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## **Chapter XI**

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

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## **Introductory note**

This chapter deals with action taken by the Security Council with respect to threats to the peace, breaches of the peace and acts of aggression, within the framework of Chapter VII of the Charter.

During the period under review, Chapter VII of the Charter was invoked by the Security Council in a greater number of its decisions than in the previous period. Most of those decisions related to the situation in the former Yugoslavia and the situation concerning Rwanda, but the Council also adopted measures under Chapter VII in connection with the situation in Somalia, the situation in Liberia and the question concerning Haiti, and in order to ensure the full cooperation of the Libyan Arab Jamahiriya in surrendering the suspects in the terrorist attacks against Pan Am flight 103 and UTA flight 772.

This chapter will focus on material selected to highlight how the provisions of Chapter VII of the Charter were interpreted by the Council in its deliberations and applied in its decisions. Given the increase during the period in the number of decisions in which the Council invoked Chapter VII, and in order to give due focus to the key elements that arose in its decisions or deliberations, several Articles that were grouped together in previous Supplements have been dealt with individually in separate parts of this chapter. Thus, parts I to IV of the chapter focus on the practice of the Council in accordance with Articles 39 to 42, while part V focuses on Articles 43 to 47, part VI deals with Article 48, part VII addresses the obligations of Member States under Article 49, and parts VIII and IX deal, respectively, with the practice of the Council with respect to Articles 50 and 51. Each section treats the different aspects of the Council's consideration of the Article in focus, under relevant subheadings. This structure is intended to better organize the material relevant to each Article.

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## Part I

### Determination of a threat to the peace, breach of the peace, or act of aggression under Article 39 of the Charter

#### *Article 39*

*The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.*

#### **Note**

During the period under review, the Security Council adopted several resolutions determining, or expressing concern at, the existence of threats to regional and/or international peace and security in connection with the situation in Angola; the question concerning Haiti; and the situation concerning Rwanda. While resolutions were adopted that referred to threats to peace and security, there was no explicit invocation of Article 39 of the Charter. The continuance of threats to international peace and security was determined in connection with the situation in the former Yugoslavia, and in connection with the Libyan Arab Jamahiriya, while the continuance of threats to regional peace and security was determined in connection with the situation in Liberia and the situation in Somalia. In all of those instances, the Council adopted measures under Chapter VII of the Charter.

In several other instances, Member States, in correspondence addressed to the President of the Council, sought to bring to the attention of the Council matters which they alleged posed a threat to the peace.<sup>1</sup>

<sup>1</sup> Such allegations were made and considered in connection with the following: (a) letter dated 4 December 1994 from the representative of Iraq addressed to the President of the Council, urging the Council to consider alleged aggression by the United States towards Iraq (S/1994/1398); (b) letter dated 16 July 1993 from the representative of Ukraine to the President of the Council, urging the Council to convene a meeting to discuss the Russian Parliament's adoption of a decree giving Russian federal status to the city of Sevastopol (S/26100); (c) letter dated 7 December 1995 from the representative of Afghanistan to the President of the Council requesting a meeting to consider the

No corresponding determination was made by the Council in those cases. While a meeting was requested in each correspondence, the only meeting convened to discuss the alleged threat was in response to a letter from the representative of Burundi requesting an urgent meeting to consider an impending "civil war" after the military coup d'état in Burundi, on 21 October 1993.<sup>2</sup> In that letter, the representative indicated to the Council that the situation there could have "incalculable consequences for international peace and security".

In the absence of express references to Article 39, it is not always possible to ascribe to the Council with any certainty decisions concerning that Article. The Council decisions discussed below may, however, help to shed light on the Council's interpretation and application of Article 39. Sections A and B provide an overview of the Council's decisions that may be interpreted as having reference to the principles contained in Article 39. Section C contains, in cases 1

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alleged interference of Pakistan in the internal affairs of Afghanistan (S/1995/1014); (d) letter dated 27 October 1993 from the President of Tajikistan to the President of the Council urging the Council to consider the ongoing tension along the Tajik-Afghan border (S/26659); (e) letter dated 21 June 1993 from the representative of the Sudan to the President of the Council alleging blatant aggression of Egyptian authorities against the Sudanese sovereignty in the Halayib area (S/25978); the same allegations were asserted in a letter dated 6 July 1995 from the representative of the Sudan to the President of the Council (S/1995/544); (f) letter dated 17 May 1994 from the representative of Rwanda to the President of the Council concerning the alleged aggression committed by Uganda against Rwanda (S/1994/586).

<sup>2</sup> Letter dated 25 October 1993 (S/26626). At the 3297th meeting, on 25 October 1993, the members of the Council, through a statement made by the President of the Council (S/26631), inter alia, condemned the acts of violence and the loss of life which had been caused by the perpetrators of the military coup. The Council demanded that they desist forthwith from taking any action which would exacerbate tension and plunge the country into more violence and bloodshed, which could have serious implications for peace and stability in the region.

and 2, a summary of relevant constitutional discussions.

### **A. Decisions of the Security Council determining the existence of a threat to the peace**

*The situation in Angola.* By resolution 864 (1993) of 15 September 1993, the Council determined that, as a result of the military actions of the National Union for the Total Independence of Angola (UNITA), the situation in Angola constituted a threat to international peace and security.

*The question concerning Haiti.* By resolution 841 (1993) of 16 June 1993, the Council expressed concern that the “mass displacements of population” in Haiti could become or aggravate threats to international peace and security. It determined that, in those unique and exceptional circumstances, the continuation of the situation threatened international peace and security in the region. By resolution 873 (1993) of 13 October 1993, the Council determined that the failure of the military authorities and police to fulfil obligations under the Governors Island Agreement constituted a threat to peace and security in the region. By resolution 875 (1993) of 16 October 1993, the Council reaffirmed its determination that, in those unique and exceptional circumstances, the failure of the military authorities in Haiti to fulfil their obligations under the Governors Island Agreement constituted a threat to peace and security in the region. In two subsequent statements made by the President of the Council on behalf of the members of the Council, the Council reaffirmed that the Governors Island Agreement remained fully in force as the only valid framework for the solution of the crisis in Haiti, which continued to threaten peace and security in the region.<sup>3</sup> By resolution 917 (1994) of 6 May 1994, the Council again reaffirmed its determination that, in those unique and exceptional circumstances, the situation created by the failure of the military authorities in Haiti to fulfil their obligations under the Governors Island Agreement and to comply with relevant Council resolutions constituted a threat to peace and security. By resolution 940 (1994) of 31 July 1994, the Council expressed concern at the significant deterioration of the humanitarian situation

<sup>3</sup> S/26633 and S/26747.

in Haiti, and determined that the situation continued to constitute a threat to peace and security in the region.

*The situation in Rwanda.* By resolution 918 (1994) of 17 May 1994, the Council stated that it was deeply disturbed by the magnitude of the human suffering caused by the conflict, and concerned that the situation in Rwanda constituted a threat to peace and security in the region. By resolution 929 (1994) of 19 June 1994, the Council determined that the magnitude of the humanitarian crisis in Rwanda constituted a threat to peace and security in the region. By resolution 955 (1994) of 8 November 1994, the Council expressed concern at the reports indicating that genocide and other systematic, widespread and flagrant violations of international humanitarian law had been committed in Rwanda, and determined that the situation in Rwanda continued to constitute a threat to international peace and security.

*Establishment of an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia.* The Council expressed its grave alarm at the continued reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia, and determined that the situation constituted a threat to international peace and security.<sup>4</sup>

*The situation in Liberia.* By resolution 813 (1993) of 26 March 1993, the Council condemned the armed attacks against the peacekeeping forces of the Economic Community of West African States (ECOWAS) in Liberia by one of the parties to the conflict, and determined that the deterioration of the situation in Liberia constituted a threat to international peace and security, particularly in the region of West Africa.

### **B. Decisions of the Security Council determining a continuing threat to the peace**

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

*The situation in Bosnia and Herzegovina.* In a statement made by the President on behalf of the

<sup>4</sup> See, respectively, resolutions 808 (1993) and 827 (1993).

Security Council,<sup>5</sup> the Council demanded that all sides immediately cease all forms of military action throughout Bosnia and Herzegovina, cease acts of violence against civilians, comply with their previous commitments including the ceasefire, and redouble their efforts to settle the conflict. Having determined in the relevant resolutions that the situation constituted a threat to international peace and security, the Council insisted that those steps had to be taken. By resolution 816 (1993) of 31 March 1993, the Council was deeply concerned by the various reports of the Secretary-General concerning violations of the ban on military flights in the airspace of Bosnia and Herzegovina, and determined that the grave situation in Bosnia and Herzegovina continued to be a threat to international peace and security. By resolution 836 (1993) of 4 June 1993, the Council was deeply concerned by the continued armed hostilities in the territory of Bosnia and Herzegovina which ran totally counter to the peace plan, and determined that the situation continued to be a threat to international peace and security. By resolution 859 (1993) of 24 August 1993, the Council was deeply concerned at the deterioration of humanitarian conditions in Bosnia and Herzegovina, including in and around Mostar, and determined that the grave situation in Bosnia and Herzegovina continued to be a threat to international peace and security. By resolution 913 (1994) of 22 April 1994, the Council recalled all its previous relevant resolutions on the conflict in Bosnia and Herzegovina, and determined that the situation in Bosnia and Herzegovina continued to constitute a threat to international peace and security. By resolution 941 (1994) of 23 September 1994, the Council emphasized that the practice of ethnic cleansing by the Bosnian Serbs constituted a clear violation of international humanitarian law and posed a serious threat to the peace effort, and determined that the situation in Bosnia and Herzegovina continued to constitute a threat to international peace and security. By resolution 942 (1994) of 23 September 1994, the Council condemned the decision by the Bosnian Serb party to refuse to accept the proposed territorial settlement, and determined that the situation in Bosnia and Herzegovina continued to constitute a threat to international peace and security. By resolution 1031 (1995) of 15 December 1995, having considered the

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<sup>5</sup> S/25361.

report of the Secretary-General,<sup>6</sup> the Council determined that the situation in the region continued to constitute a threat to international peace and security.

*United Nations Protection Force (UNPROFOR).* In two subsequent resolutions,<sup>7</sup> the Council was deeply concerned by the repeated violations by the parties and others concerned of their ceasefire obligations, and determined that the situation thus created constituted a threat to peace and security in the region. By resolution 998 (1995) of 16 June 1995, the Council was deeply concerned by the continuing armed hostilities in the territory of Bosnia and Herzegovina, and determined that the situation in the former Yugoslavia continued to be a threat to international peace and security.

*The situation prevailing in and around the safe area of Bihac.* By resolution 958 (1994) of 19 November 1994, the Council reiterated its concern about the deteriorating situation in and around the safe area of Bihac, and determined that the situation in the former Yugoslavia continued to constitute a threat to international peace and security.

*The situation in the former Yugoslavia.* By resolutions 1021 (1995) and 1022 (1995), both of 22 November 1995, the Council recalled all its previous relevant resolutions concerning the conflicts in the former Yugoslavia, and determined that the situation in the region continued to constitute a threat to international peace and security.

**Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America<sup>8</sup>**

By resolution 883 (1993) of 11 November 1993, the Council determined that the continued failure by the Government of the Libyan Arab Jamahiriya to demonstrate by concrete actions its renunciation of terrorism, and in particular its continued failure to respond fully and effectively to the requests and decisions contained in resolutions 731 (1992) and 748 (1992), constituted a threat to international peace and security.

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<sup>6</sup> S/1995/1031.

<sup>7</sup> See, respectively, resolutions 807 (1993) and 815 (1993).

<sup>8</sup> Decisions on this question were also adopted by the Council in 1991 and 1992.

### The situation in Somalia

By resolution 814 (1993) of 26 March 1993, the Council noted with deep regret and concern the continuing reports of widespread violations of international humanitarian law and the general absence of the rule of law, and determined that the situation in Somalia continued to threaten peace and security in the region. By resolution 837 (1993) of 6 June 1993, the Council was gravely alarmed at the premeditated armed attacks launched by forces apparently belonging to the United Somali Congress/Somali National Alliance against the personnel of the United Nations Operation in Somalia II (UNOSOM II), and determined that the situation in Somalia continued to threaten peace and security in the region. In three subsequent resolutions, the Council condemned the acts of violence and armed attacks against persons engaged in humanitarian and peacekeeping efforts, and determined that the situation in Somalia continued to threaten peace and security in the region.<sup>9</sup> By resolution 954 (1994) of 4 November 1994, the Council recognized that the lack of progress in the Somali peace process and in national reconciliation, in particular the lack of sufficient cooperation from the Somali parties over security issues, had fundamentally undermined the United Nations objectives in Somalia, and determined that the situation in Somalia continued to threaten peace and security.

### C. Constitutional discussions arising in connection with the principles contained in Article 39

During the period under review, in the course of the Council's deliberations relating to the adoption of the resolutions referred to in this part of the chapter, a number of speakers described the various situations on the Council's agenda as constituting a threat to international peace and security.<sup>10</sup> This section will

<sup>9</sup> Resolutions 886 (1993), 897 (1994) and 923 (1994).

<sup>10</sup> See, for example, in connection with the situation in Angola, S/PV.3277, pp. 3-11 (Angola); and pp. 16-20 (Egypt); in connection with the situation in the Republic of Bosnia and Herzegovina, S/PV.3228, pp. 48-49 (China); and p. 43 (Pakistan); in connection with the situation in Liberia, S/PV.3549; in connection with the situation in Somalia, S/PV.3229, pp. 7-8 (United States). See also the synopses of Council deliberations relating

highlight the deliberations in the Council pertaining to whether the situation in question did, indeed, constitute a threat to international peace and security and the Council's responsibility in that regard. In both case 1 and case 2 below, the Council's deliberations related to a resolution adopted under Chapter VII of the Charter.

#### Case 1

##### *The question concerning Haiti*

In the deliberations held in connection with the adoption of resolution 841 (1993),<sup>11</sup> the Council considered a letter from the representative of Haiti to the President of the Council,<sup>12</sup> in which the representative of Haiti stated that, despite efforts by the international community, constitutional order had yet to be re-established in Haiti, given the de facto authorities' continued obstruction of proposed initiatives, and requested that the Council make universal and mandatory the sanctions imposed by the Organization of American States (OAS). The President drew the Council's attention to a letter from the representative of Cuba, in which the latter informed the Council of his Government's view of resolution 841 (1993),<sup>13</sup> pointing out that the resolution characterized the question of the Haitian refugees as a threat to international peace and security in the region. He noted that Cuba, being one of Haiti's closest neighbours, had received thousands of refugees from Haiti and had never considered that the flow of refugees threatened peace and security in the geographical region. It was considered as a purely humanitarian question which needed to be resolved, through the international organizations and bodies dealing with refugees and displaced persons and, as such, did not fall under the mandate of the Council.

The representative of Venezuela stated that the situation in Haiti was "undoubtedly a threat to international peace and security, in particular in the Caribbean basin, and that it was not a question of interference in Haiti's internal affairs".<sup>14</sup> He also noted that the situation in Haiti marked the first time that the Council had adopted a resolution implementing

to the adoption of the resolutions referred to in part I of the present chapter set out in chapter VIII.

<sup>11</sup> At the 3238th meeting.

<sup>12</sup> S/25958.

<sup>13</sup> S/25942.

<sup>14</sup> S/PV.3238, p. 12.

Chapter VII in connection with a country in the American hemisphere. A number of speakers supported the imposition of limited sanctions by resolution 841 (1993),<sup>15</sup> for the purpose of advancing the negotiating process.

In deliberations held in connection with the adoption of resolution 940 (1994),<sup>16</sup> the Council considered a letter addressed to the Secretary-General from the representative of Haiti,<sup>17</sup> transmitting a letter from President Aristide, in which the international community was called on to take “prompt and decisive action” regarding the situation in Haiti. Members of OAS participating in the meeting similarly viewed the crisis in Haiti as not being a threat to international peace and security that would warrant the use of force. The representative of Mexico stated that, in the opinion of his delegation, the crisis in Haiti was “not a threat to peace, a breach of the peace or an act of aggression such as would warrant the use of force in accordance with Article 42 of the Charter”.<sup>18</sup> The representative of Uruguay stated that, with a view to the restoration of law, order and democracy, his country had, in the past, supported the imposition of economic sanctions under Article 41, but did not support military action provided for in Article 42. He explained that Uruguay did not believe that the internal political situation in Haiti projected externally in such a way as to represent a threat to international peace and security, and stressed the need to pursue avenues of dialogue and negotiation which had still not been exhausted.<sup>19</sup> The representative of Brazil described the crisis in Haiti as being of “a unique and exceptional character” which could not be put on a par with other situations in which international peace and security had been threatened.<sup>20</sup>

On the other hand, the representative of Nigeria stated that the overriding rationale for the proposed action under Chapter VII in resolution 940 (1994) was predicated on the failure of the military Government in Haiti to honour the Governors Island Agreement, and its failure to fully implement previous Council resolutions, both of which failures threatened peace

and security in the region.<sup>21</sup> This opinion was shared by some other Council members who viewed the situation in Haiti as being a threat to peace and security in the region.<sup>22</sup>

The representative of Djibouti was of the view that the mounting impact of the Haitian crisis on many countries of the region clearly constituted a threat to regional peace and security.<sup>23</sup> The representative of the Czech Republic noted that the situation in Haiti constituted a real and growing threat to peace, security and stability in the region, given that the international community’s efforts to restore democracy to Haiti through peaceful, political means and through the imposition of economic sanctions had clearly failed.<sup>24</sup>

By a letter addressed to the President of the Council,<sup>25</sup> the representative of the Libyan Arab Jamahiriya alleged that the threat of the use of force by the United States and its preparations for the invasion of Haiti constituted “a grave precedent that threatened international peace and security”. He further stated that the events in Haiti were an internal affair and did not constitute a threat to the peace or breach of the peace, nor an act of aggression justifying the use of force.

Further to the adoption of resolution 940 (1994), the Council convened a meeting<sup>26</sup> to discuss a letter from the representative of the United States addressed to the President of the Council containing the report of the United States to the Council pursuant to paragraph 13 of that resolution.<sup>27</sup> In the deliberations, the representative of the United States noted that, since the 1991 coup d’etat, the Council had viewed the overthrow of democracy in Haiti as a threat to regional security and to international norms. He added that the exercise of military force, pursuant to resolution 940 (1994), allowed for an agreement for the peaceful restoration of democracy, which made the United

<sup>15</sup> Ibid., pp. 9-10 (France); pp. 14-15 (Pakistan); pp. 16-18 (Brazil); pp. 18-19 (United States); pp. 19-21 (China); and pp. 6-8 (Canada).

<sup>16</sup> At the 3413th meeting.

<sup>17</sup> S/1994/905.

<sup>18</sup> S/PV.3413, p. 4.

<sup>19</sup> Ibid., p. 7.

<sup>20</sup> Ibid., p. 8.

<sup>21</sup> Ibid., p. 11.

<sup>22</sup> Ibid., pp. 7-8 (Canada); pp. 12-13 (United States); pp. 13-14 (France); p. 18 (United Kingdom); pp. 18-20 (Spain); pp. 20-22 (New Zealand); pp. 22-23 (Djibouti); pp. 23-24 (Russian Federation); pp. 24-25 (Oman); and pp. 25-26 (Pakistan).

<sup>23</sup> Ibid., p. 22.

<sup>24</sup> Ibid., p. 24.

<sup>25</sup> S/1994/1054.

<sup>26</sup> 3429th meeting.

<sup>27</sup> S/1994/1107.



Nations Mission in Haiti safer for the coalition and for the Haitian people.<sup>28</sup>

### Case 2

*Letters dated 20 and 23 December 1991 from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America*<sup>29</sup>

In the deliberations held in connection with the adoption of resolution 883 (1993),<sup>30</sup> the representative of the Libyan Arab Jamahiriya challenged the fact that the Council was meeting to consider a matter that threatened international peace and security. According to the representative, the Council “sought to intensify sanctions” against his country, “under the pretext that it had not complied with resolution 731 (1993)”.<sup>31</sup>

In opposing the resolution, the representative of the Sudan, speaking on behalf of the League of Arab States, pointed out that the crisis was a legal dispute that should be dealt with on the basis of Article 33 (Chapter VI) and not under Chapter VII of the Charter. He further described as “curious” the fact that the resolution was based on Chapter VII of the Charter, which addressed situations of aggression that threaten

international peace and security and was not applicable to the dispute before the Council, as it was a legal dispute that dealt with the extradition of two accused Libyan nationals. Such a dispute, he contended, should be dealt with in a court of law, specifically by the International Court of Justice. Alternatively, it should be addressed in conformity with Chapter VI of the Charter. He added that, in dealing with the crisis, the League had based itself on the Charter, which stipulated that all international disputes should be settled by peaceful means and without endangering international peace and security.<sup>32</sup> The representative of Brazil stated that the action taken by the Council involved determination of the existence of a threat to international peace and security as a result of two incidents of the utmost gravity, as it involved a number of legal questions that had been the subject of controversial debate within and outside the Council.<sup>33</sup> Most Council members supported resolution 883 (1993), since it demonstrated the Council’s commitment to the eradication of international terrorism, and since it was taking action to deal with a situation that affected international peace and security.<sup>34</sup>

<sup>28</sup> S/PV.3429, p. 3.

<sup>29</sup> Decisions on this question were also adopted by the Council in 1991 and 1992.

<sup>30</sup> At the 3312th meeting.

<sup>31</sup> S/PV.3312, pp. 3-26.

<sup>32</sup> *Ibid.*, pp. 30-39.

<sup>33</sup> *Ibid.*, p. 47.

<sup>34</sup> *Ibid.*, pp. 40-42 (United States); pp. 42-44 (France); pp. 44-46 (United Kingdom); p. 54 (Russian Federation); and p. 56 (Spain).

## Part II Provisional measures under Article 40 of the Charter

### Article 40

*In order to prevent an aggravation of the situation, the Security Council may, before making the recommendation or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.*

### Note

During the period under consideration, the Security Council did not adopt any resolution explicitly under Article 40. In a number of resolutions adopted under Chapter VII, the Council, without expressly referring to Article 40, called upon the parties to comply with certain provisional measures in order to prevent an aggravation of the situation concerned. The types of measures called for included (a) the withdrawal of armed forces; (b) the cessation of hostilities; (c) the conclusion or observance of a ceasefire; (d) the negotiation of differences and disputes; (e) compliance with obligations under international humanitarian law; (f) the creation of the

conditions necessary for unimpeded delivery of humanitarian assistance; and (g) cooperation with peacekeeping efforts and humanitarian assistance. Some of the specific measures that the Council called upon the parties concerned to take are summarized below. In some cases provisional measures were adopted concurrently with or after the imposition of measures under Article 41 of the Charter, and were therefore aimed at preventing a further aggravation of the situation.<sup>35</sup>

A number of Council resolutions contained the warning that, in the event of failure to comply with the terms of those resolutions, the Council would meet again and consider further steps. Those warnings, which might be considered as falling under the last sentence of Article 40, were expressed in various ways. Most frequently, the Council warned that it would consider taking further measures if its calls were not heeded.<sup>36</sup>

During the Council's deliberations in the period under review there was no significant constitutional discussion regarding Article 40.

## **A. Provisional measures called for by the Security Council**

### **The situation in the former Yugoslavia (situation in Croatia and the situation prevailing in and adjacent to the United Nations Protected Areas in Croatia)**

By resolution 802 (1993) of 25 January 1993, the Council, reaffirming its resolution 713 (1991) of 25 September 1991, in which the situation in the former Yugoslavia was defined as a threat to international peace and security, demanded an immediate cessation of hostile activities by Croatian armed forces within or adjacent to the United Nations Protected Areas and their withdrawal from those areas, an end to attacks against UNPROFOR personnel, the return of all heavy weapons seized from UNPROFOR-controlled storage areas, and strict compliance by all parties with the terms of ceasefire arrangements.

<sup>35</sup> See, for example, the situation in Angola, the question concerning Haiti and the situation concerning Rwanda.

<sup>36</sup> See, for example, in connection with the situation in Angola, resolutions 864 (1993), para. 26; 903 (1994), para. 10; and 932 (1994), para. 5; and, in connection with the situation in Croatia, resolution 994 (1995).

