

30. Items relating to the situation in the former Yugoslavia

A. The situation in Bosnia and Herzegovina

Decision of 21 June 2000 (4162nd meeting): resolution 1305 (2000)

At its 4117th meeting,¹ on 22 March 2000, the Security Council included in its agenda the report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina (UNMIBH) dated 15 March 2000.² In his report, the Secretary-General, *inter alia*, stated that despite some progress, the Mission had to take strong action to seek to overcome continued obstruction, resistance and delay in some key areas, including concerning the establishment of a state-level State Border Service, the integration of the Ministry of the Interior and minority recruitment for police forces. He reported that parties had, on several issues, acted against the letter and spirit of the New York Declaration of 15 November 1999³ that was adopted during the appearance of the members of the Presidency of Bosnia and Herzegovina before the Council. The Secretary-General maintained that UNMIBH would need the support of the Security Council and Member States with influence on the Bosnian Croat and Bosnian Serb authorities to overcome resistance in important areas.

At the meeting, the Council heard a briefing by the Assistant Secretary-General for Peacekeeping Operations, following which most members of the Council made statements.⁴ In addition, statements were made by the representatives of Bosnia and Herzegovina, Germany, Italy, Portugal (on behalf of the European Union⁵) and Turkey.

In his briefing, the Assistant Secretary-General reported that UNMIBH continued to focus on minority recruitment for the police, the establishment of the State Border Service, the implementation of the Brčko arbitration award, the provision of assistance in judicial reform and the setting up of a multi-ethnic Bosnian police contingent for service in a United Nations peacekeeping operation as its five main priority areas.⁶

Most speakers shared the assessment in the Secretary-General's report on progress in the areas of judicial reform and police restructuring, as well as his concern at challenges in key areas of reform. Several speakers urged a firm response against obstruction and interference in the implementation of the peace process.⁷ In addition, the representative of the Netherlands expressed concern about the current strength of the stabilization force (SFOR), which in his view should be kept at the mandated strength. He also noted that his Government was not in favour of armed contingents of the International Police Task Force of UNMIBH.⁸ The representative of the Russian Federation stressed that the activities of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 should be depoliticized and that those indicted on the basis of Tribunal warrants should not be detained without the consent of the States in whose territory they were located.⁹ Other speakers underlined the importance of the work of the Tribunal.¹⁰ The representative of Bosnia and Herzegovina noted the importance of a review of the effectiveness of the numerous international factors operating in Bosnia and Herzegovina. He also noted that his Government cooperated fully with the Tribunal and that the Presidency, as the sovereign authority of Bosnia and Herzegovina, had not sought fit to

¹ During this period, in addition to the meetings covered in this section, the Council held one meeting in private with the troop-contributing countries to the United Nations Mission in Bosnia and Herzegovina, pursuant to resolution 1353 (2001), annex II, sections A and B (4553rd meeting, held on 13 June 2002).

² S/2000/215, submitted pursuant to resolution 1247 (1999).

³ S/1999/1179, annex.

⁴ The representative of Mali did not make a statement.

⁵ Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Norway, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

⁶ S/PV.4117, pp. 2-3.

⁷ *Ibid.*, p. 5 (United States); p. 7 (Malaysia); p. 9 (Tunisia); p. 10 (France, Ukraine); and p. 13 (Bangladesh).

⁸ *Ibid.*, p. 13.

⁹ *Ibid.*, p. 5.

¹⁰ *Ibid.*, p. 7 (Malaysia); pp. 15-16 (Portugal on behalf of the European Union); and p. 17 (Turkey).

challenge the arrests made by SFOR and other legal forces within Bosnia and Herzegovina on behalf of the Tribunal.¹¹

At the end of the meeting, the President (Bangladesh) summarized the main points of the debate. In particular, he concluded that the members of the Council urged all parties to redouble their efforts to implement outstanding commitments concerning the implementation of the New York Declaration. He stated that members also urged those concerned to ensure without further delay the integration of the Ministry of the Interior as well as the integration of the chain of command and communication systems of the police throughout the Federation and in particular in Mostar, as well as to increase the number of minority police officers.¹²

At its 4136th meeting, on 9 May 2000, the Council included in its agenda the item entitled "Briefing by Mr. Wolfgang Petritsch, High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina". All members of the Council made statements.

The President (China) drew the attention of the Council to a letter dated 4 May 2000 from the Secretary-General, transmitting the High Representative's report on his activities.¹³ In his report, the High Representative highlighted the slow progress in the consolidation of efficient State institutions, progress with his concept of "ownership" of the peace process by the authorities and society of Bosnia and Herzegovina and with the development of a civil society and a welcome increase in the number of minority returns. In addition, he reported on the result of the recent municipal elections, stating that party pluralism had improved, although nationalist parties continued to dominate in predominately Croat or Serb municipalities.

In his briefing, the High Representative indicated that he would focus on economic reform, acceleration of the return of refugees and displaced persons and the consolidation of state institutions as three key areas of peace implementation.¹⁴

Most members of the Council agreed with the assessment by the High Representative of progress and challenges. Many speakers welcomed the holding and the results of the recent municipal elections. In addition, several speakers welcomed the priorities outlined by the High Representative.¹⁵ Other speakers expressed concern about the lack of implementation of the New York Declaration.¹⁶ The representative of France, echoed by the representative of Canada, expressed regret that States not members of the Council that were directly involved in the search for a settlement in Bosnia and Herzegovina were unable to speak at the meeting.¹⁷

At its 4154th meeting, on 13 June 2000, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 2 June 2000.¹⁸ In his report, the Secretary-General, inter alia, reported progress in the establishment of the State Border Service and the integration of the Ministry of the Interior and the chain of command and communication systems of the police, while regretting the lack of progress in the area of refugee returns and recruitment of minority police officers. He also reported that all UNMIBH components had begun the preparation of a strategic and operational framework for the fulfilment of the core mandate of the Mission by December 2002. He therefore recommended the extension of the mandate of UNMIBH for a further 12-month period.

At that meeting, the President (France) drew the attention of the members of the Council to a letter dated 23 May 2000 from the representative of Portugal.¹⁹ The Council heard a briefing by the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, following which all members of the Council made statements.

In his briefing, the Special Representative elaborated on the details of the activities of UNMIBH.

¹¹ Ibid., p. 14.

¹² Ibid., p. 21.

¹³ S/2000/376.

¹⁴ S/PV.4136, pp. 2-6.

¹⁵ Ibid., p. 7 (Bangladesh); p. 8 (Netherlands, France); and p. 11 (Canada).

¹⁶ Ibid., p. 10 (Russian Federation); and p. 11 (United Kingdom).

¹⁷ Ibid., p. 8 (France); and p. 11 (Canada).

¹⁸ S/2000/529, submitted pursuant to resolution 1247 (1999).

¹⁹ S/2000/486, transmitting a statement issued on 22 May 2000 by the Presidency of the European Union on the Peace Implementation Conference for Bosnia and Herzegovina, to be held on 23 and 24 May 2000.

He expressed his belief that the basic mandate of UNMIBH could be discharged within the following two and a half years.²⁰

After the briefing, the President noted that the previous day he had had a meeting with representatives of the troop-contributing countries. Most speakers welcomed the progress made by UNMIBH and noted the challenges that remained. Most speakers also expressed their support for an extension of the mandate of UNMIBH. In addition, the representative of the Russian Federation noted that with regard to the International Tribunal for the Former Yugoslavia, his delegation's priority remained freeing its activities from elements of politicization and short-term interests. He also stressed that the "violation of the mandate of SFOR", particularly in the form of the deliberate use of force to arrest people, should be brought to an end. He also noted that the failure to invite the Federal Republic of Yugoslavia to the meeting of the Peace Implementation Council, which was held on 23 and 24 May in Brussels, was a serious blow to the entire structure of the Dayton process, and that the Russian Federation, not wishing to bear responsibility for that failure, had been compelled not to participate in the Brussels meeting.²¹

At its 4162nd meeting, on 21 June 2000, the Council again included in its agenda the report of the Secretary-General dated 2 June 2000.¹⁸ Statements were made by the representatives of the Russian Federation, China, the United Kingdom, Canada and the United States.²² The President (France) drew the attention of the members of the Council to a draft resolution submitted by Canada, France, Germany, Italy, the Netherlands, the United Kingdom and the United States.²³ He also drew the attention of members to a letter dated 14 June from the representative of Portugal, transmitting the text of the declaration of the ministerial meeting of the Peace and Implementation Council, held in Brussels on 23 and 24 May 2000.²⁴

