
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 or acts of aggression, within the framework of Chapter VII of the Charter.

The period under review was marked by considerably expanded Council action in response to threats to or breaches of the peace, and Chapter VII of the Charter was invoked in a large number of decisions of the Council. Having determined the existence of a threat to the peace, the Council adopted one resolution explicitly acting under Article 40 of the Charter, in connection with the issue of non-proliferation, and imposed or modified sanctions regimes, of the type provided for in Article 41, against members of the Al-Qaida organization and the Taliban and associated individuals and entities, Côte d'Ivoire, the Democratic People's Republic of Korea, the Democratic Republic of the Congo, the Islamic Republic of Iran, Liberia, Sierra Leone and the Sudan. The Council adopted a number of judicial measures which included the establishment of a Special Tribunal for Lebanon, the referral of the situation in Darfur to the International Criminal Court, and the endorsement of the intention of the President of the Special Court for Sierra Leone to authorize a Trial Chamber in the Netherlands for the trial of the former President of Liberia, Charles Taylor. The Council also adopted several resolutions authorizing United Nations peacekeeping missions, as well as multinational forces, to take enforcement actions. The mandates of such missions became increasingly more multidimensional and complex and included a large array of tasks ranging from the protection of civilians under immediate threat of physical violence to a number of post-conflict activities such as disarmament and demobilization, support to security sector reform, and assistance to national reconciliation efforts and electoral processes. With respect to the United Nations peacekeeping missions, the Council authorized enforcement action for the newly established missions in Burundi, Côte d'Ivoire, Haiti and the Sudan. Regarding multinational forces, the Council authorized the use of "all necessary measures" within the framework of Chapter VII of the Charter for operations newly established by the European Union in Bosnia and Herzegovina, Chad and the Central African Republic and the Democratic Republic of the Congo; the African Union in Somalia; and Member States participating in the Multinational Interim Force in Haiti. During the period under consideration, the Council authorized for the first time an enforcement action by the joint African Union-United Nations Hybrid Operation in Darfur (UNAMID).

This chapter focuses 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 scope and complexity of the Council's practice under Chapter VII during the period under review, and in order to give due focus to the key relevant elements that arose in its decisions or deliberations, individual Articles of the Charter have been dealt with in separate parts of the chapter. Parts I to IV focus respectively on the practice of the Council in accordance with Articles 39 to 42, part V focuses on Articles 43 to 47. Parts VI and VII address, respectively, the obligations of Member States under Articles 48 and 49, and parts VIII and IX deal, respectively, with the practice of the Council with respect to Articles 50 and 51. Further, each part contains a section that focuses on the decisions of the Council, as well as a section that highlights relevant excerpts from the Council's deliberations, illustrating the Council's practice with respect to the Article(s) considered.

Part I

Determination of a threat to the peace, breach of the peace or act of aggression in accordance with 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 Council did not explicitly invoke Article 39 in any of its decisions nor did it determine the existence of any breach of the peace or act of aggression. The Council did adopt several resolutions determining, or expressing concern at, the existence of threats to the peace. In a number of instances, in connection with the situations in Haiti, the Middle East, the Sudan, and the situation in Chad, the Central African Republic and the subregion, the Council determined the existence of new threats to regional and/or international peace and security. The Council also determined that the situations in Afghanistan, Bosnia and Herzegovina and Iraq continued to constitute threats to international peace and security. In a number of other instances, in connection with the situations in Burundi, Côte d'Ivoire, the Democratic Republic of the Congo, Liberia, Sierra Leone and Somalia, and the cross-border issues in Africa, the Council determined that such situations continued to pose a threat to international peace and security in the region. In all those instances, following the determination of the existence of a threat to the peace, the Council took measures in accordance with Articles 40, 41 and 42 of the Charter in order to maintain or restore international peace and security.

The range of situations which the Council determined as giving rise to threats to the peace

included inter-State conflicts,¹ intra-State conflicts,² internal conflicts with a regional or subregional dimension,³ terrorist acts⁴ and the proliferation of weapons of mass destruction.⁵ In one instance, by resolution 1688 (2006) of 16 June 2006, noting that former President Taylor had been brought before the Special Court for Sierra Leone in Freetown, the Council determined that the continued presence of the former President in the subregion constituted an impediment to stability and a threat to the peace of Liberia and of Sierra Leone and to international peace and security in the region.

During the period under review, the Council also identified certain generic threats to peace and security, such as the proliferation of weapons of mass destruction and the proliferation and illicit trafficking of small arms and light weapons. By resolution 1674 (2006) of 28 April 2006, the Council reiterated that the deliberate targeting of civilians and the commission of

¹ For example, by resolution 1640 (2005) of 23 November 2005, the Council noted with deep concern the high concentration of troops on both sides of the Temporary Security Zone between Eritrea and Ethiopia, and stressed that the continuation of the situation would constitute a threat to international peace and security.

² For example, by resolution 1769 (2007) of 31 July 2007, the Council reiterated its deep concern for the security of humanitarian aid workers and their access to populations in need, reaffirmed its concern that the ongoing violence in Darfur might further negatively affect the rest of the Sudan as well as the region, and determined that the situation in Darfur, the Sudan, continued to constitute a threat to international peace and security.

³ For example, by resolution 1778 (2007) of 25 September 2007, the Council expressed the gravest concern that the situation in the region of the border between the Sudan, Chad and the Central African Republic constituted a threat to international peace and security.

⁴ For example, by resolution 1636 (2005) of 31 October 2005, the Council determined that the terrorist act that killed the former Prime Minister of Lebanon, Rafiq Hariri, as well as the act's implications, constituted a threat to international peace and security.

⁵ For example, by resolution 1718 (2006) of 14 October 2006, the Council determined that the test of a nuclear weapon supposedly carried out by the Democratic People's Republic of Korea constituted a clear threat to international peace and security.

systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict might constitute a threat to international peace and security.

Several issues regarding the interpretation of Article 39 and the determination of threats to peace and security arose during the Council's debates, mainly focusing on the threats represented by the situations in the Democratic People's Republic of Korea, the Middle East, Myanmar and the Sudan. There was also substantial discussion about understandings of non-traditional threats to the peace.

Section A outlines the decisions of the Council in which determinations were made regarding the existence of a threat to the peace. Section B reflects the arguments advanced during the Council's deliberations in connection with the adoption of some of those decisions.

A. Decisions relating to Article 39

The situation in Afghanistan

By resolution 1563 (2004) of 17 September 2004, recognizing the constraints upon the full implementation of the Bonn Agreement, the Council determined that the situation in Afghanistan continued to constitute a threat to international peace and security.⁶ The Council reaffirmed its determination by a number of subsequent resolutions.⁷

The situation in Bosnia and Herzegovina

By resolution 1551 (2004) of 9 July 2004, reaffirming its commitment to the political settlement of conflicts in the former Yugoslavia, the Council determined that the situation in the region continued to constitute a threat to international peace and security.⁸ By a number of subsequent resolutions, the Council reaffirmed its determination.⁹

⁶ Resolution 1563 (2004), seventh and tenth preambular paragraphs.

⁷ Resolutions 1623 (2005), 1707 (2006) and 1776 (2007).

⁸ Resolution 1551 (2004), second and ninth preambular paragraphs.

⁹ Resolutions 1575 (2004), 1639 (2005), 1722 (2006) and 1785 (2007).

The situation in Burundi

By resolution 1545 (2004) of 21 May 2004, noting that obstacles remained to Burundi's stability, the Council determined that the situation in the country continued to constitute a threat to international peace and security in the region.¹⁰ That determination was reiterated by the Council by a series of subsequent resolutions.¹¹

By resolution 1650 (2005) of 21 December 2005, the Council noted that, although there had been an improvement in the security situation since the completion of the transitional period, Burundi and the Great Lakes region of Africa still experienced "factors of instability", which continued to constitute a threat to international peace and security in the region.¹² The Council reiterated that determination by two subsequent resolutions.¹³

The situation in Chad, the Central African Republic and the subregion

By resolution 1778 (2007) of 25 September 2007, the Council expressed its deep concern at the activities of armed groups and other attacks in eastern Chad, the north-eastern Central African Republic and western Sudan which threatened the security of the civilian population, the conduct of humanitarian operations in those areas and the stability of those countries, and which resulted in serious violations of human rights and international humanitarian law and, therefore determined that the situation in the region of the border between the Sudan, Chad and the Central African Republic constituted a threat to international peace and security.¹⁴

¹⁰ Resolution 1545 (2004), penultimate preambular paragraph.

¹¹ Resolutions 1577 (2004), 1602 (2005) and 1641 (2005).

¹² Resolution 1650 (2005), penultimate preambular paragraph.

¹³ Resolutions 1669 (2006) and 1692 (2006).

¹⁴ Resolution 1778 (2007), third and seventeenth preambular paragraphs.

The situation in Côte d'Ivoire

By resolution 1527 (2004) of 4 February 2004, noting with concern the continued challenges to the stability of Côte d'Ivoire, the Council determined that the situation in the country continued to constitute a threat to international peace and security in the region.¹⁵ The Council reaffirmed its determination by a number of subsequent resolutions.¹⁶

Items relating to the Democratic People's Republic of Korea¹⁷

By resolution 1695 (2006) of 15 July 2006, the Council, reaffirming that the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constituted a threat to international peace and security, the Council expressed grave concern at the launch of ballistic missiles by the Democratic People's Republic of Korea, given the potential of such systems to be used as means to deliver nuclear, chemical, or biological payloads.¹⁸ The Council further affirmed that such launches jeopardized peace, stability and security in the region and beyond, particularly in the light of the Democratic People's Republic of Korea's claim that it had developed nuclear weapons.¹⁹

By a statement of the President dated 6 October 2006, the Council expressed its deep concern over the statement made by the Democratic People's Republic of Korea that it would conduct a nuclear test in the future. The Council also deemed that, should the Democratic People's Republic of Korea carry out its threat of a nuclear weapon test, it would jeopardize peace, stability and security in the region and beyond. The Council stressed that a nuclear test, if carried out by the Democratic People's Republic of Korea, would

represent a clear threat to international peace and security and that, should the Democratic People's Republic of Korea ignore the calls of the international community, the Council would act in a manner consistent with its responsibility under the Charter.²⁰

By resolution 1718 (2006) of 14 October 2006, the Council expressed the gravest concern at the claim made by the Democratic People's Republic of Korea that it had conducted a test of a nuclear weapon on 9 October 2006, and at the danger the test posed to peace and stability in the region and beyond; expressed profound concern that the test had generated increased tension in the region and beyond, and determined that there was a clear threat to international peace and security.²¹ The Council, therefore, condemned the nuclear test claimed by the Democratic People's Republic of Korea, finding it in flagrant disregard of the Council's relevant resolutions, and stressed that such a test would bring universal condemnation of the international community and would represent a clear threat to international peace and security.²²

The situation concerning the Democratic Republic of the Congo

By resolution 1533 (2004) of 12 March 2004, the Council reiterated its concern regarding the presence of armed groups and militias in the eastern part of the Democratic Republic of the Congo, which perpetuated a climate of insecurity in the whole region, and noted that the situation in the Democratic Republic of the Congo continued to constitute a threat to international peace and security in the region.²³ By a number of subsequent resolutions, the Council reiterated such a determination.²⁴

¹⁵ Resolution 1527 (2004), ninth preambular paragraph.

¹⁶ Resolutions 1528 (2004), 1572 (2004), 1584 (2005), 1594 (2005), 1600 (2005), 1603 (2005), 1609 (2005), 1632 (2005), 1633 (2005), 1643 (2005), 1652 (2006), 1657 (2006), 1682 (2006), 1708 (2006), 1721 (2006), 1726 (2006), 1727 (2006), 1739 (2007), 1761 (2007), 1763 (2007), 1765 (2007) and 1782 (2007).

¹⁷ Letter dated 4 July 2006 from the Permanent Representative of Japan to the United Nations addressed to the President of the Security Council; and Non-proliferation/Democratic People's Republic of Korea.

¹⁸ Resolution 1695 (2006), third and fourth preambular paragraphs.

¹⁹ *Ibid.*, twelfth preambular paragraph.

²⁰ S/PRST/2006/41.

²¹ Resolution 1718 (2006), third and ninth preambular paragraphs.

²² *Ibid.*, para. 1.

²³ Resolution 1533 (2004), second and seventh preambular paragraphs.

²⁴ Resolutions 1552 (2004), 1555 (2004), 1565 (2004), 1592 (2005), 1596 (2005), 1616 (2005), 1621 (2005), 1628 (2005), 1635 (2005), 1649 (2005), 1654 (2006), 1671 (2006), 1693 (2006), 1698 (2006), 1711 (2006), 1736 (2006), 1742 (2007), 1751 (2007), 1756 (2007), 1768 (2007), 1771 (2007) and 1794 (2007).

The question concerning Haiti

By resolution 1529 (2004) of 29 February 2004, the Council expressed its concern at the deterioration of the political, security and humanitarian situation in Haiti. The Council also expressed its utmost concern at the continuing violence in the country, as well as the potential for a rapid deterioration of the humanitarian situation, and its destabilizing effect on the region. The Council therefore determined that the situation in Haiti constituted a threat to international peace and security, and to stability in the Caribbean, especially through the potential outflow of people to other States in the subregion.²⁵ The Council reiterated that the situation in Haiti continued to constitute a threat to international peace and security by a series of subsequent resolutions.²⁶

By resolution 1542 (2004) of 30 April 2004, noting the existence of challenges to the political, social and economic stability of Haiti, the Council determined that the situation in Haiti continued to constitute a threat to international peace and security in the region.²⁷ By a number of subsequent resolutions, the Council reiterated that determination.²⁸

The situation concerning Iraq

By resolution 1637 (2005) of 8 November 2005, recognizing that international support for security and stability was still essential, the Council determined that the situation in Iraq continued to constitute a threat to international peace and security.²⁹ This determination was reiterated by two subsequent resolutions.³⁰

The situation between Iraq and Kuwait

By resolution 1546 (2004) of 8 June 2004, while welcoming the beginning of a new phase in Iraq's transition to a democratically elected government, the Council recognized that international support for the restoration of stability and security was still essential and therefore determined that the situation in Iraq

continued to constitute a threat to international peace and security.³¹

The situation in Liberia

By resolution 1532 (2004) of 12 March 2004, the Council noted with concern that the actions and policies of the former President of Liberia, Charles Taylor, and other persons, in particular their depletion of Liberian resources and their removal from Liberia and secreting of Liberian funds and property, had undermined Liberia's transition to democracy and the orderly development of its political, administrative and economic institutions and resources. The Council therefore determined that the situation in Liberia constituted a threat to international peace and security in West Africa, in particular to the peace process in Liberia.³² By a number of subsequent resolutions, the Council reaffirmed its determination that the situation in Liberia continued to constitute a threat to international peace and security in the region.³³

By resolution 1638 (2005) of 11 November 2005, the Council, stressing that former President Taylor remained under indictment by the Special Court for Sierra Leone, determined that his return to Liberia would constitute a threat to the peace of Liberia and to international peace and security in the region.³⁴

By resolution 1683 (2006) of 13 June 2006, while welcoming the leadership of the newly elected President, Ellen Johnson Sirleaf, and her efforts to restore peace and security in Liberia, the Council determined that, although significant progress had been made, the situation in Liberia continued to constitute a threat to international peace and security in the region.³⁵ That determination was reaffirmed by the Council in a series of subsequent resolutions.³⁶

²⁵ Resolution 1529 (2004), second, third and ninth preambular paragraphs.

²⁶ Resolutions 1608 (2005), 1658 (2006) and 1702 (2006).

²⁷ Resolution 1542 (2004), tenth preambular paragraph.

²⁸ Resolutions 1576 (2004), 1601 (2005), 1743 (2007) and 1780 (2007).

²⁹ Resolution 1637 (2005), sixteenth and nineteenth preambular paragraphs.

³⁰ Resolutions 1723 (2006) and 1790 (2007).

³¹ Resolution 1546 (2004), first, twelfth and twentieth preambular paragraphs.

³² Resolution 1532 (2004), second and fifth preambular paragraphs.

³³ Resolutions 1579 (2004), 1607 (2005), 1626 (2005), 1647 (2005), 1667 (2006), 1689 (2006), 1694 (2006), 1712 (2006), 1750 (2007), 1753 (2007) and 1777 (2007).

³⁴ Resolution 1638 (2005), fifth preambular paragraph.

³⁵ Resolution 1683 (2006), second and fifth preambular paragraphs.

³⁶ Resolutions 1731 (2006), 1760 (2007) and 1792 (2007).

The situation in the Middle East

By resolution 1636 (2005) of 31 October 2005, the Council, taking note of the findings of the International Independent Investigation Commission, responsible for the investigation of the terrorist bombing in Beirut on 14 February 2005 that killed the former Prime Minister of Lebanon, Rafiq Hariri, the Council reaffirmed that terrorism, in all its forms and manifestations, constituted one of the most serious threats to peace and security. The Council also determined that the terrorist act that killed Mr. Hariri, as well as the act's implications, constituted a threat to international peace and security.³⁷ The Council reaffirmed this determination by resolution 1757 (2007) of 30 May 2007.

By resolution 1701 (2006) of 11 August 2006, the Council, expressing its concern at the continuing escalation of hostilities in Lebanon and Israel since Hizbullah's attack on Israel on 12 July 2006, determined that the situation in Lebanon constituted a threat to international peace and security.³⁸

By resolution 1773 (2007) of 24 August 2007, the Council, reiterating its support for full respect for the cessation of hostilities and the Blue Line in its entirety and condemning all terrorist attacks against the United Nations Interim Force in Lebanon (UNIFIL), determined that the situation in Lebanon continued to constitute a threat to international peace and security.³⁹

The situation in Sierra Leone

By resolution 1562 (2004) of 17 September 2004, the Council, commending the efforts of the Economic Community of West African States towards building peace in the subregion, and encouraging the Mano River Union member States to continue their dialogue aimed at building regional peace and security, determined that the situation in Sierra Leone continued to constitute a threat to international peace and security in the region.⁴⁰ The Council reaffirmed this determination by resolution 1610 (2005) of 30 June 2005.

By resolution 1688 (2006) of 16 June 2006, noting that former President Taylor had been brought before the Special Court for Sierra Leone in Freetown, the Council determined that the continued presence of former President Taylor in the subregion constituted an impediment to stability and a threat to the peace of Liberia and Sierra Leone and to international peace and security in the region.⁴¹

The situation in Somalia

By resolution 1558 (2004) of 17 August 2004, the Council, condemning the continued flow of weapons and ammunition supplies to and through Somalia, in contravention of the arms embargo, and expressing its determination that violators should be held accountable, reiterated the importance of enhancing the monitoring of the arms embargo in Somalia and determined that the situation in Somalia constituted a threat to international peace and security in the region.⁴² By a number of subsequent resolutions, the Council reaffirmed that determination.⁴³

Reports of the Secretary-General on the Sudan

By resolution 1556 (2004) of 30 July 2004, the Council noted with grave concern that up to 200,000 refugees had fled to Chad, constituting a serious burden upon that country, and expressed grave concern at the reported cross-border incursions by Janjaweed militias into Chad. The Council therefore determined that the situation in the Sudan constituted a threat to international peace and security and to stability in the region.⁴⁴ The Council reiterated its determination by a series of subsequent resolutions.⁴⁵

By resolution 1590 (2005) on 24 March 2005, the Council, condemning the continued violations of the N'Djamena Ceasefire Agreement of 8 April 2004 and the Abuja Protocols of 9 November 2004 by all sides in Darfur and the deterioration of the security situation,

³⁷ Resolution 1636 (2005), third and nineteenth preambular paragraphs.

³⁸ Resolution 1701 (2006), second and tenth preambular paragraphs.

³⁹ Resolution 1773 (2007), fourth, tenth and seventeenth preambular paragraphs.

⁴⁰ Resolution 1562 (2004), third and tenth preambular paragraphs.

⁴¹ Resolution 1688 (2006), fourteenth preambular paragraph.

⁴² Resolution 1558 (2004), third, fourth and fifth preambular paragraphs.

⁴³ Resolutions 1587 (2005), 1630 (2005), 1676 (2006), 1724 (2006), 1725 (2006), 1744 (2007), 1766 (2007) and 1772 (2007).

⁴⁴ Resolution 1556 (2004), twentieth and twenty-first preambular paragraphs.

⁴⁵ Resolutions 1564 (2004), 1651 (2005), 1665 (2006), 1672 (2006), 1713 (2006) and 1779 (2007).

determined that the situation in the Sudan continued to constitute a threat to international peace and security.⁴⁶ That determination was reaffirmed by the Council in a number of subsequent resolutions.⁴⁷

By resolution 1769 (2007) of 31 July 2007, reaffirming its concern that the ongoing violence in Darfur might further negatively affect the rest of the Sudan as well as the region, the Council determined that the situation in Darfur, the Sudan, continued to constitute a threat to international peace and security.⁴⁸

Non-proliferation of weapons of mass destruction

By resolution 1540 (2004) of 28 April 2004, the Council, affirming that the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constituted a threat to international peace and security, reaffirmed the need to combat by all means, in accordance with the Charter, threats to international peace and security caused by terrorist acts.⁴⁹ The Council reiterated this determination by resolution 1673 (2006) of 27 April 2006.

Cross-border issues in Africa

By a statement of the President dated 25 March 2004, the Council recognized the need for a comprehensive and composite approach for durable solutions to the complex crises and conflicts in West Africa and considered that the illegal trafficking in arms posed a threat to international peace and security in the region.⁵⁰

Peace consolidation in West Africa

By a statement of the President dated 9 August 2006, the Council, stressing the primary role of each West African Government in peace consolidation and reiterating the importance for all leaders to work together for peace and security in the region, considered that illicit trafficking in small arms and

light weapons still posed a threat to international peace and security in the region.⁵¹

Protection of civilians in armed conflict

By resolution 1674 (2006) of 28 April 2006, the Council noted that the deliberate targeting of civilians and other protected persons, and the commission of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict, might constitute a threat to international peace and security, and reaffirmed its readiness to consider such situations and, where necessary, to adopt “appropriate steps”.⁵² That determination was reaffirmed by the Council by resolution 1738 (2006) of 23 December 2006.

Threats to international peace and security caused by terrorist acts

By several resolutions and statements by the President, the Council reaffirmed its determination that terrorism, in all its forms and manifestations, constituted one of the most serious threats to international peace and security.⁵³

By a series of resolutions and statements by the President, adopted in relation to specific terrorist acts committed in the period under review, the Council condemned such attacks in the strongest terms and declared that it regarded such acts, like any act of terrorism, as threats to international peace and security.⁵⁴

⁴⁶ Resolution 1590 (2005), eleventh and twenty-third preambular paragraphs.

⁴⁷ Resolutions 1591 (2005), 1593 (2005), 1627 (2005), 1663 (2006), 1679 (2006), 1706 (2006), 1709 (2006), 1714 (2006), 1755 (2007) and 1784 (2007).

⁴⁸ Resolution 1769 (2007), fifteenth and sixteenth preambular paragraphs.

⁴⁹ Resolution 1540 (2004), first and fourteenth preambular paragraphs.

⁵⁰ S/PRST/2004/7.

⁵¹ S/PRST/2006/41.

⁵² Resolution 1674 (2006), para. 26.

⁵³ Resolutions 1526 (2004), 1535 (2004), 1566 (2004), 1617 (2005), 1624 (2005), 1644 (2005), 1735 (2006) and 1787 (2007). See also S/PRST/2004/26, S/PRST/2004/37, S/PRST/2005/3, S/PRST/2005/16, S/PRST/2005/34, S/PRST/2005/64, S/PRST/2006/56 and S/PRST/2007/1.

⁵⁴ Resolutions 1530 (2004), 1611 (2005) and 1618 (2005). See also S/PRST/2004/14, S/PRST/2004/31, S/PRST/2005/36, S/PRST/2005/45, S/PRST/2005/53, S/PRST/2005/55, S/PRST/2006/18, S/PRST/2006/30, S/PRST/2007/10, S/PRST/2007/11, S/PRST/2007/26, S/PRST/2007/32, S/PRST/2007/36, S/PRST/2007/39, S/PRST/2007/45 and S/PRST/2007/50.

B. Discussion relating to Article 39

*Items relating to the Democratic People's Republic of Korea*⁵⁵

At its 5490th meeting, on 15 July 2006, the Council unanimously adopted resolution 1695 (2006), by which it expressed grave concern at the launch of ballistic missiles by the Democratic People's Republic of Korea, given the potential of such systems to be used as a means to deliver nuclear, chemical or biological payloads. During the debate that followed the vote, the representatives of Japan and the United States welcomed the unanimous adoption of the resolution, stressing that the ballistic missiles launched by the Democratic People's Republic of Korea constituted a "direct threat" to international peace and security.⁵⁶ The representative of France noted that the resolution constituted a significant development in the Council's efforts to combat the proliferation of weapons of mass destruction and their means of delivery, which posed a threat to international peace and security.⁵⁷ The representative of the Republic of Korea insisted that the launches undermined peace and stability in North-East Asia and adversely affected inter-Korean relations.⁵⁸ The representative of the Democratic People's Republic of Korea rejected the newly adopted resolution, emphasizing that the Council had no authority to debate the missile launch exercise which was a "routine military exercise" designed to increase the country's capacity for self-defence.⁵⁹

At its 5551st meeting, on 14 October 2006, the Council unanimously adopted resolution 1718 (2006) by which it expressed profound concern at the increased tension generated by the Democratic People's Republic of Korea's alleged test of a nuclear weapon. In the subsequent debate, several speakers agreed that the tests conducted by the Democratic People's Republic of Korea posed a threat to international peace and security.⁶⁰ Recalling resolution

1695 (2006), the representative of the United States expressed his disappointment that the Democratic People's Republic of Korea chose to answer the Council's demands with "yet another direct threat to international peace and security", provoking an international crisis and denying its people an opportunity for a better life. He expressed satisfaction with the Council's decision to condemn the launches, which in his opinion signalled to everyone that the Council was prepared to meet threats to international security "with swift resolve".⁶¹ The representative of the United Kingdom said that the test had been carried out in violation of the Treaty on the Non-Proliferation of Nuclear Weapons and resolution 1695 (2006).⁶² The representative of the Russian Federation recalled his Government's position that any nuclear experiment conducted by the Democratic People's Republic of Korea could complicate the prospects for a settlement of the nuclear problem on the Korean peninsula, which was already "fraught with threats to peace, security and stability". He spoke in favour of a strong response on the part of the Council to the "serious challenge to the entire international community" posed by the actions of the Democratic People's Republic of Korea, but cautioned that the response should be "carefully vetted and targeted to prevent further escalation of tension".⁶³ The representative of Japan said that, while the resolution contained strong measures, its goal was to remove the threat to international peace and security by ensuring the discontinuation of the Democratic People's Republic of Korea's nuclear testing and ballistic missile launchings.⁶⁴ In response, the representative of the Democratic People's Republic of Korea rejected the newly adopted resolution, characterizing it as "unjustifiable". He expressed disappointment at the Council's inability to express a "word of concern" to the United States, which threatened his country with a nuclear pre-emptive attack. He asserted that the Democratic People's Republic of Korea's nuclear test was "entirely attributable to the United States nuclear threat, sanctions and pressure".⁶⁵

⁵⁵ Letter dated 4 July 2006 from the Permanent Representative of Japan to the United Nations addressed to the President of the Security Council; and Non-proliferation/Democratic People's Republic of Korea.

⁵⁶ S/PV.5490, p. 2 (Japan); and p. 4 (United States).

⁵⁷ *Ibid.*, p. 7.

⁵⁸ *Ibid.*, p. 9.

⁵⁹ *Ibid.*, p. 8.

⁶⁰ S/PV.5551, p. 2 (United States); p. 5 (United Kingdom); p. 7 (Japan); and p. 8 (Republic of Korea).

⁶¹ *Ibid.*, pp. 2-3.

⁶² *Ibid.*, p. 5.

⁶³ *Ibid.*

⁶⁴ *Ibid.*, p. 7.

⁶⁵ *Ibid.*, pp. 7-8.

The situation in the Middle East

At its 5028th meeting, on 2 September 2004, the Council adopted resolution 1559 (2004), by which it expressed concern at the continued presence of armed militias in Lebanon and called upon all remaining foreign forces to withdraw from Lebanon. Following the vote, the representative of France noted that Lebanon's internal stability and the stability of the region had been "repeatedly and seriously threatened", and stressed the need for the withdrawal of foreign forces from Lebanon and the dismantling of Lebanese and non-Lebanese militias.⁶⁶ The representative of Algeria argued however that the situation in Lebanon did not "appear to constitute a threat to international peace and security" and, therefore, did not require a decision of the Council. He opined that it was Israel that, because of its "policy of occupation and colonization of Arab lands", constituted an "incontrovertible threat to international peace and security" which required urgent consideration and measures by the Council.⁶⁷ The representative of Pakistan pointed out that the newly adopted resolution was not consistent with the Council's functions and responsibilities under Article 39 of the Charter, since it failed to establish evidence of any "urgent threat to peace". He stressed that the Council should address the "real threat" to peace in the Middle East arising from the occupation of Palestinian and Arab territories.⁶⁸ The representative of Angola expressed the hope that the adoption of the resolution would not have "undesirable and unexpected effects", since the situation in Lebanon did not represent an immediate threat to peace and security.⁶⁹

At its 5117th meeting, on 28 January 2005, the Council unanimously adopted resolution 1583 (2005), by which, expressing concern at the persistence of tensions and violence along the Blue Line, as well as at the potential for conflict escalation, it renewed the mandate of UNIFIL. During the subsequent debate, the representative of the United States emphasized that the Lebanese Government's failure to deploy its armed forces in sufficient numbers to ensure a calm environment throughout its territory posed a "grave threat to peace and security".⁷⁰ The representative of

Greece noted that the unanimous adoption of the resolution was a sign of the Council's feeling that the situation in Lebanon was still threatening peace and security in the area.⁷¹

At its 5489th meeting, on 14 July 2006, the Council discussed a new outbreak of hostilities between Lebanon and Israel on 12 July 2006. During the debate, a number of speakers called for the immediate cessation of hostilities, emphasizing the grave suffering of the civilian population and the infrastructure damages.⁷² The representative of the Russian Federation voiced concern that the border incident which had triggered the crisis was escalating into a "major military conflagration" that could have "grave consequences" for Lebanon, the Middle East region as a whole and international peace. While condemning the kidnapping of Israeli soldiers and the firing of several rockets from Lebanese territory across the Blue Line, he stated the belief that Israel's military action was a disproportionate and inappropriate use of force that threatened "peace and security throughout the region".⁷³ Similarly, the representatives of the United Kingdom and Denmark said that the worsening of the relation between Israel and Lebanon posed a threat to security in the region.⁷⁴ The representative of Slovakia called on both sides to do more and demonstrate clear political will and a commitment to end the protracted conflict, which "threatens international peace and security".⁷⁵

At its 5508th meeting, on 8 August 2006, the Council continued its discussion of the situation in the Middle East. The representative of Israel emphasized the necessity of putting an end to the hostilities, and raised the question whether the Council and the international community could adopt a course of action which would end the threat that Hizbullah and its sponsors posed to the "peoples of Israel and Lebanon and to the region as a whole".⁷⁶ In response, the representative of Qatar affirmed that many factors had allowed terrorists to pursue acts that threatened

⁶⁶ S/PV.5028, p. 4.

⁶⁷ *Ibid.*, p. 5.

⁶⁸ *Ibid.*, p. 6.

⁶⁹ *Ibid.*, p. 7.

⁷⁰ S/PV.5117, p. 3.

⁷¹ *Ibid.*, p. 5.

⁷² S/PV.5489, p. 9 (Ghana, Argentina); p. 10 (Qatar); p. 11 (China); pp. 11-12 (Japan); p. 13 (Congo); pp. 13-14 (United Republic of Tanzania); p. 14 (Peru); p. 15 (Slovakia); pp. 16-17 (Greece); and p. 18 (France).

⁷³ *Ibid.*, p. 7.

⁷⁴ *Ibid.*, p. 12 (United Kingdom); and p. 15 (Denmark).

⁷⁵ *Ibid.*, p. 16.

⁷⁶ S/PV.5508, p. 4.

international peace and security, precisely because of the lack of implementation of Security Council resolutions, particularly on the issue of Palestine. He therefore emphasized the necessity for the cessation of hostilities to be established by a resolution of the Council, and not imposed exclusively from an Israeli perspective.⁷⁷

At its 5584th meeting, on 12 December 2006, the Council considered the latest report of the Secretary-General on the situation in the Middle East.⁷⁸ During the debate, the representative of Qatar expressed his regret that the Council dealt with issues of “lesser gravity and importance with unwavering seriousness and resolve”, but failed to give the same importance to the “dangerous question” of the Middle East, which posed an “ominous threat to the region as a whole”. He urged the Council to play an active role in finding a “just and permanent” solution to the Palestinian question and the Arab-Israeli conflict.⁷⁹ The representative of Israel pointed out that the “denial of the Holocaust” by the Islamic Republic of Iran, its “pursuit of nuclear weaponry, and its strategic backing of Hamas and Hizbullah” threatened peace and security. He expressed hope that the moderates in the region understood what needed to be done for peace, and where the “real threat” lay.⁸⁰ The representative of Slovakia underlined that national dialogue should continue in Lebanon with the aim, among others, of disarming militia, which represented a “constant threat to the stability and security of Lebanon and its neighbours”.⁸¹ The representative of the Congo observed that there was no military solution to the conflict in the Middle East, whose ramifications threatened to engulf an “already destabilized region”. He called for the convening of an international conference aimed at revitalizing the prospect for a two-State solution.⁸² The representative of Ghana, echoing previous speakers, declared that the Middle East “unquestionably” constituted the most “volatile region in the world and, by implication, the major threat to international peace and security”.⁸³

⁷⁷ Ibid., p. 7.

⁷⁸ S/2006/956.

⁷⁹ S/PV.5584, p. 7.

⁸⁰ Ibid., pp. 10-11.

⁸¹ Ibid., p. 14.

⁸² Ibid., p. 20.

⁸³ Ibid., p. 22.

The situation in Myanmar

The 5526th meeting of the Council was held on 15 September 2006 in response to the request by the representative of the United States to include the item entitled “The situation in Myanmar” in the agenda.⁸⁴ Prior to a vote on the adoption of the agenda, the representative of China, supported by the representative of Qatar, raised a number of objections, highlighting the fact that neither the direct neighbours of Myanmar nor the overwhelming majority of Asian countries recognized the situation in Myanmar as a threat to regional peace and security. He suggested that requesting the Council to discuss an issue which, by nature, pertained to the internal affairs of a country not only exceeded the mandate given by the Charter to the Council, but also undermined the Council’s authority and legality. He therefore concluded that, as long as the situation in Myanmar did not pose “a threat to international or regional peace and security”, China would be “unequivocally against” including the question of Myanmar in the agenda of the Security Council.⁸⁵ In response, the representative of the United States recalled his letter to the Council dated 1 September 2006,⁸⁶ in which he pointed out that the deteriorating humanitarian situation in Myanmar was likely to endanger the maintenance of international peace and security. He further noted that, since the adoption of resolution 688 (1991) dealing with the refugee flows from Iraq after the first Gulf war, the Council had considered similar matters as threats to international peace and security, which was also the case for the situation in Myanmar.⁸⁷

At its 5619th meeting, on 12 January 2007, the Council debated the adoption of a draft resolution submitted by the United States and the United Kingdom regarding the deterioration of the situation in Myanmar.⁸⁸ Prior to the vote, the representatives of China and Qatar emphasized that the developments in Myanmar were internal matters and did not constitute a threat to international peace and security, pointing out that Myanmar’s immediate neighbours, the Association of Southeast Asian Nations countries, and a majority of the Asia-Pacific countries did not regard it as a threat.⁸⁹

⁸⁴ See S/2006/742.

⁸⁵ S/PV.5526, pp. 2-3 (China); and p. 3 (Qatar).

⁸⁶ Not issued as a document of the Security Council.

⁸⁷ S/PV.5526, pp. 3-4.

⁸⁸ S/2007/14.

⁸⁹ S/PV.5619, p. 3 (China); and p. 5 (Qatar).

Similarly, the representative of Indonesia indicated that, while the events in Myanmar inflicted suffering on the people of Myanmar, the situation did not constitute a threat to international peace and security.⁹⁰ The representative of South Africa warned that his country would vote against the draft resolution because the issues it addressed did not fit with the Council's mandate under the Charter.⁹¹ Likewise, the representative of the Russian Federation stressed that, without denying that the country had been facing certain problems, particularly in the socioeconomic and humanitarian areas, the situation in Myanmar did not pose any threat to international or regional peace.⁹² Following the rejection of the draft resolution owing to the negative vote of two permanent members of the Council, the representative of the United States said that the situation in Myanmar posed a risk to peace and security beyond the country's borders. He argued that the draft resolution would have contributed to stability in the region by providing a clear support for the Secretary-General's good offices mission.⁹³ Sharing this viewpoint, the representative of the United Kingdom asserted that the situation in Myanmar represented "a threat to regional peace and security" and to the security of the people of Myanmar.⁹⁴ The representative of Slovakia expressed concern about the deteriorating situation in the country, including the massive violations of human rights, which, if not addressed adequately, could grow into an "intra-State conflict with consequences for the entire region".⁹⁵ In response, the representative of Myanmar stated that his country did not pose any threat to international peace and security and that the adoption of the draft resolution would have exceeded the Council's mandate, undermining its authority and legality, and creating a dangerous precedent.⁹⁶

At its 5753rd meeting, on 5 October 2007, the Council heard a briefing by the Secretary-General and

⁹⁰ Ibid., p. 4.

⁹¹ Ibid., p. 3.

⁹² Ibid., p. 6.

⁹³ Ibid., pp. 6-7.

⁹⁴ Ibid., p. 7.

⁹⁵ Ibid., p. 8.

⁹⁶ Ibid., p. 10. Similarly, by two letters dated 29 September 2006 and 8 December 2006, respectively, the representative of Cuba, on behalf of the Non-Aligned Movement, reaffirmed that the Movement did not consider the situation in Myanmar as posing a threat to international peace and security (see S/2006/781 and S/2006/969).

by his Special Envoy on his latest mission to Myanmar. During the ensuing debate, the representative of the United Kingdom expressed concern at the "continued human rights abuses" committed by the Government of Myanmar and opined that the situation in the country was not just an affront to the world but also "a threat to stability beyond [its] borders".⁹⁷ The representative of China noted that the situation in Myanmar was calming down thanks to the efforts of all parties and the international community, and said that the situation did not pose "any threat" to international or regional peace and security.⁹⁸ The representative of Peru noted however that the increase in the number of internally displaced persons and refugees was creating a "serious situation of instability", which threatened security in the region.⁹⁹ In response, affirming that the situation had returned to normalcy, the representative of Myanmar stated that his Government would continue its policy of national reconciliation and that, despite "recent tragic events", the situation in Myanmar was not a "threat either to regional or to international peace and security".¹⁰⁰

At its 5777th meeting, on 13 November 2007, after the Council heard another briefing from the Special Envoy of the Secretary-General to Myanmar, the representative of China reiterated that the "Myanmar issue" was an internal affair and did not pose any threat to international or regional peace and security.¹⁰¹ The representative of Peru warned however that the increasing number of displaced and refugees was leading to a situation of instability that could threaten stability within the country and the region.¹⁰² The representative of Myanmar maintained that peace and stability in his country had been restored and stressed that, unlike other situations in the world that threatened peace and security which deserved the "undivided attention" of the Council, Myanmar did not pose "any threat" to regional or international peace and security.¹⁰³

Africa's food crisis as a threat to peace and security

At its 5220th meeting, on 30 June 2005, the Council heard a briefing by the Executive Director of

⁹⁷ S/PV.5753, p. 6.

⁹⁸ Ibid., p. 9.

⁹⁹ Ibid., p. 16.

¹⁰⁰ Ibid., pp. 17-18.

¹⁰¹ S/PV.5777, p. 10.

¹⁰² Ibid., p. 14.