By resolution 807 (1993) of 19 February 1993, the Council, expressing once more its concern that the situation created in Yugoslavia constituted a threat to international peace and security, reiterated its demand that the parties comply with their ceasefire obligations and refrain from positioning their forces in the proximity of the units of UNPROFOR in the United Nations Protected Areas and pink zones. In other decisions, the Council reiterated its calls for the cessation of hostilities, the observance of the ceasefire agreements, the withdrawal of armed forces and full respect by the parties of United Nations personnel and international humanitarian law.<sup>37</sup>

By resolution 981 (1995) of 31 March 1995, the Council established as an interim arrangement the United Nations Confidence Restoration Operation (UNCRO) to replace UNPROFOR in Croatia. In its presidential statement of 1 May 1995, the Council demanded that the Government of Croatia put an end immediately to the military offensive launched by its forces in violation of the ceasefire agreement.<sup>38</sup> By resolution 994 (1995) of 17 May 1995, the Council demanded that the status and the mandate of UNCRO, as well as the safety and security of its personnel, be respected. In addition, it called upon the parties to respect the economic agreement signed by them on December 1994, and demanded that they "refrain from taking any further military measures or actions that could lead to an escalation of the situation" and warned that "in the event of failure to comply with this demand it [would] consider further steps needed to ensure such compliance".

In its presidential statement of 4 August 1995, the Council demanded that no military action be taken against civilians and that their human rights be fully respected. The Council also demanded that the parties respect the economic agreement signed by them on 2 December 1994.<sup>39</sup>

By resolution 1009 (1995) of 10 August 1995, deploring the fact that those demands had not been complied with, the Council demanded that the Government of Croatia cease immediately all military

<sup>37</sup> Presidential statements of 27 January 1993 (S/25178), 8 June 1993 (S/25897), 15 July 1993 (S/26084), 30 July 1993 (S/26199) and 14 September 1993 (S/26436) and resolution 871 (1993) of 4 October 1993.

<sup>38</sup> S/PRST/1995/23.

<sup>39</sup> S/PRST/1995/38.

actions and fully comply with all Council resolutions. It also demanded that the Government of Croatia (a) fully respect the rights of the local Serb population; (b) allow access to that population by international humanitarian organizations; (c) create conditions conducive to the return of those persons who had left their homes; and (d) fully respect the status of the United Nations personnel.

**The situation in the former Yugoslavia  
(situation in Bosnia and Herzegovina)**

By resolution 819 (1993) of 16 April 1993, the Council, reaffirming its resolution 713 (1991) of 25 September 1991, in which it affirmed that the situation in Yugoslavia constituted a threat to international peace and security, demanded that all parties and others concerned treat Srebrenica and its surroundings as a safe area which should be free from any armed attack or any other hostile act. It demanded the immediate withdrawal of Bosnian Serb paramilitary units from areas surrounding Srebrenica and the cessation of armed attacks against the town.<sup>40</sup> It also demanded that the Federal Republic of Yugoslavia cease the supply of military arms and equipment to the Bosnian Serb paramilitary units. In addition, it demanded the unimpeded delivery of humanitarian assistance to all parts of Bosnia and Herzegovina, in particular to the population of Srebrenica, as well as the safety and freedom of movement of the United Nations personnel and members of humanitarian organizations.<sup>41</sup> By the same resolution, the Council decided, acting under Chapter VII of the Charter, to consider further steps to achieve a solution in conformity with the relevant resolutions.

<sup>40</sup> The Council reiterated these demands in its presidential statement of 21 April 1993 (S/25646).

<sup>41</sup> The Council had already demanded from the parties the unimpeded delivery of humanitarian assistance in presidential statements; see, for instance, the presidential statements of 17 February 1993 (S/25302), 25 February 1993 (S/25334) and 3 April 1993 (S/25520). In a number of presidential statements, the Council more specifically demanded that all the parties and others concerned cease and desist forthwith from violating international humanitarian law in the territory of Bosnia and Herzegovina, including in particular the deliberate interference with humanitarian convoys; see, for instance, the presidential statements of 25 January 1993 (S/25162), 3 April 1993 (S/25520) and 28 October 1993 (S/26661).

By resolution 824 (1993) of 6 May 1993, the Council, declaring that Sarajevo and other threatened areas should be treated as safe areas, demanded the end of armed attacks and the withdrawal of all Bosnian Serb military or paramilitary units. It further demanded that all parties and others concerned cooperate fully with UNPROFOR and take any necessary measures to respect the safe areas.<sup>42</sup> The Council reiterated those demands in other decisions.<sup>43</sup>

The Council, in a presidential statement of 7 January 1994, demanded an immediate end to attacks against Sarajevo, which had resulted in a large number of civilian casualties, disrupted essential services and aggravated an already severe humanitarian situation. It further demanded that all parties allow for unimpeded access of humanitarian relief assistance; in this context, the Council again expressed its readiness to consider further measures to ensure that all parties in Bosnia and Herzegovina abided by their commitments.<sup>44</sup>

In a statement by the President on 3 February 1994, the Council demanded that Croatia withdraw forthwith all elements of the Croatian Army along with military equipment and fully respect the territorial integrity of Bosnia and Herzegovina.<sup>45</sup> On 23 February 1994, the Government of Bosnia and Herzegovina and the Bosnian Croat sides signed a ceasefire agreement. By resolution 900 (1994) of 4 March 1994, the Council called on all parties to cooperate with UNPROFOR in the consolidation of the ceasefire in and around Sarajevo. Further, it called upon them to achieve complete freedom of movement for the civilian population and humanitarian goods. Condemning the shelling and attacks by Bosnian Serb forces against the safe area of Gorazde, the Council demanded the withdrawal of those forces and their weapons to a distance from which they could cease to threaten the

<sup>42</sup> The Council reiterated its demands for the cessation of hostilities and the full access by UNPROFOR to all areas of Bosnia and Herzegovina in its presidential statements of 10 May 1993 (S/25746) and 22 July 1993 (S/26134).

<sup>43</sup> Resolution 859 (1993) of 24 August 1993 and the presidential statements of 28 October 1993 (S/26661) and 9 November 1993 (S/26716).

<sup>44</sup> The Council again demanded that the Bosnian Serb party and the Bosnian Croat party allow forthwith and without conditions passage to all humanitarian convoys in a presidential statement issued on 14 March 1994 (S/PRST/1994/11).

<sup>45</sup> S/PRST/1994/6.

safe area.<sup>46</sup> It demanded the immediate conclusion of a ceasefire agreement in Gorazde and throughout Bosnia and Herzegovina under the auspices of UNPROFOR leading to an agreement on cessation of hostilities.<sup>47</sup> The Council also demanded an end to any provocative action in and around the safe areas,<sup>48</sup> the immediate release of all United Nations personnel held by Bosnian Serb forces and unimpeded freedom of movement for UNPROFOR.<sup>49</sup>

By resolution 941 (1994) of 23 September 1994, the Council demanded that the Bosnian Serb authorities immediately cease their campaign of ethnic cleansing and accord unimpeded access of humanitarian assistance to a number of areas of concern. By resolution 959 (1994) of 19 November 1994, the Council, condemning violations of the international border between Croatia and Bosnia and Herzegovina, demanded that all parties, in particular the so-called Krajina Serbs, fully respect the border and refrain from hostile acts across it.

The Council called upon the Bosnian parties to agree to an extension of the agreements on a ceasefire and on a complete cessation of hostilities concluded in December 1994.<sup>50</sup> By resolution 998 (1995) of 16 June

1995, once again determining that the situation in the former Yugoslavia continued to be a threat to international peace and security, the Council made a number of demands on the parties. It demanded that (a) Bosnian Serb forces release immediately and unconditionally all remaining detained UNPROFOR personnel and that they respect the safety of Force personnel and others engaged in humanitarian assistance; (b) all parties allow unimpeded access for humanitarian assistance to all parts of Bosnia and Herzegovina; (c) the parties fully respect the status of the safe areas; and (d) the parties agree to a ceasefire.

The Council, gravely concerned about the deterioration of the situation in the safe area of Srebrenica, made a number of demands on the parties and others concerned. It demanded that (a) the Bosnian Serb forces cease their offensive and withdraw immediately from the safe area of Srebrenica; (b) the respect of the status of Srebrenica as a safe area; (c) the release by Bosnian Serb forces of UNPROFOR personnel and the full respect of their safety; and (d) unimpeded access of humanitarian assistance for the international humanitarian agencies to the area of Srebrenica.<sup>51</sup>

The Council reiterated its demands regarding the unimpeded access of humanitarian assistance to all the areas of concern by UNPROFOR and humanitarian organizations and agencies as well as its call on all the parties to guarantee their freedom of movement and safety.<sup>52</sup>

### **The situation in Somalia**

By resolution 814 (1993) of 26 March 1993, the Council expressed its concern that the situation in Somalia continued to threaten international peace and security in the region. It demanded that all Somali parties comply fully with the commitments undertaken in the agreements they had concluded at the informal preparatory meeting on Somali political reconciliation

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<sup>46</sup> The Council had already demanded the immediate cessation of attacks against the safe area of Gorazde and its population in its presidential statement of 6 April 1994 (S/PRST/1994/14).

<sup>47</sup> The Council reiterated its demand for the cessation of hostilities in its presidential statements of 30 June 1994 (S/PRST/1994/31), 2 September 1994 (S/PRST/1994/50) and 18 November 1994 (S/PRST/1994/69).

<sup>48</sup> The Council reiterated this demand in its presidential statement of 4 May 1994 (S/PRST/1994/23).

<sup>49</sup> The Council had already demanded that all parties allow UNPROFOR unimpeded freedom of movement and guarantee its safety and security in its presidential statements of 14 March 1994 (S/PRST/1994/11) and 14 April 1994 (S/PRST/1994/19). See, further, throughout the remainder of the year, the Council constantly demanded that all the parties cooperate with UNPROFOR in the fulfilment of its mandate as well as ensure its safety. For example, the presidential statement of 1 June 1994 (S/PRST/1994/26), resolution 959 (1994) of 19 November 1994 and the presidential statement of 26 November 1994 (S/PRST/1994/71).

<sup>50</sup> In its presidential statement issued on 17 February 1995 (S/PRST/1995/8), the Council had demanded that all forces in the Bihac area cease fighting and cooperate fully with UNPROFOR in achieving an effective ceasefire. See also the presidential statement of 6 January 1995 (S/PRST/1995/1).

<sup>51</sup> Resolution 1004 (1995) of 12 July 1995.

<sup>52</sup> See, for instance, the presidential statements of 14 July 1995 (S/PRST/1995/32), 20 July 1995 (S/PRST/1995/33) and 25 July 1995 (S/PRST/1995/34), resolution 1010 (1995) of 10 August 1995, the presidential statements of 18 September 1995 (S/PRST/1995/47) and 5 October 1995 (S/PRST/1995/52) and resolutions 1031 (1995) of 15 December 1995 and 1034 (1995) of 21 December 1995.

at Addis Ababa. Further, it demanded that all parties take all measures to ensure the safety of the personnel of the United Nations and its agencies as well as of the other humanitarian organizations operating in the country. Finally it reiterated its demand that the Somali parties cease and desist from all breaches of international humanitarian law.<sup>53</sup> By resolution 837 (1993), adopted on 6 June 1993 after a Pakistani contingent of UNOSOM II was attacked, resulting in the deaths of at least 18 Pakistani peacekeepers, the Council strongly condemned the attack and reiterated its demand that all Somali parties, including factions and movements, comply fully with the ceasefire and disarmament agreement reached in Addis Ababa. By resolution 897 (1994) of 4 February 1994, in expanding the UNOSOM II mandate to assistance for reconciliation and reconstruction, the Council demanded that all Somali parties refrain from any acts of intimidation or violence against personnel engaged in humanitarian or peacekeeping work in the country.<sup>54</sup>

#### **The situation in Liberia**

Having determined, in March 1993, that the deterioration of the situation in Liberia constituted a threat to international peace and security, the Council by resolution 813 (1993) of 26 March 1993, called upon the parties to the conflict to abide by and implement the ceasefire and the various accords of the peace process. In addition, it demanded that the parties concerned refrain from any action that might impede or obstruct the delivery of humanitarian assistance, and called upon the parties to ensure the safety of all personnel involved in international humanitarian assistance as well as to respect strictly the provisions of international humanitarian law.

<sup>53</sup> Also by resolution 814 (1993), the Council, acting under Chapter VII of the Charter, endorsed the mandate for the expanded UNOSOM (UNOSOM II), authorizing it to use force if necessary to ensure its mandate. UNOSOM II was mandated to secure a stable environment for the delivery of humanitarian assistance and to assist in the reconstruction of economic, social and political life.

<sup>54</sup> In view of the deteriorating security situation in Somalia, with attacks and harassment directed against UNOSOM II and other international personnel serving in Somalia, the Council reiterated this demand in resolutions 923 (1994) of 31 May 1994 and 954 (1994) of 4 November 1994.

#### **The situation in Angola**

In September 1993, as a result of UNITA military actions, the Council determined that the situation in Angola constituted a threat to international peace and security.<sup>55</sup> In its presidential statement issued on 1 November 1993,<sup>56</sup> the Council called upon the parties to cooperate fully in ensuring the unimpeded delivery of humanitarian assistance to all Angolans throughout the country and to take all the necessary measures to ensure the security and safety of United Nations and other personnel involved in humanitarian relief operations, and to strictly abide by applicable rules of international humanitarian law. The Council also expressed its readiness to consider the immediate imposition of further measures under the Charter at any time it observed that UNITA was not cooperating in good faith to make the ceasefire effective and implement the Peace Accords. By resolution 890 (1993) of 15 December 1993, the Council, deeply concerned that an effective ceasefire had not been attained, urged the parties to stop immediately all military actions as well as to agree on the modalities for the establishment of an effective and sustainable ceasefire. The Council subsequently reiterated its calls for the establishment of a ceasefire, the cessation of all offensive military operations and the unimpeded delivery of humanitarian assistance.<sup>57</sup>

#### **The situation in Rwanda**

The Council, having determined that the situation in Rwanda constituted a threat to peace and security in the region, demanded that all parties to the conflict immediately cease hostilities and agree to a ceasefire. Further, it strongly urged the parties to cooperate fully

<sup>55</sup> Resolution 864 (1993) of 15 September 1993. By the same resolution, the Council condemned UNITA for its continuing military actions, and, acting under Chapter VII of the Charter, imposed an embargo on the supply of arms and petroleum products to UNITA and warned the parties about its readiness to consider imposition of further measures.

<sup>56</sup> S/26677.

<sup>57</sup> Presidential statement of 10 February 1994 (S/PRST/1994/7), resolutions 903 (1994) of 16 March 1994, 922 (1994) of 31 May 1994 and 932 (1994) of 30 June 1994, presidential statement of 12 August 1994 (S/PRST/1994/45), resolutions 945 (1994) of 29 September 1994 and 952 (1995) of 27 October 1995 and presidential statement of 4 November 1994 (S/PRST/1994/63).

with the United Nations Assistance Mission for Rwanda (UNAMIR) in the implementation of its mandate and demanded that they refrain from any acts of violence against personnel engaged in humanitarian and peacekeeping work.<sup>58</sup> By resolution 929 (1994) of 22 June 1994, reiterating that the magnitude of the humanitarian crisis in Rwanda constituted a threat to peace and security in the region, the Council demanded that all parties to the conflict and others concerned immediately bring to an end all killings of civilian populations in areas under their control. By resolution 965 (1994) of 30 November 1994, the Council strongly urged the Government of Rwanda to continue its

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<sup>58</sup> Resolution 918 (1994) of 17 May 1994. The Council had already demanded an immediate ceasefire and cessation of hostilities between the forces of the interim Government of Rwanda and the Rwandese Patriotic Front in its resolution 912 (1994) of 21 April 1994.

cooperation with UNAMIR in the implementation of its mandate and in particular in ensuring unimpeded access to all areas of the country by UNAMIR forces, personnel of the International Tribunal for Rwanda and human rights officers.

#### **The situation in Haiti**

By resolution 917 (1994) of 6 May 1994, the Council expressed its concern that the situation created by the failure of the military authorities in Haiti to fulfil their obligations under the Governors Island Agreement and to comply with relevant Council resolutions constituted a threat to peace and security in the region. It called upon the parties concerned to fully cooperate with the Special Envoy of the Secretaries-General of the United Nations and OAS to bring about the full implementation of the Governors Island Agreement.

### **Part III**

## **Measures not involving the use of armed force under Article 41 of the Charter**

#### *Article 41*

*The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.*

#### **Note**

During the period under review, the Council did not invoke Article 41 explicitly in any of its decisions. The Council, however, imposed measures under Chapter VII of the Charter, in line with the provisions of Article 41, against Haiti, Rwanda, UNITA and the former Yugoslavia. The Council also reaffirmed the measures previously imposed against Iraq, Liberia, the Libyan Arab Jamahiriya and Somalia, which were based on the principles set out in Article 41. In connection with these and other issues, during the deliberations of the Council, members made implicit

references to Article 41 regarding economic sanctions and judicial measures.<sup>59</sup> The Council also terminated the sanctions previously imposed under Article 41 against South Africa. It should be noted that the Security Council Committee established by resolution 421 (1977) to monitor the arms embargo against South Africa was the longest standing sanctions Committee ever established.

The decisions of the Council by which measures based on the principles of Article 41 were imposed are set out in section A; section B reflects salient issues that were raised in the deliberations of the Council.

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<sup>59</sup> The International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda are the first international judicial organs created by the United Nations to prosecute crimes against humanity. One of the most innovative recommendations of the Secretary-General was that of establishing the Tribunal through the exercise of the Security Council's powers under Chapter VII of the Charter. This will be further discussed in section B, which will focus on decisions and debate among Council members in relation to Article 41.

## A. Decisions of the Security Council relating to Article 41

### 1. Sanctions

#### *Measures taken in connection with Haiti*

By resolution 841 (1993) of 16 June 1993, the Council decided that all States should prevent the sale or supply, by their nationals or from their territories or using their flag vessels or aircraft, of petroleum or petroleum products or arms and related materiel of all types, including weapons and ammunition, military vehicles, police equipment and spare parts, to any person or body in Haiti. The Council also decided that States were to freeze all funds in the name of the Government of Haiti to ensure that they were not made available directly or indirectly to or for the benefit of the de facto authorities in Haiti. By the same resolution, the Council established a Committee charged with monitoring the implementation of those measures and reporting on its work to the Council with its observations and recommendations.

By resolution 861 (1993) of 27 August 1993, the Council decided that the measures set out in paragraphs 5 to 9 of resolution 841 (1993) would be suspended with immediate effect, and requested all States to act consistently with that decision. The Council also confirmed its readiness to terminate the suspension of measures if the terms of the Governors Island Agreement were not fully implemented.

By resolution 873 (1993) of 13 October 1993, the Council decided to terminate the suspension of the measures set out in paragraphs 5 to 9 of resolution 841 (1993), unless the Secretary-General reported to the Council that the parties to the Governors Island Agreement had implemented in full the agreement to reinstate the legitimate Government and enable the United Nations Mission in Haiti (UNMIH) to carry out its mandate. The Council also confirmed its readiness to consider additional sanctions if the parties to the Agreement continued to impede the activities of UNMIH, or had not complied fully with relevant Council decisions and the provisions of the Agreement.

By resolution 917 (1994) of 6 May 1994, the Council expanded the embargo against the military authorities in order to secure their compliance with previous Council decisions and the provisions of the Agreement. Those measures included a call on all States to deny permission to any aircraft originating in

or destined for Haiti, a call on all States to prevent certain persons, including all officers of the Haitian military and police, from entering their territory, and a call on all States to freeze the assets of those persons.

By resolution 944 (1994) of 29 September 1994, the Council decided to terminate the measures set out in resolutions 841 (1993), 873 (1993) and 917 (1994) relating to sanctions, following the return to Haiti of President Jean-Bertrand Aristide. It also dissolved the Committee established pursuant to resolution 841 (1993) concerning Haiti.

#### *Measures taken in connection with the National Union for the Total Independence of Angola*

By resolution 864 (1993) of 15 September 1993, the Council prohibited all sale or supply to the National Union for the Total Independence of Angola (UNITA) of arms and related materiel and military assistance, as well as petroleum and petroleum products. The Council also expressed its readiness to consider further measures, such as economic sanctions and a travel ban, unless by 1 November 1993 the Secretary-General had reported that an effective ceasefire had been established and that the Peace Accords for Angola and relevant Security Council resolutions had been fully implemented. By the same resolution, the Council established a Security Council Committee charged with monitoring the implementation of those measures.

By resolution 976 (1995) of 8 February 1995 the Council reminded all States that they must continue to comply with the embargo.

#### *Measures taken in connection with the Libyan Arab Jamahiriya*

By resolution 883 (1993) of 11 November 1993, the Council strengthened the measures imposed against the Libyan Arab Jamahiriya by its previous resolution:<sup>60</sup> governmental assets and assets of public authorities and any Libyan undertakings related to them were frozen; an equipment embargo against the Libyan oil industry was established; all States were required to close down all offices of the Libyan Arab Airlines within their territories; and the supply of material and services related to civilian or military flight services and airfields was suspended.

<sup>60</sup> Resolution 748 (1992).

*Measures taken in connection with Liberia*

By resolution 985 (1995) of 13 April 1995, the Council urged all States, in particular all neighbouring States, to comply fully with the embargo on all deliveries of weapons and military equipment to Liberia imposed by resolution 788 (1992), and decided to establish a Committee to monitor its implementation.

By resolution 1001 (1995) of 30 June 1995, the Council reminded all States of their obligations to comply strictly with the embargo on all deliveries of weapons and military equipment to Liberia imposed by resolution 788 (1992) and to bring all instances of violations of the arms embargo before the Committee established pursuant to resolution 985 (1995).

*Measures taken in connection with Rwanda*

By resolution 918 (1994) of 17 May 1994, the Council decided that all States had to prevent the sale or supply to Rwanda by their nationals or from their territories or using their flag vessels or aircraft of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary police equipment and spare parts. By that resolution, the Council also established a Committee to monitor the implementation and possible violation of the sanctions imposed.

By resolution 1011 (1995) of 16 August 1995, the Council lifted those restrictions with regard to the sale or supply of arms and related materiel to the Government of Rwanda through named points of entry. The Council also confirmed the continuing prohibitions in respect of the sale or supply of arms and related materiel to non-governmental forces, or to persons in neighbouring States, for use in Rwanda.

*Measures taken in connection with the former Yugoslavia*

By resolution 816 (1993) of 31 March 1993, the Council extended the ban imposed by resolution 781 (1992) on military flights to cover flights by all additional categories of aircraft in the airspace of Bosnia and Herzegovina. It also authorized Member States, seven days after the adoption of the resolution, acting nationally or through regional arrangements, to take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, "all necessary measures" in

the airspace of Bosnia and Herzegovina to ensure compliance with the ban on flights, and proportionate to the specific circumstances and the nature of flights.

By resolution 820 (1993) of 17 April 1993, the Council strengthened the implementation of the measures imposed by its previous resolutions. The Council prohibited imports to, exports from, and transshipment of goods through the United Nations Protected Areas in Croatia, and those areas of Bosnia and Herzegovina under the control of Serb forces unless specifically authorized by the Committee established pursuant to resolution 724 (1991). Moreover, assets of Yugoslav entities were to be frozen, and the provision of services, both financial and non-financial, for the purposes of business carried on in Yugoslavia was prohibited. Exceptions were made for telecommunications, postal services and certain legal services. Nonetheless, all maritime traffic was prohibited from entering Yugoslavia's territorial sea.

By resolution 942 (1994) of 23 September 1994, the Council reinforced the measures imposed by its previous resolutions with regard to those areas of Bosnia and Herzegovina under the control of Bosnian Serb forces. It decided that the supply of services to any person or body in the area was prohibited, except for the supply of humanitarian aid and goods and services specifically allowed by the Committee established pursuant to resolution 724 (1991) or the Government of Bosnia and Herzegovina. Moreover, the Council also called on States to tighten controls on the shipment of goods to the former Yugoslavia, so as to prevent the diversion of goods to those parts of Bosnia and Herzegovina occupied by Bosnian Serb forces. Those measures were aimed at preventing the economic activities of and links with Bosnian Serb entities found in areas under the control of the Bosnian Serb military.

By resolution 943 (1994) of 23 September 1994, the Council suspended certain sanctions on the former Yugoslavia for an initial period of 100 days beginning on 5 October 1994, following a report of the Co-Chairmen of the Steering Committee of the International Conference on the Former Yugoslavia transmitted by the Secretary-General to the Security Council. By the same resolution, the Council suspended the ban on all civilian passenger flights to and from Belgrade airport, allowed the re-introduction



of a ferry service to Italy, and the participation of the former Yugoslavia in sports and cultural exchanges.

