existed to utilize those provisions in implementing the disarmament measures for the wider Middle East region provided for in that resolution.<sup>377</sup>

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<sup>375</sup> S/PV.3046, pp. 64-65 (Austria); pp. 109-110 (Japan); p. 116 (Hungary); and pp. 127-128 (Zimbabwe).

<sup>376</sup> Ibid., pp. 64-65 (Austria).

<sup>377</sup> Ibid., pp. 127-128 (Zimbabwe).

## Part VI

### Consideration of the provisions of Chapter VIII of the Charter

#### *Article 52*

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

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

3. *The Security Council shall encourage the development of pacific settlement of local disputes*

*through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.*

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

#### *Article 53*

1. *The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements*



*directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.*

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

#### Article 54

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

#### Note

During the period under review, there was a significant increase in the cooperation between the Security Council and regional arrangements or agencies. The resolutions and presidential statements adopted by the Council reveal an increased awareness of regional organizations and of their growing role or potential role in international peace and security. While in 1989 there were no references in Security Council resolutions to regional organizations, and in 1990 only one such reference,<sup>378</sup> since 1991 that picture has been transformed. Many resolutions and presidential statements adopted in 1991 and 1992 referred to regional organizations in the context of conflict situations in Africa: Liberia, Somalia, South Africa, Western Sahara; in Asia: Cambodia and Tajikistan; in Central America; in Europe: the former Yugoslavia and Nagorny-Karabakh; and in the Middle East: Iraq and Kuwait, and the situation in the Middle East. Such resolutions sometimes expressly recalled Chapter VIII of the Charter of the United Nations, or expressed appreciation of regional efforts aimed at the settlement of a conflict, or supported cooperation between the United Nations and regional organizations, or endorsed regional efforts. Most of those references concerned attempts at the peaceful settlement of a dispute. The period under consideration also saw the first

<sup>378</sup> Resolution 660 (1990) of 2 August 1990, in relation to the situation between Iraq and Kuwait.

authorization by the Security Council of the use of force by a regional organization.

These developments in the Council's practice are dealt with below in four sections. Section A sets out some of the institutional context within which the developments occurred, notably the recommendations made by the Secretary-General in his report entitled "An Agenda for Peace". Section B provides an overview of the Council's encouragement of efforts undertaken by regional organizations in the peaceful settlement of disputes. Section C notes two instances in which Member States challenged the Council's competence to consider a dispute on the basis of Article 52. Section D sets out the three instances in which the Council authorized the use of force by a regional organization.

#### A. General consideration of the provisions of Chapter VIII

At the meeting of the Security Council held at the level of Heads of State and Government on 31 January 1992 to consider the responsibility of the Council in the maintenance of international peace and security, several Council members spoke of the need to make greater use of Chapter VIII of the Charter and stressed the importance of strengthening cooperation and coordination between the Council and regional organizations.<sup>379</sup> In a presidential statement made at the conclusion of the summit meeting, the members of the Council invited the Secretary-General to prepare his analysis and recommendations on ways of strengthening and making more efficient, within the framework and provisions of the Charter, the capacity of the United Nations for preventive diplomacy, for peacemaking and for peacekeeping. The statement also suggested that the Secretary-General's analysis and recommendations could cover, *inter alia*, "the contribution to be made by regional organizations in accordance with Chapter VIII of the Charter in helping the work of the Council".

<sup>379</sup> S/PV.3046, pp. 19-20 (France); p. 56 (Venezuela); p. 69 (Belgium); and p. 138 (United Kingdom).

In the Secretary-General's report entitled "An Agenda for Peace",<sup>380</sup> in which he responded to the Council's request, he contended that regional organizations, in many cases, possessed a potential that should be utilized for preventive diplomacy, peacekeeping, peacemaking and post-conflict peacebuilding. He noted, in particular that, while the Security Council had and would continue to have primary responsibility for maintaining international peace and security, "regional action as a matter of decentralization, delegation and cooperation with United Nations efforts could not only lighten the burden of the Council but also contribute to a deeper sense of participation, consensus and democratization in international affairs". The Secretary-General suggested that this might be achieved in several ways:

