
Chapter XI

Consideration of the provisions of Chapter VII of the Charter

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Introductory note

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

The period under review was marked by a considerably expanded scope of Council action in this field. At the summit meeting of the Security Council on 31 January 1992, on the subject of its responsibility for the maintenance of international peace and security, the hope was expressed that this new era would present new opportunities for the maintenance of peace and security on a global scale. At the same time, the risks resulting from the break-up and the transformation of several Member States were highlighted.¹

In a statement adopted at the conclusion of that meeting,² the members of the Council reaffirmed their commitment to the collective security system of the Charter to deal with threats to peace and to reverse acts of aggression, and expressed the belief that there were now new favourable international circumstances under which the Security Council had begun to fulfil more effectively its primary responsibility for the maintenance of international peace and security.³

During the period under review, Chapter VII of the Charter was invoked by the Security Council in an increased number of its decisions, in comparison with the period covered by the preceding Supplement (1985 to 1988). Most of those decisions related to the situation between Iraq and Kuwait and the situation in the former Yugoslavia, but the Council also adopted measures under Chapter VII of the Charter in connection with the situation in Somalia and the situation in Liberia, and in order to ensure the full cooperation of the Libyan Arab Jamahiriya in establishing responsibility for the terrorist attacks against Pan Am flight 103 and UTA flight 772.⁴

¹ See S/PV.3046. This was the first meeting of the Security Council held at the level of Heads of State and Government. For a summary of the debate, see chapter VIII, section 28.

² S/23500.

³ By that statement, the members of the Council further expressed their agreement that the world now had the best chance of achieving international peace and security since the foundation of the United Nations, but also recognized that change, however welcome, had brought new risks for stability and security, noting that some of the most acute problems resulted from change to State structures. See also the Secretary-General's remarks in his report entitled "An Agenda for Peace" (S/24111, para. 8), which the Secretary-General had been invited to prepare by Council members in that statement.

⁴ In connection with the situation between Iraq and Kuwait, see resolutions 660 (1990), third preambular para.; 661 (1990), seventh preambular para.; 664 (1990), fifth preambular para.; 666 (1990), sixth preambular para.; 667 (1990), tenth preambular para.; 670 (1990), thirteenth preambular para.; 674 (1990), eighth preambular para.; 677 (1990), fourth preambular para.; 678 (1990), fifth preambular para.; 686 (1991), fifth preambular para.; 687 (1991), twenty-sixth preambular para.; 689 (1991), second preambular para.; 692 (1991), third preambular para.; 699 (1991), fourth preambular para.; 700 (1991), third preambular para.; 705 (1991), second preambular para.; 706 (1991), tenth preambular para.; 707 (1991), fourteenth preambular para.; 712 (1991), fifth preambular para.; and 715 (1991), fourth preambular para.; and presidential statement of 17 June 1992 (S/24113, para. 5). In connection with items relating to the situation in the former Yugoslavia, see resolutions 713 (1991), para. 6; 724 (1991), para. 5; 757 (1992), last preambular para.; 760 (1992), second preambular para.; 770 (1992), eleventh preambular para.; 771 (1992), para. 7; and 787 (1992), paras. 9, 10 and 12. In connection with items relating to the situation in Somalia, see resolutions 733 (1992), fifth preambular para.; and 794 (1992), paras. 10 and 16. In connection with the situation in Liberia, see resolution 788 (1992), para. 8. In connection with items relating to the Libyan Arab Jamahiriya, see resolution 748 (1992), tenth preambular para. Two draft resolutions which were not put to the vote also contained explicit

This chapter will focus, in parts I to VIII, on selected material that may best serve to highlight how the provisions of Chapter VII of the Charter were interpreted by the Council in its deliberations and applied in its decisions.⁵ Given the increase in the practice of the Council under Chapter VII during the period under review, and in order to give due focus to the key relevant elements that arose in its decisions or deliberations, several Articles that were grouped together in previous Supplements have been dealt with individually in separate parts of this chapter. Thus, parts I to IV focus on the practice of the Council in accordance with Articles 39 to 42, while part V focuses on Articles 43 to 47, part VI deals with Article 48, part VII addresses Member States' obligations under Article 49, and parts VIII and IX deal, respectively, with the practice of the Council with respect to Articles 50 and 51.

references to Chapter VII: in connection with the situation between Iraq and Kuwait, see S/21742, fourth preambular para.; in connection with the letter dated 27 April 1992 from the representative of Cuba addressed to the President of the Security Council, see S/23990, tenth preambular para.

⁵ The action taken by the Council in response to threats to the peace, breaches of the peace and acts of aggression is considered in a comprehensive manner in chapter VIII.

Part I

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

Article 39

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

Note

During the period under review, the Security Council adopted one resolution in which Article 39 was explicitly invoked. By resolution 660 (1990) of 2 August 1990, the Council determined that there existed “a breach of international peace and security as regards the Iraqi invasion of Kuwait” earlier that day. Noting that it was acting under Articles 39 and 40 of the Charter, the Council condemned the Iraqi invasion and demanded that Iraq withdraw its forces immediately and unconditionally to the positions in which they had been located on 1 August 1990.

The Council also adopted several resolutions determining, or expressing concern at, the existence of a “threat to the peace”, with regard to, for example, the situation in the Middle East (Lebanon); the situation between Iraq and Kuwait; the situation in the former Yugoslavia; the situation in Somalia; items relating to the Libyan Arab Jamahiriya; and the situation in Liberia. The context in which those determinations were made and the manner in which they were formulated is set out in section A below. The Council sometimes distinguished different types of situations by describing them, variously, as threats to “international peace and security”, to “international peace and security in the region”, to “international peace and security, particularly in West Africa as a whole”, or to “peace, security and stability in the region”.⁶

⁶ See, for example, resolutions 713 (1991) (“international peace and security”); 688 (1991) (“international peace and security in the region”); 788 (1992) (“international peace and security, particularly in West Africa as a whole”); and the presidential statement of 31 March 1989 (S/20554) (“peace, security and stability in the region”).

The adoption of some of those resolutions gave rise to a constitutional discussion in the Security Council, casting light on the interpretation and application of Article 39. This discussion is reflected in section B below.

During the period under consideration, the members of the Council also identified certain generic threats to peace and security. In the statement made by the President on their behalf at the conclusion of the summit meeting held on 31 January 1992 to consider the item entitled “The responsibility of the Security Council in the maintenance of international peace and security”, the members of the Council expressed the view that the proliferation of weapons of mass destruction constitutes a threat to international peace and security; and that the non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security.⁷

In several other instances, a threat to the peace was alleged to exist by a Member State, but no such determination was made by the Security Council.⁸

⁷ S/23500.

⁸ Such allegations were made and considered in connection with, for example, the following items: (a) letters dated 4 January 1989 from the representatives of the Libyan Arab Jamahiriya and Bahrain to the President of the Council (S/PV.2835, 2836, 2839, 2840, 2841); (b) the situation relating to Afghanistan (S/PV.2852, 2853, 2855-2857, 2859, 2860); (c) the situation in Panama (S/PV.2899-2902); (d) letter dated 2 February 1990 from the representative of Cuba to the President of the Security Council (S/PV.2907); (e) the situation in the Middle East: letter dated 17 February 1992 from the representative of Lebanon to the President of the Security Council (S/PV.3053); (f) the situation relating to Nagorny-Karabakh (S/PV.3072); and (g) the situation in Georgia (S/PV.3121).

A. Decisions of the Security Council relating to Article 39

1. Breach of the peace

The situation between Iraq and Kuwait

By resolution 660 (1990) of 2 August 1990, the Security Council expressed alarm at the invasion of Kuwait earlier that day by the military forces of Iraq, and determined that there existed “a breach of international peace and security as regards the Iraqi invasion of Kuwait”.⁹

2. Threat to the peace

The situation in the Middle East (Lebanon)

In a statement made by the President of the Council on behalf of the members of the Council at the 2951st meeting on 31 March 1989,¹⁰ the members of the Council expressed their grave concern at the recent deterioration of the situation in Lebanon, which had left many victims among the civilian population and caused considerable material damage. They expressed the view that this situation posed “a threat ... to peace, security and stability in the region”. The members of the Council reaffirmed the statement of 31 March 1989 in a further presidential statement¹¹ made at the 2858th meeting, on 24 April 1989.¹²

The situation between Iraq and Kuwait

By resolution 674 (1990) of 29 October 1990, the Council expressed alarm at “the dangers of the present crisis caused by the Iraqi invasion and occupation of Kuwait, which directly threaten international peace and security”.

⁹ The Council recalled or reaffirmed resolution 660 (1990) in many of its subsequent decisions, including resolutions 664 (1990), 665 (1990), 667 (1990), 670 (1990), 674 (1990), 678 (1990), 686 (1991) and 687 (1991).

¹⁰ S/20554.

¹¹ S/20602.

¹² In a letter to the President of the Security Council dated 15 August 1989 (S/20789), the Secretary-General informed the Council that he regarded the crisis in Lebanon as a serious threat to international peace and security, and asked that the Council be convened urgently. In response to the Secretary-General's appeal, the Council held a meeting the same day, at which it adopted a statement (S/20790) reaffirming its statement of 24 April.

In resolution 687 (1991), of 3 April 1991, the Council stated that it was “conscious of the threat that all weapons of mass destruction pose to peace and security in the area and of the need to work towards the establishment in the Middle East of a zone free of such weapons”.

The situation between Iraq and Kuwait (repression of the Iraqi civilian population in parts of Iraq)

By resolution 688 (1991) of 5 April 1991, the Council stated that it was “Gravely concerned by the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, which led to a massive flow of refugees towards and across international frontiers and to cross-border incursions which threaten international peace and security in the region”.¹³

At the 3059th meeting of the Council, on 11 March 1992, the President made a statement on behalf of the Council, the relevant part of which reads:¹⁴

34. The members of the Council are particularly concerned at the reported restrictions on the supplies of essential commodities, in particular food and fuel, which have been imposed by the Government of Iraq on the three northern governorates of Dohuk, Erbil and Sulaymaniyya. In this regard, as the Special Rapporteur has noted in his report, inasmuch as the repression of the population continues, the threat to international peace and security in the region mentioned in resolution 688 (1991) remains.

The situation in the former Yugoslavia

By resolution 713 (1991) of 25 September 1991, the Council stated that it was “Deeply concerned by the fighting in Yugoslavia, which is causing a heavy loss of human life and material damage, and by the consequences for the countries of the region, in particular in the border areas of neighbouring countries”. The Council expressed concern “that the continuation of this situation constitutes a threat to international peace and security”.

The Council recalled or reaffirmed resolution 713 (1991) in subsequent resolutions, two of which contained express references to the continued existence

¹³ The Council reaffirmed resolution 688 (1991) in resolution 706 (1991).

¹⁴ S/23699.

of a threat to international peace and security. In resolution 721 (1991), adopted on 27 November 1991, the Council stated that it was “deeply concerned by the fighting in Yugoslavia and by the serious violations of earlier ceasefire agreements, which have caused heavy loss of human life and widespread material damage, and by the consequences for the countries of the region”. The Council noted “that the continuation and aggravation of this situation constitutes a threat to international peace and security”. In resolution 743 (1992), of 21 February 1992, by which the Council decided to establish a United Nations Protection Force, the Council expressed concern “that the situation in Yugoslavia continues to constitute a threat to international peace and security as determined in resolution 713 (1991)”.

*Items relating to the situation in the
former Yugoslavia (the situation in Bosnia
and Herzegovina)*

In a statement made by the President on behalf of the Council at its 3070th meeting, on 24 April 1992,¹⁵ the Council noted “with deep concern the rapid and violent deterioration of the situation in Bosnia and Herzegovina, which in addition to causing an increasing number of deaths of many innocent victims further risks compromising peace and security in the region”. By resolution 757 (1992) of 30 May 1992, the Council determined “that the situation in Bosnia and Herzegovina and in other parts of the former Socialist Federal Republic of Yugoslavia constitutes a threat to international peace and security”. In resolution 770 (1992), of 13 August 1992, the Council “recognized that the situation in Bosnia and Herzegovina constitutes a threat to international peace and security and that the provision of humanitarian assistance in Bosnia and Herzegovina is an important element in the Council’s effort to restore international peace and security in the area”.

In a statement made by the President on behalf of the Council at the 3132nd meeting, on 30 October 1992,¹⁶ the Council stated that it remained “concerned by the continuing conflict in the Republic of Bosnia and Herzegovina with its resultant loss of life and material damage, which threaten international peace and security”. By resolution 787 (1992) of 16 November

1992, the Council reaffirmed its determination “that the situation in the Republic of Bosnia and Herzegovina constitutes a threat to the peace”, and reaffirmed “that the provision of humanitarian assistance in the Republic of Bosnia and Herzegovina is an important element in the effort by the Council to “restore peace and security in the region”.

In a statement made by the President on behalf of the Council at its 3146th meeting, on 9 December 1992,¹⁷ the Council stated that it was “alarmed by the most recent reports that Serb militia in the Republic of Bosnia and Herzegovina have renewed their offensive in Bosnia and Herzegovina, and in particular against the city of Sarajevo, resulting in further loss of life and material damage as well as in endangering the security of the United Nations Protection Force and international relief workers, thus threatening international peace and security”.

Items relating to the situation in Somalia

By resolution 733 (1992) of 23 January 1992, the Council stated that it was “Gravely alarmed at the rapid deterioration of the situation in Somalia and the heavy loss of human life and widespread material damage resulting from the conflict in the country and aware of its consequences on stability and peace in the region”. The Council voiced its concern that “the continuation of this situation constitutes, as stated in the report of the Secretary-General, a threat to international peace and security”.

In four subsequent resolutions, the Council stated that it was “deeply disturbed by the magnitude of the human suffering caused by the conflict and concerned that [the continuation of] the situation in Somalia constitutes a threat to international peace and security”.¹⁸

In resolution 794 (1992) of 3 December 1992, the Council determined “that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security”.

¹⁷ S/24932.

¹⁸ See, respectively, resolutions 746 (1992), 751 (1992), 767 (1992) and 775 (1992). The last two resolutions, adopted following further deterioration of the humanitarian situation in Somalia, omit the language in square brackets.

¹⁵ S/23842.

¹⁶ S/24744.

Items relating to the Libyan Arab Jamahiriya

By resolution 731 (1992) of 21 January 1992, the Council urged the Government of the Libyan Arab Jamahiriya immediately to provide a full and effective response to the requests made by France, the United Kingdom and the United States to cooperate fully in establishing responsibility for the terrorist acts carried out against Pan Am flight 103 and UTA flight 772. In resolution 748 (1992) of 31 March 1992, the Council determined “that the failure by the Libyan Government to demonstrate by concrete actions its renunciation of terrorism and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992) constitute a threat to international peace and security”.

The situation in Liberia

In resolution 788 (1992) of 19 November 1992, the Council expressed regret “that parties to the conflict in Liberia have not respected or implemented the various accords to date, especially the Yamoussoukro IV Agreement”, and determined that “the deterioration of the situation in Liberia constitutes a threat to international peace and security, particularly in West Africa as a whole”.

B. Constitutional discussion arising in connection with Article 39

A number of issues were discussed at the meetings of the Council leading up to its determinations of the existence of a breach of the peace or threat to the peace that cast light on the interpretation and application of Article 39. These are considered below.

Military invasion constituting a breach of the peace

Case 1

The situation between Iraq and Kuwait

On 2 August 1990, the Security Council met urgently, at the request of the representatives of Kuwait and the United States,¹⁹ to consider “the invasion of Kuwait by Iraqi forces”. The representative of Kuwait reported that, in the early hours of that day, Iraqi forces

had crossed Kuwait’s borders, penetrated Kuwait’s territory and reached the populated area of the country. They had occupied ministries, and the headquarters of the Government had been shelled. Baghdad Radio had announced that the aim of the invasion of Kuwait was to stage a coup d’état to overthrow the regime and establish a new regime and a Government friendly to Iraq. The representative assured the Council, however, that the Amir, the Prime Minister, and the Government of Kuwait remained in control in Kuwait and were defending the country’s security.²⁰

In response, the representative of Iraq claimed that the events taking place in Kuwait were “internal matters which have no relation to Iraq”. The “Free Provisional Government of Kuwait” had requested the Government of Iraq to assist it to establish security and order. The Iraqi forces would withdraw as soon as order had been restored.²¹

The representative of the United States disputed the Iraqi account of events. According to reports received from the United States Embassy in Kuwait, Iraqi military forces had crossed over into Kuwaiti territory all along the frontier and rapidly proceeded to Kuwait City where they currently were. There had been opposition to the movement of those military forces, firing and combat; Kuwaiti forces were resisting the advance of the Iraqis. The representative observed that the Iraqis had made a serious mistake: “instead of staging their coup d’état and installing this so-called free provisional government before the invasion, they got it the wrong way around: they invaded Kuwait and then staged the coup d’état in a blatant and deceitful effort to justify their action”.²²

The representative of the United Kingdom similarly condemned the “full-scale invasion” of Kuwait’s territory by Iraq. He dismissed the Iraqi account in the following terms: “Thus, we have an invasion from the outside; ... a phoney coup d’état from within; and ... the purported establishment of a puppet government”. Describing the invasion as “an unquestionable act of aggression,” he welcomed the invocation of articles 39 and 40 in the draft resolution before the Council.²³

²⁰ S/PV.2932, p. 6.

²¹ Ibid., p. 11.

²² Ibid., pp. 12-13.

²³ Ibid., pp. 19-21.

¹⁹ See S/21423 and S/21424.

Other Council members uniformly condemned the Iraqi invasion of Kuwait's territory, with some describing it as an act of aggression.²⁴ Nine members jointly sponsored the draft resolution, adopted as resolution 660 (1990),²⁵ by which the Council determined that there existed a breach of international peace and security as regards the Iraqi invasion of Kuwait; and, acting under Articles 39 and 40 of the Charter, condemned the invasion and demanded that Iraq withdraw immediately and unconditionally all its forces to the positions in which they had been located on 1 August 1990.

Consequences of the repression of a civilian population constituting a threat to the peace

Case 2

Items relating to the situation between Iraq and Kuwait

In response to requests contained in letters dated 2 and 4 April 1991 from the representatives of Turkey and France to the President of the Security Council,²⁶ the Council, at its 2982nd meeting, considered the situation resulting from the repression of the Iraqi civilian population in parts of Iraq. The Council had before it a draft resolution by which it would find that the consequences of the repression — which had “led to a massive flow of refugees towards and across international frontiers and to cross-border incursions” — threatened international peace and security in the region.²⁷

The representative of Turkey stated that his Government had requested the meeting in view of the “grave threat to the peace and security of the region posed by the tragic events taking place in Iraq”. He described the situation in the northern part of Iraq adjacent to the borders of Turkey and the Islamic Republic of Iran as especially alarming, with hundreds

of thousands of displaced persons having been driven to the Iraqi-Turkish border and having trekked across it. He denied that what was going on in northern Iraq could be justified as an internal affair of that country. Given the scale of the human tragedy and its international implications, the Council could not remain indifferent but should take urgent and forceful action to secure an immediate cessation of the repression of the inhabitants of that area.²⁸ The Iranian representative, whose country was similarly affected, stated: “it is evident that the situation inside Iraq, due to its gravity and implications for the neighbouring countries, has consequences that threaten regional and international peace and security”. He, too, believed it was incumbent upon the Council to take immediate measures to put an early end to the suffering of the Iraqi people.²⁹

Opposition to Security Council involvement in the matter was voiced, on the other hand, by the representative of Iraq, and three Council members who voted against the resolution.³⁰ The representative of Iraq denied any repression by the Iraqi Government of its citizens. He described the draft resolution under consideration as an “illegitimate intervention in Iraq's internal affairs and a violation of Article 2 of the Charter, which prohibits intervention in the internal affairs of other States”.³¹ One representative took exception to the references in the draft resolution to political developments within Iraq and to its calls for internal dialogue, which he regarded as attempts to intervene in the internal affairs of Iraq, contrary to Article 2 of the Charter. His country did not, moreover, share the view expressed in the draft resolution that there was a problem threatening international peace and security, as there was no conflict or war across the borders of Iraq with its neighbours. The issue was not, therefore, within the competence of the Security Council.³² The representatives of Zimbabwe and Cuba, similarly, considered that a domestic political conflict lay at the core of the situation referred to in the draft resolution. The serious humanitarian situation that had arisen and the question of refugees gave cause for concern but could be adequately addressed, in their view, by the appropriate organs of the United Nations.

²⁴ Ibid., p. 16 (Colombia); p. 17 (Canada); p. 18 (France); pp. 18-19 (Malaysia); p. 22 (Finland); p. 23 (Soviet Union, China); and pp. 24-25 (Romania).

²⁵ Resolution 660 (1990) was adopted by 14 votes to none. Yemen did not participate in the voting.

²⁶ S/22435 and S/22442.

²⁷ By the draft resolution (adopted, without amendment, as resolution 688 (1991)), the Council would also demand that Iraq immediately end the repression, and insist that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance.

²⁸ S/PV.2982, pp. 4-8.

²⁹ Ibid., pp. 13-15.

³⁰ Cuba, Yemen, Zimbabwe.

³¹ Ibid., p. 17.

³² Ibid., p. 27 (Yemen).

Although the humanitarian dimensions affected neighbouring States, that did not make the internal conflict in Iraq an issue of which the Council should be seized.³³ The representative of India, who abstained in the vote, stated that his delegation had sought to focus the attention of the Council on the aspect of the threat or likely threat to peace and security in the region, rather than on the factors that had created the current situation. He believed that the Council should have concentrated on the former and left the other aspects to other, more appropriate organs of the United Nations.³⁴ The representative of China, too, while noting the international aspects of the situation in Iraq, considered that they should be settled through the appropriate channels.³⁵

Most Council members, however, rejected the argument that the matter was in some way outside the scope of the Council, that it was an entirely internal matter. They were of the view that, while the situation under consideration related to the internal policy of Iraq, the transboundary impact of Iraq's treatment of its civilian population clearly threatened peace and security in the region. They saw it as the Council's legitimate responsibility to respond to the concerns raised by Turkey, the Islamic Republic of Iran and other neighbouring countries at the huge surge of Iraqi refugees which was destabilizing the region.³⁶ The draft resolution was adopted as resolution 688 (1991).³⁷

³³ Ibid., pp. 31-32 and 46-52, respectively.

³⁴ Ibid., p. 63.

³⁵ Ibid., pp. 55-56.

³⁶ Ibid., p. 22 (Romania); p. 36 (Ecuador); p. 37 (Zaire); p. 41 (Côte d'Ivoire); p. 53 (France); p. 56 (Austria); pp. 57-58 (United States); pp. 60-61 (Soviet Union); p. 65 (United Kingdom); and p. 67 (Belgium). Similar views were expressed by a number of non-members: see S/PV.2982, pp. 9-10 (Pakistan); p. 69 (Italy); p. 74 (Luxembourg); and p. 92 (Canada).

³⁷ The resolution was adopted by 10 votes to 3 (Cuba, Yemen, Zimbabwe), with 2 abstentions (China, India).

Threats to international peace and security arising from internal conflicts

Case 3

Items relating to the situation in the former Yugoslavia

At the request of several Member States,³⁸ the Security Council met to consider "the deteriorating situation regarding Yugoslavia", the continuation of which was likely to endanger the maintenance of international peace and security. The meeting was welcomed by the Government of Yugoslavia, which expressed the hope that the Council would be able to adopt a resolution that would contribute to the efforts to bring peace to all Yugoslavs.³⁹ It was held at ministerial level, 10 Council members being represented by their Foreign Ministers.

Speaking at the beginning of the debate, the Minister for Foreign Affairs of Yugoslavia observed that the Council's concern with his country was fully justified: "The Yugoslav crisis threatens peace and security on a large scale. Yugoslavia is in conflict with itself". He added that the Yugoslav crisis had jeopardized not only the present and future of the Yugoslav peoples, but also peace and stability in Europe.⁴⁰

The representative of Belgium stated that it had become essential for the Council to deal with the situation in Yugoslavia. He pointed to the intensification of the fighting, the loss of human life and the significant material damage, and, above all, to the consequences for the other countries of the region, particularly the bordering countries. For Belgium, it was "obvious that this situation is a threat to regional peace and security": the threat was particularly destabilizing as it was occurring in an extremely delicate context of political and economic change in Central and Eastern Europe.⁴¹ This view was shared by other Council members, several of whom stressed the

³⁸ Letters dated 19, 20 and 24 September 1991 from the representatives of Austria, Canada and Hungary to the President of the Security Council (S/23052, S/23053 and S/23057, respectively).

³⁹ Letter dated 24 September 1991 from the representative of Yugoslavia to the President of the Security Council (S/23069).

⁴⁰ S/PV.3009, pp. 6 and 11.

⁴¹ Ibid., p. 21.

fact that the conflict had begun to spill over national borders, giving it an international dimension.⁴²

A number of Council members⁴³ emphasized that, in the light of the Charter provisions concerning non-interference in the internal affairs of a Member State, the explicit agreement of the Government of Yugoslavia to the Council's involvement in the Yugoslav crisis had been a decisive factor in their decision support the draft resolution (unanimously adopted at the meeting as resolution 713 (1991)).

The first two preambular paragraphs of resolution 713 (1991) refer explicitly to the fact that Yugoslavia had welcomed the decision to convene a meeting of the Security Council, and the statement made by the Minister for Foreign Affairs of Yugoslavia at the meeting. The third and fourth paragraphs read:

Deeply concerned by the fighting in Yugoslavia, which is causing a heavy loss of human life and material damage, and by the consequences for the countries of the region, in particular in the border areas of neighbouring countries,

Concerned that the continuation of this situation constitutes a threat to international peace and security.

Case 4

Items relating to the situation in the former Yugoslavia (Bosnia and Herzegovina)

By resolution 757 (1992) of 30 May 1992, the Security Council determined "that the situation in Bosnia and Herzegovina and in other parts of the former Socialist Federal Republic of Yugoslavia constitutes a threat to international peace and security".

At the Council meeting at which that resolution was adopted, the Council members expressed differing views with regard to the nature of the threat. Some speakers saw the threat to the peace as emanating essentially from ethnic strife within Bosnia and Herzegovina, which threatened to spill over into other countries.⁴⁴ Others, including sponsors of the

⁴² Ibid., pp. 46-48 (India); p. 51 (Soviet Union); p. 57 (United Kingdom); and p. 58 (United States).

⁴³ Ibid., p. 27 (Ecuador); p. 28 (Zimbabwe); p. 36 (Yemen); p. 38 (Cuba); p. 45 (India); p. 49 (China); and p. 64 (Zaire).

⁴⁴ See, for example, the statement by the representative of the Russian Federation: "The expansion of the ethnic strife into a broader bloody conflict involving groups and forces from republics bordering on Bosnia and Herzegovina constitutes a real threat to the countries of

resolution, viewed the continuing outside interference in Bosnia and Herzegovina by the Belgrade authorities, both military and civilian, as the decisive factor, some describing it as aggression.⁴⁵ A number of speakers noted that Bosnia and Herzegovina was, by this time, a member of the international community, having been admitted as a State Member of the United Nations on 22 May 1992.

Despite these differences, a broad majority of Council members agreed on the need to address the threat by imposing mandatory sanctions against Serbia and Montenegro under Chapter VII of the Charter.⁴⁶

Case 5

The situation in Liberia

Following a deterioration of the situation in Liberia, which had been torn by civil conflict since 1989, the Security Council held its 3138th meeting on 19 November 1992, at the request of the representative of Benin on behalf of the Economic Community of West African States (ECOWAS),⁴⁷ to consider the imposition of a general arms embargo on Liberia in support of sanctions imposed by ECOWAS. The request was endorsed by the Minister for Foreign Affairs of Liberia.⁴⁸

During the debate, the representative of Benin, speaking on behalf of an ECOWAS ministerial delegation, expressed the view that, despite the measures adopted by ECOWAS, there remained a great

the region and to international peace and security" (S/PV.3082, p. 36). See also the statement by the representative of India (ibid., pp. 20-21).

⁴⁵ See, for example, the statement made by the representative of the United States: "The aggression of the Serbian regime and the armed forces it has unleashed against Bosnia and Herzegovina represent a clear threat to international peace and security" (S/PV.3082, p. 33). See also the statement made by the representative of Hungary: "To sum up, the provisions of resolution 752 (1992) are not being complied with at all, and the aggression against Bosnia and Herzegovina is raging on" (ibid., p. 15). Venezuela observed that "Belgrade is waging war against other States, sovereign members of our Organization" (ibid., pp. 29-30).

⁴⁶ Resolution 757 (1992) was adopted by 13 votes to none. The representatives of China and Zimbabwe abstained from the voting, believing that the crisis could be settled only through negotiations.

⁴⁷ S/24735.

⁴⁸ S/24825.

risk that the civil war would spread to the entire West African subregion, and that its continuation “threatened the peace and security of the West African subregion and therefore international peace and security”.⁴⁹

The Minister for Foreign Affairs of Liberia also emphasized the international dimension of the conflict in his country. He observed: “The Liberian situation has all the makings of one that could degenerate into a wider conflagration in West Africa. By its spill-over effects, it is already a clear and present danger to neighbouring Sierra Leone; it is slowly transforming West Africa into an arms market”. Accordingly, he urged that the request to the Security Council to support the measures taken by ECOWAS be perceived “in the context of the Council’s responsibility for the maintenance of international peace and security.”⁵⁰

Similar views were expressed by other members of the ECOWAS delegation. The Foreign Minister of Sierra Leone warned that his country faced a mortal danger to its security because of the conflict in Liberia;⁵¹ the Foreign Minister of Senegal highlighted the many destabilizing consequences the crisis in Liberia had for the 16 countries of the region.⁵²

Several members of the Council also spoke of the threat posed by the civil conflict to the peace and security of the neighbouring States and the region as a whole.⁵³ Some remarked that, with thousands of refugees spilling over into neighbouring countries, the crisis in Liberia could no longer be considered a purely domestic issue to be resolved by the Liberians themselves.⁵⁴

At the end of the debate, the Council unanimously adopted resolution 788 (1992), by which it determined “that the deterioration of the situation in Liberia constitutes a threat to international peace and security, particularly in West Africa as a whole”, and imposed a general arms embargo on Liberia. In a preambular paragraph, the Council took account of the

request made by the representative of Benin on behalf of ECOWAS, and of the endorsement of that request by the Minister for Foreign Affairs of Liberia.

Case 6

The situation in Somalia

By resolution 794 (1992), which was adopted unanimously at the 3145th meeting on 3 December 1992, the Security Council determined “that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security”.⁵⁵

During the debate held in connection with the adoption of that resolution, most Council members, in line with the above description of the threat, expressed the view that the humanitarian situation itself necessitated the adoption of measures under Chapter VII of the Charter.⁵⁶ Some referred to the international or regional dimension of the crisis.⁵⁷

A number of Council members emphasized the unique character of the situation in Somalia and cautioned that the action taken by the Council should

⁵⁵ By a letter dated 29 November 1992 to the President of the Security Council (S/24868), the Secretary-General had concluded that the Council now had no alternative but to decide to adopt “more forceful measures to secure the humanitarian operations in Somalia”. Noting that no government existed in Somalia that could request and allow the use of force, he observed that it would be necessary for the Council “to make a determination under Article 39 of the Charter that a threat to the peace exists, as a result of the repercussions of the Somali conflict on the entire region, and to decide what measures should be taken to maintain international peace and security” (ibid., p. 3).