By resolution 1021 (1995) of 22 November 1995, the Council set out the terms of the termination of the arms embargo. It specified, in particular, that the embargo on deliveries of weapons and military equipment imposed by resolution 713 (1991) should be terminated beginning from the day the Secretary-General submitted to the Council a report stating that Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia had formally signed the Peace Agreement.

By resolution 1022 (1995) of 22 November 1995, following the signing of the Dayton Peace Agreement, the Council indefinitely suspended the sanctions against the Federal Republic of Yugoslavia.

#### *Measures taken in connection with Iraq*

By resolution 986 (1995) of 14 April 1995, the Council authorized Iraq to export a certain quantity of petroleum and to sell it on foreign markets. The proceeds of the sale were to be used to “meet the humanitarian needs of the Iraqi population”. The major part of the funds was to be used to finance the import of medicine, health supplies, foodstuffs and supplies for essential civilian needs.

#### *Measures taken in connection with South Africa*

By resolution 919 (1994) of 25 May 1994, the Council terminated the arms embargo and other restrictions imposed on South Africa by resolution 418 (1977). By the same resolution, the Council dissolved the Committee established pursuant to resolution 421 (1977) concerning the question of South Africa.

#### *Measures taken in connection with Somalia*

By resolution 814 (1993) of 26 March 1993, the Council requested the Secretary-General to support from within Somalia the implementation of the arms embargo established by resolution 733 (1992), utilizing as available and appropriate the UNOSOM II forces authorized by the resolution, and to report on the subject, with any recommendations regarding more effective measures if necessary. It also called on all States to cooperate in the implementation of the arms embargo established by resolution 733 (1992).

By resolutions 886 (1993) of 18 November 1993, 897 (1994) of 4 February 1994, 923 (1994) of 31 May 1994 and 954 (1994) of 4 November 1994, the Council reaffirmed the obligations of States to implement fully the embargo on all deliveries of weapons and military equipment to Somalia imposed by resolution 733 (1992).

## **2. Judicial measures**

### *Establishment of the International Tribunal for the Former Yugoslavia*

By resolution 827 (1993) of 25 May 1993, the Council decided to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace.

### *Establishment of the International Tribunal for Rwanda*

By resolution 955 (1994) of 8 November 1994, the Council decided, having received the request of the Government of Rwanda,<sup>61</sup> to establish an international tribunal for the sole purpose of prosecuting persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January 1994 and 31 December 1994.

## **B. Salient issues raised in the deliberations of the Security Council**

The cases below outline the practice of the Council which may be viewed as illustrating its interpretation of the principles set out in Article 41. Cases 3 to 9 relate to the Council’s practice concerning the measures imposed against Haiti, Angola (UNITA), the Libyan Arab Jamahiriya, Liberia, Rwanda, the former Yugoslavia and Iraq. Case 10 relates to the termination of sanctions imposed against South Africa; case 11 deals with the establishment of international tribunals. Case 12 is relevant to the discussion of the Secretary-General’s position paper entitled

<sup>61</sup> S/1994/1115.

“Supplement to an Agenda for Peace”, in which the question of collateral damage due to the imposition of sanctions, particularly their humanitarian impact, is examined. Case 13 addresses the rationalization of the sanctions tool as discussed at the 3439th meeting of the Council.

### Case 3

#### *Measures taken in connection with Haiti*

The objectives of the sanctions measures imposed on Haiti were to ensure the departure of the de facto authorities and the restoration of the legitimate institutions in Haiti. The sanctions regime in Haiti may be considered to have been the first example of sanctions targeted against decision makers who had seized power unconstitutionally.

In the deliberations held in connection with the adoption of resolution 841 (1993), a number of speakers argued that the measures set out in the resolution were necessary as a result of the threat to international peace and security.<sup>62</sup> The representative of Canada stated that her Government considered it legitimate and necessary that the Council respond positively to the call by President Aristide, and impose an embargo on the delivery of oil supplies in order to bring about a speedy conclusion to the tragic and volatile situation.<sup>63</sup> The French delegation hoped that the adoption of sanctions against Haiti would make it possible to bring the perpetrators of the coup d'état to the negotiating table, in order to restore constitutional order in Haiti.<sup>64</sup> In a similar vein, the representative of the United States noted that sanctions alone were not a solution to the Haitian tragedy. Rather, the adoption of tough sanctions represented a further step by the international community to put pressure on those who stood in the way of a solution.<sup>65</sup>

In a letter to the Secretary-General of 15 July 1993,<sup>66</sup> the President of the Security Council confirmed the readiness of the Council to suspend the sanctions imposed against Haiti under resolution 841 (1993), immediately after the ratification of the Prime Minister and his assumption of his functions in Haiti.

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<sup>62</sup> S/PV.3238, pp. 10-14 (Venezuela); pp. 14-15 (Pakistan); pp. 16-18 (Brazil); and pp. 19-21 (China).

<sup>63</sup> *Ibid.*, p. 8.

<sup>64</sup> *Ibid.*, p. 9.

<sup>65</sup> *Ibid.*, p. 19.

<sup>66</sup> S/26085.

The President further stated that the Council agreed that provision would need to be made for the automatic termination of such suspension if, at any time, the Secretary-General, having regard to the views of the Secretary-General of OAS, reported to the Council that the parties to the Governors Island Agreement or any authorities in Haiti had failed to comply in good faith with the Agreement. The Council also declared its readiness to terminate the sanctions upon receipt of a report from the Secretary-General immediately after the return of President Aristide to Haiti. As was pointed out in resolution 861 (1993), failure by those responsible for the military and security machinery in Haiti to fulfil the commitments entered into would lead to the imposition of sanctions.

In the deliberations held in connection with the adoption of resolution 861 (1993), the representative of Spain stated that the establishment of the Government of Robert Malval was of great importance to Haiti and its people. It was also a source of gratification for the United Nations, for it implied that the Security Council's action in adopting the sanctions regime set out in resolution 841 (1993) had proved commensurate with the circumstances and laid the foundation for the restoration of the Haitian people's democratic freedoms.<sup>67</sup> The President of the Council, speaking in her capacity as representative of the United States, noted that the Council's actions in suspending sanctions immediately upon ratification of the new Haitian Government showed that that economic tool was both flexible and effective, and that the Council could act quickly and decisively.<sup>68</sup>

In the deliberations held in connection with the adoption of resolution 917 (1994), by which the Council expanded the embargo against the military authorities, the representative of Spain stated that the ultimate objective of the sanctions was to facilitate the restoration of democracy in Haiti and the return of President Aristide.<sup>69</sup> The representative of the United States noted that the draft resolution was the product of full cooperation among the Latin American and Caribbean States, the members of the Council, and the democratically elected Government of Haiti.<sup>70</sup> Following the vote, the representative of France stated that his delegation wished to ensure that the imposition

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<sup>67</sup> S/PV.3271, p. 9.

<sup>68</sup> *Ibid.*, p. 17.

<sup>69</sup> S/PV.3376, p. 6.

<sup>70</sup> *Ibid.*, p. 7.

of new sanctions was seen first of all as a means to achieve a political result, and not as an end in itself. The objective sought was clear: to ensure that democracy regained its course in Haiti and to foster the return of President Aristide to his own country.<sup>71</sup>

#### Case 4

##### *Measures taken in connection with the National Union for the Total Independence of Angola*

With respect to the measures imposed against UNITA, the question arose how and when to target the Angolan non-State actor. The sanctions regime imposed against UNITA was requested by the Government of Angola.

##### *Question of targeting the non-State actor UNITA*

In the deliberations held in connection with the adoption of resolution 864 (1993), Council members unanimously condemned the military operations of UNITA in Angola and its failure to implement the Angola Peace Accords. The representative of Angola proposed that the following measures be taken against UNITA, under Chapter VII: a mandatory comprehensive arms embargo; a ban on the sale or supply of petroleum and petroleum products; the closure of the foreign offices or any form of representation of UNITA; and a ban on its political and propaganda activities. The Council should also seize and freeze UNITA bank accounts, and take appropriate measures, under Chapter VII, to guarantee the delivery of humanitarian assistance to the population. He stated: “we can say unhesitatingly that the time has come to impose mandatory sanctions on UNITA in order to force them to stop the war and resume a frank and serious dialogue which will not only bring lasting peace to the martyred Angolan people but also enable UNITA itself to participate in the democratic process and in the social and economic reconstruction of the country”.<sup>72</sup>

The representative of the Russian Federation stated that his delegation believed that it was essential, if there should be no progress in the peace process, for the Council to consider additional steps under the Charter, including trade measures against UNITA and restrictions on the travel of its representatives and a

ban on all air, land and sea deliveries to Angola, with the exception of those previously authorized by the Government of Angola. In addition, the Council should also consider the possibility of freezing the foreign bank accounts of UNITA and its leaders.<sup>73</sup> The representative of China emphasized that the sanctions to be imposed by the Council on UNITA were measures taken in line with the special circumstances in Angola. The sanctions themselves were not the end, but rather only the means designed to urge UNITA to resume negotiations with the Government of Angola as soon as possible and bring the civil war to an end at an early date.<sup>74</sup>

In the deliberations held in connection with the adoption of resolution 932 (1994), the representative of Angola stated that it was up to the Council to use all the means at its disposal to prevent the intransigence of UNITA leading to the failure of the opportunity for peace. His Government firmly supported the measures referred to in paragraph 5 of resolution 932 (1994), although it considered the grace period to be excessive, since his Government had been negotiating in Lusaka for about eight months.<sup>75</sup>

The representative of the Russian Federation stated that, by systematically escalating its demands and disregarding the decisions of the Council and the recommendations of the mediator and the three observer States, UNITA was forcing the Council to consider very seriously the question of introducing additional sanctions, as provided for in paragraph 26 of resolution 864 (1993).<sup>76</sup> The representative of Brazil further stated that the scope of the measures that the Council would adopt, if UNITA failed to accept in due time the proposals put forward by the mediation, reflected not only the seriousness of the situation, but also the determination of the Council with regard to the prompt and successful conclusion of the peace process.<sup>77</sup> Some speakers emphasized that the Council would consider the question of introducing additional sanctions as provided for in resolution 864 (1993), if UNITA failed to accept the proposals in the peace agreement.<sup>78</sup>

<sup>71</sup> Ibid., p. 8.

<sup>72</sup> S/PV.3277, p. 10.

<sup>73</sup> Ibid., p. 46.

<sup>74</sup> Ibid., p. 28.

<sup>75</sup> S/PV.3395, p. 3.

<sup>76</sup> Ibid., p. 5.

<sup>77</sup> Ibid., p. 5.

<sup>78</sup> Ibid., p. 4 (Brazil); p. 6 (Nigeria); p. 7 (France, China); p. 8 (Spain); and p. 9 (United Kingdom).

Following the acceptance by both the Government of Angola and UNITA of the complete set of proposals on national reconciliation, the President of the Council, in a presidential statement,<sup>79</sup> underlined that, in that context, the Council had agreed not to consider the imposition of additional measures against UNITA.

### Case 5

#### *Measures taken in connection with the Libyan Arab Jamahiriya*

By resolution 883 (1993) the Council, in view of the “continued failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism”, and, considering the failure of the Libyan Arab Jamahiriya to fully and effectively respond to the request and decisions in resolutions 731 (1992) and 748 (1992), tightened the sanctions imposed on that country through, inter alia, the freezing of Libyan funds and financial resources in other countries and a ban on the provision to the Libyan Arab Jamahiriya of equipment for oil refining and transportation. The Council also cited the country’s non-compliance with its demands that it cooperate with the authorities of France, the United Kingdom and the United States in establishing responsibility for the terrorist bombings of two commercial airliners in 1988 and 1989.

In the deliberations held in connection with the adoption of resolution 883 (1993), the representative of the Libyan Arab Jamahiriya stated that his Government had complied with resolution 731 (1992) except for the fact that it had not extradited two alleged suspects in the terrorist attacks against Pan Am flight 103 and UTA flight 772. In his view, there was an attempt by the three countries to have a draft resolution adopted under Chapter VII of the Charter on a matter which should have been dealt with under Chapter VI, since the issue in question was a legal dispute over which country had competence to try the accused, a dispute which had essentially been settled by the provisions of the Montreal Convention of 1971.<sup>80</sup>

The representative of the Sudan, speaking on behalf of the League of Arab States, was of the opinion that the crisis between the Libyan Arab Jamahiriya, on one hand, and the United States, France and the United

Kingdom, on the other hand, was a legal dispute which should be dealt with on the basis of Article 33, (Chapter VI). Chapter VII concerned threats to international peace and security and not legal disputes. The interpretation of legal texts, especially the Charter, should be carried out only by judicial organs.<sup>81</sup>

The representative of the United States noted that, for the pursuit of justice, sanctions by the Security Council must be adopted when necessary. She stated that, by strengthening sanctions, the Council had again shown the flexibility of sanctions as a diplomatic tool. She further stated: “the more we demonstrate that this Council can impose, lift, suspend or strengthen sanctions at will, the better the sanctions stick can serve our diplomacy”.<sup>82</sup> Some speakers also emphasized that by strengthening sanctions the Council was taking action to deal with a situation that threatened international peace and security. They also expressed the hope that the Libyan Arab Jamahiriya would comply with the relevant Council resolutions.

The Chinese delegation was of the view, however, that the only effective means that could lead to a solution of this question was negotiation and consultation. He stated that to intensify sanctions against the Libyan Arab Jamahiriya would not help to settle the question. On the contrary, it would further complicate the matter, by making the Libyan people suffer more, and creating even greater economic difficulties for the neighbouring and other countries concerned.<sup>83</sup> In a similar vein, the representative of Pakistan was unable to support resolution 883 (1993).<sup>84</sup>

### Case 6

#### *Measures taken in connection with Liberia*

In the Council’s deliberations held in connection with the adoption of resolution 985 (1995), a number of speakers were concerned about the absence of progress towards peace in Liberia and believed that the establishment of the sanctions Committee would contribute to the peace process in Liberia.<sup>85</sup> The representative of Nigeria stated that his delegation

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<sup>79</sup> S/PRST/1994/52.

<sup>80</sup> S/PV.3312, pp. 22-23.

<sup>81</sup> Ibid., p. 31.

<sup>82</sup> Ibid., pp. 40-42.

<sup>83</sup> Ibid., p. 53.

<sup>84</sup> Ibid., p. 39.

<sup>85</sup> S/PV.3517, p. 2 (Italy); pp. 2-3 (Indonesia); and p. 4 (Honduras).

supported measures aimed at tightening the current regime limiting the flow of arms into the country, and endorsed the paragraph of the draft resolution which established a sanctions committee to monitor compliance with the arms embargo regime.<sup>86</sup> The representative of the United States urged all invited Heads of State to attend the Abuja summit in the interest of harmonizing their policies on Liberia, and particularly to halt the flow of arms into Liberia, thereby facilitating an end to the war.<sup>87</sup>

The representative of the Russian Federation emphasized that the decision to set up a sanctions committee to monitor the compliance with the embargo would help to normalize the situation not only in Liberia but in the region as a whole.<sup>88</sup> Other Council members were concerned about the absence of progress towards peace in Liberia and believed that the establishment of the sanctions Committee would contribute to the peace process in Liberia.

In the deliberations held in connection with the adoption of resolution 1001 (1995), the representative of Liberia expressed concern about the violation by some Member States of the arms embargo imposed on Liberia by resolution 788 (1992).<sup>89</sup> Several Council members expressed concern over the continued flow of arms into Liberia, in violation of resolution 788 (1992), across the borders and from sources within Liberia.<sup>90</sup> In this regard, they unanimously supported the request of the ECOWAS leaders to the ECOWAS Monitoring Group and the United Nations Observer Mission in Liberia to improve the monitoring mechanism so as to stem the flow of arms into the country. Council members reminded all States that they must comply strictly with the embargo on all deliveries of weapons and military equipment to Liberia.

<sup>86</sup> Ibid., p. 3.

<sup>87</sup> Ibid., p. 5.

<sup>88</sup> Ibid., p. 5.

<sup>89</sup> S/PV.3549, p. 3.

<sup>90</sup> Ibid., pp. 3-5 (Nigeria); pp. 5-6 (Indonesia); pp. 6-7 (Botswana); p. 7 (China); pp. 7-8 (Honduras); pp. 8-9 (Rwanda); pp. 9-10 (United States); p. 10 (France); pp. 10-11 (Russian Federation); pp. 11-12 (Italy); pp. 12-13 (Argentina); and pp. 13-14 (Czech Republic).

## Case 7

### *Measures taken in connection with Rwanda*

With regard to the measures imposed against Rwanda, the question which arose concerned the imposition of sanctions and its relation to the principle of national sovereignty and the right of self-defence.

In the deliberations held in connection with the adoption of resolution 918 (1994), speakers unanimously supported the call in that resolution on Member States to restrict the sale or delivery of arms to any of the Rwandan parties.<sup>91</sup> The representative of Rwanda was of the opinion that the arms embargo contained in the resolution should be imposed on Uganda, following its alleged involvement in the conflict. He also believed that an arms embargo against Rwanda would be in violation of the Charter, as the Charter laid down the principle of self-defence under Article 51.<sup>92</sup>

The representative of the Russian Federation viewed as particularly important the provision of resolution 918 (1994) with respect to the imposition of an arms embargo: this was critical in the absence of a ceasefire. He stated that special responsibility for effective implementation would lie with neighbouring African States, particularly with respect to not permitting the sale or delivery of weapons and not permitting the transit of weapons through their territory.<sup>93</sup>

By resolution 1011 (1995), as a result of the progress made by the Government of Rwanda in stabilizing conditions within the country, the Council lifted the embargo on the supply of arms to Rwanda. During the debate, the Government of Zaire made it clear that it opposed the lifting of the arms embargo on Rwanda, given the deterioration of the security situation.<sup>94</sup>

On the other hand, the representative of Nigeria stated that his delegation had supported the request of Rwanda that restrictions on the acquisition of arms

<sup>91</sup> S/PV.3377, p. 8 (Djibouti); p. 9 (China); p. 11 (Russian Federation); p. 11 (France); pp. 11-12 (New Zealand); p. 12 (United States); pp. 12-13 (United Kingdom); p. 13 (Brazil); pp. 13-14 (Argentina); pp. 14-15 (Spain); and p. 15 (Czech Republic).

<sup>92</sup> Ibid., p. 6.

<sup>93</sup> Ibid., p. 10.

<sup>94</sup> S/PV.3566, p. 3.

imposed under resolution 918 (1994) be lifted, as part of measures aimed to stabilize the situation and assure the Government of Rwanda of its own security. He explained that this would not only enable the Government to defend itself and its citizens, but also serve “to deter military adventurism from opponents of the Government from outside”.<sup>95</sup> Other speakers pointed out that the embargo was clearly intended against a former government and that the new government should be able to defend itself.<sup>96</sup> They also supported the safeguard that was included in resolution 1011 (1995) which established a controlled removal of the embargo for one year. France favoured a more general lifting of the embargo that dealt on a priority basis with equipment for maintaining order, especially for equipping the police and the gendarmerie.<sup>97</sup>

### Case 8

#### *Measures taken in connection with the former Yugoslavia*

In connection with the arms embargo imposed against the former Yugoslavia, two questions arose in the deliberations of the Council that may be interpreted as being in relation to Article 41. The first concerned the strengthening of measures in resolution 820 (1993), which contributed to the effectiveness of sanctions. The second question included the lifting of the arms embargo on the sale or transfer of arms to States within the former Yugoslavia.

#### *Strengthening of measures imposed against the former Yugoslavia*

By resolution 820 (1993), the Council decided to strengthen significantly the sanctions regime imposed against the Federal Republic of Yugoslavia (Serbia and Montenegro), effective nine days after the date of adoption of the resolution, unless the Bosnian Serb party signed the peace plan and ceased its military attacks in Bosnia and Herzegovina. During the debate, the majority of Council members supported the additional measures imposed against the Federal Republic of Yugoslavia, because it increased the effectiveness of the sanctions and at the same time

opened up other prospects if there was a radical change in the attitude of the Bosnian Serbs. The representative of the Russian Federation, who abstained from voting, reasoned that it was “important to give the parties to the conflict the possibility, through international mediation, of reaching an agreement on the Vance-Owen plan, and of completing the intensive negotiations in this regard that are going on at this moment”.<sup>98</sup>

In the deliberations held in connection with the adoption of resolution 942 (1994), the majority of the Council members supported the provisions of the resolution, in particular the strengthening of all measures against the Bosnian Serbs. The representative of Bosnia and Herzegovina stated that his delegation supported resolution 942 (1994) on the enhancement of sanctions with respect to the Bosnian Serbs. However, he questioned the effectiveness of the measure in securing the desired objectives, especially the reversal of the consequences of aggression and ethnic cleansing.<sup>99</sup> The representative of China, who abstained from voting, stated that his delegation was not in favour of using sanctions or mandatory measures to resolve the conflict in the former Yugoslavia, because experience had proved that this would not help to solve the problem.<sup>100</sup>

By resolution 943 (1994), the Council suspended some of the sanctions imposed against the Federal Republic of Yugoslavia. The representative of Croatia, expressing serious reservations about the draft resolution, stated that the sanctions regime should be suspended only after the Council received concrete and undisputed evidence about real progress on the ground. Croatia could not accept mere political declarations as a basis for suspending the most efficient mechanism the international community had used to pursue a peaceful solution to the problems in the region.<sup>101</sup> Other non-members of the Council were of the view that easing the sanctions imposed on Serbia and Montenegro would be premature, inappropriate and perilous, and likely to encourage aggression that

<sup>95</sup> Ibid., p. 5.

<sup>96</sup> Ibid., pp. 4-5 (Botswana); p. 7 (Russian Federation); pp. 9-11 (United States); pp. 11-12 (Argentina); p. 12 (Germany); and pp. 14-15 (Oman).

<sup>97</sup> Ibid., p. 10.

<sup>98</sup> S/PV.3200, p. 11.

<sup>99</sup> S/PV.3428, p. 3.

<sup>100</sup> Ibid., p. 24.

<sup>101</sup> Ibid., p. 5.

violated the fundamental principles of the Charter.<sup>102</sup> The representative of Pakistan, who had voted against the draft resolution, stated that his delegation considered the timing for the submission of the draft resolution to be most inopportune, inappropriate and premature, and counter-productive for the peace process.<sup>103</sup> The representative of the United States pointed out that, in preparing to ease sanctions on the Federal Republic of Yugoslavia, the Council acknowledged that the Federal Republic had taken an important step to persuade the Bosnian Serbs to accept the negotiated settlement that had been proposed.<sup>104</sup> The representative of the Russian Federation stated that resolution 943 (1994) sent a clear signal to the effect that the Council was not captive to old stereotypes and was prepared properly to re-evaluate the situation, depending on changes in the policy of the parties, and to encourage those who were trying through practical deeds to achieve peace.<sup>105</sup>

#### *Lifting of the arms embargo*

In the deliberations held in connection with the adoption of resolution 1021 (1995), which provided for the phased lifting of the embargo on the sale or transfer of arms to States within the former Yugoslavia, and resolution 1022 (1995), by which the Council indefinitely suspended the sanctions against Serbia and Montenegro, the representative of Germany stated that those measures marked the first step of the implementation of the Peace Agreement reached in Dayton.<sup>106</sup> The representative of the Russian Federation, who abstained from voting, stated that his delegation would have preferred resolution 1021 (1995) to provide for a more clear-cut mechanism to operate in the event the peace process should be derailed.<sup>107</sup> By adopting resolution 1021 (1995), Council members welcomed the commitments of the parties set out in the Agreement on Regional Stabilization, in terms of arms control, ceilings for categories of weapons and confidence-building

measures. The representative of the United States emphasized that by suspending economic sanctions, the Council had given the parties the support they needed to sign the Peace Agreement and ensure its effective implementation. He further stated that “the Council imposed economic sanctions for the explicit purpose of encouraging Serbia to choose the path of peace. The sanctions appear to have achieved their purpose. Indeed, this much-criticized sanctions tool has proved critical in bringing about the decision in Dayton, and the leverage it brings us will continue to serve us well in the complicated task of implementation”.<sup>108</sup>

#### **Case 9**

##### *Measures taken in connection with Iraq*

A number of questions arose concerning the application of measures against Iraq under Chapter VII of the type provided for in Article 41. The first concerned the question of lifting or easing measures against Iraq, that is, changing the sanctions regime; the second concerned the extent to which the Council should act to minimize the humanitarian impact of measures mandated under Article 41; the third question concerned the relationship between sanctions and the principles of national sovereignty and territorial integrity.

##### *Question of lifting measures against Iraq*

During the period under review, no resolution was adopted in which the sanctions regime imposed upon Iraq was altered. The issue was however discussed during Council meetings before and after various resolutions on Iraq were adopted.