Speaking before the vote, the representative of the Russian Federation noted that his country was convinced that the mandate of UNMIBH should be

extended for another year and would not object to the draft resolution before the Council in the interest of continuing the peace process. However, the Russian Federation could not support the draft resolution and, for the first time in the last two years, had refused to join the sponsors of the draft resolution on that subject, since operative paragraph 5, which expressed support for the declaration of the meeting of the Peace Implementation Council in Brussels on 23 and 24 May 2000, was not acceptable to the Russian Federation. The Russian Federation had been compelled to refuse to participate in that meeting, since the Federal Republic of Yugoslavia — a direct participant and signatory to the Dayton Agreement — had not been allowed to participate in that forum. The Russian Federation was categorically opposed to attempts to oust the Federal Republic of Yugoslavia from all multilateral mechanisms on a settlement in the former Yugoslavia and believed that the Brussels Declaration had no force since the meeting of the Peace Implementation Council had been conducted virtually in violation of the Dayton Agreement. The representative of the Russian Federation also expressed serious concerns over the provision of the draft resolution that extended the reporting period of UNMIBH from three to six months and considered it as an attempt to weaken oversight by the Security Council over the Bosnian settlement process.²⁵

The draft resolution was then put to the vote and adopted, by 14 votes to none, with 1 abstention (Russian Federation), as resolution 1305 (2000), by which the Council, acting under Chapter VII of the Charter of the United Nations with regard to sections I and II of the resolution, *inter alia*:

Authorized the Member States acting through or in cooperation with the organization referred to in annex 1-A of the Peace Agreement to continue for a further planned period of 12 months the Stabilization Force as established in accordance with resolution 1088 (1996) under unified command and control in order to fulfil the role specified in annexes 1-A and 2 of the Peace Agreement;

Authorized the Member States to take all necessary measures to effect the implementation of and to ensure compliance with annex 1-A of the Peace Agreement; authorized Member States to take all necessary measures, at the request of SFOR, either in defence of SFOR or 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;

²⁰ S/PV.4154, pp. 2-7.

²¹ *Ibid.*, pp. 9.

²² The representatives of Germany and Italy were invited to participate in the meeting but did not make statements.

²³ S/2000/591.

²⁴ S/2000/586.

²⁵ S/PV.4162, pp. 2-3.

Authorized the Member States to take all necessary measures to ensure compliance with the rules and procedures established by the Commander of SFOR, governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic.

In section III of the resolution, the Council, reaffirming the legal basis of the Charter on which the task force was given its mandate in resolution 1035 (1995), *inter alia*:

Decided to extend the mandate of UNMIBH, which included the International Police Task Force, for an additional period terminating on 21 June 2001, and also decided that the Task Force should continue to be entrusted with the tasks set out in annex 11 of the Peace Agreement, including the tasks referred to in the conclusions of the London, Bonn, Luxembourg, Madrid and Brussels Conferences and agreed by the authorities in Bosnia and Herzegovina;

Requested the Secretary-General to keep the Council regularly informed and to report at least every six months on the implementation of the mandate of UNMIBH as a whole.

Speaking after the vote, the representative of China noted that, while his delegation had voted in favour of the draft resolution, he was of the view that the Federal Republic of Yugoslavia, as a signatory to the Dayton Agreement, should have been invited to the meeting of the Peace Implementation Council held in Brussels in May 2000.²⁶ The representative of the United Kingdom, supported by the representative of the United States, held that the lack of unanimity on parts of the resolution should not be seen as detracting from the unanimous support of the Council for the work of the United Nations Mission.²⁷ The representatives of Canada and the United States noted that they fully supported the decision not to invite the Federal Republic of Yugoslavia to the ministerial meeting of the Peace Implementation Council in Brussels.²⁸

**Decision of 13 July 2000 (4169th meeting):
statement by the President**

At its 4169th meeting, on 13 July 2000, the Council extended an invitation to the representative of Bosnia and Herzegovina to participate. The President (Jamaica) made a statement on behalf of the Council²⁹

²⁶ *Ibid.*, p. 3.

²⁷ *Ibid.*, p. 3 (United Kingdom); and p. 4 (United States).

²⁸ *Ibid.*, p. 4 (Canada, United States).

²⁹ S/PRST/2000/23.

in commemoration of the tragic events at Srebrenica, by which the Council, *inter alia*:

Paid tribute to the thousands of civilians murdered or forcibly relocated as a result of the policy of ethnic cleansing;

Regretted the deplorable events and recalled its resolve to ensure that justice was carried out fully through the work of the International Tribunal for the Former Yugoslavia;

Acknowledged the report of the Secretary-General on Srebrenica;³⁰

Reiterated its commitment to the full implementation of the Dayton-Paris Peace Agreement and the establishment of multi-ethnic democracy and the rule of law throughout the territory of the former Yugoslavia.

The Council subsequently observed a minute of silence in honour of the victims of the Srebrenica massacre.

**Deliberations of 15 August 2000 to
12 December 2000 (4188th, 4209th, 4222nd
and 4245th meetings)**

At its 4188th meeting, on 15 August 2000, the Council heard a briefing by the Under-Secretary-General for Peacekeeping Operations. Statements were made by most members of the Council.³¹ In his briefing, the Under-Secretary-General reported progress in all areas of the mandate of UNMIBH, including police reform, judicial reform and the return of minority refugees and displaced persons. In particular, he noted that the judicial system assessment programme of UNMIBH was finalizing its work and was coordinating closely with the Office of the High Representative, which was expected to assume most of the judicial assessment functions when the mandate of UNMIBH in that area expired late in 2000.³²

Most of the speakers welcomed the progress in the main areas of the mandate of UNMIBH. Nevertheless, several speakers cautioned that progress depended on overcoming continued obstruction and delays.³³ The representative of the Russian Federation expressed his belief that raising questions about the establishment of a single defence system in Bosnia and Herzegovina ran counter to the provisions of the

³⁰ A/54/549.

³¹ The representative of Mali did not make a statement.

³² S/PV.4188, pp. 2-3.

³³ *Ibid.*, pp. 3-5 (United States); pp. 5-6 (Bangladesh); pp. 7-8 (United Kingdom); pp. 11-12 (Russian Federation); p. 12 (Namibia); and pp. 12-13 (Malaysia).

Dayton Agreement. He reaffirmed his country's position that arrests of persons indicted by the International Tribunal for the Former Yugoslavia by SFOR contingents contravened the mandate of SFOR. He also reiterated that attempts to isolate the Federal Republic of Yugoslavia from the Balkan settlement processes were counterproductive.³⁴

At its 4209th meeting, on 26 October 2000, the Council included in its agenda a letter dated 18 October 2000 from the Secretary-General addressed to the President of the Council,³⁵ transmitting the seventeenth report on the activities of the Office of the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina. In his report, the High Representative reported, *inter alia*, on the decision of the Constitutional Court of Bosnia and Herzegovina on the Constituent Peoples' Case, in which the Court decided that no ethnic group constituent on the territory of Bosnia and Herzegovina should be excluded from exercising its right in the entities and that the entity Constitutions would have to be changed in that regard. He also reported on a high increase of minority returns to pre-war homes, even in areas previously considered dangerous, on the adoption of state treasury and party financing laws, and on his imposition of the single national passport.

At the same meeting, the Council heard a briefing by the High Representative. Statements were made by all members of the Council and the representatives of Bosnia and Herzegovina, Germany and Italy.

In his briefing, the High Representative, *inter alia*, commented on the "seismic changes" that had occurred in the two key neighbouring countries of the Federal Republic of Yugoslavia and Croatia, expressing both hope and caution for the effects of this change on the situation in Bosnia and Herzegovina. On the situation in Bosnia and Herzegovina itself, he reported slow progress in all areas of reform and expressed his opinion that sustained change would depend on the outcome of the general elections on 11 November 2000.³⁶

Most speakers welcomed the democratic changes in the Federal Republic of Yugoslavia and recognized both the progress and continuing obstacles outlined by the High Representative. In response to some of the

criticism expressed by the High Representative, the representative of Bosnia and Herzegovina stressed that responsibility for both progress and difficulties was shared between the international community and the people and Government of Bosnia and Herzegovina. He also cautioned that the democratic success of elections could not be judged by the outcome, but rather by the process of the elections.³⁷

At its 4222nd meeting, on 14 November 2000, the Council heard a briefing by the Under-Secretary-General for Peacekeeping Operations. At the meeting, statements were made by most members of the Council,³⁸ as well as by the representatives of Austria³⁹ and the Federal Republic of Yugoslavia.

