

## **Part VI**

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

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## Introductory note

Part VI covers the practice of the Security Council during the period 2012-2013 with regard to the interpretation and application of Chapter VI (Articles 33 to 38), in relation to the peaceful settlement of disputes, as well as Articles 11 and 99 of the Charter of the United Nations.

Part VI is divided into four main sections. Section I illustrates how States brought disputes or situations to the attention of the Security Council during the period under review, pursuant to Article 35 of the Charter. This section also surveys the practice of the General Assembly and the Secretary-General, under Articles 11 (3) and 99 of the Charter, respectively, in drawing the attention of the Council to situations which are likely to threaten the maintenance of international peace and security. Section II sets out the investigative and fact-finding activities performed by the Council and other bodies that may be deemed to fall under the scope of Article 34, including Security Council missions. Section III provides an overview of the decisions of the Council taken with regard to the pacific settlement of disputes. It specifically illustrates recommendations of the Council to parties to a conflict and its support for the endeavours of the Secretary-General in the peaceful settlement of disputes. Section IV reflects constitutional discussions on the interpretation or application of the provisions of Chapter VI of the Charter and Article 99. Part VI does not discuss the practice of the Council with respect to the pacific settlement of disputes in an exhaustive manner but focuses on selected materials that highlight how the provisions of Chapter VI were interpreted and applied during the period under review in the decisions and deliberations of the Council. Joint or parallel efforts undertaken by the Council and regional arrangements or agencies in the pacific settlement of disputes during the period under review are covered in part VIII of this Supplement.

During the period 2012-2013, the Council continued to be seized of a high volume of matters and was actively engaged in the peaceful settlement of disputes in numerous situations worldwide. Given the increasingly intra-State and cross-border nature of disputes, as well as the political sensitivities associated with new disputes or situations on the list of matters of which it is seized, the Council continued its practice of frequently considering disputes or situations that were likely to or might endanger international peace and security first in informal settings, such as its informal consultations of the whole,<sup>1</sup> as in the case of Mali, and/or in formal meetings under existing items. The Council also considered cross-cutting issues such as piracy,<sup>2</sup> the challenges of the fight against terrorism in Africa in the context of maintaining international peace and security<sup>3</sup> and conflict prevention and natural resources<sup>4</sup> as sub-items within existing thematic items. Only in rare instances were disputes or situations discussed under new items. The situation in Mali, for example, was first considered under the existing region-specific item entitled “Peace and security in Africa” and subsequently discussed under a new country-specific item entitled “The situation in Mali”.

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<sup>1</sup> See part II, sect. I, with regard to informal consultations and other informal meetings.

<sup>2</sup> S/PV.6865 and S/PV.6865 (Resumption 1).

<sup>3</sup> S/PV.6965.

<sup>4</sup> S/PV.6982 and S/PV.6982 (Resumption 1).

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The decisions of the Council during the period 2012-2013 reflect a multifaceted approach to the situations on the list of matters of which it is seized and the pursuance of the pacific settlement of disputes. The deliberations in the Council during the period under review reflect a renewed interest in strengthening the mechanisms for the peaceful settlement of disputes pursuant to Chapter VI of the Charter by means of, inter alia, referring disputes to the International Court of Justice, the increased involvement of women in the peaceful settlement of disputes, the partnership with regional organizations in dealing with conflict and the use of early warning mechanisms.

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## I. Referral of disputes or situations to the Security Council

### Article 11

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

### Article 35

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

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

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

### Article 99

*The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.*

## Note

Article 35 (1) and (2) of the Charter of the United Nations allows Member States and States which are not members of the United Nations to bring any dispute or any other situation to the attention of the Security Council.

Under Articles 11 (3) and 99, the General Assembly and the Secretary-General, respectively, may also bring to the attention of the Council situations or matters which are likely to or may threaten the maintenance of international peace and security.

The practice of the Council in this regard, during the period 2012-2013, is described below in three subsections. Subsection A provides an overview of the referrals of disputes or situations by States to the Council pursuant to Article 35. Subsections B and C include referrals by the Secretary-General and the General Assembly, respectively, of matters which were likely to

endanger international peace and security, in accordance with Articles 99 and 11 (3) of the Charter.

During the period under review, referrals by Member States and the Secretary-General of disputes or situations, in most cases without an explicit reference to Articles 35 or 99, continued to form the basis of the Council's consideration of matters it deemed likely to threaten the maintenance of international peace and security. In the case of referrals by the Secretary-General, in addition to communications, the referrals also took the form of briefings by the Secretary-General himself or his representatives, in formal as well as informal meetings.

As described in further detail in subsection A below, Member States brought seven disputes or situations to the attention of the Council in relation to a variety of geographical regions. All of them were brought to the attention of the Council by means of written communications by affected Member States or by third States.

With the exception of two communications (in relation to the situation between Ethiopia and Eritrea and the relations between Israel and the Sudan), most disputes or situations were considered under existing items, namely, "The situation in the Middle East, including the Palestinian question", "The situation concerning the Democratic Republic of the Congo" and "The situation in Guinea-Bissau". In relation to the Sudan and South Sudan, however, the Council considered the situation under a reformulated item. The Council agreed that issues pertaining to the Sudan and South Sudan, including the African Union-United Nations Hybrid Operation in Darfur, the United Nations Interim Security Force for Abyei, the United Nations Mission in South Sudan and Council resolution [2046 \(2012\)](#), would as from 11 November 2013 be considered under the item entitled "Reports of the Secretary-General on the Sudan and South Sudan".<sup>5</sup>

The Secretary-General brought to the attention of the Council, through the Under-Secretary-General for Political Affairs, the situation in Mali during the course of a briefing in the context of informal consultations of the whole. Issues pertaining to Mali, first considered under the item entitled "Peace and security in Africa", were

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<sup>5</sup> See [S/2013/657](#).

from December 2012 considered under the item entitled “The situation in Mali”.<sup>6</sup>

The Council may deal with a new dispute or situation in the context of an existing item. The inclusion of a new item on the list of matters of which the Council is seized does not actually imply the existence of a new dispute or situation.

The General Assembly did not explicitly refer to the Council any matter likely to endanger international peace and security.

### A. Referrals by States

Owing to the large number of communications addressed to the Council and consistent with the aim of the *Repertoire* to cover the evolving practice of the Council, subsection A focuses exclusively on those communications addressed to the Council by Member States that (a) referred explicitly to Article 35; and/or (b) drew attention to and requested a particular action of the Council in relation to a dispute or situation (regardless of whether the Council heeded the request), whether or not they led to the inclusion of a new item or sub-item. This approach represents a departure from previous Supplements. Communications from Member States merely conveying information regarding a particular dispute or situation but not requesting a meeting of the Council or any other specific action have not been included in this subsection.

The communications featured below, bringing disputes or situations to the attention of the Council, were addressed to the President of the Council directly by the affected Member State<sup>7</sup> or through a third State;<sup>8</sup> in the case of Guinea-Bissau, the communication was addressed to the Secretary-General, but action was requested of the Council.<sup>9</sup>

During the period 2012-2013, the country-specific and regional situations referred to the Council were deemed likely to threaten international peace and security. All communications featured in the present subsection describe the nature of the situation, with a limited amount of detail or chronology of events. While Chapter VI provides the basis for Member States to bring matters to

the attention of the Council, the subject matter of communications submitted to the Council was not limited by the scope of Chapter VI. For example, in his communication, the representative of Egypt labelled the situation in the Gaza Strip as an “aggression”.<sup>10</sup> Likewise, the representative of the Democratic Republic of the Congo, in a letter concerning the alleged actions by Rwanda, labelled them as a “new aggression”.<sup>11</sup> The representative of Jordan, on the other hand, deemed that the flow of Syrian refugees into his country threatened its stability and security and had implications for international peace and security.<sup>12</sup>

In his report dated 25 July 2012 on the responsibility to protect, the Secretary-General affirmed the ability of any Member State, under Chapter VI of the Charter, to bring any dispute or situation, which would encompass the commission of crimes and violations relating to the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, to the attention of the Council.<sup>13</sup> During the period under review, however, situations relating to, invoking or involving the responsibility to protect were not brought to the attention of the Council by any Member State.

In the communications featured below, a variety of actions was requested of the Council, for example, that a meeting (or an extraordinary meeting) be held,<sup>14</sup> that some concrete action or measure be taken<sup>15</sup> or that compliance with decisions of the Council be ensured.<sup>16</sup> The submitting States also requested the Council to take “all necessary measures”<sup>17</sup> and to determine that a particular situation constituted a threat to international peace and security.<sup>18</sup>

### Communications containing explicit references to Article 35

During the period 2012-2013, most communications from Member States addressed to the

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<sup>6</sup> See [S/2012/961](#).

<sup>7</sup> [S/2012/57](#), [S/2012/118](#), [S/2012/126](#), [S/2012/127](#), [S/2012/132](#), [S/2012/181](#), [S/2012/857](#), [S/2012/864](#), [S/2013/247](#), [S/2013/268](#), [S/2013/414](#) and [S/2013/517](#).

<sup>8</sup> [S/2012/840](#) and [S/2012/859](#).

<sup>9</sup> [S/2012/254](#).

<sup>10</sup> [S/2012/840](#).

<sup>11</sup> [S/2012/857](#).

<sup>12</sup> See [S/2013/247](#), in which the representative of Jordan made reference to Article 34 of the Charter in connection with his requests to the Council, which included a request that the Council visit Jordan.

<sup>13</sup> See [S/2012/578](#), para. 41.

<sup>14</sup> [S/2012/254](#), [S/2012/840](#), [S/2012/859](#) and [S/2013/517](#).

<sup>15</sup> [S/2012/857](#), [S/2013/247](#), [S/2013/268](#), [S/2013/414](#) and [S/2013/517](#).

<sup>16</sup> [S/2012/158](#) and [S/2012/164](#).

<sup>17</sup> [S/2012/840](#).

<sup>18</sup> [S/2013/247](#).

President of the Security Council bringing to the attention of the Council a “dispute” or “situation” did not cite any specific Article of the Charter. Article 35 of the Charter was explicitly cited, however, on two occasions in relation to disputes or situations in the Middle East.<sup>19</sup>

<sup>19</sup> S/2012/840 and S/2013/247.

In response to both communications, the Council convened closed meetings to consider the situations brought to its attention.<sup>20</sup> Both communications are mentioned in table 1.

<sup>20</sup> S/PV.6863 and S/PV.6957.

Table 1  
**Communications explicitly citing Article 35**

<i>Communications</i>	<i>Action requested of the Security Council</i>	<i>Meeting record and date</i>
<b>The situation in the Middle East, including the Palestinian question</b>		
Letter dated 14 November 2012 from the Permanent Representative of Egypt to the United Nations addressed to the President of the Security Council (S/2012/840) <sup>a</sup>	To convene an urgent meeting of the Security Council to consider the ongoing unlawful Israeli military operation against the Palestinian people, and to assume its responsibilities in maintaining international peace and security by taking all necessary measures to stop the aggression immediately	S/PV.6863 (closed) 14 November 2012
<b>The situation in the Middle East</b>		
Letter dated 25 April 2013 from the Permanent Representative of Jordan to the United Nations addressed to the President of the Security Council (S/2013/247)	To determine that the grave humanitarian “situation” facing Jordan as a result of the influx of Syrian refugees constitutes a threat to international peace and security if left unchecked and in the absence of the financial assistance required to enable Jordan to cope, to invite Jordan to participate in a private meeting of the Security Council, and to visit Jordan	S/PV.6957 (closed) 30 April 2013

<sup>a</sup> In a letter dated 20 November 2012, the representative of Morocco also requested an urgent open debate “to examine the grave consequences of the ongoing Israeli military attacks against the Palestinian people in Gaza” (S/2012/859).

### **Communications containing requests for particular action**

During the period under review, in most communications from Member States that drew the attention of the Council to a particular dispute or situation, no specific action was requested, but rather simply that the communication be circulated as a document of the Council. These communications have not been considered in the present section, since they seem immaterial to the interpretation and application of Article 35 of the Charter.

In addition to the explicit references to Article 35 indicated in table 1, the present section focuses on those communications that drew the attention of the Council to disputes or situations and in which a particular action was requested of the Council, regardless of whether the

request was actually attended to. In the language of the Charter, disputes or situations brought to the Council pursuant to Article 35 (referencing Article 34) may lead to “international friction or give rise to a dispute” and have the potential to endanger international peace and security.

While most of the disputes or situations described below relate to ongoing disputes or situations of which the Council had already been seized, they are featured below because they present new elements (which were brought to the attention of the Council) in the context of an ongoing dispute or situation with the potential of escalating, deteriorating or exacerbating an already existing dispute or situation. These communications, as well as the overall context in which they were submitted to the Council, are described below.

*Sudan and South Sudan\**

On 27 February 2012, the representative of the Sudan addressed a letter to the President of the Security Council informing the Council of the attack by some 1,500 insurgents of the Sudan People's Liberation Movement, allegedly supported by officers and soldiers from the Sudan People's Liberation Army of South Sudan.<sup>21</sup> In the letter, the representative demanded the Council to "shoulder its responsibilities" under the Charter by sending a "long-overdue message to the Government of South Sudan that it must end such actions".<sup>22</sup> Further to that complaint, on 29 February 2012, the representative of the Sudan denounced the actions of the Government of South Sudan and requested the Council to "call on the Government of South Sudan to refrain immediately from its aggression and the assistance it renders to the various rebel movements".<sup>23</sup> In response, on 2 March 2012, the representative of South Sudan addressed a letter to the President of the Security Council bringing to the attention of the Council the "unabated aggression" by the Sudan.<sup>24</sup> The representative called upon the Council to "condemn these wanton acts of aggression ... and take stern measures against Khartoum to ensure that its flagrant aggression and attacks against the territory of South Sudan are halted".<sup>25</sup> A series of communications ensued during 2012 regarding military incidents across the border between the two countries and, in particular, the occupation of the town of Heglig by South Sudan, which was denounced by the representative of the Sudan.<sup>26</sup> On 22 March 2013, the representative of the Sudan informed the Council that a "credible source" had confirmed the imminent launch of an attack by forces of the armed rebel movements from Darfur and the Sudanese Revolutionary Front on an oil facility west of Kadugli Town, in the State of Southern Kordofan. In the communication, he vehemently urged the Council to condemn this negative move by the rebel movements of the Sudanese Revolutionary Front, intended to spoil the

peace process.<sup>27</sup> On 6 May 2013, the representative of South Sudan addressed a letter to the President of the Council drawing attention to the killing of Kuol Deng Kuol, the Paramount Chief of the Ngok Dinka, by elements of the Messeriya Arab militia of the Sudan in "flagrant violation of Security Council resolutions and other agreements".<sup>28</sup> In the letter, the representative requested a series of measures from the Council.

*Eritrea and Ethiopia*

On 14 March 2012, the representative of Ethiopia denounced the "destabilizing activities" of the Government of Eritrea,<sup>29</sup> including acts of terrorism, and urged the Council to ensure that Eritrea complied with relevant resolutions and desisted from destabilizing activities.<sup>30</sup> In a letter dated 16 March 2012 addressed to the President of the Security Council, the representative of Eritrea, in reference to the alleged incursion of Ethiopian troops "18 kms deep into sovereign Eritrean territory", urged the Council to "shoulder its legal and moral responsibilities and to take appropriate measures to rectify acts of aggression against Eritrea's sovereign territories and to ensure justice and respect for the rule of law".<sup>31</sup> Furthermore, in a letter dated 27 March 2012 addressed to the President of the Security Council, the President of Eritrea requested the Council to form an "independent, transparent and accountable inquiry body" to investigate the alleged implication of the Government of the United States of America in the illegal attacks perpetrated by Ethiopia against Eritrea.<sup>32</sup>

*Guinea-Bissau*

On 9 April 2012, the Prime Minister of Guinea-Bissau addressed a letter to the Secretary-General informing him that his country "could come to face a new cycle of internal political instability, owing to the non-acceptance of the electoral results".<sup>33</sup> In the letter, he requested that the Security Council "analyses at an extraordinary meeting the internal situation of Guinea-Bissau" and "debate the dispatch of a peacekeeping force

\* The Council agreed that issues pertaining to the Sudan and South Sudan would, as from 11 November 2013, be considered under the item "Reports of the Secretary-General on the Sudan and South Sudan" (see [S/2013/657](#)).