¹⁰³ Ibid., p. 18.

the World Food Programme on the food crisis in Africa, who reported on a range of humanitarian issues, specifically as they affected peace and security in the continent. In his opinion, the greatest humanitarian crisis in the world was posed by the erosion of the social and political fabric in southern Africa due to a “lethal mix of AIDS, recurring drought and failing governance and capacity”. He further stated that, in much of Africa, the prevalence of hunger was an “accurate barometer” for the level of social instability and that hunger could be both a cause and effect of political conflict.¹⁰⁴ During the ensuing debate, sharing the concerns regarding the triple threat of food insecurity, HIV/AIDS, and weakened governance in many African countries, Council members welcomed the opportunity to address the issue and spoke of the correlation between food security and peace and security in Africa. The representative of Romania, although noting that “humanitarian challenges” had not been formally taken up by the Council, welcomed the opportunity for the Council itself to be informed of and to examine those situations since they could constitute “ominous threats to regional peace, security and stability”.¹⁰⁵ Noting that the failure to achieve food security made peaceful societies more vulnerable to conflicts, the representative of Brazil stated that the international community needed to tackle the “deep-rooted socioeconomic causes of conflicts and humanitarian crises” in order to prevent the emergence, spread and recurrence of conflicts.¹⁰⁶ Echoing this statement, the representative of the United Kingdom expressed the view that inadequate distribution of food was a well-known cause of instability and could contribute to increasing the potential for conflict. He therefore opined that while the underlying causes of hunger were “very complex”, there was “no doubt” that it had “links both to governance and to peace and security”, which were the Council’s principal concern.¹⁰⁷ The representative of China said that the Council, as the body with the primary responsibility for international peace and security, should “adequately” recognize the direct relationship between food crises and conflicts in Africa and take effective measures to eliminate hunger and poverty in order to genuinely achieve peace and stability in Africa.¹⁰⁸ The representative of Greece emphasized that,

¹⁰⁴ S/PV.5220, pp. 2-4.

¹⁰⁵ Ibid., p. 9.

¹⁰⁶ Ibid., p. 8.

¹⁰⁷ Ibid., p. 9.

¹⁰⁸ Ibid., p. 13.

like any event or process leading to large-scale death or the lessening of life’s opportunities, and undermining States as the basic unit of the international system, hunger constituted a “threat to international security”.¹⁰⁹ The representative of the United States emphasized that the challenges in Africa represented a compelling call for international cooperation to support the continent’s efforts to achieve lasting progress, peace and security. She drew attention to a number of specific situations, such as those in Ethiopia, Liberia, the Niger, Sierra Leone, the Sudan and Zimbabwe, where hunger continued to threaten the peace and security of the African continent.¹¹⁰

Children and armed conflict

At its 4898th meeting, on 20 January 2004, the Council considered the latest report of the Secretary-General on children and armed conflict.¹¹¹ During the debate, the representative of the Russian Federation noted that many civil and international conflicts affected children, a phenomenon of such great magnitude that it could be viewed as “a new threat to peace and security in individual regions”.¹¹²

At the 5573rd meeting, on 28 November 2006, the representative of Egypt noted that the Council should not deal with the situations covered in the report of the Secretary-General on children and armed conflict,¹¹³ as such situations were not on the agenda of the Council and did not constitute a threat to international peace and security. Instead, he declared, such matters fell under the responsibility of the Third Committee of the General Assembly.¹¹⁴

Letter dated 5 April 2007 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council

At its 5663rd meeting, on 17 April 2007, the Council considered the security implications of climate change, having before it a concept paper prepared by the United Kingdom.¹¹⁵ During the debate, it was generally acknowledged that climate change presented

¹⁰⁹ Ibid.

¹¹⁰ Ibid., p. 15.

¹¹¹ S/2003/1053.

¹¹² S/PV.4898, p. 13.

¹¹³ S/2006/826.

¹¹⁴ S/PV.5573 (Resumption 1), p. 21.

¹¹⁵ S/2007/186, annex.

a serious global challenge, and most speakers called for international cooperation to tackle the problem in a holistic and preventive manner.

A number of speakers affirmed that the Council had the responsibility to discuss the issue, as climate change presented a potential threat to international peace and security.¹¹⁶ The representatives of the United Kingdom, Belgium and Germany, among others, explicitly pointed at the clear link between climate change and the need for conflict prevention.¹¹⁷ The representative of Germany further added that, although the Council usually dealt with more imminent threats to international peace and security than those caused by climate change, “less obvious and more distant drivers of conflict” should not be neglected.¹¹⁸ The representative of Belgium pointed out that the Council’s “conventional security policies” were still often based on “obsolete” threat assessments and were more geared to managing crises than preventing them, making security policies exclusively based on national sovereignty “less and less appropriate”.¹¹⁹ The representative of Papua New Guinea highlighted that the dangers that small islands and their populations faced were no less serious than those faced by countries and people “threatened by guns and bombs”.¹²⁰

By contrast, a number of speakers held the view that the Council was not the right forum in which to address the implications of climate change on security.¹²¹ They contended that there was no direct link between climate change and security, stressing that both energy and climate change were fundamentally development issues. For instance, the representative of China, although recognizing that climate change might

have certain security implications, stated that it was “in essence” an issue of sustainable development.¹²² The representative of India stated that climate change could not be considered a threat in the context of Article 39 of the Charter.¹²³ Similarly, the representative of Venezuela (Bolivarian Republic of) emphasized that the Council was not the appropriate body to discuss the subject of climate change, insisting on a strict interpretation of what constituted “a threat to international peace and security”, in accordance with Article 39 of the Charter.¹²⁴

Non-proliferation (Islamic Republic of Iran)

At its 5500th meeting, on 31 July 2006, the Council adopted resolution 1696 (2006), by which it expressed its concern at the proliferation risks presented by the nuclear programme of the Islamic Republic of Iran and its determination to prevent an aggravation of the situation. During the debate following the adoption of the resolution, the representative of the United States commended the Council for taking “clear and firm” action, noting that the pursuit of nuclear weapons by the Islamic Republic of Iran constituted a direct threat to international peace and security, which demanded a “clear statement from the Council in the form of a binding resolution”.¹²⁵ In response, the representative of the Islamic Republic of Iran pointed out that his country’s nuclear programme did not pose a threat to international peace and security, which made the Council’s dealing with the issue “unwarranted and void of any legal basis or practical utility”.¹²⁶

At its 5612th meeting, on 23 December 2006, the Council unanimously adopted resolution 1737 (2006), by which, expressing concern about the Islamic Republic of Iran’s nuclear programme and its failure to comply with resolution 1696 (2006), it imposed a number of measures against the Islamic Republic of Iran. During the debate preceding the vote, the representative of the United States reiterated that the pursuit of a nuclear weapon capability by the Islamic Republic of Iran constituted a “grave threat” and demanded a clear statement from the Council.¹²⁷ Speaking after the vote, the representative of Japan noted that his country viewed the Islamic

¹¹⁶ S/PV.5663, p. 2 (United Kingdom); p. 4 (Slovakia, Italy); p. 5 (Belgium); p. 7 (Ghana); pp. 11-12 (France); and p. 19 (Germany, on behalf of the European Union and associated countries); S/PV.5663 (Resumption 1), pp. 14-15 (Denmark).

¹¹⁷ S/PV.5663, p. 2 (United Kingdom); p. 6 (Belgium); and p. 19 (Germany, on behalf of the European Union and associated countries).

¹¹⁸ *Ibid.*, p. 19.

¹¹⁹ *Ibid.*, p. 5.

¹²⁰ *Ibid.*, p. 28.

¹²¹ *Ibid.*, p. 10 (Qatar); p. 11 (France); pp. 12-13 (China); p. 14 (Indonesia); p. 16 (South Africa); p. 17 (Russian Federation); and p. 24 (Pakistan); S/PV.5663 (Resumption 1), p. 5 (Egypt); p. 10 (Venezuela, Bolivarian Republic of); p. 12 (Sudan); p. 21 (India); and p. 27 (Cuba, on behalf of the Non-Aligned Movement).

¹²² S/PV.5663, p. 12.

¹²³ S/PV.5663 (Resumption 1), p. 21

¹²⁴ *Ibid.*, p. 10.

¹²⁵ S/PV.5500, p. 3.

¹²⁶ *Ibid.*, p. 9.

¹²⁷ S/PV.5612, p. 3.

Republic of Iran's expansion of its enrichment — and reprocessing — related activities as an issue that could affect its own “national peace and security and that of the international community”. He stressed that the proliferation of nuclear and other weapons of mass destruction, along with their means of delivery, was a clear and present global challenge posing a great threat and should, therefore, be handled with “firm determination”.¹²⁸ The representative of the Islamic Republic of Iran deplored the adoption of the resolution, insisting that the Council should instead address the actual threat to international peace and security posed by Israel.¹²⁹

At its 5647th meeting, on 24 March 2007, the Council unanimously adopted resolution 1747 (2007) by which, reiterating concern over the proliferation risks posed by the nuclear programme of the Islamic Republic of Iran and the country's continuing failure to comply with the Council's resolutions, it strengthened the measures imposed against the Islamic Republic of Iran. During the discussion preceding the vote, the representative of South Africa noted that the Council should remain within its “mandate of addressing threats to international peace and security”. He added that if the sponsors of the draft resolution were convinced that the Iranian programme represented a threat to international peace, then the Council should have been asked to take a decision on a draft resolution that would have concentrated on that, and not to act as if the Government of the Islamic Republic of Iran itself posed a threat to international peace and security.¹³⁰ After the vote, the representative of the United States commended the Council on taking action against what was “clearly” a grave threat to international peace and security.¹³¹ The representative of the Islamic Republic of Iran argued that, by adopting the resolution, the Council was being “abused” to take an “unlawful, unnecessary and unjustifiable action” against his Government's peaceful nuclear programme, which presented no threat to international peace and security and therefore fell outside the Council's Charter-based mandate.¹³²

Non-proliferation of weapons of mass destruction

¹²⁸ Ibid., pp. 6-7.

¹²⁹ Ibid., pp. 8-9.

¹³⁰ S/PV.5647, p. 4.

¹³¹ Ibid., p. 8.

¹³² Ibid., p. 14.

At its 4950th meeting, on 22 April 2004, the Council considered a draft resolution on the non-proliferation of weapons of mass destruction.¹³³ During the debate, several speakers agreed that the acquisition of weapons of mass destruction by non-State actors posed a serious threat to international peace and security and pointed to the fact that the existing non-proliferation regimes did not adequately address the issue.¹³⁴ A number of speakers expressed the hope that the draft resolution would be adopted by the Council,¹³⁵ while several other speakers said that more consultations should be held before a decision was made.¹³⁶ A discussion arose regarding the opportunity for the Council to adopt the draft resolution under Chapter VII of the Charter. The representative of France pointed out that there were “widespread misgivings” about the reference to Chapter VII of the Charter in the draft resolution. He insisted that the reference did not imply that the Council would use force to ensure the implementation of the draft resolution; rather it served as a basis for the Council's consideration of the issue of proliferation of weapons of mass destruction as a threat to international peace and security.¹³⁷ Similarly, the representative of the United Kingdom stated that the Council had a “responsibility” to respond to what he labelled as a threat to international peace and security. He further

¹³³ Not issued as a document of the Security Council.

¹³⁴ S/PV.4950, pp. 2-3 (Philippines); pp. 3-5 (Brazil); pp. 5-6 (Algeria); pp. 6-8 (Spain); pp. 8-9 (France); pp. 9-10 (Angola); pp. 11-12 (United Kingdom); pp. 17-18 (United States); pp. 18-19 (Germany); pp. 19-20 (Canada); pp. 20-21 (New Zealand); pp. 22-23 (South Africa); pp. 23-24 (India); p. 25 (Singapore); pp. 25-27 (Ireland, on behalf of the European Union and associated countries); p. 27 (Sweden); pp. 28-29 (Switzerland); pp. 30-31 (Cuba); pp. 31-32 (Indonesia); and pp. 33-34 (Syrian Arab Republic); S/PV.4950 (Resumption 1), pp. 2-3 (Egypt); pp. 3-4 (Malaysia, on behalf of the Non-Aligned Movement); p. 7 (Australia); pp. 8-9 (Republic of Korea); pp. 9-10 (Argentina); pp. 10-11 (Jordan); pp. 11-12 (Liechtenstein); pp. 12-13 (Nicaragua); pp. 14-15 (Nigeria); pp. 15-16 (Albania); pp. 16-17 (Namibia); and pp. 17-18 (Thailand).

¹³⁵ See, for example, S/PV.4950, pp. 2-3 (Philippines); pp. 3-5 (Brazil); pp. 6-8 (Spain); and pp. 27-28 (Japan).

¹³⁶ See, for example, S/PV.4950, p. 20 (Peru); pp. 32-33 (Islamic Republic of Iran); and pp. 33-34 (Syrian Arab Republic); S/PV.4950 (Resumption 1); pp. 3-4 (Malaysia, on behalf of the Non-Aligned Movement); and pp. 13-14 (Nepal).

¹³⁷ S/PV.4950, pp. 8-9.

opined that the invocation of Chapter VII of the Charter was justifiable, considering that the Council was dealing with an urgent and clear threat to peace and security where it alone could act with the necessary speed and authority.¹³⁸ In contrast, the representative of Pakistan affirmed that there was “no justification” for the adoption of the draft resolution under Chapter VII of the Charter, because the threat of proliferation of weapons of mass destruction by non-State actors, while real, was not imminent, and thus did not pose a threat to peace.¹³⁹ In response, the representative of the United States declared that the draft resolution was placed under Chapter VII of the Charter in order to send an “important political message” regarding the seriousness with which the Council viewed that threat to international peace and security, and emphasized that the draft resolution was not about enforcement.¹⁴⁰ A number of representatives agreed with the necessity of totally eliminating weapons of mass destruction.¹⁴¹

At its 4956th meeting, on 28 April 2004, the Council unanimously adopted resolution 1540 (2004), which addressed the threat posed by non-State actors’ acquisition and development of weapons of mass destruction, under Chapter VII of the Charter. During the debate that followed, the majority of speakers welcomed the adoption of the resolution, as a legitimate and decisive response by the Council to a clear threat to international peace and security.¹⁴²

Reports of the Secretary-General on the Sudan

At its 5082nd meeting, on 19 November 2004, the Council unanimously adopted resolution 1574 (2004), by which it expressed its deep concern at the growing insecurity and violence in Darfur and stressed the importance of progress towards resolving the situation in the region. During the debate that followed, the representative of the United Kingdom noted that

the situation in Darfur remained a “threat to international security and stability in the region”, and urged the Council to remain seized of the issue and “be ready to take tougher action” if and when this was needed.¹⁴³ Noting that peace in the Sudan would not be complete without a political settlement for Darfur and voicing concern over the appalling humanitarian tragedy that the conflict had caused, the representative of France asserted that the situation posed a threat to international peace and security. He cautioned that the climate of violence and impunity reigning in Darfur further contributed to instability.¹⁴⁴

At the 5520th meeting, on 11 September 2006, the representative of Japan voiced concern over the worsening security situation on the ground in Darfur and the “well-documented atrocities and large-scale humanitarian disaster”. He opined that the situation continued to create conditions that could lead to “serious consequences” that threatened peace and security in the entire subregion.¹⁴⁵ The representative of Qatar pointed out that, although the Darfur Peace Agreement had been signed by the Government of the Sudan, some parties had refused to sign it. He noted that because of those factions violence had resumed, especially on the borders with Chad, posing “a threat to peace and security in Darfur and throughout the region”.¹⁴⁶

At its 5528th meeting, on 18 September 2006, the Council heard a briefing on the progress made in implementing the Comprehensive Peace Agreement in the Sudan. During the subsequent debate, the representative of Japan expressed the view that, while the resurgence of activities by armed groups in southern Sudan posed a serious threat to security in the region, the agreement on the cessation of hostilities signed by the Government of Uganda and the Lord’s Resistance Army was a positive step in the direction of improving security in southern Sudan.¹⁴⁷ The representative of Slovakia welcomed the progress made in implementing the Comprehensive Peace Agreement, but expressed concern at the deadlock concerning the status of the Abyei area, which continued to undermine the Agreement and threatened international peace and security. He further called on the Government of National Unity to resolve the issue

¹³⁸ Ibid., pp. 11-12.

¹³⁹ Ibid., p. 15.

¹⁴⁰ Ibid., p. 17.

¹⁴¹ S/PV.4950, pp. 33-34 (Syrian Arab Republic); S/PV.4950 (Resumption 1), pp. 3-4 (Malaysia, on behalf of the Non-Aligned Movement); pp. 4-5 (Mexico); pp. 6-7 (Norway); pp. 14-15 (Nigeria); pp. 16-17 (Namibia); and pp. 17-18 (Thailand).

¹⁴² S/PV.4956, p. 2 (France); p. 5 (United States); p. 6 (Russian Federation); p. 7 (Algeria, United Kingdom); p. 8 (Spain); p. 9 (Romania, Philippines); and p. 10 (Germany).

¹⁴³ S/PV.5082, p. 4.

¹⁴⁴ Ibid., p. 12.

¹⁴⁵ S/PV.5520, p. 17.

¹⁴⁶ Ibid., pp. 18-19.

¹⁴⁷ S/PV.5528, p. 12.

of the demarcation between the north and the south as soon as possible.¹⁴⁸

Small arms

At the 4896th meeting of the Council, on 19 January 2004, a number of representatives commented on the fact that the proliferation of illicit small arms and light weapons posed a threat to international peace and security.¹⁴⁹ The representative of Colombia wondered whether the Security Council could deal with the issue of small arms under Chapter VII of the Charter in the same way it had used resolution 1373 (2001) to fight terrorism, considering that the illicit trade in small arms and light weapons represented “an equal or even greater threat to international peace and security” and caused massive

destruction.¹⁵⁰ The representative of Sierra Leone argued that, considering the threat to international peace and security posed by the illicit trade in small arms, the Council should assume responsibility in removing such a threat by going “beyond” its presidential statements and rather seeking other means of enforcing its arms embargoes.¹⁵¹

At the 5127th and 5390th meetings, on 17 February 2005 and 20 March 2006, respectively, several representatives reiterated that the illicit traffic of small arms posed a threat to international peace and security.¹⁵²

¹⁴⁸ Ibid., p. 14.

¹⁴⁹ S/PV.4896, p. 12 (Spain); p. 17 (Angola); p. 18 (Algeria); p. 24 (Republic of Korea); p. 28 (South Africa); and p. 31 (Colombia); S/PV.4896 (Resumption 1), p. 4 (Peru); pp. 12-13 (Sierra Leone); and p. 15 (Costa Rica).

¹⁵⁰ S/PV.4896, p. 29.

¹⁵¹ S/PV.4896 (Resumption 1), p. 12.

¹⁵² S/PV.5127, p. 10 (United Republic of Tanzania); p. 17 (Algeria); p. 25 (Canada); and p. 30 (Peru); S/PV.5127 (Resumption 1), p. 6 (Turkey); pp. 7-8 (Indonesia); and p. 12 (Norway); S/PV.5390, p. 4 (Peru); p. 9 (United Kingdom); p. 12 (Greece); p. 19 (Slovakia); p. 22 (Argentina); p. 24 (Guyana); p. 27 (Sierra Leone); and p. 32 (Brazil).

Part II

Provisional measures to prevent the aggravation of a situation in accordance with Article 40 of the Charter

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations 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 adopted one resolution explicitly citing Article 40 of the Charter, in connection with the issue of non-proliferation. In several other instances, having determined the existence of a threat to the peace, the Council adopted a number of decisions acting under Chapter VII of the Charter, without expressly referring

to Article 40, which may be of relevance to the Council’s interpretation and application of the principle enshrined in Article 40. By those decisions, the Council called upon the parties to comply with certain provisional measures in order to prevent an aggravation of the situation in question. The measures that could typically be subsumed under the provision of Article 40 included: (a) withdrawal of armed forces; (b) cessation of hostilities; (c) disarmament of militias; (d) conclusion or observance of a ceasefire; (e) negotiation of differences and disputes; (f) compliance with obligations under international humanitarian law; (g) creation of the conditions necessary for unimpeded delivery of humanitarian assistance; and (h) cooperation with peacekeeping efforts and humanitarian assistance. Increasingly, during the period under consideration, the Council, after determining the existence of a threat to the peace and acting under Chapter VII of the Charter, made calls upon the parties to sign peace or ceasefire agreements, to fulfil their obligations under existing peace or ceasefire agreements, or to resume peace talks and/or political dialogue.

Section A outlines the decisions of the Council containing specific provisional measures that the Council called upon the parties to comply with in order to prevent an aggravation of the situation. A number of Council resolutions contained warnings that, in the event of failure to comply with the terms of those resolutions, the Council would meet again and consider further steps. These warnings, which might be considered as falling under Article 40, were expressed in various ways. In a number of instances, the Council warned that it would consider taking further measures if its calls were not heeded.¹⁵³

Section B reflects the discussion in the Council in connection with the adoption of measures falling under the provisions of Article 40 on the issue of non-proliferation.

A. Decisions relating to Article 40

Non-proliferation (Islamic Republic of Iran)

By resolution 1696 (2006) of 31 July 2006, the Council expressed its concerns about the proliferation risks presented by the Iranian nuclear programme. Therefore, “mindful of its primary responsibility under the Charter for the maintenance of international peace and security”, and being “determined to prevent an aggravation of the situation”, the Council explicitly acting under Article 40 of Chapter VII of the Charter, called upon the Islamic Republic of Iran, without further delay, to take the steps required by the Board of Governors of the International Atomic Energy Agency (IAEA) which the Council considered essential for building confidence in the exclusively peaceful purpose of that country’s nuclear programme and for resolving outstanding questions; demanded that the Islamic Republic of Iran suspend all enrichment-related and reprocessing activities, including research and development, actions which would be verified by IAEA; called upon the Islamic Republic of Iran to act in accordance with the provisions of the Additional Protocol and to implement without delay all

¹⁵³ See, for example, in connection with the situation in the Sudan, resolutions 1556 (2004), para. 6; 1564 (2004), para. 14; 1591 (2005), para. 8; and 1679 (2006), para. 1. In connection with the situation in Côte d’Ivoire, see resolutions 1727 (2006), para. 12, and 1782 (2007), para. 15. In connection with non-proliferation, see resolution 1747 (2007), para. 13.

transparency measures as IAEA might request in support of its ongoing investigations; and expressed its intention, in the event of non-compliance by the Islamic Republic of Iran by 31 August 2006, to adopt appropriate measures under Article 41 of Chapter VII of the Charter.¹⁵⁴

The situation in Burundi

By resolution 1545 (2004) of 21 May 2004, the Council, noting that obstacles remained to Burundi’s stability and stressing the importance of the full and unconditional implementation of the Arusha Agreement, demanded that all parties fulfil their obligations under that agreement in order to allow the electoral process, in particular the legislative elections, to take place before 31 October 2004.¹⁵⁵

By resolution 1577 (2004) of 1 December 2004, the Council, condemning all acts of violence as well as violations of human rights and international humanitarian law, in particular the Gatumba massacre, urged all the Governments and parties concerned in the region to denounce the use of and incitement to violence, to condemn unequivocally violations of human rights and international humanitarian law, and actively to cooperate with the United Nations Operation in Burundi and the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) and with efforts of States aimed at ending impunity. The Council also called upon the Governments of the Democratic Republic of the Congo and Rwanda to cooperate unreservedly with the Government of Burundi to ensure that the investigation into the Gatumba massacre was completed and that those responsible were brought to justice.¹⁵⁶

By resolution 1602 (2005) of 31 May 2005, the Council called upon all Burundian parties to exert greater efforts to ensure the success of the transition, national reconciliation, and the stability of the country in the longer term, in particular by refraining from any actions which might affect the cohesion of the Arusha Agreement process.¹⁵⁷

¹⁵⁴ Resolution 1696 (2006), ninth preambular paragraph and paras. 1, 2, 6 and 8.

¹⁵⁵ Resolution 1545 (2004), para. 15.

¹⁵⁶ Resolution 1577 (2004), tenth and eleventh preambular paragraphs and paras. 2 and 3.

¹⁵⁷ Resolution 1602 (2005), para. 2.

By resolution 1650 (2005) of 21 December 2005, the Council urged the Government of Burundi to complete the implementation of the programme of disarmament, demobilization and reintegration, including the effective reintegration of former combatants. Welcoming the willingness shown by the Government of Burundi to achieve a peaceful solution with the Parti pour la libération du peuple hutu-Forces nationales de libération (Palipehutu-FNL), the Council reiterated its call upon that movement to join the peace and national reconciliation process without further delays or conditions. The Council expressed its deep concern at the violations of human rights reported by the Secretary-General, and urged the Government and other parties concerned to take the necessary steps to prevent further violations and to ensure that those responsible for such violations were brought to justice without delay.¹⁵⁸

The situation in Chad, the Central African Republic and the subregion

By resolution 1778 (2007) of 25 September 2007, while establishing a multidimensional presence in Chad and the Central African Republic, the Council called upon all the parties to cooperate fully in the deployment and operations of the United Nations Mission in the Central African Republic and Chad and the European Union operation, including by guaranteeing the security and freedom of movement of their personnel and associated personnel.¹⁵⁹

The situation in Côte d'Ivoire

By resolution 1527 (2004) of 4 February 2004, the Council, reaffirming its endorsement of the agreement signed by the Ivorian political forces at Linas-Marcoussis on 23 January 2003, and noting with concern the continued existence of challenges to the stability of Côte d'Ivoire, called upon the signatories to the Linas-Marcoussis Agreement to carry out expeditiously their responsibilities under that Agreement.¹⁶⁰ The Council also called upon the signatories to the Agreement to take the steps called for

by the Secretary-General in paragraph 86 of his report.¹⁶¹

By resolution 1528 (2004) of 27 February 2004, stressing the importance of the complete and unconditional implementation of the measures provided for under the Linas-Marcoussis Agreement, the Council demanded that the countries fulfil their obligations under the Agreement so that, in particular, the forthcoming presidential election could be held in 2005, in accordance with the constitutional deadlines.¹⁶² The Council called upon all parties to cooperate fully in the deployment and operations of the United Nations Operation in Côte d'Ivoire (UNOCI), in particular by guaranteeing the safety, security and freedom of movement of United Nations personnel as well as associated personnel throughout the territory of Côte d'Ivoire.¹⁶³

By resolution 1572 (2004) of 15 November 2004, condemning the air strikes committed by the national armed forces of Côte d'Ivoire, which constituted flagrant violations of the ceasefire agreement of 3 May 2003, the Council demanded that all Ivorian parties to the conflict, the Government of Côte d'Ivoire as well as the Forces nouvelles, fully comply with the ceasefire. Emphasizing that there could be no military solution to the crisis and that the full implementation of the Linas-Marcoussis and Accra III Agreements remained the only way to resolve the crisis persisting in the country, the Council urged the President of Côte d'Ivoire, the heads of all Ivorian political parties and the leaders of the Forces nouvelles immediately to begin resolutely implementing all the commitments they had made under those agreements. The Council demanded that the Ivorian authorities stop all radio and television broadcasting inciting hatred, intolerance and

¹⁵⁸ Resolution 1650 (2005), paras. 7, 8 and 9.

¹⁵⁹ Resolution 1778 (2007), para. 13.

¹⁶⁰ Resolution 1527 (2004), third and ninth preambular paragraphs and para. 4.

¹⁶¹ Ibid., para. 5. In his report dated 6 January 2004 (S/2004/3), the Secretary-General recommended that the Forces nouvelles reaffirm their commitment to remain part of the Government of National Reconciliation; that the Forces armées nationales de Côte d'Ivoire and the Forces nouvelles complete their implementation of the decisions taken at the meetings in Yamoussoukro and Bouaké; that the concerned Ivorian parties take steps to disband the militias and curb the disruptive activities of the various youth groups; and that the Government complete its consideration of the package of reforms envisaged in the Linas-Marcoussis Agreement.

¹⁶² Resolution 1528 (2004), para. 10.

¹⁶³ Ibid., para. 11. The Council reiterated its call upon all parties to cooperate fully in the deployment and operations of UNOCI in resolution 1603 (2005), para. 15.

violence, and urged the Government of Côte d'Ivoire and the Forces nouvelles to take all necessary measures to ensure the security and safety of civilian persons, including foreign nationals and their property.¹⁶⁴

By resolution 1584 (2005) of 1 February 2005, the Council demanded that all Ivorian parties, including the Government of Côte d'Ivoire and the Forces nouvelles, provided unhindered access, particularly to equipment, sites and installations, to UNOCI and the French forces supporting it.¹⁶⁵

By resolution 1594 (2005) of 4 April 2005, the Council called upon all Ivorian parties immediately and actively to pursue a lasting and just solution to the crisis, particularly through the African Union mediation led by President Thabo Mbeki.¹⁶⁶

By resolution 1600 (2005) of 4 May 2005, reminding all parties they had decided to refer to the mediator, President Thabo Mbeki, any differences which might arise in the interpretation of any part of the Pretoria Agreement, the Council called upon them to implement fully that Agreement.¹⁶⁷

By resolution 1603 (2005) of 3 June 2005, endorsing the Pretoria Agreement, the Council demanded that all the signatories to the Agreement and all the Ivorian parties concerned implement it fully and without delay. The Council also reiterated its demand that all the Ivorian parties take all necessary steps to ensure that the forthcoming elections were free, fair and transparent.¹⁶⁸

By resolution 1633 (2005) of 21 October 2005, expressing serious concern at the persistence of the crisis and the deterioration of the situation in Côte d'Ivoire, the Council made a number of demands to the parties and others concerned. In particular, the Council demanded that all the parties signatories to the Linas-Marcoussis, Accra III and Pretoria Agreements, as well as all the Ivorian parties concerned implement these fully and without delay; that the Forces nouvelles proceed without delay with the programme of disarmament, demobilization and reintegration, in order to facilitate the restoration of the authority of the State throughout the national territory, the reunification of the country and the organization of the elections as soon as

possible; that all Ivorian parties stop all incitement to hatred and violence in radio and television broadcasting as well as in any other media; the immediate disarmament and dismantling of militias throughout the national territory; that all Ivorian parties refrain from any use of force and violence, including against civilians and foreigners, and from all kinds of disruptive street protests; and that all Ivorian parties cooperate fully with the operations of UNOCI and the French forces, in particular by guaranteeing the safety, security and freedom of movement of their personnel, as well as associated personnel, throughout the territory of Côte d'Ivoire.¹⁶⁹ The Council urged countries neighbouring Côte d'Ivoire to prevent any cross-border movement of combatants or arms into Côte d'Ivoire; and, reiterating its serious concern at all violations of human rights and international humanitarian law in Côte d'Ivoire, urged the Ivorian authorities to investigate those violations without delay in order to put an end to impunity.¹⁷⁰

By resolution 1721 (2006) of 1 November 2006, the Council made a number of demands to the parties and others concerned, namely, that the programme for the disarmament and dismantling of militias throughout the national territory be resumed immediately; that all the Ivorian parties concerned, in particular the armed forces of the Forces nouvelles and the armed forces of Côte d'Ivoire, participate in good faith in the work of the quadripartite commission responsible for overseeing the implementation of the disarmament, demobilization and reintegration programme and the operations for the disarmament and dismantling of militias; that all Ivorian parties end all incitement to hatred and violence, in radio and television broadcasting as well as in any other media; that all Ivorian parties refrain from any use of force and violence, including against civilians and foreigners, and from all kinds of disruptive street protests; that all Ivorian parties guarantee the security and freedom of movement of all Ivorian nationals throughout the territory of Côte d'Ivoire; and that all Ivorian parties cooperate fully with the operations of UNOCI and the French forces supporting it, as well as United Nations agencies and associated personnel, in particular by guaranteeing the safety, security and freedom of movement of their personnel, as well as associated personnel, throughout the territory of Côte d'Ivoire.¹⁷¹

¹⁶⁴ Resolution 1572 (2004), paras. 1, 3, 4 and 6.

¹⁶⁵ Resolution 1584 (2005), para. 5.

¹⁶⁶ Resolution 1594 (2005), para. 2.

¹⁶⁷ Resolution 1600 (2005), para. 2.

¹⁶⁸ Resolution 1603 (2005), paras. 1 and 6.

¹⁶⁹ Resolution 1633 (2005), paras. 3, 14, 16, 17, 18 and 21.

¹⁷⁰ *Ibid.*, paras. 19 and 20.

¹⁷¹ Resolution 1721 (2006), paras. 12, 14, 19, 26, 27 and 28.

By resolution 1727 (2006) of 15 December 2006, acting under Chapter VII of the Charter, the Council declared that it was fully prepared to impose targeted measures against persons to be designated by the Committee established pursuant to resolution 1572 (2004) to be a threat to the peace and national reconciliation process in Côte d'Ivoire, or found responsible for blocking the implementation of the peace process, attacking or obstructing the actions of UNOCI, the French forces, the High Representative for the elections, the International Working Group, or the Mediator, as well as serious violations of human rights and international humanitarian law, inciting public hatred or violating the arms embargo.¹⁷²

By resolution 1739 (2007) of 10 January 2007, the Council called upon all Ivorian parties to cooperate fully in the deployment and operations of UNOCI and the French forces supporting it, in particular by guaranteeing their safety, security and freedom of movement with unhindered and immediate access, as well as for associated personnel, throughout the territory of Côte d'Ivoire, to enable them to carry out fully their mandates.¹⁷³

*Items relating to the Democratic People's Republic of Korea*¹⁷⁴

By resolution 1695 (2006) of 15 July 2006, acting "under its special responsibility for the maintenance of international peace and security", and after condemning the multiple launches by the Democratic People's Republic of Korea of ballistic missiles on 5 July 2006, the Council demanded that the Government suspend all activities related to its ballistic missile programme, and re-establish its pre-existing commitments to a moratorium on missile launching. It further underlined, in particular to the Democratic People's Republic of Korea, the need to show restraint and refrain from any action that might aggravate tension, and to continue to work on the resolution of non-proliferation concerns through political and diplomatic efforts. The Council

¹⁷² Resolution 1727 (2006), para. 12. The Council reiterated its determination to impose targeted sanctions against such persons in resolution 1782 (2007), para. 15.

¹⁷³ Resolution 1739 (2007), para. 9.

¹⁷⁴ Letter dated 4 July 2006 from the Permanent Representative of Japan to the United Nations addressed to the President of the Security Council; and Non-proliferation/Democratic People's Republic of Korea.

strongly urged the Democratic People's Republic of Korea to return immediately to the six-party talks without precondition, to work towards the expeditious implementation of the Joint Statement of 19 September 2005, in particular to abandon all nuclear weapons and existing nuclear programmes, and to return at an early date to the Treaty on the Non-Proliferation of Nuclear Weapons and IAEA safeguards.¹⁷⁵

By resolution 1718 (2006) of 14 October 2006, condemning the nuclear test proclaimed by the Democratic People's Republic of Korea on 9 October 2006 in flagrant disregard of the Council's relevant resolutions, the Council made a number of demands. In particular, it demanded that the Democratic People's Republic of Korea not conduct any further nuclear test or launch of a ballistic missile; immediately retract its announcement of withdrawal from the Treaty on the Non-Proliferation of Nuclear Weapons; and return to the Treaty and IAEA safeguards. The Council called upon the Democratic People's Republic of Korea to return immediately to the six-party talks without precondition and to work towards the expeditious implementation of the joint statement issued on 19 September 2005 by China, the Democratic People's Republic of Korea, Japan, the Republic of Korea, the Russian Federation and the United States.¹⁷⁶

The situation concerning the Democratic Republic of the Congo

By resolution 1565 (2004) of 1 October 2004, noting that the situation in the Democratic Republic of the Congo continued to constitute a threat to international peace and security in the region, the Council made a number of demands to the parties and others concerned. In particular, the Council urged the Government of National Unity and Transition to continue, with determination and rapidity, the integration of the security forces, in particular the integration of the armed forces; and to develop without further delay a plan for the disarmament of foreign combatants, and to entrust its implementation to the armed forces of the Democratic Republic of the Congo, with the support of MONUC.¹⁷⁷ The Council further urged the Governments of the Democratic Republic of the Congo, Burundi, Rwanda and Uganda to ensure that their territories were not used to infringe the

¹⁷⁵ Resolution 1695 (2006), paras. 1, 2, 5 and 6.

¹⁷⁶ Resolution 1718 (2006), paras. 2, 3, 4 and 14.

¹⁷⁷ Resolution 1565 (2004), paras. 13 and 14.

sovereignty of the others, to realize without further delay the complete normalization of their bilateral relations, and to cooperate actively in assuring security along their common borders, in particular by implementing agreements they had signed for the establishment of joint verification mechanisms with the active participation of MONUC. It urged the Governments of the Democratic Republic of the Congo and Rwanda to work together and with the Mission and the African Union, with a view to removing the threat posed by foreign armed groups, as they had agreed to in the Peace Agreement signed in Pretoria on 30 July 2002 and the Declaration signed in Pretoria on 27 November 2003, and in accordance with the terms of reference for the Joint Verification Mechanism signed in New York on 22 September 2004.¹⁷⁸ The Council also called upon the Government of National Unity and Transition and Congolese officials at all levels to take all necessary steps, while respecting freedom of expression and of the press, to prevent the use of the media to incite hatred or tensions among communities. Strongly condemning violence and other violations of international humanitarian law and human rights, in particular those perpetrated against civilians in the Democratic Republic of the Congo, the Council demanded that all parties and Governments concerned in the region, including the Government of National Unity and Transition, take without delay all necessary steps to bring to justice those responsible for the violations and to ensure respect for human rights and international humanitarian law, as appropriate with relevant international assistance, as well as to guarantee the security and well-being of the civilian population.¹⁷⁹ The Council demanded that all parties cooperate fully with the operations of MONUC and ensure the safety of as well as unhindered and immediate access for United Nations and associated personnel in carrying out their mandate, throughout the territory of the Democratic Republic of the Congo. In particular, the Council demanded that all parties provide full access to MONUC military observers, including in all ports, airports, airfields, military bases and border crossings.¹⁸⁰ Reaffirming the obligation of all parties to comply fully with the rules and principles

of international humanitarian law applicable to them related to the protection of humanitarian and United Nations personnel, the Council urged all those concerned to allow immediate, full and unimpeded access by humanitarian personnel to all people in need of assistance, as set forth in applicable international humanitarian law.¹⁸¹

By resolution 1592 (2005) of 30 March 2005, the Council urged the Government of National Unity and Transition to do its utmost to ensure the security of civilians, including humanitarian personnel, by effectively extending State authority throughout the territory of the Democratic Republic of the Congo, and in particular in North and South Kivu and in Ituri.¹⁸² The Council called upon the Government of National Unity and Transition to develop with MONUC a joint concept of operations for the disarmament of foreign combatants by the armed forces of the Democratic Republic of the Congo, with the assistance of MONUC, within its mandate and capabilities; and demanded that the Governments of Uganda, Rwanda, as well as the Democratic Republic of the Congo put a stop to the use of their respective territories in support of violations of the arms embargo imposed by resolution 1493 (2003) or of activities of armed groups operating in the region.¹⁸³

By resolution 1693 (2006) of 30 June 2006, reiterating its serious concern regarding the continuation of hostilities by militias and foreign armed groups in the eastern part of the Democratic Republic of the Congo, and at the threat they posed to the holding of elections, the Council called upon all Congolese parties to refrain from incitement to hatred and violence.¹⁸⁴

By resolution 1711 (2006) of 29 September 2006, condemning the continuation of hostilities by militias and foreign armed groups in the eastern part of the Democratic Republic of the Congo, and the threat they posed to the holding of elections, the Council reiterated its call on all Congolese parties to refrain from incitement to hatred and violence and from any threat or use of force to prevent elections, dispute their

¹⁷⁸ Ibid., paras. 15 and 16.

¹⁷⁹ Ibid., paras. 17 and 19.

¹⁸⁰ Ibid., para. 20. This demand was reiterated in resolutions 1592 (2005), para. 2, and 1756 (2007), para. 16. By the latter resolution, the Council demanded that MONUC human rights observers be granted access also to prisons.

¹⁸¹ Resolution 1565 (2004), para. 21. The Council reiterated this statement in resolutions 1756 (2007), para. 13, and 1794 (2007), para. 17.

¹⁸² Resolution 1592 (2005), para. 3. This statement was reiterated in resolution 1649 (2005), para. 8.

¹⁸³ Resolution 1592 (2005), paras. 5 and 9.