At the 3439th meeting, the representative of the Russian Federation referred to the joint communiqué issued by Iraq and the Russian Federation on 13 October 1994.<sup>109</sup> He pointed out that lifting the sanctions imposed on Iraq, which were having a serious economic effect on ordinary people and on the country’s situation, was linked not to military efforts or to the struggle against a foreign plot but only to the strict implementation of the relevant resolutions of the Council. If Iraq were to comply with all the demands in all the resolutions, then the sanctions regime would cease to have any sense, as implied in the joint

<sup>102</sup> Ibid., pp. 3-5 (Bosnia and Herzegovina); pp. 5-6 (Croatia); pp. 6-8 (Malaysia); pp. 8-9 (Islamic Republic of Iran); pp. 9-10 (Senegal); pp. 10-11 (Albania); pp. 11-12 (Germany); pp. 12-13 (Egypt); pp. 17-18 (Canada); and pp. 20-21 (Afghanistan).

<sup>103</sup> Ibid., p. 27.

<sup>104</sup> Ibid., p. 33.

<sup>105</sup> Ibid., p. 30.

<sup>106</sup> S/PV.3595, p. 4.

<sup>107</sup> Ibid., p. 12.

<sup>108</sup> Ibid., p. 15.

<sup>109</sup> S/1994/1173, annex.

communiqué. On condition that Iraq cooperated honestly with the United Nations, it would then be possible for the Council to take a decision on lifting the oil embargo, as provided in paragraph 22 of resolution 687 (1991), and, eventually, to consider lifting or mitigating the remaining sanctions.<sup>110</sup>

The representative of the United States welcomed the statement by the Russian Federation to the effect that the only way forward to the lifting of sanctions was through full implementation of all relevant Security Council resolutions. She stated that the Council should categorically reject the approach promoted by some whereby Iraq should be rewarded for partial compliance with some of its obligations. The representative added that the threshold question the Council faced was not how long Iraq must cooperate with United Nations requirements on weapons of mass destruction before the oil embargo was suspended but rather whether Iraq would continue to cooperate with United Nations inspectors after the embargo was suspended.<sup>111</sup>

According to the representative of Spain, it was incumbent upon the Iraqi authorities to improve the situation of their people by taking concrete steps to convince the international community of their peaceful intentions. At the same time, the Council must be prepared to respond appropriately to an actual change in the attitude of the Iraqi authorities.<sup>112</sup>

The representative of the United Kingdom noted that much remained to be done before any general easing of the sanctions against Iraq could be contemplated. In that regard, he added that there could be no question of package deals between the Council and Iraq.<sup>113</sup>

The representative of Iraq noted that his Government had complied with its commitments in accordance with section C of resolution 687 (1991), as stated in the reports of the United Nations Special Commission and the International Atomic Energy Agency (IAEA). In addition, the Iraqi authorities had fully cooperated with the Special Commission and IAEA, in accordance with the monitoring system instituted by Council resolution 715 (1991). Other facts included elements contained in the joint communiqué

issued by Iraq and the Russian Federation on 13 October 1994. He called on the Council to base its work on these fundamental facts which were substantiated by those official documents.<sup>114</sup>

After the Council received a letter from the representative of Iraq concerning the country's recognition of Kuwait and its international boundaries, the President declared that that recognition entailed a significant step towards the implementation of all relevant Security Council resolutions.

*Question of the humanitarian impact of measures under Article 41*

By resolution 986 (1995) the Council expressed its concern about the nutritional and health situation of the Iraqi population. It allowed countries to permit the import of petroleum and petroleum products originating from Iraq under certain conditions. A special escrow account was established, which the Secretary-General could use to finance the export to Iraq of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs. Resolution 986 (1995) might be viewed as a humanitarian resolution aimed at providing for the essential humanitarian needs of the Iraqi population.

During the deliberations held in connection with the adoption of resolution 986 (1995), the representative of Italy pointed out that sanctions should not lead to the extreme consequence of inflicting misery and starvation on an entire civilian population. They remained one of the most effective tools provided by the Charter to enforce compliance with international law, but they should be applied with caution and parsimony and be precisely targeted to avoid serious negative side effects.<sup>115</sup>

The representative of China was of the opinion that while Iraq continued to cooperate in the implementation of Council resolutions the Council should discuss the lifting of the oil embargo against Iraq, especially to ease the humanitarian situation in Iraq.<sup>116</sup> The representative of Honduras underlined the importance of effective economic sanctions, but felt that, when sanctions were imposed, specific measures

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<sup>110</sup> S/PV.3439, pp. 2-6.

<sup>111</sup> Ibid., pp. 7-8.

<sup>112</sup> Ibid., pp. 12-13.

<sup>113</sup> Ibid., p. 13.

<sup>114</sup> Ibid., p. 15.

<sup>115</sup> S/PV.3519, pp. 2-3.

<sup>116</sup> Ibid., p. 3.



to mitigate their impact on the innocent civilian population should be considered.<sup>117</sup>

Several Council members also emphasized that the measures did not constitute an exception to the sanctions regime,<sup>118</sup> but rather an exemption with the purpose of humanitarian relief. The Russian Federation was extremely concerned over the humanitarian situation in Iraq and the effects of the sanctions and believed that sanctions should be eased in response to the constructive steps taken by Iraq, thereby motivating Iraq to comply fully with Council resolutions.<sup>119</sup> The representative of the Czech Republic referred to the resolution as a way of refining the generally blunt instrument of sanctions for other situations around the world.<sup>120</sup>

In a letter dated 15 May 1995 addressed to the Secretary-General,<sup>121</sup> the Minister for Foreign Affairs of Iraq informed the Secretary-General that the Government of Iraq would not implement resolution 986 (1995) because it objected, inter alia, “to the proportion of petroleum to be exported via the Kirkuk-Yumurtalik pipeline and to the modalities for distribution of humanitarian relief in three northern governorates”.

#### *Question of sanctions and national sovereignty*

Resolution 986 (1995), paragraph 6, provides that “the larger share of the petroleum and petroleum products should be shipped via the Kirkuk-Yumurtalik pipeline”.

In the deliberations held in connection with the adoption of resolution 986 (1995), the representative of Indonesia argued that Iraq should be able to decide on the use of its pipelines. He further stated that “the sovereignty and territorial integrity of Iraq” must be respected, and that “Iraq should therefore be able to decide on the use of its pipelines for transportation and production purposes”.<sup>122</sup> These views were shared by the representative of Nigeria, who said that his delegation would have preferred that no reference be made to the proportion of the oil to be shipped through

any particular pipeline or terminal.<sup>123</sup> In his view, this should have been left to market forces. The representative of the Russian Federation also underlined this point, stating that the principles of sovereignty reaffirmed in the resolution were not always backed up by specific procedures for giving practical effect to those principles.<sup>124</sup> The representative of Argentina, on the other hand, was of the opinion that the regime established could in no way be interpreted as harmful to Iraq’s sovereignty and territorial integrity.<sup>125</sup>

#### **Case 10**

#### *Termination of sanctions imposed against South Africa*

The main objective of the sanctions imposed by resolution 418 (1977) was the complete transformation of the South African political system. In September 1993, following the establishment of the Transitional Executive Council to allow all South Africans to participate in government decisions pending elections, the Security Council was willing to lift sanctions. The Council, however, did not formally lift all sanctions until after the first multi-racial elections in April 1994.

#### *Lifting of sanctions imposed under Article 41*

In the deliberations held in connection with the adoption of resolution 919 (1994), by which the Council decided to terminate the arms embargo and other restrictions related to South Africa imposed by its previous resolution, the representative of South Africa, the First Executive Deputy President of South Africa, Mr. Thabo Mbeki, recalled that when the embargo was imposed pursuant to the provisions of Chapter VII, it was “because the prevailing system of government in our country and the actions carried out by that Government constituted, demonstrably, a threat to international peace and security”.<sup>126</sup> His delegation viewed the decision of the Council to lift the embargo as an acceptance by the international community that South Africa had become a democratic country that could adhere to the pursuit of the important goals of international peace and security. Council members agreed that sanctions were an effective tool in the

<sup>117</sup> Ibid., p. 4.

<sup>118</sup> Ibid., pp. 3-4 (Rwanda); pp. 7-8 (Oman); pp. 10-11 (United States); and pp. 11-12 (United Kingdom).

<sup>119</sup> Ibid., p. 14.

<sup>120</sup> Ibid., pp. 14-15.

<sup>121</sup> See S/1995/495.

<sup>122</sup> S/PV.3519, p. 5.

<sup>123</sup> Ibid., p. 6.

<sup>124</sup> Ibid., p. 14.

<sup>125</sup> Ibid., p. 9.

<sup>126</sup> S/PV.3379, p. 3.

liberation of South Africa, which opened opportunities for the region. They were also of the view that the termination of the arms embargo was appropriate and timely, in the light of the changes that were taking place in South Africa. The representative of the Russian Federation stated that his delegation would support the adoption of the draft resolution, since it fully corresponded to the task of assisting in the speedy reintegration of the new democratic South African Republic into the international community.<sup>127</sup> The representative of the United States emphasized that the United Nations arms embargoes and related restrictions imposed against South Africa had contributed significantly to the demise of apartheid. Now that apartheid had been dismantled and non-racial democracy was taking root, those restrictions were simply no longer appropriate.<sup>128</sup>

### Case 11

#### *Judicial measures under Article 41*

The Council decided to address the serious violations of international humanitarian law, such as mass murder, torture and rape, that characterized the conflicts in the former Yugoslavia and Rwanda by establishing international tribunals.

#### *International Tribunal for the Former Yugoslavia*

By resolution 827 (1993), the Council, acting under Chapter VII, established an International Tribunal for the Former Yugoslavia, to prosecute persons responsible for war crimes, crimes against humanity and genocide committed in the territory of the former Yugoslavia since 1991.

During the deliberations held in connection with the adoption of resolution 827 (1993), speakers were unanimous in expressing support for the establishment of the tribunal. Some Council members expressed the view that the crisis in the former Yugoslavia constituted a threat to international peace and security which therefore justified the Council's decision under Chapter VII to establish the Tribunal.<sup>129</sup> The representative of Hungary stated that this was the first time that the United Nations established an international criminal jurisdiction to prosecute persons

responsible for grave violations of international humanitarian law.<sup>130</sup> The representative of New Zealand stated that, as was noted in the resolution and in the Secretary-General's report, "the establishment of the Tribunal and the prosecution of persons suspected of crimes against international humanitarian law is closely related to the wider efforts to restore peace and security to the former Yugoslavia".<sup>131</sup> The representative of the Russian Federation emphasized that his delegation supported the international tribunal because they saw it as an instrument of justice which was called upon to restore international legality and the faith of the world community in the triumph of justice and reason.<sup>132</sup> While supporting the resolution by which the Tribunal was established, and given the particular circumstances in the former Yugoslavia and "the urgency of restoring and maintaining world peace", the representative of China stated that that political position of the Council should not be construed as endorsement of the legal approach involved. He stated China's view that, to avoid setting any precedent for abusing Chapter VII of the Charter, a prudent attitude should be adopted with regard to the establishment of an international tribunal by means of Security Council resolutions under Chapter VII. He stated the consistent position of the Chinese delegation that an international tribunal should be established by concluding a treaty, and emphasized that the Tribunal established in the manner in which it had been established could only be an ad hoc arrangement suited to the special circumstances of the former Yugoslavia and was not to constitute any precedent.<sup>133</sup>

#### *International Tribunal for Rwanda*

During the deliberations held in connection with the adoption of resolution 955 (1994), the majority of Council members believed that the establishment of a tribunal was a signal of the international community's determination that offenders must be brought to justice, and considered that the Tribunal would contribute to the process of reconciliation in Rwanda. The representative of Brazil stated that the invocation of Chapter VII of the Charter for the purpose of establishing an international tribunal went, in his delegation's view, beyond the competence of the

<sup>127</sup> Ibid., p. 22.

<sup>128</sup> Ibid., p. 26.

<sup>129</sup> S/PV.3217, p. 12 (France), p. 20 (Hungary); and p. 23 (Japan).

<sup>130</sup> Ibid., p. 20.

<sup>131</sup> Ibid., pp. 22-23.

<sup>132</sup> Ibid., pp. 43-46.

<sup>133</sup> Ibid., pp. 33-34.

Council as clearly defined in the Charter.<sup>134</sup> The representative of France noted that, because of their particular seriousness, the offences that fell within the competence of the Tribunal were a threat to international peace and security, which justified recourse to Chapter VII of the Charter.<sup>135</sup> On the other hand, the representative of Rwanda, who voted against the resolution, expressed his Government's concern about the following issues: the Tribunal refusing to consider the causes of genocide in Rwanda and its planning, his delegation found the composition and structure of the Tribunal inappropriate and ineffective; some countries had taken an active part in the genocide; and the draft statute of the tribunal proposed that those condemned be imprisoned outside Rwanda.<sup>136</sup> The representative of China, who had abstained from voting, explained that his Government was not in favour of invoking at will Chapter VII of the Charter to establish an international tribunal through the adoption of a Security Council resolution.<sup>137</sup>

### Case 12

#### *Agenda for Peace*

In his position paper entitled "Supplement to an Agenda for Peace",<sup>138</sup> the Secretary-General noted that the objectives of sanctions had not always been clearly defined. He pointed out that it was of great importance that, when the Council decided to impose sanctions, it should define objective criteria for determining that, their purpose had been achieved. He also noted that by interfering with the work of humanitarian agencies and the economies of neighbouring countries, sanctions often appeared to contradict the development objectives of the Organization of improving humanitarian conditions and promoting economic development. The Secretary-General called on Member States to consider ways of ensuring that the work of humanitarian agencies was facilitated when sanctions were imposed. He proposed that, when Member States imposed sanctions, provisions should be considered to facilitate the work of humanitarian agencies. It was, therefore, necessary to avoid banning imports that were required by local health industries and that applications

for exemptions for humanitarian supplies were quickly processed.

The Secretary-General also recalled the proposals contained in his earlier report entitled "An Agenda for Peace",<sup>139</sup> concerning collateral damage due to sanctions. He noted that, while the heads of the international financial institutions acknowledged the collateral effects of sanctions, they proposed that this should be dealt with under existing mandates for providing aid to affected countries. The Secretary-General believed, however, that special provisions should be made and, in that connection, proposed the establishment of a new mechanism that would carry out the following five functions: assess the potential impact of sanctions on the target country and on third countries; monitor application of the sanctions; measure their effect; ensure the delivery of humanitarian assistance to vulnerable groups; and explore ways of assisting Member States suffering collateral damage.

In a presidential statement adopted in relation to the Secretary-General's position paper entitled "Supplement to an Agenda for Peace",<sup>140</sup> the President of the Council affirmed that the steps demanded of a country or party should be clearly defined in Council resolutions, and that the sanctions regime in question should be subject to periodic review. He further affirmed that once the objectives of the appropriate provisions of the relevant Council resolutions were achieved, sanctions should be lifted. The President stated: "the Council remains concerned that, within this framework, appropriate measures should be taken to ensure that humanitarian supplies reach affected populations and appropriate consideration is given to submissions received from neighbouring or other States affected by special economic problems as a result of the imposition of sanctions". The Council urged the Secretary-General, when considering the allocation of resources available to him within the Secretariat, to take appropriate steps to reinforce those sections of the Secretariat dealing directly with sanctions and their various aspects so as to ensure that all those matters were addressed in as effective, consistent and timely a manner as possible.

<sup>134</sup> S/PV. 3453, pp. 8-10.

<sup>135</sup> *Ibid.*, pp. 3-4.

<sup>136</sup> *Ibid.*, p. 15.

<sup>137</sup> *Ibid.*, p. 11.

<sup>138</sup> S/1995/1.

<sup>139</sup> S/24111.

<sup>140</sup> S/PRST/1995/9; adopted at the 3503rd meeting, on 22 February 1995.

### Case 13

#### *Rationalization of the sanctions tool*

At its 3439th meeting, on 17 October 1994, the Council considered the situation between Iraq and Kuwait and also touched upon two questions related to the application and lifting of sanctions. The first question concerned the rationalization of the sanctions tool, most notably with regard to the application and termination of sanctions. The second concerned the unilateral withdrawal from a sanctions regime by the actor concerned.

#### *Question of the rationalization of the application and termination of sanctions*

The representative of the Russian Federation pointed out that sanctions remained the most powerful non-military means of exerting an impact in accordance with the Charter on those who violated the international legal order. Like any powerful weapon, however, sanctions required a very careful and responsible attitude and their use must be very carefully directed. It was most important that the criteria to be taken into consideration should be the achievement of the goals set by the Council, a solid legal basis, and consistency and rigour in the interpretation of decisions taken. The Russian Federation believed that certain corrections must be made in the sphere of application of sanctions, primarily with regard to developing and improving the machinery for applying and lifting sanctions. In his view the Council's experience in that respect reflected a significant inconsistency. In some cases, sanctions were lifted as a kind of advance, counting on the fact that the situation would develop in accordance with the best possible scenario. In other cases, the question of lifting or suspending sanctions was connected to a great number of fact-finding missions of all kinds, the submission of reports and so on. Such a varied and not fully systematized practice often laid the Council open to charges of "double standards", which was damaging to its prestige in the eyes of public opinion. According to the representative of the Russian Federation, the Council should devote greater attention to ensuring that, when sanctions were adopted, a procedure was at the same time determined for halting or lifting them, in accordance with the implementation of the relevant demands. He added that sanctions were not a

punishment of peoples, but a reaction of the international community to concrete actions on the part of the ruling circles if they violated international law and order. Thought must therefore be given to the question how sanctions might be aimed at political elites, thereby reducing to a minimum the sufferings of broad strata of the population, including its most vulnerable categories, who were perhaps the least capable of righting the situation.<sup>141</sup>

The representative of the United States agreed with the need to rationalize the Council's approach to sanctions and noted that the members of the Council were becoming increasingly engaged in a discussion aimed at improving the sanctions tool.<sup>142</sup>

According to the representative of Spain, sanctions regimes were not an end in themselves but rather an instrument designed to obtain certain objectives delimited by the Council. As those objectives were met, the Council could and must draw the appropriate conclusions, bearing in mind, first and foremost, the principles defended by the international community and the effects on the populations concerned and on neighbouring countries.<sup>143</sup>

#### *Question of unilateral withdrawal from a sanctions regime*

With regard to what the Russian Federation described as "a new phenomenon" whereby a country sometimes called for unilateral withdrawal from a sanctions regime, the representative of the Russian Federation noted that the Council could find a way of reaffirming what was an axiom of the Charter, namely, that decisions of the Council could be repealed only by the Council itself. He stated that sanctions were a kind of sentence passed by the international community but, as distinct from clearly defined conditions for the end of periods of punishment provided for by norms of criminal law, "these elements in our case [were] very often missing". The very logic of law required that clarity be introduced on that point.<sup>144</sup>

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<sup>141</sup> S/PV.3439, p. 4.

<sup>142</sup> Ibid., p. 8.

<sup>143</sup> Ibid., p. 12.

<sup>144</sup> Ibid., p. 5.

## Part IV Consideration of the provisions of Article 42 of the Charter

### Article 42

*Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.*

### Note

During the period under review, the Security Council did not explicitly invoke Article 42 in any of its decisions. The Council did, however, adopt a number of resolutions by which it called on Member States to use “all necessary measures” to enforce its demands relating to the restoration of international peace and security and which may be of relevance to the Council’s interpretation and application of the principle in Article 42.<sup>145</sup> Action taken by the Council during the period under review may give insights into its interpretation and invocation of Article 42. The case of Haiti, for example, relates to action authorized by the Council to restore democracy in a Member State. In the cases of Rwanda and Somalia, the Council authorized enforcement action for the achievement of humanitarian purposes.

This section will briefly examine six case studies in which the Council authorized the use of force. Cases 14 to 16 relate to the Council’s authorization of enforcement action to maintain and restore international peace and security in Somalia and in the former Yugoslavia. In case 17, the authorization of the use of force in the restoration of the democratically elected government of Haiti is examined, while cases 18 and 19 relate to such authorization by the

<sup>145</sup> In connection with the situation in Somalia, see resolutions 814 (1993) and 837 (1994); in connection with the situation in the former Yugoslavia, see resolutions 816 (1993), 836 (1993), 871 (1993), 958 (1994) and 1031 (1995); in connection with the situation concerning Rwanda, see resolution 929 (1994); in connection with the situation in Haiti, see resolution 940 (1994).

Council in connection with the delivery of humanitarian relief, the maintenance of public order and the protection of civilians in Somalia and Rwanda.

### A. Enforcement action necessary to maintain or restore international peace and security

#### Case 14

##### *The situation in Somalia*

Following the attacks on 5 June 1993 against UNOSOM II personnel by Somali militiamen which resulted in the deaths of 25 members of UNOSOM II from Pakistan, the Council, by resolution 837 (1993), “gravely alarmed at the premeditated armed attacks launched by Somali militiamen against the personnel of UNOSOM II”, reaffirmed that the Secretary-General was authorized under resolution 814 (1993) to “take all necessary measures against all those responsible for the armed attacks referred to in paragraph 1 of that resolution, including against all those responsible for publicly inciting such attacks, to establish the effective authority of UNOSOM II throughout Somalia, including to secure the investigation of their actions and their arrest and detention for prosecution, trial and punishment”.

In the deliberations held in connection with the adoption of resolution 837 (1993), Council members condemned the attack and regarded it as an attack against the international community which should be responded to by a prompt United Nations action. The representative of the United States noted that the resolution reaffirmed the existing authority of UNOSOM II to take strong and forceful action to safeguard international forces, to punish those who attack them and to restore security and, further, that appropriate measures included the disarming or detention of persons posing a threat to United Nations forces or obstructing their operations. She stated that those who challenged the authority of the Security Council to enforce its resolutions must know that it

stood firm in its resolve to bring peace and reconciliation to Somalia.<sup>146</sup>

The representative of France stated that what had just taken place in Somalia was unacceptable and required from the Council the strongest possible reaction. His delegation was pleased that the resolution went beyond mere condemnation and that it affirmed the necessity for putting into practice concrete measures. He stated that the United Nations Operation in Somalia was, in effect, “entrusted with adopting all necessary measures against those responsible and also with neutralizing their media”, whose propaganda had played a decisive role in the unfolding of the tragedy.<sup>147</sup> The representative of the United Kingdom stated that the resolution sent a clear signal that the international community would not tolerate renewed attempts by the warlords in Somalia to challenge UNOSOM in the exercise of its mandate. He further stated that it provided for the use of all necessary measures against those responsible for the attacks against the Pakistani soldiers.<sup>148</sup> The representative of Spain recalled that the mandate of UNOSOM II set out in resolution 814 (1993) authorized the Secretary-General “to adopt such measures as would lead to the detention, prosecution and punishment of those responsible for ceasefire violations and undermining the security of United Nations forces”. In the light of this, he stated that UNOSOM II should therefore “take all necessary measures to prevent similar actions in the future by disarming the factions and neutralizing the means of communication which incite violence in that country”.<sup>149</sup>

### Case 15

#### *The situation in the Republic of Bosnia and Herzegovina*

Following violations of a ban on military flights in the airspace of Bosnia and Herzegovina imposed by resolution 781 (1992), the Council at its 3191st meeting considered measures to be taken against those parties responsible.

By resolution 816 (1993), the Council authorized Member States, seven days after the adoption of that resolution, acting nationally or through regional

organizations or arrangements, “to take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures in the airspace of the Republic of Bosnia and Herzegovina, in the event of further violations to ensure compliance with the ban on flights referred to in paragraph 1 above, and proportionate to the specific circumstances and the nature of the flights”.

During the deliberations held in connection with the adoption of resolution 816 (1993), several Council members expressed support for the use of force to implement its previous resolutions. Several speakers emphasized that the resolution envisaged the application of enforcement measures to those who violated the airspace of Bosnia and Herzegovina.

The representative of France stated that the Council would adopt under Chapter VII a resolution authorizing the use of force to ensure compliance with the ban on flights established by resolution 781 (1992), the repeated violation of which the Council had deplored in recent weeks. He further stated that it was essential that the Serbian side understand that a new stage in the conflict ravaging Bosnia and Herzegovina had been reached, and that the Council had decided to have recourse to force to see that its decisions were respected.<sup>150</sup>

The representative of the United Kingdom underlined the significance of the resolution before the Council at a very important moment in the “horrendous story” of Bosnia and Herzegovina. He emphasized that the resolution was important because it signalled that the Council was not prepared to have its resolutions flouted. His delegation believed that the Council should be slow to authorize the use of force, but the combat flights against the eastern Bosnian villages a few days earlier represented “a step too far to tolerate under any circumstances”.<sup>151</sup> The representative of the Russian Federation defended the authorization to use force as a necessary step to counter violations of previous resolutions. He stated that his delegation believed that no one had the right to violate Security Council resolutions, and yet all three Bosnian parties, notwithstanding the ban, had perpetrated acts that ran counter to the demands of the Council.<sup>152</sup>

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<sup>146</sup> S/PV.3229, p. 8.