In his briefing, the Under-Secretary-General focused on the outcome of the elections held on 11 November 2000. He stated that the activities of UNMIBH and the International Police Task Force had contributed to a calm atmosphere during the elections. The Under-Secretary-General reported that preliminary results indicated a mixed picture concerning the performance of nationalist and moderate, multi-ethnic parties and concluded that the hope that the elections would produce local political authorities who would work constructively to consolidate a sovereign and multi-ethnic Bosnia had not been fully borne out.⁴⁰

In their statements, most speakers welcomed the successful holding of elections in Bosnia and Herzegovina and expressed their hope that the newly elected authorities would be committed to pursuing the peace process. However, the representative of the Russian Federation stressed that the "pushing through" of the Dayton Agreement often destroyed the compromise variants achieved by the Bosnians themselves and was counterproductive.⁴¹ The representative of the Federal Republic of Yugoslavia stated that following the major democratic changes in his country, conditions were being created to view the problems and outstanding issues related to the implementation of the Dayton Agreement in a new, democratic way. He stressed that the Federal Republic

³⁴ *Ibid.*, p. 12.

³⁵ S/2000/999.

³⁶ S/PV.4209, pp. 2-5.

³⁷ *Ibid.*, pp. 17-18.

³⁸ The President of the Council (Netherlands) did not make a statement in his national capacity.

³⁹ In the capacity of Chairman-in-Office of the Organization for Security and Cooperation in Europe (OSCE).

⁴⁰ S/PV.4222, pp. 2-4.

⁴¹ *Ibid.*, p. 5.

of Yugoslavia accepted the Dayton-Paris Peace Agreement and that one of its main foreign policy priorities was the normalization of relations with all former Yugoslav republics.⁴²

At its 4245th meeting, on 12 December 2000, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 30 November 2000.⁴³ In his report, the Secretary-General, *inter alia*, observed that the international community had made a massive contribution to the cause of peace in Bosnia and Herzegovina in the past five years, but progress had been frustratingly slow and difficult, owing mainly to political obstruction by extremist nationalists. He held that the recent general elections held in Bosnia and Herzegovina had demonstrated yet again how nationalist parties were willing to incite inter-ethnic fear and suspicion in order to preserve their power and privileges. Nevertheless, he reported that progress had been made in all core areas of the mandate of UNMIBH and that, together with the changes in the leaderships of core neighbouring countries, this progress had enabled the Mission to draw up the mandate implementation plan with a proposed timetable of December 2002 for the completion of the core mandate of UNMIBH. The Secretary-General requested the Council to support the Mission's assessment that the authorized strength of UNMIBH for the period 2001/2002 might be reduced to 1,850 officers of the International Police Task Force.

At the meeting, the Council heard a briefing by the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, following which statements were made by all members of the Council⁴⁴ and the representative of Bosnia and Herzegovina.

In his briefing, the Special Representative focused on the progress made by UNMIBH in its mandate implementation plan, while calling the

attention of the Council to the major resource shortfalls that UNMIBH was facing in completing its mandate.⁴⁵

Most speakers welcomed the assessment of progress and challenges as presented in the report of the Secretary-General and the briefing of the Special Representative.

Nevertheless, the representative of the Netherlands held that, five years after the Dayton Agreement, the political and the economic situations of Bosnia and Herzegovina were disconcerting. Although the security situation was good, the animosity among the three population groups had hardly subsided since the Peace Agreement. He also held that the result of the recent elections had been disappointing, in that they underlined how Bosnia and Herzegovina was divided along ethnic lines.⁴⁶

The representative of the United States emphasized that the lesson learned from Bosnia and Herzegovina was that, to be effective, every mission needed a clear, credible and achievable mandate; peacekeeping troops had to be given rules of engagement that enabled them adequately to defend themselves; Member States should be permitted to contribute troops only if they were able to commit to equip them adequately; missions required a more thorough training of personnel and needed to consist of several types of peacekeepers; and the peacekeeping structures of the United Nations must be redesigned to be able to provide the resources of expertise to fulfil more complex mandates.⁴⁷

The representative of Bosnia and Herzegovina expressed his country's appreciation for the changes in the Federal Republic of Yugoslavia and in Croatia, which he deemed of paramount importance for Bosnia and Herzegovina and the region as a whole.⁴⁸

**Decision of 22 March 2001 (4304th meeting):
statement by the President**

At its 4303rd meeting, on 22 March 2001, the Council included in its agenda the item entitled "Briefing by Mr. Wolfgang Petritsch, High Representative for the Implementation of the Peace

⁴² *Ibid.*, pp. 11-12.

⁴³ S/2000/1137, submitted pursuant to resolution 1305 (2000).

⁴⁴ The representative of France spoke on behalf of the European Union. Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania and Slovakia aligned themselves with the statement.

⁴⁵ S/PV.4245, pp. 2-6.

⁴⁶ *Ibid.*, pp. 15-16.

⁴⁷ *Ibid.*, pp. 6-10. At this meeting, the United States was represented by Senator Joseph R. Biden.

⁴⁸ *Ibid.*, pp. 27-28.

Agreement on Bosnia and Herzegovina". Statements were made by all members of the Council and the representatives of Bosnia and Herzegovina, Croatia, Sweden (on behalf of the European Union⁴⁹) and the Federal Republic of Yugoslavia. The President (Ukraine)⁵⁰ drew the attention of the members of the Council to two letters, dated 26 February and 8 March 2001, respectively, from the representative of Sweden addressed to the Secretary-General,⁵¹ transmitting a statement by the Presidency on behalf of the European Union concerning the formation of a new Council of Ministers in Bosnia and Herzegovina, as well as a statement by the Presidency on behalf of the European Union on the conclusions of the Croat National Congress of Bosnia and Herzegovina, condemning its recent moves to place itself outside the provisions of the Dayton-Paris Agreement.

In his briefing, the High Representative *inter alia* cautioned against disappointment in the international community over the situation in Bosnia and Herzegovina. He reported that while the results of the elections in Bosnia and Herzegovina had been seen as a disappointment given the revolutionary changes in Croatia and the Federal Republic of Yugoslavia the same year, nationalist parties had indeed lost ground and the shift to more moderate parties was both real and encouraging. The Government at both State level and in the Federation of Bosnia and Herzegovina were headed by non-nationalist parties, in the Republika Srpska by a moderate technocrat. He also reported that he had removed Mr. Ante Jelavić from his post as the Croat member of Bosnia's Joint Presidency, after his party had boycotted official institutions, held a referendum and announced a plan for self-rule. He briefed the Council on progress in the return of refugees, the financial system, constitutional questions and judicial reform. He informed the Council that he had taken the decision to set up so-called constitutional commissions in both entities, which would ensure that the ruling of the Constitutional Court on the Constituent Peoples' Case, in which the Court had ruled that no ethnic group constituent on the territory of Bosnia and Herzegovina should be excluded from

exercising its rights in the entities, was implemented on an interim basis until the entity constitutions were amended. While maintaining that too many of the positive advances had needed to be imposed by him, the High Representative expressed the belief that this would change with the new administrations in Bosnia and Herzegovina.⁵²

In their statements following the briefing, most speakers welcomed the formation of moderate administrations in Bosnia and Herzegovina after the elections, but expressed concern at unilateral moves by the Croat National Congress to establish Croat self-rule. The representatives of Bosnia and Herzegovina and Croatia both warned that if the return of displaced persons and refugees was not accelerated, time would become a major factor and that too many refugees and internally displaced persons would accept the fact that ethnic cleansing had been successfully completed.⁵³ In addition, the representative of Croatia expressed his regret at the unilateral decisions taken by some Croatian political actors, which he deemed damaging both for the interests of Bosnia and Herzegovina and for Croatia. He expressed understanding of the High Representative's reaction and stated that his Government viewed the High Representative's intervention as a reaction against radical methods being used, and not as a step against the legitimate interests of the Croatian community in Bosnia and Herzegovina.⁵⁴

At the 4304th meeting, also on 22 March 2001, the President (Ukraine)⁵⁵ made a statement on behalf of the Council,⁵⁶ by which the Council, *inter alia*:

Encouraged further regional political and economic cooperation, in compliance with the principles of the sovereignty and territorial integrity and the inviolability of the borders of Bosnia and Herzegovina and the other States of the region;

Welcomed the new State-level and entity-level Governments formed after the general elections of 11 November 2000 and called on them to take active measures to make further progress on the return of refugees, consolidation of the state institutions, and economic reform; welcomed the establishment

⁴⁹ Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

⁵⁰ Ukraine was represented by its Foreign Minister.