¹⁸⁴ Resolution 1693 (2006), para. 4.

outcome or subvert the peace process, and to resolve political differences by peaceful means, including through the framework established with the facilitation of MONUC, and within the framework of democratic institutions and the rule of law.¹⁸⁵

By resolution 1756 (2007) of 15 May 2007, reiterating its grave concern at the presence of armed groups and militias in the eastern part of the Democratic Republic of the Congo, particularly in the Ituri district and in North and South Kivu, which perpetuated a climate of insecurity in the whole region, the Council demanded that the militias and armed groups still present in the eastern part of the Democratic Republic of the Congo lay down their arms and engage voluntarily and without any further delay or preconditions in their demobilization, repatriation or resettlement, and reintegration.¹⁸⁶

By resolution 1794 (2007) of 21 December 2007, the Council reiterated its demand that the militias and armed groups still present in the eastern part of the Democratic Republic of the Congo, in particular the Forces démocratiques de libération du Rwanda, the ex-Rwandan Armed Forces/Interahamwe, the dissident militia of Laurent Nkunda and the Lord's Resistance Army, lay down their arms and engage voluntarily and without any further delay or preconditions in their demobilization, repatriation, resettlement and reintegration, as appropriate. Recalling resolution 1698 (2006), the Council further demanded that all armed groups immediately stop recruiting and using children and release all children associated with them.¹⁸⁷

The question concerning Haiti

By resolution 1529 (2004) of 29 February 2004, the Council authorized the immediate deployment of a Multinational Interim Force in Haiti and demanded that all parties to the conflict in Haiti cease using violent means. The Council also reiterated that all parties must respect international law, including with respect to human rights, and that there would be individual accountability and no impunity for violators. The Council further demanded that parties respect the constitutional succession and the political process under way to resolve the crisis and enable legitimate Haitian security forces and other public institutions to perform

their duties and provide access to humanitarian agencies to carry out their work. The Council called on all parties in Haiti to cooperate fully with the Multinational Interim Force in the execution of its mandate and to respect the security and freedom of movement of the Force, as well as to facilitate the safe and unimpeded access of international humanitarian personnel and aid to populations in need in Haiti.¹⁸⁸

By resolution 1542 (2004) of 30 April 2004, the Council authorized the establishment of the United Nations Stabilization Mission in Haiti and demanded strict respect for the persons and premises of the United Nations and associated personnel, the Organization of American States, the Caribbean Community and other international and humanitarian organizations, as well as diplomatic missions in Haiti, and that no acts of intimidation or violence be directed against personnel engaged in humanitarian, development or peacekeeping work. In addition, it demanded that all parties in Haiti provide safe and unimpeded access to humanitarian agencies to allow them to carry out their work.¹⁸⁹

The situation in the Middle East

By resolution 1701 (2006) of 11 August 2006, the Council, determining that the situation in Lebanon constituted a threat to international peace and security, called for a full cessation of hostilities based upon, in particular, the immediate cessation by Hizbullah of all attacks and the immediate cessation by Israel of all offensive military operations. It further called upon the Government of Lebanon and the United Nations Interim Force in Lebanon (UNIFIL) upon full cessation of hostilities, to deploy their forces together throughout the south, and called upon the Government of Israel, as that deployment began, to withdraw all of its forces from southern Lebanon in parallel.¹⁹⁰ The Council called for Israel and Lebanon to support a permanent ceasefire and a long-term solution based on the following principles and elements: full respect for the Blue Line by both parties; security arrangements to prevent the resumption of hostilities, including the establishment between the Blue Line and the Litani river of an area free of any armed personnel, assets and weapons other than those of the Government of

¹⁸⁵ Resolution 1711 (2006), para. 9.

¹⁸⁶ Resolution 1756 (2007), para. 10.

¹⁸⁷ Resolution 1794 (2007), para. 3.

¹⁸⁸ Resolution 1529 (2004), paras. 7 and 8.

¹⁸⁹ Resolution 1542 (2004), para. 12. These demands were reiterated in resolutions 1743 (2007), para. 11 and 1780 (2007), para. 13.

¹⁹⁰ Resolution 1701 (2006), paras. 1 and 2.

Lebanon and UNIFIL; full implementation of the relevant provisions of the Taif Accords, and of resolutions 1559 (2004) and 1680 (2006), that required the disarmament of all armed groups in Lebanon, so that, pursuant to the Lebanese Cabinet decision of 27 July 2006, there would be no weapons or authority in Lebanon other than that of the Lebanese State; no foreign forces in Lebanon without the consent of its Government; no sales or supply of arms and related materiel to Lebanon except as authorized by its Government; and provision to the United Nations of all remaining maps of landmines in Lebanon in Israel's possession; and called upon the Government of Lebanon to secure its borders and other entry points to prevent the entry in Lebanon without its consent of arms or related materiel.¹⁹¹

By resolution 1773 (2007) of 24 August 2007, the Council, still determining that the situation in Lebanon constituted a threat to international peace and security, reiterated its call upon all parties concerned to respect the cessation of hostilities and the Blue Line in its entirety. Condemning all terrorist attacks against UNIFIL, the Council urged all parties to cooperate fully with the United Nations and UNIFIL and to abide scrupulously by their obligation to respect the safety of UNIFIL and other United Nations personnel, including by avoiding any course of action which endangered United Nations personnel and by ensuring that UNIFIL was accorded full freedom of movement within its area of operation; and called upon all parties to cooperate fully with the Security Council and the Secretary-General to achieve a permanent ceasefire and a long-term solution, as envisioned in resolution 1701 (2006).¹⁹²

The situation in Somalia

By resolution 1725 (2006) of 6 December 2006, expressing its concern regarding the continued violence inside Somalia, the Council urged the transitional federal institutions and the Union of Islamic Courts to fulfil the commitments they had made, resume without delay peace talks on the basis of the agreements reached in Khartoum, and adhere to agreements reached in their dialogue. The Council stated its intention to consider taking measures against those that sought to prevent or block a peaceful dialogue process, overthrow the

transitional federal institutions by force, or take action that could further threaten regional stability.¹⁹³

By resolution 1744 (2007) of 20 February 2007, the Council expressed its deep concern over the humanitarian situation in Somalia and demanded that all parties in Somalia ensure complete and unhindered humanitarian access, as well as provide guarantees for the safety and security of humanitarian aid workers in Somalia.¹⁹⁴

By resolution 1772 (2007) of 20 August 2007, the Council welcomed the convening of the National Reconciliation Congress at the initiative of the transitional federal institutions, and urged all parties to support the Congress and participate in the political process. It also urged the transitional federal institutions and all parties in Somalia to respect the conclusions of the Congress and to sustain an equally inclusive ongoing political process thereafter. The Council called on all parties and armed groups in Somalia to take appropriate steps to ensure the safety and security of the African Union Mission in Somalia and humanitarian personnel, and grant timely, safe and unhindered access for the delivery of humanitarian assistance to all those in need.¹⁹⁵

Reports of the Secretary-General on the Sudan

By resolution 1556 (2004) of 30 July 2004, expressing concern at reports of violations of the ceasefire agreement signed in N'Djamena on 8 April 2004, the Council made a number of demands to the parties and others concerned. In particular, the Council called upon the Government of the Sudan to fulfil immediately all of the commitments made in the joint communiqué of 3 July 2004, including by facilitating international relief for the humanitarian disaster by means of a moratorium on all restrictions that might hinder the provision of humanitarian assistance and access to the affected populations; advancing independent investigation, in cooperation with the United Nations, of violations of human rights and international humanitarian law; establishing credible security conditions for the protection of the civilian population and humanitarian actors; and resuming political talks with dissident groups from the Darfur region, specifically the Justice and Equality Movement

¹⁹¹ Ibid., paras. 8 and 14.

¹⁹² Resolution 1773 (2007), paras. 3-5.

¹⁹³ Resolution 1725 (2006), para. 2.

¹⁹⁴ Resolution 1744 (2007), para. 11.

¹⁹⁵ Resolution 1772 (2007), paras. 2, 4 and 20.

and the Sudan Liberation Movement and Sudan Liberation Army on Darfur.¹⁹⁶ The Council also urged the parties to the N'Djamena ceasefire agreement to conclude a political agreement without delay and strongly urged rebel groups to respect the ceasefire, end the violence immediately, engage in peace talks without preconditions, and act in a positive and constructive manner to resolve the conflict; further demanded that the Government of the Sudan fulfil its commitments to disarm the Janjaweed militias and apprehend and bring to justice Janjaweed leaders and their associates who had incited and carried out human rights and international humanitarian law violations and other atrocities; and expressed its intention to consider further actions, including measures as provided for in Article 41 of the Charter, in the event of non-compliance.¹⁹⁷

By resolution 1564 (2004) of 18 September 2004, the Council called upon the Government of the Sudan and the rebel groups to work together under the auspices of the African Union to reach a political solution in the negotiations held in Abuja. The Council also urged the parties to the negotiations to sign and implement the humanitarian agreement immediately, and to conclude a protocol on security issues as soon as possible.¹⁹⁸ The Council also urged the Government of the Sudan and the Sudan People's Liberation Movement to conclude a comprehensive peace accord expeditiously as a critical step towards the development of a peaceful and prosperous Sudan; called upon all Sudanese parties to take the necessary steps to ensure that violations reported by the Ceasefire Commission were addressed immediately and that those responsible for such violations were held accountable; demanded that the Government of the Sudan submit to the African Union mission for verification the names of Janjaweed militiamen disarmed and names of those arrested for human rights abuses and violations of international humanitarian law; and demanded that all armed groups, including rebel forces, cease all violence, cooperate with international humanitarian relief and monitoring efforts, ensure that their members comply with international humanitarian law, and facilitate the safety and security of humanitarian staff. In the event that the Government of the Sudan failed to comply fully with resolutions 1556 (2004) or 1564 (2004), the Council declared that it would consider imposing additional

measures as contemplated in Article 41 of the Charter, such as actions to affect the petroleum sector and the Government of the Sudan or individual members of the Government, in order to obtain full compliance or full cooperation.¹⁹⁹

By resolution 1591 (2005) of 29 March 2005, the Council demanded that all parties take immediate steps to fulfil all their commitments to respect the N'Djamena ceasefire agreement and the Abuja Protocols, including notification of force positions, to facilitate humanitarian assistance, and to cooperate fully with the African Union Mission. The Council also called upon the Government of the Sudan and the rebel groups, particularly the Justice and Equality Movement and the Sudanese Liberation Movement/Army, to resume the Abuja talks rapidly and negotiate in good faith to speedily reach an agreement. It also urged the parties to the Comprehensive Peace Agreement to play an active and constructive role in support of the Abuja talks and take immediate steps to support a peaceful settlement to the conflict in Darfur. The Council also demanded that the Government of the Sudan, in accordance with its commitments under the N'Djamena ceasefire agreement and the Abuja Security Protocol, immediately cease conducting offensive military flights in and over the Darfur region. The Council reiterated that in the event that the parties failed to fulfil their commitments and demands, and the situation in Darfur continued to deteriorate, the Council would consider further measures as provided for in Article 41 of the Charter.²⁰⁰

By resolution 1679 (2006) of 16 May 2006, the Council called upon the parties to the Darfur Peace Agreement to respect their commitments and implement the Agreement without delay. The Council also urged those parties that had not signed the Agreement to do so without delay and not to act in any way that would impede implementation of the Agreement.²⁰¹ The Council expressed its intention to consider taking strong and effective measures, such as a travel ban and an asset freeze, against any individual or group that violated or attempted to block the implementation of the Darfur Peace Agreement.²⁰²

¹⁹⁶ Resolution 1556 (2004), para. 1.

¹⁹⁷ *Ibid.*, paras. 5 and 6.

¹⁹⁸ Resolution 1564 (2004), para. 4.

¹⁹⁹ *Ibid.*, paras. 5, 8, 9, 10 and 14.

²⁰⁰ Resolution 1591 (2005), paras. 1, 2, 6 and 8.

²⁰¹ Resolution 1679 (2006), para. 1. The Council reiterated this demand in resolutions 1706 (2006), para. 14, and 1714 (2006), para. 3.

²⁰² Resolution 1679 (2006), para. 1.

By resolution 1755 (2007) of 30 April 2007, the Council called upon the parties to the Comprehensive Peace Agreement to accelerate urgently progress on implementing all their commitments, in particular to carry out the establishment of Joint Integrated Units and other aspects of the security sector reforms; to re-energize the process of disarmament, demobilization and reintegration of combatants; to complete the full and verified redeployment of forces by 9 July 2007; to demarcate precisely the north/south borderline of 1 January 1956, consistent with the Machakos Protocol of 20 July 2002; to resolve the Abyei problem and urgently establish an administration there; and to take the necessary steps to hold national elections according to the agreed time frame. The Council also reiterated its call upon the parties to the Comprehensive Peace Agreement, the Darfur Peace Agreement, the N'Djamena Humanitarian Ceasefire Agreement, the Eastern Sudan Peace Agreement, and the communiqué of 28 March 2007 to respect their commitments and implement fully all aspects of those agreements without delay, and called upon those parties that had not signed the Darfur Peace Agreement to do so without delay and not to act in any way that would impede the implementation of the Agreement.²⁰³

By resolution 1769 (2007) of 31 July 2007, authorizing the establishment of an African Union-United Nations Hybrid Operation in Darfur (UNAMID), the Council called on all parties to urgently facilitate the full deployment of the United Nations light and heavy support packages to the African Union Mission in the Sudan (AMIS) and preparations for UNAMID.²⁰⁴ The Council called upon all the parties to the conflict in Darfur to immediately cease all hostilities and commit themselves to a sustained and permanent ceasefire; and demanded an immediate cessation of hostilities and attacks on AMIS, civilians and humanitarian agencies, their staff and assets and relief convoys, and that all parties to the conflict in Darfur fully cooperate with the Mission, civilians and humanitarian agencies, their staff and assets and relief convoys, and gave all necessary assistance to the deployment of the United Nations light and heavy support packages to the Mission, and to UNAMID.²⁰⁵ Welcoming the commitment expressed by the Government of the Sudan and some other parties

to the conflict to enter into talks and the political process, the Council called upon the other parties to the conflict to do likewise, and urged all the parties, in particular the non-signatory movements, to finalize their preparations for the talks. Welcoming the signing of a joint communiqué between the Government of the Sudan and the United Nations on facilitation of humanitarian activities in Darfur, the Council called for it to be fully implemented, and called upon all parties to ensure, in accordance with relevant provisions of international law, the full, safe and unhindered access of relief personnel to all those in need and the delivery of humanitarian assistance, in particular to internally displaced persons and refugees. The Council demanded that the parties to the conflict in Darfur fulfil their international obligations and their commitments under relevant agreements and Security Council resolutions.²⁰⁶

By resolution 1784 (2007) of 31 October 2007, the Council called for all parties to agree immediately to full unrestricted monitoring and verification by the United Nations Mission in the Sudan in the Abyei region, without prejudice to the final agreement on the actual borders between the two sides. The Council further called on the parties to take steps to reduce tensions in the Abyei region, including by redeploying their forces away from the disputed border of 1 January 1956 and by implementing an interim administration and agreeing upon boundaries. The Council called upon the parties to the Comprehensive Peace Agreement and the communiqué signed by the United Nations and the Government of National Unity at Khartoum on 28 March 2007 to support, protect and facilitate all humanitarian operations in the Sudan. It also called upon the Government of National Unity to cooperate fully with all United Nations operations within its territory in the implementation of their mandates.²⁰⁷

B. Discussion relating to Article 40

Non-proliferation (Islamic Republic of Iran)

At its 5500th meeting, on 31 July 2006, the Council, acting under Article 40 of Chapter VII of the Charter, adopted resolution 1696 (2006) by which it called upon the Islamic Republic of Iran to take the steps required by IAEA, and demanded that the Islamic Republic of Iran to suspend all enrichment-related and

²⁰³ Resolution 1755 (2007), paras. 3 and 4.

²⁰⁴ Resolution 1769 (2007), para. 4.

²⁰⁵ *Ibid.*, paras. 13 and 14.

²⁰⁶ *Ibid.*, paras. 18, 19 and 22.

²⁰⁷ Resolution 1784 (2007), paras. 5, 7, 12 and 14.

reprocessing activities. During the debate subsequent to the vote, the representative of Qatar declared that his country had voted against the draft resolution because his Government preferred exhausting “all possible ways and means” before taking a decision in the Council.²⁰⁸ In contrast, a number of speakers welcomed the adoption of the resolution and cautioned that should the Islamic Republic of Iran choose not to comply with the Council’s decision, the Council would discuss the adoption of measures under Article 41 of the Charter.²⁰⁹ The representative of the United Kingdom expressed his disappointment at the failure of the Islamic Republic of Iran to take steps that would allow for negotiations to begin. He concluded that there was “no alternative” but to adopt the resolution, which created a “mandatory obligation” on the Islamic Republic of Iran to suspend fully all uranium enrichment-related and processing activities.²¹⁰ The representative of the Russian Federation declared that, by acting under Article 40 of the Charter, the resolution made mandatory the demand of IAEA regarding the

Islamic Republic of Iran’s suspension of all uranium enrichment and reprocessing activities. He stressed that the measure adopted in accordance with Article 40 of the Charter should be viewed as an “interim measure”. In the event that the Islamic Republic of Iran fulfilled its obligations under Security Council resolutions, he added, it would not be necessary for the Council to adopt additional measures.²¹¹ The representative of the United Republic of Tanzania noted that he had voted in favour of the resolution because it precluded the use of force as an option in engaging the Islamic Republic of Iran. He expressed hope that, even in the resolution’s current form, additional measures would be unnecessary.²¹² In response, the representative of the Islamic Republic of Iran reiterated that, as his country’s nuclear programme posed no threat to international peace and security, the Council’s dealing with that issue was “unwarranted and void of any legal basis or practical utility”. He noted that the resolution was imposing “arbitrary thresholds” and that his Government was always ready for negotiations.²¹³

²⁰⁸ S/PV.5500, p. 3.

²⁰⁹ Ibid., p. 3 (United States); p. 4 (United Kingdom); p. 5 (Russian Federation, China); and p. 7 (France).

²¹⁰ Ibid., p. 4.

²¹¹ Ibid., p. 5.

²¹² Ibid., p. 6.

²¹³ Ibid., p. 9.

Part III

Measures not involving the use of armed force in accordance with 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 Security Council imposed or modified measures under Chapter VII, of the type provided for in Article 41, against members of the Al-Qaida organization and the Taliban and associated individuals and entities, Côte

d’Ivoire, the Democratic People’s Republic of Korea, the Democratic Republic of the Congo, the Islamic Republic of Iran, Liberia, Sierra Leone and the Sudan, after having determined, in each case, the existence of a threat to international peace and security. In instances relating to the Democratic People’s Republic of Korea and the Islamic Republic of Iran, the Council specified that it was acting under Article 41 of Chapter VII of the Charter. The Council terminated measures imposed under Article 41 against Liberia and Rwanda. In addition, the Council imposed a number of judicial measures in relation to the situations in the Middle East, Sierra Leone and the Sudan. Such measures included the establishment of a Special Tribunal for Lebanon, the referral of the situation in Darfur to the Prosecutor of the International Criminal Court, and the endorsement of the intention of the President of the Special Court for Sierra Leone to authorize a Trial

Chamber in the Netherlands for the trial of the former President of Liberia, Charles Taylor.

Section A outlines the decisions of the Security Council imposing, modifying or terminating measures under Article 41 of the Charter, and section B highlights the salient issues that were raised in the Council's deliberations relating to Article 41 of the Charter. Both sections are subdivided into thematic, country-specific and judicial issues.

A. Decisions relating to Article 41

Decisions on thematic issues

The present subsection presents decisions on thematic issues which contain information concerning sanctions measures and their implementation. Such decisions were taken in relation to five agenda items, namely, children and armed conflict; general issues relating to sanctions; maintenance of international peace and security; small arms; and strengthening international law: rule of law and maintenance of international peace and security. In those decisions the Council emphasized the importance of the sanctions tool in the maintenance of international peace and security, and, inter alia, stressed its resolve to ensure targeted and balanced sanctions as well as fair and clear procedures for the listing and delisting of individuals on sanctions lists. The Council also reminded Member States of their obligations to implement and respect sanctions regimes and to collaborate with the sanctions committees and the panels of experts.

Children and armed conflict

By resolution 1539 (2004) of 22 April 2004, the Council, reiterating its commitment to address the widespread impact of armed conflict on children, took note, with deep concern, of the continued recruitment and use of children by parties to armed conflicts.²¹⁴ The Council expressed its intention to consider imposing targeted and graduated measures, through country-specific resolutions, such as a ban on the export or supply of small arms and light weapons and other military equipment and on military assistance, against parties to an armed conflict if they refused to enter into

²¹⁴ Resolution 1539 (2004), fifth preambular paragraph and para. 5.

dialogue, failed to develop an action plan, or failed to meet the commitments included in their action plan.²¹⁵

General issues relating to sanctions

By resolution 1730 (2006) of 19 December 2006, emphasizing that sanctions constituted an important tool in the maintenance and restoration of international peace and security and the obligations placed upon all States to implement in full the mandatory measures adopted by the Council, the Council stressed its continuing resolve to ensure that sanctions were carefully targeted in support of clear objectives and implemented in ways that balanced effectiveness against possible adverse consequences. It also expressed its commitment to ensuring that fair and clear procedures existed for placing individuals and entities on sanctions lists and for removing them. The Council adopted a delisting procedure and requested the Secretary-General to establish within the Secretariat a focal point to receive delisting requests. The Council also directed the sanctions committees to revise their guidelines accordingly.²¹⁶

Maintenance of international peace and security

By a statement of the President dated 25 June 2007, the Council noted that, through its various resolutions, it had taken measures to prevent the illegal exploitation of natural resources and had established sanctions committees, groups and panels of experts to oversee the implementation of those measures. The Council also emphasized the importance of improving the work of and strengthening the contributions made by existing sanctions committees and the various groups and panels of experts in dealing with the impact of illegal exploitation of natural resources on conflicts in countries under its consideration.²¹⁷

By a statement of the President dated 28 August 2007, the Council supported the comprehensive and global approach recommended by the Secretary-General in his report on the prevention of armed conflict,²¹⁸ which included, inter alia, the use of targeted sanctions in the face of immediate crises.²¹⁹

²¹⁵ Ibid., para. 5 (c). The Council reaffirmed this intention by its resolution 1612 (2005), para. 9.

²¹⁶ Resolution 1730 (2006), second, third, fourth and fifth preambular paragraphs and paras. 1 and 2.

²¹⁷ S/PRST/2007/22.

²¹⁸ A/60/891.

²¹⁹ S/PRST/2007/31.

Small arms

By a statement of the President dated 19 January 2004, the Council reiterated its call on all States to effectively implement arms embargoes and other sanctions measures imposed by the Council in its relevant resolutions. The Council further encouraged States to provide sanctions committees with any available information on alleged violations of arms embargoes.²²⁰

By a statement of the President dated 17 February 2005, the Council reiterated its call upon all States to enforce all resolutions on sanctions, including those imposing arms embargoes, and to bring their own domestic implementation into compliance with the Council's measures on sanctions. The Council also called upon States to continue to make available to the sanctions committees all pertinent information on any alleged violations of arms embargoes and to take appropriate measures to investigate such allegations.²²¹

Strengthening international law: rule of law and maintenance of international peace and security

By a statement of the President dated 22 June 2006, the Council noted that it considered sanctions an important tool in the maintenance and restoration of international peace and security. The Council also expressed its resolve to ensure that sanctions were carefully targeted in support of clear objectives and were implemented in ways that balanced effectiveness against possible adverse consequences. It further stated its commitment to ensuring that fair and clear procedures existed for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions.²²²

Country-specific decisions relating to Article 41

This subsection covers the decisions relating to specific countries adopted during the period under review, by which the Council imposed, modified, strengthened or terminated sanctions regimes. It includes information on the establishment of subsidiary bodies of the Council tasked to oversee the implementation of the sanctions measures, namely, sanctions committees, monitoring groups, and panels of experts. When required for clarification, summarized descriptions of the mandatory measures — arms

embargo, asset freeze, travel restrictions, diamond ban, restriction of air traffic, restriction on diplomatic representation, prohibitions of round logs and timber products — are included, but these are not intended to serve as legal definitions of the measures. The decisions of the Council relating to committees or other subsidiary bodies are described in more detail in chapter V.

Measures imposed against Côte d'Ivoire

By resolution 1572 (2004) of 15 November 2004, the Council, deeply concerned with the humanitarian situation in Côte d'Ivoire, imposed an arms embargo for a period of 13 months, preventing the direct or indirect sale or transfer to Côte d'Ivoire of arms or any related materiel. The Council also decided that exemptions to these measures were to be considered, including supplies to the United Nations Operation in Côte d'Ivoire (UNOCI), supplies of non-lethal military equipment intended solely for humanitarian or protective use and related technical assistance and training. The Council decided to impose, for a period of 12 months, a travel ban, asking all States to take the necessary measures to prevent the entry into or transit through their territories of all persons designated by the Committee established by the resolution. The Council also decided that the travel restrictions would not apply to cases in which travel was justified on the grounds of humanitarian need.²²³ The Council decided that all States should, for a period of 12 months, freeze immediately the funds, other financial assets, and economic resources owned or controlled by those who blocked the implementation of the Linas-Marcoussis and Accra III Agreements; persons responsible for serious violations of human rights and international humanitarian law in Côte d'Ivoire; any other person publicly inciting hatred and violence; and any other person determined by the Committee to be in violation of the sanctions imposed on Côte d'Ivoire.²²⁴ The Council extended these measures by resolutions 1643 (2005), 1727 (2006) and 1782 (2007). By resolution 1643 (2005) of 15 December 2005, the Council expressed its concern at the persistence of the crisis in Côte d'Ivoire and recognized the role played by the illicit trade in diamonds in fuelling the conflict in the

²²³ Resolution 1572 (2004), paras. 7, 8, 9 and 10.

²²⁴ *Ibid.*, para. 11. By para. 12 of the resolution, the Council also outlined a number of exemptions to the asset freeze.

²²⁰ S/PRST/2004/1.

²²¹ S/PRST/2005/7.

²²² S/PRST/2006/28.

country.²²⁵ The Council decided that all States were to take the necessary measures to prevent the import of all rough diamonds from Côte d'Ivoire.²²⁶

Establishment of a Group of Experts. By resolution 1584 (2005) of 1 February 2005, the Council authorized UNOCI and the French forces supporting it to monitor the application of the arms embargo imposed by resolution 1572 (2004) and to collect and dispose of such materiel as appropriate. The Council also requested the Secretary-General to establish a Panel of Experts in order to generate independent information on violations of the arms embargo and as a step towards implementing and strengthening the embargo.²²⁷ The mandate of the Panel was subsequently extended by resolutions 1632 (2005), 1727 (2006), 1761 (2007) and 1782 (2007) and re-established by resolution 1643 (2005).

Measures imposed against the Democratic People's Republic of Korea

By resolution 1718 (2006) of 14 October 2006, in response to the nuclear test proclaimed by the Democratic People's Republic of Korea on 9 October 2006, the Council, acting under Chapter VII of the Charter, and taking measures under its Article 41, imposed an embargo on heavy weapons, weapons of mass destruction and ballistic missiles, and luxury goods; an export ban, by which the Democratic People's Republic of Korea had to cease the export of weapons of mass destruction, ballistic missiles and heavy weapons; an asset freeze, directed at persons or entities designated by the Committee established by the resolution or by the Council as being engaged in the weapons of mass destruction-related and ballistic missiles-related programmes; and a travel ban.²²⁸ The Council affirmed

²²⁵ Resolution 1643 (2005), seventh and ninth preambular paragraphs.

²²⁶ *Ibid.*, para. 6. The embargo was renewed by resolutions 1727 (2006), para. 1, and 1782 (2007), para. 1.

²²⁷ Resolution 1584 (2005), paras. 2 and 7.

²²⁸ Resolution 1718 (2006), para. 8. By paras. 9 and 10 of the resolution, the Council also decided that the asset freeze would not apply to financial resources deemed by relevant States to be necessary for basic expenses, including payment for foodstuffs, as well as for extraordinary expenses approved by the Committee, and to funds which were the subject of a judicial, administrative or arbitral lien or judgement; and decided that the travel ban would not apply to cases in which the Committee determined that the travel was justified.

that it would keep the actions of the Democratic People's Republic of Korea under continuous review and that it would be prepared to reassess the appropriateness of the measures, including the strengthening, modification, suspension, or lifting of the measures.²²⁹

Measures imposed against the Democratic Republic of the Congo

Establishment of a Committee and a Group of Experts. By resolution 1533 (2004) of 12 March 2004, the Council established a Committee to monitor the implementation and violations of the arms embargo imposed by resolution 1493 (2003).²³⁰ The Council also established a Group of Experts tasked to collect and examine information on the flows of arms and related materiel.²³¹ The Council authorized the United Nations Mission in the Democratic Republic of the Congo to seize or collect, as appropriate, the arms and any related materiel whose presence violated the arms embargo.²³²

Renewal and modification of measures. By resolution 1552 (2004) of 27 July 2004, the Council decided to renew until 31 July 2005 the arms embargo imposed by resolution 1493 (2003), in the light of the failure by the parties to comply with the Council's demands.²³³ By resolution 1596 (2005) of 18 April 2005, the Council decided to amend and expand the

²²⁹ Resolution 1718 (2006), para. 15.

²³⁰ Resolution 1533 (2004), para. 8. By resolution 1493 (2003) of 28 July 2003, the Council imposed an arms embargo on all foreign and Congolese armed groups and militias operating in the territory of North and South Kivu and Ituri, and on groups not parties to the Global and All-Inclusive Agreement on the Transition in the Democratic Republic of the Congo.

²³¹ Resolution 1533 (2004), para. 10. The Group of Experts was subsequently re-established by resolutions 1552 (2004), para. 5, 1596 (2005), para. 21, 1616 (2005), para. 4, and 1654 (2006), para. 1. By resolution 1698 (2006) of 31 July 2006, the Council extended the mandate of the Group of Experts, requesting it to recommend feasible and effective measures the Council might impose to prevent the illegal exploitation of natural resources financing armed groups in the eastern part of the Democratic Republic of the Congo.

²³² Resolution 1533 (2004), para. 4.

²³³ Resolution 1552 (2004), para. 2. By resolution 1616 (2005) of 29 July 2005, the Council renewed the arms embargo established by resolution 1493 (2003), as amended and expanded by resolution 1596 (2005), as well as the travel ban and the asset freeze, as modified by the latter resolution.

arms embargo, applying the measure to any recipient of arms in the territory of the Democratic Republic of the Congo.²³⁴ The Council also modified the travel ban and the asset freeze, which would apply for the period of the arms embargo to all persons designated by the Committee as acting in violation of the measures established by the Council.²³⁵ By resolution 1649 (2005) of 21 December 2005, the Council deplored the fact that foreign armed groups present in the eastern part of the Democratic Republic of the Congo had not yet laid down their arms, and demanded that all such groups engage voluntarily and without any delay or preconditions in their disarmament and in their repatriation and resettlement.²³⁶ To this end, the Council decided that, for a period expiring on 31 July 2006, the travel and financial restrictions imposed by resolution 1493 (2003), and modified by resolution 1596 (2005), would extend to political and military leaders of foreign armed groups operating in the Democratic Republic of the Congo and to political and military leaders of Congolese militias receiving support from outside the Democratic Republic of the Congo and impeding the disarmament and reintegration of combatants.²³⁷ By resolution 1698 (2006) of 31 July 2006, reiterating its serious concern regarding the presence of armed groups and militias in the eastern part of the Democratic Republic of the Congo, the Council renewed the arms embargo and the travel and financial restrictions for a period of 12 months.²³⁸ The Council also extended the travel ban and the asset freeze to political and military leaders recruiting or using children in armed conflict and to individuals committing serious violations of international law involving the targeting of children in situations of armed conflict.²³⁹

²³⁴ Resolution 1596 (2005), para. 1. By para. 2 of the resolution, the Council established exemptions to the arms embargo.

²³⁵ Resolution 1596 (2005), paras. 13 and 15. The Council also provided exemptions to these measures (paras. 14 and 16 of the resolution).

²³⁶ Resolution 1649 (2005), para. 1.

²³⁷ *Ibid.*, para. 2. By para. 3 of the resolution, the Council established exemptions to the travel ban and asset freeze.

²³⁸ Resolution 1698 (2006), fourth preambular paragraph and para. 2. By resolution 1768 (2007) of 31 July 2007, the Council extended the arms embargo as well as the travel and financial restrictions until 10 August 2007.

²³⁹ Resolution 1698 (2006), para. 13.

Measures imposed against Iraq

Exemptions. By resolution 1546 (2004) of 8 June 2004, the Council decided that the prohibitions related to the sale or supply to Iraq of arms and related materiel under previous resolutions should not apply to arms or related materiel required by the Government of Iraq or the multinational force.²⁴⁰

Measures imposed against the Islamic Republic of Iran

By resolution 1737 (2006) of 23 December 2006, “concerned by the proliferation risks presented by the Iranian nuclear programme” and by the Islamic Republic of Iran’s “continuing failure to meet the requirements” of the International Atomic Energy Agency (IAEA), the Council, acting under Article 41 of Chapter VII of the Charter of the United Nations, imposed a number of measures against the Islamic Republic of Iran. The measures adopted by the Council included a proliferation-sensitive nuclear and ballistic missile programmes-related embargo; an export ban on arms and related materiel from the Islamic Republic of Iran; and targeted sanctions, namely a travel ban, a travel notification requirement, and an asset freeze, on designated persons and entities.²⁴¹ The Council established a Committee to monitor the implementation and violations of these measures.²⁴²

By resolution 1747 (2007) of 24 March 2007 acting under Article 41 of Chapter VII of the Charter, the Council reiterated the travel ban established by resolution 1737 (2006), applicable to the persons listed in the annex to the resolution and to persons designated by the Committee or the Council. The Council also imposed an arms embargo on the Islamic Republic of Iran, under which the country was prohibited from supplying, selling or transferring any arms or related materiel, and no States could procure from or sell to it such items. The Council called upon all States to exercise vigilance and restraint in the provision of heavy weapons and related services to the Islamic Republic of Iran, and called upon all States and international financial institutions not to enter into new commitments

²⁴⁰ Resolution 1546 (2004), para. 21.

²⁴¹ Resolution 1737 (2006), ninth preambular paragraph and paras. 3-7, 10, 12 and 17. By paras. 9 and 13 of the resolution, the Council also decided on exemptions from the nuclear-related embargo and asset freeze.

²⁴² Resolution 1737 (2006), para. 18.

for grants, financial assistance, and concessional loans to the Government of the Islamic Republic of Iran, except for humanitarian and developmental purposes.²⁴³ The Council affirmed that it would review actions taken by the Islamic Republic of Iran in the light of the report it had requested of IAEA, and that it would suspend the implementation of measures if and for so long as the Islamic Republic of Iran suspended all enrichment-related and reprocessing activities, including research and development, as verified by IAEA; terminate the measures imposed by resolutions 1737 (2006) and 1747 (2007) as soon as it determined, based on the report of IAEA, that the Islamic Republic of Iran had fully complied with its obligations; and in the event that the report showed that the Islamic Republic of Iran had not complied with resolutions 1737 (2006) and 1747 (2007), adopt further appropriate measures under Article 41 of Chapter VII of the Charter.²⁴⁴

Measures imposed against Liberia

By resolution 1532 (2004) of 12 March 2004, the Council decided that all States should freeze without delay funds, financial assets and economic resources owned or controlled directly or indirectly by Charles Taylor, Jewell Howard Taylor and Charles Taylor Jr., senior officials of the former Taylor regime, or other close allies or associates, as designated by the Committee established pursuant to resolution 1521 (2003), in order to prevent those individuals from using misappropriated funds and property to interfere in the restoration of peace and stability in Liberia and the subregion.²⁴⁵

By resolution 1579 (2004) of 21 December 2004, the Council decided to renew the measures imposed by resolution 1521 (2003). Specifically, the Council renewed the arms embargo, travel ban, and restrictions imposed on timber acquisition for a period of 12 months, and the measures on diamonds for a period

of six months.²⁴⁶ The Council renewed such measures by several subsequent resolutions.²⁴⁷

Re-establishment of a Panel of Experts. By resolution 1549 (2004) of 17 June 2004, the Council decided to re-establish the Panel of Experts, appointed pursuant to resolution 1521 (2003), for the period from 30 June to 21 December 2004, to assess the implementation, enforcement and impact of the measures imposed by resolutions 1521 (2003) and 1532 (2004) in Liberia and the neighbouring States.²⁴⁸

Exemptions. By resolution 1683 (2006) of 13 June 2006, the Council, recognizing the need for newly vetted and trained Liberian security forces to assume greater responsibility for national security, decided to introduce exemptions to the arms embargo imposed by resolution 1521 (2003). In particular, the Council decided that the measures should not apply to weapons and ammunition already provided to members of the Special Security Service for training purposes; and limited supplies of weapons and ammunition intended for use by members of the Government of Liberia police and security forces who had been vetted and trained since the inception of the United Nations Mission in Liberia (UNMIL) in October 2003.²⁴⁹ By resolution 1688 (2006) of 16 June 2006, welcoming the willingness of the Government of the Netherlands to host the Special Court for the detention and trial of former President Taylor, the Council exempted the former President and any witnesses required at the trial from the travel ban

²⁴³ Resolution 1747 (2007), paras. 2, 5, 6 and 7.

²⁴⁴ *Ibid.*, para. 13.

²⁴⁵ Resolution 1532 (2004), para. 1. By para. 2 of the resolution, the Council established exemptions to the asset freeze, which applied to funds necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and medical treatment; necessary for extraordinary expenses; or the subject of a judicial, administrative or arbitral lien or judgement.

²⁴⁶ Resolution 1579 (2004), para. 1.

²⁴⁷ By resolution 1607 (2005), para. 1, the Council renewed the measures on diamonds for a further period of six months. By resolution 1647 (2005), para. 1, the Council renewed the measures related to arms and travel imposed by resolution 1521 (2003) for a period of 12 months, and renewed the measures on diamond and timber imposed by resolution 1521 (2003) for a further period of six months. By resolutions 1689 (2006) (para. 4) and 1731 (2006) (para. 1 (c)), the Council renewed the interdiction on States to import directly or indirectly rough diamonds from Liberia. The arms embargo was renewed by resolutions 1731 (2006), para. 1 (a), and 1792 (2007), para. 1 (a). The travel ban was renewed by resolutions 1731 (2006), para. 1 (a), and 1792 (2007), para. 1 (a).

²⁴⁸ Resolution 1549 (2004), para. 1. The Council decided to re-establish the Panel of Experts by its resolutions 1579 (2004), para. 8, 1607 (2005), para. 14, 1647 (2005), para. 9, and 1760 (2007), para. 1. The mandate of the Panel was renewed by resolutions 1689 (2006), para. 5, 1731 (2006), para. 4, and 1792 (2007), para. 5.

²⁴⁹ Resolution 1683 (2006), paras. 1 and 2.

imposed by resolution 1521 (2003) for any travel related to his trial before the Special Court as well as any travel related to the execution of the judgment.²⁵⁰ By resolution 1731 (2006) of 20 December 2006, the Council decided that the arms embargo imposed by resolution 1521 (2003) should not apply to supplies of non-lethal military equipment, excluding non-lethal weapons and ammunition, as notified in advance to the sanctions Committee, intended solely for use by members of the Government of Liberia police and security forces who had been vetted and trained since the inception of UNMIL in October 2003.²⁵¹

Termination. By resolution 1689 (2006) of 20 June 2006, the Council decided not to renew the interdiction on Member States set by resolution 1521 (2003), by which Member States were obligated to prevent the import into their territories of all round log and timber products originating in Liberia.²⁵² By resolution 1753 (2007) of 27 April 2007, having reviewed the measures imposed and conditions set out by resolution 1521 (2003) and concluding that sufficient progress had been made towards meeting those conditions, the Council decided to terminate the diamond measures imposed by resolution 1521 (2003) and renewed by resolution 1731 (2006).²⁵³

Measures imposed against Osama bin Laden, members of Al-Qaida and the Taliban and other individuals or groups associated with them

Strengthening of measures. By resolutions 1526 (2004), 1617 (2005) and 1735 (2006), the Council decided to strengthen the sanctions regime imposed against Osama bin Laden, the members of Al-Qaida and the Taliban, and other individuals or entities associated with them by resolutions 1267 (1999), 1333

²⁵⁰ Resolution 1688 (2006), para. 9.

²⁵¹ Resolution 1731 (2006), para. 1.

²⁵² Resolution 1689 (2006), para. 1.

²⁵³ Resolution 1753 (2007), para. 1.