<sup>147</sup> *Ibid.*, pp. 19-20.

<sup>148</sup> *Ibid.*, p. 21.

<sup>149</sup> *Ibid.*, p. 23.

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<sup>150</sup> S/PV.3191, p. 4.

<sup>151</sup> *Ibid.*, p. 16.

<sup>152</sup> *Ibid.*, p. 23.

The representative of Brazil stated that his country had consistently favoured the settlement of disputes by peaceful and negotiated means and believed that enforcement action under Chapter VII should be a last resort, after the clear and confirmed demonstration of its necessity. He recalled that resolution 781 (1992) had been aimed at ensuring safety for the delivery of humanitarian assistance and at helping to promote a cessation of hostilities in Bosnia and Herzegovina, and that, at that time, the Council had undertaken “to consider, urgently, measures necessary to enforce the ban in the event of violations”. Violations had, however, persisted, and the adoption of resolution 816 (1993) derived “not only from the non-compliance with previous relevant resolutions but also from the changes perceived in the qualitative nature of the violations”.<sup>153</sup>

The representative of Spain stated that the draft resolution before the Council was of “great political importance” and, further, that with the authorization of the use of force implied by the authorization of “all necessary measures”, in operative paragraph 4, should new violations occur, the Council would manifest its firm determination to ensure compliance with the ban on all flights in the airspace of Bosnia and Herzegovina, with the exception of those authorized by UNPROFOR.<sup>154</sup>

The representative of Morocco stated that the Council’s decision “to take the necessary action and use force to implement its resolutions” was necessary, particularly since the atrocities committed had reached an intolerable level.<sup>155</sup>

On the other hand, the representative of China, who had abstained from voting, explained the grounds for his Government’s reservations about the resolution. He stated it did not oppose the establishment of a flight exclusion zone in Bosnia and Herzegovina with the consent of the parties concerned. However, his Government’s principled position on resolution 781 (1992) remained unchanged, namely, that it had reservations on the invocation of Chapter VII to authorize countries to use force in implementing that zone.<sup>156</sup>

By resolution 836 (1993), the Council expanded the mandate of UNPROFOR to, inter alia, enable it, “in the safe areas referred to in resolution 824 (1993), to deter attacks in the safe areas, to monitor the ceasefire, to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia and Herzegovina, and to occupy some key points on the ground, in addition to participating in the delivery of humanitarian relief to the population as provided for in resolution 776 (1992)”. The Council further authorized UNPROFOR, in carrying out its mandate, “acting in self-defence, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys”. It also decided that, notwithstanding paragraph 1 of resolution 816 (1993), Member States, acting nationally or through regional organizations or arrangements, might take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, “all necessary measures, through the use of air power”, in and around the safe areas in Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate.

During the debate held in connection with the adoption of resolution 836 (1993), many Council members supported the provisions of the resolution, believing that it aimed at ensuring the protection of the safe areas by deterring attacks against them. They agreed on the possibility of using force to respond to bombardments against the safe areas.

The representative of New Zealand stressed that the letter and the spirit of the draft resolution clearly provided that, if the Council were to adopt it, the Serbs had to cease, immediately and conclusively, their aggression and outrages in respect of the areas designated in the text. Unless they did so, a response in the form of air strikes could ensue. He further stated that the draft resolution did not require any further study by the Council, or an additional report from the Secretary-General or strictly even a further meeting of the Council, or that UNPROFOR be strengthened. If the Serbs refused to abandon their aggression, action

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<sup>153</sup> Ibid., p. 18.

<sup>154</sup> Ibid., p. 8.

<sup>155</sup> Ibid., p. 31.

<sup>156</sup> Ibid., p. 22.

could be taken forthwith under the terms of the draft resolution.<sup>157</sup>

The representative of France noted that, to carry out the new mandate, the draft resolution explicitly provided for the possibility of using force to respond to bombardments against the safe areas, and to armed incursions into them or to any deliberate obstacles to the freedom of movement of UNPROFOR or of protected humanitarian convoys. It also provided for “the use of air power within and around the safe areas in order to support UNPROFOR in the fulfilment of its mandate, if necessary”.<sup>158</sup>

The representative of China stated that he had voted in favour of the resolution on the basis of humanitarian considerations. He emphasized that the use of force could only be a temporary measure, not a solution to the conflict. China had always actively advocated the peaceful solution of disputes in international relations through dialogue and negotiation and opposed the threat or use of force. He pointed out that invoking Chapter VII of the Charter to authorize the use of force, as well as the implication in the resolution that further military action would be taken in Bosnia and Herzegovina might, instead of helping the effort to seek an enduring peace in Bosnia and Herzegovina, further complicate the issue there, and adversely affect the peace process.<sup>159</sup>

The representative of the United Kingdom stated that his Government, together with France and the United States, probably acting in a NATO framework, was prepared, once authorized by that resolution, “to make available air power in response to calls for assistance from United Nations forces in and around the safe areas”. To implement the concept of “safe areas” effectively, the United Nations would need some further troops, and those delegations would support the Secretary-General in his efforts to attract new contributions, including from some Islamic States.<sup>160</sup>

The representative of Hungary stated that his country had voted in favour of the resolution because it understood it as authorizing UNPROFOR “to resort to force in response to bombardments of safe areas or armed incursions or if there [were] deliberate impediments in or round those areas to the freedom of

movement of UNPROFOR or protected humanitarian convoys”. He also stated that his Government understood the resolution “as authorizing Member States to take all necessary measures, including air power, to support UNPROFOR in its activities”.<sup>161</sup>

The representative of Spain stated that resolution 836 (1993) was a “logical consequence” of two prior resolutions, and that the measures adopted involved a considerable increase in the tasks entrusted to UNPROFOR, and presupposed “an important qualitative change, with the explicit authorization of the use of force by UNPROFOR under given circumstances, as well as the use of air power to support UNPROFOR in the fulfilment of an expanded mandate”.<sup>162</sup>

The representative of Pakistan stated, however, that his delegation had advocated decisive, expeditious and comprehensive action by the Security Council under Chapter VII of the Charter to enforce its decisions and to authorize the use of all necessary measures, including the use of air strikes against key strategic targets to halt the Serbian aggression and reverse it through withdrawals from any territories occupied by the use of force and “ethnic cleansing”.<sup>163</sup> In his delegation’s view, however, the draft resolution did not address certain core issues in the conflict in Bosnia and Herzegovina. In a similar vein, the representative of Venezuela would have preferred to await the opinion of the Secretary-General on how he would implement the resolution on safe areas, before the sponsors of the resolution brought it forward to a vote.<sup>164</sup>

#### *Debate on NATO air strikes in Bosnia*

In a letter dated 6 February 1994 addressed to the President of the Security Council,<sup>165</sup> the Secretary-General referred to two incidents of mortar attacks against civilian targets that had occurred in Sarajevo during the previous week. He stated, *inter alia*, that the two incidents made it necessary, in accordance with paragraphs 9 and 10 of resolution 836 (1993), “to prepare urgently for the use of air strikes to deter further such attacks”. He indicated that he had written

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<sup>157</sup> S/PV.3228, p. 31.

<sup>158</sup> *Ibid.*, p. 13.

<sup>159</sup> *Ibid.*, pp. 48-49.

<sup>160</sup> *Ibid.*, p. 57.

<sup>161</sup> *Ibid.*, pp. 52-53.

<sup>162</sup> *Ibid.*, pp. 59-60.

<sup>163</sup> *Ibid.*, p. 27.

<sup>164</sup> *Ibid.*, p. 15.

<sup>165</sup> S/1994/131.



to the Secretary-General of the North Atlantic Treaty Organization (NATO) to seek that Organization's support in this matter.

In his letter to the Secretary-General of NATO,<sup>166</sup> the Secretary-General recalled the declaration of the Heads of State and Government of NATO in which they had affirmed their "readiness under the authority of the United Nations Security Council and in accordance with the Alliance decisions of 2 and 9 August 1993 to carry out air strikes in order to prevent the strangulation of Sarajevo, the safe areas and other threatened areas in Bosnia and Herzegovina". He further stated that the mortar attacks against civilian targets in Sarajevo made it necessary "to prepare urgently for air strikes to deter further such attacks". He requested the NATO Secretary-General "to take action to obtain, at the earliest possible date, a decision by the North Atlantic Council to authorize the Commander-in-Chief of NATO's Southern Command to launch air strikes, at the request of the United Nations, against artillery or mortar positions in or around Sarajevo which [were] determined by UNPROFOR to be responsible for attacks against civilian targets in that city".

On 9 February 1994, in response to the Secretary-General's request, NATO carried out air strikes to prevent further shelling of Sarajevo following the attacks against civilians in the central market on 5 February 1994.

At its 3336th meeting, the Council considered the situation in Bosnia and Herzegovina, in particular the attack against civilians in the central market.<sup>167</sup> During the debate, Member States described the situation as a threat to peace and security. Several welcomed the decision by NATO and the steps taken by the Secretary-General to prepare for the use of force, adding that those actions had been fully authorized by existing Council resolutions. They emphasized that the use of force was designed to underpin efforts by the United Nations and the European Union to achieve a negotiated settlement of the conflict, and that air strikes had to be carried out with caution and precision.

The representative of France expressed his Government's satisfaction at the decisions taken on

9 February by the North Atlantic Council to authorize air strikes to prevent further shelling of Sarajevo following the intolerable massacres of 4 and 5 February. In the view of his Government, the decisions of the North Atlantic Council were squarely within the framework of Security Council resolutions 824 (1993) and 836 (1993) with respect to safe areas. The lifting of the siege from those areas, Sarajevo in particular, was the purpose of those resolutions, by which, *inter alia*, UNPROFOR was authorized to use force, including air power, in fulfilling its mandate. Hence, there was no need for those decisions of the North Atlantic Council to be submitted to the Security Council for any further decision.<sup>168</sup>

The representative of the United States noted that "for the first time" a regional organization had acted to implement a decision of the Council to use force under Chapter VII of the Charter. She added that the decision of the North Atlantic Council would bring closer to reality the sentiments often expressed in the Council concerning Bosnia, which was to seek an end to aggression, to safeguard innocent lives, and to encourage the peaceful resolution of disputes.<sup>169</sup>

The representative of Pakistan stated that, despite the fact that most of the Security Council resolutions on Bosnia and Herzegovina were adopted under Chapter VII, they remained by and large unimplemented. To his delegation it was clear that only decisive use of force, particularly the use of surgical, punitive air strikes, would make the Serbs conform to Security Council resolutions.<sup>170</sup>

In a similar vein, several members of the Organization of the Islamic Conference condemned the attack on civilians and urged the Council to act immediately and adopt necessary measures to bring the attacks to an end.<sup>171</sup> They welcomed the decision of NATO to use air strikes against the Serb positions in Bosnia and Herzegovina, and urged that that decision be carried out rapidly. The representative of Indonesia stated that one of the immediate concerns which had to be addressed was the need to ensure the safe passage of relief convoys to prevent the imminent threat of a humanitarian disaster by taking all necessary measures,

<sup>166</sup> *Ibid.*, annex.

<sup>167</sup> At the 3336th meeting, held on 14 and 15 February 1994, no draft resolution or statement was before the Council.

<sup>168</sup> S/PV.3336, pp. 14-15.

<sup>169</sup> *Ibid.*, p. 21.

<sup>170</sup> *Ibid.*, pp. 36-37.

<sup>171</sup> *Ibid.*, pp. 60-63 (Oman); pp. 95-101 (Egypt); pp. 181-187 (Saudi Arabia); and pp. 226-232 (Kuwait).

including the use of force.<sup>172</sup> The representative of Saudi Arabia called on the international community to take all the action provided for by the Charter to implement the Security Council resolutions adopted under Chapter VII, which allowed for the use of force to compel the Serbian party to observe the rules of international legitimacy.<sup>173</sup>

A number of speakers, however, while condemning the attack, believed that the situation in Bosnia could be resolved through dialogue and negotiation.<sup>174</sup> The representative of Jordan, while objecting to the use of military force, believed that the establishment of peace in any conflict could be implemented by negotiated political settlements that guaranteed the legitimate rights of all sides.<sup>175</sup> Ambassador Djovic argued that the decisions of NATO did not fall within the purview of the relevant resolutions of the Council authorizing air strikes. Therefore any attempt to carry out air strikes on the basis of that decision would represent a direct involvement in the civil war on one side. He emphasized that if a true objective was peace for Bosnia and Herzegovina, then the use of force could not be an instrument to that end.<sup>176</sup>

#### *Transition to Implementation Force*

Following the conclusion of the General Framework Agreement for Peace in Bosnia and Herzegovina, the Dayton Agreement and the decision of the Peace Implementation Conference to establish a Peace Implementation Council, the Security Council, acting under Chapter VII of the Charter, adopted resolution 1031 (1995), by which it decided that the mandate of UNPROFOR should terminate on the date on which the Secretary-General reported to the Council that the transfer of authority from UNPROFOR to a multinational implementation force (IFOR) had taken place, and approved the arrangements set out in the report of the Secretary-General on the withdrawal of UNPROFOR and headquarters elements from the United Nations Peace Forces.

By resolution 1031 (1995), the Council recognized that the parties had, in particular, authorized the multinational force referred to in paragraph 14<sup>177</sup> “to take such actions as required, including the use of necessary force, to ensure compliance with annex 1-A of the Peace Agreement”. It further authorized Member States acting under paragraph 14 to “take all necessary measures to effect the implementation of and ensure compliance with annex 1-A” and stressed that the parties were to be “equally subject to such enforcement action by IFOR as may be necessary to ensure implementation of that annex and the protection of IFOR”. The Council further authorized Member States to “take all necessary measures “ at the request of IFOR, either in defence of IFOR or to assist it in carrying out its mission, and recognized the right of the force to “take all necessary measures to defend itself from attack or threat of attack”.

During the debate held in connection with the adoption of resolution 1031 (1995), Member States welcomed the transition to IFOR and expressed their hope for a lasting peace process. The representative of Spain, speaking on behalf of the European Union, stated that the States members of the European Union had, in the past, been the major contributors of United Nations peacekeeping troops on the ground and would continue to play a major part not only in the multinational force, where thousands of European Union troops stood ready for deployment, but also in the civil and humanitarian tasks involved in implementing the Peace Agreement.<sup>178</sup> The representative of the United Kingdom noted that the role of the implementation force, which had been accepted by all the parties, would be even-handed in scope and duration. He further stated that the force was not imposing the peaceful settlement but that it would take the necessary action to ensure compliance.<sup>179</sup> The representative of Germany noted that the draft resolution authorized the deployment of a multinational force to implement the Dayton

<sup>172</sup> Ibid., p. 131.

<sup>173</sup> Ibid., p. 187.

<sup>174</sup> Ibid., p. 53 (Nigeria); pp. 68-70 (China); pp. 107-111 (Turkey); pp. 194-199 (Ambassador Djovic); and pp. 219-223 (United Arab Emirates).

<sup>175</sup> Ibid., pp. 148-157.

<sup>176</sup> Ibid., p. 195.

<sup>177</sup> Paragraph 14 of the resolution provides as follows:

“Authorizes the Member States acting through or in cooperation with the organization referred to in annex 1-A of the Peace Agreement to establish a multinational Implementation Force under unified command and control in order to fulfil the role specified in annexes 1-A and 2 of the Peace Agreement”.

<sup>178</sup> S/PV.3607, p. 32.

<sup>179</sup> Ibid., p. 8.

Agreement, which would go to Bosnia for about one year. By then, a durable peace had to be achieved. He further stated that, in that context, it was important to note that all parties had consented to the deployment of IFOR, including the use of force should that be necessary.<sup>180</sup>

The representative of the United States said that the resolution noted that the deployment of IFOR was requested by the signatories, that it called upon all Member States, including those in the region, to cooperate with the force, and that it further recognized “the right of IFOR to take all necessary measures to defend itself from attack or threat of attack”. She also noted that the resolution further recognized that IFOR had “the authority to take actions, including the use of necessary force, to ensure compliance with annex 1-A of the Peace Agreement”. She described this as a “welcome supplement” to the duties and authorities stemming from resolution 827 (1993).<sup>181</sup> The representative of France stated that the authority of the Security Council must be affirmed. It was the Council, and the Council alone, which, under the Charter, could give legitimacy to the military means that would be used.<sup>182</sup>

Regarding the use of force by IFOR, the representative of Ukraine hoped that IFOR commanders would interpret the resolution in a restrictive manner. He stated that “the right given to IFOR to take all necessary measures to defend itself from threat of attack should not be abused”.<sup>183</sup>

The representative of China stated that he would vote in favour of the draft resolution on the basis of his country’s principled position in support of the peace process and its hope for an early revitalization of lasting peace in Bosnia and Herzegovina, as well as in view of the urgent wishes of the parties concerned and the fact that the draft resolution called for “extraordinary measures in extraordinary circumstances”. He explained, however, that China’s support did not mean that its position had changed, but that China had all along disapproved of operations authorized by the Security Council “when at every turn it invoke[d] Chapter VII of the Charter and adopted mandatory measures”. He stated his Government’s belief that, in carrying out its mandate,

IFOR had to remain neutral and impartial and avoid wanton use of force so as to avoid damaging the image of the United Nations.<sup>184</sup>

### Case 16

#### *The situation prevailing in and around the safe area of Bihac*

By resolution 958 (1994), the Council, acting under Chapter VII of the Charter, extended the provisions of resolution 836 (1993) by providing for the use of air power, in support of the UNPROFOR mandate in respect of the safe areas within Bosnia and Herzegovina.

During the debate held in connection with the adoption of resolution 958 (1994), Council members were unanimous in condemning the attacks launched by the Krajina Serbs in and around the Bihac area. They shared concern at the aggravation of the conflict in Bosnia and Herzegovina, especially the bombing of the Bihac area, and viewed that act as a violation of international borders. In order to prevent a further escalation of the conflict, they urged parties concerned to immediately cease fire and hostilities in and around the Bihac area.

The representative of France welcomed the extension to Croatian territory of the possibility of using air power to enable UNPROFOR to carry out the mandate entrusted to it in the Council resolutions relating to the safe areas in Bosnia and Herzegovina. He stated that, just as he wished to see an end to the offensive military actions, the acts of provocation and the resulting escalations, and the attacks on the safe areas, must not be allowed to go unanswered. He emphasized that the credibility of the Security Council’s decisions and of UNPROFOR activities was at stake.<sup>185</sup>

The representative of the Russian Federation explained that his delegation had voted in favour of the resolution, because it held the position that the order which had been established for the use of air power in Bosnia and Herzegovina and surrounding areas, and which had now been extended to the territory of Croatia with a view to ensuring the protection of the Bihac safe area, fully corresponded to the rules for the use of air power in the other safe areas. He stressed

<sup>180</sup> Ibid., p. 10.

<sup>181</sup> Ibid., pp. 19-20.

<sup>182</sup> Ibid., p. 22.

<sup>183</sup> Ibid., p. 29.

<sup>184</sup> Ibid., pp. 13-14.

<sup>185</sup> S/PV.3461, p. 4.

that the use of air power by United Nations forces, in appropriate cases, should be an impartial one, regardless of who might be the violator. He expressed hope that the resolution would be a signal to all the parties and to all those involved in the Bihac area to put an end to the escalation of military confrontation in order to ensure that the ceasefire was attained immediately.<sup>186</sup>

The representative of New Zealand stressed that resolution 958 (1994) was adopted in the light of lessons learned from previous practice under resolution 836 (1993). He recalled the attack on the safe area of Gorazde in April 1994. At that time, it was not until the tanks were actually in the streets of the city that the United Nations and NATO were galvanized into deterrent action by the use of air power, which had been promised in resolution 836 (1993). He believed that that situation must not be repeated, and his delegation was therefore very pleased that resolution 958 (1994) had been adopted by consensus.<sup>187</sup>

On the other hand, the representative of China explained he had voted in favour of the resolution because it aimed at protecting the safe area of Bihac and the safety of the civilians therein as well as ensuring the successful implementation by UNPROFOR of its mandate. However, he reiterated his Government's reservations concerning the mandatory actions authorized by invoking Chapter VII of the Charter. It was his view that the Council should be extremely prudent and cautious regarding the use of air power in Croatia. Air power should be used only for the purpose of self-defence — to protect the safety and security of UNPROFOR personnel and the civilians in the safe areas — and should not be abused for any punitive and pre-emptive purposes.<sup>188</sup>

## **B. Enforcement action to restore democracy**

### **Case 17**

#### *The question concerning Haiti*

By resolution 940 (1994), the Council authorized Member States to form a multinational force under unified command and control and, in this framework, to use all necessary means to facilitate the departure

from Haiti of the military leadership. By the same resolution, the Council called for the prompt return of the legitimately elected President and the restoration of the legitimate authorities of the Government of Haiti.

The provisions of resolution 940 (1994) that may have some bearing on the provisions of Article 42 proved to be controversial among Member States. The representative of China stated that he could not support the provision in the draft resolution concerning the authorization for Member States to adopt mandatory means under Chapter VII of the Charter to resolve the problem of Haiti. He emphasized that China advocated a peaceful solution to any international disputes or conflicts through patient negotiations. He stated that he did not agree with the adoption of any means of solution based on the resort to pressure at will or even the use of force.” The Chinese delegation was of the view that resolving problems such as that of Haiti through military means did not conform to the principles enshrined in the Charter and lacked sufficient and convincing grounds. He noted that many Member States, particularly those in the Latin American region, had identical or similar views.<sup>189</sup>

The representative of Brazil stated that it was essential to respect not only the democratic solidarity which had been built in the region, but also the personality, sovereignty and independence of the States within it. He noted that for the first time in history, the Security Council was holding a discussion on the use of force under Chapter VII in connection with a country of the Western Hemisphere. The representative of Brazil also raised concerns about the draft resolution. Paragraph 4 contained language similar to that in resolution 678 (1990) regarding the Gulf War. That was a situation of a totally distinct political and legal nature, in a different political and regional context, resulting from the invasion of one country by another, an act which gave rise at the time to the strongest reaction by the international community.<sup>190</sup>

In this context, several Latin American States argued that the situation in Haiti did not pose a threat to international peace and security, therefore, did not support military intervention. The representative of Mexico noted that the actions proposed in the draft resolution were not, strictly speaking, provided for in the Charter. In his opinion, the situation was not a

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<sup>186</sup> Ibid., p. 5.

<sup>187</sup> Ibid., p. 6.

<sup>188</sup> Ibid., p. 7.

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<sup>189</sup> S/PV.3413, p. 10.