⁵⁶ For the relevant statements, see S/PV.3145, p. 12 (Ecuador); p. 18 (Cape Verde); p. 23 (Belgium); p. 26 (Russian Federation); p. 29 (France); p. 31 (Austria); pp. 33-35 (United Kingdom); p. 36 (United States); pp. 39-40 (Venezuela); p. 43 (Japan); and p. 47 (Hungary).

⁵⁷ Ibid., pp. 19-20 (Cape Verde); p. 38 (United States); p. 42 (Venezuela); and p. 44 (Morocco).

⁴⁹ S/PV.3138, pp. 8-11 and 97.

⁵⁰ Ibid., pp. 18-20.

⁵¹ Ibid., pp. 51-54.

⁵² Ibid., p. 22.

⁵³ Ibid., pp. 61-62 (Zimbabwe); p. 66 (Russian Federation); p. 69 (Cape Verde); p. 71 (China); p. 81 (Ecuador); pp. 84-85 (Venezuela); p. 87 (India); and p. 89 (Morocco). See also, to similar effect, the statement made by the representative of Egypt, not a member of the Council (ibid., pp. 93-95).

⁵⁴ Ibid., p. 62 (Zimbabwe); and p. 87 (India).

not be seen as a precedent.⁵⁸ Others, however, thought that Council action demonstrated its capacity to adapt to the new challenges of the post-cold-war world.⁵⁹

**Insufficient action by a State against terrorism
constituting a threat to the peace**

Case 7

Items relating to the Libyan Arab Jamahiriya

At its meeting on 21 January 1992, the Security Council considered letters dated 20 and 23 December 1991 from France, the United Kingdom and the United States to the Secretary-General,⁶⁰ alleging the involvement of Libyan Government officials in the destruction of Pan Am flight 103 and UTA flight 772 and making specific requests of the Libyan authorities relating to the judicial procedures that were under way. By resolution 731 (1992), the Council urged the Libyan Government to provide a full and effective response to those requests to cooperate fully in establishing responsibility for the terrorist acts, so as to contribute to the elimination of international terrorism. During the debate held in connection with the adoption of that resolution, several members of the Council described attacks against civilian aircraft, as in the case at hand, and acts of international terrorism in general, as acts that threaten international peace and security.⁶¹ The representative of the Libyan Arab Jamahiriya asserted, however, that his country had never threatened another and could not “behave in such a way as to endanger peace and security”.⁶²

At its 3063rd meeting, on 31 March 1992, the Council adopted resolution 748 (1992), by which it determined that the failure by the Libyan Government

to demonstrate by concrete actions its renunciation of terrorism, and in particular its continued failure to respond fully and effectively to the requests in resolution 731 (1992), constituted a threat to international peace and security.⁶³ Having made that determination, the Council imposed certain measures on the Libyan Arab Jamahiriya.⁶⁴ In the debate leading to the adoption of resolution 748 (1992), the representative of the Libyan Arab Jamahiriya contended that the situation before the Council did not involve a threat to the peace, breach of the peace or act of aggression, but was a legal dispute concerning who should investigate the accused and who should put them on trial. In his view, it was inappropriate, therefore, to invoke Chapter VII in the draft resolution under consideration.⁶⁵ Several Council members⁶⁶ and other Member States,⁶⁷ while not directly addressing the question of the existence of a threat to the peace, shared the view of the Libyan Arab Jamahiriya that the means of peaceful settlement set out under Chapter VI of the Charter had not been exhausted and that resort to Chapter VII was premature. The sponsors of the draft resolution,⁶⁸ on the other hand, stressed that the evidence revealing the involvement of the Libyan Arab Jamahiriya in these acts of terrorism indicated a serious breach of international peace and security, fully justifying the adoption by the Council of measures

⁵⁸ *Ibid.*, p. 7 (Zimbabwe); pp. 12-14 (Ecuador); p. 17 (China); and pp. 49 and 51 (India). Resolution 794 (1992) recognizes the “unique character of the present situation in Somalia” and notes that its “deteriorating, complex and extraordinary nature” requires “an immediate and exceptional response” (second preambular para.).

⁵⁹ *Ibid.*, p. 30 (France); p. 31 (Austria); p. 36 (United States); and p. 48 (Hungary).

⁶⁰ S/23306, S/23307, S/23308, S/23309 and S/23317.

⁶¹ See S/PV.3033, p. 47 (Canada); p. 72 (Ecuador); pp. 78-79 (United States); p. 82 (France); p. 83 (Belgium); pp. 87-89 (Russian Federation); p. 91 (Hungary); pp. 92-93 (Austria); and pp. 102-103 (United Kingdom).

⁶² *Ibid.*, p. 23.

⁶³ In the preamble to resolution 748 (1992), the Council also stated its conviction that “the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is essential for the maintenance of international peace and security”. Further, it reaffirmed that, in accordance with the principle in Article 2 (4) of the Charter, “every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when such acts involve a threat or use of force”.

⁶⁴ See the discussion on Article 41 in part III of the present chapter.

⁶⁵ S/PV.3063, pp. 19-20.

⁶⁶ *Ibid.*, pp. 46-47 (Cape Verde); p. 52 (Zimbabwe); pp. 57-58 (India); pp. 60-61 (China); and pp. 63-64 (Morocco); all of those members abstained from voting on the resolution.

⁶⁷ *Ibid.*, pp. 23-30 (Jordan, on behalf of the Group of Arab States); pp. 32-33 (Mauritania, on behalf of the States members of the Arab Maghreb Union); pp. 34-37 (Iraq); pp. 39-40 (Uganda); pp. 42-44 (observer for the Organization of the Islamic Conference).

⁶⁸ *Ibid.*, pp. 66-67 (United States); pp. 68-69 (United Kingdom); and pp. 73-74 (France).

pursuant to Chapter VII of the Charter. That view was echoed by several other Council members.⁶⁹

⁶⁹ Ibid., p. 76 (Hungary); p. 77 (Austria); pp. 79-81 (Russian Federation); pp. 81-82 (Belgium); and pp. 82-83 (Venezuela).

Part II

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

Article 40

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

Note

During the period under consideration, the Security Council adopted one resolution explicitly under Article 40 of the Charter. By resolution 660 (1990) of 2 August 1990, the Council, noting that it was acting under Articles 39 and 40, condemned the Iraqi invasion of Kuwait; demanded that Iraq withdraw immediately and unconditionally all its forces to the positions in which they had been located on 1 August 1990; and called upon Iraq and Kuwait to begin immediately intensive negotiations for the resolution of their differences.

In a number of other resolutions adopted under Chapter VII, the Security Council, without expressly referring to Article 40, also called upon the parties to comply with certain provisional measures in order to prevent an aggravation of the situation concerned. The types of measures called for included (a) the withdrawal of armed forces; (b) the cessation of hostilities; (c) the conclusion or observance of a ceasefire; (d) the negotiation of differences and disputes; (e) compliance with obligations under international humanitarian law; (f) the creation of the

conditions necessary for the unimpeded delivery of humanitarian assistance; and (g) cooperation with peacekeeping efforts and humanitarian assistance. Some of the specific measures that the Council called upon the parties concerned to take are summarized chronologically in section A below, by agenda item.

A number of Council resolutions contained warnings that, in the event of failure to comply with the terms of those resolutions, the Council would meet again and consider further steps. Those warnings, which might be considered as falling under Article 40, were expressed in various ways. Frequently, the Council warned that it would consider taking further measures if its calls were not heeded.⁷⁰ In one instance, the Council signalled its decision to “consult urgently to take further concrete measures as soon as possible, under Chapter VII of the Charter”.⁷¹

During the Council’s deliberations in the period under review there was no significant constitutional discussion regarding Article 40. There were only occasional references made to it or its language to support a specific demand relating to the question

⁷⁰ See, for example, the following resolutions: in connection with the situation between Iraq and Kuwait, resolutions 660 (1990), para. 4; and 674 (1990), para. 10; in connection with items relating to the situation in the former Yugoslavia, resolutions 752 (1992), para. 14; 757 (1992), fourteenth preambular para.; 761 (1992), para. 4; 771 (1992), para. 7; 781 (1992), para. 6; 786 (1992), para. 6; and 787 (1992), para. 5; in connection with the situation in Somalia, resolution 767 (1992), para. 4.

⁷¹ Resolution 667 (1990), para. 6, in connection with the situation between Iraq and Kuwait.

under consideration.⁷² The binding effect of certain provisional measures under Article 40 was stressed by Council members, notably in connection with the Iraqi invasion of Kuwait.⁷³

Decisions of the Security Council relating to Article 40

The situation between Iraq and Kuwait

The Council, having determined that Iraq's invasion of Kuwait constituted a breach of international peace and security, adopted a number of resolutions, by which, inter alia, it demanded that Iraq withdraw immediately and unconditionally all its forces to the positions where they were located on 1 August 1990;⁷⁴ called upon Iraq and Kuwait to begin immediately intensive negotiations to resolve their differences;⁷⁵ demanded that Iraq rescind its actions purporting to annex Kuwait;⁷⁶ demanded that Iraq permit and facilitate the immediate departure from Kuwait and Iraq of third-State nationals and grant immediate and continuing access of consular officials to such nationals; demanded that Iraq take no action to jeopardize the safety, security or health of such

nationals; and demanded that Iraq rescind its orders for the closure of consular and diplomatic missions in Kuwait and the withdrawal of the immunity of their personnel, and refrain from any such actions in the future.⁷⁷

The Council further demanded the immediate release of those foreign nationals abducted from diplomatic premises; demanded that Iraq immediately and fully comply with its international obligations under preceding Security Council resolutions, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and international law; and demanded that Iraq immediately protect the safety and well-being of diplomatic and consular personnel and premises in Kuwait and in Iraq and take no action to hinder the diplomatic and consular missions in the performance of their functions. The Council signalled its decision to "consult urgently to take further concrete measures as soon as possible, under Chapter VII of the Charter, in response to Iraq's continued violation of the Charter of the United Nations, of resolutions of the Security Council and of international law".⁷⁸

On 29 November 1990, the Council noted that, despite all efforts by the United Nations, Iraq refused to comply with its obligation to implement resolution 660 (1990) and subsequent resolutions. It demanded that Iraq comply fully with those resolutions, and decided, while maintaining all its decisions, to allow Iraq one final opportunity, "as a pause of goodwill", to do so. It authorized Member States co-operating with the Government of Kuwait, unless Iraq fully implemented those resolutions on or before 15 January 1991, "to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area".⁷⁹

Items relating to the situation between Iraq and Kuwait

In April 1991, the Security Council condemned the repression of the Iraqi civilian population in many

⁷² Two explicit references were made to Article 40 during the Council's proceedings. During the consideration of the situation between Iraq and Kuwait, the representative of the United Kingdom welcomed the invocation of Articles 39 and 40 in resolution 660 (1990) (S/PV.2932, pp. 19-21). During the consideration of items relating to the Libyan Arab Jamahiriya, the representative of the Libyan Arab Jamahiriya contended that Article 40 required the Security Council, before making recommendations or deciding upon the measures provided for in Article 39, to call upon the parties to a dispute to comply with such provisional measures as it deemed necessary or desirable; and that the Council must then take account of whether the parties to the dispute did or did not take such provisional measures. It could not "jump directly" to Article 41 (S/PV.3063, pp. 19-21).

⁷³ See, for example, commenting on resolution 660 (1990), the statements of the representatives of the United States, France, Canada, the United Kingdom and China (S/PV.2933, pp. 16, 21, 23, 26 and 28).

⁷⁴ Resolution 660 (1990), para. 2. By resolution 661 (1990), the Council imposed economic measures against Iraq to secure its compliance with that demand and to restore the authority of the legitimate Government of Kuwait: see also part III of the present chapter, on Article 41.

⁷⁵ Resolution 660 (1990), para. 3.

⁷⁶ Resolution 662 (1990), para. 3.

⁷⁷ Resolution 664 (1990), paras. 1, 2 and 3; reaffirmed in resolution 674 (1990), paras. 3, 4 and 6.

⁷⁸ Resolution 667 (1990), paras. 1, 2, 3, 4 and 6; reaffirmed in resolution 674 (1990), paras. 3 and 6.

⁷⁹ Resolution 678 (1990); see also part IV of the present chapter, on Article 42.

parts of Iraq, most recently in Kurdish-populated areas, the consequences of which, it found, threatened international peace and security in the region. The Council demanded that Iraq, as a contribution to removing the threat to international peace and security in the region, end that repression, and, in the same context, expressed the hope that an open dialogue would take place to ensure that the human and political rights of all Iraqi citizens were respected. It further insisted that Iraq allow immediate access by international humanitarian organizations to all those in need of assistance in all parts of Iraq and make available all necessary facilities for their operations.⁸⁰

Items relating to the situation in the former Yugoslavia

The Security Council expressed concern that the continuation of the situation in Yugoslavia constituted a threat to international peace and security. It strongly urged all parties to abide by ceasefire agreements entered into in September 1991; and appealed urgently to and encouraged all parties to settle their disputes peacefully and through negotiation at the Conference on Yugoslavia, including through the mechanisms set forth within it.⁸¹ It further strongly urged the Yugoslav parties to comply fully with an agreement signed at Geneva on 23 November 1991.⁸² It also strongly urged all States and parties to refrain from any action which might contribute to increasing tension, to inhibiting the establishment of an effective ceasefire and to impeding or delaying a peaceful and negotiated outcome to the conflict in Yugoslavia.⁸³

The Council urged all parties to honour the commitments made in November 1991 at Geneva and in January 1992 in Sarajevo.⁸⁴ The Council subsequently established the United Nations Protection Force, and once again urged all parties and others concerned to comply strictly with the ceasefire agreements signed at Geneva and Sarajevo, and urged them to cooperate fully and unconditionally in the implementation of the United Nations peacekeeping plan. It called again upon the Yugoslav parties to cooperate fully with the Conference on Yugoslavia in

its aim of reaching a political settlement consistent with the principles of the Conference on Security and Cooperation in Europe.⁸⁵ It further urged all parties and others concerned to take all action necessary to ensure complete freedom of aerial movement for the United Nations Protection Force; and called upon them not to resort to violence, particularly in any area where the Force was to be based or deployed.⁸⁶

Items relating to the situation in the former Yugoslavia (the situation in Bosnia and Herzegovina)

The Council appealed to all parties and others concerned in Bosnia and Herzegovina to cooperate with the efforts of the European Community to bring about a ceasefire and a negotiated political solution.⁸⁷ It further made a number of demands of the parties and others concerned. It demanded that (a) all parties and others concerned in Bosnia and Herzegovina stop the fighting immediately and respect the ceasefire signed in April 1992, and cooperate with the efforts of the European Community to bring about a negotiated political solution respecting the principle that any change of borders by force is not acceptable; (b) that all forms of interference from outside Bosnia and Herzegovina, including by units of the Yugoslav People's Army as well as elements of the Croatian Army, cease immediately; (c) that those units of the Yugoslav People's Army and elements of the Croatian Army then in Bosnia and Herzegovina either be withdrawn, or be subject to the authority of the Government of Bosnia and Herzegovina, or be disbanded and disarmed; and (d) that all irregular forces in Bosnia and Herzegovina be disbanded and disarmed.⁸⁸ The Council also called upon all parties and others concerned to ensure the immediate cessation of forcible expulsions of persons from the areas where they lived and any attempts to change the ethnic composition of the population anywhere in the former Socialist Federal Republic of Yugoslavia. Further, it called upon them to ensure that conditions were established for the effective and unhindered delivery of humanitarian assistance, including safe and secure access to airports in Bosnia and Herzegovina. In addition, the Council demanded that all parties and

⁸⁰ Resolution 688 (1991), paras. 2 and 3; reaffirmed in resolution 706 (1991), eighth preambular para.

⁸¹ Resolution 713 (1991), paras. 4 and 5.

⁸² Resolution 721 (1991), para. 3.

⁸³ Resolution 724 (1991), para. 7.

⁸⁴ Resolution 727 (1992), para. 4.

⁸⁵ Resolution 743 (1992), paras. 8 and 10.

⁸⁶ Resolution 749 (1992), paras. 3-5.

⁸⁷ Resolution 749 (1992), para. 6.

⁸⁸ Resolution 752 (1992), paras. 1, 3, 4 and 5.

others concerned cooperate fully with the United Nations Protection Force and the European Community Monitoring Mission, and respect fully their freedom of movement and the safety of their personnel.⁸⁹ At the end of May 1992, the Council, deploring the fact that these demands had not been complied with, imposed a broad range of economic, diplomatic and other measures against the Federal Republic of Yugoslavia (Serbia and Montenegro).⁹⁰

The Council continued to reiterate its calls for the cessation of hostilities, the observance of ceasefire agreements and the withdrawal of armed forces.⁹¹ It also called again upon all parties concerned to cooperate fully with the Conference on Yugoslavia and its aim of reaching a political settlement consistent with the principles of the Conference on Security and Cooperation in Europe.⁹² It further called upon the parties in the Republic of Bosnia and Herzegovina to consider the draft outline constitution for Bosnia and Herzegovina as a basis for negotiating a political settlement of the conflict in that country and to continue negotiations for constitutional arrangements on the basis of the draft outline.⁹³

The Council also made more specific appeals in connection with efforts aimed at delivering humanitarian assistance to the people of Bosnia and Herzegovina, and repeatedly called on the parties to cooperate in making such assistance possible. For example, it demanded that all parties and others concerned create immediately the necessary conditions for unimpeded delivery of humanitarian supplies to Sarajevo and other destinations in Bosnia and Herzegovina, including the establishment of a security zone encompassing Sarajevo and its airport.⁹⁴ It later demanded that all parties and others concerned cooperate fully with the United Nations Protection Force and international humanitarian agencies and organizations, failing which the Council indicated that it did not exclude other measures to deliver

humanitarian assistance to Sarajevo and its environs.⁹⁵ Recognizing that the provision of humanitarian assistance in Bosnia and Herzegovina was an important element in its effort to restore international peace and security in the area, the Council called on States to take nationally or through regional agencies or arrangements all measures necessary to facilitate the delivery of humanitarian assistance.⁹⁶

In the wake of reports of widespread violations of international humanitarian law occurring within the territory of the former Yugoslavia and especially in Bosnia and Herzegovina, including mass forcible expulsion and deportation of civilians and imprisonment and abuse of civilians in detention centres, the Council demanded that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia and Herzegovina, immediately cease and desist from all breaches of international humanitarian law. It also demanded that relevant international humanitarian organizations, in particular the International Committee of the Red Cross, be granted immediate, unimpeded and continued access to camps, prisons and detention centres within the territory of the former Yugoslavia, and called upon all parties to facilitate such access.⁹⁷ The Council further decided, acting under Chapter VII of the Charter, that all parties and others concerned in the former Yugoslavia, and all military forces in Bosnia Herzegovina, must comply with these demands, failing which the Council would “need to take further measures under the Charter”.⁹⁸

Items relating to the situation in Somalia

The Security Council expressed its concern that the continuation of the situation in Somalia constituted a threat to international peace and security. It strongly

⁸⁹ Resolution 752 (1992), paras. 6, 8 and 11.

⁹⁰ Resolution 757 (1992); see also part III of the present chapter, on Article 41.

⁹¹ See, for example, resolutions 757 (1992), 758 (1992), 761 (1992), 762 (1992), 764 (1992), 770 (1992), 779 (1992) and 787 (1992).

⁹² See, for example, resolutions 762 (1992) and 764 (1992).

⁹³ Resolution 787 (1992), para. 1.

⁹⁴ Resolutions 757 (1992), para. 17, and 758 (1992), para. 8.

⁹⁵ Resolution 761 (1992); see also resolutions 764 (1992) and 769 (1992).

⁹⁶ Resolution 770 (1992). This was followed, in October, by the establishment of a ban on military flights in the airspace of Bosnia and Herzegovina, which the Council considered an essential element for the safety of the delivery of humanitarian assistance and a decisive step for the cessation of hostilities in the country (resolution 781 (1992)); see also part III of the present chapter, on Article 41.

⁹⁷ Resolution 771 (1992); see also resolution 770 (1992).

⁹⁸ Resolution 771 (1992), para. 7; see also resolutions 780 (1992) and 787 (1992), on the establishment of a Commission of Experts to investigate the allegations.

urged all parties to the conflict immediately to cease hostilities and agree to a ceasefire, and to promote the process of reconciliation and of political settlement in the country.⁹⁹ It also called upon the parties to facilitate the delivery by the United Nations, the specialized agencies and other humanitarian organizations of humanitarian assistance to all those in need of it. In addition, it urged all parties to take all necessary measures to ensure the safety of personnel providing humanitarian assistance, to assist them, and to ensure full respect for the rules and principles of international law regarding the protection of civilian populations.¹⁰⁰ The Council took note of the signing of ceasefire agreements, and urged the Somali factions to honour their commitment under the agreements.¹⁰¹ It also urged all the Somali factions to facilitate the delivery by humanitarian organizations of humanitarian assistance to all those in need of it, and called on all parties, movements and factions in Mogadishu in particular, and in Somalia in general, to respect the security and safety of the technical team and the personnel of the humanitarian organizations and to guarantee their complete freedom of movement in and around Mogadishu and other parts of Somalia.¹⁰² By resolution 767 (1992), it reiterated those calls.¹⁰³

⁹⁹ Resolution 733 (1992), para. 4.

¹⁰⁰ Resolution 733 (1992), paras. 7 and 8.

¹⁰¹ Resolution 746 (1992), para. 2.

¹⁰² Resolution 746 (1992), paras. 3 and 8.

¹⁰³ Resolution 767 (1992), paras. 3, 7 and 9.

Further, it called upon all parties, movements and factions in Somalia to cooperate with the United Nations with a view to the deployment of United Nations security personnel mandated to escort deliveries of humanitarian supplies, and it called upon them to assist in the general stabilization of the situation in the country. The Council noted that, without such cooperation, it did “not exclude other measures to deliver humanitarian assistance to Somalia”.¹⁰⁴

The situation in Liberia

Having determined that the deterioration of the situation in Liberia constituted a threat to international peace and security, the Security Council called upon all parties to the conflict to respect and implement the ceasefire and the various accords of the peace process, and to respect strictly the provisions of international humanitarian law.¹⁰⁵

¹⁰⁴ Resolution 767 (1992), para. 4. These appeals to the Somali parties, movements and factions were reiterated in resolutions 775 (1992) and 794 (1992). In the latter resolution, the Council, acting under Chapter VII, authorized the Secretary-General and Member States cooperating “to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia”.

¹⁰⁵ Resolution 788 (1992), paras. 6 and 5, respectively. By the same resolution, the Council decided, under Chapter VII of the Charter, to impose an arms embargo against Liberia.

Part III

Measures not involving the use of armed force in accordance with Article 41 of the Charter

Article 41

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

Note

During the period under review, the Security Council imposed measures under Chapter VII, of the type provided for in Article 41, against Iraq, Yugoslavia,¹⁰⁶ the Libyan Arab Jamahiriya, Somalia and Liberia, after having determined, in each case, the existence of a breach of the peace or a threat to the peace.¹⁰⁷ The decisions of the Council by which those measures were imposed, altered or implemented will be set out in the following brief overview (section A).¹⁰⁸ This overview will be followed in

¹⁰⁶ The term “Yugoslavia” is intended to refer to both the former Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia (Serbia and Montenegro). By resolution 713 (1991) the Security Council imposed an arms embargo against the Socialist Federal Republic of Yugoslavia. By resolution 757 (1992), the Council imposed a trade embargo against the Federal Republic of Yugoslavia.

¹⁰⁷ In connection with the situation between Iraq and Kuwait, the Council made such a determination in a decision prior to the resolution imposing such measures (see resolution 660 (1990), second preambular para.). In all other situations, this determination was made by the same decision by which such measures were imposed (see the study on the practice of the Security Council in connection with Article 39 in part I of the present chapter).

¹⁰⁸ In addition to the decisions set out in this overview, attention is drawn to resolution 765 (1992) on South Africa and resolution 792 (1992) on Cambodia. By resolution 765 (1992), the Council reaffirmed the measures previously imposed against South Africa. By resolution 792 (1992), the Council, without invoking

section B by a short summary of Member States’ views, as expressed in the Council’s deliberations, on salient issues raised in connection with these measures.

A. Decisions of the Security Council relating to Article 41

1. Measures imposed against Iraq

By resolution 661 (1990) of 6 August 1990, the Council imposed a broad range of measures against Iraq in order to secure its compliance with the Council’s demand to withdraw immediately and unconditionally all its forces from the territory of Kuwait, and to restore the authority of the legitimate Government of Kuwait.¹⁰⁹ Those measures included, in particular, a ban on all international trade, but envisaged an exemption for imports of medicine and health supplies and, in humanitarian circumstances, foodstuffs. By the same resolution, the Council established a committee charged with monitoring the implementation of those measures.

By resolution 665 (1990) of 25 August 1990, the Council authorized Member States cooperating with Kuwait to use “such measures commensurate to the specific circumstances as may be necessary ... to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990)”.

Chapter VII of the Charter, inter alia, called on those concerned “to ensure that measures are taken, consistent with the provisions of Article VII of annex 2 to the Paris Agreements, to prevent the supply of petroleum products to the areas occupied by any Cambodian party not complying with the military agreements”. By the same resolution, the Council undertook “to consider appropriate measures to be implemented should the Party of Democratic Kampuchea obstruct the implementation of the peace plan, such as the freezing of the assets held by the Party of Democratic Kampuchea outside Cambodia”.

¹⁰⁹ Resolution 661 (1990) was adopted by 13 votes to none, with 2 abstentions (Cuba, Yemen). The relevant draft resolution had been sponsored by 10 members of the Council.

By resolution 666 (1990) of 13 September 1990, the Council decided that the Committee established pursuant to resolution 661 (1990) was to keep the situation regarding foodstuffs in Iraq and Kuwait under constant review, in order to make the necessary determination as to whether “humanitarian circumstances” had arisen.

By resolution 670 (1990) of 25 September 1990, the Council confirmed that the embargo applied “to all means of transport, including aircraft”.¹¹⁰

By resolution 686 (1991), which was adopted on 2 March 1991 after the suspension of the military operations conducted by an alliance of States against the Iraqi forces in accordance with resolution 678 (1990),¹¹¹ the Council affirmed that all previous resolutions, including resolution 661 (1991), continued to have full force and effect.¹¹²

By resolution 687 (1991) of 3 April 1991,¹¹³ the Council linked the termination of the measures imposed under resolution 661 (1990) to the compliance by Iraq with certain disarmament requirements, and to arrangements for the compensation of any direct loss, damage or injury suffered by foreign Governments, nationals and corporations as a result of Iraq’s unlawful invasion and occupation of Kuwait.¹¹⁴ By the same resolution, the Council endorsed the recommendation of the Committee established pursuant to resolution 661 (1990) to make the exemption for supplies of foodstuffs envisaged in resolution 661 (1990) immediately effective,¹¹⁵ and to allow for the import of

certain materials and supplies for essential humanitarian needs.¹¹⁶

By resolution 706 (1991) of 15 August 1991, the Council authorized States to permit the import of certain quantities of petroleum and petroleum products from Iraq, and decided that a portion of the proceeds of sale would be made available to the Secretary-General, to finance the purchase of foodstuffs, medicines and

the Secretary-General and ICRC on the deteriorating humanitarian situation in Iraq, the Committee established pursuant to 661 (1990) had decided “to make, with immediate effect, a general determination that humanitarian circumstances appl[ied] with respect to the entire civilian population of Iraq in all parts of Iraq’s national territory”. The Committee had also concluded that certain essential civilian and humanitarian imports to Iraq were “integrally related to the supply of foodstuffs and supplies intended strictly for medical purposes (which [were] exempt from sanctions under the provisions of resolution 661 (1990)) and that such imports should also be allowed with immediate effect”. The Committee had further decided upon “a simple notification procedure for foodstuffs supplied to Iraq and a no-objection procedure for those civilian and humanitarian imports (other than supplies intended strictly for medical purposes)”. The Committee’s decision was brought to the attention of all Member States in a note by the Secretary-General (S/22400, annex). The relevant reports prepared by the Secretariat and ICRC were attached to a letter from the Secretary-General to the President of the Security Council dated 20 March 1991 (S/22366).

¹¹⁶ See resolution 687 (1991), para. 20. The Council also empowered the Committee to approve exceptions to the “prohibition against the import of commodities and products originating in Iraq”, when necessary to ensure that Iraq possessed sufficient financial resources to purchase humanitarian supplies (para. 23). By the same resolution (para. 26), the Council requested the Secretary-General, in consultation with appropriate Governments, to develop guidelines to facilitate full international implementation of the sanctions imposed against Iraq. Under the guidelines, which were contained in the annex to the report of the Secretary-General pursuant to paragraph 26 of resolution 687 (1991) (S/22660) and approved by the Council in resolution 700 (1991), the Committee was required to advise States and international organizations on whether goods and supplies proposed to be exported to Iraq in accordance with permitted exemptions constituted items with potential for diversion or conversion to military use (“dual-use items”) (see S/22660, annex, paras. 13 and 15).

¹¹⁰ In resolution 670 (1990), which was adopted by 14 votes to 1 (Cuba) at the 2943rd meeting, the Council also confirmed, however, that the ban on flights to Iraq did not apply to deliveries of food in humanitarian circumstances, subject to authorization by the Council or the Committee, or supplies intended strictly for medical purposes.

¹¹¹ The suspension of combat operations was noted in the preamble to resolution 686 (1991), when the Council also referred to “the need to be assured of Iraq’s peaceful intentions, and the objective expressed in resolution 678 (1990) of restoring international peace and security in the region”.

¹¹² The resolution was adopted at the 2978th meeting, by 11 votes to 1 (Cuba), with 3 abstentions (China, India, Yemen).

¹¹³ The resolution was adopted at the 2981st meeting, by 12 votes to 1 (Cuba), with 2 abstentions (Ecuador, Yemen).

¹¹⁴ See resolution 687 (1991), para. 22.

¹¹⁵ On 22 March 1991, after having received reports from

materials and supplies for essential civilian needs.¹¹⁷ Resolution 712 (1991) of 19 September 1991 comprised provisions aimed at the implementation of the goals established by resolution 706 (1991).