Consultations between the United Nations and regional arrangements or agencies could do much to build international consensus on the nature of a problem and the measures required to address it. Regional organizations participating in complementary efforts with the United Nations in joint undertakings would encourage States outside the region to act supportively. And should the Security Council choose to authorize a regional arrangement or organization to take the lead in addressing a crisis within its region, it could serve to lend the weight of the United Nations to the validity of the regional effort.<sup>381</sup>

Following a preliminary examination of the Secretary-General's report, the Council adopted a presidential statement on 29 October 1992 in which it expressed its intention to study further the paragraphs of the report concerning the role of regional organizations.<sup>382</sup> In a presidential statement of 30 November 1992, adopted in connection with their continued examination of the report, the members of the Council noted the positive role of regional organizations and arrangements in fact-finding within their areas of competence and welcomed its intensification and close coordination with fact-finding efforts by the United Nations.<sup>383</sup>

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<sup>380</sup> The full title of the report, dated 17 June 1992, is "An Agenda for Peace: preventive diplomacy, peacekeeping and peacemaking" (S/24111).

<sup>381</sup> S/24111, paras. 64-65.

<sup>382</sup> S/24728.

<sup>383</sup> S/24872.

## **B. Encouragement by the Security Council of efforts undertaken by regional organizations in the pacific settlement of disputes**

During the period under review, the Security Council encouraged a wide variety of peace efforts undertaken by regional arrangements or agencies, and/or requested the Secretary-General to undertake such efforts in cooperation with regional arrangements. The Council's activity in this regard is highlighted below, by region.

### **Africa**

With regard to **Liberia**, the Security Council commended the role played by the Economic Community of West African States (ECOWAS) and its various organs to resolve the conflict, and took action in support of that subregional organization. At the Council's first meeting on the situation in Liberia, on 22 January 1991, the representative of Nigeria, speaking in his capacity as Chairman of the group of Ambassadors of countries members of ECOWAS at the United Nations, stated that, in response to the tragic civil war in Liberia, the leaders of ECOWAS had authorized and supported the operations of a ceasefire Monitoring Group (ECOMOG). The mandate of ECOMOG, he explained, was not to take sides, but to reconcile the sides, and to restore peace, normalcy and stability to the country. He said that ECOWAS should be commended for acting in ways that promoted the principles of the Charter by stepping in to prevent the situation in Liberia from degenerating into a situation likely to constitute a real threat to international peace and security.<sup>384</sup> In a presidential statement adopted at the same meeting,<sup>385</sup> the members of the Council commended the efforts made by the Heads of State and Government of ECOWAS to promote peace and normalcy in Liberia, and called upon the parties to the conflict to continue to respect the ceasefire agreement which they had signed and to cooperate fully with ECOWAS to restore peace and normalcy in the country. In a presidential statement of 7 May 1992,<sup>386</sup> the members of the Council commended ECOWAS and its various organs, in particular the Committee of Five

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<sup>384</sup> S/PV.2974, pp. 7-8.

<sup>385</sup> S/22133.

<sup>386</sup> S/23886.

on Liberia,<sup>387</sup> for their untiring efforts to bring the Liberian conflict to a speedy conclusion, and renewed their call to the parties to the conflict to respect and implement the various accords of the peace process of the Committee of Five.

At the Council's second meeting on the situation in Liberia, on 19 November 1992, the representative of Benin, speaking on behalf of the Chairman of ECOWAS, recalled the initiatives taken by ECOWAS aimed at a peaceful settlement of the Liberian conflict. He also explained its decision on sanctions and requested the Council's support to make that decision binding on the international community.<sup>388</sup> Several other speakers, including the Foreign Minister of the Interim Government of Liberia, a ministerial delegation of ECOWAS, and the representative of Senegal speaking on behalf of the Organization of African Unity (OAU) and its acting Chairman, similarly appealed to the Council to support or endorse the actions taken by ECOWAS.<sup>389</sup> Some speakers referred specifically to the role being played by ECOMOG in accordance with Chapter VIII of the Charter.