⁵¹ S/2001/181 and S/2001/212.

⁵² S/PV.4303, pp. 2-5.

⁵³ *Ibid.*, pp. 19-20 (Bosnia and Herzegovina); and pp. 21-23 (Croatia).

⁵⁴ *Ibid.*, p. 22.

⁵⁵ Ukraine was represented by its Foreign Minister.

⁵⁶ S/PRST/2001/11.

of constitutional commissions to protect the vital interest of the constituent peoples;

Noted the recent conclusion of the Agreement on a special relationship between the Federal Republic of Yugoslavia and the Republika Srpska and urged the High Representative to monitor its implementation and any amendments to it;

Condemned recent unilateral moves by the so-called Croat national congress to establish Croat self-rule in open contradiction of the provisions of the Peace Agreement;

Welcomed the progress made on the return of refugees and property law implementation in 2000; and urged all political parties and their respective leaders to engage constructively in order to implement fully the Peace Agreement.

**Decision of 21 June 2001 (4333rd meeting):
resolution 1357 (2001)**

At its 4330th meeting, on 15 June 2001, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 7 June 2001.⁵⁷ In his report, the Secretary-General, *inter alia*, reported that UNMIBH continued to make measurable progress in the implementation of its mandate and towards its goal of completing the core mandate by December 2002. He therefore recommended to the Security Council an extension of the mandate of UNMIBH at an authorized strength of 1,850 police officers for a further 12-month period.

At the meeting, the Council heard a statement by the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, following which statements were made by all members of the Council, as well as by the representatives of Bosnia and Herzegovina, Sweden (on behalf of the European Union⁵⁸) and the Federal Republic of Yugoslavia.

In his briefing, the Special Representative expressed optimism at the developments in the field, and held that the core issues addressed in the Dayton settlement could be resolved within the following two to three years, at which point European institutions

could take over the economic and social harmonization.⁵⁹

In their statements, most speakers welcomed the progress achieved by UNMIBH and supported the proposed extension of the mandate. Several speakers condemned the attempts to establish Croat self-rule, as well as recent ethnically motivated violence in Mostar, Trebinje and Banja Luka.⁶⁰ The representative of the Federal Republic of Yugoslavia underlined the growing cooperation among the neighbouring countries of Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia.⁶¹ In response to statements, the Special Representative pointed to the issue of a transition of tasks to another international organization after the envisaged termination of the mandate of UNMIBH, naming the Organization for Security and Cooperation in Europe (OSCE) and the European Union as possible options.⁶²

At its 4333rd meeting, on 21 June 2001, the Council again included in its agenda the report of the Secretary-General of 7 June 2001.⁵⁷ The Council extended an invitation to the representative of Bosnia and Herzegovina to participate in the meeting. A draft resolution⁶³ was then put to the vote and adopted unanimously and without a debate as resolution 1357 (2001), by which the Council, acting under Chapter VII of the Charter with regard to sections I and II of the resolution, *inter alia*:

Authorized the Member States acting through or in cooperation with the organization referred to in annex 1-A of the Peace Agreement to continue for a further planned period of 12 months SFOR as established in accordance with resolution 1088 (1996) under unified command and control in order to fulfil the role specified in annexes 1-A and 2 of the Peace Agreement;

Authorized the Member States to take all necessary measures to effect the implementation of and to ensure compliance with annex 1-A of the Peace Agreement;

Authorized Member States to take all necessary measures, at the request of SFOR, either in defence of SFOR or to assist the Force in carrying out its mission, and recognized the right of

⁵⁷ S/2001/571 and Corr.1 submitted pursuant to resolution 1305 (2000).

⁵⁸ Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

⁵⁹ S/PV.4330, pp. 2-7.

⁶⁰ *Ibid.*, pp. 8-9 (France); pp. 9-10 (Russian Federation); pp. 12-13 (Norway); pp. 13-15 (Ukraine); p. 16 (Ireland); pp. 16-17 (Mauritius); p. 20 (Sweden on behalf of the European Union); and p. 23 (Bangladesh).

⁶¹ *Ibid.*, pp. 21-22.

⁶² *Ibid.*, pp. 23-25.

⁶³ S/2001/610.

the Force to take all necessary measures to defend itself from attack or threat of attack;

Authorized the Member States to take all necessary measures to ensure compliance with the rules and procedures established by the Commander of SFOR governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic.

In section III of the resolution, the Council, reaffirming the legal basis of the Charter on which the International Police Task Force was given its mandate in resolution 1035 (1995), *inter alia*:

Decided to extend the mandate of UNMIBH, which included the International Police Task Force, for an additional period terminating on 21 June 2002, and decided also that the Task Force should continue to be entrusted with the tasks set out in annex 11 of the Peace Agreement, including the tasks referred to in the conclusions of the London, Bonn, Luxembourg, Madrid and Brussels Conferences and agreed by the authorities in Bosnia and Herzegovina; and requested the Secretary-General to keep the Council regularly informed and to report at least every six months on the implementation of the mandate of UNMIBH as a whole.

Deliberations of 21 September and 5 December 2001 (4379th and 4433rd meetings)

At its 4379th meeting, on 21 September 2001, the Council included in its agenda a letter dated 14 September 2001 from the Secretary-General addressed to the President of the Security Council,⁶⁴ transmitting the twentieth report on the activities of the Office of the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina. In his report, the High Representative, *inter alia*, described his efforts to resolve difficulties concerning the consolidation of the Bosnia and Herzegovina State institutions and the strengthening of their competencies, informed the Council of the progress in Bosnia and Herzegovina towards European and North Atlantic Treaty Organization (NATO) integration processes and reported on problems with the pace of economic revitalization.

At the meeting, the Council heard briefings by the High Representative and the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, following which statements were made by all members of the Council, as well as the representatives of

Belgium (on behalf of the European Union⁶⁵) and Bosnia and Herzegovina.

In his briefing, the High Representative reported considerable progress in his work. In addition, he reported that his Office had carried out a comprehensive overview of the international community's activities in Bosnia and Herzegovina, with a view to streamlining the civil international peace implementation structures.⁶⁶ The Special Representative, in his briefing, warned that the UNMIBH mission of police reform and restructuring would be futile without adequate funding and without a complementary reform of the judicial system. With regard to the period after the completion of the mandate of UNMIBH in December 2002, he proposed, among other options, a comprehensive rule-of-law mission as a follow-up to UNMIBH.⁶⁷

In their statements following the briefings, several speakers held that continued international involvement would be necessary in Bosnia and Herzegovina.⁶⁸ Other speakers welcomed the streamlining process of the international presence in Bosnia and Herzegovina.⁶⁹ The representative of the Russian Federation held that bringing into force important laws through a decision of the High Representative, while possibly necessary, was not the best possible way of encouraging State-building in Bosnia and Herzegovina.⁷⁰

At its 4433rd meeting, on 5 December 2001, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 29 November 2001.⁷¹ In his report, the Secretary-General, *inter alia*, informed the Council of progress made by UNMIBH towards the goal of completing its core mandate, including on police reform and restructuring, and the

⁶⁴ S/2001/868.

⁶⁵ Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

⁶⁶ S/PV.4379, pp. 2-8.

⁶⁷ *Ibid.*, pp. 8-12.

⁶⁸ S/PV.4379 (Resumption 1), p. 2 (Tunisia); pp. 2-3 (Ireland); pp. 7-8 (Bangladesh); and pp. 11-12 (France).

⁶⁹ S/PV.4379, p. 13 (United States); p. 14 (United Kingdom); S/PV.4379 (Resumption 1), pp. 2-3 (Ireland); pp. 6-7 (Norway); pp. 7-8 (Bangladesh); and pp. 14-15 (Belgium on behalf of the European Union).

⁷⁰ S/PV.4379 (Resumption 1), pp. 5-6.

⁷¹ S/2001/1132 and Corr.1, submitted pursuant to resolution 1357 (2001).

establishment of the State Border Service. The Secretary-General, in underlining the need for continued monitoring and assistance, suggested that this could be carried out by a smaller police mission of approximately one quarter of the strength of UNMIBH, while stressing that it would be desirable for regional actors to assume responsibility for such a mission. He emphasized that in order to ensure a smooth transition, an early decision on this matter would be important.