By resolution 778 (1992) of 2 October 1992, the Council noted that Iraq had rejected both resolution 706 (1991) and resolution 712 (1991). In the light of Iraq's refusal to cooperate in the implementation of those resolutions, and in order to generate the funds required for the purposes referred to in resolution 706 (1991), the Council therefore decided that States in which there were funds representing Iraqi petroleum or petroleum products, paid for after 6 August 1990, were to transfer such funds to the escrow account established by the United Nations in accordance with resolution 706 (1991).¹¹⁸

2. Measures imposed against Yugoslavia

Embargo on arms deliveries to the former Yugoslavia

By resolution 713 (1991), adopted on 25 September 1991 following the outbreak of hostilities in the former Yugoslavia, the Council decided, under Chapter VII of the Charter, that "for the purposes of establishing peace and security in Yugoslavia", all States were to "immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Yugoslavia until the Council decide[d] otherwise following consultations between the Secretary-General and the Government of Yugoslavia".¹¹⁹

¹¹⁷ The authorization was limited to a period of six months and to a value to be determined by the Council, but not to exceed US\$ 1.6 billion. Each petroleum purchase was to be approved by the Committee. Petroleum imports also remained subject to the approval by the Council of a scheme for the purchase of humanitarian supplies. In addition to purchases of humanitarian supplies, the proceeds of sale were also to be used to finance war reparations, and costs incurred by the United Nations in carrying out specific tasks mandated by the Security Council.

¹¹⁸ Resolution 778 (1992) also envisaged that States in which there were Iraqi petroleum or petroleum products were to purchase or arrange for the sale of such petroleum or petroleum products at fair market value, and thereupon to transfer the proceeds to the said escrow account.

¹¹⁹ By resolution 724 (1991), the Council established a committee to monitor the implementation of the embargo

By resolution 727 (1992), which was adopted on 8 January 1992, after the disintegration of the Socialist Federal Republic of Yugoslavia, the Council decided that the embargo would continue to apply to all areas that had been part of Yugoslavia, any decisions on the question of the recognition of the independence of certain republics notwithstanding.¹²⁰

Measures imposed against the Federal Republic of Yugoslavia

By resolution 757 (1992) of 30 May 1992, the Council imposed a broad range of measures against the Federal Republic of Yugoslavia (Serbia and Montenegro), including a ban on all international trade and financial transactions, with the exception of "supplies intended for strictly medical purposes and foodstuffs".¹²¹ The measures adopted also included a suspension of scientific and technical cooperation and sports and cultural exchanges with the Federal Republic of Yugoslavia.

The objective of those measures was to ensure compliance with resolution 752 (1992) of 15 May 1992, by which the Council had demanded that all parties involved in Bosnia and Herzegovina stop fighting immediately and respect the ceasefire of 12 April 1992;¹²² that all forms of interference from outside Bosnia and Herzegovina cease immediately;¹²³ that action be taken regarding units of the Yugoslav People's Army in Bosnia and Herzegovina, including the disbanding and disarming of any units that were neither withdrawn nor placed under the authority of the Government of Bosnia and Herzegovina;¹²⁴ and that all irregular forces in Bosnia and Herzegovina be disbanded and disarmed.¹²⁵

imposed by resolution 713 (1991).

¹²⁰ See resolution 727 (1992), para. 6, and the report of the Secretary-General referred to therein (S/23363, para. 33).

¹²¹ Such supplies were to be notified to the Security Council Committee established pursuant to resolution 724 (1991). The exemptions provided for under resolution 757 (1992) were subsequently expanded by resolution 760 (1992), so as to include "commodities and products for essential humanitarian need". The supply of such commodities and products was subject to approval by the Committee.

¹²² Resolution 752 (1992), para. 1.

¹²³ *Ibid.*, para. 3.

¹²⁴ *Ibid.*, para. 4.

¹²⁵ *Ibid.*, para. 5.

By resolution 787 (1992) of 15 November 1992, the Council prohibited the trans-shipment of strategic goods through Yugoslavia in order to prevent their diversion in violation of resolution 757 (1992); and called upon States, acting nationally or through regional agencies or arrangements, to use “such measures commensurate with the specific circumstances as may be necessary” to halt all inward and outward maritime shipping, and all shipping on the Danube River, in order to inspect and verify cargoes and destinations.¹²⁶

3. Measures imposed against the Libyan Arab Jamahiriya

By resolution 748 (1992) of 31 March 1992, the Council banned all international air travel to and from the Libyan Arab Jamahiriya, with the exception of flights approved on grounds of significant humanitarian need; imposed a ban on the supply of aircraft and aircraft components; prohibited the supply of arms and related materials to the Libyan Arab Jamahiriya; required States to reduce the number and level of the staff at Libyan diplomatic and consular missions abroad; and restricted the travel of Libyan nationals suspected of terrorist activity.¹²⁷

The objective of these measures was to ensure that the Libyan Arab Jamahiriya would cooperate fully in establishing responsibility for the terrorist attacks against Pan Am flight 103 and UTA 772;¹²⁸ and that the Libyan Arab Jamahiriya would commit itself definitely “to cease all types of terrorist action and all assistance to terrorist groups”, which commitment was to be demonstrated by concrete actions.

4. Embargo on arms deliveries to Somalia

By resolution 733 (1992) of 23 January 1992, the Council decided, under Chapter VII of the Charter, that “for the purposes of establishing peace and security in

Somalia”, all States were to “immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Somalia” until the Council decided otherwise”.

By resolution 794 (1992) of 3 December 1992, the Council called upon States, acting nationally or through regional agencies or arrangements, “to use such measures as may be necessary” to ensure the strict implementation of the arms embargo.

5. Embargo on arms deliveries to Liberia

By resolution 788 (1992) of 19 November 1992, the Council decided, under Chapter VII of the Charter, that “for the purposes of establishing peace and security in Liberia”, all States were to “immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Liberia” until the Council decided otherwise.

B. Constitutional discussion relating to Article 41

This overview will focus on the principal arguments advanced in relation to Article 41 with respect to several situations before the Council. Special attention is given to those issues that were raised by or affected several Member States.

This section sets out case studies highlighting the arguments raised relating to the following issues:

- Discussion on measures under Article 41
- Humanitarian impact of measures under Article 41
- Employment of force in the implementation of measures under Article 41
- Duration of measures imposed under Article 41
- Obligations of States non-members of the United Nations to apply measures under Article 41.

1. Discussion on measures under Article 41

The question of the potential of measures under Article 41 of the Charter to form an effective instrument for the maintenance or restoration of international peace and security was debated extensively during the period under review, in particular in connection with the measures imposed

¹²⁶ See resolution 787 (1992), paras. 12 and 13.

¹²⁷ The resolution was adopted by 10 votes to none, with 5 abstentions (Cape Verde, China, India, Morocco, Zimbabwe). By that resolution, the Council established a committee to monitor the sanctions.

¹²⁸ By resolution 731 (1992), the Council had urged the Government of the Libyan Arab Jamahiriya immediately to provide a full and effective response to the requests of the Governments of France, the United Kingdom and the United States to cooperate fully in the relevant investigations.

against Iraq, Yugoslavia and the Libyan Arab Jamahiriya.¹²⁹

Case 8

Measures imposed against Iraq

At the 2933rd meeting, on 6 August 1990, at which the Security Council adopted resolution 661 (1990), several Council members expressed the hope that the measures imposed against Iraq by that resolution would help to ensure Iraq's compliance with the demand that Iraq withdraw its forces from the territory of Kuwait.

Noting that many individual States and several regional organizations¹³⁰ had condemned the Iraqi invasion, the representative of the United States observed that the resolution would "give effect to their condemnations of this invasion and to all calls for immediate and unconditional withdrawal". He stated that, by the proposed resolution, the Council would declare to Iraq that it would use the means ... provided in Chapter VII of the Charter to give effect to Security Council resolution 660 (1990). Iraq needed to learn "that its disregard for international law [would] have crippling political and economic costs, including, but not limited to, arms cut-offs". The speaker stated that the Council's concerted resolve would demonstrate that the international community did not — and would

not — accept "Baghdad's preference for the use of force, coercion and intimidation".¹³¹

The representative of the United Kingdom explained that "economic sanctions should not be regarded as a prelude to anything else", and stressed that economic sanctions were "designed to avoid the circumstances in which military action might otherwise arise".¹³²

The representative of Malaysia said he hoped that the broad sanctions envisaged in the draft resolution would be of short duration, given prompt compliance by Iraq with resolution 660 (1990).¹³³

Some speakers also believed that the measures could serve as a warning to help avoid similar situations in the future. The representative of Zaire noted that his vote "should be seen as a warning to all those who might be tempted to use their military force in the future to bring about institutional changes in other countries whose only fault is to be small or militarily weak".¹³⁴ The representative of Colombia believed that, in spite of the negative consequences that might result from the imposition of the measures, they had to be adopted "for the sake of peace and future generations".¹³⁵

However, the representative of Iraq, noting that his Government had already begun to withdraw its troops, claimed that the proposed resolution would only "exacerbate the crisis in the Gulf region and impede the withdrawal of forces".¹³⁶ This view was shared by the representative of Cuba, who believed that the imposition of the proposed sanctions would tend "to complicate the situation even more at a time when Iraq [had] begun withdrawing its troops", and "would also impede the current actions and efforts of the Arab States to arrive at a solution".¹³⁷ In a similar vein, the representative of Yemen contended that "the brotherly Arab means of containing the conflict [was] the valid and effective way of dealing with it".¹³⁸

¹²⁹ The question was also addressed by several speakers during the 3046th meeting of the Council, held at the level of Heads of State and Government on 31 January 1992 under the item entitled "The responsibility of the Security Council in the maintenance of international peace and security". At that meeting, the President of the United States observed that progress in achieving the aims of the Council stemmed from "acting in concert" and urged that it was necessary to deal resolutely with "renegade regimes", and "if necessary by sanctions or stronger measures, in order to compel them to observe international standards of behaviour". Moreover, terrorists and their State sponsors should know that there would be "serious consequences" if they violated international law (S/PV.3046, p. 53). This view was also held by the Minister for Foreign Affairs of Zimbabwe, whose representative advocated the increased use of economic sanctions to ensure compliance with Security Council resolutions (*ibid.*, pp. 123-125).

¹³⁰ In particular the European Union, the Gulf Cooperation Council and the Arab League, in addition to the group of non-aligned States.

¹³¹ S/PV.2933, p. 18.

¹³² *Ibid.*, p. 27.

¹³³ *Ibid.*, p. 21.

¹³⁴ *Ibid.*, p. 33.

¹³⁵ *Ibid.*, p. 51.

¹³⁶ *Ibid.*, p. 12.

¹³⁷ *Ibid.*, p. 38. (Cuba abstained from voting on the draft resolution.)

¹³⁸ *Ibid.*, p. 52. (Yemen abstained from voting on the draft resolution.)

Case 9

Arms embargo imposed against the former Yugoslavia

At the 3009th meeting, on 25 September 1991, at which the Council unanimously adopted resolution 713 (1991), a number of speakers expressly stated their hope and belief that the arms embargo imposed by that resolution would help to restore peace.

The representative of Yugoslavia, acknowledging that Yugoslavia was “in conflict with itself”¹³⁹ and that it had “not been able to resolve the crisis” on its own,¹⁴⁰ stated that it was essential “for the international community to be engaged in an active and constructive way in seeking a solution by imposing a general and complete embargo on all deliveries of weapons and military equipment to all parties in Yugoslavia”.¹⁴¹

The representative of the Union of Soviet Socialist Republics supported the decision to impose the embargo since the shipment of arms to Yugoslavia “could lead to a further exacerbation of the situation in the country, in the Balkans and in Europe as a whole”.¹⁴² The representative of France stated that the Council was “helping peace in Yugoslavia by decreeing a general and complete embargo on arms deliveries to that country”.¹⁴³ The Romanian representative referred to the “paramount importance” of instituting the embargo until peace and stability had been established, noting that “the illegal introduction of weapons to Yugoslavia had contributed, to a great extent, to the current obstacles in the way of a peaceful settlement of the Yugoslav crisis”.¹⁴⁴

However, at the open debates held on 13 and 16 November 1992,¹⁴⁵ after the disintegration of the Socialist Federal Republic of Yugoslavia, and in the light of the continued application of the embargo to all areas that previously formed part of that State,¹⁴⁶ the

representative of the newly founded Republic of Bosnia and Herzegovina, supported by a number of States non-members of the Council, contended that the continuation of the arms embargo would not help to restore peace. Instead, the cause of peace would be furthered if the embargo were selectively lifted, so that it would no longer apply to Bosnia and Herzegovina.

The representative of Bosnia and Herzegovina emphasized that “from the victims’ perspective, self-defence does not increase conflict, but rather reduce the brutal and murderous consequences of aggression directed at civilians”.¹⁴⁷ He contended that “self-defence through legitimate and lawful authorities or through international mechanisms ... makes peace a reality, rather than an uncertain and far-off goal”.¹⁴⁸

The representative of Turkey stated that if Bosnia and Herzegovina had adequate means to protect itself, then perhaps the aggressor might be induced “to resort to dialogue to overcome differences”.¹⁴⁹ The representative of Pakistan argued that lifting the embargo against Bosnia and Herzegovina would not exacerbate the conflict, contending that the experience of Croatia had indicated “that the Serbs halted their onslaught only after the Croats were enabled to put up a stiff resistance”.¹⁵⁰ The representative of the Islamic Republic of Iran believed that lifting the embargo against Bosnia and Herzegovina was “the only effective means to stop the aggression, short of international military action”.¹⁵¹

On the other hand, the representative of the United Kingdom stated that the introduction of more arms into the region “could only lead to more killing, more suffering and the jeopardizing of efforts to deliver humanitarian supplies to those in need”.¹⁵² The representative of Ecuador agreed that the lifting of the embargo against Bosnia and Herzegovina would not contribute to the cause of peace, as violence would “not be eliminated by increasing the flow of arms”.¹⁵³

¹³⁹ S/PV.3009, p. 6.

¹⁴⁰ *Ibid.*, p. 11.

¹⁴¹ *Ibid.*, p. 17.

¹⁴² *Ibid.*, pp. 52-53.

¹⁴³ *Ibid.*, p. 67.

¹⁴⁴ *Ibid.*, pp. 43-44.

¹⁴⁵ 3134th to 3137th meetings.

¹⁴⁶ By resolution 727 (1992), which was unanimously adopted at the 3028th meeting on 8 January 1992, the Council had reaffirmed the embargo and decided that it would continue to apply to “all areas that have been part of Yugoslavia, any decisions on the question of the

recognition of the independence of certain republics notwithstanding” (see paragraph 6 of that resolution and the report of the Secretary-General referred to therein (S/23363, para. 33)).

¹⁴⁷ S/PV.3134, pp. 54-55.

¹⁴⁸ *Ibid.*

¹⁴⁹ S/PV.3135, p. 25 (a-z).

¹⁵⁰ S/PV.3136, pp. 33-34.

¹⁵¹ *Ibid.*, p. 73.

¹⁵² S/PV.3135, p. 9.

¹⁵³ S/PV.3136, p. 14.

These views were shared, by Mr. Cyrus Vance and Lord Owen, co-Chairmen of the International Conference on Yugoslavia, who argued that the cause of peace would be best served by maintaining the embargo. Mr. Vance believed that lifting the arms embargo would only increase hostilities in Bosnia and Herzegovina and could spread the conflict throughout the Balkan region.¹⁵⁴ Lord Owen observed that “prohibiting arms sales tends to dampen conflict while pushing arms sales deepens conflict”.¹⁵⁵

At its 3137th meeting, on 16 November 1992, the Council adopted resolution 787 (1992), by which it reaffirmed resolution 713 (1991) and all subsequent relevant resolutions, and thereby the continued application of the arms embargo to all parties to the conflict.¹⁵⁶

Case 10

Measures imposed against the Federal Republic of Yugoslavia

At the 3082nd meeting, on 30 May 1992, at which the Council adopted resolution 757 (1992), the sponsors of that resolution, supported by several other speakers, argued that the measures imposed by that resolution against the Federal Republic of Yugoslavia would help to facilitate a solution to the conflict in Bosnia and Herzegovina.¹⁵⁷

The representative of the United States, acknowledging that the measures which the Council was about to take were “serious and comprehensive”, stated that his Government was “determined to see them through and if necessary to seek further measures”, until the Serbian regime changed course.¹⁵⁸ The representative of the United Kingdom observed that the measures were “designed purely and simply to try to bring about a peaceful solution; to bring the parties back to the negotiating table; to get them off the battlefield, to bring home to them that this [was] bankrupt policy, that it [would] lead nowhere”.¹⁵⁹ The

representative of France stated that the purpose of resolution 757 (1992) was “not to punish or isolate certain parties, but to use pressure to promote the pursuit of peace efforts and the resumption of inter-community dialogue in Bosnia and Herzegovina”.¹⁶⁰ The representative of the Russian Federation acknowledged that, in voting for the resolution, it was “discharging its obligations as a permanent member of the Security Council for the maintenance of international law and order”.¹⁶¹ The representative of Hungary expressed the view that, by adopting the resolution, the Council was reaffirming its credibility and taking “a very important step towards the containment of aggression and the restoration of peace and stability”.¹⁶² The representative of Ecuador believed that the measures would “contribute to the restoration of common sense and good judgement, especially in the minds of the leaders in the region”.¹⁶³

The representatives of China and Zimbabwe, who abstained from voting on the resolution, expressed the concern that the measures envisaged in the resolution might be counter-productive.¹⁶⁴ The representative of China believed that sanctions would “probably lead to a further deterioration of the situation”.¹⁶⁵ The representative of Zimbabwe questioned whether the imposition of sanctions would “encourage all the parties involved to cooperate fully in reaching a negotiated solution, or militate against this essential ingredient to any lasting solution”, and whether such measures would “contribute towards confidence-building among the parties involved, or lead to desperate acts by some of the parties”.¹⁶⁶

¹⁵⁴ S/PV.3134, pp. 16-17.

¹⁵⁵ *Ibid.*, p. 28.

¹⁵⁶ Resolution 787 (1992), the draft of which had been submitted by Belgium, France, Hungary, Morocco, the United Kingdom and the United States, was adopted by 13 votes to none, with 2 abstentions (China, Zimbabwe).

¹⁵⁷ S/PV.3082, p. 7 (Cape Verde); pp. 17-18 (Ecuador); p. 43 (United Kingdom); and p. 44 (Austria).

¹⁵⁸ *Ibid.*, pp. 33-34.

¹⁵⁹ *Ibid.*, p. 43.

¹⁶⁰ *Ibid.*, pp. 40-41.

¹⁶¹ *Ibid.*, p. 37.

¹⁶² *Ibid.*, p. 17.

¹⁶³ *Ibid.*, p. 18.

¹⁶⁴ *Ibid.*, pp. 9-10 and 13-14. Questions as to the usefulness of sanctions were also raised by India, which, however, “decided to defer to the collective judgement of other members of the Council” and, “in response to the international call for deterrent action”, voted in favour of the resolution (S/PV.3082, p. 24).

¹⁶⁵ S/PV.3082, pp. 9-10. China reiterated that concern at the 3137th meeting, when the Council adopted resolution 787 (1992) (S/PV.3137, p. 121).

¹⁶⁶ S/PV.3082, pp. 13-14.

Following the debate, resolution 757 (1992) was adopted with the affirmative votes of 13 members of the Council.¹⁶⁷

Case 11

Measures imposed against the Libyan Arab Jamahiriya

At the open debate held on 31 March 1992,¹⁶⁸ in connection with the adoption of resolution 748 (1992), the sponsors of that resolution,¹⁶⁹ supported by several other speakers, argued that the imposition of the proposed measures against the Libyan Arab Jamahiriya would be in conformity with the Council's responsibility for the maintenance of international peace and security.

The representative of the United States stated that, by imposing such measures, the Council was sending a message that it would use its powers under the Charter to "preserve the rule of law and ensure the peaceful resolution of threats to international peace and security".¹⁷⁰ The representative of the United Kingdom believed that the Council was fully entitled to take such measures to address terrorism, and that any other view would "seriously weaken the Council's ability to maintain peace and security in future circumstances which are unforeseen and unforeseeable".¹⁷¹ He further contended that, by adopting resolution 748 (1992), the Council was acting "in full conformity with its primary responsibility for the maintenance of international peace and security".¹⁷²

The representative of Hungary felt that the Council had to "take further measures to ensure compliance with its own resolutions", noting that it was necessary "to act individually and collectively against any terrorist challenge ... and to do everything possible to put an end once and for all to this crime against humanity".¹⁷³ The representative of Austria, describing terrorism as "the most dangerous threat to international peace and security", agreed that it was appropriate for the Security Council "to deal firmly

with this matter", noting that the proposed measures were not "punishment" but that they had been introduced "in order to make a certain member of the international community comply with its obligations under the Charter".¹⁷⁴

The representative of the Libyan Arab Jamahiriya, however, contended that the measures about to be adopted by the Council would "undermine the basis of international law and open the door to chaos, with a particular threat to the future of smaller States".¹⁷⁵

The representatives of China and Zimbabwe, who abstained from voting on the resolution, believed that such measures would not help to settle the question. The representative of China stated that the imposition of such measures would "complicate the issue further, aggravate regional tension and have serious economic consequences for the countries concerned in the region".¹⁷⁶ The representative of Zimbabwe contended that the approach taken by the Council could have "far-reaching ramifications which could cause irreparable harm to the credibility and prestige of the Organization, with dire consequences for a stable and peaceful world order".¹⁷⁷

Similar views were expressed by several States non-members of the Council. The representative of Jordan felt that the adoption of the proposed draft resolution might "undermine the hopes which the Arab people and public opinion [were] pinning on reaching a peaceful settlement satisfactory to all parties".¹⁷⁸ The representative of Iraq stated that Iraq did "not believe that harm would be done to international peace and security" if the Council showed patience and persisted in following up efforts to achieve the desired solution.¹⁷⁹ The Permanent Observer of the Organization of the Islamic Conference expressed the concern that the imposition of the proposed measures against the Libyan Arab Jamahiriya would not "help resolve the issue", but would "uselessly increase tension among members of the international

¹⁶⁷ China and Zimbabwe abstained from voting on the resolution.

¹⁶⁸ 3063rd meeting.

¹⁶⁹ France, the United Kingdom and the United States.

¹⁷⁰ S/PV.3063, p. 67.

¹⁷¹ *Ibid.*, pp. 68-69.

¹⁷² *Ibid.*, p. 72.

¹⁷³ *Ibid.*, pp. 76-77.

¹⁷⁴ *Ibid.*, p. 77.

¹⁷⁵ *Ibid.*, p. 18.

¹⁷⁶ *Ibid.*, p. 61.

¹⁷⁷ *Ibid.*, pp. 54-55.

¹⁷⁸ *Ibid.*, pp. 24-25.

¹⁷⁹ *Ibid.*, p. 37.

community”.¹⁸⁰ At the same meeting, resolution 748 (1992) was adopted by 10 affirmative votes.¹⁸¹

2. Humanitarian impact of measures under Article 41

The humanitarian impact of economic sanctions was addressed in the Council’s decisions and deliberations in connection with the measures imposed by resolution 661 (1990) on Iraq and Kuwait, by resolution 748 (1992) on the Libyan Arab Jamahiriya, and by resolution 757 (1992) on the Federal Republic of Yugoslavia.¹⁸²

A brief summary of the Council’s decisions and debates addressing humanitarian concerns in connection with the application of those measures is set out below.

Case 12

The situation between Iraq and Kuwait

Resolution 661 (1990) of 6 August 1990, by which the Council imposed a general ban on all international trade with Iraq, provided that imports of medicine and health supplies would be exempted from the ban. In addition, the resolution provided that an exemption for foodstuffs would be made in the event of “humanitarian circumstances”. By resolution 666 (1990) of 13 September 1990, the Council decided that the committee charged with monitoring the implementation of the sanctions, which had been

established by resolution 661 (1990), would keep the situation regarding foodstuffs in Iraq and Kuwait under constant review, in order to determine whether such “humanitarian circumstances” had arisen.

During debates held in August and September 1990,¹⁸³ the majority of the Council members, while acknowledging the humanitarian consequences which the sanctions regime would entail,¹⁸⁴ emphasized that it was important for the Council to show resolve in the face of Iraq’s breach of the peace.¹⁸⁵ Several speakers noted that the need for sanctions, and therefore the humanitarian problem, were a result of the Iraqi aggression, and the problem could only be solved once that aggression had been brought to an end.¹⁸⁶ Pending such a solution, it was generally believed that the humanitarian situation could be adequately addressed through the arrangements for humanitarian exemptions envisaged in resolutions 661 (1990) and 666 (1990).¹⁸⁷

However, some Council members opposed the sanctions regime, calling it inhuman,¹⁸⁸ or charged that

¹⁸⁰ Ibid., p. 44.

¹⁸¹ Cape Verde, China, India, Morocco and Zimbabwe abstained from voting on the resolution.

¹⁸² The issue of humanitarian sanctions was also addressed at the 3046th meeting of the Security Council, held at the level of Heads of State and Government on 31 January 1992 under the item entitled “The responsibility of the Security Council in the maintenance of international peace and security”. At that meeting, the Prime Minister of India emphasized that it was incumbent on the Security Council to anticipate the consequences of its decisions, arguing that it should act decisively and in a timely manner to alleviate human suffering, once the primary purpose of economic sanctions had been fulfilled (S/PV.3046, pp. 97-98). The Minister for Foreign Affairs of Zimbabwe called upon the Council to look once more at the effect of economic sanctions upon innocent civilians living in a State whose Government they could not change, observing that such people lacked the political means to reverse the very policies that had given rise to the offence being sanctioned (ibid., pp. 124-125).

¹⁸³ 2933rd, 2938th, 2939th and 2943rd meetings.

¹⁸⁴ See, for example, the statements of the representatives of Canada (S/PV.2933, pp. 24-25) and Malaysia (ibid., p. 21). In a statement made before the Council at the 2943rd meeting, the Secretary-General drew attention to the unprecedented scale of the sanctions regime (S/PV.2943, p. 7).

¹⁸⁵ S/PV.2933, pp. 24-25 (Canada); S/PV.2938, pp. 26-31 (United States); pp. 33-36 (Canada); pp. 38-40 (Zaire); pp. 48-50 (United Kingdom); pp. 50-51 (Côte d’Ivoire); and pp. 51-52 (Ethiopia).

¹⁸⁶ See for example, the statements made by the representative of Kuwait at the 2938th meeting (S/PV.2938, p. 62), and by the Secretary of State of the United States at the 2943rd meeting (S/PV.2943, p. 27).

¹⁸⁷ See, for example, the statements of the representatives of the Soviet Union (S/PV.2939, p. 72), Finland (ibid., p. 61), Malaysia (ibid., p. 60) and Zaire (ibid., pp. 44-46).

¹⁸⁸ At the 2938th meeting, the representative of Cuba stated that “no action or decision adopted or to be adopted by this Council [could] give it the political, legal or moral authority to undertake any kind of action that is in itself inhuman” (S/PV.2938, pp. 18-21). The representative reiterated his delegation’s view at the 2943rd meeting (S/PV.2943, p. 21). See also the draft resolution (S/21742/Rev.1) proposed by Cuba at the 2939th meeting, which stipulated that “access to basic foodstuffs and adequate medical assistance is a fundamental human right to be protected under all circumstances”, and that, in accordance with that principle, no action was to be taken that might “hinder

the provisions for humanitarian exemptions were inadequate or had been interpreted in an inhumane manner.¹⁸⁹

The humanitarian impact of the sanctions regime was again discussed in March and April 1991, following the suspension of the military enforcement action against Iraq,¹⁹⁰ in connection with the adoption of resolutions 686 (1991) and 687 (1991).¹⁹¹ By those resolutions, the Council affirmed the continued application of the sanctions regime, but, in the light of the prevailing humanitarian crisis in Iraq, decided to make the exemption for supplies of foodstuffs envisaged in resolutions 661 (1990) and 666 (1990) immediately effective, and to permit the import of “materials and supplies for essential humanitarian needs”, subject to approval by the Committee.¹⁹²

the access of the civilian population and the foreign nationals in Iraq and Kuwait to basic foodstuffs, medical supplies and medical assistance”. The draft resolution was not adopted, however, as it received only 3 affirmative votes (China, Cuba, Yemen).

¹⁸⁹ See in particular the statements made by the representative of Yemen at the 2939th and 2943rd meetings (S/PV.2939, p. 11, and S/PV.2943, pp. 16-17). (Yemen abstained from voting on resolution 661 (1990) and voted against resolution 666 (1990).)

¹⁹⁰ This action had been authorized by resolution 678 (1990), adopted at the 2963rd meeting. Offensive combat operations commenced on 16 January and were suspended on 28 February 1991. The suspension of combat operations was noted in the preamble to resolution 686 (1991).

¹⁹¹ Resolution 686 (1990) was adopted at the 2978th meeting by 11 votes to 1 (Cuba), with 3 abstentions (China, India, Yemen). Resolution 687 (1990) was adopted at the 2981st meeting, by 12 votes to 1 (Cuba), with 2 abstentions (Ecuador, Yemen).

¹⁹² See resolution 687 (1991), para. 20. The Council also empowered the Committee to approve exceptions to the “prohibition against the import of commodities and products originating in Iraq”, when necessary to ensure that Iraq possessed sufficient financial resources to purchase humanitarian supplies (see resolution 687 (1991), para. 23). In accordance with the same resolution (para. 26), the Secretary-General developed guidelines to facilitate full international implementation of the sanctions imposed against Iraq. Under these guidelines, the Committee established pursuant to resolution 661 (1990) was required to advise States and international organizations on whether goods and supplies proposed to be exported to Iraq in accordance with permitted exemptions constituted items with potential for diversion or conversion to military use (“dual-use items”) (see S/22660, annex, paras. 13 and 15).

While most Council members believed that these provisions appropriately addressed the humanitarian problems of the civilian population,¹⁹³ a number of speakers expressed the belief that all restrictions relating to the civilian needs of the Iraqi population should be lifted forthwith.¹⁹⁴ However, a proposal submitted by one delegation to declare null and void all restrictions regarding trade in foodstuffs and other essential civilian products did not find the required majority.¹⁹⁵

In order to generate the funds required for the purchase of humanitarian supplies exempted under resolutions 661 (1990) and 666 (1990), the Council, by resolution 706 (1991), adopted on 15 August 1991,¹⁹⁶ authorized States to permit the import of certain quantities of petroleum and petroleum products from Iraq, on the condition that the purchase price for each such petroleum import was to be paid into an escrow account to be administered by the Secretary-General.¹⁹⁷

¹⁹³ See, for example, the statements made by the representatives of France (S/PV.2981, p. 94), the Soviet Union (*ibid.*, p. 103) and Belgium (*ibid.*, pp. 130-131).

¹⁹⁴ See the statements made by the representatives of Yemen (S/PV.2981, p. 47), Zimbabwe (*ibid.*, p. 57), India (*ibid.*, p. 76) and China (*ibid.*, p. 97).

¹⁹⁵ See the amendments contained in documents S/22315 and S/22316, submitted by Cuba. The amendments formed part of a set of 18 amendments proposed by Cuba during the meeting (S/22300-S/22317). The representatives of Yemen (S/PV.2978, p. 26) and Ecuador (*ibid.*, p. 82) agreed with the Cuban position that the resolution should have included provisions providing for the end of the sanctions regime for humanitarian reasons.