<sup>21</sup> [S/2012/118](#).

<sup>22</sup> *Ibid.*, p. 2.

<sup>23</sup> [S/2012/127](#), p. 2.

<sup>24</sup> [S/2012/132](#).

<sup>25</sup> [S/2012/118](#).

<sup>26</sup> *Ibid.*, p. 2.

<sup>27</sup> [S/2012/127](#), p. 2.

<sup>28</sup> [S/2012/132](#).

<sup>29</sup> [S/2012/132](#), annex.

<sup>30</sup> [S/2012/225](#), [S/2012/252](#) and [S/2012/264](#).

<sup>27</sup> [S/2013/183](#).

<sup>28</sup> [S/2013/268](#).

<sup>29</sup> The letter followed communications from the representative of Eritrea bringing to the attention of the Council incidents involving alleged military activities by Ethiopia at the border between the two countries and requesting a series of actions of the Council ([S/2012/57](#) and [S/2012/126](#)).

<sup>30</sup> [S/2012/158](#), annex.

<sup>31</sup> [S/2012/164](#), annex.

<sup>32</sup> [S/2012/181](#), annex.

<sup>33</sup> [S/2012/254](#), annex II.



to Guinea-Bissau”.<sup>34</sup> On 13 April 2012, the Assistant Secretary-General for Political Affairs briefed the Council in closed consultations on the military seizure of power in Guinea-Bissau that had occurred on 12 April 2012.<sup>35</sup>

*Sudan and Israel*

By a letter dated 17 November 2012 addressed to the President of the Security Council, the representative of the Sudan, in his capacity as Chair of the Arab Group, requested the Council “to take the appropriate measures to condemn” the aerial bombardment by the Israeli Air Force of the Yarmouk military factory in Khartoum that took place on 24 October 2012.<sup>36</sup> The request followed a letter dated 25 October 2012 from the representative of the Sudan addressed to the President of the Council (further to a meeting with him), in which the representative condemned the “barbaric aggression” and expressed the expectation that the Council would “take appropriate measures accordingly”.<sup>37</sup> Moreover, in the context of a meeting of the Council on 24 October 2012 to consider the report of the Secretary-General on the African Union-United Nations Hybrid Operation in Darfur, the representative of the Sudan made reference to the incident and said that he expected the Council to condemn the attack because “it was a blatant violation of the concept of peace and security” and of the principles and purposes of the Charter.<sup>38</sup>

*Democratic Republic of the Congo*

On 19 November 2012, the representative of the Democratic Republic of the Congo addressed a letter to the President of the Security Council informing him about “continuing attacks by troops of the Rwandan regular army”. In the letter, the representative called upon the Council to, inter alia, condemn the “new aggression by Rwanda” and requested the Council to convene an urgent open meeting to consider the question.<sup>39</sup> The Council held a meeting on the situation concerning the Democratic Republic of the Congo on 20 November 2012. While no explicit reference was made to that particular letter, in his statement following the adoption of resolution 2076 (2012), the representative of Rwanda questioned the description of events in the letter.<sup>40</sup>

On 15 July 2013, the representative of the Democratic Republic of the Congo drew the attention of the Council to “the renewed fighting in North Kivu” and urged the Council to, inter alia, “condemn the renewed fighting” and to order the “immediate and unconditional withdrawal of the Rwandan special forces from the territory of the Democratic Republic of the Congo”.<sup>41</sup> In a subsequent letter addressed to the President of the Council dated 16 July 2013, the representative of Rwanda informed the President of deliberate bombings on Rwandan territory from a region controlled by the Armed Forces of the Democratic Republic of the Congo and the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo and requested the Council to “take all appropriate measures” to ensure the immediate cessation of such bombings.<sup>42</sup> On 23 August 2013, the representative of the Democratic Republic of the Congo drew the attention of the Council to the situation in North Kivu, denouncing in particular the attacks by the 23 March Movement, and requested the Council to take a series of actions, including condemning the attacks by the Movement and ordering the immediate and unconditional withdrawal of the regular units of the Rwandan army from the territory of the Democratic Republic of the Congo.<sup>43</sup> By a letter dated 29 August 2013 addressed to the President of the Council, the representative of the Democratic Republic of the Congo called for an emergency meeting of the Council in the light of the escalation of hostilities in the eastern part of the Democratic Republic of the Congo.<sup>44</sup>

None of the above-mentioned communications led to the inclusion of a new item on the list of matters of which the Council is seized. It should be noted, however, as also mentioned above, that on 11 November 2013, the Council agreed that, as from that date, issues pertaining to the Sudan and South Sudan would be considered under the item entitled “Reports of the Secretary-General on the Sudan and South Sudan”.<sup>45</sup> The communications concerning the relations between Israel and the Sudan and the situation between Eritrea and Ethiopia were not discussed by the Council.<sup>46</sup>

<sup>34</sup> Ibid.

<sup>35</sup> S/2012/626, p. 2.

<sup>36</sup> S/2012/864.

<sup>37</sup> S/2012/790.

<sup>38</sup> S/PV.6851, p. 5.

<sup>39</sup> S/2012/857.

<sup>40</sup> S/PV.6866, p. 4 (Rwanda).

<sup>41</sup> S/2013/414.

<sup>42</sup> S/2013/426.

<sup>43</sup> S/2013/512.

<sup>44</sup> S/2013/517.

<sup>45</sup> S/2013/657.

<sup>46</sup> See the reports of the Security Council to the General Assembly at its sixty-seventh and sixty-eighth sessions (A/67/2 and A/68/2).

## B. Referrals by the Secretary-General

Article 99 of the Charter provides that the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. During the period under review, the Secretary-General did not invoke Article 99, either directly or by implication.

As with Article 35, Article 99 of the Charter does not specify the means by which the Secretary-General may bring to the attention of the Council any matter that may threaten the maintenance of international peace and security. In recent years, the practice of the Council has broadened, and the horizon-scanning briefings in the context of informal consultations among the members of the Council have become one of the tools available to the Secretary-General for bringing new situations to the attention of the Council. Albeit controversial, during the period under review, the use of horizon-scanning briefings was acknowledged by some members of the Council (in relation to Mali in particular) to be a useful tool for the Council's prevention efforts.<sup>47</sup>

On 10 February 2012, during the course of a horizon-scanning briefing in the context of informal consultations, the Under-Secretary-General for Political Affairs briefed the members of the Council on the impact of actions carried out in Mali by an armed group

<sup>47</sup> S/2013/280, p. 10, and S/2014/213, p. 12.

allegedly affiliated to the Mouvement national de libération de l'Azawad, which was seeking the independence of the north and had caused the movement of 15,000 displaced persons and refugees.<sup>48</sup> The Council continued to discuss the situation in Mali during 2012.<sup>49</sup> However, as from 20 December 2012, by virtue of a note by the President of the Security Council, issues pertaining to Mali were considered under the item entitled "The situation in Mali", and the earlier item was subsumed.<sup>50</sup>

## C. Referrals by the General Assembly

Under Article 11 (3) of the Charter, the General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security. During the period under review, the Assembly did not refer any matters to the Council under this Article.

<sup>48</sup> See A/67/2, p. 23. During the discussions held at the tenth annual workshop for newly elected members of the Security Council, in November 2012, horizon-scanning briefings were mentioned as a way of "drawing the members' attention to emerging threats to international peace and security" (see S/2013/280, p. 10). The case of Mali was mentioned as an example.

<sup>49</sup> In October 2012, the Secretary-General transmitted a communication from the interim President of Mali and the Prime Minister of Mali requesting action from the Council (S/2012/727).

<sup>50</sup> S/PV.6898 and S/2012/961.

## II. Investigation of disputes and fact-finding

### Note

#### Article 34

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

Article 34 of the Charter provides that the Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute. On this basis, the Council may determine whether the continuance of the dispute or situation is

likely to endanger the maintenance of international peace and security.

The language of Article 34 does not exclude the Secretary-General or other organs from performing investigative functions, nor does it limit the Council's general competence to obtain knowledge of the relevant facts of any dispute or situation by dispatching a fact-finding or investigative mission.

Therefore, section II provides an overview of the practice of the Council relating to fact-finding and investigation in accordance with Article 34 of the Charter and is divided into three subsections. Subsection A relates to Security Council missions; subsection B to investigative and fact-finding functions of the Secretary-

General; and subsection C to other instances of investigative functions acknowledged by the Council.

During the period under review, the Council dispatched five missions in order to, inter alia, support countries and Governments and assess the situation on the ground, as well as the implementation of its resolutions. The Council also acknowledged and welcomed the investigative functions of the Secretary-General in relation to the Syrian Arab Republic and requested him to establish a commission of inquiry in the Central African Republic to investigate reports of violations of international humanitarian law and international human rights law by all parties since 1 January 2013. The Council acknowledged and relied upon the investigations conducted by organs other than the Secretary-General, such as the Human Rights Council, in considering the items on the list of matters of which it is seized.

## A. Security Council missions

During the period under review, the Council dispatched five missions, to Haiti; West Africa (Liberia, Côte d'Ivoire and the Economic Community of West African States (ECOWAS), and Sierra Leone); Timor-Leste; Yemen; and Africa (Democratic Republic of the Congo, Rwanda, Uganda and Ethiopia). None of the Council's missions during the period under review were charged with investigative tasks. In most cases, the terms of reference of the missions included tasks such as reiterating, reaffirming or expressing the support of the Council for the Governments and countries visited; assessing the implementation of relevant Security Council resolutions; assessing the evolution of the situation on the ground; or supporting, reviewing and assessing the role and mandate of the relevant peacekeeping and political missions. Details on the Security Council missions that were dispatched during the period 2012-2013, including duration, composition and related documents, are set out in table 2.

Table 2  
Security Council missions, 2012-2013

<i>Duration</i>	<i>Destination</i>	<i>Composition</i>	<i>Terms of reference</i>	<i>Report</i>	<i>Meeting record and date</i>	<i>Item</i>
13-16 February 2012	Haiti	United States (head of mission), Azerbaijan, Colombia, France, Germany, Guatemala, India, Morocco, Pakistan, Portugal, Russian Federation, South Africa, Togo and United Kingdom <sup>a</sup>	<a href="#">S/2012/82</a>	<a href="#">S/2012/534</a>	<a href="#">S/PV.6724</a> 28 February 2012	Security Council mission
18-24 May 2012	West Africa (Liberia, Côte d'Ivoire and ECOWAS, and Sierra Leone)	United States and Morocco (co-heads of mission for Liberia), France and Togo (co-heads of mission for Côte d'Ivoire and ECOWAS), United Kingdom and South Africa (co-heads of mission for Sierra Leone), Azerbaijan, China, Colombia, Germany, Guatemala, India, Pakistan, Portugal and Russian Federation	<a href="#">S/2012/344</a>	<a href="#">S/2014/242</a>	<a href="#">S/PV.6777</a> 31 May 2012	Security Council mission

## Repertoire of the Practice of the Security Council, 2012-2013

<i>Duration</i>	<i>Destination</i>	<i>Composition</i>	<i>Terms of reference</i>	<i>Report</i>	<i>Meeting record and date</i>	<i>Item</i>
3-6 November 2012	Timor-Leste	South Africa (head of mission), Azerbaijan, India, Pakistan, Portugal and Togo	<a href="#">S/2012/793</a>	<a href="#">S/2012/889</a>	<a href="#">S/PV.6858</a> 12 November 2012	Security Council mission
27 January 2013	Yemen	United Kingdom and Morocco (co-heads of mission), Argentina, Australia, Azerbaijan, China, France, Guatemala, Luxembourg, Pakistan, Republic of Korea, Russian Federation, Rwanda and Togo	<a href="#">S/2013/61</a>	<a href="#">S/2013/173</a>	<a href="#">S/PV.6916</a> 7 February 2013	Security Council mission
3-9 October 2013	Africa (Democratic Republic of the Congo, Rwanda, Uganda and Ethiopia)	France and Morocco (co-heads of mission for the Democratic Republic of the Congo), United States (head of mission for Rwanda), United Kingdom (head of mission for Uganda), Azerbaijan and Rwanda (co-heads of mission for Ethiopia), Argentina, Australia, China, Guatemala, Luxembourg, Pakistan, Republic of Korea, Russian Federation and Togo	<a href="#">S/2013/579</a>	<a href="#">S/2014/341</a>	<a href="#">S/PV.7045</a> 21 October 2013	Security Council mission

<sup>a</sup> The representative of China was unable to join the mission.

On 26 November 2012 having before it the concept note prepared by the representatives of India and Portugal,<sup>51</sup> the Council held an open debate on the implementation of the note by the President of the Security Council ([S/2010/507](#)), in the context of which several Council members made reference to the use of missions by the Council.<sup>52</sup> The representative of France emphasized the need to draw greater advantage from such missions by defining the objectives more specifically and by ensuring follow-up to the conclusions drawn.<sup>53</sup> The representative of South Africa, on the other hand, asserted that “field visits” by the Council continued to be an important vehicle for the Council’s understanding of the situation on the ground and for its ability to make informed decisions. He added that the Council should

consider increasing such visits, including “mini-missions” by the Chairs of subsidiary bodies.<sup>54</sup>

### B. Investigative and fact-finding functions of the Secretary-General

During the two-year period under review, the Council in its decisions acknowledged the investigative or fact-finding functions of the Secretary-General on two occasions.

In the context of the armed conflict in the Syrian Arab Republic and further to the alleged use of chemical weapons against civilians on 21 August 2013, in resolution [2118 \(2013\)](#) the Council welcomed the establishment by the Secretary-General of a mission to

<sup>51</sup> [S/2012/853](#).

<sup>52</sup> [S/PV.6870](#).

<sup>53</sup> *Ibid.*, p. 15.

<sup>54</sup> *Ibid.*, p. 16.

investigate the allegations of the use of chemical weapons in the Syrian Arab Republic, pursuant to General Assembly resolution 42/37 C.<sup>55</sup> Further to resolution 2118 (2013), the Secretary-General addressed a letter dated 7 October 2013 to the President of the Security Council containing recommendations regarding the role of the United Nations in eliminating the chemical weapons programme of the Syrian Arab Republic.<sup>56</sup> In that letter, the Secretary-General made reference to his reporting to the Council, on 16 September 2013, on the results of the investigation by the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic of the incident that took place on 21 August 2013 in the Ghouta area of Damascus.

In the light of the rapidly deteriorating security situation in the Central African Republic characterized by “a total breakdown in law and order, the absence of the rule of law, and intersectorial tensions”, on 5 December 2013, the Council adopted resolution 2127 (2013), in which it requested that the Secretary-General rapidly establish an international commission of inquiry for an initial period of one year to investigate reports of, compile information on, and help to identify (and ensure accountability for) perpetrators of, violations of international humanitarian law and international human rights law and abuses of human rights in the Central African Republic since 1 January 2013.<sup>57</sup> For all the relevant provisions of the decisions, see table 3.

<sup>55</sup> Resolution 2118 (2013), sixth preambular paragraph.

<sup>56</sup> S/2013/591.

<sup>57</sup> Resolution 2127 (2013), third preambular paragraph and para. 24.