(2000) and 1390 (2002). The measures included an asset freeze, a travel ban and an arms embargo.²⁵⁴

Strengthening of the Committee's mandate and establishment of a Monitoring Team. By resolution 1526 (2004) of 30 January 2004, the Council decided to strengthen the mandate of the Committee established pursuant to resolution 1267 (1999) to include, in addition to the oversight of the implementation of the above-mentioned measures by States, a central role in assessing information for review by the Council regarding the effective implementation of the measures, as well as in recommending improvements to the measures.²⁵⁵ The Council decided to establish a Monitoring Team to assist the Committee in the fulfilment of its mandate.²⁵⁶ By resolution 1735 (2006) of 22 December 2006, the Council decided that the Committee would consider submissions from States concerning exemptions to the travel ban where entry or transit was necessary for the fulfilment of a judicial process or the Committee determined on a case-by-case basis only that entry or transit was justified. In addition, the Council decided to extend the period for consideration by the Committee of exemption requests concerning the asset freeze established by resolutions 1267 (1999) and 1390 (2002), from 48 hours, as set out by resolution 1452 (2002), to three working days.²⁵⁷

Measures imposed against Rwanda

Termination. By resolution 1749 (2007) of 28 March 2007, the Council took note of the letter dated 2 March 2007 from the representative of Rwanda to the President of the Security Council requesting the

²⁵⁴ Resolutions 1526 (2004), para. 1, 1617 (2005), para. 1, and 1735 (2006), para. 1. By para. 2 of resolution 1617 (2005) of 29 July 2005, the Council decided that acts and activities indicating that an individual or entity was associated with Al-Qaida, Osama bin Laden or the Taliban, and thus also subject to the sanctions measures, included participation in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of; supplying, selling, or transferring arms and related materiel to; recruiting for; or otherwise supporting acts or activities of Al-Qaida, Osama bin Laden or the Taliban, or any cell, affiliate, splinter group or derivative thereof.

²⁵⁵ Resolution 1526 (2004), para. 2.

²⁵⁶ *Ibid.*, para. 6. The Council decided to extend the mandate of the Monitoring Team by resolutions 1617 (2005), para. 19, and 1735 (2006), para. 32.

²⁵⁷ Resolution 1735 (2006), paras. 1 and 15.

termination of the measures imposed by paragraph 11 of resolution 1011 (1995).²⁵⁸ Welcoming the positive developments in Rwanda and the Great Lakes region, particularly the signing of the Pact on Security, Stability and Development in the Great Lakes Region on 15 December 2006, the Council decided to terminate, with immediate effect, the arms embargo imposed by resolution 1011 (1995).²⁵⁹

Measures imposed against Sierra Leone

Exemptions. By resolution 1793 (2007) of 21 December 2007, reiterating its appreciation for the work of the Special Court for Sierra Leone and its vital contribution to reconciliation and the rule of law in Sierra Leone and the subregion, the Council decided to exempt from the travel ban imposed by resolution 1171 (1998) the travel of any witnesses whose presence at trial before the Special Court for Sierra Leone was required.²⁶⁰

Measures imposed against Somalia

Establishment of a Monitoring Group. By resolution 1558 (2004) of 17 August 2004, the Council, condemning the continued flow of weapons and ammunition supplies to and through Somalia, in contravention of the arms embargo, and reiterating the importance of enhancing the monitoring of the arms embargo in Somalia through persistent and vigilant investigation of violations, requested the Secretary-General to re-establish, for a period of six months, the Monitoring Group initially established by resolution 1519 (2003).²⁶¹

Exemptions. By resolution 1725 (2006) of 6 December 2006, the Council decided that the arms embargo imposed by resolution 733 (1992) and further elaborated by resolution 1425 (2002) should not apply

to supplies of weapons and military equipment and technical training and assistance intended solely for the support of or use by the protection and training mission established by the Intergovernmental Authority on Development and States members of the African Union.²⁶² By resolution 1744 (2007) of 20 February 2007, the Council further extended the exemptions to the arms embargo, which would not apply to supplies of weapons and military equipment, technical training and assistance intended solely for the support of or use by the mission established by the States members of the African Union; and supplies and technical assistance by States intended solely for the purpose of helping develop security sector institutions.²⁶³

Measures imposed against the Sudan

By resolution 1556 (2004) of 30 July 2004, the Council, expressing concern at reports of violations of the ceasefire agreement signed in N'Djamena on 8 April 2004, imposed an arms embargo against all non-governmental entities and individuals, including the Janjaweed, operating in the States of Northern Darfur, Southern Darfur and Western Darfur.²⁶⁴

By resolution 1591 (2005) of 29 March 2005, the Council strongly deplored the failure of the Government of the Sudan and of all other armed groups in Darfur to comply fully with the Council's previous resolutions, and condemned the continued violations of the N'Djamena ceasefire agreement and the Abuja Protocols.²⁶⁵ The Council expanded the arms embargo established by resolution 1556 (2004) to include all the parties to the N'Djamena ceasefire agreement and any other belligerents in the States of Northern Darfur, Southern Darfur and Western

²⁵⁸ S/2007/121.

²⁵⁹ Resolution 1749 (2007), seventh preambular paragraph and para. 1.

²⁶⁰ Resolution 1793 (2007), ninth preambular paragraph and para. 8. By resolution 1171 (1998), the Council had imposed a travel ban against members of the former military junta and of the Revolutionary United Front.

²⁶¹ Resolution 1558 (2004), para. 3. The mandate of the Monitoring Group was subsequently re-established by resolutions 1587 (2005), para. 3, 1630 (2005), para. 3, 1676 (2006), para. 3, and 1724 (2006), para. 3. By resolution 1766 (2007), para. 3, the Council extended the mandate of the Monitoring Group for a further period of six months.

²⁶² Resolution 1725 (2006), para. 5.

²⁶³ Resolution 1744 (2007), para. 6. This exemption was reiterated in resolution 1772 (2007), para. 11.

²⁶⁴ Resolution 1556 (2004), paras. 7 and 8. By para. 9 of the same resolution, the Council decided that the arms embargo would not apply to supplies and related technical training and assistance to monitoring, verification or peace support operations; supplies of non-lethal military equipment intended solely for humanitarian, human rights monitoring or protective use, and related technical training and assistance; and supplies of protective clothing, for the personal use of United Nations personnel, human rights monitors, representatives of the media, and humanitarian and development workers and associated personnel.

²⁶⁵ Resolution 1591 (2005), para. 1.

Darfur.²⁶⁶ The Council imposed an asset freeze and a travel ban against individuals who impeded the peace process, constituted a threat to stability in Darfur and the region, committed violations of international human rights law, or violated the sanctions imposed against the Sudan.²⁶⁷ By resolution 1672 (2006) of 25 April 2006, the Council decided that the travel ban and asset freeze would apply to four designated individuals.²⁶⁸

Establishment of a Committee and a Panel of Experts. By resolution 1591 (2005), to monitor the implementation of the measures, the Council established a Committee and a Panel of Experts to assist the Committee.²⁶⁹

*Measures imposed pursuant to resolution
1636 (2005)*

By resolution 1636 (2005) of 31 October 2005, the Council took note with concern, of the conclusion of the International Independent Investigation Commission that there was evidence pointing at the involvement of both Lebanese and Syrian officials in the terrorist bombing in Beirut on 14 February 2005 that killed, among others, the former Prime Minister of Lebanon, Rafiq Hariri. Moreover, the Commission concluded that it was difficult to envisage a scenario whereby such a complex assassination could have been carried out without the knowledge of Lebanese and Syrian officials. Consequently, the Council decided to impose a travel ban and an asset freeze against all individuals designated by the Commission or the Government of Lebanon as suspected of involvement in planning, sponsoring or organizing that terrorist

act.²⁷⁰ The Council also established a Security Council Committee to monitor the enforcement of the measures.²⁷¹

Judicial measures relating to Article 41

This subsection consists of the decisions adopted during the period under review by which the Council imposed judicial measures intended to prevent the aggravation of a situation that posed a threat to international peace and security. Specifically, acting under Chapter VII of the Charter, the Council authorized the establishment of a Special Tribunal for Lebanon, referred the situation in Darfur to the Prosecutor of the International Criminal Court, and endorsed the intention of the President of the Special Court for Sierra Leone to authorize a Trial Chamber in the Netherlands for the trial of former President Taylor.

The situation in the Middle East

By resolution 1644 (2005) of 15 December 2005, reaffirming its condemnation of the terrorist bombings of 14 February 2005 that resulted in the death of the former Prime Minister of Lebanon, Rafiq Hariri, and reiterating that those involved in the attack had to be held accountable for their crimes, the Council acknowledged the request of the Government of Lebanon that those eventually charged with involvement in the attack be tried by a tribunal of an international character, and requested the Secretary-General to help the Government of Lebanon to identify the nature and scope of the international assistance needed in that regard.²⁷²

²⁶⁶ Ibid., para. 7. By the same paragraph, the Council decided that the arms embargo would not apply to supplies and related technical training and assistance; assistance and supplies provided in support of implementation of the Comprehensive Peace Agreement; and movements of military equipment and supplies into the Darfur region, approved in advance by the sanctions Committee.

²⁶⁷ Resolution 1591 (2005), para. 3 (c), (d) and (e). By paras. 3 (f), 3 (g) and 7 of the same resolution the Council also established exemptions to these measures.

²⁶⁸ Resolution 1672 (2006), para. 1.

²⁶⁹ Resolution 1591 (2005), para. 3 (a) and (b). The Council subsequently extended the mandate of the Panel of Experts by resolutions 1651 (2005), para. 1, 1665 (2005), para. 1, 1713 (2006), para. 1, and 1779 (2007), para. 1.

²⁷⁰ Resolution 1636 (2005), paras. 2 and 3 (a).

²⁷¹ Ibid., para. 3 (b). The Council further decided that the Committee should register individuals designated by the International Independent Investigation Commission as falling subject to the sanctions; approve exceptions to the travel ban and asset freeze on a case-by-case basis; register the removal of individuals from the scope of the travel ban and asset freeze measures in accordance with resolution 1636 (2005); and inform all Member States as to which individuals were subject to those measures (resolution 1636 (2005), annex; paras. 1-4).

²⁷² Resolution 1644 (2005), second preambular paragraph and para. 6. By resolution 1664 (2006) (para. 1), while not acting under Chapter VII of the Charter, the Council welcomed the report of the Secretary-General and requested him to negotiate an agreement with the Government of Lebanon aimed at establishing a tribunal of an international character.

By resolution 1757 (2007) of 30 May 2007, expressing its willingness to continue to assist Lebanon in holding those involved in the terrorist attack accountable, the Council, acting under Chapter VII of the Charter, decided that the agreement between the United Nations and the Government of Lebanon on the establishment of a Special Tribunal would enter into force on 10 June 2007.²⁷³

The situation in Sierra Leone

By resolution 1688 (2006) of 16 June 2006, noting that the presence of former President Taylor in the region constituted an impediment to stability and a threat to the peace of Liberia and Sierra Leone and to international peace and security in the region, the Council, acting under Chapter VII of the Charter, took note of the intention of the President of the Special Court for Sierra Leone to authorize a Trial Chamber to exercise its functions away from the seat of the Special Court, as well as his request to the Government of the Netherlands to host the trial, including any appeal. The Council also took note of the willingness of the International Criminal Court to allow the use of its premises for the detention and trial of former President Taylor by the Special Court, including any appeal. The Council requested all States to cooperate with the Special Court by, in particular, ensuring the appearance of the former President in the Netherlands for purposes of his trial, and encouraged all States to ensure that any evidence or witnesses were, upon request of the Special Court, promptly made available to the Court.²⁷⁴ The Council also requested the Secretary-General to assist in the conclusion of all necessary legal and practical arrangements, including for the transfer of former President Taylor to the Special Court in the Netherlands and for the provision of the necessary facilities for the conduct of the trial. The Council decided that the Special Court should retain exclusive jurisdiction over former President Taylor during his transfer to and presence in the Netherlands in respect of matters within the statute of the Special Court, and that the Government of the Netherlands should not exercise its jurisdiction over former President Taylor except by express agreement with the Special Court and facilitate the implementation of the

²⁷³ Resolution 1757 (2007), twelfth preambular paragraph and para. 1.

²⁷⁴ Resolution 1688 (2006), fourteenth preambular paragraph and paras. 1, 3, and 4.

decision of the Special Court to conduct the trial of former President Taylor in the Netherlands.²⁷⁵

Reports of the Secretary-General on the Sudan

By resolution 1593 (2005) of 31 March 2005, taking note of the report of the International Commission of Inquiry for Darfur on violations of international humanitarian law and human rights law in Darfur, the Council, acting under Chapter VII of the Charter, decided to refer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court. The Council also decided that the Government of the Sudan and all other parties in Darfur had to cooperate fully with and provide any necessary assistance to the Court and the Prosecutor and, while recognizing that States not parties to the Rome Statute had no obligation under the Statute, urged all States and concerned regional and other international organizations to cooperate fully.²⁷⁶

B. Discussion relating to Article 41

Discussion of thematic issues

Children and armed conflict

At its 4898th meeting, on 20 January 2004, the Council considered the latest report of the Secretary-General on children and armed conflict.²⁷⁷ In his report, the Secretary-General recommended that the Council take concrete steps where insufficient or no progress had been made by parties in accordance with its resolutions 1379 (2001) and 1460 (2003) which provided a comprehensive framework for addressing the protection of children affected by armed conflict. Such targeted and concrete measures could include the imposition of travel restrictions on leaders and their exclusion from any governance structures and amnesty provisions, a ban on the export or supply of small arms, a ban on military assistance, and restriction on the flow of financial resources to the parties concerned.²⁷⁸ During the debate, several speakers expressed their support for applying “justified”, “graduated” and “targeted” sanctions against parties

²⁷⁵ *Ibid.*, paras. 5, 7 and 8.

²⁷⁶ Resolution 1593 (2005), first preambular paragraph and paras. 1 and 2.

²⁷⁷ S/2003/1053.

²⁷⁸ In a subsequent report, the Secretary-General reiterated these recommendations (see S/2005/72, para. 57).

that failed to adopt measures aimed at ending violations against children in situations of armed conflict.²⁷⁹ The representative of Brazil noted that such measures should rely on precise information and be finely tuned, so as to avoid problems common to sanctions and the conditioning of assistance, which often delayed and even prevented the provision of humanitarian aid.²⁸⁰ The representative of Germany, while recognizing that targeted measures were a highly complex and “politically charged” issue, said that the Council should not continue to treat it as a “taboo subject” or it would never be able to find the right solution.²⁸¹

At its 5129th meeting, on 23 February 2005, the Council considered the latest report of the Secretary-General on children and armed conflict,²⁸² including his recommendations regarding the imposition of “targeted and concrete” measures where insufficient or no progress had been made by the parties recruiting or using children in situations of armed conflict. Recalling resolution 1539 (2004), a number of speakers supported the use of targeted measures against the parties to an armed conflict identified in the list submitted by the Secretary-General to the Council.²⁸³ While welcoming the effective monitoring and reporting of violations against children, the representative of the United States expressed concern about the possible unanticipated policy and resource implications of the “proposed new thematic sanctions committee”.²⁸⁴ The representative of India held that the Council could impose sanctions under Article 41 only if it had established, under Article 39, that there was a sufficient danger to international peace and security to justify them.²⁸⁵ The representative of Canada suggested that sanctions should be coupled with the establishment of base indicators and standards, and

called for an adequate monitoring and enforcement mechanism to be put in place.²⁸⁶ The representative of Liechtenstein, echoed by the representative of Norway, considered it crucial that measures be tailored to their respective targets in all situations.²⁸⁷

At its 5494th meeting, on 24 July 2006, a number of speakers reiterated the belief that it was necessary to impose sanctions against those who were responsible for the most flagrant violations of the human rights of children in conflict situations.²⁸⁸

At the 5573rd meeting, on 28 November 2006, the representative of China reiterated his position against frequent resort to sanctions or threats of sanctions, and asserted that caution was especially necessary with regard to the question of children and armed conflict. He noted that every conflict was different and that there could be no generalizations or “one-size-fits-all” approach. Instead, he opined, the Council should work with the countries concerned and support their efforts to protect children.²⁸⁹ In contrast, a number of speakers called on the Council to reaffirm its willingness to use all the tools at its disposal and not shy away from more difficult measures, such as sanctions, if the gravity of the situation called for them.²⁹⁰

General issues relating to sanctions

At its 5599th meeting, on 19 December 2006, the Council adopted resolution 1730 (2006), by which it approved a new delisting procedure aimed at ensuring that fair and clear procedures existed for placing individuals and entities on sanctions lists and for removing them, as well as granting humanitarian exemptions. During the debate, the representatives of Greece and Denmark expressed the view that the newly adopted resolution enhanced the effectiveness and credibility of the relevant sanctions regimes.²⁹¹ The representative of France stated that, in the light of the development of sanctions regimes aimed at individuals or entities, rather than countries, the inadequacy of

²⁷⁹ S/PV.4898, p. 8 (Brazil); p. 9 (Algeria); p. 11 (Angola); and p. 24 (Germany); S/PV.4898 (Resumption 1), p. 5 (Ireland, on behalf of the European Union and associated countries); p. 8 (Sierra Leone); p. 19 (Fiji); p. 24 (Monaco); p. 26 (Azerbaijan); and p. 28 (Liechtenstein).

²⁸⁰ S/PV.4898, p. 8.

²⁸¹ *Ibid.*, p. 24.

²⁸² S/2005/72.

²⁸³ S/PV.5129, p. 13 (France); p. 14 (Romania); pp. 20-21 (Greece); and pp. 23-24 (Denmark); S/PV.5129 (Resumption 1), pp. 3-4 (Luxembourg, on behalf of the European Union and associated countries); p. 7 (Iceland); p. 9 (Canada); and p. 23 (Mali).

²⁸⁴ S/PV.5129, pp. 22-23.

²⁸⁵ S/PV.5129 (Resumption 1), p. 11.

²⁸⁶ *Ibid.*, p. 9.

²⁸⁷ *Ibid.*, p. 10 (Liechtenstein); and p. 15 (Norway).

²⁸⁸ S/PV.5494, p. 10 (Finland, on behalf of the European Union and associated countries); p. 15 (Argentina); p. 26 (Denmark); p. 28 (France); pp. 29-30 (Canada); and p. 31 (Sri Lanka); S/PV.5494 (Resumption 1), p. 17 (Benin).

²⁸⁹ S/PV.5573, p. 12.

²⁹⁰ *Ibid.*, p. 14 (Denmark); p. 19 (Argentina); and p. 24 (United Republic of Tanzania).

²⁹¹ S/PV.5599, pp. 2-3 (Denmark); and p. 3 (Greece).

delisting procedures had gradually become apparent. He pointed out that the efficacy of sanctions had been impaired by the perception that the delisting procedure was “opaque and inaccessible”. He therefore expressed the hope that the new procedure, while facilitating requests for delisting, would strengthen the support of States for the sanctions regimes, and, therefore, guarantee the effectiveness of targeted sanctions.²⁹² The representative of Qatar expressed the hope that the Council could further improve procedures on delisting from sanctions. Although he had voted in favour of the resolution, he expressed concern that it failed to respect many legal norms and standards that should be respected and applied by both the Council and its sanctions committees in the delisting of individuals. He argued that the focal point established by the Council lacked “independence, neutrality, standards or controls for delisting”. He further regretted that the resolution did not allow legal representatives of listed persons to petition for delisting, particularly since some of the listed persons were deceased.²⁹³

Maintenance of international peace and security

At its 5705th meeting, on 25 June 2007, the Council held an open debate on the role played by natural resources in conflict situations. Referring to the existing sanctions related to natural resources, several speakers said that, in spite of the progress made, there was more room for improving the effectiveness of the sanctions regimes.²⁹⁴ While acknowledging that sanctions measures against those who exploited natural resources in conflict areas could be an important tool for the Council to prevent, intervene in and stop conflicts, a number of representatives believed that sanctions should be used with great prudence, given their possible negative humanitarian impact.²⁹⁵ They underlined the importance of improving the mechanisms for the lifting of sanctions. The representative of France, reinforced by the representative of Germany, expressed the belief that the effectiveness of sanctions had to be improved in order for sanctions to play a more important role in

bringing conflicts to an end.²⁹⁶ Similarly, the representative of Peru stated that sanctions regimes had to be made more effective and expert groups had to be encouraged to consider the lessons learned, make use of them, and, when necessary, propose modifications to the mandates of peacekeeping operations or to sanctions regimes.²⁹⁷

The representative of Italy supported the view that, whenever commodity sanctions were in place, peacekeeping operations should be given an appropriate mandate to assist the Government concerned to prevent the illegal exploitation of natural resources from further fuelling the conflict.²⁹⁸ The representative of Switzerland, referring to the various sources used by armed groups to finance their activities, stressed that the Council had to be prepared to react swiftly to changes in the way in which armed groups obtained revenue. Stressing that the link between conflict and natural resources generally arose in States with weak institutions, he said that sanctions should include a comprehensive strategy to fight corruption, rebuild institutions, re-establish the rule of law, and diversify the economy.²⁹⁹ The representative of the Congo, echoed by the representatives of Ghana and Senegal, said that to ensure the credibility of sanctions regimes transnational corporations should not be treated more leniently than local leaders when it came to “economic abuses and crimes”.³⁰⁰ The representative of Pakistan noted that the Council’s approach of utilizing sanctions to control arms trafficking and natural resource exploitation had proved, unfortunately, to be “too narrow and, at times, inappropriate in responding to various situations”. He suggested using more extensive measures, including border controls and wider monitoring.³⁰¹ In contrast, the representative of Indonesia, recognizing that the fierce competition for possession of valuable natural resources fuelled armed conflicts, asserted that the Council should acknowledge limitations to its power and not be tempted to become involved in the area of conflict prevention. He believed that imposing

²⁹² Ibid., p. 2.

²⁹³ Ibid., pp. 3-4.

²⁹⁴ S/PV.5705, p. 10 (Panama); p. 14 (South Africa); p. 21 (Slovakia); p. 25 (Germany, on behalf of the European Union and associated countries); and p. 26 (Switzerland).

²⁹⁵ Ibid., p. 14 (South Africa); pp. 17-18 (China); p. 21 (Slovakia); and p. 23 (Russian Federation).

²⁹⁶ Ibid. p. 15 (France); and pp. 24-25 (Germany, on behalf of the European Union and associated countries).

²⁹⁷ Ibid., p. 17.

²⁹⁸ Ibid., p. 20.

²⁹⁹ Ibid., p. 26.

³⁰⁰ Ibid., p. 12 (Congo); p. 13 (Ghana); and p. 29 (Senegal).

³⁰¹ S/PV.5705 (Resumption 1), p. 7.

sanctions or authorizing military action would not solve the underlying problems of conflicts.³⁰²

A number of speakers supported the view that sanctions should be reversed once they had achieved their intended purpose.³⁰³ The representative of Liechtenstein noted that previous sanctions imposed by the Council with respect to certain commodities had contributed to conflict resolution in Angola, Liberia and Sierra Leone. He said that such sanctions had to be tailored to the circumstances of each individual case with clearly identified objectives, specified measures for implementation by Member States, and conditions for their suspension or lifting.³⁰⁴

Protection of civilians in armed conflict

At its 4990th meeting, on 14 June 2004, the Council considered the latest report of the Secretary-General on the protection of civilians in armed conflict.³⁰⁵ In his report, the Secretary-General declared that more serious consideration should be given to the imposition of travel restrictions and targeted sanctions against armed groups that blatantly violated international humanitarian law and prevented humanitarian access to populations in need. In the ensuing debate, the representative of Angola declared that the responsibility to respond to the need to protect civilians implied also making effective use of sanctions and international prosecution.³⁰⁶ The representative of Germany, while recognizing the contentious nature of the issue, stressed that national sovereignty could not be used as an excuse when the lives of civilians were threatened. He therefore proposed considering targeted sanctions and travel restrictions as possible measures against non-State armed groups and those backing them.³⁰⁷

At the 5100th meeting, on 14 December 2004, the representative of Benin noted that the Council could take measures that would increase the penalties for violators of international humanitarian law and human rights. For such individuals, he opined, sanctions could act as a deterrent. He said that activities such as blocking access to populations who needed humanitarian assistance and attacks on humanitarian

staff should be included among the acts that triggered the imposition of international sanctions.³⁰⁸ The representative of Switzerland, while acknowledging that in recent years significant progress had been achieved in defining sanctions that were more effectively targeted, thus minimizing their negative impact on civilian populations, said that further efforts were still required.³⁰⁹ The representative of Canada stated that the Council still needed to strengthen its enforcement and monitoring mechanisms for arms embargoes and targeted sanctions.³¹⁰

At the 5319th meeting, on 9 December 2005, the representative of Iraq, referring to the proposals made by the Secretary-General in his report on how to deal with States and groups that had failed to discharge their duties to protect civilians,³¹¹ cautioned that when imposing economic sanctions the Council had to ensure that they did not negatively affect the most vulnerable in society, including children.³¹² The representative of Egypt also voiced concern over the idea of imposing targeted sanctions against States that were preventing or blocking humanitarian access, as recommended by the Secretary-General. He suggested that such situations should be dealt with by means of cooperation with the Member State concerned, using all measures, including the provisions of Chapters VI and VIII of the Charter, but not by imposing sanctions under Chapter VII.³¹³

At the 5476th meeting, on 28 June 2006, the representatives of Greece, Denmark and Canada called on the Council to use targeted sanctions as part of a holistic strategy supporting peace agreements and deterring attacks on civilians.³¹⁴

At the 5577th meeting, on 4 December 2006, the representative of France, referring to the increasing number of casualties among journalists and media professionals in recent years, called on the Council to send a clear message to all parties to a conflict to remind them of their obligations to prevent any violence against journalists and of potential investigations and sanctions if they failed to do so.³¹⁵ The representative of

³⁰² S/PV.5705, p. 8.

³⁰³ Ibid., p. 13 (Ghana); p. 14 (South Africa); and p. 23 (Russian Federation).

³⁰⁴ S/PV.5705 (Resumption 1), p. 5.

³⁰⁵ S/2004/431.

³⁰⁶ S/PV.4990, p. 13.

³⁰⁷ Ibid., p. 25.

³⁰⁸ S/PV.5100, p. 22.

³⁰⁹ S/PV.5100 (Resumption 1), p. 9.

³¹⁰ Ibid., pp. 3-5.

³¹¹ S/2005/740.

³¹² S/PV.5319, p. 21.

³¹³ S/PV.5319 (Resumption 1), p. 6.

³¹⁴ S/PV.5476, p. 20 (Greece); p. 22 (Denmark); and p. 28 (Canada).

³¹⁵ S/PV.5577, p. 13.

Denmark, echoed by the representative of Canada, stressed that the Council should make use of targeted sanctions to deter attacks against civilians, including humanitarian workers, workers for non-governmental organizations, and journalists. He believed that the Council had to overcome its reluctance to fully use those tools if it seriously wished to move the “protection agenda” forward.³¹⁶

At the 5781st meeting, on 20 November 2007, the representative of the United Kingdom, echoed by the representatives of Canada and Norway, expressed the view that the international community had not only a right to act but a responsibility to do so, in those exceptional cases when States could not or would not protect civilians from the gravest abuses of their human rights. As possible actions, he referred to targeted sanctions, as well as direct intervention to protect civilians, stressing that the latter should always be proportionate and carefully chosen.³¹⁷

Small arms

At its 4896th meeting, on 19 January 2004, the Council considered the latest report of the Secretary-General on small arms.³¹⁸ During the debate, several speakers supported the Secretary-General’s recommendations to establish monitoring mechanisms to oversee the enforcement of sanctions and to consider coercive measures against Member States that deliberately violated arms embargoes.³¹⁹ A number of representatives shared the view that the Council should adopt effective and practical enforcement strategies for arms embargoes, for targeted sanctions, and for restricting the supply of ammunition to areas of

instability.³²⁰ The representative of Egypt proposed, as a first step, the publication of the names of institutions or countries that were violating arms embargoes.³²¹ The representative of the Republic of Korea was of the view that sanctions committees, under the guidance of the Council, could act as a monitoring mechanism.³²² That view was not shared by the representative of Costa Rica, who believed that the sanctions committees were political bodies that lacked the technical capacity to carry out genuine verification work. He proposed the establishment of a mechanism within the Secretariat to proactively monitor the implementation of arms embargoes and to serve as technical support for the work of the sanctions committees.³²³

At its 5127th meeting, on 17 February 2005, the Council considered the impact of illicit trafficking of small arms and light weapons on conflict situations based on the Secretary-General’s most recent report on small arms.³²⁴ During the debate, a number of speakers reiterated the need to further strengthen the effectiveness and enforcement of arms embargoes imposed by the Council.³²⁵ The representative of the Russian Federation said that the main priority continued to be monitoring the level of compliance with the Council’s embargoes on the delivery of weapons and enhancing the effectiveness of monitoring mechanisms to investigate cases of embargo violations.³²⁶ The representative of Luxembourg supported the establishment of monitoring mechanisms to detect violations of arms embargoes.³²⁷ Similarly, the representative of Senegal called for a “clear mechanism” to detect violations and punish violators

³¹⁶ S/PV.5577 (Resumption 1), p. 3 (Denmark); and p. 16 (Canada).

³¹⁷ S/PV.5781, p. 11 (United Kingdom); S/PV.5781 (Resumption 1), p. 15 (Canada); and p. 17 (Norway).

³¹⁸ S/2003/1217.

³¹⁹ S/PV. 4896, p. 4 (Romania); pp. 8-9 (Russian Federation); pp. 9-10 (Benin); pp. 11-13 (Spain); pp. 15-16 (China); pp. 16-17 (Angola); pp. 20-21 (Ireland, on behalf of the European Union and associated countries); pp. 24-25 (Republic of Korea); and pp. 28-29 (South Africa); S/PV.4896 (Resumption 1), pp. 2-3 (New Zealand); pp. 4-5 (Peru); pp. 6-7 (Canada); pp. 7-9 (Zimbabwe); pp. 9-10 (India); pp. 10-12 (Indonesia); and pp. 13-15 (Mali).

³²⁰ S/PV.4896, pp. 7-8 (Philippines); pp. 9-10 (Benin); pp. 18-19 (Algeria); and pp. 19-20 (Chile); S/PV.4896 (Resumption 1), pp. 12-13 (Sierra Leone).

³²¹ S/PV.4896, p. 23.

³²² *Ibid.*, p. 24.

³²³ S/PV.4896 (Resumption 1), p. 16. At the 5127th meeting, on 17 February 2005, the representative of Costa Rica reiterated his conviction that sanctions committees were political bodies that lacked the technical capacity for genuine verification (see S/PV. 5127 (Resumption 1), p. 15).

³²⁴ S/2005/69.

³²⁵ S/PV.5127, pp. 8-9 (Romania); pp. 17-18 (Denmark); pp. 19-20 (Benin); p. 23 (Luxembourg, on behalf of the European Union and associated countries); and pp. 25-26 (Canada); S/PV.5127 (Resumption 1), p. 12 (Norway); and pp. 14-15 (Costa Rica).

³²⁶ S/PV.5127, p. 12.

³²⁷ *Ibid.*, p. 23.

of arms embargoes.³²⁸ The representative of Denmark opined that the follow-up to the recommendations of the panels of experts should be strengthened, for example, through stronger provisions for secondary sanctions on countries or individuals that violated sanctions regimes.³²⁹ Consideration of secondary measures against violators was supported also by the representatives of Benin, Ukraine and Egypt.³³⁰

At its 5390th meeting, on 20 March 2006, the Council considered another report of the Secretary-General on small arms.³³¹ Several speakers shared the view that peacekeeping missions and sanctions committees should be mandated to initiate small arms traces to assist States in identifying and pursuing those who violated arms embargoes.³³² The representatives of the Congo and Austria expressed the wish for the Council to adopt stronger measures, including with regard to the implementation and monitoring of targeted sanctions, in order to sever the link between the illicit trade in small arms and illegal exploitation of natural resources.³³³ The representative of Denmark said that Member States should be encouraged to bring their own legislation into line with the Council's measures and to take the required legal action against sanctions violators. He suggested that the Council, for its part, could employ targeted sanctions, such as travel bans against individuals or entities breaching embargoes.³³⁴ The representative of Sierra Leone, while commending the Council for establishing and mandating expert monitoring mechanisms for the effective implementation of sanctions, supported the view expressed by the Secretary-General that sanctions enforcement depended on the political will and relevant technical capacity of Member States. Referring to the Council's primary responsibility under the Charter for the maintenance of international peace and security, he opined that the Council should take the lead and assume a more proactive role in the collective

effort to combat the illicit trade and excessive accumulation of small arms.³³⁵

Threats to international peace and security caused by terrorist acts

At its 5104th meeting, on 17 December 2004, the Council was briefed on the work of the Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities. During the subsequent debate, a number of speakers expressed the opinion that, while the significance of targeted sanctions as an instrument of counter-terrorism had progressively increased, the mechanisms to monitor compliance and facilitate the provision of technical assistance still needed to be improved.³³⁶ Several representatives expressed concern with regard to the current methods of listing and delisting individuals, complaining of lack of transparency and due process.³³⁷ Other speakers emphasized that enforcement measures needed to be combined with efforts to address the underlying causes of terrorism.³³⁸

At its 5446th meeting, on 30 May 2006, the Council heard briefings by the Chairmen of the three sanctions committees established, respectively, pursuant to resolutions 1267 (1999), 1373 (2001) and 1540 (2004). During the ensuing debate, a number of speakers, referring to the work of the Committee established pursuant to resolution 1267 (1999), said that there was a need to ensure fair and clear procedures for placing individuals and entities on sanctions lists and for removing them, as well as for granting humanitarian exemptions.³³⁹ The representative of Qatar, underlining the need to move from comprehensive sanctions to targeted sanctions, stressed that such sanctions had to be imposed with a clear objective, and implemented "objectively, effectively and in a balanced number". Noting that the imposition of sanctions was not only a political tool but also a legal tool, he stressed that the

³²⁸ S/PV.5127 (Resumption 1), p. 5.

³²⁹ S/PV.5127, p. 18.

³³⁰ Ibid., p. 20 (Benin); p. 25 (Ukraine); and p. 31 (Egypt).

³³¹ S/2006/109.

³³² S/PV.5390, pp. 10-11 (Congo); and p. 18 (Denmark); S/PV.5390 (Resumption 1), p. 6 (Canada).

³³³ S/PV.5390, p. 12 (Congo); and p. 23 (Austria, on behalf of the European Union and associated countries).

³³⁴ Ibid., p. 18.

³³⁵ Ibid., pp. 27-28.

³³⁶ S/PV.5104, pp. 6-7 (France); p. 9 (Pakistan); and p. 13 (Russian Federation, Angola).

³³⁷ Ibid., pp. 5-6 (Romania); p. 8 (Germany); p. 9 (Pakistan); p. 12 (Spain); and pp. 16-17 (Brazil).

³³⁸ Ibid., p. 10 (Pakistan); and p. 11 (Philippines).

³³⁹ S/PV.5446, p. 10 (Greece); p. 13 (United Republic of Tanzania); p. 14 (Qatar); pp. 15-16 (Japan); p. 22 (France); p. 26 (Austria, on behalf of the European Union and associated countries); p. 28 (Switzerland); and pp. 30-31 (Liechtenstein).

Council had to take into consideration both the legal and human rights aspects when adopting sanctions.³⁴⁰ The representative of France affirmed that it was urgent to set up a mechanism that would make procedures simpler and would ensure that all delisting and exemption requests were received by the Committee and dealt with accordingly. To this end, he proposed that a focal point be set up within the Secretariat for the direct receipt from listed individuals of their requests for delisting or exemption.³⁴¹ The representative of Austria expressed the view that effective listing and delisting procedures were essential to preserve the legitimacy and reinforce the efficacy of sanctions regimes. Referring to a number of cases pending before various courts that challenged the Al-Qaida and Taliban sanctions regime for violating the rights of the listed individuals to a fair trial and to an effective remedy, he expressed the belief that the Council should devote special attention to the matter, as a negative court ruling would not only put the Member States concerned in a difficult position, but might call the whole system of targeted sanctions into question.³⁴² The representative of Switzerland stressed that, despite the progress made, shortcomings remained with regard to listing, delisting, notification of individuals and entities, and especially the right to an effective remedy. He pointed to the lack of a periodic review of those listed, the limited time to resolve delisting requests, and the open-ended nature of the sanctions regime. He cautioned that excessively long intervals between reviews tended to change the preventive character of sanctions into permanent punishment, which could be very difficult for national or international courts to accept.³⁴³ The representative of Liechtenstein asserted that the listing and delisting procedures should, “as an absolute minimum”, grant targeted individuals and entities the right to be informed about the measures imposed, the reasons for their imposition, as well as the right to present information that might refute the case for listing.³⁴⁴ The representative of the Russian Federation maintained that to enhance the effectiveness of the sanctions regime it was essential to enhance national procedures for taking decisions on placing new names

on sanctions lists.³⁴⁵ The representative of Peru, recognizing that difficulties in identifying individuals and entities on the consolidated list posed a challenge to the implementation of sanctions, in particular with regard to human rights and the credibility of the Committee, expressed the view that it was essential to have sufficient information regarding the identification of individuals and justifying listing requests for those individuals. In his view, all requests should comply with the standards set by the International Criminal Police Organization (INTERPOL) for inclusion of names in its database.³⁴⁶ Referring to the sanctions against Al-Qaida and the Taliban, the representative of Ghana, echoed by other speakers, supported country visits by the Chairman of the Committee and the Monitoring Team as one of the “key pillars” by which the implementation of the sanctions regime could be evaluated and its weaknesses corrected.³⁴⁷

Wrap-up discussion on the work of the Security Council for the current month

At its 5156th meeting, on 30 March 2005, the Council considered the African dimension of its work. Referring to the peacekeeping operations deployed in Africa, the representative of Algeria noted that a majority of operations had benefited from a “robust, multidimensional mandate” supported by a sanctions regime that he assessed as being “adequate”. He opined that the political will of the parties remained the “crucial factor” in achieving conflict settlement.³⁴⁸ The representative of Pakistan, referring to the challenges associated with large peacekeeping operations, such as the one in the Sudan, expressed hope that the Council would give “serious thought” to the compatibility of United Nations peace operations with the policy of sanctions.³⁴⁹ The representative of Benin suggested that, when applicable and in order to ensure greater respect for arms embargoes as well as for individual sanctions, the mandate and rules of engagement of United Nations peacekeeping operations should be formulated so as to ensure the effective enforcement of sanctions.³⁵⁰ The representative of the Philippines affirmed that sanctions should be treated in the context

³⁴⁰ Ibid., p. 14.

³⁴¹ Ibid., p. 22.

³⁴² Ibid., p. 26.

³⁴³ Ibid., p. 28.

³⁴⁴ Ibid., pp. 30-31.

³⁴⁵ Ibid., p. 21.

³⁴⁶ Ibid., p. 23.

³⁴⁷ Ibid., p. 16 (Ghana); p. 20 (United States); and pp. 24-25 (Congo).

³⁴⁸ S/PV.5156, p. 5.

³⁴⁹ Ibid., p. 10.

³⁵⁰ Ibid., p. 19.

of the broader peace processes. He concurred with the representative of Benin on the need to increase the effectiveness of sanctions and noted that the gap between the establishment of sanctions and their enforcement was related to the question of respect for the Council's authority.³⁵¹ The representative of the Russian Federation called for caution in the choice and timing of sanctions because, once a sanctions regime was introduced, the Council must consider "effective machinery" to ensure its implementation so as not to harm the authority of the Council and of the United Nations as a whole.³⁵² Observing that the Council's efforts were a combination of "sticks and carrots" in addressing the challenges in Africa, the representative of the United States noted that the mere threat of sanctions was not always enough to change the behaviour of individuals and entities acting against the peace process. He added that in those cases, although the Council's performance in this regard had been "mixed", the Council had to be willing to impose sanctions "promptly" and to bring "sufficient political pressure" to bear on all States and parties to make sanctions effective.³⁵³

Country-specific decisions relating to Article 41

The situation in Côte d'Ivoire

At its 5078th meeting, on 15 November 2004, the Council unanimously adopted resolution 1572 (2004) by which it, inter alia, imposed an arms embargo against Côte d'Ivoire, as well as travel and financial measures on designated individuals. Making a statement after the vote, the representative of China called upon the Ivorian parties to exercise restraint in order to avoid a further escalation of the crisis. While expressing support for additional Council action in Côte d'Ivoire, he opined that the objective of such action should be to encourage the parties to abide by the ceasefire and resume the peace process.³⁵⁴ The representative of France noted that, by unanimously adopting the resolution, the Council was pursuing the "essential objective" of promoting the implementation of the Linas-Marcoussis and Accra III Agreements, since there could be no military solution to the situation in Côte d'Ivoire.³⁵⁵ The representative of Angola opined that in "tense and

fragile" environments, such as the one in Côte d'Ivoire, the Council should opt for a "kind of pressure" that would not radicalize the position of one or another party, but that would instead continue to stimulate dialogue. He emphasized that the main concern was to find the "appropriate way" to calm the tension and to bring the parties back to implementing the peace agreements.³⁵⁶

At the 5152nd meeting, on 28 March 2005, the representative of South Africa noted that the cooperation and involvement of all Ivorian parties was required for attaining a peace settlement in Côte d'Ivoire. He further emphasized that it was "centrally important" that the Council and the African Union have the possibility of imposing "effective sanctions" against any parties that might act wilfully to deny the people of Côte d'Ivoire their right to peace, democracy and development.³⁵⁷ The representative of Japan stressed that all Ivorian parties had to be made fully aware that any failure to cooperate in the facilitation of the efforts of President Mbeki would render them subject to a sanctions regime, in accordance with resolution 1572 (2004). He said that, if the parties continued to obstruct the peace process, the Council had to show its readiness, in consultation with the African Union, to immediately apply sanctions against those individuals responsible for the "sabotage".³⁵⁸ The representative of Argentina expressed the view that the Council should begin to apply individual sanctions, as provided for in resolution 1572 (2004), against persons who obstructed the implementation of the peace agreements, as well as against those who committed any other human rights violations in Côte d'Ivoire.³⁵⁹

At its 5169th meeting, on 26 April 2005, the Council was briefed by the representative of South Africa, on behalf of the African Union mediation mission, on the situation in Côte d'Ivoire. Following the briefing, the representative of the United Kingdom said that, while he had argued for the adoption of sanctions in the past, in the light of the Pretoria Agreement he did not think sanctions were a priority anymore. He recognized however, that the dimension of sanctions had been important in getting the parties to agree and sign the peace agreement.³⁶⁰ The representative of Japan concurred that it was not the

³⁵¹ Ibid., p. 20.