¹⁹⁶ 3004th meeting.

¹⁹⁷ The authorization was limited to a period of six months and to a value to be determined by the Council, but not to exceed US\$ 1.6 billion. Each petroleum purchase was to be approved by the Committee. Petroleum imports also remained subject to the approval by the Council of a scheme for the purchase of humanitarian supplies. In addition to purchases of humanitarian supplies, the proceeds of sale were to be used to finance war reparations, and costs incurred by the United Nations in carrying out specific tasks mandated by the Security Council. Provisions aimed at the implementation of resolution 706 (1991) are contained in resolution 712 (1991). Both resolutions 706 (1991) and 712 (1991) were adopted by 13 to 1 (Cuba), with 1 abstention (Yemen).

While most Council members were confident that this arrangement would help to meet the essential humanitarian needs of the Iraqi civilian population,¹⁹⁸ individual Council members believed that it would not be sufficient to alleviate the humanitarian crisis.¹⁹⁹ Some concern was also expressed with regard to the limitations that the administration of the scheme by the United Nations would impose on Iraq's sovereignty.²⁰⁰ Other speakers emphasized, however, that effective supervision and monitoring by the United Nations would be essential for the equitable distribution of humanitarian supplies.²⁰¹

The proposed arrangement failed to be implemented, however, owing to its rejection by Iraq.²⁰² In the light of Iraq's refusal to cooperate and the resulting lack of funds to implement the envisaged arrangement, the Security Council decided in October 1992 that all States in which there were funds from Iraqi petroleum or petroleum products, paid for after 6 August 1990, were to transfer such funds to the escrow

account established by the United Nations in accordance with resolution 706 (1991).²⁰³

Case 13

Items relating to the Libyan Arab Jamahiriya

By resolution 748 (1992) of 31 March 1992, the Council imposed a ban on all international air travel to and from the Libyan Arab Jamahiriya, a general embargo on all sales of arms and military equipment to that country, and certain restrictions on Libyan diplomatic and consular personnel. With regard to the ban on air travel, the resolution provided that exemptions would be granted for flights approved on grounds of significant humanitarian need.²⁰⁴

At the open debate held in connection with the adoption of that resolution,²⁰⁵ the sponsors of the draft resolution²⁰⁶ emphasized that the scope of the measures imposed against the Libyan Arab Jamahiriya had been tailored precisely to those areas that could be used to support international terrorism.²⁰⁷ They were not, therefore, aimed at the Libyan people, who were not responsible for the actions of their leaders.²⁰⁸ In this context, the sponsors also emphasized that the resolutions specifically provided for humanitarian exemptions from the flight ban, and noted that it was

¹⁹⁸ See for example the statements by the representatives of the United States (S/PV.3004, p. 79; and S/PV.3008, p. 16), Belgium (S/PV.3004, p. 92), Ecuador (S/PV.3004, p. 101) and the Soviet Union (S/PV.3008, p. 19). See also the statement by the representative of India, who believed that resolution 706 (1991) tried to meet humanitarian concerns "to some extent", but noted that his delegation "would have preferred a clear and unambiguous approach to this issue" (S/PV.3004, pp. 94-97).

¹⁹⁹ For relevant statements by the representative of Cuba, see S/PV.3004, pp. 65-68; and S/PV.3008, p. 13. For the views expressed by the representative of Yemen, see S/PV.3004, pp. 52-55. Both resolutions 706 (1991) and 712 (1991) were rejected by Cuba. Yemen abstained from voting in both instances.

²⁰⁰ See in particular the statement by the representative of China, who emphasized that, in the implementation of the resolution, it would be necessary to respect the sovereignty of Iraq, and to allow it to play its proper role in the purchase and distribution of the food, medicine and other materials required to meet essential civilian needs (S/PV.3004, pp. 81-82).

²⁰¹ See for example the statements by the representatives of the United States (S/PV.3004, p. 79; and S/PV.3008, p. 18), the United Kingdom (S/PV.3004, p. 84) and Belgium (S/PV.3004, p. 92).

²⁰² Iraq rejected the arrangement on the grounds that, while the proposed scheme would require Iraq to concede its sovereignty over its oil resources, it would be inadequate to deal with the humanitarian situation (S/PV.3004, pp. 23-36; and S/PV.3008, pp. 6-7).

²⁰³ See resolution 778 (1992), adopted at the 3117th meeting. The resolution also envisaged that States in which there were Iraqi petroleum or petroleum products were to purchase or arrange for the sale of such petroleum or petroleum products at fair market value, and thereupon to transfer the proceeds to the escrow account.

²⁰⁴ According to resolution 748 (1992), exemptions were to be approved by the Committee established pursuant to that resolution, which would "consider and decide upon expeditiously any application by States for the approval of flights on the grounds of significant humanitarian need" (see resolution 748 (1992), paras. 4 (a) and 9 (e)).
²⁰⁵ 3063rd meeting.

²⁰⁶ France, the United Kingdom and the United States.

²⁰⁷ The measures were for example described as "measured, precise and limited" by the representative of the United States (S/PV.3063, p. 67), and as "selective and fitting" by the representative of France (*ibid.*, p. 74). See also the statements by the representatives of the United Kingdom (*ibid.*, p. 69) and Belgium (*ibid.*, p. 81).

²⁰⁸ S/PV.3063, p. 74 (France).

the Council's intention that such exemptions would include pilgrims wishing to go to Mecca.²⁰⁹

Some speakers nevertheless expressed concern about the potential humanitarian impact which the measures imposed by that resolution would have on the Libyan people.²¹⁰

Case 14

Items relating to the situation in the former Yugoslavia

By resolution 757 (1992) of 30 May 1992, the Council imposed a general ban on international trade with the Federal Republic of Yugoslavia (Serbia and Montenegro). Exemptions were, however, envisaged for "supplies intended for strictly medical purposes and foodstuffs", which were to be notified to the Committee established pursuant to resolution 724 (1991). Those exemptions were subsequently expanded by resolution 760 (1992), so as to include "commodities and products for essential humanitarian need", subject to approval by the Committee.

The potential humanitarian impact of the sanctions regime was discussed both in connection with its imposition by resolution 757 (1992) and in connection with the adoption of measures aimed at its enforcement in November 1992.²¹¹ During the debates speakers acknowledged the adverse impact of the sanctions regimes on the civilian population,²¹² but generally agreed that the Council had to display determination to enforce the measures it had adopted under Chapter VII of the Charter.²¹³

Individual speakers expressed the view, however, that continued negotiations would be preferable to the

²⁰⁹ See the statements made by the representatives of France (S/PV.3063, p. 70) and the United Kingdom (*ibid.*, p. 74).

²¹⁰ S/PV.3063, pp. 36-37 (Iraq); and p. 52 (Zimbabwe).

²¹¹ For further details, see the records of the debates held in connection with the adoption of resolution 787 (1992) on 16 November 1992 (S/PV.3134-3137).

²¹² See for example the statements made by the representatives of the United States (S/PV.3082, p. 34) and France (*ibid.*, France, p. 40).

²¹³ See for example the statement by Lord Owen, co-Chairman of the International Conference on Yugoslavia, who acknowledged: "sanctions are a blunt instrument which hit the innocent often harder than the guilty"; but noted that they were "the only peaceful instrument the world has" (S/PV.3134, p. 27).

imposition of sanctions, which would only add to the suffering of the civilian population.²¹⁴

Other speakers emphasized that the right balance would have to be struck so that sanctions served as a political tool without disproportionately affecting the most vulnerable strata of the civilian population.²¹⁵

3. Employment of force in the implementation of measures under Article 41

In connection with the measures imposed against Iraq and Yugoslavia,²¹⁶ the Council, by resolutions 665 (1990) and 787 (1992) respectively, authorized States to use "such measures commensurate with the specific circumstances as may be necessary" to halt maritime shipping in order to inspect and verify cargoes and destinations, and to ensure strict implementation of the respective embargo regimes.²¹⁷

The debates held in connection with the adoption of those resolutions touched on the question whether such implementing measures might include the use of

²¹⁴ Such concerns were formulated in particular by the representatives of China and Zimbabwe (S/PV.3082, pp. 9-10 (China) and pp. 13-14 (Zimbabwe)). Both countries abstained from voting on resolutions 757 (1992) and 787 (1992). See also the statement by the representative of Yugoslavia, who demanded the lifting of the sanctions for humanitarian reasons (S/PV.3137, pp. 76-77).

²¹⁵ See in particular the statement by the United Nations High Commissioner for Refugees, who had been invited to brief the Council members at the 3134th meeting (S/PV.3134, pp. 34-35). See also the statement by the representative of France, who noted that France was determined that the sanctions should not lead to the "total isolation of the populations involved" (S/PV.3082, p. 40).

²¹⁶ Reference is made to the general trade embargoes imposed by resolutions 661 (1990) and 757 (1992) against Iraq and the Federal Republic of Yugoslavia, respectively, and the arms embargo imposed by resolution 713 (1991) against the former Yugoslavia.

²¹⁷ In addition to those decisions, the Council, by resolution 794 (1992), called upon States to use "such measures as may be necessary" to ensure the strict implementation of the arms embargo imposed against Somalia. However, the debate held in connection with the adoption of that resolution did not specifically focus on that provision of the resolution. This may partly be due to the fact that the same resolution also authorized the use of "all necessary means" to establish a secure environment for humanitarian relief operations, which was the main focus of the debate (see S/PV.3145).

force, and whether Article 41 could be deemed to permit implicitly a “minimum use of force” to ensure the effective implementation of embargo regimes.²¹⁸ The arguments advanced by Member States in relation to this question are briefly summarized below.

Case 15

Measures imposed against Iraq

One week after the adoption of resolution 661 (1991),²¹⁹ the United States informed the President of the Security Council that it had deployed military forces to the Gulf region.²²⁰ At a meeting held on the same day,²²¹ the representative of the United States explained that the increase of the United States presence in the region was in accordance with the right of collective self-defence under Article 51 of the Charter, but also noted that the action had been taken “in consistency with Article 41 and resolution 661 (1990)”.²²² This view was shared by the representative of the United Kingdom, who announced that his Government had agreed “to contribute forces to a multinational force for the collective defence of the territory of Saudi Arabia and other threatened States in the area”, and also stated that his Government saw “the close monitoring of maritime traffic as a key element in making the embargo effective”.²²³

The representative of Iraq contended at a later meeting that the United States had “arrogated to itself the right to impose a maritime blockade against Iraq without calling it by that name”. He believed that the conduct of the United States and the United Kingdom

constituted “aggression against Iraq”.²²⁴ The representative of Cuba expressed the view that the action taken by the United States military forces to guarantee the implementation of resolution 661 (1990) constituted “not only a violation of the Charter but a violation of resolution 661 (1990) itself”. The representative contended that resolution 661 (1990) did not authorize anyone “to implement the resolution by military means”, noting that resolution 661 (1990) was clearly based on Article 41 of the Charter, which refers to measures “not involving the use of force”.²²⁵

At a meeting held on 25 August 1990,²²⁶ the Council adopted resolution 665 (1990), by which it expressly authorized Member States cooperating with Kuwait to use “such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations, and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990)”.

During the deliberations in connection with the adoption of that resolution,²²⁷ the representative of the United States explained that the Council had been forced “to tighten the application of the sanctions regime”, owing to Iraq’s defiance of the Council and its resolution 661 (1990). The representative emphasized that his country, along with all the other members of the Council, intended to ensure that its resolutions and its actions had meaning and were observed. Noting that naval forces had initially been deployed “at the request of the legitimate Government of Kuwait, in accordance with the inherent right of individual and collective self-defence under Article 51 of the Charter”, the representative stated that resolution 665 (1990) provided “an additional and most welcome basis under United Nations authority for actions to secure compliance with the sanctions mandated by resolution 661 (1990)”.²²⁸

The representative of France noted that the resolution provided for “appropriate measures” to ensure respect for the embargo, “including the minimum use of force”, but stressed that such

²¹⁸ Article 41 envisages only the adoption of “measures not involving the use of armed force”.

²¹⁹ By resolution 661 (1990), the Council had imposed a general trade embargo against Iraq.

²²⁰ S/21492.

²²¹ 2934th meeting. At that meeting, the Council adopted resolution 662 (1992), declaring the annexation of Kuwait by Iraq null and void.

²²² S/PV.2934, p. 7.

²²³ *Ibid.*, p. 18. See also the letter dated 13 August 1990 from the representative of the United Kingdom to the President of the Security Council, officially informing the President of the deployment (S/21501); and the letter dated 12 August 1990 from the representative of Kuwait (S/21498), informing the President of the Security Council that his country had “requested some nations to take such military or other steps as are necessary to ensure the effective and prompt implementation of Security Council resolution 661 (1990)”.

²²⁴ S/PV.2937, pp. 42-46.

²²⁵ *Ibid.*, pp. 28-31.

²²⁶ 2938th meeting.

²²⁷ See S/PV.2938.

²²⁸ S/PV.2938, pp. 26-31.

measures had to be applied only as “a last resort” and that they ought to be “limited to what is strictly necessary”. The resolution could not be understood, therefore, “as a blanket authorization for the indiscriminate use of force”. The representative also believed that, in each case, the use of coercion would require “notification of the Security Council”.²²⁹

The representative of the Union of Soviet Socialist Republics, while noting that the resolution was “intended to expand the array of means available for implementing the sanctions”, emphasized that measures taken ought to be “commensurate to the circumstances” and that “political and diplomatic methods should be employed to the maximum degree possible”.²³⁰

The representative of China, while voting in favour of the resolution, held a different view with regard to the interpretation of its text and expressed strong reservations with regard to its adoption. He contended that the resolution did not contain the concept of using force and recalled that the reference to a “minimum use of force” had been intentionally deleted from the draft resolution. He argued that the measures authorized by the resolution had to be taken within the framework of resolution 661 (1990), which did not provide for the use of force and would not allow force to be used for its implementation.²³¹

The representative of Yemen, who voted against the resolution, believed that the Council was moving “too quickly towards the use of force to impose the provisions of the Security Council resolutions on the embargo”.²³² The representative of Cuba, who also voted against the resolution, expressed the view that Article 41 precluded the use of force to give effect to economic measures imposed by the Council.²³³ Similar views were expressed by the representative of Iraq, who had been invited to participate in the debate.²³⁴

²²⁹ Ibid., p. 32.

²³⁰ Ibid., p. 43; similar views were expressed by the representatives of Malaysia (ibid., pp. 37-38) and Finland (ibid., p. 47).

²³¹ S/PV.2938, p. 53.

²³² Ibid., p. 7. The representative also stated that, by the resolution, “unclear powers” were being granted “to undertake unspecified actions without a clear definition of the Security Council’s role and powers of supervision over those actions”.

²³³ S/PV.2938, p. 17.

²³⁴ Ibid., pp. 67-70.

Reservations were also expressed by the representative of Colombia, who believed that, by adopting the resolution, the Council was in fact establishing a naval blockade and therefore acting pursuant to Article 42 of the Charter. He also criticized the proposed resolution for not clearly defining the role of the Security Council and its powers to supervise any action taken by States.²³⁵

Case 16

Measures imposed against the Federal Republic of Yugoslavia

In the debates leading up to the adoption of resolution 787 (1992),²³⁶ by which the Council called upon States to use “such measures commensurate with the specific circumstances as may be necessary” to ensure that maritime shipping and shipping on the Danube did not contravene the provisions of resolutions 713 (1991) and 757 (1992), several Council members stated why they believed those measures to be necessary.

The representative of the United Kingdom stated that the measures were necessary to ensure that sanctions were not “breached by way of the Danube or the Adriatic”, adding that the authorities in Belgrade and the Bosnian Serbs had to be “made to realize that the cost of their policies [was] economic ruin and the status of a pariah in world affairs”.²³⁷ This view was shared by the representative of the United States, who believed that the resolution would help to prevent the Adriatic and the Danube “from being used to circumvent the embargo”, and stated that “sanctions-busters [would] be stopped and turned back”.²³⁸ The representative of Ecuador felt that the measures aimed at the surveillance and control of maritime shipping were “very important elements” that would make it possible for the sanctions to achieve their objectives.²³⁹

Several States non-members of the Council also expressed support for the measures envisaged in

²³⁵ Ibid., p. 21. In spite of these reservations, Colombia voted in favour of the resolution.

²³⁶ 3134th to 3137th meetings.

²³⁷ S/PV.3135, pp. 8-9.

²³⁸ Ibid., pp. 11-12.

²³⁹ S/PV.3136, pp. 14-15. See also the statements made by the representatives of Belgium (S/PV.3134, p. 67); France (S/PV.3135, p. 17); the Russian Federation (S/PV.3136, p. 6); and Hungary (S/PV.3137, p. 13).

resolution 787 (1992), and hoped they would help to ensure the implementation of the embargo.²⁴⁰

The representative of China, who abstained from voting on the draft resolution, argued that the use of force would “only complicate the situation, sharpen the differences, intensify the hatred and make it more difficult to solve the problem”. He further noted that China was “not in favour of the use of force in any form in the settlement of the conflict in Bosnia and Herzegovina”.²⁴¹ The question whether Article 41 could be deemed to permit implicitly the use of force to ensure the effective implementation of measures adopted under that Article was not addressed directly during the debates.

4. Duration of measures imposed under Article 41

While the measures adopted in accordance with Article 41 were generally imposed for an unspecified period, most decisions imposing such measures either set out concrete conditions for the termination of these measures,²⁴² or provided for review periods or mechanisms.²⁴³

²⁴⁰ Pakistan expressed the hope that the draft resolution would result in “effective and complete enforcement of the sanctions” (S/PV.3136, p. 33). Canada expressed its strong support for the provision of the draft resolution calling upon all States to use necessary measures to ensure strict application of the sanctions regime, and noted that it had participated in the naval task force monitoring traffic on the Adriatic coast and was participating in sanctions monitoring in neighbouring countries (S/PV.3136, p. 47). Italy, speaking in its capacity as Chairman of the Western European Union, noted that the resolution would “greatly enhance the effectiveness of the embargo” and would help the naval forces of the Western European Union and NATO in the Adriatic Sea to discover and defeat any attempt by sea to “violate or circumvent” the embargo (S/PV.3137, p. 16). Ukraine argued that the draft resolution should envisage “all the necessary steps” to strengthen the effectiveness of the sanctions (S/PV.3137, p. 86). Bangladesh also argued that the sanctions must be “strictly enforced” (S/PV.3137, p. 111).

²⁴¹ S/PV.3135, p. 16.

²⁴² See resolutions 661 (1990), 748 (1992) and 757 (1992).

²⁴³ Resolution 713 (1991) envisaged that the arms embargo against the former Yugoslavia would apply until the Council decided otherwise following consultations between the Secretary-General and the Government of Yugoslavia. By resolution 748 (1992), para. 13, the Council decided that it would, every 120 days or sooner,

In connection with the measures imposed against Iraq, States expressed different views with regard to the concrete conditions and the appropriate time for the termination of those measures after the withdrawal of the Iraqi forces from Kuwait. In connection with the arms embargo imposed against the former Yugoslavia, questions with regard to its continued application against Bosnia and Herzegovina were raised after Bosnia and Herzegovina had seceded from Yugoslavia and become an independent State. In connection with the measures imposed against the Libyan Arab Jamahiriya, questions were raised with regard to the evidence required for that State’s compliance with the demands contained in resolution 748 (1992).

Case 17

Measures imposed against Iraq

At the 2977th meeting of the Council, the representative of the Union of Soviet Socialist Republics said that recent talks held in Moscow between the Soviet leadership and a special representative of Iraq, Mr. Tariq Aziz, had succeeded “in making more specific the readiness expressed by the Iraqi leadership to withdraw their troops from Kuwait on the basis of the decisions of the Security Council”. Accordingly, the representative of the Union of Soviet Socialist Republics believed that “immediately after the completion of the withdrawal of troops from Kuwait, the reason for the adoption of other Security Council resolutions would have lapsed, and those resolutions would thus cease to be in force”.²⁴⁴

In response, the representative of the United States noted that the steps the Iraqis were considering “would constitute a conditional withdrawal and would

should the situation so require, “review the measures imposed by paragraphs 3 to 7 in the light of the compliance by the Libyan Government with paragraphs 1 and 2 of the resolution taking into account, as appropriate, any reports by the Secretary-General on his role as set out in paragraph 4 of resolution 731 (1992)”. By resolution 757 (1992), para. 16, the Council decided “to keep under continuous review the measures imposed by paragraphs 4 to 9 with a view to considering whether such measures might be suspended or terminated following compliance with the requirement of resolution 752 (1992)”.

²⁴⁴ S/PV.2977 (Part II) (closed-resumption 3), p. 296. This view was for example shared by the representative of Cuba (*ibid.*, pp. 318-321).

also prevent the full implementation of relevant United Nations Security Council resolutions”. He noted that the world first had to make sure that Iraq had in fact “renounced its claim to Kuwait and accepted all relevant Security Council resolutions”. Accordingly, only the Security Council “could agree to lift sanctions against Iraq”, and the world needed “to be assured in concrete terms of Iraq’s peaceful intentions” before such action could be taken.²⁴⁵ He stated, therefore, that his Government could not accept the idea of declaring that Security Council resolutions somehow ceased to exist, were null and void or without effect. He cautioned that the Council “must not dismantle at the stroke of a pen” what the Council had built since 2 August until it had “reached agreement on how to restore peace and security to the area”.²⁴⁶ Similar views were expressed by the representatives of the United Kingdom,²⁴⁷ France,²⁴⁸ Romania,²⁴⁹ Kuwait²⁵⁰ and Egypt.²⁵¹

The representative of India urged the Union of Soviet Socialist Republics and the United States “to try to work out the differences between their plans of action”, and suggested to Council members “to sit together and find some way out” of what appeared to be an impasse.²⁵² The representative of China, referring to Iraq’s “positive response to the peaceful initiative of the Soviet Union”, believed that the Council should “fulfil its responsibilities by considering and adopting an appropriate plan for the peaceful settlement of the Gulf crisis”.²⁵³

The representative of Cuba believed that, as a result of the agreements reached in Moscow, the Council was obliged “to get down to work immediately to determine the specific steps and actions it should take to make it possible for a plan for a peaceful settlement of the conflict to be carried out as speedily as possible”. He argued that there was a “direct cause and effect relationship between economic sanctions as decided upon by the Council and Iraq’s failure to comply with the terms of paragraph 2 of resolution 660

(1990) — that is to say, fully to withdraw from Kuwait.”²⁵⁴

At the 2978th meeting, on 2 March 1991, following the suspension of the military operations which an alliance of States had conducted against Iraqi forces in accordance with resolution 678 (1990),²⁵⁵ several speakers again questioned the reasons for the continued application of the measures imposed by resolution 661 (1990). The representative of India noted that Iraq had “officially confirmed its willingness to comply with all relevant Security Council resolutions”, and stated that it would like the Council “to begin an early examination of the question of sanctions”.²⁵⁶ The representative of Yemen, noting that the draft resolution did “not mention the end of the embargo against Iraq”, recalled that, “when the Council adopted resolution 661 (1990) and imposed a stringent embargo regime against Iraq ..., it was because it was believed that the sanctions would lead to Iraq’s withdrawal and implementation of resolution 660 (1990)”. Accordingly, the representative believed that a reference to the end of the embargo, in particular in relation to food supplies, should have been included.²⁵⁷

The representative of the United States, on the other hand, stressed that Iraq had “much to account for”, and that there was “much yet to be done to fulfil the resolutions of the Council and the requirements of international law”. The representative emphasized that “the price of aggression and its defeat” had been too high to allow it to recur.²⁵⁸ The representative of France agreed that the Organization first had to “consolidate effectively the cessation of hostilities and then ... define the conditions for the lasting restoration of peace and security in the region”.²⁵⁹ The representative of Belgium cautioned that the Council ought to “avoid a situation in which Iraq might again gain an offensive military potential”. Accordingly, it

²⁴⁵ Ibid., pp. 300-301.

²⁴⁶ Ibid., pp. 304-305.

²⁴⁷ Ibid., pp. 312-313.

²⁴⁸ Ibid., p. 322.

²⁴⁹ Ibid., pp. 332-335.

²⁵⁰ Ibid., pp. 337-341.

²⁵¹ Ibid., pp. 345-346.

²⁵² Ibid., p. 311.

²⁵³ Ibid., p. 306.

²⁵⁴ Ibid., pp. 318-320.

²⁵⁵ The suspension of offensive combat operations was noted in the preamble to resolution 686 (1991), which was adopted at the same meeting.

²⁵⁶ S/PV.2978, pp. 76-77. (India abstained from voting on the draft resolution.)

²⁵⁷ Ibid., pp. 22-26. (Yemen abstained from voting on the draft resolution.)

²⁵⁸ Ibid., pp. 41-46.

²⁵⁹ Ibid., p. 53. Similar views were expressed, inter alia, by the representative of the United Kingdom (ibid., pp. 68-72).

would be necessary “to maintain a military embargo against Iraq”.²⁶⁰

At the same meeting, the Council adopted resolution 686 (1991), by which it affirmed that all previous resolutions, including resolution 661 (1990), continued to have full force and effect.²⁶¹

At its 2981st meeting, on 3 April 1991, the Council discussed and adopted the text of resolution 687 (1991), by which it linked the termination of the measures imposed against Iraq by resolution 661 (1990) to, *inter alia*, compliance by Iraq with certain disarmament requirements.²⁶²

Prior to the adoption of resolution (687 (1991), the representative of Iraq stated that his Government believed “that maintaining the land, sea and air blockade and the freeze of assets — in spite of ... the fact that Iraq has accepted the implementation of all 13 Security Council resolutions on the issue and removed all the reasons that prompted the Security Council to adopt resolution 661 (1990) ... — would be in contravention of the Charter of the United Nations and could be viewed as an economic aggression and a clear violation of the Charter of Economic Rights and Duties of States and human rights covenants, foremost among which are the rights to life, dignity and freedom”.²⁶³

The representative of Cuba stated that the Council had “the obligation of eliminating all economic sanctions imposed against Iraq”, because these sanctions had been established on the basis of certain conditions that had ceased to exist. He believed that the Council had “persistently ignored the fact that the economic sanctions were established in order to ensure compliance with one paragraph of resolution 660 (1990), which called for the unconditional withdrawal of Iraqi troops from the territory of Kuwait”. Accordingly, he said, the Security Council, by adopting the proposed resolution, would “continue and confirm a sanctions regime that was not only

unjustified, but also the cause of the ongoing problems and suffering of the Iraqi people.”²⁶⁴

The representatives of China, India, Yemen and Ecuador agreed that, in the light of the development of the situation, the measures imposed against Iraq by resolution 661 (1990) ought to be lifted.²⁶⁵

Speaking after the vote, the representative of the United States emphasized that, after having acted “to bring an end to aggression and lawlessness”, the international community, acting through the United Nations, now had to act to restore international peace and security.²⁶⁶ He believed that the resolution created a “dynamic and flexible process “which linked the removal of sanctions to the implementation of the resolution, which would be an “incentive to implement fully the resolution as soon as possible”. He stated that “upon implementation of the provisions dealing with weapons of mass destruction and the compensation regime”, the sanctions against Iraq’s exports would also be lifted.²⁶⁷

The representative of the United Kingdom explained that, just as the Security Council had the primary responsibility to reverse the aggression, so it also had the responsibility “to lay sound foundations for the future” and to ensure that it would not be again “confronted with such a ruthless and comprehensive challenge to international law”. The representative

²⁶⁰ *Ibid.*, p. 58.

²⁶¹ The resolution was adopted by 11 votes to 1 (Cuba), with 3 abstentions (China, India, Yemen). The preamble to that resolution refers to “the need to be assured of Iraq’s peaceful intentions and the objective expressed in resolution 678 (1990) of restoring international peace and security in the region”.

²⁶² See resolution 687 (1991), para. 22. The resolution was adopted by 12 votes to 1 (Cuba), with 2 abstentions (Ecuador, Yemen).

²⁶³ S/PV.2981, p. 33.

²⁶⁴ *Ibid.*, pp. 63-67. (Cuba voted against the draft resolution.)

²⁶⁵ China, which voted in favour of the draft resolution, noted that the resolution included “some unnecessary restriction of the lifting of economic sanctions on Iraq”. Accordingly, China believed that the Security Council should “ease and lift economic sanctions as soon as possible, so as to bring the economy of all the countries in the region back to normality at an early date” (*ibid.*, p. 97). India, which also voted in favour of the resolution, believed that “all non-military sanctions against Iraq should be lifted” as soon as Iraq conveyed acceptance of the draft resolution (*ibid.*, p. 76). Yemen, which abstained from voting, believed that “the insistence of the sponsors of the draft resolution that the embargo be continued with regard to the needs of the Iraqi civilians would hurt only the Iraqi people” (*ibid.*, p. 47). Ecuador, which also abstained from the vote, considered “that the Council must approve the lifting of the sanctions, which are affecting the civilian population of Iraq” (*ibid.*, p. 108).

²⁶⁶ S/PV.2981, pp. 83-85.

²⁶⁷ *Ibid.*, p. 88.

added that that was the “objective of the resolution, and the yardstick by which it should be measured”.²⁶⁸

At the 3004th meeting, at which the Council, inter alia, adopted resolution 706 (1991), the representative of Iraq claimed that Iraq had satisfied all conditions set out in resolution 687 (1991) for the lifting of the measures imposed against it by resolution 661 (1991). According to the representative, “a small minority in the Council” prevented the Council from deciding that those conditions had been met.²⁶⁹ The representative also claimed that, “for all intents and purposes”, the draft resolution was “aimed at keeping the embargo in place indefinitely”, which, in his view, only affirmed “that this alliance had the sole aim of destroying Iraq as an effective Arab force influential in determining the fate of the region”.²⁷⁰

Iraq’s demand that the embargo be lifted was supported by Yemen and Cuba. The representative of Yemen, noting that all Council members had affirmed that they were “not against the Iraqi people”, asked why then some insisted on the continuation of its suffering, and why they did not lift from its shoulders the embargo that was harming and weakening Iraqi society day by day.²⁷¹ The representative of Cuba believed that the sanctions against Iraq should have been eliminated at the moment when the causes which were argued in justification of it had disappeared.²⁷²

The representative of Kuwait, however, insisted that the measures imposed by resolution 661 (1990) needed to remain in effect until the Iraqi regime ceased “its actions intended to deceive the international community and violate its resolutions”.²⁷³ In particular, he noted that the lifting of the sanctions was closely linked to the return of prisoners to Kuwait in accordance with paragraphs 21 and 30 of resolution 687 (1991),²⁷⁴ as well as Iraq’s cooperation in the area of disarmament.²⁷⁵ Several Council members similarly emphasized that Iraq had not complied with its international obligations under relevant resolutions, in particular its obligations relating to the elimination of

its weapons of mass destruction, as required by resolution 687 (1991).²⁷⁶

Case 18

Measures imposed against the Libyan Arab Jamahiriya

Resolution 748 (1992), by which the Council imposed a broad range of measures against the Libyan Arab Jamahiriya, provided that those measures were to apply until the Council had decided that the Libyan Government had (a) complied with the demand made in resolution 731 (1992) that the Libyan Arab Jamahiriya “cooperate fully in establishing responsibility for the terrorist acts against Pan Am flight 103 and UTA flight 772”, and (b) committed itself definitely “to cease all types of terrorist action and all assistance to terrorist groups”.²⁷⁷

At the Council’s 3063rd meeting, on 31 March 1992, at which the text of resolution 748 (1992) was discussed and adopted, the representative of the Libyan Arab Jamahiriya observed that the conditions for the termination of the measures envisaged in that resolution left his country in a position in which it did not know when the Security Council would decide that it had complied, so that the measures could be lifted. In particular, the Libyan Arab Jamahiriya believed that the provisions requiring it to renounce terrorism contained “unspecified demands”.²⁷⁸

The representative of the United Kingdom, however, believed that the members of the Council would understand why, in the case of the Libyan Arab Jamahiriya, a simple verbal commitment to renounce terrorism by itself was not adequate, noting that Council members had heard such statements from Colonel Qaddafi in the past, and that the Libyan authorities, by their own admission, had continued afterwards to give direct assistance to terrorists.²⁷⁹

²⁶⁸ Ibid., p. 112.