At the same meeting, the Council adopted its first resolution on Liberia — resolution 788 (1992) of 19 November 1992 — in which, after recalling Chapter VIII of the Charter, the Council commended ECOWAS for its efforts to restore peace, security and stability in Liberia, welcomed the endorsement and support by OAU of those efforts, and called upon ECOWAS to continue its efforts to assist in the peaceful implementation of the Yamoussoukro IV Agreement. The Council also called upon all parties to the conflict to respect and implement the ceasefire and the various accords of the peace process, and requested all States to respect the measures established by ECOWAS to bring about a peaceful solution to the conflict in Liberia. Acting under Chapter VII of the Charter, the Council imposed an arms embargo on Liberia, on the

basis, *inter alia*, of the request made by ECOWAS and taking into account a letter from the Government of Liberia endorsing that request.

In connection with **Somalia**, three different regional organizations — the Organization of African Unity, the League of Arab States (LAS) and the Organization of the Islamic Conference (OIC) — joined efforts with the United Nations. By resolution 733 (1992) of 23 January 1992, the Security Council requested the Secretary-General, in cooperation with the Secretary-General of OAU and the Secretary-General of LAS, to contact all parties involved in the conflict, to seek their commitment to the cessation of hostilities in order to permit the humanitarian assistance to be distributed, to promote a ceasefire, and to assist in the process of a political settlement of the conflict in Somalia. After a joint delegation from the United Nations, OAU, LAS and OIC engaged the Somali parties in intensive negotiations in Mogadishu from 29 February to 3 March 1992, a ceasefire agreement was secured on 3 March.<sup>390</sup> At the Council's meeting on 17 March 1992, several speakers welcomed the cooperation between the United Nations and regional organizations, pointing to the joint mission as a constructive example.<sup>391</sup> By resolution 746 (1992), adopted at the same meeting, the Council expressed its appreciation to the regional organizations, including OAU, LAS and OIC, for their cooperation with the United Nations in the effort to resolve the Somali problem, and requested the Secretary-General, in close cooperation with those three organizations, to continue his consultations with all Somali parties, movements and factions towards the convening of a conference on national reconciliation and unity in Somalia. The Council reiterated these views in resolutions 751 (1992) of 24 April 1992 and 767 (1992) of 27 July 1992. By resolution 775 (1992) of 28 August 1992, the Council requested the Secretary-General to continue, in close cooperation with the three organizations, his efforts to seek a comprehensive political solution to the crisis in Somalia.

With regard to **South Africa**, by resolution 772 (1992) of 17 August 1992, the Council invited other

<sup>387</sup> The members of the ECOWAS Committee of Five on Liberia were Burkina Faso, Côte d'Ivoire, Senegal, Nigeria, and representatives of the Interim Government of Liberia and the National Patriotic Front of Liberia.

<sup>388</sup> S/PV.3138, pp. 5-12.

<sup>389</sup> *Ibid.*, pp. 19-20 (Liberia); pp. 21-25 (Senegal); p. 32 (Côte d'Ivoire); p.34 (Burkina Faso); p. 38 (Gambia); p. 42 (Guinea); pp. 44-48 (Nigeria); pp. 54-55 (Sierra Leone); pp. 59-60 (Togo); p. 77 (United States); pp. 78-79 (France); and pp. 79-80 (United Kingdom).

<sup>390</sup> See report of the Secretary-General dated 11 March 1992 (S/23693).

<sup>391</sup> S/PV.3060, p.12 (Nigeria, on behalf of the Chairman of OAU); pp. 24-25 (Permanent Observer of LAS); p. 29 (Observer of OIC); p. 34 (Italy); and pp. 53-54 (Russian Federation).

relevant regional and intergovernmental organizations, such as OAU, the Commonwealth and the European Community, to consider deploying their own observers in South Africa in coordination with the United Nations and the structures set up under the National Peace Accord. The members of the Council reiterated that invitation in a presidential statement of 10 September 1992.<sup>392</sup> Those three organizations cooperated with the United Nations in monitoring the transitional process and the elections in South Africa.<sup>393</sup>

In the case of **Western Sahara**, by resolution 658 (1990) of 27 June 1990, the Council expressed its full support for a mission of good offices pursued jointly by the Secretary-General and the Chairman of the Assembly of Heads of State and Government of OAU, with a view to settling the question of Western Sahara. The Council called upon the two parties to cooperate fully with the joint mission. By resolutions 690 (1991) of 29 April 1991 and 725 (1991) of 31 December 1991, the Council expressed its full support for the organization and the supervision, by the United Nations in cooperation with OAU, of a referendum for self-determination of the people of Western Sahara.