³⁵² Ibid., p. 22.

³⁵³ Ibid., p. 24.

³⁵⁴ S/PV.5078, pp. 2-3.

³⁵⁵ Ibid., p. 3.

³⁵⁶ Ibid.

³⁵⁷ S/PV.5152, pp. 6-7.

³⁵⁸ Ibid., p. 18.

³⁵⁹ Ibid., p. 20.

³⁶⁰ S/PV.5169, p. 8.

appropriate time to immediately apply targeted sanctions against individuals, since the Ivorian parties had just shown their readiness, through the Pretoria Agreement, to revitalize the peace process. However, he stressed that all Ivorian parties had to recognize that any delay in implementing the Agreement would render them immediately subject to sanctions.³⁶¹

The situation in Liberia

At its 4981st meeting, on 3 June 2004, the Council considered the report of the Secretary-General pursuant to resolution 1521 (2003) regarding Liberia and the third progress report of the Secretary-General on UNMIL.³⁶² Following the statement of the Special Representative of the Secretary-General for Liberia, the Chairman of the National Transitional Government of Liberia appealed to the Council to lift the sanctions on timber and diamonds imposed by resolution 1521 (2003). He reaffirmed that the war in his country was over, and pointed out that the sanctions regime contributed to the perception that Liberia was “unsafe and dangerous”. He said that the sanctions resulted in a surcharge on everything imported into the country, thus raising the cost of living for the people of Liberia and having adverse implications for an orderly transition from conflict to peace. To strengthen his appeal, he outlined the steps taken by his Government to meet the Council’s concerns and requested that Council experts visit Liberia within 90 days to assess the progress made by the Transitional Government in fulfilling the conditions for the removal of sanctions. As further assurance to the Council, he stated that, upon the lifting of sanctions on diamonds, Liberia would temporarily avoid any sale, importation and exportation of rough diamond until it had joined the Kimberley Process.³⁶³ The representative of Algeria noted that the sanctions regime would need to be in line with the new political realities of Liberia and, given the fact that the Government of Liberia was a “partner for peace” of the Council, he deemed that the issue of sanctions should no longer be a source of controversy between Liberia and the Council.³⁶⁴ Similarly, the representative of Angola, noting the progress made by Liberia, said that the Council needed to respond effectively to the plea made

by the country concerning the ending of sanctions.³⁶⁵ The representative of Pakistan observed that the political changes in Liberia had had a positive impact on the way sanctions were implemented. Pointing out that arms and travel bans, on the one hand, and economic sanctions, on the other hand, should be treated differently, he advocated for the Council to lift the sanctions on diamonds. Noting with appreciation the assurance that Liberia would not export diamonds until it joined the Kimberley Process, he hoped that, given the progress made by the Liberian authorities in the case of diamonds, the sanctions could be soon lifted.³⁶⁶ By contrast, the representative of France, echoed by the representative of the United Kingdom, while acknowledging the actions taken by the Government of Liberia and UNMIL in the direction of restoring State control over natural resources, pointed out that Liberia still faced challenges to achieving lasting stability.³⁶⁷ The representative of the United Kingdom added that, before lifting the sanctions on diamonds, it would be more logical to first ensure that the Kimberley Process was fully implemented.³⁶⁸ The representatives of China and Benin concurred that the Council should decide on Liberia’s request in the near future.³⁶⁹

At the 5005th meeting, on 16 July 2004, in connection with the item entitled “Security Council mission”, the representative of Liberia reiterated the plea for the Council to lift the sanctions on timber and diamonds, stressing the role that those natural resources could play in Liberia’s reconstruction. He further pleaded for international assistance to ensure Liberia’s compliance with the management of public funds standards set by resolution 1521 (2003).³⁷⁰ The representative of Nigeria joined in the request for lifting the embargo on the trade of timber and other natural resources, so that the Government of Liberia could have the necessary funds for the rehabilitation of its infrastructure.³⁷¹ The representative of Pakistan acknowledged the challenge of economic recovery and reconstruction in Liberia, and opined that the Council had to revisit the issue of economic sanctions as the country made progress in achieving the benchmarks

³⁶¹ Ibid., p. 11.

³⁶² S/2004/428 and S/2004/430.

³⁶³ S/PV.4981, pp. 6-10.

³⁶⁴ Ibid., p. 15.

³⁶⁵ Ibid., p. 19.

³⁶⁶ Ibid., pp. 22-23.

³⁶⁷ Ibid., p. 15 (France); and p. 22 (United Kingdom).

³⁶⁸ Ibid., p. 22.

³⁶⁹ Ibid., p. 14 (China); and p. 21 (Benin).

³⁷⁰ S/PV.5005, p. 9.

³⁷¹ Ibid., p. 10.

related to the timber and diamond sectors.³⁷² The representative of the Russian Federation however cautioned that the lifting of sanctions had to be closely linked to guarantees of the irreversibility of the political settlement in Liberia.³⁷³

At its 5105th meeting, on 21 December 2004, the Council unanimously adopted resolution 1579 (2004), by which it renewed the measures on arms, travel, timber and diamonds imposed on Liberia by resolution 1521 (2003). Following the adoption of the resolution, the representative of the United States said that the newly adopted decision constituted a statement of his Government's strong support of the ongoing efforts of the United Nations to ensure peace and stability in Liberia and the region. He pointed out that the premature lifting of sanctions could potentially lead to the re-emergence of armed conflict. Although sharing the desire of other Council members to see Liberia's timber sector restored quickly as a source of legitimate revenue for the National Transitional Government, he emphasized that, in order to accomplish such an objective, there should be "security, transparency and accountability" in the timber sector. Currently, however, Liberia lacked the necessary institutional and financial measures to ensure that forest resources were used for legitimate development. He concluded by saying that his Government was "actively engaged" in assisting the Liberian authorities to restructure the timber and diamond sectors, as a means to expedite the eventual lifting of sanctions.³⁷⁴

At its 5389th meeting, on 17 March 2006, the Council heard a statement by the President of Liberia on the most recent reforms adopted by the country to meet the requirement for lifting the timber and diamond sanctions. She pointed out that Liberia had put in place mechanisms that would enhance transparency in governance, "consistent with the requirements for the lifting of timber and diamond sanctions". She further pointed out that her Government was meeting most of the requirements for implementing the Kimberley Process, and expressed the hope that those measures would lead to an "early lifting" of the ban on diamond exports.³⁷⁵ The representative of the United States, commending the President of Liberia for her commitment to reform the timber and diamond sectors,

expressed hope that the remaining reforms would be put in place so that sanctions could be lifted as soon as possible.³⁷⁶ The representative of the United Kingdom also commended the President of Liberia for the measures already adopted, and declared that it was incumbent on the Council to review the sanctions "as quickly as possible", taking into account the steps that the President had taken.³⁷⁷ The representative of Denmark asserted that the sanctions should be terminated as soon as the conditions imposed against Liberia were met and the revenues from the timber and diamond sectors benefited the Liberian people. She added that if the current reform momentum was kept up, that goal should be within short reach.³⁷⁸ The representative of Japan observed that the international community should support Liberia's efforts not only with good will, but also by mobilizing substantial support for and assistance to Liberia. He added that the Security Council would have to address, among other issues, the lifting of the sanctions in close consultation with the new Government.³⁷⁹ Similarly, the representative of Peru opined that the holding of elections should be just one phase in a wide-ranging programme for the rebuilding of Liberia, which included, in the economic sphere, the removal of sanctions.³⁸⁰

The situation in the Middle East

At its 5297th meeting, on 31 October 2005, the Council unanimously adopted resolution 1636 (2005), by which it imposed a set of financial and travel restrictions on individuals designated by the International Independent Investigation Commission or the Government of Lebanon as suspected of involvement in planning, sponsoring, organizing or perpetrating the terrorist act which caused the death of the former Prime Minister of Lebanon, Rafiq Hariri, and others. In the debate following the adoption of the resolution, a few speakers referred in their statements to an initial version of the draft resolution³⁸¹ which had envisaged the possibility of imposing sanctions against the Syrian Arab Republic if it did not fully cooperate with the Commission.

³⁷² Ibid., p. 22.

³⁷³ Ibid., pp. 19-20.

³⁷⁴ S/PV.5105, pp. 2-3.

³⁷⁵ S/PV.5389, p. 3.

³⁷⁶ Ibid., pp. 6-7.

³⁷⁷ Ibid., p. 7.

³⁷⁸ Ibid., p. 8.

³⁷⁹ Ibid., p. 9.

³⁸⁰ Ibid., p. 10.

³⁸¹ Not issued as a document of the Security Council.

The representatives of France, the United Kingdom and the United States, welcoming the unanimous adoption of the resolution, warned that the Council would decide on the consequences of any failure by the Syrian authorities to meet their obligations under the resolution and fully cooperate with the International Independent Investigation Commission.³⁸² The representative of the United States said that, with resolution 1636 (2005), the United Nations was taking a step to hold the Syrian Arab Republic accountable for “any further failure to cooperate with the Commission’s investigations and to consider further action if necessary”.³⁸³ The representative of the United Kingdom said that the resolution had put the Syrian Arab Republic on notice that the Council’s patience was “limited” in obtaining its necessary cooperation.³⁸⁴

By contrast, the representatives of Algeria, China and the Russian Federation said that they supported the removal of any language related to the “threat of sanctions” from the text of the draft resolution. The representative of Algeria said that such a provision would have been “both premature and superfluous”, since the resolution was adopted in the context of Chapter VII of the Charter and was, therefore, “in and of itself already binding”.³⁸⁵ The representative of China held the view that the use of sanctions could only be authorized “with prudence and in the light of actual situations”. In such circumstances, he found it “inappropriate” for the Council to prejudge the outcome of the investigation and threaten to impose sanctions, as that would “not contribute to resolving this issue” and would “add new destabilizing factors” to the already complex situation in the Middle East.³⁸⁶ The representative of the Russian Federation expressed his satisfaction that the resolution did not go beyond the context of cooperation with the investigation and did not contain any “baseless threats” or cast doubt on the universal principle of the presumption of innocence. Referring to the initial version of the draft resolution, he declared that the initial text, if adopted, would have provided for an “unprecedented procedure” that would have automatically imposed sanctions against suspects purely at the discretion of the

Commission, thereby depriving the Council of its prerogatives under the Charter.³⁸⁷

The situation in Myanmar

At its 5753rd meeting, on 5 October 2007, the Council heard a briefing by the Special Envoy of the Secretary-General in Myanmar on recent developments in that country. In the ensuing debate, the representative of the United States expressed his readiness to introduce a draft resolution imposing sanctions if the country’s regime did not respond constructively to the demands of the international community in a timely manner. He believed that measures such as an arms embargo should be considered to induce the regime to cooperate with the Special Envoy in his mediation efforts.³⁸⁸ The representative of Singapore declared that, although the idea of additional sanctions should not be ruled out, the possible impact of such measures should be carefully considered. All such actions should have only one objective — the strengthening of the Special Envoy’s hand as an effective mediator.³⁸⁹ In contrast, the representative of China emphasized that pressure would not serve any purpose and would only lead to confrontation or even loss of dialogue and cooperation between Myanmar and the international community, including the United Nations. To this end, he called on the Council to adopt a “prudent and responsible” approach in handling the issue.³⁹⁰

At its 5777th meeting, on 13 November 2007, the Council heard another briefing by the Special Envoy of the Secretary-General about his most recent visit to Myanmar in the context of his good offices mandate. During the debate, the representative of China restated his belief that sanctions would not help to resolve the situation, but rather complicate it, in particular by undermining the dialogue and the reconciliation process that was starting.³⁹¹ Likewise, the representative of the Russian Federation asserted that threats, pressure and sanctions exerted from outside the country were counterproductive and would only hinder the effort to solve the problems that Myanmar was facing.³⁹²

³⁸² S/PV.5297, p. 3 (France); pp. 3-4 (United Kingdom); and p. 5 (United States).

³⁸³ *Ibid.*, p. 5.

³⁸⁴ *Ibid.*, p. 4.

³⁸⁵ *Ibid.*, p. 6.

³⁸⁶ *Ibid.*, p. 8.

³⁸⁷ *Ibid.*, p. 11.

³⁸⁸ S/PV.5753, p. 13.

³⁸⁹ *Ibid.*, p. 19.

³⁹⁰ *Ibid.*, p. 9.

³⁹¹ S/PV.5777, p. 10.

³⁹² *Ibid.*, p. 14.

*Non-proliferation/Democratic People's Republic
of Korea*

At its 5551st meeting, on 14 October 2006, the Council unanimously adopted resolution 1718 (2006) by which it imposed an arms embargo, a travel ban, and an asset freeze against the Democratic People's Republic of Korea, in response to the nuclear test proclaimed by the country on 9 October 2006. In the debate following the vote, the representatives of the United States, France and the United Kingdom welcomed the imposition of sanctions as a decisive and necessary response by the Council to a serious threat to international peace and security.³⁹³ The representative of China stated that sanctions in themselves were not "the end" and emphasized that, if the Democratic People's Republic of Korea complied with the resolution, the Council would suspend or lift sanctions.³⁹⁴ Similarly, the representative of the Russian Federation affirmed that any sanctions introduced by the Council should not remain in place indefinitely and should be lifted if the Council's demands were met. He further emphasized that the imposition of sanctions by Governments in a "one-sided way" was not compatible with the Council's effort to reach an agreement on common approaches in which all interested parties were involved.³⁹⁵ The representative of Japan stressed that the goal of the newly adopted resolution was not to impose sanctions "for the sake of sanctions" but to remove a threat to international peace and security by ensuring the discontinuation of the Democratic People's Republic of Korea's nuclear testing and ballistic missile launchings as well as the abandonment of its nuclear and missile programmes.³⁹⁶ In response, the representative of the Democratic People's Republic of Korea rejected the resolution as "unjustifiable" and argued that the United States had sought to impose collective sanctions upon his country by "manipulating the Council" to adopt the resolution.³⁹⁷

Non-proliferation (Islamic Republic of Iran)

At its 5500th meeting, on 31 July 2006, acting under Article 40 of the Charter, the Council adopted resolution 1696 (2006), by which it made mandatory

the suspension of uranium enrichment and reprocessing activities undertaken by the Islamic Republic of Iran, as required by IAEA. The Council further expressed its intention, in the event that the Islamic Republic of Iran did not comply with the resolution, to adopt appropriate measures under Article 41 of Chapter VII of the Charter. In the debate that followed the adoption of the resolution, a number of speakers reaffirmed their readiness to introduce measures under Article 41, should the Islamic Republic of Iran not comply with the resolution.³⁹⁸ The representatives of the Russian Federation and China, however, added that in case of compliance no additional measures by the Council would be necessary.³⁹⁹

At its 5612th meeting, on 23 December 2006, the Council unanimously adopted resolution 1737 (2006), by which it imposed the first set of sanctions against the Islamic Republic of Iran related to its nuclear programme. During the debate, the representative of the United States opined that the resolution sent the Islamic Republic of Iran an "unambiguous message" that there were "serious repercussions" to its continued disregard of its obligations. Hoping that the country would comply with the resolution, he stated that, by that resolution, the Council had clearly affirmed its intention to review the Islamic Republic of Iran's actions based on the report to be submitted by IAEA and to adopt "further measures" if the country had not complied fully with its obligations.⁴⁰⁰ The representative of France pointed out that the sanctions adopted by the Council were "proportionate and reversible", but emphasized that in the event the Islamic Republic of Iran persisted on its current path, there would be "other measures" under Article 41 of the Charter.⁴⁰¹ The representative of China emphasized that the sanctions were not an end, but a means to urge the Islamic Republic of Iran to resume negotiations, and reaffirmed their time-limited and reversible character.⁴⁰² In response, the representative of the Islamic Republic of Iran pointed out that the Council had imposed sanctions on a party to the Treaty on the Non-Proliferation of Nuclear Weapons which had never attacked or threatened to use force against any

³⁹³ S/PV.5551, pp. 2-3 (United States); pp. 3-4 (France); and p. 5 (United Kingdom).

³⁹⁴ *Ibid.*, p. 4.

³⁹⁵ *Ibid.*, pp. 5-6.

³⁹⁶ *Ibid.*, p. 7.

³⁹⁷ *Ibid.*, pp. 7-8.

³⁹⁸ S/PV.5500, p. 3 (United States); p. 4 (United Kingdom); p. 5 (Russian Federation, China); and p. 7 (France).

³⁹⁹ *Ibid.*, p. 5 (Russian Federation, China).

⁴⁰⁰ S/PV.5612, p. 3.

⁴⁰¹ *Ibid.*, p. 6.

⁴⁰² *Ibid.*, p. 7.

Member of the United Nations. He deemed that the United States and its three European Union partners had never taken seriously his Government's proposals, being from the beginning "bent on abusing" the Council and on using sanctions as an instrument of pressure against the Islamic Republic of Iran.⁴⁰³

At its 5647th meeting, on 24 March 2007, the Council adopted resolution 1747 (2007), by which it imposed another set of sanctions against the Islamic Republic of Iran. Prior to the vote, the representatives of Qatar, the Congo, Indonesia and South Africa made statements indicating their intention to vote in favour of the draft resolution, but stressed the inalienable right of the Islamic Republic of Iran to develop nuclear energy for peaceful purposes and called on all States to seek a negotiated solution to the issue.⁴⁰⁴ More specifically, the representative of Qatar expressed his disapproval of the adoption of new sanctions, considering them an inappropriate means of pressuring the Government of the Islamic Republic of Iran. He cautioned that sanctions could sometimes complicate matters and signal another failure of diplomatic efforts. He further noted that the continued pressure on the Islamic Republic of Iran could have serious consequences, given the already volatile nature in the region.⁴⁰⁵ Similarly, the representative of South Africa expressed the belief that coercive measures, such as sanctions, should be utilized with great caution and only to support the resumption of political dialogue and negotiations to achieve a peaceful solution.⁴⁰⁶ In the debate following the adoption of the resolution, the representative of the United Kingdom, supported by the representatives of France and the United States, underlined the incremental and proportional nature of the resolution, noting that it did not introduce any changes to the provisions of paragraph 15 of resolution 1737 (2006). They also underlined the inalienable right of the Islamic Republic of Iran to the development of nuclear energy for peaceful purposes and called on that country to return to the negotiating table in order to achieve a long-lasting and comprehensive solution to the issue.⁴⁰⁷ The representative of the United States said that the non-compliance of the Islamic Republic of Iran with

Security Council resolutions as well as its violation of its international treaty obligations required Council action, which was however undertaken in a "careful and deliberate" manner.⁴⁰⁸ The representative of China, underlining the reversible nature of the sanctions measures, added that the purpose of the new resolution was not to punish the Islamic Republic of Iran but to urge it to return to negotiations and reactivate diplomatic efforts. If the Islamic Republic of Iran complied with the relevant resolutions, the Council would suspend, and even terminate the sanctions measures. Maintaining that it was impossible to resolve the issue by imposing sanctions and pressure only, he emphasized that diplomatic talks remained the "best option". He also maintained that the sanctions should neither harm the people of the Islamic Republic of Iran nor affect normal economic, trade and financial exchanges between the Islamic Republic of Iran and other countries.⁴⁰⁹ While highlighting the balanced text of the resolution, the representative of the Russian Federation said that Article 41 of the Charter precluded the possibility of the use of force and that any further steps that could be taken in response to the Islamic Republic of Iran's future actions would therefore be peaceful. He hoped that the Government of the Islamic Republic of Iran would enter into dialogue in order to attain a political and diplomatic solution to the issue.⁴¹⁰ The representative of Panama expressed the view that the Council's adoption of a resolution imposing sanctions signalled the "failure of the political process". He called upon all parties to launch a new negotiating process aimed at resolving the situation.⁴¹¹

In response, the representative of the Islamic Republic of Iran regretted that, for the fourth time in the past 12 months, the Council had taken "unjustifiable action" against his country, which was pursuing a peaceful nuclear programme. He argued that by establishing sanctions, the resolution was punishing a country that, "according to IAEA", had never diverted its nuclear programme, and which had been a "committed party" and had fulfilled all of its commitments under the Non-Proliferation Treaty. He concluded by noting that even the harshest political and economic sanctions or other threats were far too

⁴⁰³ Ibid., pp. 9-10.

⁴⁰⁴ S/PV.5647, p. 2 (Qatar); p. 3 (Congo); pp. 3-4 (Indonesia); and pp. 4-5 (South Africa).

⁴⁰⁵ Ibid., p. 2.

⁴⁰⁶ Ibid., p. 4.

⁴⁰⁷ Ibid., pp. 6-7 (United Kingdom); pp. 7-8 (France); and pp. 8-10 (United States).

⁴⁰⁸ Ibid., p. 9.

⁴⁰⁹ Ibid., pp. 11-12.

⁴¹⁰ Ibid., p. 11.

⁴¹¹ Ibid., p. 12.

weak to coerce the Iranian nation into retreating from its “legal and legitimate demands”.⁴¹²

Reports of the Secretary-General on the Sudan

At its 5015th meeting, on 30 July 2004, the Council adopted resolution 1556 (2004), by which it imposed an arms embargo against all non-governmental entities and individuals operating in the States of Northern Darfur, Southern Darfur and Western Darfur. By the same resolution the Council demanded that the Government of the Sudan fulfil its commitments to disarm the Janjaweed militias and expressed its intention to consider further actions, including measures as provided for in Article 41 of the Charter, in the event of non-compliance.

Speaking before the vote, the representative of China, recalling that the Government of the Sudan bore the primary responsibility to resolve the situation in Darfur, stated that his Government would abstain in the voting because the draft resolution still included references to measures that, given the fact that all parties were “speeding up” diplomatic efforts, were not helpful and which could further complicate the situation.⁴¹³ Speaking after the vote, the representative of the United States noted that the resolution imposed an arms embargo specifically focused on Darfur and provided for a monthly progress-monitoring mechanism with the “prospect of sanctions” if the Government of the Sudan failed to fulfil its commitments. He added that the Sudan had to know that “serious measures”, namely international sanctions, were looming in the event of non-compliance.⁴¹⁴ Similarly, the representative of the United Kingdom asserted that if the Government’s commitments and obligations were not met, specifically entering into constructive peace talks and the cessation of intimidation and atrocities, the Council, upon reviewing the progress made after one month, would consider measures as provided for in Article 41 of the Charter.⁴¹⁵ The representatives of Germany and France agreed with the previous speakers that the newly imposed measures constituted a chance for the Government of the Sudan to avoid the imposition of sanctions by making significant and measurable progress on disarming the Janjaweed

militias and bringing them to justice. Otherwise, the Council would be obliged to impose measures under Article 41 of the Charter.⁴¹⁶ The representative of Algeria, speaking also on behalf of Angola and Benin, welcomed the adoption of the resolution and insisted on the adoption of new measures against the Sudan only after the Council had reviewed the progress made by the Government of the Sudan in fulfilling its commitments.⁴¹⁷ Similarly, the representative of the Russian Federation declared that it was “of fundamental importance” that the resolution did “not foresee possible further Security Council action with regard to Darfur”. In his view, such action should be taken only after considering the Secretary-General’s recommendations and developments on the ground.⁴¹⁸ The representative of Brazil observed that the adoption of the measures under Chapter VII of the Charter added little or no value to the resolution’s vigour, and viewed the reference to Article 41 “as a way out and a compromise”. He opined that the text should have made clear that measures such as those envisaged in Article 41 should be adopted solely for the purpose of giving effect to the decisions of the Council contained in the resolution.⁴¹⁹ The representative of Pakistan pointed out that his Government did not support the new measures because it did not believe that the threat or imposition of sanctions against the Government of the Sudan was advisable. He added that his Government considered unnecessary the adoption of the entire resolution under Chapter VII.⁴²⁰ The representative of the Philippines noted that his country had voted in favour of the resolution in response to the humanitarian situation and expressed the hope that the Sudan would comply with its commitments and that after 30 days there would be no reason to implement Article 41 of the Charter.⁴²¹

At its 5040th meeting, on 18 September 2004, the Council adopted resolution 1564 (2004), reiterating that in the event the Government of the Sudan failed to comply fully with the relevant Security Council resolutions, the Council would consider taking additional measures under Article 41 of the Charter. Prior to the vote, the representative of Algeria said that

⁴¹² Ibid., pp. 14-18.

⁴¹³ S/PV.5015, p. 3.

⁴¹⁴ Ibid., p. 4.

⁴¹⁵ Ibid., p. 5.

⁴¹⁶ Ibid., p. 7 (Germany); and p. 9 (France).

⁴¹⁷ Ibid., p. 6.

⁴¹⁸ Ibid., p. 7.

⁴¹⁹ Ibid., p. 8.

⁴²⁰ Ibid., p. 10.

⁴²¹ Ibid., pp. 10-11.

his Government did not expect that the Council would use the threat of “recourse to sanctions” and expressed his concerns regarding the text of the draft resolution,⁴²² as it only highlighted the shortcomings of the Government of the Sudan without mentioning the actions taken by the Government in the right direction. Furthermore, he disagreed with the fact that the resolution envisaged the possibility of using sanctions against the Sudan not only if there was a lack of compliance with Security Council resolutions but also if there was a lack of cooperation with the African Union on the extension of the mandate of the African Union Mission in the Sudan.⁴²³ Following the vote, the representative of the Russian Federation said that the threat of sanctions was far from the best method to induce the Government of the Sudan to fulfil its obligations. Instead, he recommended the use of “approved diplomatic methods”.⁴²⁴ Expressing his delegation’s reservations about the resolution, the representative of China agreed that the Council and the international community should focus on encouraging the Government of the Sudan to continue to cooperate, rather than “doing the opposite”, and suggested supporting the mediation of the African Union. He noted that his Government had abstained but had not blocked the adoption of the resolution, because of the provisions referring to the African Union. He also noted that the co-sponsors of the resolution had repeatedly stated that sanctions would not be automatically implemented, and reiterated his Government’s opposition to sanctions, which in his view only aggravated the existing problems.⁴²⁵ Similarly, the representative of Pakistan said that his delegation could not endorse the use, or the threat of use, of sanctions. Considering the progress made, the threat to use sanctions against the Government of the Sudan was not “justifiable or necessary”. He added that the sanctions were unfair and that they might provoke a response that would be counterproductive, threatening international humanitarian relief and eroding the mediatory efforts of the African Union.⁴²⁶ In response, the representative of the United States pointed out that the Council was acting only because the Government of the Sudan had failed to comply with resolution 1556 (2004). He said that, if the Sudan continued to

persecute its people and did not fully cooperate with the African Union, the Council would indeed have to consider sanctions against it.⁴²⁷ The representative of Germany, supported by the representative of Romania, emphasized that the Council needed to maintain pressure on the Sudan, which included the threat of sanctions, but without creating any “automaticity”.⁴²⁸ Similarly, the representative of the United Kingdom stated that “by repeating the clear threat of measures”, the Council was underlining its commitment to ensure that the Government of the Sudan achieved the targets that had been set.⁴²⁹ The representative of Chile noted that sanctions were “tools with which to achieve higher purposes”, declaring that his Government’s goal was for the Sudan to fulfil its commitments.⁴³⁰ The representative of the Sudan maintained that his Government had fulfilled its obligations towards its citizens. He further reminded the Council that his country’s problems lay in “economic and social backwardness” and questioned whether sanctions would help to resolve the problem, or would only further complicate it.⁴³¹

At its 5082nd meeting, on 19 November 2004, the Council unanimously adopted resolution 1574 (2004), by which it expressed its deep concern at the situation in the Sudan and its implications for international peace and security and stability in the region. In the debate that followed the adoption of the resolution, the representative of the United Kingdom remarked that the resolution reiterated the Council’s determination to ensure that all parties in Darfur fulfilled their obligations. He further noted that the resolution was a reminder that measures under Article 41 of the Charter would be used against those who did not comply.⁴³² Similarly, the representative of the Netherlands, speaking on behalf of the European Union and associated countries, said that the European Union would continue to exert pressure on both the Government of the Sudan and the rebel groups, and would take appropriate measures, as contemplated in Article 41 of the Charter, if no tangible progress was achieved.⁴³³ The Chairman of the Sudan People’s Liberation Movement/Army declared that the

⁴²² S/2004/744.

⁴²³ S/PV.5040, p. 3.

⁴²⁴ *Ibid.*, p. 4.

⁴²⁵ *Ibid.*, pp. 4-5.

⁴²⁶ *Ibid.*, p. 7.

⁴²⁷ *Ibid.*, p. 5.

⁴²⁸ *Ibid.*, p. 7 (Germany); and p. 11 (Romania).

⁴²⁹ *Ibid.*, p. 9.

⁴³⁰ *Ibid.*, p. 11.

⁴³¹ *Ibid.*, pp. 13-14.

⁴³² S/PV.5082, p. 4.

⁴³³ *Ibid.*, p. 24.

resolution constituted a “much stronger action” than sanctions because it constituted a commitment by the parties to the conflict to reach a political settlement by 31 December 2004. If the parties did not agree, the resolution signified that there could be “much more serious consequences” than sanctions.⁴³⁴

At its 5153rd meeting, on 29 March 2005, the Council adopted resolution 1591 (2005), by which it expanded the arms embargo and imposed additional measures, including a travel ban and asset freeze on designated individuals involved in the conflict in the Sudan. In the ensuing debate, the representative of the Russian Federation insisted that the potential of political and diplomatic measures to defuse the conflict in Darfur had not been exhausted. While affirming that the imposition of sanctions was “hardly likely to create a constructive atmosphere”, he noted that targeted sanctions could still be used against persons who were creating obstacles to normalizing the situation in Darfur. He added that doubts about the practical ability to implement the sanctions regime already imposed by the Council did not help to strengthen its effectiveness. He expressed support for the strong opposition of the African Union and the League of Arab States to the strengthening of sanctions, and expressed the view that the Council should review, as soon as possible, the decision to impose an arms embargo, particularly in the light of the formation of the coalition Government of the Sudan.⁴³⁵ Similarly, expressing his reservations about the resolution, the representative of China reiterated his cautious approach to the issue of sanctions and stressed that the Council should exercise the greatest caution with respect to “measures” that could make negotiations more difficult and have a negative impact on the peace process.⁴³⁶

At its 5423rd meeting, on 25 April 2006, the Council adopted resolution 1672 (2006), by which it designated four individuals as subject to travel restrictions and asset freeze. Following the vote, the representative of Qatar expressed the view that there was no “clear and consistent evidence that would condemn those individuals in the way required for imposing sanctions on them”, in accordance with the measures and guidelines of the Committee established pursuant to resolution 1591 (2005).⁴³⁷ The

representative of the Russian Federation voiced concern about the timing of the resolution, stating that its adoption could have a negative impact on the prospects for concluding a peace agreement. He believed that the implementation of sanctions should be closely linked with the task of promoting the political settlement of the conflict and ensuring regional stability.⁴³⁸ The representative of China, emphasizing that the African Union-led Abuja peace talks were at a crucial juncture, cautioned that the Council would have to assume responsibility if, as a result of the resolution, any party to the Abuja peace talks had second thoughts about signing a peace accord, and the conflict in Darfur was prolonged or even intensified. Regarding the criteria for the inclusion of individuals in the sanctions list, he expressed his reservation and stated that sanctions should be applied as an extremely careful step.⁴³⁹

At the 5434th meeting, on 9 May 2006, the representative of Denmark advocated that all measures, including sanctions, should be “put to use as and when appropriate”. She believed it was crucial to encourage, and when necessary, apply pressure, on those parties or individuals that stood “in the way of peace”, in order to achieve a lasting peace in Darfur and in the Sudan as a whole.⁴⁴⁰ Similarly, the representative of Austria, speaking on behalf of the European Union and associated countries, reiterated his support for making full use of the measures set out in resolution 1591 (2005) against those who were impeding the peace process.⁴⁴¹

At the 5520th meeting, on 11 September 2006, the representative of Qatar called on the Council to study the comprehensive plan of action for Darfur put forward by the Government of the Sudan and reach an agreement with the Government on the situation. He further stressed that the threat of sanctions had to be avoided, as it would “undoubtedly” complicate matters.⁴⁴² By contrast, the representative of Denmark, stressed that all those responsible had to and would be held accountable, and expressed the view that, if the Government of the Sudan pressed on with its current

⁴³⁴ Ibid., p. 17.

⁴³⁵ S/PV.5153, p. 4.

⁴³⁶ Ibid., p. 5.

⁴³⁷ S/PV.5423, p. 2.

⁴³⁸ Ibid.

⁴³⁹ Ibid., p. 3.

⁴⁴⁰ S/PV.5434, p. 10.

⁴⁴¹ Ibid., p. 17.

⁴⁴² S/PV.5520, p. 19.

plans in Darfur, broader political and economic sanctions would not be ruled out.⁴⁴³

Discussion of judicial measures relating to Article 41

The situation in the Middle East

At its 5685th meeting, on 30 May 2007, the Council adopted resolution 1757 (2007), by which, inter alia, it requested the Secretary-General, in coordination with the Government of Lebanon, to establish a Special Tribunal to judge those accused of the terrorist attack that killed the former Prime Minister, Rafiq Hariri, and others. During the debate preceding the vote, a number of representatives justified their abstention from voting on the draft resolution by questioning the adoption of the measures under Chapter VII of the Charter. They noted that Council resolutions were binding under Article 25 of the Charter and that the Council, by establishing the Tribunal, was interfering in the domestic affairs of Lebanon.⁴⁴⁴ Moreover, the representative of China indicated that, by invoking Chapter VII, the Council's measure could give rise to "political and legal problems" and create instability in Lebanon.⁴⁴⁵ Similarly, the representative of the Russian Federation declared that there was "no basis" for a reference to Chapter VII in the draft resolution.⁴⁴⁶ Speaking after the vote, several representatives expressed support for the establishment of the tribunal.⁴⁴⁷ The representative of the United Kingdom maintained that the use of Chapter VII carried no connotation other than making it binding.⁴⁴⁸ The representative of Peru declared that he had voted in favour of the resolution because of the "exceptional political circumstances" in Lebanon, but cautioned that the invocation of Chapter VII of the Charter should not constitute a precedent beyond that particular case.⁴⁴⁹

Reports of the Secretary-General on the Sudan

At its 5158th meeting, on 31 March 2005, the Council adopted resolution 1593 (2005), by which it

referred the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court. A number of representatives welcomed the Council's decision to refer the situation in Darfur to the Court as the most efficient and effective means to deal with impunity and to ensure justice.⁴⁵⁰ While voting in favour of the resolution, the representatives of the Philippines, Greece and Benin expressed their concerns regarding the provisions of impunity from jurisdiction contained in the decision.⁴⁵¹ The representative of Brazil stated that while his Government was in favour of referring the situation in Darfur to the Court, he had abstained from the voting because of the references to the immunities from the jurisdiction of the Court.⁴⁵² The representative of the United States declared that, by adopting the resolution, the international community had established an "accountability mechanism for the perpetrators of crimes and atrocities" in Darfur. However, she said that she had abstained from the vote because the United States objected to the view that the International Criminal Court should be able to exercise jurisdiction over the nationals of States not parties to the Rome Statute.⁴⁵³ Similarly, the representative of China disapproved of the Court exercising jurisdiction over States not parties and indicated that the referral might "severely complicate" efforts to settle the Darfur issue.⁴⁵⁴ Echoed by the representative of Algeria, the representative of the United States suggested that a "hybrid tribunal" in Africa would have been a "better mechanism" to deal with the situation than the International Criminal Court.⁴⁵⁵ The representative of the Sudan spoke against the referral and stated that the disagreement over the jurisdiction of the Court exposed the fact that the Court was intended only for "developing and weak States". He further said that the judiciary in his country had "gone a long way" in holding trials and underlined that some States had wanted to activate the Court and had used the situation in Darfur as a "mere pretext".⁴⁵⁶

⁴⁴³ Ibid., p. 21.

⁴⁴⁴ S/PV.5685, p. 3 (Qatar, Indonesia); pp. 3-4 (South Africa); p. 4 (China); and p. 5 (Russian Federation).

⁴⁴⁵ Ibid., p. 4.

⁴⁴⁶ Ibid., p. 5.

⁴⁴⁷ Ibid., p. 7 (Belgium, Slovakia, Italy); pp. 7-8 (United States); and pp. 8-9 (Lebanon).

⁴⁴⁸ Ibid. p. 6.

⁴⁴⁹ Ibid.

⁴⁵⁰ S/PV.5158, p. 6 (Denmark, Philippines); p. 7 (Japan, United Kingdom, Argentina); p. 8 (France); p. 9 (United Republic of Tanzania); and p. 10 (Romania, Russian Federation).

⁴⁵¹ Ibid., p. 6 (Philippines); p. 9 (Greece); and p. 10 (Benin).

⁴⁵² Ibid., p. 11.

⁴⁵³ Ibid., p. 3.

⁴⁵⁴ Ibid., p. 5.

⁴⁵⁵ Ibid., p. 3 (United States); and p. 4 (Algeria).

⁴⁵⁶ Ibid., p. 12.

Part IV

Other measures to maintain or restore international peace and security in accordance with 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, without explicitly invoking Article 42 of the Charter but acting under Chapter VII of the Charter, the Council adopted several resolutions by which it authorized a number of United Nations peacekeeping missions as well as multinational forces to use “all necessary measures”, “all necessary means”, “all means”, or “all necessary action” to enforce its demands relating to the restoration of international peace and security. With respect to the United Nations peacekeeping missions, the Council authorized enforcement action for the newly established missions in Burundi, Côte d’Ivoire, Haiti and the Sudan. In connection with the mission deployed in Côte d’Ivoire, the Council also authorized French forces to use “all necessary means” to support it. The Council also continued to authorize the use of force for the United Nations peacekeeping operations already deployed in the Democratic Republic of the Congo and Sierra Leone. In addition, while not acting explicitly under Chapter VII of the Charter, but having determined the existence of a threat to international peace and security, the Council authorized the United Nations Interim Force in Lebanon to take “all necessary action” to undertake a number of tasks it was mandated to perform. In connection with multinational forces, the Council authorized the use of “all necessary measures” for the operations newly established by the European Union in Bosnia and Herzegovina, Chad and the Central African Republic, and the Democratic Republic of the Congo; the African Union in Somalia; and Member States participating in the Multinational Interim Force in Haiti. The Council also renewed the authorization of the use of force for the multinational

forces already deployed in Afghanistan, Bosnia and Herzegovina and Iraq. During the period under consideration, the Council authorized for the first time an enforcement action by a joint African Union-United Nations Hybrid Operation in Darfur (UNAMID).