²⁶⁹ S/PV.3004, p. 31.

²⁷⁰ Ibid., pp. 35-36.

²⁷¹ Ibid., p. 60.

²⁷² Ibid., p. 68.

²⁷³ Ibid., p. 21.

²⁷⁴ Ibid., p. 12.

²⁷⁵ Ibid., p. 16.

²⁷⁶ Ibid., in particular the statements made by the representatives of France (pp. 72-78); the United States (pp. 78-82); the United Kingdom (pp. 85-86); Austria (pp. 87-88); and the Soviet Union (p. 91).

²⁷⁷ According to resolution 748 (1992), such a commitment was to be demonstrated by concrete actions. The resolution was adopted by 10 votes to none, with 5 abstentions (Cape Verde, China, India, Morocco, Zimbabwe).

²⁷⁸ S/PV.3063, p. 21.

²⁷⁹ Ibid., p. 71.

The representative of Austria reminded Council members that Austria had always stressed the necessity of establishing objective criteria for the provisions on the termination of sanctions. He welcomed the fact that resolution 748 (1992) envisaged that the Council, in reviewing the compliance of the Libyan Arab Jamahiriya, was to take into account the Secretary-General's reports on his role in seeking that State's cooperation.²⁸⁰

The representative of India, on the other hand, noting the importance of an appropriate definition of the circumstances under which the sanctions would be lifted, regretted that, although the non-aligned members of the Council, as had indeed several other delegations, had explored with the sponsors the injection of more precision in the relevant paragraphs, it had not been possible to remove the vagueness from the draft resolution on that particular point.²⁸¹

Case 19

Arms embargo imposed against the former Yugoslavia

By resolution 727 (1992), adopted on 8 January 1992 after the disintegration of the Socialist Federal Republic of Yugoslavia, the Council reaffirmed that the arms embargo, which it had imposed against that State by resolution 713 (1991), would continue to apply to all areas that had been part of Yugoslavia, any decisions on the question of the recognition of the independence of certain republics notwithstanding.²⁸²

During the open debates of the Council held from 13 to 16 November 1992,²⁸³ the representative of Bosnia and Herzegovina argued that, through the indiscriminate continuation of the arms embargo, it was effectively denied its right of self-defence. The representative of Bosnia and Herzegovina also

contended that the cause of peace would be furthered if the embargo were selectively lifted, so that it would no longer apply to Bosnia and Herzegovina, and that through effective self-defence peace could be made a reality, rather than an uncertain and far-off goal.²⁸⁴

This view was supported by the representatives of several States non-members of the Council, including Turkey,²⁸⁵ Pakistan,²⁸⁶ the Islamic Republic of Iran²⁸⁷ and Afghanistan.²⁸⁸

Other speakers, including the Foreign Minister of the Federal Republic of Yugoslavia,²⁸⁹ the co-Chairmen of the Steering Committee of the International Conference on Yugoslavia²⁹⁰ and several Council members,²⁹¹ expressly warned however that a selective lifting of the arms embargo would only fuel the conflict, lead to an increase in hostilities throughout the Balkan region, and jeopardize the

²⁸⁴ S/PV.3134, pp. 54-55.

²⁸⁵ S/PV.3135, p. 25 (a-z).

²⁸⁶ S/PV.3136, pp. 33-34.

²⁸⁷ *Ibid.*, p. 73.

²⁸⁸ S/PV.3137, pp. 56-57. In addition to the arguments pertaining to Bosnia and Herzegovina's right of self-defence, the representative of Afghanistan questioned the legality of the continued application of the arms embargo, insofar as it related to Bosnia and Herzegovina, in the light of the original purpose for which the measures had been imposed. Afghanistan argued that resolution 713 (1991) had been designed to address the conflict between Croatia and Serbia and Montenegro and that "in no legal or technical sense" did that resolution pertain to Bosnia and Herzegovina, for it had been adopted in September 1991, while the conflict in Bosnia and Herzegovina had arisen in April 1992. Afghanistan further argued that, from the legal standpoint, it seemed "senseless to contend that the sovereign State of Bosnia and Herzegovina should be subject to an arms embargo and sanctions because it was once part of the Socialist Federal Republic of Yugoslavia".

²⁸⁹ See S/PV.3137, p. 75: "We cannot but warn, with profound concern, of the unforeseeable harmful effects of the continued sending of mercenaries, violations of the arms embargo and the ever more evident prospects of this conflict turning into a full-scale religious war."

²⁹⁰ S/PV.3134, p. 29 (Lord Owen); and p. 17 (Mr. Vance).

²⁹¹ See for example the statements made by the representatives of the United Kingdom and Ecuador at the 3135th and 3136th meetings respectively. (S/PV.3135, p. 9; S/PV.3136, pp. 13-15).

²⁸⁰ The representative specifically referred to paragraphs 12 and 13 of resolution 748 (1992) (S/PV.3063, p. 78).

²⁸¹ The Indian delegation, which abstained from voting on the draft resolution, acknowledged, however, that the sponsors had showed readiness to work with it on this aspect (S/PV.3063, p. 57). See also the statement made by the representative of Iraq, who queried whether the measures to be imposed were "designed to become sanctions for an unspecified period" (*ibid.*, p. 36).

²⁸² See resolution 727 (1992), para. 6, and the report of the Secretary-General referred to therein (S/23363, para. 33).

²⁸³ 3134th to 3137th meetings.

effectiveness of the United Nations peacekeeping operation.²⁹²

5. Obligations of States non-members of the United Nations to apply measures under Article 41

Article 41 provides that the Security Council may call upon the Members of the United Nations to apply the measures envisaged in that Article. However, in its resolutions creating or modifying State obligations in relation to the implementation of the measures imposed against Iraq,²⁹³ Yugoslavia,²⁹⁴ Somalia,²⁹⁵ the Libyan Arab Jamahiriya²⁹⁶ and Liberia,²⁹⁷ the Council consistently called upon “all States”²⁹⁸ to comply with the relevant obligations, and in several instances explicitly referred to “all States, including States non-members of the United Nations”.²⁹⁹

Replies received from States in response to requests for information sought by the Security Council³⁰⁰ or the Secretary-General³⁰¹ in relation to

their compliance with relevant obligations included communications from Switzerland and the Republic of Korea.³⁰² The communications received from these States, which, at that time, were not Members of the United Nations, either confirmed that measures had been taken to implement the relevant Council resolutions, or that measures corresponding in substance to the requirements of those resolutions were in existence or had been taken independently.

²⁹² As the arguments advanced by Member States in relation to Bosnia and Herzegovina’s right of self-defence are closely linked to the provisions of Article 51 of the Charter, details of those arguments are set out in part IX of the present chapter.

²⁹³ See resolutions 661 (1990), paras. 3-4; 670 (1990), paras. 3-6; 687 (1991), paras. 24, 29; and 778 (1992), paras. 1, 2 and 4.

²⁹⁴ Reference is made to both the former Yugoslavia and the Federal Republic of Yugoslavia; see resolutions 713 (1991), para. 6; 724 (1991), para. 5; 727 (1992), para. 6; 740 (1992), para. 8; 757 (1992), paras. 3-9 and 11-14; 760 (1992); and 787 (1992), paras. 9-15.

²⁹⁵ See resolutions 733 (1992), para. 5; 751 (1992), para. 11; and 794 (1992), para. 16.

²⁹⁶ See resolution 748 (1992), paras. 3-6.

²⁹⁷ By resolution 788 (1992), the Council decided that “all States” should immediately implement a general and complete embargo on all deliveries of weapons and military equipment to Liberia.

²⁹⁸ Occasionally, the Council merely called on “States”. See for example resolution 794 (1992), by which the Council called upon States to use such measures as might be necessary to ensure strict implementation of the arms embargo which it had previously imposed against Somalia by resolution 733 (1992).

²⁹⁹ See for example resolutions 661 (1990), para. 5; 748 (1992), para. 7; and 757 (1992), para. 11.

³⁰⁰ By resolution 700 (1991), para. 4, the Council requested “all States” to report to the Secretary-General within 45 days on the measures they had instituted to meet the obligations set out in paragraph 24 of resolution 687

(1991). By resolution 748 (1992), para. 8, the Council requested “all States” to report to the Secretary-General by 15 May 1992 on the measures they had instituted for meeting their obligations relating to the sanctions imposed against the Libyan Arab Jamahiriya. By resolution 757 (1992), para. 12, the Council requested all States to report to the Secretary-General by 22 June 1992 on the measures they had instituted for meeting their obligations relating to the sanctions imposed against the Federal Republic of Yugoslavia (Serbia and Montenegro).

³⁰¹ In connection with the measures imposed against Iraq, see, for example, the note dated 8 August 1990 from the Secretary-General to the Ministers for Foreign Affairs of all States (S/21536, annex I), requesting them to report on measures taken to implement resolution 661 (1990); the note verbale dated 3 July 1991 from the Secretary-General to the Ministers for Foreign Affairs of all States (not issued as a United Nations document), requesting them to submit information on the measures taken to implement paragraph 4 of resolution 700 (1991). In carrying out his responsibility to report on the implementation of the sanctions imposed by resolution 713 (1991) against Yugoslavia, the Secretary-General addressed a note verbale to all States on 16 December 1991, requesting them to submit to him information on the measures instituted by them to meet their obligations relating to the implementation of the embargo (see S/23358, para. 4). In connection with the situation in Somalia, see the Secretary-General’s note verbale to all States dated 23 January 1992 (S/23693 and Corr.1, paras. 5 and 7).

³⁰² In connection with the situation between Iraq and Kuwait, see the communications from the Republic of Korea (S/21487, S/21617) and Switzerland (S/21585) relating to the implementation of measures imposed under resolution 661 (1990); and the communications from Switzerland (S/22958) and the Republic of Korea (S/23016) relating to the implementation of sanctions established in paragraph 24 of resolution 687 (1991). A communication relating to the requirements under that resolution was also received from the Holy See (S/22802). See also the communications sent by Switzerland in relation to measures imposed against the former Yugoslavia, Somalia and the Libyan Arab Jamahiriya (S/23338, S/23612, S/23938 and S/24160).

However, in one of its responses to the Secretary-General, Switzerland noted that, as a non-member of the United Nations, it was “not in fact legally bound by the decisions of the Security Council”.³⁰³

³⁰³ S/21585.

Part IV

Other measures to maintain or restore international peace and security in accordance with Article 42 of the Charter

Article 42

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

Note

During the period under review, the Security Council did not invoke Article 42 explicitly in any of its decisions. The Council did, however, adopt a number of resolutions by which it called upon States to take “all measures necessary”³⁰⁴ to enforce demands related to the restoration of international peace and security, and which are therefore of relevance to the interpretation of Article 42. These include, in particular, resolution 678 (1990), authorizing States cooperating with the Government of Kuwait to use all necessary means to enforce the withdrawal of the Iraqi forces from the territory of Kuwait³⁰⁵ (see section A below).

³⁰⁴ “All measures necessary” was the precise wording used in resolution 770 (1992), para. 2. In resolutions 665 (1990), para. 1, 787 (1992), para. 12, and 794 (1992), para. 16, reference was made to “such measures (commensurate to the specific circumstances) as may be necessary”, and in resolutions 678 (1991), para. 2, and 794 (1992), para. 10, to “all necessary means”.

³⁰⁵ In his report entitled “An Agenda for Peace”, however, the Secretary-General expressed the view that, in the situation between Iraq and Kuwait, the Security Council had not actually made use of the option envisaged in Article 42, as the Council had chosen to authorize Member States to take measures on its behalf. More

Section B below describes the Council’s decisions calling upon States to take measures necessary to ensure the strict implementation of sanctions previously imposed on Iraq,³⁰⁶ Yugoslavia³⁰⁷ and Somalia.³⁰⁸ Section C deals with decisions authorizing States to use all necessary means to facilitate the delivery of humanitarian aid to Bosnia and Herzegovina and Somalia.³⁰⁹

generally, the Secretary-General stated his belief that, while action under Article 42 should be taken only when all peaceful means had failed, the option of taking it was “essential to the credibility of the United Nations as a guarantor of international security” (see S/24111, paras. 42-44).

³⁰⁶ By resolution 665 (1990), the Council called upon Member States to use “such measures commensurate with the specific circumstances as may be necessary” to ensure the strict implementation of the sanctions imposed against Iraq by resolution 661 (1990).

³⁰⁷ The term “Yugoslavia” is intended to refer to both the former Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia (Serbia and Montenegro), as, by resolution 713 (1991), the Council had imposed an arms embargo against the Socialist Federal Republic of Yugoslavia and, by resolution 757 (1992), had imposed a general trade embargo against the Federal Republic of Yugoslavia. By resolution 787 (1992), the Council called upon Member States to use “such measures commensurate with the specific circumstances as may be necessary” to ensure the strict implementation of resolutions 713 (1991) and 757 (1992).

³⁰⁸ By resolution 794 (1992), the Council called upon States to use “such measures as may be necessary” to ensure the strict implementation of the arms embargo imposed against Somalia by resolution 733 (1992).

³⁰⁹ See resolutions 770 (1992) and 794 (1992). While measures to facilitate the delivery of humanitarian assistance are not primarily adopted with the aim of maintaining or restoring international peace and security, as envisaged in Article 42, they are believed to be

Section D briefly examines aspects of two peacekeeping operations established during the period under review, which are believed to have a bearing on the interpretation of Article 42 of the Charter.³¹⁰

A. Military enforcement action necessary to maintain or restore international peace and security

The situation between Iraq and Kuwait

By resolution 678 (1990),³¹¹ the Council reiterated its demand that Iraq comply fully with resolution 660 (1990) and all subsequent resolutions, and decided “to allow Iraq one final opportunity, as a pause of goodwill, to do so”; and authorized Member States cooperating with the Government of Kuwait, unless Iraq fully implemented all relevant Council resolutions on or before 15 January 1991, “to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area”.³¹²

During the Council’s deliberations in connection with the adoption of resolution 678 (1990),³¹³ most members agreed that there remained no alternative to authorizing the use of “all necessary means”, as Iraq’s aggression could not be tolerated.³¹⁴ Most speakers

relevant to the interpretation and application of Article 42 insofar as they are typically adopted in the context of existing threats to the peace and closely connected to the broader efforts to restore peace and security in the affected regions.

³¹⁰ As peacekeeping operations are typically deployed with the consent of the Governments involved, they are clearly different from enforcement action under Article 42. It has been thought useful, however, in connection with the consideration of such enforcement action, to draw attention to the establishment of UNIKOM under Chapter VII of the Charter, and the incorporation of certain enforcement powers in the mandate of UNPROFOR.

³¹¹ Adopted at the 2963rd meeting, on 29 November 1990, by 12 votes to 2 (Cuba, Yemen), with 1 abstention (China). At the meeting, 13 Council members were represented at the ministerial level.

³¹² See resolution 678 (1990), paras. 1 and 2.

³¹³ The draft resolution (S/21969) was sponsored by Canada, France, Romania, the Union of Soviet Socialist Republics, the United Kingdom and the United States.

³¹⁴ S/PV.2963, p. 67 (France); p. 75 (Malaysia); p. 82

believed that the Council had already shown a great degree of patience, and emphasized that the proposed resolution gave Iraq a further period of 45 days to comply with the demands made in previous resolutions.³¹⁵ In this context it was noted that by 15 January — the date set in the resolution — the aggression would be nearly six months old.³¹⁶ Several speakers expressed confidence that the pause granted by the resolution would usher in a transition to a political settlement.³¹⁷ Other speakers emphasized the dangers of delaying the use of military force, noting that in the meantime the destruction of Kuwait and the atrocities against its people would continue.³¹⁸

However, various Council members opposed the use of force at this stage of the crisis. They cautioned that the Council should avoid taking hasty action and show patience for economic sanctions to work, bearing in mind the serious consequences that a solution through the use of force would entail.³¹⁹

The representative of Iraq asserted that, by authorizing the use of force, the Council would be acting beyond its jurisdiction. As the Council was seized of the matter, the use of force could not fall

(United Kingdom); p. 87 (Côte d’Ivoire); pp. 84-85 (Finland); p. 91 (Soviet Union); p. 103 (United States). See also the statement by the representative of Kuwait, who urged the Security Council to authorize the use of all necessary means in order to implement its previous resolutions so as to put an end to Iraq’s defiance of the will of the international community (S/PV.2963, pp. 17-18).

³¹⁵ See the statements by the representative of Kuwait (*ibid.*, p. 16), the Secretary of State for Foreign Affairs of the United Kingdom (*ibid.*, p. 82), the Minister for Foreign Affairs of the Soviet Union (*ibid.*, pp. 89-90), the Secretary of State of the United States (*ibid.*, p. 103).

³¹⁶ See the statement by the Secretary of State for Foreign Affairs of the United Kingdom (*ibid.*, p. 82).

³¹⁷ See for example the statements made by the Minister for Foreign Affairs of the Soviet Union (*ibid.*, pp. 89-90) and the Minister for Foreign Affairs of Finland (*ibid.*, pp. 83-85).

³¹⁸ See for example the statements by the Minister for Foreign Affairs of Malaysia (*ibid.*, p. 76) and the Minister for Foreign Affairs of Ethiopia (*ibid.*, p. 51).

³¹⁹ See the statements by the representative of Yemen (S/PV.2963, p. 36); the Minister for Foreign Affairs of China (*ibid.*, p. 62) and the Minister for Foreign Affairs of Cuba (*ibid.*, pp. 58-60). The latter also expressed the view that, by granting some States the authorization to use military force, the Council was acting in violation of the procedures established by the Charter (*ibid.*).

under the provisions governing the legitimate exercise of the right of self-defence. Accordingly, the Council could authorize the use of force only if sanctions adopted in accordance with Article 41 had proved ineffective or unenforceable.³²⁰

B. Measures necessary to ensure the strict implementation of decisions taken in accordance with Article 41

The situation between Iraq and Kuwait

By resolution 665 (1990),³²¹ the Council authorized Member States cooperating with Kuwait to use “such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations, and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990)”.³²²

During the deliberations in connection with the adoption of that resolution,³²³ its sponsors explained that the Council had been forced to tighten the application of the sanctions regime owing to Iraq’s defiance of the Security Council and resolution 661 (1990). While naval forces had initially been deployed at the request of the Government of Kuwait, in accordance with the inherent right of individual and collective self-defence under Article 51 of the Charter, the proposed resolution would provide an additional basis for actions to secure compliance with the sanctions mandated by resolution 661 (1990). While the authority granted in the proposed resolution was sufficiently broad to use armed force to ensure respect for the embargo, such force would be applied only as a last resort and would be limited to what was strictly necessary.³²⁴

³²⁰ S/PV.2963, pp. 19-21.

³²¹ Adopted at the 2938th meeting, on 25 August 1990, by 13 votes to none, with 2 abstentions (Cuba, Yemen).

³²² See resolution 665 (1990), para. 1.

³²³ The draft resolution (S/21640) was sponsored by Canada, Côte d’Ivoire, Finland, France, the United Kingdom, the United States and Zaire.

³²⁴ S/PV.2938, pp. 26-31 (United States); and p. 32 (France). (In this context, speakers also used the terms “minimum force” and “minimum use of force” during the debate.)

The resolution was, however, opposed by two Council members, who believed that the Council was moving too quickly towards the use of force.³²⁵ One Council member expressed the view that, if the basis for the resolution was Article 42, then, in accordance with that Article, the Council first had to determine that economic sanctions had proved insufficient before proceeding to apply measures involving the use of force.³²⁶

Other speakers, while generally supporting the proposed resolution, nevertheless cautioned that any measures taken under it ought to be proportional to the intended purposes, and that political and diplomatic methods should be employed to the maximum degree possible.³²⁷

One Council member believed that the phrase “such measures commensurate to the specific circumstances as may be necessary” used in the proposed resolution did not in fact contain the concept of using force, as measures taken under that resolution had to be taken within the framework of resolution 661 (1990), which did not allow force to be used for its implementation.³²⁸

*Items relating to the situation in the former Yugoslavia (the situation in Bosnia and Herzegovina)*³²⁹

By resolution 787 (1992),³³⁰ the Council called upon States to use “such measures commensurate with the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure

³²⁵ S/PV.2938, p. 7 (Yemen); and p. 17 (Cuba).

³²⁶ *Ibid.*, p. 17 (Cuba). Similar arguments were advanced by the representative of Iraq (*ibid.*, p. 71).

³²⁷ *Ibid.*, p. 43 (Soviet Union); pp. 37-38 (Malaysia); and p. 47 (Finland).

³²⁸ *Ibid.*, p. 53 (China). In this context, the representative of China recalled that the reference to a “minimum use of force” has been intentionally deleted from the draft resolution.

³²⁹ The reference to “Yugoslavia” is to both the Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia (Serbia and Montenegro), as resolution 713 (1991) was imposed against the former and resolution 757 (1992) against the latter.

³³⁰ Adopted at the 3137th meeting, on 16 November 1992; by 13 votes to none, with 2 abstentions (China, Zimbabwe).

strict implementation of the provisions of resolutions 713 (1991) and 757 (1992); and reaffirmed “the responsibility of riparian States to take necessary measures” to ensure that shipping on the Danube was in accordance with resolutions 713 (1991) and 757 (1992), including “such measures commensurate with the specific circumstances as may be necessary to halt such shipping in order to verify cargoes and destinations and to ensure strict implementation of resolutions 713 (1991) and 757 (1992)”.³³¹

In the debates leading up to the adoption of that resolution,³³² its sponsors explained that these measures were necessary to prevent the Adriatic and the Danube from being used to circumvent the sanctions regime, and to make the authorities in Belgrade and the Bosnian Serbs realize the cost of their policies.³³³

Several States non-members of the Council also expressed support for the measures envisaged in the proposed resolution, and believed that they would help to ensure the implementation of the embargo.³³⁴

³³¹ See resolution 787 (1992), paras. 12 and 13.

³³² 3134th to 3137th meetings. The draft resolution (S/24808/Rev.1) was sponsored by Belgium, France, the Russian Federation, the United Kingdom and the United States.

³³³ See for example the statements made by the representatives of the United Kingdom (S/PV.3135, pp. 8-9); the United States (*ibid.*, pp. 11-12); Belgium (S/PV.3134, p. 67); France (S/PV.3135, p. 17); and the Russian Federation (S/PV.3136, p. 6).

³³⁴ Pakistan expressed the hope that the draft resolution would result in “effective and complete enforcement of the sanctions” (S/PV.3136, p. 33). Canada expressed its strong support for the provision of the draft resolution, calling upon all States to use necessary measures to ensure strict application of the sanctions regime, and noted that it had participated in the naval task force monitoring traffic on the Adriatic coast and was participating in sanctions monitoring in neighbouring countries (S/PV.3136, p. 47). Italy, speaking in its capacity as Chairman of the Western European Union, noted that the resolution would “greatly enhance the effectiveness of the embargo” and would help the naval forces of the Western European Union and NATO in the Adriatic Sea to discover and defeat any attempt by sea to “violate or circumvent” the embargo (S/PV.3137, p. 16). Ukraine argued that the draft resolution should envisage “all the necessary steps” to strengthen the effectiveness of the sanctions (S/PV.3137, p. 86). Bangladesh also argued that the sanctions must be “strictly enforced” (S/PV.3137, p. 111).

However, one Council member reaffirmed that it opposed the use of force in any form in the settlement of the conflict in Bosnia and Herzegovina, arguing that the use of force would only complicate the situation.³³⁵

The situation in Somalia

By resolution 794 (1992),³³⁶ the Council, acting under Chapters VII and VIII, called upon States, nationally or through regional agencies or arrangements, “to use such measures as may be necessary” to ensure strict implementation of the arms embargo imposed by resolution 733 (1992).³³⁷

No substantive issues concerning this provision were raised during the debate held in connection with the adoption of that resolution.³³⁸

C. Measures necessary to facilitate the delivery of humanitarian assistance

Items relating to the situation in the former Yugoslavia (the situation in Bosnia and Herzegovina)

By resolution 770 (1992),³³⁹ the Council, acting under Chapter VII of the Charter, called upon States “to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery by relevant United Nations humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina”.³⁴⁰

³³⁵ See the statement by the representative of China (S/PV.3135, p. 16).

³³⁶ Adopted at the 3145th meeting, on 3 December 1992. The draft resolution (S/24880) had been prepared in the course of the Council’s prior consultations.

³³⁷ See resolution 794 (1992), para. 16.

³³⁸ The debate held at the 3145th meeting in connection with the adoption of resolution 794 (1992) was focused on the authorization, contained in that resolution, of all necessary means to facilitate the delivery of humanitarian assistance (see section C below for details of the debate).

³³⁹ Adopted at the 3106th meeting, on 13 August 1992, by 12 votes to none, with 3 abstentions (China, India, Zimbabwe).

³⁴⁰ See resolution 770 (1992), para. 2.

During the debate held in connection with the adoption of that resolution,³⁴¹ the sponsors of the resolution welcomed the fact that the resolution would allow for all necessary means, including the use of force, to achieve the provision of humanitarian assistance. While the use of force was not desirable, it might yet be necessary. In deciding whether military measures were needed, great weight would be given to the views of the United Nations and the humanitarian agencies. It was noted that the provision of humanitarian assistance was not only an urgent humanitarian concern but also an important element of the effort to restore peace and security in the region”.³⁴²

However, one Council member, while endorsing the objectives of resolution 770 (1992) in principle, stated that it could not agree to the authorization of the use of force, as it was precisely the continuous armed conflict that currently hindered the delivery of humanitarian assistance. Once Member States resorted to force, the armed conflict would surely be expanded and prolonged, thus further hampering the humanitarian relief work and the efforts aimed at a political solution.³⁴³

The situation in Somalia

By resolution 794 (1992),³⁴⁴ the Council, acting under Chapter VII of the Charter, authorized the Secretary-General and Member States cooperating “to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia”.³⁴⁵

³⁴¹ The draft resolution (S/24421) was sponsored by Belgium, France, the Russian Federation, the United Kingdom and the United States.

³⁴² United Kingdom (S/PV.3106, pp. 34-36), United States (ibid., p. 38), France (ibid., p. 47). The representative of the United States observed that the adoption of resolution 770 (1992) had demonstrated that the Council too shared the belief “that the provision of humanitarian assistance [was] not only an urgent humanitarian concern but also an important element of the effort to restore peace and security in the region” (S/PV.3106, p. 38).

³⁴³ See the statement by the representative of China (S/PV.3106, pp. 50-51).

³⁴⁴ Adopted at the 3145th meeting, on 3 December 1992. The draft resolution (S/24880) had been prepared in the course of the Council’s prior consultations.

³⁴⁵ See resolution 794 (1992), para. 10. The decision to take

During the debate held in connection with the adoption of the resolution, speakers emphasized that measures authorized by resolution 794 (1992) were aimed at achieving a secure environment for the delivery of humanitarian relief to the Somali people, and that the use of force would be endorsed only if and when necessary to accomplish that objective.³⁴⁶ It was noted that the Council’s earlier efforts to increase security had failed. Action under Chapter VII of the Charter was therefore the only way to ensure the distribution of humanitarian supplies.³⁴⁷ While there was no desire to intervene in the internal affairs of Somalia, a humanitarian crisis of the current magnitude could not be allowed to continue. The present circumstances were unique and required special measures.³⁴⁸

D. Aspects of peacekeeping operations having potential relevance to Article 42

The situation between Iraq and Kuwait

By resolutions 686 (1991)³⁴⁹ and 689 (1991),³⁵⁰ the Council established, under Chapter VII of the

action under Chapter VII was made, as noted in paragraph 7 of the resolution, pursuant to a recommendation by the Secretary-General in his letter of 29 November 1992 (S/24868).

³⁴⁶ See for example the statements by the representatives of the United States (S/PV.3145, p. 36) and France (ibid., p. 29).

³⁴⁷ See for example the statement by the representative of the United Kingdom, who noted that, in the prevailing situation, food and security were “inextricably linked” (S/PV.3145, p. 34).

³⁴⁸ China, in particular, emphasized that it saw the military operation authorized by the resolution as an exceptional action in view of the unique situation in Somalia; once a secure environment for the humanitarian relief effort in Somalia had been created, the military operation should cease (S/PV.3145, p. 17).

³⁴⁹ Adopted at the 2978th meeting, on 2 March 1991, by 11 votes to 1 (Cuba), with 3 abstentions (China, India, Yemen). The draft resolution (S/22298) was sponsored by Belgium, France, Romania, the Union of Soviet Socialist Republics, the United Kingdom, the United States and Zaire.

³⁵⁰ Adopted unanimously at the 2983rd meeting, on 9 April 1991. The draft resolution (S/22470) had been prepared in the course of the Council’s prior consultations.

Charter, the United Nations Iraq-Kuwait Observation Mission (UNIKOM).³⁵¹

The establishment of that operation, under Chapter VII of the Charter, may be relevant to the interpretation of Article 42 insofar as it created an obligation for Iraq and Kuwait to have a military force stationed on their territory.³⁵² While the operation was deployed with the consent of both States,³⁵³ it could be terminated only by a formal decision of the Security Council, as expressly provided for in resolution 689 (1991).³⁵⁴

It should be noted however, that, while the operation was established under Chapter VII of the Charter, it was not authorized to take physical action to prevent the entry of military personnel or equipment into the demilitarized zone or assume other responsibilities that fell within the competence of the host Governments. In accordance with the concept of operations approved by the Council, UNIKOM, as an observation mission, was required to monitor and observe only.³⁵⁵

³⁵¹ By resolution 687 (1991), adopted at the 2981st meeting on 3 April 1991, the Council had established a demilitarized zone along the boundary between Iraq and Kuwait, to be monitored by a United Nations observer unit. By resolution 689 (1991), the Council approved the Secretary-General's plan in his report dated 5 April 1991 (S/22454 and Add.1 and 2) for the deployment of UNIKOM.