### Asia

In connection with the situation in **Cambodia**, the Association of Southeast Asian Nations (ASEAN) and individual States from several regions were brought together with the parties to the Cambodian conflict at an international conference, to work with the United Nations. In resolution 668 (1990) of 20 September 1990, the Council took note with appreciation of the efforts of the countries of ASEAN and other countries involved in promoting the search for a comprehensive political settlement.

With regard to the situation in **Tajikistan**, in a presidential statement of 30 October 1992,<sup>394</sup> the Council welcomed the efforts made by the member countries of the Commonwealth of Independent States, on the initiative of Kyrgyzstan, and those undertaken by other States to help Tajikistan to resolve the crisis.

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<sup>392</sup> S/24541.

<sup>393</sup> Report of the Joint Inspection Unit entitled "Sharing responsibilities in peacekeeping: the United Nations and regional organizations", 1995 (A/50/571-JIU/REP/95/4), paras. 43 and 44.

<sup>394</sup> S/24742.

It invited the Government of Tajikistan and all other parties to the conflict to cooperate actively with all those efforts.

### Central America

In Central America, the end of armed conflict involved a highly complex effort which was initiated by leaders of the region and conducted by individual States, groups of States and the Organization of American States (OAS). By resolution 637 (1989) of 27 July 1989, the Council recognized the important contribution of the Contadora Group and its Support Group in favour of peace in Central America. In a presidential statement of 8 December 1989,<sup>395</sup> the members of the Council expressed their firm support for the efforts being made by the Secretary-General of the United Nations and the Secretary-General of OAS in the peace process.

### Europe

Efforts undertaken by the European Community and its member States, with the support of States participating in the Conference on Security and Cooperation in Europe (CSCE), were endorsed by the Council as being of central importance in helping to resolve the various conflicts and disputes in the **former Yugoslavia**. Support for those regional efforts evolved into joint diplomatic and peacekeeping efforts with the United Nations.

By resolution 713 (1991) of 25 September 1991, the Council, recalling Chapter VIII of the Charter, expressed its full support for the collective efforts for peace and dialogue undertaken under the auspices of the States members of the European Community, with the support of the States participating in CSCE, and imposed an arms embargo on Yugoslavia in support of measures taken by the European Community and its member States.<sup>396</sup> In a presidential statement of

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<sup>395</sup> S/21011.

<sup>396</sup> By letters dated 5 and 22 July, 6 and 21 August and 20 September 1991 addressed to the Secretary-General, the representative of the Netherlands transmitted the texts of statements and declarations on Yugoslavia adopted by the European Community, expressing the intention of seeking, through the Security Council, the support of the international community for the European efforts (S/22775, S/22834, S/22898, S/22975 and S/23059).

7 January 1992,<sup>397</sup> the members of the Council underlined the continuing importance of the role played by the European Community Monitoring Mission. In resolutions 740 (1992) of 7 February 1992 and 743 (1992) of 21 February 1992, the Council, recalling Chapter VIII of the Charter, called upon the Yugoslav parties to cooperate fully with the Conference on Yugoslavia in its aim of reaching a political settlement consistent with the principles of CSCE.

By resolution 749 (1992) of 7 April 1992, the Council appealed to all parties and others concerned in **Bosnia and Herzegovina** to cooperate with the efforts of the European Community to bring about a ceasefire and a negotiated political solution. In a presidential statement of 24 April 1992, the Council welcomed the efforts of the European Community and the Secretary-General aimed at prevailing upon the parties to respect the ceasefire signed under the auspices of the European Community; approved the decision of the Secretary-General to accelerate the deployment in Bosnia and Herzegovina of a number of military observers from UNPROFOR; and expressed the view that their presence, like that of the monitors of the European Community, should help the parties to implement their commitment to respect the ceasefire. The Council also expressed its support for the efforts undertaken by the European Community in the framework of the discussions on constitutional arrangements for Bosnia and Herzegovina under the auspices of the Conference on Yugoslavia, and urged the three communities in Bosnia and Herzegovina to participate actively and constructively in those talks. In subsequent resolutions, the Council, recalling Chapter VIII of the Charter, reiterated its call that all parties continue their efforts in the framework of the Conference on Yugoslavia and that the three communities in Bosnia and Herzegovina resume their discussions on the constitutional arrangements.<sup>398</sup>