During the period under consideration, the Council authorized peacekeeping operations and multinational forces to undertake enforcement actions under Article 42 of the Charter in the discharge of a large range of tasks, such as, to maintain and/or create a secure environment; to monitor and ensure respect of ceasefire agreements and cessation of hostilities agreements; to support the implementation of peace agreements; to provide protection to transitional/ interim Governments; to protect civilians under imminent threat of physical violence; to protect United Nations personnel and facilities as well as humanitarian personnel; to monitor and ensure the implementation of arms embargoes imposed by the Council; to support national reconciliation efforts and to promote the re-establishment of confidence between the parties to a conflict; to disarm and demobilize armed groups; to support the implementation of national programmes of disarmament, demobilization and reintegration; to support the reform of the security sector; to assist in the field of human rights; and to contribute to the successful completion of electoral processes.⁴⁵⁷

Section A contains 12 case studies relating to the Council’s authorization of enforcement action, under Chapter VII of the Charter, for the maintenance of peace and security, with regard to Afghanistan, Bosnia and Herzegovina, Burundi, the Central African Republic, Côte d’Ivoire, the Democratic Republic of the Congo, Haiti, Iraq, the Middle East, Sierra Leone, Somalia and the Sudan. Section B highlights the salient issues that were raised in the Council’s deliberations in connection with the adoption of the resolutions authorizing the use of force or deliberations, and includes an overview of the discussions in the Council on thematic issues which shed light on the interpretation and application of the provisions enshrined in Article 42. Such discussions were held in

⁴⁵⁷ See chap. V, part I, sect. F, for mandates of individual peacekeeping and peacebuilding operations.

connection with the non-proliferation of weapons of mass destruction, the protection of civilians in armed conflict, the strengthening of international law, and United Nations peacekeeping operations.

A. Decisions relating to Article 42

The situation in Afghanistan

By resolution 1563 (2004) of 17 September 2004, the Council decided to extend the authorization of the International Security Assistance Force (ISAF) for a further period of 12 months, and authorized the Member States participating in ISAF to take “all necessary measures” to fulfil the Mission’s mandate.⁴⁵⁸ By subsequent resolutions, the Council extended the authorization of ISAF and that of the Member States participating in it.⁴⁵⁹

The situation in Bosnia and Herzegovina

By resolution 1551 (2004) of 9 July 2004, the Council authorized Member States, acting through or in cooperation with the North Atlantic Treaty Organization (NATO), to continue, for a further period of six months, the multinational stabilization force (SFOR) and to take “all necessary measures” to effect the implementation and to ensure compliance with annex 1-A of the Dayton Peace Agreement. The Council authorized the relevant Member States to take “all necessary measures”, at the request of SFOR, either in defence of 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 an attack or threat of attack. The Council also authorized the relevant 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.⁴⁶⁰

By resolution 1575 (2004) of 22 November 2004, the Council authorized the Member States acting through or in cooperation with the European Union to establish, for an initial period of 12 months, a multinational stabilization force (EUFOR) as a legal successor to SFOR. The Council welcomed the decision

of NATO to conclude the SFOR operation in Bosnia and Herzegovina by the end of 2004 and to maintain a presence in the country through the establishment of a NATO headquarters in order to continue to assist in implementing the Peace Agreement in conjunction with EUFOR. The Council therefore authorized the Member States acting through or in cooperation with NATO to establish a NATO headquarters as a legal successor to SFOR under unified command and control, to fulfil its missions in relation to the implementation of annexes 1-A and 2 of the Peace Agreement in cooperation with EUFOR and in accordance with the arrangements agreed between NATO and the European Union which recognized that EUFOR would have the main peace stabilization role under the military aspects of the Peace Agreement.⁴⁶¹ The Council authorized the relevant Member States acting through or in cooperation with EUFOR and NATO to take “all necessary measures” to effect the implementation and ensure compliance with annexes 1-A and 2 of the Peace Agreement; and stressed that the parties should be equally subject to such enforcement action by the European Union force and the NATO presence as necessary to ensure implementation of the above-mentioned annexes and the protection of EUFOR and the NATO presence. The Council further authorized Member States to take “all necessary measures”, at the request of EUFOR or the NATO headquarters, either in defence of or to assist both organizations in carrying out their missions, and recognized the right of both EUFOR and the NATO presence to take “all necessary measures” to defend themselves from an attack or threat of attack. The Council also authorized the relevant Member States acting through or in cooperation with the European Union force and NATO to take “all necessary measures” to ensure compliance with the rules and procedures governing command and control of airspace over Bosnia and Herzegovina with respect to all civilian and military air traffic.⁴⁶²

The mandates of both EUFOR and the NATO presence were extended several times by subsequent Council resolutions.⁴⁶³

The situation in Burundi

⁴⁵⁸ Resolution 1563 (2004), paras. 1 and 2.

⁴⁵⁹ Resolutions 1623 (2005), paras. 1 and 2; 1707 (2006), paras. 1 and 2; and 1776 (2007), paras. 1 and 2.

⁴⁶⁰ Resolution 1551 (2004), paras. 11, 13, 14 and 15.

⁴⁶¹ Resolution 1575 (2004), paras. 10 and 11.

⁴⁶² *Ibid.*, paras. 14-16.

⁴⁶³ Resolutions 1639 (2005), paras. 10, 11, 14, 15 and 16; 1722 (2006), paras. 10, 11, 14, 15 and 16; and 1785 (2007), paras. 10, 11, 14, 15 and 16.

By resolution 1545 (2004) of 21 May 2004, the Council decided to establish the United Nations Operation in Burundi (ONUB), authorizing it to use “all necessary means” to carry out the following mandate: ensure the respect of ceasefire agreements; carry out disarmament and demobilization activities; monitor the quartering of the armed forces of Burundi and their heavy weapons; monitor the illegal flow of arms across the national borders; contribute to the creation of the necessary security conditions for the provision of humanitarian assistance, and facilitate the voluntary return of refugees and internally displaced persons; contribute to the successful completion of the electoral process stipulated in the Arusha Agreement; protect civilians under imminent threat of physical violence; and ensure the protection of United Nations personnel, facilities, installations and equipment, as well as the security and freedom of movement of ONUB personnel, and to coordinate and conduct, as appropriate, mine action activities in support of its mandate.⁴⁶⁴ The mission’s mandate, including the authorization to use “all necessary means”, was extended several times by subsequent Council resolutions.⁴⁶⁵

The situation in Chad, the Central African Republic and the subregion

By resolution 1778 (2007) of 25 September 2007, the Council authorized the European Union to deploy, for a period of one year, an operation aimed at supporting the United Nations Mission in the Central African Republic and Chad, and decided that the European Union operation would be authorized to take “all necessary measures”, within its capabilities and its area of operation in eastern Chad and the north-eastern Central African Republic, to fulfil the following functions: contribute to protecting civilians in danger, particularly refugees and displaced persons; facilitate the delivery of humanitarian aid and the free movement of humanitarian personnel; and contribute to protecting United Nations personnel, facilities, installations and equipment and to ensuring the security and freedom of movement of its staff and United Nations and associated personnel. The Council further authorized the European Union, at the close of the one-year period, to take “all appropriate measures” to achieve an orderly disengagement, by

⁴⁶⁴ Resolution 1545 (2004), paras. 2 and 5.

⁴⁶⁵ Resolutions 1577 (2004), para. 1; 1602 (2005), para. 1; 1641 (2005), para. 1; 1650 (2005), para. 2; and 1692 (2006), para. 1.

means including fulfilment of the above-mentioned functions and within the limits of its residual capacity.⁴⁶⁶

The situation in Côte d’Ivoire

By resolution 1528 (2004) of 27 February 2004, the Council decided to establish, as from 4 April 2004 and for an initial period of 12 months, the United Nations Operation in Côte d’Ivoire (UNOCI), and authorized it to use “all necessary means”, within its capabilities and its areas of deployment, to carry out its mandate which included tasks related to monitoring the ceasefire and the movements of armed groups; disarmament, demobilization, reintegration, repatriation and resettlement; protection of United Nations personnel, institutions and civilians; support for humanitarian assistance; support for the implementation of the peace process; assistance in the field of human rights; public information; and law and order. The Council authorized, as from 4 April 2004 and for a period of 12 months, the French forces to use “all necessary means” in order to support UNOCI, and in particular to contribute to the general security of the area of activity of the international forces; intervene at the request of UNOCI in support of its elements whose security might be threatened; intervene against belligerent actions, if the security conditions so required, outside the areas directly controlled by UNOCI; and help to protect civilians in the deployment areas of their units.⁴⁶⁷ The mission’s mandate was extended several times by subsequent Council resolutions.⁴⁶⁸

By resolution 1609 (2005) of 24 June 2005, the Council decided to extend the mandate of UNOCI and of the French forces supporting it and reauthorized the mission to use “all necessary means” to carry out its mandate.⁴⁶⁹ The Council modified the mission’s mandate to include additional tasks related to the disarmament and dismantling of militias; monitoring the arms embargo; support for the redeployment of State

⁴⁶⁶ Resolution 1778 (2007), para. 6.

⁴⁶⁷ Resolution 1528 (2004), paras. 1, 6, 8 and 16.

⁴⁶⁸ Resolutions 1594 (2005), para. 1; 1600 (2005), para. 5; and 1603 (2005), para. 11. By para. 2 of resolution 1584 (2005) of 1 February 2005, the Council also authorized UNOCI and the French forces supporting it, within the mandate set out in resolution 1528 (2004), to monitor the implementation of the measures imposed by resolution 1572 (2004) as well as to collect arms and any related materiel brought into the country in violation of the arms embargo.

⁴⁶⁹ Resolution 1609 (2005), paras. 1 and 8.

administration; and support for the organization of open, free, fair and transparent elections. The Council also reauthorized the French forces in Côte d'Ivoire to use "all necessary means" to support UNOCI, and added to their mandate the task of contributing to monitoring the arms embargo established by resolution 1572 (2004).⁴⁷⁰ The mandate was extended twice by subsequent Council resolutions.⁴⁷¹

By resolution 1739 (2007) of 10 January 2007, the Council further extended the mandate of UNOCI and of the French forces which supported it and reauthorized the mission to use "all necessary means" to carry out its mandate.⁴⁷² The Council modified the mission's mandate to include the tasks of identification of the population and registration of voters, as well as assisting in the reform of the security sector. The Council also reauthorized the French forces in Côte d'Ivoire to use "all necessary means" to support UNOCI, and added to their mandate the task of contributing to the drawing up of a plan on the restructuring of the defence and security forces and to the preparation of possible seminars on security sector reform organized by the African Union and the Economic Community of West African States.⁴⁷³ The mandate of UNOCI and of the French forces was subsequently extended twice by the Council.⁴⁷⁴

The situation concerning the Democratic Republic of the Congo

By resolution 1533 (2004) of 12 March 2004, the Council requested the United Nations Mission in the Democratic Republic of the Congo (MONUC) to continue to use "all means" within its capabilities to fulfil its mandate as set out in resolution 1493 (2003), and in particular to inspect, without notice, as it deemed necessary, the cargo of aircraft and of any transport vehicle using the ports, airports, airfields, military bases and border crossings in North and South Kivu and in Ituri.⁴⁷⁵ The mission's mandate was extended by resolution 1555 (2004) of 29 July 2004.

By resolution 1565 (2004) of 1 October 2004, the Council decided to extend and modify the MONUC mandate, to include, inter alia, the tasks of protecting civilians, humanitarian and United Nations personnel, maintaining a presence in the key areas of potential volatility as well as supporting the Government of National Unity and Transition in a number of areas. The Council authorized MONUC to use "all necessary means" to carry out its mandated tasks.⁴⁷⁶

By resolution 1592 (2005) of 30 March 2005, the Council decided to extend the Mission's mandate as set out by resolution 1565 (2004) and emphasized that the Mission was authorized to use "all necessary means" to deter any attempt at the use of force that threatened the political process and to ensure the protection of civilians under imminent threat of physical violence, from any armed group, foreign or Congolese, in particular the ex-Rwandan Armed Forces and Interahamwe. The Council encouraged the Mission to continue to make "full use" of its mandate under resolution 1565 (2004) in the eastern part of the Democratic Republic of the Congo and stressed that, in accordance with its mandate, the Mission might use cordon and search tactics to prevent attacks on civilians and disrupt the military capability of illegal armed groups that continued to use violence in those areas.⁴⁷⁷ The Mission's mandate was extended several times by subsequent Council resolutions.⁴⁷⁸

By resolution 1671 (2006) of 25 April 2006, the Council took note of the letter dated 30 March 2006 from the representative of the Democratic Republic of the Congo addressed to the President of the Security Council⁴⁷⁹ and of the support of the Government of the Democratic Republic of the Congo for the temporary deployment of a European Union force to support MONUC during the period encompassing the elections in the Democratic Republic of the Congo.⁴⁸⁰ The Council authorized the European Union force to take "all necessary measures" to carry out within its means and capabilities the following tasks: to support MONUC in

⁴⁷⁰ Ibid., paras. 2 and 12.

⁴⁷¹ Resolutions 1652 (2006), para. 1; and 1726 (2006), para. 1.

⁴⁷² Resolution 1739 (2007), paras. 1 and 5.

⁴⁷³ Ibid., paras. 2 and 8.

⁴⁷⁴ Resolutions 1763 (2007), para. 1; and 1765 (2007), para. 1.

⁴⁷⁵ Resolution 1533 (2004), para. 3.

⁴⁷⁶ Resolution 1565 (2004), paras. 1, 4, 5 and 6. See also chap. V, part I, sect. F.

⁴⁷⁷ Resolution 1592 (2005), paras. 1 and 7.

⁴⁷⁸ Resolutions 1628 (2005), para. 1; 1635 (2005), para. 1; 1649 (2005), para. 11; 1693 (2006), para. 1; 1711 (2006), para. 1; 1742 (2007), para. 1; 1751 (2007), para. 1; 1756 (2007), para. 1; and 1794 (2007), para. 1.

⁴⁷⁹ S/2006/203.

⁴⁸⁰ Resolution 1671 (2006), para. 1.

stabilizing the situation, in case the Mission faced serious difficulties in fulfilling its mandate within its existing capabilities; to contribute to the protection of civilians under imminent threat of physical violence in the areas of its deployment and without prejudice to the responsibility of the Government of the Democratic Republic of the Congo; to contribute to airport protection in Kinshasa; to ensure the security and freedom of movement of the personnel as well as the protection of the installations of the European Union force; and to execute operations of limited character in order to extract individuals in danger.⁴⁸¹

By resolution 1794 (2007) of 21 December 2007, the Council extended the mandate of MONUC and encouraged the Mission, emphasizing that the protection of civilians should be given priority in decisions about the use of available capacity and resources, to use “all necessary means” to support the integrated brigades of the armed forces of the Democratic Republic of the Congo with a view to disarming the recalcitrant foreign and Congolese armed groups in order to ensure their participation in the disarmament, demobilization, repatriation, resettlement and reintegration processes. The Council also reiterated the Mission’s mandate to use all necessary means to protect civilians under imminent threat of physical violence, particularly in the Kivus.⁴⁸²

The question concerning Haiti

By resolution 1529 (2004) of 29 February 2004, the Council authorized the deployment of the Multinational Interim Force in Haiti for a period of “not more than three months” to contribute to a secure and stable environment in the Haitian capital and elsewhere in the country; facilitate the provision of humanitarian assistance and the access of international humanitarian workers to the Haitian people in need; facilitate the provision of international assistance to the Haitian police and the Haitian Coast Guard in order to establish and maintain public safety and law and order and to promote and protect human rights; support the establishment of conditions for international and regional organizations, including the United Nations and the Organization of American States (OAS), to assist the Haitian people; and coordinate, as needed, with the OAS Special Mission and with the United

⁴⁸¹ *Ibid.*, para. 8.

⁴⁸² Resolution 1794 (2007), paras. 1, 5 and 8.

Nations Special Adviser for Haiti, to prevent further deterioration of the humanitarian situation. The Council authorized the Member States participating in the Multinational Interim Force to take “all necessary measures” to fulfil its mandate.⁴⁸³

By resolution 1542 (2004) of 30 April 2004, while authorizing remaining elements of the Multinational Interim Force to continue to carry out their mandate under resolution 1529 (2004) for a transition period not exceeding 30 days, the Council established the United Nations Stabilization Mission in Haiti (MINUSTAH) and requested that authority be transferred from the Multinational Interim Force to MINUSTAH on 1 June 2004. The Council authorized remaining elements of the Multinational Interim Force to continue to carry out their mandate under resolution 1529 (2004) within the means available from 1 June 2004, as required and requested by MINUSTAH. Acting under Chapter VII of the Charter, the Council decided that the mandate of MINUSTAH would include tasks related to supporting the political process and the Transitional Government, ensuring a secure and stable environment, and protecting United Nations personnel, facilities, installations and equipment as well as civilians under imminent threat.⁴⁸⁴ The Mission’s mandate was extended several times by subsequent Council resolutions.⁴⁸⁵

The situation between Iraq and Kuwait

By resolution 1546 (2004) of 8 June 2004, noting that the presence of the multinational force in Iraq was at the request of the incoming Interim Government of Iraq, the Council reaffirmed the authorization for the multinational force established under resolution 1511 (2003) to take “all necessary measures” to contribute to the maintenance of security and stability in Iraq, including by preventing and deterring terrorism, so that the United Nations could fulfil its role in assisting the Iraqi people through the Special Representative of the Secretary-General and the United Nations Assistance Mission for Iraq (UNAMI).⁴⁸⁶

⁴⁸³ Resolution 1529 (2004), paras. 2 and 6.

⁴⁸⁴ Resolution 1542 (2004), paras. 1, 2 and 7.

⁴⁸⁵ Resolutions 1576 (2004), para 1; 1601 (2005), para. 1; 1608 (2005), para. 1; 1658 (2006), para. 1; 1702 (2006), para. 1; 1743 (2007), para. 1; and 1780 (2007), para 1.

⁴⁸⁶ Resolution 1546 (2004), paras. 1, 9 and 10. For the mandate of the United Nations Assistance Mission for Iraq, see para. 7 of the resolution.

The situation in the Middle East

By resolution 1701 (2006) of 11 August 2006, having determined that the situation in Lebanon constituted a threat to international peace and security, the Council decided to increase the number of troops of the United Nations Interim Force in Lebanon (UNIFIL) and modified the Force's mandate. Acting in support of a request of the Government of Lebanon to deploy an international force to assist it to exercise its authority throughout the territory, although not acting explicitly under Chapter VII of the Charter, the Council authorized UNIFIL to take "all necessary action" to ensure that its area of operations was not utilized for hostile activities of any kind, to resist attempts by forceful means to prevent it from discharging its duties under the mandate, and to protect United Nations personnel, facilities, installations and equipment, ensure the security and freedom of movement of United Nations personnel and humanitarian workers and, without prejudice to the responsibility of the Government of Lebanon, to protect civilians under imminent threat of physical violence.⁴⁸⁷ The Council subsequently renewed the Force's mandate by resolution 1773 (2007) of 24 August 2007.

The situation in Sierra Leone

By resolution 1537 (2004) of 30 March 2004, the Council further extended the mandate of the United Nations Mission in Sierra Leone (UNAMSIL) until 30 September 2004, which included the authorization to take the "necessary action" to fulfil its mandate pursuant to resolution 1289 (2000).⁴⁸⁸

By resolution 1562 (2004) of 17 September 2004, the Council welcomed further progress towards the drawdown of UNAMSIL and decided to extend the Mission's mandate until 30 June 2005, authorizing the residual Mission presence to use "all necessary means" to carry out its mandate, which included military, civilian police and civilian tasks.⁴⁸⁹ The Council extended the Mission's mandate, for the last time, by resolution 1610 (2005) of 30 June 2005 until 31 December 2005.

⁴⁸⁷ Resolution 1701 (2006), paras. 11 and 12.

⁴⁸⁸ Resolution 1537 (2004), para. 1.

⁴⁸⁹ Resolution 1562 (2004), paras. 1, 2 and 3.

The situation in Somalia

By resolution 1744 (2007) of 20 February 2007, the Council decided to authorize Member States of the African Union to establish a mission in Somalia (AMISOM), and empowered it to take "all necessary measures" to carry out its mandate to support dialogue and reconciliation in Somalia by assisting with the free movement, safe passage and protection of all those involved with the political peace process; provide protection to the transitional federal institutions to help them carry out their functions of government, and security for key infrastructure; assist with the implementation of the National Security and Stabilization Plan, in particular the effective re-establishment and training of all-inclusive Somali security forces; contribute to the creation of the necessary security conditions for the provision of humanitarian assistance; and protect its personnel, facilities, installations, equipment and mission, and ensure the security and freedom of movement of its personnel.⁴⁹⁰ The Mission's mandate was renewed by resolution 1772 (2007) of 20 August 2007.

Reports of the Secretary-General on the Sudan

By resolution 1590 (2005) of 24 March 2005, the Council established the United Nations Mission in the Sudan (UNMIS), and authorized it to take the "necessary action", in the areas of deployment of its forces and as it deemed within its capabilities, to protect United Nations personnel, facilities, installations and equipment; to ensure the security and freedom of movement of United Nations personnel, humanitarian workers, joint assessment mechanism and assessment and evaluation commission personnel, and, without prejudice to the responsibility of the Government of the Sudan, to protect civilians under imminent threat of physical violence.⁴⁹¹ The Mission's mandate was extended twice by subsequent Council resolutions.⁴⁹²

⁴⁹⁰ Resolution 1744 (2007), para. 4. Prior to the authorization to the African Union to establish AMISOM, the Council, by resolution 1725 (2006) of 6 December 2006 (para. 3), acting under Chapter VII of the Charter, had authorized the Intergovernmental Authority on Development and States members of the African Union to establish a peacekeeping operation in Somalia, but that peacekeeping operation was never deployed.

⁴⁹¹ Resolution 1590 (2005), paras. 1 and 16.

⁴⁹² Resolutions 1627 (2005), para. 1; and 1663 (2006), para. 1.

By resolution 1706 (2006) of 31 August 2006, the Council decided to expand and strengthen the mandate of UNMIS to support the implementation of the Darfur Peace Agreement of 5 May 2006 and the N'Djamena Agreement on Humanitarian Ceasefire on the Conflict in Darfur. The Mission's mandate was extended several times by subsequent Council resolutions.⁴⁹³

By resolution 1769 (2007) of 31 July 2007, in support of the early and effective implementation of the Darfur Peace Agreement and the outcome of the negotiations between the parties to the conflict in Darfur, the Council decided to authorize the establishment of the African Union-United Nations Hybrid Operation in Darfur. The Council decided that UNAMID was authorized to take the "necessary action" in the areas of deployment of its forces and as it deemed within its capabilities to protect its personnel, facilities, installations and equipment, and to ensure the security and freedom of movement of its own personnel and humanitarian workers; and support early and effective implementation of the Darfur Peace Agreement, prevent the disruption of its implementation and armed attacks, and protect civilians, without prejudice to the responsibility of the Government of the Sudan.⁴⁹⁴

B. Discussion relating to Article 42

Reports of the Secretary-General on the Sudan

At its 5519th meeting, on 31 August 2006, the Council adopted resolution 1706 (2006), by which it decided to expand the mandate of UNMIS and to deploy the Mission to Darfur. During the debate following the vote, the representative of the United Kingdom declared that by giving the Mission a "clear Chapter VII mandate to use all necessary means to protect civilians", the Council had fulfilled its responsibility to the people of Darfur. She further noted that the countries that had abstained from the voting did not have a "fundamental disagreement" with the principle that the United Nations should "take over",

but that the issue was more one of timing. She asserted that the United Kingdom had drafted the resolution in such a way as to make it "as acceptable as possible" to the Sudan, by not making references to the International Criminal Court and by not placing the entire resolution under Chapter VII, but only the provisions referring to the protection of civilians and to UNMIS.⁴⁹⁵

At its 5520th meeting, on 11 September 2006, the Council heard a briefing by the Secretary-General on the situation in Darfur. The Secretary-General expressed his concern at the worsening humanitarian situation and the escalation of renewed fighting in the region and urged the international community to take urgent action.⁴⁹⁶ During the debate, the representative of the United States declared that the adoption of resolution 1706 (2006) was the first step towards improving the situation in Darfur and that the next step would be to implement it. However, he noted that the Government of the Sudan had taken a step backwards by threatening the expulsion of the African Union Mission in the Sudan (AMIS) by the end of the month and its replacement by national forces.⁴⁹⁷ The representative of the United Kingdom questioned the assertion that a United Nations peacekeeping force in Darfur would be a breach of the sovereignty of the Sudan by recalling that no such charges had been levied against the deployment of UNMIS in southern Sudan. As for the lack of consultations, he noted that there had been countless discussions and insisted that if the force was not deployed, there would be a real crisis.⁴⁹⁸ In contrast, the representative of China stated that the Council should continue to seek the consent and cooperation of the Government regarding the deployment of United Nations peacekeeping troops; it should respect the views of the national Government and no peacekeeping operation should be imposed.⁴⁹⁹ Concurring with this statement, the representative of the Russian Federation expressed the belief that the use of force to stabilize the situation in Darfur would lead to an impasse, because any Security Council decision pertaining to peacekeeping should take into account the views of the host Government. Unfortunately, the Council had adopted resolution 1706 (2006) hastily,

⁴⁹³ Resolutions 1709 (2006), para. 1; 1714 (2006), para. 1; 1755 (2007), para. 1; and 1784 (2007), para. 1.

⁴⁹⁴ Resolution 1769 (2007), paras. 1 and 15. The mandate of UNAMID was set out in the report of the Secretary-General and the Chairperson of the African Union Commission on the hybrid operation in Darfur (S/2007/307/Rev.1, paras. 54 and 55).

⁴⁹⁵ S/PV.5519, pp. 3-4.

⁴⁹⁶ S/PV.5520, pp. 2-4.

⁴⁹⁷ *Ibid.*, pp. 7-8.

⁴⁹⁸ *Ibid.*, pp. 8-9.

⁴⁹⁹ *Ibid.*, pp. 11-12.

without consulting the Government of the Sudan.⁵⁰⁰ Other Council members, including Slovakia, France and Peru, asserted that the Council should ensure the implementation of resolution 1706 (2006) as it provided a basis for the international community to protect civilians on the ground.⁵⁰¹

At its 5727th meeting, on 31 July 2007, the Council unanimously adopted resolution 1769 (2007), by which, inter alia, it decided to authorize the establishment of UNAMID in support of the early and effective implementation of the Darfur Peace Agreement. During the debate, many members welcomed the Secretary-General's commitment to the process and agreed that, while the hybrid force was an important step forward, it should have been part of a comprehensive approach that could secure a political settlement. The representative of Belgium said that by giving the mission a robust mandate and an effective command structure, the Council had added a crucial instrument both for protecting the civilian population and for seeking a solution to the crisis.⁵⁰²

Non-proliferation of weapons of mass destruction

At its 4950th meeting, on 22 April 2004, the Council held an open debate on the issue of non-proliferation of weapons of mass destruction and non-State actors.⁵⁰³ A number of representatives underlined the importance of having the draft resolution adopted under Chapter VII of the Charter in order for the Council to send a strong political signal and to underline the binding nature of the requirement to establish controls with respect to weapons of mass destruction.⁵⁰⁴ They pointed out that the reference to Chapter VII of the Charter would not automatically authorize the use of force in cases of non-compliance, the representative of the United Kingdom emphasizing that any enforcement action would require a new decision by the Council.⁵⁰⁵

Other speakers voiced their concern about the invocation of Chapter VII of the Charter.⁵⁰⁶ For instance, noting that the draft resolution contained provisions whose implementation would not include enforcement action, the representative of Chile suggested that only certain operative paragraphs of the resolution should be adopted under Chapter VII.⁵⁰⁷ Other speakers believed that the draft resolution should not invoke Chapter VII at all, since all decisions of the Council were mandatory under Article 25 of the Charter.⁵⁰⁸ The representative of Pakistan held that there was "no justification" for the adoption of the draft resolution under Chapter VII of the Charter as the threat posed by the proliferation of weapons of mass destruction among non-State actors was not imminent and did not constitute a threat to peace and security. He further deemed that the language used in the draft resolution gave rise to a legitimate fear that the text authorized the "coercive actions" envisaged by Articles 41 and 42 of the Charter.⁵⁰⁹ The representative of Cuba emphasized that the adoption of the draft resolution under Chapter VII of the Charter could not be interpreted as a pre-authorization or justification for the unilateral use of force against given States because of alleged suspicions of proliferation of weapons of mass destruction or their components.⁵¹⁰

Protection of civilians in armed conflict

At the 5100th meeting, on 14 December 2004, the representative of France noted that the protection of civilian populations in armed conflict had become a major issue for international peace and security. He opined that the matter should be treated from the standpoint of collective security and the use of force because States had a collective obligation to protect when a State was no longer able to protect its population.⁵¹¹ Endorsing the report of the High-level Panel on Threats, Challenges and Change,⁵¹² the representative of Canada recommended that, as specified in the report, the Council should adopt the basic criteria for the authorization of the use of force,

⁵⁰⁰ Ibid., p. 13.

⁵⁰¹ Ibid., pp. 14-15 (Slovakia); pp. 16-17 (France); and pp. 19-20 (Peru).

⁵⁰² S/PV.5727, pp. 6-7.

⁵⁰³ At the meeting several speakers referred to a draft resolution that was not issued as a document of the Security Council.

⁵⁰⁴ S/PV.4950, pp. 6-8 (Spain); pp. 8-9 (France); pp. 11-12 (United Kingdom); pp. 17-18 (United States); and pp. 20-21 (New Zealand).

⁵⁰⁵ Ibid., p. 12.

⁵⁰⁶ Ibid., p. 24 (India); and pp. 31-32 (Indonesia); S/PV.4950 (Resumption 1), p. 14 (Nepal); and p. 15 (Nigeria).

⁵⁰⁷ S/PV.4950, p. 11.

⁵⁰⁸ Ibid., p. 4 (Brazil); and p. 5 (Algeria); S/PV.4950 (Resumption 1), p. 4 (Malaysia); and p. 11 (Jordan).

⁵⁰⁹ S/PV.4950, p. 15.

⁵¹⁰ Ibid., p. 30.

⁵¹¹ S/PV.5100, p. 12.

⁵¹² A/59/565, and Corr. 1.

providing elements of a critical framework for Council action, in connection with the collective international responsibility to protect.⁵¹³

At the 5209th meeting, on 21 June 2005, the representative of Peru expressed the view that the Council should undertake a “systematic evaluation” of mandates pertaining to the protection of civilians, including measures taken pursuant to Chapter VII of the Charter, so as to enhance its capacity to protect.⁵¹⁴ Similarly, the representative of Canada pointed out that there was a need for the Council to reach an agreement on how it would apply Chapter VII of the Charter in response to attacks against civilians, particularly in internal conflicts.⁵¹⁵ The representative of Norway endorsed the Secretary-General’s appeal to embrace the principle of the responsibility to protect as a norm for collective action in cases of genocide, ethnic cleansing and crimes against humanity. He therefore concluded that the Council should adopt a resolution setting out principles for the use of force, in accordance with the norms of international law, and express its intention to be guided by them.⁵¹⁶

At the 5319th meeting, on 9 December 2005, in connection with the report of the Secretary-General on the protection of civilians in armed conflict,⁵¹⁷ the representative of Peru remarked that in various situations of conflict throughout the world the United Nations had been unable to prevent genocide and ethnic cleansing. He further conveyed his Government’s view that the Council should focus on the concept of responsibility to protect, which included the responsibility to respond, in extreme cases, with coercive measures including, inter

alia, the use of force.⁵¹⁸ The representative of Canada, speaking also on behalf of Australia and New Zealand, believed that the Council’s engagement, in cases in which it was justified, had to be timely, its monitoring vigilant, and its political will sustained, so that the Council could draw on the full range of measures at its disposal to protect civilian populations, including, as a last resort, the use of force. He further stated that a Council resolution should clarify the Council’s resolve to act, including through enforcement action under Chapter VII, in response to serious violations of international humanitarian law, including genocide, war crimes and crimes against humanity, should peaceful means be inadequate and should national authorities manifestly fail to protect their populations.⁵¹⁹ The representative of Denmark, reinforced by a number of other speakers, observed that, in accordance with one of the main purposes of the Charter, the international community had to take appropriate action to protect civilians, first through peaceful means. However, in the event that those means failed, she opined that the international community had a responsibility to use all necessary and available means, including collective action in accordance with Chapter VII of the Charter, to put an end to ongoing acts of genocide, war crimes, ethnic cleansing and crimes against humanity.⁵²⁰

At the 5476th meeting, on 28 June 2006, the representative of Canada reiterated the call for criteria to guide the use of force in situations in which diplomatic efforts proved unsuccessful in preventing gross and systematic violations of human rights and humanitarian law. He further stated that, until such criteria were adopted, the Council should focus on the design and use of tailored and robust multidimensional mandates for civilian protection where a physical international presence was required, backed up by the necessary means and capabilities.⁵²¹ Referring to Darfur, the representative of Peru expressed his Government’s support for giving AMIS a robust mandate to enable it to protect civilians. He further insisted on a United Nations force to be deployed in Darfur with a clear mandate to implement peace agreements and to protect civilians under Chapter VII of the Charter.⁵²²

⁵¹³ S/PV.5100 (Resumption 1), p. 5.

⁵¹⁴ S/PV.5209, p. 23.

⁵¹⁵ *Ibid.*, p. 28.

⁵¹⁶ *Ibid.*, p. 31.

⁵¹⁷ S/2005/740. In his report, the Secretary-General recalled his report entitled “In larger freedom” (A/59/5005), in which he had developed further the concept of the “responsibility to protect”, elements of which have been reiterated in resolutions such as those related to children and armed conflict. The Secretary-General was pleased that the World Summit Outcome (General Assembly resolution 60/1) emphasized the responsibility of the international community to seek appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII, and if necessary, in accordance with Chapter VII on a case-by-case basis, to provide protection from genocide, crimes against humanity, war crimes and ethnic cleansing (S/2005/740, para. 53).

⁵¹⁸ S/PV.5319, p. 13.

⁵¹⁹ *Ibid.*, p. 15.

⁵²⁰ *Ibid.*, p. 31 (Denmark); S/PV.5319 (Resumption 1), p. 17 (Republic of Korea, Spain); and p. 19 (Rwanda).

⁵²¹ S/PV.5476, p. 28.

⁵²² *Ibid.*, p. 18.

At the 5703rd meeting, on 22 June 2007, the representative of Qatar noted that, although at the theoretical level the responsibility to protect civilians was an important humanitarian principle, from a practical and operation perspective the Council should be cautious in dealing with it so that it would not be exploited or abused. He insisted that peacekeeping, humanitarian relief operations, and other forms of intervention under Chapter VII of the Charter in conflict areas were merely contingency solutions and called for urgent action to end conflicts in a definitive manner.⁵²³ The representative of Mexico stated that the lessons learned from the atrocities committed in the Balkans and Rwanda had proved the need to define clear rules according to which the Council could authorize resolutions under Chapters VI and VII of the Charter to act against such crimes.⁵²⁴ The representative of Canada cited resolution 1674 (2006), by which the Council had a unique responsibility to protect civilians from the most acute threats to their personal security, including through enforcement action under Chapter VII.⁵²⁵

Strengthening international law: rule of law and maintenance of international peace and security

At its 5474th meeting, on 22 June 2006, the Council considered the relationship between the rule of law and international peace and security from the perspective of the role played by the Council in that process. The representative of the Russian Federation remarked that the Council had, in recent years, increased its recourse to Chapter VII of the Charter. He emphasized that recourse to Chapter VII was justified only in situations where the Council had determined that there was a threat to peace or a violation of international law in a given region. He said that discussion of enforcement measures and use of force could take place only once all other avenues of ensuring international peace and security had been exhausted.⁵²⁶ The representative of Canada, speaking also on behalf of Australia and New Zealand, stressed that the Council's endorsement of the responsibility to protect concept must be put into credible and consistent practice. The Council must be timely in its engagement and vigilant in its monitoring and if it had the political

⁵²³ S/PV.5703, pp. 11-12.

⁵²⁴ Ibid., p. 29.

⁵²⁵ Ibid., p. 35.

⁵²⁶ S/PV.5474, p. 17.

will, when non-coercive options proved inadequate, to have full recourse to its powers under Article 42. He added that when such action was authorized, the Council should ensure that the operation was designed to maximize the prospects of success and that the use of military force was proportional to the threat.⁵²⁷ The representative of Switzerland noted that the Council had the responsibility to promote the rule of law and international law. He suggested that one way in which the Council could contribute practically was by adopting a set of principles on the issue of authorizing the use of force, as suggested by the Secretary-General in his report entitled "In larger freedom".⁵²⁸ Similarly, the representative of Norway held the view that the most important contribution the United Nations could make to peace and security was supporting a world order in which the use of force was regulated by international law.⁵²⁹ The representative of Venezuela (Bolivarian Republic of) noted that the Council had previously had recourse to the provisions of Articles 41 and 42 of the Charter in too hasty a manner, before the mechanisms provided for the pacific settlement of disputes had been fully exhausted. He further recommended curbing that tendency in order to strengthen the legitimacy of the Council.⁵³⁰

United Nations peacekeeping operations

At its 4970th meeting, on 17 May 2004, the Council considered the challenges associated with United Nations peacekeeping operations and ways of increasing the effectiveness of such operations. The representative of the Russian Federation highlighted the substantial role played by peacekeeping operations in the maintenance of international peace and security and stressed that there should be no circumvention of the Council's powers, especially in situations in which the use of force was made on behalf of the international community. He further emphasized that military action was undoubtedly an extreme recourse and that the nature of such action should be agreed upon and should be rational and sufficient.⁵³¹ The representatives of Brazil and Argentina believed that the Council should keep the use of Chapter VII to a minimum and only

⁵²⁷ S/PV.5474 (Resumption 1), pp. 7-8.

⁵²⁸ Ibid., p. 10. For the report of the Secretary-General, see A/59/2005.

⁵²⁹ Ibid., p. 17.

⁵³⁰ Ibid.

⁵³¹ S/PV.4970, p. 16.

when strictly necessary when defining the mandates of forces that it authorized.⁵³² While speakers concurred that United Nations peacekeepers needed robust rules of engagement, the representatives of Algeria and Bangladesh cautioned that mandates had to also be matched with the principle of non-use of force except in self-defence.⁵³³ The representative of Canada

⁵³² Ibid., p. 18 (Brazil); S/PV.4970 (Resumption 1), p. 20 (Argentina).

⁵³³ S/PV.4970, p. 12 (Algeria); S/PV.4970 (Resumption 1), p. 7 (Bangladesh).

emphasized the increasing role of regional organizations and coalitions of the willing as partners of the United Nations in supporting field operations. He stressed that such arrangements were all the more important as the Council increasingly recognized the need for Chapter VII mandates that permitted the use of force to establish secure environments, re-establish law and order, deter spoilers, and protect civilians.⁵³⁴

⁵³⁴ S/PV.4970 (Resumption 1), p. 17.

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

Articles 43 to 47 of the Charter provide for arrangements intended to govern the relationship between the Security Council and the Member States contributing troops for the purpose of the maintenance of international peace and security. During the period under review, the Council, in a number of decisions and deliberations, touched upon such arrangements in the context of enhancing United Nations peacekeeping as well as its consultations with troop-contributing countries.

The Council did not explicitly refer to Articles 43 and 44 of the Charter in any of its decisions. The Council did however adopt decisions by which it called upon States to provide armed forces and assistance related to enforcement actions by United Nations peacekeeping operations, and which are therefore of relevance to the interpretation of Article 43.⁵³⁵ In connection with the United Nations peacekeeping operations deployed in Côte d'Ivoire, Haiti, Iraq, the Middle East and the Sudan, the Council held a number of meetings which are relevant to the application of Article 43. With regard to Article 44, the Council adopted one presidential statement in relation to the United Nations peacekeeping operations, by which it recognized the importance of increasingly involving the troop-contributing countries in the planning and mandate review phases of missions. The need for increased involvement by troop-contributing countries was also considered by the Council at two debates.

⁵³⁵ See chapter 5 for additional details on arrangements concerning peacekeeping missions and other measures used by subsidiary organs of the Council to give effect to its decisions.

During the period under review, the Council continued to hold private meetings with troop-contributing countries, in accordance with resolution 1353 (2001). The Council held 90 private meetings with countries contributing troops to the United Nations missions in Burundi, Côte d'Ivoire, Cyprus, the Democratic Republic of the Congo, Ethiopia and Eritrea, Georgia, Haiti, Lebanon, Liberia, Sierra Leone, the Sudan, Timor-Leste and Western Sahara, as well as to the United Nations Disengagement Observer Force, in the Middle East.

During the period, while the Council did not adopt any resolutions referring to Article 45 of the Charter, it held one constitutional discussion in connection with the situation in the Sudan, which is relevant to the application and interpretation of the Article.