³⁵² According to the concept of operations approved by resolution 689 (1991), UNIKOM would be composed of military contingents provided by Member States at the request of the Secretary-General and each contingent would comprise armed and unarmed military personnel. The maximum initial strength of UNIKOM was to be approximately 1,440 all ranks, of which the infantry temporarily attached to it from other established missions would be 680. It was envisaged that a group of 300 military observers would be required initially.

³⁵³ The acceptance of the Secretary-General's proposed plan by the Governments of Iraq and Kuwait was transmitted to the Council in an addendum dated 9 April 1991 (S/22454/Add.3) to the Secretary-General's report (S/22454 and Add.1 and 2).

³⁵⁴ Paragraph 2 of resolution 689 (1991) provides that "the unit can be terminated only by a decision of the Council" and that "the Council shall therefore review the question of its termination or continuation every six months".

³⁵⁵ The responsibility for the maintenance of law and order in the demilitarized zone rested with the Governments of Iraq and Kuwait, which maintained police posts in their respective parts of the zone. Police were allowed to

Items relating to the situation in the former Yugoslavia (the situation in Bosnia and Herzegovina)

By resolution 776 (1992),³⁵⁶ the Council authorized the mandate and strength of the United Nations Protection Force in Bosnia and Herzegovina (UNPROFOR) to be expanded in implementation of paragraph 2 of resolution 770 (1992), thus linking the mandate of the Force to Chapter VII, and incorporating the authorization for the use of "all measures necessary", provided for in that paragraph, in the mandate of the Force.³⁵⁷

The sponsors of resolution 776 (1992), supported by several other speakers, particularly welcomed the fact that it fully corresponded to the goals of resolution 770 (1992), by which the Council had defined the basis for resolute intervention by the international community. The armed protection of humanitarian convoys was now absolutely essential. The resolution

carry only side arms. For further details, see the report of the Secretary-General (S/22454, para. 6).

³⁵⁶ Adopted at the 3114th meeting, on 14 September 1992, by 12 votes to none, with 3 abstentions (China, India, Zimbabwe). The draft resolution (S/24554) was sponsored by Belgium, France, the Russian Federation, the United Kingdom and the United States.

³⁵⁷ By paragraph 2 of resolution 770 (1992), the Council had called upon States "to take nationally or through regional agencies or arrangements all measures necessary to facilitate in coordination with the United Nations the delivery by relevant United Nations humanitarian organizations and others of humanitarian assistance to Sarajevo and wherever needed in other parts of Bosnia and Herzegovina". In addition to the reference to paragraph 2 of resolution 770 (1992), resolution 776 (1992) also refers more generally to functions outlined in a report of the Secretary-General on the UNPROFOR revised concept of operations, including the protection of convoys of released detainees if requested by the International Committee of the Red Cross. In that report, which was issued on 10 September 1992, the Secretary-General had inter alia recommended that, when providing "protective support" to convoys organized by the Office of the United Nations High Commissioner for Refugees, UNPROFOR troops would follow normal peacekeeping rules of engagement and would thus be authorized to use force in self-defence. The Secretary-General noted, however, that self-defence was "deemed to include situations in which armed persons attempt by force to prevent United Nations troops from carrying out their mandate" (S/24540, para. 9).

would provide UNPROFOR with the necessary tools to further its difficult mission in Bosnia and Herzegovina.³⁵⁸

However, individual Council members explained that, owing to the link established in that resolution with paragraph 2 of resolution 770 (1992), they were

not in a position to vote for the draft resolution.³⁵⁹ It was feared that linking the draft resolution with resolution 770 (1992) would change the non-mandatory nature of UNPROFOR as a United Nations peacekeeping operation, and that UNPROFOR would run the risk of plunging into armed conflict.³⁶⁰

³⁵⁸ S/PV.3114, pp. 12-13 (France); pp. 14-15 (Austria); p. 18 (United States); and p. 19 (Belgium).

³⁵⁹ See the statements made at the 3114th meeting by the representatives of China, India and Zimbabwe.

³⁶⁰ S/PV.3114, pp. 11-12 (China).

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

Article 43

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

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

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

Article 44

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

Article 45

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

Article 46

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

Article 47

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

2. *The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the*

Committee's responsibilities requires the participation of that Member in its work.

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

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

Note

In its decisions adopted during the period under review, the Council did not explicitly refer to Articles 43 to 47. The Council did, however, adopt a decision referring to a potential role for the Military Staff Committee, in connection with measures aimed at the enforcement of sanctions imposed against Iraq.³⁶¹

The relevance of the provisions of Articles 43 to 47, in particular as they relate to the command and control of military forces acting pursuant to an authorization by the Security Council, was repeatedly discussed in the Council's deliberations, including in connection with the adoption of decisions relating to the situation between Iraq and Kuwait, the situation in Bosnia and Herzegovina and the situation in Somalia.

The significance of these provisions was also touched upon at the Council's summit meeting on 31 January 1992,³⁶² and in the Secretary-General's report entitled "An Agenda for Peace"³⁶³ submitted

³⁶¹ See resolution 665 (1990), para. 4.

³⁶² 3046th meeting, held at the level of Heads of State and Government, under the agenda item entitled "The responsibility of the Security Council in the maintenance of international peace and security". At that meeting, the President of France *inter alia* suggested an active role for the Military Staff Committee (S/PV.3046, p. 18). The Minister for Foreign Affairs of Zimbabwe expressed the view that future collective enforcement operations ought to be fully accountable to the Security Council and should be truly representative, which, in his view, could be achieved by strengthening Article 46 of the Charter (*ibid.*, pp. 126-127). For further details, see chapter VI of the present volume, which sets out details of the discussions relevant to the relationship between the Security Council and the Military Staff Committee.

³⁶³ S/24111, of 17 June 1992.

pursuant to the presidential statement³⁶⁴ adopted at the conclusion of that meeting. In his report, the Secretary-General expressed the view that the detailed approach governing the use of military force in Chapter VII of the Charter now merited the attention of all Member States. He felt that under the existing political circumstances, the long-standing obstacles to the conclusion of the special agreements foreseen in Article 43 should no longer prevail, and that, therefore, the Security Council, supported by the Military Staff Committee, should initiate negotiations in accordance with that Article.³⁶⁵ These suggestions were not, however, referred to by the Council in the presidential statements adopted following its consideration of the Secretary-General's report.³⁶⁶

The brief overview which follows gives details of the Council's pertinent decisions and deliberations in connection with the situation between Iraq and Kuwait, the situation in Bosnia and Herzegovina and the situation in Somalia.

A. Military enforcement action for the purpose of maintaining international peace and security

The situation between Iraq and Kuwait

Resolution 678 (1990),³⁶⁷ by which the Council authorized States cooperating with Kuwait "to use all necessary means" to ensure Iraq's compliance with its previous resolutions, required those States to keep the Council regularly informed on the progress of action undertaken pursuant to that authorization, but did not otherwise set out any details concerning the relationship between the Council and those States.³⁶⁸

³⁶⁴ S/23500.

³⁶⁵ S/24111, paras. 42-44.

³⁶⁶ Statements of 30 June 1992 (S/24210); 29 October 1992 (S/24728); 30 November 1992 (S/24872); and 30 December 1992 (S/25036).

³⁶⁷ Adopted at the 2963rd meeting, on 29 November 1990, by 12 votes to 2 (Cuba, Yemen), with 1 abstention (China).

³⁶⁸ See resolution 678 (1990), para. 4.

In the debates held in connection with the adoption of the resolution,³⁶⁹ some Council members criticized the resolution for not being based on any specific article of Chapter VII of the Charter, and expressed concern that the Council would have no control over the forces whose actions it had authorized.³⁷⁰ The representative of Iraq charged that the draft resolution was unlawful, as collective enforcement action could be taken only under the command and control of the Security Council, in coordination with the Military Staff Committee, as provided for in the Charter.³⁷¹

Some members also charged that the text of the resolution was so vague that it was not limited to the purpose of enforcing previous resolutions. They warned against the use of excessive force which might lead to the destruction of Iraq and to a military confrontation on a larger scale.³⁷²

Most speakers emphasized, however, that the objective of the proposed resolution was merely to enforce the implementation of previous resolutions.³⁷³

At debates held by the Council after the commencement of military operations against the Iraqi forces,³⁷⁴ several members and non-members of the Council asserted that the military operations undertaken against the Iraqi forces in implementation of resolution 678 (1990) were not being sufficiently monitored by the Council. A number of speakers deplored in particular the fact that, following the commencement of military operations, the Council had not met formally on this matter for several weeks, even

though many delegations had requested formal, open meetings to keep the situation under review.³⁷⁵

The representative of Iraq alleged that the United States and its allies were exceeding the objectives and limits of resolution 678 (1990) and violating the Charter and international humanitarian law, inter alia, by the intentional destruction of non-military targets.³⁷⁶ Several speakers expressed varying degrees of support for the Iraqi position,³⁷⁷ or more generally warned of an escalation of the military offensive that might go beyond its original objectives, and urged the allied forces to abide strictly by the humanitarian rules of war and international law.³⁷⁸

Other speakers, including in particular representatives of the sponsors of the resolution, maintained, however, that the authorization given by resolution 678 (1991) was sufficiently clear, and that the efforts of the coalition were being undertaken strictly in keeping with that resolution and the provisions of the Charter. In relation to complaints about insufficient monitoring by the Council, they emphasized that they had submitted frequent, full reports to the Council, as required under resolution 678 (1990).³⁷⁹ They asserted that the efforts of the allied forces were aimed at clear and limited objectives and

³⁶⁹ 2963rd meeting. The draft resolution (S/21969) was sponsored by Canada, France, Romania, the Union of Soviet Socialist Republics, the United Kingdom and the United States.

³⁷⁰ S/PV.2963, p. 33 (Yemen); p. 58 (Cuba); and p. 76 (Malaysia).

³⁷¹ S/PV.2963, pp. 19-21. The representative of Iraq reiterated the Iraqi position in this regard at the 2981st meeting (S/PV.2981, p. 22).

³⁷² See in particular the statements by the representative of Yemen (S/PV.2963, p. 33) and the Minister for Foreign Affairs of Malaysia (*ibid.*, pp. 76-77).

³⁷³ S/PV.2963, pp. 17-18 (Kuwait); p. 67 (France); p. 75 (Malaysia); pp. 84-85 (Finland); p. 87 (Côte d'Ivoire); p. 82 (United Kingdom); p. 91 (Soviet Union); and p. 103 (United States).

³⁷⁴ At the 2977th meeting, held from 13 February to 2 March 1991. Offensive combat operations commenced on 16 January and were suspended on 28 February 1991.

³⁷⁵ S/PV.2977 (Part I), pp. 49-51 (India); pp. 23-31 (Cuba); and p. 16 (Yemen); S/PV.2977 (Part II) (closed — resumption 1), pp. 171-172 (Malaysia); and pp. 189-190 (Islamic Republic of Iran).

³⁷⁶ S/PV.2977 (Part II) (closed), pp. 66-68; S/PV.2977 (Part II) (closed — resumption 2), pp. 278-281. At the 2981st meeting on 3 April 1991, i.e. following the suspension of offensive combat operations, the Iraqi representative reiterated those charges (S/PV.2981, pp. 22-31).

³⁷⁷ See the statements by the representatives of Malaysia (S/PV.2977 (Part II) (closed — resumption 1), pp. 171-172); the Sudan (S/PV.2977 (Part II) (closed — resumption 2), p. 216); the Islamic Republic of Iran (S/PV.2977 (Part II) (closed — resumption 1), p. 191); and Cuba (*ibid.*, p. 197).

³⁷⁸ S/PV.2977 (Part II) — (closed), p. 112 (Soviet Union); S/PV.2977 (Part II) (closed — resumption 2), p. 228 (Sweden).

³⁷⁹ United States: S/PV.2977 (Part I), pp. 46-47; United Kingdom: S/PV.2977 (Part II) (closed), p. 73; Canada: S/PV.2963, p. 73; Italy: S/PV.2977 (Part II) (closed — resumption 1), pp. 143-145. The representative of the United States also explained that the Council had not met earlier, as, in the light of Iraq's continuing refusal to acknowledge the validity of the Council's demands, an earlier meeting of the Council would not have helped to advance its objectives (S/PV.2977 (Part I), pp. 46-47).

fully in accordance with the relevant Council resolutions. They reaffirmed that those objectives did not include the destruction, dismemberment or occupation of Iraq, and that the allied forces aimed to minimize civilian casualties. It was noted that a limitation on the use of force would not facilitate the achievement of the objectives sought by all. Responding to suggestions that the fighting should be confined to the territory of occupied Kuwait, it was contended that such self-limitation would make it impossible to achieve the objectives of resolution 678 (1990), as the logistical support and resources of the Iraqi military extended far beyond the confines of Kuwait. That did not mean, however, that the allies had extended their objectives beyond those laid down in the pertinent Council resolutions, that is, Iraq's unconditional withdrawal from Kuwait and the re-establishment of Kuwait's sovereignty and independence.³⁸⁰

Following a declaration by the Iraqi leadership, on 15 February, which envisaged the possibility of an Iraqi withdrawal from Kuwait, several Member States expressed the view that offensive combat operations should be ceased or suspended forthwith,³⁸¹ or that at least options for a peaceful settlement of the conflict should be explored by the Council.³⁸² One Council member submitted two draft resolutions,³⁸³ the first of which envisaged the immediate resumption of negotiations without further resort to force, and the second of which envisaged that the Council "consider

possible formulae for halting armed actions and achieving a peaceful settlement of the conflict".³⁸⁴

Other speakers opposed a cessation or suspension of military action at this stage, arguing that such a move would be counterproductive. It was noted that a ceasefire without concrete steps by Iraq to withdraw from Kuwait would not accomplish the objectives of resolution 660 (1990) and not bring the aggression to a close. While the declaration by the Iraqi leadership did indeed envisage withdrawal from Kuwait, it had added conditions which contravened the provisions of resolution 660 (1990). For peace initiatives to succeed, a clear and unequivocal commitment from the Iraqi leadership was needed.³⁸⁵

As noted in the preamble to resolution 686 (1991), offensive combat operations were suspended following Iraq's confirmation, on 27 February 1991, of its agreement to comply fully with all previous Council resolutions, and its intention to immediately release prisoners of war.³⁸⁶

B. Measures necessary to ensure the strict implementation of decisions taken in accordance with Article 41

The situation between Iraq and Kuwait

By resolution 665 (1990),³⁸⁷ by which the Council authorized Member States cooperating with the Government of Kuwait to interdict maritime shipping in order to ensure compliance with the economic sanctions imposed by resolution 661 (1990), the Council requested the States concerned "to

³⁸⁰ United States: S/PV.2977 (Part I), p. 43; S/PV.2977 (Part II) (closed — resumption 1), p. 187; S/PV.2977 (Part II) (closed — resumption 2), pp. 267-268; United Kingdom: S/PV.2977 (Part II) (closed), pp. 73-76; S/PV.2977 (Part II) (closed), pp. 73-76; S/PV.2977 (Part II) (closed — resumption 2), p. 262; Australia: S/PV.2977 (Part II) (closed — resumption 1), p. 147; Kuwait: S/PV.2977 (Part II) (closed), p. 23.

³⁸¹ India: S/PV.2977 (Part II) (closed — resumption 1), p. 121; Pakistan: S/PV.2977 (Part II) (closed — resumption 2), p. 211; Sudan: S/PV.2977 (Part II) (closed — resumption 2), p. 216; Yemen: S/PV.2977 (Part II) (closed — resumption 2), p. 286.

³⁸² Islamic Republic of Iran: S/PV.2977 (Part II) (closed — resumption 1), pp. 192-193; Malaysia: S/PV.2977 (Part II) (closed — resumption 1), pp. 168-170; Sweden: S/PV.2977 (Part II) (closed — resumption 2), pp. 227-228.

³⁸³ S/22231 and S/22232.

³⁸⁴ The draft resolutions were submitted at the 2977th meeting, on 15 and 16 February 1991 respectively. See S/PV.2977 (Part II) (closed — resumption 1) and S/PV.2977 (Part II) (closed — resumption 2).

³⁸⁵ Kuwait: S/PV.2977 (Part II) (closed), p. 22; S/PV.2977 (Part II) (closed — resumption 2), pp. 236-237; Saudi Arabia: S/PV.2977 (Part II) (closed — resumption 2), pp. 232-235; United States: S/PV.2977 (Part II) (closed — resumption 2), pp. 264-265; United Kingdom: S/PV.2977 (Part II) (closed — resumption 2), pp. 257 and 261; France: S/PV.2977 (Part II) (closed — resumption 1), pp. 123-125; Japan: *ibid.*, p. 132; Canada: *ibid.*, pp. 137-140.

³⁸⁶ See resolution 686 (1991), fourth and fifth preambular paras.

³⁸⁷ Adopted at the 2938th meeting, on 25 August 1990, by 13 votes to none, with 2 abstentions (Cuba, Yemen).

coordinate their actions ... using, as appropriate, mechanisms of the Military Staff Committee and, after consultation with the Secretary-General, to submit reports to the Security Council and the Security Council Committee established by resolution 661 (1990) ... in order to facilitate the monitoring of the implementation of the present resolution”.³⁸⁸

During the debate held in connection with the adoption of the resolution,³⁸⁹ its sponsors expressly acknowledged the importance of the Council’s role in monitoring the use of force,³⁹⁰ and indicated their readiness to consider a role for the Military Staff Committee in coordinating the naval interdiction.³⁹¹

Some Council members criticized the proposed resolution as not clearly defining the powers of the Security Council to supervise any action taken by States.³⁹² One Council member contended that the draft resolution violated provisions of the Charter relating to the use of force, including Articles 46 and 47, as it did not make States accountable to the Security Council for the proper exercise of the

authority delegated to them, and as it did not set out how the Military Staff Committee was to assist the Council in the “employment and command of forces placed at its disposal”, as required by Article 47. It was noted that, although there was a reference to the Military Staff Committee in the draft resolution, the Committee had not been convened to draw up any plan for the deployment of forces.³⁹³

*Items relating to the situation in the former Yugoslavia (the situation in Bosnia and Herzegovina)*³⁹⁴

Resolution 787 (1992),³⁹⁵ by which the Council, inter alia, called upon States to interdict maritime shipping in order to ensure compliance with the sanctions imposed by resolutions 713 (1991) and 757 (1992), provided that such action was to be taken “under the authority of the Security Council”. The resolution also required States concerned “to coordinate with the Secretary-General on the submission of reports to the Security Council” regarding actions taken pursuant to that authorization.³⁹⁶

During the debate held in connection with the adoption of the resolution,³⁹⁷ one Council member expressed concern that the Security Council and the United Nations as a whole should retain full authority and responsibility over the execution of enforcement action authorized by the Council, but noted that the cooperation of the sponsors in amending the resolution to provide for effective coordination, through the Secretary-General, of the actions that Member States

³⁸⁸ See resolution 665 (1990), para. 4.

³⁸⁹ The draft resolution (S/21640) was sponsored by Canada, Côte d’Ivoire, Finland, France, the United Kingdom, the United States and Zaire.

³⁹⁰ See for example the statement by the representative of France, who believed that “in each case, the use of coercion [would] require notification of the Security Council” (S/PV.2938, p. 32). The representative of Finland stated that any action by the naval forces concerned would require close attention in order to ensure that such action served the purposes intended by the Security Council (ibid., p. 47).

³⁹¹ See the statements by the representatives of the United States (S/PV.2938, pp. 29-30) and the Soviet Union (ibid., pp. 41 and 43). At an earlier meeting in relation to the same item, the representative of the Soviet Union had already expressed his delegation’s readiness “to undertake consultations immediately in the Military Staff Committee, which, under the Charter of the United Nations, can perform very important functions” (S/PV.2934, p. 12).

³⁹² S/PV.2938, pp. 8-11 (Yemen); pp. 13-16 (Cuba); and pp. 21-25 (Colombia). See also the statement by the representative of Iraq, who asserted that resolution 665 (1990) vested no real authority in the Security Council, the Military Staff Committee or the Secretary-General in supervising the use of force. He contended that the Council had “no right to deprive itself of its own authority, or to delegate that authority to a number of States, unless the Charter [was] properly amended” (ibid., pp. 67-71).

³⁹³ S/PV.2938, pp. 12-17 (Cuba). See also the statement made by the representative of Iraq at the same meeting (S/PV.2938, pp. 67-70).

³⁹⁴ The reference to “Yugoslavia” is intended to relate to both the Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia (Serbia and Montenegro), as resolution 713 (1991) was imposed against the former and resolution 757 (1992) against the latter.

³⁹⁵ Adopted at the 3137th meeting, on 16 November 1992, by 13 votes to none, with 2 abstentions (China, Zimbabwe).

³⁹⁶ See resolution 787 (1992), paras. 12 and 14.

³⁹⁷ The draft resolution (S/24808/Rev.1) was sponsored by Belgium, France, the Russian Federation, the United Kingdom and the United States.

might take had met this concern to a considerable extent.³⁹⁸

C. Decisions authorizing the use of all measures necessary to facilitate the delivery of humanitarian assistance

Items relating to the situation in the former Yugoslavia (the situation in Bosnia and Herzegovina)

Resolution 770 (1992),³⁹⁹ by which the Council called upon States to take all measures necessary to facilitate the delivery of humanitarian assistance to Bosnia and Herzegovina, required those States to take such action “in coordination with the United Nations”, and to report to the Secretary-General on measures they were taking in coordination with the United Nations to carry out the resolution; and furthermore required the Secretary-General to report to the Council on a regular basis on the implementation of the resolution.⁴⁰⁰

While the sponsors of the resolution⁴⁰¹ emphasized that, in accordance with those provisions, all action taken under it would be closely coordinated with the United Nations,⁴⁰² two Council members, who did not oppose the purposes of the resolution in principle, nevertheless abstained from voting on it, as they felt it would be imperative that an operation that could involve the use of force should be under the command and control of the United Nations, in strict conformity with the provisions of the Charter.⁴⁰³

³⁹⁸ See the statement by the representative of India (S/PV.3137, p. 6). China and Zimbabwe abstained from voting on the resolution as they generally opposed the measures authorized by it.

³⁹⁹ Adopted at the 3106th meeting, on 13 August 1992, by 12 votes to none, with 3 abstentions (China, India, Zimbabwe).

⁴⁰⁰ Resolution 770 (1992), paras. 2, 4 and 7.

⁴⁰¹ The draft resolution (S/24421) was sponsored by Belgium, France, the Russian Federation, the United Kingdom and the United States.

⁴⁰² S/PV.3106, p. 35 (United Kingdom); p. 40 (United States); p. 45 (Belgium); and p. 47 (France).

⁴⁰³ S/PV.3106, pp. 11-12 (India); and pp. 16-17 (Zimbabwe). China also abstained from voting on the resolution as it generally opposed the authorization of the use of force (*ibid.*, p. 50). The representatives of India and Zimbabwe reiterated their reservations in this

The situation in Somalia

By resolution 794 (1992),⁴⁰⁴ by which the Council authorized the Secretary-General and Member States cooperating “to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia”, the Council authorized “the Secretary-General and Member States concerned to make the necessary arrangements for the unified command and control of the forces involved”.⁴⁰⁵ The Council furthermore provided that the arrangements for the unified command and control of the forces would reflect the offer by the United States to take the lead in organizing and commanding such an operation.⁴⁰⁶ By the same resolution, the Council requested the Secretary-General and, as appropriate, the States concerned to report to the Council on a regular basis, the first such report to be made no later than 15 days after the adoption of the resolution, on the implementation of the resolution and the attainment of the objective of establishing a secure environment so as to enable the Council to make the necessary decision for a prompt transition to continued peacekeeping operations.⁴⁰⁷

regard at the 3114th meeting, in connection with the adoption of resolution 776 (1992), which incorporated the authorization given by resolution 770 (1992) in the mandate of UNPROFOR; S/PV.3114, pp. 6-8 (India); and pp. 3-4 (Zimbabwe).

⁴⁰⁴ Adopted at the 3145th meeting, on 3 December 1992.

⁴⁰⁵ See resolution 794 (1992), para. 12. The decision to take action under Chapter VII was made, as noted in paragraph 7 of the resolution, pursuant to a recommendation by the Secretary-General in his letter of 29 November 1992 (S/24868). In that letter, the Secretary-General had proposed to the Council a number of options for the establishment of a secure environment for humanitarian relief operations. One of those options (the fifth option) was for the Council to mandate an “enforcement operation” under United Nations command and control.

⁴⁰⁶ See resolution 794 (1992), para. 12, which referred to an offer by the United States described in the Secretary-General’s letter of 29 November 1992. According to the letter, the United States had informed the Secretary-General that “if the Security Council were to decide to authorize Member States to use forceful means to ensure the delivery of relief supplies to the people of Somalia, the United States would be ready to take the lead in organizing and commanding such an operation, in which a number of other Member States would also participate” (see S/24868).

⁴⁰⁷ See resolution 794 (1992), para. 18.

At the debate held in connection with the adoption of the resolution,⁴⁰⁸ a number of speakers emphasized that the operational concept underlying the resolution recognized the fundamental role of the United Nations in scrutinizing the operation, as the Security Council and the Secretary-General would play an essential role throughout its duration.⁴⁰⁹

However, several other speakers, while acknowledging that the resolution incorporated

opinions expressed by many delegations regarding the strengthening of United Nations control over such an operation, noted that they would have preferred an arrangement under which the United Nations kept effective political command and control, in full conformity with the provisions of the Charter. Even though some provisions for United Nations monitoring had been made, the resolution still took the form of authorizing certain countries to take military actions, which might adversely affect the collective role of the United Nations.⁴¹⁰

⁴⁰⁸ The draft resolution (S/24880) had been prepared in the course of the Council's prior consultations.

⁴⁰⁹ S/PV.3145, p. 29 (France); pp. 13-14 (Ecuador); p. 7 (Zimbabwe); and p. 48 (Hungary).

⁴¹⁰ S/PV.3145, p. 17 (China); pp. 50-51 (India); and p. 24 (Belgium).

Part VI

Obligations of Member States under Article 48 of the Charter

Article 48

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

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

Note

During the period under review, the Council adopted one decision referring expressly to Article 48. By resolution 670 (1990), which was aimed at strengthening the sanctions regime imposed on Iraq and Kuwait, the Council expressed its determination "to ensure respect for its decisions and the provisions of Articles 25 and 48 of the Charter".⁴¹¹ By that resolution, the Council further affirmed that any acts of the Government of Iraq which were contrary to Articles 25 or 48 of the Charter were null and void.⁴¹²

In other resolutions, the Council underlined the mandatory nature of measures imposed under Chapter VII of the Charter without specifically referring to Article 48. When imposing sanctions on Iraq and Kuwait, the Libyan Arab Jamahiriya and the Federal Republic of Yugoslavia, the Council in each case expressly stated in its decisions that States were to act strictly in accordance with the provisions of the resolutions, notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any licence or permit granted before the date of the resolution.⁴¹³ By the same decisions, the Council required States to report on their compliance with

present resolution by a State or its nationals or through its territory, measures directed at the State in question to prevent such evasion (para. 12).

⁴¹³ In connection with the measures imposed against Iraq and Kuwait, see resolutions 661 (1990), para. 5; 670 (1990), para. 3; and 687 (1991), para. 25. In connection with the measures imposed on the Libyan Arab Jamahiriya, see resolution 748 (1992), para. 7. In connection with the measures imposed on the Federal Republic of Yugoslavia, see resolution 757 (1992), para. 11.

⁴¹¹ See resolution 670 (1990), seventh preambular para.

⁴¹² *Ibid.*, eighth preambular para. By the same resolution, the Council decided to consider, in the event of evasion of the provisions of resolution 661 (1990) or of the

relevant prohibitions,⁴¹⁴ and provided that implementation reports received by States were to be examined by committees specifically mandated to monitor the implementation of sanctions, and to consider any information concerning violations of relevant State obligations.⁴¹⁵ In order to ensure full compliance with relevant prohibitions, the Council, by subsequent decisions, called on States to take “such measures commensurate with the specific circumstances as may be necessary” to enforce the sanctions regimes imposed on Iraq and Kuwait and the Federal Republic of Yugoslavia.⁴¹⁶

In accordance with Article 48, action required to carry out the Council’s decisions “shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine”, both

“directly and through their action in the appropriate international agencies”.

In its decisions imposing measures not involving the use of armed force, in accordance with the provisions of Article 41 of the Charter, the Council consistently called upon “all States” to comply with relevant prohibitions.⁴¹⁷ In connection with the measures imposed on Iraq and Kuwait, the Libyan Arab Jamahiriya and the Federal Republic of Yugoslavia, the Council expressly included “States non-members of the United Nations” among those to whom its decisions were addressed,⁴¹⁸ and also required international organizations to act strictly in accordance with their provisions.⁴¹⁹

While the decisions referred to above were formulated so as to achieve universal compliance and to create binding obligations for all States, decisions

⁴¹⁴ In connection with the arms embargo imposed against the former Yugoslavia, the Council, by resolution 724 (1991), para. 5, requested all States to report to the Council within 20 days on the measures they had instituted for meeting their obligations. In connection with the sanctions regime imposed on the Federal Republic of Yugoslavia (Serbia and Montenegro), the Council, by resolution 757 (1992), para. 12, requested all States to report to the Secretary-General within 23 days on the measures they had taken. In connection with sanctions imposed on Iraq and Kuwait, the Council, by resolution 700 (1991), para. 4, requested all States to report to the Secretary-General within 45 days on their compliance with the prohibitions set out in resolution 687 (1991). In connection with the measures imposed against the Libyan Arab Jamahiriya, the Council, by resolution 748 (1992), para. 8, requested all States to report to the Secretary-General within 45 days on their compliance with that resolution.

⁴¹⁵ In connection with the measures imposed on Iraq and Kuwait, see resolutions 661 (1990), para. 6 (b); and 700 (1991), para. 4. In connection with the measures imposed on the Libyan Arab Jamahiriya, see resolution 748 (1992), para. 9. In connection with the measures imposed on the Federal Republic of Yugoslavia, see resolution 757 (1992), para. 13. Attention is also drawn to resolution 751 (1992), para. 11, providing for the establishment of a sanctions committee to monitor the implementation of the arms embargo imposed on Somalia by resolution 733 (1992).

⁴¹⁶ See resolutions 665 (1990), para. 1; and 787 (1992), para. 12, relating to the enforcement of sanctions imposed on Kuwait and Iraq and the Federal Republic of Yugoslavia respectively. By resolution 794 (1992), para. 16, the Council also called on States to take measures necessary to enforce the arms embargo imposed on Somalia.