By resolution 764 (1992) of 13 July 1992, the Council requested the Secretary-General to keep close contact with the developments within the framework of the Conference on Yugoslavia and to assist in finding a negotiated political solution for the conflict in Bosnia and Herzegovina. In a presidential statement of 17 July 1992, the Council indicated that it had decided, in

principle, to respond positively to the request for the United Nations to make arrangements for the supervision by UNPROFOR of all heavy weapons, in accordance with the London Agreement entered into by the parties that day.<sup>399</sup> On 21 July 1992, the Secretary-General submitted to the Council a report on the implementation and resource implications of that decision.<sup>400</sup> He concluded that the conditions did not exist for him to recommend that the Security Council accept the request of the three parties in Bosnia and Herzegovina that the United Nations supervise the heavy weapons which they had agreed to place under international supervision. He voiced, *inter alia*, two concerns touching on the relationship between the United Nations and regional organizations in the maintenance of international peace and security. First, he noted that Chapter VIII of the Charter of the United Nations underlined the primary responsibility of the Council in such matters, providing, for instance, that in certain circumstances the Council could “utilize” regional organizations or agencies. There was no provision, on the other hand, for the reverse to occur. He observed that, in other instances, when the United Nations and a regional organization had both been involved in an international peace and security situation, care had been taken to ensure that the primacy of the United Nations had not been compromised. Secondly, the United Nations had not participated in the negotiation of the London Agreement. He stressed that it was most unusual for the United Nations to be asked to help to implement a political-military agreement in whose negotiation it had played no part. He added that his concern on those two points was heightened by the lack of clarity concerning the respective roles of the United Nations and the European Community in the implementation of the London Agreement.<sup>401</sup>

In a presidential statement of 24 July 1992,<sup>402</sup> the Council concurred with the Secretary-General’s view that the conditions did not yet exist for the United Nations to supervise the heavy weapons in Bosnia and Herzegovina as envisaged in the London Agreement. Recalling Chapter VIII of the Charter, the Council invited the European regional arrangements and agencies concerned, particularly the European

<sup>397</sup> S/23389.

<sup>398</sup> Resolutions 752 (1992) of 15 May 1992 and 757 (1992) of 30 May 1992.

<sup>399</sup> S/24307.

<sup>400</sup> S/24333.

<sup>401</sup> *Ibid.*, paras. 7-10.

<sup>402</sup> S/24346.

Community, to enhance their cooperation with the Secretary-General in their efforts to help to resolve the conflicts that continued to rage in the former Yugoslavia. The Council stated that it would welcome, in particular, the participation of the Secretary-General in any negotiations under European Community auspices. In a presidential statement of 2 September 1992,<sup>403</sup> the Council took note of a letter from the Secretary-General, dated 28 August 1992, conveying the documents of the London stage of the International Conference on the former Yugoslavia, held on 26 and 27 August 1992, which the Secretary-General had co-chaired with the Prime Minister of the United Kingdom, President of the Council of Ministers of the European Community. The Council expressed its full support for the Statement of Principles adopted and the other agreements reached at the London Conference. The Council also noted with satisfaction that the London Conference had established the framework within which an overall political settlement of the crisis in the former Yugoslavia in all its aspects might be achieved. In addition, the Council welcomed the appointment of the two Co-Chairmen of the Steering Committee who, under the overall direction of the Permanent Co-Chairmen of the International Conference on the former Yugoslavia, would direct the working groups and prepare the basis for a general settlement and associated measures. It noted with satisfaction that they would commence their work immediately and pursue it in continuous session at the United Nations Office at Geneva. Noting the urgency of the situation in Bosnia and Herzegovina, the Council called on the parties to cooperate fully with the Co-Chairmen of the Steering Committee in achieving a comprehensive settlement. It reiterated this call in several subsequent resolutions.