The Council did not adopt any decisions under Articles 46 and 47. However, the possibility of reactivating the Military Staff Committee was raised by a Council member at two meetings, in connection with threats to international peace and security and United Nations peacekeeping operations.

This part is divided into five sections. Section A describes the measures that the Council adopted on the basis of the principles enshrined in Article 43, while section B outlines the salient issues raised in the Council's deliberations relevant to that Article. Section C covers the decision relevant to the principles contained in Article 44, while section D presents the constitutional discussions relating to that Article. Sections E and F deal with the Council's deliberations relating to Articles 45 and 46 and 47, respectively.

A. Decisions relating to Article 43

United Nations peacekeeping operations

By a statement of the President dated 17 May 2004, while noting the increase in demand for United Nations peacekeeping operations, the Council recognized the challenges the surge posed for the United Nations system in terms of generating the necessary resources, personnel and other capabilities. The Council called on States to ensure that the Organization was provided with "full political and financial support". The Council also stressed the importance of ensuring that, while meeting the demand for new peacekeeping operations, the resources available for, and effective management of, the existing operations were not adversely affected. Underscoring the need for "efficient

and effective management of resources”, the Council called upon States to contribute “sufficient levels” of trained troops, police and civilian personnel, to allow the multiple operations to start “optimally” and fulfil their respective mandates in an effective manner.⁵³⁶

The situation in Chad, the Central African Republic and the subregion

By resolution 1778 (2007) of 25 September 2007, authorizing the establishment in Chad and the Central African Republic of a multidimensional presence which would include, for a period of one year, the United Nations Mission in the Central African Republic and Chad, the Council urged all States, particularly those bordering Chad and the Central African Republic, to facilitate the delivery of all personnel, equipment, provisions, supplies and other goods, including vehicles and spare parts, intended for the Mission.⁵³⁷

The question concerning Haiti

By resolution 1702 (2006) of 15 August 2006, the Council decided to extend the mandate of the United Nations Stabilization Mission in Haiti (MINUSTAH) and urged States to provide enough well-qualified, particularly francophone, police candidates, to ensure full staffing of the MINUSTAH police and, in particular, to provide specific expertise in anti-gang operations, corrections and other specializations identified as necessary in the report of the Secretary-General.⁵³⁸

The situation in the Middle East

By resolution 1701 (2006) of 11 August 2006, the Council authorized an increase in the force strength of United Nations Interim Force in Lebanon (UNIFIL) to a maximum of 15,000 troops, and urged States to consider making appropriate contributions to UNIFIL, to respond positively to requests for assistance from the Force, and expressed its strong appreciation to those who had contributed to the Force in the past.⁵³⁹

Reports of the Secretary-General on the Sudan

By resolution 1590 (2005) of 24 March 2005, the Council decided to establish the United Nations

Mission in the Sudan (UNMIS) for an initial period of six months, and called upon States to ensure the free, unhindered, and expeditious movement to the Sudan of all personnel, as well as equipment, provisions, supplies, and other goods, including vehicles and spare parts, which were for the exclusive and official use of UNMIS.⁵⁴⁰ The Council extended the mandate of UNMIS and reiterated its call to States by resolution 1706 (2006) of 31 August 2006.

By resolution 1769 (2007) of 31 July 2007, the Council authorized the establishment of an African Union-United Nations Hybrid Operation in Darfur (UNAMID), and called on States to finalize their contributions to UNAMID within 30 days of the adoption of the resolution. The Council also called upon States to facilitate the free, unhindered and expeditious movement to the Sudan of all personnel, as well as equipment, provisions, supplies and other goods, including vehicles and spare parts, which were for the exclusive use of UNAMID in Darfur. Emphasizing the “urgent need” to mobilize the financial, logistical, and other support required for the African Union Mission in the Sudan (AMIS), the Council called on States and regional organizations to provide “further assistance”, in particular to permit the early deployment of two additional battalions during the transition from AMIS to UNAMID.⁵⁴¹

B. Discussion relating to Article 43

The situation in Côte d’Ivoire

At its 5152nd meeting, on 28 March 2005, the Council heard a briefing by the Principal Deputy Special Representative of the Secretary-General for Côte d’Ivoire, who stressed the need to strengthen the United Nations Operation in Côte d’Ivoire (UNOCI) and noted that if two major conflicts occurred in Côte d’Ivoire at the same time, the mission would not be able to respond effectively, pointing to the additional responsibilities given to UNOCI by resolution 1584 (2005).⁵⁴² In their remarks, a number of representatives acknowledged the mission’s difficulties in carrying out its mandate effectively, and expressed their support for strengthening UNOCI in line with the Secretary-General’s recommendation regarding the deployment

⁵³⁶ S/PRST/2004/16.

⁵³⁷ Resolution 1778 (2007), paras. 1, 2 and 14.

⁵³⁸ Resolution 1702 (2006), paras. 1 and 5. For the report of the Secretary-General, see S/2006/592.

⁵³⁹ Resolution 1701 (2006), paras. 11 and 13.

⁵⁴⁰ Resolution 1590 (2005), paras. 1 and 8.

⁵⁴¹ Resolution 1769 (2007), paras. 1, 4, 10 and 11.

⁵⁴² S/PV.5152, pp. 4-5.

of 1,226 troops.⁵⁴³ The representative of South Africa stated that the Forces nouvelles had declared that they feared being attacked once they moved their forces into the disarmament, demobilization and reintegration sites, and supported the proposal made by the mediation team that an African country be approached to supply additional forces to UNOCI with a view to securing the disarmament, demobilization and reintegration sites.⁵⁴⁴ The representative of the Philippines supported this proposal, observing that having an African country supply additional forces to UNOCI could be an important incentive for combatants to begin the disarmament, demobilization and reintegration process.⁵⁴⁵ The representative of France remarked that the Ivorian parties had not abandoned the military option and that the international community was determined to enforce the arms embargo established by resolutions 1572 (2004) and 1584 (2005). He opined that, considering the lack of progress in the process of reconciliation, the strengthening of UNOCI troops was “a sine qua non and very urgent”.⁵⁴⁶ In contrast, the representative of the United States questioned the utility of expanding the strength of UNOCI beyond its current mandate, given the lack of political will shown by the parties to move the peace process forward. He further emphasized the need for progress in Côte d’Ivoire and stressed that UNOCI should use all the tools at its disposal.⁵⁴⁷ The representative of the United Kingdom stated that the Council’s strategy in Côte d’Ivoire, the number of troops and civilian police comprising UNOCI, and the mandate, rules of engagement and tasks given to the mission had to be fully consistent with one another, and supported the proposal made by the representative of France for a one-month rollover of the mandate of UNOCI, time during which the Council could reassess the situation in Côte d’Ivoire.⁵⁴⁸

At its 5169th meeting, on 26 April 2005, the Council considered the report of the Secretary-General on UNOCI.⁵⁴⁹ During the debate, the representative of South Africa opined that an improvement in the security

situation in Côte d’Ivoire could be achieved only if the United Nations and the international community were ready to act “decisively and urgently” by, among other things, increasing the capacity of UNOCI to carry out the additional tasks emanating from the Pretoria Agreement.⁵⁵⁰ Similarly, the representative of Nigeria argued that the United Nations presence in Côte d’Ivoire had to be strengthened and become visible throughout the country. He stressed that it was necessary for the Council to consider an urgent review of the mission’s mandate and to expand it, which would entail the commitment of additional resources and logistics commensurate with the situation on the ground.⁵⁵¹ The representative of France announced that in the coming days his delegation would introduce a draft resolution on the renewal of the mission’s mandate and emphasized the need to give UNOCI “all the means necessary” to carry out its mission successfully. He expressed the belief that strengthening UNOCI would facilitate the disarmament, demobilization and reintegration programme and the holding of sound elections.⁵⁵² The representative of the United Kingdom said that the Department of Peacekeeping Operations should make a “considered recommendation” regarding the timetable for the necessary additional deployment of personnel.⁵⁵³ The representatives of Benin and Romania noted that, in the context of the forthcoming elections and the launching of the disarmament, demobilization and reintegration programme, the mission’s role would increase and, therefore, expressed support for revisiting its mandate and strengthening its staff with adequate resources.⁵⁵⁴ Similarly, the representative of Denmark declared that her country supported a greater involvement of the United Nations in the peace process and an “appropriate” strengthening of UNOCI, as well as an extension of its mandate.⁵⁵⁵ The representative of Japan noted that, given the precariousness and volatility of the security situation in Côte d’Ivoire, serious deliberations with regard to a certain level of reinforcement of the peacekeeping operation were needed. He declared that his Government was ready to consider such reinforcement, in spite of the fact that the additional funds for reinforcement could be put to better use for the reconstruction and development of

⁵⁴³ Ibid., p. 10 (South Africa); p. 11 (Romania); p. 13 (Benin); p. 14 (United Republic of Tanzania); p. 15 (France); p. 17 (Algeria); p. 19 (Russian Federation); p. 20 (Greece); and p. 23 (Denmark).

⁵⁴⁴ Ibid., p. 9.

⁵⁴⁵ Ibid., p. 21.

⁵⁴⁶ Ibid., p. 15.

⁵⁴⁷ Ibid.

⁵⁴⁸ Ibid., p. 22.

⁵⁴⁹ S/2005/186.

⁵⁵⁰ S/PV.5169, p. 5.

⁵⁵¹ Ibid., pp. 5-6.

⁵⁵² Ibid., p. 7.

⁵⁵³ Ibid.

⁵⁵⁴ Ibid., p. 9 (Benin); and p. 12 (Romania).

⁵⁵⁵ Ibid., p. 14.

the country if the situation were not so precarious.⁵⁵⁶ The representative of China cautioned that the progress in the Ivorian peace process would require continued assistance from the international community and expressed his Government's readiness to study, together with other members, the issue of the extension and reinforcement of UNOCI.⁵⁵⁷

The question of Haiti

At its 5110th meeting, on 12 January 2005, the Council heard a briefing by the Special Representative of the Secretary-General and Head of MINUSTAH, who stated that if the international community provided Haiti with continued support, the country would emerge from its political and economic crisis.⁵⁵⁸ During the debate, a number of speakers commended troop-contributing countries for their contributions to MINUSTAH.⁵⁵⁹ The representative of Chile pointed out however, that resources and capacities had been made available by States but were underutilized because of a lack of financial resources. He therefore underlined the need to establish "expedited processes" to enable international organizations and donors to contribute to MINUSTAH.⁵⁶⁰ The representative of the United Republic of Tanzania urged and encouraged the "full deployment" of troops, police and other personnel by contributing countries to strengthen the Mission's ability to face the challenges of re-establishing stability and to carry out its mandate, as well as to build the capacity of the local institutions.⁵⁶¹ The representative of Ecuador endorsed a multidimensional approach to peacekeeping operations, and expressed his Government's readiness to contribute to such operations. He further pointed to the contributions in military personnel made by countries with "scarce economic resources", such as Ecuador.⁵⁶² The representative of Paraguay indicated that for "logistical reasons" beyond its control, his country had to postpone to a later stage the deployment of troops to the field.⁵⁶³

⁵⁵⁶ Ibid., p. 11.

⁵⁵⁷ Ibid., p. 18.

⁵⁵⁸ S/PV.5110, p. 3.

⁵⁵⁹ Ibid., p. 20 (Romania); p. 23 (Japan); and p. 27

(Algeria); S/PV.5110 (Resumption 1), p. 17 (Morocco).

⁵⁶⁰ S/PV.5110, p. 14.

⁵⁶¹ Ibid., p. 24.

⁵⁶² S/PV.5110 (Resumption 1), pp. 13-14.

⁵⁶³ Ibid., p. 14.

The situation in the Middle East

At its 5493rd meeting, on 21 July 2006, while considering the item entitled "The situation in the Middle East, including the Palestinian question", a number of speakers referred to the deteriorating situation in Lebanon. The representative of Peru expressed support for the substantive reinforcement of UNIFIL and its transformation into a force that would help the Lebanese authorities guarantee the full implementation of resolution 1559 (2004).⁵⁶⁴ The representative of the United Republic of Tanzania recommended the strengthening of UNIFIL to make it more responsive and effective. He noted that, in its current form, the Force was unable to discharge its mandate with regard to the Blue Line and called for a more robust force with a new concept of operation and powers.⁵⁶⁵ Similarly, the representative of Ghana stressed that the proposed deployment of an expanded international peacekeeping force along the Blue Line was of "utmost importance" and noted that the mission's effectiveness depended mainly on its military capabilities.⁵⁶⁶ The representative of Indonesia expressed support for the establishment of an international peacekeeping force under the auspices of the United Nations and indicated his Government's readiness to participate by contributing a military contingent to the force.⁵⁶⁷ The representative of Mexico also expressed support for the creation of such an international force which would gradually replace UNIFIL.⁵⁶⁸

At its 5511th meeting, on 11 August 2006, the Council unanimously adopted resolution 1701 (2006), by which it decided to supplement and enhance UNIFIL in numbers, equipment, mandate and scope of operations, and authorized an increase in the force strength of UNIFIL to a maximum of 15,000 troops. Preceding the vote, the Secretary-General stated that if UNIFIL were expected to carry out its mandate, it needed to be augmented with the "utmost urgency" and provided with "sophisticated military capabilities". He urged Council members to consult closely with both existing and potential troop contributors, with a view to generating the additional forces needed "as quickly as possible".⁵⁶⁹ The representative of the United States

⁵⁶⁴ S/PV.5493 (Resumption 1), p. 4.

⁵⁶⁵ Ibid., p. 5.

⁵⁶⁶ Ibid., pp. 8-9.

⁵⁶⁷ Ibid., p. 26.

⁵⁶⁸ Ibid., p. 45.

⁵⁶⁹ S/PV.5511, pp. 3-4.

noted that it was at the request of the Government of Lebanon that UNIFIL was given an expanded mandate, a greater scope of operations, better equipment and a sevenfold increase in its troops.⁵⁷⁰ The representative of France declared that it was “crucial” that many countries respond “favourably and expeditiously” to the request made by the Lebanese authorities by contributing to a reinforced UNIFIL. He further announced that his Government, already present in UNIFIL, would consider, alongside its European partners, a possible supplementary support to the Force.⁵⁷¹ The representative of Qatar welcomed the fact that the draft resolution was “limited to augmenting” UNIFIL, and that its mandate would continue to be subject to the provisions of Chapter VI. He further called upon the contributing States or those States that intended to contribute to UNIFIL to dispatch their forces “promptly”.⁵⁷² Following the adoption of the draft resolution, the representative of Denmark welcomed the decision of the Government of Lebanon to deploy 15,000 troops in southern Lebanon and expressed support for the enhancement of UNIFIL in numbers, equipment, mandate and scope of operations.⁵⁷³ A number of representatives also welcomed the strengthening of UNIFIL and stressed the need for troop-contributing countries to act with urgency.⁵⁷⁴

At the 5515th meeting, on 22 August 2006, several speakers referred to the strengthening of UNIFIL in their statements and made appeals to States in a position to do so to make contributions in this regard. The representative of Argentina stressed the role of UNIFIL in the peace process and conveyed his gratitude to the Department of Peacekeeping Operations for its efforts to accelerate the deployment of additional troops. He further expressed hope that, after the circulation of the draft rules of engagement and concept of operations of UNIFIL, it would be possible to ensure that substantive contributions to the Force were made.⁵⁷⁵ The representative of the United States urged potential troop-contributing countries to expedite their internal decision-making processes in order to achieve the goal of an expanded 15,000-

member international force. He emphasized that delays in deployment did not serve the peace process.⁵⁷⁶ Similarly, the representative of China noted that the expansion of UNIFIL had to be “stepped up” and that countries in a position to do so should “swiftly” contribute troops to ensure the mission’s early deployment.⁵⁷⁷ Noting that the progress in planning for the enhanced UNIFIL deployment was encouraging, the representative of the United Kingdom underlined that the priority was to give UNIFIL the resources to do its “new job” and to turn the many offers to contribute into forces on the ground. He declared that his country had already made a firm offer of air and naval assets and stood ready to deploy them quickly if the Department of Peacekeeping Operations took up on its offer.⁵⁷⁸ The representative of Denmark announced that his country was ready to support the naval component of an enhanced UNIFIL and expressed hope that, since the concept of operations and the rules of engagement had been clarified, additional States would provide similar “specific pledges”.⁵⁷⁹ The representative of Israel opined that, once UNIFIL was given a “clear and unequivocal mandate”, contributing countries would be able to commit “wholeheartedly and without hesitation”.⁵⁸⁰ The representative of Finland, speaking on behalf of the European Union and associated countries, indicated the willingness of the European Union countries to participate in the peace process, and pointed out that some countries had already made their decision to send troops, while others were considering it.⁵⁸¹

Reports of the Secretary-General on the Sudan

At its 5519th meeting, on 31 August 2006, the Council adopted resolution 1706 (2006), by which it expanded the mandate of UNMIS and urged States to provide the capability for an expeditious deployment. During the debate, the representative of the United Kingdom noted that the newly adopted resolution authorized the “much-needed” United Nations support for AMIS and mandated the United Nations to deploy additional resources, as soon as possible thereafter, in preparation for a full United Nations operation no later

⁵⁷⁰ Ibid., p. 5.

⁵⁷¹ Ibid., p. 8.

⁵⁷² Ibid., pp. 8-9.

⁵⁷³ Ibid., p. 12.

⁵⁷⁴ Ibid., p. 14 (Slovakia); p. 15 (Argentina); p. 17 (United Republic of Tanzania); p. 18 (Ghana); and p. 19 (Lebanon).

⁵⁷⁵ S/PV.5515, p. 6.

⁵⁷⁶ Ibid., p. 7.

⁵⁷⁷ Ibid., p. 9.

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid., p. 11.

⁵⁸⁰ Ibid., p. 25.

⁵⁸¹ Ibid., p. 29.

than 31 December.⁵⁸² The representative of Qatar opined that more efforts should have been made on the “political front” to prepare the ground for securing the “voluntary consent” of the Government of the Sudan to expanding the mandate of the United Nations forces, increasing their strength, and deploying them to Darfur.⁵⁸³ The representatives of Greece and Slovakia concurred that the strengthening of AMIS and the expansion of the mandate of UNMIS were important elements to a lasting and sustainable solution to the crisis in Darfur.⁵⁸⁴ The representative of Japan noted that, given the worsening security situation on the ground, his Government believed that it was “long overdue” for the international community to take “resolute action” on the matter by providing adequate support for AMIS through the United Nations and a transition to a United Nations operation.⁵⁸⁵

At its 5727th meeting, on 31 July 2007, the Council adopted unanimously resolution 1769 (2007), by which it authorized the deployment of UNAMID. During the subsequent debate, the Secretary-General underlined that States, especially troop- and police-contributing countries, had to provide “every support” to UNAMID, including by committing additional “capable troops”.⁵⁸⁶ The representative of France noted that, given its exceptional size and its unprecedented hybrid nature, UNAMID would require “special commitment and ongoing mobilization” on the part of the international community, relying on the United Nations and the African Union. He further declared that France would “stand with them”.⁵⁸⁷ The observer for the African Union stressed the role of UNAMID in the restoration of durable peace and security in Darfur and reiterated the appeal of the African Union Peace and Security Council to States for generous contributions to UNAMID.⁵⁸⁸

At its 5784th meeting, on 27 November 2007, the Council was briefed on the progress made in the deployment of UNAMID by the Under-Secretary-General for Peacekeeping Operations, who stated that, only five weeks before the transfer of authority from AMIS to UNAMID, the latter faced “serious gaps” in

force requirements, being short of “critical mobility capabilities”. He declared that, as a result of pre-deployment visits, pledges for one reconnaissance company were withdrawn and that, consequently, the gap in capability had grown. He further warned that, if no appropriate offers for those missing units were identified, the Council might have to mitigate the lack of air mobility by increasing the number of troops or by borrowing those capabilities from other missions. He concluded that it was critical that, once troop-contributing countries were identified, they initiated preparations for deployment as rapidly as possible, and said that every delay or suspension in the predeployment activity would have a “direct and negative” impact on the readiness of troops to deploy to UNAMID early in 2008.⁵⁸⁹ The representative of the United States, recognizing that mobility was critical for a force like UNAMID, expressed his concern about the delays in the deployment of the Mission to Darfur and announced the intention of his delegation to work bilaterally to urge contributions of the assets needed by UNAMID.⁵⁹⁰ Expressing the same concern, the representative of the United Kingdom emphasized that, because of the delays in the deployment of UNAMID, there was a growing risk that the hybrid force would not be an effective military force capable of implementing its mandate.⁵⁹¹ The representative of the Congo conveyed his concern regarding the difficulties in securing the Mission’s budget and declared that his Government was prepared to make its “modest contribution” by supplying two infantry companies to the African Union and the United Nations for use by UNAMID.⁵⁹² A few representatives, including those of the United States and the Russian Federation, urged the Government of the Sudan to approve the list of troop-contributing countries and to remove the obstacles to the Mission’s deployment.⁵⁹³ The representative of Indonesia opined that, in spite of delays on the political front, the peacekeeping track should move forward within its already determined time frame and argued that the international community should not retreat from the commitment made in resolution 1769 (2007) to support UNAMID.⁵⁹⁴ The Under-Secretary-General

⁵⁸² S/PV.5519, p. 3.

⁵⁸³ *Ibid.*, p. 6.

⁵⁸⁴ *Ibid.*, p. 8 (Greece, Slovakia).

⁵⁸⁵ *Ibid.*, p. 6.

⁵⁸⁶ S/PV.5727, p. 3.

⁵⁸⁷ *Ibid.*, p. 4.

⁵⁸⁸ *Ibid.*, p. 11.

⁵⁸⁹ S/PV.5784, pp. 6-7.

⁵⁹⁰ *Ibid.*, p. 12.

⁵⁹¹ *Ibid.*, p. 14.

⁵⁹² *Ibid.*, p. 18.

⁵⁹³ *Ibid.*, p. 11 (United States); and p. 17 (Russian Federation).

⁵⁹⁴ *Ibid.*, p. 26.

for Peacekeeping Operations stated that the delay in the deployment of troops was the result of several factors, including the lack of capacity of the contributing countries, the hesitation of the troop-contributing countries about when to deploy, and the terms of cooperation with the host country.⁵⁹⁵

C. Decisions relating to Article 44

United Nations peacekeeping operations

By a statement of the President dated 17 May 2004, the Council highlighted the need to strengthen the relationship between those who plan, mandate and manage peacekeeping operations, and those who implement the mandates for those operations. The Council further declared that troop-contributing countries, through their experience and expertise, could “greatly contribute” to the planning process and assist the Council in taking appropriate, effective and timely decisions on peacekeeping operations. The Council recognized that the meetings and mechanisms established by resolution 1353 (2001) served to facilitate the consultation process. The Council recognized that in peacekeeping operations there were contributors, other than troop-contributing countries, whose views should also be taken into account, as appropriate.⁵⁹⁶

D. Discussion relating to Article 44

United Nations peacekeeping operations

At its 4970th meeting, on 17 May 2004, the Council held an open discussion on United Nations peacekeeping operations. A number of representatives called for enhanced coordination among the Council, the Secretariat, and the troop-contributing countries, in accordance with resolution 1353 (2001), which offered a framework for decision-making in peacekeeping operations. Some speakers emphasized that not only the countries contributing troops but also those contributing financially to peacekeeping operations should be consulted by the Council. The representative of France stressed that the existing processes for cooperation with troop-contributing countries should be revitalized and other contributors, including the financial contributors, should be more closely involved

through a better exploitation of the provisions of resolution 1353 (2001).⁵⁹⁷ The representative of Japan stressed that reform was necessary in order to involve in the Council’s decision-making process those countries contributing human, material, financial and other resources that enabled the Council to work to consolidate peace.⁵⁹⁸ Similarly, the representative of Germany proposed that Member States contributing to peacekeeping through means other than troop contributions should likewise participate in the entire decision-making process, including the planning and the debate preceding a mission.⁵⁹⁹ With reference to the “quality” and “timing” of the consultation process with the troop-contributing countries, the representatives of Algeria, Malaysia and Lebanon noted that troop-contributing countries should be involved in all the phases of the decision-making process, including those defining or changing the mandate of an operation to which their military units had been committed.⁶⁰⁰ The representative of Malaysia, in particular, regretted that the views expressed by troop-contributing countries during their consultations with the Council had not been taken into consideration when the Council had made important decisions pertaining to the expansion of a mandate or the appropriate size of a peacekeeping force.⁶⁰¹ The representative of Tunisia favoured “in-depth” and “interactive” consultations between the Secretariat, the Council and the troop-contributing countries to enable States to be better informed of the situation on the ground in a “thorough and regular manner”. He further stressed that it was “absolutely necessary” to take into account the views of troop-contributing countries, which should not be “merely consultative”.⁶⁰² The representative of New Zealand pointed out that it was time for an “honest assessment” of the existing consultative mechanisms between the Council and non-Council members.⁶⁰³ Finally, several speakers suggested using the Working Group on Peacekeeping

⁵⁹⁷ S/PV.4970, p. 7.

⁵⁹⁸ S/PV.4970 (Resumption 1), p. 4.

⁵⁹⁹ S/PV.4970, p. 26.

⁶⁰⁰ S/PV.4970, pp. 12-13; S/PV.4970 (Resumption 1), p. 16 (Malaysia); and p. 27 (Lebanon).

⁶⁰¹ S/PV.4970 (Resumption 1), p. 16.

⁶⁰² *Ibid.*, p. 8.

⁶⁰³ *Ibid.*, p. 2.

⁵⁹⁵ *Ibid.*, p. 29.

⁵⁹⁶ S/PRST/2004/16.

Operations to underpin the partnership between the Secretariat and the troop-contributing countries.⁶⁰⁴

Wrap-up discussion on the work of the Security Council for the current month

At its 5156th meeting, on 30 March 2005, the Council held a wrap-up meeting focusing on the African dimension in its work. The representative of the Russian Federation, referring to the settlement of conflicts in Africa and in other regions of the world, stressed the importance of consulting troop-contributing countries in order to improve the Council's decision-making process. He noted that the Council relied primarily on the military expertise of the Secretariat and expressed interest in obtaining the views and appraisals of troop-contributing countries, whose contingents were directly involved in the area of operations. He further questioned the justification for the Council's practice of conducting private meetings at which the delegations of troop-contributing countries were usually "very passive", and proposed discussing the subject further in the future.⁶⁰⁵ The representative of Tunisia noted that, while the "close cooperation" between States and the Secretariat helped to strengthen the peacekeeping operations, "more advanced and interactive" consultations were necessary between the Secretariat, the Council and the troop-contributing countries, so that the latter were better informed about the situation on the ground in a "complete and regular fashion". He concluded that in the future it would be necessary to give greater consideration to the concerns of troop-contributing countries, whose opinions should be "more than advisory".⁶⁰⁶

E. Discussion relating to Article 45

Reports of the Secretary-General on the Sudan

At the 5784th meeting, on 27 November 2007, the Under-Secretary-General for Peacekeeping Operations stated, in his briefing, that UNAMID was short of "critical mobility capabilities". He noted that if the missing units were not identified by early in 2008, the Council might have to "consider options" to

mitigate the lack of air mobility.⁶⁰⁷ The representative of the United States called for countries that had air support capability to contribute to the Mission. He stated that the Council had to support the efforts of the Secretariat to identify potential contributors and to impress upon them the importance of meeting the Mission's demands.⁶⁰⁸ Expressing concern regarding the difficulties in securing the Mission's necessities, the representative of the Congo made an appeal for States to provide the "medium-sized transport companies and helicopters" needed and without which the Mission's intervention capacity would be "gravely" compromised.⁶⁰⁹ The representative of Slovakia observed that the Council had authorized the deployment of a "robust and effective" force that should be able to make a "real difference" on the ground. However, he argued that, for the Mission to achieve that goal, it was "indispensable" to find the missing transportation and aviation units.⁶¹⁰

F. Discussion relating to Articles 46 and 47

Threats to international peace and security

At the 5615th meeting, on 8 January 2007, the representative of the Russian Federation noted that not all of the "unique peacekeeping opportunities and mechanisms" of the United Nations were being fully used. He opined that the situation could be improved through the "more active utilization" of the potential of the Military Staff Committee, on the basis of the relevant provisions of the Charter and with respect for the prerogatives of the Security Council.⁶¹¹

United Nations peacekeeping operations

At its 4970th meeting, on 17 May 2004, the Council heard a briefing by the Secretary-General on the financial and personnel challenges faced by the United Nations peacekeeping operations. During the debate, the representative of the Russian Federation opined that one of the most effective ways to improve military expertise within the Organization could be to "activate" work of the Military Staff Committee. He said that the reactivation would not occur within the

⁶⁰⁴ S/PV.4970, p. 7 (France); p. 8 (United Kingdom); pp. 10-11 (Romania); pp. 15-16 (Russian Federation); p. 23 (China); and pp. 25-26 (Germany).

⁶⁰⁵ S/PV.5156, p. 21.

⁶⁰⁶ *Ibid.*, p. 28.

⁶⁰⁷ S/PV.5784, p. 6.

⁶⁰⁸ *Ibid.*, p. 12.

⁶⁰⁹ *Ibid.*, p. 18.

⁶¹⁰ *Ibid.*, pp. 20-21.

⁶¹¹ S/PV.5615, p. 21.

“traditional understanding” of the role of that body, but in an “essentially expanded” format. He stressed that his proposal was not designed to increase the role of the permanent members of the Council, but rather, in accordance with Article 47 of the Charter, to “finally” fill out the activities of the Military Staff Committee with “practical content”, as a body not for five

members, but for the entire Council. All members of the Council, including troop-contributing countries, would be included in it.⁶¹²

⁶¹² S/PV.4970, p. 16.

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.*

Note

During the period under review, the Council did not explicitly invoke Article 48 in any of its decisions. In a number of instances, however, the Council adopted decisions in accordance with Chapter VII of the Charter, underlining the mandatory nature of the measures imposed, and containing provisions that might be regarded as implicit references to the principle enshrined in Article 48.

In the absence of express references, it is not always possible to relate with certainty any decisions of the Council to a particular Article. The Council decisions discussed below may, nevertheless, shed light on the Council’s interpretation and application of Article 48. Section A deals with the calls made by the Council for action in connection with a decision adopted under Article 40 of the Charter. Section B provides an overview of the action required to carry out the Council’s decisions adopted in accordance with the provisions of Article 41 of the Charter, while section C focuses on the action required to carry out the Council’s decisions in connection with measures that involved use of armed force in accordance with the provisions of Article 42 of the Charter.

During the period under consideration, the interpretation and application of Article 48 did not give rise to any significant constitutional discussions in the Council.

A. Obligations arising pursuant to decisions adopted under Article 40

In two decisions imposing non-military provisional measures designed to prevent the aggravation of the situation, the Council called on “all States” to assist in carrying out its decision. By resolution 1696 (2006) of 31 July 2006, the Council, acting under Article 40 of the Charter, called upon the Islamic Republic of Iran to take the steps required by the International Atomic Energy Association and called upon “all States”, in accordance with their national legal authorities and legislation and consistent with international law, to exercise vigilance and prevent the transfer of any items, materials, goods, and technology that could contribute to the enrichment-related and reprocessing activities and ballistic missile programmes of the Islamic Republic of Iran.⁶¹³ By resolution 1695 (2006) of 15 July 2006, while demanding that the Democratic People’s Republic of Korea suspend all activities related to its ballistic missile programme, and in this context re-establish its pre-existing commitments to a moratorium on missile launching, the Council required “all Member States”, in accordance with their national legal authorities and legislation and consistent with international law, to exercise vigilance and prevent missile and missile-related items, materials, goods and technology being transferred to the missile or weapons of mass destruction programmes of the Democratic People’s Republic of Korea; and the procurement of missiles or missile-related items, materials, goods and

⁶¹³ Resolution 1696 (2006), para. 5.

technology from the Democratic People's Republic of Korea, and the transfer of any financial resources in relation to those missile or weapons of mass destruction programmes.⁶¹⁴

B. Obligations arising pursuant to decisions adopted under Article 41

In imposing measures not involving the use of armed force under Article 41 of the Charter, the Council consistently called upon "all States" to comply with relevant prohibitions.⁶¹⁵ In other instances, the Council addressed its call for compliance to "States" in general⁶¹⁶ or "all Member States".⁶¹⁷

⁶¹⁴ Resolution 1695 (2006), paras. 3 and 4.

⁶¹⁵ In connection with the situation in Côte d'Ivoire, see resolutions 1572 (2004), paras. 7, 9 and 11; and 1643 (2005), para. 6. In connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1533 (2004), paras. 1 and 7, and 1596 (2005), paras. 12, 13 and 15. In connection with the situation in Liberia, see resolution 1579 (2004), paras. 6 and 7. In connection with the situation in the Middle East, see resolutions 1636 (2005), para. 3, and 1701 (2006), para. 15. In connection with the situation in Sierra Leone, see resolution 1688 (2006), para. 4. In connection with the situation in Somalia, see resolution 1558 (2004), para. 1. In connection with the situation in the Sudan, see resolutions 1556 (2004), paras. 7 and 8, and 1672 (2006), para. 1. In connection with non-proliferation, see resolutions 1737 (2006), paras. 3, 4, 6, 10, 12 and 17, and 1747 (2007), paras. 2, 5, 6 and 7. In connection with threats to international peace and security caused by terrorist acts, see resolutions 1526 (2004), paras. 5 and 20, 1617 (2005), para. 1, and 1735 (2006), para. 1.

⁶¹⁶ In connection with threats to international peace and security caused by terrorist acts, see resolutions 1526 (2004), para. 4, and 1735 (2006), paras. 2, 19 and 20. In connection with the situation in Liberia, see resolution 1549 (2004), para. 5.

⁶¹⁷ In connection with the situation between Iraq and Kuwait, see resolution 1546 (2004), paras. 15, 20, 23, 28 and 29. In connection with the situation in Sierra Leone, see resolution 1793 (2007), para. 5. In connection with the situation in Somalia, see resolution 1744 (2007), para. 8. In connection with the situation in the Sudan, see resolutions 1556 (2004), para. 3, and 1679 (2006), para. 2. In connection with non-proliferation/Democratic Republic of Korea, see resolution 1718 (2006), para. 4. In connection with threats to international peace and security caused by terrorist acts, see resolution 1617 (2005), paras. 7 and 10.

In a few other instances, the Council called more specifically upon a certain number or group of States. For example, in connection with the measures imposed against Côte d'Ivoire, the Council expressly included "all States, particularly those bordering Côte d'Ivoire",⁶¹⁸ while in connection with the measures imposed against Somalia, the Council urged "all Member States, in particular those of the region" to fully comply with the arms embargo.⁶¹⁹ In one instance, in connection with the measures imposed against the Democratic Republic of the Congo, the Council decided that "each Government in the region, in particular those of States bordering Ituri and the Kivus, as well as that of the Democratic Republic of Congo" should maintain a registry of flights originating in their respective territories to destinations in the Democratic Republic of the Congo.⁶²⁰ Also, in connection with those measures, the Council demanded that "the Governments of Uganda, Rwanda, the Democratic Republic of the Congo and Burundi" take measures to prevent the use of their respective territories in support of violations of the arms embargo or in support of activities of armed groups present in the region; and demanded that "all States neighbouring the Democratic Republic of the Congo as well as the Government of National Unity and Transition" impede any kind of support to the illegal exploitation of Congolese natural resources, particularly by preventing the flow of such resources through their respective territories".⁶²¹ In connection with the measures imposed against Liberia, the Council decided that "all States" in which there were "funds, other financial assets and economic resources owned or controlled directly or indirectly" by Charles Taylor and other individuals should freeze all such funds without delay.⁶²² Also in connection with sanctions against Liberia, the Council urged that "all West African States" take action to prevent armed individuals and groups from using their territory to prepare and commit attacks on neighbouring countries.⁶²³

In a number of instances, the Council called upon international agencies and organizations and/or the international community to undertake certain actions. In connection with non-proliferation and the Islamic

⁶¹⁸ Resolution 1584 (2005), para. 1.

⁶¹⁹ Resolution 1744 (2007), para. 10.

⁶²⁰ Resolution 1596 (2005), para. 7.

⁶²¹ Resolution 1649 (2005), paras. 15 and 16.

⁶²² Resolution 1532 (2004), para. 1.

⁶²³ Resolution 1579 (2004), para. 6.

Republic of Iran, the Council urged “all States and international financial institutions” not to enter into new commitments for grants, financial assistance and concessional loans to the Government of the Islamic Republic of Iran, except for humanitarian and development purposes.⁶²⁴

When imposing sanctions against Côte d’Ivoire, the Democratic Republic of the Congo, the Islamic Republic of Iran, and the Taliban and members of Al-Qaida, the Council required “all States concerned, in particular those in the region”⁶²⁵ or, more generally, “all States”⁶²⁶ to report on their compliance with relevant prohibitions, specifying 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. In connection with the situation in Côte d’Ivoire, the Council requested the Government of France to communicate, as appropriate, to the Security Council, through the committee established for that purpose, the information gathered by the French forces regarding the supply of arms and related material to Côte d’Ivoire.⁶²⁷

In a number of decisions establishing reporting obligations to ensure compliance with relevant prohibitions, the Council addressed its call to “all States” to cooperate with the relevant Panel of Experts or sanctions committees.⁶²⁸ In other instances, the Council

⁶²⁴ Resolution 1747 (2007), para. 7.

⁶²⁵ In connection with the situation in Côte d’Ivoire, see resolutions 1572 (2004), para. 15, 1584 (2005), para. 13, 1643 (2005), para. 7, and 1727 (2006), para. 5. In connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1533 (2004), para. 9, and 1596 (2005), para. 20.

⁶²⁶ In connection with threats to international peace and security caused by terrorist acts, see resolution 1526 (2004), para. 22. In connection with non-proliferation, see resolutions 1737 (2006), para. 19, and 1747 (2007), para. 8.

⁶²⁷ Resolution 1584 (2005), para. 10.

⁶²⁸ In connection with the situation in Côte d’Ivoire, see resolutions 1572 (2004), para. 16, 1584 (2005), para. 11, 1643 (2005), para. 13; and 1727 (2006), para. 11. In connection with the situation concerning the Democratic Republic of the Congo, see resolutions 1533 (2004), para. 12, 1596 (2005), para. 19, and 1698 (2006), para. 18. In connection with the situation in Liberia, see resolution 1549 (2004), para. 7. In connection with the situation in Sierra Leone, see resolution 1688 (2006), para. 4. In connection with threats to international peace and security caused by terrorist acts, see resolution 1526 (2004), para. 14.

addressed such calls to “all States, relevant United Nations bodies and, as appropriate, other organizations and interested parties”.⁶²⁹

In connection with the implementation of judicial measures adopted under Article 41, the Council called on “all States” to cooperate. In particular, regarding the decision to defer the situation in Darfur since 1 July 2002 to the Prosecutor of the International Criminal Court, the Council, while recognizing that States not parties to the Statute of the Court had no obligation under the Statute, urged “all States and concerned regional and international organizations” to cooperate fully.⁶³⁰ With regard to the authorization of a Trial Chamber in the Netherlands for the trial of former President Taylor, the Council requested “all States” to cooperate and, in particular, to ensure the appearance of the former President in the Netherlands for purposes of his trial by the Special Court. The Council further encouraged “all States” to ensure that any evidence or witnesses were, upon the request of the Special Court, promptly made available.⁶³¹

C. Obligations arising pursuant to decisions adopted under Article 42

Decisions of the Council, imposing measures involving the use of armed force in accordance with the provisions of Article 42 of the Charter frequently took the form of requests made to “Member States”, “Member States and regional organizations”, “States, in particular those in the region”, States “in the vicinity” of, or “bordering” a State where forces authorized to take enforcement action had been deployed.

In a number of instances, the Council addressed its requests, mainly entailing the provision of support

⁶²⁹ In connection with the situation in Côte d’Ivoire, see resolutions 1572 (2004), para. 16, 1584 (2005), para. 11, 1643 (2005), para. 13, and 1727 (2006), para. 11. In connection with the situation in Liberia, see resolution 1549 (2004), para. 7. In connection with the situation in the Middle East, see resolution 1553 (2004), para. 12. In connection with threats to international peace and security caused by terrorist acts, see resolution 1526 (2004), paras. 14 and 24.

⁶³⁰ Resolution 1593 (2005), para. 2.