At the meeting, the Council heard a briefing by the Assistant Secretary-General for Peacekeeping Operations, following which statements were made by all members of the Council and the representatives of Belgium (on behalf of the European Union⁷²) and Bosnia and Herzegovina.

The Under-Secretary-General, in his briefing, welcomed initial assessments made by the High Representative, the European Union and OSCE in planning a post-UNMIBH international police monitoring presence and affirmed that the Special Representative cooperated fully with those organizations.⁷³

Most speakers noted the Secretary-General's suggestion that regional organizations assume responsibility for continued monitoring and assistance. The representative of France emphasized that the choice of the regional organization assuming the functions of the police mission should be made only when the time was right, but noted the advantages of the European Union in that regard.⁷⁴ The representative of the Russian Federation expressed his opinion that OSCE was the best prepared organization for continuing the police operation in Bosnia and Herzegovina, but also warned of any haste and stressed that the decision should be taken by the Security Council.⁷⁵

**Decision of 5 March 2002 (4484th meeting):
resolution 1396 (2002)**

At its 4484th meeting, on 5 March 2002, the Council included in its agenda a letter dated

⁷² Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Liechtenstein, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

⁷³ S/PV.4433, pp. 2-3.

⁷⁴ *Ibid.*, pp. 9-10.

⁷⁵ *Ibid.*, p. 15.

26 February 2002 from the Secretary-General addressed to the President of the Security Council, transmitting the twenty-first report on the activities of the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina.⁷⁶ In his report, the High Representative reported, *inter alia*, that the Steering Board of the Peace Implementation Council had endorsed his draft action plan on streamlining the work of the international civilian organizations in Bosnia and Herzegovina. In addition, the implementation of the decision of the Constitutional Court in the Constituent Peoples' Case, including the establishment of fair representation of all constituent peoples on all public institutions and the establishment of a system to protect the vital interests of the constituent peoples, was in a crucial phase. The entities' constitutional commissions had proposed amendments to the respective constitutions and the leaders of the main parties in Bosnia and Herzegovina had met several times with the aim of finding a compromise solution.

At the meeting, the Council was addressed by the Secretary-General, the High Representative, the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, and the High Representative for the European Union's Common Foreign and Security Policy, following which statements were made by all members of the Council⁷⁷ and the representatives of Bosnia and Herzegovina, Croatia, Spain, Ukraine and the Federal Republic of Yugoslavia. The President drew the attention of the Council to a draft resolution.⁷⁸

The Secretary-General, in his statement to the Council, emphasized that UNMIBH was well on track to completing its core mandate by the end of 2002 and welcomed the decision by the European Union to establish a post-UNMIBH follow-on police mission.⁷⁹

The High Representative, in his briefing, emphasized that the concept of ownership was increasingly gaining roots in Bosnia and Herzegovina. In addition, he welcomed the increasing Europeanization of Bosnia and Herzegovina, as

⁷⁶ S/2002/209.

⁷⁷ Norway (holding the Presidency of the Council) was represented by the Minister for Foreign Affairs.

⁷⁸ S/2002/221.

⁷⁹ S/PV.4484, p. 3.

crystallized in the imminent accession of the country to the Council of Europe and in the European Union road map for eventual membership. He further noted the intention of the European Union to establish a police mission as well as his office's cooperation with the Council of Europe on a reinvigorated programme of judicial reform.⁸⁰

The Special Representative, in his briefing, reported that UNMIBH was making strong progress towards completing its core mandate on schedule and within its budget by the end of 2002 and pledged a seamless transfer to the European Union mission.⁸¹

The High Representative for the European Union's Common Foreign and Security Policy, in his statement, indicated that the European Union police mission would seek to establish sustainable policing arrangements under Bosnia and Herzegovina ownership in accordance with best European and international practice. He stated that the Mission would have a strength of about 480 police officers and 70 civilians, and expected that its goal would be achieved by the end of 2005.⁸²

Most speakers, including the representative of Bosnia and Herzegovina,⁸³ welcomed the offer of the European Union to establish a follow-on police mission and the intention of UNMIBH and the European Union to ensure a seamless transition.

At the same meeting, the draft resolution was put to the vote and adopted unanimously as resolution 1396 (2002), by which the Council, *inter alia*:

Welcomed the acceptance by the Steering Board of the Peace Implementation Council on 28 February 2002 of the offer made by the European Union to provide a European Union police mission, from 1 January 2003, to follow the end of the UNMIBH mandate, and the European Union's intention also to invite States that are not members of the European Union to participate in the police mission;

Encouraged coordination between UNMIBH, the European Union and the High Representative in order to ensure a seamless transition of responsibilities from the International Police Task Force to the European Union police mission;

Reaffirmed the importance it attached to the role of the High Representative in pursuing the implementation of the Peace Agreement;

Reaffirmed also the final authority of the High Representative in theatre regarding the interpretation of annex 10 on civilian implementation of the Peace Agreement.

Decisions of 19 June 2002 to 12 July 2002: resolutions 1418 (2002), 1420 (2002), 1421 (2002) and 1423 (2002) and rejection of a draft resolution

At its 4555th meeting, on 19 June 2002, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 5 June 2002.⁸⁴ In that report, the Secretary-General observed that UNMIBH was moving rapidly towards the completion of its core tasks, but that the systematic weakness of the rule of law in Bosnia and Herzegovina would require continued monitoring of and assistance to local police, a task that would be taken over by the European Union follow-on mission. In addition, the Secretary-General stressed that the continued presence and support of SFOR would be essential. He therefore recommended the extension of the current mandate of UNMIBH at an authorized strength of 1,600 police officers, to be drawn down after the October general elections to 460 officers, until 31 December 2002.

At the meeting, at which no statements were made, the Council heard a briefing by the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, in which he underlined the achievements of UNMIBH at the end of its term, including the creation of a modern police force of European standard from a wartime militia, the creation of a State Border Service, a Criminal Justice Advisory Unit and a Special Trafficking Operations Programme.⁸⁵

At its 4558th meeting, on 21 June 2002, the Council again included in its agenda the report of the Secretary-General of 5 June 2002.⁸⁴ The Council extended an invitation to the representative of Bosnia and Herzegovina to participate in the meeting. A draft resolution⁸⁶ was then put to the vote and adopted unanimously and without a debate as resolution 1418 (2002), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

⁸⁰ *Ibid.*, pp. 4-7.

⁸¹ *Ibid.*, pp. 7-11.

⁸² *Ibid.*, pp. 11-12.

⁸³ *Ibid.*, pp. 28-30.

⁸⁴ S/2002/618, submitted pursuant to resolution 1357 (2001).

⁸⁵ S/PV.4555, pp. 2-6.

⁸⁶ S/2002/680.

Decided that the provisions of its resolution 1357 (2001) should continue in force until 30 June 2002;

Decided to remain seized of the matter.

At its 4563rd meeting, on 30 June 2002, the Council again included in its agenda the report of the Secretary-General of 5 June 2002.⁸⁴ Statements were made by the Secretary-General, as well as the representatives of Bulgaria, China, Colombia, France, Ireland, Norway, the Russian Federation, the United Kingdom and the United States. The President (Syrian Arab Republic) drew the attention of the Council to a draft resolution submitted by Bulgaria, France, Germany, Ireland, Italy, Norway, the Russian Federation and the United Kingdom,⁸⁷ by which the Council would have extended the mandate of UNMIBH for an additional period terminating on 31 December 2002.