<sup>190</sup> Ibid., pp. 8-9.

threat to the peace, a breach of the peace or an act of aggression such as would warrant the use of force in accordance with Article 42 of the Charter. He stated that the foundation for the actions proposed, as could be seen from the report of the Secretary-General, appeared to be “previous practice, that is, precedent”. Every situation, however, was different. He stated that, in this case, the international community and the resolution itself had emphasized the exceptional nature of the Haitian case. Therefore, it seemed at the least contradictory to insist, on the one hand, on this unique character and, on the other, to cite precedents and concepts applied in other circumstances and in other geographical areas. The relevance of those precedents in the case of Haiti therefore appeared to be highly questionable, since this case was different and quite singular.<sup>191</sup>

The representative of Cuba reiterated his country’s resolute opposition to military intervention as a means of solving internal conflicts. He stated that history had shown that military operations could not resolve internal conflicts for the simple reason that they could not resolve the causes of those conflicts. Decisions of that nature went beyond the mandate of the Security Council under Chapter VII of the Charter, which only authorized such powers in cases of an express threat to international peace and security.<sup>192</sup>

The representative of Uruguay expressed doubts whether the situation in Haiti posed a threat to international peace and security and thus allowed for the application of Article 42 of the Charter. He said that although — with a view to the restoration of law, order and democracy in a fraternal nation — Uruguay had unswervingly supported the imposition of economic sanctions in accordance with Article 41 of the Charter, it did not support the application of military action provided for in Article 42. His delegation did not believe that the internal political situation in Haiti projected externally in such a way as to represent a threat to international peace and security. Moreover, he believed that the search for a peaceful solution had not been exhausted. This was precisely the objective of the application of sanctions against the dictatorship which was so unjustly afflicting the Haitian people.<sup>193</sup>

The representative of Venezuela reiterated his Government’s strict adherence to the non-intervention norm and therefore rejected any kind of military intervention, whether unilateral or multilateral, in the American hemisphere.<sup>194</sup>

Although Nigeria supported the resolution, its representative pointed out that the draft resolution took the Council to another, entirely new level of external action to deal with the situation in Haiti and also to an entirely new territory in the Charter of the United Nations, in particular the use of Chapter VII.<sup>195</sup>

The representative of the United States stated that the resolution built on the precedents of Kuwait and Rwanda as far as the first phase of the operation was concerned. The second phase, on the other hand, established a United Nations mission of modest size, with a clear and achievable mandate, operating in a relatively secure environment, with the consent of the Government, for a finite period of time. She stated that the purpose of the resolution was in favour of democracy being restored, not to impinge upon the sovereignty of Haiti.<sup>196</sup>

The representative of Djibouti, while welcoming the resolution on the whole, raised a number of important issues. He called upon the members of the Council to reflect upon the growing pattern of reliance upon ad hoc multinational intervention forces to mitigate or resolve conflicts or conflict-induced humanitarian crises. Should the United Nations continue to encounter difficulties in assembling the manpower and resources necessary to address such situations, as they had seen in Haiti and other places, they could face the prospect of diminishing credibility. He called on the United Nations to retain its determination, its creativity, its capability and its means, or the future could become increasingly unpredictable — which meant unsafe.<sup>197</sup>

### **C. Enforcement action for humanitarian purposes**

The Security Council has, on a number of occasions, adopted decisions by which it authorized the

<sup>191</sup> Ibid., pp. 4-5.

<sup>192</sup> Ibid., pp. 6.

<sup>193</sup> Ibid., p. 7.

<sup>194</sup> Ibid., p. 8.

<sup>195</sup> Ibid., p. 11.

<sup>196</sup> Ibid., pp. 12-13.

<sup>197</sup> Ibid., pp. 22-23.

provision of humanitarian assistance, not only out of an urgent humanitarian concern but also as an important element of the effort to restore peace and security. Such measures aimed at delivering humanitarian assistance may, therefore, be of relevance to the Council's interpretation and application of Article 42, insofar as they are adopted in the context of existing threats to the peace closely connected to broader efforts to restore peace and security in the affected regions.<sup>198</sup>

### Case 18

#### *The situation in Somalia*

By resolution 794 (1992), the Council determined that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constituted a threat to international peace and security. Acting under Chapter VII, the Council authorized a multinational coalition led by the United States, the Unified Task Force (UNITAF), "to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia".

By resolution 814 (1993), the Security Council established UNOSOM II, which was authorized to take appropriate action, including enforcement action, to establish throughout Somalia a secure environment for humanitarian assistance. UNOSOM II was to complete the task begun by UNITAF for the restoration of peace, stability, law and order. The mandate also empowered UNOSOM II to provide assistance to the Somali people in rebuilding their economy, re-establishing the country's institutional structure, achieving national political reconciliation, recreating a Somali State based on democratic governance and rehabilitating the country's economy and infrastructure.<sup>199</sup> In his report, the Secretary-General had stated, in the light of the "disheartening reverses", that the threat to international peace and security ascertained in resolution 794 (1992)

continued to exist. Consequently, UNOSOM II would not be able to implement the mandate recommended unless it was "endowed with enforcement powers under Chapter VII of the Charter".<sup>200</sup> The Council also requested the Secretary-General, through his Special Representative, to direct the Force Commander of UNOSOM II to assume responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia, taking account of the particular circumstances in each locality, on an expedited basis in accordance with the recommendations contained in his report, and in this regard to organize a prompt, smooth and phased transition from UNITAF to UNOSOM II.<sup>201</sup>

In the deliberations held in connection with the adoption of resolution 814 (1993), some speakers agreed that the task entrusted to the expanded UNOSOM II would make possible the restoration of peace and security in Somalia, and put an end to the humanitarian disaster. The representative of China stated that his Government had always held that a political solution to the Somali question should be sought through peaceful means within the framework of the Conference on National Reconciliation under the auspices of the United Nations. At the same time, China took note of the opinion of the Secretary-General to the effect that, while the unique situation of the absence of any effective, functioning government in Somalia had increased the difficulty and complexity of the task of settling the Somali question, delaying such a settlement would undoubtedly affect the peace and stability of the entire region. China had therefore supported the United Nations taking strong, exceptional measures in Somalia, so as to establish a secure environment for humanitarian assistance and to create conditions for the final settlement of the Somali question. The representative of China further stated that "authorizing UNOSOM II to take enforcement action under Chapter VII in order to implement its mandate had made it the first operation of its kind in the history of United Nations peacekeeping".<sup>202</sup>

The representative of the United Kingdom noted that the great merit of the resolution was its mixture of firmness and sensitivity, firmness in the sense that UNOSOM II would be endowed with a robust Chapter VII mandate to disarm the Somali factions and

<sup>198</sup> In this context, see for example the statement made by the representative of the United States regarding the adoption of resolution 770 (1992), concerning Bosnia and Herzegovina (S/PV.3106, pp. 37-40).

<sup>199</sup> The expansion of the size and mandate of UNOSOM II, under paragraph 5 of resolution 814 (1993), was in accordance with the recommendations of the Secretary-General contained in paragraphs 56 to 88 of his further report submitted in pursuance of paragraphs 18 and 19 of resolution 794 (1992) (S/25354).

<sup>200</sup> S/25354, para. 58.

<sup>201</sup> Resolution 814 (1993), para. 14.

<sup>202</sup> S/PV.3188, pp. 21-22.

to operate throughout the territory of Somalia, and sensitivity in the sense that it recognized the Secretary-General's invaluable work in promoting the task of political reconciliation.<sup>203</sup>

### Case 19

#### *The situation in Rwanda*

On a number of occasions, the Council took decisions relating to the provision of humanitarian assistance in Rwanda. Its decisions either conferred such a mandate upon the United Nations Assistance Mission in Rwanda (UNAMIR) and were sometimes backed up by the authorization of the use of force, or, in cases where the relevant decisions of the Council were not taken under Chapter VII, they continued to focus on the humanitarian situation and action that could be taken towards alleviating it.

By resolution 912 (1994), the Council decided to adjust the mandate of UNAMIR to, inter alia, assist in the resumption of humanitarian relief operations to the extent feasible, called upon the parties concerned to cooperate fully in ensuring the unimpeded delivery of humanitarian assistance to those in need throughout Rwanda and appealed to the international community to provide increased humanitarian assistance commensurate with the scale of the human tragedy. By resolution 918 (1994), the Council decided to expand the mandate of UNAMIR under resolution 912 (1994) to include responsibility for contributing to the security and protection of displaced persons, refugees and civilians at risk in Rwanda, "including through the establishment and maintenance, where feasible, of secure humanitarian areas". It also recognized that UNAMIR might "be required to take action in self-defence against persons or groups who threaten[ed] protected sites and populations, United Nations and other humanitarian personnel or the means of delivery and distribution of humanitarian relief".

In the light of the deteriorating situation in Rwanda, pressure mounted for the Council to consider what further action could be taken in order to end the violence.

By resolution 925 (1994), the Council noted with the gravest concern the reports indicating that acts of genocide had occurred in Rwanda and noted further that the expanded military component of UNAMIR

would continue only as long as and to the extent that it was needed "to contribute to the security and protection of displaced persons, refugees and civilians at risk in Rwanda and to provide security, as required, to humanitarian relief operations". The Council further recognized that UNAMIR might be required "to take action in self-defence against persons or groups who threatened protected sites and populations, United Nations and other humanitarian personnel or the means of delivery and distribution of humanitarian relief". It further emphasized the necessity that, inter alia, "all appropriate steps be taken to ensure the security and safety of the operation and personnel engaged in the operation".

In the debate held in connection with the adoption of resolution 925 (1994), the representative of the United States noted that ceasefire negotiations had begun but, in the meantime, there was no comprehensive ceasefire in effect and no comprehensive agreement among the parties involved in the Rwandan conflict or with the United Nations. In those circumstances, the activities described in the Secretary-General's report<sup>204</sup> might be considered to involve enforcement actions. He further stated that UNAMIR military units had to be provided with the equipment and rules of engagement to execute successfully the assigned mission to defend themselves and to provide basic protection for threatened persons and security for the delivery of humanitarian relief. The Council had, to that end, included in the resolution "a reaffirmation that UNAMIR might be required to take action in self-defence".<sup>205</sup>

In view of the further deterioration of the situation in Rwanda, the Secretary-General addressed a letter dated 19 June 1994 to the President of the Security Council<sup>206</sup> in which he suggested that the Council might wish to consider the offer of the Government of France to undertake, subject to Security Council authorization, a French-commanded multinational operation in conjunction with other Member States, under Chapter VII of the Charter, to ensure the security and protection of displaced persons and civilians at risk in Rwanda. The Secretary-General stated that, if the Council decided to authorize an operation along those lines, it would be necessary for it to request the Governments concerned to commit

<sup>203</sup> Ibid., p. 37.

<sup>204</sup> S/1994/640.

<sup>205</sup> S/PV.3388, pp. 12-13.

<sup>206</sup> S/1994/728.

themselves to maintaining their troops in Rwanda until UNAMIR was brought up to the necessary strength to take over from the multinational force and the latter had created conditions in which a peacekeeping force would have the capacity to carry out its mandate.<sup>207</sup>

Following the recommendations of the Secretary-General, by resolution 929 (1994),<sup>208</sup> the Council, stressing the strictly humanitarian character of the operation, which would be conducted in an impartial and neutral fashion, and which was not to constitute an interposition force between the parties, and acting under Chapter VII, authorized Member States “cooperating with the Secretary-General to conduct a temporary operation ... using all necessary means to achieve the humanitarian objectives set out in subparagraphs 4 (a) and (b) of resolution 925 (1994)”.<sup>209</sup>

During the debate, a number of Council members supported the establishment of a multinational force in Rwanda for humanitarian purposes aimed at ensuring the security and protection of civilians. The representative of France underlined the humanitarian objectives of the mission. He stated that the goal of the French initiative was exclusively humanitarian: the initiative was motivated by the plight of the people, in the face of which the international community could not and ought not to remain passive. It would not be the mission of the soldiers in Rwanda to interpose themselves between the warring parties, still less to influence in any way the military and political situation. Their objective was simple: to rescue endangered civilians and put an end to the massacres, and to do so in an impartial manner.<sup>210</sup>

The representative of the Russian Federation stated that the enormous scale of the human tragedy and the continuing massacres of the innocent civilian

population dictated the need for the adoption of “urgent measures that [could] stop the further bloodshed in Rwanda”. His delegation believed that it was important that the draft resolution clearly stated that this action had “the purely humanitarian goal of contributing to the security and protection of the civilian population”. He stated that it was also important that the operation be carried out impartially and neutrally, in close cooperation with UNAMIR.<sup>211</sup>

The representative of the United States stated that the “grave humanitarian crisis in that country demand[ed] a swift response from the international community” and commended the French for acting to address that need. She stressed that the mandate of the force was limited to addressing humanitarian needs, as called for in resolution 925 (1994).<sup>212</sup>

The temporary French-led operation conducted parallel to UNAMIR was not supported by some members of the Council. New Zealand, which had abstained from voting, stressed that in terms of the objectives and motives it agreed with the terms of the resolution. It disagreed, however, on the means chosen by the Security Council. The representative of New Zealand cautioned that, if the right means were not employed, tragedy could be the result, as had been the case for Somalia, in which the Council had the best of humanitarian intentions. He stated that “trying to run two separate operations in parallel with different command arrangements does not work and, in the long run, those whom we set out to save can be those who suffer. The Security Council must learn from history”.<sup>213</sup>

In a similar vein, the representative of China noted that the Rwandan parties to the conflict should negotiate within the framework of the Arusha Peace Agreement, because that was the correct and only way of solving the crisis in Rwanda. He further stated that resort to armed force or mandatory measures would only worsen the situation there.<sup>214</sup> The representative of Brazil stated that his Government had repeatedly maintained that the Council should do its utmost to avoid invoking the extraordinary powers conferred upon it by Chapter VII of the Charter.<sup>215</sup>

<sup>207</sup> Ibid., para. 12.

<sup>208</sup> Adopted at the 3392nd meeting, on 22 June 1994, with 5 abstentions (Brazil, China, New Zealand, Nigeria, Pakistan), suggesting deep divisions within the Council about authorizing a French intervention.

<sup>209</sup> By paragraph 2 of resolution 929 (1994), the Council welcomed “the offer by Member States to cooperate with the Secretary-General in order to achieve the objectives of the United Nations in Rwanda through the establishment of a temporary operation under national command and control aimed at contributing, in an impartial way, to the security and protection of displaced persons, refugees and civilians at risk in Rwanda”.

<sup>210</sup> S/PV.3392, p. 6.

<sup>211</sup> Ibid., p. 2.

<sup>212</sup> Ibid., p. 6.

<sup>213</sup> Ibid., p. 7.

<sup>214</sup> Ibid., p. 4.

<sup>215</sup> Ibid., p. 3.



## Part V

### Decisions and deliberations having relevance to Articles 43 to 47 of the Charter

#### Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

#### Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfilment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

#### Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

#### Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

#### Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament.

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work.

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional sub-committees.

### Note

Part V contains six case studies which examine the deliberations of the Security Council in connection with its adoption of decisions authorizing the use of force pursuant to Chapter VII of the Charter of the United Nations.<sup>216</sup> In its decisions adopted during the period under review, with respect to the situations in Somalia and Bosnia and Herzegovina, the question

<sup>216</sup> See part IV of the present chapter for Council decisions relating to Article 42.

concerning Haiti and the situation concerning Rwanda, the Council did not explicitly refer to Articles 43 to 47, but its discussions demonstrate the relevance of those provisions, particularly as they relate to the command and control of military forces acting pursuant to an authorization by the Council.

Section A contains summaries of the decisions dealt with in the case studies contained in section B and is organized by agenda item and the decisions are listed chronologically. Section B considers salient issues raised in the Council's deliberations relevant to Articles 43 to 47, and the case studies are accordingly organized by subject.

## **A. Decisions of the Security Council relating to Articles 43 to 47**

### *The situation in Somalia*

By resolution 814 (1993) of 26 March 1993, the Council, acting under Chapter VII, requested the Secretary-General, through his Special Representative, to direct the Force Commander of UNOSOM II to assume responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia, with a view to the facilitation of humanitarian assistance.

### *The situation in Bosnia and Herzegovina*

By resolution 816 (1993) of 31 March 1993, the Council, acting under Chapter VII of the Charter, authorized Member States, seven days after the adoption of the resolution, acting nationally or through regional arrangements, to take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures in the airspace of the Republic of Bosnia and Herzegovina, in the event of further violations, to ensure compliance with the ban on flights imposed by resolution 781 (1992), and proportionate to the specific circumstances and the nature of the flights. The Council requested the Member States concerned, the Secretary-General and UNPROFOR to coordinate closely on implementation measures, including the rules of engagement, and on the starting date of the implementation, and to report that starting date to the Council through the Secretary-General. The Council further requested Member States to inform the Secretary-General immediately of any actions taken to

implement the resolution and requested the Secretary-General to so inform the Council.

By resolution 1031 (1995) of 15 December 1995, the Council, acting under Chapter VII, authorized the Member States acting through or in cooperation with NATO to establish a multinational implementation force (IFOR) under unified command and control in order to fulfil the role specified in annexes 1-A and 2 of the General Framework Agreement for Peace in Bosnia and Herzegovina. The Council authorized Member States to take all necessary measures at the request of IFOR to assist the force in carrying out its mission and recognized the right of the force to take all necessary measures to defend itself from attack or threat of attack. The Council decided that it would, within 12 months of the resolution, review the authorization given to IFOR. The Council requested the Member States acting through or in cooperation with NATO to report to the Council, through the appropriate channels on at least a monthly basis. The Council also requested the Secretary-General to submit to it reports from the High Representative.

### *The question concerning Haiti*

By resolution 875 (1993) of 16 October 1993, the Council, acting under Chapters VII and VIII of the Charter, called upon Member States, acting nationally or through regional agencies or arrangements, cooperating with the legitimate Government of Haiti, to use such measures commensurate with the specific circumstances as might be necessary under the authority of the Security Council to ensure strict implementation of the provisions of previous resolutions relating to the supply of petroleum or petroleum products or arms and related materiel of all types, and in particular to halt inward maritime shipping as necessary in order to inspect and verify cargoes and destinations.

By resolution 940 (1994) of 31 July 1994, the Council, acting under Chapter VII, authorized Member States to form a multinational force under unified command and control and, in that framework, to use all necessary means to facilitate the removal from Haiti of the military leadership, the return and restoration of the legitimate authorities of the Government of Haiti and to establish and maintain a secure environment for the implementation of the Governors Island Agreement. The Council approved the creation of an advance team of the United Nations Mission in Haiti (UNMIH) to

establish the appropriate means of coordination with the multinational force and to carry out the monitoring of its operations, and requested the Secretary-General to report on the activities of the team within 30 days of the date of deployment of the multinational force. The Council decided it would terminate the mission *inter alia* when a secure and stable environment had been established — that determination to be made by the Council, taking into account the assessment of the Commander of the multinational force and recommendations from the Secretary-General. The Council also requested those Member States forming part of the multinational force to report to the Council at regular intervals following an initial report not later than seven days following the force's deployment.

*The situation concerning Rwanda*

By resolution 929 (1994) of 22 June 1994, the Council agreed that a multinational operation might be set up for humanitarian purposes in Rwanda until the United Nations Assistance Mission for Rwanda (UNAMIR) was brought up to the necessary strength and, acting under Chapter VII, authorized the Member States cooperating with the Secretary-General to conduct the operation using all necessary means to achieve the humanitarian objectives set out in paragraphs 4 (a) and (b) of resolution 925 (1994). The Council decided that the mission of Member States cooperating with the Secretary-General would be limited to a period of two months, unless the Secretary-General determined at an earlier date that the expanded UNAMIR was able to carry out its mandate, and requested the Member States concerned and the Secretary-General to report to the Council on a regular basis. The Council also requested Member States to cooperate with the Secretary-General to coordinate closely with UNAMIR, and requested the Secretary-General to set up appropriate mechanisms to that end.

## **B. Salient issues raised in the deliberations of the Security Council**

### **Transfer from Member States to the Secretary-General of command responsibility for operations**

#### **Case 20**

*The situation in Somalia*

In the deliberations held in connection with the adoption of resolution 814 (1993), the significance of the envisaged transfer of command responsibility from Member States to the Secretary-General for operations in Somalia authorized by the Security Council under Chapter VII was underlined by most speakers as they discussed the transition from the Unified Task Force (UNITAF) to UNOSOM II.<sup>217</sup> The representative of Cape Verde described the decision to authorize the Secretary-General and certain Member States to establish the necessary secure environment for humanitarian relief operations as a turning-point and a new point of departure with regard to the involvement of the international community in Somalia.<sup>218</sup> Similarly, the representative of Morocco noted that the operation, the first of its kind ever undertaken by the United Nations, clearly illustrated the important role which the Organization was able to play in crises of the kind under discussion.<sup>219</sup> The representative of the United States believed the adoption of the resolution would signify that it was time for the United Nations to resume its rightful leadership role in restoring peace to Somalia.<sup>220</sup> The representative of Spain noted that by adopting the resolution the Council had established the first operation of its nature.<sup>221</sup> The representative of New Zealand believed the resolution marked “a further step by the United Nations towards defining a new era in international peacekeeping operations”.<sup>222</sup>

The representative of China noted that authorizing UNOSOM II “to take enforcement action under Chapter VII of the Charter in order to implement its mandate ha[d] made it the first operation of its kind

<sup>217</sup> S/PV.3188, p. 8 (Djibouti); pp. 22-23 (France); and p. 36 (Hungary), in addition to the other statements explicitly cited.

<sup>218</sup> *Ibid.*, p. 11.

<sup>219</sup> *Ibid.*, p. 17.

<sup>220</sup> *Ibid.*, p. 18.

<sup>221</sup> *Ibid.*, p. 26.

<sup>222</sup> *Ibid.*, p. 41.

in the history of United Nations peacekeeping".<sup>223</sup> He believed, however, that UNOSOM II should act prudently in carrying out such enforcement tasks and that, once the situation in Somalia had improved, UNOSOM II should resume its normal peacekeeping operations. The representative of the Russian Federation noted the need, given the unprecedented nature of the operation, for the Secretary-General to report regularly to the members of the Council on measures relating to the period of transition from UNITAF to UNOSOM II and the deployment of the Operation itself.<sup>224</sup>

**Authorizing Member States to ensure the effective enforcement of measures not involving the use of force pursuant to Chapter VII**

**Case 21**

*The question concerning Haiti*

In the deliberations held in connection with the adoption of resolution 875 (1993), two speakers stressed that the sole purpose of the Council's decision was to ensure the effective enforcement of the embargo measures adopted under its resolutions 841 (1993) and 873 (1993).<sup>225</sup> The representative of Brazil noted that the authorization provided in the resolution was "restricted in scope, space and time" and "intended to have effect only until those sanctions measures were suspended or terminated".<sup>226</sup>

The representative of France noted that the Council's decision was not the first use by the Council of maritime monitoring of the implementation of sanctions, and believed that the rules of engagement to be employed should follow those previously established.<sup>227</sup> The representative of China stated that, in carrying out the measures authorized by the resolutions, countries should only take actions commensurate with the specific situations prevailing at the time. Furthermore, they should strengthen coordination with the efforts of the Secretary-General and his Special Representative and keep the Council informed on a regular basis.<sup>228</sup>

<sup>223</sup> Ibid., p. 22.

<sup>224</sup> Ibid., p. 40.

<sup>225</sup> S/PV.3293, p. 12 (Spain); and p. 24 (Brazil).

<sup>226</sup> Ibid., p. 24.

<sup>227</sup> Ibid., p. 16.

<sup>228</sup> Ibid., p. 18.

**Authorization by the Security Council of a multinational force**

**Case 22**

*The situation concerning Rwanda*

In the deliberations held in connection with the adoption of resolution 929 (1994), several Council members stressed the strictly humanitarian character of the mandate given to the multinational force. It was specifically noted that the mandate of the force was limited to addressing humanitarian needs, as called for in paragraph 4 (a) and (b) of resolution 925 (1994), and that the operation was to be carried out with impartiality and neutrality, in close coordination with the activities of UNAMIR.<sup>229</sup> Emphasis was also placed on the temporary nature of the force, as an interim measure until the full deployment of an expanded UNAMIR.<sup>230</sup> One Council member also recalled that the Secretary-General was expected to regularly inform the Council on the implementation of the operation.<sup>231</sup>

The representative of Nigeria believed that, in a situation which constituted a threat to international peace and security, the United Nations, through the Security Council, retained primary responsibility. Any effort, whether unilateral, bilateral or multilateral, was best subsumed within it. He also believed that a parallel command structure in Rwanda, of UNAMIR on the one hand, and the French-led intervention force

<sup>229</sup> S/PV.3392, p. 2 (Russian Federation); p. 6 (United States); p. 7 (Spain); and p. 9 (United Kingdom). The representative of France stated "[i]t will not be the mission of our soldiers in Rwanda to interpose themselves between the warring parties, still less to influence in any way the military and political situation" (S/PV.3392, pp. 5-6).

<sup>230</sup> The representative of France stated "It is not the objective of the French initiative to replace UNAMIR ... It will end as soon as the troops of General Dallaire ... have obtained their long-awaited reinforcements, at the latest within two months, as the resolution we have just adopted states" (S/PV.3392, p. 6). The representative of Spain stated "the multinational operation is aimed at bridging the gap until the full deployment of an expanded UNAMIR and for a two-month period" (ibid., p. 8). The representative of Argentina stated "[The] operation has been approved on the understanding that its objective is ... strictly in connection with the effective deployment of an expanded ... UNAMIR" (ibid., p. 10).