In resolution 786 (1992) of 10 November 1992, by which the Council reaffirmed its ban on military flights in the airspace of Bosnia and Herzegovina, the Council welcomed the advance deployment of military observers of UNPROFOR and the European Community Monitoring Mission at airfields in Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia (Serbia and Montenegro). By resolution 798 (1992) of 18 December 1992, the Council expressed its support for the initiative taken by the European Council on the rapid dispatch of a delegation to investigate the facts received concerning the abusive

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<sup>403</sup> S/24510.

treatment and detention of women, in particular Muslim women, in Bosnia and Herzegovina. It requested the States members of the European Community to inform the Secretary-General of the work of the delegation, and invited the Secretary-General to report to the Security Council within 15 days of the adoption of the resolution on measures taken to support the delegation.

In the meantime, with regard to **Croatia**, the Council, by resolution 779 (1992) of 6 October 1992, had authorized UNPROFOR, in cooperation with the European Community Monitoring Mission, to assume responsibility for monitoring the arrangements agreed for the withdrawal of the Yugoslav Army from Croatia.

In connection with **the former Yugoslav Republic of Macedonia**, the Council, by resolution 795 (1992) of 11 December 1992, welcomed the presence of a mission of CSCE in the former Yugoslav Republic of Macedonia. Recalling Chapter VIII of the Charter, the Council authorized the Secretary-General to establish a presence of UNPROFOR in the former Yugoslav Republic of Macedonia, as he had recommended, and urged the Force to coordinate closely with the CSCE mission there.

Elsewhere in Europe, in connection with the situation relating to **Nagorny-Karabakh**, in a presidential statement of 12 May 1992,<sup>404</sup> the members of the Council commended and supported the efforts undertaken within the framework of CSCE aimed at assisting the parties in arriving at a peaceful settlement and at providing humanitarian assistance. In presidential statements of 26 August and 27 October 1992,<sup>405</sup> the members of the Council strongly appealed to all parties and others concerned to support the efforts of the Minsk Conference on the question of Nagorny-Karabakh within the framework of CSCE, to cooperate closely with CSCE, and to participate positively in the Conference in order to reach an overall settlement of their disputes.

### **Middle East**

In its first resolution adopted in connection with the situation between **Iraq and Kuwait**, resolution 660 (1990) of 2 August 1990, the Council called upon Iraq and Kuwait to begin immediately intensive

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<sup>404</sup> S/23904.

<sup>405</sup> S/24493 and S/24721.

negotiations for the resolution of their differences and expressed support for all efforts in that regard, especially those of the League of Arab States.

With regard to the situation in the **Middle East**, the members of the Council, in a number of presidential statements adopted in 1989, expressed support for efforts undertaken by LAS to find a solution to the crisis in Lebanon.<sup>406</sup>

### **C. Challenges to the appropriateness of Security Council action in the light of Article 52**

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

#### **Case 24**

##### *Complaint by Nicaragua of violation of diplomatic premises in Panama*

During the Council’s deliberations on a letter dated 3 January 1990 from the representative of Nicaragua to the President of the Security Council,<sup>407</sup> alleging violation by the United States of Nicaragua’s diplomatic premises in Panama, two Council members objected to consideration of the incident by the Council on the ground, inter alia, that the matter had been fully dealt with by the appropriate regional agency, the Organization of American States.

The representative of the United States recalled that his Government had formally expressed its regret over the incident to the Government of Nicaragua through diplomatic channels and that, subsequently, OAS had reviewed the issue and pronounced itself on the question.<sup>408</sup> While regrettable, the actions taken by the United States in regard to the premises of the Nicaraguan Embassy in Panama had not posed and did not pose any threat to international peace and security. He concluded that there was therefore no reason to insist that the Security Council debate the issue and, consequently, no reason for the Council to adopt a resolution in response to the Nicaraguan complaint.<sup>409</sup> The representative of the United Kingdom stated that his delegation would abstain in the vote on the draft resolution before the Council because of its view that it related to an incident not appropriate for action by the Council. Referring expressly to Article 52 (2) of the Charter, he recalled that, by its terms, Members were urged to make every effort to achieve pacific settlement of disputes through regional arrangements or by regional agencies before referring them to the Security Council. That, in his view, was precisely what had happened over the incident under consideration: the question it raised had been well and truly dealt with in a resolution adopted by the appropriate regional agency — OAS — on 8 January. The matter was therefore closed and he saw no reason to re-open it in the Security Council.<sup>410</sup>

A draft resolution, by which the Council would have expressed concern over the incident, was put to the vote but was not adopted.<sup>411</sup> Speaking after the vote, the representative of Canada also referred to the OAS resolution. He expressed the view that, by adopting the draft resolution, the Security Council would have “appropriately added its voice to the voices

<sup>406</sup> See the presidential statements of 31 March, 24 April, 15 August, 20 September, 7 November, 22 November and 27 December 1989 (S/20554, S/20602, S/20790, S/20855, S/20953, S/20988 and S/21056).