Table 3

**Decisions referring to investigative and/or fact-finding activities by the Secretary-General 2012-2013**

<i>Decision and date</i>	<i>Provision</i>
<b>The situation in the Middle East</b>	
Resolution 2118 (2013) 27 September 2013	<p>The Council welcomed the establishment by the Secretary-General of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic (the Mission) pursuant to General Assembly resolution 42/37 C of 30 November 1987, and reaffirmed in Security Council resolution 620 (1988) of 26 August 1988, and expressed appreciation for the work of the Mission (sixth preambular paragraph)</p> <p>The Council acknowledged the report of the Mission of 16 September 2013 (S/2013/553), underscored the need for the Mission to fulfil its mandate, and emphasized that future credible allegations of chemical weapons use in the Syrian Arab Republic should be investigated (seventh preambular paragraph)</p> <p>The Council decided to authorize an advance team of United Nations personnel to provide early assistance to activities of the Organization for the Prohibition of Chemical Weapons in the Syrian Arab Republic, requested the Director-General of the Organization and the Secretary-General to closely cooperate in the implementation of the Executive Council decision of 27 September 2013 and the resolution, including through their operational activities on the ground, and further requested the Secretary-General, in consultation with the Director-General of the Organization and, where appropriate, the Director-General of the World Health Organization, to submit to the Council within 10 days of the adoption of the resolution recommendations regarding the role of the United Nations in eliminating the Syrian Arab Republic’s chemical weapons programme (para. 8)</p> <p>The Council encouraged Member States to provide support, including personnel, technical expertise, information, equipment and financial and other resources and assistance, in coordination with the Director-General of the Organization for the Prohibition of Chemical Weapons and the Secretary-General, to enable the Organization and the United Nations to implement the elimination of the Syrian Arab Republic’s chemical weapons programme, and decided to authorize Member States to acquire, control, transport, transfer and destroy chemical weapons identified by the Director-General of the Organization, consistent with the objective of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, to ensure the elimination of the Syrian Arab Republic’s chemical weapons programme in the soonest and safest manner (para. 10)</p>

The Council decided to review on a regular basis the implementation in the Syrian Arab Republic of the decision of 27 September 2013 of the Executive Council of the Organization for the Prohibition of Chemical Weapons and the resolution, and requested the Director-General of the Organization to report to the Council, through the Secretary-General, who was to include relevant information on United Nations activities related to the implementation of the resolution, within 30 days and every month thereafter, and further requested the Director-General and the Secretary-General to report in a coordinated manner, as needed, to the Council on non-compliance with the resolution or the Executive Council decision (para. 12)

### The situation in the Central African Republic

Resolution [2127 \(2013\)](#)  
5 December 2013

The Council requested that the Secretary-General rapidly establish an international commission of inquiry for an initial period of one year, including experts in both international humanitarian law and human rights law, in order immediately to investigate reports of violations of international humanitarian law and international human rights law and abuses of human rights in the Central African Republic by all parties since 1 January 2013, to compile information, to help to identify the perpetrators of such violations and abuses, to point to their possible criminal responsibility and to help to ensure that those responsible are held accountable, and called upon all parties to cooperate fully with such a commission (para. 24)

The Council requested the Secretary-General to report to the Council on the findings of the commission of inquiry six months and one year after the adoption of the resolution (para. 25)

During the period under review, the Secretary-General dispatched, on his own initiative, two field missions for the purposes of assessing the scope of the threat of piracy in the Gulf of Guinea, on the one hand, and the scope of the threat of the Libyan crisis in the region of the Sahel, on the other.

By a letter dated 17 January 2012, the Secretary-General transmitted to the Council the report of the mission dispatched to the Sahel region to assess the scope of the threat of the Libyan crisis in the region and the national and wider international capacities to respond to those challenges.<sup>58</sup> The report was considered by the Council on 26 January 2012 during its 6709th meeting, in connection with the item “Peace and security in Africa”. During the meeting, the Under-Secretary-General for Political Affairs briefed the Council on the findings and the recommendations of the mission.<sup>59</sup> Speakers welcomed the Secretary-General’s initiative in dispatching the assessment mission, as well as the report prepared by the mission.<sup>60</sup> At the 6717th meeting, an open debate held on 21 February 2012 in connection with the same item, the Council considered again the report of

the mission. Several speakers took note of the Secretary-General’s initiative in dispatching the assessment mission,<sup>61</sup> and some speakers urged serious consideration of its findings and recommendations.<sup>62</sup>

By a letter dated 18 January 2012, the Secretary-General brought to the attention of the Council the report of the assessment mission dispatched to the Gulf of Guinea to assess the scope of the threat of piracy in the region, take stock of national and regional capacities to ensure maritime safety and security in the region and make recommendations for a possible United Nations response.<sup>63</sup> The Council considered the report during its 6723rd meeting, held on 27 February 2012, in connection with the item “Peace consolidation in West Africa: piracy in the Gulf of Guinea”.<sup>64</sup> During the meeting, speakers welcomed the Secretary-General’s initiative to dispatch

<sup>58</sup> [S/2012/42](#).

<sup>59</sup> [S/PV.6709](#), p. 2.

<sup>60</sup> *Ibid.*, p. 6 (India); p.7 (Russian Federation); p. 9 (Germany); p. 10 (United States); p. 13 (Guatemala); p.14 (Azerbaijan); and p.16 (Togo).

<sup>61</sup> [S/PV.6717](#), p. 3 (Togo); p. 21 (Azerbaijan); [S/PV.6717 \(Resumption 1\)](#), p. 8 (Japan); and p. 20 (Mali).

<sup>62</sup> [S/PV.6717](#), p. 14 (Colombia); p. 21 (Azerbaijan); and [S/PV.6717 \(Resumption 1\)](#), p. 18 (Australia).

<sup>63</sup> [S/2012/45](#).

<sup>64</sup> The report was also acknowledged by a number of speakers during the 6717th meeting of the Council. See [S/PV.6717](#), p. 11 (Morocco); p. 14 (Colombia); p. 30 (Benin); [S/PV.6717 \(Resumption 1\)](#), p. 8 (Japan); p. 9 (Tunisia); and p. 12 (Luxembourg).

the assessment mission.<sup>65</sup> The representatives of South Africa and Togo shared the concern and observation of the assessment mission that the growing evidence of piracy in the Gulf of Guinea constituted yet another major threat to the peace, security and economic interests of the countries of the region.<sup>66</sup>

Of particular interest during the period under review was the action taken by the Council in connection with the establishment of a fact-finding mission to investigate the alleged use of chemical weapons in the Syrian Arab Republic. Case 1 compiles the most significant milestones in the establishment of the mission.

### **Case 1 The situation in the Middle East, including the Palestinian question**

On 24 April 2013, the Council held its 6950th meeting. During the open debate, the Under-Secretary-General for Political Affairs informed the Council that the Secretariat was in discussions with the Government of the Syrian Arab Republic on the scope and modalities for the United Nations fact-finding mission to investigate the alleged use of chemical weapons.<sup>67</sup> Against the backdrop of conflicting allegations of attacks with chemical weapons by Government forces and rebel forces, he clarified that the Secretary-General intended to ensure that all credible allegations brought to his attention by Member States were considered and, if deemed necessary, investigated.<sup>68</sup> He added that the position of the Secretary-General, at that stage, was to investigate the allegations of incidents involving the use of chemical weapons in the cities of Aleppo and Homs.<sup>69</sup> He further indicated that the investigators were studying the information on the alleged incidents involving the use of chemical weapons provided to them by Member States while awaiting access to the Syrian territory. A number of speakers expressed their support for the efforts of the Secretary-General to investigate all allegations of the use of chemical weapons in the Syrian Arab Republic.<sup>70</sup> The representative of the Russian Federation, however, urged Member States not to yield to attempts to sidestep the

investigation requested by the Syrian authorities regarding the use of chemical weapons near Aleppo on 19 March 2013.<sup>71</sup> He also criticized the Secretariat for not having shown the requisite consistency and transparency on the matter.<sup>72</sup>

On 23 July 2013, during the open debate held at the 7007th meeting, the Special Coordinator for the Middle East Peace Process informed the Council that the High Representative for Disarmament Affairs and the head of the fact-finding mission would be visiting Damascus to complete consultations on the modalities of cooperation required for the proper, safe and efficient conduct of the United Nations investigation mission.<sup>73</sup> Speakers urged the Syrian authorities to grant full access to the United Nations investigations into all allegations.<sup>74</sup>

On 27 September 2013, the Council held its 7038th meeting, a high-level meeting during the course of which it adopted resolution [2118 \(2013\)](#) (see table 3). In paragraph 8 of the resolution, the Council requested the Secretary-General to submit to it recommendations regarding the role of the United Nations in eliminating the Syrian Arab Republic's chemical weapons programme in support of the Organization for the Prohibition of Chemical Weapons.<sup>75</sup> Further to resolution [2118 \(2013\)](#), the Secretary-General addressed a letter to the President of the Council in which he proposed a joint mission of the Organization for the Prohibition of Chemical Weapons and the United Nations to implement the roles and responsibilities of each organization pursuant to resolution [2118 \(2013\)](#) and eliminate the chemical weapons programme of the Syrian Arab Republic.<sup>76</sup> The Council held no formal meetings to consider the letter from the Secretary-General. Instead, the President of the Security Council addressed a letter to the Secretary-General authorizing the establishment of the Joint

<sup>65</sup> [S/PV.6723](#), p. 7 (Azerbaijan); p.10 (Pakistan); and p. 20 (Togo).

<sup>66</sup> *Ibid.*, p. 15 (South Africa); and p. 20 (Togo).

<sup>67</sup> [S/PV.6950](#), p. 5.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> [S/PV.6950](#), p. 12 (United States); p. 17 (United Kingdom); p. 21 (Australia); [S/PV.6950 \(Resumption 1\)](#), p. 13 (European Union); p. 15 (Japan); and p. 34 (Qatar).

<sup>71</sup> [S/PV.6950](#), p. 19.

<sup>72</sup> *Ibid.*

<sup>73</sup> [S/PV.7007](#), p. 5.

<sup>74</sup> *Ibid.*, p. 17 (Australia); p. 18 (Republic of Korea); p. 20 (Pakistan); pp. 25-26 (France); p. 27 (United Kingdom); p. 29 (United States); and p. 36 (European Union).

<sup>75</sup> Annex I to resolution [2118 \(2013\)](#) included the decision of the Executive Council of the Organization for the Prohibition of Chemical Weapons of 27 September 2013, which required the Syrian Arab Republic, consistent with its obligations under the Chemical Weapons Convention, to submit information on its chemical weapons as well as on weapons storage and production facilities and to cooperate with inspections.

<sup>76</sup> [S/2013/591](#).

Mission.<sup>77</sup> The first monthly report of the Joint Mission was transmitted to the Council by way of a letter dated 28 October 2013 from the Secretary-General addressed to the President of the Security Council.<sup>78</sup>

<sup>77</sup> S/2013/603.

<sup>78</sup> S/2013/629.

### C. Other instances of investigative functions acknowledged by the Security Council

During the period under review, the Council recognized investigative functions performed by the United Nations High Commissioner for Human Rights and the Human Rights Council in relation to matters of which the Council is seized. Table 4 contains the provisions of decisions of the Council referring to such functions.

Table 4  
**Decisions relating to investigation and inquiry by other bodies of the United Nations acknowledged by the Security Council, 2012-2013**

<i>Decision and date</i>	<i>Provision</i>
<b>The situation in Timor-Leste</b>	
Resolution <a href="#">2037 (2012)</a> 23 February 2012	<p>Reaffirming the need for respect for the independence of the judiciary, stressing the need to act against impunity, while noting the continuing serious resource constraints of the judicial system and the efforts of the Government of Timor-Leste to address these challenges, and encouraging the leadership of Timor-Leste to continue to increase its efforts to establish accountability for serious criminal offences, including those committed during the 2006 crisis, as recommended by the Independent Special Commission of Inquiry for Timor-Leste (seventh preambular paragraph)</p> <p>Reaffirms the importance of ongoing efforts to achieve accountability and justice, expresses its support for the work of the United Nations Integrated Mission in Timor-Leste in assisting the Government of Timor-Leste in this regard, within its mandate, as well as for the initiatives to strengthen the Office of the Provedor for Human Rights and Justice, and underlines the importance of the implementation by the Government of the recommendations contained in the report of the Independent Special Commission of Inquiry for Timor-Leste of 2 October 2006, including paragraphs 225 to 228 thereof (para. 10)</p> <p>Requests the Mission to continue its efforts, adjusting them as necessary to enhance the effectiveness of the judiciary, in assisting the Government of Timor-Leste in carrying out the proceedings recommended by the Commission of Inquiry (para. 12)</p>
<b>The situation in Libya</b>	
Resolution <a href="#">2040 (2012)</a> 12 March 2012	<p>Taking note further of its briefing by the United Nations High Commissioner for Human Rights on 25 January 2012 and the report of the International Commission of Inquiry on Libya to the Human Rights Council of 2 March 2012 (eighteenth preambular paragraph)</p>

By a statement by the President dated 12 February 2013 in connection with the item “Protection of civilians in armed conflict”,<sup>79</sup> the Council recognized international commissions of inquiry and fact-finding missions as valuable mechanisms to verify and investigate allegations of serious violations of international human rights and

humanitarian law. In the same statement, the Council considered the possibility of using the International Humanitarian Fact-Finding Commission established in accordance with article 90 of Additional Protocol I to the Geneva Conventions. In resolution [2122 \(2013\)](#), the Council invited United Nations-established commissions of inquiry investigating situations on the agenda of the Council to include in their briefings information on the

<sup>79</sup> S/PRST/2013/2.



differentiated impacts of armed conflict on women and girls.<sup>80</sup>

As reported in a letter dated 18 May 2012 from the representative of Portugal to the President of the Security Council, the participants of the panel on fact-finding mechanisms discussed the challenges for fact-finding bodies as well as the factors that contributed to their success.<sup>81</sup> An element that was raised in those discussions was the importance of the timing of the establishment of the mechanisms; the panel highlighted that the work of the mechanisms should take place sufficiently early in a crisis to enable them to contribute to the prevention of further violations rather than just investigate those already committed. On the possible role of the Council, it was suggested that the Council should be more systematically apprised of the reports of the commissions or missions not mandated by the Council. It was also highlighted that the Council could reinforce or support non-mandated fact-finding missions by requesting States and other actors to cooperate in the investigation or in the implementation of recommendations. Examples of recent Council practice were noted, such as the reference, in resolution 2000 (2011), to the report and findings of the international commission of inquiry on Côte d'Ivoire mandated by the Human Rights Council.<sup>82</sup>

Cases 2 to 4 illustrate instances in which the Council considered the outcome of fact-finding missions by bodies of the United Nations other than the Secretary-General in relation to the situation in the Middle East and the situation in Libya.

### **Case 2** **The situation in the Middle East**

On 4 February 2012, at its 6711th meeting, the Council considered a draft resolution in relation to the Syrian conflict. The draft resolution received 13 votes in favour but was not adopted owing to the negative vote of two permanent members of the Council. By the draft resolution, the Council would have demanded that the Syrian authorities cooperate fully with the Office of the United Nations High Commissioner for Human Rights and with the commission of inquiry dispatched by the

Human Rights Council.<sup>83</sup> During the debate that followed, the representative of Germany expressed regret that, in a spirit of compromise in the negotiations, the draft resolution had not mandated a commission of inquiry into human rights violations, as his country had advocated.<sup>84</sup>

On 23 July 2013, at the 7007th meeting, several speakers expressed concern about the findings of the recent report of the independent international commission of inquiry on the Syrian Arab Republic,<sup>85</sup> which confirmed a wide range of violations of international humanitarian and human rights law, and called for holding those responsible fully accountable.<sup>86</sup>

### **Case 3** **The situation in the Middle East, including the Palestinian question**

On 23 April 2012, the Council held its 6757th meeting. During the debate, a number of speakers welcomed Human Rights Council resolution 19/17 authorizing, *inter alia*, a fact-finding mission on the impact of the Israeli settlements on the human rights situation in the occupied Palestinian territories.<sup>87</sup>

On 24 April 2013, at its 6950th meeting, the Council held another open debate on the situation in the Middle East, including the Palestinian question. Some speakers again welcomed the decision of the Human Rights Council to establish an independent international fact-finding mission to investigate the implications of Israeli settlements on the human rights of the Palestinian people throughout the occupied territories.<sup>88</sup> The representative of the United Kingdom made reference to incidents involving the Israel Defense Forces, recalled that it had called for an investigation into those clashes and welcomed the investigations by the Government of Israel while looking forward to the perpetrators being held to account.<sup>89</sup> The representative of Pakistan, for his part, stated that the United Nations Fact-Finding Mission on the Gaza Conflict, established by the Human Rights

<sup>80</sup> Resolution 2122 (2013), para. 2 (e).

<sup>81</sup> The report was transmitted by the Permanent Representative of Portugal to the President of the Security Council on 18 May 2012 and issued as a document of the Council (S/2012/373).

<sup>82</sup> S/2012/373, p. 10.

<sup>83</sup> S/2012/77, para. 11.

<sup>84</sup> S/PV.6711, p. 5.

<sup>85</sup> A/HRC/23/58.

<sup>86</sup> S/PV.7007, p. 19 (Rwanda); p. 27 (United Kingdom); and p. 36 (European Union).