<sup>231</sup> S/PV.3392, p. 2 (Russian Federation).

on the other, was most unlikely to produce a climate conducive to peace in Rwanda.<sup>232</sup>

### Case 23

#### *The question concerning Haiti*

In the deliberations held in connection with the adoption of resolution 940 (1994), one speaker expressed deep concern over the absence of any reference to a specific time frame for the proposed action. In his opinion, “a kind of *carte blanche* ha[d] been awarded to an undefined multinational force to act when it deem[ed] it to be appropriate”.<sup>233</sup> By contrast, the representative of New Zealand believed that the resolution did in fact contain elements which “clearly indicate[d] that the operation would be of a temporary nature and would be focused on a specific point in history”.<sup>234</sup>

The representative of Spain, noting the Council’s caution in the drafting of the multinational force’s mandate, stressed the need for it to be just as scrupulous in its implementation. To that end, he recalled the Council’s follow-up mechanisms contained in the resolution, including the monitoring of the multinational force by military observers within an advance group of UNMIH and the reporting requirements of the Secretary-General and Member States involved in the multinational force.<sup>235</sup> The representative of the United States recalled that the timing of the transition from the multinational force to the United Nations mission (phase one to phase two) would be determined by the Council itself.<sup>236</sup>

Regarding the command of the operation, the representative of New Zealand recorded his Government’s continued preference for collective security to be undertaken by the United Nations itself.<sup>237</sup> The representative of China described the practice of the Council authorizing certain Member

<sup>232</sup> Ibid., p. 10.

<sup>233</sup> S/PV.3413, p. 5 (Mexico); see also the statement of Cuba (ibid., p. 6).

<sup>234</sup> Ibid., p. 22. See also the statements by the representatives of Nigeria (ibid., p. 11), in which he expressed the hope that the operation of the multinational force would be a temporary one that was focused and subject-specific, and Spain (ibid., p. 19).

<sup>235</sup> Ibid., p. 20.

<sup>236</sup> Ibid., p. 13.

<sup>237</sup> Ibid., p. 21.

States to use force as “disconcerting” because it would create a dangerous precedent.<sup>238</sup>

### Case 24

#### *The situation in Bosnia and Herzegovina*

In the deliberations held in connection with the adoption of resolution 816 (1993), the representative of France noted the balance the resolution had struck between the technical necessity of setting up effective military structures and the political need to place them under the authority of the Security Council, in close coordination with the Secretary-General.<sup>239</sup> The representative of Brazil also attached particular importance to the fact that the implementation of the authorization contained in the resolution would be conducted under the authority of the Security Council and would be subject to close coordination with the Secretary-General and UNPROFOR. He understood that measures taken would be of a limited nature and that the Council would proceed to review those measures as soon as the situation warranted it.<sup>240</sup> The representative of Spain noted that the measures were “limited to the airspace of [Bosnia and Herzegovina] and to the legitimate exercise of self-defence. Anything outside [that] scope [would] require the new authorization of the Council”.<sup>241</sup>

### Authorization by the Security Council of a force under the command of a regional organization

### Case 25

#### *The situation in Bosnia and Herzegovina*

In the deliberations held in connection with the adoption of resolution 1031 (1995), the political control exercised by the Council over the NATO-led operation was a central issue for several Council members. The representative of Nigeria noted that he would have preferred “a United Nations operation under the policy control of the Security Council and the managerial supervision of the Secretary-General”. He believed that the Council “should not continue to contract out what would normally be a United Nations responsibility to a group of powerful States. It was his delegation’s belief that “multinational forces for peace

<sup>238</sup> Ibid., p. 10.

<sup>239</sup> S/PV.3191, p. 4.

<sup>240</sup> Ibid., pp. 19-20; see also p. 23 (Russian Federation).

<sup>241</sup> Ibid., p. 8.

enforcement should be placed at the disposal of the United Nations and operated under the command of the Secretary-General. He stated “[a]s Member States of the United Nations, we should not support decisions that have the effect of subordinating our Organization or our Secretary-General to another organization, no matter how powerful its members”.<sup>242</sup>

The representative of China called for IFOR to provide the Council with timely and full reports on its implementation task so that it could accept the necessary control of and guidance from the Security Council.<sup>243</sup> The representative of Nigeria also raised the matter of the timetable for the authorization.<sup>244</sup>

The representative of France stated that the authority of the Security Council had to be affirmed. Under the Charter, it was the Security Council, and the

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<sup>242</sup> S/PV.3607, p. 15.

<sup>243</sup> *Ibid.*, p. 14.

Council alone, that gave legitimacy to the military means to be used by IFOR. Only the Council could ensure the overall coherence of the operations by regularly assessing both the civilian and military aspects of the operation.<sup>245</sup>

The representative of the Russian Federation stressed that, under the terms of the resolution, reliable political control by the Security Council was ensured, namely through the provision of regular reports to it on the conduct of the entire operation and by virtue of its power to decide whether to extend the military component of the operation. Furthermore, the operation under way in Bosnia in no way meant a replacement of the United Nations by individual or regional organizations.<sup>246</sup>

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<sup>244</sup> *Ibid.*, p. 15.

<sup>245</sup> *Ibid.*, p. 21.

<sup>246</sup> *Ibid.*, p. 25.

## Part VI

### Obligations of Member States under Article 48 of the Charter

#### Article 48

1. *The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.*

2. *Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members.*

During the period under review, no decisions were adopted by the Council referring expressly to Article 48. When the Council did adopt decisions under Chapter VII, it underlined the mandatory nature of those measures imposed without specifically referring to Article 48. When imposing measures against Haiti, Rwanda, the Libyan Arab Jamahiriya and the National

Union for the Total Independence of Angola (UNITA), the Security Council in each case expressly stated in its decisions that States were to act strictly in accordance with the provisions of the resolution, “notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted before the date of the respective resolution”.<sup>247</sup> By those decisions, the Council required States to report

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<sup>247</sup> In connection with the measures imposed against Haiti, see resolution 841 (1993), para. 9. In connection with the measures imposed against UNITA, see resolution 864 (1993), para. 20. In connection with the measures imposed against Rwanda, see resolution 918 (1994), para. 15. In connection with the strengthened measures imposed against the Libyan Arab Jamahiriya, see resolution 883 (1993), para. 12.

on their compliance with relevant prohibitions,<sup>248</sup> and provided that implementation reports received from States were to be examined by committees specifically mandated to monitor the implementation of sanctions and to consider any information concerning violations of relevant State obligations.<sup>249</sup> In order to ensure full compliance with relevant prohibitions, the Council, by subsequent decisions, called on States to take “such measures commensurate with the specific circumstances as may be necessary” to enforce the sanctions regimes imposed on Haiti and the Federal Republic of Yugoslavia.<sup>250</sup>

<sup>248</sup> In connection with measures imposed against Haiti, the Council, by resolutions 841 (1993), para. 13, and 917 (1994), para. 13, requested all States to report to the Secretary-General within one month on the measures they had instituted for meeting their obligations. In connection with the measures imposed against UNITA, the Council, by resolution 864 (1993), para. 24, requested all States to report to the Secretary-General within one month on the measures they had taken for meeting their obligations. In connection with sanctions imposed on the Libyan Arab Jamahiriya, the Council, by resolution 883 (1993), para. 13, requested all States to report to the Secretary-General within one month on the measures they had instituted for meeting their obligations. In connection with the measures imposed on the Federal Republic of Yugoslavia, the Council, by resolution 988 (1995), para. 3, called upon all States which allowed flights or ferry services permitted under paragraph 1 of the resolution from their territories or using their flag vessels or aircraft to report to the Committee established pursuant to resolution 724 (1991). In connection with sanctions imposed against Rwanda, the Council, by resolution 1011 (1995), para. 11, decided that States should notify the Committee established pursuant to resolution 918 (1994) of all exports from their territories of arms or related materiel to Rwanda.

<sup>249</sup> In connection with the measures imposed on Haiti, see resolutions 841 (1993), para. 10, and 917 (1994), para. 14. In connection with the measures imposed on UNITA, see resolution 864 (1993), para. 22. In connection with the measures imposed on Rwanda, see resolution 918 (1994), para. 14. Attention is also drawn to resolution 883 (1993), para. 9, instructing the Committee established pursuant to resolution 748 (1992) concerning the Libyan Arab Jamahiriya to draw up and amend, as appropriate, the guidelines for the implementation of resolution 748 (1992).

<sup>250</sup> See resolutions 875 (1993), para. 1, and 820 (1993), para. 29. By the presidential statement of 28 January 1993 (S/25190), in connection with navigation on the Danube river in the Federal Republic of Yugoslavia, the Council reiterated the responsibility of all riparian States

In accordance with Article 48, action required to carry out the Council’s decisions “shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine”, both “directly and through their action in the appropriate international agencies”.

In its decisions imposing measures not involving the use of armed force, in accordance with the provisions of Article 41 of the Charter, the Security Council consistently called upon “all States” to comply with relevant prohibitions.<sup>251</sup> In some instances, the Council addressed its calls to comply with relevant prohibitions to “States” in general.<sup>252</sup> In connection with the measures imposed on Rwanda, the Libyan Arab Jamahiriya and Haiti, the Council expressly

to take necessary measures to ensure that shipping on the Danube was in accordance with Council resolutions, including such enforcement measures commensurate with the specific circumstances as might be necessary to halt such shipping.

<sup>251</sup> In connection with the situation in Somalia, see resolutions 814 (1993), para. 11, 897 (1994), para. 9, 885 (1993), para. 11, and 923 (1994), para. 6. In connection with the situation concerning Rwanda, see resolutions 918 (1994), paras. 13 and 15, and 1011 (1995), para. 9. In connection with the situation in Liberia, see resolutions 813 (1993), para. 9, 1001 (1995), para. 10, and 1020 (1995), para. 11. In connection with the Libyan Arab Jamahiriya, see resolution 883 (1993), paras. 3, 5 and 6. In connection with the question concerning Haiti, see resolutions 841 (1993), paras. 5 and 11, and 917 (1994), paras. 2-4, 6, 7 and 11. In connection with the situation in the former Yugoslavia and in Bosnia and Herzegovina, see resolutions 820 (1993), paras. 13, 24 and 25, 988 (1995), paras. 3 and 4, and 1022 (1995), para. 7.

<sup>252</sup> In connection with the measures imposed on the former Yugoslavia, see resolution 942 (1994), paras. 7-12, 14 and 16-18. By resolution 820 (1993), para. 19, the Council reminded “States” of the importance of strict enforcement of measures imposed under Chapter VII of the Charter and called upon them to bring proceedings against persons and entities violating the measures imposed by previous resolutions. In connection with the measures imposed on Somalia, see resolution 886 (1993), para. 11, by which the Council reaffirmed “the obligations of States to implement fully the embargo on all deliveries of weapons and military equipment to Somalia” as imposed by resolution 733 (1992). In connection with the measures imposed on UNITA, see resolution 864 (1993), para. 21, by which the Council called upon “States” to bring proceedings against persons and entities violating the measures imposed by that resolution.

included “States not Members of the United Nations” among those to whom its decisions were addressed,<sup>253</sup> and also required international organizations to act strictly in accordance with their provisions.<sup>254</sup> In connection with the measures imposed on Somalia, Rwanda and the former Yugoslavia, the Council expressly included “neighbouring States” among those to whom its decisions were addressed.<sup>255</sup> Concerning the situation in Bosnia and Herzegovina, the Council reaffirmed the responsibility of “riparian States” to ensure strict implementation of the relevant resolutions regarding shipping on the Danube.<sup>256</sup> The Council also imposed particular obligations on “each State neighbouring the Federal Republic of Yugoslavia”.<sup>257</sup>

In its resolutions establishing the International Tribunals for the Former Yugoslavia and Rwanda, the Council decided that “all States” should cooperate fully with the Tribunal and its organs in accordance with the relevant resolution and the statute of the Tribunal, and that consequently “all States” should take any measures necessary under their domestic law to implement the provisions of the resolution and of the statute.<sup>258</sup>

While the above-mentioned decisions were formulated to ensure universal compliance and to create binding obligations for all States, decisions providing for the use of “all measures necessary”<sup>259</sup> to enforce previous resolutions of the Council instead took the form of authorizations or calls on States willing and in a position to take such action. While such authorizations or calls were often addressed to “Member States” in general,<sup>260</sup> in some instances they were more specifically addressed to “Member States concerned”<sup>261</sup> or “Member States cooperating”.<sup>262</sup> In one decision, however, adopted in connection with the implementation of sanctions imposed on the Federal Republic of Yugoslavia, the Council reiterated its request, in resolution 787 (1992), to “all States, including non-riparian States” to provide assistance to the riparian States regarding shipping on the Danube.<sup>263</sup> Some of the decisions authorizing the use of all necessary measures expressly envisaged possible

<sup>253</sup> See resolutions 918 (1994), para. 15, and 917 (1994), para. 12, in which the Council called on “all States, including States not Members of the United Nations” to act strictly in accordance with the provisions of those resolutions.

<sup>254</sup> In connection with the measures imposed on Rwanda, UNITA and the Libyan Arab Jamahiriya, see resolutions 918 (1994), para. 15, 864 (1993), para. 20 and resolution 883 (1993), para. 12, respectively, by which the Council called upon all States, including States not Members of the United Nations, and international organizations to act strictly in accordance with their provisions. In connection with the measures imposed on Haiti, see resolution 841 (1993), para. 9, by which the Council called on “all States and all international organizations” to act in accordance with their provisions, while in resolution 917 (1994), para. 12, 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 resolution.

<sup>255</sup> In connection with the measures imposed on Somalia, see resolution 814 (1993), para. 11, by which the Council called upon “all States, in particular neighbouring States, to cooperate in the implementation of the arms embargo established by resolution 733 (1992)”. In connection with the measures imposed on Rwanda, by resolution 997 (1995), para. 5, the Council called upon “the States neighbouring Rwanda” to take steps to ensure the full implementation of the embargo as imposed by resolution 918 (1994).

<sup>256</sup> Resolution 820 (1993), para. 17.

<sup>257</sup> See resolution 820 (1993), para. 23, by which the Council decided that each State neighbouring the Federal Republic of Yugoslavia should prevent the passage of all freight vehicles and rolling stock into or out of the Federal Republic of Yugoslavia, except limited exceptions, and report to the relevant sanctions Committee.

<sup>258</sup> See resolutions 827 (1993), para. 4, and 955 (1994), para. 2, respectively.

<sup>259</sup> “All necessary measures” was the phrase used in connection with items relating to the former Yugoslavia, in resolutions 816 (1993), para. 4, 836 (1993), para. 10, 908 (1994), para. 8, 958 (1994), para. 1, and 1031 (1995), para. 15. In resolution 940 (1994), para. 4, in connection with the question concerning Haiti, and resolution 929 (1994), para. 3, in connection with the situation concerning Rwanda, reference was to “all necessary means”.

<sup>260</sup> See resolutions 816 (1993), para. 4, 836 (1993), para. 10, 908 (1994), para. 8, 940 (1994), para. 4, and 958 (1994), para. 1.

<sup>261</sup> See resolutions 816 (1993), para. 5, and 836 (1993), para. 11.

<sup>262</sup> By resolution 929 (1994), para. 3, the Council authorized Member States cooperating with the Secretary-General to conduct an operation aimed at contributing to the security and protection of displaced persons, refugees and civilians at risk in Rwanda.

<sup>263</sup> See resolution 820 (1993), para. 17.



action through regional agencies or arrangements.<sup>264</sup> In

<sup>264</sup> By resolution 816 (1993), para. 4, the Council authorized Member States, acting nationally or through regional organizations or arrangements, to take all necessary measures in the airspace of Bosnia and Herzegovina to ensure compliance with the ban on flights imposed by that resolution. By resolution 820 (1993), para. 17, the Council reiterated its request in resolution 787 (1992) to all States, including non-riparian States, to provide, acting nationally or through regional organizations or arrangements, such assistance as might be required by the riparian States. By resolution 836 (1993), para. 10, the Council decided that Member States, acting nationally or through regional organizations or arrangements, could take all necessary measures to support UNPROFOR in the performance of its mandate. By resolution 908 (1994), para. 8, the Council decided that Member States, acting nationally or through regional organizations or arrangements, could take all necessary

one decision, adopted in connection with the situation in Bosnia and Herzegovina, the Council authorized the Member States to establish a multinational implementation force,<sup>265</sup> acting through or in cooperation with NATO.<sup>266</sup>

measures to extend close air support to the Republic of Croatia, in defence of UNPROFOR in the performance of its mandate. By resolution 958 (1994), the Council decided that the authorization given in resolution 836 (1993) to Member States, acting nationally or through regional organizations or arrangements, to take all necessary measures in the safe areas of Bosnia and Herzegovina should apply also to measures taken in Croatia.

<sup>265</sup> Resolution 1031 (1995), para. 14.

<sup>266</sup> Referred to paragraph 14 of resolution 1031 (1995) as “the organization referred to in annex I-A of the Peace Agreement”.

## Part VII Obligations of Member States under Article 49 of the Charter

### *Article 49*

*The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.*

During the period under review, the obligation of States to join in affording mutual assistance assumed specific relevance in connection with decisions under Chapter VII of the Charter by which the Security Council authorized or called on Member States to take all measures necessary to enforce the Council's resolutions, even though those decisions contained no explicit references to Article 49. While such authorizations or calls were addressed primarily to States willing and in a position to take relevant enforcement action, the Council regularly requested all States to provide appropriate support and assistance to those States. Such requests were made by the following decisions:

By resolution 820 (1993) concerning the situation in Bosnia and Herzegovina, by which the Council reaffirmed the responsibility of riparian States to take

necessary measures to ensure that shipping on the Danube was done in accordance with previous relevant resolutions, the Council reiterated its request to all States, including non-riparian States, to provide, acting nationally or through regional organizations or arrangements, such assistance as might be required by the riparian States.

By resolution 1031 (1995) concerning the situation in Bosnia and Herzegovina, by which the Council authorized the Member States acting through or in cooperation with NATO<sup>266</sup> to establish a multinational implementation force, the Council invited all States, in particular those of the region, to provide appropriate support and facilities, for the Member States acting through or in cooperation with NATO.

By resolution 940 (1994), concerning the situation in Haiti, by which the Council authorized Member States to form a multinational force, it invited all States, in particular those of the region, to provide appropriate support for the actions undertaken by the United Nations and by Member States pursuant to the resolution.

## Part VIII

### Special economic problems of the nature described in Article 50 of the Charter

#### Article 50

*If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.*

#### Note

During the period under review, the Security Council expressly recalled the rights of States under Article 50 of the Charter in three of its decisions, adopted in connection with the imposition of sanctions on the former Yugoslavia, the Libyan Arab Jamahiriya and Haiti.<sup>267</sup>

In connection with the implementation of measures imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro),<sup>268</sup> the Libyan Arab Jamahiriya<sup>269</sup> and Haiti,<sup>270</sup> a number of Member

States were confronted with special economic problems, and requested consultations and assistance in accordance with Article 50.<sup>271</sup> Questions relating to the application and interpretation of that Article were discussed during the Council's debates held in connection with the adoption and implementation of the above-mentioned measures.

Article 50 was also considered by the Secretary-General in his report dated 15 June 1993 on the implementation of the recommendations contained in "An Agenda for Peace". He observed that there was no mechanism in the United Nations to address the spirit of Article 50 of the Charter effectively and systematically and suggested there was also a need to set up a permanent mechanism for consultations between the Security Council, the Secretary-General and international financial institutions and other components of the United Nations system, as well as Member States, when sanctions were considered or imposed.<sup>272</sup> In a subsequent position paper, prepared on the occasion of the fiftieth anniversary of the United Nations, the Secretary-General outlined the establishment of a mechanism tasked with, inter alia, assessing, at the request of the Council, the potential impact of sanctions on the target country and on third countries and also exploring ways to assist Member States suffering from collateral damage and to evaluate claims submitted by such States under Article 50.<sup>273</sup> The deliberations of Member States in connection with that position paper are dealt with in case 29 below.

Case studies 26 to 28 give an overview of the Council's proceedings relevant to Article 50 of the Charter in connection with the measures imposed

<sup>267</sup> See resolutions 843 (1993), 883 (1993) and 917 (1994). The resolution relating to the former Yugoslavia was adopted under the item entitled "Applications made under Article 50 of the Charter of the United Nations as a consequence of the implementation of measures imposed against the former Yugoslavia".

<sup>268</sup> See resolution 757 (1992), paras. 3-9. For subsequent provisions modifying the sanctions regime, see resolutions 760 (1992) and 787 (1992), paras. 9 and 10. For further discussion of the sanctions regime against the Federal Republic of Yugoslavia (Serbia and Montenegro), see the studies on Articles 41, 48 and 49 in the present chapter.

<sup>269</sup> See resolution 883 (1993) imposing further sanctions on the Libyan Arab Jamahiriya and recalling the right of States, under Article 50 of the Charter, to consult the Security Council where they find themselves confronted with special economic problems arising from the carrying out of preventive or enforcement measures. For the previous sanctions against the Libyan Arab Jamahiriya, see resolution 748 (1992), paras. 3-6. For further discussion of the sanctions regime against the Libyan Arab Jamahiriya, see the studies on Articles 41, 48 and 49 in the present chapter.

<sup>270</sup> See resolution 917 (1994) imposing further sanctions on Haiti and expanding the tasks of the Committee established pursuant to resolution 841 (1993) to include the examination of possible requests for assistance under the provisions of Article 50 and making recommendations to the President of the Security Council for appropriate action (para. 14 (g)).

<sup>271</sup> For details of communications from affected States, see the case studies below.

<sup>272</sup> S/25944, paras. 49 and 50.

<sup>273</sup> Supplement to an Agenda for Peace (S/1995/1), para. 75 (a) and (e).

against the former Yugoslavia, the Libyan Arab Jamahiriya and Haiti.

## Decisions of the Security Council relating to Article 50

### Case 26

#### *Implementation of measures imposed against the former Yugoslavia by resolution 820 (1993)*

Immediately after the adoption of resolution 820 (1993), the Council held three consecutive meetings to consider the impact on Member States of the measures imposed against the Federal Republic of Yugoslavia (Serbia and Montenegro).<sup>274</sup> The representatives of Romania,<sup>275</sup> Bulgaria<sup>276</sup> and Ukraine,<sup>277</sup> while reaffirming support for, and their strict compliance with, the sanctions imposed, noted the negative effects the implementation of those sanctions was having on their respective economies. Recalling Article 50 of the Charter, they requested the support of the international community to identify forms of compensation to remedy the losses incurred by their compliance with the sanctions regime and/or to adopt measures to mitigate the negative consequences arising from the enforcement of sanctions. The representative of Bulgaria welcomed the establishment of a committee to devise mechanisms for assisting the States most affected by the implementation of sanctions.<sup>278</sup> The representative of Argentina also brought to the attention of other members the economic difficulties that the countries neighbouring the Federal Republic of Yugoslavia were suffering as a consequence of implementing the sanctions, and asked the international community to address this issue in the spirit of Article 50.<sup>279</sup>

<sup>274</sup> 3201st to 3203rd meetings.

<sup>275</sup> S/PV.3201, p. 65.

<sup>276</sup> S/PV.3202, pp. 8-10.

<sup>277</sup> *Ibid.*, pp. 33-34. At the 3336th meeting, the representative of Ukraine reiterated his country's view that the Council should seriously address the effectiveness of economic sanctions against the Federal Republic of Yugoslavia with the aim of mitigating the adverse consequences of the sanctions regime on the economies of third countries, in accordance with Article 50 of the Charter (S/PV.3336 (Resumption 2), p. 203).

<sup>278</sup> S/PV. 3202, p. 8.

<sup>279</sup> S/PV. 3203, p. 61.

By letters addressed to the President of the Security Council or the Secretary-General, representatives of various affected countries, including Bulgaria,<sup>280</sup> Hungary,<sup>281</sup> Slovakia<sup>282</sup> and Ukraine,<sup>283</sup> requested assistance to mitigate the adverse economic impact of the sanctions regime in accordance with Article 50 of the Charter. Requests for assistance were similarly made by Albania,<sup>284</sup> the former Yugoslav Republic of Macedonia<sup>285</sup> and Uganda<sup>286</sup> in letters addressed to the Chairman of the Security Council Committee established pursuant to resolution 724 (1991).

By its resolution 843 (1993), the Council, *inter alia*, noted that the Committee established pursuant to resolution 724 (1991) had set up a working group to examine an increasing number of requests for assistance submitted pursuant to Article 50 of the Charter. The Council confirmed that the Committee was entrusted with the task of examining requests for assistance under the provisions of Article 50 and

<sup>280</sup> Letter dated 7 May 1993 from the representative of Bulgaria addressed to the President of the Council, (S/25743); and letter dated 22 September 1993 from the representative of Bulgaria addressed to the Secretary-General (S/24685).

<sup>281</sup> Letter dated 22 June 1992 from the representative of Hungary addressed to the President of the Council and circulated by the President of the Council on 28 April 1993 (S/25683).

<sup>282</sup> Letter dated 7 June 1993 from the representative of Slovakia addressed to the President of the Council (S/25894).