Speaking before the vote, the representative of the United States noted that while the longstanding commitment of the United States to peace and stability in the Balkans was beyond question, the United States had also been clear and consistent about its concerns on the question of the International Criminal Court, in particular the need to ensure its national jurisdiction over its personnel and officials involved in United Nations peacekeeping and in coalition-of-the-willing operations. He stated that it was with great regret that the United States found itself on the eve of that date, and despite its best efforts, without a solution. He held that with its global responsibilities, the United States were and would remain a special target and could not have its decisions second-guessed by a court whose jurisdiction it did not recognize. He emphasized that with the Court coming into being, the problem needed to be resolved in a way that took into account the fact that the United States wanted to participate in international peacekeeping, but that it did not and would not accept the jurisdiction of the International Criminal Court over the peacekeepers that it contributed to operations established and authorized by the United Nations. He held that the failure of the Security Council to act to preserve an appropriate legal status for the United States and peacekeepers from other non-parties to the International Criminal Court could only end in damage to international peacekeeping generally. He recalled that the United States had proposed to establish immunity for United

Nations peacekeeping, building on immunities already recognized in the United Nations system, and held that this solution would not run counter to the obligations of signatories of the Rome Statute of the International Criminal Court. The representative emphasized that the United States would vote against the draft resolution with great reluctance and that this decision was not directed at the people of Bosnia and Herzegovina. He held, however, that the fact that the United States was vetoing the draft resolution in the face of its commitment to the people of Bosnia and Herzegovina was an indication of the seriousness of its concerns about the risks to its peacekeepers.⁸⁸

The draft resolution was then put to the vote; it received 13 votes in favour, 1 against (United States) and 1 abstention (Bulgaria), and was not adopted owing to the negative vote of a permanent member.⁸⁹

Speaking after the vote, the Secretary-General stated that, on that day, the mandate of UNMIBH was coming to an abrupt end for reasons that were unrelated to the vitally important work that it was performing to implement the Dayton Peace Agreement. He warned that unless an agreement could be reached on an orderly wind-down of the Mission, the police in Bosnia would be left unmonitored, unguided and unassisted. Key programmes, including the control of the borders by a professional State Border Service, would be left uncompleted and the long-planned handover to the European Union police mission would be severely compromised. More generally, he remained convinced that United Nations peacekeeping was an indispensable tool for the international community's promotion of global peace and security and he appealed to members of the Security Council to intensify the high-level negotiations so as to find a solution acceptable to all concerned that respected the principles of the Charter of the United Nations and treaty obligations of Member States. He stressed that the world could not afford a situation in which the Security Council was deeply divided on such an important issue that could have implications for all peace operations.⁹⁰

The representative of Bulgaria stated that his country had wished to abstain in the vote on the draft

⁸⁷ S/2002/712.

⁸⁸ S/PV.4563, pp. 2-3.

⁸⁹ For more information on the discussion with regard to procedure see chap. IV, part IV, sect. B, case 1.

⁹⁰ S/PV.4563, pp. 3-4.

resolution, not because it did not support the principle of a United Nations presence in Bosnia and Herzegovina, but because it wanted to draw attention to the lack of unity in the Council on this issue. He reminded delegations of the various formulas his delegation had proposed in informal consultations to resolve the situation before the Council and he appealed to all members of the Security Council to seek compromise.⁹¹

All other speakers also regretted the rejection of the draft resolution, and expressed their hope that a mutually acceptable solution would be found soon. Several speakers emphasized the legal commitments of their States as signatories of the Rome Statute of the International Criminal Court.⁹² Some speakers also pointed to the principle of complementarity, under which the International Criminal Court would take over jurisdiction only if States were unwilling or unable to prosecute perpetrators.⁹³ In addition, the representative of France pointed to the possibility that either the United States conclude an agreement with the host countries of United Nations missions on extradition to the International Criminal Court, or the Security Council request the Court, through a resolution, to not be seized for a one-year renewable period, in the case of an ongoing investigation on a member of a force who was a citizen of a State that was not a party to the Statute of the Court.⁹⁴

At its 4564th meeting, also on 30 June 2002, the Council again included in its agenda the report of the Secretary-General of 5 June 2002.⁹⁵ The Council extended an invitation to the representative of Bosnia and Herzegovina to participate in the meeting. The President drew the attention of the Council to a draft resolution submitted by France, Ireland, Norway and the United Kingdom.⁹⁶ It was put to the vote and adopted unanimously and without debate as resolution

1420 (2002), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided that the provisions of its resolution 1357 (2001) should continue in force until 3 July 2002;

Decided to remain seized of the matter;

At the 4566th meeting, on 3 July 2002, a draft resolution⁹⁷ was put to the vote and adopted unanimously and without debate as resolution 1421 (2002), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Decided that the provisions of its resolution 1357 (2001) should continue in force until 15 July 2002;

Decided to remain seized of the matter.

By a letter dated 3 July 2002,⁹⁸ the representative of Canada requested an open meeting of the Security Council, arguing that what was at issue in the Council's deliberations on UNMIBH concerned not just the extension of the mandate of UNMIBH, but also a "potentially irreversible decision negatively affecting the integrity of the Rome Statute of the International Criminal Court, the integrity of treaty negotiations generally, the credibility of the Security Council, the viability of international law with respect to investigation and prosecution of grievous crimes and the established responsibilities of States under international law to act on such crimes", and that it was therefore appropriate for the Council to hear the views of the wider United Nations membership.

At the 4568th meeting, held on 10 July 2002 in response to the request contained in the above-mentioned letter, statements were made by all members of the Council and the representatives of Argentina, Bosnia and Herzegovina, Brazil, Canada, Costa Rica (on behalf of the Rio Group), Cuba, Denmark (on behalf of the European Union⁹⁹), Fiji, Germany, India, the Islamic Republic of Iran, Jordan, Liechtenstein, Malaysia, Mongolia, New Zealand, Samoa, Sierra Leone, South Africa, Thailand, Ukraine, Venezuela and the Federal Republic of Yugoslavia, as well as the Permanent Observer of Switzerland.¹⁰⁰

⁹¹ *Ibid.*, p. 4.

⁹² *Ibid.*, pp. 4-5 (France); pp. 5-6 (United Kingdom); p. 6 (Colombia); p. 7 (Norway); and pp. 7-8 (Ireland).

⁹³ *Ibid.*, pp. 5-6 (United Kingdom); p. 6 (Colombia); p. 7 (Norway); and pp. 7-8 (Ireland).

⁹⁴ *Ibid.*, pp. 4-5. For more information on the discussion regarding exemptions for peacekeepers from prosecution by the International Criminal Court, see chap. XII, parts II and IV, with regard to Articles 24 and 103 of the Charter, and the study in the present chapter on United Nations peacekeeping (sect. 47.D).

⁹⁵ S/2002/618.

⁹⁶ S/2002/716.

⁹⁷ S/2002/724.

⁹⁸ S/2002/723.

⁹⁹ Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia and Slovenia aligned themselves with the statement.

¹⁰⁰ The representative of Croatia was invited to participate

At the meeting, the representative of Canada raised concern over the discussion that had been taking place among members of the Council regarding exemptions for peacekeepers from prosecution by the International Criminal Court.¹⁰¹ He maintained that with regard to the issue at hand, fundamental principles of law were in question, that the Council had not been empowered to rewrite treaties, that the draft resolutions being circulated¹⁰² contained elements that “exceed[ed] the Council’s mandate” and that their adoption would “undermine the credibility of the Council”. In his opinion, the adoption of a resolution on the International Criminal Court under Chapter VII of the Charter, in the absence of a threat to international peace and security, would be *ultra vires*. For those reasons, he held that adoption of the draft resolutions circulating at that time could place Canada and other Member States “in the unprecedented position of having to examine the legality of a Security Council resolution”. In addition, he held that options existed that would preserve the integrity of the international legal system and the Rome Statute of the International Criminal Court, including the withdrawal of United States forces from current peacekeeping missions or the negotiation of bilateral agreements with receiving States.¹⁰³

During the debate, many speakers similarly argued that in interpreting or amending a treaty without the approval of its States parties, the Security Council would overstep its authority and mandate. Several speakers explicitly stated that in their opinion the issue at hand did not constitute a threat to international peace and security.¹⁰⁴ Furthermore, several speakers agreed with the representative of Canada that it was undesirable for the Council to place States into a position where they were in a conflict between their legal obligations with regard to Council decisions and their obligations entered into under the Statute of the International Criminal Court.¹⁰⁵ Many speakers also maintained that failure to extend the mandate of

UNMIBH would not only threaten United Nations achievements in the Balkans but endanger United Nations peacekeeping operations in general. In that regard, the representative of Bulgaria held that the discussions on the extension of peacekeeping mandates and exemptions for peacekeepers from prosecution by the International Criminal Court had “tested the Council’s ability to carry out its mandate under Chapter VII of the Charter”.¹⁰⁶ The representatives of the Islamic Republic of Iran and Jordan held that given the obligations conferred to it in Article 24 of the Charter, it was inconceivable that the Council could ponder placing peacekeeping operations in jeopardy.¹⁰⁷ Most speakers held that the safeguards built into the Rome Statute should be sufficient to protect peacekeepers from politically motivated charges. Many speakers argued strongly that the search for a compromise solution should not result in an erosion of the Statute. In that regard, many speakers noted that article 16 of the Statute of the International Criminal Court was intended to be used on a case-by-case to suspend prosecutions where a temporary conflict between the resolution of armed conflict and the prosecution of offences existed, and not to be invoked for general exemptions.