<sup>87</sup> S/PV.6757, p. 18 (Morocco); p. 23 (Pakistan); S/PV.6757 (Resumption 1), p. 12 (Bangladesh); and p. 14 (Iceland).

<sup>88</sup> S/PV.6950, pp. 23-24 (Pakistan); and S/PV.6950 (Resumption 1), p. 32 (Turkey).

<sup>89</sup> S/PV.6950, p. 17.

Council, had pronounced that Israeli settlements symbolized the acute lack of justice experienced by the Palestinian people.<sup>90</sup> The representative of Pakistan called for an independent investigation into the death of Arafat Jaradat in Israeli custody to bring the perpetrators to justice.<sup>91</sup>

At the 7007th meeting, on 23 July 2013, the representative of Malaysia, as a member of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, reported on his participation in a fact-finding mission by the Human Rights Council to Amman and Cairo and affirmed that the situation in the Palestinian territory continued to deteriorate.<sup>92</sup>

#### **Case 4 The situation in Libya**

On 7 March 2012, at its 6731st meeting, the Council considered the report of the Secretary-General on the United Nations Support Mission in Libya (UNSMIL).<sup>93</sup> The Special Representative of the Secretary-General for Libya and Head of UNSMIL informed the Council that the Mission intended to give high priority to supporting the Libyan authorities and civil society in ensuring that the transition in Libya was anchored in solid rule of law systems, institutions and practices, and in respect for human rights, which would be consistent with the specific recommendations for the role of UNSMIL made in the report of the International Commission of Inquiry on Libya.<sup>94-95</sup> The representative of Libya stated that the human rights situation was one of the main concerns of the Government and confirmed its cooperation with the International Commission of Inquiry during its field visits to various Libyan cities and regions.<sup>96</sup>

Speakers had differing views on the conclusions contained in the report of the International Commission of Inquiry. While the representative of the Russian Federation highlighted that the dozens of civilian casualties reported by the Commission of Inquiry were due to the North Atlantic Treaty Organization (NATO) air

strikes on Libya<sup>97</sup> and the representative of China mentioned that it was explicitly stated in the report that certain targets were not military facilities,<sup>98</sup> the representatives of the United States and France drew attention to the conclusion of the report, that NATO had conducted such air strikes with a demonstrable determination to avoid civilian casualties.<sup>99</sup>

On 16 May 2012, at its 6772nd meeting, the Council was briefed by the Prosecutor of the International Criminal Court, who acknowledged that in its report,<sup>100</sup> the International Commission of Inquiry had presented a comprehensive view of the crimes committed in Libya.<sup>101</sup> In addition, he said that in the same report it had been found that NATO had not deliberately targeted civilians in Libya and informed the Council that the Office of the Prosecutor had requested additional information on the five incidents in which civilian casualties had been reported.<sup>102</sup> The representative of the United Kingdom drew attention to the efforts of NATO to minimize civilian casualties, while the representative of China reiterated that in the reports of both the International Commission of Inquiry and the International Criminal Court it was indicated that NATO activities in Libya had resulted in civilian casualties; he stated that the Council had the right and the obligation to know the truth.<sup>103</sup> The representative of France noted in this respect that in the report of the Prosecutor it was underscored that there was neither proof nor elements suggesting that NATO command had intentionally planned or committed crimes against the civilian population. He added that the Prime Minister of Libya had undertaken to carry out his Government's own inquiry and that NATO would offer its full support.<sup>104</sup> The representative of the United States expressed deep concern about the patterns of rape documented by the International Commission of Inquiry and affirmed that impunity could not be reconciled with respect for human rights and the rule of law.<sup>105</sup> The representative of the Russian Federation deemed that it was important to continue to evaluate the data received from the Human Rights Council's International Commission of Inquiry,

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<sup>90</sup> *Ibid.*, p. 23.

<sup>91</sup> *Ibid.*, p. 24.

<sup>92</sup> *S/PV.7007*, p. 41.

<sup>93</sup> *S/2012/129*.

<sup>94</sup> *A/HRC/19/68*.

<sup>95</sup> *S/PV.6731*, pp. 3 and 4.

<sup>96</sup> *Ibid.*, p. 6.

<sup>97</sup> *Ibid.*, p. 8.

<sup>98</sup> *Ibid.*, p. 10.

<sup>99</sup> *Ibid.*, pp. 8 and 9.

<sup>100</sup> *A/HRC/17/44*.

<sup>101</sup> *S/PV.6772*, p. 3.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Ibid.*, p. 10 (United Kingdom) and p. 11 (China).

<sup>104</sup> *Ibid.*, p. 13.

<sup>105</sup> *Ibid.*, p. 5.

among other sources.<sup>106</sup> The representative of Portugal welcomed the synergy between the Office of the Prosecutor of the International Criminal Court and the International Commission of Inquiry and made reference to the findings of the latter in its report.<sup>107</sup> The representative of Colombia affirmed that the cooperation between the Court and the Commission of Inquiry, among other bodies, was fundamental.<sup>108</sup> The representative of Germany also made reference to the conclusions of the Commission of Inquiry and demanded compliance with international human rights standards by “all those exerting factual power in Libya”.<sup>109</sup> The representative of Morocco emphasized the cooperation offered by the Libyan authorities to the Commission of Inquiry, and the representative of the United Kingdom, while acknowledging the cooperation, urged the Government of Libya to make further progress.<sup>110</sup> In reference to an earlier report of the International Commission of Inquiry on Libya,<sup>111</sup> the representatives of France and Togo urged the Libyan authorities to take action.<sup>112</sup> The representative of Azerbaijan, in closing the debate, commended the Libyan authorities for their commitment to investigate the incidents identified by the International Commission of Inquiry.<sup>113</sup>

On 7 November 2012, at its 6855th meeting, the Council was briefed by the Prosecutor of the International Criminal Court. During the debate that ensued, speakers

made various references to the report of the International Commission of Inquiry. The representative of the Russian Federation noted the lack of progress by the Court in the investigation of the information received from the Commission of Inquiry.<sup>114</sup> In that regard, the representative of South Africa urged the Office of the Prosecutor to complete the investigation.<sup>115</sup> The representative of the United States expressed deep concern about the allegations of rape and sexual violence documented by the Commission of Inquiry and looked forward to the further reports by the Prosecutor about its efforts in that regard.<sup>116</sup> Echoing the representative of the United States, the representatives of Portugal and Germany focused on the information relating to gender-related crimes and patterns of rape identified by the Commission of Inquiry.<sup>117</sup> The representatives of Colombia and Portugal reiterated earlier calls in favour of closer cooperation between the Commission of Inquiry and other bodies, including the Office of the United Nations High Commissioner for Human Rights and the International Criminal Court.<sup>118</sup> The representative of Morocco indicated that Libya was endeavouring to focus its investigations on high-level officials accused by the independent International Commission of Inquiry and had laid the foundations of a general plan to establish transitional justice, national reconciliation and civil peace.<sup>119</sup>

<sup>106</sup> Ibid., p. 6.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid., p. 11.

<sup>109</sup> Ibid., p. 10.

<sup>110</sup> Ibid., p. 8 (Morocco) and p. 10 (United Kingdom).

<sup>111</sup> A/HRC/19/68.

<sup>112</sup> Ibid., p. 12 (France) and p.13 (Togo).

<sup>113</sup> Ibid., p. 15.

<sup>114</sup> S/PV.6855, p. 6.

<sup>115</sup> Ibid., p. 7.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid., p. 13 (Portugal) and p. 14 (Germany).

<sup>118</sup> Ibid., p. 4 (Colombia) and pp. 12 and 13 (Portugal).

<sup>119</sup> Ibid., p. 12.

### III. Decisions of the Security Council concerning the pacific settlement of disputes

#### *Article 33*

1. *The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.*

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

#### *Article 36*

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

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

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

*Article 37*

1. *Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.*

2. *If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.*

*Article 38*

*Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.*

**Note**

Article 33 (1) of the Charter of the United Nations provides the framework for parties to settle their disputes by peaceful means. According to Article 33 (2) of the Charter, the Security Council shall call on the parties to settle their disputes by such peaceful means as provided for in Article 33 (1). The Council may recommend “appropriate procedures or methods of adjustment” for the settlement of disputes under Article 36 (1). According to Article 36 (2) and (3), the Council should take into consideration procedures for the settlement of the dispute already adopted by the parties and consider that legal disputes should, as a general rule, be referred by the parties to the International Court of Justice. Article 37 (2) envisages that the Council shall decide whether to “recommend such terms of settlement as it may consider appropriate”, and Article 38 provides that the Council may “make recommendations to the parties with a view to a pacific settlement of the dispute”.

Section III examines the decisions of the Security Council in 2012 and 2013 reflecting the activity of the Council in relation to the peaceful settlement of disputes within the framework of Chapter VI of the Charter. The section is divided into four subsections. Subsection A features the relevant decisions of the Council on general and thematic issues referencing the provisions of Chapter VI of the Charter. Subsection B illustrates how the Council welcomed, encouraged or supported efforts in the peaceful settlement of disputes by means of its decisions in relation to country-specific and regional situations. Subsection C provides an overview of the Council’s activities in support of the pacific settlement of disputes involving the Secretary-General. Subsection D briefly refers to the various ways in which the Council encouraged and supported efforts by regional organizations in the peaceful settlement of disputes, which are covered in more detail in part VIII.

**A. Decisions under general and thematic items**

This subsection provides an overview of the decisions of the Security Council on general and thematic issues relating to the pacific settlement of disputes. The decisions of the Council during the period 2012-2013 reveal a multifaceted approach taken by the Council in relation to the pacific settlement of disputes.

During the period under review, the Council rarely made explicit reference to Chapter VI or to Articles 33 to 35 and 99 of the Charter. The Council, however, reiterated its call upon Member States to settle their disputes by peaceful means as set forth in Chapter VI of the Charter and emphasized the key role of the International Court of Justice in this regard.<sup>120</sup> The Council also noted that it would continue to explore ways to prevent the outbreak of armed conflict and develop measures to address the root causes of conflicts in order to ensure sustainable peace.<sup>121</sup>

Concretely, the Council emphasized that United Nations peacekeeping activities should be conducted in a manner so as to facilitate post-conflict peacebuilding, prevention of relapse into armed conflict and progress

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<sup>120</sup> S/PRST/2012/1, third paragraph, in connection with the item “The promotion and strengthening of the rule of law in the maintenance of international peace and security”.

<sup>121</sup> S/PRST/2013/2, twelfth paragraph, in connection with the item “Protection of civilians in armed conflict”.

towards sustainable peace and development.<sup>122</sup> It also stressed the importance of grasping the challenges of peacebuilding through integrated strategic assessment and planning processes, so as to ensure coherence between peacemaking, peacekeeping and peacebuilding.<sup>123</sup> The Council also supported the good offices role of multidimensional peacekeeping missions, as well as their role in facilitating consultation processes among the local population and civil society.<sup>124</sup>

In its decisions during the period 2012-2013, the Council recognized the important role of the good offices of the Secretary-General and encouraged the Secretary-General to continue to use mediation as often as possible to help to resolve conflicts peacefully in relation to the cooperation between the United Nations and regional organizations.<sup>125</sup> Specifically, in connection with the item “Peace and security in Africa”, the Council emphasized that the fight against impunity for war crimes, crimes against humanity and genocide was an important element of conflict prevention.<sup>126</sup> In connection with the item “Children and armed conflict”, the Council called upon Member States, United Nations entities and other parties concerned to ensure that child protection provisions were integrated into all peace negotiations and peace agreements.<sup>127</sup> The Council reiterated the importance of addressing crimes committed against women from the outset of peace processes, mediation efforts, ceasefires and peace agreements,<sup>128</sup> and also reiterated the important role of women in the prevention and resolution of conflict and in peacebuilding.<sup>129</sup>

<sup>122</sup> Resolution 2086 (2013), para. 2, in connection with the item “United Nations peacekeeping operations”.

<sup>123</sup> *Ibid.*, para. 4.

<sup>124</sup> *Ibid.*, para. 8 (e).

<sup>125</sup> S/PRST/2013/12, twelfth paragraph, in connection with the item “Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security”.

<sup>126</sup> S/PRST/2013/4, fourteenth paragraph.

<sup>127</sup> S/PRST/2013/8, sixteenth paragraph, in connection with the item “Children and armed conflict”.

<sup>128</sup> S/PRST/2012/29, fifteenth paragraph, in connection with the item “Post-conflict peacebuilding”, and resolution 2106 (2013), para. 12.

<sup>129</sup> S/PRST/2012/3, twelfth paragraph, in connection with the item “Women and peace and security”, and resolution 2086 (2013), para. 8 (j), in connection with the item “United Nations peacekeeping operations”. In resolution 2122 (2013), thirteenth preambular paragraph, the Council took note of the importance of sustained consultation and dialogue between women and national and international decision makers.

## B. Decisions under country-specific items

This subsection provides an overview of the practice of the Council aimed at the pacific settlement of disputes in the application of Chapter VI of the Charter in the context of country- or region-specific situations. It should be recalled that Article 33 (2) of the Charter provides that the Council shall call upon the parties to settle their disputes by the means established in Article 33 (1) when it deems necessary. Article 36 (1) provides that the Council may “recommend appropriate procedures or methods of adjustment”. Under Article 37 (2), if the Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to “recommend such terms of settlement as it may consider appropriate”. Article 38 provides that without prejudice to the provisions of Articles 33 to 37, the Council may make recommendations to the parties with a view to a pacific settlement of the dispute if all parties so request.

During the period under review, the Council adapted the tools available for the pacific settlement of disputes provided for in Chapter VI of the Charter to the context of specific situations. In dealing with complex situations in which it determined the existence of a threat to international peace and security, the Council utilized the tools available under Chapter VII of the Charter in parallel with those available under Chapter VI with a view to restoring peace and to recommending procedures or methods for the pacific settlement of disputes. This subsection also features the recommendations of the Council with regard to the pacific settlement of disputes contained in decisions of the Council, regardless of whether the decisions were adopted under Chapter VI or Chapter VII of the Charter. This approach differs from earlier volumes of the *Repertoire*.

During the period under review, the Council formulated its recommendations on the basis of the particular circumstances prevailing on the ground. Whether or not a threat to international peace and security was determined, the nature of the disputes dealt with by the Council in the period 2012-2013 was, in the majority of the cases, of a national character between different ethnic, religious and/or political groups. During the period under review, the Council in almost all cases encouraged stakeholders to engage in inclusive political dialogue as a means of creating an

environment conducive to the holding of elections,<sup>130</sup> negotiations,<sup>131</sup> peace and reconciliation processes,<sup>132</sup> discussions<sup>133</sup> or the strengthening of national unity and dialogue over key aspects, such as internal boundaries.<sup>134</sup> The Council also recalled that early warning and response systems, preventive diplomacy, preventive deployment, mediation, practical disarmament measures, peacemaking, peacekeeping and peacebuilding strategies were interdependent and complementary components of a comprehensive conflict prevention strategy.