<sup>283</sup> Letter dated 28 April 1993 from the representative of Ukraine addressed to the President of the Council (S/25682); note verbale dated 1 June 1993 from the Permanent Mission of Ukraine, addressed to the Secretary-General (S/25910); and letter dated 27 June 1995 from the representative of Ukraine addressed to the Secretary-General (S/1995/517).

<sup>284</sup> Letter dated 7 July 1993 from the representative of Albania addressed to the Chairman of the Security Council Committee established pursuant to resolution 724 (1991) (see S/26040/Add.1, annex I).

<sup>285</sup> Communication dated 11 May 1993 from the Ministry of Foreign Relations of the former Yugoslav Republic of Macedonia addressed to the Chairman of the Security Council Committee established pursuant to resolution 724 (1991) (see S/26040/Add.2, annex II).

<sup>286</sup> Letter dated 26 March 1993 from the representative of Uganda addressed to the Chairman of the Security Council Committee established pursuant to resolution 724 (1991) (see S/26040, annex IV).

invited the Committee to make recommendations to the President of the Council for appropriate action.

The President of the Security Council received recommendations from the Committee established pursuant to resolution 724 (1991) with regard to Bulgaria, Hungary, Romania, Uganda and Ukraine based on the requests for assistance those countries had presented in relation to the economic difficulties faced in the course of compliance with sanctions imposed against the Federal Republic of Yugoslavia.<sup>287</sup> Subsequently, the President received from the Chairman of the Committee recommendations for assistance under Article 50 for Albania,<sup>288</sup> Slovakia<sup>289</sup> and the former Yugoslav Republic of Macedonia.<sup>290</sup> Following the receipt of the recommendations of the Committee, the Security Council adopted no resolutions providing specific compensatory measures to the affected countries.

The issue of the application of Article 50 of the Charter was again raised at the 3454th and 3483rd meetings of the Council. The representative of Romania noted that the Council's decisions in connection with the situation in Bosnia and Herzegovina had led to important actions with regard to questions of more general scope, including the particularly important issue of the application of provisions of Article 50 with a view to resolving the economic difficulties of States resulting from the implementation of sanctions measures adopted by the Council.<sup>291</sup> The representative of Indonesia, speaking on behalf of the non-aligned countries, stressed the need to make Article 50 operational by institutionalizing the consultations envisaged in the Charter and to adopt other effective measures providing solutions for the problems

encountered by the affected Member States in the implementation of sanctions.<sup>292</sup>

### Case 27

#### *Implementation of measures imposed against the Libyan Arab Jamahiriya by resolution 883 (1993)*

By its resolution 883 (1993), the Security Council, inter alia, reaffirmed its resolutions 731 (1992) and 748 (1992) and imposed a strengthened financial, economic and air transportation sanctions regime against the Libyan Arab Jamahiriya. In connection with the application of Article 50, the Council entrusted the Committee established by resolution 748 (1992) with the task of examining possible requests for assistance under the provisions of Article 50 and making recommendations to the President of the Security Council for appropriate action.

During the deliberations, a number of speakers touched upon the Council's responsibility to address the potential consequences for third States of its decision to apply sanctions against the Libyan Arab Jamahiriya. The representative of Egypt called upon the Council to consider measures with a view to alleviating the economic suffering of the Libyan Arab Jamahiriya and its neighbours that would arise from the adoption of the draft resolution under consideration.<sup>293</sup> The representative of the Sudan called to the attention of the members of the Council that the impact of the sanctions measures had gone beyond the people of the Libyan Arab Jamahiriya to affect neighbouring countries with social and cultural links to that people.<sup>294</sup> He further stated that Article 50 of the Charter could be only of minimal help to those who were suffering as a result of the implementation of those resolutions. The representative of Brazil stated that his delegation was aware of the need to address the consequences which sanctions could have on third countries and for that reason attached great importance to the provision of the resolution which entrusted the Committee established by resolution 748 (1992) with the task of examining possible requests for assistance under Article 50.<sup>295</sup>

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<sup>287</sup> Letter dated 2 July 1993 from the Acting Chairman of the Committee established pursuant to resolution 724 (1991) addressed to the President of the Council (S/26040).

<sup>288</sup> Letter dated 14 August 1993 from the Chairman of the Committee established pursuant to resolution 724 (1991) addressed to the President of the Council (S/26040/Add.1).

<sup>289</sup> Letter dated 10 December 1993 from the Chairman of the Committee established pursuant to resolution 724 (1991) addressed to the President of the Council (S/26040/Add.2).

<sup>290</sup> Ibid.

<sup>291</sup> S/PV.3454 (Resumption 2), p. 61.

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<sup>292</sup> S/PV.3483, p. 20.

<sup>293</sup> S/PV.3312, p. 29.

<sup>294</sup> Ibid., p. 37.

<sup>295</sup> Ibid., p. 51.

During the period under review, although no requests for special assistance under Article 50 were received in connection with the sanctions against the Libyan Arab Jamahiriya, two communications of relevance to Article 50 were transmitted. By a note verbale dated 14 January 1994 addressed to the Secretary-General,<sup>296</sup> the representative of Poland urged the Security Council to consider measures to alleviate the economic losses resulting from the implementation of resolution 883 (1993) in accordance with Article 50 of the Charter. Similarly, the representative of Bulgaria, by a note verbale dated 20 January 1994 addressed to the Secretary-General,<sup>297</sup> described some of the legislative measures taken by the Government of Bulgaria to comply with the latest resolution against the Libyan Arab Jamahiriya. In the note, the representative of Bulgaria also drew attention to the new economic and financial losses arising for Bulgaria from compliance with resolution 883 (1993), and informed the Secretary-General that Bulgaria would shortly submit a memorandum to request assistance pursuant to Article 50. During the period under review, the Security Council adopted no decisions providing specific compensatory measures to the countries affected by compliance with the sanctions regime against the Libyan Arab Jamahiriya.

#### Case 28

##### *Implementation of measures imposed against Haiti by resolutions 873 (1993) and 917 (1994)*

By its resolution 917 (1994) the Council imposed travel bans against the military officers involved in the coup d'état in Haiti and strengthened sanctions on the import and export of commodities, and the supply of petroleum, its derivatives and other products. The Council also decided that the Committee established pursuant to resolution 841 (1993) would be responsible for examining requests for assistance under the provisions of Article 50 and would make recommendations to the President of the Council for appropriate action.

During the Council's deliberations in connection with the adoption of resolution 917 (1994), the representative of Spain pointed out that neighbouring countries had to make special efforts to ensure the effectiveness of sanctions and, as a result, suffered

<sup>296</sup> S/1994/42.

<sup>297</sup> S/1994/82.

considerable economic damage. He urged the Council to address the issue of requests for assistance in the context of the resolution adopted.<sup>298</sup>

By a note verbale dated 4 October 1994 addressed to the Secretary-General,<sup>299</sup> the Dominican Republic submitted a memorandum concerning its economic losses associated with the application of the embargo against Haiti. By a letter to the President of the Security Council,<sup>300</sup> the Secretary-General forwarded the application made by the Dominican Republic pursuant to Article 50 for the attention of the Council. The Council took no further action on the request for consultation of the Dominican Republic.

#### Case 29

##### *Supplement to an Agenda for Peace*

During the Council's deliberations in connection with the Supplement to an Agenda for Peace, the majority of speakers addressed the recommendations made by the Secretary-General in relation to the application of Article 50, specifically the proposed mechanism which would, inter alia, explore ways of assisting Member States that were suffering collateral damage and evaluate claims submitted by such States under Article 50.<sup>301</sup> The representatives of Botswana,<sup>302</sup> China,<sup>303</sup> the Czech Republic,<sup>304</sup> Egypt,<sup>305</sup> Honduras,<sup>306</sup> Ireland,<sup>307</sup> Romania<sup>308</sup> and Turkey<sup>309</sup> endorsed the recommendation of the Secretary-General to create a mechanism to alleviate special economic problems.

The representative of Indonesia, speaking on behalf of the non-aligned countries, stated that, while Article 50 of the Charter had called for consultations in seeking a solution to the problems caused to neighbouring States and trading partners due to sanctions, a more extensive use of that provision as a means to limit the impact of sanctions was essential.

<sup>298</sup> S/PV.3376, p. 6.

<sup>299</sup> S/1994/1265, annex.

<sup>300</sup> S/1994/1265.

<sup>301</sup> See S/1995/1, para. 75 (e).

<sup>302</sup> S/PV.3492, p. 11.

<sup>303</sup> *Ibid.*, p. 14.

<sup>304</sup> S/PV.3492 (Resumption 1), p. 10.

<sup>305</sup> S/PV.3492 (Resumption 2), p. 32.

<sup>306</sup> S/PV.3492 (Resumption 1), p. 27.

<sup>307</sup> S/PV.3492 (Resumption 2), p. 19.

<sup>308</sup> *Ibid.*, p. 20.

<sup>309</sup> S/PV.3492 (Resumption 1), p. 30.

His delegation believed that the establishment of a sanctions mechanism should be further explored.<sup>310</sup> The representative of Poland believed that there should be arrangements alleviating the burdens incurred by countries which participated in economic measures against the offender States, and stated that Article 50 did not constitute a sufficient remedy.<sup>311</sup> The representative of Colombia viewed the mechanism proposed by the Secretary-General as a means which would enable the United Nations to fully develop and implement the provisions of Article 50.<sup>312</sup> The representative of Sierra Leone reiterated the position of his delegation that the provisions of Article 50 carried with them an expectation that went beyond mere consultation with the Council,<sup>313</sup> and included the provision of some form of remedy for those affected.

The representative of India took note of the proposal concerning the establishment of a mechanism to implement Article 50 of the Charter. In the view of his delegation the mechanism should be established by the Security Council and it needed to contain the element of automaticity of application. He also suggested that the Council consider establishing a fund from assessed contributions for the purpose of alleviating special economic problems when sanctions were initially imposed.<sup>314</sup> In that connection, the representative of Indonesia believed that consultations with Bretton Woods institutions were not necessarily the most effective way of alleviating the damages suffered by third parties.<sup>315</sup> He noted that the Security Council, which imposed sanctions, had the responsibility to provide relief.

The representative of Pakistan welcomed the suggestion of establishing a mechanism to, inter alia, explore ways of assisting Member States that were suffering collateral damage due to Security Council sanctions and to evaluate claims of such States under Article 50. He believed that establishing such a mechanism could prove to be an important step towards institutionalizing a system whereby the burdens placed on third countries as a result of Security Council-imposed sanctions were equitably

shared by all Member States.<sup>316</sup> Similarly, the representative of Bulgaria held that an institutionalized mechanism should be set up to provide a realistic possibility of offsetting the unfavourable effects of sanctions on third States and compensating them for their losses.<sup>317</sup>

The representative of Sri Lanka noted that the Secretariat deserved to be strengthened with additional staff and resources required to more effectively and expeditiously fulfil its functions in respect of Article 50 of the Charter.<sup>318</sup> The representative of New Zealand acknowledged there was a strong argument for Members of the United Nations affected by sanctions to support the concept of a mechanism to investigate the economic implications,<sup>319</sup> but believed that the issue should not be studied in isolation from other issues related to sanctions, including enforcement. The representative of Ukraine believed it appropriate to return to the question of creating a special compensatory mechanism that would include a compensation fund.<sup>320</sup> He believed a standing committee of the Security Council on sanctions should be charged with the responsibility for, inter alia, assessing the impact of economic losses sustained by States.

While the representative of the United States shared the concern about the desirability of avoiding or reducing unintended and harmful collateral effects of sanctions, she stressed that procedures designed to mitigate the unintended effects of sanctions should not be allowed to obstruct or so mitigate their effects as to render them useless as a means for influencing the behaviour of a Government that was defying the international community and law.<sup>321</sup>

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<sup>310</sup> S/PV.3492, p. 9.

<sup>311</sup> S/PV.3492 (Resumption 1), p. 27.

<sup>312</sup> S/PV.3492 (Resumption 2), p. 15.

<sup>313</sup> *Ibid.*, p. 27.

<sup>314</sup> S/PV.3492 (Resumption 1), p. 19.

<sup>315</sup> S/PV.3492, p. 9.

<sup>316</sup> S/PV.3492 (Resumption 1), pp. 25-26.

<sup>317</sup> S/PV.3492 (Resumption 2), p. 24.

<sup>318</sup> *Ibid.*, p. 11; see also p. 19 (Brazil).

<sup>319</sup> *Ibid.*, p. 7.

<sup>320</sup> S/PV.3492 (Resumption 1), p. 24.

<sup>321</sup> S/PV.3492, p. 24.

The representative of France noted that the use of measures outlined in Article 41 of the Charter was not subject to any restriction and that Article 50 referred only to the ability of third States to consult the Council on specific economic difficulties they might encounter. Unable to endorse the Secretary-General's suggestion for the establishment of a mechanism to evaluate the potential impact of the planned sanctions on the

country in question and on third countries, he noted that the proposed mechanism would, unfortunately, lead to all sorts of pressure being exerted on the Council and limit the Council's autonomy in decision-making.<sup>322</sup>

<sup>322</sup> Ibid., pp. 6-7.

## Part IX

### The right of self-defence in accordance with Article 51 of the Charter

#### Article 51

*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*

#### Note

During the period under review, the Security Council adopted one resolution in connection with the proposal by China, France, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America on security assurances containing an explicit reference to and reaffirming the principle set out in Article 51.<sup>323</sup>

The Council also debated the application and interpretation of Article 51 in connection with the use of armed force by the United States against Iraq in connection with an assassination attempt against a former United States Head of State. In that case,

<sup>323</sup> See resolution 984 (1995), para. 9. By that resolution, the Council, inter alia, recognized the legitimate interest of non-nuclear-weapon States parties to the Treaty on the Non-Proliferation of Nuclear Weapons to receive assurances that the Council would act immediately in accordance with the relevant provisions of the Charter.

Council discussion centred on whether the United States was justified in relying on its right of self-defence under Article 51.

In connection with the situation in Bosnia and Herzegovina, the Council considered a draft resolution which sought to exempt Bosnia and Herzegovina from the arms embargo imposed on the former Yugoslavia by resolution 713 (1991). A majority of speakers, speaking in support of the resolution, argued for its adoption so as to allow Bosnia and Herzegovina to exercise its inherent right to self-defence.

The arguments advanced during the Council's deliberations in connection with the above-mentioned incidents and situations are set out in the case studies in section A below. The case studies will be followed by a brief overview in section B of instances in which the right of self-defence was invoked in official correspondence, but which did not give rise to any constitutional discussion relevant to Article 51.

#### A. Constitutional discussion in connection with the right of self-defence under Article 51 of the Charter

In the instances that follow, the invocation of the right of self-defence by a Member State gave rise to a discussion relevant to the application and interpretation of Article 51.

**Decisions of the Security Council relating to Article 51**

**Case 30**

*United States notification of 26 June 1993 measures against Iraq*

By a letter dated 26 June 1993 addressed to the President of the Council,<sup>324</sup> the representative of the United States reported that, in accordance with Article 51 of the Charter, the United States Government had exercised its right of self-defence by responding to the unlawful attempt by the Government of Iraq to murder the former President of the United States and to its continuing threat to United States nationals. It had decided to respond, as a last resort, to the attempted attack and the threat of further attacks, by striking at an Iraqi military and intelligence target so as to minimize the risk of collateral damage to civilians.

By a letter dated 27 June 1993 addressed to the Secretary-General,<sup>325</sup> the Minister for Foreign Affairs of Iraq described the cruise missile attack, launched from American warships in the Red Sea and Arabian Gulf, as an unjustified act of aggression.

The Security Council met to consider the matter at its 3245th meeting. The representative of the United States held that the attempt against the former President of the United States during his visit to Kuwait in April 1993 was an attack on the United States and, while not asking the Council for any action, contended that every Member State would regard an assassination attempt against its former Head of State as an attack against itself, and would react. She indicated that the United States had responded directly, as it was entitled to do under Article 51 of the Charter. The response had been proportionate and aimed at a target directly linked to the operation against the former President of the United States. The specific incident had been between Iraq and the United States directly, which was why the United States had acted alone. She noted further that, although the United States had taken action under Article 51 of the Charter, there was a broader context of Iraq's repeated and consistent refusal to comply with the resolutions of the Council since its invasion of Kuwait in 1990.<sup>326</sup>

The representative of Iraq, denying any role by his Government with respect to the alleged assassination attempt, referred to the attack as an act of aggression against Iraq. He also argued that the United States had acted without providing either evidence against Iraq or inviting it to clarify its position. He further stated that the rules of international law gave the United States no right to overlook the principle of due process of law or the provisions of the Charter. He called on the Council to condemn the act of aggression and take the action necessary to prevent a repetition in the future.<sup>327</sup>

The representative of the Russian Federation called the actions of the United States justified since they arose from the right of States to individual and collective self-defence, in accordance with Article 51 of the Charter.<sup>328</sup> Other speakers expressed their understanding for the reaction of the United States and the reasons for its unilateral action.<sup>329</sup> The representative of Brazil took note of the statement by the United States Government that it considered such action necessary, as a last resort, with a view to preventing the further occurrence of such acts.<sup>330</sup>

Appreciation was expressed generally for the presentation of evidence supporting the conclusion of the United States Government concerning the direct involvement of the Government of Iraq in the assassination attempt.<sup>331</sup> Some speakers welcomed the explanation of the proportionate nature of the United States response.<sup>332</sup>

The representative of China expressed deep concern about the events which had occurred and stated his Government's opposition to any action that could contravene the Charter and norms of international relations. His delegation did not endorse any action that could intensify the tension in the region, including the use of force.<sup>333</sup> Similarly, the representative of Cape Verde, speaking on behalf of the

<sup>324</sup> S/26003.

<sup>325</sup> S/26004.

<sup>326</sup> S/PV.3245, pp. 3-9.

<sup>327</sup> *Ibid.*, pp. 11-13.

<sup>328</sup> *Ibid.*, p. 22. See also statements by the representatives of Hungary (*ibid.*, p. 18) and the United Kingdom (*ibid.*, p. 21), who said that the actions had been justified, although they did not refer to Article 51 or its language.

<sup>329</sup> *Ibid.*, p. 13 (France); p. 16 (Japan); and p. 24 (Spain).

<sup>330</sup> *Ibid.*, p. 17.

<sup>331</sup> *Ibid.*, p. 13 (France); p. 16 (Japan); p. 23 (New Zealand); and p. 23 (Spain).

<sup>332</sup> *Ibid.*, p. 13 (France); and p. 25 (Spain).

<sup>333</sup> *Ibid.*, p. 21.



non-aligned members of the Council, urged the exercise of restraint by all States, consistent with the principles of the Charter and in particular for the maintenance of international peace and security and the avoidance of the use of force inconsistent with the purposes of the United Nations.<sup>334</sup>

### Case 31

#### *The situation in the Republic of Bosnia and Herzegovina*

At its 3247th meeting, on 29 June 1993, the Council considered a draft resolution<sup>335</sup> by which it would have, inter alia, reaffirmed that the Republic of Bosnia and Herzegovina, as a State Member of the United Nations, enjoyed the rights provided for in the Charter of the United Nations; affirmed that the international community had the responsibility to secure fully the independence, territorial integrity and unity of Bosnia and Herzegovina; and, in its operative part, decided to exempt the Government of Bosnia and Herzegovina from the arms embargo imposed on the former Yugoslavia by its resolution 713 (1991) for the sole purpose of enabling Bosnia and Herzegovina to exercise its inherent right of self-defence. The draft resolution was not adopted.

During the Council's deliberations, the majority of speakers strongly argued that Bosnia and Herzegovina had to be allowed to exercise its inherent right of self-defence, as embodied in Article 51 of the Charter, and was being prevented from doing so by virtue of the arms embargo imposed pursuant to resolution 713 (1991).<sup>336</sup>

The representative of Bosnia and Herzegovina called upon the Council to free it of the "shackles" that

were diminishing its self-defence, and further, queried whether the arms embargo should be declared de jure invalid in accordance with the Charter's guarantee of the right of self-defence.<sup>337</sup> Other speakers arguing in favour of lifting the arms embargo against Bosnia and Herzegovina questioned the logic of maintaining the arms embargo in place,<sup>338</sup> stressed the need to "untie the hands" of the Bosnians and enable them to exercise their inherent right to self-defence,<sup>339</sup> stated that it was ineffective,<sup>340</sup> and that resolution 713 (1991) applied to the former Yugoslavia, which no longer existed.<sup>341</sup>

While not addressing the constitutional question concerning Article 51, those speakers opposed to the draft resolution argued that a selective lifting of the arms embargo would only contribute to further escalating the violence and hostilities.<sup>342</sup> It was also argued that lifting the embargo ran counter to finding a peaceful negotiated settlement to the conflict and that it was imperative to reach such a settlement.<sup>343</sup> The representative of the United Kingdom further contended that the adoption of the draft resolution would be seen as a signal that the United Nations was turning its back on Bosnia and leaving its inhabitants to "fight it out, come what may".<sup>344</sup>

### B. Invocation of the right of self-defence in other instances

In the instances that follow, Member States invoked the right of self-defence in correspondence which did not give rise to any significant constitutional discussion with direct relevance to Article 51.

<sup>334</sup> Ibid., p. 17. The members of the Security Council belonging to the Group of Non-Aligned Countries were Cape Verde, Djibouti, Morocco, Pakistan and Venezuela. S/25997.

<sup>336</sup> S/PV.3247, pp. 6-10 (Cape Verde); pp. 9-17 (Bosnia and Herzegovina); pp. 17-26 (Pakistan); pp. 26-33 (Egypt); pp. 38-41 (Malaysia); pp. 41-47 (Jordan); pp. 47-52 (Morocco); pp. 52-54 (Albania); pp. 54-59 (Indonesia); pp. 60-63 (Turkey); pp. 63-72 (Afghanistan); pp. 72-77 (Islamic Republic of Iran); pp. 77-83 (United Arab Emirates); pp. 83-88 (Senegal); pp. 92-96 (Algeria); pp. 96-102 (Libyan Arab Jamahiriya); pp. 102-106 (Bangladesh); pp. 106-108 (Costa Rica); pp. 108-110 (Slovenia); pp. 116-121 (Djibouti); pp. 121-131 (Venezuela); and pp. 148-149 (United States).

<sup>337</sup> Ibid., p. 11.

<sup>338</sup> Ibid., pp. 26-33 (Egypt); and pp. 41-47 (Jordan).

<sup>339</sup> Ibid., pp. 17-26 (Pakistan); pp. 26-33 (Egypt); pp. 38-41 (Malaysia); pp. 54-59 (Indonesia); pp. 102-106 (Bangladesh); and pp. 106-108 (Costa Rica).

<sup>340</sup> Ibid., pp. 54-59 (Indonesia).

<sup>341</sup> Ibid., pp. 54-59 (Indonesia); and pp. 121-131 (Venezuela).

<sup>342</sup> Ibid., pp. 89-91 (Federal Republic of Yugoslavia); pp. 138-142 (Russian Federation); pp. 142-143 (Japan); pp. 151-153 (Brazil); pp. 153-155 (New Zealand); and pp. 156-159 (Spain).

<sup>343</sup> Ibid., pp. 136-138 (France); pp. 138-142 (Russian Federation); pp. 143-147 (Hungary); pp. 150-151 (China); and pp. 153-155 (New Zealand).

<sup>344</sup> Ibid., pp. 132-135.

*The situation between Iran and Iraq*

By a letter dated 25 May 1993 addressed to the Secretary-General,<sup>345</sup> the representative of the Islamic Republic of Iran reported that, in accordance with Article 51, the Islamic Republic Air Force had carried out an operation against the military bases located in Iraq of a terrorist group, where armed attacks against and incursions into Iranian territory had originated. In response, the representative of Iraq, by a letter dated 8 June 1993,<sup>346</sup> claimed that the Iranian justification for its attack, on the basis of Article 51, had no firm basis in fact and actually constituted aggression.

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<sup>345</sup> S/25843.

<sup>346</sup> S/25914.

*Letter dated 28 January 1995 from the representative of Ecuador to the Secretary-General*

By a letter dated 27 January 1995 addressed to the Secretary-General,<sup>347</sup> the Minister for Foreign Affairs of Ecuador reported his country's exercise of the right of self-defence, recognized in Article 51 of the Charter, in response to military operations launched by Peru against Ecuadorian army positions located in Ecuadorian territory. In response, the Deputy Minister for International Policy and Secretary-General for External Relations of Peru, by a letter dated 28 January 1995, stated that his country had been the victim of armed aggression by Ecuador.<sup>348</sup>

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<sup>347</sup> S/1995/88.

<sup>348</sup> S/1995/89.