⁴¹⁷ In connection with the situation between Iraq and Kuwait, see resolutions 661 (1990), paras. 3-4; 670 (1990), paras. 1-6; and 687 (1991), paras. 24 and 29. In connection with items relating to the situation in the former Yugoslavia and in Bosnia and Herzegovina, see resolutions 713 (1991), para. 6; and 757 (1992), paras. 3-9. In connection with the situation in Somalia, see resolution 733 (1992), para. 5. In connection with items relating to the Libyan Arab Jamahiriya, see resolution 748 (1992), paras. 3-6. In connection with the situation in Liberia, see resolution 788 (1992), para. 8.

⁴¹⁸ See resolutions 661 (1990), para. 5; 748 (1992), para. 7; and 757 (1992), para. 11, calling on “all States, including States non-members of the United Nations” to act strictly in accordance with the provisions of those resolutions.

⁴¹⁹ In connection with the measures imposed on Iraq and Kuwait, see resolution 670 (1990), para. 11, by which the Council affirmed that the United Nations, the specialized agencies and other organizations in the United Nations system were required to take such measures as may be necessary to give effect to the terms of resolution 661 (1990) and that resolution. In resolutions 687 (1991), para. 25, and 700 (1991), para. 3, the Council more generally called on “all States and international organizations” to act in accordance with their provisions. In connection with the measures imposed on the Libyan Arab Jamahiriya and the Federal Republic of Yugoslavia, see resolutions 748 (1992), para. 7, and 757 (1992), para. 11, respectively, both of which require all States and international organizations to act strictly in accordance with their provisions.

providing for the use of “all measures necessary”⁴²⁰ to enforce previous resolutions of the Council rather took the form of authorizations or calls on States willing and in a position to take such action. While such authorizations or calls were often addressed to “States” in general,⁴²¹ in some instances they were more specifically addressed to “Member States cooperating”⁴²² or “Member States in a position to do

so”.⁴²³ However, one decision, adopted in connection with the implementation of sanctions imposed on the Federal Republic of Yugoslavia, explicitly affirmed the responsibility of “riparian States” to take all necessary measures to ensure that shipping on the Danube did not infringe the prohibitions previously imposed by the Council.⁴²⁴ Some of the decisions authorizing the use of all necessary measures expressly envisaged possible action through regional agencies or arrangements.⁴²⁵

⁴²⁰ “All measures necessary” was the precise wording used in resolution 770 (1992), para. 2. In resolutions 665 (1990), para. 1; 787 (1992), para. 12; and 794 (1992), para. 16, reference was made to “such measures (commensurate to the specific circumstances) as may be necessary”, and in resolutions 678 (1991), para. 2; and 794 (1992), para. 10, to “all necessary means”.

⁴²¹ See resolutions 770 (1992), para. 2; 787 (1992), para. 12; and 794 (1992), para. 16.

⁴²² By resolution 665 (1990), para. 1, the Council specifically called on “those Member States cooperating with the Government of Kuwait which are deploying maritime forces to the area” to take measures necessary to ensure the strict implementation of the measures imposed by resolution 661 (1990). By resolution 678 (1990), para. 2, the Council authorized “Member States cooperating with the Government of Kuwait” to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions. By resolution 794 (1992), para. 10, the Council authorized “Member States cooperating” to implement an offer by the United States to establish an operation to create a secure environment for the delivery of humanitarian relief supplies in Somalia.

⁴²³ By resolution 794 (1992), para. 11, the Council called on all Member States in a position to do so to provide military forces and make other contributions to an operation aimed at creating a secure environment for the delivery of humanitarian relief supplies in Somalia.

⁴²⁴ See resolution 787 (1992), para. 13.

⁴²⁵ By resolution 770 (1992), para. 2, the Council called upon States to take nationally or through regional agencies or arrangements all measures necessary to facilitate the delivery of humanitarian assistance to Bosnia and Herzegovina. By resolution 787 (1992), para. 12, the Council called upon States, acting nationally or through regional agencies or arrangements, to use such measures commensurate with the specific circumstances as might be necessary to halt all inward and outward maritime shipping in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions of resolutions 713 (1991) and 757 (1992). By resolution 794 (1992), para. 16, the Council called upon States, nationally or through regional agencies or arrangements, to use such measures as might be necessary to ensure strict implementation of the arms embargo imposed on Somalia by resolution 733 (1992). In all of those decisions the Council indicated that it was acting under both Chapters VII and VIII of the Charter.

Part VII

Obligations of Member States under Article 49 of the Charter

Article 49

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

Note

During the period under review, the obligation of States to join in affording mutual assistance assumed specific relevance in connection with decisions under

Chapter VII of the Charter by which the Security Council authorized or called on Member States to take all measures necessary to enforce the Council’s resolutions. While such authorizations or calls were primarily addressed to States willing and in a position to take relevant enforcement action, the Council regularly requested all States to provide appropriate support and assistance to those States. Such requests were made by the decisions described below. The Council did not adopt any resolutions containing an explicit reference to Article 49.

By resolution 665 (1990),⁴²⁶ in which the Council called on Member States cooperating with the Government of Kuwait to use such measures as may be necessary to ensure implementation of resolution 661 (1990),⁴²⁷ the Council requested all States to provide, in accordance with the Charter of the United Nations, such assistance as might be required by the States concerned.⁴²⁸

By resolution 678 (1990),⁴²⁹ by which the Council authorized⁴³⁰ Member States cooperating with the Government of Kuwait to use all necessary means to uphold and implement resolution 660 (1990) and subsequent relevant resolutions,⁴³¹ the Council requested all States to provide appropriate support for the actions undertaken in pursuance of that authorization.⁴³²

By resolution 787 (1992), by which the Council called on States to take action under Chapter VII of the Charter to ensure strict implementation of resolutions 713 (1991) and 757 (1992),⁴³³ the Council requested

all States to provide such assistance as might be required by those States.⁴³⁴

By resolution 794 (1992),⁴³⁵ by which the Council authorized action under Chapter VII of the Charter to establish a secure environment for a humanitarian relief operation in Somalia, and called on Member States in a position to do so to provide military forces or make other contributions,⁴³⁶ the Council requested all States, in particular those in the region, to provide appropriate support for the actions undertaken by those States.⁴³⁷

In addition to the above provisions relating to the obligation of States to afford mutual assistance in connection with action involving the use of “all measures necessary”, States were reminded of their obligations under Article 49 in connection with the implementation of economic sanctions. In particular, in a statement by the President of the Council on 29 April 1991,⁴³⁸ the Council members appealed to all States to provide assistance to those States facing special economic problems as a result of their compliance with the sanctions imposed on Iraq and Kuwait by resolution 661 (1990).⁴³⁹

⁴²⁶ Adopted at the 2938th meeting, on 25 August 1990, by 13 votes to none, with 2 abstentions (Cuba, Yemen).

⁴²⁷ Resolution 661 (1990), by which the Council imposed sanctions on Iraq, was adopted at the 2933rd meeting, on 6 August 1990, by 13 votes to none, with 2 abstentions (Cuba, Yemen).

⁴²⁸ See resolution 665 (1990), para. 3.

⁴²⁹ Adopted at the 2963rd meeting, on 29 November 1990, by 12 votes to 2 (Cuba, Yemen), with 1 abstention (China).

⁴³⁰ See resolution 678 (1990), para. 2.

⁴³¹ See resolution 660 (1990), adopted at the 2932nd meeting, on 2 August 1990, by 14 votes to none, with 1 abstention member (Yemen).

⁴³² See resolution 678 (1990), para. 3.

⁴³³ See resolution 787 (1992), para. 12; 678 (1990), para. 3. Contributions were to be made in cash or in kind. Cash contributions were to be channelled to the States or operations concerned through a fund to be established by the Secretary-General.

⁴³⁴ See resolution 787 (1992), para. 15.

⁴³⁵ Adopted unanimously at the 3145th meeting, on 3 December 1992.

⁴³⁶ See resolution 794 (1992), para. 11.

⁴³⁷ *Ibid.*, para. 17.

⁴³⁸ S/22548.

⁴³⁹ For further details of decisions and deliberations relating to special economic problems arising from enforcement measures, see part VIII of the present chapter, on the Council's practice relating to Article 50.

Part VIII

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

Article 50

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

Note

During the period under review, the Security Council expressly recalled the rights of States under Article 50 of the Charter in three of its decisions, adopted in connection with the imposition of sanctions on Iraq and Kuwait, the Libyan Arab Jamahiriya and the Federal Republic of Yugoslavia (Serbia and Montenegro).⁴⁴⁰

In connection with the implementation of measures imposed on Iraq and Kuwait⁴⁴¹ and the Federal Republic of Yugoslavia,⁴⁴² a number of Member States were confronted with special economic problems, and requested consultations and assistance in accordance with Article 50.⁴⁴³ Those requests were examined by the relevant sanctions committees, which transmitted their observations and recommendations to the Security Council.⁴⁴⁴

⁴⁴⁰ See resolutions 669 (1990), 748 (1992) and 757 (1992).

⁴⁴¹ See resolution 661 (1990), paras. 2-4. For subsequent modifications to the measures imposed by that resolution, see resolutions 666 (1990), para. 1; 670 (1990), paras. 3-6; 687 (1991), paras. 20, 24 and 29; and 778 (1992), paras. 1-2, 4. For further details, see part III of the present chapter.

⁴⁴² See resolution 757 (1992), paras 3-9. For subsequent modifications of the measures imposed by that resolution, see resolutions 760 (1992) and 787 (1992), paras. 9-10. For further details, see part III of the present chapter.

⁴⁴³ For details of relevant communications from affected States, see the case studies below.

⁴⁴⁴ For details of such recommendations, see in particular the report dated 18 September 1990 (S/21786) and the letters dated 19 and 21 December 1990 and 18 March 1991 (S/22021, Add.1 and 2), submitted to the Council

In response to a recommendation by the Iraq/Kuwait sanctions Committee, the Council called on all States, United Nations organizations and financial organizations to respond effectively to the problems of the most affected States.⁴⁴⁵

Questions relating to the application and interpretation of Article 50 were also considered at the 3046th meeting of the Council, which was held at the level of Heads of State and Government to consider the item entitled “The responsibility of the Security Council in the maintenance of international peace and security”,⁴⁴⁶ and in the report of the Secretary-General entitled “An Agenda for Peace”,⁴⁴⁷ submitted pursuant

by the Iraq/Kuwait sanctions Committee.

⁴⁴⁵ See the statement by the President of the Council dated 29 April 1991 (S/22548).

⁴⁴⁶ At that meeting, the need to address economic problems arising in third countries was stressed in particular by the Prime Minister of India and the Minister for Foreign Affairs of Zimbabwe. The Prime Minister of India observed that, while some consequences of Council decisions might be unintended, they could affect those whom they were least intended to affect, such as the trading partners of a State subject to economic sanctions. Noting that, for developing countries, that impact could be catastrophic, the Prime Minister stressed that the Council needed to take speedy and parallel action to address problems arising in a third country from the implementation of its resolutions, if the Council’s decisions were to continue to command adherence and support (S/PV.3046, pp. 97-98). The Minister for Foreign Affairs of Zimbabwe remarked that, “although Article 50 was designed to give some protection to [third] States, the experience of the Gulf war had shown that some gaps need[ed] to be closed”. Noting that “the application of sanctions against Iraq [had] brought hardship to many countries in the region and beyond”, he contended that “the fact that representations continue[d] to come to the sanctions Committee from the most affected States ... demonstrated the inadequacy of Article 50”. He further observed that there was a need for “clear criteria for determining who deserved assistance and standing United Nations arrangements for the mobilization of the resources needed to assist the affected States” (ibid., pp. 123-125).

⁴⁴⁷ S/24111, para. 41.

to a request made by the Council at that meeting.⁴⁴⁸ In his report, the Secretary-General observed that it was important “that States confronted with special economic problems not only have the right to consult the Security Council regarding such problems, as Article 50 provides, but also have a realistic possibility of having their difficulties addressed”. Accordingly, the Secretary-General recommended “that the Security Council devise a set of measures involving the financial institutions and other components of the United Nations system that can be put in place to insulate States from such difficulties”, noting that such measures would be “a matter of equity and a means of encouraging States to cooperate with decisions of the Council”.⁴⁴⁹

In a statement made by the President,⁴⁵⁰ the Council expressed its determination to further consider the above-mentioned recommendation of the Secretary-General, and requested the Secretary-General in this regard to consult the heads of the international financial institutions, other components of the United Nations system and Member States.

⁴⁴⁸ In a presidential statement issued at the conclusion of the summit meeting on 31 January 1992 (S/23500), the Council had invited the Secretary-General to “report on ways of strengthening and making more efficient within the framework and provisions of the Charter the capacity of the United Nations for preventive diplomacy, for peacemaking and for peacekeeping”.

⁴⁴⁹ Prior to the submission of the report, by a letter to the Secretary-General dated 26 May 1992, a number of Member States had expressed concern that there was “no machinery guaranteeing an adequate response to requests for assistance under Article 50 of the Charter”. Accordingly it was felt that “such machinery should be set up in order to compensate for secondary effects on third States of sanctions imposed under Chapter VII of the Charter” (see S/24025 and Corr.1, annex, para. 15).

⁴⁵⁰ At the 3154th meeting, on 30 December 1992 (S/25036).

Decisions of the Security Council relating to Article 50

The following case studies set out an overview of the Council’s proceedings relevant to Article 50 of the Charter in connection with the measures imposed against Iraq and Kuwait, the Libyan Arab Jamahiriya and the Federal Republic of Yugoslavia.

Case 20

The situation between Iraq and Kuwait (in connection with the implementation of measures imposed by resolution 661 (1990))

Shortly after the adoption of resolution 661 (1990), by which the Council, imposed a general ban on all international trade with Iraq and Kuwait,⁴⁵¹ several Member States, in accordance with Article 50 of the Charter, informed the Council of the economic problems with which they were confronted as a consequence of complying with those measures, and requested consultations with a view to finding an appropriate solution.⁴⁵²

On 22 August 1990, the Council entrusted the Committee established under resolution 661 (1990) with the task of considering communications received from States confronted with such problems.⁴⁵³

⁴⁵¹ See resolution 661 (1990), paras. 2-4. For subsequent modifications to the measures imposed by that resolution, see resolutions 666 (1990), para. 1; 670 (1990), paras. 3-6; 687 (1991), paras. 20, 24 and 29; and 778 (1992), paras. 1-2, 4. For further details, see part III of the present chapter.

⁴⁵² See in particular the communication transmitted by Jordan on 20 August 1990 (S/21620).

⁴⁵³ The Committee was entrusted with this task at the Council’s consultations of the whole held on that day: see the Committee’s report dated 18 September 1992 (S/21786, para. 2). At the 2939th meeting, on 13 September 1990, a number of speakers expressed the hope that the Council would address more effectively the economic problems encountered by third States, in particular the unique economic difficulties faced by Jordan: see S/PV.2939, p. 13 (Yemen); pp. 23-30 (Cuba); p. 59 (Malaysia); p. 63 (Romania); and pp. 68-70 (Colombia). See also the statements made by France (*ibid.*, p. 51) and the United Kingdom (*ibid.*, p. 58). Other speakers emphasized, however, that these problems could be best overcome through the liberation of Kuwait: S/PV.2939, p. 72 (Soviet Union); and p. 81 (Kuwait).

The Committee transmitted to the Council a report concerning the need to address the unique economic difficulties faced by Jordan, and the problems resulting from the influx of refugees and displaced persons into its territory.⁴⁵⁴ According to the Committee's recommendations, the Secretary-General was to undertake, in cooperation with the Government of Jordan, a full assessment of the situation, with suggestions for appropriate remedies, including especially the supply of petroleum and its derivatives.⁴⁵⁵

By a letter dated 24 September 1990,⁴⁵⁶ the President of the Security Council requested the Secretary-General to implement the Committee's recommendations.

On the same day, the Council, by resolution 669 (1990), noted the fact that an increasing number of requests for assistance under Article 50 of the Charter had been received, and requested the Committee to examine those requests and make recommendations to the President of the Security Council for appropriate action.⁴⁵⁷

The Committee transmitted such recommendations by letters dated 19 and 21 December 1990 and 18 March 1991.⁴⁵⁸ In those letters, the

Committee recognized that the States concerned urgently required assistance in coping with the special economic problems resulting from their compliance with the measures imposed by resolution 661 (1990), and called on all States, the competent organs and specialized agencies of the United Nations system, as well as the international financial institutions and the regional development banks, to provide the affected States with such assistance.

By letters dated 21 December 1990 and 21 March 1991,⁴⁵⁹ the President of the Council requested the Secretary-General to implement the Committee's recommendations.

1990 (S/22021) related to requests received from Bulgaria, Tunisia, Romania, India, Yugoslavia, Lebanon and the Philippines. The letter dated 21 December 1990 (S/22021/Add.1) related to requests received from Sri Lanka, Yemen, Czechoslovakia, Poland, Mauritania, Pakistan, the Sudan, Uruguay, Viet Nam, Bangladesh and the Seychelles. The letter dated 18 March 1991 (S/22021/Add.2) related to requests received from the Syrian Arab Republic and Djibouti. For details of communications from affected States, see the following documents: Bangladesh: S/21856 (9 October 1990); Bulgaria: S/21477, S/21573, S/21576 and S/21741 (9 August, 21 August and 11 September 1990); Czechoslovakia: S/21750, S/21837 and S/22019 (13 September, 2 October and 19 December 1990); Djibouti: S/22209 (8 February 1991); India: S/21711 and S/22013 (5 September and 19 December 1990); Jordan: S/21620 (20 August 1990); Lebanon: S/21686 and S/21737 (31 August and 10 September 1990); Mauritania: S/21789 and S/21818 (18 and 24 September 1990); Pakistan: S/21776 and S/21875 (14 September and 12 October 1990); Philippines: S/21712 and S/22011 (5 September and 18 December 1990); Poland: S/21808 (21 September 1990); Romania: S/21643 and S/21990 (27 August and 7 December 1990); Seychelles: S/21891 and S/22023 (19 October and 20 December 1990); Sri Lanka: S/21627, S/21710 and S/21984 (24 August, 5 September and 6 December 1990); Sudan: S/21695 and S/21930 (4 September 1990 and 6 November 1990); Syrian Arab Republic: S/22193 (31 January 1991); Tunisia: S/21649 and S/22015 (24 August and 19 December 1990); Uruguay: S/21775 and S/22026 (13 September and 20 December 1990); Viet Nam: S/21821 and S/22004 (25 September and 15 December 1990); Yemen: S/21615 and S/21748 (23 August and 12 September 1990); Yugoslavia: S/21618, S/21642 and S/22014 (23 August, 24 August and 19 December 1990).⁴⁵⁹ S/22033 and S/22398. These letters followed the model of the President's letter dated 24 September 1990 (S/21826).

⁴⁵⁴ S/21786 dated 18 September 1990.

⁴⁵⁵ The Committee had furthermore recommended that the Secretary-General develop methods for receiving information from States about action being taken to alleviate Jordan's situation, and to appoint a Special Representative to coordinate the assistance being given to Jordan. In its report, the Committee had also appealed to all States to provide immediate technical, financial and material assistance to Jordan to mitigate the consequences of the difficulties it was facing. In addition, it had called upon the agencies, organs and bodies of the United Nations system to intensify their programmes of assistance in response to the pressing needs of Jordan.

⁴⁵⁶ S/21826.

⁴⁵⁷ Resolution 669 (1990), adopted unanimously at the 2942nd meeting, on 24 September 1990, dealt exclusively with this matter. At a Council meeting held on the following day, at which 13 Council members were represented by their Ministers for Foreign Affairs, a number of speakers touched upon the Council's responsibility under Article 50: see S/PV.2943, p. 7 (Secretary-General); pp. 21-22 (Cuba); p. 31 (United States); p. 37 (Canada); p. 51 (China); p. 62 (Malaysia); and pp. 71-72 (Romania).

⁴⁵⁸ S/22021 and Add.1 and 2. The letter dated 19 December

Following a further collective appeal from affected Member States on 22 March 1991,⁴⁶⁰ the members of the Council, in a statement by the President of the Council,⁴⁶¹ took note of efforts undertaken by United Nations bodies,⁴⁶² several Member States⁴⁶³ and international financial institutions⁴⁶⁴ to respond effectively to the needs of the most affected States, invited other Member States and international organizations to provide information on the measures they had taken, and appealed for a

positive and speedy response, in accordance with the recommendations of the Committee.

Resolution 674 (1990)⁴⁶⁵ is relevant in this context. The Council reminded Iraq that under international law it was liable for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq.⁴⁶⁶ Resolutions 687 (1991) and 692 (1991), of 3 April 1991 and 20 May 1991 respectively, by which the Council decided to create a fund and a commission to compensate claims by foreign Governments, nationals and corporations are also relevant.⁴⁶⁷

Case 21

Items relating to the Libyan Arab Jamahiriya (in connection with the implementation of measures imposed by resolution 748 (1992))

In resolution 748 (1992), by which the Council imposed a broad range of enforcement measures against the Libyan Arab Jamahiriya,⁴⁶⁸ the Council expressly recalled “the right of States, under Article 50 of the Charter, to consult the Security Council where they find themselves confronted with special economic problems arising from the carrying out of preventive or enforcement measures”.⁴⁶⁹

The resolution also provided that the Committee entrusted with the task of monitoring the implementation of the enforcement measures was “to give special attention to any communications in accordance with Article 50 of the Charter of the United

⁴⁶⁰ See S/22382. The affected Member States noted that the appeals launched by the Secretary-General pursuant to the recommendations of the Committee had not evoked responses commensurate with their urgent needs (S/22382, para. 4). They urged the Council to give renewed attention to their problems, with a view to finding “quick and effective solutions”, and appealed to donor States to respond urgently and effectively by providing assistance through the allocation of additional financial resources, both via bilateral channels and by supporting the actions of the competent organs and specialized agencies of the United Nations system (*ibid.*, paras. 6 and 8). In a memorandum annexed to the letter, it was noted that the economic, financial and commercial losses incurred by the Member States as a result of their full compliance with the measures imposed against Iraq had been estimated at more than \$30 billion.

⁴⁶¹ Adopted at the 2985th meeting, on 29 April 1991 (S/22548).

⁴⁶² Efforts undertaken by the United Nations system were coordinated by the Secretary-General through the Administrative Committee on Coordination.

⁴⁶³ Official correspondence was addressed to the Secretary-General by the following States: Belgium (S/22537: letter dated 26 April 1991); Denmark (S/22538: letter dated 26 April 1991); Japan (S/21673: letter dated 29 August 1990); Luxembourg (S/22541: letter dated 26 April 1991); the Netherlands (S/22553: letter dated 29 April 1991); New Zealand (S/22296: note verbale dated 1 March 1991); and Spain (S/22539: letter dated 26 April 1991). In addition, Luxembourg submitted a communication on behalf of the European Union (S/22542: letter dated 27 April 1991). Replies received by the Secretary-General from Austria, France, Germany, Greece, Ireland, Italy, Liechtenstein, Norway, Portugal, Switzerland, the United Kingdom, the United States and the Soviet Union were made available to the Council but were not circulated as documents of the Council.

⁴⁶⁴ Reference was made in particular to communications from the President of the World Bank and the Managing Director of the International Monetary Fund, which were made available to the Council but were not circulated as documents of the Council.

⁴⁶⁵ Adopted at the 2951st meeting, on 29 October 1990, by 13 votes to none, with 2 abstentions (Cuba, Yemen).

⁴⁶⁶ Iraq rejected such liability (S/PV.2951, p. 36). The representative of Cuba questioned whether Iraq was to shoulder exclusively the responsibility for damages related to the Council’s decisions on Iraq, and whether the Council would thus be indirectly avoiding its responsibilities under Article 50 (*ibid.*, p. 61).

⁴⁶⁷ At the debate held in connection with the adoption of resolution 687 (1991), some speakers raised questions concerning the relationship between the envisaged compensation mechanism and the responsibility of the Security Council under Article 50 (S/PV.2981, p. 67 (Cuba); and p. 126 (Romania)).

⁴⁶⁸ Adopted at the 3063rd meeting, on 31 March 1992, by 10 votes to none, with 5 abstentions (Cape Verde, China, India, Morocco, Zimbabwe).

⁴⁶⁹ Resolution 748 (1992), ninth preambular paragraph.

Nations from any neighbouring or other State with special economic problems that might arise from the carrying out of the measures".⁴⁷⁰ No such communications were received during the period under review.⁴⁷¹

Case 22

Items relating to the situation in the former Yugoslavia (in connection with the implementation of measures imposed by resolution 757 (1992))

In resolution 757 (1992),⁴⁷² by which the Council imposed a broad range of measures against the Federal Republic of Yugoslavia (Serbia and Montenegro), the Council expressly recalled "the right of States, under Article 50 of the Charter, to consult the Council where they find themselves confronted with special economic problems arising from the carrying out of preventive or enforcement measures".⁴⁷³

By communications⁴⁷⁴ addressed to the Secretary-General during the period from 22 June to 14 December 1992, six States informed the Council of economic difficulties suffered as a consequence of implementing the measures imposed by resolution 757 (1992), and requested consultations under Article 50, or indicated that they might seek such consultations in due course.

In its report of 30 December 1992,⁴⁷⁵ the Security Council Committee established pursuant to resolution 724 (1991)⁴⁷⁶ observed that the effective implementation of the sanctions had had an adverse impact on the economies of a number of countries, particularly those neighbouring the territory of the former Socialist Federal Republic of Yugoslavia, some of which had addressed the Committee on the matter.⁴⁷⁷

⁴⁷⁰ Ibid., para. 9 (f). At the 3063rd meeting, the representative of the United Kingdom observed that the reference to Article 50 had been included at the request of affected States in the region (S/PV.3063, p. 71). The representative of India argued that, in the light of past experience, the resolution should have included a clearer acknowledgement of the Council's responsibility to address the economic problems encountered by third States, with a commitment to take concrete, practical and effective measures to address urgently all such problems brought to its notice (ibid., p. 58). For other statements touching upon the Council's responsibility to address the potential consequences of the resolution for third States, see S/PV.3063, p. 61 (China); p. 58 (India); p. 26 (Jordan); p. 36 (Iraq); and p. 41 (Uganda).

⁴⁷¹ However, by a letter dated 15 May 1992 to the Secretary-General (S/23939), Bulgaria indicated its intention to submit such request.

⁴⁷² Adopted at the 3082nd meeting, on 30 May 1992, by 13 votes to none, with 2 abstentions (China, Zimbabwe).

⁴⁷³ See resolution 757 (1992), sixteenth preambular paragraph. At the 3082nd meeting, several speakers touched upon the potential economic consequences for third States; see S/PV.3082, pp. 9-10 (China); p. 23 (India); and p. 17 (Hungary).

⁴⁷⁴ See the following communications addressed to the Secretary-General: letters dated 22 June and 20 July 1992 from the representative of Romania (S/24142 and Add.1); letter dated 19 June 1992 from the representative of Slovenia (S/24120); note verbale dated 22 June 1992 from the representative of Hungary (S/24147); and note verbale dated 11 August 1992 from the representative of Algeria (S/24426); see also note verbale dated 25 September 1992 from the representative of Czechoslovakia to the President of the Security Council (S/24602); and letter dated 14 December 1992 from the representative of Bulgaria to the President of the Council (S/24963).

⁴⁷⁵ S/25027.

⁴⁷⁶ The Committee, which had first been mandated to monitor the implementation of the arms embargo imposed by resolution 713 (1991), was charged by resolution 757 (1992) with the monitoring of the measures imposed by that resolution (see resolution 757 (1992), para. 13).

⁴⁷⁷ S/25027, para. 23.

Part IX

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

Article 51

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

Note

During the period under review, the Security Council reaffirmed the principle set out in Article 51 in one decision relating to the armed attack by Iraq against Kuwait.⁴⁷⁸ In the Council's subsequent deliberations in connection with this matter, speakers expressed differing views, however, with regard to the measures taken by some States in reliance on the right of collective self-defence.

The Council also debated the application and interpretation of Article 51 in connection with the use of armed force by the United States in Panama, and in connection with an incident involving the downing of two Libyan aircraft by United States forces. In these instances, Council deliberations touched on the question whether the United States was justified in relying on its right of self-defence under Article 51 of the Charter.

In connection with the situation in Bosnia and Herzegovina, the Council considered Bosnia and Herzegovina's claim that, through an arms embargo imposed by the Council, Bosnia and Herzegovina was prevented from exercising its right of self-defence.⁴⁷⁹

⁴⁷⁸ Resolution 661 (1990).

⁴⁷⁹ The arms embargo had originally been imposed by resolution 713 (1991) against the former Yugoslavia. By resolution 727 (1992), the Council affirmed that the arms embargo would continue to apply to all areas that had

At a meeting held in connection with the situation relating to Afghanistan,⁴⁸⁰ the representative of Afghanistan indicated his Government's intention to rely on its right of self-defence in response to alleged interference and aggression by Pakistan.

The arguments advanced during the Council's deliberations in connection with those incidents and situations are set out in the case studies below (section A).

These case studies will be followed by a brief overview in section B of instances in which the right of self-defence was invoked in official correspondence, but which did not give rise to any constitutional discussion relevant to Article 51.

A. Constitutional discussion relating to the invocation of the right of self-defence under Article 51

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

Case 23

Incident involving the downing of Libyan reconnaissance aircraft

By a letter dated 4 January 1989,⁴⁸¹ the representative of the United States informed the Council that, in accordance with Article 51, United States forces operating lawfully above international waters of the Mediterranean sea had exercised their inherent right to self-defence in response to hostile actions by the military forces of the Libyan Arab Jamahiriya.

been part of Yugoslavia, any decisions on the question of the recognition of the independence of certain republics notwithstanding.

⁴⁸⁰ 2857th meeting. For details of Pakistan's position in relation to this matter, see the verbatim record of the 2859th meeting.

⁴⁸¹ S/20366.

By letters of the same date⁴⁸² addressed to the President of the Security Council, the representatives of the Libyan Arab Jamahiriya and Bahrain described the incident as an aggression by the United States forces, and requested that the Security Council be convened immediately.

The Security Council held its 2835th meeting on 5 January 1989 to consider this matter. The Council further discussed the incident at the 2837th and 2839th to 2841st meetings, on 6, 9 and 11 January 1989 respectively.