In connection with the situation in Burundi, the Council called upon the Government to foster inclusive elections in 2015 by continuing to improve dialogue between all national actors.<sup>135</sup>

With regard to the situation in the Central African Republic, the Council called for the expeditious and full implementation of the ceasefire signed between the Government and the Séléka coalition, and of the political agreement on the resolution of the crisis signed between the presidential majority, the democratic opposition, the armed groups, the Séléka coalition, the Chair of the Follow-up Committee on the Central African Republic and the Economic Community of Central African States.<sup>136</sup> The Council expressed its support for and demanded the swift implementation of the Libreville Agreements of 11 January 2013, the N'Djamena Declaration of 18 April 2013 and the N'Djamena summit road map, which provided the basis for a peaceful political resolution to the crisis in the Central African Republic, and the implementation of which would lead to

the holding of free, fair and transparent elections.<sup>137</sup> The situation in the Central African Republic deteriorated considerably during the period under review, leading the Council to determine that it constituted a threat to international peace and security on 5 December 2013.<sup>138</sup> The Council underlined its support for the Libreville Agreements, the N'Djamena Declaration, the Brazzaville Appeal of 3 May 2013 and the declaration adopted by the International Contact Group on the Central African Republic at its third meeting, held in Bangui on 8 November 2013.<sup>139</sup> In parallel with the deployment of the African-led International Support Mission in the Central African Republic, the Council expressed deep concern at the escalation of interreligious and intercommunal violence as well as violence targeting members of ethnic and religious groups and their leaders, and urged all parties and stakeholders in the Central African Republic to work together in order to strengthen intercommunal and interfaith dialogues, to prevent further deterioration of the situation on the ground.<sup>140</sup>

In relation to the situation in Côte d'Ivoire, the Council, acting under Chapter VII of the Charter, emphasized the urgent need for concrete measures to promote justice and reconciliation at all levels and on all sides, including through the active involvement of civil society groups, with the aim of addressing the underlying causes of the Côte d'Ivoire crises. The Council urged the Government of Côte d'Ivoire to take concrete steps to prevent and respond to intercommunal violence by seeking a broad national consensus on how to address identity and land tenure issues.<sup>141</sup> In addition, the Council encouraged the Dialogue, Truth and Reconciliation Commission to complete its work and produce concrete results.<sup>142</sup>

During the period under review, of the four resolutions adopted by the Council under Chapter VII of the Charter in relation to the situation concerning the Democratic Republic of the Congo,<sup>143</sup> two included recommendations relating to the pacific settlement of disputes. In June 2012, the Council encouraged the Government to promote non-military solutions as an

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<sup>130</sup> Resolutions 2065 (2012), fifth preambular paragraph, in connection with the item "The situation in Sierra Leone"; 2088 (2013), para. 11, in connection with the item "The situation in the Central African Republic"; 2090 (2013), para. 4, in connection with the item "The situation in Burundi"; and 2103 (2013), sixth preambular paragraph, in connection with the item "The situation in Guinea-Bissau".

<sup>131</sup> Resolution 2044 (2012), eighteenth preambular paragraph and para. 5, in connection with the item "The situation concerning Western Sahara".

<sup>132</sup> Resolutions 2041 (2012), para. 13, in connection with the item "The situation in Afghanistan"; and 2067 (2012), para. 2, in connection with the item "The situation in Somalia".

<sup>133</sup> Resolution 2058 (2012), para. 1, in connection with the item "The situation in Cyprus".

<sup>134</sup> Resolution 2061 (2012), sixth preambular paragraph, in connection with the item "The situation concerning Iraq".

<sup>135</sup> Resolution 2090 (2013), para. 4.

<sup>136</sup> Resolution 2088 (2013), para. 5.

<sup>137</sup> Resolution 2121 (2013), paras. 1 and 3.

<sup>138</sup> Resolution 2127 (2013), thirty-first preambular paragraph.

<sup>139</sup> *Ibid.*, para. 1.

<sup>140</sup> *Ibid.*, para. 19.

<sup>141</sup> Resolution 2062 (2012), para. 10.

<sup>142</sup> Resolution 2101 (2013), seventh preambular paragraph.

<sup>143</sup> Resolutions 2053 (2012), 2076 (2012), 2078 (2012) and 2098 (2013).

integral part of the overall solution for reducing the threat posed by Congolese and foreign armed groups.<sup>144</sup> In March 2013, the Council welcomed the signing on 24 February 2013 of the Peace, Security and Cooperation Framework for the Democratic Republic of the Congo and the Region,<sup>145</sup> and demanded that the signatory States of the Framework fully implement their commitments in good faith.<sup>146</sup>

Concerning Guinea-Bissau, the Council stressed that all stakeholders should work to ensure stability through clear commitment and genuine inclusive political dialogue aimed at creating conditions conducive to the restoration of and respect for constitutional order following credible elections, ultimately facilitating the implementation of key reforms and the strengthening of State institutions.<sup>147</sup> Concerning Liberia, the Council determined that, despite significant progress, the situation remained fragile and that it continued to constitute a threat to international peace and security in the region.<sup>148</sup> The Council called upon all Liberian leaders to promote meaningful reconciliation and inclusive dialogue to consolidate peace and advance Liberia's democratic development.<sup>149</sup>

In relation to Mali, the Council reacted promptly to the crisis in 2012 by issuing two presidential statements,<sup>150</sup> and in July 2012 the Council determined that the situation constituted a threat to international peace and security, and, acting under Chapter VII of the Charter, expressed its support for all efforts made by the transitional authorities of Mali, with the support of ECOWAS, the African Union, neighbouring and other countries in the region and the United Nations, aimed at seeking a peaceful solution to the situation in the north of Mali.<sup>151</sup> It requested the Secretary-General to provide support to ongoing mediation efforts, including through the good offices of his Special Representative for West Africa.<sup>152</sup> The Council acknowledged the steps taken by Mali, including by the signing on 6 April 2012 of a framework agreement under the auspices of ECOWAS,

towards developing a road map for the restoration of constitutional order, an inclusive national dialogue and the organization of free, transparent and fair presidential elections.<sup>153</sup> The Council also emphasized the importance for the transitional authorities of Mali to move swiftly in a process of inclusive dialogue and active engagement with Malian political groups.<sup>154</sup> The Council commended the initial measures taken to restore constitutional order and national unity in Mali.<sup>155</sup>

Concerning Sierra Leone, the Council urged the Government to continue its efforts to hold regular, inclusive and genuine dialogue with all relevant national and international stakeholders on the country's peacebuilding and development goals, and also urged the Government to ensure that the Agenda for Prosperity continued to build on progress achieved in strengthening the political, security, justice and human rights institutions in the country, including through implementation of the recommendations of the Truth and Reconciliation Commission.<sup>156</sup>

In connection with Somalia, the Council, acting under Chapter VII of the Charter, reiterated its full support for the Djibouti peace process and the Transitional Federal Charter, which provided the framework for reaching a lasting political solution in Somalia, and stressed the need for reconciliation, dialogue and broad-based, inclusive and representative Somali institutions.<sup>157</sup> The Council emphasized the critical role of the new Somali authorities in achieving reconciliation, lasting peace and stability in Somalia, and stressed their importance in developing a programme to define post-transition priorities.<sup>158</sup> The Council encouraged the Federal Government of Somalia to initiate processes of national reconciliation in order to accelerate efforts to establish sustainable, legitimate and representative local governance structures across the country.<sup>159</sup>

In relation to the situation in the Sudan, specifically in Darfur, the Council welcomed the initiative of the African Union-United Nations Joint Chief Mediator for Darfur to revitalize the peace process, including through renewed engagement of the non-signatory movements,

<sup>144</sup> Resolution 2053 (2012), para. 3.

<sup>145</sup> S/2013/131, annex.

<sup>146</sup> Resolution 2098 (2013), paras. 1 and 2.

<sup>147</sup> Resolution 2103 (2013), sixth preambular paragraph.

<sup>148</sup> Resolutions 2079 (2012), eleventh preambular paragraph, and 2128 (2013), fifteenth preambular paragraph.

<sup>149</sup> Resolutions 2079 (2012), tenth preambular paragraph, and 2128 (2013), twelfth preambular paragraph.

<sup>150</sup> S/PRST/2012/7 and S/PRST/2012/9.

<sup>151</sup> Resolution 2056 (2012), para. 11.

<sup>152</sup> *Ibid.*, para. 12.

<sup>153</sup> Resolution 2071 (2012), fifteenth preambular paragraph.

<sup>154</sup> Resolution 2100 (2013), sixth preambular paragraph.

<sup>155</sup> *Ibid.*, para. 1.

<sup>156</sup> Resolution 2065 (2012), para. 8.

<sup>157</sup> Resolution 2036 (2012), third preambular paragraph.

<sup>158</sup> Resolution 2067 (2012), paras. 2 and 4.

<sup>159</sup> Resolution 2124 (2013), para. 25.

and encouraged the Joint Chief Mediator to be mindful of other relevant peace processes.<sup>160</sup>

In relation to Western Sahara, the Council recognized that the consolidation of the status quo was not acceptable, and called upon the parties to continue to show political will and to work in an atmosphere propitious for dialogue, thus ensuring the implementation of the relevant resolutions and the success of negotiations.<sup>161</sup>

In relation to Afghanistan, the Council welcomed the continuing efforts of the Government of Afghanistan to advance the peace and reconciliation process, including by the High Peace Council, and the implementation of the Afghan Peace and Reintegration Programme, to promote an inclusive, Afghan-led dialogue on reconciliation and political participation as laid down in the Kabul Conference communiqué on dialogue for all those who “renounce violence, have no links to international terrorist organizations”, including Al-Qaida, “respect the constitution”, including its human rights provisions, “and are willing to join in building a peaceful Afghanistan”, and encouraged the Government to make use of the good offices of the United Nations Assistance Mission in Afghanistan to support the process as appropriate, in full respect of the implementation of measures and procedures introduced by the Council in its resolutions [1267 \(1999\)](#) and [1988 \(2011\)](#) as well as other relevant resolutions of the Council.<sup>162</sup> The Council, acting under Chapter VII of the Charter, reiterated its call upon all Afghan parties and groups to engage constructively in peaceful political dialogue within the framework of the Afghan Constitution, to work together with international donors for the socioeconomic development of the country and to avoid resorting to violence.<sup>163</sup>

With regard to the situation in Timor-Leste, the Council urged all parties in the country, in particular political leaders, to continue to work together and engage in political dialogue and to consolidate peace, and reaffirmed its full support for the continued efforts of the Special Representative of the Secretary-General for Timor-Leste in promoting a culture of democratic

governance, through inclusive and collaborative processes.<sup>164</sup>

In relation to Iraq, the Council welcomed improvements in the security situation, and stressed that challenges to security in Iraq still existed and that improvements needed to be sustained through meaningful political dialogue and national unity.<sup>165</sup>

The consideration of and response to the situation in the Syrian Arab Republic divided the Council during the period under review, as was exemplified by its failure to adopt two draft resolutions.<sup>166</sup> However, the Council was able to adopt a series of decisions in application of Chapter VI of the Charter. The Council underscored the central importance of a peaceful political settlement to the Syrian crisis and reiterated its call for the urgent, comprehensive and immediate implementation of all aspects of the six-point proposal of the Joint Special Envoy of the United Nations and the League of Arab States to Syria.<sup>167</sup> The Council stressed that the only solution to the crisis was through an inclusive and Syrian-led political process based on the final communiqué of the Action Group for Syria (Geneva communiqué) of 30 June 2012,<sup>168</sup> and emphasized the need to convene an international conference on the Syrian Arab Republic as soon as possible.<sup>169</sup>

During the period under review, the Council viewed the situation concerning the Sudan and South Sudan as a serious threat to international peace and security.<sup>170</sup> The Council adopted a series of decisions involving multiple actions. With regard to recommendations relating to the peaceful settlement of disputes, the Council decided that the Sudan and South Sudan should, among other actions and with immediate effect, cease all hostilities, unconditionally withdraw all of their armed forces to their side of the border, activate the necessary border security mechanisms and cease hostile propaganda in the media, as well as attacks against the property and religious and cultural symbols belonging to the nationals of the other State.<sup>171</sup> Some of the recommendations were repeated by

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<sup>160</sup> Resolution [2113 \(2013\)](#), paras. 9 and 24.

<sup>161</sup> Resolutions [2044 \(2012\)](#), eighteenth preambular paragraph and para. 5; and [2099 \(2013\)](#), eighteenth preambular paragraph and para. 5.

<sup>162</sup> Resolution [2041 \(2012\)](#), para. 13.

<sup>163</sup> Resolutions [2069 \(2012\)](#), twenty-eighth and thirty-ninth preambular paragraphs; and [2120 \(2013\)](#), twenty-ninth and fortieth preambular paragraphs.

<sup>164</sup> Resolution [2037 \(2012\)](#), para. 2.

<sup>165</sup> Resolutions [2061 \(2012\)](#), fifth preambular paragraph; and [2110 \(2013\)](#), fifth preambular paragraph.

<sup>166</sup> [S/2012/77](#) and [S/2012/538](#).

<sup>167</sup> [S/PRST/2012/10](#), seventh paragraph.

<sup>168</sup> Resolution [2118 \(2013\)](#), annex II.

<sup>169</sup> Resolution [2118 \(2013\)](#), twelfth preambular paragraph and paras. 16 and 17.

<sup>170</sup> See [S/PRST/2012/5](#), first paragraph.

<sup>171</sup> Resolution [2046 \(2012\)](#), para. 1.



the Council in subsequent resolutions. The Council also decided that the Sudan and South Sudan should unconditionally resume negotiations to reach agreement on critical issues relating to the dispute between the two countries.<sup>172</sup> With regard to Abyei, the Council expressed its determination that the future status of Abyei should be resolved by negotiations and not by the unilateral actions of either party.<sup>173</sup> The Council also called for a cessation of hostilities and the “immediate opening of a dialogue”.<sup>174</sup>

In relation to the situation in Cyprus, the Council acknowledged the progress made in the fully fledged negotiations, but noted that it had not been sufficient and had not resulted in a comprehensive and durable settlement. The Council urged the sides to continue their discussions. Recalling its resolution 2026 (2011), the Council called upon the two leaders (a) to put their efforts behind further work on reaching convergences on the core issues; (b) to continue to work with the technical committees with the objective of improving the daily lives of the Cypriots; (c) to improve the public atmosphere in which the negotiations were proceeding, including by focusing public messages on convergences and the way ahead and delivering more constructive and harmonized messages; and (d) to increase the participation of civil society in the process, as appropriate.<sup>175</sup>

### C. Decisions involving the Secretary-General

Article 99 of the Charter provides that the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. While the Charter does not describe or define the role of the Secretary-General in relation to matters of peace and security, the efforts of the Council regarding conflict prevention and the peaceful settlement of disputes increasingly required his involvement. The Secretary-General thus has been heavily involved in the facilitation of peace efforts in coordination with the Council or at its request, as demonstrated by the decisions of the Council in this regard.

During the period 2012-2013, the Council welcomed, acknowledged and recognized the work of the Secretary-General and his Special Representatives alike in assisting parties to conflict before, during and after peaceful negotiations.<sup>176</sup> The Council also requested the Secretary-General, through his Special Representatives, to enhance the mediation capacities of parties to conflict and to facilitate and strengthen dialogue.<sup>177</sup> The Council, moreover, requested the Secretary-General and his Special Representatives to provide support to mediation efforts by other organizations, and also requested the Secretary-General to use his good offices to facilitate dialogue among stakeholders.<sup>178</sup> The Council further requested the Secretary-General to explore and report on options to facilitate enhanced dialogue between relevant parties and to provide support in critical areas, such as national dialogue and electoral processes.<sup>179</sup>

During the period under review, the Secretary-General relied heavily on his Special Envoys, Special Advisers and Special Representatives to assist him in his efforts.<sup>180</sup> The Secretary-General was involved in the facilitation of peace efforts in cooperation with regional organizations, for example with the African Union and the Intergovernmental Authority on Development in the

<sup>172</sup> *Ibid.*, para. 2.

<sup>173</sup> Resolution 2126 (2013), seventeenth preambular paragraph.

<sup>174</sup> Resolution 2132 (2013), para. 1.

<sup>175</sup> Resolutions 2058 (2012), paras. 1 and 3; 2089 (2013), paras. 1 and 3; and 2114 (2013), paras. 1 and 3.

<sup>176</sup> Resolutions 2044 (2012), para. 7, in connection with the item “The situation concerning Western Sahara”; 2058 (2012), nineteenth preambular paragraph, in connection with the item “The situation in Cyprus”; 2088 (2013), eighth preambular paragraph, in connection with the item “The situation in the Central African Republic”; and 2099 (2013), para. 7, in connection with the item “The situation concerning Western Sahara”.

<sup>177</sup> Resolutions 2085 (2012), para. 3, in connection with the item “The situation in Mali”; and 2127 (2013), para. 7, in connection with the item “The situation in the Central African Republic”.

<sup>178</sup> Resolutions 2053 (2012), para. 16, in connection with the item “The situation concerning the Democratic Republic of the Congo”; 2062 (2012), para. 11, in connection with the item “The situation in Côte d’Ivoire”; 2098 (2013), para. 14, in connection with the item “The situation concerning the Democratic Republic of the Congo”; and 2112 (2013), para. 19, in connection with the item “The situation in Côte d’Ivoire”.