⁶³¹ Resolution 1688 (2006), para. 4.

to the missions deployed, to “Member States” in general.⁶³²

In other instances, the Council addressed its calls to Member States, as well as to “international and/or regional organizations”. For example, by resolution 1546 (2004) of 8 June 2004, while reaffirming the authorization for the multinational force in Iraq, the Council requested that “Member States and international and regional organizations” contribute assistance, including military forces, to the multinational force.⁶³³ Similarly, by resolution 1769 (2007) of 31 July 2007, by which it established the African Union-United Nations Hybrid Operation in Darfur (UNAMID), the Council called on “Member States and regional organizations” to provide further assistance to the operation, in particular to permit the early deployment of two additional battalions.⁶³⁴ In connection with the situation in Somalia, by resolution 1744 (2007) of 21 February 2007 the Council, authorizing the member States of the African Union to establish a mission in Somalia, urged “member States of the African Union” to contribute to the mission in order to create the conditions for the withdrawal of all other foreign forces from Somalia.⁶³⁵

⁶³² See, for example, resolutions 1563 (2004), para. 3, 1529 (2004), para. 5, 1590 (2005), para. 8, 1706 (2006), para. 10, and 1772 (2007), para. 14.

⁶³³ Resolution 1546 (2004), para. 15.

⁶³⁴ Resolution 1769 (2007), para. 11.

⁶³⁵ Resolution 1744 (2007), para. 5. The Council reiterated its request in its resolution 1772 (2007), para. 10.

Requests were also addressed to “States, in particular those in the region” and to States “in the vicinity” of, or “bordering” a State where a peacekeeping operation was deployed. For example, by resolution 1551 (2004) of 9 July 2004, while renewing the mandate of the multinational stabilization force in Bosnia and Herzegovina, the Council invited “all States, particular those in the region”, to continue to provide appropriate support and facilities, including transit facilities to the Member States.⁶³⁶ By resolution 1671 (2006) of 25 April 2006, while authorizing the deployment of a temporary European Union force to support the United Nations Mission in the Democratic Republic of the Congo, the Council requested “all Member States, in particular those in the vicinity of the Democratic Republic of the Congo” to provide all the necessary support to facilitate the deployment of the European Union force.⁶³⁷ By resolution 1778 (2007) of 25 September 2007, while establishing a multidimensional presence in Chad and the Central African Republic and authorizing the deployment of a European Union operation in the area, the Council urged “all Member States, particularly the States bordering Chad and the Central African Republic”, to facilitate the delivery of all personnel, equipment, and other goods intended for the operation.⁶³⁸

⁶³⁶ Resolution 1551 (2004), para. 21. The call was reiterated by the Council in its resolution 1575 (2004), para. 19.

⁶³⁷ Resolution 1671 (2006), para. 13.

⁶³⁸ Resolution 1778 (2007), para. 14.

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.

Note

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

measures to enforce its resolutions. While not containing explicit references to Article 49, the Council decisions covered in this part may have relevance to the Council’s interpretation and application of the Article. Section A provides an overview of the Council’s decisions calling upon Member States to provide mutual assistance in carrying out the decisions adopted in accordance with the provisions of Article 41 of the Charter. Section B deals with the Council’s decisions calling upon Member States to provide mutual assistance in carrying out the decisions adopted in accordance with the provisions of Article 42 of the Charter. During the period under consideration, the interpretation and application of

Article 49 gave rise to some relevant discussion in the Council in connection with the assistance to be provided to the African Union Mission in the Sudan. That discussion is presented in section C.

A. Calls for mutual assistance in the implementation of decisions adopted under Article 41

In imposing measures not involving the use of force, in accordance with the provisions of Article 41 of the Charter, the Council, in a number of instances, requested Member States in a position to do so to offer assistance to the concerned States in the implementation of those measures. More generally, the Council, by a statement of the President dated 19 January 2004, urged Member States “in a position to do so” to provide assistance to interested States in strengthening their capacity to fulfil their obligations under the resolutions imposing sanctions measures.⁶³⁹ The same call was reiterated by the Council in a statement of the President dated 17 February 2005.⁶⁴⁰

The situation concerning the Democratic Republic of the Congo

By resolution 1533 (2004) of 12 March 2004, while renewing its demand on all States to take the necessary measures to prevent the supply of arms to armed groups in North and South Kivu and in Ituri, the Council called upon the international community, in particular the specialized international organizations concerned, to provide financial and technical assistance to the Government of the Democratic Republic of the Congo with a view to helping it to exercise effective control over its borders and airspace.⁶⁴¹

The situation in Liberia

By resolution 1549 (2004) of 17 June 2004, taking note of the appeal made by the Chairman of the National Transitional Government of Liberia for the lifting of the timber and diamonds sanctions, the Council reiterated its call upon States, relevant organizations, and others in a position to do so to offer assistance to the Government in restructuring the security sector and ensuring that the ceasefire was

⁶³⁹ S/PRST/2004/1.

⁶⁴⁰ S/PRST/2005/7.

⁶⁴¹ Resolution 1533 (2004), para. 13.

respected; establishing an effective certificate-of-origin regime for trade in Liberian rough diamonds; and establishing control over timber-producing areas and ensuring that revenue was not used to fuel conflict.⁶⁴²

Non-proliferation (Islamic Republic of Iran)

By resolution 1747 (2007) of 24 March 2007, recalling the requirement on States to join in affording mutual assistance in carrying out the measures decided upon, and acting under Article 41 of the Charter, the Council reiterated the travel ban established by resolution 1737 (2006), applicable to the persons set out in the annex to the resolution and to the persons designated by the Security Council Committee or by the Council.⁶⁴³

B. Calls for mutual assistance in the implementation of decisions adopted under Article 42

When authorizing the use of force and calling upon States willing and in a position to do so to take relevant enforcement action through multinational forces, the Council regularly requested “all Member States” or “Member States” to provide appropriate support and assistance to those States, as illuminated below.

The situation in Afghanistan

By resolution 1563 (2004) of 17 September 2004, the Council extended the authorization of the International Security Assistance Force (ISAF) and, recognizing the need for strengthening ISAF, called upon Member States to contribute personnel, equipment and other resources.⁶⁴⁴ The Council reiterated its call for contributions in several subsequent resolutions.⁶⁴⁵

The situation in Bosnia and Herzegovina

By resolution 1551 (2004) of 9 July 2004, the Council paid tribute to those Member States which had participated in the multinational stabilization force (SFOR) established in accordance with resolution 1088 (1996) and welcomed their willingness to assist the

⁶⁴² Resolution 1549 (2004), para. 5.

⁶⁴³ Resolution 1747 (2007), eighth preambular paragraph and para. 2.

⁶⁴⁴ Resolution 1563 (2004), paras. 1 and 3.

⁶⁴⁵ Resolutions 1623 (2005), para. 3, 1707 (2006), para. 3, and 1776 (2007), para. 3.

parties to the Peace Agreement by continuing to deploy a multinational stabilization force. The Council invited all States, in particular those in the region, to continue to provide appropriate support, and facilities, including transit facilities, for the Member States participating in SFOR or in the proposed European Union mission.⁶⁴⁶

By resolution 1575 (2004) of 22 November 2004, while authorizing States acting through or in cooperation with the European Union to establish a multinational stabilization force (EUFOR), the Council invited all States, in particular those in the region, to continue to provide appropriate support and facilities, including transit facilities, for the Member States participating in EUFOR.⁶⁴⁷ The Council reiterated its invitation for support to the multinational stabilization force by several subsequent resolutions.⁶⁴⁸

The situation in Chad, the Central African Republic and the subregion

By resolution 1778 (2007) of 25 September 2007, while authorizing in Chad and the Central African Republic the establishment of a multidimensional presence which would include the United Nations Mission in the Central African Republic and Chad, the Council urged all Member States, particularly those bordering the two countries, to facilitate the delivery of all personnel, equipment, provisions, supplies and other goods, including vehicles and spare parts, intended for the Mission and the European Union operation authorized by the same resolution.⁶⁴⁹

The situation concerning the Democratic Republic of the Congo

By resolution 1671 (2006) of 25 April 2006, while authorizing the deployment of a European Union force to support the United Nations Mission in the Democratic Republic of the Congo, the Council requested all Member States, in particular those in the vicinity of the Democratic Republic of the Congo, to provide “all necessary support” to facilitate the deployment of the European Union force, and in particular to ensure the free, unhindered and expeditious movement to the Democratic Republic of

the Congo of its personnel, as well as equipment, provisions, supplies and other goods, including vehicles and spare parts.⁶⁵⁰

The question concerning Haiti

By resolution 1529 (2004) of 29 February 2004, while authorizing the deployment of a Multinational Interim Force in Haiti, the Council called upon Member States to contribute personnel, equipment and other financial and logistical resources on an “urgent basis” to the Force and stressed the importance of such voluntary contributions to help defray the expenses of the Force that participating States would bear.⁶⁵¹

The situation in Iraq

By resolution 1546 (2004) of 8 June 2004, deciding that the multinational force in Iraq would have the authority to take “all necessary measures” to contribute to the maintenance of security and stability in Iraq, the Council requested Member States and international and regional organizations to contribute assistance to the multinational force, including by providing military forces, as agreed with the Government of Iraq.⁶⁵²

The situation in Somalia

By resolution 1725 (2006) of 6 December 2006, the Council authorized the Intergovernmental Authority on Development and member States of the African Union to establish a peacekeeping mission in Somalia and encouraged Member States to provide financial resources for that mission.⁶⁵³

By resolution 1744 (2007) of 20 February 2007, while authorizing member States of the African Union to establish a mission in Somalia (AMISOM), the Council urged Member States to provide personnel, equipment and services, if required, for the successful deployment of AMISOM and encouraged States to provide financial resources for the Mission.⁶⁵⁴

By resolution 1772 (2007) of 20 August 2007, while authorizing the extension of the Mission’s mandate, the Council urged member States of the African Union to contribute to AMISOM in order to

⁶⁴⁶ Resolution 1551 (2004), paras. 8 and 21.

⁶⁴⁷ Resolution 1575 (2004), para. 19.

⁶⁴⁸ Resolutions 1639 (2005), para. 19, 1722 (2006), para. 19, and 1785 (2007), para. 19.

⁶⁴⁹ Resolution 1778 (2007), para. 14.

⁶⁵⁰ Resolution 1671 (2006), para. 13.

⁶⁵¹ Resolution 1529 (2004), para. 5.

⁶⁵² Resolution 1546 (2004), para. 15.

⁶⁵³ Resolution 1725 (2006), para. 6.

⁶⁵⁴ Resolution 1744 (2007), para. 8.

help to create the conditions for the withdrawal of all other foreign forces from Somalia. The Council further urged Member States to provide financial resources, personnel, equipment and services for the full deployment of the Mission.⁶⁵⁵

Reports of the Secretary-General on the Sudan

By resolution 1556 (2004) of 30 July 2004, while endorsing the deployment of international monitors to Darfur, including the protection force envisioned by the African Union, the Council urged the international community to continue to support those efforts. The Council further urged Member States to reinforce the international monitoring team led by the African Union by providing personnel and other assistance, including financing, supplies, transport, vehicles, command support, communication and headquarters support, as needed, for the monitoring operation.⁶⁵⁶

By resolution 1564 (2004) of 18 September 2004, welcoming the intention of the African Union to enhance its monitoring mission in the Darfur region, the Council urged Member States to support the African Union in its efforts by providing all equipment, logistical, financial, material and other necessary resources to support the rapid expansion of the African Union Mission in the Sudan (AMIS).⁶⁵⁷

By a statement of the President dated 11 April 2006, the Council commended the African Union for what AMIS had achieved in Darfur and urged Member States and international and regional organizations to provide additional assistance to AMIS, so that it could be strengthened.⁶⁵⁸ The Council reiterated its call in a presidential statement dated 9 May 2006.⁶⁵⁹

By resolution 1769 (2007) of 31 July 2007, by which it authorized the establishment of an African Union-United Nations Hybrid Operation in Darfur (UNAMID), the Council called upon Member States to finalize their contributions to UNAMID within 30 days

⁶⁵⁵ Resolution 1772 (2007), paras. 10 and 14.

⁶⁵⁶ Resolution 1556 (2004), paras. 2 and 3.

⁶⁵⁷ Resolution 1564 (2004), paras. 2 and 3.

⁶⁵⁸ S/PRST/2006/16.

⁶⁵⁹ S/PRST/2006/21. By resolution 1706 (2006) (fifth preambular paragraph), the Council welcomed the decision of the African Union Peace and Security Council of 27 June 2006 on strengthening mandate and tasks of AMIS, including on the protection of civilians, and considered that AMIS needed “urgent reinforcing”.

of the adoption of the resolution. Stressing the “urgent need” to mobilize the financial, logistical and other support required for AMIS, the Council called on Member States and regional organizations to provide “further assistance”, in particular to permit the early deployment of two additional battalions during the transition from AMIS to UNAMID.⁶⁶⁰

C. Discussion relating to Article 49

Reports of the Secretary-General on the Sudan

At the 5080th meeting, on 18 November 2004, the Secretary-General noted that the African Union Mission in the Sudan had begun to deploy and had already achieved some successes, but still needed “means of transport, as well as financial and logistical support”. He stressed that all States with the capacity to do so should give the Mission the “maximum possible support”, so that the African Union force could “deploy swiftly” and mount an “effective operation” on the ground.⁶⁶¹ The representative of Nigeria reiterated his Government’s support for the commitment of the African Union to increase its mission in Darfur and welcomed the Mission’s expanded mandate.⁶⁶²

At the 5082nd meeting, on 19 November 2004, the representative of Brazil stressed the need for “increased international support” for the African Union in Darfur. He expressed hope that the Secretary-General would continue to keep the Council “closely informed” about the assistance to be provided.⁶⁶³ The representative of Angola indicated that the scenario of a “poorly endowed expanded African force” in Darfur and a well-equipped United Nations operation in southern Sudan should be avoided. He highlighted the need for “appropriate support” to enable the African Union to play its “leading role adequately”.⁶⁶⁴ The Director of African Administration and African-Arab Cooperation of the League of Arab States declared that the African Union Mission required “full and strong financial, technical and logistical support” to deal with the crisis in Darfur and announced that the League of Arab States would spare “no effort” to provide all

⁶⁶⁰ Resolution 1769 (2007), paras. 4 and 11.

⁶⁶¹ S/PV.5080, p. 4.

⁶⁶² *Ibid.*, p. 8.

⁶⁶³ S/PV.5082, p. 10.

⁶⁶⁴ *Ibid.*, p. 14.

forms of support to the African Union.⁶⁶⁵ The representative of the Netherlands stated that it was “essential” that AMIS received “all the support needed” to ensure its rapid and full deployment and “effective operationalization”.⁶⁶⁶ The representative of Australia, speaking also on behalf of New Zealand, opined that the international community had to make “every effort” to ensure the success of AMIS and indicated that the Governments of Australia and New Zealand were offering their “full support” to the Mission.⁶⁶⁷

At the 5434th meeting, on 9 May 2006, the Secretary-General stated that a “follow-on United Nations force” would have to be much larger than the current AMIS and would need major logistical support from States that were in a position to provide it.⁶⁶⁸ The representative of the United Kingdom opined that the first step in addressing the challenges in the Sudan was to “urgently” strengthen AMIS to ensure that the ceasefire prevailed. He added that his Government would “do its part” and indicated that it had just contributed additional funds.⁶⁶⁹ The representative of Greece recalled that the European Union and its member States had provided planning and technical, financial and equipment support to both the military and the police components of AMIS, and had reiterated their readiness to continue to provide such support. He further stated that his Government had also contributed to that effort, “within its capabilities”, and would continue to do so.⁶⁷⁰ Similarly, other representatives agreed on the necessity of strengthening AMIS and enhancing its operational capabilities,⁶⁷¹ and a number of representatives announced financial contributions to the Mission.⁶⁷²

At the 5520th meeting, on 11 September 2006, the Secretary-General, in his briefing, declared that the Secretariat would be meeting senior officials from the Commission of the African Union to finalize a support package for AMIS. He added that the Department of Peacekeeping Operations would also convene a meeting

⁶⁶⁵ Ibid., p. 22.

⁶⁶⁶ Ibid., p. 24.

⁶⁶⁷ Ibid., p. 25.

⁶⁶⁸ S/PV.5434, p. 3.

⁶⁶⁹ Ibid., p. 4.

⁶⁷⁰ Ibid., p. 11.

⁶⁷¹ Ibid., p. 10 (Denmark); p. 15 (Qatar); p. 17 (Austria, on behalf of the European Union and associated countries); and p. 21 (Nigeria).

⁶⁷² Ibid., p. 12 (Japan); p. 18 (Austria, on behalf of the European Union and associated countries); and p. 18 (Netherlands).

of potential troop and police contributors to discuss the expansion of the United Nations Mission in the Sudan to Darfur. He further noted that, during the transition from AMIS to a United Nations peacekeeping operation, there could be “no walking away from AMIS” and that AMIS would have to play a “vital role” until the United Nations operation was in place. However, he noted that AMIS lacked the “necessary resources” and called on the Mission’s partners to ensure that it could continue to work during the “crucial transition period”.⁶⁷³ The representative of the United States opined that support had to be offered to the African Union and to AMIS at that “critical point” in maintaining their “key role” in addressing the Darfur crisis. He insisted that “everyone” had to do “everything possible” to support AMIS, including by implementing resolution 1706 (2006), which called for “robust assistance” to the Mission.⁶⁷⁴ The representative of the United Kingdom stressed the importance of not creating a “vacuum” in Darfur, in which the Janjaweed and the rebels would fight. He noted that the basic measure for avoiding such a vacuum would be to provide AMIS with the capabilities and the financing it needed.⁶⁷⁵ The representative of Japan expressed the belief that, in the transition from AMIS to a United Nations peacekeeping mission, the international community had to respond to the “urgent need for prompt support” for maintaining the African Union forces on the ground, as well as to the “enormous humanitarian requirements”.⁶⁷⁶ The representative of Qatar emphasized the importance of increasing the “financial and logistical support” given to AMIS, making use of the “resources of the United Nations”. He noted that the request had received no favourable response until the report of the Secretary-General had been issued, requesting all financial and logistical support necessary for AMIS. He noted that the Security Council had been clear on the need for such support and advocated that the General Assembly should follow up by providing that support.⁶⁷⁷

At the 5727th meeting, on 31 July 2007, while a number of representatives emphasized the need to provide support for the newly established UNAMID, a few speakers stressed the importance of offering assistance to AMIS in the transition phase. The representative of China affirmed that, as the only

⁶⁷³ S/PV.5520, p. 3.

⁶⁷⁴ Ibid., p. 8.

⁶⁷⁵ Ibid., p. 9.

⁶⁷⁶ Ibid., p. 17.

⁶⁷⁷ Ibid., p. 19.

international peacekeeping force in Darfur, AMIS was shouldering “daunting tasks” and was facing “huge difficulties”. He suggested that, in the near future, the Council should first focus on urging the international community to provide financial support to AMIS and fully implement the United Nations light and heavy

support packages aimed at building the capacity of AMIS, so as to lay a “solid foundation” for the deployment of the hybrid operation.⁶⁷⁸

⁶⁷⁸ S/PV.5727, p. 10.

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 continued its practice of imposing targeted sanctions measures that helped to minimize economic problems experienced by third States. Through two notes by the President the Council also decided to extend the mandate of the Informal Working Group on General Issues of Sanctions, whose tasks included an “assessment of the unintended impact of sanctions and ways to assist affected untargeted States”.⁶⁷⁹

Given the shift from comprehensive economic sanctions to targeted sanctions, no sanctions committees were approached by Member States concerning special economic problems arising from the implementation of sanctions. There were therefore no pre-assessment reports or ongoing assessment reports concerning the likely and actual unintended impact of sanctions on third States.⁶⁸⁰

⁶⁷⁹ S/2004/1014 and S/2005/841.

⁶⁸⁰ Some of the sanctions Committees did, however, touch on the issue of the humanitarian and socioeconomic consequences of sanctions in their reports to the Council (see, for example, S/2007/778 and S/2008/17), as did Groups or Panels of Experts (see S/2004/955, paras. 24-52; S/2005/436, para. 87; S/2006/379, para. 133; and S/2007/40, paras. 42-45) and Monitoring Teams (see S/2005/572, paras. 18 and 86).

Section A examines decisions of the Council relevant to Article 50, while section B highlights the salient issues raised in the Council’s deliberations regarding the interpretation and application of the Article. Section C presents material relating to the Council’s subsidiary bodies in connection with Article 50, as included in their reports to the Council, as well as in the reports of the Secretary-General on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions.⁶⁸¹

A. Decisions relating to Article 50

Informal Working Group on General Issues of Sanctions

By a note by the President dated 23 December 2004, the Council decided to extend the mandate of the Informal Working Group on General Issues of Sanctions, established by a note by the President dated 17 April 2000, until 31 December 2005. While the Working Group continued to be tasked with developing general recommendations on how to improve the effectiveness of United Nations sanctions, it was also mandated to undertake within that framework, as appropriate, and with the consensus of its members, assessment of the unintended impact of sanctions and ways to assist affected untargeted States.⁶⁸² By a note by the President dated 29 December 2005, the Council agreed to further extend the mandate of the Working Group until 31 December 2006.⁶⁸³ By resolution 1732 (2006) of 21 December 2006, taking note of the best practices and methods contained in the Working

⁶⁸¹ See A/59/334, A/60/320, A/61/304 and A/62/206.

⁶⁸² S/2004/1014.

⁶⁸³ S/2005/841.

Group's final report,⁶⁸⁴ the Council decided that the Working Group had fulfilled its mandate.

Strengthening international law: rule of law and maintenance of international peace and security

By a statement of the President dated 22 June 2006, the Council reaffirmed the role sanctions played in the maintenance and restoration of international peace and security. The Council further resolved to ensure that sanctions were carefully targeted in support of clear objectives and were implemented in ways that balanced effectiveness against possible adverse consequences.⁶⁸⁵

B. Discussion relating to Article 50

Strengthening international law: rule of law and maintenance of international peace and security

At the 5474th meeting, on 22 June 2006, the representative of Nigeria expressed the view that, in order to enhance the efficiency and credibility of the United Nations sanctions regimes, sanctions should be applied only as a "last resort", be "targeted" and "time-bound", and should be lifted once the objectives had been achieved. He said that sanctions should be applied in accordance with Article 50 of the Charter, and that the impact of sanctions both on the target and on third States should be assessed and remedied.⁶⁸⁶

C. Instances arising in the subsidiary bodies of the Council

Informal Working Group on General Issues of Sanctions

By a letter dated 17 December 2004 addressed to the President of the Council, the outgoing Chairman of

⁶⁸⁴ S/2006/997.

⁶⁸⁵ S/PRST/2006/28.

⁶⁸⁶ S/PV.5474 (Resumption 1), p. 19.

the Informal Working Group on General Issues of Sanctions noted that the Council, in relevant cases, had sought an assessment of the possible humanitarian impact of the measures it had authorized, with a view to minimizing the unintended negative consequences of such measures. He also noted that various reports by expert sanctions monitoring bodies had included recommendations for improving the implementation and effectiveness of sanctions as well as for mitigating their unintended impact.⁶⁸⁷

In a report of the Chairman of the Informal Working Group on General Issues of Sanctions to the President of the Security Council, transmitted in a note by the President dated 22 December 2005, the Working Group observed that, unlike comprehensive sanctions, targeted sanctions tended to have minimal negative effects on civilian populations and third States. The Working Group also noted, however, that if targeted sanctions were not properly designed and implemented, their legitimacy could be compromised and their usefulness questioned.⁶⁸⁸ Reference was also made to the call by some delegations for the Security Council to improve its monitoring of the implementation and effects of sanctions and the establishment of a mechanism to address special economic problems arising from the application of sanctions.⁶⁸⁹

In a report of the Chairman of the Informal Working Group, transmitted in a note by the President dated 22 December 2006, the Working Group observed that several of the recommendations and best practices set out in that report related to improved sanctions design and monitoring. The report did not however contain any recommendations that explicitly referred to ways to assist untargeted States affected by the unintended impact of sanctions.⁶⁹⁰

⁶⁸⁷ S/2004/979, pp. 5-6.

⁶⁸⁸ S/2005/842, annex.

⁶⁸⁹ Ibid., para. 10.

⁶⁹⁰ S/2006/997, annex.

Part IX

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 reaffirmed the principle set out in Article 51 of the Charter in three different decisions related to its consideration of the item entitled “Small arms” (see section A).

During the period, in the course of the deliberations in the Council, various issues occasioned arguments relating to the interpretation of the principle of self-defence. Specifically, the Council debated the application and interpretation of Article 51 in connection with the following items: Small arms; Letter dated 4 July 2006 from the Permanent Representative of Japan to the United Nations addressed to the President of the Security Council; Non-proliferation/Democratic People’s Republic of Korea; Non-proliferation of weapons of mass destruction; and The situation in the Middle East. The arguments advanced during the Council’s deliberations in connection with these situations are presented in section B.

These cases will be followed by a brief overview in section C 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. Decisions relating to Article 51

Small arms

By two statements of the President dated 19 January 2004 and 17 February 2005, respectively, in connection with the Council’s consideration of the destabilizing role played by the accumulation and uncontrolled spread of small arms and light weapons in many regions of the world, the Council reaffirmed “the inherent right of individual or collective self-defence in accordance with Article 51 of the Charter and, subject to the Charter, the right of each State to import,

produce and retain small arms and light weapons for its self-defence and security needs”.⁶⁹¹

By a statement of the President dated 29 June 2007, the Council reaffirmed “the inherent right to individual or collective self-defence consistent with Article 51 of the Charter of the United Nations”.⁶⁹²

B. Discussion relating to Article 51

Small arms

At the 4896th meeting, on 19 January 2004, a number of speakers commented on the need to strike a balance between the need to limit the illegal trade and proliferation of small arms and the right of States to legally produce and trade arms, in accordance with the right of self-defence as enshrined in the Charter. The representative of Romania noted that the illicit traffic in arms and drugs could become a serious obstacle to national development and well-being and, taking into account that countries have the right to produce and transfer arms in accordance to the right to self-defence, stressed that arms transfers should be conducted in a “very responsible manner”.⁶⁹³ The representative of Algeria emphasized that a precise analysis of the factors generating and developing the traffic in small arms would help to clarify the concepts, and thus prevent confusion between the illegal traffic in small arms and the legal trade in small arms covered by Article 51.⁶⁹⁴ The representative of Colombia said that export control mechanisms should take into account not only the “views and interests of the producing and exporting countries” but also the interests of the importing countries. He expressed caution about the “subjective” nature of criteria such as “respect for human rights, the existence of internal conflicts and the imbalance between defence and development expenditures”, which, if applied by exporting countries, might violate the right of all States to import and possess small arms and light weapons for their self-defence and security needs in accordance with Article 51.⁶⁹⁵ The representative of Indonesia pointed out that the progress made in the implementation of demobilization, disarmament, rehabilitation and resettlement programmes

⁶⁹¹ S/PRST/2004/1 and S/PRST/2005/7.

⁶⁹² S/PRST/2007/24.

⁶⁹³ S/PV.4896, p. 4.

⁶⁹⁴ *Ibid.*, p. 19.

⁶⁹⁵ *Ibid.*, p. 30.

for ex-combatants in post-conflict countries had been achieved while respecting the “right of States to self-defence and security” and without prejudice to their corresponding right to effective control over the export, import, transit and storage of small weapons.⁶⁹⁶

At the 5127th meeting, on 17 February 2005, the representative of Romania reiterated that countries retained the legitimate “right to self-defence” in accordance with the Charter, as arms production and transfers for that purpose were licit. He therefore stated that legality of arms trading entailed the conduct of transfers in an “even more responsible” manner.⁶⁹⁷ The representative of Greece concurred, but warned that in some instances small arms that started out legally ultimately arrived at illegal destinations, owing to “loopholes” which must be effectively addressed through severe measures in the national legislation of all countries.⁶⁹⁸ The representative of Mexico opined that one fundamental element in controlling the illicit trade in small arms and light weapons would be to negotiate a legal instrument regulating the transfer of such arms. The main manufacturers and exporters, he added, should be subject to precise rules that would prevent the transfer of small arms and light weapons to be diverted on to the illegal track. He cautioned, however, that such rules and provisions should be applied with no negative impact on lawful transfers that enable countries to exercise their legitimate right to self-defence as set out in Article 51 of the Charter.⁶⁹⁹

*Items relating to the Democratic People's
Republic of Korea*⁷⁰⁰

At its 5490th meeting, on 15 July 2006, the Council unanimously adopted resolution 1695 (2006) by which it condemned the launching of ballistic missiles on 5 July by the Democratic People's Republic of Korea. Welcoming the adoption of the resolution, the representative of Japan declared that the missile launches posed a “direct threat to the security of Japan and other countries”, particularly in the light of the

Democratic People's Republic of Korea's claim that it had developed nuclear weapons.⁷⁰¹ The representative of the United States, declaring that the missile launches represented a “direct threat to international peace and security, demanded “a strong statement from the Council in the form of a strong resolution”.⁷⁰² In response, the representative of the Democratic People's Republic of Korea stated that the missile launches had been part of a “routine military exercise” intended to increase his country's “military capacity for self-defence” and would go on in the future. He contended that the missile launches did not strain the regional situation, nor did they block the progress of the dialogue. He also argued that were it not for his country's “tremendous deterrent in self-defence”, the United States would have attacked the Democratic People's Republic of Korea.⁷⁰³

By a letter dated 11 October 2006 addressed to the President of the Security Council, the representative of the Democratic People's Republic of Korea transmitted a statement issued by his country's Foreign Ministry, indicating that his Government had successfully conducted “an underground nuclear test” under secure conditions on 9 October as a “new measure for bolstering its war deterrent for self-defence”.⁷⁰⁴

At its 5551st meeting, on 14 October 2006, the Council unanimously adopted resolution 1718 (2006), by which, acting under Chapter VII of the Charter, it condemned the nuclear test conducted by the Democratic People's Republic of Korea on 9 October 2006, finding it in flagrant disregard of its relevant resolutions, and in particular of resolution 1695 (2006). During the ensuing debate, a number of speakers saluted the adoption of the resolution as a strong signal by the international community. In response, the representative of the Democratic People's Republic of Korea declared that the underground nuclear test had been a new measure for bolstering his country's “war deterrent for self-defence” and was “entirely attributable to the United States nuclear threat, sanctions and pressure”.⁷⁰⁵

⁶⁹⁶ S/PV.4896 (Resumption 1), p. 11.

⁶⁹⁷ S/PV.5127, p. 8.

⁶⁹⁸ Ibid., p. 13.

⁶⁹⁹ Ibid., p. 29.

⁷⁰⁰ Letter dated 4 July 2006 from the Permanent Representative of Japan to the United Nations addressed to the President of the Security Council; and Non-proliferation/Democratic People's Republic of Korea.

⁷⁰¹ S/PV.5490, p. 2.

⁷⁰² Ibid., p. 4.

⁷⁰³ Ibid., pp. 8-9.

⁷⁰⁴ S/2006/801.

⁷⁰⁵ S/PV.5551, p. 8.

The situation in the Middle East

By identical letters dated 12 July 2006 addressed to the Secretary-General and the President of the Security Council, in connection with the Hizbullah attacks on Israel's northern border with Lebanon, the representative of Israel asserted that his country reserved the "right to act in accordance with Article 51 of the Charter of the United Nations and exercise its right of self-defence" when attacked and take "appropriate actions" in this regard.⁷⁰⁶

At its 5489th meeting, on 14 July 2006, the Council heard a briefing by the Under-Secretary-General for Peacekeeping Operations in relation to the crisis between Israel and Lebanon which had started on 12 July 2006. During the ensuing debate, several representatives recognized Israel's right to act in self-defence, but cautioned that Israel should ensure that its actions were proportionate and measured, in accordance with international law.⁷⁰⁷ Among those speakers, the representative of Slovakia, while recognizing and acknowledging "the right of each and every State to self-defence", emphasized that the right could not and should not be confused with counterattacks or acts of military provocation.⁷⁰⁸ The representative of Qatar stated that while his country recognized the right of all States to defend themselves, such a right was not in agreement with Israel's actions of waging "a widespread military campaign directly targeting civilians" and hitting Lebanon's infrastructure, which was not consonant with the objective of self-defence. He added that "the alleged right of Israel to self-defence" ended when the Council took the necessary measures to maintain international peace and security and hoped that the Council would soon take action to stop the "premeditated aggression" by Israel.⁷⁰⁹

By identical letters dated 17 July 2006 addressed to the Secretary-General and the President of the Security Council, the representative of Lebanon pointed out the "disproportionate aggression" and the consequences of the Israeli actions taken in "self-defence".⁷¹⁰

⁷⁰⁶ S/2006/515.

⁷⁰⁷ S/PV.5489, p. 12 (United Kingdom); p. 14 (Peru); p. 15 (Denmark); p. 16 (Slovakia); and p. 17 (Greece).

⁷⁰⁸ *Ibid.*, p. 16.

⁷⁰⁹ *Ibid.*, pp. 10-11.

⁷¹⁰ S/2006/529. Subsequently, by identical letters dated 19 July 2006 addressed to the Secretary-General and the President of the Security Council (S/2006/550), the

representative of Lebanon questioned the international community's use of the label of "self-defence" to justify the "escalating" Israeli military actions against Lebanon.⁷¹¹

At its 5492nd meeting, on 20 July 2006, the Council heard a briefing by the Secretary-General in relation to the situation in the Middle East in which the Secretary-General, while reiterating his condemnation of Hizbullah's attacks on Israel and acknowledging Israel's right to defend itself under Article 51 of the Charter, cautioned against the excessive use of force.⁷¹¹

At the 5493rd meeting, on 21 July 2006, held to consider the item entitled "The situation in the Middle East, including the Palestinian question", a number of speakers referred to the situation between Israel and Lebanon. Several speakers, while recognizing Israel's right to self-defence against terrorism and its perpetrators, urged Israel to exercise that right with caution and restraint.⁷¹² Other speakers insisted that Israel's exercise of the right to self-defence should be in accordance with the principles of the Charter and international law.⁷¹³ The representative of Norway recalled that all use of armed force must satisfy requirements of necessity as well as proportionality and therefore urged Israel not to resort to "disproportionate action".⁷¹⁴ A number of speakers argued on the other hand that the Israeli actions could not be justified by the right to self-defence.⁷¹⁵ The representative of Turkey emphasized that Israel should not resort to "disproportionate and indiscriminate" use of force.⁷¹⁶ The representative of Qatar stated that the situation had suddenly deteriorated as a result of the "excessive use" of military force by Israel against Lebanon "on the pretext of self-defence".⁷¹⁷ By contrast, the representative of the United States argued that there was "no moral equivalence between acts of terrorism and Israel's exercise of its legitimate right to self-defence". He insisted that the killing of civilians who died as the direct result of malicious terrorist acts

representative of Lebanon questioned the international community's use of the label of "self-defence" to justify the "escalating" Israeli military actions against Lebanon.

⁷¹¹ S/PV.5492, p. 3.

⁷¹² S/PV.5493, p. 19 (Slovakia); S/PV.5493 (Resumption 1), p. 4 (Peru); p. 7 (Denmark); p. 12 (France); p. 19 (Brazil); p. 27 (Australia); p. 39 (Canada); and p. 41 (Guatemala).

⁷¹³ S/PV.5493 (Resumption 1), p. 7 (United Kingdom); p. 9 (Argentina); and p. 23 (Norway).

⁷¹⁴ *Ibid.*, p. 23.

⁷¹⁵ S/PV.5493, p. 13 (Lebanon); p. 14 (Qatar); S/PV.5493 (Resumption 1), p. 20 (Saudi Arabia); p. 30 (Islamic Republic of Iran); p. 32 (Djibouti); p. 38 (Sudan); and p. 42 (United Arab Emirates).

⁷¹⁶ S/PV.5493 (Resumption 1), p. 28.

⁷¹⁷ S/PV.5493, p. 14.

was not morally equivalent to “the tragic and unfortunate consequence of civilian deaths as a result of military action taken in self-defence”.⁷¹⁸

C. Invocation of the right of self-defence in other instances

Communications concerning relations between the Democratic Republic of the Congo and Rwanda

By a letter dated 10 June 2004 addressed to the President of the Security Council, in connection with two letters dated 3 and 7 June 2004, respectively, from the representative of Rwanda,⁷¹⁹ the representative of the Democratic Republic of the Congo reiterated his Government’s “accusation of renewed aggression” by Rwanda in the area of Bukavu, “in flagrant violation of the Charter”. He reaffirmed that his Government had no “hidden agenda” in Rwanda, noting that “the inherent right of individual or collective self-defence” in the event of armed attack was enshrined in Article 51 of the Charter.⁷²⁰

By a letter dated 16 August 2004 addressed to the President of the Security Council, the representative of Rwanda called upon the international community to take action against the “incipient ethnic cleansing” of Bunyamulenge refugees in Rwanda and Burundi. Moreover, he asked for the “forcible disarmament, demobilization and repatriation” of ex-Rwandan Armed Forces/Interahamwe deployed along Rwanda’s border, and asserted that the “failure to do so” might force his country “to take appropriate measures in self-defence”.⁷²¹

Communications concerning relations between the Democratic Republic of the Congo and Uganda

By a letter dated 3 October 2005 addressed to the President of the Security Council, the representative of the Democratic Republic of the Congo recalled the “threatening statements” made by the President of Uganda stating that the Ugandan army would cross the border with the Democratic Republic of the Congo if the Congolese Government and the United Nations Organization Mission in the Democratic Republic of

the Congo failed to disarm, within two months, the rebels of the Lord’s Resistance Army (LRA). He added that, in the light of “this new Ugandan threat” to his country’s international sovereignty, territorial integrity and political independence, his Government would have “no other choice but to act within the framework of international legality”, including by taking the “relevant action authorized by the Charter”, in particular the provisions of Article 51.⁷²²

In response, the representative of Uganda, by a letter dated 7 October 2005 addressed to the President of the Security Council, pointed out that “as a responsible and sovereign State”, Uganda was expected to guarantee the peace and security of its citizens, who, for an extended period of time, had been “terrorized” by LRA and other armed groups which used the territory of neighbouring States “as bases from which to attack Uganda”. Consequently, he declared that Uganda had an “obligation to defend itself” if attacked, in accordance with Article 51 of the Charter.⁷²³

Communications concerning relations between Eritrea and Ethiopia

By a letter dated 28 October 2005 addressed to the President of the Security Council, the representative of Eritrea declared that his country showed “maximum patience and restraint” throughout Ethiopia’s “occupation” of its territory, and declared that the measures taken by his country to protect its sovereignty and territorial integrity were “not tactically motivated posturing but rather legal acts of self-defence, recognized as such by the Charter”.⁷²⁴

By a letter dated 20 December 2005 addressed to the President of the Security Council, the representative of Ethiopia transmitted a press release issued by his country’s Ministry of Foreign Affairs in response to the decision of the Eritrea-Ethiopia Claims Commission. He noted that the Eritrean occupation of Badme could not be justified as lawful self-defence under the Charter as it was a “clear aggression without any provocation whatsoever from Ethiopia”.⁷²⁵

⁷²² S/2005/620.

⁷²³ S/2005/645.

⁷²⁴ S/2005/688.

⁷²⁵ S/2005/816.

⁷¹⁸ Ibid., p. 17.

⁷¹⁹ S/2004/452 and S/2004/459.

⁷²⁰ S/2004/489.

⁷²¹ S/2004/652.

Communications concerning the situation in the Sudan

By a letter dated 10 August 2004 addressed to the President of the Security Council, the representative of the Sudan announced an action plan to create conditions for the restoration of peace, security, stability and development in the Darfur. He stated that “all offensive military operations” by his Government’s armed forces in the proposed safe areas would cease immediately. He stressed that the Government of the Sudan armed forces would exercise restraint and avoid retaliation against rebel activities “notwithstanding their right of self-defence”.⁷²⁶

By a letter dated 10 February 2006 addressed to the President of the Security Council, the representative of the Sudan, in response to the report of the Panel of Experts established pursuant to resolution

⁷²⁶ S/2004/636.

1591 (2005),⁷²⁷ noted that his Government’s forces in Darfur were “totally committed to non-aggression”, which meant that they did not use any arms, “except in cases of self-defence”.⁷²⁸

Communication concerning the situation in the Middle East

By a series of identical letters addressed to the Secretary-General and the President of the Security Council, the representative of Israel reaffirmed his country’s right to self-defence, according to the Article 51 of the Charter, in response to attacks against its citizens and territory.⁷²⁹

⁷²⁷ S/2006/65.

⁷²⁸ S/2006/96.

⁷²⁹ S/2004/702, S/2004/757, S/2005/609, S/2005/756, S/2006/891, S/2006/1029, S/2007/285, S/2007/316, S/2007/368, S/2007/524, S/2007/733 and S/2007/741.