The representative of the United States reaffirmed his country’s commitment to justice and the rule of law, to accountability for war crimes, crimes against humanity and genocide, as well as to peace and security in Bosnia and around the world. He nevertheless held that peacekeepers from States not parties to the Statute of the International Criminal Court should not face, in addition to the dangers and hardships of deployment, additional, unnecessary legal jeopardy and he contended that the principle of immunity for peacekeeping troops had been acknowledged over decades. He held that a deferral of investigations and prosecutions in keeping with the Rome Statute could not undermine the role of the Court, while a failure to address concerns about placing peacekeepers in legal jeopardy before the Court could impede the provision of peacekeepers to the United Nations. He held that by invoking article 16 of the Statute in its latest proposals, the United States had sought to work within the provisions of that Statute

but did not make a statement.

¹⁰¹ See footnote 94.

¹⁰² Not issued as documents of the Council.

¹⁰³ S/PV.4568, p. 3.

¹⁰⁴ *Ibid.*, p. 5 (New Zealand); and p. 16 (Jordan); S/PV.4568 (Resumption 1), p. 9 (Germany).

¹⁰⁵ S/PV.4568, p. 6 (New Zealand); p. 19 (Mongolia); p. 20 (Liechtenstein); and pp. 24-25 (Singapore); S/PV.4568 (Resumption 1), p. 4 (Ukraine). See also chap. XII, part IV, with regard to Article 103 of the Charter.

¹⁰⁶ S/PV.4568, p. 12.

¹⁰⁷ *Ibid.*, p. 15 (Islamic Republic of Iran); and p. 16 (Jordan). See also chap. XII, part II, with regard to Article 24 of the Charter.

and he held that this approach was consistent with the terms of article 16 and with the primary responsibility of the Security Council for maintaining international peace and security.¹⁰⁸ The representative of India also held that the Council should give careful consideration to the views of major troop-contributing countries that were not parties to the Rome Statute.¹⁰⁹

With regard to the future of UNMIBH, the representative of France held that it should be possible to extend its mandate one last time until the end of 2002 by adding to the draft resolution a paragraph stressing the primacy of the competence of the International Tribunal for the Former Yugoslavia over that of the International Criminal Court, but added that, if that solution was not accepted by the United States, France would support a draft resolution of the United Kingdom allowing for the orderly withdrawal of UNMIBH and its replacement, on 1 November, by the European Union police mission.¹¹⁰ The representative of Bosnia and Herzegovina stated his country's readiness to consider during the remaining six months of the mandate of UNMIBH, and bearing in mind the Statute of the International Criminal Court, modalities for the transfer, surrender or extradition of nationals participating in UNMIBH suspected of committing crimes under the jurisdiction of the Court.¹¹¹

At its 4573rd meeting, on 12 July 2002, the Council extended an invitation to the representative of Bosnia and Herzegovina to participate in the discussion. A draft resolution¹¹² was then put to the vote and adopted unanimously and without debate as resolution 1423 (2002), by which the Council, acting under Chapter VII of the Charter with regard to sections I and II of the resolution, authorized the continuation of SFOR for a further period of 12 months and, reaffirming the legal basis of the Charter on which the International Police Task Force was given its mandate in resolution 1035 (1995), in section III of the resolution:

Decided to extend the mandate of UNMIBH, which included the International Police Task Force, for an additional period terminating on 31 December 2002, and also decided that, during that period, the Task Force should continue to be entrusted with the tasks set out in annex 11 of the Peace

Agreement, including the tasks referred to in the conclusions of the London, Bonn, Luxembourg, Madrid and Brussels Conferences and agreed by the authorities in Bosnia and Herzegovina;

Requested the Secretary-General to keep the Council regularly informed and to report in six months on the implementation of the mandate of UNMIBH as a whole;

Reiterated that the successful implementation of the tasks of the Task Force rested on the quality, experience and professional skills of its personnel, and once again urged Member States, with the support of the Secretary-General, to ensure the provision of such qualified personnel;

Urged Member States, in response to demonstrable progress by the parties in restructuring their law enforcement institutions, to intensify their efforts to provide, on a voluntary-funded basis and in coordination with the Task Force, training, equipment and related assistance for local police forces in Bosnia and Herzegovina;

Requested the Secretary-General to continue to submit to the Council reports from the High Representative, in particular on compliance by the parties with their commitments under the Peace Agreement.

Decision of 12 December 2002 (4661st meeting): statement by the President

At its 4631st meeting, on 23 October 2002, the Council included in its agenda a letter dated 18 October 2002 from the Secretary-General addressed to the President of the Security Council,¹¹³ transmitting the twenty-third report on the activities of the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina. In his report, the newly appointed High Representative stated that his aim was to set Bosnia and Herzegovina irreversibly on the road to statehood within the European Union.

At its meeting, the Council heard briefings by the High Representative, as well as by the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, following which statements were made by all members of the Council and the representatives of Croatia, Denmark (on behalf of the

¹¹³ S/2002/1176.

¹⁰⁸ S/PV.4568, pp. 9-10.

¹⁰⁹ *Ibid.*, pp. 13-14.

¹¹⁰ *Ibid.*, pp. 10-12.

¹¹¹ S/PV.4568 (Resumption 1), p. 3.

¹¹² S/2002/757.

European Union¹¹⁴) and the Federal Republic of Yugoslavia.¹¹⁵

In his briefing, the High Representative described his priorities as “first justice, then jobs, through reform”. On economic reform, he held that reforms were needed quickly and that at this time speed would matter more than perfection. He noted that he had instructed his staff to draw up a mandate implementation plan — similar to that of UNMIBH.¹¹⁶ The Special Representative, noting that the work of UNMIBH was coming to an end, emphasized the concrete successes of UNMIBH, underlining that the restructuring and reform of the police had led to a low general crime rate and a significant drop in the numbers of illegal migrants. He also reported that arrangements for a seamless transition to the European Union peace mission at the end of the mandate of UNMIBH were in place.¹¹⁷

Most speakers agreed with the priorities set out by the High Representative. In addition, they welcomed the transition from UNMIBH to the European Union police mission and lauded the achievements of UNMIBH. In addition, the representative of the Russian Federation conveyed his understanding that the Security Council, as the main body responsible for peacekeeping and international security, would, even after UNMIBH had completed its work, continue to receive, on a regular basis, reports on the process of implementing the police operation in Bosnia and Herzegovina.¹¹⁸

At its 4661st meeting, on 12 December 2002, the Council included in its agenda the report of the Secretary-General on UNMIBH dated 2 December 2002.¹¹⁹ In his final report on UNMIBH, which would complete its mandate on 31 December 2002, the Secretary-General held that, through UNMIBH, the United Nations had demonstrated its ability to

complete a complex mandate in accordance with a strategic plan and within a realistic and finite time frame. He held that police reform and restructuring in accordance with international standards had created in Bosnia and Herzegovina what had been termed “a police fit for Europe”. As successes of UNMIBH he highlighted, among others, the high standard of security throughout the country, a dramatically reduced flow of illegal migrants, narcotics smuggling and human trafficking and the return of over 250,000 refugees.

At the meeting, the Council was addressed by the Secretary-General, the Special Representative of the Secretary-General and Coordinator of United Nations operations in Bosnia and Herzegovina, and the Presiding member and two other members of the Presidency of Bosnia and Herzegovina.¹²⁰

In his address to the Council, the Secretary-General underlined that UNMIBH had completed the most extensive police reform and restructuring project that the United Nations had undertaken so far. He held that, with the end of UNMIBH and the United Nations Mission of Observers in Prevlaka, an era of United Nations involvement in the former Yugoslavia came to an end that had seen some of the bitterest moments of peacekeeping. He emphasized that the United Nations had drawn important conclusions about the nature, scope and role of United Nations peacekeeping and had made it a better instrument for the international community.¹²¹

The Special Representative, in his briefing, held that UNMIBH had been a success, its mandate had been implemented and there were visible signs that reforms were at work. In addition, he pointed to lessons learned that he hoped would be applied to other peace operations, such as the use of a mandate implementation plan as a strategic and operational vision and as an exit strategy.¹²²

In their consecutive statements, the three members of the Presidency of Bosnia and Herzegovina expressed their gratitude to the United Nations and to the Council for their assistance to Bosnia and Herzegovina. They underlined the key role of the

¹¹⁴ Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

¹¹⁵ The representatives of Bosnia and Herzegovina, Japan, Slovenia and Ukraine were invited to participate but did not make statements.