<sup>179</sup> Resolutions 2051 (2012), para. 16, in connection with the item “The situation in the Middle East”; and 2076 (2012), para. 16, and S/PRST/2012/22, eighth paragraph, in connection with the item “The situation concerning the Democratic Republic of the Congo”.

<sup>180</sup> For example, the Special Envoy of the Secretary-General for the Sahel, the Joint Special Envoy of the United Nations and the League of Arab States to Syria and the Special Adviser to the Secretary-General on Yemen.

Sudan and South Sudan, the Economic Community of Central African States in the Central African Republic and Côte d'Ivoire, ECOWAS in Mali and Guinea-Bissau, the International Conference on the Great Lakes Region in the Democratic Republic of the Congo and the League of Arab States in the Syrian Arab Republic, and independently in Western Sahara and Cyprus. The work of the Secretary-General in pursuing the pacific settlement of disputes was often related to the enhancement of political or national dialogue, as in Côte d'Ivoire, the Democratic Republic of the Congo, Guinea-Bissau and Libya. In Mali, Western Sahara, Cyprus, Yemen and the Syrian Arab Republic, the role of the Secretary-General consisted of a deeper involvement and active participation through mediation and his good offices.

Given the gravity of the conflict in the Syrian Arab Republic, on 16 February 2012 the General Assembly adopted resolution [66/253](#), in which it requested the Secretary-General and all relevant United Nations bodies to provide support to the efforts of the League of Arab States, both through the appointment of a special envoy to undertake good offices aimed at promoting a peaceful solution to the Syrian crisis, and through technical and material assistance, in consultation with the League of Arab States.<sup>181</sup> In a presidential statement dated 21 March 2012, the Council welcomed the appointment of the Joint Special Envoy of the United Nations and the League of Arab States to Syria and expressed its full support for the efforts of the Joint Special Envoy to bring an end to the violence and for his six-point proposal.<sup>182</sup> In an earlier letter dated 16 March 2012, the Joint Special Envoy had proposed a six-point plan aimed at bringing an immediate end to all violence and human rights violations, securing humanitarian access and facilitating a Syrian-led political transition leading to a democratic, plural political system, including by commencing a comprehensive political dialogue between the Government of the Syrian Arab Republic and the Syrian opposition. On 5 April 2012, in a presidential statement, the Council underscored the importance of an effective and credible United Nations supervision mechanism in the Syrian Arab Republic to monitor a cessation of armed violence in all its forms by all parties.<sup>183</sup> In resolutions

[2042 \(2012\)](#) and [2043 \(2012\)](#),<sup>184</sup> the Council reaffirmed its full support for the proposal of the Joint Special Envoy aimed at bringing an immediate end to all violence.<sup>185</sup> The Joint Special Envoy resigned in August 2012, however, and a new envoy was appointed shortly thereafter. During the remainder of the period under review, while the Council met on multiple occasions and was actively seized of the matter, it made no further decision.

With regard to Yemen, on the other hand, the Council unanimously and consistently endorsed the good offices efforts of the Secretary-General through his Special Adviser. On 12 June 2012, the Council adopted resolution [2051 \(2012\)](#), in which it emphasized the importance of conducting a fully-inclusive, participatory, transparent and meaningful National Dialogue Conference, demanded the cessation of all actions aimed at undermining the Government of National Unity and the political transition, and expressed its readiness to consider further measures, including under Article 41 of the Charter, if such actions continued. In the same resolution, the Council requested the Secretary-General to continue his good offices role, including through the efforts of his Special Adviser.<sup>186</sup> On 27 January 2013, the Council dispatched a mission to Yemen to reaffirm its support for the ongoing political transition process in the country, as well as for the involvement of the international community in implementing the Gulf Cooperation Council initiative, including the Special Adviser and his good offices in Yemen.<sup>187</sup> On 15 February 2013, the Council issued a presidential statement in which it affirmed that it would remain closely engaged on the situation in Yemen and would continue to closely follow the next steps towards a peaceful political transition.<sup>188</sup>

The types of activities undertaken by the Secretary-General and supported by the Council in relation to the peaceful settlement of disputes and the prevention of conflict are set out in table 5.

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<sup>184</sup> By virtue of resolution [2043 \(2012\)](#), the Council established the United Nations Supervision Mission in the Syrian Arab Republic under the command of a Chief Military Observer. For more information on the mandate and activities of the Mission, see part X, sect. II, "Peacekeeping operations".

<sup>185</sup> Resolution [2042 \(2012\)](#), para. 1.

<sup>186</sup> Resolution [2051 \(2012\)](#), paras. 5, 6 and 16.

<sup>187</sup> See [S/2013/61](#), annex.

<sup>188</sup> [S/PRST/2013/3](#), eighth paragraph.

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<sup>181</sup> General Assembly resolution [66/253](#), para. 11.

<sup>182</sup> [S/PRST/2012/6](#), fourth, fifth, sixth and seventh paragraphs.

<sup>183</sup> [S/PRST/2012/10](#), sixth paragraph.

Table 5  
**Decisions involving the Secretary-General in the Council's efforts at the pacific settlement of disputes, 2012-2013**

<i>Decision and date</i>	<i>Provision</i>	<i>Type of activity supported by the Council</i>
<b>Africa</b>		
<b>The situation in the Central African Republic</b>		
Resolution <a href="#">2088 (2013)</a> 24 January 2013	Eighth preambular paragraph	Good offices
Resolution <a href="#">2121 (2013)</a> 10 October 2013	Para. 4	Mediation support
Resolution <a href="#">2127 (2013)</a> 5 December 2013	Para. 7	Mediation support
<b>The situation in Côte d'Ivoire</b>		
Resolution <a href="#">2062 (2012)</a> 26 July 2012	Para. 11	Good offices
Resolution <a href="#">2112 (2013)</a> 30 July 2013	Para. 19	Good offices
<b>The situation concerning the Democratic Republic of the Congo</b>		
Resolution <a href="#">2053 (2012)</a> 27 June 2012	Para. 16	Electoral support
	Para. 17	Good offices
<a href="#">S/PRST/2012/22</a> 19 October 2012	Eighth paragraph	Good offices
Resolution <a href="#">2076 (2012)</a> 20 November 2012	Para. 16	Dialogue assessment
Resolution <a href="#">2098 (2013)</a> 28 March 2013	Para. 5	Peace implementation assessment
	Para. 14	Good offices
<b>The situation in Guinea-Bissau</b>		
Resolution <a href="#">2092 (2013)</a> 22 February 2013	Para. 3	Dialogue and electoral support
Resolution <a href="#">2103 (2013)</a> 22 May 2013	Para. 8	Dialogue support
<b>The situation in the Great Lakes region</b>		
<a href="#">S/PRST/2013/11</a> 25 July 2013	Seventh paragraph	Peace implementation assessment

## Repertoire of the Practice of the Security Council, 2012-2013

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<i>Decision and date</i>	<i>Provision</i>	<i>Type of activity supported by the Council</i>
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### **The situation in Libya**

<a href="#">S/PRST/2013/21</a> 16 December 2013	Third paragraph	Dialogue support
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### **The situation in Mali**

Resolution <a href="#">2056 (2012)</a> 5 July 2012	Para. 12	Mediation support
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Resolution <a href="#">2071 (2012)</a> 12 October 2012	Para. 4	Dialogue support
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	Para. 10	Mediation support
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Resolution <a href="#">2085 (2012)</a> 20 December 2012	Para. 3	Mediation support
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Resolution <a href="#">2100 (2013)</a> 25 April 2013	Para. 2	Transition and dialogue support
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### **Reports of the Secretary-General on the Sudan and South Sudan**

Resolution <a href="#">2063 (2012)</a> 31 July 2012	Para. 20	Mediation
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Resolution <a href="#">2113 (2013)</a> 30 July 2013	Paras. 9 and 24	Mediation
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### **The situation concerning Western Sahara**

Resolution <a href="#">2044 (2012)</a> 24 April 2012	Paras. 6 and 9	Mediation
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Resolution <a href="#">2099 (2013)</a> 25 April 2013	Paras. 6 and 9	Mediation
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### **Europe**

#### **The situation in Cyprus**

Resolution <a href="#">2058 (2012)</a> 19 July 2012	Nineteenth preambular paragraph	Mediation support
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Resolution <a href="#">2089 (2013)</a> 24 January 2013	Third and nineteenth preambular paragraphs	Mediation support
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Resolution <a href="#">2114 (2013)</a> 30 July 2013	Third and nineteenth preambular paragraphs	Mediation support
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### **Middle East**

#### **The situation in the Middle East (Syrian Arab Republic)**

<a href="#">S/PRST/2012/6</a> 21 March 2012	Fifth paragraph	Political dialogue
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<i>Decision and date</i>	<i>Provision</i>	<i>Type of activity supported by the Council</i>
<a href="#">S/PRST/2012/10</a> 5 April 2012	Sixth paragraph	Ceasefire supervision
	Seventh paragraph	Peace implementation mechanism
Resolution 2042 (2012) 14 April 2012	Para. 1	Peace implementation mechanism
Resolution 2043 (2012) 21 April 2012	Para. 1	Peace implementation mechanism
<b>The situation in the Middle East (Yemen)</b>		
Resolution 2051 (2012) 12 June 2012	Para. 16	Good offices
<a href="#">S/PRST/2013/3</a> 15 February 2013	Eighth paragraph	Good offices

#### **D. Decisions involving regional arrangements or agencies**

During the period under review, consistent with Article 52 of the Charter, the Council welcomed and expressed support for the efforts for the pacific settlement of disputes through regional organizations and other arrangements, encouraged the continuation of those

efforts and called upon parties to conflict to engage and cooperate in such processes led by regional organizations and entities. Decisions of the Council with regard to joint or parallel efforts undertaken by the Council and regional arrangements or agencies in the pacific settlement of disputes during the period under review are covered in detail in part VIII.

### **IV. Discussion on the interpretation or application of the provisions of Chapter VI of the Charter**

#### **Note**

Section IV features the main discussions in the Security Council with regard to the interpretation of specific provisions of Chapter VI of the Charter concerning the role of the Council and the Secretary-General in the peaceful settlement of disputes. It excludes those discussions concerning regional organizations, which are covered in part VIII.

During the period under review, explicit references were made to Articles 33,<sup>189</sup> 36<sup>190</sup> and 99,<sup>191</sup> as well as

<sup>189</sup> In connection with the protection of civilians in armed conflict, [S/PV.7019](#), p. 58 (Netherlands); and in connection with the promotion and strengthening of the rule of law in the maintenance of international peace and security, [S/PV.6705](#), p.17 (Pakistan); and p. 20 (South Africa); and [S/PV.6705 \(Resumption 1\)](#), p.10 (Mauritius).

<sup>190</sup> In connection with the promotion and strengthening of the rule of law in the maintenance of international peace and security, [S/PV.6705](#), p.4 (Germany); p.17 (Pakistan); and [S/PV.6705 \(Resumption 1\)](#), p.18 (Argentina).

<sup>191</sup> In connection with children and armed conflict, [S/PV.6838](#), p.25 (Pakistan); p. 26 (India); and [S/PV.6980](#), p.27 (India); in connection with the implementation of the note by the President of the Security Council ([S/2010/507](#)), [S/PV.6870](#), p.26 (Luxembourg); [S/PV.7052](#), p. 6 (United Kingdom); p.13 (France); and [S/PV.7052 \(Resumption 1\)](#), p. 8 (New Zealand).

to Chapter VI<sup>192</sup> of the Charter during deliberations, most of which did not give rise to constitutional discussions.

Section IV is divided into four subsections: A. Relevance of the provisions of Chapter VI in comparison to the provisions of Chapter VII; B. Referral of legal disputes in the light of Article 36 of the Charter; C. Reference to peaceful means of settlement in the light of Article 33 of the Charter; and D. Utilization of Article 99 by the Secretary-General for the pacific settlement of disputes. The section features cases in which relevant constitutional discussions took place during the period under review.

### A. Relevance of the provisions of Chapter VI in comparison to the provisions of Chapter VII

During the period under review, discussions in the Council touched upon the distinction between Chapter VI and Chapter VII of the Charter. In the cases discussed below, speakers identified the nature of Council actions considered within each Chapter, the timing of such

<sup>192</sup> In connection with cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security, *S/PV.6702*, p. 11 (Colombia); *S/PV.6702 (Resumption 1)*, pp. 2-3 (Pakistan); and *S/PV.7015 (Resumption 1)*, p.23 (New Zealand); in connection with implementation of the note by the President of the Security Council (*S/2010/507*), *S/PV.6870*, p. 11 (Pakistan); p.21 (India); pp.23-24 (New Zealand); *S/PV.7052*, p.15 (Pakistan); p.23 (India); *S/PV.7052 (Resumption 1)*, p.8 (New Zealand); and p.10 (Turkey); in connection with peace and security in Africa, *S/PV.6946*, pp.19-20 (Pakistan); in connection with the protection of civilians in armed conflict, *S/PV.6790*, p.25 (India); in connection with the promotion and strengthening of the rule of law in the maintenance of international peace and security, *S/PV.6849*, p.11 (India); in connection with the situation between Iraq and Kuwait, *S/PV.6990*, p. 3 (Iraq); in connection with the situation concerning Iraq, *S/PV.7068*, p.5 (Special Representative of the Secretary-General and Head of the United Nations Assistance Mission for Iraq); in connection with the situation in the Great Lakes region, *S/PV.7011 (Resumption 1)*, p.8 (United Republic of Tanzania); in connection with the situation in the Middle East, *S/PV.6710*, p.23 (Pakistan); p.26 (Azerbaijan); p. 27 (Togo); and *S/PV.6711*, p. 7 (United Kingdom); in connection with the situation in the Middle East, including the Palestinian question, *S/PV.6706*, p.23 (Guatemala); and in connection with United Nations peacekeeping operations, *S/PV.6903*, p.11 (Togo); p.25 (New Zealand); p.52 (Côte d'Ivoire); and p.60 (Namibia).

actions, the conditions on the ground susceptible of being addressed with Council actions under Chapter VI or Chapter VII of the Charter and the cost-benefit analysis of adopting such actions by the Council.

### Case 5 The situation in the Middle East

On 31 January 2012, at its 6710th meeting, the Council had before it a letter dated 24 January 2012 from the Secretary-General addressed to the President of the Security Council transmitting a letter from the League of Arab States regarding the situation in the Syrian Arab Republic.<sup>193</sup> Against the backdrop of the crisis, Council members discussed the opportunity of adopting a draft resolution tabled by Morocco addressing the violence prevailing in the country. The Secretary-General of the League of Arab States stated that he looked forward to supporting a resolution that called upon all parties to immediately cease all acts of violence in order to protect the Syrian people and to engage in a serious national dialogue under the aegis of the League of Arab States.<sup>194</sup> The representative of France clarified that nothing in the draft resolution proposed by Morocco could be construed as an authorization of the use of force. He added that “the draft does not fall under Chapter VII. We are not preparing any military operation”.<sup>195</sup> Furthermore, he noted that the goal would be to find a peaceful way out of the crisis that would allow the Syrian people to freely express their aspirations.<sup>196</sup> The representative of the United Kingdom argued that the draft resolution did not propose imposing change on the Syrian Arab Republic from outside; it called for the Syrian people to be allowed to make their choices for themselves. He added that the plan of the League of Arab States that was endorsed in the draft resolution did not include “any outside intervention” and did not contain “coercive measures”, but would put the leaders of the Syrian Arab Republic on notice that measures would be considered by the Council if there was not an immediate end to the violence.<sup>197</sup> The representative of Pakistan cautioned that the discussion should remain in full cognizance of and respect for the independence, unity, sovereignty and territorial integrity of the Syrian Arab Republic and should remain within the framework of Chapter VI of the Charter and the principles

<sup>193</sup> *S/2012/71*.

<sup>194</sup> *S/PV.6710*, p. 9.

<sup>195</sup> *Ibid.*, p. 16.