<sup>407</sup> S/21066.

<sup>408</sup> In a resolution of 8 January 1990, the Council of OAS had declared the United States action to be a violation of the diplomatic immunities and privileges recognized under international law and codified in the Vienna Convention on Diplomatic Relations.

<sup>409</sup> S/PV.2905, pp. 27-29 and 33-34.

<sup>410</sup> Ibid., pp. 34-35.

<sup>411</sup> The draft resolution (S/21084) was sponsored by Colombia, Côte d’Ivoire, Cuba, Democratic Yemen, Ethiopia, Malaysia and Zaire. It received 13 votes in favour, 1 against (United States) and 1 abstention (United Kingdom).

of other international bodies” that had addressed the issue.<sup>412</sup>

### Case 25

#### *The situation between Iraq and Kuwait*

Following the invasion of Kuwait by Iraq on 2 August 1990, various efforts aimed at securing a peaceful settlement of the conflict were undertaken by regional organizations, notably the League of Arab States. By resolution 660 (1990), adopted on the same day, the Security Council expressed its support for such efforts.<sup>413</sup> At subsequent meetings of the Council to consider how to bring the invasion and occupation of Kuwait to an end, the representative of Iraq contended that, in the light of those regional efforts, the Council’s involvement was premature. That argument was firmly rejected by the representative of Kuwait and other Member States.

At the Council’s meeting on 25 August 1990, at which it adopted resolution 665 (1990) providing for enforcement of the trade embargo against Iraq, the representative of Iraq stressed the importance of continuing diplomatic efforts, especially within an Arab context, and expressed concern that regional initiatives were not getting a fair hearing in the Council.<sup>414</sup> The representative of Kuwait, on the other hand, recalled that his Government had indeed sought to settle the problem within an Arab framework, both before and after the invasion and occupation of his country. Iraq had, however, rejected the demands that it withdraw its forces, unconditionally, in accordance with the resolution adopted by the League of Arab States on 2 August 1990 and the resolutions subsequently adopted by the Arab Summit and the Foreign Ministers of Muslim countries.<sup>415</sup> The representative of Oman, on behalf of the States members of the Gulf Cooperation Council, regretted that Iraq had failed to heed the LAS and OIC resolutions to work towards a peaceful solution of the situation by withdrawing from Kuwait and restoring the legitimate authority of Kuwait. That was why his

Government had joined with other States in asking the Security Council to convene the current meeting and to look into necessary measures for the implementation of its relevant resolutions.<sup>416</sup>

At the Council’s meeting on 29 October 1990, at which it adopted resolution 674 (1990), the representative of Iraq drew attention to that part of Article 52 of the Charter which states: “The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements ...”. He expressed regret that the Council had completely disregarded the Arab initiatives calling for a peaceful Arab solution of the Gulf crisis. He attributed this “disregard by the Security Council and its permanent members of Arab initiatives” to a deliberate policy that evidenced a determination not to permit any regional organization or Power to act independently of or apart from United States interests.<sup>417</sup> In response, the representative of Kuwait reiterated that it was Iraq that had rejected all Arab — and international — initiatives. He recalled that the Arab initiatives had included a resolution adopted at an emergency summit meeting of the League of Arab States,<sup>418</sup> which had embodied the Arab view on how the dispute should be resolved, namely, through the call of the Arab leaders for the unconditional and complete withdrawal of Iraq and the return to Kuwait of its legitimacy and full compensation for the losses it had sustained.<sup>419</sup>

### **D. Authorization by the Security Council of the use of force by regional organizations**

During the period under review, the Security Council for the first time authorized enforcement action by a regional organization. It authorized the use of force to implement measures under Article 41 in two instances — in the former Yugoslavia and in Somalia (see cases 26 and 27). The Council also authorized the use of force to facilitate the delivery by United Nations humanitarian organizations and others of humanitarian assistance, again in the case of the former Yugoslavia (case 28).