¹¹⁶ S/PV.4631, pp. 2-7.

¹¹⁷ *Ibid.*, pp. 7-11.

¹¹⁸ *Ibid.*, pp. 15-17.

¹¹⁹ S/2002/1314, submitted pursuant to resolution 1423 (2002).

¹²⁰ The Prime Minister of Bosnia and Herzegovina was invited to participate in the meeting but did not make a statement.

¹²¹ S/PV.4661, pp. 2-3.

¹²² *Ibid.*, pp. 3-7.

United Nations in assisting the parties to ensure stability and establish the reform process. They indicated that they considered the withdrawal of the peacekeeping operation as a sign of confidence in Bosnia and Herzegovina. They expressed their support for the transition from UNMIBH to the European Union police mission. They confirmed their commitment to reform and to the European and Euro-Atlantic integration processes and emphasized their determination to continue the process of democratic transformation.¹²³

At the same meeting, the President (Colombia) made a statement on behalf of the Council,¹²⁴ by which the Council, *inter alia*:

Welcomed the decision of the European Union to send a Police Mission to Bosnia and Herzegovina from 1 January 2003, as part of a broader rule of law approach, as well as the close coordination between all those concerned to ensure a seamless transition of responsibilities from the International Police Task Force to the European Union police mission, with the participation of the interested States non-members of the European Union;

Reiterated that the primary responsibility for the further successful implementation of the Peace Agreement lay with the authorities in Bosnia and Herzegovina themselves and that the continued willingness of the international community and major donors to assume the political, military and economic burden of implementation and reconstruction efforts would be determined by the compliance and active participation by all the authorities in Bosnia and Herzegovina in implementing the Peace Agreement and all reforms needed to rebuild a civil society.

Decision of 11 July 2003 (4786th meeting): resolution 1491 (2003)

At its 4786th meeting, on 11 July 2003, the Council extended an invitation to the representative of Bosnia and Herzegovina to participate. A draft resolution¹²⁵ was put to the vote and adopted unanimously and without a debate as resolution 1491 (2003), by which the Council, acting under Chapter VII of the Charter, *inter alia*:

Called upon the parties to comply strictly with the obligations under the Agreements, and expressed its intention to keep the implementation of the Peace Agreement, and the situation in Bosnia and Herzegovina, under review; authorized the Member States acting through or in cooperation with the organization referred to in annex 1-A of the Peace Agreement to

continue for a further planned period of 12 months SFOR as established in accordance with its resolution 1088 (1996) under unified command and control in order to fulfil the role specified in annexes 1-A and 2 of the Peace Agreement;

Authorized the Member States acting under paragraph 10 of the resolution to take all necessary measures to effect the implementation of and to ensure compliance with annex 1-A of the Peace Agreement, stressed that the parties should continue to be held equally responsible for compliance with that annex and should be equally subject to such enforcement action by SFOR as may be necessary to ensure implementation of that annex and the protection of SFOR, and took note that the parties consented to SFOR's taking such measures;

Demanded that the parties respect the security and freedom of movement of SFOR and other international personnel.

Deliberations of 8 October 2003 (4837th meeting)

At its 4837th meeting, on 8 October 2003, the Council included in its agenda a letter dated 25 September 2003 from the Secretary-General addressed to the President of the Security Council,¹²⁶ transmitting the twenty-fourth report on the activities of the High Representative for the Implementation of the Peace Agreement on Bosnia and Herzegovina. In his report, the High Representative observed measurable progress in the main areas of his mandate. In addition, he reported that the European Union police mission was launched on 1 January 2003 and was fully operational.

At the meeting, the Council heard briefings by the High Representative, as well as by the President of the International Tribunal for the Former Yugoslavia, following which statements were made by all members of the Council, as well as by the representatives of Bosnia and Herzegovina and Italy (on behalf of the European Union¹²⁷).

In his briefing, the High Representative, commenting on the rule of law and the economy as his two priorities, observed that the task of reforming the entire judiciary and court system was on track for completion in the following five to six months. On economic reforms, he pointed to a report of the

¹²⁶ S/2003/918.

¹²⁷ Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia and Turkey aligned themselves with the statement.

¹²³ *Ibid.*, pp. 7-10.

¹²⁴ S/PRST/2002/33.

¹²⁵ S/2003/697.

International Monetary Fund commending Bosnia and Herzegovina for the speed with which its macroeconomic framework was strengthened. He attributed some of this success to the work of recently established local reform committees, composed entirely of local civil society representatives under international chairmanship, which had produced high-quality, European-standard legislative reforms and forwarded them to Governments and Parliaments for adoption. The High Representative considered this a sign for a shift in the political culture and mindset and emphasized that the need to resort to the extraordinary powers of his Office had halved in the period under review.¹²⁸

The President of the International Tribunal for the Former Yugoslavia, in his briefing, reported on the joint initiative of the Office of the High Representative and the Tribunal to establish a special War Crimes Chamber within the State Court of Bosnia and Herzegovina, which he held had been recognized by the Security Council in resolution 1503 (2003) as an essential prerequisite for the success of the completion strategy of the Tribunal, and which would, in addition,

¹²⁸ S/PV.4837, pp. 2-7.

contribute to the process of reconciliation in the region. In that regard, he appealed for adequate funding of the project.¹²⁹

Most speakers welcomed the improvements in key areas of reform. Many speakers also welcomed the establishment of a War Crimes Chamber at the State Court of Bosnia and Herzegovina. In addition, the representative of France, along with the representatives of the United Kingdom and the Russian Federation welcomed the dialogue in Bosnia and Herzegovina on military reform and noted the progress towards putting the armed forces of the entities under effective civilian control with a view to the eventual establishment of a unified command structure.¹³⁰ The representative of Germany, in addition to seeing internationally assisted national courts as an interesting and cost-effective alternative, suggested that in the future, the Council give increased consideration to the possibility of referring situations to the International Criminal Court whenever there was a need for international criminal justice.¹³¹

¹²⁹ *Ibid.*, pp. 7-8. For more information, see the study in the present chapter on items relating to the International Tribunals (sect. 36).

¹³⁰ S/PV.4837, pp. 10-11 (France); pp. 14-15 (United Kingdom); and pp. 17-18 (Russian Federation).

¹³¹ *Ibid.*, pp. 9-10.

B. The situation in Croatia

Decisions of 13 January 2000 to 11 October 2002: resolutions 1285 (2000), 1307 (2000), 1335 (2001), 1362 (2001), 1387 (2002), 1424 (2002) and 1437 (2002)

During this period, the Security Council held seven meetings,¹³² at each of which, unanimously and without debate, it adopted a resolution by which it extend the mandate of the United Nations Mission of

Observers in Prevlaka (UNMOP)¹³³ on the basis of the recommendations contained in the reports of the Secretary-General on UNMOP,¹³⁴ until its termination on 15 December 2002.

At those meetings, in which the representation of Croatia, Germany and Italy were invited to

¹³² The 4088th (13 January 2000), 4170th (13 July 2000), 4256th (12 January 2001), 4346th (11 July 2001), 4448th (15 January 2002), 4574th (12 July 2002) and 4622nd (11 October 2002) meetings. During this period, in addition to the meetings covered in this section, the Council held a number of meetings in private with the troop-contributing countries to the United Nations Mission of Observers in Prevlaka (UNMOP), pursuant to resolution 1353 (2001), annex II, sections A and B. The meetings were held on 10 January 2002 (4446th), 10 July 2002 (4569th) and 10 October 2002 (4620th).

¹³³ By resolutions 1285 (2000), 1307 (2000), 1335 (2001), 1362 (2001) and 1387 (2002), the Council extended the mandate of UNMOP by six-month periods. By resolutions 1424 (2002) and 1437 (2002), the Council extended the mandate of UNMOP by three months and two months, respectively.

¹³⁴ Reports dated 31 December 1999 (S/1999/1302), 3 July 2000 (S/2000/647), 29 December 2000 (S/2000/1251), 3 July 2001 (S/2001/661), 2 January 2002 (S/2002/1), 28 June 2002 (S/2002/713) and 2 October 2002 (S/2002/1101).