<sup>196</sup> *Ibid.*

<sup>197</sup> *Ibid.*

of the pacific settlement of disputes.<sup>198</sup> The representative of Azerbaijan noted that the international community should not only demand certain steps from the Government of the Syrian Arab Republic, but also focus on persuading the opposition to reciprocate. Only measures adequate to the situation that “conform with Chapter VI of the Charter and pay due regard to the role of the League of Arab States” could be considered.<sup>199</sup> The representative of Togo expressed concerns regarding the implementation of the far-reaching road map of the League of Arab States elaborated in the framework of Chapter VI of the Charter, given the reluctance of the Government to step down or to take part in the transition process as recommended by the road map.<sup>200</sup> The Prime Minister and Minister for Foreign Affairs of Qatar, speaking also in his capacity as Chair of the Arab ministerial committee on the Syrian Arab Republic, clarified that his mission was not to request military intervention from the Council or to take a decision in favour of military intervention. He emphasized that it was a matter for the Syrian people to decide who should govern them.<sup>201</sup>

Four days later, on 4 February 2012, at its 6711th meeting, the Council considered a draft resolution submitted by 19 Member States, including Morocco.<sup>202</sup> The favourable vote of 13 Council members notwithstanding, the draft resolution was not adopted owing to the negative vote of two permanent members of the Council.<sup>203</sup> Most Council members regretted the result of the vote. The representative of Germany, who was echoed by the representatives of the United Kingdom and the United States, explained that the draft resolution was aimed at answering the call from Arab States and a large part of the international community to support the initiative of the League of Arab States towards finding a political, Syrian-led solution to the crisis.<sup>204</sup> He noted that the resolution did not foresee an arms embargo or a sanctions regime, nor did it mandate a commission of inquiry into human rights violations.<sup>205</sup> The representative of the United Kingdom clarified that, in an attempt to reach consensus, the text of the draft

resolution, which was a “Chapter VI resolution”, had been assessed to dispel the fears of some Council members about regime change, military intervention, an arms embargo and sanctions.<sup>206</sup> The representative of India stated that the draft resolution expressly ruled out any measures under Article 42 of the Charter and called for a serious political dialogue between the Government of the Syrian Arab Republic and the whole spectrum of the opposition under the auspices of the League of Arab States.<sup>207</sup> Similar remarks were made by the representative of Azerbaijan, who emphasized that the draft resolution supported the idea of a peaceful solution to the crisis in the Syrian Arab Republic and that no provision in the draft authorized measures under Article 42 of the Charter.<sup>208</sup>

### **Case 6** **The situation between Iraq and Kuwait**

On 27 June 2013, at its 6990th meeting, the Council adopted resolution [2107 \(2013\)](#), terminating a series of measures against Iraq that had been adopted under Chapter VII of the Charter concerning the repatriation of Kuwaiti nationals (including members of the armed forces of Kuwait held as prisoners of war) and the return of the remains of deceased Kuwaiti and third-country nationals, as well as Kuwaiti property seized by Iraq.<sup>209</sup> By virtue of resolution [2107 \(2013\)](#), the Council also terminated the involvement of the Secretary-General in reporting specifically on the compliance by Iraq with the Chapter VII measures mentioned above.<sup>210</sup> In the resolution, the Council recognized that the situation existing in Iraq was significantly different from that which had existed at the time of the adoption of resolution [661 \(1990\)](#). The Council also recognized the importance of Iraq achieving international standing equal to that which it had held prior to the adoption of resolution [661 \(1990\)](#).<sup>211</sup> Most importantly, the Council welcomed the ongoing cooperation between Iraq and Kuwait in the search for missing Kuwaiti and third-country nationals, and, “with consideration to the provisions of Chapter VI of the Charter of the United Nations on the pacific settlement of disputes”, called upon the Government of Iraq to continue cooperation with the International

<sup>198</sup> *Ibid.*, p. 23.

<sup>199</sup> *Ibid.*, p. 26.

<sup>200</sup> *Ibid.*, p. 27.

<sup>201</sup> *Ibid.*, p. 30.

<sup>202</sup> [S/2012/77](#).

<sup>203</sup> [S/PV.6711](#), p. 2.

<sup>204</sup> *Ibid.*, p. 4 (Germany); p. 5 (United States); and p. 7 (United Kingdom).

<sup>205</sup> *Ibid.*, p. 5.

<sup>206</sup> *Ibid.*, p. 7.

<sup>207</sup> *Ibid.*, p. 8.

<sup>208</sup> *Ibid.*, pp. 11- 12.

<sup>209</sup> See resolutions [686 \(1991\)](#), paras. 2 (c), 2 (d) and 3 (c), and [687 \(1991\)](#), para. 30.

<sup>210</sup> Resolution [1284 \(1999\)](#), para. 14.

<sup>211</sup> Resolution [2107 \(2013\)](#), second preambular paragraph.

Committee of the Red Cross<sup>212</sup> for the search of persons still unaccounted for, as well as missing property.<sup>213</sup> The Council requested the Special Representative of the Secretary-General for Iraq to promote, support and facilitate efforts in that regard, and requested the Secretary-General to report separately to the Council on the matters in his reports on the progress made towards the fulfilment of the responsibilities of the United Nations Assistance Mission for Iraq.<sup>214</sup>

Following the adoption of the resolution, the Minister for Foreign Affairs of Iraq stated that the Council was meeting to adopt a resolution to “remove Iraq from the provisions of Chapter VII of the Charter”.<sup>215</sup> He assessed the achievements of Iraq in regaining international standing and noted that, with respect to the situation between Iraq and Kuwait, only the issue of missing Kuwaitis and property remained open. He indicated that significant progress had been achieved under bilateral cooperation and affirmed that Iraq would continue to cooperate and to step up the pace of cooperation given that the issue had been “transferred to coverage under the provisions of Chapter VI”.<sup>216</sup> He assessed that resolution 2107 (2013) represented a significant development in the relationship between Iraq and Kuwait and that their cooperation would serve as a model for resolving disputes between States by peaceful means.

#### **Case 7 Implementation of the note by the President of the Security Council (S/2010/507)**

On 29 October 2013, at its 7052nd meeting, the Council considered its working methods in the light of a concept note circulated by Azerbaijan.<sup>217</sup> During the course of the debate, speakers made reference to actions taken by the Council under Chapters VI and VII of the Charter. The representative of Pakistan believed that the Council should rely more on diplomacy and the peaceful settlement of disputes under Chapter VI of the Charter.<sup>218</sup>

In his assessment, excessive reliance on Chapter VII could lead to impasse on several issues and create an erroneous impression of the “sanctity and force” of non-Chapter VII resolutions.<sup>219</sup> The representative of India emphasized that before mandating measures under Chapter VII of the Charter, the Council should first make serious efforts for the peaceful settlement of disputes through measures under Chapter VI.<sup>220</sup> The representative of New Zealand affirmed that much more needed to be done to enable the Council to perform more effectively its most neglected Charter responsibilities, namely those under Chapter VI, concerning conflict prevention and the peaceful settlement of disputes.<sup>221</sup> He recalled that preventive initiatives were less costly in terms of resources and lives than peacekeeping or peace enforcement, and were more likely to deliver lasting outcomes that would address the root causes of conflict.<sup>222</sup> Echoing the representative of New Zealand, the representative of Turkey said that the Council should make better use of measures under Chapter VI of the Charter.<sup>223</sup> He added that without prejudice to the measures under Chapter VII, the Council should “give some thought” to utilizing different ways to reach a peaceful settlement of disputes.<sup>224</sup>

### **B. Referral of legal disputes in the light of Article 36 of the Charter**

Article 36 of the Charter provides that, as a general rule, legal disputes should be referred to the International Court of Justice by the parties. During the period under review, and as illustrated by the case featured below, speakers encouraged the Council to refer legal disputes more frequently to the Court and to seek the Court’s legal advice on issues of legal complexity. Speakers called upon the Council and Member States to strengthen the role of the Court by means of a more frequent recourse to the Court and by accepting its jurisdiction.

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<sup>212</sup> The search for Kuwaiti and third-country nationals and property had taken place under the auspices of the International Committee of the Red Cross, as provided for in resolution 686 (1991).

<sup>213</sup> Resolution 2107 (2013), fourth preambular paragraph and para. 2.

<sup>214</sup> *Ibid.*, para. 4.

<sup>215</sup> S/PV.6990, p. 2.

<sup>216</sup> *Ibid.*, p. 3.

<sup>217</sup> S/2013/613, annex.

<sup>218</sup> S/PV.7052, p. 15.

<sup>219</sup> *Ibid.*

<sup>220</sup> *Ibid.*, p. 23.

<sup>221</sup> S/PV.7052 (Resumption 1), p. 8.

<sup>222</sup> *Ibid.* The idea was also stated by the representative of New Zealand during the 6903<sup>rd</sup> meeting of the Council, on United Nations peacekeeping operations (see S/PV.6903, p. 25).

<sup>223</sup> *Ibid.*, p. 10.

<sup>224</sup> *Ibid.*



**Case 8**  
**The promotion and strengthening of the rule of law in the maintenance of international peace and security**

At its 6705th meeting, on 19 January 2012, the Council considered the report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies.<sup>225</sup> Speakers agreed that the rule of law was critical in preventing conflict and rebuilding societies. To strengthen the rule of law, the representative of Germany proposed more frequent use of Article 36 of the Charter, which allowed the Council to recommend to States to refer legal aspects of international disputes to the International Court of Justice.<sup>226</sup> He called upon more Member States to accept the compulsory jurisdiction of the Court as a means of further anchoring the rule of law, both within the Council and in international relations.<sup>227</sup>

The representative of Pakistan agreed with the recommendation of the Secretary-General that the Council needed to strengthen its support for the International Court of Justice, including by requesting advisory opinions when faced with issues of legal intricacy.<sup>228</sup> Echoing the representative of Pakistan, the representative of South Africa added that making requests for advisory opinions would show that the old debate about whether the Council functioned above international law was “passé”, and that the Council operated within the framework of international law in its actions.<sup>229</sup> Similarly, the representative of Brazil affirmed that the work of the Court helped to uphold the primacy of law in international affairs and that the Council could further explore the advisory role of the Court.<sup>230</sup> The representative of Peru underscored the work of the Court in resolving disputes among States and, in this regard, noted that two factors determined the contribution and commitment of States to the maintenance of international peace and security, namely, the recognition of the Court’s contentious jurisdiction and the recognition of and full compliance with its rulings.<sup>231</sup> Echoing the position of Peru, the representative of Costa Rica emphasized that the

Council should maintain its support for the Court, in particular in the event of non-compliance with the obligations stemming from the decisions adopted by the Court, pursuant to Article 94 of the Charter.<sup>232</sup>

The representative of Mauritius affirmed that the international community had yet to set up adequate machinery for the settlement of legal disputes available to States. He noted that only about one third of the United Nations membership had made declarations under Article 36 of the Statute of the International Court of Justice accepting the compulsory jurisdiction of the Court, and that many States that had made such declarations had also voiced reservations limiting the Court’s jurisdiction or, in many cases, excluding it. He added that other States sought to vary or revoke their declaration when a dispute was submitted or was about to be submitted to exclude the competence of the Court over the dispute concerned, illustrating the difficulties faced by States in settling disputes under international law.<sup>233</sup> The representative of Kyrgyzstan affirmed that the role of the International Court of Justice as the principal judicial organ of the United Nations was significant and that the Court should be one of the key mechanisms for the peaceful settlement of disputes.<sup>234</sup>

During the course of the meeting, the Council issued a presidential statement, in which it emphasized the key role of the International Court of Justice in adjudicating disputes among States and the value of its work. To that end, the Council called upon States that had not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute.<sup>235</sup>

On 17 October 2012, at its 6849th meeting, the Council considered the subject “Peace and justice, with a special focus on the International Criminal Court”, on the basis of a concept note circulated by Guatemala.<sup>236</sup> The representative of India stated that the Council needed to lay more emphasis on Chapter VI of the Charter rather than on coercive measures, and recalled that the International Court of Justice had a role under the Charter in adjudicating disputes between States.<sup>237</sup> In the same vein, the representative of Pakistan affirmed that the rule of law was strengthened if there were no exceptions or double standards in the application of international law,

<sup>225</sup> [S/2011/634](#).

<sup>226</sup> [S/PV.6705](#), p. 4.

<sup>227</sup> Similar calls were made by other speakers. See [S/PV.6705](#), p. 6 (Portugal); p. 16 (Guatemala); p. 17 (Pakistan); p. 20 (South Africa); and [S/PV.6705 \(Resumption 1\)](#), p. 2 (European Union).

<sup>228</sup> *Ibid.*, p. 17.

<sup>229</sup> *Ibid.*, p. 20.

<sup>230</sup> *Ibid.*, p. 23.

<sup>231</sup> *Ibid.*, p. 26.

<sup>232</sup> *Ibid.*, p. 29.

<sup>233</sup> [S/PV.6705 \(Resumption 1\)](#), pp. 10-11.

<sup>234</sup> *Ibid.*, p. 21.

<sup>235</sup> [S/PRST/2012/1](#), third paragraph.

<sup>236</sup> [S/2012/731](#), annex.

<sup>237</sup> [S/PV.6849](#), p. 11.

and that the Council would promote the rule of law by more frequent recourse to the International Court of Justice.<sup>238</sup> The representative of Honduras called upon States to accept the jurisdiction of the Court without reservation.<sup>239</sup>

### C. Reference to peaceful means of settlement in the light of Article 33 of the Charter

Article 33 of the Charter refers to a broad variety of means of resolving disputes. As illustrated by the cases included below, during the period under review, the Council continued to focus on the role of women in the peaceful settlement of disputes, as well as on the role of regional organizations for global conflict prevention.

With regard to the item “Women and peace and security”, members indicated consensus on the need for women’s involvement as a vehicle for conflict prevention, conflict resolution and peacebuilding and that such participation was indispensable in promoting lasting peace. The discussions on the topic resulted in the adoption of resolution [2122 \(2013\)](#), in which the Council expressed its intention to focus more attention on women’s participation in conflict resolution and peacebuilding and recognized the need to increase women’s participation in all discussions pertinent to the prevention and resolution of armed conflict.

The Council also dwelled on the regional dimensions of conflict prevention in its discussions under the item entitled “Peace and security in Africa”. During the discussions on that item, speakers praised the conflict prevention architecture developed by the African Union and emphasized the importance of partnerships between regional and subregional organizations. Speakers also made reference to other means of conflict prevention, such as good offices, mediation, dialogue, early warning mechanisms and preventive diplomacy.

#### Case 9 Women and peace and security

On 30 November 2012, at its 6877th meeting, in connection with women and peace and security, the Council considered the report of the Secretary-

General.<sup>240</sup> During the debate, speakers focused on the role of women in conflict prevention and peacebuilding.<sup>241</sup> The Under-Secretary-General for Peacekeeping Operations affirmed that women could and must play a leading role in political participation, conflict resolution and the transition from conflict to peace.<sup>242</sup> He also gave concrete examples of the successful resolution of conflicts by women.<sup>243</sup> The representative of the NGO Working Group on Women, Peace and Security noted that despite the constraints and barriers they faced, women played a central role in the prevention and resolution of conflicts and in peacebuilding at the community, national and international levels, from early warning to post-conflict reconstruction.<sup>244</sup> The representative of South Africa, however, noted with concern the continuing underrepresentation of women in formal peace processes and therefore called for a more regular review of the status of implementation of the recommendations of the Secretary-General in that regard.<sup>245</sup> The representative of the Russian Federation said that the direct involvement of women in conflict prevention and settlement was an important precondition for overcoming violence against them.<sup>246</sup> The representative of Guatemala stated that without security for women, no lasting peace could be achieved.<sup>247</sup> The representative of China noted that although women tended to be victims in conflict and post-conflict situations, they were also important partners in the prevention and mediation of conflicts and in post-conflict reconstruction,<sup>248</sup> a statement that was echoed by the representative of Croatia.<sup>249</sup> The representative of

<sup>240</sup> [S/2012/732](#).

<sup>241</sup> The participation of women in conflict prevention and conflict resolution was also discussed at other meetings of the Council. During its 6903<sup>rd</sup> meeting, on 21 January 2013, for instance, under the item “United Nations peacekeeping operations”, speakers welcomed the efforts of the Secretary-General in fostering greater representation of women in conflict prevention, conflict resolution and peacebuilding (see [S/PV.6903](#)). The Council at that meeting unanimously adopted resolution [2086 \(2013\)](#), in which it noted that multidimensional peacekeeping missions could be mandated to, inter alia, support the participation of women in conflict prevention, conflict resolution and peacebuilding (para. 8 (j)).