<sup>412</sup> S/PV.2905, p. 37.

<sup>413</sup> The Council called upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences and supported “all efforts in this regard, and especially those of the League of Arab States” (resolution 660 (1990), para. 3).

<sup>414</sup> S/PV.2938, p. 76.

<sup>415</sup> *Ibid.*, p. 62.

<sup>416</sup> *Ibid.*, p. 66.

<sup>417</sup> S/PV.2951, p. 17.

<sup>418</sup> Resolution 195, adopted in Cairo on 10 September 1990.

<sup>419</sup> S/PV.2951, pp. 41-42.



### Case 26

#### *Implementation of an arms and trade embargo: the former Yugoslavia*

In response to the situation in Croatia and later in Bosnia and Herzegovina, the Security Council imposed an arms embargo on the whole of the former Yugoslavia by resolution 713 (1991) of 25 September 1991. In May 1992, the Council imposed a wide-ranging economic embargo against the Federal Republic of Yugoslavia (Serbia and Montenegro) by resolution 757 (1992). No express provision was made in either of those resolutions for the enforcement of their provisions. In November 1992, the Council took steps to reinforce those measures. By resolution 787 (1992), paragraph 12, the Council:

Acting under Chapters VII and VIII of the Charter, *calls upon* States, acting nationally or through regional agencies or arrangements, to use such measures commensurate with the specific circumstances as may be necessary under the authority of the Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions of resolutions 713 (1991) and 757 (1992).<sup>420</sup>

The Council also, in paragraph 14 of the resolution, requested “the States concerned, acting nationally or through regional agencies or arrangements, to coordinate with the Secretary-General, inter alia, on the submission of reports to the Council regarding actions taken in pursuance of paragraphs 12 and 13 to facilitate the monitoring of the implementation of the present resolution”. In the debate in the Council leading to the adoption of resolution 787 (1992), one Council member indicated that the Council’s authority and control over the operation was of decisive importance for its support of the resolution.<sup>421</sup>

### Case 27

#### *Implementation of an arms embargo: Somalia*

In response to the deterioration of the situation in Somalia and the heavy loss of life and widespread

material damage resulting from the conflict in the country, the Council imposed an arms embargo on Somalia in January 1992 by resolution 733 (1992). At the end of the year, the Council reinforced those measures. By paragraph 16 of resolution 794 (1992) of 3 December 1992, the Council:

Acting under Chapters VII and VIII of the Charter, *calls upon* States, nationally or through regional agencies or arrangements, to use such measures as may be necessary to ensure strict implementation of paragraph 5 of resolution 733 (1992).

The Council also imposed a reporting requirement. In paragraph 18 of the resolution, it requested the Secretary-General and, as appropriate, the States concerned to report to the Council on a regular basis, the first such report to be made no later than 15 days after the adoption of the resolution, on the implementation of the resolution.

### Case 28

#### *Facilitation of delivery of humanitarian aid: the former Yugoslavia (Bosnia and Herzegovina)*

In August 1992, the Council recognized, in resolution 770 (1992), that the situation in Bosnia and Herzegovina constituted a threat to international peace and security and that the provision of humanitarian assistance there was an important element in the Council’s effort to restore international peace and security in the area. In response to the situation prevailing in Sarajevo, which had severely complicated the efforts of UNPROFOR to fulfil its mandate to ensure the security and functioning of Sarajevo airport and the delivery of humanitarian assistance in Sarajevo and other parts of Bosnia and Herzegovina, the Council, acting under Chapter VII, decided in paragraph 2 as follows:

*Calls upon* States to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery by relevant United Nations humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina.

The Council further, in paragraph 4, called upon States to report to the Secretary-General on measures they were taking in coordination with the United Nations to implement the resolution.

<sup>420</sup> Under that authorization, the North Atlantic Treaty Organization and the Western European Union intercepted ships in the Adriatic and on the Danube (see the report of the Joint Inspection Unit entitled “Sharing responsibilities in peacekeeping: the United Nations and regional organizations”, 1995 (A/50/571-JIU/REP/95/4), para. 40.

<sup>421</sup> S/PV.3137, p. 6 (India).