During the Council's deliberations, the representative of the Libyan Arab Jamahiriya alleged that the United States forces had shot down two unarmed Libyan reconnaissance aircraft on routine patrol near the Libyan coast, and that the incident had been "an act of premeditated, deliberate aggression as a prelude to a large-scale aggression".⁴⁸³ He contended that the United States had resorted to a deliberate misinterpretation of Article 51 in order to "justify aggression".⁴⁸⁴

The representative of the United States maintained that the action by the United States aircraft had been taken in response to provocation and threat from armed Libyan aircraft, in accordance with internationally accepted principles of self-defence.⁴⁸⁵ The representative stated that the United States aircraft had been operating on a routine training mission in international airspace, and that they had been tracked in a hostile manner by armed Libyan aircraft. Only after repeated futile attempts to avoid those aircraft had they shot them down in a clear and unambiguous act of self-defence.⁴⁸⁶ The representative of Canada stated that his delegation had "accepted the United States explanation for its actions during the incident".⁴⁸⁷ The representative of the United Kingdom emphasized the importance his Government attached "to upholding the freedom of ships and aircraft to operate in international waters and airspace and their inherent right to self-defence as recognized by Article 51 of the Charter".⁴⁸⁸

However, many speakers, both members and non-members of the Council, supported the position of the Libyan Arab Jamahiriya and described the action taken by the United States as an act of aggression and a violation of international law and the Charter.⁴⁸⁹ Several speakers specifically stated that attempts to justify the use of force against the Libyan Arab Jamahiriya by invoking the right of self-defence were untenable.⁴⁹⁰ The representative of the Union of Soviet Socialist Republics asserted that the reference by the United States representative to Article 51 of the Charter, relating to self-defence, was "absolutely unfounded". He noted that nobody had attacked the aircraft or ships of the United States and that if arbitrary action, further armed clashes and utter anarchy in international airspace were to be avoided, the military aircraft of one State could not be entitled to open fire on the aircraft of another State simply because those aircraft had come too close to them in international airspace.⁴⁹¹ The representative of the League of Arab States asserted that there was no justification for intercepting and destroying those Libyan aircraft, which were flying above international waters.⁴⁹² The representative of the Syrian Arab Republic alleged that the incident was a link in a series of aggressive measures and actions which the United States Administration had been taking against the Libyan Arab Jamahiriya since 1981, when the United States Navy downed two Libyan aircraft near the Libyan coast.⁴⁹³ The representative of Finland warned that "in an age of military high technology, the resort to so-called pre-emptive self-defence without warning [could] have very dangerous consequences."⁴⁹⁴ The

⁴⁸² S/20364 and S/20367.

⁴⁸³ S/PV.2835, p. 12.

⁴⁸⁴ S/PV.2841, p. 51.

⁴⁸⁵ S/PV.2835, pp. 14-15.

⁴⁸⁶ S/PV.2835, pp. 14-16; S/PV.2836, p. 47; S/PV.2841, p. 47.

⁴⁸⁷ S/PV.2841, pp. 38-40.

⁴⁸⁸ *Ibid.*, p. 41.

⁴⁸⁹ S/PV.2835, pp. 18-20 (Bahrain); p. 26 (League of Arab States); pp. 36-37 (Syrian Arab Republic); pp. 41-42 (Cuba); S/PV.2836, pp. 12-20 (Soviet Union); pp. 23-27 (Madagascar); pp. 28-32 (Nicaragua); pp. 34-36 (Lao People's Democratic Republic); p. 41 (Afghanistan); p. 43 (Democratic Yemen); S/PV.2837, p. 11 (Algeria); pp. 18-22 (Islamic Republic of Iran); pp. 22-28 (Zimbabwe); p. 31 (Pakistan); S/PV.2839, pp. 11-15 (Ethiopia); pp. 21-22 (Sudan); S/PV.2840, p. 28 (German Democratic Republic); p. 33 (Czechoslovakia); pp. 42-46 (Yemen); S/PV.2841, p. 22 (Bulgaria); pp. 29-31 (Mongolia).

⁴⁹⁰ See for example S/PV.2836, p. 7 (Uganda); S/PV.2837, pp. 18-20 (Islamic Republic of Iran); S/PV.2841, p. 26 (Byelorussian Soviet Republic).

⁴⁹¹ S/PV.2836, pp. 12-15.

⁴⁹² S/PV.2835, p. 26.

⁴⁹³ *Ibid.*, p. 36.

⁴⁹⁴ S/PV.2839, p. 7.

representative of Czechoslovakia pointed out that the exercise of the right of self-defence pursuant to Article 51 of the Charter was contingent on the objective existence of circumstances provided by the Charter, not to be confused with the subjective perceptions of military commanders. He added that otherwise the provisions of Article 51 on self-defence would cease to be a mere exception to the general ban on the use of armed force and become, conversely, an instrument of complete and irreversible destruction of this ban.⁴⁹⁵

At the Council's 2841st meeting, seven Member States⁴⁹⁶ jointly submitted a draft resolution⁴⁹⁷ by the adoption of which the Council would have deplored the downing of the two Libyan reconnaissance aircraft and called upon the United States to suspend its military manoeuvres off the Libyan coast. The draft was put to the vote but was not adopted, owing to the negative votes of three permanent members.⁴⁹⁸

Case 24

The situation relating to Afghanistan

By a letter to the President of the Security Council dated 3 April 1989,⁴⁹⁹ the Minister for Foreign Affairs of Afghanistan requested the convening of an emergency meeting to consider "Pakistan's military aggression and its overt and covert interference in the internal affairs of the Republic of Afghanistan".⁵⁰⁰

During the Council's deliberations on this matter,⁵⁰¹ Afghanistan reiterated its allegations against Pakistan, claiming, inter alia, that peace, stability and security in South-West Asia were threatened, and drawing attention to the "dangerous implications of the aggression by Pakistan for peace and security in the region and in the world".⁵⁰² Afghanistan claimed that if

⁴⁹⁵ S/PV.2840, pp. 34-35.

⁴⁹⁶ Algeria, Colombia, Ethiopia, Malaysia, Nepal, Senegal and Yugoslavia.

⁴⁹⁷ S/20378.

⁴⁹⁸ The draft resolution received 9 votes in favour and 4 against (Canada, France, United Kingdom, United States), with 2 abstentions (Brazil, Finland).

⁴⁹⁹ S/20561. For further details, see the letter dated 28 March 1989 from the representative of Afghanistan to the Secretary-General (S/20545).

⁵⁰⁰ These allegations were denied by Pakistan in a letter to the President of the Council dated 7 April 1989 (S/20577).

⁵⁰¹ 2852nd to 2860th meetings, from 11 to 26 April 1989.

⁵⁰² S/PV.2852, p. 6.

the Security Council failed "to adopt necessary measures for defusing the present tense situation, and Pakistani aggression and intervention" against Afghanistan continued, Afghanistan would have no choice but to rely on its right of self-defence.⁵⁰³

The representative of Pakistan, on the other hand, asserted that the situation in Afghanistan was a purely internal matter, and that there was no threat to regional or international peace and security. He contended that the developments in Afghanistan represented the resistance of the Afghan people against the rule of an illegal and unrepresentative regime that had been imposed on them by external military intervention.⁵⁰⁴

Case 25

The situation in Panama

By a letter dated 20 December 1989,⁵⁰⁵ the representative of the United States informed the President of the Security Council, in accordance with Article 51 of the Charter, that United States forces had exercised their "inherent right of self-defence under international law by taking action in Panama in response to armed attacks by forces under the direction of Manuel Noriega".

By a letter of the same date,⁵⁰⁶ the representative of Nicaragua requested the President of the Security Council to convene the Council urgently "to consider the situation following the invasion of the Republic of Panama by the United States".

The Council held its 2899th meeting on 20 December 1989 to consider the matter. The representative of Nicaragua asserted that the United States had committed "an act of aggression" against Panama, which constituted a "threat to international peace and security", and for which international law could "provide no justification".⁵⁰⁷ In a similar vein, the representative of the Union of Soviet Socialist Republics considered that the invasion of Panama by

⁵⁰³ S/PV.2857, p. 74.

⁵⁰⁴ See for example S/PV.2859, p. 42. In a letter dated 6 July 1989 from the representative of Afghanistan to the Secretary-General, Afghanistan again indicated that it would need to make "necessary use" of the right of self-defence against alleged interference and aggression from Pakistan (see S/20716).

⁵⁰⁵ S/21035.

⁵⁰⁶ S/21034.

⁵⁰⁷ S/PV.2899, pp. 3-17.

United States troops was “a flagrant violation of the elementary norms of international law and the Charter”. The representative believed that statements to the effect that Panama had been threatening the national interests of the United States were unsubstantiated.⁵⁰⁸ The Chinese delegation expressed “its utmost shock and strong condemnation of that aggressive action of the United States”.⁵⁰⁹

The representative of the United States, on the other hand, asserted that the United States had resorted to military action “only after exhausting the full range of available alternatives,” and had done so “in a manner designed to minimize casualties and damage”.⁵¹⁰ He recalled that General Noriega had declared a state of war against his country and that, in implementation of that declaration, an unarmed American serviceman had been killed and others had been threatened. He contended that the Noriega regime had in fact declared war considerably earlier through its drug-trafficking activities, which threatened democratic societies as surely as the use of conventional military forces.⁵¹¹

The representatives of the United Kingdom and Canada agreed with the position expressed by the United States that, after the failure of numerous attempts to resolve the situation peacefully, the United States had been justified in using force, as a last resort, against a regime that had itself turned to force.⁵¹²

The Council continued its discussion of this matter at its 2900th to 2902nd meetings. During the deliberations, several speakers, representing both members⁵¹³ and non-members⁵¹⁴ of the Council, deplored or condemned the military intervention and, in some instances, explicitly rejected the argument that

the United States had acted in self-defence. The representative of Cuba asserted that “the armed aggression by the United States against Panama, in flagrant violation of United Nations principles and norms, [had] no justification whatsoever”.⁵¹⁵ The representative of the Libyan Arab Jamahiriya described the invocation of Article 51 as a “fallacious legal pretext”.⁵¹⁶ The representative of Algeria argued that the action taken by the United States “was fraught with a potential threat to the security of small States through an abusive and erroneous interpretation of the provisions of the Charter”.⁵¹⁷

At the 2902nd meeting, a draft resolution submitted by seven Member States⁵¹⁸ was voted upon but was not adopted owing to the negative votes of three permanent members.⁵¹⁹ Under that draft resolution, the Council would have, among other things, strongly deplored the intervention in Panama by the armed forces of the United States, which constituted a flagrant violation of international law and of the independence, sovereignty and territorial integrity of States; and demanded the immediate cessation of the intervention and the withdrawal of the United States armed forces from Panama.⁵²⁰

Case 26

The situation between Iraq and Kuwait

By resolution 661 (1990) of 6 August 1990, by which the Council imposed a general trade embargo on Iraq in order to secure the withdrawal of its forces from the territory of Kuwait, the Council affirmed “the inherent right of individual or collective self-defence,

⁵⁰⁸ Ibid., pp. 17-18.

⁵⁰⁹ Ibid., pp. 21-22.

⁵¹⁰ Ibid., p. 36.

⁵¹¹ S/PV.2902, pp. 8-13. For further relevant comments, see the statement made by the representative of the United States at the 2905th meeting, in connection with the item concerning the letter dated 3 January 1989 from the representative of Nicaragua to the President of the Security Council (S/PV.2905, p. 24).

⁵¹² S/PV.2899, p. 26 (United Kingdom); and pp. 27-30 (Canada).

⁵¹³ Algeria, Brazil, Colombia, Ethiopia, Malaysia, Nepal, Senegal and Yugoslavia, see the relevant statements made at the 2900th and 2902nd meetings.

⁵¹⁴ Cuba, Libyan Arab Jamahiriya and Peru; see the relevant statements made at the 2900th meeting.

⁵¹⁵ S/PV.2900, pp. 23-33. In this context, the representative of Cuba also cited from a letter which his Government had transmitted to the President of the Council and the Secretary-General on 21 December 1989 (see S/PV.2900 and S/21038, annex).

⁵¹⁶ S/PV.2900, p. 41.

⁵¹⁷ Ibid., p. 18.

⁵¹⁸ S/21048, sponsored by Algeria, Colombia, Ethiopia, Malaysia, Nepal, Senegal and Yugoslavia.

⁵¹⁹ The draft resolution received 10 votes in favour and 4 against (Canada, France, United Kingdom, United States), with 1 abstention (Finland).

⁵²⁰ S/21048, paras. 1 and 2.

in response to the armed attack by Iraq against Kuwait, in accordance with Article 51 of the Charter".⁵²¹

At the 2934th meeting, the representatives of the United States and the United Kingdom stated that, at the request of Governments in the region, they had deployed forces to the area, in order to help protect Saudi Arabia and other threatened States in the area. Both representatives emphasized that the action was taken in accordance with Article 51, noting that the application of that Article to the situation between Iraq and Kuwait had been expressly affirmed by resolution 661 (1990).⁵²² The representative of the United States further stated that the Iraqi invasion of Kuwait and the large Iraqi military presence on the Saudi frontier had created "grave risks of further aggression in the area". His Government and others were therefore "sending forces with which to deter further Iraqi aggression".⁵²³ The representative of the United Kingdom observed that the presence of British forces, particularly naval forces, in the area would "be of added advantage in the context of securing the effective implementation of resolution 661 (1990)".⁵²⁴

The representative of the Union of Soviet Socialist Republics, on the other hand, while not directly commenting on the deployments, stated that his Government was "against reliance on force and against unilateral decisions". He added that, in his delegation's view, the surest, wisest way to act in a conflict situation was "to make collective efforts and to make full use of the machinery of the United Nations". He further emphasized that it was important "to reject actions which might pour oil on the fire", and indicated that his delegation was prepared to undertake consultations immediately in the Military Staff Committee, which, under the Charter of the United

Nations, could perform very important functions.⁵²⁵ The representative of China, while reiterating that the sovereignty and independence of Kuwait needed to be restored and respected, called upon "all concerned parties to exercise restraint and refrain from any actions that might further complicate the situation".⁵²⁶ The representative of Cuba asserted that certain Powers were taking "unilateral measures which were not in accordance with the decisions taken by the Council", adding that an "arbitrary interpretation of the right to self-defence" could not be used to justify war and interventionism in the Middle East.⁵²⁷

By a letter dated 12 August 1990,⁵²⁸ the representative of Kuwait informed the President of the Security Council that, in the exercise of its inherent right of individual and collective self-defence and pursuant to Article 51 of the Charter, his country had "requested some nations to take such military or other steps as ... necessary to ensure the effective and prompt implementation of Security Council resolution 661 (1990)". By a letter of the same date,⁵²⁹ the representative of Saudi Arabia informed the Council that his country had "exercised its legitimate right, as enshrined in Article 51 of the Charter" and had "welcomed the forces of fraternal and other friendly States which [had] expressed their willingness to support the Saudi Arabian armed forces in the defence of the Kingdom".⁵³⁰

⁵²⁵ Ibid., p. 12.

⁵²⁶ Ibid., p. 22.

⁵²⁷ Ibid., p. 23.

⁵²⁸ S/21498.

⁵²⁹ S/21554.

⁵³⁰ In a letter dated 27 August 1990 to the Secretary-General, the representative of Egypt noted that a resolution adopted at the Extraordinary Arab Summit Conference held at Cairo on 10 August 1990 had recommended "to comply with the request of the Kingdom of Saudi Arabia and the other Arab States of the Gulf that Arab forces should be deployed to assist their armed forces in defending their soil and territorial integrity against any external aggression" (S/21664, para. 6). In a letter dated 17 January 1991 to the Secretary-General, the representative of Egypt also noted that the Iraqi invasion of Kuwait had created a situation which "impelled Saudi Arabia and some of the Gulf States, in exercise of their inherent right of legitimate self-defence, to request the aid and military assistance of their brothers and friends" (S/22113). However, the Libyan Arab Jamahiriya, in a letter dated 15 August 1990 to the Secretary-General, claimed that

⁵²¹ See resolution 661 (1990), preamble. In addition, the resolution expressly provides that, notwithstanding the provisions on embargo measures contained in the resolution, "nothing in the present resolution shall prohibit assistance to the legitimate Government of Kuwait" (para. 9).

⁵²² S/PV.2934, pp. 7-8 (United States) and pp. 17-18 (United Kingdom). The deployment was subsequently confirmed by letters dated 9 August (S/21492) and 13 August 1990 (S/21501) addressed to the President of the Security Council, from the representatives of the United States and the United Kingdom respectively.

⁵²³ S/PV.2934, p. 8.

⁵²⁴ Ibid., p. 18.

By a letter dated 16 August 1990,⁵³¹ the United States informed the Council that, in accordance with Article 51, and at the request of the Government of Kuwait, its military forces had joined that Government in taking actions to intercept vessels seeking to engage in trade with Iraq and Kuwait in violation of the sanctions imposed by resolution 661 (1990). These actions were being taken by the United States “in the exercise of the inherent right of individual and collective self-defence, recognized in Article 51 of the Charter”. The letter also stated that the military forces of the United States would use force “only if necessary and then only in a manner proportionate to prevent vessels from violating such trade sanctions contained in resolution 661 (1990)”.

At the 2937th meeting of the Council, a number of speakers expressed concern about the resort to military action in reliance on Article 51. The delegation of China believed that the military involvement by the great Powers was “not conducive to the settlement of the present crisis”, and called once again on the parties concerned “to exercise restraint, so as to avoid any action that could cause a further deterioration of the situation”.⁵³² In a similar vein, the representative of the Union of Soviet Socialist Republics felt that it was important “to stop military activities, to prevent them from spreading to other countries and to restore respect for international law”. The representative noted that his Government intended “to act exclusively within the context of collective efforts for the settlement of this conflict”.⁵³³

The representative of Iraq asserted that the United States, followed by the United Kingdom, had “arrogated to itself the right to impose a maritime blockade against Iraq without calling it by that name”, and that those two States were attempting “to impose a certain interpretation of Article 51 of the Charter”.⁵³⁴ The representative of Yemen contended that the “utilization of this military blockade by one State

without taking into consideration the role assumed by the Security Council for the safeguarding of international peace and security [was] an act that [was] not defensive in character”.⁵³⁵ The representative of Cuba asserted that the terms of the Charter were being twisted and implemented unilaterally, noting that Article 51 recognized the right of self-defence only “until the Security Council has taken measures necessary to maintain international peace and security”.⁵³⁶

In response to these comments, the representative of the United States cited the text of a letter which he had submitted to the Council on 9 August, informing the Council that the United States had deployed forces in the area “in exercise of the inherent right of self-defence, recognized in Article 51, in response to developments and requests from Governments in the region, including requests from Kuwait and Saudi Arabia, for assistance”.⁵³⁷

At its 2938th meeting, the Council adopted resolution 665 (1990), by which it called upon “those Member States cooperating with the Government of Kuwait which are deploying maritime forces to the area to use such measures commensurate to the specific circumstances as may be necessary under the authority of the Security Council to halt all inward and outward maritime shipping, in order to inspect and verify their cargoes and destinations and to ensure strict implementation of the provisions related to such shipping laid down in resolution 661 (1990)”.

In connection with the adoption of resolution 665 (1990), the representatives of the United States and the United Kingdom maintained that the resolution only provided an additional basis of authority, as sufficient legal authority to take such measures had already existed under Article 51.⁵³⁸ More specifically, the representative of the United States asserted that resolution 665 (1990) did not diminish the legal authority of Kuwait and other States to exercise their inherent right of self-defence.⁵³⁹

At the 2963rd meeting, the Council adopted resolution 678 (1990), by which it authorized Member

there was “absolutely no justification for invoking Article 51 of the Charter in the current situation” (S/21529). Iraq, in a letter dated 13 November 1990 to the Secretary-General, asserted that the purpose of the “American military build-up” was an attack on Iraq rather than the defence of Saudi Arabia (S/21939).

⁵³¹ S/21537.

⁵³² S/PV.2937, pp. 13-15.

⁵³³ *Ibid.*, pp. 18-20.

⁵³⁴ *Ibid.*, pp. 45-46.

⁵³⁵ *Ibid.*, p. 6.

⁵³⁶ *Ibid.*, pp. 29-33.

⁵³⁷ S/21492. See also S/PV.2937, pp. 33-35.

⁵³⁸ S/PV.2938, pp. 29-31 (United States and p. 48 (United Kingdom)).

⁵³⁹ *Ibid.*, p. 31.

States “to use all necessary means to uphold and implement resolution 660 (1990) and all subsequent relevant resolutions and to restore international peace and security in the area”.

During the deliberations held at that meeting, the representative of Iraq argued that the resolution was not justified under any Charter provisions and that it could not be justified under Article 51, as, under that Article, “the use of force [was] limited to the period until the Security Council [was] seized of the matter”, beyond which point “any use of force [had to] be deemed to be an aggression”.⁵⁴⁰

The representative of Malaysia, while expressing support for resolution 678 (1990), underlined that his delegation had not agreed to any attempt to apply Article 51 of the Charter unilaterally once the Council was seized of the matter. Thus, any proposed use of force had to be brought before the Council for its prior approval, in accordance with the specific provisions of Chapter VII of the Charter. The representative expressed regret that this point was not clearly reflected in resolution 678 (1990).⁵⁴¹

Case 27

The situation in Bosnia and Herzegovina

At its 3028th meeting, the Council unanimously adopted resolution 727 (1992), by which it affirmed that the arms embargo previously imposed against the Socialist Federal Republic of Yugoslavia would continue to apply to “all areas that ha[d] been part of Yugoslavia, any decisions on the question of the

recognition of the independence of certain republics notwithstanding”.⁵⁴²

At the 3134th meeting, held on 13 November 1992, after the disintegration of the former Yugoslavia, the representative of Bosnia and Herzegovina asserted that the continued application of the arms embargo against his country prevented it from exercising its inherent right of self-defence under Article 51. He argued that, if the Security Council would not take any direct steps to protect his country, then it should yield and fully recognize his country’s “sovereign and absolute right to self-defence”. The representative also maintained that, “from the victim’s perspective, self-defence does not increase conflict, but rather reduce the brutal and murderous consequences of aggression directed at civilians”. He contended that “self-defence through legitimate and lawful authorities or through international mechanisms ... makes peace a reality rather than an uncertain and far-off goal”.⁵⁴³

The discussion of this matter was resumed at the Council’s 3135th to 3137th meetings, at which a number of States non-members of the Council supported Bosnia and Herzegovina’s position.⁵⁴⁴

⁵⁴⁰ S/PV.2963, pp. 19-20. Previously, at the Council’s 2951st meeting, on 29 October 1990, the representative of Iraq had similarly argued that no State had the right to unilaterally use force against his country, as the Security Council was seized of the situation (S/PV.2951, pp. 13-17).

⁵⁴¹ S/PV.2963, p. 76. At a subsequent meeting, held on 15 February 1991, the representative of Malaysia stated his understanding that the military action against Iraq was a “United Nations-authorized international enforcement action under Chapter VII of the Charter, not a result of Article 51 and certainly not a war between any of the allied countries and Iraq per se”. The representative added that no country, however powerful, could “arrogate to itself the right to conduct the war entirely on the basis of its own imperatives and interests” (S/PV.2977 (Part II) (closed — resumption 1), p. 171).

⁵⁴² Resolution 727 (1992), para. 6. A recommendation to this effect had been made by the Secretary-General in his report dated 5 January 1992 (S/23363, para. 33). The arms embargo against the former Yugoslavia had been imposed by resolution 713 (1991).

⁵⁴³ S/PV.3134, pp. 53-55. For additional details of the views expressed by the representative of Bosnia and Herzegovina on this matter, see the letters dated 30 June, 30 July, 10 September, 29 September, 6 October and 28 December 1992 addressed to the President of the Security Council or the Secretary-General (S/24214, S/24366, S/24543, S/24601 and S/24622 and S/25021).

⁵⁴⁴ See for example S/PV.3135, p. 25 (Turkey); p. 33 (Malaysia); p. 41 (Egypt); S/PV.3136, pp. 33-34 (Pakistan); p. 58 (Indonesia); pp. 72-73 and 76-77 (Islamic Republic of Iran); S/PV.3137, pp. 18-21 (Qatar); pp. 27-28 (Comoros); p. 36 (Lithuania); p. 43 (Croatia); p. 51 (Kuwait), pp. 54-60 (Afghanistan); p. 66 (Tunisia); p. 79 (Morocco); p. 92 (United Arab Emirates); p. 112 (Bangladesh); pp. 114-116 (Senegal). For Member States’ views expressed in correspondence, see the letters addressed to the President of the Council dated 10 and 13 August 1992 from the representative of the Islamic Republic of Iran (S/24410 and S/24432); 13 August 1992 from the representative of Pakistan (S/24437); 13 August 1992 from the representative of Egypt (S/24438); 17 August and 9 December 1992 from the representative of Saudi Arabia (also addressed to the

The representative of Turkey suggested that “if the Bosnian Government had adequate means to defend itself, this would deter the aggressor from pursuing a policy based on the use of force and perhaps induce it to resort to dialogue to overcome differences”.⁵⁴⁵ Similarly, the representative of the Islamic Republic of Iran asserted that the selective lifting of the arms embargo was “the only effective means to stop the aggression, short of international military action”.⁵⁴⁶ The representative of the Comoros questioned whether the Council, as the organ entrusted with the maintenance of peace and security, had any moral justification to “withhold from the weak, aggressed people of Bosnia and Herzegovina the right to defend themselves”, and whether it did not have “the moral responsibility and obligation to give a fighting chance to the victim of aggression”.⁵⁴⁷ The representative of Lithuania believed that if the international community could not provide effective defence, it could not “morally deny the right of self-defence to the people of Bosnia and Herzegovina”. He contended that it was “morally and legally unacceptable” to continue “to impose a stranglehold on a victim engaged in a life or death struggle”.⁵⁴⁸ The representative of Qatar asserted that “the application of the embargo to victim and aggressor alike [was] cynical and preposterous and [went] against the human conscience”. Claiming that

the continuation of the arms embargo amounted to “support for the aggressor”, he believed that the international community was “duty-bound to enable Bosnia and Herzegovina to defend itself as long as [it was] unable to ward off the Serbian aggression by recourse to the provisions of the Charter”.⁵⁴⁹

The representative of the United Kingdom stated, on the other hand, that the introduction of more arms into the region “could only lead to more killing, more suffering and the jeopardizing of efforts to deliver humanitarian supplies to those in need”.⁵⁵⁰ The representative of Ecuador agreed that the lifting of the embargo against Bosnia and Herzegovina would not contribute to the cause of peace, as “violence [would] not be eliminated by increasing the flow of arms”.⁵⁵¹

The Minister for Foreign Affairs of the Federal Republic of Yugoslavia warned of the “unforeseeable harmful effects of the continued sending of mercenaries, violations of the arms embargo and the ever more evident prospects of this conflict turning into a full-scale religious war”.⁵⁵²

These views were shared by Mr. Cyrus Vance and Lord Owen, co-Chairmen of the International Conference on Yugoslavia, who argued that the cause of peace would be best served by maintaining the embargo. Mr. Vance believed that lifting the arms embargo would only increase hostilities in Bosnia and Herzegovina and could spread the conflict throughout the Balkan region.⁵⁵³ Lord Owen observed that “prohibiting arms sales tends to dampen conflict while pushing arms sales deepens conflict”.⁵⁵⁴

At the 3137th meeting, the Council adopted resolution 787 (1992), by which it reaffirmed resolution 713 (1991) and all subsequent relevant resolutions, and thereby the continued application of the arms embargo to all parties to the conflict.⁵⁵⁵

Secretary-General) (S/24460 and S/24930); the letter dated 30 September 1992 from the representative of Turkey to the Secretary-General (S/24604); the letter dated 19 October 1992 from the representatives of Saudi Arabia, Egypt, the Islamic Republic of Iran, Pakistan, Senegal and Turkey to the President of the Council (S/24678); the letter dated 12 November 1992 from the Permanent Observer of Palestine to the President of the Council (S/24799); the letter dated 9 December 1992 from the representative of Malaysia to the President of the Council (S/24928); and the letter dated 24 December 1992 from the representative of the United Arab Emirates to the Secretary-General (S/25020). See also the letter dated 2 September 1992 from the President of the General Assembly to the President of the Council, reminding the latter that the General Assembly in resolution 46/242 had reaffirmed Bosnia and Herzegovina’s right of self-defence, and expressing the hope that the Security Council would find it appropriate to take urgent action on that resolution (S/24517, paras. 2 and 3).

⁵⁴⁵ S/PV.3135, p. 25.

⁵⁴⁶ S/PV.3136, p. 73.

⁵⁴⁷ S/PV.3137, pp. 27-28.

⁵⁴⁸ *Ibid.*, p. 36.

⁵⁴⁹ *Ibid.*, pp. 18-21.

⁵⁵⁰ S/PV.3135, p. 9.

⁵⁵¹ S/PV.3136, p. 14.

⁵⁵² S/PV.3137, p. 75.

⁵⁵³ S/PV.3134, pp. 16-17.

⁵⁵⁴ *Ibid.*, p. 28.

⁵⁵⁵ Resolution 787 (1992), the draft of which had been submitted by Belgium, France, Hungary, Morocco, the United Kingdom and the United States, was adopted by 13 votes to none, with 2 abstentions (China, Zimbabwe). While the resolution contains no direct reference to Article 51, the Council, in the third preambular

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

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

The situation between Iran and Iraq

By a letter dated 7 January 1989 addressed to the Secretary-General,⁵⁵⁶ the representative of Iraq, referring to the alleged non-compliance of the Islamic Republic of Iran with the ceasefire concluded five months earlier, asserted that Iraq was “fully willing to defend itself”.

In response, the representative of the Islamic Republic of Iran, by a letter dated 23 January 1989 addressed to the Secretary-General,⁵⁵⁷ claimed that Iraq was relying on its right of self-defence merely in order “to justify its preparations to launch yet another war of aggression against the Islamic Republic of Iran”.

The situation in the Middle East

By a letter dated 29 May 1992 from the representative of Israel addressed to the Secretary-

paragraph, expressed its deep concern “at the threats to the territorial integrity of the Republic of Bosnia and Herzegovina, which, as a State Member of the United Nations, enjoys the rights provided for in the Charter of the United Nations”.

⁵⁵⁶ S/20376.

⁵⁵⁷ S/20413.

General,⁵⁵⁸ Israel asserted its right of self-defence “by engaging in operations against the terrorist organizations operating from the territory of Lebanon”.⁵⁵⁹

The situation relating to Nagorny-Karabakh

By a letter dated 20 August 1992 from the representative of Armenia to the President of the Security Council,⁵⁶⁰ Armenia requested an urgent meeting of the Security Council, alleging that Azerbaijan had launched “attacks of aggression” against Armenia.

By a letter dated 25 August 1992 from the representative of Azerbaijan addressed to the President of the Security Council,⁵⁶¹ Azerbaijan asserted that Armenia was “openly continuing its armed aggression against Azerbaijan”, and stated it had been “compelled to take the necessary measures to exercise its right of self-defence and re-establish its sovereignty and territorial integrity”.

⁵⁵⁸ S/24032.

⁵⁵⁹ See also for example the letter dated 27 January 1992 from the representative of Israel to the Secretary-General, in which Israel alleged that the Government of Lebanon was unwilling to take action against Hizbullah’s activities against Israel (S/23479). See also Israel’s statement at the 3151st meeting, held on 18 December 1992 under the agenda item “The situation in the occupied Arab territories”. At that meeting Israel asserted its right of self-defence against “the forces of terrorism”, referring in particular to recent attacks by organizations such as Hamas and Islamic Jihad (S/PV.3151, p. 24).

⁵⁶⁰ S/24470.

⁵⁶¹ S/24486.