<sup>242</sup> [S/PV.6877](#), p. 6.

<sup>243</sup> *Ibid.*

<sup>244</sup> *Ibid.*, p. 8.

<sup>245</sup> *Ibid.*, p. 12.

<sup>246</sup> *Ibid.*, p. 15.

<sup>247</sup> *Ibid.*, p. 18.

<sup>248</sup> *Ibid.*, p. 24.

<sup>249</sup> *Ibid.*, p. 48.

<sup>238</sup> *Ibid.*, p. 12.

<sup>239</sup> [S/PV.6849 \(Resumption 1\)](#), p. 12.

China added that when deliberating on conflict and post-conflict situations, the Council should include as central elements the protection of women and their rights.<sup>250</sup> The representative of the European Union, echoing comments by most speakers, indicated that women's organizations played a particularly important role in conflict prevention, conflict resolution and building sustainable peace.<sup>251</sup> The representative of Lithuania remarked that mainstreaming gender perspectives into conflict prevention, conflict resolution and post-conflict rehabilitation remained an unfinished business and that continuous engagement by the Council on the subject was required.<sup>252</sup> The representative of Latvia recalled the need to build on the role of women as agents of conflict resolution and sustained recovery. She added that the role of women was important in the whole crisis cycle, from the prevention and resolution of conflict to peacebuilding, post-conflict reconciliation and reintegration.<sup>253</sup> In the same vein, the representative of Nigeria stressed the importance of creating enabling conditions for the participation of women during all stages of peace processes.<sup>254</sup> The representative of Tunisia highlighted the importance of further mobilizing technical support for civil society, in particular women's organizations, given their significant role in pre-empting the escalation of violence against women by enhancing early warning mechanisms and in developing women's capacities to participate actively in conflict prevention, mediation and resolution processes.<sup>255</sup>

On 24 June 2013, at its 6984th meeting, the Council considered the subject of sexual violence in conflict, having before it a concept note circulated by the United Kingdom.<sup>256</sup> The representative of Australia affirmed that sexual violence was both a tactic and a consequence of conflict. He added that it could prolong and deepen conflict and its prevention was intrinsic to the protection of civilians in conflict and to rebuilding societies devastated by conflict.<sup>257</sup> He clarified that women were not just victims, but were critical agents in conflict prevention, resolution, rebuilding and reconciliation, and he urged the Council to utilize its decisive power to bring

about peace.<sup>258</sup> The representative of Luxembourg stated that sexual violence was indisputably a subject directly linked to international peace and security and that both restorative and punitive justice for crimes committed could play a prevention role in terms of future conflict.<sup>259</sup> The representative of Sweden affirmed that the equal participation of men and women in conflict prevention and peacebuilding was fundamental to combating sexual violence.<sup>260</sup> The representative of the Netherlands noted that the role of women in finding solutions through conflict prevention, resolution and transformation was often underestimated, and their capacity in that regard was underutilized, ultimately decreasing the effectiveness and likelihood of success of any peace and reconstruction process.<sup>261</sup> He concluded that the participation of women in finding solutions to conflicts and in reconstruction processes was indispensable.<sup>262</sup> In the same vein, the representative of Canada affirmed that the Council should take concrete measures to support women's opportunities for equal participation and decision-making in all conflict-prevention and resolution processes.<sup>263</sup> Echoing previous interventions, the representative of Bosnia and Herzegovina stated that involving women in conflict prevention and mediation and deploying women's protection advisers to United Nations peacekeeping and special political missions was crucial to building and reinforcing peace.<sup>264</sup>

On 18 October 2013, at its 7044th meeting, the Council considered the subject of women, rule of law and transitional justice in conflict-affected situations on the basis of a concept note circulated by Azerbaijan.<sup>265</sup> At the meeting, the Council unanimously adopted resolution [2122 \(2013\)](#), in which it expressed its intention to focus more attention on women's leadership and participation in conflict resolution and peacebuilding, and recognized the need to increase women's participation and the consideration of gender-related issues in, inter alia, all discussions pertinent to the prevention and resolution of armed conflict.<sup>266</sup>

<sup>250</sup> *Ibid.*, p. 24.

<sup>251</sup> *Ibid.*, p. 29.

<sup>252</sup> *Ibid.*, p. 52.

<sup>253</sup> *Ibid.*, p. 53.

<sup>254</sup> *Ibid.*, p. 61.

<sup>255</sup> *Ibid.*, p. 67.

<sup>256</sup> [S/2013/335](#), annex.

<sup>257</sup> [S/PV.6984](#), p. 20.

<sup>258</sup> *Ibid.*, p. 21.

<sup>259</sup> *Ibid.*, p. 23.

<sup>260</sup> *Ibid.*, p. 28.

<sup>261</sup> *Ibid.*, p. 48.

<sup>262</sup> *Ibid.*

<sup>263</sup> *Ibid.*, p. 51.

<sup>264</sup> *Ibid.*, p. 56.

<sup>265</sup> [S/2013/587](#), annex.

<sup>266</sup> See resolution [2122 \(2013\)](#), paras. 1 and 7.

During the ensuing debate, the Secretary-General commended the Council for having adopted resolution 2122 (2013), underscoring the central importance of women's participation in conflict prevention, conflict resolution and peacebuilding.<sup>267</sup> The Executive Director of the United Nations Entity for Gender Equality and the Empowerment of Women emphasized that women's leadership was central to reconciliation and conflict resolution, and to peacebuilding efforts that brought results for families and communities.<sup>268</sup> The representative of the United States called upon the Council to take concrete steps so that women would share fully in efforts to avoid and contain conflict just, as they inevitably would share the suffering when such efforts were poorly designed or failed.<sup>269</sup> Many speakers noted the importance of the effective participation of women for sustainable peace and social stability.<sup>270</sup> The representative of Indonesia stated that the resolution adopted was a clear reflection of the resolve of the Council concerning the role of women in conflict prevention, conflict resolution, peacebuilding and peacekeeping.<sup>271</sup>

#### Case 10 Peace and security in Africa

On 15 April 2013, at its 6946th meeting, the Council considered the item "The prevention of conflicts in Africa: addressing the root causes", having before it a concept note circulated by Rwanda.<sup>272</sup> The President of the Council expressed the hope that the meeting would be an occasion for the Council to revisit the concept and practice of conflict prevention within the United Nations system.<sup>273</sup> The Secretary-General, in his address to the Council, emphasized the importance of mediation efforts to ensure that peace agreements were not just pacts between political elites to address an immediate political problem; they must also deal with the underlying causes of conflict and allow all stakeholders to participate.<sup>274</sup> He added that they should also be fully implemented,

monitored and enforced.<sup>275</sup> He also noted that, in an increasingly interconnected world, regional action to prevent or address conflicts was all the more important.<sup>276</sup> The representative of Togo emphasized the need for Africa to find locally generated structural solutions to address the deep causes of conflict.<sup>277</sup> He also called upon the Council to use conflict prevention mechanisms as much as possible, making reference to Articles 40 and 41 of the Charter, which, he assessed, would promote early warning systems and strengthen the role of the Council in conflict prevention.<sup>278</sup> The representative of Australia made reference to the peace and security architecture built by the African Union, in particular the strategic use by the African Union Peace and Security Council and Peace and Security Department of representatives and missions, the appointment of high-level mediators and the dispatch of fact-finding missions.<sup>279</sup> He encouraged support for the evolving conflict-prevention mechanisms of the African Union, such as the Continental Early Warning System, the Panel of the Wise and the African Peer Review Mechanism.<sup>280</sup> He also urged the Council to make better use of preventive tools, including horizon-scanning and increased responsiveness to early warning signs.<sup>281</sup> For the representative of the United States, there was a need to, *inter alia*, strengthen the focus on governance and institution-building as a means of preventing or overcoming conflict.<sup>282</sup> The representative of Argentina affirmed that any method that settled disputes peacefully was also worth using for settling conflicts, and emphasized in this regard the role entrusted in the Charter to the Secretary-General in the area of good offices and mediation and the obligation of Member States to consent to the peaceful resolution of disputes.<sup>283</sup> The representative of the Russian Federation noted that the successful prevention of conflicts, particularly in Africa, depended on the skilful use of a number of specific tools, including early warning and response, preventive diplomacy, mediation, good offices, reconciliation and confidence-building measures. He drew attention to the value of regional and subregional organizations and to the

<sup>267</sup> S/PV.7044, p. 3.

<sup>268</sup> *Ibid.*, pp. 5-6.

<sup>269</sup> *Ibid.*, p. 12.

<sup>270</sup> *Ibid.*, p. 13 (Australia), p. 20 (China), p.27 (Brazil), p. 33 (New Zealand), p. 37 (Lithuania) and pp. 48-49 (Bosnia and Herzegovina).

<sup>271</sup> *Ibid.*, p. 70.

<sup>272</sup> S/2013/204, annex.

<sup>273</sup> S/PV.6946, p. 2.

<sup>274</sup> *Ibid.*

<sup>275</sup> *Ibid.*

<sup>276</sup> *Ibid.*, p. 3.

<sup>277</sup> *Ibid.*, p. 6.

<sup>278</sup> *Ibid.*

<sup>279</sup> *Ibid.*, p. 8.

<sup>280</sup> *Ibid.*, p. 9.

<sup>281</sup> *Ibid.*

<sup>282</sup> *Ibid.*, pp. 9-10.

<sup>283</sup> *Ibid.*, p. 13.

availability of more customized preventive diplomacy mechanisms that took into account the local specifics.<sup>284</sup> The representatives of China and Luxembourg assessed that it was essential to leverage the role of the Peacebuilding Commission in helping post-conflict countries to consolidate peace.<sup>285</sup> The representative of Luxembourg also noted the importance of partnerships and cooperation among the Council, the African Union and subregional organizations in the area of conflict prevention.<sup>286</sup> The representative of Pakistan emphasized that greater reliance on the preventive diplomacy tools provided under Chapter VI of the Charter, as well as those under Chapter VIII, would help to prevent conflicts and stall their recrudescence.<sup>287</sup> He also lauded the role of the United Nations regional offices in providing services to prevent conflicts and in helping post-conflict countries with good offices, mediation, dialogue, electoral assistance and assistance for security sector reform and disarmament, demobilization and reintegration, as well as the African Union's resort to a wide array of tools available under Chapter VI of the Charter.<sup>288</sup> The representative of the United Kingdom stated that when a crisis was on the horizon, it was necessary to spot it early, and that improving early warning systems was vital.<sup>289</sup> He mentioned the role played in this regard by the United Nations Office for West Africa and the United Nations Regional Office for Central Africa and expressed hope about the then newly established United Nations Operations and Crisis Centre.<sup>290</sup> He affirmed, in addition, that much more was necessary with regard to mediation and preventive diplomacy, denouncing the fact that too many members of the Council shied away from their responsibilities with regard to conflict prevention.<sup>291</sup> The representative of Morocco acknowledged the unprecedented mobilization in Africa to address the security and stability challenges facing the region, through the mediation of the Economic Community of West African States, the Economic Community of Central African States and the International Conference on the Great Lakes Region.<sup>292</sup> He underlined that strengthening cooperation between the United Nations and the affected

countries of the region and the subregion in order to support State institutions and the various mechanisms established at the subregional level to tackle the underlying causes of conflicts was more essential than ever.<sup>293</sup> The representative of the Republic of Korea drew attention to home-grown conflict-resolution mechanisms rooted in local practice, arguing that they could fill the gap and meet local needs for justice, peace and reconciliation.<sup>294</sup> He added that institutions of national pride and integrity, such as a forum of elders, could offer a path to conflict prevention, reconciliation and peacebuilding, which would provide the best answers to conflicts involving diverse ethnic and cultural backgrounds.<sup>295</sup> In recalling the basic tools available under the Charter in case of conflict, the representative of France noted that the Council could also send political messages, take preventive measures and even impose sanctions as necessary.<sup>296</sup> As an example, he made reference to the mediation conducted by the former President of South Africa, Thabo Mbeki, between the Sudan and South Sudan, with the support of the Council, and the Secretary-General's framework agreement on the Democratic Republic of the Congo and the Great Lakes region, supported by the African Union, showing that the United Nations and African organizations had the ability to tackle together the specific root causes of conflicts.<sup>297</sup> The representative of Rwanda affirmed that the collaboration and partnership among the Council, the African Union and its subregional organizations was of the utmost importance, and welcomed the strengthening of that cooperation over recent years, including through the Ad Hoc Working Group on Conflict Prevention and Resolution in Africa.<sup>298</sup>

#### **D. Utilization of Article 99 by the Secretary-General for the pacific settlement of disputes**

Article 99 of the Charter provides that the Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. The utilization of Article 99 by the Secretary-

<sup>284</sup> *Ibid.*, p. 14.

<sup>285</sup> *Ibid.*, p. 16 (China) and p. 18 (Luxembourg).

<sup>286</sup> *Ibid.*, p. 18.

<sup>287</sup> *Ibid.*, p. 19.

<sup>288</sup> *Ibid.*, p. 20.

<sup>289</sup> *Ibid.*, p. 21.

<sup>290</sup> *Ibid.*

<sup>291</sup> *Ibid.*

<sup>292</sup> *Ibid.*, p. 22.

<sup>293</sup> *Ibid.*, p. 23.

<sup>294</sup> *Ibid.*, p. 24.

<sup>295</sup> *Ibid.*

<sup>296</sup> *Ibid.*, pp. 24-25.

<sup>297</sup> *Ibid.*, p. 25.

<sup>298</sup> *Ibid.*, p. 27.

General was explicitly discussed in the context of two meetings relating to the implementation of the note by the President of the Security Council (S/2010/507). In those meetings, several speakers supported the practice of horizon-scanning in application of Article 99, as described below.

**Case 11  
Implementation of the note by the President of  
the Security Council (S/2010/507)**

During the discussion held at the 6870th meeting, on 26 November 2012, the representative of Luxembourg made reference to Article 99 of the Charter in affirming that the practice of horizon-scanning (initiated by the United Kingdom in November 2010) was a good example of applying that provision.<sup>299</sup> Other speakers also made reference to horizon-scanning and praised its utility for the Council, urging that it become a regular practice of the Council.<sup>300</sup>

On the same topic, at the 7052nd meeting, on 29 October 2013, the representative of the United Kingdom welcomed the Secretariat's readiness to bring troubling situations to the attention of the Council, thereby making Article 99 an active tool for conflict prevention.<sup>301</sup> Several Council members and non-members endorsed the use of means at the disposal of the Council to prevent conflicts, singling out horizon-scanning briefings from the Secretariat as a particularly useful tool to respond quickly to threats to peace and

security.<sup>302</sup> The representative of the Russian Federation, however, noted that horizon-scanning sessions had evolved into provisional discussions of issues that Council members themselves planned to discuss at a later time or that were beyond the Council's purview but were being discussed for the sole purpose of using a modern format. In his view, when the Council's programme was busy, such conduct became unnecessary.<sup>303</sup>

The representative of France also made reference to the utilization of Article 99 by the Secretary-General, in the context of the impasse that the Security Council faced in the context of the Syrian conflict owing to the use of the right of veto. He recalled the President of France's proposal to create a code of conduct, with guidelines for the use of the right of veto, and he emphasized that it would entail the suspension of the right of veto when a situation involving a crime on a massive scale was considered to have occurred.<sup>304</sup> In that connection, the representative of France suggested that, in the spirit of Article 99 of the Charter, the Secretary-General could have a central role in establishing an alert mechanism that would trigger the suspension of the right of veto.

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<sup>299</sup> S/PV.6870, p. 26.

<sup>300</sup> Ibid., p. 3 (Portugal); p. 7 (Germany); p. 9 (United Kingdom); p. 24 (New Zealand); and p. 30 (Switzerland).

<sup>301</sup> S/PV.7052, p. 6.

<sup>302</sup> Ibid., p. 4 (Luxembourg); p. 6 (United Kingdom); p. 16 (Australia); p. 20 (Switzerland); p. 26 (Sweden); S/PV.7052 (Resumption 1), p. 8 (New Zealand); p. 9 (Belgium, also on behalf of the Netherlands); p. 10 (Turkey); p. 12 (Spain); and p. 19 (Ireland).

<sup>303</sup> S/PV.7052, p. 14.

<sup>304</sup> Ibid., p. 13.